

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

Corner of Edward Street and Botany Road, Botany on **Tuesday 17 September 2019** at **6.00 pm**

ON-SITE INSPECTIONS

On-site inspection/s will precede the meeting.

AGENDA

1 ACKNOWLEDGEMENT OF COUNTRY

Bayside Council respects the traditional custodians of the land, elders past, present and emerging, 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
- 5 REPORTS PLANNING PROPOSALS

Nil

6 REPORTS – DEVELOPMENT APPLICATIONS

6.1	S82-2019/10 - 47 Farr Street, Rockdale	.10
6.2	DA-2018/326 - 96-102 Princes Highway, Arncliffe	.75
6.3	DA-2019/147 - 6 Culver Street, Monterey1	87
6.4	DA-2018/346 - 29 Kurnell Street, Botany2	244

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

17/09/2019

Item No 4.1

Subject Minutes of the Bayside Local Planning Panel Meeting - 10

September 2019

Report by Michael McCabe, Director City Futures

File SF19/7248

Recommendation

That the Bayside Local Planning Panel notes that the Minutes of the Bayside Local Planning Panel meeting held on 10 September 2019 have been confirmed as a true record of proceedings by the Chairperson of that meeting.

Present

Robert Montgomery, Chairperson and Independent Expert Member Ross Bonthorne, Independent Expert Member Robert Furolo, Independent Expert Member Amber O'Connell, Community Representative

Also present

Luis Melim, Manager Development Services
Fausto Sut, Manager Governance & Risk
Busola Martins, Coordinator Governance
Marta Gonzalez-Valdes, Coordinator Development Assessment
Christopher Mackay, Coordinator Development Assessment
Ben Latta, Coordinator Development Assessment
Fiona Prodromou, Senior Development Assessment Planner
Patrick Nash, Senior Development Assessment Planner
Christopher Lazaro, Development Assessment Planner
Ben Tesoriero, Consultant from CPS Planning
Suhradam Patel, IT Technical Support Officer
Anne Suann, Governance Officer

The Chairperson opened the meeting in the Botany Town Hall Committee Room at 6.03 pm.

1 Acknowledgement of Country

The Chairperson affirmed that Bayside Council respects the traditional custodians of the land, elders past, present and emerging, 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

Robert Furolo declared a Less than Significant Non-Pecuniary Interest in Item 6.3 on the basis that he has previously worked with one of the consultants on an unrelated project. The Chairperson agreed that it is not necessary for Mr Furolo to be excluded from participating as there is no actual conflict of interest.

4 Minutes of Previous Meetings

4.1 Minutes of the Bayside Local Planning Panel Meeting - 15 August 2019

Decision

That the Bayside Local Planning Panel notes that the Minutes of the Bayside Local Planning Panel meeting held on 15 August 2019 have been confirmed as a true record of proceedings by the Chairperson of that meeting.

4.2 Minutes of the Bayside Local Planning Panel Meeting - 27 August 2019

Decision

That the Bayside Local Planning Panel notes that the Minutes of the Bayside Local Planning Panel meeting held on 27 August 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 DA-2018/293 - 65A Barton Street, Kogarah

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

The following person spoke:

• Terry Palapanis, applicant, spoke against the officer's recommendation and responded to the Panel's questions.

Determination

That the Bayside Local Planning Panel, exercising its functions as the consent authority, REFUSE Development Application DA-2018/293 for the installation of thirty-six (36) x 8 metre high lighting towers at the Scarborough Park Tennis Courts, pursuant to Section 4.16(1)(b) of the *Environmental Planning and*

Assessment act 1979 for the following reasons:

Insufficient information has been provided to enable proper assessment
of the proposal with respect to Clause 6.8 Biodiversity protection under
Rockdale Local Environmental Plan 2011 as a Flora and Fauna Impact
Assessment has not been provided the Statement of Environmental
Effects is inadequate with respect to the provisions of this clause.

The additional information requested has not been provided, and Council is unable to consider the adverse impact of the proposed development on the following – as required by clause 6.8(3):

- a) native ecological communities,
- b) the habitat of any threatened species, populations or ecological community,
- c) regionally significant species of fauna and flora or habitat,
- d) habitat elements providing connectivity.
- 2. Insufficient information has been provided to enable proper assessment of the proposal with respect to Clause 2.3 Zone objectives and Land Use Table. The development application does not provide sufficient information to confirm whether the proposal can satisfy the third objective for the RE1 Public Recreation Zone in which the development is proposed to be carried out. That third objective being:
 - To protect and enhance the natural environment for recreational purposes.
- 3. The proposed development is unsatisfactory, pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, as it does not comply with the following objectives and controls of Rockdale Development Control Plan 2011:
 - a) Part 4.1.8 Biodiversity Without the provision of a Flora and Fauna Impact Assessment and amended Statement of Environmental Effects, Council cannot be satisfied the proposal complies with the objectives and controls for biodiversity land prescribed under Part 4.1.8 of the *Rockdale Development Control Plan 2011*.
- 4. Without the provision of a Flora and Fauna Impact Assessment and amended Statement of Environmental Effects, pursuant to Section 4.15(1)(b) of the *Environmental Planning and Assessment Act 1979*, the impacts of the proposed development on the natural environment cannot be confirmed.
- 5. Pursuant to Section 4.15(1)(c) of the *Environmental Planning and Assessment Act 1979*, it cannot be confirmed the proposed development is suitable for the site.
- 6. There is a public interest in ensuring development appropriately protects and enhances the natural environment, particularly native flora and fauna,

habitats and ecological processes. There is also a public interest in ensuring the provisions of Council's planning controls are upheld. Having regard to the reasons for refusal outlined above, pursuant to Section 4.15(1)(e) of the *Environmental Planning and Assessment Act 1979*, approval of the development is not in the public interest.

2 That the submitters be notified of the decision of the Panel.

Name	For	Against
Robert Montgomery	\boxtimes	
Ross Bonthorne	\boxtimes	
Robert Furolo	\boxtimes	
Amber O'Connell	\boxtimes	

Reasons for the Panel's Determination

- The Panel agrees with the officer's assessment of the application.
- The Panel notes that the consent authority is required to consider the impact of the proposal on the flora and fauna present on the site as required by Clause 6.8 Biodiversity Protection under Rockdale LEP 2011. In the absence of an appropriate biodiversity assessment the Panel is not in a position to determine the application other than by refusal.

6.2 DA-2019/143 - 24 Albert Street, Botany

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

The following people spoke:

- Huss Chalich, affected neighbour, spoke for the officer's recommendation and responded to the Panel's questions.
- John O'Rourke, owner, spoke against the officer's recommendation and responded to the Panel's questions.
- George Vardas from Champion Homes, applicant, spoke against the officer's recommendation and responded to the Panel's questions.

Determination

That the Development Application No. 2019/143 for the demolition of existing structures, Torrens Title subdivision into two (2) lots and construction of two (2) semi-detached dwellings, be DEFERRED to allow the applicant an opportunity to consider an overall redesign of the proposal to address the following matters:

- Impact on solar access and privacy to the private open space on land adjoining to the south.
- A more appropriate streetscape presentation which may or may not include the provision of a single driveway but gives consideration to the established residential streetscape, particularly in terms of the balance of hard surfaces and landscaping.
- Consider a revised internal layout to achieve improved amenity for future occupants of the buildings.
- Provide a better urban design outcome considering the site constraints and the adjoining and surrounding residential development.
- Resolution of the stormwater design for the site.
- That the amended plans be notified in accordance with the DCP prior to the matter coming back to the Panel.
- 2 That the submitter be notified of the Bayside Local Planning Panel's decision.

Name	For	Against
Robert Montgomery	\boxtimes	
Ross Bonthorne	\boxtimes	
Robert Furolo	\boxtimes	
Amber O'Connell	\boxtimes	

Reasons for the Panel's Determination

- In its present form the Panel cannot support the application. The applicant has advised that they are prepared to consider some redesign to address the matters raised in the report and provide an amended application to Council.
- The Panel considers that there is an appropriate design response for a development such as that which is proposed, however further consideration must be given to the matters noted in the Panel's decision.

6.3 DA-2018/378 - 13A-17 Swinbourne Street, Botany

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

The following people spoke:

 Patrick Nicholas, Principal Architect from AN+A Architects Nicholas + Associates, spoke for the officer's recommendation and responded to the Panel's questions.

 Alison Davidson, Town Planner from Planning Ingenuity, spoke for the officer's recommendation and responded to the Panel's questions.

Determination

- That Development Application No.2018/378 for demolition of existing structures and construction of a three (3) storey shop top housing development comprising one (1) ground floor commercial tenancies, 20 dwellings, basement and ground floor parking and strata subdivision be DEFERRED to give the applicant the opportunity to address the following matters raised by the Panel:
 - Resolution of the roof design over both the private and communal open space areas including access, weatherproofing as necessary and the bulk which is presented by the proposed solid roof.
 - Consideration of a light weight structure or structures for weather protection of rooftop courtyard / communal open space.
 - Consider incorporating passive communal open space within the deep soil area and providing access to the area for residents.
- 2 That the submitters be notified of the Bayside Local Planning Panel's decision.

Name	For	Against
Robert Montgomery	\boxtimes	
Ross Bonthorne	\boxtimes	
Robert Furolo	\boxtimes	
Amber O'Connell	\boxtimes	

Reasons for the Panel's Determination

- The Panel agrees with the officer's assessment of the proposal and considers that a development such as proposed would be suitable subject to resolving the design matters as noted in the Panel's determination.
- The Panel acknowledges that some of the units are designed to be flexible so as to be occupied as three bedrooms. This flexibility satisfies the Panel's concerns in relation to diversity of housing.
- The provision of some rooftop private open space areas is supported by the Panel subject to resolution of the proposed roof structure, access and also providing passive communal space within the deep soil zone.

6.4 S82-2019/6 - 3-5 Queen Street, Botany

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

The following people spoke:

- Derek Raithby, Principal, from Derek Raithby Architecture, spoke for the officer's recommendation and responded to the Panel's questions.
- John Higgins, My Place Estate Agents, speaking for the applicant, spoke for the officer's recommendation and responded to the Panel's questions.
- Philip Tian, owner, spoke for the officer's recommendation and responded to the Panel's questions.
- Anthony Betros, town planner, from ABC Planning P/L, spoke for the officer's recommendation and responded to the Panel's questions.

Determination

- That the Bayside Local Planning Panel, exercising the functions of the Council as the Consent Authority, pursuant to Division 8.2, relating to Development Application S82-2019/5 for a review of determination, resolve to change the decision for Refusal of the Development Application DA-2018/1169, pursuant to Section 8.4 of the Environmental Planning and Assessment Act 1979.
- That the Bayside Local Planning Panel support the variation to the FSR development standard, as contained in Clause 4.4 FSR of Botany Bay LEP 2013, in accordance with the request under clause 4.6 of BBLEP 2013 submitted by the applicant.
- That development application S82-2019/6 for the demolition of existing structures and construction of four (4) semi-detached dwellings, two (2) swimming pools and Torrens title subdivision into 4 lots at 3-5 Queen Street, Botany is APPROVED pursuant to S4.16(1)(a) of the Environmental Planning and Assessment Act 1979 and subject to the conditions of consent attached to this report, and subject to conditions as amended below:
 - Condition 101 be amended to read:
 - 101 Prior to the issue of any Occupation Certificate, Council requires proof of lodgement of the 88B Instrument with the Land Titles Office that will create reciprocal rights of carriageway easements for proposed lot 02 and 03 (house 2 and house 3) to provide for vehicular access.
 - Condition 103 be amended to read:
 - 103 Prior to the issue of an occupation certificate, certification from a licenced plumber shall be provided certifying the installation of the required minimum capacity 2000L rainwater tank(s) in each lot in accordance with the requirements of Sydney Water and AS/NZS 3500 National Plumbing and Drainage Code. The rainwater tanks shall be certified as serving the pool (where applicable) and taps onsite. First flush device shall be installed & overflow from the rainwater tank shall connect to the proposed site drainage system.
 - Condition 111 To be deleted

- Condition 25(c) To be deleted
- 4 That the objector be notified of the Bayside Local Planning Panel decision.

Name	For	Against
Robert Montgomery	\boxtimes	
Ross Bonthorne	\boxtimes	
Robert Furolo	\boxtimes	
Amber O'Connell	\boxtimes	

Reasons for the Panel's Determination

- The Panel agrees with the officer's assessment and recommendation for approval.
- The Panel acknowledges that the application as amended through the Section 8.2 process has addressed the reasons for refusal of the application previously.

The Chairperson closed the meeting at 7.33 pm.

Certified as true and correct.

Robert Montgomery **Chairperson**



Bayside Local Planning Panel

17/09/2019

Item No 6.1

Application Type S8.2 Review of Determination

Application No S82-2019/10 Lodgement Date 16/08/2019

Property 47 Farr Street, Rockdale

Ward Ward 5

Owner Mr A M Syed

Mrs R Syed

Applicant JC Professional Architectural Services

Proposal Review of determination of DA-2018/296 for the conversion

of existing cabana to a secondary dwelling.

No. of Submissions Nil

Cost of Development \$70,000

Report by Michael McCabe, Director City Futures

Officer Recommendation

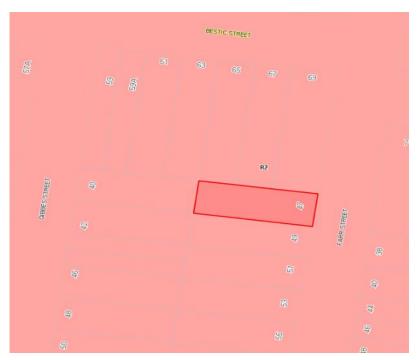
- That the Bayside Local Planning Panel, exercising the functions of the Council as the consent authority pursuant to s4.16 of the Environmental Planning and Assessment Act 1979 not support the variation to the floor space ratio prescribed by cl4.4 Floor Space Ratio of the Rockdale Local Environmental 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 objectives for development within the zone.
- That the Bayside Local Planning Panel, pursuant to Division 8.2 relating to development application S82-2019/10 for a review of determination for the conversion of the existing outbuilding to a secondary dwelling at 47 Farr Street Rockdale, resolve to confirm previous decision for refusal of the development application DA-2018/296, pursuant to Section 8.4 of the Environmental Planning and Assessment Act 1979, with modified reasons as follows:
 - 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.
 - ii Pursuant to the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development is not consistent with SEPP (Building Sustainability Index: Basix 2004) in that a BASIX certificate was not provided for the amended proposal.

Item 6.1 10

- iii 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 R2 Low Density Residential zone as contained in Part 2.3 of Rockdale Local Environmental Plan 2011 including:
 - i) 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.
- Pursuant to the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, it is considered the applicant's request for variation to Cl4.4 Floor Space Ratio of the Rockdale Local Environmental Plan 2011, has not adequately addressed the matters required to be demonstrated by cl4.6 of that Plan. 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 development within the zone.
- v Pursuant to the provisions of Section 4.2(1) of the Environmental Planning and Assessment Act 1979, the works to which this application are related have been carried out without first obtaining a development consent and without first a development consent being in force.
- vi Pursuant to the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposal does not comply with the objectives and requirements of cl6.3 Development in areas subject to aircraft noise of the Rockdale Local Environmental Plan 2011. The Acoustic Report prepared by Koikas Acoustics Pty Ltd, dated Friday 6 September 2019 refers to superseded plans and provides calculations for these superseded plans (original proposal). It is unclear whether the existing structure complies with acoustic requirements or whether the existing structure will be retrofitted/rebuilt to comply.
- vii Pursuant to the provisions of Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, approval of the proposed development is not in the public interest.

Item 6.1 11

Location Plan



Attachments

- 1
- s8.2 Planning Assessment Report <u>J</u>
 Original Assessment Report for DA-2018/296 <u>J</u> 2
- 3
- Site Plan <u>J</u> Elevations <u>J</u> 4
- 5
- Clause 4.6 Statement
 Amended Acoustics Report 6

Item 6.1 12

BAYSIDE COUNCIL

Planning Assessment Report

Application Details

Application Number: S82-2019/10

Date of Receipt: 16 August 2019

Property: 47 Farr Street, ROCKDALE (Lot 17 Sec6 DP 1677)

Owner(s): Mr Asif Mohammod Syed

Mrs Rana Syed

Applicant: JC Professional Architectural Services

Proposal: Review of determination of DA-2018/296 for the conversion of existing

cabana to a secondary dwelling

Recommendation: Refused No. of submissions: Nil

Author: Carol Vito Sula

Date of Report: 10 September 2019

Key Issues

The key issues related to this application are:

- The overall FSR for the site exceeds 0.5:1. The Clause 4.6 justification provided is outdated and does not apply to the proposal as modified.
- The site is affected by the 25-30 ANEF contours for aircraft noise. The acoustic report provided refers to superseded plans. It is also unclear whether the existing outbuilding meets acoustic requirements or whether a whole knock down rebuild is required in order to comply.
- An updated BASIX Certificate has not been provided.

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 not support the variation to the floor space ratio prescribed by cl4.4 Floor Space Ratio 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 objectives for development within the zone.
- 2. That the Bayside Local Planning Panel, pursuant to Division 8.2 relating to development application S82-2019/10 for a review of determination for the conversion of the existing outbuilding to a secondary dwelling at 47 Farr Street Rockdale, resolve to confirm previous decision for refusal of the development application DA-2018/296, pursuant to Section 8.4 of the Environmental Planning and

Assessment Act 1979, with modified reasons as follows:

- (i) 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.
- (ii) Pursuant to the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development is not consistent with SEPP (Building Sustainability Index: Basix 2004) in that a BASIX certificate was not provided for the amended proposal.
- (iii) 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 R2 Low Density Residential zone as contained in Part 2.3 of Rockdale Local Environmental Plan 2011 including:
 - i) 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.
- (iv) Pursuant to the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, it is considered the applicant's request for variation to Cl4.4 Floor Space Ratio of the Rockdale Local Environmental Plan 2011, has not adequately addressed the matters required to be demonstrated by cl4.6 of that Plan. 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 development within the zone.
- (v) Pursuant to the provisions of Section 4.2(1) of the Environmental Planning and Assessment Act 1979, the works to which this application are related have been carried out without first obtaining a development consent and without first a development consent being in force.
- (vi) Pursuant to the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposal does not comply with the objectives and requirements of cl6.3 *Development in areas subject to aircraft noise* of the Rockdale Local Environmental Plan 2011. The Acoustic Report prepared by Koikas Acoustics Pty Ltd, dated Friday 6 September 2019 refers to superseded plans and provides calculations for these superseded plans (original proposal). It is unclear whether the existing structure complies with acoustic requirements or whether the existing structure will be retrofitted/rebuilt to comply.
- (vii) Pursuant to the provisions of Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, approval of the proposed development is not in the public interest.

Background

History

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

- DA-2002/1047, New two storey residential dwelling with storeroom and BBQ area. Approved 24
 July 2002
- DA-2002/1047/A, Amended plans for New two storey residential dwelling with storeroom and BBQ area. Approved 27 August 2002
- DA-2003/770, S96 Application to amend windows on North side elevation. Approved 2 April 2003
- DA-2018/296 for the demolition of existing outbuilding and awning at the rear, alterations and additions to cabana and conversion to a secondary dwelling. Refused by Council under delegation on 4 April 2019. The reasons for refusal are as follows:
- 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 the objectives of the R2 Low Density Residential zone as contained in Part 2.3 of the zone under Rockdale Local Environmental Plan 2011 including:
- To ensure that land uses are carried out in a context and setting that minimises any impact on the character and amenity of the area.
- 2. 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 4.6 of the Rockdale Local Environmental Plan 2011. The proposed development does not comply with the 0.5:1 maximum Floor Space Ratio requirement of clause 4.4(2) in RLEP 2011. The applicant's Clause 4.6 arguments to vary the development standard are unfounded and the statement fails to justify contravention of the RLEP 2011 development standards.
- 3. 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 6.3(3)(c) of the Rockdale Local Environmental Plan 2011 specifically relating to development in areas subject to aircraft noise. The subject site is located on land within ANEF 25-30 contours and an acoustic report prepared by Koikas Acoustics Pty Ltd calculates that aircraft noise intrusion would exceed AS2021-2015 Criteria levels of 50 decibels (dB) in Bedroom 1 (51 dB) and Bedroom 2 (52 dB), despite the recommended building materials provided in the acoustics report. As such, the Assessing Officer has deemed the proposed development to be unsuitable due to the air craft noise hazards for future occupants.
- 4. The applicant has failed to provide information sufficient to complete a thorough assessment. The acoustics report by Koikas Acoustics Pty Ltd was prepared to address the matter of aircraft noise for a new residential dwelling, however, the proposed development applies to the conversion of an existing structure to be used as a habitable secondary dwelling and not a new dwelling. The application fails to provide accurate information as requested by Council.
- 5. 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 Part 5.1.1 (Storey Height and Setbacks Secondary Dwellings) of the Rockdale DCP 2011 including:
- a) To encourage development of a high standard of architectural merit and design;
- b) To ensure the size and location of new dwellings allow for the sharing of views and preserve privacy and sunlight for neighbouring and new residents; and

d) To encourage innovative housing which is pleasant to live in, relates to the existing and future neighbourhood character, is responsive to the site and is environmentally sensitive.

The proposed development does not meet the minimum 0.9m side and rear setback requirements for Secondary Dwellings as required by the Rockdale Development Control Plan 2011. In this regard, the proposed setbacks are considered to adversely impact upon the amenity and enjoyment of neighbouring properties and, if approved, would set an unwanted precedent for unauthorised development and over-development in the Rockdale Area.

- 6. Pursuant to the provisions of Section 4.2(1) of the Environmental Planning and Assessment Act 1979, works to which this application are related have been carried out without first obtaining a development consent and therefore without a development consent being in force.
- 7. Pursuant to the provisions of Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, approval of the proposed development is not in the public interest.

This S8.2 application was lodged on 16 August 2019 and seeks to review the determination of DA-2018/296 which refused demolition of an existing outbuilding and awning at the rear, alterations and additions to cabana and conversion to a secondary dwelling at the site.

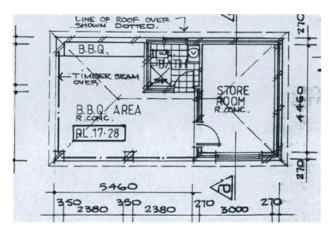
Proposal

Council is in receipt of a s8.2 review application S82-2019/10 at 47 Farr Street which seeks to review the refusal determination of Development Application DA-2018/296.

The following amendments have been made to the original proposal:

- The proposed FSR reduced from 0.54:1 to 0.518:1. This is because the amended proposal does not include an extension to the existing outbuilding as originally proposed.
- · Removal of bedroom and kitchen.
- The acoustic report has been amended to suitable for "existing structure to be used as a
 habitable secondary dwelling". The Acoustic report has recommended additional building
 materials to achieve compliance with ANEF 25-30 contours.

A comparison of floor plans is shown below.



4 of 15

Location of Existing HWS Location of Existing Propose to Active the Mill BATH BATH BATH BATH BATH BASIX Rise Location of Alc As BASIX Rise 250X250 Back Pier 250X250 Back Pie

Approved cabana and BBQ area under DA-2002/1047

Proposed addition and conversion refused under DA-2018/296



Proposed conversion under S82-2019/10

Site location and context

The 490.3sq.m site is known as Lot 17 Section 6 DP 1677, 47 Farr Street Rockdale. It is located on the western side of Farr Street, with the nearest cross roads being Bestic Street to the north and Bryant Street to the south. The site is a rectangular shape with front and rear boundary widths of 12.19 metres and side boundaries that are 40.235sq.m deep. The topography of the site is a gentle east slope of approximate 50 from the rear to the front of the property.

The subject site contains a two storey principal dwelling and brick outbuilding to the rear of the site. The brick outbuilding has been illegally converted into a secondary dwelling.

Adjoining development to the sides includes a single storey dwelling at 49 Farr Street (south side) and single storey dwelling at 69 Bestic Street (north side). There is a mix of one storey and two storey residential buildings within close proximity to the subject site.

Statutory Considerations

Environmental Planning and Assessment Act, 1979

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

S8.2 - Review of Determination

The relevant matters to consider under Section 8.2 are listed below.

8.2 Determination and decisions subject to review

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. The application can be reviewed under this Division as it is not for complying development, designated development or Crown development.

8.3 Application for and conduct of review

This application is lodged pursuant to Section 8.3(1) of the EP&A Act. The applicant may amend the proposed development for Consent authority review. The Consent Authority is to review the amended proposal provided it is satisfied that it is substantially the same development (S8.3(3) of the EP&A Act).

The applicant has provided amended plans showing the building will have one bedroom, lounge area and bathroom. There will be no extension to the footprint of the existing building. As a result the Kitchen and Bedroom 2 have been deleted from the amended plans. However the site inspection reveals that a kitchen has been installed. Further, the documents submitted with the application reference a secondary dwelling. As such, the application remains substantially the same development.

Pursuant to 8.3(2)(a) and Section 8.10 of the EP&A Act an application to review a determination is to be made within six (6) months of the determination date. Since the development application was refused on 4 April 2019, the application can be determined by the Consent Authority as it has been lodged within the required timeframe.

8.4 Outcome of review

The application has been reviewed and it is recommended that the initial refusal decision be upheld.

8.5 Miscellaneous provisions relating to reviews

The miscellaneous provisions have been considered and noted. No further comments are made in this regard.

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 amended proposal is not accompanied by a BASIX certificate. Therefore does not satisfy this Clause

State Environmental Planning Policy No 55—Remediation of Land

The property is not identified in Council's records as being Contaminated. Therefore, this clause is not applicable.

Rockdale Local Environmental Plan 2011

Relevant clauses	Compliance with	Compliance with
	objectives	standard/provision
2.3 Zone R2 Low Density Residential	No - see discussion	Yes - see discussion
4.3 Height of buildings	Yes - see discussion	Yes - see discussion
4.4 Floor space ratio - Residential	No - see discussion	No - see discussion
zones		
4.6 Exceptions to development	No - see discussion	No - see discussion
standards		
5.4 (9) Secondary dwellings	Yes - see discussion	Yes - see discussion
6.1 Acid Sulfate Soil - Class 5	Yes - see discussion	Yes - see discussion
6.2 Earthworks	Yes - see discussion	Yes - see discussion
6.3 Between 25 and 30 ANEF (2033)	No - see discussion	No - see discussion
contours		
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 R2 Low Density Residential

The subject site is zoned R2 - Low Density Residential under the provisions of Rockdale Local Environmental Plan 2011 (RLEP 2011). The proposal is defined as a secondary dwelling which constitutes a permissible development only with development consent. The objectives of the zone are:

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

The proposed development provides additional housing stock for the area. However, insufficient information has been submitted to ensure that the proposed landuse will be carried out in context and setting that minimises any impact on the character and amenity of the area.

4.3 Height of buildings

The height of the existing building is 3.98m and therefore does not exceed the maximum 8.5m height shown for the land on the Height of Buildings Map. The existing building will be utilised for the proposal therefore will have no additional impacts relating to height.

4.4 Floor space ratio - Residential zones

The proposed GFA for the buildings on site are as follows:

Main Dwelling - Ground Floor: 106 sq.m

Main Dwelling - First Floor: 118 sq.m

Secondary Dwelling: 38 sq.m

The total GFA is 262 sq.m. The FSR is 0.53:1 when calculated against the site area of 490.3sq.m. The proposed development does not comply with clause 4.4(2) in RLEP 2011, which restricts the floor space ratio (FSR) to 0.5:1 in a R2 zone.

It is noted that the GFA of all approved development on the site as calculated by council is 241.2 sq.m or 0.49:1. The breakdown is as follows:

Main Dwelling - Ground Floor: 106 sq.m
 Main Dwelling - First Floor: 118 sq.m
 Outbuilding - Store room/Bath: 17.2 sq.m

The unauthorised works which converted the approved BBQ Area into a habitable room has resulted in non-compliance to the Floor Space Ratio standards. The applicant has provided a Clause 4.6 in support of the non-compliance.

4.6 Exceptions to development standards

The proposal is for the conversion of the existing cabana to a secondary dwelling. It is to be noted that the cabana/ BBQ area has been illegally converted into a room. According to the Floor Space Ratio Maps, the maximum floor space ratio is not to exceed 0.5:1. The following table demonstrates the existing GFA and proposed GFA for the site:

	Approved	Refused DA- 2018/296	Proposed/Unauthorised
Site Area	490.3sq.m		
Gross Floor Area (GFA)			
· Main Dwelling Ground Floor	106sq.m	219.56sq.m	106sq.m
· Main Dwelling First Floor	118sq.m		118sq.m
· Outbuilding/ Store Room	17.2sq.m	-	-
· Secondary Dwelling	-	46.5sq.m	38sq.m
Total GFA	241.2sq.m	266.06sq.m	262sq.m
Floor Space Ratio (FSR)	0.49:1	0.54:1	0.53:1
Variation to Standard	No Variation	20.91 or 8.53%	16.85sq.m or 6.87%

Clause 4.6 provides an appropriate degree of flexibility in applying certain development standards to development proposals in order to achieve better outcomes for and from development (Clause 4.6(1).

Although the proposed development contravenes development standard 4.4 (Floor Space Ratio), pursuant to Clause 4.6(2) development consent may still be granted subject to Clause 4.6 as the FSR

development standard is not expressly excluded from the operation of Clause 4.6.

Pursuant to Clause 4.6(3) of the Rockdale LEP2011 development consent must not be granted for development that contravenes a development standard unless the applicant has provided a written request justifying the contravention of the development standard by demonstrating:

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

The applicant has provided a Cl4.6 variation request to justify the contravention to the Floor Space Ratio (FSR) development standard (Cl4.4). The Cl4.6 variation request relates to the original proposal which has been amended by the current proposal.

Cl.4.6(3)(a): Is the development standard unreasonable or unnecessary in the circumstances of the case?

The applicants Clause 4.6 Variation request argues compliance with the Development Standard would be unreasonable as the proposal continues to achieve the objectives of the FSR standard despite the non-compliance. As mentioned above, the Applicants Clause 4.6 relates to the proposal as originally proposed under DA-2018/296. As such some matters referred to in the variation request are no longer relevant to the proposal (detailed below):

- The Clause 4.6 notes the existing built form on the site already exceeds the FSR control by approximately 10m². Using the submitted plans, Council's Planner has calculated the FSR before the unauthorised works were undertaken as 0.49:1 which complies with the FSR standard. The unauthorised conversion of the BBQ Area has resulted in the non-compliance with FSR of 0.53:1.
- The Clause 4.6 notes the proposal complies with setback requirements. The proposal does not comply with the side setback requirement of 0.9m.
- The Clause 4.6 refers to the proposed secondary dwelling being widened and enlarged. Under the current proposal, the existing building will not be extended/enlarged.
- The Aim of the request as noted in the Clause 4.6 is to allow an increase of FSR from 0.53:1 to 0.54:1 on the site. The proposed FSR for this application is 0.53:1.

Given the discrepancies between the Clause 4.6 variation request and proposal, it is considered the applicant has not fully demonstrated how strict compliance with the FSR development standard would be unreasonable or unnecessary in this case.

Cl. 4.6(3)(b): Are there sufficient environmental planning grounds to justify contravening the development standard:

The applicant has simply listed a number of benefits arising from the proposal. It does not justify the contravention of the development standard nor does it demonstrate that there are sufficient environmental planning grounds to justify the contravention. As such the Clause 4.6 variation request is insufficient in this regard.

Cl.4.6(4)(a)(i) Has the applicants written request adequately addressed the matters required in subclause (3)?

The applicant has not adequately addressed the matters required in subclause 3 as the variation request submitted with this Section 82 application relates to the original proposal. The matters discussed in the Clause 4.6 request are not relevant to the proposal as currently lodged with Council.

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

The proposal is not consistent with the objectives of Cl 4.4 Floor space Ratio and Cl4.6 Exceptions to Development Standards as the Clause 4.6 variation request relates to the original proposal that was refused by Council. A detailed analysis of how the proposal is consistent with the objectives of the R2 Low Density Residential zone has not been provided An analysis of the objectives of the R2 Low Density Residential zone is provided below.

 To provide for the housing needs of the community within a low density residential environment

The proposal is consistent with this provision as it will provide an additional secondary dwelling which is an anticipated development within this zone. The development will not change the density of the site.

 To enable other land uses that provide facilities or services to meet the day to day needs of residents.

The proposal is not consistent with this objective as the land is subject to ANEF greater than 25 which is considered an unacceptable site for a new dwelling. The applicant has not provided sufficient information to confirm that aircraft noise will not impact upon occupants of the new secondary dwelling. As such, the ability of residents to meet their day to day needs is compromised.

 To ensure that land uses are carried out in a context and setting that minimises any impact on the character and amenity of the area.

The proposal is not consistent with this objective as unauthorised works have already been undertaken to convert the bbq area (cabana) into a room. The information provided with this application to authorise the works is insufficient and a proper and thorough assessment of the impacts of the proposal and the suitability of the site for the development can not be undertaken.

Overall, the proposal is not consistent with the Objectives of the R2 zone.

In summary, the Clause 4.6 variation request cannot be supported as the Applicant's written request is unsatisfactory in regards to addressing 4.6(3). The proposed development is not in the public interest as it is inconsistent with the objectives of the R2 zone, Development Standard Cl4.4 (FSR) and Cl4.6.

5.4 (9) Secondary dwellings

The proposed secondary dwelling has a floor area of 38sq.m which complies with the maximum total floor area of 60 sq.m set by this clause.

6.1 Acid Sulfate Soil - Class 5

Acid Sulfate Soils (ASS) - Class 5 affects the property. However, development consent is not required

as the site is not within 500 metres of adjacent Class 1, 2, 3 or 4 that is below 5 AHD.

6.2 Earthworks

No earthworks will be undertaken as the proposal utilises the existing outbuilding which has been illegally converted into secondary dwelling.

6.3 Between 25 and 30 ANEF (2033) contours

The subject site is located between the 25 and 30 ANEF contours for aircraft noise. The criteria set out in Table 2.1 (Building Site Acceptability Based on ANEF Zones) in AS 2021—2000, indicates new dwellings on sites greater than 25 ANEF are deemed unacceptable. The Acoustic Report prepared by Koikas Acoustics Pty Ltd, dated Friday 6 September 2019 refers to superseded plans and provides calculations for these superseded plans (original proposal). It is unclear whether the existing structure complies with acoustic requirements or whether the existing structure will be retrofitted/rebuilt to comply.

6.4 Airspace operations

The proposed development falls between OLS 40-42 metres to Australian Height Datum (AHD). The proposed building height is at 21.26 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 proposed dwelling will utilise the existing stormwater system on the site.

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 standard/provision
4.1.1 Views and Vista	Yes - see discussion	Yes - see discussion
4.1.3 Water Management	Yes - see discussion	Yes - see discussion
4.1.4 Soil Management	Yes - see discussion	Yes - see discussion
4.2 Streetscape and Site Context - General	Yes - see discussion	Yes - see discussion
4.3.1 Open Space & Landscape Design - Low & medium density residential	Yes - see discussion	Yes - see discussion
4.3.2 Private Open Space - Secondary Dwelling	Yes - see discussion	Yes - see discussion
4.4.1 Energy Efficiency - Residential	No - see discussion	No - see discussion

Relevant clauses		Compliance with standard/provision
4.4.2 Solar Access - Low and medium density residential	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 - see discussion	Yes - see discussion
4.4.5 Acoustic privacy	Yes - see discussion	Yes - see discussion
4.6 Parking Rates - Dwelling House	Yes - see discussion	Yes - see discussion
4.7 Air Conditioning and Communication Structures	Yes - see discussion	Yes - see discussion
4.7 Laundry Facilities and Drying Areas	No - see discussion	No - see discussion
5.1 Storey Height and Setbacks - Secondary dwelling	No - see discussion	No - see discussion
5.1 Frontage Setback - Rear Lane	Yes - see discussion	Yes - see discussion
5.1 Building Design - General	Yes - see discussion	Yes - see discussion

4.1.1 Views and Vista

The proposed development will utilise an existing outbuilding therefore there will be no additional impacts on the surrounding views presently enjoyed by adjacent residents.

4.1.3 Water Management

The roofwater and runoff is to be directed to an detention tank.

4.1.4 Soil Management

No physical works are proposed as unauthorised works have been completed to convert the existing outbuilding into a secondary dwelling.

4.2 Streetscape and Site Context - General

The proposal is not visible from the streetscape as it is located behind the existing two storey principal dwelling.

4.3.1 Open Space & Landscape Design - Low & medium density residential

The proposal will not result in any changes to the existing landscaped areas of the site.

4.3.2 Private Open Space - Secondary Dwelling

No changes to the existing private open space are proposed

4.4.1 Energy Efficiency - Residential

The applicant has not submitted a BASIX Certificate for the proposed development.

4.4.2 Solar Access - Low and medium density residential

There will be minimum impact on the level of sunlight currently received by adjoining properties and within the development site as no changes to the built form on site are proposed.

4.4.3 Natural Lighting and Ventilation - Residential

The outbuilding has minimum ceiling heights of 2.7m which complies with this provision.

4.4.5 Visual privacy

The proposal will not result in additional windows/openings to the existing building which may increase

privacy impacts to adjoining neighbours.

4.4.5 Acoustic privacy

There will be minimal adverse impact on the acoustic privacy of adjoining and surrounding properties as consideration has been given to the location and design of the building and landscaping in relation to private recreation areas to minimise noise intrusion on the amenity of adjoining properties.

4.6 Parking Rates - Dwelling House

There are no parking requirements for secondary dwellings.

4.7 Air Conditioning and Communication Structures

The plans show the airconditioning unit on the southern side of the building.

4.7 Laundry Facilities and Drying Areas

The plans do not illustrate the provision of internal laundry facilities within the secondary dwelling. The provisions of this Clause are not satisfied.

5.1 Storey Height and Setbacks - Secondary dwelling

The existing structure to be used as a secondary dwelling does not comply with the side setback requirements.

5.1 Frontage Setback - Rear Lane

This clause is not applicable as the existing outbuilding/ proposed secondary dwelling does not front a rear lane.

5.1 Building Design - General

The existing building is of a design and architectural style that is compatible with the principal dwelling.

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. The works carried out without consent, if approved, would require a Building Information Certificate to be issued by Council.

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. As proposed the site is not suitable for the proposed development as the acoustic impacts have not been fully assessed as the acoustic information provided is insufficient and incomplete.

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 does not meet FSR, Basix and Acoustic -Airport Noise requirements and 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 have been considered and addressed. As such it is considered that the proposed development is not in the public interest.

Civil Aviation Act, 1988

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

Civil Aviation (Building Control) Regulations 1988

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

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

The proposed development is affected by the 15.23m Building Height Civil Aviation Regulations, however the proposed building height at 3.98m will have minimal impact upon the height requirement in the regulations.

Schedule 1 - Draft Conditions of consent

BAYSIDE COUNCIL

Planning Assessment Report

Application Details

Application Number: DA-2018/296
Date of Receipt: 2 November 2018

Property: 47 Farr Street, ROCKDALE (Lot 17 Sec6 DP 1677)

Owner(s): Mr Asif Mohammod Syed

Mrs Rana Syed

Applicant: Mr Jonathan Chow

Proposal: Demolition of existing outbuilding and awning at the rear, alterations and

additions to cabana and conversion to a secondary dwelling

Recommendation: Refused No. of submissions: Nil

Author: Gary Choice
Date of Report: 22 March 2019

Key Issues

The key issues related to this application are:

 An inspection of the site revealed the store room and BBQ area has already been converted to, and is being used as an unauthorised secondary dwelling.

The approved storeroom and BBQ area has not been constructed in accordance with the 0.9m setbacks of the approved DA-2002/1047/A. The existing BBQ area has been enclosed and converted to a kitchen, laundry and living area, and the storeroom has been converted to a bedroom.

The proposed development does not comply with clause 4.4(2) in RLEP 2011, which restricts
the floor space ratio (FSR) to 0.5:1 in a R2 zone. The proposed development will result in an
overall FSR of 0.54:1.

In accordance with clause 4.6 of RLEP 2011, the applicant has requested that a variation to the maximum FSR requirement be allowed. The applicant's arguments to vary the development standard Clause 4.4 (Floor Space Ratio) are unfounded and the proposed development does not achieve the objectives of Clause 4.4. Therefore, the statement does not adequately justify contravention of RLEP 2011 development standard.

 The proposed development does not meet the minimum 0.9m side and rear setbacks for Secondary Dwellings as required by the Rockdale Development Control Plan 2011.

In this regard, the proposed setbacks are considered to adversely impact upon the adjoining properties

and, if approved, would set an unwanted precedent for unauthorised development and overdevelopment in the Rockdale Area.

 The proposed development will result in an increase in the number of dwellings or people affected by aircraft noise on land located between 25 and 30 ANEF (2033) contours.

An acoustics report prepared by Koikas Acoustics Pty Ltd dated Monday 17 December 2018 (Project No.952) was submitted on Wednesday 30 January 2019. The Koikas acoustics report calculates that aircraft noise intrusion would exceed AS2021-2015 Criteria levels of 50 decibels (dB) in Bedroom 1 (51 dB) and Bedroom 2 (52 dB), despite the recommended building materials provided in the acoustics report. As such, the Assessing Officer has deemed the proposed development to be unsuitable due to the air craft noise hazards for future occupants.

The applicant has failed to provide information sufficient to complete a full assessment.

The acoustics report prepared by Koikas Acoustics Pty Ltd dated Monday 17 December 2018 (Project No.952) was prepared to address the matter of aircraft noise for a new residential dwelling, however, the proposed development applies to the conversion of an existing structure to be used as a habitable secondary dwelling and not a new dwelling. The Assessing Officer asserts that this a failure to provide accurate information as requested by Council.

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)(a)(i) of the Environmental Planning and Assessment Act 1979, it is considered that the proposed development does not satisfy the objectives of the R2 Low Density Residential zone as contained in Part 2.3 of the zone under Rockdale Local Environmental Plan 2011 including:
- To ensure that land uses are carried out in a context and setting that minimises any impact on the character and amenity of the area.
- 2. 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 4.6 of the Rockdale Local Environmental Plan 2011. The proposed development does not comply with the 0.5:1 maximum Floor Space Ratio requirement of clause 4.4(2) in RLEP 2011. The applicant's Clause 4.6 arguments to vary the development standard are unfounded and the statement fails to justify contravention of the RLEP 2011 development standards.
- 3. 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 6.3(3)(c) of the Rockdale Local Environmental Plan 2011 specifically relating to development in areas subject to aircraft noise. The subject site is located on land within ANEF 25-30 contours and an acoustic report prepared by Koikas Acoustics Pty Ltd calculates that aircraft noise intrusion would exceed AS2021-2015 Criteria levels of 50 decibels (dB) in Bedroom 1 (51 dB) and Bedroom 2 (52 dB), despite the recommended building materials provided in the acoustics report. As such, the Assessing Officer has

deemed the proposed development to be unsuitable due to the air craft noise hazards for future occupants.

- 4. The applicant has failed to provide information sufficient to complete a thorough assessment. The acoustics report by Koikas Acoustics Pty Ltd was prepared to address the matter of aircraft noise for a new residential dwelling, however, the proposed development applies to the conversion of an existing structure to be used as a habitable secondary dwelling and not a new dwelling. The application fails to provide accurate information as requested by Council.
- 5. 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 Part 5.1.1 (Storey Height and Setbacks Secondary Dwellings) of the Rockdale DCP 2011 including:
- a) To encourage development of a high standard of architectural merit and design;
- b) To ensure the size and location of new dwellings allow for the sharing of views and preserve privacy and sunlight for neighbouring and new residents; and
- d) To encourage innovative housing which is pleasant to live in, relates to the existing and future neighbourhood character, is responsive to the site and is environmentally sensitive.

The proposed development does not meet the minimum 0.9m side and rear setback requirements for Secondary Dwellings as required by the Rockdale Development Control Plan 2011. In this regard, the proposed setbacks are considered to adversely impact upon the amenity and enjoyment of neighbouring properties and, if approved, would set an unwanted precedent for unauthorised development and over-development in the Rockdale Area.

- 6. Pursuant to the provisions of Section 4.2(1) of the Environmental Planning and Assessment Act 1979, works to which this application are related have been carried out without first obtaining a development consent and therefore without a development consent being in force.
- 7. Pursuant to the provisions of Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, approval of the proposed development is not in the public interest.

Background

History

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

- DA-2002/1047, NEW TWO STOREY RESIDENTIAL DWELLING WITH STOREROOM AND BBQ AREA approved 24 July 2002
- DA-2002/1047/A, S.96 APPLICATION TO AMEND WINDOWS ON NORTH SIDE ELEVATION approved 29 July 2004

With regards to DA-2018/296, a 14 day letter requesting additional information was sent to the applicant on Wednesday 28 November 2018. Key issues with the proposal included:

An inspection of the site revealed the approved store room and BBQ area has already been

- converted to a secondary dwelling;
- Calculations provided for the proposed development indicated an exclusion of the secondary dwelling storage room from the total gross floor area;
- The location of the 3000 litre rainwater tank and air conditioning unit on the western boundary were deemed impracticable for service, repairs and replacement as required;
- The application proposed a 5 metre blank wall with a 665mm side setback from the southern boundary;
- The development had a proposed ceiling height of 2.5m; and
- The site is located within an ANEF contour of 25 to 30. The acoustic report submitted with the application related to the historic DA-1047/02 and did not address the proposed Secondary Dwelling.

The applicant requested a time extension to submit the information (until Jan 31 2019) on Friday 7 December 2018, which was subsequently granted. An acoustics report, amended plans and a Clause 4.6 statement (*Exceptions to development standards*) were received by Wednesday 30 January 2019.

Subsequent amendments have been made by the applicant to address the preliminary issues identified by the Assessing Officer including:

- Re-labelling of the Storage Room to Bed 1
- Relocation of the Rainwater tank and A/C Unit
- Reduction of extension to comply with the 0.9m side setback on the southern boundary
- Increase in ceiling height to comply with the minimum 2.7m height for habitable areas.

Full consideration is given to the responsiveness and efforts of the applicant to comply with Council Development controls.

Proposal

Council is in receipt of a development application DA-2018/296 at 47 Farr Street ROCKDALE, which seeks consent for the conversion of the approved store room and barbeque area to a secondary dwelling.

Specifically, the proposal consists of:

- partial demolition comprising the removal of the existing BBQ area awning, garden shed and southern store room wall;
- ground floor extension of the secondary dwelling and reconfiguration of the existing floor plan comprising relocation of kitchen with laundry, and addition of a second bedroom; and
- installation of 3000 litre rainwater tank and air conditioning to the rear of secondary dwelling.

As a footnote, the actual works would require the demolition of the existing unauthorised southern wall as the BBQ area has already been enclosed.

Site location and context

The subject site is known as Lot 17 Section 6 DP 1677, 47 Farr Street ROCKDALE. The site is a rectangular shape with front and rear boundary widths of 12.19 metres. The side boundaries are 40.235m deep. The total site area is 490.3m². The topography of the site is a gentle east slope of approximate 5^o from the rear to the front of the property.

The subject site contains a two storey principal dwelling. The site is located on the western side of Farr

Street, with the nearest cross roads being Bestic Street to the north and Bryant Street to the south. Adjoining development to the sides includes a single storey dwelling at 49 Farr Street (south side) and single storey dwelling at 69 Bestic Street (north side). An unauthorised secondary dwelling (converted from the approved store room and BBQ area of DA-2002/1047/A) is situated on the rear property. There is a mix of one storey and two storey residential buildings within close proximity to the subject property.

Statutory Considerations

Environmental Planning and Assessment Act, 1979

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

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

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

The following Environmental Planning Instruments are relevant to this application:

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 The applicant has submitted a BASIX Certificate for the proposed development. The Certificate number is 966529S_02.

The commitments made result in the following reductions in energy and water consumption:

Reduction in Energy Consumption 51% Reduction in Water Consumption 40% Thermal Comfort Pass

The proposal is satisfactory in regard to this SEPP.

State Environmental Planning Policy No 55—Remediation of Land

The provisions of SEPP 55 have been considered in the assessment of the development application, along with the requirements of Part 4.1.5 - Contaminated Land of the Rockdale Development Control Plan 2011. The likelihood of encountering contaminated soils on the subject site is considered to be extremely low given the following:

- 1. The site appears to have been continuously used for residential purposes;
- 2. The adjoining and adjacent properties are currently used for residential purposes; and
- 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.

Rockdale Local Environmental Plan 2011

Relevant clauses	Compliance with	Compliance with
	objectives	standard/provision
2.3 Zone R2 Low Density Residential	Yes - see discussion	Yes - see discussion
2.7 Demolition requires consent	Yes - see discussion	Yes - see discussion
4.3 Height of buildings	Yes - see discussion	Yes - see discussion
4.4 Floor space ratio - Residential zones	No - see discussion	No - see discussion
4.6 Exceptions to development standards	No - see discussion	No - see discussion
5.4 Controls relating to miscellaneous permissible	Yes - see discussion	Yes - see discussion
uses - Secondary dwellings		
6.1 Acid Sulfate Soil - Class 5	Yes - see discussion	Yes - see discussion
6.2 Earthworks	Yes - see discussion	Yes - see discussion
6.3 Development in areas subject to aircraft noise	No - see discussion	No - see discussion
6.3 Between 25 and 30 ANEF (2033) contours	No - see discussion	No - 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 R2 Low Density Residential

The subject site is zoned R2 - Low Density Residential under the provisions of Rockdale Local Environmental Plan 2011 (RLEP 2011). The proposal is defined as a secondary dwelling which constitutes a permissible development only with development consent. The objectives of the zone are:

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

The proposed development is not consistent with the objectives of the zone as it deviates from the original approved outbuilding location, resulting in a breach of setback on the western boundary. Additionally, the proposed dwelling exceeds floor space ratio restrictions for the site, and does not meet the Australian Standards for aircraft noise levels. As an example of over-development, additional buildings of this kind will result in a negative impact on the character and amenity of the area.

2.7 Demolition requires consent

The proposed development seeks consent for the demolition of the existing garden shed and rear BBQ area awning and hence satisfies the provisions of this Clause.

4.3 Height of buildings

The height of the proposed building is 4.19m and therefore does not exceed the maximum 8.5m maximum height requirement shown for the land on the Height of Buildings Map. Furthermore, the proposed development will result in a 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

The proposed development does not comply with clause 4.4(2) in RLEP 2011, which restricts the floor space ratio (FSR) to 0.5:1 in a R2 zone. The proposed secondary dwelling will generate an additional GFA of 46.5m2 and the existing Principal Dwelling GFA is 219.56m², resulting in a total GFA of 266.06m². The proposed development will result in an overall FSR of 0.54:1 and does not comply with RLEP requirements of this clause.

4.6 Exceptions to development standards

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

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

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

- (i) the applicant's written request is satisfactory in regards to addressing subclause (3) above, and (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives of the relevant zone.
- 5(a) The consent authority must also consider whether contravention of the development standard raises any matter of significance for State or Regional environmental planning, and 5(b) the public benefit of maintaining the development standard.

In accordance with clause 4.6 of RLEP 2011, the applicant has provided a 4.6 statement requesting that a variation to the maximum FSR requirement be permitted with Council consent.

The applicant's comments to address Clause 4.6(3)(a) are provided below:

- The proposed works seek to add approximately 10m2 to the total gross floor area. The degree of non-compliance is minor, being only 20.9m2 or 4% of the allowable FSR. Whilst this only a very small amount, the level of amenity provided by the works and new secondary dwelling will be significantly improved. Accordingly the non-compliance will not lead to any burden on infrastructure or local roads etc in light of objective (a) above.
- The works will result in a built form that is single level and only marginally larger in footprint compared to the existing form. The single storey nature of the proposal ensures that no unreasonable impacts to neighbours will occur. Accordingly the non-compliance will not lead to any amenity impact in light of objective (b) above.
- The additional built form is styled and finished to match the existing form. The rear studio will only appear minimally larger in terms of its footprint. Accordingly the non-compliance will not lead to any adverse impact to built form in light of objective (c) above.
- The proposal complies with height and setbacks requirements and appropriate areas of open space and built upon areas are provided. Accordingly, the proposal does not appear as an over development of the site. The street appearance of the site is completely unaffected. Accordingly the non-compliance will not lead to any adverse impact to built form in light of objective (c) above.
- The amenity to neighbours will not be unreasonably affected. Good solar access is achieved to rear of the adjoining dwellings that the external works are at ground floor level. Accordingly the non-compliance will not lead to any amenity impact in light of objective (b) above.
- The proposed building bulk is entirely appropriate within the context of the site. Accordingly

the non-compliance will not lead to any adverse impact to built form in light of objective (c) above; and

The works will result in an improved dwelling providing greater diversity in housing choice.

The applicant's comments to address Clause 4.6(3)(b) are provided below:

- It has been demonstrated that the proposal and its FSR breach remains consistent with the objectives of the subject R2 Low Density Residential Zone as well as Clause 4.4 and 4.6 of the
- Rockdale LEP 2011, despite the numerical non-compliance;
- The proposal would not compromise the character or nature of the area sought by the local environmental planning framework;
- The non-compliant FSR does not result in any unreasonable visual or amenity impacts;
- The non-compliant FSR does not result in any unreasonable overshadowing impacts, largely because the works are single storey; and
- The FSR non-compliance assists with providing improved amenity for residents.

The applicant has addressed each element of Clause 4.6(3), and specific subclauses have been accordingly referenced. The Assessing Officer, however, asserts that the arguments for compliance with the standard to be treated as unreasonable or unnecessary in the circumstances of the proposed development are unfounded. The proposed development does not achieve the objectives of Clause 4.4 as argued in the Clause 4.6 statement for the following reasons:

- The existing unauthorised building deviates from the approved DA-2002/1047/A design comprising a 0.9m western boundary setback;
- The existing setbacks do not comply with current RDCP 2011 standards of 0.9m for secondary dwellings, including a 325mm setback from the northern boundary and a 730mm setback from the western boundary; and
- the proposed development includes the extension of an already (illegally) enclosed BBQ area which will result in a 5m blank wall 0.9m from the southern boundary.

With consideration given to the abovementioned characteristics of the existing unapproved building, it is considered that use of the existing unapproved structure as a secondary dwelling poses an unacceptable impact on the amenity, use and enjoyment of neighbouring properties and does not, therefore achieve the objectives of Clause 4.4. The statement is considered unsatisfactory in the context of clause 4.6.

5.4 Controls relating to miscellaneous permissible uses - Secondary dwellings

The proposed secondary dwelling has an approximate total floor area of 46.5m² and complies with the GFA requirements of this Clause.

6.1 Acid Sulfate Soil - Class 5

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

6.2 Earthworks

Earthworks including excavation are not required on site for the proposed development.

6.3 Development in areas subject to aircraft noise

The site falls within the 25-30 ANEF Contour Map therefore, the proposed development is likely to be affected by aircraft noise. The details of the acoustics report are provided in the next section.

6.3 Between 25 and 30 ANEF (2033) contours

The development is on land is located between 25 and 30 ANEF (2033) contours. Further, the development will result in an increase in the number of dwellings or people affected by aircraft and in accordance with this clause, the proposed development requires noise mitigation measures.

An Acoustic Report was requested by Council on Wednesday 28 November. Subsequently, an acoustics report prepared by Koikas Acoustics Pty Ltd dated Monday 17 December 2018 (Project No.952) was submitted on Wednesday 30 January 2019.

Council notes the abovementioned report was prepared to address the matter of aircraft noise and details noise amelioration measures to be incorporated into the construction of a new residential dwelling in order to minimise aircraft noise impacts to future occupants, in compliance with the Australian Standards for indoor design sound levels. The subject proposal, however, applies to the conversion of an existing structure to be used as a habitable secondary dwelling and not a new dwelling. The Assessing Officer asserts that this a failure to provide accurate information as requested by Council.

The Koikas acoustics report (see 2.7 - CALCULATED INDOOR NOISE LEVELS, p.11) predicts that aircraft noise intrusion is to exceed AS2021-2015 Criteria levels of 50 decibels in Bedroom 1 (51 dB) and Bedroom 2 (52 dB), despite the recommended building materials provided in the acoustics report. As such, the Assessing Officer has deemed the proposed development to be unsuitable due to the air craft noise hazards for future occupants.

With regards to this Clause, the proposed development does not demonstrate a genuine compliance with the requirements and objectives of this clause. As the Koikas Acoustics report was intended for a newly constructed building and not the conversion of an existing non-habitable building, the Applicant has not provided sufficient information for Council to perform a full assessment.

6.4 Airspace operations

The proposed development is affected by the Obstacle Limitation Surface (OLS) which is set at 40 metres to Australian Height Datum (AHD). The proposed building height is at 21.26 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 installation of a 3000 litre rainwater tank on the northern boundary to manage stormwater. Rainwater tank overflow will connect to the existing stormwater system. 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	Compliance with
	objectives	standard/provision
4.1.1 Views and Vista	Yes - see discussion	Yes - see discussion
4.1.3 Water Management	Yes - see discussion	Yes - see discussion
4.1.4 Soil Management	Yes - see discussion	Yes - see discussion
4.1.6 Development on Sloping Sites	Yes - see discussion	Yes - see discussion
4.2 Streetscape and Site Context - General	Yes - see discussion	Yes - see discussion
4.3.1 Open Space & Landscape Design - Low &	Yes - see discussion	Yes - see discussion
medium density residential		
4.3.2 Private Open Space - Secondary Dwelling	Yes - see discussion	Yes - see discussion
4.4.1 Energy Efficiency - Residential	Yes - see discussion	Yes - see discussion
4.4.2 Solar Access - Low and medium density	Yes - see discussion	Yes - see discussion
residential		
4.4.3 Natural Lighting and Ventilation - Residential	Yes - see discussion	Yes - see discussion
4.4.5 Visual privacy	Yes - see discussion	Yes - see discussion
4.4.5 Acoustic privacy	Yes - see discussion	Yes - see discussion
4.6 Parking Rates - Dwelling House	Yes - see discussion	Yes - see discussion
4.7 Air Conditioning and Communication Structures	Yes - see discussion	Yes - see discussion
4.7 Laundry Facilities and Drying Areas	Yes - see discussion	Yes - see discussion
4.7 Storage Areas	Yes	Yes
5.1 Storey Height and Setbacks - Secondary	No - see discussion	No - see discussion
dwelling		
5.1 Building Design - General	Yes - see discussion	Yes - see discussion

4.1.1 Views and Vista

The proposed secondary dwelling relates to an existing building and poses minimal adverse impact on the surrounding views presently enjoyed by adjacent residents.

4.1.3 Water Management

The roof water and runoff is to be directed to a 3000 litre retention tank (RWT). A Stormwater Drainage Concept Plan has been submitted showing RWT overflow to connect an existing stormwater drainage pit.

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.

4.1.6 Development on Sloping Sites

The objectives of this clause are to limit site excavation and minimise cut and fill by allowing the building mass to step in accordance with the slope of the land; and to protect the amenity of adjoining

properties. In this regard, the proposed secondary development will occur on the existing approved BBQ and storage area, minimising environmental impacts and amenity impacts due to excessive cut and fill.

4.2 Streetscape and Site Context - General

The proposal is located in a R2 Zone. The immediate context is relatively low scale, consisting of a combination of single and two storey dwellings. Although proximate neighbourhoods of Banksia and Arncliffe have undergone recent rezoning to allow for higher density and mixed use development, there is no indication of similar immediate change in the subject area. The proposed Secondary Dwelling is similar to surrounding the area in terms of height, bulk and scale.

Although the proposed development will be virtually hidden from street view, a range of materials, colours and finishes is proposed to provide for a modern contemporary building that speaks to the existing principal dwelling.

4.3.1 Open Space & Landscape Design - Low & medium density residential

The proposal provides adequate landscaping, with capability to contain storm water runoff.

4.3.2 Private Open Space - Secondary Dwelling

The proposed development provides 87m² of shared private open space, satisfying the 80m² RDCP 2011 requirements for Secondary dwellings. Private open spaces are usable, accessible, clearly defined and will meet occupants requirements of privacy, solar access, outdoor activities and landscaping.

4.4.1 Energy Efficiency - Residential

The applicant has submitted a BASIX Certificate for the proposed development and the commitments made result in reductions in energy and water consumption, and will achieve the efficiency target set under SEPP BASIX.

4.4.2 Solar Access - Low and medium density residential

The proposed height and location of the single storey secondary dwelling will have minimum impact of the level of sunlight currently received by adjoining properties and within the development site. The installation of a skylight in the kitchen and bathroom, as per BASIX requirements, would ensure adequate natural lighting is provided.

4.4.3 Natural Lighting and Ventilation - Residential

The proposed development is for the conversion of a BBQ area and storage room into a secondary dwelling with a ceiling height of 2.7m. This satisfies the minimum ceiling height requirements of the RDCP 2011 for natural ventilation and lighting.

The Assessing Officer notes that the acoustic report by Koikas Acoustics Pty Ltd (p.11) recommends that due to high external traffic noise levels, naturally ventilating may not be suitable and pose a breach of applied noise criterion. Additional BCA compliant ventilation would be required for all habitable spaces within the secondary dwelling. Based on the lack of certainty of the abovementioned acoustics report (see RLEP 6.3), the proposed development's compliance with this RDCP control is considered inadequate to achieve the overall sustainable building design objectives of the RDCP.

4.4.5 Visual privacy

The proposed secondary dwelling is located at the rear of the site and displays the following key

features that help minimise impacts on visual privacy for residents and adjoining properties including:

- existing boundary fences above 1.8m on the north, south and west boundaries;
- obstructed views into the site from northern and western boundaries due to a number of shed and garage structures;
- established trees and hedging on northern and southern boundary fences at a height above 1.8m; and
- windows are offset to preclude views into windows of adjacent building.

Having regard to the above, the proposed development provides a reasonable level of visual privacy between the adjoining properties.

4.4.5 Acoustic privacy

There will be minimal adverse impact on the acoustic privacy of adjoining and surrounding properties as consideration has been given to the location and design of the building and landscaping in relation to private recreation areas to minimise noise intrusion on the amenity of adjoining properties.

4.6 Parking Rates - Dwelling House

The development will have minimal impact on access, parking and traffic in the area. The provision of 2 car spaces is in accordance with RDCP 2011.

4.7 Air Conditioning and Communication Structures

The plans depict the location of proposed residential air conditioning unit at the rear of the secondary dwelling on the western boundary. The development is acceptable with regard to this control.

4.7 Laundry Facilities and Drying Areas

Plans illustrate the provision of internal laundry facilities within the kitchen area of the proposed secondary dwelling. The provisions of this Clause are satisfied.

5.1 Storey Height and Setbacks - Secondary dwelling

The RDCP2011 requires a 0.9m side setback and 0.9m rear setback for single storey secondary dwellings. The existing unauthorised building has a northern side boundary setback of 0.325m and north west corner rear setback of 0.73m, which is also the location of the main bedroom (Bed 1). The development proposes a 0.9m side setback from the southern boundary and a rear boundary setback ranging from 0.73m to 1.01m.

The proposed setbacks are not consistent with the objectives of this control.

5.1 Building Design - General

The existing structure is hidden from street view and responds the architectural style of the principal dwelling in texture and composition, having been constructed of the same or similar brick and roof tile cladding. The building is located as such to minimise impacts to privacy for residents and neighbouring properties and is well protected from street noise. The building height and hipped roof is sympathetic to the neighbouring rear yard structures.

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. Additional conditions of consent are proposed to further minimise any impacts on neighbouring properties. There are no known major physical constraints, environmental impacts, natural hazards or exceptional circumstances that would hinder the suitability of the site for the proposed development.

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

The development has been notified in accordance with the provisions of Rockdale DCP 2011. Council did not receive any submissions on this proposal.

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

The 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 have been considered and addressed. As such it is considered that, if approved, the proposed development would set an unwanted precedent for unauthorised development and over-development in the Rockdale Area.

S7.12 Fixed development consent levies

In accordance with Part 3.9.2 of the *Rockdale Section 94A Development Contributions Plan* (2008), a secondary dwelling or 'Granny flat housing' is exempt from the Section 7.12 levy.

Civil Aviation Act, 1988

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

Civil Aviation (Building Control) Regulations 1988

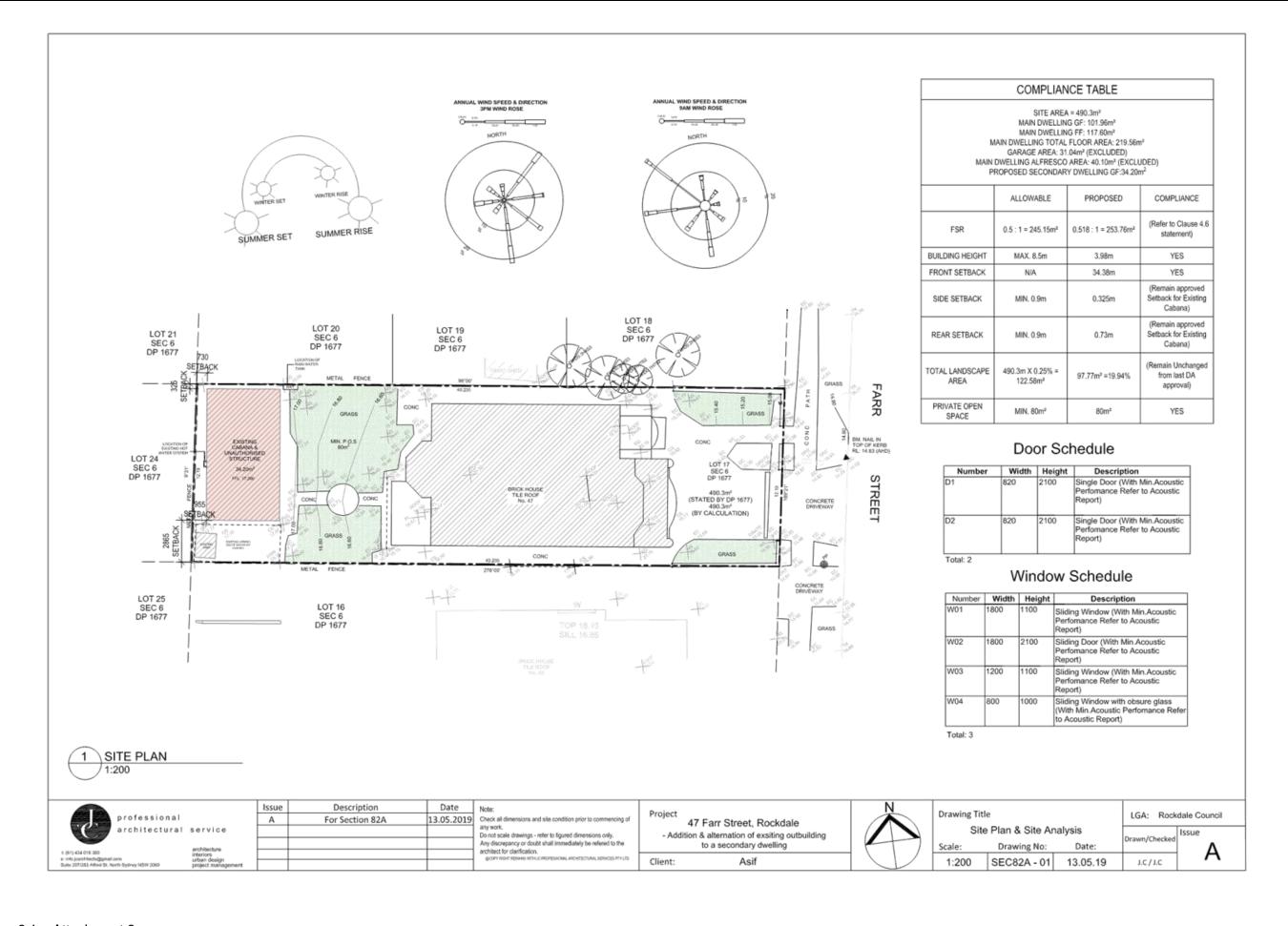
The Regulations require a separate approval from the Civil Aviation Safety Authority if a building or structure exceeds a prescribed height limit.

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

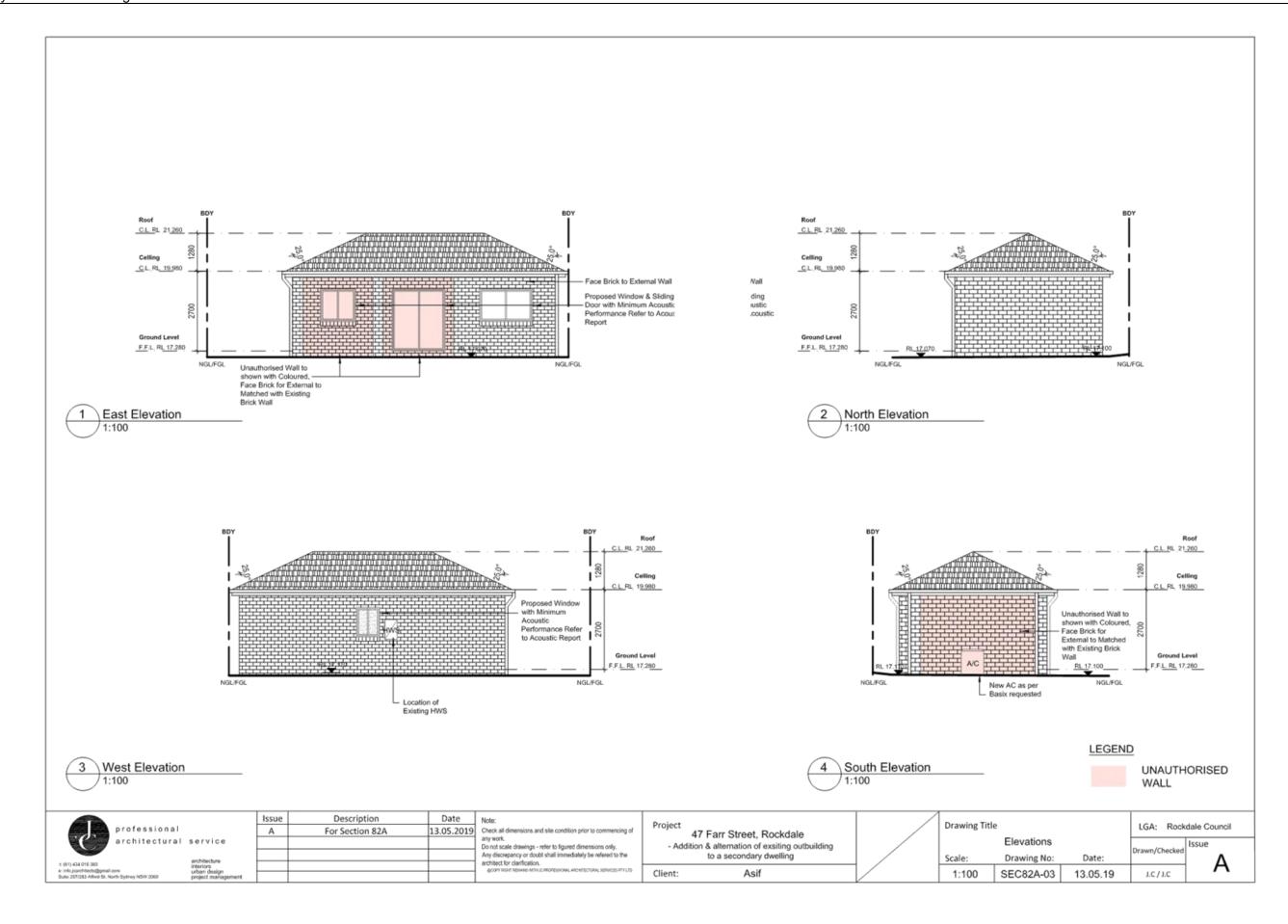
The proposed development is affected by the 15.24m Building Height Civil Aviation Regulations, however the proposed building height at 4.19m will have minimal impact upon the height requirement in the regulations.

Schedule 1 - Draft Conditions of consent

Bayside Local Planning Panel 17/09/2019



Bayside Local Planning Panel 17/09/2019



REQUEST TO VARY DEVELOPMENT STANDARD PURSUANT TO CLAUSE 4.6 OF ROCKDALE LOCAL ENVIRONMENTAL PLAN 2011

TO ACCOMPANY A DEVELOPMENT APPLICATION TO BAYSIDE COUNCIL FOR A SECONDARY DWELLING

Property: 47 Farr Street Rockdale.

Proposal: Secondary dwelling.

Zoning: R1 General Residential.

Development standard to which the request to vary the standard is taken: Clause 4.4 of the Rockdale LEP 2011 (LEP 2011) prescribes a maximum floor space ratio of 0.5:1 applying to the site.

1. The Aim of the request

To allow an increase of FSR from 0.53:1 to 0.54:1 to the site.

Clause 4.6 of LEP 2011 allows the applicant to provide a request to vary the non-compliance with a development standard.



Fig 1 – Subject site shown with very dark coloured roof.

2. Objectives of the Standard

The objectives in relation to Floor Space Ratio in LEP 2011 are given as,

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

3. Application and Assessment of Clause 4.6 Exceptions to development standards

Clause 4.6 of LEP 2011 is designed to provide the consent authority some flexibility in the strict compliance with the application of the development standard. There have been various Land and Environment Court judgments that have some relevance to addressing the application of Clause 4.6, among them being,

- 1. Winten Property Group Limited v North Sydney Council [2001] NSWLEC 46
- 2. Wehbe v Pittwater Council [2007] NSWLEC 827
- 3. Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 1009; NSWLEC 90; NSWCA 248
- 4. Moskovich v Waverley Council [2016] NSWLEC 1015

In the assessment of using Clause 4.6 it is particularly relevant to address parts (3) and (4) of the clause, being,

- (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.

In assessment of the proposal against parts 3(a), 3(b) and 4(ii) the following is offered.

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

The NSW Land and Environment Court in Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90, considered how this question may be answered and referred to the earlier Court decision in Wehbe v Pittwater Council [2007] NSW LEC 827. Under Wehbe, the most common way of demonstrating that compliance is unreasonable or unnecessary, was whether the proposal met the objectives of the standard regardless of the non-compliance. Under Four2Five, whilst this can still be considered under this heading, it is also necessary to consider it under Clause 4.6 (3)(a).

The five part test described in Wehbe are therefore appropriately considered in this context.

- 1. The works are considered to be consistent with the objectives for this clause because;
- (a) to establish the maximum development density and intensity of land use, accounting for the availability of infrastructure and generation of vehicular and pedestrian traffic, in order to achieve the desired future character of Rockdale,
- (b) to minimise adverse environmental effects on the use or enjoyment of adjoining properties,
- (c) to maintain an appropriate visual relationship between new development and the existing character of areas or locations that are not undergoing or likely to undergo a substantial transformation.
- The degree of non-compliance is minor, being only 20.9m². Whilst this only a very small amount, the level of amenity provided by the works and new secondary dwelling will be significantly improved. It is noted that the existing built form already exceeds the FSR control by approximately 10m². The proposed works seek to add approximately 10m² only. Accordingly the non-compliance will not lead to any burden on infrastructure or local roads etc in light of objective (a) above.
- The works will result in a built form that is single level and only marginally larger in footprint compared to the existing form. The single storey nature of the proposal ensures that no unreasonable impacts to neighbours will occur. Accordingly the non-compliance will not lead to any amenity impact in light of objective (b) above.
- The additional built form is styled and finished to match the existing form. The rear studio will only appear minimally larger in terms of its footprint. Accordingly the non-compliance will not lead to any adverse impact to built form in light of objective (c) above.
- The proposal complies with height and setbacks requirements and appropriate areas of open space and built upon areas are provided. Accordingly, the proposal does not appear as an overdevelopment of the site. The street appearance of the site is completely unaffected. Accordingly the non-compliance will not lead to any adverse impact to built form in light of objective (c) above.
- The amenity to neighbours will not be unreasonably affected. Good solar access is achieved to rear of the adjoining dwellings that the external works are at ground floor level. Accordingly the non-compliance will not lead to any amenity impact in light of objective (b) above.

- The proposed building bulk is entirely appropriate within the context of the site. Accordingly
 the non-compliance will not lead to any adverse impact to built form in light of objective (c)
 above.
- The works will result in an improved dwelling providing greater diversity in housing choice.

In light of the above, this request provides that the non-compliant FSR satisfies the objective in question.

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

Not applicable. The underlying objective or purpose of the standard is relevant to the development and is achieved.

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

The exception request does not rely on this reason.

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;

The exception request does not rely on this reason.

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

The zoning of the land is appropriate for the site. The exception request does not rely on this reason.

In addition to demonstrating that the principles of Wehbe are is satisfied, strict compliance with the standard is considered to be unreasonable and unnecessary in the circumstances of this case for the following additional reasons.

In the case of Moskovich v Waverley Council, the Land and Environment Court accepted that compliance with the standard (FSR in that case) was unreasonable and unnecessary because the design achieved the objectives of the standard and the respective zone, in a way that addressed the particular circumstances of the site, and resulted in a better streetscape and internal and external amenity outcome than a complying development. For the subject application, the proposed development which seeks to also vary the FSR standard, achieves a better response to the objectives of the subject R2 — Low density Residential Zone in that it provides a much higher level of amenity for occupants by allowing the proposed secondary dwelling to be widened and enlarged.

On the basis of the above, compliance with the standard is considered to be unnecessary and would be unreasonable.

Sufficient environmental planning grounds to justify the contravention

This request provides that there is sufficient environmental planning ground to justify the contravention. Such grounds include:

It has been demonstrated that the proposal and its FSR breach remains consistent with the objectives of the subject R2 Low Density Residential Zone as well as Clause 4.4 and 4.6 of the Rockdale LEP 2011, despite the numerical non-compliance.

The proposal would not compromise the character or nature of the area sought by the local environmental planning framework.

The non-compliant FSR does not result in any unreasonable visual or amenity impacts.

The non-compliant FSR does not result in any unreasonable overshadowing impacts, largely because the works are single storey.

The FSR non-compliance assists with providing improved amenity for residents.

Is the variation in the public interest?

Clause 4.6(4)(a)(ii) states that development consent must not be granted for development that contravenes a development standard unless the proposed development will be in the public interest. The proposal is considered to be in the public interest because it is consistent with the objectives of the particular standard, and the objectives for development within the zone in which the development is proposed to be carried out. The objectives of the standard have been addressed above and are demonstrated to be satisfied. The works are consistent with the requirements for the Low Density Residential Zone because of significant improvements to the amenity of the dwelling that will arise following the works, with a substantially improved design and the wider improvement to the amenity of the housing stock on the site.

Is the variation well founded?

This Clause 4.6 variation request is well founded as it demonstrates, as required by Clause 4.6 of the Rockdale LEP 2011, that:

Compliance with the development standard would be unreasonable and unnecessary in the circumstances of this development;

There are sufficient environmental planning grounds to justify the requested contravention;

The development achieves and is consistent with the objectives of the development standard and the objectives of the R2 Low Density Residential Zone;

The proposed development is in the public interest and there is no public benefit in maintaining the standard; and

The contravention does not raise any matter of State or Regional Significance.

The variation is therefore considered well founded.



KOIKAS ACOUSTICS PTY

CONSULTANTS IN NOISE & VIBRATION

ABN 12 058 524 77

Commercial 1 (Unit 27)

Ph: (02) 9587 9702

637 - 645 Forest Road

Fax: (02) 9587 5337

BEXLEY NSW 2207

E-mail: Office@KoikasAcoustics.com

ACOUSTICAL REPORT

PROPOSED CONVERSION OF AN EXISTING STRUCTURE TO BE USED AS A HABITABLE SECONDARY DWELLING

47 FARR STREET, ROCKDALE NSW

Date: Friday, 6 September 2019

File Reference: 952R20190528jg47FarrStRockdaleV4

DOCUMENT CONTROL

Project title Acoustical Report. Proposed conversion of an existing structure to be used a secondary dwelling 47 Farr Street, Rockdale NSW		
Project number	952	3 7
Document reference	952R20190528jg47FarrStRockdaleV4	
Document path G:\Shared drives\KA Acoustics 2019\REPORT\Aircraft\952R20190528jg47FarrStRockdal		

Version	Date	Author	Review	Notes
V1	17/12/2018	JG	NK	Report version 1 available for issue
V2	17/12/2018	JG	NK	Report version 2 available for issue
V3	29/05/2019	JG	JT	Report version 3 available for issue
V4	06/09/2019	NK	NK	Report version 4 available for issue

Checked by	Nick Koikas Principal Consultant
Client	Mr. Asif & Mrs. Rana Syed 47 Farr Street, Rockdale NSW 2216 E: amsyed54@gmail.com

The information contained herein should not be reproduced except in full. The information provided in this report relates to acoustic matters only. $Supplementary\ advice\ should\ be\ sought\ for\ other\ matters\ relating\ to\ construction,\ design,\ structural,\ fire\ -rating,\ waterproofing,\ and\ the\ likes.$

KOIKAS ACOUSTICS PTY LTD

Date: Friday, 6 September 2019

File Reference: 952R20190528jg47FarrStRockdaleV4.docx Prepared For: Mr. Asif & Mrs. Rana Syed

Acoustical Report: Proposed conversion to secondary dwelling development. 47 Farr Street, Rockdale NSW

ACOUSTICAL REPORT

PROPOSED CONVERSION OF AN EXISTING STRUCTURE TO BE USED AS A HABITABLE SECONDARY DWELLING

47 FARR STREET, ROCKDALE NSW

CONTENTS

1.0	CO	NSULTANT'S BRIEF	.4
1.	1	INSTRUCTIONS	4
1.3	2	THE ASSESSMENT SITE	4
1.3	3	THE PROPOSED DEVELOPMENT	4
1.4	4	ARCHITECTURAL DRAWINGS	4
2.0	AII	RCRAFT NOISE IMPACT ASSESSMENT	.5
2.	1	NOISE DESIGN CRITERIA	5
2.:	2	ASSESSMENT METHODOLOGY	6
2.	3	MAXIMUM EXPECTED AIRCRAFT NOISE LEVEL	8
2.4	4	AIRCRAFT NOISE IMPACT	8
2.	5	TYPICAL REVERBERATION TIMES FOR BUILDING INTERIORS	8
2.0	6	RECOMMENDATIONS	9
	2.6.1	External walls	9
	2.6.2	Ceiling/roof	9
	2.6.3	Glass windows and doors	.0
	2.6.4	Timber Entry Doors	1
	2.6.5	Ventilation	1
2.	7	CALCULATED INDOOR NOISE LEVELS1	.2
3.0	со	NCLUSION	.3
TAB	LE OF	APPENDICES	
Арр	endix /	A: ANEF Diagram	
Арр	endix (3: Aircraft Noise Intrusion Calculations	
App	endix (C: Mechanical Ventilation Diagrams	

KOIKAS ACOUSTICS PTY LTD

Date: Friday, 6 September 2019

File Reference: 952R20190528jg47FarrStRockdaleV4.docx

Prepared For: Mr. Asif & Mrs. Rana Syed

Acoustical Report: Proposed conversion to secondary dwelling development. 47 Farr Street, Rockdale NSW

1.0 CONSULTANT'S BRIEF

1.1 INSTRUCTIONS

Koikas Acoustics Pty Ltd (KA) has been commissioned to prepare an aircraft noise assessment of an existing unauthorised structure that includes an addition to the southern end.

This structure is to be used as a habitable secondary dwelling at 47 Farr Street, Rockdale NSW. As the building is an existing structure, retrofitting is required to increase the sound transmission loss of the external building envelope so as to comply with the recommended indoor design sound levels of AS2021-2015 Acoustics – Aircraft Noise Intrusion – Building Siting and Construction to all habitable spaces. These habitable spaces are, the bedrooms 1 & 2, kitchen/living and bathroom. Although the bathroom is not a habitable space, it is considered for assessment consistent with AS2021-2015. The assessment is required to be submitted to Inner West Council with the Development Application.

1.2 THE ASSESSMENT SITE

The assessment site is located at 47 Farr Street, Rockdale NSW. Refer to attached ANEF contour map in Appendix A for site location.

1.3 THE PROPOSED DEVELOPMENT

The proposal is for the retrofitting of an existing structure to be used as a habitable secondary dwelling at the rear of the subject site.

1.4 ARCHITECTURAL DRAWINGS

The assessment is based on architectural drawings by JC Professional Architectural Service (See Table 1).

Drawing Title	Drawing No.	Issue	Date	Project No
Site Plan & Site Analysis	DA-01	A	02.11.2018	-
Existing Floor Plan	DA-02	A	02.11.2018	-
Proposed Floor & Roof Plan	DA-04	А	02.11.2018	-
Elevations	DA-05	A	02.11.2018	-
Sections	DA-06	A	02.11.2018	-
Basix Note	DA-09	А	02.11.2018	

KOIKAS ACOUSTICS PTY LTD

Date: Friday, 6 September 2019

File Reference: 952R20190528jg47FarrStRockdaleV4.docx

Prepared For: Mr. Asif & Mrs. Rana Syed

Acoustical Report: Proposed conversion to secondary dwelling development. 47 Farr Street, Rockdale NSW



2.0 AIRCRAFT NOISE IMPACT ASSESSMENT

2.1 NOISE DESIGN CRITERIA

The aircraft noise assessment was undertaken to determine appropriate building materials for the purpose of retrofitting the subject existing building from aircraft take-offs and landings from Sydney (Kingsford Smith) Airport. The basis for design is to achieve interior noise levels in accordance with the recommendations of AS 2021:2015 Acoustics – Aircraft Noise Intrusion – Building Siting and Construction (AS2021:2015). This is achieved by determining the required building materials and construction techniques necessary to acoustically insulate indoor areas from aircraft noise. Assessment procedures and methodologies are outlined in AS2021:2015.

The Sydney Airport Corporation Limited has published Aircraft Noise Exposure Forecast (ANEF) charts that identify areas within Sydney that will likely experience noise impacts associated with air traffic arriving and departing Sydney Airport. The ANEF charts are included in the Sydney Airport Master Plan which is periodically published by Sydney Airport and details the planning strategies to be included by the airport over the coming 20-year planning period.

The current Sydney Airport Master Plan utilises the ANEF 2033 chart. The ANEF chart includes a tabulated summary of predicted aircraft movements and the associated aircraft fleet to be operating at Sydney Airport on a daily basis for each of the runways. The tables may exclude aircraft that are in the process of being phased out. For aircraft that may not be included in the ANEF charts, but still currently operate at Sydney airport, relevant arrival and departure movements per runway have been sourced from tabulated summaries within Airservices Australia's Aircraft Noise Exposure Index (ANEI) reports.

The contours depicted on the ANEF charts indicate the level of noise exposure predicted to areas surrounding the airport. Councils commonly use the ANEF charts to assess whether a proposal is deemed 'acceptable', or will require further acoustic analysis.

In this case, the assessment site is located between the 25 and the 30 ANEF contour. This noise assessment is to provide advice relating to satisfactory construction materials that will accommodate acceptable internal noise levels.

A site located in or around the ANEF 25 contour area may experience moderate levels of aircraft noise during fly-over events. Acoustic-type glazing, solid masonry type wall construction and

KOIKAS ACOUSTICS PTY LTD

Date: Friday, 6 September 2019

File Reference: 952R20190528jg47FarrStRockdaleV4.docx

Prepared For: Mr. Asif & Mrs. Rana Syed

Acoustical Report: Proposed conversion to secondary dwelling development. 47 Farr Street, Rockdale NSW



acoustically insulated roofing systems may still be required in some cases to sufficiently attenuate aircraft noise.

In accordance with Table 3.3 of the aircraft noise standard, an appropriate design range for residential dwellings is between LASmax 50 dB and 55 dB.

The above indoor design sound levels are hypothesized values based on Australian experience. The response of any individual to aircraft noise and the perception of intrusiveness or annoyance is inherently subjective. As such, the indoor design sound level (criteria) is the level at which the average listener would not consider noise to be intrusive or annoying when in that space.

2.2 ASSESSMENT METHODOLOGY

AS2021:2015 includes tables that can be referenced to establish typical maximum aircraft noise levels for different aircraft types and flight characteristics (take-off and landing). Data within the tables correspond to the orientation of typical aircraft flight paths in relation to the location of the assessment site. The flight paths in use at Sydney Airport are given in Figure 14.3 of the Sydney Airport Preliminary Draft Master Plan 2033. Refer to Figure 1.

The site location is characterised by three distance coordinates:

- DS is the distance in metres from the proposed building site to the extended runway centreline along the sideline projection (i.e. a line drawn perpendicular to the extended runway centre-line and passing through the proposed building site),
- ii. DL is the distance in metres from the nearer end of the runway to the intersection of the extended runway and centre-line along the sideline projection,
- iii. DT is the distance in metres from the furthest end of the runway to the intersection of the runway centre-line along the sideline projection.

KOIKAS ACOUSTICS PTY LTD

Date: Friday, 6 September 2019

File Reference: 952R20190528jg47FarrStRockdaleV4.docx

Prepared For: Mr. Asif & Mrs. Rana Syed

Acoustical Report: Proposed conversion to secondary dwelling development. 47 Farr Street, Rockdale NSW

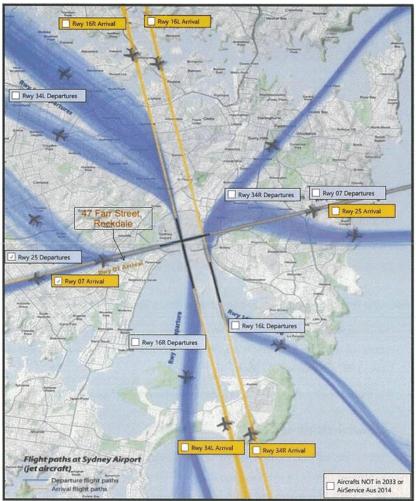


Figure 1. Jet aircraft flight paths at Sydney Airport

Figure 1 shows that arrivals along flight path 07 and departures along flight path 25 will generate the highest noise levels at the assessment site. Aircraft movements along these flight paths have been referenced to determine the maximum aircraft flyover noise level which will form the basis for all noise intrusion calculations.

KOIKAS ACOUSTICS PTY LTD

Date: Friday, 6 September 2019

File Reference: 952R20190528jg47FarrStRockdaleV4.docx

Prepared For: Mr. Asif & Mrs. Rana Syed

Acoustical Report: Proposed conversion to secondary dwelling development. 47 Farr Street, Rockdale NSW

Runway		Arrival		Departure	
		DS	DL	DS	DT
Main North South Runway (34L)		-	-	-	-
East West Runway (07 / 25)		154	1,821	154	4,221
Third Parallel Runway (16L)		-	-	-	T
NOTES 1.	When the height of the assess are made. In this case, due to and the aerodrome, relevant height corrections are not refle	an approximate heig eight corrections hav	ght difference of 19 e been considered a	metres between	the assessment site

2.3 MAXIMUM EXPECTED AIRCRAFT NOISE LEVEL

The maximum aircraft noise level affecting the subject site will be LASmax 89 dB for Airbus A330-301 aircraft departing along flight path 25 from the East-West runway.

The determination of the maximum aircraft flyover noise level is based on:

- The average of recorded daily aircraft movements for each runway (published within Appendix A of Air Services Australia's Sydney Airport N504 Australian Noise Exposure Index, 1 July to 30th September 2017, and
- The forecast of aircraft movements included on the current ANEF chart 2033.

2.4 AIRCRAFT NOISE IMPACT

The design of the external facades and the construction materials used must provide sufficient noise reduction to achieve compliance with the design standard. This will require a façade noise reduction of 34-39 dB for kitchen/living area and bedrooms respectively.

2.5 TYPICAL REVERBERATION TIMES FOR BUILDING INTERIORS

Our calculations consider the average reverberation time (RT_{60}) for the secondary dwelling to be between 0.5 and 0.6 seconds.

It is noted that alternative building materials to those recommended within this report may be used provided that advice is sought from an acoustical engineer prior to installation. Failure to follow these prescribed recommendations may lead to non-compliance with the design criteria.

KOIKAS ACOUSTICS PTY LTD

Date: Friday, 6 September 2019

File Reference: 952R20190528jg47FarrStRockdaleV4.docx

Prepared For: Mr. Asif & Mrs. Rana Syed

Acoustical Report: Proposed conversion to secondary dwelling development. 47 Farr Street, Rockdale NSW

2.6 RECOMMENDATIONS

Indoor noise levels were calculated to determine the acoustical performance of the existing building structure in conjunction with additional building materials necessary to the external building envelope to achieve the recommended indoor design sound levels of AS2021-2015. The noise modelling conclude that the following building materials would be required:

2.6.1 External walls

External walls recommended as shown in Table 3.

Table 3. Wall construction requirements				
Construction	Applicable Area			
Double Brick Wall Construction:				
- 110 mm brick wall				
 Minimum 50 mm wall cavity 	Existing external wall system			
- Secondary 110 mm brick wall				
- 13 mm cement render on one side of wall				

2.6.2 Ceiling/roof

Table 4 provides recommendations for the construction of the new ceiling/roof.

Construction	Applicable Area	
Pitched concrete roof tiles Pitched concrete roof tiles A layer of 19mm particle board over the existing roof rafters A layer of 100 mm thick 14 kg/m³ insulation batts fitted tightly between the existing ceiling joists, and Two layers of 13 mm thick plasterboard resilient mounted beneath the existing ceiling joists.	Ceiling/roof	

KOIKAS ACOUSTICS PTY LTD

Date: Friday, 6 September 2019

File Reference: 952R20190528jg47FarrStRockdaleV4.docx

Prepared For: Mr. Asif & Mrs. Rana Syed

Acoustical Report: Proposed conversion to secondary dwelling development. 47 Farr Street, Rockdale NSW



2.6.3 Glass windows and doors

Recommendations for glass windows and doors are included in Table 5.

Room	oom Glass recommendation	
Bedroom 1 & 2	Two separate Frames: - 1 st frame consisting of 6.38mm glazing - 100mm cavity - 2 nd frame consisting of 10.38mm glazing	51
Kitchen/living	One Frame – 10.38mm laminated + 46 mm air gap + 12.38 mm laminated	49
Bathroom	On frame of 12.38 mm thick glazing	36

In addition to the minimum glass recommendation, the installed window/glazed door systems (inclusive or framing and seals) must achieve a minimum acoustic rating and comply with Notes 1 to 5 below.

Koikas Acoustics notes that the recommendations provided in this report are for the minimum required glazing predicted to achieve satisfactory acoustic performance. Design factors such as safety, thermal or energy efficiency are outside the scope of this report and should be assessed accordingly. It is the Client's responsibility to ensure all glazed windows and sliding doors installed on-site to meet all building design requirements.

Notes

- Recommendation based on typical aluminium framed sliding windows/doors with no weep holes in the frame.
- Window frames should be tightly fitted to the external wall minimising any air gaps. Any air gaps present should be packed with timber and appropriate acrylic sealant such as Knauf Bindex (or approved equivalent).
- 3. All open-able windows and glazed door systems should be air tight when closed.
- 4. Q-lon type seals or the equivalent should be fitted along the perimeter of all glazing systems to minimise air gaps. For sliding glass systems that cannot incorporate Q-lon seals, heavy duty fin-type seals such as Schlegel SilentFin could be used. If the windows/doors are not designed to be air-tight when closed, the reduced performance of the windows/doors could compromise the acoustic integrity of the building facade.
- Recommended glass systems have been calculated based on current architectural drawings as established within this report.

John Tsilimigras of Eco Aluminium is a recommended supplier and fitter of acoustic type glazed windows. 0475770272.

KOIKAS ACOUSTICS PTY LTD

Date: Friday, 6 September 2019

File Reference: 952R20190528jg47FarrStRockdaleV4.docx

Prepared For: Mr. Asif & Mrs. Rana Syed

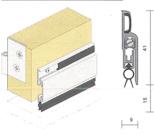
Acoustical Report: Proposed conversion to secondary dwelling development. 47 Farr Street, Rockdale NSW

2.6.4 Timber Entry Doors

Entry doors are recommended to be a minimum 45mm solid core with threshold and perimeter seals. Typical seals include Raven RP60 threshold seals and RP120 perimeter seals. Refer to diagrams below.

Any glass inserts in the door should not detract from the acoustic integrity of the door system and as such we recommend them to be minimum 12.38mm laminated glass be used.

Raven RP60 Threshold Seal



Raven type RP120 perimeter seals



2.6.5 Ventilation

In the event of high external air traffic noise levels, naturally ventilating rooms through the opening of windows and/or doors may not be suitable. This is due to the level of aircraft noise being transmitted through the open doors resulting in a breach of the applied noise criterion.

As a general rule, where windows or doors opened sufficiently to provide natural ventilation to a room, the indoor noise level is 10dB below the outside noise level. Therefore, a window or sliding door to a room may be opened to provide natural ventilation where the outdoor noise level does not exceed 10dB above the "Windows open" criteria as detailed within this report.

Based on this argument and the predicted external façade noise levels of 89 dB(A) for aircraft flyovers, additional BCA compliant ventilation will be required for all habitable spaces within the secondary dwelling.

For rooms requiring an alternate source of 'mechanical' ventilation, suitable options could be to incorporate a component of fresh air into a ducted air conditioning system or to install a small wall-mounted ventilator such as the Acoustica Aeropac. Examples of such solutions are shown in Appendix C. Other options may be considered through consultation with suitably qualified ventilation and acoustic consultants.

KOIKAS ACOUSTICS PTY LTD

Date: Friday, 6 September 2019

File Reference: 952R20190528jg47FarrStRockdaleV4.docx

Prepared For: Mr. Asif & Mrs. Rana Syed

Acoustical Report: Proposed conversion to secondary dwelling development. 47 Farr Street, Rockdale NSW

CALCULATED INDOOR NOISE LEVELS

Based on the recommended building materials provided in this report, the following maximum indoor noise levels shown in Table 6 are expected when an Airbus A330 type aircraft departs on the East West Runway (Runway 25). The LASmox external aircraft noise level is calculated to be 89 dB.

Table 6. Calculated LA,Slow max indoor noise levels [dB]				
Area	Calculated indoor noise level	AS2021:2015 Criteria	Compliance	
Bedroom 1	50	50	Yes	
Bedroom 2	50	50	Yes	
Dining/Kitchen	54	55	Yes	
Bathroom	60	59	Yes	

KOIKAS ACOUSTICS PTY LTD

Date: Friday, 6 September 2019

File Reference: 952R20190528jg47FarrStRockdaleV4.docx Prepared For: Mr. Asif & Mrs. Rana Syed

Acoustical Report: Proposed conversion to secondary dwelling development. 47 Farr Street, Rockdale NSW

3.0 CONCLUSION

This acoustic report assesses noise intrusion to the proposed conversion of an existing structure to be used as a habitable secondary dwelling at 47 Farr Street, Rockdale NSW due to aircraft overflights. The recommendations within this report are based on achieving the indoor design sound level criteria of AS2021-2015 Acoustics - Aircraft Noise Intrusion - Building Siting and Construction.

Maximum aircraft noise is generated from Airbus A330 type aircraft departing on the East West Runway (Runway 25). The LASmox external aircraft noise level is calculated to be 89 dB.

Aircraft noise generally contains high levels of acoustic energy at low frequencies. This low-frequency noise is the most critical component of noise when designing against the transmission of this noise to indoor areas of a building. For this reason, a detailed 1/1 octave band analysis of aircraft noise transmission/insulation has been conducted for this assessment in-lieu of providing recommendations based on product Rw/STC values.

It is noted that the construction materials provided within this report are only recommendations and that alternate building materials may be considered. Where alternate building materials are proposed it is recommended that they be able to achieve the same or better low-frequency transmission loss levels as shown in the attached calculations (Appendix B), and not be compared to the overall Rw performance rating. Failure to adhere to this recommendation may result in higher indoor noise levels than predicted.

Koikas Acoustics also notes that the recommended building materials may not be appropriate for other building requirements including safety, thermal or energy efficiency and that these additional requirements are outside the scope of the acoustic assessment.

In conclusion, with the recommendations of this acoustic report being implemented within the design and construction of this development, it is the professional opinion of Koikas Acoustics that the recommended indoor design levels of AS2021-2015 will be achieved for the proposed conversion of an existing structure to be used as a habitable secondary dwelling at 47 Farr Street, Rockdale NSW.

KOIKAS ACOUSTICS PTY LTD

Date: Friday, 6 September 2019

File Reference: 952R20190528jg47FarrStRockdaleV4.docx

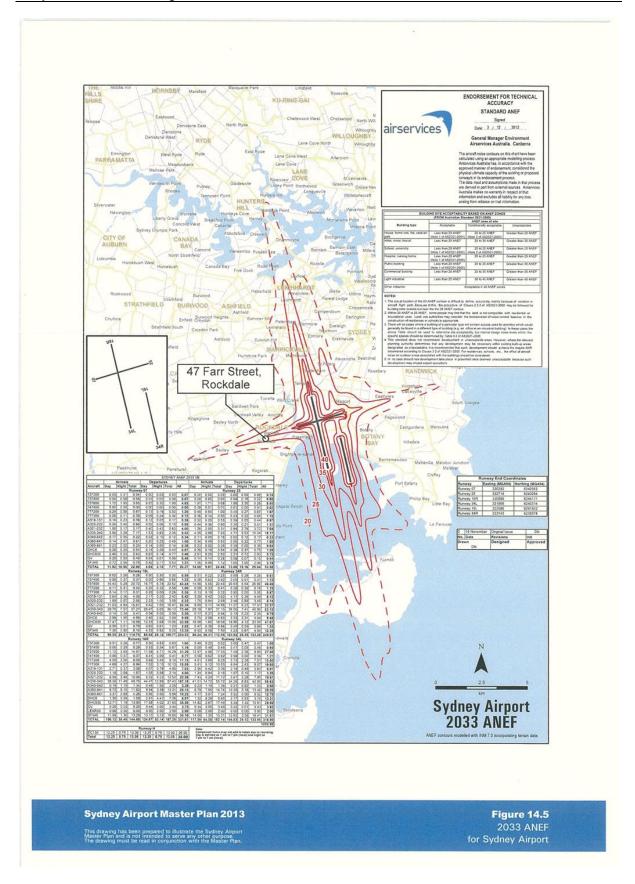
Prepared For: Mr. Asif & Mrs. Rana Syed

Acoustical Report: Proposed conversion to secondary dwelling development. 47 Farr Street, Rockdale NSW

APPENDIX A

APPENDIX

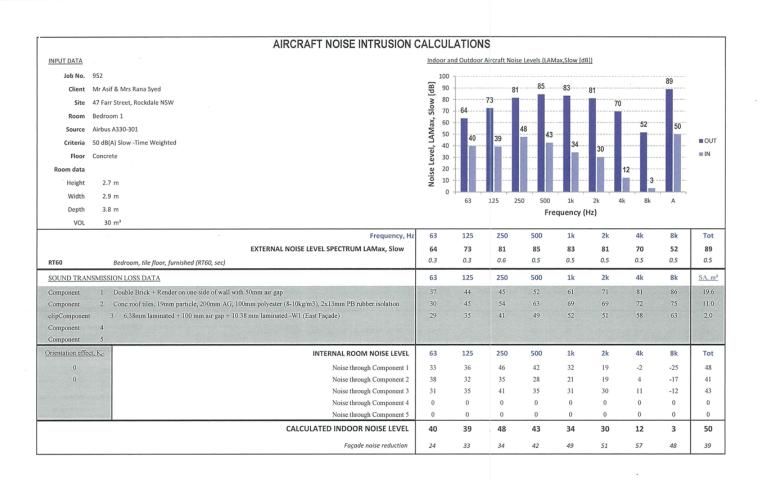
APPENDIX A



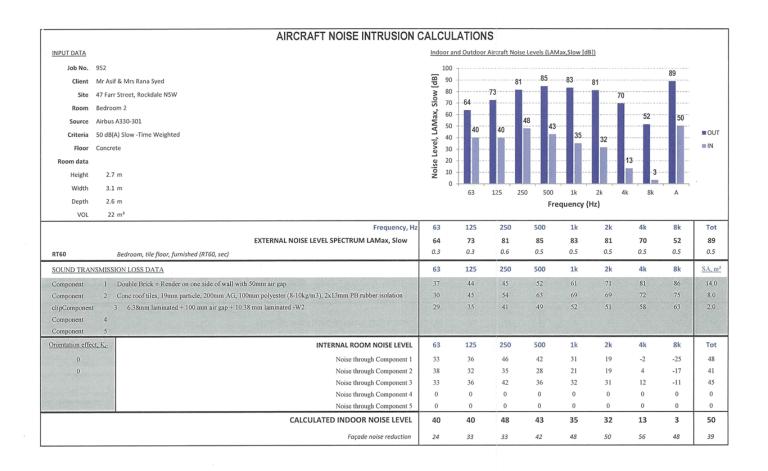
APPENDIX B

A P P E N D I X B

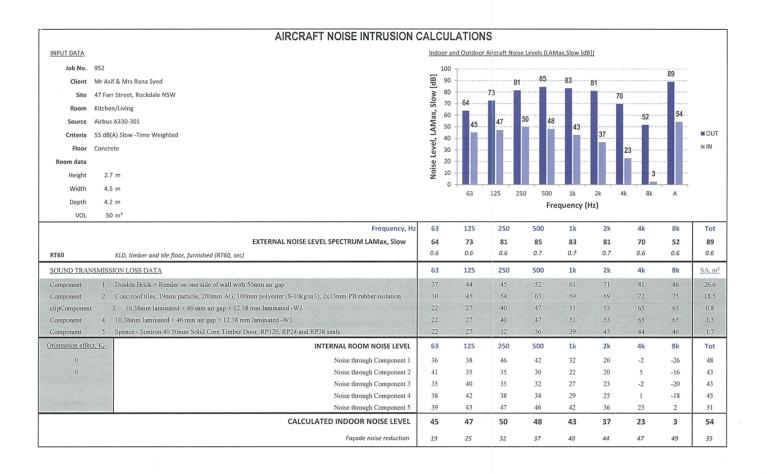
APPENDIX B



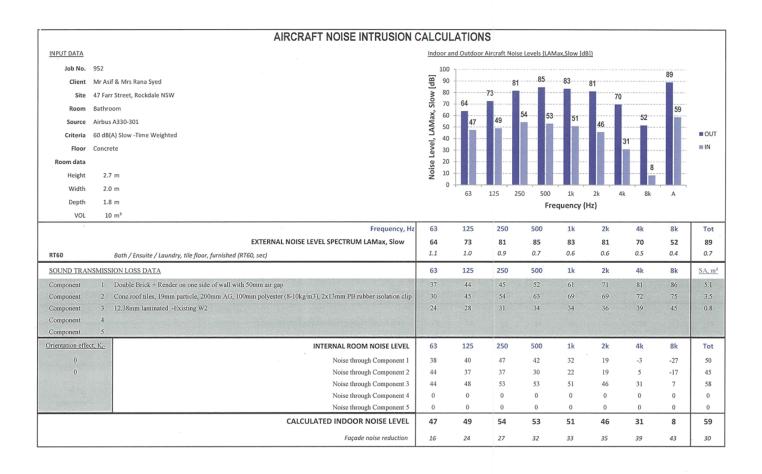










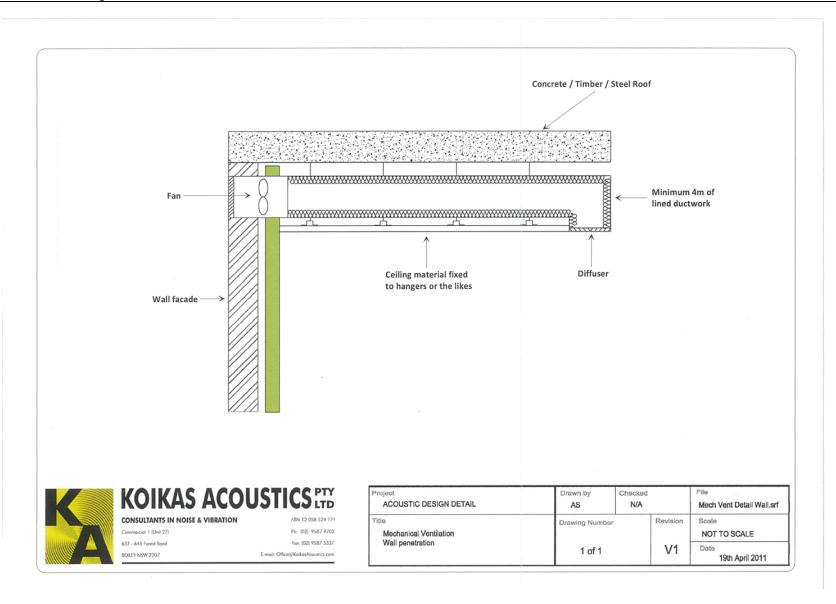


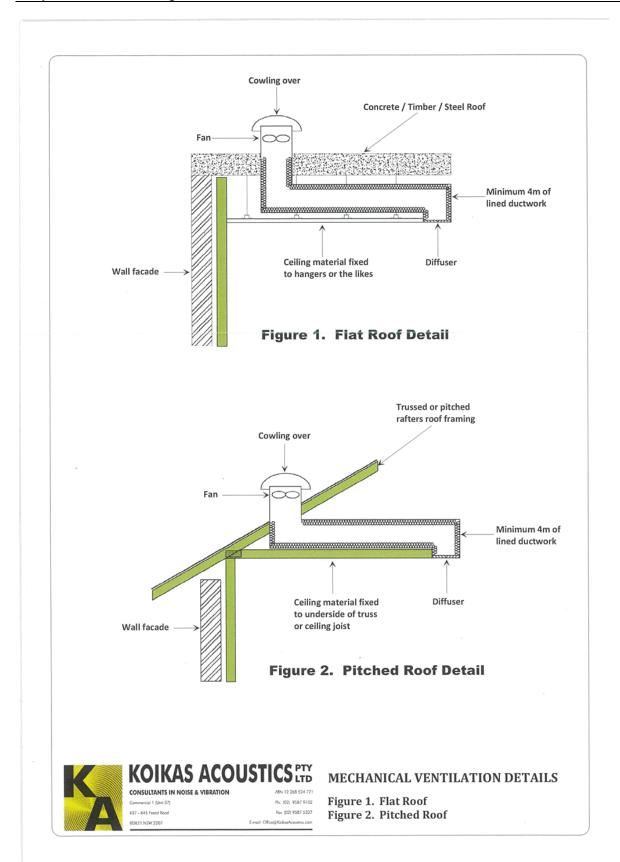


APPENDIX C

APPENDIX

APPENDIX C





Bayside Local Planning Panel	17/09/2019
	,



Bayside Local Planning Panel

17/09/2019

Item No 6.2

Application Type Development Application

Application No DA-2018/326 Lodgement Date 28/11/2018

Property 96-102 Princes Highway, Arncliffe

Ward 2

Owner AIDOP No 1 Pty Limited
Applicant AIDOP No 1 Pty Limited

Proposal Demolition of existing structures and construction of a nine

(9) storey mixed-use development comprising eighty one (81) dwellings, ground floor commercial space, two (2) basement levels of car parking and roof-top communal open space.

No. of Submissions Two (2)

Cost of Development \$28,154,054

Report by Michael McCabe, Director City Futures

Officer Recommendation

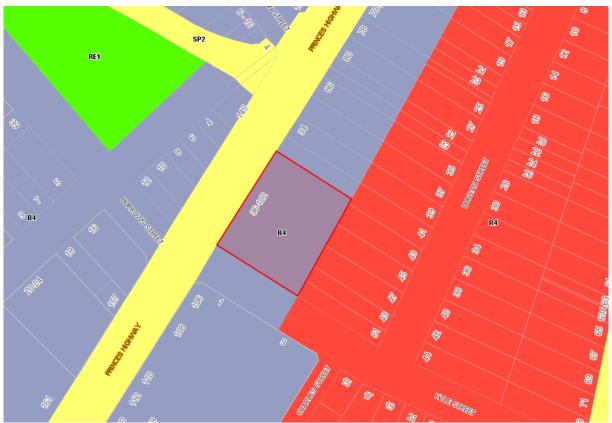
- That the Bayside Local Planning Panel, exercising the functions of the Council as the consent authority pursuant to s4.16 of the Environmental Planning and Assessment Act 1979 approves a variation to the building height prescribed by cl4.3 Height of Buildings of the Rockdale Local Environmental Plan 2011, as it is satisfied that the applicant's request has adequately addressed the matters required to be demonstrated by cl4.6 of that Plan, and the proposed development would be in the public interest because it is consistent with the objectives of that particular standard and the objectives for development within the zone.
- That DEFERRED COMMENCEMENT consent be granted to development application DA-2018/326 for the demolition of the existing structures and construction of a nine (9) storey mixed-use development comprising eighty one (81) dwellings, ground floor commercial space, two (2) basement levels of car parking and roof-top communal open space at 96-102 Princes Highway Arncliffe, pursuant to s4.16(3) of the Environmental Planning and Assessment Act 1979 in accordance with the deferred commencement conditions listed below, and subject to the conditions of consent attached to this report:
 - a) A bin / waste collection area / loading bay shall be provided on the site, accessible from Kyle Street with the bin room being setback further from Kyle Street to replace unit 1B on the ground floor. The new waste collection area/ loading bay shall be designed to accommodate a Small Rigid Vehicle (SRV) for furniture delivery/removal and waste collection by a private waste contractor. The truck is permitted to reverse into the loading bay and exit in a forward direction. A minimum height clearance/headroom clearance of 3.5m is required.
 - b) A new driveway shall be provided along Kyle Street to service the waste collection area on the ground floor and shall have a minimum 6m separation from

Item 6.2 75

- the basement driveway or be incorporated with it to minimise impacts on onstreet parking within Kyle Street.
- c) The commercial / retail gross floor area (GFA) shall be increased behind the northern commercial tenancy fronting the Princes Highway. An increase in GFA of at least 115m2 with a single storey height extending a minimum of 16m back from the glazing fronting the Princes Highway on basement 01 level with a double height floor to ceiling extending back a minimum of 13m back from the glazing fronting the Princes Highway. This additional commercial GFA and headroom will replace the retail parking spaces 1 to 4 and the loading bay on basement 01, while the ground floor units 1K and 2C shall be deleted and one x 2 bedroom unit with a depth of 6m fronting the communal open space provided in its place. A goods lift shall be provided between Ground level and Basement level to facilitate deliveries between the loading bay and the northern commercial tenancy, with access between the loading bay and commercial tenancy provided wholly within the site and building.
- d) A continuous pedestrian path shall be provided within the Princes Highway frontage of the site. In this regard, stairs shall be provided within the site linking the paved pedestrian path in front of the northern commercial tenancy (RL 16.3) with the upper level pedestrian area within the open forecourt area at the corner of Princes Highway and Kyle Street (RL 19.3). This is to satisfy the objectives and requirements of Part 7.7 RDCP 2011. (Note: the addition of glazing may be possible within the western elevation of the office for the northern commercial tenancy when stairs are provided)
- e) An attached awning shall be erected over the footpath located in front of the northern commercial tenancy along the Princes Highway providing weather protection for pedestrians along the paved area adjacent to the glazed front elevation.
- 3 That the submitters be notified of the Bayside Local Planning Panel's decision.

Item 6.2 76

Location Plan



96-102 Princes Highway Arncliffe

Attachments

- 1
- Planning Assessment Report
 Satisfactory Arrangement Certificate
 Landscape Plan
 Site Plan and Elevation Plan
 Minutes of DERP Meeting
 Clause 4.6 Variation Request 2
- 3
- 4
- 5
- 6

Item 6.2 77

BAYSIDE COUNCIL

Planning Assessment Report

Application Details

Application Number: DA-2018/326

Date of Receipt: 28 November 2018

Property: 96 - 102 Princes Highway, ARNCLIFFE (Lot 10 DP 1003743)

Owner: AIDOP No 1 Pty Limited Applicant: Aidop No 1 Pty Ltd

Proposal: Demolition of existing structures and construction of a nine (9) storey

mixed-use development comprising eighty one (81) dwellings, ground floor commercial space, two (2) basement levels of car parking and roof-

top communal open space

Recommendation: Approved

No. of submissions: Two (2) submissions received during the first notification period

Nil submissions received during the second notification period

Author: Michael Maloof

Date of Report: 2 September 2019

Key Issues

The subject site is located within the Special Precinct - Arncliffe and Banksia and is subject to special provisions within Section 7.7 of Council's DCP 2011. The application is the first to be assessed under the new controls. The Special Precinct includes additional requirements that apply to the proposed development to facilitate the desired future character and outcomes established in the Department of Planning, Industry and Environment's review and rezoning of the precinct. The current proposal has been amended to generally satisfy the requirements of Section 7.7 and is acceptable in this regard subject to recommended conditions of consent, including a deferred commencement condition.

The application is subject to the design excellence requirements of clause 6.14 of the RLEP 2011 and was considered by the Council's Design Excellence Review Panel (DERP). The DERP supported the scheme subject to compliance with Council's requirements in relation to the large commercial floor plate for showroom and/or similar uses which is one of the requirements under Section 7.7 of Council's DCP 2011. The proposed commercial space is considered satisfactory subject to recommended amendments in accordance with Deferred Commencement conditions, and the proposal is considered to exhibit design excellence.

The proposed development exceeds the maximum permitted height of 31m by 1.15m (32.15m) at the lift overrun, and a Clause 4.6 variation has been submitted for consideration and has been found acceptable. The proposal has been designed to comply with the maximum permissible floor space ratio control (2.5:1) applying to the site.

The applicant indicated that the proposed development is classified as Integrated Development as it it includes piling and construction of footings for the internal columns that will transect the water table. The application was referred to NSW Water who advised that the application is not integrated under the Water Management Act and therefor no conditions or Terms of Agreement are to be imposed in this regard. The application was referred to the Roads and Maritime Services, NSW Police, Ausgrid and Sydney Water and their comments have been considered in respect to the scheme.

The application was notified twice to the surrounding properties and two (2) submissions were received in response to the proposed development during the first notification period and no submissions were received during the second notification period. The key issues raised include car parking, loss of privacy, solar access, noise impacts and construction impacts (including dust, litter, noise in the early morning hours around 6.30 am and parking in the driveway). The issues raised have been considered and the impacts are considered minimal or have been addressed by way of conditions of consent.

The proposal has been the subject of an extensive design process, and is considered to provide a positive contribution to the Arncliffe precinct. The proposal is recommended for approval subject to imposition of recommended conditions.

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, approves a variation to the building height prescribed by cl4.3 Height of Buildings of the Rockdale Local Environmental Plan 2011, as it is satisfied that the applicant's request has adequately addressed the matters required to be demonstrated by cl4.6 of that Plan, and the proposed development would be in the public interest because it is consistent with the objectives of that particular standard and the objectives for development within the zone.
- (2) That DEFERRED COMMENCEMENT consent be granted to development application DA-2018/326 for the demolition of the existing structures and construction of a nine (9) storey mixed-use development comprising eighty one (81) dwellings, ground floor commercial space, two (2) basement levels of car parking and roof-top communal open space at 96-102 Princes Highway Arncliffe, pursuant to s4.16(3) of the Environmental Planning and Assessment Act 1979 in accordance with the deferred commencement conditions listed below, and subject to the conditions of consent attached to this report.
 - (a) A bin / waste collection area / loading bay shall be provided on the site, accessible from Kyle Street with the bin room being setback further from Kyle Street to replace unit 1B on the ground floor. The new waste collection area/ loading bay shall be designed to accommodate a Small Rigid Vehicle (SRV) for furniture delivery/removal and waste collection by a private waste contractor. The truck is permitted to reverse into the loading bay and exit in a forward direction. A minimum height clearance/headroom clearance of 3.5m is required.
 - (b) A new driveway shall be provided along Kyle Street to service the waste collection area on the ground floor and shall have a minimum 6m separation from the basement driveway or be incorporated with it to minimise impacts on on-street parking within Kyle Street.
 - (c) The commercial / retail gross floor area (GFA) shall be increased behind the

northern commercial tenancy fronting the Princes Highway. An increase in GFA of at least 115m2 with a single storey height extending a minimum of 16m back from the glazing fronting the Princes Highway on basement 01 level with a double height floor to ceiling extending back a minimum of 13m back from the glazing fronting the Princes Highway. This additional commercial GFA and headroom will replace the retail parking spaces 1 to 4 and the loading bay on basement 01, while the ground floor units 1K and 2C shall be deleted and one x 2 bedroom unit with a depth of 6m fronting the communal open space provided in its place. A goods lift shall be provided between Ground level and Basement level to facilitate deliveries between the loading bay and the northern commercial tenancy, with access between the loading bay and commercial tenancy provided wholly within the site and building.

- (d) A continuous pedestrian path shall be provided within the Princes Highway frontage of the site. In this regard, stairs shall be provided within the site linking the paved pedestrian path in front of the northern commercial tenancy (RL 16.3) with the upper level pedestrian area within the open forecourt area at the corner of Princes Highway and Kyle Street (RL 19.3). This is to satisfy the objectives and requirements of Part 7.7 RDCP 2011. (Note: the addition of glazing may be possible within the western elevation of the office for the northern commercial tenancy when stairs are provided).
- (e) An attached awning shall be erected over the footpath located in front of the northern commercial tenancy along the Princes Highway providing weather protection for pedestrians along the paved area adjacent to the glazed front elevation.
- That the submitters be notified of the Bayside Local Planning Panel's decision.

Background

History

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

- DA-2009/42 Demolition of existing building and construction of a commercial/industrial development comprising 4 warehouse units, two levels of office space and basement car park with capacity of 73 vehicles - Approved on 21 January 2009
- PDA-2008/26 Mixed use and commercial development The Pre DA letter was issued by Council on 6 March 2008

The current application was lodged with Council on 28 November 2018 and referred to the Design Review Panel (DRP) three times on 20 March 2019, 6 June 2019 and 4 July 2019. The applicant has been amended several times and represents a substantial improvement over the original scheme.

Proposal

Council is in receipt of a development application DA-2018/326 at 96-102 Princes Highway, Arncliffe, which seeks consent for the demolition of existing structures and construction of a nine (9) storey mixed use development comprising 83 residential units, two (2) commercial units, two (2) levels of basement car parking and associated landscaping including a roof top communal open space. The application does not include subdivision.

The proposal consists of:

Demolition

The proposal includes the demolition and removal of all existing structures on the subject site apart from the substation in the northern corner fronting the Princes Highway which is proposed to be relocated to within the northern side setback. The existing power pole in the nature strip along Kyle Street adjacent to the south eastern corner of the site will also be relocated further to the west along Kyle Street.

Construction

Construction of a mixed use development comprising 83 residential units, 2 retail tenancies and two basement parking levels.

Ground Floor

Due to the fall of the site down to the north, a component of the ground floor commercial are is at a lower level (basement 1) including 285m2 fronting the Princes Highway. The ground floor level of the building (ground floor) contains a retail use having 158m2 in area. Both these areas total commercial floor space to 443m2 for the site. The ground floor level also contains four residential dwellings, the main entry lobby from Kyle Street, plant room, bin storage rooms and services and the main open space area with landscaping and play area at ground level behind the building. The remaining residential units are located on Levels 1 to 8 above, as follows:

Residential Units (Levels G-8)

The 83 residential units are located at Levels G-8 and comprise the following mix:

21 x 1 bedroom units (25%),

16 x 1 bedroom + study units (19%),

41 x 2 bedroom units (50%),

5 x 3 bedroom units (6%).

Access & Public Domain Interface

Vehicular access and servicing is proposed from Kyle Street, while separate pedestrian access to the residential units via a main entry lobby is also proposed from Kyle Street. Separate pedestrian access to each of the two commercial units is provided from the corner intersection on the ground floor tenancy and from the Princes Highway frontage on the lower tenancy (basement 1). The commercial tenancies cannot be accessed from the main residential lobby in Kyle Street.

Car Parking

The plans show on site car parking for 102 vehicles. The Applicant proposes to allocate the parking spaces as follows:

67 residential car spaces (this includes 9 x accessible spaces);

23 visitor spaces (this includes one car wash bay and one charging bay);

12 commercial spaces;

1 loading bay;

In addition to car parking, the applicant proposes:

6 motorcycle parking spaces;

2 bicycle parking spaces at basement 1;

The residential car spaces are separated from the visitor & commercial spaces by an additional

security gate / roller shutter door and security fence for security purposes.

Servicing

A loading bay that can service small trucks and vans for deliveries is provided within basement 1 to the rear of the commercial tenancy. The bin storage rooms are located on the ground floor and serviced from Kyle Street. A second bin room is located on basement 1. The substation housing is provided within the north western corner along the Princes Highway and is accessed from the highway.

Commmunal Open Space

Two primary areas of communal open space have been proposed, including a 595m2 area at the eastern rear yard behind the building on the ground floor and a 392m2 area on the roof top terrace (level 9). The proposal provides a total open space area of 987m2 (or 36.7% of the site).

Photomontage of the proposal is provided below (see Figure 2):



Figure 1: Photo montage of the proposed development.

Site location and context

The site is located on the north eastern corner of Princes Highway and Kyle Street, Arncliffe and is bounded on the eastern boundary by properties fronting Duncan Street and to the north by properties along the Princes Highway. The land is a regular rectangle in shape and comprises one (1) allotment, legally described as Lot 10 in DP 1003743, with a total site area of 2,690 m². The south-western corner (along Princes Highway) is the highest point with a fall of 2.5m to the eastern corner (at the corner of Kyle Street/Duncan Street) and a fall to the north along the Princes Highway of approximately 2.0 metres.



Figure 2 Aerial photo of the site context and surrounds

The subject site contains a detached industrial building comprising a single storey brick warehouse with metal roof, a brick retaining wall and small brick garage in the north western corner along the highway. The site is located on the eastern side of the Princes Highway between Kyle Street to the south and West Botany Street to the north. Adjoining development to the sides includes single storey dwelling houses to the east which front Duncan Street and another car sales/repair development to the north along the Princes Highway at No. 94. Opposite the site to the west is a mosque and single storey dwelling houses and to the south on the opposite side of Kyle Street is a recently constructed mixed use development comprising several buildings of between six and ten storeys. This development has been completed under a planning proposal (PP) prior to rezoning of the land in the Arncliffe and Banksia Priority Precinct. The mixed use development includes commercial tenancies on the ground floor and residential units above.

There is a mix of developments types within the immediate locality surrounding the site including multistorey mixed use buildings, industrial uses both small and large scale, residential apartments and single storey dwelling houses. There are several small trees at the front of the site along the Princes Highway are are to be removed and replaced.

Kyle Street is a two way street with kerbside parking on each side. However, it contains a one way entry from but no exit to the Princes Highway and has row parking perpendicular to the kerb on the southern side directly opposite the site. Kyle Street is identified within the Arncliffe and Banksia Special Precinct as a pedestrian link between the new high density area and Arncliffe Station to the west. The subject site is located within this new precinct which is an area earmarked for transition to high density residential and mixed use development.

Council's records indicate that the subject site is affected by previous industrial uses (contamination), a potential unstable cliff face and acid sulfate soils class 5. The subject site is located approximately 180 metres walking distance from the entrance to the Arncliffe Railway Station to the west on the Sydney Trains Illawarra Railway Line.

Statutory Considerations

Environmental Planning and Assessment Act, 1979

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

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

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

The following Environmental Planning Instruments are relevant to this application:

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 The applicant has submitted a BASIX Certificate for the proposed development. The Certificate number is 859060M.

The commitments made result in the following reductions in energy and water consumption:

Reduction in Energy Consumption 35 % Reduction in Water Consumption 41 % Thermal Comfort Pass

A condition has been imposed on the consent to ensure that these requirements are adhered to.

State Environmental Planning Policy (Infrastructure) 2007

Clause 45 - Works within the vicinity of Electricity Infrastructure

The application is subject to clause 45 of the SEPP as the development proposes works within the vicinity of electricity infrastructure and therefore in accordance with clause 45(2) the consent authority must give written notice to the electricity supply authority for the area in which the development is to be carried out, inviting comments about potential safety risks, and take into consideration any response to the notice that is received within 21 days after the notice is given.

Accordingly, the proposal has been sent to Ausgrid. The authority did not raise any objection to the proposal and provided standard conditions of consent to be imposed on the draft Notice of Determination. The application is consistent with the provisions of Clause 45 and is acceptable in this regard.

Clause 101 - Development with frontage to classified road

The proposed development is located on land with a frontage to a classified road i.e. The Princes Highway. In this regard, clause 101- Development with frontage to a classified road, of the SEPP must be considered before consent can be granted.

The proposed development involves a main vehicular access to and from the site from Kyle Street and not off the main frontage of the Princes Highway. In this regard, the proposal will not result in any direct changes to the frontage along the Princes Highway. However, the existing substation at the north

eastern corner at the front of the site has vehicular access along the Princes Highway. The current proposal will retain this access to the substation but may involve changing the location of the actual substation building which will be upgraded and moved away from the front property boundary and into the site. In this regard, the substation relocation will not involve any changes to the existing driveway along the Princes Highway and is acceptable in this regard.

Accordingly, the proposal has been sent to the Roads & Maritime Service (RMS). The authority recommended conditions of consent be imposed by letter dated 15 January 2019. However when the scheme was amended, the authority requested further information by letter dated 20 August 2019. The RMS subsequently confirmed their previous referral response as per the letter dated 15 January 2019 and confirmed that there are no additional recommended conditions be imposed by email dated 22 August 2019. The recommendations have been included in the draft Notice of Determination. The application is consistent with the provisions of Clause 101 of the SEPP and is acceptable in this regard.

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

The proposed development is for a mixed commercial and residential development that is on land in or adjacent to the road corridor for a freeway, a tollway or a transitway or any other road with an annual average daily traffic volume of more than 20,000 vehicles (based on the traffic volume data published on the website of the RMS) and that the consent authority considers is likely to be adversely affected by road noise or vibration. Accordingly, Clause 102 - Impact of road noise or vibration on non-road development, of SEPP Infrastructure is required to be considered as part of this assessment.

In this regard, the consent authority must not grant consent to the development for a residential use unless it is satisfied that appropriate measures will be taken to ensure that the following LAeq levels are not exceeded:

- (a) in any bedroom in the building-35 dB(A) at any time between 10 pm and 7 am,
- (b) anywhere else in the building (other than a garage, kitchen, bathroom or hallway)-40 dB(A) at any time.

The proposal was accompanied by an Acoustic Report, prepared by Acoustic Logic and dated 1 May 2018, which considered the potential impact of road noise on the proposed development.

The report concludes that the development will satisfy the noise level requirements as outlined in the SEPP, should the recommendations in the report be incorporated into construction. Accordingly, the recommendations have been incorporated as conditions in the draft Notice of Determination.

Clause 104 - Traffic Generating Development consistent with SEPP

The proposal is classified as 'traffic generating development' under Schedule 3 of State Environmental Planning Policy (Infrastructure) 2007. In accordance with clause 104(3) of the SEPP, RMS is required to be notified of the proposed development and any submissions provided by RMS are to be considered. In this regard, the proposed development was referred to RMS who did not raise any objections to the development and provided recommended conditions by letter dated 15 January 2019.

It is considered that the proposed development will have no detrimental impact upon the existing operation of the Princes Highway as it will involve vehicular access through the side street by Kyle

Street. Sufficient turning and manoeuvring area shall be provided on the site to enable vehicles to enter and exit the site in a forward direction. Additional conditions are also proposed requiring waste collection and servicing to be undertaken during off peak times to further minimise impacts to the flow of traffic on the Princes Highway.

Further, the application was considered by Council's Traffic Development Advisory Committee (BTDAC) who provided recommended conditions of consent which have also been included in the notice of determination. Therefore, due to the above it is considered that the proposed development is consistent with Clause 104 of the SEPP.

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

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

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

The subject site contains one tree adjacent to the eastern corner fronting Kyle Street which is to be removed and several existing confer trees adjacent to the front boundary at the northern end along the Princes Highway. The application was referred to Council's Tree Management Officer who advised that the existing site trees and vegetation may be removed, subject to at least eight replacement trees being planted.

Subject to the replacement trees being planted on an accompanying comprehensive Landscape Plan, the proposal is satisfactory with regards to the SEPP (Vegetation in Non-Rural Areas) 2017 and Clause 4.1.7 of the Rockdale DCP 2011. Council's Tree Management Officer has recommended appropriate conditions that have been imposed in the draft Notice of Determination, regarding the removal of site trees subject to suitable replacement trees being planted in appropriate locations.

Subject to compliance with the conditions of consent, the proposal is satisfactory in relation to SEPP (Vegetation in Non-Rural Areas) 2017 and Clause 4.1.7 of the Rockdale DCP2011.

State Environmental Planning Policy No 55—Remediation of Land

The property is not identified in Council's records as being contaminated, however, it has a history of light industrial use.

The application has been accompanied by a Remedial Action Plan dated 3 May 2017, a Detailed Site Investigation dated 18 October 2017 and a Geotechnical Investigation Report dated 19 November 2018, all of which were prepared by El Australia Pty Ltd. The documents detail that completion of the remediation and validation program in accordance with the RAP will ensure that the site is made suitable for the proposed mixed use development which includes commercial and high-density residential apartments. The reports conclude that the site can be made suitable for the proposed land use and were referred to Council's Environmental Health Officer who has accepted the recommendations contained within the reports as being satisfactory. In this regard, standard conditions have been included in the draft Notice of Determination in relation to remediation works required.

Based on the above, the proposed development satisfies the requirements and objectives of the SEPP and subject to the recommended conditions, is acceptable in relation to site remediation.

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)

Prior to the lodgement of the current application, a draft proposal (larger than the current scheme) was referred to the Design Review Panel (Panel) on 5 October 2017. The Panel resolved that the draft scheme could not be supported and it should be amended before reconsideration by the Panel. The Panel stated the scheme is to comply with the draft Rockdale LEP and draft Part 7 Special Precincts Banksia and Arncliffe DCP. The draft scheme included 10 storeys that well exceeded the height and FSR controls applying to the site and did not comply with the upper level setback requirements.

The current development proposal has been referred to the Panel on 20 March 2019 and then twice more to the Design Excellence Review Panel (DERP) on 6 June 2019 and then again on 4 July 2019. (Note: This proposal is subject to the newly established DERP which was formed to assess proposal subject to the Design Excellence provisions contained in Clause 6.14 of the RLEP 2011 and Clause 6.16 of the BBLEP 2013). The DERP supports the amended scheme given the changes made to address the issues raised subject to compliance with the DCP requirements for large floorplate showroom uses, as noted in their recommendation below:

RECOMMENDATION - DESIGN EXCELLENCE

- The Panel supports the application in terms of the desired future character, built form, public domain landscape and sustainability where the application achieves Design Excellence in accordance with Clause 6.14 of the RLEP.
- The Panel recommends that changes /refinements be made in terms of land use and mix to provide large format commercial space to the satisfaction of Council officers. In the event that the Council officers are satisfied, the Panel will not require the modified proposal be referred to the Panel for further consideration to demonstrate that Design Excellence has been achieved in accordance with Clause 6.14 or RLEP 2011.

The issues raised by the DERP are discussed below and the scheme has been amended as follows:

<u>Issue</u>: An additional front setback of 3m above Level 6 on both street frontages should be provided to minimise view impacts and improve streetscape in accordance with RDCP 2011 <u>Comment</u>: The scheme has been amended to include a 3m building envelope setback above the street wall on levels 6 and above and complies with the requirements set out in Part 7.7 Special Precincts Anroliffe and Banksia.

Issue: The DERP stated: "The Panel recommends that changes / refinements be made in terms of land use and mix to provide large format commercial space to the satisfaction of Council officers."

Comment: The commercial floor plate has been increased and includes two sections, one on the corner (158m2) and one on the highway frontage (285m2), although on a lower street level (3m level difference). Notwithstanding this, the proposal can be improved with additional commercial floor space and this has been addressed through the imposition of a deferred commencement condition requiring an increase in this area behind the existing commercial tenancy fronting the Princes Highway. The proposal contains a floor to floor height of 6.7m on the corner and fronting the highway which is 0.3m short of the 7m but is not visually discernible. Based on the above, the amended proposal is consistent with the requirements of Part 7 Special Precincts of the DCP.

Issue: The number of storeys exceeds 8 which exceeds the maximum permitted by the RDCP 2011.

<u>Comment</u>: The proposed building has been amended to include upper level setbacks and the Panel are supporting the minor variation to the building height for the lift overrun.

<u>Issue</u>: The scheme should address the desired future character as described in the RLEP and Part 7 Special Precincts Banksia and Arncliffe DCP

Comment: The scheme has been amended to address the issues raised by the Panel with regards to the future desired character of the area in accordance with Part 7 Special Precincts Arncliffe and Banksia. The changes made to the scheme include the setbacks for the upper levels, an active street frontage, a street wall height of 6 storeys and a 6m landscaped setback to the highway. As noted previously the Panel supports the scheme which is acceptable and consistent with the future desired character of the area, subject to compliance with the DCP requirements for large floorplate showroom uses

Issue: Further opportunities exist for sustainability initiatives

<u>Comment</u>: The applicant has included a loading bay, an electric car charging bay, a photovoltaic (solar) system to supply power to the lighting in all common areas, rainwater harvesting for the irrigation to common areas, toilets and laundries and provision of a site Waste Minimisation and Management Plan. In this regard, the DERP indicated their support to the sustainability initiatives adopted and the application is acceptable in this regard.

<u>Issue</u>: As a minimum the Panel recommended that additional lighting and ventilation slots be provided at the end of each corridor.

<u>Comment:</u> The applicant has amended the plans to include a natural lighting / ventilation slot into the corridor at the northern end however it was agreed that the slot adjacent to the liftwell be retained and that no additional slot be required at the buildings eastern end of the corridor. In this regard, the common areas on the upper levels have improved lighting, ventilation and legibility during the day. While it does not fully address the Panel's recommendation, the amendment is found to be acceptable.

<u>Issue</u>: Bulk massing and modulation to both streets remains inappropriate to the desired future character of the precinct

<u>Comment</u>: The DERP indicated that the modifications to the design have incorporated a 3m upper level setback to levels 6 to 8 and reduced the building to 8 storeys which are fundamental to the desired future character of the area. It also reduces the bulk and scale from street level and results in a development that has additional visual and amenity impacts that are considered to be acceptable in this case.

<u>Issue:</u> The use of Palms within the 6m landscaped front setback is not supported <u>Comment:</u> Council has imposed conditions on the draft Notice of Determination relating to the use of more appropriate species rather than Palm trees. A condition has been imposed in relation to the provision of adequate soil depth and volume. Accordingly, the proposal as conditioned is acceptable in this regard.

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

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

Principle 1 - Context and Neighborhood Character

The applicant have given detailed consideration to the context of the development and the character of surrounding developments in the design stage. As noted by the DERP, the proposal responds to the site constraints and forms the beginning of the Princes Highway corridor between Arncliffe and Banksia recently established in Part 7 Special Precincts Arncliffe and Banksia in RDCP 2011. Furthermore, the proposal provides an appropriate appearance along the highway and is of a scale and form that is appropriate in the existing and future desired context and is consistent with Section 7.7 the Special Precincts part of Council's DCP. The proposal integrates tree planting along the highway that reinforces the location of the Arncliffe Precinct and encourages a high quality mixed use development. The proposal is considered to provide a high quality outcome for the desired context of the site, subject to compliance with recommended conditions (including deferred commencement condition).

Principle 2 - Built Form and Scale

Massing Analysis

The building form and height is generally consistent with Council's LEP and DCP requirements (apart from the lift overrun), and is supported by the DERP subject to Council being satisfied that the commercial floor space is "large format" and satisfies RDCP 2011 requirements. The minor variation to the maximum building height (lift overrun) is supported for the reasons discussed in response to Clause 4.6 of RLEP 2011 later in the report. The site is located on a corner position, and the scale of development when viewed from the street frontages is consistent with the LEP and DCP objectives as well as proposed developments on adjoining and nearby sites within the precinct. The proposal contains suitable street wall heights that are consistent with the DCP and will provide a positive contribution to the alignment of mixed use developments along the highway as required by RDCP 2011. It is considered that the minor variation to the height control relating to the lift overrun will not impact compliance on other sites. Accordingly, the proposal will provide a positive contribution to the streetscape and the Princes Highway corridor.

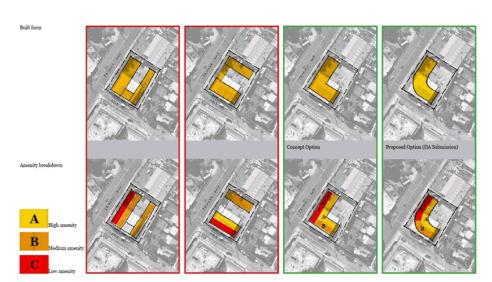


Figure 3 - Built form and massing study (DKO Architecture)

Principle 3 - Density

The proposal complies with the maximum permissible FSR control and the resulting density is consistent with the anticipated yield under the zone in the RLEP 2011. The proposal is consistent with the future desired character of the area and the the development generally complies with the required setbacks in the RDCP 2011 & ADG. The proposal is acceptable in respect to height and setbacks and the density of the scheme is supported by the DERP. The proposed density is considered suitable for this corner location which is located close to good public transport services. The proposal is therefore acceptable in this regard.

Principle 4 - Sustainability

The application complies with BASIX and includes a 6 metre landscape strip to the Princes Highway frontage as well as tree and landscape planting at the rear of the site. The proposal has been oriented and designed in a curved building form to maximise the number of units which benefit from direct sunlight, and results in more dwellings benefiting from cross ventilation and access to natural light. The applicant has also committed to other measures such as provision of an electric car charging bay, solar power and rainwater harvesting. Accordingly, the proposal satisfies the requirements of this clause and is satisfactory in this regard.

Principle 5 - Landscape

The proposal includes a 6m wide deep soil buffer along the Princes Highway which contains trees and landscape plantings in deep soil areas. Planting is also provided at the rear of the site at ground level and includes a playground area with turfed lawns. The proposed landscape areas will contain deep soil areas to the front and northern side and be capable of allowing trees to reach maturity on the site. The proposed landscaping will complement the proposed development and satisfy the objectives of Council's DCP in relation to the provision of landscape elements on the site.

Principle 6 – Amenity

The proposal satisfies the solar access and ventilation requirements of the Apartment Design Guide (ADG). The applicant has amended the plans to address most of the amenity issues identified by the DERP and this includes increasing the provision of natural light within the corridors and ensuring the internal areas will provide a high quality space for future occupants. The units and rooms are of adequate size and dimensions, and storage has also been provided in accordance with ADG. The public domain interface has also been amended to ensure a positive relationship is achieved with the public domain, benefiting the amenity of pedestrians and users of the surrounding public domain. Overall, the amended proposal has significantly improved the level of amenity that will be afforded to future residents. The proposal is therefore considered to provide an acceptable standard of amenity.

Principle 7 - Safety

The proposal has been designed to remove concealment opportunities, including legibility for the main building entry lobby, and maximise passive surveillance of the surrounding public domain. Car parking for residential occupants has been separated from visitors and commercial car parking spaces, and security access points are provided to gain access to the lift lobby. Suitable lighting and CCTV will be required by conditions of consent, and the proposed design is satisfactory in this regard.

Principle 8 - Housing Diversity and Social Interaction

The site is well located in proximity to the Arncliffe railway station, and the housing mix will ensure that a variety of apartment sizes and layouts is provided. The proposal includes adaptable units to satisfy RDCP 2011, and provides lobby spaces and circulation areas that will provide spaces for residents to meet. The proposal includes ample communal open space at ground level and at Level 9 that will

provide for a range of activities, is usable and provides an attractive and inviting area for use by future occupants. The proposal is therefore satisfactory in relation to housing diversity and social interaction.

Principle 9 – Aesthetics

The proposal has been amended several times to improve the external appearance and provide a range of colours and materials that will provide a satisfactory contemporary development in the context of the site. The amended proposal was considered and supported by the DERP subject to the satisfaction of Council in relation to the large format commercial floor space. The amended scheme includes a large commercial floor plate as well as an improved range of materials and finishes including appropriate fenestration and floor to ceiling height on the ground floor. The amended scheme therefore complies with the requirements of this principle.

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	25% of site area = 672m2 50% direct sunlight to principal usable part of communal open space for min. 2 hours between 9am and 3pm on 21 June.	Two areas of genuine communal open space are provided, including 595m2 at ground level and 392m ² at the roof top terrace = 987m2 (37%).	Yes
3E - Deep Soil	Deep soil zones provide areas on the site that allow for and support healthy plant and tree growth. They improve residential amenity and promote management of water and air quality. A minimum Deep Soil area of 7% of the site area and with minimum dimensions of 6m is required for this proposal which has a site area in excess of 1,500m2. On some sites achieving the design criteria may not be possible due to location of the building (e.g. CBD)	The proposal includes approximately 590m² (22%) of deep soil at the front and northern side of the site. While parts of these areas are paved however permeable pavers are required in these areas by way of condition.	Yes
3J - Bicycle and car parking	As per Guide to Traffic Generating Developments, or per council requirement, whichever is less. Parking provided off street:	96 off-street car parking spaces required 102 off street parking spaces provided	Yes - Either arrangement of floor space can comply with the minimum on

Required for Proposal as Submitted: 37×1 bed = 0.6 $\times 37$ = 22.2 spaces 41×2 bed = 0.9 $\times 41$ = 36.9 spaces 5×3 bed = 1.4 $\times 5$ = 7 spaces TOTAL Residential Spaces = 66.1 = 67 spaces required

Visitors (1/5) = 16.6 = 17 spaces.

Commercial Parking = 1 / 40 m2 of GFA = 443 / 40 = 11.075 = 12 spaces (total)

Tenancy 1 - 158m2 requires 4 spaces, and

Tenancy 2 - 285m2 requires 8 spaces, totaling 12 spaces.

= 96 spaces required + dedicated car wash bay & loading bay

TOTAL PARKING REQUIRED

= 67 + 17 + 12

<u>Provided</u>= 102 Spaces Provided. Applicant proposes to allocate as follows:

- 67 residential parking spaces
- 22 visitor (3 of these are tandem)
- 12 commercial spaces
- 1 visitor / car wash bay, and
- 1 loading bay for vans

Subject to Deferred Commencement:

Required for Deferred
Commencement:
35 x 1 bed = 0.6 x 35 =
21 spaces
41 x 2 bed = 0.9 x 41 =
36.9 spaces
5 x 3 bed = 1.4 x 5 = 7
spaces
TOTAL Residential
Spaces = 64.9 = 65
spaces required

Visitors (1 / 5) = 16.2 = 17 spaces.

Commercial Parking

(corner tenancy) = 1 / 40 m2 of GFA = 158 / 40 = 3.95 = 4 spaces

Commercial parking (northern tenancy) = 1 / 40m2 of GFA = 400 / 40 = 10 spaces

TOTAL PARKING
REQUIRED
= 65 + 17 + 14
= 96 spaces required.

Can comply deferred commencement:
- 65 residential parking spaces

- 17 visitor (must not be tandem)
- 14 commercial spaces
- 1 dedicated car wash bay, and
- 1 loading bay / waste collection
- = 96 spaces total

site car parking requirements (i.e. retail or showroom use for the commercial GFA)

			Note that 3 of the visitor parking spaces are tandem however a total of 23 visitor spaces has been provided while only 17 visitor spaces are required. These tandem spaces may be allocated to commercial tenancies.		
4D –	Minimum internal a		All units comply with the	Yes	
Apartment size and	Apartment type	Minimum internal area	minimum requirements. Some of the 1		
layout	Studio	35m²	bedroom units are a		
	1 bedroom	50M ²	minimum of 50m2		
	2 bedroom	70m²	which comply. All of the		
	3 bedroom	90m²	remaining units are all		
	Internal areas includes only one bathroom. Additional bathrooms increase area by 5m² each. Further bedrooms increase minimum internal area by 12m² each.		in excess of the minimum area required.		
4C - Ceiling	Minimum ceiling	heights:	3.1m floor to floor is	Yes	
heights	Habitable	2.7m	provided, which will		
	Non-habitable	2.4m	permit a minimum		
	Two storey apartments	2.7m main living 2.4m first floor, area < 50% of apartment area	2.7m floor to ceiling height for habitable spaces. The ground floor		
	Attic spaces	1.8m at edge 30deg min slope	contains 6.7m and 3.6m		
	Mixed use area	3.3m for ground and first floor			

3F Visual Privacy	Min separation boundaries:	lin separation - side & rear oundaries:		Northern Side Setback: The proposal generally	NO - but is acceptable	
,	Building height	Habitable rooms and balconies	Non habitable rooms	complies with the setback requirements however there are some minor variations.	(See Note 1)	
	Up to 12m (4 storeys)	6m	3m	This has been addressed in more		
	Up to 25m (5-8 Storeys)	9m	4.5m	detail in Note 1 below.		
	Over 25m (9+storeys)	12m	6m	Eastern Side Setback The proposal generally		
	Buildings on required build Gallery treate	ding separati	ons.	complies with the setbacks on the eastern side however there are some minor variations. These variations have been addressed in more detail in Note 1 below.		
4A – Solar and daylight access	Living rooms + POS of at least 70% of apartments receive min2hrs direct sunlight b/w 9am & 3 pm mid-winter Max 15% apartments receive no direct sunlight b/w 9am & 3pm mid-winter		71% (59 of 83 units)	Yes		
			5% (4 units)	Yes		
4F – Common circulation and spaces	Max apartments off a circulation core on a single level is eight.		Twelve (12) units are located off one circulation core at levels 2 to 4, nine (9) units on level 1, ten (10) units on level 5, nine (9) units on level 6 and 7	NO - but is acceptable (See Note 2)		
	10 storeys and sharing a sing		partments	and six (6) units on level 8.	N/A	

4E – Private	Primary balco	onies as follo	ws:	All units comply with	Yes
open space			these requirements.		
and balconies	type	area	depth		
	Studio	4m²	-		
	1 bed	8m²	2m		
	2 bed	10m²	2m		
	3+ bed	12m²	2.4m		
	Min balcony of balcony area Ground level, provided inst 15m² and mir	is 1m. , podium or si ead of a balc	imilar -POS ony: min area		
4B – Natural ventilation	Min 60% of apartments are naturally cross ventilated in the first nine storeys of the building. Ten storeys or > are deemed to be cross ventilated only if any enclosure of the balconies at these levels allows adequate natural ventilation and cannot be fully enclosed. Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line.		63% of units achieve natural cross ventilation (52 units)	Yes.	
4G – Storage			The plans demonstrate compliance.	Yes	
	Dwelling t		orage size volume		
	Studio		4m²		
	1 bed		6M²		
	2 bed		8m²		
	3 bed		10m²		
	At least 50% located within	-	ed storage is		

Note 1 Setbacks:

The proposal generally complies, however habitable rooms & balconies for units on the 5th level and above are setback 5.8m from northern side boundary instead of 9m as required. The windows and balconies for two units on this level face toward the north and will have a setback of 5.8m which is more than half the 9m setback required for the site and adjoining property. The units have openings orientated away from the boundary and as such, the openings facing north can be made highlight. In

this instance, the setback of level 5 is acceptable and necessary to comply with the special provisions in Council's DCP 2011 relating to the wall height for the Special Precinct.

The northern side setback on the sixth floor complies with the 9m setback control apart from the balcony which breaches this setback by 2.2m. While the balcony follows the location of the external wall on the level below, it will still result in increased overlooking to the north and is in breach of the setback control. As the two northern facing units in this location have balconies other than those in the northern setback, the setback breach shall be deleted so the development will comply with the setback control. In this regard, this has been addressed through the imposition of a condition of development consent. Level 8 is setback 12m while the roof top terrace is setback 20m and both comply.

The eastern side setback does not comply with the minimum 6m setback ordinarily applied to the mixed use development for levels 1 to 4. However, the variation is to secondary windows and the units are generally oriented away from the boundary. In addition, screening has been provided to increase privacy to the balconies and these matters have been addressed through the imposition of a condition of development consent. Levels 5 to 7 have a setback that varies around 6m and does not comply with the minimum of 9m required. Similarly, level 8 has a setback of 8.5m to 9.5m to the balcony but requires a setback of 12m. Similarly, the variation is to secondary windows and the units are generally oriented away from the boundary. The building on the adjoining property to the east will be setback approximately 10m from the boundary and is a lower density residential flat building in accordance with the R4 High Density Residential Flat Building zone. Further, the length of wall containing the non compliance on the proposed building is limited to 18.4m (or two units in length).

In respect to the matters above, the proposal is not likely to result in any significant adverse amenity impacts and is not unreasonable in the circumstances of the case as it satisfies the objectives of the control

The proposal complies with the minimum southern side setback requirement as the structures on the adjoining property are garages and the same standard of half the setback requirement applies. The adjoining property to the south is zoned R4 High Density Residential and fronts Duncan Street to the east.

Note 2 Common Circulation and Spaces:

The proposal will contain more than eight (8) units off one common circulation core and does not comply with this requirement of the Apartment Design Guide. However, there are two lifts servicing the one circulation core and the entries to each unit are spread throughout the length of the central core. Further, the core is designed in an "L" shape given the building follows the corner location and visually has less than eight (8) units off each end of the core. Finally, the core has been designed with natural lighting and limited lengths in each direction and as such, will result in a suitable internal amenity of the corridor.

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
2.7 Demolition requires consent	Yes - see discussion	Yes - see discussion
4.3 Height of buildings	Yes - see discussion	No - see discussion

Relevant clauses		Compliance with standard/provision
4.4 Floor space ratio	Yes - see discussion	Yes - see discussion
4.6 Exceptions to development standards	Yes - see discussion	No - see discussion
6.1 Acid Sulfate Soil - Class 5	Yes - see discussion	Yes - see discussion
6.2 Earthworks	Yes - see discussion	Yes - see discussion
6.4 Airspace operations	Yes	Yes - see discussion
6.7 Stormwater	Yes - see discussion	Yes - see discussion
6.12 Essential services	Yes - see discussion	Yes - see discussion
6.14 Design excellence	Yes - see discussion	Yes - see discussion
7.1 Arrangements for designated State public	Yes - see discussion	Yes - see discussion
infrastructure		
7.2 Public utility infrastructure	Yes	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 shop top 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.

2.7 Demolition requires consent

The proposed development seeks consent for the demolition of the existing industrial / warehouse building and hence satisfies the provisions of this clause.

4.3 Height of buildings

The height of the proposed building is 33.25m which exceeds the maximum 31m height permitted in Clause 4.3 (Height of buildings) of RLEP 2011. The subject site is not located within any areas identified with a height of building incentive under the Rockdale LEP 2011.

The applicant has submitted variation in accordance with the requirements of clause 4.6 of RLEP 2011, and this has been discussed in more detail in the next section of this report.

4.4 Floor space ratio

The gross floor area (GFA) of the proposed development has been calculated as 6,725m2 over a site area of 2,690m2. In this regard, the proposed floor space ratio (FSR) for the building is 2.5:1 and therefore does not exceed the maximum FSR for the land (2.5:1) as shown on the Floor Space Ratio Map. Further, the proposed density is in accordance with the desired future character of Rockdale, will have minimal adverse environmental effects on the use or enjoyment of adjoining properties, and will maintain an appropriate visual relationship between new development and the existing character of area.

Accordingly, the proposed FSR for the development meets the objectives and satisfies the maximum

FSR permitted by Clause 4.4 in RLEP 2011.

4.6 Exceptions to development standards

The proposal exceeds the maximum 31m building height permitted under clause 4.3(2) of RLEP 2011 by 1.15m (RL 52.55m over NGL of RL20.4) or a variation of 3.7% at the height of the lift overrun (*Figure* 4). In this instance a clause 4.6 variation is permitted under the RLEP 2011 and is discussed below.



Figure 4 - Extent of building height variation to lift overrun to access rooftop communal open space

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

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

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

- (i) the applicant's written request is satisfactory in regards to addressing subclause (3) above, and
- (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives of the relevant zone.
- (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(a) The consent authority must also consider whether contravention of the development standard raises any matter of significance for State or Regional environmental planning, and 5(b) the public benefit of maintaining the development standard.

The objectives of clause 4.3(1) of the RLEP 2011 are stated 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.

It is noted that the proposal has further been assessed against the principles established by the Land and Environment Court in *Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*. The judgement established that justification was required in order to determine whether the development standard was unreasonable or unnecessary, included the Wehbe test and included sufficient environmental grounds to justify contravening the development standard on grounds other than whether the development achieved the objectives of the development standard. Consideration is to be given to the particular circumstances of the site and development.

The applicant has submitted a detailed justification to the proposed variation of the height development standard in accordance with Clause 4.6 of RLEP 2011. A summary of the key rationale provided by the applicant includes:

- The variation is limited to the lift overrun while the vast majority of the envelope is below the 31m height limit.
- The breach is to assist in providing equitable access to the roof top communal area,
- The height is compatible with the existing and future context and will not result in any additional adverse impacts to the surrounding properties,
- The proposal is consistent with the objectives of the standard,
- The variation allows a building that achieves improved planning outcomes in respect to amenity, presentation to the street and the public domain,
- The proposal provides a high quality urban form that was supported by the Design Excellence Review Panel,
- The proposal has a height that provides satisfactory daylight exposure and sunlight to much of the proposed building and public domain,
- The proposed height is relative to the scale of anticipated development and existing development (e.g. 108 Princes Highway)
- The proposal is consistent with the built form and land use intensity of the locality.
- Compliance with the development standard is unreasonable and unnecessary in the circumstances of this case as the proposal is consistent with the objectives of the standard notwithstanding non-compliance with the standard (Wehbe test).
- Their are sufficient environmental planning grounds to support the development, particularly that
 the proposal is consistent with the future desired character of the area, is under the permitted
 FSR, will not result in further overshadowing impacts, will result in a better planning outcome than
 if compliance was achieved.
- That the proposal is in the public interest as it meets the objectives of the development standard and the objectives of the zone.

Discussion:

The applicant's justification is generally agreed with and is considered to adequately address the matters required to be demonstrated by Clause 4.6(3) of RLEP 2011. The area of noncompliance to the height is minor in area and nature, and is generally located centrally within the site and will not be readily visible from the public domain. The proposed variation to the height standard is considered to meet the objectives of the development standard and the objectives of the zone and is therefore in the public interest in accordance with Clause 4.6(4). In this case in the context of clause 4.6, and in consideration of relevant case law, the proposal is found to be satisfactory for the following key reasons:

- The proposed height variation is restricted to a minor portion of the top floor of the development which is generally setback from the main building alignment.
- The additional height proposed is minor and is not considered to result in a detrimental environmental planning outcome as it does not give rise to adverse solar access, view loss or visual or acoustic privacy impacts on site or to neighbouring properties.
- The proposal is consistent with the objectives of Clause 4.3 Height of Buildings of Rockdale LEP 2011, notwithstanding the non compliance with the standard. The development is a high quality urban form, retains appropriate sky exposure and solar access on site and to neighbouring properties.
- The proposal is consistent with the objectives of the B4 Mixed Use zone, providing for a suitable residential use within a highly accessible location within the Arncliffe precinct.
- The development was the result of a design excellence competition and the scale of the development is supported by the Council's Design Excellence Review Panel (subject to satisfaction of Council with regards to the commercial floorspace).
- The proposal uses quality materials and the design appropriately addresses the prominent corner location at the intersection of Kyle Street and the Princes Highway.
- The variation would not adversely impact on the environmental amenity nor the aesthetic character of the area.

The proposed height will have minimal adverse impact in terms of building dominance, solar access, light and air and therefore the proposed height satisfies the relevant objectives of Clause 4.3 in RLEP 2011. The applicant's request to vary the development standard Clause 4.3 (height of buildings) is considered to be consistent with the relevant requirements in Clause 4.6 (Exceptions to development standards) and there are sufficient environmental planning grounds in which to justify the contravention of the height standard in the circumstances of the case. As such, compliance with the height standard is therefore unreasonable and unnecessary in this instance. The concurrence of the Secretary is not required in this case, and contravention of the standard does not raise any matter of significance for state or regional planning. Approval of the proposal would not create an undesirable precedent and is in the public interest.

6.1 Acid Sulfate Soil - Class 5

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

6.2 Earthworks

Earthworks including excavation are required on site for the proposed two basement parking 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 are included in the draft Notice of Determination to ensure that the environmental amenity of surrounding land is maintained, and soil erosion, sedimentation, and drainage impacts are minimised.

6.4 Airspace operations

The proposed development is affected by the Obstacle Limitation Surface (OLS) which is set at RL 51.0m AHD. The building height is at RL 33.25m m (RL 52.55) and therefore will penetrate the OLS by 1.55m. Therefore, the application sought approval under the Airports (Protection of Airspace) Regulations 1996, for the intrusion of the proposed development into the airspace, which under the regulations, is prescribed airspace for Sydney Airport.

In this regard, the proposal was referred to Sydney Airports for comment. Sydney Airports approved the proposal subject to the imposition of 4 conditions on 23 May 2019. The recommended conditions have been included in the draft Notice of Determination.

6.7 Stormwater

The proposal involves the construction of an on site detention system including rainwater tank to manage stormwater. The proposed stormwater system has been assessed by Council's development engineer and the proposal is satisfactory subject to imposition of appropriate conditions of consent, including standard conditions to ensure that discharge of stormwater will comply with Rockdale Technical Specification for Stormwater Management. Notwithstanding this, a condition has been imposed requiring the relocation of the OSD tank from the deep soil zone to within the building footprint to ensure increased and effective deep soil area and provision of landscape planting on the site.

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.

6.14 Design excellence

In accordance with Clause 6.14, the subject site is located within the land bounded by a heavy black line on the Design Excellence Map. As such, the Design Excellence clause applies to the proposal and seeks to deliver the highest standard of architectural, urban and landscape design. Pursuant to subclause 5(a), development consent must not be granted unless a design review panel reviews the development and the consent authority takes into account the findings of the design review panel.

As noted in the previous section of this report, the proposal was put before the Design Review Panel twice, being once before lodgement of the current application and once during the assessment of the application. In addition, the proposal was put before the Design Excellence Review Panel (DERP) on two occasions in accordance with Clause 6.14 of RLEP 2011. The results of these four reviews have been discussed previously in this report (please refer to the State Environmental Planning Policy (SEPP) No. 65 relating to the Design Review Panel).

At the most recent DERP meeting on Thursday 4 July 2019, the Design Excellence Review Panel made the following recommendation:

RECOMMENDATION - DESIGN EXCELLENCE

- The Panel supports the application in terms of the desired future character, built form, public domain landscape and sustainability where the application achieves Design Excellence in accordance with Clause 6.14 of the RLEP 2011.
- The Panel recommends that changes / refinements be made in terms of land use and mix to
 provide large format commercial space to the satisfaction of Council officers. In the event that the
 Council officers are satisfied, the Panel will not require the modified proposal be referred to the
 Panel for further consideration to demonstrate that Design Excellence has been achieved in
 accordance with Clause 6.14 or RLEP 2011

The latest amendments to the scheme include the refinements described by the DERP with exception of the commercial floor space. Subject to a recommended condition requiring an increase in the commercial GFA, the proposal is considered to demonstrate Design Excellence. In reaching this conclusion, regard has been given to all matters contained in CI. 6.14(4) of the RLEP 2011. The proposed development demonstrates compliance with the requirements of this clause as it includes a high standard of architectural design, will make a positive contribution to the streetscape using an appropriate building type and an external appearance that will improve the quality and amenity of the public domain.

Accordingly, the proposal meets the Design Excellence requirements of clause 6.14(4) of the RLEP 2011 and is acceptable in this regard.

7.1 Arrangements for designated State public infrastructure

Pursuant to Section 7.1 of the Rockdale LEP 2011, the applicant is required to ensure that satisfactory arrangements are made for the provision of designated State public infrastructure before the development of land for the purposes of residential accommodation is approved to satisfy needs that arise from development on the land, but only if the land is developed intensively for urban purposes. The current proposal includes an intensive urban redevelopment of the land. The state public infrastructure under this provision includes state and regional roads, bus interchanges and bus lanes, regional open space and social infrastructure (such as schools, hospitals, emergency services and facilities for justice purposes).

In addition, certification from the Secretary of the Department of Planning is required in writing to be submitted to Council confirming that satisfactory arrangements have been made to contribute to the provision of designated State public infrastructure in relation to the land on which the development is to be carried out.

On 31 July 2019 the Acting Deputy Secretary of Place and Infrastructure Greater Sydney at the department issued a "Satisfactory Arrangements Certificate" and advised that satisfactory arrangements are in place for the provision of State public infrastructure. In this regard, a planning agreement applies and the applicant has satisfied Council in respect to section 7.1 of the RLEP 2011.

7.2 Public utility infrastructure

Pursuant to Section 7.2 of the Rockdale LEP 2011, the applicant is to ensure Council is satisfied that any public utility infrastructure that is essential for the proposed development is available or that adequate arrangements have been made to make that infrastructure available when required. Such infrastructure includes water, power and sewage.

The applicant has submitted to Council details of the provision of services to the subject site including the provision of water, power and sewage. Accordingly, the applicant has satisfied Council in relation

to Section 7.1 and 7.2 of the RLEP 2011 and the proposal is acceptable in this regard.

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:

4.1.1 Views and Vista Yes - see discussion	Relevant clauses	Compliance with objectives	Compliance with standard/provision
4.1.3 Water Management 4.1.4 Soil Management 4.1.5 Contaminated Land 4.1.6 Development on Sloping Sites 4.1.9 Lot size and Site Consolidation - isolated sites 4.2 Streetscape and Site Context - General 4.3.1 Open Space and Landscape Design - Residential Flat Buildings 4.3.2 Private Open Space - Residential Flat Building/Shoptop housing 4.4.3 Natural Lighting and Ventilation - Residential Pas - see discussion 4.4.4 Glazing - Commerical 4.4.5 Visual privacy 4.4.6 Noise Impact - Non-residential 4.5 Social Equity - Housing Diversity and Choice 4.6 Parking Rates - Shops Yes - see discussion	4.4.4.16	-	-
4.1.4 Soil Management 4.1.5 Contaminated Land 4.1.6 Development on Sloping Sites 4.1.9 Lot size and Site Consolidation - isolated sites 4.2 Streetscape and Landscape Design - Residential Flat Buildings 4.3.1 Open Space - Residential Flat Buildings 4.3.2 Communal Open Space 4.4.5 Solar Access - Residential Flat Buildings 4.4.6 Natural Lighting and Ventilation - Residential Yes - see discussion 4.4.5 Visual privacy 4.4.6 Noise Impact - Non-residential 4.5 Ves - see discussion Yes - see discussion			
4.1.5 Contaminated Land 4.1.6 Development on Sloping Sites 4.1.9 Lot size and Site Consolidation - isolated sites 4.2 Streetscape and Landscape Design - Residential Flat Buildings 4.3.1 Open Space - Residential Flat Buildings 4.3.2 Private Open Space - Residential Flat Buildings 4.3.3 Communal Open Space 4.4.1 Energy Efficiency - Residential Flat Buildings 4.4.2 Solar Access - Residential Flat Buildings 4.4.3 Natural Lighting and Ventilation - Residential Yes - see discussion 4.4.4 Glazing - Commerical 4.4.5 Visual privacy 4.4.5 Visual and Acoustic Privacy - Building 5.2 Social Equity - Housing Diversity and Choice 4.5 Parking Rates - Shops Yes - see discussion			
4.1.6 Development on Sloping Sites 4.1.9 Lot size and Site Consolidation - isolated sites 4.2 Streetscape and Site Context - General 4.3.1 Open Space and Landscape Design - Residential Flat Buildings 4.3.2 Private Open Space - Residential Flat Building/Shoptop housing 4.3.3 Communal Open Space 4.4.1 Energy Efficiency - Residential Flat Buildings 4.4.2 Solar Access - Residential Flat Buildings 4.4.3 Natural Lighting and Ventilation - Residential Yes - see discussion 4.4.4 Glazing - Commerical 4.4.5 Visual privacy 4.4.5 Visual and Acoustic Privacy - Building Separation 4.4.7 Wind Impact 4.6 Noise Impact - Non-residential 4.7 Separation 4.8 Parking Rates - Shops Yes - see discussion			
4.1.9 Lot size and Site Consolidation - isolated sites 4.2 Streetscape and Site Context - General Yes - see discussion Yes - see discussion 4.3.1 Open Space and Landscape Design - Residential Flat Buildings 4.3.2 Private Open Space - Residential Flat Yes - see discussion Yes - see discussion Building/Shoptop housing 4.3.3 Communal Open Space Yes - see discussion Yes - see discussion 4.4.1 Energy Efficiency - Residential Yes - see discussion Yes - see discussion 4.4.2 Solar Access - Residential Flat Buildings Yes - see discussion Yes - see discussion 4.4.3 Natural Lighting and Ventilation - Residential Yes - see discussion Yes - see discussion 4.4.4 Glazing - Commerical Yes - see discussion Yes - see discussion 4.4.5 Visual privacy Yes - see discussion Yes - see discussion 4.4.5 Visual and Acoustic Privacy - Building Yes - see discussion Yes - see discussion 4.4.6 Noise Impact - Non-residential Yes - see discussion Yes - see discussion 4.5.1 Social Equity - Housing Diversity and Choice Yes - see discussion Yes - see discussion 4.6 Parking Rates - Shops Yes - see discussion Yes - see discussion Yes - see discussion Yes - see discussion Yes - see discussion Yes - see discussion			
sites 4.2 Streetscape and Site Context - General Yes - see discussion Yes - see discussion 4.3.1 Open Space and Landscape Design - Residential Flat Buildings 4.3.2 Private Open Space - Residential Flat Yes - see discussion Yes - see discussion Building/Shoptop housing 4.3.3 Communal Open Space Yes - see discussion Yes - see discussion 4.4.1 Energy Efficiency - Residential Yes - see discussion Yes - see discussion 4.4.2 Solar Access - Residential Flat Buildings Yes - see discussion Yes - see discussion 4.4.3 Natural Lighting and Ventilation - Residential Yes - see discussion Yes - see discussion 4.4.4 Glazing - Commerical Yes - see discussion Yes - see discussion 4.4.5 Visual privacy Yes - see discussion Yes - see discussion 4.4.5 Visual and Acoustic Privacy - Building Yes - see discussion Yes - see discussion 4.4.6 Noise Impact - Non-residential Yes - see discussion Yes - see discussion 4.5.1 Social Equity - Housing Diversity and Choice Yes - see discussion Yes - see discussion 4.6 Parking Rates - Shops Yes - see discussion Yes - see discussion 4.7 Yes - see discussion	, , ,	Yes - see discussion	
4.2 Streetscape and Site Context - General 4.3 1 Open Space and Landscape Design - Residential Flat Buildings 4.3.2 Private Open Space - Residential Flat Building/Shoptop housing 4.3.3 Communal Open Space 4.4.1 Energy Efficiency - Residential Flat Buildings 4.4.2 Solar Access - Residential Flat Buildings and Shop Top Housing 4.4.3 Natural Lighting and Ventilation - Residential Flat Building Flat Buildings And Solar Private Flat Buildings Flat Flat Buildings	4.1.9 Lot size and Site Consolidation - isolated	Yes	Yes
4.3.1 Open Space and Landscape Design - Residential Flat Buildings 4.3.2 Private Open Space - Residential Flat Building/Shoptop housing 4.3.3 Communal Open Space Pesidential A.3.2 Solar Access - Residential A.3.3 Natural Lighting and Ventilation - Residential A.4.4 Glazing - Commerical A.5 Visual privacy A.5 Visual and Acoustic Privacy - Building Separation A.6 Noise Impact - Non-residential A.5 Social Equity - Housing Diversity and Choice A.5 Social Equity - Equitable Access Access - Residential A.5 See discussion A.6 Parking Rates - Shops Yes - see discussion	sites		
Residential Flat Buildings 4.3.2 Private Open Space - Residential Flat Building/Shoptop housing 4.3.3 Communal Open Space 4.4.1 Energy Efficiency - Residential Yes - see discussion Yes - see discussion 4.4.2 Solar Access - Residential Flat Buildings and Shop Top Housing 4.4.3 Natural Lighting and Ventilation - Residential Yes - see discussion	4.2 Streetscape and Site Context - General	Yes - see discussion	Yes - see discussion
4.3.2 Private Open Space - Residential Flat Building/Shoptop housing 4.3.3 Communal Open Space 4.4.1 Energy Efficiency - Residential 4.4.2 Solar Access - Residential Flat Buildings and Shop Top Housing 4.4.3 Natural Lighting and Ventilation - Residential 4.4.5 Visual privacy 4.4.5 Acoustic privacy 4.4.5 Visual and Acoustic Privacy - Building Separation 4.4.6 Noise Impact - Non-residential 4.5.1 Social Equity - Housing Diversity and Choice 4.6 Parking Rates - Shops Yes - see discussion	4.3.1 Open Space and Landscape Design -	Yes - see discussion	Yes - see discussion
Building/Shoptop housing 4.3.3 Communal Open Space Yes - see discussion Yes - see discussion 4.4.1 Energy Efficiency - Residential Yes - see discussion Yes - see discussion 4.4.2 Solar Access - Residential Flat Buildings Yes - see discussion Yes - see discussion 4.4.3 Natural Lighting and Ventilation - Residential Yes - see discussion Yes - see discussion 4.4.4 Glazing - Commerical Yes - see discussion Yes - see discussion 4.4.5 Visual privacy Yes - see discussion Yes - see discussion 4.4.5 Acoustic privacy Yes - see discussion Yes - see discussion 4.4.5 Visual and Acoustic Privacy - Building Yes - see discussion Yes - see discussion 4.4.5 Visual and Acoustic Privacy - Building Yes - see discussion Yes - see discussion 4.4.5 Visual and Acoustic Privacy - Building Yes - see discussion Yes - see discussion 4.5 Visual Impact - Non-residential Yes - see discussion Yes - see discussion 4.5.1 Social Equity - Housing Diversity and Choice Yes - see discussion Yes - see discussion 4.5.2 Social Equity - Equitable Access Yes - see discussion Yes - see discussion 4.6 Parking Rates - Shops Yes - see discussion Yes - see discussion	Residential Flat Buildings		
4.3.3 Communal Open Space 4.4.1 Energy Efficiency - Residential 4.4.2 Solar Access - Residential Flat Buildings and Shop Top Housing 4.4.3 Natural Lighting and Ventilation - Residential 4.4.4 Glazing - Commerical 4.4.5 Visual privacy 4.4.5 Acoustic privacy 4.4.5 Visual and Acoustic Privacy - Building Separation 4.4.6 Noise Impact - Non-residential 4.4.7 Wind Impact 4.5.1 Social Equity - Housing Diversity and Choice 4.6 Parking Rates - Shops Yes - see discussion	4.3.2 Private Open Space - Residential Flat	Yes - see discussion	Yes - see discussion
4.4.1 Energy Efficiency - Residential Yes - see discussion Yes - see discussion 4.4.2 Solar Access - Residential Flat Buildings and Shop Top Housing 4.4.3 Natural Lighting and Ventilation - Residential Yes - see discussion Yes - see discussion 4.4.4 Glazing - Commerical Yes - see discussion Yes - see discussion 4.4.5 Visual privacy Yes - see discussion Yes - see discussion 4.4.5 Acoustic privacy Yes - see discussion Yes - see discussion 4.4.5 Visual and Acoustic Privacy - Building Yes - see discussion Yes - see discussion 4.4.6 Noise Impact - Non-residential Yes - see discussion Yes - see discussion 4.4.7 Wind Impact Yes - see discussion Yes - see discussion 4.5.1 Social Equity - Housing Diversity and Choice Yes - see discussion Yes - see discussion 4.5.2 Social Equity - Equitable Access Yes - see discussion Yes - see discussion 4.6 Parking Rates - Shops Yes - see discussion Yes - see discussion	Building/Shoptop housing		
4.4.2 Solar Access - Residential Flat Buildings and Shop Top Housing 4.4.3 Natural Lighting and Ventilation - Residential Yes - see discussion Yes - see discussion 4.4.4 Glazing - Commerical Yes - see discussion Yes - see discussion 4.4.5 Visual privacy Yes - see discussion Yes - see discussion 4.4.5 Visual privacy Yes - see discussion Yes - see discussion 4.4.5 Visual and Acoustic Privacy - Building Yes - see discussion Yes - see discussion 5 Separation Yes - see discussion Yes - see discussion 4.4.6 Noise Impact - Non-residential Yes - see discussion Yes - see discussion 4.5.1 Social Equity - Housing Diversity and Choice Yes - see discussion Yes - see discussion 4.5.2 Social Equity - Equitable Access Yes - see discussion Yes - see discussion 4.5.5 See discussion Yes - see discussion	4.3.3 Communal Open Space	Yes - see discussion	Yes - see discussion
and Shop Top Housing 4.4.3 Natural Lighting and Ventilation - Residential Yes - see discussion Yes - see discussion 4.4.4 Glazing - Commerical Yes - see discussion Yes - see discussion 4.4.5 Visual privacy Yes - see discussion Yes - see discussion 4.4.5 Acoustic privacy Yes - see discussion Yes - see discussion 4.4.5 Visual and Acoustic Privacy - Building Yes - see discussion Yes - see discussion 5 Separation Yes - see discussion Yes - see discussion 4.4.6 Noise Impact - Non-residential Yes - see discussion Yes - see discussion 4.5.1 Social Equity - Housing Diversity and Choice Yes - see discussion Yes - see discussion 4.5.2 Social Equity - Equitable Access Yes - see discussion Yes - see discussion 4.6 Parking Rates - Shops Yes - see discussion Yes - see discussion	4.4.1 Energy Efficiency - Residential	Yes - see discussion	Yes - see discussion
4.4.3 Natural Lighting and Ventilation - Residential 4.4.4 Glazing - Commerical 4.4.5 Visual privacy 4.4.5 Acoustic privacy 4.4.5 Visual and Acoustic Privacy - Building Separation 4.4.6 Noise Impact - Non-residential 4.4.7 Wind Impact 4.5.1 Social Equity - Housing Diversity and Choice 4.5.2 Social Equity - Equitable Access 4.6 Parking Rates - Shops Yes - see discussion	4.4.2 Solar Access - Residential Flat Buildings	Yes - see discussion	Yes - see discussion
4.4.4 Glazing - Commerical 4.4.5 Visual privacy 4.4.5 Acoustic privacy 4.4.5 Visual and Acoustic Privacy - Building Separation 4.4.6 Noise Impact - Non-residential 4.4.7 Wind Impact 4.5.1 Social Equity - Housing Diversity and Choice 4.5.2 Social Equity - Equitable Access 4.6 Parking Rates - Shops Yes - see discussion	and Shop Top Housing		
4.4.5 Visual privacy 4.4.5 Acoustic privacy 4.4.5 Visual and Acoustic Privacy - Building Separation 4.4.6 Noise Impact - Non-residential 4.4.7 Wind Impact 4.5.1 Social Equity - Housing Diversity and Choice Yes - see discussion 4.5.2 Social Equity - Equitable Access 4.6 Parking Rates - Shops Yes - see discussion	4.4.3 Natural Lighting and Ventilation - Residential	Yes - see discussion	Yes - see discussion
4.4.5 Acoustic privacy 4.4.5 Visual and Acoustic Privacy - Building Separation 4.4.6 Noise Impact - Non-residential 4.4.7 Wind Impact 4.5.1 Social Equity - Housing Diversity and Choice Yes - see discussion 4.5.2 Social Equity - Equitable Access 4.6 Parking Rates - Shops Yes - see discussion	4.4.4 Glazing - Commerical	Yes - see discussion	Yes - see discussion
4.4.5 Visual and Acoustic Privacy - Building Separation 4.4.6 Noise Impact - Non-residential 4.4.7 Wind Impact 4.5.1 Social Equity - Housing Diversity and Choice Yes - see discussion 4.5.2 Social Equity - Equitable Access 4.6 Parking Rates - Shops Yes - see discussion	4.4.5 Visual privacy	Yes - see discussion	Yes - see discussion
Separation 4.4.6 Noise Impact - Non-residential 4.4.7 Wind Impact 4.5.1 Social Equity - Housing Diversity and Choice Yes - see discussion 4.5.2 Social Equity - Equitable Access 4.6 Parking Rates - Shops Yes - see discussion	4.4.5 Acoustic privacy	Yes - see discussion	Yes - see discussion
Separation 4.4.6 Noise Impact - Non-residential 4.4.7 Wind Impact 4.5.1 Social Equity - Housing Diversity and Choice Yes - see discussion 4.5.2 Social Equity - Equitable Access 4.6 Parking Rates - Shops Yes - see discussion	4.4.5 Visual and Acoustic Privacy - Building	Yes - see discussion	Yes - see discussion
4.4.7 Wind Impact 4.5.1 Social Equity - Housing Diversity and Choice Yes - see discussion 4.5.2 Social Equity - Equitable Access 4.6 Parking Rates - Shops Yes - see discussion	Separation		
4.5.1 Social Equity - Housing Diversity and Choice Yes - see discussion 4.5.2 Social Equity - Equitable Access Yes - see discussion 4.6 Parking Rates - Shops Yes - see discussion Yes - see discussion Yes - see discussion Yes - see discussion	4.4.6 Noise Impact - Non-residential	Yes - see discussion	Yes - see discussion
4.5.2 Social Equity - Equitable Access Yes - see discussion Yes - see discussion Yes - see discussion	4.4.7 Wind Impact	Yes - see discussion	Yes - see discussion
4.6 Parking Rates - Shops Yes - see discussion Yes - see discussion	4.5.1 Social Equity - Housing Diversity and Choice	Yes - see discussion	Yes - see discussion
4.6 Parking Rates - Shops Yes - see discussion Yes - see discussion	4.5.2 Social Equity - Equitable Access	Yes - see discussion	Yes - see discussion
·	4.6 Parking Rates - Shops	Yes - see discussion	Yes - see discussion
	4.6 Car Park Location and Design	Yes - see discussion	Yes - see discussion
4.6 Vehicles Enter and Exit in a Forward Direction Yes - see discussion Yes - see discussion		Yes - see discussion	Yes - see discussion
	4.6 Basement Parking - General		Yes - see discussion
·	4.6 Car Wash Facilities		
	4.7 Air Conditioning and Communication		
	Structures		

Relevant clauses	Compliance with	Compliance with
	objectives	standard/provision
4.7 Waste Storage and Recycling Facilities	Yes - see discussion	Yes - see discussion
4.7 Service Lines/Cables	Yes - see discussion	Yes - see discussion
4.7 Laundry Facilities and Drying Areas	Yes - see discussion	Yes - see discussion
4.7 Letterboxes	Yes - see discussion	Yes - see discussion
4.7 Storage Areas	Yes - see discussion	Yes - see discussion
4.7 Hot Water Systems	Yes - see discussion	Yes - see discussion
5.3 Mixed Use - Commercial	Yes - see discussion	Yes - see discussion
5.3 Mixed Use - Awnings	Yes - see discussion	Yes - see discussion
7.7 Arncliffe & Banksia	Yes	Yes - see discussion
7.7.2 Vision and Principles	Yes - see discussion	Yes - see discussion
2 - The Princes Highway Arncliffe and Banksia	Yes - see discussion	Yes - see discussion
4 - Cahill Park Neighbourhood	Yes - see discussion	Yes - see discussion
7.7.3 Public Domain	Yes - see discussion	Yes
Street network and design	Yes - see discussion	Yes
Princes Highway Landscape Setback Objectives		Yes - see discussion
Residential Streets		Yes - see discussion
7.7.4 Built Form	Yes - see discussion	Yes
Building Setbacks		Yes - see discussion
Street Wall Heights		Yes - see discussion
Active Frontages		Yes - see discussion

4.1.1 Views and Vista

The occupants of the upper levels of the proposed development will enjoy views over the properties to the east and out to Botany Bay to the south east and the airport to the west, as well as district views to the north and south in accordance with this clause. Consideration has also been given to potential impacts to views of Botany Bay currently enjoyed by residents living to the west of the site on the opposite side of the highway. In this regard, the proposal has a height normally anticipated under the current controls contained in RLEP 2011 and therefore will not result in an unexpected loss of views from these properties. Furthermore, properties that currently enjoy views of Botany Bay are located a substantial distance from the site and these residents will continue to enjoy broader district views.

The mixed use development opposite the site at 108 Princes Highway contains northern facing units that overlook the site and adjacent properties. The views from these units will be affected and reduced in the immediate context, however, they will retain longer northerly views and those to the east and south. In this regard, the proposal is not unreasonable. Based on the above, the proposal is therefore acceptable in respect to the requirements of this clause.

4.1.3 Water Management

The roofwater and runoff is to be directed to a detention tank. A stormwater management plan has been submitted with application. The proposal includes the harvesting of rainwater collected from the site to supply common area irrigation, toilets and laundry rooms to minimise water use.

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.

4.1.5 Contaminated Land

The land is potentially contaminated given its history of light industrial use. Council has accepted the recommendations in the report from El Australia Pty Ltd and appropriate conditions are to be included in the Draft Notice of Determination. This has been addressed in more detail previously in this report (please refer to SEPP 55).

4.1.6 Development on Sloping Sites

The objectives of this clause are to limit site excavation and minimise cut and fill by allowing the building mass to step in accordance with the slope of the land; and to protect the amenity of adjoining properties. In this regard, the topography of the site is unique, such that the site falls to the north approximately 2m across its width fronting the Princes Highway.

In this regard, design elements have been incorporated in the proposed development generally allowing it to respond to the natural sloping topography of the land. These measures include having a lower level fronting the highway with the building stepping down the site, In this regard, the building steps in accordance with the topography of the site, with the use of internal stairs within the ground and first floor levels, as an attempt to lower the northern section of the building

Taking into consideration the above, the proposed development appropriately responds to the slope of the land, minimising environmental impacts and amenity impacts on adjoining residents.

4.2 Streetscape and Site Context - General

The proposed development has been amended several times to improve the external appearance of the building and ensure it is commensurate with the future desired character of the area. The proposed facade includes dark brick base with four storeys of light fibre cement cladding above topped with a dark cladding metal finish for the top three storeys. The colours and finishes will create a suitable context for the development with an appropriate built form that has a clear bottom, middle and top of the building. The curved facade is punctuated with vertical louvres, fenestration of windows and vertical modulation (gaps) that break up the massing of the building.

The development is compliant with the required setback to each street frontage which is capable of accommodating increased landscaping that will soften the proposed development. The front entry points to the commercial tenancies and residential lobby are legible and separated for pedestrian access. The proposal will provide a positive contribution to the existing streetscape and will facilitate the continuation of development that is consistent with Council's DCP 2011 Special Precincts applying to the Princes Highway. While the topography of the site was a challenge, the proposal relates well with the site context, existing adjoining developments and future desired character of the area. In this regard, the proposal respects the subdivision pattern, massing controls applying to the precinct and setback controls applying to the site.

As the second major development site in the row of properties fronting the Princes Highway, the proposal will maintain consistency with the current controls in Section 7 of Council's DCP that relates to the Special Precinct, Arncliffe and Banksia. The proposed development addresses the street with an appropriate form that defines the prominent corner, minimises conflicts with pedestrians and includes landscape plantings along the highway. In this regard, the proposal will result in a suitable streetscape

and external appearance that will contribute to the precinct and add to the diversity of styles in the area. Accordingly, the proposal complies with the requirements of this clause and is acceptable in this regard.

4.3.1 Open Space and Landscape Design - Residential Flat Buildings

The proposal has been designed with a minimum of 590m2 of deep soil area (or 22%) which complies with the minimum requirement of 7% (or 188.3m2) under the Apartment Design Guide (ADG) for the site. In this regard, a condition is imposed requiring relocation of the OSD tank in the northern side setback to further increase the deep soil zone. The proposal will include provision of additional shrub and tree planting to enhance indigenous wildlife populations and habitat. The proposed density of planting is a substantial increase when compared with the existing site conditions and is appropriate to the proposed built form of the development. The proposed development complies with the Special Precinct controls under Council's DCP which require the provision of a 6m front setback to contain trees and a well landscaped setting. In this regard, the front setback well exceeds the minimum 20% landscaped area and complies with Council's DCP. The proposed stormwater will utilise Water Sensitive Urban Design (WSUD) and accordingly, the proposal complies with the requirements of this clause.

4.3.2 Private Open Space - Residential Flat Building/Shoptop housing

The Apartment Design Guide (ADG) requires a minimum provision of 8m2, 10m2 and 12m2 of balcony areas for apartments of 1, 2 and 3+ bedrooms respectively. As outlined previously in this report, the proposed shop top housing development will contain residential units having different size balconies / private open space areas for each unit, all of which comply with the minimum area requirements under the ADG. Most of the units will exceed the minimum requirements and all comply with the minimum dimension of 2m under the ADG. Accordingly, the proposal is acceptable in respect to the requirements of this clause.

4.3.3 Communal Open Space

The communal open space has been arranged to maximise solar access, with barbeque and seating facilities on the roof top terrace. As indicated, the proposal provides 595m2 and 392m2 of communal open space on the ground floor and roof top terrace respectively. This results in a total of 987m2 (37%) for the site which complies with the requirements in the ADG.

The bin storage rooms on the ground floor has been relocated to Kyle Street and have been located appropriately to minimise amenity impacts to adjoining properties.

The proposal involves the conservation of the existing substantial trees. The landscape design optimises useability, privacy and social opportunity, and respect for neighbours' amenity. The landscape design is considered satisfactory.

4.4.1 Energy Efficiency - Residential

The applicant has submitted a BASIX Certificate for the residential dwellings in the proposed development. The commitments made result in reductions in energy and water consumption, and will achieve the efficiency target set under SEPP BASIX.

4.4.2 Solar Access - Residential Flat Buildings and Shop Top Housing

The proposal will include 71% of units (59 of 83 units) that receive a minimum of 2 hours of natural sunlight while there will be only 5% of units (4 units) that are south facing and do not receive direct sunlight between 9am and 3pm in mid-winter. In this regard, the proposal will provide a satisfactory

level of amenity for the future occupants of the site.

The proposed development will result in some overshadowing to the south but will still afford more than 2 hours solar access to the adjoining properties to the rear fronting Duncan Street in mid winter. The proposal will therefore have minimum impact of the level of sunlight currently received by adjoining properties and within the development site. Accordingly, the proposal complies with Council's requirements in respect to solar access and is acceptable in this regard.

4.4.3 Natural Lighting and Ventilation - Residential

The proposed development is designed to achieved natural ventilation and lighting, incorporating minimum ceiling heights of 2.7m on the ground and up to level 8 of the proposed building. The commercial ground floor tenancies will have a floor to floor height of 6.7m to the ground floor along the corner commercial tenancy and 7.1m floor to floor for the Princes Highway tenancy. Accordingly, the proposal is acceptable in respect to lighting and ventilation.

4.4.4 Glazing - Commerical

This clause seeks to reduce the necessity for mechanical heating and cooling. It limits commercial buildings so that they do not compromise the amenity of the public domain through excessive glare and reflection. In this regard, all glazing used in the building will be limited to a maximum of 20% reflectivity to ensure the building has thermal massing and the reflection of light does not cause any adverse impacts given the prominent corner location of the subject site. A condition of development consent has been imposed in this regard and applies to the entire building including both front and rear elevations (particularly the curved part).

The proposed development provides appropriate sun protection/shading devices during summer for glazed areas facing north, west and east, including the use of vertical sunshades, recessed window openings, awnings, external louvers and projecting sunshades.

Accordingly, the proposal as conditioned, is acceptable in respect to glazing and complies with the requirements of this clause.

4.4.5 Visual privacy

The proposal will provide adequate separation between the site and future buildings on the adjoining properties. As such, the proposal will retain adequate privacy between adjacent dwellings despite the variation to the ADG setback control as outlined previously in this report (please refer to the SEPP 65 assessment earlier in this report). While the proposal comprises a nine storey development, a seven storey development (DA-2018/320) is currently being considered by Council for the redevelopment of the properties to the rear fronting 49-51 Duncan Street. In this regard, the proposed seven storey residential flat building is setback approximately 10m from the subject site and impacts will be minimal. This development will be located directly to the east of the site and is still under consideration. In this regard, the residential units having windows to the bedroom and bathrooms within the eastern elevation on levels 1 to 4 are to be made highlight in order to reduce overlooking to the eastern adjoining property. The balconies facing east up to level 7 which are adjacent to the eastern side boundary shall include provision of a privacy screen (louvres) in order to retain adequate privacy between dwellings on adjacent properties. In this regard, level 8 is a larger balcony, but is set further back and given the protrusion of the building in the level below, does not require provision of a privacy screen. These matters have been addressed through the imposition of conditions in the draft Notice of Determination.

As detailed earlier in this report, the proposal complies with the setback controls applying to the site apart from the eastern and northern side setbacks which are not unreasonable. The building has been designed to step back from each frontage with an increase in height and generally minimises overlooking. The building has been designed in an L shape with landscaped private open space to the rear. In this regard, the proposal is consistent with the requirements of Council's DCP in respect to massing and building location and accordingly, is acceptable in respect to setbacks and is not likely to result in any significant or unreasonable privacy and amenity impacts on the proposed dwellings or those on the adjoining properties. Privacy impacts between units located within the site are minimal due to the design.

4.4.5 Acoustic privacy

The application was also accompanied by a DA Acoustic Report prepared by Acoustic Logic (dated 1 May 2018) which considered the potential acoustic impacts to future occupants of the development as well as possible impacts from traffic noise, air conditioning plant and ventilation on adjoining properties.

The acoustic report notes that the required internal noise levels can be achieved. The reports concluded the following:

"Provided that the acoustic treatments set out in Section 6 of this report are adopted, traffic noise impacts on the development will comply with the requirements of the Bayside Council DCP and relevant Australian Standards. Indicative treatments to comply with Rockdale Council's internal noise separation requirement have also been presented in Section 7. It is recommended that a full review of mechanical plant be undertaken during the detailed design phase to ensure that noise emissions from mechanical plant servicing the site are in compliance with the requirements of Bayside Council and the EPA Noise Policy for Industry as detailed in Section 8 of this report."

Furthermore the report provides recommendations to ensure that the internal noise environment meets the relevant criteria for road and traffic noise within the Infrastructure SEPP 2007 and relevant requirements. The recommendations include standard requirements such as glazing thickness to windows and doors, external walls and roof/ceiling detail.

Finally, there will be minimal adverse impact on the acoustic privacy of adjoining and surrounding properties as consideration has been given to the location and design of the building and landscaping in relation to private recreation areas to minimise noise intrusion on the amenity of adjoining properties.

As such, subject to imposition of relevant conditions the proposal is acceptable with regards to potential noise impacts to future occupants of the subject site as well as current and future users of adjoining sites in accordance with clause 4.4.5 of RDCP 2011.

4.4.5 Visual and Acoustic Privacy - Building Separation

Consideration of visual privacy has been addressed in response to the assessment of the ADG. Subject to recommended conditions, the visual privacy impacts resulting from the proposal are found to be acceptable.

4.4.6 Noise Impact - Non-residential

The proposed uses for the non-residential (commercial or showroom) tenancies are not yet known, however the premises have been designed to provide separate waste storage areas for these premises, and that all goods can be delivered from within the loading bay required by a deferred commencement condition. Subject to imposition of recommended conditions regarding use of the

premises, it is considered that the non-residential (commercial or showroom) uses will have minimal impacts on the amenity of the locality. The proposal is therefore satisfactory with regards to Control 3 of Clause 4.4.6 of RDCP 2011.

4.4.7 Wind Impact

A Wind Report prepared by WindTech dated 23 November 2018 was submitted with the application and details the proposal and its likely impacts in respect to the wind environment on and around the subject site. While no wind tunnel tests were carried out, the proposal and its effect on the existing wind patterns was discussed. The conclusions of the report indicate that the curved nature of the proposal will be affected by winds in the north east, southerly and westerly directions and are the result of climate, building morphology and land topography. The curved nature of the proposal will increase some winds within the courtyard at the rear and along balconies within the upper levels. Notwithstanding this, the report concludes that despite the wind exposure, the wind effects discussed can be ameliorated with the consideration of several different strategies in the design of the building. In this regard, a condition of development consent has been imposed requiring the applicant to implement the strategies in the report and therefore the proposal is acceptable in respect to wind impacts.

4.5.1 Social Equity - Housing Diversity and Choice

Part 4.5 of RDCP 2011 contains objectives and controls that aim to ensure that apartments in mixed use developments are flexible, maximise housing choice and provide equality of access. The proposal is considered to satisfy the relevant objectives and requirements. Compliance with the key controls are discussed below:

- Provision of 10%-30% 1 bedroom units, 50-75% 2 bedroom units, and 10-20% 3 bedroom units. The proposed unit mix does not comply with the requirements of RDCP 2011. In this case, the proposal includes only 5 (6%) of 3 bedroom units while a minimum 10% is required. The applicant considers that larger dwellings are over represented in broader Bayside Council context with a higher proportion of detached dwellings and a total of 48% of all dwellings have 3 bedrooms or more. The applicant also advises that market demand is for smaller units in this location. The proposal includes 25% of 1 bedroom units which complies with the requirements above. While the proposal includes 50% of 2 bedroom units, which complies with the requirements above, it also includes 19% of 1 bedroom with study units, which would effectively result in a combined 69% of 2 bedroom or similar units (noting that the study rooms do not comply with minimum bedroom sizes). These factors have been taken into account, and it is considered that the variation of 4% for the provision of 3 bedroom units is not unreasonable or excessive in the circumstances of the case. In this regard, the conversion of other 1 and 2 bedroom units into three bedroom units is not required. Accordingly, the proposal is considered acceptable in respect to the requirements of this clause.
 - Minimum 10% of units being adaptable in accordance with AS 4299, and barrier free access to be provided to a minimum of 20% of apartments.

Minimum 10% of units being adaptable in accordance with AS 4299, and barrier free access to be provided to a minimum of 20% of apartments. The proposed development includes 10 adaptable units (or 12%). The proposal is therefore considered to satisfy the requirements of Part 4.5 of RDCP 2011 subject to inclusion of recommended conditions.

The proposal is therefore considered to satisfy the requirements of Part 4.5 of RDCP 2011 subject to inclusion of recommended conditions.

4.5.2 Social Equity - Equitable Access

The proposal was accompanied by an Access Report prepared by Code Performance (dated 23 November 2018). The report concludes that the submitted design is capable of complying with the performance requirements of the Building Code of Australia (BCA) and AS4299. The proposal is therefore acceptable in this regard.

4.6 Parking Rates - Shops

The Rockdale DCP 2011 requires the provision of 1 spaces per 40m2 of retail floor space. The proposal includes a total retail floor space of 443m2 which would require a minimum on site car parking requirement of 11.1 spaces (or 12 rounded up to the nearest whole). Deferred commencement conditions have been imposed in relation to the provision of a waste service area and relocation of the bin store room at ground level. These conditions will alter the car parking layout and reduce the number of residential dwellings by 2 (from 83 to 81). Notwithstanding this, the proposal still complies with the minimum required on site car parking provision which is a total of 96 spaces, including 14 commercial parking spaces (refer to assessment of SEPP 65). As such, the application can comply with the parking requirements despite the Deferred Commencement conditions altering the commercial floor space and changes to the basement level.

Accordingly, the proposal is acceptable and complies with the requirements of this clause. Adequate car parking is available for the reconfigured commercial gross floor area.

Car parking has been provided for the residential component of the development, including 67 car parking spaces as previously stated in this report. (For more information regarding the parking spaces required given the changes to the commercial floor space, please refer to the section under State Environmental Planning Policy No. 65). As such, the proposal is acceptable in respect to the provision of on site car parking.

4.6 Car Park Location and Design

The proposal will include two basement car parking levels with adequate room for manoeuvring and turning with suitable sight distances for entry and exit along Kyle Street. As such, the proposal is not likely to result in any significant adverse impacts on the Princes Highway or reduce road safety. The proposal will include a new driveway crossing in the same location as the existing vehicle crossing and will be adequately signposted for legibility. The proposal contains access to service areas on the basement 01 level and the Roads and Maritime Services have not raised any objections to the proposal. Accordingly, the proposal is acceptable in respect to the requirements of this clause.

4.6 Vehicles Enter and Exit in a Forward Direction

All vehicles can enter and leave the site in a forward direction, including the required delivery bay that will incorporate a turntable. In this regard, vehicles obtain access directly from Kyle Street via a driveway ramp and have sufficient turning and manoeuvring area in which to enter and exit the site in a forward direction. In respect to waste collection vehicles, smaller trucks can be used for waste collection on the subject site and a condition has been imposed on the development in this regard. Accordingly, the proposal is acceptable in respect to the requirements of this clause.

4.6 Basement Parking - General

The proposal will include two basement levels which are largely underground and screened with commercial floor space where above ground to the Prince Highway frontage. The proposal contains access to visitor parking, commercial spaces and residential spaces for the entire development. The two basement parking levels will contain adequate ingress and egress from Kyle Street via a 5.5m wide vehicle crossing, do not contain excessive parking and will not dominate or detract from the external

appearance of the site. The basement parking levels will comply with the requirements of AS2890.1 and Council's Technical Specification - Traffic, Parking and Access.

The proposal will service the needs of the future occupants of the site but still encourage alternative modes of transport given the close proximity to the Arncliffe Railway Station and major bus routes along the Princes Highway. All visitor car parking spaces provided will be clearly marked and easily accessible to visitors to the site. The proposal contains parking spaces for people with a disability which are provided in close proximity to lifts for easy access. Based on the above, the proposal is acceptable and complies with the requirements in this clause.

4.6 Car Wash Facilities

The proposal will involve 81 residential apartments on the site (a reduction of 2 units) as the deferred commencement conditions will remove residential unit 1G and amalgamate units 1K and 2C on the ground floor. The proposal requires a minimum provision of one dedicated car wash facility. The proposal includes a shared car wash bay and visitor parking space on basement 1 and this shall be made into one dedicated car wash bay. This has been addressed through the a condition of development consent. As such, the proposal provides a car wash bay in accordance with Council's DCP 2011 and is acceptable in this regard.

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 Waste Storage and Recycling Facilities

The proposal includes separate waste storage rooms within the basement 01 level, a waste and recycling chute, and a waste compactor service within the bin room. The proposal will facilitate the on going recycling of some waste products as well as depositing garbage in the chute and compactor in the basement level. The use entails the building manager moving the bins from the basement to the ground floor bin store prior to collection. This has been detailed in the Waste Management Plan submitted with the application. Deferred commencement conditions have been imposed that will require the provision of on site waste collection with access from Kyle Street.

The Waste Management Plan submitted with the application confirms the transfer of bins from the basement to the bin holding room by the building manager. The waste collection could be undertaken by Council or a private waste collection company. A private contractor could be engaged for the retail waste collection on an agreed schedule to ensure there is no conflict with the residential collection days.

The application was referred to Council's Waste Management Officer who raised no objections to the proposal and advised that it can comply with the requirements of Council's DCP in respect to waste. The bin store room can cater for waste from the proposed uses including a bin collection service using the 1,100 garbage bins and recycling bins collected from the site. In this regard, the proposal complies with the Technical Specification Waste Minimisation and Management and the requirements of this clause.

The Bayside Traffic Development Advisory Committee (BTDAC) have recommended imposing

conditions of consent requiring that waste management collection be carried out on site. The proposal will involve management waste and collection within the site subject to compliance with the deferred commencement conditions.

Accordingly, subject to compliance with the submitted Waste Management Plan and relevant conditions, waste and recycling will be carried out in accordance with RDCP 2011.

4.7 Service Lines/Cables

A condition has been imposed on the draft Notice of Determination requiring the applicant to liaise with Ausgrid to provide the necessary services to the proposed development in accordance with their requirements. Such services will include laying conduits within the nature strip to underground cables in front of the site in future and the provision of electrical energy to the site, location of light poles along with internal communications such as telephone, internet and cable television services. In addition, this includes the relocation of the existing electricity pole within the Kyle Street frontage in the eastern corner of the site and the relocation of the existing electricity substation along the Princes Highway frontage in the northern corner of the site. Accordingly, the proposal is acceptable and subject to the proposed conditions, can satisfy the requirements of this clause.

4.7 Laundry Facilities and Drying Areas

The amended plans submitted with this application illustrate the provision of internal laundry facilities within each of the residential units. Accordingly, the provisions of this clause are satisfied.

4.7 Letterboxes

The proposal will include letterboxes for each individual unit within the foyer along the Kyle Street frontage. The proposal will include a void above the lobby allowing light penetration during the day. A condition will be imposed in relation to street numbering and access to letterboxes in accordance with the requirements of Australia Post. Accordingly, the proposal satisfies the requirements of this clause.

4.7 Storage Areas

Some areas for storage have been provided within each residential dwelling while larger dedicated storage areas have been provided for each unit within the basement car parking levels of the development. Accordingly, the proposal complies with the requirements of this clause and is acceptable in this regard.

4.7 Hot Water Systems

The detailed location of hot water systems has not been provided, however a condition is proposed requiring any such system on a balcony to be screened in accordance with RDCP 2011.

5.3 Mixed Use - Commercial

The proposed development has been designed with 6.7m and 7.1m floor to floor level on the ground floor and therefore contains maximum flexibility with area for a mezzanine and increased visibility and legibility along the Princes Highway. The commercial premises comprises two tenancies which will be increased to a combined gross floor area of 558m2 by a Deferred Commencement condition. The basement parking level contains bicycle parking and amenities for staff. The commercial and residential lobbies are separated and provide suitable separation of functions with increased legibility for pedestrians.

Control 14 of Part 5.3 also requires that a minimum of 10% of the gross floor area of the development be provided as retail and/or commercial uses. The application proposes 443m2 (6.6%) however the

proposal would include a total of 558m2 (8.3%) of the GFA as commercial premises subject to compliance with the deferred commencement condition. This is a 1.7% variation to the minimum 10% required, however is found to be acceptable in this case as the proposed commercial floor space would be more in keeping with the objectives and requirements of Part 7.7 of RDCP 2011 which require large format destination commercial uses at ground level. This matter is addressed in response to Part 7.7 of the RDCP 2011 below.

Accordingly, the proposal complies with the requirements of this clause.

5.3 Mixed Use - Awnings

The proposal does not include an awning around the corner of the building and along the Princes Highway as the facade has been designed with a dark brick delineating the two storey commercial tenancy floor height on the ground floor with a light colour fibre cement cladding on four floors above. The building is located on a corner and there are no buildings on the adjoining properties that have an awning over Council's footpath. However, the adjoining property to the north will be redeveloped in future and would most likely include an awning as required under the public domain plan for the precinct. In this regard, a condition has been imposed requiring an awning be constructed along the Prince Highway at the lower level of the building. The proposal will provide a suitable treatment on the facade for the entry points to the building elsewhere and an awning along the corner is not required as the development maintains a colonnade with an appropriate context with the street. Accordingly, the proposal is acceptable in respect to the requirements of this clause.

7.7 Arncliffe & Banksia

7.7.2 Vision and Principles

The vision for the Arncliffe and Banksia Precincts is to create "vibrant, attractive and connected communities, where people live and work, with great access to public transport, community facilities, new open spaces, shops and local services." Section 7.7 of the Special Precincts that relates to Arncliffe and Banksia has numerous objectives which include the following:

- A. To create vibrant Town Centres that provide for the daily needs of the local and wider community;
- B. To provide a wide range of opportunities for different types of employment generating activities to meet local and regional needs;
- C. To provide high quality and a wide range housing choice;
- D. To promote the Princes Highway as a key regional employment and economic corridor;
- E. To ensure that new residential development provides a high level of amenity by adequately responding to the local and environmental context;
- F. To ensure a safe, connected, permeable and legible public domain that caters for the accessibility of pedestrians and cyclists;
- G. To promote the development of new buildings that display design excellence through a design review panel for buildings over 3 storeys and a competitive design process for buildings over 12 storeys;

The current proposal involves a mixed use development with active street frontage which is subject to compliance with recommended conditions and is consistent with the structure plan and above objectives in Section 7.7 of Council's DCP 2011.

The subject site is located within the Special Precincts listed below, and consideration of the relevant requirements is provided separately below:

- 2.1 The Princes Highway Arncliffe; and
- 4 Cahill Park

2 - The Princes Highway Arncliffe and Banksia

The subject site is located within the Special Precinct - 2.1 "*The Princes Highway Arncliffe*". This is the first application to be determined within the precinct under the recently adopted planning controls.

Relevant matters for this proposal to demonstrate general compliance with the desired future character, land use, built form and public domain controls of this section of RDCP 2011 for the Princes Highway in Arncliffe include (*author's emphasis*):

- "Integrate boulevard tree planting along the Highway that reinforces the location of the Arncliffe Town Centre:
- Allow provision of destination commercial spaces and showrooms that are highly visible from passing vehicles;
- Large format commercial uses at lower levels;
- Building height controls should allow for **generous 7m floor to floor heights for ground level showroom uses**. These spaces might comprise a small mezzanine;
- Residential levels located above lower commercial levels with visual and acoustic separation from busy road frontage/
- Improved pedestrian and cycle environment, and amenity for businesses and residents;
- A front setback of 3 metres is required, unless a specific setback is recommended;
- 6 metre setback and dedication on sites adjoining Princes Highway. Proposed landscape
 improvements include significant boulevard tree planting and the creation of a dual footpath
 that allows for the staged delivery of the setback and continued pedestrian access during
 transition"

The proposal generally complies however, as noted previously in Part 5.3 of RDCP 2011, the application includes only 6.6% of the GFA as commercial / retail floor space while a minimum of 10% is required by RDCP 2011. The applicant's amended plans do not achieve this minimum, nor are they considered to satisfy the relevant provisions of Part 2.1 of Section 7.7 of RDCP above which require 'destination commercial spaces', 'showrooms' and 'large format commercial uses'. These requirements were based on economic analysis undertaken by the Department of Planning, and previous economic analysis undertaken on behalf of Council, and aim to create the desired future character of the precinct to include motor showroom, large commercial floorplate uses such as bulky goods and similar and ancillary uses for the locality. Subject to the recommended deferred commencement condition to increase the size of the lower level retail / showroom, the proposal would provide 8.3% of the GFA as commercial floor space, including the 158m² corner tenancy and a larger 400m² showroom fronting Princes Highway at the lower level. This would result in the loss of one x 1 bedroom unit at ground floor level. Provision of the commercial floor space within a single floor plate is not possible in this case due to the topography of the site. The site has a 2m cross fall, and the difference in levels between the floor level of the two commercial tenancies is 3.0m. Therefore, the proposal as recommended to be amended is considered to satisfactorily address the objectives and requirements of the recently adopted section in Council's DCP and facilitate the desired future outcome for the precinct.

4 - Cahill Park Neighbourhood

The subject site is located within the Cahill Park Neighbourhood under Part 7 Special Precinct of Council's DCP 2011. The neighbourhood includes predominantly houses and car-oriented commercial

uses along the Princes Highway and is several blocks to the north, south and east of the subject site. The desired future character of the precinct includes leafy residential streets sheltered from the north-south busy arterial roads that traverse the neighbourhood. The land use for this precinct includes primarily residential development but also large format commercial development at the lower levels of development adjoining the Princes Highway.

The built form includes a 8 storey development with double height commercial ground floor uses and units above on sites adjoining the Princes Highway. The built form includes a street wall height of 6 storeys with a 3m setback to the upper levels over 6 storeys. Deep soil zones are required along the rear boundary to facilitate mid-block tree planting and visual privacy between properties, and a condition is included to relocate the OSD system to achieve this requirement (while the relocation of the substation into the side setback is supported to provide the larger commercial floor space and frontage to Princes Highway). The public domain includes a 6m landscaped setback on sites adjoining the Princes Highway, and the building is setback 3m from Kyle Street and 6m from Princes Highway as required by the control.

7.7.3 Public Domain

The relevant parts of Part 7.7.3 'Public Domain' of RDCP 2011 include 'Street Network and Design', 'Princes Highway Landscape Setback Objectives' and 'Residential Streets' which are addressed separately below:

Street network and design

Council's DCP states that the objectives for the street network and design controls are as follows:

- A. To strengthen the landscape character and quality of the precincts through street tree planting;
- B. To encourage improvements to the amenity of the Princes Highway corridor through better landscaping and improved facilities for pedestrians and cyclists;
- C. To provide for improved and safer street crossings for pedestrians throughout the precincts;
- D. To enhance the precincts permeability including new and improved through site links and connections to adjacent areas outside the Precinct; and
- E. To create an attractive and comfortable streetscape for pedestrians and cyclists that comprises of consistent and high quality paving, street furniture, street tree planting, bike stands and bike racks.

The proposal is consistent with the street network requirement in providing the landscaped 6m front setback along the Princes Highway. The design and layout of the tree planting will reinforce the above objectives and improve the streetscape for pedestrians and cyclists with high quality paving, street furniture and facilities. The proposal satisfies the above objectives and is acceptable in respect to the street network and design.

Princes Highway Landscape Setback Objectives

The proposal includes a 6m front setback to be landscaped and is generally in accordance with Section 7.7.3 of Council's DCP 2011, Public Domain which relates to open space and street network design. The proposal is consistent with these requirements subject to a condition requiring that the permeable paved areas to the Princes Highway frontage to be provided in these setbacks, and incorporates a well landscaped front setback that will include the provision of trees along the Princes Highway corridor. In this regard, conditions of development consent shall be imposed requiring compliance with the public domain requirements of Section 7.7 of Council's DCP 2011, including provision of suitable tree and landscape planting, underground placement of existing overhead power lines and provision of a wider 3m paved footpath in front of the Princes Highway commercial tenancy as envisaged by the DCP

diagrams (see **Figure 5** below, and Figure 7.7.28 in RDCP 2011). The proposal as conditioned complies with Council's requirements in respect to the landscape setbacks and is acceptable in this regard.

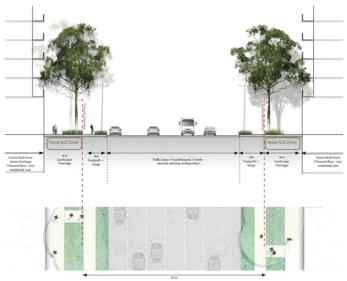


Figure 7.7.27 Indicative Section and Plan of Intermittent planting along the Princes Highway in the Amcliffe Precinc

Figure 5 - Copy of Figure 7.7.27 from RDCP 2011 showing the 6m landscape setback envisaged for this section of Princes Highway.

Residential Streets

The residential street controls in Part 7 of the DCP 2011 seek to increase canopy cover and improve neighbourhood amenity within the residential streets with increased pedestrian footpath widths and improved tree planting. The proposal includes additional tree planting and improved pedestrian environment within Kyle Street and is consistent with the requirements of this clause.

7.7.4 Built Form

Part 7.7.4 of RDCP 2011 is comprised of three sections, including 'Building Setbacks', 'Street Wall Heights' and 'Active Frontages' which have been addressed separately below:

Building Setbacks

The proposal is required to provide building setbacks of 6m along the Princes Highway and including significant tree planting and landscaping within this setback. The current proposal includes a well landscaped 6m setback and includes trees and plantings and complies with this control.

Council's DCP states that "Buildings should be set back 6 metres along the Princes Highway. The setbacks should include significant tree planting, landscaping and a secondary footpath located closer to the shop fronts and away from the traffic." The proposal includes a secondary footpath in front of the shops on the ground floor creating an improved pedestrian environment behind the landscaping elements and trees. Accordingly, the proposal complies with the requirements of this clause and is acceptable in this regard.

Street Wall Heights

The proposal is required to provide a street wall height of up to 6 storeys along the Princes Highway and Kyle Street and then setback the wall up to 3m above the street wall. The current proposal includes a street wall up to 6 storeys and then a 3m setback above this street wall and complies with this control. The different wall heights are complemented in different materials and colours providing a textured built form that addresses the prominent corner site.

The proposal includes a compliant street wall height creating an improved external appearance and appropriate facade treatment on the subject site. Accordingly, the proposal complies with the requirements of this clause and is acceptable in this regard.

Active Frontages

The proposal is required to provide an active street frontage along the Prince Highway and a floor to floor height of 7m to accommodate a wide range of retail showroom and / or commercial uses. The current proposal includes a retail / commercial frontage to the corner and along the Princes Highway with a floor to floor height of 6.7m which is sufficient in respect to the usability of the floor space and external appearance of the ground floor level. The proposed ground floor will have a commercial legibility to passing pedestrians and motorists and will satisfy the objectives of this control. An "active street frontage" is defined under point 3 of Council's DCP 2011 as all the premises on the ground floor presenting to the street or public domain being used for the purposes of business or retail premises. While the proposal includes a residential component fronting Kyle Street, the development is considered likely to achieve an active street frontage given the length of commercial floor space fronting the corner and along the Princes Highway. In this regard, subject to point 4 in Council's DCP, Council is satisfied that the development will have an actives street frontage and satisfy the objectives of this clause.

The proposal generally satisfies the remaining requirements of this clause which relate to locating ground levels at grade with finished footpaths, reinforcing corner frontages, residential lobbies being located off the main street frontage and so on. The proposal fails in only one requirements which stipulates that no residential uses be on the ground floor.

The proposal will contain dwellings on the ground floor at the rear of the building. These dwellings are not unreasonable given they face the communal open space area and given the size of the site and the design of the proposed budding, subject to compliance with the Deferred Commencement conditions requiring increased provision of commercial floorspace to satisfy. The objectives of the active street frontage requirements are as follows:

- A. To encourage active street frontages in suitable locations;
- B. To provide active street frontages to promote activity on the street and public domain; and
- C. To enhance public security and passive surveillance, and improve the amenity to the public domain by encouraging pedestrian activity.

Despite the variation, the proposal is consistent with the above objectives, and therefore is acceptable in this instance. Accordingly, the proposal complies with the requirements of this clause and is acceptable in this regard.

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

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

condition of consent is proposed to ensure compliance with the standard.

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

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

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

Construction Traffic and Work Zones

The proposed development is located on Princes Highway at the intersection of Kyle Street and construction traffic will need to be managed carefully to ensure minimal impacts to traffic flow and safety. In addition, Council's Traffic Development Advisory Committee have advised that a pedestrian warning system be installed within Kyle Street to ensure pedestrian safety. A condition of consent has been imposed to provide this requirement. In addition, a condition requiring that a Construction and Traffic Management Plan be prepared prior to issue of the Construction Certificate, and that approval be obtained from the relevant authority (RMS) if a works zone is required on Princes Highway during works. Subject to compliance with the submitted reports and recommended conditions of consent, the impacts from the construction traffic and works is found to be satisfactorily minimised.

Social Impact

The amended proposal will activate and enhance the public domain, including provision of the landscape corridor and commercial premises along the Princes Highway frontage which subject to compliance with recommended Deferred Commencement conditions, will help to establish the desired future character of the new precinct. The residential units have access to public transport that will assist to reduce car use, and the proposal includes motorcycle and bicycle parking. The proposal also includes satisfactory areas of communal open space both at ground level and on the roof top terrace that will benefit from good solar access throughout the year and encourage social activity for both occupants and visitors to the site. The proposal make a positive contribution to the existing streetscape along the Princes Highway and will add to the diversity of streets within the precinct.

Economic Impact

The proposal will provide temporary employment through the construction of the building and permanent employment in the on going operation of the commercial tenancies and building maintenance. The proposal will increase investment in providing a range of modern housing types that will meet demand in the area and will add to the local economy through the increased infrastructure, provision of services and increase the local population base.

Safety and Security

Safer by Design principles of crime prevention through environmental design are incorporated into RDCP 2011 and this aspect has been considered in the assessment of this proposal. The proposal has been designed as a secure development, with restricted access to private and communal areas and to the residential and nonresidential car parking areas (which have been separated to maximise security for residential car spaces while providing unrestricted access for the commercial spaces). The proposal activates and enhances the front, side and rear of the development to maximise passive

surveillance of the public domain. Furthermore, draft conditions are proposed requiring the installation of CCTV cameras at relevant locations, the preparation of a lighting maintenance policy, use of graffiti resistant materials at ground floor level and provision of an intercom facility for residents.

Construction

The shop top housing which includes commercial tenancies and residential apartments shall be constructed in masonry with concrete floors. There are no specific issues relating to the BCA in the proposed design.

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

The relevant matters pertaining to the suitability of the site for the proposed development have been considered in the assessment of the proposal. Additional conditions of consent are proposed to further minimise any impacts on neighbouring properties. The proposal has been amended several times to comply with the Special Provisions of Council's DCP 2011 applying to the Arncliffe and Banksia Precincts. There are no known major physical constraints, environmental impacts, natural hazards or exceptional circumstances that would hinder the suitability of the site for the proposed development.

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

The adjoining owners were notified twice of the proposed development in accordance with the provisions of Rockdale DCP 2011. During the first notification period (between 6/12/18 to 16/01/19) two submission were received by Council. During the second notification period (between 31/07/19 to 14/08/19) no submissions were received by Council. The issues raised in the submissions are discussed below:

Issue 1: Car parking - on street parking is limited in surrounding streets and the proposal will add to the parking demand - 1 space per dwelling is insufficient

Comment: The proposal complies with the minimum number of parking spaces required for the proposed mixed use development. Refer to discussion of Part 4.6 of RDCP 2011 and assessment of the Apartment Design Guide. In this regard, the proposal as conditioned, will provide sufficient car parking to cater for the likely increase in demand and is not considered likely to result in any unreasonable impacts on the provision of on street car parking within the vicinity of the site.

Issue 2: Loss of privacy and overlooking into the rear yard and in my back door and large windows Comment: The proposal has been design to comply with the setback requirements under Council's DCP apart from the small variations within the eastern and northern elevations. The adjoining property to the north will in future be designed and built in accordance with the same setback requirements under the Apartment Design Guide and this will result in sufficient separation between buildings. Notwithstanding this, the adjoining properties to the rear (east) fronting Duncan Street are proposed to be redeveloped in a similar manner under the high density R4 residential zone. In this regard, the proposed eastern setback will allow adequate building separation to be maintained for future development to the east. The rear yards of the single storey dwellings currently on the adjoining properties to the east are earmarked for redevelopment to high density residential.

Issue 3: Solar access - loss of sunlight to properties to the east

Comment: The shadows cast by the development will largely be to the south. This is largely a result of the orientation of the site. While the proposal will result in shadows falling to the east, they will only be in the late afternoon and the proposal complies with the requirements of Council's DCP in respect to solar

access. This has been addressed previously in this report (please refer to section 4.4.2 of this report).

Issue 4: Noise impacts (including noise in the early morning hours around 6.30 am) Comment: An acoustic report was submitted with the application which addresses impacts from traffic noise, air conditioning and ventilation. Measures are to be put in place to mitigate these acoustic impacts and a condition has been imposed in this regard. The proposal will result in temporary noise impacts throughout construction which is no different to any other redevelopment site, including those residential properties fronting Duncan Street which currently have a development application under consideration by Council.

Issue 5: Construction impacts (including dust, litter from workers, and parking in the driveway). Comment: Conditions have been imposed to ensure adequate safety, control and management of the building site is maintained throughout the construction period including standard Council restrictions on hours of construction. Noise and dust are sometimes unavoidable throughout construction but are limited to a temporary period and are to be mnimised in accordance with conditions of relevant legislation. On street car parking by people working on the construction site within Duncan and Kyle Streets is unavoidable and limited to the parking restrictions within those streets. Should vehicles park on or block residential driveways to properties that are not part of the subject site, Council rangers can be contacted.

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

The proposal has been assessed against the relevant planning policies applying to the site having regard to the objectives of the controls. As demonstrated in the assessment of the development application, the proposal will allow the development of the site in accordance with its environmental capacity. The proposed building is a high quality building that will add architectural value to the existing streetscape. Furthermore, the proposal does not create unreasonable impacts on surrounding properties. As such it is considered that subject to compliance with recommended Deferred Commencement conditions to facilitate development that complies with the desired future direction of the Precinct (particularly with regards to the provision of large format commercial premises) the development application is in the public interest.

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

With the deletion of two x 1 bedroom dwellings in the Deferred Commencement conditions, the applicable Section 7.11 Contribution Payment is calculated at \$1,099,799.38. This does not include the study rooms on the plans (e.g. unit 1J) as these rooms are not bedrooms (and are significantly less than a bedroom size). Accordingly, an appropriate condition regarding Section 7.11 Contribution payment has been included in the recommended conditions of consent.

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 will have a height of 33.25m, (RL 52.55 AHD) and therefore the proposal was referred to Sydney Airports for comment. Sydney Airports approved the proposed height subject to conditions. The recommended conditions have been included in the draft Notice of Determination.

Schedule 1 - Draft Conditions of consent

General Conditions

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

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

Plan/Dwg No.	Drawn by	Dated	Received by Council
Architectural Plans, Drawing Nos. DA103, DA200 to DA210, DA300 to DA302, DA400 to DA401, Revision C, (19/224309)	DKO Architects	25 July 2019	25 July 2019
Landscape Plan, Job No. BB 1195, Drawing No. LA. LP. 01/08 to 0./08, (19/224322)	Black beetle	25 July 2019	25 July 2019
Basement Drainage Layout Plans, Project 21837, DA 04, Revision 2, (19/224320)	ADG	25 July 2019	25 July 2019
Basement Drainage Layout Plans, Project 21837, DA 05, Revision 3, (19/224321)	ADG	25 July 2019	25 July 2019
Exterior Finishes Schedule (19/224315)	DKO Architects	-	25 July 2019

- 3. All new building work must be carried out in accordance with the provisions of the Building Code of Australia (BCA).
- 4. A Construction Certificate must be obtained from Council or an Accredited

Certifier prior to any building work commencing.

 The development must be implemented and all BASIX commitments thereafter maintained in accordance with BASIX Certificate Number (859060M) 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. Further alterations and/or additions to the subject building, including any changes to the relocation of the fire booster valves and substation, or other modifications shall not be undertaken without first obtaining approval from Council under Section 4.55 of the EP&A Act. This includes the fitting of any form of doors and/or walls.
- A separate development application shall be submitted for the Strata Subdivision of the approved mixed use development.
- The proposed balconies shall not be enclosed at any future time without prior development consent.
- 9. This approval is not to be construed as permission to erect any structure on or near a boundary contrary to the provisions of the Dividing Fences Act.
- 10. Parking spaces shall be allocated to residential apartments / non-residential units in the development in the following manner and this shall be reflected in any subsequent strata subdivision of the development:

Use	Number of Spaces Allocated [note to planner: insert whole numbers or rates of allocation as appropriate]		
Residential			
Residential units Studio/ One bedroom Two bedrooms Three bedrooms	i) 1 bedroom – 0.6 spaces, with maximum of 1 space per unit;		
	ii) 2 bedroom – 0.9 spaces, with maximum of 1 space per unit;		
	ii) 3 bedroom – 1.4 spaces, with a minimum of 1 space per unit and a maximum of 2 spaces per unit.		
Residential visitor	1 space per 5 units = 17 visitor spaces		
Car wash bay	1 dedicated car wash bay - 3.5m wide		
Non-Residential			

Commercial/Industrial	Corner commercial tenancy = 1 space per 40m2 - 158/40 = 4 spaces Northern commercial tenancy = 1 space per 40m2 = 400/40 = 10 spaces Total of 14 spaces required, with 4 spaces allocated to the corner tenancy and 10 spaces allocated to the northern tenancy.		
Others	,		
Car share space			
Motorcycle parking			
	1 space per 15 dwellings		
Bicycle parking			
Residential	1 space per 10 dwellings		
Non-Residential			
End of Trip Facilities			
Showers and change areas	Showers and change area required for the commercial tenancies		
Personal lockers	Yes		

The above allocation must be adhered and complied with at all times and shall be reflected in any subsequent Strata subdivision of the development.

All residential visitor spaces, car wash bays and loading bays shall be stated as common property on any Strata plan for the site.

A minimum of nine (9) accessible parking spaces shall be allocated to adaptable dwelling units.

Any stacked parking spaces shall be allocated to a single residential and/or commercial unit only.

The bicycle parking facilities with the exception of bicycle parking rails for visitors adjacent to the entry / within the front setback of the building shall be provided within a secured area.

All spaces must be appropriately line marked and labelled according to this requirement prior to the issue of an Occupation Certificate.

Note: Separate conditions stipulating design requirements for car and bicycle parking and compliance with AS 2890 series are included in the consent.

- 11. The design and construction of the off-street parking facilities shall comply with Australian Standards, as follows:
 - AS/NZS 2890.1:2004
 - AS 2890.2:2002
 - AS 2890.3:1993
 - AS/NZS 2890.6:2009

The following conditions apply to the provision of car parking on site and the adequacy of vehicular movements within the site:

• A dedicated 3.5m wide car wash facility shall be provided in accordance Rockdale

Technical Specification – Stormwater Management, in relation to the minimum width and configuration of car wash bays.

- Provide bicycle parking facilities for residents that are class 1 or 2 in accordance with AS2890.3:1993. Bicycle parking facilities for residents shall not be Class 3 facilities.
- Comply with Council's Vehicular Entrance Policy in relation to the design of the access driveways, in particular the layout of the access driveways shall be provided in the form of a layback in the kerb and gutter.
- Design the entry gate location for the basements so that there is no effect to traffic on the road (including footpath / cycleway) from vehicle queuing at the gate, and as a minimum of 2 car space must be provided between the gate and the future property boundary, subject to compliance with AS2890.1:2004, which may require more than 2 car space queue length.
- Internal height clearance shall be designed throughout the car park and access driveway in accordance with AS2890.1, AS2890.6 and commercial vehicle facilities shall be designed strictly in accordance with AS2890.2:2002.

For parking with people with disabilities, the clearance above the parking bay shall be 2.5mminium.

- The proposed loading bays shall be designed to accommodate a Small Rigid Vehicle (SRV) for furniture removal and waste collection by private waste contractor in terms of forward direction exit, height clearance of 3.5m and clear swept path within the ramp.
- In addition to the SRV loading bay, to make provision for one (1) VAN loading bay having direct access to lift lobbies within the basement, and be a minimum dimension of 5.4 m X 3.0 m, with an unrestricted height clearance of 2.3 m.
- Bicycle parking facilities shall be designed in accordance with AS2890.3:1993.
- Allocate all off street visitor parking, loading bays and car wash bays as 'common property' on any future strata plan of subdivision under the Strata (Freehold) Schemes Act.

Note: Parking allocation conditions apply to any Strata Certificate issued with respect to a Consent issued in accordance with Section 81 (1)(A) of the Environmental Planning and Assessment Act 1979 or a Complying Development Certificate issued in accordance with Part 6 of State Environmental Planning Policy (Exempt and Complying Development Codes) 2008.

Development specific conditions

The following conditions are specific to the Development Application proposal.

- 12. The windows to the bedroom and bathrooms within the eastern elevation on levels 1 to 4 are to be made highlight with a minimum sill height of 1.7m above the finished floor level in order to retain adequate privacy between adjacent buildings. Details are to be submitted with the Construction Certificate.
- 13. Privacy screens having a minimum height of 1.8m above finished floor level shall be provided along the eastern side edge of the balcony within the eastern elevation of the building for residential unit 2B on levels 1 to 7 and unit 2F on levels 6 and 7 in order to retain adequate levels of privacy between adjacent dwellings. The screens shall be constructed in horizontal louvres directed upwards or be of solid materials and extend the full length of the side edge of the balcony. Details are to be submitted

- with the Construction Certificate.
- 14. The two northern facing balconies within the northern side setback to units 1P and 2W on level 6 of the proposed building will be deleted and reinstated as non trafficable roof area in order to reduce overlooking, comply with the setback control and ensure the proposal is consistent with the objectives of the setback controls applying to the site. Details are to be submitted with the Construction Certificate.
- 15. The measures and strategies discussed within the Wind Report prepared by WindTech dated 23 November 2018 submitted with the application shall be implemented in the design of the building in order to reduce the likely wind impacts from the proposal. Details are to be submitted with the Construction Certificate and shall be complied with prior to the issue of any Occupation Certificate.
- 16. The State Public Infrastructure contribution as it relates to Section 7.1 of the Rockdale Local Environmental Plan 2011, shall be paid to the Minister of the Department of Planning, Industry and Environment, or Minister's nominee for the provision of State Public Infrastructure prior to the issue of any Construction Certificate on the subject site. Details of compliance with this condition are to be submitted to Council and the Department of Planning, Industry and Environment prior to issue of any Construction Certificate.

17. Basement Access Control

Prior to issue of the Occupation Certificate, and for the lifetime of the development, basement access shall be managed as follows:

- (a) Separated residential and non-residential parking areas must be provided.
- (b) Access to Commercial / Visitors Parking Access to the commercial / visitors parking must be managed as follows at all times.
 - (i) An 'Auto gate / roller door' must be provided at the main basement driveway entrance from the Kyle Street. The gate / roller door shall be located in order to permit the queuing of two (2) vehicles when waiting to enter the basement garage from the Kyle Street.
 - (ii) The control mechanism for the gate shall be arranged such that access to the basement garage for registered proprietors of the commercial units, their visitors, and residential visitor parking spaces does not require security clearance or assisted entrance between the hours of 7:00am to 7:00pm Monday to Saturday and 8:00am to 5:00pm on Sundays. Where the hours of operation of the commercial units are approved outside of these hours, the unobstructed access arrangements shall match the approved hours of operation.
 - (iii) Intercom facilities must be installed at the main vehicular entry/exit and at all pedestrian entry/exit points to enable residents to communicate with and identify people prior to admitting them to the development (including providing access to the basement area outside of approved business hours for the commercial tenancy).
- (c) Access to Residential Parking must be managed as follows at all times:
 - (i) A second roller door / gate combined with security fencing must be provided within Basement Level to secure the residential parking spaces from the commercial / visitors parking.
 - (ii) This second roller door / gate must be operated by a system that is accessible by occupants of the residential component of the

development only.

18. Safer by Design

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

- a) Monitored CCTV facilities shall be implemented throughout the development. Areas of focus include the basement car park (including entry and exits), main entry areas to the development and garbage/storage areas.
- A lighting maintenance policy shall be established for the development.
 Lighting shall be designed to the Australian and New Zealand Lighting
 Standards. Australia and New Zealand Lighting Standard 1158.1 Pedestrian, requires lighting engineers and designers to consider crime risk
 and fear when selecting lamps and lighting levels.
- Security mirrors shall be installed within corridors and on blind corners to enable users to see around blind corners.
- d) Graffiti resistant materials shall be used to ground level external surfaces.
- Intercom facilities shall be installed at all vehicular and pedestrian entry/exit points to enable residents to communicate and identify with people prior to admitting them to the development.
- f) The front window of the ground floor commercial tenancies must be kept free of shelves, and a maximum of 15% of the window display area may be covered with promotional materials to ensure passive surveillance is maintained to and from the tenancy.
- 19. (a) All loading, unloading and transfer of goods to and from the loading bay and premises as required by the Deferred Commencement condition, shall take place wholly within the property. Loading areas are to be used only for the loading and unloading of goods, materials etc. not for any other purpose.
 - (b) Loading areas are to be used only for the loading and unloading of goods, materials etc. not for any other purpose; and
 - (c) The loading bay must be allocated as 'common property' on any future strata plan of subdivision under the Strata (Freehold) Schemes Act.
- Parking spaces shall not be enclosed without further approval of Council. The
 enclosure of car spaces is not permitted unless the enclosure complies with the
 design requirements of AS2890.1.
- Loading Bay / Waste & Recycling Collection / Removalist Drop-offs & Pick-ups -Operational Requirements
 - (a) Waste & recycling collection and servicing, including removalist trucks, must be carried out entirely within the site and within the loading bays shown in the plans approved under the deferred commencement conditions at all times.
 - (b) Waste & recycling collection, deliveries, removalists and or any other servicing must not, at any time, be undertaken from the Princes Highway or Kyle Street frontages of the site.
 - (c) Waste and recycling may collected by a private waste contractor. A contract for waste and recycling collection must be entered into prior to issue of the Occupation Certificate. The company engaged must ensure that all recycling is collected separately from waste.
 - (d) Waste & recycling collection must be undertaken during off-peak times using

minimum size 1,100 litre bins for waste and 240L bins for recycling (i.e. waste collection must not be undertaken during Clearway times for the eastern side of Princes Highway, which is currently 3pm to 7pm, Monday to Friday), and not between 8:00pm and 7:00am seven days. The number of waste bins must comply with Council's Technical Specifications for waste management.

- (e) The loading bay must accommodate a minimum size Small Rigid Vehicle (SRV).
- (f) The loading bay must be allocated as 'common property' on any future strata plan of subdivision under the Strata (Freehold) Schemes Act.
- 22. A pedestrian warning system shall be installed on the subject site within the Kyle Street entrance/exit driveway to ensure sufficient pedestrian safety along the footpath within Kyle Street adjacent to the site. Details shall be submitted with the Construction Certificate.
- 23. Materials and Finishes

The materials and façade details approved under condition 2 and any other relevant condition of this consent shall not be altered or amended at the construction certificate stage without a prior S4.55 application and approval under the EP&A Act.

To ensure design excellence is achieved, as required by Cl6.14 of Rockdale Local Environmental Plan 2011/ Cl6.16 of Botany Bay Local Environmental Plan 2013, prior to the issue of any construction certificate entailing any works above basement levels including public domain works, the following must be prepared by the registered architect commissioned for the construction of the project:

- (a) Two (2) sample boards containing original samples and swatches of all external materials and colours including:
 - (a) wall and roof cladding;
 - (b) columns located in front of the corner retail tenancy (including vertical elements attached to columns);
 - (c) balustrading;
 - (d) louvres;
 - (e) glazing;
 - (f) window edge treatments;
 - (g) paving/surface in front setback areas;
 - (h) driveway;
 - (i) footpaths;
 - (j) retaining wall details;
 - (k) roof top garden (including all surface treatments.
- (b) Full coloured elevational details at a minimum scale of 1:10;
- (c) Sections through relevant façade elements, public domain stairs, planter boxes at a minimum scale of 1:10.

The boards, elevations and sections are to be submitted and stamped as approved by the Director City Futures (or delegate) prior to the issue of any Construction Certificate entailing any works above basement levels. The Construction Certificate shall be precisely consistent with these approved materials.

Any modifications to the approved materials under this condition require submission and approval of a S4.55 application.

24. Retail / Commercial Premises - Operational Conditions

The operations of the commercial / retail premises must comply with the following:

- (a) Parking allocation must be provided in accordance with the conditions of this consent;
- (b) Materials, goods or machinery shall not be stored, placed or otherwise permitted to stand between the building line and the street alignment, or any other part of the public road at any time without Council's consent.
- (c) All loading, unloading and transfer of goods / waste to and from the loading bay and premises shall take place wholly within the property, and in accordance with other relevant conditions of this Consent.
- (d) Deliveries to commercial premises restricted to between 7am and 6pm Monday to Friday and between 8am and 5pm on Saturdays. No deliveries permitted on Sundays or public holidays.
- (e) Unobstructed access to commercial parking spaces to be made available for customers during all hours of operation of the commercial tenancies. At a minimum, the roller shutter gate to the basement must include an on-site control mechanism for the gate so that access to the basement garage for registered proprietors of the commercial units, and their visitors / customers, does not require security clearance or assisted entrance between the hours of 7:00am to 7:00pm Monday to Saturday and 7:30am to 5:00pm on Sundays. Where the hours of operation of the commercial units are approved outside of these hours, the access arrangements shall match the approved hours of operation.
- (f) The front windows of the ground floor commercial / retail tenancies must be kept free of shelves, and a maximum of 15% of the window display area may be covered with promotional materials, obscure glazing and/or other treatment to ensure passive surveillance is maintained to and from the tenancies
- (g) Any proposed signs must, unless separately approved, comply with the requirements of the State Environmental Planning Policy (Exempt and Complying Development Code) 2008. In addition, any signage cannot have /
 - (i) flashing lights;
 - (ii) electronically changeable messages;
 - (jij) animated display, moving parts or simulated movement; or
 - (iv) a method and level of illumination that distracts or dazzles.
- (h) All other relevant conditions of this consent.
- 25. The existing and future owners (Registered Proprietor) of the property will be responsible for the operation and maintenance of the detention system. The registered proprietor will:
 - (i) permit stormwater to be temporarily detained by the system;
 - (ii) keep the system clean and free of silt, rubbish and debris;
 - (iii) maintain, renew and repair the whole or parts of the system so that it functions in a safe and efficient manner, and in doing so complete the same within the

- time and in the manner specified in written notice issued by the Council;
- (iv) carry out the matters referred to in paragraphs (ii) and (iii) at the proprietor's expense;
- not make any alterations to the system or elements thereof without prior consent in writing of the Council;
- (vi) permit the Council or its authorised agents from time to time upon giving reasonable notice (but at any time and without notice in the case of emergency) to enter and inspect the land for compliance with the requirements of this clause;
- (vii) comply with the terms of any written notice issued by the Council in respect to the requirements of this clause within the time stated in the notice.
- 26. The existing and future owners (Registered Proprietor) of the property will be responsible for the efficient operation and maintenance of the pump system.

The Registered Proprietor will:

- (i) permit stormwater to be temporarily detained and pumped by the system;
- (ii) keep the system clean and free of silt, rubbish and debris;
- (iii) maintain, renew and repair the whole or parts of the system so that it functions in a safe and efficient manner; and in doing so complete the same within the time and in the manner specified in written notice issued by the Council;
- (iv) carry out the matters referred to in paragraphs (ii) and (iii) at the proprietor's expense;
- not make alterations to the system or elements thereof without prior consent in writing of the Council.
- (vi) permit the Council or its authorised agents from time to time upon giving reasonable notice (but at any time and without notice in the case of emergency) to enter and inspect the land for compliance with the requirement of this clause:
- (vii) comply with the terms of any written notice issued by the Council in respect to the requirements of this clause within the time stated in the notice.
- 27. All wastewater and stormwater treatment devices (including drainage systems, sumps and traps) shall be regularly maintained in order to remain effective. All solid and liquid wastes collected from the device shall be disposed of in accordance with the Protection of the Environment Operations Act, 1997.
- 28. 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.
- 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.
- 30. Residential air conditioners shall not cause 'offensive noise' as defined by the Protection of the Environment Operations Act 1997 or contravene provisions of the Protection of the Environment (Noise Control) Regulation 2008 where emitted noise from a residential air conditioner can be heard within a habitable room in any other residential premises at night.
- Temporary dewatering of the site to construct the subsurface structure is not permitted.
- 32. The visible light reflectivity from building materials used on the façade of the building shall not exceed 20% and shall be designed so as not to result in glare that causes

- any nuisance or interference to any person or place. A statement demonstrating compliance with these requirements shall be submitted to the satisfaction of the Certifying Authority prior to the issue of a Construction Certificate for the relevant stage of works.
- 33. All existing and proposed lights shall comply with the Australian Standard AS4282 -1997 "Control of the Obtrusive Effects of Outdoor Lighting". In this regard, the lighting of the premises shall be directed so as not to cause nuisance to the owners or occupiers of adjacent/adjoining premises or to motorists on adjoining or nearby roads.
- 34. Hot and cold water hose cocks shall be installed to the garbage room.
- 35. (a) In order to ensure the design quality I excellence of the development is retained:
 - A registered architect is to have direct involvement in the design documentation, contract documentation and construction stages of the project;
 - ii) The design architect is to have full access to the site and is to be authorised by the applicant to respond directly to the consent authority where information or clarification is required in the resolution of design issues throughout the life of the project;
 - iii) Evidence of the design architect's commission is to be provided to Bayside Council prior to issue of the Construction Certificate.
 - (c) The design architect of the project is not to be changed without prior notice and approval of Bayside Council.
- 36. All hot water systems/units and/or air conditioning which are located on the balcony of a dwelling/unit must be encased in a recessed box on the balcony with the lid/cover of the box designed to blend in with the building. All associated pipe work is to be concealed.
- 37. Trees located within the footprint of the proposed buildings may be removed.
- 38. The external walls of the building including attachments must comply with the relevant requirements of the National Construction Code (NCC). Prior to the issue of a Construction Certificate and Occupation Certificate the Certifying Authority and Principal Certifying Authority must:
 - a. Be satisfied that suitable evidence is provided to demonstrate that the products and systems (including installation) proposed for use or used in the construction of external walls, including finishes and claddings such as synthetic or aluminium composite panels, comply with the relevant requirements of the NCC; and
 - Ensure that the documentation relied upon in the approval processes include an appropriate level of detail to demonstrate compliance with the NCC as proposed and as built.
- 39. Appropriate soil volumes and soil depths are to be provided for the root systems of the proposed tree and landscape plantings within each street frontage and shall comply with the minimum volume and depth requirements for each particular plant type as detailed within Table 5 of Section 4P of the Apartment Design Guide (ADG). The minimum soil volume for each tree shall be 150 cubic meters with soil depth of 1.4 meters from adjacent footpath level. All paving provided within the front and northern side setback deep soil areas shall be permeable paving. Details of all of the above are to be submitted to and approved by Council's Landscape Architect

- prior to the issue of any Construction Certificate.
- 40. The stormwater plan prepared by ADG, revision 5, dated 25th July 2019 submitted with the application proposes an OSD tank within the deep soil area along northern boundary of the site. The OSD tank shall be relocated within the building footprint to allow for the inclusion of a minimum of two additional large native trees able to reach a minimum mature height of 12 meters in local conditions. If sandstone is present, excavation shall be carried out to a minimum 1.4 meter depth and backfilled with imported soil/compost, water holding additive and fertiliser.
- 41. (2) The Final Landscape Plan shall be generally in accordance with the approved Landscape Plan by Black Beetle, issue 09, dated 25th July 2019 and comprise detailed landscape construction documentation (plans and specifications) to be submitted to, and approved by Bayside Council's Director of City Futures (or delegate) prior to the issue of any Construction Certificate for above ground works. The landscape documentation shall include, but not be limited to:
 - (a) A planting plan at 1:100 showing all plant locations/groupings and plant centres/species. There is to be a dense layered planting scheme consisting of trees, shrubs and groundcovers in all of these areas;
 - (b) Street frontages landscape setbacks will retain the natural ground level to be generally in level with the public domain footpath. Retaining walls will be avoided or minimised if required. The interface of planter bed with the public domain will be flushed. Proposed surface levels to be provided on all plans submitted.
 - (c) Elevated planter box sectional details and drainage details to be shown on plans. All planter box depths and dimensions shall be in accordance with Council's DCP and capable of supporting medium and large trees. All relevant levels and top of walls will be included in landscape plan for assessment.
 - (d) Planter box located along eastern boundary shall be minimum 800mm soil depth to allow trees and screen panting along rear boundary adjacent residential area.
 - (e) The front setbacks to Kyle Street and Princes Highway to be consistent with the adopted Public Domain Plan for the precinct.
 - (f) All paved surfaces in the front Princes Highway setback to be permeable paving.
 - (g) Planter boxes in the southern setback are not supported and adequate soil depth and volume must be provided below the finished surface level that is adequate for required tree and landscape planting below the finished surface level.
 - (h) Plans to demonstrate that adequate soil depth and volume will be provided within the sites western (Princes Highway) setback for required tree and landscape planting. Plans to demonstrate that where excavation of sandstone / rock is required to achieve the soil depth / volume, that these details provided on the plans. The ADG landscape depths / volumes can be used as a guide.
 - (i) Northern boundary deep soil The OSD System to be relocated out of the setback zone and the deep soil area shall include screen shrubs and medium trees to satisfy the requirements of RDCP 2011 for planting between adjacent properties, and a minimum of four (4) Australian native large trees with a minimum pot size supplied at 200

- litre, to reach a minimum mature height of 12 meters. Recommended large canopy trees species for this location are: *Angophora costata*, *Angophora floribunda*, *Corymbia citriodora*, *Corymbia maculata*, *Lophostemon confertus*, or similar.
- (j) Construction details of planting proposed in lawn area. Planter boxes with adequate soil depth may be required to support proposed planting within this area.
- (k) Communal open space on roof terrace shows planter of 500 mm depth of soil with trees. The soil depth is non-sufficient to support the proposed planting. Planter boxes with trees shall be minimum 1000mm deep of soil. Is recommended to consolidate round central planters with perimeter planters to simplify the design and maximise the use area.
- (I) A Landscape Maintenance Schedule shall be submitted that covers a 12 month period to provide a guide to the landowner or occupier on how to best maintain the constructed landscaped areas; and include the following information: shrub pruning/trimming (frequency, plant requirements); Fertilising and pest control (soil testing, types, rate, frequency); Mulching, weeding and soil improvement (frequency, materials); Irrigation (checks, adjustments); tree maintenance (fertilising, mulching, tree stakes adjustments, special tree requirements); Maintenance of hard landscape elements (paving, edges, walls, pergolas, seats, and planter box walls); and planter boxes/roof gardens/green wall (specialised maintenance requirements).
- (3) Irrigation prior Occupation Certificate. To ensure satisfactory growth and maintenance of the landscaping, a fully automatic drip irrigation system is required in all landscaped areas. The system shall be installed by a qualified landscape contractor and provide full coverage of planted areas with no more than 300mm between drippers, automatic controllers and backflow prevention devices, and should be connected to a recycled water source. Irrigation shall comply with both Sydney Water and Council requirements as well as Australian Standards, and be maintained in effective working order at all times.
- (4) Planting of the Lophostemon confertus along the Princes Highway landscape setback shall be supplied and planted with a container size of 600 litres as per Control 1. Part 7.7 Special Precincts 3.3 Landscape Setbacks of Rockdale DCP 2011 requirements. Height above container shall be 6 meters, calipre at 300mm shall be 95 mm or greater, with a clear trunk of 1.8 meters. Trees shall be installed with tree guards or stakes as per Council specifications.
- (5) Relocation of OSD tank shall allow a minimum of two additional large native trees able to reach a minimum mature height of 12 meters in local conditions. Details shall be submitted to Landscape Architect prior Construction Certificate
- (6) If sandstone is present anywhere within the site where landscape / tree planting is proposed or required in conditions of consent, excavation to a minimum 1.4 meters depth and with adequate volume to support large trees is required (refer to ADG as a guide). These areas must be backfilled with imported soil/compost, water holding additive and fertiliser. Backfill soil mix

- specifications shall be detailed and submitted to Council for approval. Lightly compact the soil to ensure all voids around rootballs are filled and that no air pockets are retained. Backfill soil shall not be placed over the top of the tree rootballs. The top of the rootball and plant stem must be kept level with the top of the backfill. Drainage from these areas to be provided where be required.
- (7) Planter boxes constructed over a concrete slab shall be built in accordance with the following requirements:
 - (a) Ensure soil depths in accordance with Council's Landscape DCP. The base of the planter must be screeded to ensure drainage to a piped internal drainage outlet of minimum diameter 90mm, with no low points elsewhere in the planter. There are to be no external weep holes.
 - (b) A concrete hob or haunch shall be constructed at the internal join between the sides and base of the planter to contain drainage to within the planter.
 - (c) Planters are to be fully waterproofed and sealed internally with a proprietary sealing agent and applied by a qualified and experienced tradesman to eliminate water seepage and staining of the external face of the planter. All internal sealed finishes are to be sound and installed to manufacturer's directions prior to backfilling with soil. An inspection of the waterproofing and sealing of edges is required by the Certifier prior to backfilling with soil.
 - (d) Drainage cell must be supplied to the base and sides of the planter to minimize damage to the waterproof seal during backfilling and facilitate drainage. Apply a proprietary brand filter fabric and backfill with an imported lightweight soil suitable for planter boxes compliant with AS 4419 and AS 3743. Install drip irrigation including to lawns.
 - (e) Finish externally with a suitable paint, render or tile to co-ordinate with the colour schemes and finishes of the building.
 - (f) All planter boxes shall be irrigated, and shall have the required depth to sustain the proposed planting, as detail:
 - (i) Trees over 8 meters: Minimum soil depth 1.2 metre
 - (ii) Medium trees (8 metre canopy diameter at maturity): Minimum soil depth 1 metre
 - (iii) Small trees (4 metre canopy diameter at maturity): Minimum soil depth 800mm
 - (iv) Shrubs: Minimum soil depths 500-600mm\
 - (v) Groundcover: Minimum soil depths 300-450mm
 - (g) Any subsurface drainage requirements are in addition to the minimum soil depths quoted above
- (8) Prior Occupation Certificate any proposed play equipment shall be in accordance with Australian Standards for Play Equipment and Surfacing, set out in AS 4422:2016 and AS 4685:2017.
- (9) Prior to the release of the construction certificate all landscape and construction documentation shall comply with Arncliffe and Banksia Public Domain Plan & Technical Manual

- (10) Prior to the issue of a Construction Certificate, the applicant shall submit a Frontage Works Application. Public domain landscape improvements plan shall be submitted for approval by Council. The Plan shall be undertaken by a suitably experienced Landscape Architect and shall include but not be limited to new street tree planting, footpath paving (segmental/other), street tree pit treatments and tree guards, street furniture, in ground landscaping, irrigation, lighting. The Plan shall be in accordance with Arncliffe and Banksia Public Domain Plan & Technical Manual, Council's City Identity Program, Landscape DCP and any other Council specification or requirement. Civil drawings shall be included detailing levels and detailed footpath construction sections in accordance with Council's Engineering Services requirements. Contact Council's Landscape Architect for further details of specific requirements in preparation of the plan.
- (11) All street trees have to be supplied in a pot size not less than 200 Litres. Trees supplied shall be healthy and vigorous, free of pest and disease, free from injuries. Trees provided shall conform to NATSPEC guide.
- (12) An experienced Landscape Contractor shall be engaged to undertake all landscaping public domain work and shall be provided with a copy of both the approved landscape drawing and the conditions of approval to satisfactorily construct the landscape to Council requirements. The contractor shall be engaged weekly for a minimum period of 52 weeks from final completion of landscaping for maintenance and defects liability, replacing plants in the event of death, damage, theft or poor performance. After that time regular and ongoing maintenance is required.
- (13) Landscape Completion / Certification: Prior to issue of any Occupation Certificate, the following must be complied with:
 - (a) All landscape works are to be carried out in accordance with the approved final Construction Certificate landscape plans for the approved development. The landscaping is to be maintained to the approved standard at all times.
 - (b) A Landscape Architect shall provide a report to the certifying authority (with a copy provided to Council, if Council is not the principal certifier) stating that the landscape works have been carried out in accordance with the approved CC landscape plans and documentation.
- 42. Terms and Conditions of the Positive Covenant required to be included in the positive covenant on the site prior to issue of any Occupation Certificate:
 - (1) The existing and future owners (Registered Proprietor) of the property will be responsible for the implementation of a management plan for collection of waste and recycling from the site.

The Registered Proprietor will:

- (a) Provide separate storage and collection of waste and recycling to maximise recycling and minimise waste;
- (b) Keep the on-site waste and recycling collection area clean and free of rubbish and debris;
- (c) Maintain, the onsite waste & recycling collection area and onsite collection management agreement, so that the onsite waste & recycling collection is maintained at all time;
- (d) Waste and recycling may collected by a private waste contractor. A contract for waste and recycling collection must be entered into prior to issue of the Occupation Certificate. The company engaged must ensure that all recycling is collected

separately from waste.

- (e) Carry out the matters referred to in paragraphs, (a), (b), (c) and (d) at the proprietor's expense;
- (f) Not make any alterations to the arrangement thereof without prior consent in writing of the Council;
- (g) 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 an emergency) to enter and inspect the system for compliance with the requirements of this clause;
- (h) Comply with the terms on any written notice issued by the Council in respect to the requirements of this clause within the time stated on the notice.
- (2) In the event of the registered proprietor failing to comply with the terms of any written notice served in respect of the matters in Clause 1 the Council of its authorised agents my enter with all necessary equipment and carry out any work required to ensure the safe and efficient operation of garbage collection and recover from the registered proprietor the cost of liaison with the proprietor and the cost of carrying out the work, and if necessary, recover the amount due by legal proceedings (including legal cost and fees) and entry of a covenant charge on the land under Section 88F of the Conveyancing Act 1919. In carrying out any work under this clause, the Council shall take reasonable precautions to ensure that the building is disturbed as little as possible.

Name of the Authority Empowered to Release, Vary or Modify Covenant: Bayside

43. Prior to the issue of the Construction Certificate

Contaminated Land - Remedial Action Plan amendment

- 1. An amended Stage 3 Remedial Action Plan (RAP) or an addendum to the RAP must be prepared by a suitably qualified contaminated land consultant and must be in accordance with:
- a) NSW Office of Environment and Heritage (OEH) 'Contaminated Sites Guidelines for Consultants Reporting on Contaminated Sites'; and
- b) NSW Environment Protection Authority (NSW EPA) guidelines under the Contaminated Land Management Act 1997; and
- State Environmental Planning Policy 55 (SEPP55) Remediation of Land.
 The amended RAP or addendum must specifically:
- a) address all data gap closure investigations identified in the 'Remedial Action Plan - 96-102 Princes Highway, Arncliffe NSW' (Report E23328.E06_Rev0) by El Australia dated 3 May 2019;
- b) Provide details of any requirements for further investigation, remediation and/or management of groundwater;
- c) provide details on the additional vapour sampling and/or risk assessment completed to determine if vapours pose an unacceptable risk to human health, should vapour be found at concentrations exceeding the adopted criteria;
- d) Provide information clearly detailing the requirements for remediation and/or treatment of the building structure if there is an unacceptable risk from vapours; and
- e) Not involve any active vapour extraction system as a remediation measure. The Remedial Action Plan (RAP) should avoid the use of containment measures and contaminants should be treated onsite or removed from the site whenever possible. Any remediation that utilises a containment strategy for contaminants must be accompanied by a Long-term Environmental Management Plan (LTEMP). This

LTEMP must be added to the title of the site under the Conveyancing Act. The amended RAP or addendum must be submitted to Council for review and concurrence prior to the issue of any construction certificate not associated with the preparation of the RAP.

Site Audit Statement - Section B - RAP

2. To ensure that the Remedial Action Plan (RAP), or any amended RAP, proposed for the site will result in the land being made suitable for the proposed use, a Section B Site Audit Statement (SAS) completed by an accredited site auditor under the Contaminated Land Management Act 1997 must be submitted to Council clearly demonstrating that the land can be made suitable for the proposed use by implementation of a specified Remedial Action Plan (RAP). This must be provided to Council for concurrence prior to the issue of any construction certificate.

<u>Prior to the commencement of any work (including demolition and excavation)</u>

Dewatering Water Quality Requirements

3. For any water from site dewatering to be permitted to go to the stormwater system, the water must meet the relevant default guideline values (DGVs) under the Australian & New Zealand Guidelines for Fresh & Marine Water Quality. All testing must be completed by a NATA accredited laboratory. All laboratory results must be accompanied by a report prepared by a suitably qualified and experienced person indicating the water is acceptable to be released into Councils stormwater system. If it is not acceptable, details of treatment measures to ensure that the water is suitable for discharge to council's stormwater shall be provided in this report. Reports shall be provided to council prior to discharge of any groundwater to the stormwater system.

Dewatering - Permit to Discharge to Stormwater

4. To ensure that relevant engineering and water quality provisions are met during the period of dewatering for construction, prior to any water from site dewatering to be permitted to go to council's stormwater system a permit to discharge to the stormwater must be obtained from Council. Dewatering must not commence until this is issued by Council.

Conditions which must be satisfied during any works (including demolition, excavation and construction)

Additional information - Contamination - Cease work addition

5. Any new information that comes to light during demolition or construction which has the potential to alter previous conclusions about site contamination and remediation must be notified to Council, the appointed Site Auditor (Contaminated Land) and the accredited certifier immediately. All work on site must cease until the Council is notified and appropriate measures to assess and manage the contamination in accordance with any relevant NSW EPA adopted guidelines is completed by an appropriately qualified and experienced environmental consultant and reviewed and approved by the Site Auditor (Contaminated Land).

Remediation Works

- 6. All remediation work must be carried out in accordance with:
- a) NSW Office of Environment and Heritage (OEH) 'Contaminated Sites Guidelines for Consultants Reporting on Contaminated Sites';
- b) NSW Environment Protection Authority (NSW EPA) guidelines under the Contaminated Land Management Act 1997;
- c) State Environmental Planning Policy 55 (SEPP55) Remediation of Land; and
- d) the 'Remedial Action Plan 96-102 Princes Highway, Arncliffe NSW' (Report E23328.E06_Rev0) by El Australia dated 3 May 2019 or as amended.

Dewatering Water Quality Requirements

7. For any water from site dewatering to be permitted to go to the stormwater system, the water must meet the relevant default guideline values (DGVs) under the Australian & New Zealand Guidelines for Fresh & Marine Water Quality. All testing must be completed by a NATA accredited laboratory. All laboratory results must be accompanied by a report prepared by a suitably qualified and experienced person indicating the water is acceptable to be released into Councils stormwater system. If it is not acceptable, details of treatment measures to ensure that the water is suitable for discharge to council's stormwater must be provided in this report. Reports must be provided to council prior to discharge of any groundwater to the stormwater system.

Dewatering - Permit to Discharge to Stormwater

8. To ensure that relevant engineering and water quality provisions are met during the period of dewatering for construction, prior to any water from site dewatering to be permitted to go to council's stormwater system a permit to discharge to the stormwater must be obtained from Council. Dewatering must not commence until this is issued by Council.

Waste Classification - Excavated Materials

9. All materials excavated from the site (fill or natural) must be classified in accordance with the NSW Environment Protection Authority (EPA) Waste Classification Guidelines (2014) prior to being disposed of to a NSW approved landfill or to a recipient site. Appropriate records must be retained to support this.

Importation of Fill (General)

- 10. To prevent contaminated soil being used onsite and to ensure that it is suitable for the proposed land use, all imported fill must be appropriately certified material and must be validated in accordance with the:
- a) Office of Environment and Heritage (OEH) approved guidelines; and
- b) Protection of the Environment Operations Act 1997; and
- c) Protection of the Environment Operations (Waste) Regulation 2014.

 All imported fill must be <u>accompanied by documentation from the supplier</u> which certifies that the material has been analysed and is suitable for the proposed land use.

Conditions which must be satisfied prior to the issue of an occupation

certificate

Conveyancing Act Registration

11. If following remediation contaminants are contained onsite or an active remediation solution is adopted, a restriction as to use under Section 88B of the Conveyancing Act 1919 is to be registered on the title of insert lot and DP with the following terms of restriction on use:

The registered proprietor must not use or otherwise undertake development on the land hereby burdened except in accordance with the provisions of the plan [Enter Details] prepared by [Enter Details], ref: [Enter Details], dated [Enter Details], incorporated within the Site Audit Statement (Insert Number) dated (insert date), prepared by accredited Site Auditor (Insert auditors name), a copy of which Statement is held by Bayside Council.

The name of the person or authority empowered to release, vary or modify the restriction will be the Bayside Council.

Contaminated Land – Site Validation Report

- 12. A Stage 4 Site Validation Report (SVR) must be prepared by a suitably qualified contaminated land consultant and must be in accordance with:
- a) NSW Office of Environment and Heritage (OEH) 'Contaminated Sites Guidelines for Consultants Reporting on Contaminated Sites';
- b) NSW Environment Protection Authority (NSW EPA) approved guidelines under the Contaminated Land Management Act 1997; and
- c) State Environmental Planning Policy 55 (SEPP55) Remediation of Land. The site validation report must provide a notice of completion of remediation works, whether there are any ongoing site management requirements and a clear statement on the suitability of the likely proposed site use. The report must be submitted to the Principal Certifying Authority, and the Council if the Council is not the Principal Certifying Authority. The report is to be submitted after completion of remediation works and prior to the issue of any occupation certificate.

Site Audit Statement - Site Suitability

13. To ensure that the site is suitable for the proposed use, a Site Audit Statement (SAS) completed by an accredited site auditor under the *Contaminated Land Management Act 1997* must be submitted to Council clearly demonstrating that the site is suitable for the proposed development. This must be provided <u>prior to the release of any Occupation Certificate</u>.

Any conditions imposed on the SAS must form part of this consent. The accredited site auditor must provide Council with a copy of the Site Audit Report (SAR) and Site Audit Statement (SAS) prior to the issuing of any Occupation Certificate. In circumstances where the SAS conditions (if applicable) are not consistent with the consent, an application pursuant to the *Environmental Planning & Assessment Act* 1979 must be submitted to ensure that they form part of the consent conditions.

Prior to issue of the construction certificate

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

- 44. Prior to the issue of the Construction Certificate, a Construction Traffic Management Plan (CTMP) must be submitted to and approved by Bayside Council. Approval of the CTMP may require endorsement from the Bayside Traffic Committee. The CTMP shall include, but not limited to the following: vehicle routes, number of construction vehicles, hours of operation, access arrangements, pedestrian management, construction vehicle turning templates and parking management for workers. The CTMP shall be certified by an appropriately accredited person and/or Roads and Traffic Authority Traffic Controller. The TMP shall be supported by a traffic control plan prepared by a suitably qualified and RTA accredited Work Site Traffic Controller, designed in accordance with the requirements of the Roads and Traffic Authority's Manual, Traffic Control at Work Sites current version, and the current Australian Standards, Manual of Uniform Traffic Control Devices Part 3, 'Traffic Control Devices for Works on Roads'.
- 45. 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 \$61,374.00. This is to cover repair of any damages, or other works to be done by Council. This includes construction, removal, or repair as required to: kerb and guttering, existing or new driveways; paved areas and concrete footpaths. The deposit may be lodged with Council in the form of a Bank Guarantee (Any proposed Bank Guarantee must not have an expiry date). The deposit will not be returned by Council until works are completed and all damage is restored and all specified works are completed by Council.
 - ii. An environmental enforcement fee of 0.25% of the cost of the works.
 - iii. A Soil and Water Management Sign of \$19.00.
- 46. A footpath inspection fee of \$320.00 shall be paid to Council with lodgement of the Construction Certificate with Council, or by the PCA when submitting the copy to Council
- 47. 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.
- 48. A Section 7.11 contribution of \$ 1,099,799.38 shall be paid to Council. Such contributions are only used towards the provision or improvement of the amenities and services identified below. The amount to be paid is adjusted at the time of payment, in accordance with the contribution rates contained in Council's current Adopted Fees and Charges. The contribution is to be paid prior to the issue of any construction certificate for works above the floor level of the ground floor. (Payment of the contribution is not required prior to any separate construction certificates issued only for demolition, site preparation works and the construction of basement levels). The contribution is calculated from Council's adopted Section 7.11 contributions plan in the following manner:

Open Space \$975,658.16

Community Services & Facilities \$39,688.43

Town Centre & Streetscape Improvements \$21,082.28 Pollution Control \$58,858.89 Plan Administration & Management \$4,513.62

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

49. Mechanical ventilation

The plans submitted with the construction certificate shall comply with the following:

- (a) Any mechanical ventilation system must comply in all respects with the requirements of Australian Standard 1668, Part 1 & 2.
- (b) Mechanical ventilation for commercial tenancies all ground floor level commercial tenancies shall be provided with mechanical ventilation which complies with the relevant Australian Standards to permit future uses for food and drink premises. The systems must vent above the roof top level.
- (c) If vents for the mechanical ventilation system(s) are proposed within the roof top level landscape area they must be appropriately designed and screened from the public domain by landscape planting.
- 50. Prior to the issue of the Construction Certificate a certificate from a practicing Structural Engineer, registered with NPER, shall be submitted to Council stating that the subsurface structural components located on the boundary of the public road, including but not limited to the slabs, walls and columns, have been designed in accordance with all SAA Codes for the design loading from truck and vehicle loads.
- 51. Where the front fence / planter boxes or ramp is greater than 1200mm in height, the vehicular entry gates are to be set back a minimum of 900 mm from the boundary and may only open inwards. The return fences on each side are to be splayed at an angle of 45 degrees to the boundary. Details of the gates to be included in the documentation accompanying the Construction Certificate.
- 52. Compliance with Council's Development Control Plan (DCP) 2011 Requirements for Access. Access in accordance with the relevant Australian Standards must be provided to and within nine (9) residential units, and between these units and their allocated car parking spaces. The allocated parking space will be located in close proximity to the access points of the building. The adaptable units are to be unit numbers 2B and 1N.2 at the eastern end of the building on levels 1 to 5. Please note that compliance with this condition requires the relevant units to be constructed to comply with all the essential (Type C) requirements of the relevant Australian Standards.

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

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

Note: Compliance with Council's Development Control Plan (DCP) 2011 and the Building Code of Australia does not necessarily guarantee that the development

- meets the full requirements of the Disability Discrimination Act (DDA) 1992. It is the responsibility of the applicant to make the necessary enquiries to ensure that all aspects of the DDA legislation are met.
- 54. The applicant shall confer with Ausgrid to determine the details of the relocation of the existing electricity distribution substation from the northern corner at the front of the site along the Princes Highway. Written confirmation of Ausgrid's requirements shall be obtained prior to issue Construction Certificate.
- 55. The relocation of the existing electricity supply pole in the road reserve at the Kyle Street frontage (eastern corner) is required to avoid conflict with the new driveway. The relocation works shall be undertaken in accordance with the requirements of Ausgrid and subject to the remaining conditions of this consent requiring the cables to be underground. The applicant shall enter into a contract with Ausgrid for the relocation works prior to the issue of the Construction Certificate, and the works must be completed prior to the commencement of the driveway works and issue of the Occupation Certificate. The applicant is responsible for all relocation costs, including costs associated with other cabling such as telecommunications cables.
- 56. Prior to the issue of the Construction Certificate, the approved plans must be submitted to Sydney Water Tap in™ online service to determine whether the development will affect any Sydney Water sewer or water main, stormwater drains and/or easement, and if further requirements need to be met.

Sydney Water's Tap in™ online service is available at: https://www.sydneywater.com.au/SW/plumbing-building-developing/building/sydneywater-tap-in/index.htm

- 57. 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.
- 58. Adjoining buildings founded on loose foundation materials

As the basement floor are being proposed closer to existing built structures on neighbouring properties, which may be in the zone of influence of the proposed works and excavations on this site, a qualified practicing geotechnical engineer must:

- (a) Implement all recommendations contained in the report prepared by ElAustralia (Environmental Investigation Pty Ltd), Ref: E23328.G02_Rev 1, dated 19 November 2018.
- (b) Provide a certificate that the construction certificate plans are satisfactory from a geotechnical perspective and
- (c) Confirm that the proposed construction methodology

To prepare a Construction Methodology report demonstrating that the proposed construction methods (including any excavation, and the configuration of the built structures) will have no adverse impact on any surrounding property and infrastructure. The report must be submitted with the application for a Construction Certificate for the relevant stage of works.

- (d) Inspect the works as they progress. The Inspections are to occur at frequencies determined by the geotechnical engineer.
- (e) The geotechnical engineer to comment on proposed stormwater drainage design

for the basement area, mainly on AGG line connections / permanent dewatering and a tanked basement structure.

NB: (i) If the proposed construction of the basement carpark impedes the water table, thus requiring dewatering of the site, the application is Integrated Development.

- (ii) From the proposed basement pumped discharge drainage systems are permitted subject to complying with the design criteria listed in DCP.
- (iii)The design of the basement structure will require consideration of the effects of the water table, both during and after construction (Tanking / waterproofing).
- (f) Where a Private Certifier issues the Construction Certificate a copy of the above documentation must be provided to Council, once the Construction Certificate is issued for the relevant stage of works.

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

59. Vibration monitoring

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

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

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

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

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

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

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

Note: Professional engineer has the same mean as in Clause A1.1 of the BCA. Note: Building has the same meaning as in section 4 of the Act i.e. "building includes part of a building and any structure or part of a structure". Note: Supported land has the same meaning as in section 88K of the Conveyancing Act 1919.

60. Tanking

Any sub-surface structure within the highest known groundwater table + 0.5m shall be designed with a waterproof retention system (i.e. tanking and waterproofing) with adequate provision for future fluctuation of the water table. The subsurface structure is required to be designed with consideration of uplift due to water pressure and "flotation" (buoyancy) effects. Subsoil drainage around the subsurface structure must allow free movement of groundwater around the structure, but must not be connected to the internal drainage system. The design of subsurface structure, tanking and waterproofing, and subsoil drainage shall be undertaken by a suitably experienced Chartered Professional Engineer(s). Design details and construction specifications shall be included in the documentation accompanying the Construction Certificate for the relevant stage of works.

- 61. A gutter flow analysis will be required to be submitted for the protection of the low level driveway in accordance with Section 4.6 of Council's DCP 2011. The underground garage shall be floodproofed to a minimum of 100 mm above the 1% Annual Exceedance Probability Gutter flow. Details shall be submitted with the Construction Certificate. The levels shall be certified by a registered surveyor prior to construction of the driveway or other openings.
- 62. Required design changes for the parking facility design on approved plans

Prior to the issue of any Construction Certificate, detailed design plans for the parking layout on basement levels shall be submitted to the Principal Accredited Certifier for assessment and approval. The following detailed design plans shall include the following amendments:

- a) Proposed tandem parking spaces for visitors parking are to be reallocated only to same occupant/tenancy units (including commercial tenancies).
- b) A dedicated 3.5m wide car wash facility shall be provided in accordance Rockdale Technical Specification Stormwater Management, in relation to the minimum width and configuration of car wash bays.
- c) In addition to the SRV loading bay, to make provision for one (1) VAN loading bay having direct access to lift lobbies within the basement, and be a minimum dimension of $5.4~{\rm m}~{\rm X}~3.0~{\rm m}$, with an unrestricted height clearance of $2.3~{\rm m}$ (this may be shared with a car wash bay).

Swept path analysis for independent movement of vehicles into and out of all relocated parking spaces on these level is to be conducted. The swept path analysis for residential vehicles is to use a recognised computer software package such as Autoturn, complying with Section B3 of The above detailed design shall be certified

- by a suitably qualified traffic engineer experienced in the design of parking facilities and the AS2890 parking series.
- 63. The low level driveway must be designed to prevent inflow of water from the road reserve. The assessment of flows and design of prevention measures shall be in accordance with the requirements of Rockdale Technical Specification Stormwater Management. Details shall be included in the documentation presented with the Construction Certificate application.
- 64. The underground placement of all low voltage street mains in that section of the street/s adjacent to the development is required, as well as associated services and the installation of underground supplied street lighting columns. This shall be carried out at the applicant's expense. The works shall be approved in writing by Ausgrid prior to issue of any Construction Certificate.
- 65. A dedicated car wash bay is required. A tap shall be provided. A sign shall be fixed saying 'Car Wash Bay'. The runoff shall be directed and treated as per Rockdale Technical Specification Stormwater Management. Details shall be provided with the plans accompanying the Construction Certificate.
- 66. Prior to the issue of the Construction Certificate, detailed drainage design plans for the management of stormwater are to be submitted to Principal Certifying Authority for assessment and approval. Design certification, in the form specified in Rockdale Technical Specification Stormwater Management, and drainage design calculations are to be submitted with the plans. Council's Rockdale Technical Specification Stormwater Management sets out the minimum documentation requirements for detailed design plans. Stormwater management requirements for the development site, including the final discharge/end connection point, must comply with Rockdale Technical Specification Stormwater Management.
 - a. The stormwater management for the proposed development should be in accordance with the requirements of DCP 4.1.3 and Rockdale Technical Specification Stormwater Management. The provision of on-site detention shall have 2 years and 50 years orifice controls
 - b. The site is sufficiently large to warrant the use of a Water Sensitive Urban Design Approach (WSUD) to the design of the drainage system.

Generally, WSUD involves recognition of a need to:

- a. Reduce runoff and peak flows.
- c. Conserve water by reducing demand on potable water supplies.
- d. Protect water quality.
- e. To incorporate an oil separator in accordance with Rockdale Technical Specification Stormwater Management, section 7.5.4.
- f. The basement pumpwell size shall be in accordance with Clause 4.2.4 of DCP2011- Technical Specification for Stormwater Management.

Prior to commencement of works

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

67. 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.

68. 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.

69. A Construction Management Plan (CMP) shall be prepared in accordance with the requirements of all relevant regulatory approval bodies. Prior to the commencement of works the Certifying Authority shall be satisfied that the Construction Management Plan has obtained all relevant regulatory approvals. The Construction Management Plan shall be implemented during demolition, excavation and construction.

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

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

Note: The swept path of the longest vehicle entering and existing the subject site, as well as manoeuvrability through the site, shall be in accordance with Austroads. A swept path plan shall be submitted to Certifying Authority for approval illustrating compliance with this requirement, prior to release of the Construction Certificate.

Any proposed landscaping, fencing or signage is not to impede the desired sight lines of all road users including pedestrians and cyclists.

All road works / regulatory signposting associated with the proposed development shall be at no cost to the Council or RMS.

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

- 70. 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.
- 71. A sign must be erected in a prominent position on any work site on which work involved in the erection or demolition of a building is being carried out:
 - i. stating that unauthorised entry to the work site is prohibited, and
 - ii. showing the name of the person in charge of the work site and a telephone number at which that person may be contacted outside working hours.

Any such sign is to be removed when the work has been completed. This condition does not apply to:

- iii. building work carried out inside an existing building or
- iv. building work carried out on premises that are to be occupied continuously (both during and outside working hours) while the work is being carried out.
- 72. Where it is necessary to import landfill material onto the site to fill the land to levels shown on the plans forming part of the consent, a certificate, prepared by a suitably qualified and experienced Contaminated Land Consultant, shall be submitted to Council being the Regulatory Authority prior to the commencement of works, certifying that the imported fill is suitable for the land use.
- 73. The site shall be secured by a 1800 mm (minimum) high temporary fence for the duration of the work. Gates shall be provided at the opening points.
- 74. (a) A hoarding or fence shall be erected between the work site and the public place when the work involved in the erection or demolition of a building:
 - (i) is likely to cause pedestrian or vehicular traffic in a public place to be obstructed or rendered inconvenient, or
 - (ii) building involves the enclosure of a public place,
 - (b) Where the development site adjoins a public thoroughfare, the common boundary between them must be fenced for its full length with a hoarding, unless, the least horizontal distance between the common boundary and the nearest part of the structure is greater than twice the height of the structure. The hoarding must be constructed of solid materials (chain wire or the like is not acceptable) to a height of not less than 1.8m adjacent to the thoroughfare.
 - (c) Where a development site adjoins a public thoroughfare with a footpath alongside the common boundary then, in addition to the hoarding required above, the footpath must be covered by an overhead protective structure, type B Hoarding, and the facing facade protected by heavy duty scaffolding unless either:
 - (i) the vertical height above footpath level of the structure being demolished is less than 4m; or
 - (ii) the least horizontal distance between footpath and the nearest part of the structure is greater than half the height of the structure.

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

- (i) extend from the common boundary to 200mm from the edge of the carriageway for the full length of the boundary;
 - (ii) have a clear height above the footpath of not less than 2.1m;
- (iii) terminate not less than 200mm from the edge of the carriageway (clearance to be left to prevent impact from passing vehicles) with a continuous solid upstand projecting not less than 0.5m above the platform surface; and
- (iv) together with its supports, be designed for a uniformly distributed live load of not less than 7 kPa The 'B' Class hoarding is to be lit by fluorescent lamps with antivandalism protection grids. Any such hoarding, fence or awning is to be removed when the work has been completed.
- (d) The principal contractor or owner builder must pay all fees and rent associated with the application and occupation and use of the road (footway) for required hoarding or overhead protection.
- 75. Toilet facilities must be available or provided at the work site before works begin and must be maintained until the works are completed at a ratio of one toilet plus one

- additional toilet for every 20 persons employed at the site.
- 76. Where clearances to any existing overhead High Voltage mains are affected, the builder shall make arrangements with Ausgrid for any necessary modification to the electrical network in question. These works shall be at the applicant's expense. Ausgrid's requirements under Section 49 Part 1 of the Electricity Supply Act 1995 shall be met prior to commencement of works or as agreed with Ausgrid.
- 77. The applicant shall design and construct the works subject to the recommendations of the Rockdale Traffic Committee as resolved by Council. Such work is to be designed and carried out in accordance with AUSTROADS and RTA Technical Directions, and is subject to detailed approval by the Rockdale Traffic Committee.

The following recommendations will be required to be undertaken in the road reserve at the applicant's expenses:

- 1. That the 'No Parking' restriction be provided along the northern kerbline of Kyle Street subject to the Bayside Traffic Committee approval.
- 2. That the electricity light pole be placed along the boundary line to meet Ausgrid's requirements. (Note: The pole shall be placed to permit the underground placement of all above ground cables in front of the site).
- 3. That a pedestrian warning system be installed within the driveway on the site to retain adequate safety for pedestrians along Kyle Street.

No works shall commence until approval has been obtained for the design of all road and streetscape works listed above under the Roads Act 1993, the Transport Administration Act 1988 and the Road Transport (Safety and Traffic Management) Act 1999.

During demolition / excavation / construction

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

- 78. 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.
- 79. 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.
- 80. For Class 2, 3 and 4 structures, the building works are to be inspected during construction, by the principal certifying authority (or other suitably qualified person on behalf of the principal certifying authority) to monitor compliance with Council's approval and the relevant standards of construction encompassing the following stages:
 - i. after excavation for, and before the placement of, any footing, and
 - prior to covering waterproofing in any wet areas, for a minimum of 10% of rooms with wet areas within a building, and
 - iii. prior to covering any stormwater drainage connections, and
 - iv. after the building work has been completed and prior to any occupation certificate being issued in relation to the building.

Documentary evidence of compliance with Council's approval and relevant standards of construction is to be obtained prior to proceeding to the subsequent stages of

- construction and copies of the documentary evidence are to be maintained by the principal certifying authority and be made available to Council officers upon request.
- 81. Upon inspection of each stage of construction, the Principal Certifying Authority (or other suitably qualified person on behalf of the Principal Certifying Authority) is also required to ensure that adequate provisions are made for the following measures (as applicable), to ensure compliance with the terms of Council's approval:
 - Sediment control measures
 - Provision of perimeter fences or hoardings for public safety and restricted access to building sites.
 - Maintenance of the public place free from unauthorised materials, waste containers or other obstructions.
- 82. 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.

- 83. 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.
- 84. All waste generated on site shall be disposed of in accordance with the submitted Waste Management Plan.
- 85. A Registered Surveyor's check survey certificate or compliance certificate shall be forwarded to the certifying authority detailing compliance with Council's approval at the following stage/s of construction:
 - After excavation work for the footings, but prior to pouring of concrete, showing the area of the land, building and boundary setbacks.
 - 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.
 - 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.
- 86. When soil conditions require it:
 - retaining walls associated with the erection or demolition of a building or other approved methods of preventing movement of the soil shall be provided, and

- adequate provision shall be made for drainage.
- 87. Any new information discovered during remediation, demolition or construction works which has the potential to alter previous conclusions about site contamination, shall be notified to Council being the Regulatory Authority for the management of contaminated land.
- 88. Provide drop edge beams where and if necessary to contain all filling within the building envelope.
- 89. All contractors shall comply with the following during all stages of demolition and construction:
 - A Waste Container on Public Road Reserve Permit must be obtained prior to the placement of any waste container or skip bin in the road reserve (i.e. road or footpath or nature strip). Where a waste container or skip bin is placed in the road reserve without first obtaining a permit, the Council's fees and penalties will be deducted from the Footpath Reserve Restoration Deposit. Permits can be obtained from Council's Customer Service Centre.
 - A Road Opening Permit must be obtained prior to any excavation in the road reserve (i.e. road or footpath or nature strip). Where excavation is carried out on the road reserve without first obtaining a permit, the Council's fees and penalties will be deducted from the Footpath Reserve Restoration Deposit.
 Permits can be obtained from Council's Customer Service Centre.
 - A Hoarding Permit must be obtained prior to the erection of any hoarding (Class A or Class B) in the road reserve (i.e. road or footpath or nature strip).
 Where a hoarding is erected in the road reserve without first obtaining a permit, the Council's fees and penalties will be deducted from the Footpath Reserve Restoration Deposit. Permits can be obtained from Council's Customer Service Centre.
 - A Crane Permit must be obtained from Council prior to the operation of any
 activity involving the swinging or hoisting of goods across or over any part of a
 public road by means of a lift, hoist or tackle projecting over the footway.
 Permits can be obtained from Council's Customer Service Centre.
 - A current Permit to Dewater or Pump Out a site must be obtained prior to the discharge of pumped water into the road reserve, which includes Council stormwater pits and the kerb and gutter. Permits can be obtained from Council's Customer Service Centre.
- 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.
- 91. The following conditions are necessary to ensure minimal impacts during construction:
 - Building, demolition and construction works not to cause stormwater pollution and being carried out in accordance with Section 2.8 of Council's Stormwater Pollution Control Code 1993. Pollutants such as concrete slurry, clay and soil shall not be washed from vehicles onto roadways, footways or into the stormwater system. Drains, gutters, roadways and access ways shall be maintained free of sediment. Where required, gutters and roadways shall be swept regularly to maintain them free from sediment.
 - Stormwater from roof areas shall be linked via a temporary downpipe to an approved stormwater disposal system immediately after completion of the roof area.

- All disturbed areas shall be stabilised against erosion within 14 days of completion, and prior to removal of sediment controls.
- iv. Building and demolition operations such as brickcutting, washing tools or paint brushes, and mixing mortar shall not be performed on the roadway or public footway or any other locations which could lead to the discharge of materials into the stormwater drainage system.
- v. Stockpiles are not permitted to be stored on Council property (including nature strip) unless prior approval has been granted. In addition stockpiles of topsoil, sand, aggregate, soil or other material shall be stored clear of any drainage line or easement, natural watercourse, kerb or road surface.
- vi. Wind blown dust from stockpile and construction activities shall be minimised by one or more of the following methods:
 - a) spraying water in dry windy weather
 - b) cover stockpiles
 - c) fabric fences
- vii. Access to the site shall be restricted to no more than two 3m driveways. Council's footpath shall be protected at all times. Within the site, provision of a minimum of 100mm coarse crushed rock is to be provided for a minimum length of 2 metres to remove mud from the tyres of construction vehicles.

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

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

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

Prior to issue of occupation certificate or commencement of use

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

- An Occupation Certificate shall be obtained in relation to the approved works prior to any use or occupation of the building.
- 94. 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.
- 95. 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.
- 96. A by-law shall be registered and maintained for the life of the development, which requires that:
 - (a) balconies are not to be used as clothes drying areas, storage of household goods and air-conditioning units that would be visible from the public domain;
 - (b) an owner of a lot must ensure that all floor space within the lot complies with the acoustic conditions for floors specified in this consent;
 - (c) Not withstanding subclause (b), in the event that a floor covering in the lot is removed, the newly installed floor covering shall have a weighted standardized impact sound pressure level not greater than L'nT,w 45 measured in accordance with AS ISO 140.7 and AS ISO 717.2, A test report from a qualified acoustic engineer employed by a firm eligible to membership of the Association of Australian Acoustical Consultants shall be submitted to the Owners Corporation within 14 days of the installation of the new floor covering demonstrating compliance with that standard. In the event that the standard is not complied with, the floor covering shall be removed and replaced with a floor covering that conforms to that standard in accordance with any directions given by the Owners Corporation.

Proof of registration of the By Law shall be submitted to Council prior to the issue of the Occupation Certificate.

- 97. Ground level surfaces are to be treated with anti-graffiti coating to minimise the potential of defacement. In addition, any graffiti evident on the exterior facades and visible from a public place shall be removed forthwith.
- 98. (a) All landscape works are to be carried out in accordance with the approved landscape plans and all landscape requirements contained in Condition 35 (and other relevant conditions) prior to the issue of an Occupation Certificate for the approved development. The landscaping is to be maintained to the approved standard at all times. (Refer to condition 34 of this consent).
 - (b) A Landscape Architect shall provide a report to the certifying authority (with a copy provided to Council, if Council is not the principal certifying authority) stating that the landscape works have been carried out in accordance with the approved plans and documentation.
- 99. 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.
- 100. The underground placement of all low voltage street mains in that section of the street/s adjacent to the development, and associated services and the installation of underground supplied street lighting columns, shall be carried out at the applicant's expense. The works shall be completed and Ausgrid's requirements shall be met prior to issue of the Occupation Certificate.
- 101. Vehicles shall enter and exit the site in a forward direction at all times. A plaque with minimum dimensions 300mm x 200mm shall be permanently fixed to the inside skin of the front fence, or where there is no front fence a prominent place approved by the Principal Certifying Authority, stating the following: "Vehicle shall enter and exit the

- site in a forward direction at all times".
- 102. 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.
- 103. The internal basement ramp width shall be a 6.1 metres except where a greater width is required to comply with the relevant standards.
- 104. The publicly accessible areas of land within the Princes Highway and Kyle Street frontages of the site (including the 6.0m setback to Princes Highway, the 3m setback to Kyle Street and the forecourt at the corner of Princes Highway and Kyle Street) shall be covered by a right of footway / footway easment in favour of Bayside Council. 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.
 - Council requires proof of lodgement of the signed Subdivision Certificate and 88B Instrument with the Land Titles Office prior to issue of the Occupation Certificate.
- 105. Bollards shall be installed by the Developer on adaptable shared parking spaces. Bollards are to be constructed from steel pipe minimum 100mm diameter, domed at the top and filled with concrete. They are to be installed a minimum of 900mm into the ground and are to be 1100 mm out of the ground, painted white, with reflectors attached. Future maintenance will be the responsibility of the owner and/or occupier.
- 106. Prior to issue of any Occupation Certificate:
 - (a) a minimum of ninety six (96) off-street car spaces shall be provided generally in accordance with the submitted plan and Deferred Commencement Conditions (including the waste collection space), and shall be sealed and linemarked to Council's satisfaction. The pavement of all car parking spaces, manoeuvring areas and internal driveways shall comply with Australian Standard AS3727 – Guide to Residential Pavements.
 - (b) a loading bay / waste collection area shall be provided on site for minimum Small Rigid Vehicle (SRV) size truck in accordance with plans approved by Deferred Commencement conditions.
- 107. 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 > Plumbing, building and developing > Developing > Land development or telephone 13 20 92.
- 108. 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.
- 109. The noise reduction measures specified in the noise report prepared by Acoustic Logic dated 1 May 2018 shall be validated by a Certificate of Compliance prepared

- by the acoustic consultant and submitted to the Principal Certifying Authority (PCA) prior to the issue of an Occupation Certificate. If Council is not the PCA, a copy shall be submitted to Council concurrently.
- 110. The air conditioning system to living and bedroom areas in each residential unit and the mechanical ventilation system to the basement levels shall be certified by a suitably qualified and experienced engineer at the completion of installation prior to the issue of an Occupation Certificate.
- 111. Prior to issue of any Occupation Certificate, a qualified mechanical engineer shall certify that the mechanical ventilation/air conditioning systems comply in all respects with the requirements of Australian Standard 1668, Part 1 & 2.
- 112. Prior to occupation, a chartered professional engineer shall certify that the tanking and waterproofing has been constructed in accordance with the approved design and specification. A copy shall be provided to Council if council is not the Principal Certifying Authority.
- 113. 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.
- 114. Prior to Occupation, Positive covenants pursuant to the Conveyancing Act 1919 shall be created on the title of the lots that contain the following facilities to provide for the maintenance of the facilities and landscape area within the front setback.
 - The stormwater detention facility to provide for the maintenance of the system.
 - The waste and recycling storage area and collection by private Waste Management Contractor.
 - The front setback tree planting and landscape area to be maintained in accordance with the approved landscape plans.
- 115. The pump system, including all associated electrical and control systems, shall be tested and inspected by a suitably qualified and experienced person. Records of testing shall be retained and provided to the certifying hydraulic engineer and/or PCA upon request.
- 116. Signs shall be displayed adjacent to all stormwater drains on the premises, clearly indicating "Clean water only No waste".
- 117. 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.

- 118. Prior to the issue of an Occupation Certificate for occupation or use of residential flat development, a design verification statement shall be submitted to the PCA from a qualified designer certifying that the development achieves the design quality of the development as shown in the plans and specifications in respect of which the construction certificate was issued, having regard to Schedule 1 of State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development.
- 119. The included initiatives and the additional initiatives discussed within the ESD DA Report prepared by Cundall dated 23 November 2018 submitted with the application shall be implemented in the design of the building in order to benefit from the energy, transport and water sustainability and reduce the consumption of resources in the operation of the proposal. Certification of compliance shall be submitted to Council prior to the release of the Occupation Certificate.
- 120. Prior to occupation a Chartered Professional Engineer competent in geotechnics shall certify that the construction works has been constructed in accordance with the geotechnical report and include an evaluation of the completed works. A copy of the certificate shall be supplied to the Principal Certifying Authority. A copy shall be provided to Council if Council is not the Principal Certifying Authority
- 121. The recommendations of the Traffic Committee shall be implemented prior to the release of any Occupation Certificate.

Integrated development/external authorities

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

122. Sydney Airport Corporation Limited (SACL) has approved the maximum height of the proposed building at 52.55 metres relative to Australian Height Datum (AHD). This height is inclusive of all lift over runs, vents, chimneys, aerials, TV antennae, lightning rods and construction cranes etc. No permanent or temporary structure is to exceed this height without further approval from Sydney Airport Corporation Limited.

Separate approval **must be sought** under the **Regulations** for any equipment (i.e. cranes) required to construct the **building**. **Construction** cranes may be required to operate at a height significantly higher than that of the propsoed controlled activity and consequently, may not be approved under the Regulations. Therefore, it is advisable that approval to operate construction equipment (i.e. cranes) be obtained prior to any commitment to construct.

The proponent must advise Airservices Australia at least three business days prior to the controlled activity commencing by emailing <ifp@airservicesaustralia.com> and quoting YSSY-CA-168.

On completion of construction of the building, the Proponent must provide the airfield design manager with a written report form a certified surveyor on the finished height of the building.

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

123. Roads and Maritime Services

1. All buildings and structures, together with any improvements integral to the future use of the site are wholly within the freehold property (unlimited in height or depth), along the Princes Highway boundary.

Note: The proponent is advised that the subject property is within an area of investigation for the F6 Extension (F6E) Stage 1 Project. Further information about the project is available by contacting the F6 Team on 1800 789 297 or F6Extension@rms.nsw.gov.au, or by visiting the project website at http://www.rms.nsw.gov.au/projects/sydney-south/f6/index.htm

- 2. Detailed design plans and hydraulic calculations of any changes to the stormwater drainage system are to be submitted to Roads and Maritime for approval, prior to the commencement of any works. Please send all documentation to development.sydney@rms.nsw.gov.au. A plan checking fee will be payable and a performance bond may be required before Roads and Maritime approval is issued.
- 3. The developer is to submit design drawings and documents relating to the excavation of the site and support structures to Roads and Maritime for assessment, in accordance with Technical Direction GTD2012/001.

The developer is to submit all documentation at least six (6) weeks prior to commencement of construction and is to meet the full cost of the assessment by Roads and Maritime. Please send all documentation to development.sydney@rms.nsw.gov.au

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

- 4. Roads and Maritime is currently undertaking a program to implement "Clearways" on State roads within Sydney. If not already in place, "Clearway" restrictions will be implemented along the full Princes Highway frontage of the development site.
- 5. All demolition and construction vehicles are to be contained wholly within the site and vehicles must enter the site before stopping. A construction zone will not be permitted on Princes Highway.
- 6. A Construction Traffic Management Plan detailing construction vehicle routes, number of trucks, hours of operation, access arrangements and traffic control should be submitted to Council for approval prior to the issue of a Construction Certificate.
- 7. A Road Occupancy Licence should be obtained from Transport Management Centre for any works that may impact on traffic flows on Princes Highway during construction activities.
- 8. A Road Occupancy Licence (ROL) should be obtained from Transport Management Centre for any works that may impact on traffic flows on Princes

Highway during construction activities. A ROL can be obtained through https://myrta.com/oplinc2/pages/security/oplincLogin.jsf

Roads Act

124. The design and construction of the gutter crossing shall be in accordance with RMS requirements. Details of these requirements should be obtained from RMS's Project Services Manager, Traffic Projects Section, Blacktown (Ph 02 8814 2144).

Detailed design plans of the proposed gutter crossing are to be submitted to the RMS for approval prior to the commencement of any roadworks. It should be noted that a plan checking fee (amount to be advised) and lodgment of a performance bond may be required from the applicant prior to the release of the approved road design plans by the RMS.

125. Construction related activities must not take place on the roadway without Council approval.

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

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

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

- 126. Where applicable, the following works will be required to be undertaken in the road reserve at the applicant's expense:
 - i) construction of a concrete footpath along the frontage of the development site;
 - ii) construction of a new fully constructed concrete vehicular entrance/s;
 - iii) removal of the existing concrete vehicular entrance/s, and/or kerb laybacks which will no longer be required;
 - iv) reconstruction of selected areas of the existing concrete Footpath/vehicular entrances and/or kerb and gutter:
 - v) construction of paving between the boundary and the kerb;
 - vi) removal of redundant paving;
 - vii) construction of kerb and gutter.
- 127. 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.
- 128. All driveway, footpath, or road and drainage modification and/or improvement works

to be undertaken in the road reserve shall be undertaken in accordance with Council's Subdivision and Civil Works Construction Specification (AUS-SPEC 1). Amendment to the works specification shall only apply where approved by Council. Where a conflict exists between design documentation or design notes and AUS-SPEC 1, the provisions of AUS-SPEC 1 shall apply unless otherwise approved by Council.

- 129. 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.
- 130. 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.
- 131. 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).
- 132. All works associated with the proposed development shall be at no cost to the RMS.
- 133. Public infrastructure works in the public road reserve shall not commence without prior approval of the design in accordance with the Roads Act 1993, the Transport Administration Act 1988 and the Road Transport (Safety and Traffic Management) Act 1999.

Development consent advice

- a. A street/shop number shall be prominently displayed at the front of the development. The street number shall be a minimum of 120 mm in height to assist emergency services and visitors to locate the property. The numbering shall be erected prior to commencement of operations.
- b. 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.
- c. If Council is appointed as the Principal Certifying Authority (PCA), a fee shall be paid before a Construction Certificate is issued. If the fee is paid after the end of the financial year, it will be adjusted in accordance with Council's adopted fees and charges. The fees charged encompass all matters related to ensuring that the proposed development is carried out in accordance with the approved plans and any post inspection issues that may arise.
- d. If Council is the Principal Certifying Authority for the development, a drainage inspection fee shall be paid prior to the issue of the Construction Certificate. If payment is made after the end of the financial year, the amount shall be adjusted in accordance with Council's adopted fees and charges.
 - NB: This fee does not include a confined space entry into the on-site detention tank. Where a confined space entry is required, an additional fee is payable. A confined space entry will be required where:
 - a) Information provided in the works-as-executed drawing and engineering certification is inconclusive as to the compliance of the system with the approved plans; and/or
 - b) Visual inspection from outside the tank is inconclusive as to the compliance of the system with the approved plans.
- e. Where Council is not engaged as the Principal Certifying Authority for the issue of the Subdivision Certificate (Strata), and the Section 88B Instrument contains

- easements and/or covenants to which Council is a Prescribed Authority, the Council must be provided with all relevant supporting information (such as works-as-executed drainage plans and certification) prior to Council endorsing the Instrument.
- f. Hazardous and/or intractable wastes arising from the demolition process shall be removed and disposed of in accordance with the requirements of the relevant statutory authorities (NSW WorkCover Authority and the NSW Environment Protection Authority), together with the relevant regulations, including:
 - Work Health and Safety Act 2011
 - Work Health and Safety Regulation 2011
 - Protection of the Environment Operations (Waste) Regulation 2005.
- g. The water from the rainwater tank should not be used for drinking, Sydney Water shall be advised of the installation of the rainwater tank.
- If the development is not subject to BASIX, a mandatory rainwater tank may be required. Rainwater tank requirements for development not subject to BASIX are specified in Council's DCP 78.
- i. In the event of any inconsistency between conditions of this approval and the drawings/documents referred to in condition 2, the conditions of this approval prevail.
- j. Consultation with Ausgrid is essential prior to commencement of work. Failure to notify Ausgrid may involve unnecessary expense in circumstances such as:

 i) where the point of connection and the meter board has been located in positions other than those selected by Ausgrid or
 ii) where the erection of gates or fences has restricted access to metering equipment.



IRF19/5069

Ms Meredith Wallace General Manager Bayside Council PO Box 21 ROCKDALE NSW 2216

Dear Ms Wallace

I write in relation to DA-2018/326 which seeks consent for the demolition of existing structures and construction of a mixed-use development comprising a nine-storey residential flat building containing 83 residential lots, ground floor commercial space, 2 basement levels of car parking and roof top communal open spaces on Lot 10 DP 1003743.

The Department has considered the above development application as it relates to clause 7.1 of the *Rockdale Local Environmental Plan 2011*. I hereby confirm that satisfactory arrangements are in place for the provision of State public infrastructure. Please find attached a Satisfactory Arrangements Certificate for DA-2018/326.

Under the 96-102 Princes Highway, Arncliffe Planning Agreement (Planning Agreement 2019/9986) to which the land subject to DA-2018/326 applies, the Developer must pay the Contribution Amount prior to the issue of the relevant Subdivision Certificate or Construction Certificate, whichever occurs earlier. To ensure compliance, the Department would appreciate Bayside Council providing written notification to the Department at planningagreements@planning.nsw.gov.au, referencing Planning Agreement 2019/9986, on receipt of any future Subdivision Certificate or Construction Certificate application for the land to which DA-2018/326 applies.

Should you have any further questions in relation to this matter, please contact Mitchel Chin, Infrastructure Planning Officer, Infrastructure Contributions and Agreements, at the Department on 8289 6961 or mitchel.chin@planning.nsw.gov.au.

31 July 2019

Yours sincerely

Brett Whitworth

Acting Deputy Secretary

Place and Infrastructure Greater Sydney

BAYSIDE COUNCIL RECEIVED

0 5 AUG 2019

AUSTRALIA POST

Encl:

Satisfactory Arrangements Certificate

320 Pitt Street Sydney NSW 2000 | GPO Box 39 Sydney NSW 2001 | dpie.nsw.gov.au



IRF19/5069

Secretary's Certificate

Satisfactory Arrangements for designated State public infrastructure

Development Application DA-2018/326

In accordance with the provisions of clause 7.1 in the Rockdale Local Environmental Plan 2011, I, Brett Whitworth, Acting Deputy Secretary, Place and Infrastructure Greater Sydney, as delegate for the Secretary of the Department of Planning, Industry and Environment, certify that satisfactory arrangements have been made to contribute to the provision of designated State public infrastructure in relation to:

Development application number:	DA-2018/326
Address:	96-102 Princes Highway, Arncliffe Lot 10 DP 1003743
Development application description:	Demolition of existing structures and construction of a mixed-use development comprising a nine-storey residential flat building containing 83 residential lots, ground floor commercial space, 2 basement levels of car parking and roof top communal open spaces.
Map at Attachment A:	Yes

Acting Deputy Secretary

Place and Infrastructure Greater Sydney

Date: 31 July 2019

(as delegate for the Secretary)

*the satisfactory arrangements certificate is being issued in relation to the above development application only.

320 Pitt Street Sydney NSW 2000 | GPO Box 39 Sydney NSW 2001 | dpie.nsw.gov.au



IRF19/5069

Secretary's Certificate

Satisfactory Arrangements for designated State public infrastructure

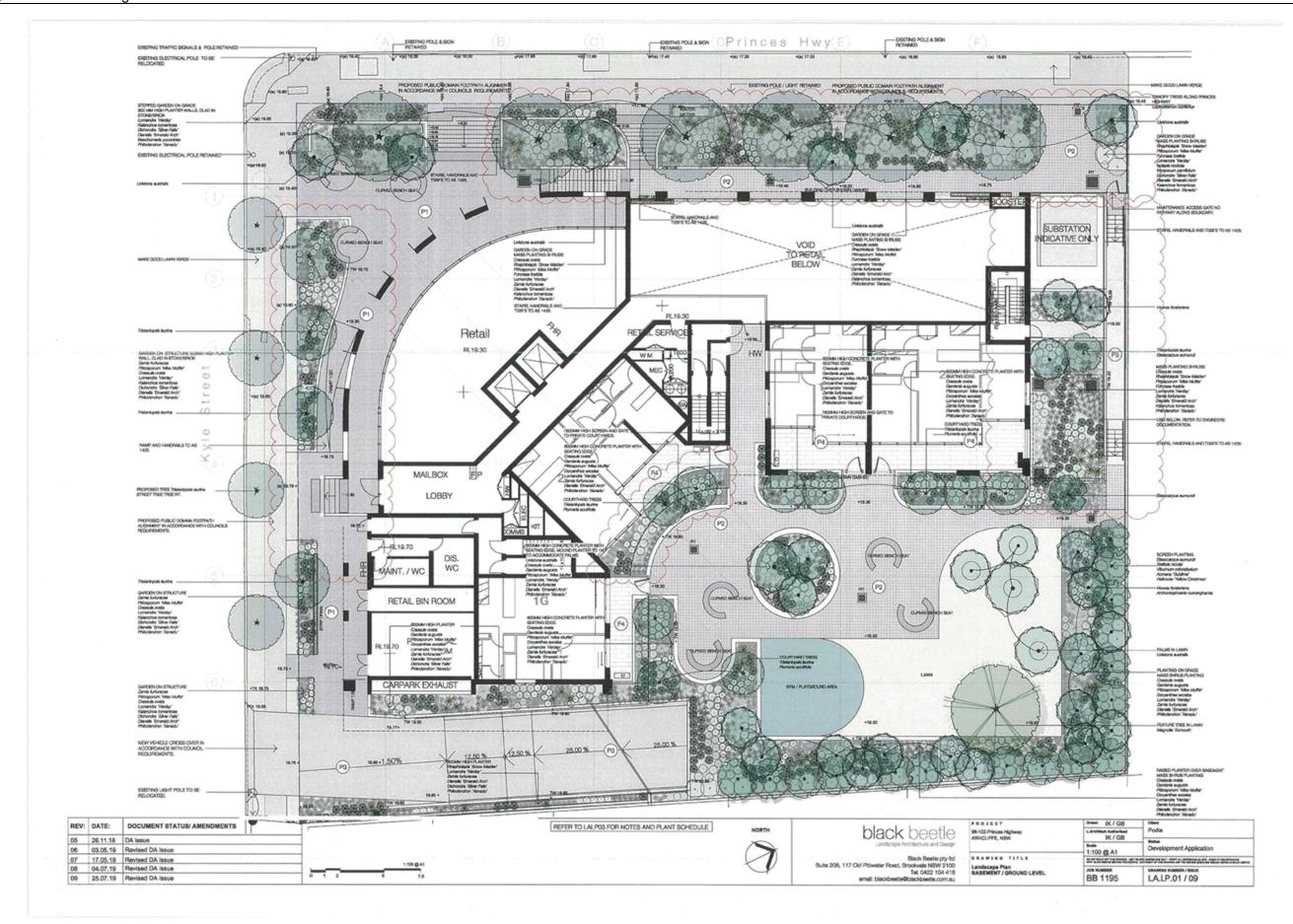
Development Application DA-2018/326

Attachment A

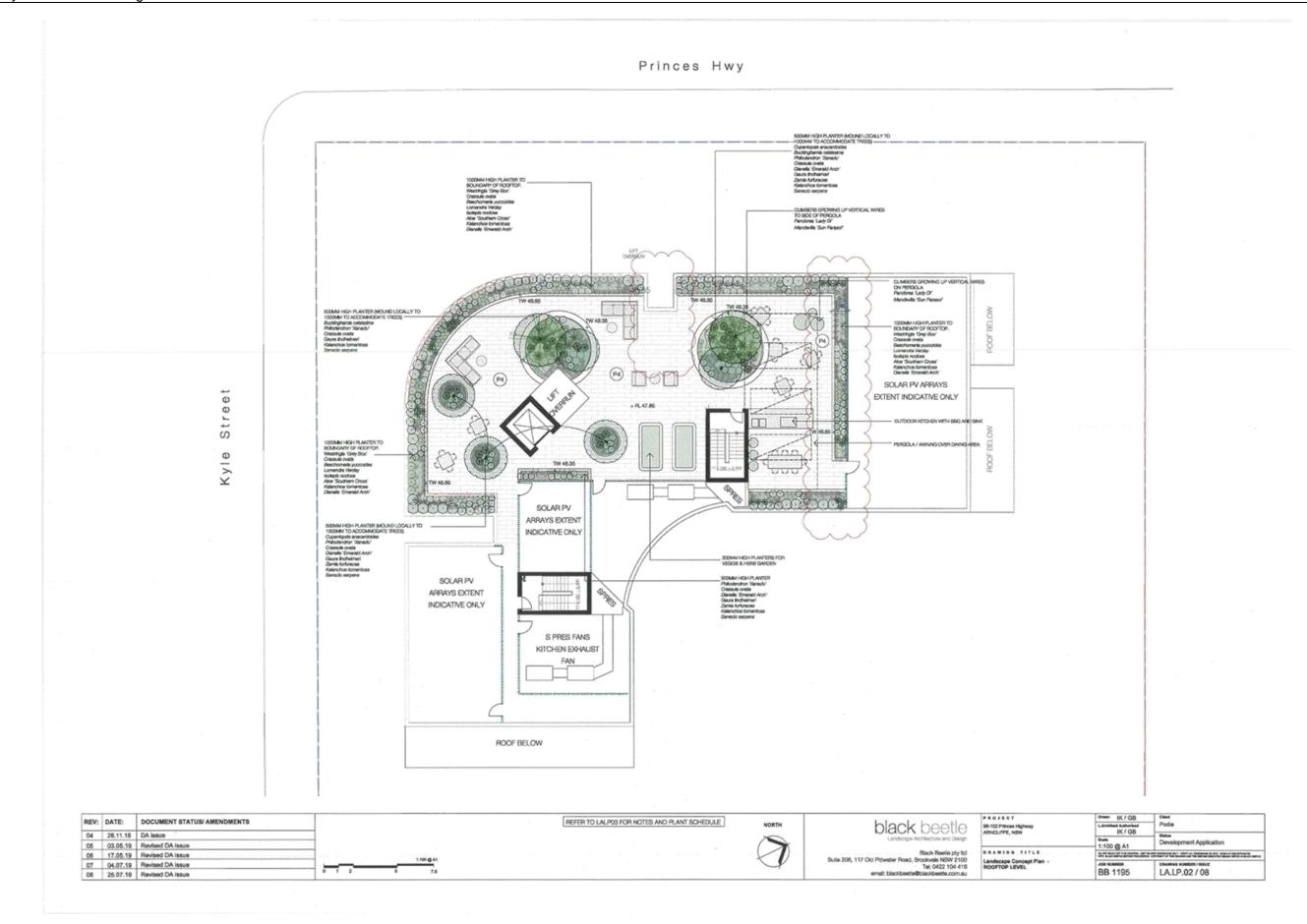


320 Pitt Street Sydney NSW 2000 | GPO Box 39 Sydney NSW 2001 | dpie.nsw.gov.au

Bayside Local Planning Panel 17/09/2019



Bayside Local Planning Panel



Bayside Local Planning Panel 17/09/2019

BOUNDARY LINE EXISTING LEVEL +19.50 +TW 19.30 PROPOSED TOP OF WALL LEVEL P1 - PAVEMENT TYPE 01 EQUAL TO COMBLE (TEC) P2 - PAVEMENT TYPE OZ BOUAL TO COSBLE (TBC)



GYM / PLAYGROUND AREA SOFTFALL / SYNTHETIC TURF

PB - PAVEMENT TYPE 03 CONCRETE



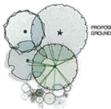
PROPOSED PLANTER WALL STONE TILE CLADONG!/ PENDERAD AND PAINTED PRISHTING





DRAMAGE PIT, REFER TO HYDRAULIC ENGINEERS DOCUMENTATION





1. DRAWINGS TO BE READ IN CONJUNCTION WITH ARCHTECTURAL AND ENGINEERING GRAWINGS. NOTE ALL LANCSCAPE: HARDWORKS INCLUDING PAWING, STEPS, RETAINING WALLS AND FENCES TO ARCHTECTS DOCUMENTATION.

2. ALL PLANTING AREAS TO BE MULCHED, TYPICALLY 79AM DEPTH, ORGANIC MULCH TO CONFORM TO AS 4454-2009 COMPOST, SOL. CONDITIONING AND MULCHES.

FERTILISER SHALL BE A SLOW RELEASE PELLETISED FORM SUITABLE FOR USE WITH AUSTRALIAN NATIVE PLANTS APPLIED AT THE MANUFACTURES. RECOMMENDED HATE.

SOIL WETTING AGENT SHALL BE "ADUASOL" OR "WETTASOL" APPLIED AT A RATE OF 1 LITTRE/ 1000 LITRES OF WATER OR EQUIVALENT.

SOLIS TO CONFORM TO AS 4419-0000 SOLIS FOR LANDSCAPING AND GAFDEING LIBE.
 SOLI DEPTHS - PLANTISIA APERS TWEES I DODORN - BODORN SOLIC DEPTHS
 ON STRUCTURE - MARBALE BODORN FOR TREE PLANTISIS
 ON STRUCTURE - MARBALE BODORN FOR TREE PLANTISIS
 ON STRUCTURE - MARBALE BODORN FOR GROUND CONFES AND SHIFLISS
 ON GROUE GARDEN - GOODN

GAPOEN SOL SHALL HAVE A PH BETWEEN 5.5 AND 7.0, ECx 1.205AL 2-60G/MG RATIO, 5-20MED % CEC, AND NUTRIENTS TO AS 3743-POTTING MICES.

ALL PLANTING SOL SHALL BE FREE OF PLEBESH, DEBRIS AND SUBSTANCES THAT ARE TOXIC TO LIVING ORGANISMS, OR WOULD OTHERWISE BE DROLAPED CONTAINABILD. ALL IMPORTED GARDEN SOL SHALL BE FREE OF WEED SIEDS.

PLANTING SOL SHALL NOT BE WATER REPOLLENT AND IT SHALL TIME LESS THAN 58 SECONDS FOR A WATER DROPLET TO SCAK INTO DRY SOLEREFERENCE: HANDROX & BLADQ.

THE CONTRACTION SHALL BHSUPE ANY INSTALLED SUB-SPACES APE NOT TOXIC TO NORMAL PLANT GROWTH OR LINNATURALLY OWNER TOXIC TO PLANT GROWTH, AND NOTEY SUPERINTENENT RAMEMATLY FREEZE ARE NOT OWNERS WITH TREADWOOD TO THE SUB-SC CONDITION.

ALL PLANTING SOL TO BE CONSOLIDATED BUT NOT COMPACTED AND HAVE PARTICLE SIZES OPERATER THAN THE BUBBOIL

BOTANICAL NAME	COMMON NAME	HEIGHT	POT SIZE	QTY.	
TREES			£		
Archontochoenir cunninghemiene	Benaskow Pelm	Benadow Pelm 15M 3-7M bunk		as shows	
Skolmonemia celolosima	Mony Curt Flower	Nory Cult Flower 4M 100L		as snown	
Cupanicosis anecestoides	Tudieros	M0	2004	as shown	
Neocarpus aumundi	Native Quantions	104	2000.	as shown	
Howe brande	Kantia Paim	18000M	3-7M trunk	as shown	
Elvistone austrafa	Cabbace Tree Psim	15M	5-7M turk	as shown	
Loohostemon confertue	- Brushoox	12M	2001	as shown	
Magnolle (Berrouth)	Magnoka	104	200.	as above	
Plumente acustibile	Francioest		200.	as shown	
Streftzle nitrolei	Glant Bird of Paradise	6M	2006	as shows	
Tristanioosis isurina	Water Gum	- OM	2006		
SHRUBS, GROUNDCOVERS, AND	CLIMBERS				
Aomene smithill Sublime	Dubline Life Pily		200MM	2012	
Albe 'Southern Orpes'	Southern Cross Alos	156	200MM	3/10	
Descripmenta vuocobbe	Medosh Litr	198	300MM	2m2.	
Grassule ovete	Jade plant	1M 0.6M 0.1M 2M	300MM 150MM 150MM 200MM 300MM	2/m2 5/m2 7/m2 2/m2 2/m2	
Disnote tesmenice "Emerald Arch"	Emerald Arch				
Olchondra america: "Silver Falls"	Silver Falls Homey Weed				
Donanthes excebs	Gerree Lily				
Furcine Ibedde	Mauritius Hemp. 2M	2M			
Gardenia augusta	Gardenie	1M.	200MM	g/m2	
Gaure Incheimeri	Dutterfy Dush	0.6M	150MM		
Heliconia Yellow Christman	Yellow Christmas Heliconia	2M	200MM	2/m2	
Isolapis noctose	Knobby Club Plush	Q.BM	150MM	5/m2	
Katanohoe tomentose	Ponda Plent	0.597	200MM	4/m2	
Lomandre Verder*	Verdey	Mt.c	150MM	50m2	
Mandevilla 'Sun Parasor'	Giars White Manoevilla	414	200MM	5/11/2	
Micconim pandolum "Yanena"	Yamone Crecoing bootside	0.2M	150MM	7/142	
Pandome isomnoche 'Lady O'	Lady Di Bower of Beauty	EM.	200MM	3/m2	
Fhilodendron 'Xanady'	Xenedu Philodendron	W8.0	300MM	3012	
Phononer Was Muller	Max Muffat Pittosponum	TM	300MM	3/11/2	
Shaphblack 'Snow Makler'	Snow Maiden Hawthors	1M	300MM	Sing	
Senecio serpens	Die Owk Skin	0.2M	150564	5010	
Westeron 'Grey Sor'	Grey Box 0.8M 200MM		2/102		
What a charles mum	Dweet Vournum	2M 200MM			
Zarvie Arturaces	Cardboard Orcad	104	300MM	2/m2	



4. PLANT BLEPELY - THE PLANTS ARE TO BE VISIORISE AND APPROPRIATELY ADDIMATISED WITH A ROOTSMIL. THAT IS FALL BUT NOT RESTRANSED. TREE ECOCY AND TO BE GROWN AND CERTIFIED AS COMPLYING WITH HATSPETTS SPECIFING TREES. A QUIDE TO ASSISSABATIO OF THEE QUALITY, SECOND ESTION S 2013 PHYSISS CAMP.

5. ALL PLANTING AREAS TO HAVE DRY PRINCATION SYSTEM WITH BACK UP PROTECTION TO THE MAN SUPPLY, TO ALL CUPPENT SYDNEY WATERS REQUIREMENTS AND RELEVANT AUSTRALIAN STANDARDS

SUPPLY - DESIGN, SUPPLY AND INSTALL A PERMANENT AUTOMATED SUB-SURFACE IFRIGATION SYSTEM.

CAPACITY - THE SYSTEM IS TO BE CAPABLE OF SUPPLYING SYMM OF WATERWEEK OVER ALL AREAS, IT IS TO BE DESIGNED TO OPERATE FOR TO YEARS ARM.

NETALLATION - WAVE PITS ARE TO BE SET ON A 2004ALDEEP BED OF GRAVEL FOR DRAWINGE PIT COVERS ARE TO BE LEVEL WITH THE SOL SUFFACE INCLIDE PLANERS CONVECTION TO THE WAN LINE, ALL YOUNG AND INCOVERY PREMISTION LOCATE A CHITMEN MUST HATCHOLOWING USE IN A LOCOME EXT AS DIRECTED BY THE PROJECT MANAGER. A DEDICATED GPO IS TO BE PROVIDED BY THE BULDSHIPOR THE CONTROLLER TO BE PLUGGED INTO.

6. MANTAN ALL WORKS DURNIS THE CONTRACT PERCO FOR ST WEEKS FROM THE DATE OF PRACTICAL COMPLETON INCLIDING, BUT NOT LANTED TO WATERIA, CHOWA, GUIVER, RUBBING RUBBIN FEMONIA, REPLACEMENT PLANTING, DISEASE AND PEST CONTROL, PRIANNA, DOI. AND MALLOH CORTICO, REVESTATIONS.

- 7. PROTECT ALL ADJOINING PROPERTY BURDINGS WALLS FENCES AND PAYING DAMAGED BLEMENTS ARE TO BE REPLACED.
- 5. THERE ARE TO BE NO SHARP PROTEUSIONS OR ASPASANT FOORS, OBTRUSANT RETINOS OR FOOTUBES.
- 9. GENERALLY PAVEMENTS ARE TO FALL AT 1% TO 2% UNLESS NOTED OTHERWISE.
- 10. PROVIDE CONDUITS THROUGH WALLS / PAVILMENTS AS REQUIRED FOR SERVICES.
- 11. ALL STRUCTURAL DETAILS OF FOOTINGS, SLASS, WALLS AND THE LIKE ARE TO BE REFERRED TO AN ENGINEER TO PROVIDE DETAILS AND SPECIFICATION.
- 12. LEVELS SHOWN ARE FINISHED SURFACE LEVELS. GRADE AND THIN LOCALLY TO ENGUIRE THE FINISHED SURFACE DRAWS.
- ALL PLANTS AFE TO BE THOROUGHLY WATERED NOT MORE THAN SHOURS PRIOR TO PLANTING. OD NOT STANS TREES OR SHRUSS

 19. SOL, LEVELS IN GADDIN AREAS TO PRIGH SOMM BELOW ADJACENT WALLS? PAISMENTS UNLESS NOTED OTHERWISE. UNLESS NOTED OTHERWISE.
 - 14. MATERIAL SAMPLES AND PRODUCT INFORMATION- MATERIALS AND WORKMANSHIP ARE TO CONFORM TO THE CURRENT EDITION OF APPLICABLE REQUIREMENTS OF AUSTRALIAN STANDARD SPECIFICATIONS AND CODES.

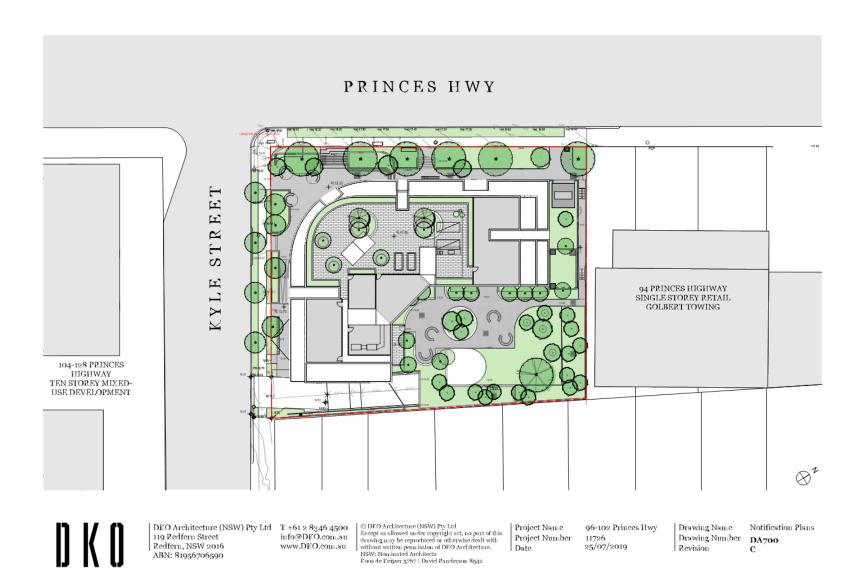
SAMPLES, PRODUCT DETAUS AND TECHNICAL INFORMATION FOR ALL MATERIALS AND PROFRECTION TEMS ARE TO BE SUBMITTED TO THE PROJECT MANUSCRIP ALL MOSCOME ARCHITECT FOR APPROVAL PRICE TO INCLUSION INTO THE WORKS, CHITAM AND SUBMET REPORTED ON RELEVANT TESTS BY AN EXCEPTIONAL TESTING AUTHORITY AS RECULSTED BY THE SUPPREVIOUN.

15. WORDMANDER & RETALLATION SAMPLES ANY WORK OR MATERIALS, WHICH, IN THE DIPPORT OF THE SUPERVIENCENT OR LANCISORY APCHINGTARRORSES, CO NOT MEET APPROPRIATE ROUSER'S STANDARDS OF WORDMANDER OR QUALITY, BHALL BE RECEITED BY BRALL BE THE CONTRIBUTIONS RESPONSEMENTY TO REMOVE PELECTED WORK AND REINSTALL BY TO AN ACCEPTABLE STANDARD AT NO ACCITIONAL, COST TO THE PRINCIPAL/CLENT.

MATERIALS AND WORKMASHIP ARE TO CONFORM TO THE CURRENT EDITION OF APPLICABLE AUSTRALIAN STANDARD SPECIFICATIONS AND CODES.

PROMOTE SAMPLES OF PRIMERD INSTALLED WORKS FOR APPROVAL BY THE PROJECT MANAGER PRIOR TO PROCEEDING. IF NOT APPROVE, SAMPLES ARE TO BE RECOVED OR REMOVED AND REPLACED AS REQUIRED BY THE PROJECT MANAGER, IF APPROVED SAMPLES MAY BE RETAINED TO FORM A PART OF THE COMPLETED WORKS, FOLLOWING APPROVAL, ALL REMAINING WORKS ARE TO MET AND MATCH THE QUALITY OF THE SAMPLE PROVIDED.

REV:	DATE:	DOCUMENT STATUS/ AMENDMENTS	black heetle	FROJECT 96-102 Princes Highway	Dresen IK / GB	Podia
01	22.11.18	DA issue	DIACK DOCTO	ARNCLIFFE, NOW	IK/GB	Steha
02	26.11.18	DA issue	Landscape Antifecture and Deelgn		1:100 @ A1	Development Application
03	03.05.19	Revised DA issue	Black Beetle pty ltd	DRAWING TITLE	No. of Street or an advantage of the last	THE PARTY OF THE SHAPE AND THE SHAPE
			Suite 206, 117 Old Pittweter Road, Brookvale NSW 2100 Tek 0422 104 416	Landscape Concept Plan - NOTES AND LEDGEND	ADD HEMBER	DISAMING NUMBER (1860/E
			emsil: blackbeete@blackbeete.com.su	TO THE AND CERTIFIED	BB 1195	LALP.03 / 03











DKO

DKO Architecture (NSW) Pty Ltd 119 Redfern Street info@DKO.com.au Redfern, NSW 2016 www.DKO.com.au ABN: 81956706590

Project Name Project Number 96-102 Princes Hwy 11726 25/07/2019 Drawing Name Notifica
Drawing Number DA701
Revision C

Notification Elevations
DA701
C

Bayside Design Review Panel

REPORT OF THE BAYSIDE DESIGN REVIEW PANEL

Meeting held on Thursday, 4 July 2019 at Bayside Council

[Panel members: Brian Zulaikha, Matthew Taylor, Brendan Randles and Jim Koopman]

ITEM 3

Date of Panel Assessment:	4 July 2019
Applicant:	Aidop No 1 Pty Ltd
Architect:	Nick Byrne – DKO Architecture (NSW) Pty Ltd
Property Address:	96-102 Princes Highway, Arncliffe
Description:	Amended Plans - Demolition of existing structures and construction of a nine (9) storey mixed-use development comprising eighty (85) dwellings, ground floor commercial space, two (2) basement levels of car parking and roof-top communal open space
No. of Buildings:	1
No. of Storeys:	9
No. of Units:	85
Consent Authority Responsible:	Bayside Council
Application No.:	DA-2018/326
Declaration of Conflict of Interest:	Nil

The Panel inspected the site, reviewed the submitted documentation and met with representatives of the applicant including Dominic Biancardi (Director Podia), Michael Grassi (Senior DM Podia), Sonny Oh (Architect DKO), Kell Lee (Architect DKO), Michael Maloof (Senior Development Assessment Planner), Pascal Van de Walle (Coordinator Development Assessment) and Chris Mackey (Coordinator Development Assessment).

[Note: Minutes in blue italics were comments of the previous Design Review Panel meeting held on 7 October 2017; comments in black italics were comments of the previous Design Review Panel meeting held on 20 March 2019; comments in red were comments of the previous Design Review Panel meeting held on 6 June 2019 and comments in green were comments of the previous Design Review Panel meeting held on 4 July 2019]

Page 1 of 10

Design Principle Comments Context and Neighbourhood Comments from DRP 7 October 2017 Character The design should address the desired future character as described Good design responds and contributes in the draft Rockdale LEP and draft Part 7 Special Precincts Banksia to its context. Context is the key and Arncliffe DCP. natural and built features of an area, their relationship and the character The following points are of particular concern: they create when combined. It also Setbacks at both street level and upper storey levels includes social, economic, health and environmental conditions. Activation to Princes Highway Responding to context involves Activation to Kyle street identifying the desirable elements of an area's existing or future character. Well Comments 20 March 2019 designed buildings respond to and enhance the qualities and identity of As previously advised the design should address the desired future the area including the adjacent sites, character as described in the Rockdale LEP and Part 7 Special streetscape and neighbourhood. Precincts Banksia and Arncliffe DCP. Consideration of local context is The following points are of particular concern: important for all sites, including sites in Street wall heights - 3m setback over 6 storeys not provided established areas, those undergoing despite being fundamental to the desired future character of change or identified for change. the Princes Highway being a tree lined road with 6m landscape setbacks and maximum 6 storey frontages Activation to Princes Highway - whilst the development provides for a retail space activating the Princes Hwy/ Kyle Street corner, the Panel questions the likelihood that the proposed space for smart lockers will provide street activation, and is likely to be too small for alternate uses in the future. It is noted also that the development relies upon this space being used by residents as it must be used to access the lifts from the upper level of car park No activation to Kyle street other than corner retail Insufficient ceiling heights to "retail" spaces provided (should be 7m) Bin room on Kyle Street The Kyle Street/ Princes Highway corner is not significant to the desired future character of the precinct. The Panel questions the appropriateness of marking corner with a curved form. Together with the lack of a 3m setback of levels 7, 8 and 9, the resultant form is at odds with the desired future character of the precinct. Furthermore, the design of the façade preferences verticality over horizontality. Again, this is at odds with the desired future character, expressed as a 3m setback above 6 stories. mments from 6 June 2019 As previously advised on 7 October 2017 and 20 March 2019 the design should address the desired future character as described in the Rockdale LEP and Part 7 Special Precincts Banksia and Arncliffe The following points remain of particular concern: Provision of the full 3m setback above Level 6 on both Princes Highway and Kyle Street must be achieved in accordance with the DCP in order to achieve the desired future character of the precinct Provision of large scale commercial tenancies / showroom uses to the Princes Highway frontage. Both a large format floor plate and the 7m floor to floor height must be provided.

Page 2 of 10

Design Principle	Comments
	The use of bicycle storage / lockers within this space is not supported.
	Marking the corner of the Princes Highway with a curved form need not preclude meeting the desired future character as described in the Rockdale LEP and Part 7 Special Precincts Banksia and Arncliffe DCP.
	The Panel considers that the level of activation to Kyle Street at ground level is acceptable. A 7m floor to floor height should be achieved.
	The Panel supports the built form of the modified proposal incorporating a minimum 3m upper level setback to Levels 6, 7 and 8 on both the Princes Highway and Kyle Street frontages which address the requirements for a horizontal streetwall to deliver the desired future character as described in the Rockdale LEP and Part 7 Special Precincts Banksia and Arncliffe DCP.
	The Panel does not contain economic expertise which would enable it to comment on the minimum size for "large format commercial space". However the Panel is advised that the Rockdale Development Control Plan Part 7.7 Arncliffe and Banksia Clause 4.3 Active Frontages (6)(f) requires that "no ground floor residential is permitted" and that the intent is to ensure that the whole of the ground floor is occupied by retail showroom or commercial space except for residential lobbies and vehicle access. On this basis, the Panel remains concerned that the provision of large-scale commercial tenancies/showroom uses to the Pacific Highway frontage has not been achieved.
	The Panel notes that the "Retail Showroom" on the Pacific Highway has been increased in depth from approximately 4 metres to 9 metres of which approximately 6 metres provides a double height volume resulting in an increased floor area of 202m². The Panel considers that if Council were of the view that due to the particularities of the site an exception could be justified that maximized the floor area of commercial space whilst allowing some ground floor residential, it is possible to further increase:
	the proposed floor area of the Prince Highway showroom by:
	a. relocating the chamber substation to the setback area to the north. In this location the active frontage with be lengthened and the substation be visually recessive because of the 6 metre landscaped setback on the highway and the extent of deep soil landscaped planting adjacent to the north fire stair. Deep soil is currently 17% and can be reduced to 15%.
	 Moving the back of the showroom to the alignment of retail car spaces 01-05,
	 Extending the showroom southwest to the alignment of the projecting corner of the lift core which could accommodate support spaces such as storage offices and wet areas, and
	 the extent of double height volume from 6 metres depth to approximately 10 metres depth by replacing ground level apartments 1K and 2C with a single dwelling with a building depth reduced to approximately 7 metres.

Page 3 of 10

Design Principle	Comments
	The area of a single tenancy by relocating the entrance lobby to the apartments onto Kyle Street thereby enabling the two separate tenancies to be used as one larger space, or two spaces.
Built Form and Scale	Comments from DRP 7 October 2017
Good design achieves a scale, bulk and height appropriate to the existing or desired future character of the street and surrounding buildings.	The built form and scale should respond to the draft Rockdale LEP and draft Part 7 Special Precincts Banksia and Arncliffe DCP. The following points are of particular concern:
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.	 No justification for exceeding the height controls and FSR The location of the lift towers adjacent to street frontages The Panel supports the integration of green landscaped elements into the façade.
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.	Comments 20 March 2019 The built form and scale should respond to the Rockdale LEP and Part 7 Special Precincts Banksia and Arncliffe DCP. The following points are of particular concern: • Street wall heights – 3m setback over 6 storeys not provided despite being fundamental to the desired future character of the Princes Highway being a tree lined road with 6m landscape setbacks and maximum 6 storey frontages
	Number of storeys – exceeds 8
	Comments from 6 June 2019
	As previously advised on 7 October 2017 and 20 March 2019 the design should address the desired future character as described in the Rockdale LEP and Part 7 Special Precincts Banksia and Arncliffe DCP.
	The following points remain of particular concern:
	 Street wall heights – 3m setback over 6 storeys not provided despite being fundamental to the desired future character of the Princes Highway being a tree lined road with 6m landscape setbacks and maximum 6 storey frontages
	Number of storeys – exceeds 8
	As stated above the Panel supports the built form of the modified proposal incorporating a minimum 3m upper level setback to Levels 6, 7 and 8.
	The Panel notes that whilst a height non-compliance is retained it is in relation the lift overrun and the lift core has been relocated to be well setback from the building façade where its additional visual and amenity impacts are considered to be acceptable. Further the lift height delivers additional benefit in the form of functional and equitable access to a communal roof garden.

Page 4 of 10

Design Principle	Comments		
Density	Comments from DRP 7 October 2017		
Good design achieves a high level of amenity for residents and each apartment, resulting in a density appropriate to the site and its context.	Density should respond to the draft Rockdale LEP and draft Part 7 Special Precincts Banksia and Arncliffe DCP. The following points are of particular concern:		
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.	No justification for exceeding the height controls and FSR Comments 20 March 2019 The Panel makes no comment on the density of the proposed design beyond comments made above. Comments from 6 June 2019 As previously advised on 7 October 2017 and 20 March 2019 the design should address the desired future character as described in the Rockdale LEP and Part 7 Special Precincts Banksia and Arncliffe DCP. The Panel makes no comment on the density of the proposed design beyond comments made above.		
	The Panel notes the proposal is compliant with the FSR control.		
Sustainability	Comments from DRP 7 October 2017		
Good design combines positive environmental, social and economic outcomes. Good sustainable design includes use of natural cross ventilation and sunlight	The Panel supports the proposed sustainability initiatives. The Panel notes that there are further opportunities for including sustainability initiatives in the design above and beyond those required by BASIX, such as solar energy generation, rainwater harvesting, etc.		
for the amenity and liveability of residents and passive thermal design	Comments 20 March 2019		
for ventilation, heating and cooling reducing reliance on technology and	The Panel supports the installation of solar panels to the rooftop.		
operation costs. Other elements include recycling and reuse of materials and waste, use of sustainable materials and deep soil zones for groundwater recharge and	The Panel notes that there are further opportunities for including sustainability initiatives in the design above and beyond those required by BASIX, such rainwater harvesting, etc		
vegetation.	Comments from 6 June 2019		
	The Panel was not presented with any further information regarding sustainability measures.		
	The Panel notes that there are further opportunities for including sustainability initiatives in the design above and beyond those required by BASIX, such rainwater harvesting, battery storage for PV cells etc.		
	The Panel notes the applicant has explored further opportunities for including sustainability initiatives in the design and supports the following commitments over and above strict compliance:		
	The provision of a car share bay		
	The provision of an electric car charging bay. (Consider a minimum Level 2 station to allow overnight full charging.)		
	3. PV system to supply power to all common area lighting		

Page 5 of 10

Design Principle	Comments		
	Rainwater harvesting to supply common area irrigation, toilets and laundry.		
	 Provision of a Site Waste Minimisation and Management Plan to ensure the use of reclaimed water and manufactured sand in cement mixes and the diversion of at least 90% of construction and demolition waste from landfill. 		
Landscape	Comments from DRP 7 October 2017		
Good design recognises that together landscape and buildings operate as an integrated and sustainable system, resulting in attractive developments with good amenity.	Landscape should respond to the draft Part 7 Special Precincts Banksia and Arncliffe DCP. The Panel notes the high level of amenity proposed within some parts of the development however the landscape setback to the Princes Highway, amenity and form at the streetscape level and the amenity o		
A positive image and contextual fit of well designed developments is achieved by contributing to the landscape character of the streetscape and neighbourhood.	the rooftop communal open space need to be addressed and resolved. Provision of landscape screen planting and tall canopy trees within the deep soil zone is considered to be inadequate within the current proposal.		
Good landscape design enhances the development's environmental	Comments 20 March 2019		
performance by retaining positive natural features which contribute to the	Landscape should respond to the Part 7 Special Precincts Banksia and Arncliffe DCP.		
local context, co-ordinating water and soil management, solar access, micro-climate, tree canopy, habitat values and preserving green networks.	The Panel notes that an adequate level of amenity is proposed within some parts of the development. However the rooftop landscape could be expanded to unused portions of the roof.		
Good landscape design optimises usability, privacy and opportunities for social interaction, equitable access, respect for neighbours' amenity and provides for practical establishment and long term management.	Provision of tall canopy trees within the deep soil zone is considered to be inadequate within the current proposal. Tall canopy trees, at appropriate spacing set out in the DCP should be provided for the extent of the site fronting the Princes Highway. The proposed OSD tank should not be located within this zone.		
	Comments from 6 June 2019		
	The Panel is satisfied that previous comments have been addressed in the amended design.		
	The Panel notes the use of palms as a tall vegetated element to the extent of the site facing Princes Highway. The proposed use of these plantings contrast to the use of the Fig trees on the adjacent property to the south. The Panel is concerned that the palm trees will not provide the appropriate vegetated volume that a more traditional canopy tree such as a Eucalypt would provide as per the DCP. As per the comments of the 20th March, tall canopy trees are to be provided to the proposal.		
Amenity	Comments from DRP 7 October 2017		
Good design positively influences internal and external amenity for residents and neighbours. Achieving good amenity contributes to positive	Amenity should respond to the draft Part 7 Special Precincts Banksia and Arncliffe DCP. The following points are of particular concern:		
living environments and resident well being.	Streetscape interface to Princes Highway		
	Strongogo interiado to i filloso i ligitway		

Page 6 of 10

Design Principle	Comments	
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.	Removal of non-active street frontage uses such as the bin holding room Safety security and amenity for residents accessing bins and other services Quality of the rooftop open space Provision of accessible parking spaces within the basement Comments 20 March 2019 In addition to the comments made on 7 October 2017, the Panel notes the following Kitchens in apartments 1K and 2C are too far from sources of natural light There is insufficient natural light and ventilation to access corridors on levels 1 – 8. Windows should be provided at each end of these corridors. The proposed design does not have sufficient setbacks to the southeast boundary – in particular on level 8. The balconies of apartments 2R and 2S will be unacceptably hot in summer, given their adjacency to the roof over lower levels to the northeast. Adequate solar access is unlikely to be achieved to sufficient percentage of apartments, given that most apartments fronting Kyle Street will receive little to no winter sun to living areas, unless otherwise demonstrated by the applicant. Comments from 6 June 2019 The Panel is satisfied that previous comments have been addressed in the amended design with the exception of: There remains insufficient natural light and ventilation to access corridors on levels 6 – 8. Windows should be provided at each end of these corridors The Panel notes that in the revised design the location of the ventilation and lighting slots to corridors/lift lobbies are not well located. Due to the cranked design of the common spaces vistas to daylight and views beyond are not achieved from most of the common space. As a minimum the Panel recommends that additional slots are provided at the end of each corridor.	
Safety 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. A positive relationship between public and private spaces is achieved through clearly defined secure access points	Comments from DRP 7 October 2017 The following points are of particular concern: • Access to and from the entrances to the building and other 'public spaces' associated with the ground level • Access to and from the bin storage room is only provided by external access • The bin storage should be relocated to the basement Creation of seating spaces which are poorly located adjacent to the Princes Highway.	

Page 7 of 10

Design Principle	Comments
and well lit and visible areas that are easily maintained and appropriate to the location and purpose.	Comments 20 March 2019 The Panel understands that the access to residential bin rooms is now via the basement carpark, and that the Kyle Street bin room is only for temporary storage prior to pick-up.
	Comments from 6 June 2019 The Panel is satisfied that previous comments have been addressed in the amended design.
Housing Diversity and Social Interaction Good design achieves a mix of apartment sizes, providing housing choice for different demographics,	Comments from DRP 7 October 2017 Housing Diversity and Social Interaction should respond to the draft Part 7 Special Precincts Banksia and Arncliffe DCP.
living needs and household budgets. Well designed apartment developments respond to social context by providing housing and facilities to suit the existing and future social mix.	Comments 20 March 2019 The Panel notes that the design achieves an appropriate mix of apartment sizes. Comments from 6 June 2019
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.	The Panel has no further comment.
Aesthetics	Comments from DRP 7 October 2017
Good design achieves a built form that has good proportions and a balanced composition of elements, reflecting the	The Panel reserves comments for further iterations of the design.
internal layout and structure. Good	Comments 20 March 2019
design uses a variety of materials, colours and textures. The visual appearance of a well designed apartment development responds to the existing or future local	The design should respond to the Part 7 Special Precincts Banksia and Arncliffe DCP, in particular the desired future character of the Princes Highway landscape edge and the Princes Highway street wall. The visual appearance of the apartment development does not respond to desired future character.
context, particularly desirable elements and repetitions of the streetscape.	The Panel questions the appropriateness of marking the Kyle Street/ Princes Highway corner with a curved wall form. The Kyle Street/ Princes Highway corner is not significant to the desired future character of the precinct. Together with the lack of a 3m setback of levels 7, 8 and 9, the resultant form is at odds with the desired future character of the precinct. Furthermore, the design of the façade preferences verticality over horizontality. Again, this is at odds with the desired future character, expressed as a 3m setback above 6 stories. An appropriate aesthetic response on this site has not been achieved by the current design.
	Comments from 6 June 2019
	As previously advised on 7 October 2017 and 20 March 2019 the design should address the desired future character as described in the Rockdale LEP and Part 7 Special Precincts Banksia and Arncliffe DCP.

Page 8 of 10

Design Principle	Comments
	None of the points made above have been addressed in the amended design. The Panel maintains that the visual appearance of the apartment development does not respond to desired future character of the precinct.
	The Panel supports the built form, materiality and articulation of the modified proposal.

	considering whether the development e following matters:	exhib	its de	esign excellence, the consent authority must have regard to
	e following matters.			
whether a high standard of architectural design, materials and detailing appropriate to the building type and location will be achieved,		(a)	stan	Panel considers that the design is likely to achieve a high dard of finishing appropriate to a residential flat building in location.
(b)	whether the form, arrangement and external appearance of the development will improve the quality and amenity of the public domain,	(b) The Panel considers that the form, arrangement and external appearance of the development will adequately improve the quality and amenity of the public domain.		
(c)	whether the development detrimentally impacts on view corridors,	(c)	impa High	Panel considers that the development will not detrimentally act on desired future view corridors along the Princes hway as envisioned by Part 7 Special Precincts Banksia and cliffe DCP.
(d)	the requirements of any development control plan made by			Panel considers that objectives of Part 7 Special Precincts iksia and Arncliffe DCP have not been met in regard to:
the Council and as in force at the commencement of this clause,		1	 maximising active street frontages with 7m high ceilings to the extent possible along the Princes Highway (which could be addressed by relocating the chamber substation.) 	
			2	 satisfying Clause 4.3 Active Frontages (6)(f) which requires that "no ground floor residential is permitted" the intent of which is to ensure that the whole of the ground floor is occupied by retail showroom or commercial space except for residential lobbies and vehicle access
(e)	how the development addresses the following matters:	(e)	The	Panel considers:
	(i) the suitability of the land for development,		(i)	The suitability of the land has been satisfactorily addressed.
	(ii) existing and proposed uses and use mix,		(ii)	the proposed commercial uses and mix have not been satisfactorily addressed insofar as the dimensions and areas proposed are not considered to be "large format commercial".
	(iii) heritage issues and streetscape constraints,		(iii)	There are no relevant heritage issues.
	(iv) the relationship of the development with other development (existing or		(iv)	The relationship with other development has been satisfactorily addressed in terms of the desired future character of development on this section of the Princes

Page 9 of 10

- proposed) on the same site or on neighbouring sites in terms of separation, setbacks, amenity and urban form,
- (v) bulk, massing and modulation of buildings,
- (vi) street frontage heights,
- (vii) environmental impacts such as sustainable design, overshadowing, wind and reflectivity,
- (viii) the achievement of the principles of ecologically sustainable development,
- (ix) pedestrian, cycle, vehicular and service access, circulation and requirements,
- (x) the impact on, and any proposed improvements to, the public domain.
- (xi) achieving appropriate interfaces at ground level between the building and the public domain
- (xii) excellence and integration of landscape design.

- Highway, particularly in relation to the street wall. The relationship with adjoining properties has been satisfactorily addressed.
- (v) The bulk massing and modulation to the Princes Highway and Kyle Street will achieve the desired future character of the precinct.
- (vi) The street frontage heights to the Princes Highway and Kyle Street will achieve the desired future character of the precinct.
- (vii) The documentation provided to the Panel sufficiently demonstrates that environmental impacts such as sustainable design, overshadowing, wind and reflectivity have been achieved
- (viii) The principles of ESD have been satisfactorily addressed and measures beyond strict compliance are proposed
- (ix) The access and servicing of the residential component of the building has been met, however, the Panel has concerns the building has not satisfactorily addressed:
 - The on-site servicing and loading for the commercial component which requires clarification, and
 - The separation of vertical circulation systems and secure entry points for residents and commercial users using the basement car parking area is recommended
- (x) No adverse impacts on the public domain have been identified
- (xi) The interfaces of the building with the public domain have been satisfactorily addressed.
- $\mbox{(xii)}\;\;\mbox{The landscape}\;\mbox{design}\;\mbox{has}\;\mbox{been}\;\mbox{satisfactorily}\;\mbox{addressed}$

RECOMMENDATION

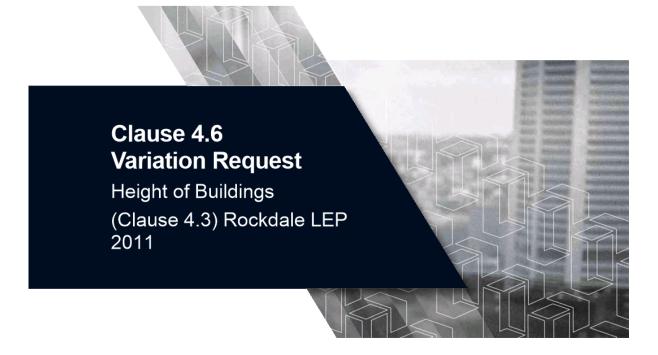
The Panel supports the application in terms of desired future character, built form, public domain, sustainability and landscape subject to the changes described above. The application, with modification, can comply with the design quality principles contained in SEPP 65 and Council officers will need to ensure the application demonstrates compliance and satisfies the design quality principles contained in SEPP 65.

RECOMMENDATION – DESIGN EXCELLENCE

- The Panel supports the application in terms of the desired future character, built form, public domain landscape and sustainability where the application achieves Design Excellence in accordance with Clause 6.14 of the RLEP.
- The Panel recommends that changes /refinements be made in terms of land use and mix to provide large format commercial space to the satisfaction of Council officers. In the event that the Council officers are satisfied, the Panel will not require the modified proposal be referred to the Panel for further consideration to demonstrate that Design Excellence has been achieved in accordance with Clause 6.14 or RLEP 2011.

Page 10 of 10





96-102 Princes Highway, Arncliffe

Submitted to Bayside Council On Behalf of Podia

NOVEMBER 27, 2018





REPORT REVISION HISTORY

Revision	Date Issued	Revision Description	
01	26/11/18	Revision tracking notes	
		Prepared by	Verified by
		Theodore Wilkinson Assistant Planner	Carlo Di Giulio Associate Director
02	26/11/18	Revision tracking notes	
		Prepared by	Verified by
		Carlo Di Giulio Assistant Planner	Steven Kerr Executive Director
03	27/11/18	Revision tracking notes	
		Prepared by	Verified by
		Theo Wilkinson Assistant Planner	Steven Kerr Executive Director

Certification

This report has been authorised by City Plan Strategy & Development P/L, with input from a number of other expert consultants. To the best of our knowledge the accuracy of the information contained herein is neither false nor misleading. The comments have been based upon information and facts that were correct at the time of writing.

Copyright © City Plan Strategy & Development P/L ABN 58 133 501 774

All Rights Reserved. No material may be reproduced without prior permission. While we have tried to ensure the accuracy of the information in this publication, City Plan Strategy & Development P/L accepts no responsibility or liability for any errors, omissions or resultant consequences including any loss or damage arising from reliance in information in this publication.

City Plan Strategy & Development P/L
Suite 6.02, 120 Sussex St, Sydney NSW 2000
P +61 2 8270 3500
CITYPLAN. COM.AU
M:Projects/CP2017:17-177 96-102 Princes Hwy, Amoliffel4, Draft/Draftl4.8 Request.docx

Page | i



4.6 Request Name of Property Site Address to go here Project # Date

TABLE OF CONTENTS

1.	Introduction			
2.	Extent of variation			
3.	Compliance with the development standard is unreasonable or unnecessary in the circumstances of this case. [cl.4.6 (3)(a)]			
4.	There are sufficient environmental planning grounds to justify contravening the standard. [4.6(3)(b)]			
5.	The Proposal will be in the public interest because it is consistent with the objectives of the standard and the objectives of the zone. [cl.4.6(4)(a)(ii)]8			
6.	Contravention of the development standard does not raise any matter of significance for State or regional environmental planning. [cl. 4.6(5)(a)]9			
7.	There is no public benefit of maintaining the standard. [cl. 4.6(5)(b)]9			
8.	Conclusion 9			
FIC	GURES			
Figi	ure 1: Extract of proposed elevation with height breach outlined yellow (Source: DKO Architects)4			
ΤA	BLES			
Tab	ele 1: Achievement of Development Standard Objectives5			
Tab	ele 2: Consistency with Zone Objectives			

City Plan Strategy & Development P/L
Suite 6.02, 120 Sussex St, Sydney NSW 2000
P +61 2 8270 3500
CITYPLAN.COM.AU
M:ProjectsiCP2017/17-177 98-102 Princes Hwy, Arnoliffel4, DraftiDraft4.6 Request.docx

Page | ii



4.6 Request
Name of Property
Site Address to go here
Project #
Date

1. INTRODUCTION

This is a formal written request that has been prepared in accordance with clause 4.6 of the Rockdale Local Environmental Plan 2011 to support a development application submitted to Bayside Council for a proposed mixed-use development at 96-102 Princes Highway, Arncliffe ("the site").

The objectives of Clause 4.6 are to provide an appropriate degree of flexibility in applying development standards to achieve better outcomes for, and from, development.

As the following request demonstrates, a better planning outcome would be achieved by exercising the flexibility afforded by Clause 4.6 in the particular circumstances of this application.

The development standard that this request seeks approval to vary is the Height of Buildings control in Clause 4.3 of the *Rockdale Local Environmental Plan 2011* (RLEP). It is acknowledged that the maximum height prescribed for this site according to the RLEP is 31m. This request seeks an exception to the proposed maximum height of 31m, specifically, the development proposes to vary the maximum height by 1.65m. It should be noted that the breach relates to the lift over run only.

This request has been prepared having regard to the Department of Planning and Environment's Guidelines to Varying Development Standards (August 2011) and relevant decisions in the New South Wales Land and Environment Court and New South Wales Court of Appeal¹.

In **Sections 3** and **4** of this request, we have explained how flexibility is justified in this case in terms of the matters explicitly required by clause 4.6 to be addressed in a written request from the applicant. In **Sections 4, 5, 6** and **7** we address additional matters that the consent authority is required to be satisfied of when exercising either the discretion afforded by Clause 4.6 or the assumed concurrence of the Secretary.

Page | 3

¹ Relevant decisions include: Winten Property Group Limited v North Sydney Council [2001] NSWLEC 46; Wehbe v Pittwater Council [2007] NSWLEC 827; Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90; Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90; Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248; and Moskovich v Waverley Council [2016] NSWLEC 1015





2. EXTENT OF VARIATION

The subject site has a maximum building height standard of 31m. The proposal has a maximum building height, as measured from ground level 'existing', of (32.65m) (at RL 52.55) as confirmed by DKO Architects Therefore, the proposal breaches the standard by (0.3m). Specifically, the portion of the building above the 31m height limit includes the lift overrun. The vast majority of the proposed envelope is, in fact, below the 31m height limit. The extent of the height breach is shown in **Figure 1** below.



Figure 1: Extract of proposed elevation with height breach outlined yellow (Source: DKO Architects)

It is important to note that the extent of the variation is related to the lift overrun only (refer to above figure) that provides a maximum building height of 32.65m. The proposed development seeks a variation to the height standard to ensure that the proposal delivers an appropriate built form that is consistent with the desired future character as outlined in the RLEP 2011 and the Apartment Design Guide. The breach also assists with providing equitable access to the roof top communal area.



4.6 Request
Name of Property
Site Address to go here
Project #
Date

COMPLIANCE WITH THE DEVELOPMENT STANDARD IS UNREASONABLE OR UNNECESSARY IN THE CIRCUMSTANCES OF THIS CASE. [cl.4.6 (3)(a)]

Achieves the objectives of the standard

Compliance with the Height of Buildings development standard is unreasonable or unnecessary in the circumstances of this case because, as explained in **Table 1** (below), the objectives of the development standard are achieved, notwithstanding non-compliance with the standard²

Table 1: Achievement of Development Standard Objectives.

Objective	Discussion
1(a) To establish the maximum limit within which buildings can be designed and floor space can be achieved.	The proposed height of the mixed-use building is approximately 1.65m greater than the height standard. As discussed in the SEE, the proposed height is compatible with its existing and future context and will not result in any adverse impacts to surrounding properties. Except for the minor height breach caused by the lift overrun, all of the building complies with the 31m height limit, whilst, the proposal is entirely compliant with the Floor Space Ratio development standard.
1(b) To permit building heights that encourage high quality urban form.	The breach of the standard does not affect consistency with this objective. In fact, the breach of the standard allows for a building that achieves improved planning outcomes providing better amenity and presentation to the street and public domain. The only non-compliance is related to the lift-
	overrun, which is required to provide access to the roof level which provides communal open space.
	Except for the minor height breach, the proposal is predominantly complaint with the general built form objectives outlined in the Rockdale DCP and

² In Wehbe v Pittwater Council [2007] NSWLEC 827 Preston CJ identified 5 ways in which an applicant might establish that compliance with a development standard is unreasonable or unnecessary and that it is sufficient for only one of these ways to be established. Although the decision concerned SEPP 1, it remains relevant to requests under clause 4.6 as confirmed by Pain J in Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90, notwithstanding that if the first and most commonly applied way is used, it must also be considered in 4.6(4)(a)(ii). The 5 ways in Wehbe are: 1. The objectives of the development standard are achieved notwithstanding non-compliance with the standard; 2. The underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary; 3. The objective would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable; 4. The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence the standard is unreasonable and unnecessary; or 5. The zoning of the land is unreasonable or inappropriate.



4.6 Request Name of Property Site Address to go here Project # Date

Objective	Discussion
	Bayside West Precincts 2036 Plan. Further, as described in the design excellence statement, and ADG compliance table prepared by DKO Architects, the proposal provides a high quality urban form.
	In addition, the proposal is effective in defining the Princes Highway corridor and will be visually appealing from both public and private domains.
1(c) To provide building heights that maintain satisfactory sky exposure and daylight to buildings, key areas and the public domain.	The Princes Highway is a wide corridor. Its width is largely responsible for maintaining satisfactory daylight exposure and sunlight to much of the proposed building, but particularly to/from the public domain. The proposal would not modify the dimensions of the corridor.
1(d) To nominate heights that will provide an appropriate transition in built form and land use intensity.	The vast majority of the subject locality is intended to accommodate high density, mixed use buildings, and in some cases substantially higher than proposed by the accompanying DA. Relative to the scale of anticipated development, and proposed mixed use development, at 108 Princes Highway, Arncliffe (DA/2016/6/A), and 130-
	140 Princes Highway, Arncliffe the proposal is consistent with the built form and land use intensity of the locality.

Compliance with the Height of Building development standard is also unreasonable or unnecessary in the circumstances of this case because it would thwart the objective of the standard (Test 3 under Wehbe).





THERE ARE SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS TO JUSTIFY CONTRAVENING THE STANDARD. [cl. 4.6(3)(b)]

The SEE prepared for this DA provides a holistic environmental planning assessment of the proposed development and concludes that subject to adopting a range of reasonable mitigation measures, there are sufficient environmental planning grounds to support the development.

There is robust justification through the SEE and accompanying documentation to support the overall development and contend that the outcome is appropriate on environmental planning grounds.

Some additional specific environmental grounds to justify the breach of the standard are summarised as follows:

- The breach of the standard allows for a development that is consistent with the existing and desired future character of the area;
- The proposal is under the maximum permissible floor space ratio for the site;
- As demonstrated by the shadow diagrams accompanying the DA, the variation of the height standard does not result in any additional overshadowing from the proposal.
- Compliance with the standard would be incongruous with the built form character in the surrounding area:
- The proposed RFB has been built within the permissible maximum FSR standard of the site, and is
 predominantly within the building envelope controls;
- The proposal would result in a better planning outcome than if compliance were to be achieved, as it provides a development that meets the objective of the standard. The breach also assists with providing equitable access to the roof top communal open space.





5. THE PROPOSAL WILL BE IN THE PUBLIC INTEREST BECAUSE IT IS CONSISTENT WITH THE OBJECTIVES OF THE STANDARD AND THE OBJECTIVES OF THE ZONE. [cl.4.6(4)(a)(ii)]

In **Section 3** (above), it was demonstrated that the proposal is consistent³ with the objectives of the development standard. The proposal is also consistent with the objectives of the zone as explained in **Table 2** (below).

Table 2: Consistency with Zone Objectives.

Objective	Discussion
B4 Mixed Use	
To provide a mixture of compatible land uses.	As can be seen in the Architectural Plans included as part of the DA, the proposed development provides a mixture of land uses and therefore addresses this objective. Specifically, the proposal allows for residential and commercial land uses.
To integrate suitable business, office, residential, retail and other development in accessible locations as to maximise public transport patronage and encourage walking and cycling.	The proposed development is consistent with the objective given it incorporates residential apartments and commercial space fronting the Princes Highway. The subject site is also in close proximity to Arncliffe Railway Station, and several public bus stops.

As can be seen from **Table 1** and **Table 2**, the proposal is consistent with the objectives of the standard and the objectives of the zone and is therefore considered to be in the public interest.

³ In Dem Gillespies v Warringah Council [2002] LGERA 147 and Addenbrooke Pty Ltd v Woollahra Municipal Council [2008] NSWLEC the term 'consistent' was interpreted to mean 'compatible' or 'capable of existing together in harmony'





6. CONTRAVENTION OF THE DEVELOPMENT STANDARD DOES NOT RAISE ANY MATTER OF SIGNIFICANCE FOR STATE OR REGIONAL ENVIRONMENTAL PLANNING. [cl. 4.6(5)(a)]

There is no identified outcome which would be prejudicial to planning matters of state or regional significance that would result as a consequence of varying the development standard as proposed by this application.

7. THERE IS NO PUBLIC BENEFIT OF MAINTAINING THE STANDARD. [cl. 4.6(5)(b)]

The breach of the standard is minor and is required to provide access to communal space on the roof level.

Accordingly, there is no public benefit⁴ in maintaining strict compliance with the development standard given that there are no unreasonable impacts that will result from the variation to the Height of Buildings standard and hence there are very minor disadvantages.

We therefore conclude that the benefits of the proposal outweigh any disadvantage and as such the proposal will have an overall public benefit.

8. CONCLUSION

This Clause 4.6 variation request demonstrates, as required by Clause 4.6 of the *Rockdale Local Environmental Plan 2011*, that:

- Compliance with the development standard would be unreasonable and unnecessary in the circumstances of this development:
- There are sufficient environmental planning grounds to justify the contravention;
- The development achieves the objectives of the development standard and is consistent with the
 objectives of the B4 Mixed Use Zone;
- The proposed development, notwithstanding the variation, is in the public interest and there is no public benefit in maintaining the standard; and
- The variation does not raise any matter of State or Regional Significance.

On this basis, therefore, it is considered appropriate to exercise the flexibility provided by Clause 4.6 in the circumstances of this application.

4 Ex Gratia P/L v Dungog Council (NSWLEC 148) established that the question that needs to be answered to establish whether there is a public benefit is "whether the public advantages of the proposed development outweigh the public disadvantages of the proposed development"



17/09/2019

Item No 6.3

Application Type Residential – New Single Dwelling

Application No DA-2019/147 Lodgement Date 06/05/2019

Property 6 Culver Street, Monterey

Ward 5

Owner Mrs Diana Sadig
Applicant Artmade Architects

Proposal Demolition of existing structures and construction of a two (2)

storey dwelling with a basement garage and rooftop terrace.

No. of Submissions Nil

Cost of Development \$948,294

Report by Gary Choice, Development Assessment Planner

Officer Recommendation

- That the Bayside Local Planning Panel, exercising the functions of the Council as the consent authority pursuant to s4.16 of the Environmental Planning and Assessment Act 1979 not support the variation to the building height prescribed by cl4.3 Height of Buildings 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 objectives for development within the zone.
- That development application DA-2019/147 for demolition of existing structures and construction of a two (2) storey dwelling with a basement garage and rooftop terrace at 6 Culver Street, Monterey be REFUSED pursuant to s4.16(1)(b) of the Environmental Planning and Assessment Act 1979 for the following reasons:
 - 1. Pursuant to the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, it is considered that the proposed development does not satisfy the objectives of the R2 Low Density Residential zone as contained in Part 2.3 of the zone under Rockdale Local Environmental Plan 2011, including:
 - To ensure that land uses are carried out in a context and setting that minimises any impact on the character and amenity of the area.
 - 2. 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 Height of Buildings of the Rockdale Local Environmental Plan 2011 relating to the following objectives:

Item 6.3

- to permit building heights that encourage high quality urban form,
- to nominate heights that will provide an appropriate transition in built form and land use intensity.
- 3. 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 4.6 of the Rockdale Local Environmental Plan 2011 as an amended Clause 4.6 statement has not been submitted to reflect amended plans.
- 4. Pursuant to the provisions of Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposed development including an elevated alfresco, rear deck and rooftop terrace will create significant overlooking to neighbouring properties and does not, therefore, meet the objectives of 4.45 Visual Privacy of the Rockdale DCP 2011.
- 5. Pursuant to the provisions of Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposed development does not meet the objectives of the Rockdale Development Control Plan 2011 including:
 - Part 4.4.6 Noise Impact
- 6. 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 5.1 Building Design General of the Rockdale DCP 2011 in terms of bulk appearance of bare expanse, exceedance of FSR and building height provisions, and potential impacts of window design.
- 7. 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 unnecessary removal of established vegetation; and
 - b) Built Environment approval of the proposal would set a precedent for additional over-development of a similar kind.
- 8. 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 surrounding built environment.
- 9. 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 height, bulk, scale, size and density and would adversely impact upon the amenity of the locality.
- 10. The proposed development, pursuant to the provisions of Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979, is not considered suitable for the site, in terms of height and bulk and is likely to adversely impact on the solar access, and visual and acoustic privacy of neighbouring properties.
- 11. Pursuant to the provisions of Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, and in consideration of the impacts and submissions made the proposed development is not considered to be in the public interest and is likely to set an undesirable precedent.

Item 6.3 188

Location Plan



Attachments

- 1 Planning Assessment Report 1
- 2 Survey Plans J
- 3 Plans Cover Page &
- 4 Site Analysis Plan & Streetscape Analysis J.
- 5 Demolition Plan & Proposed Site Plan J
- 6 Site and Roof Drainage Plan J.
- 7 External Elevations J
- 8 Building Sections & Driveway Ramp Profile &
- 9 Shadow Diagrams <u>J</u>
- 10 Proposed Turning Studies <u>4</u>
- 11 Clause 4.6 Variation Height J
- 12 Statement of Environmental Effects <u>J</u>

Item 6.3 189

BAYSIDE COUNCIL

Planning Assessment Report

Application Details

Application Number: DA-2019/147 **Date of Receipt:** 6 May 2019

Property: 6 Culver Street, MONTEREY (Lot 446 DP 11398)

Owner(s): Mrs Diana Sadig

Mr Raymond Edward Sadig

Applicant: Artmade Architects

Proposal: Demolition of existing structures and construction of a two (2) storey

dwelling with a basement garage and rooftop terrace

Recommendation: Refused No. of submissions: NIL

Author: Gary Choice
Date of Report: 21 August 2019

Key Issues

The key issues related to this application are:

- Non-compliance with the maximum 8.5m building height requirement for the R2 zone;
- An amended Clause 4.6 Statement has not been submitted that reflects the amended plans;
- The development is not sympathetic to the surrounding streetscape in terms of height and bulk and features such as a rooftop terrace;
- The elevated ground floor area and rooftop terrace pose visual and acoustic privacy impacts as well as impacts to neighbouring properties; and
- The proposed size and potential holding capacity of the rooftop terrace poses significant noisegenerating impacts to neighbouring properties and the surrounding area.

Recommendation

That the Bayside Local Planning Panel, exercising the functions of the Council as the consent authority pursuant to s4.16 of the Environmental Planning and Assessment Act 1979 not support the variation to the building height prescribed by cl4.3 Height of Buildings 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 objectives for development within the zone.

That development application DA-2019/147 for demolition of existing structures and construction of a two (2) storey dwelling with a basement garage and rooftop terrace at 6 Culver Street MONTEREY be REFUSED pursuant to s4.16(1)(b) of the Environmental Planning and Assessment Act 1979 for the following reasons:

- 1. Pursuant to the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, it is considered that the proposed development does not satisfy the objectives of the R2 Low Density Residential zone as contained in Part 2.3 of the zone under Rockdale Local Environmental Plan 2011, including:
 - To ensure that land uses are carried out in a context and setting that minimises any impact on the character and amenity of the area.
- 2. 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 Height of Buildings of the Rockdale Local Environmental Plan 2011 relating to the following objectives:
 - to permit building heights that encourage high quality urban form,
 - to nominate heights that will provide an appropriate transition in built form and land use intensity.
- 3. 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 4.6 of the Rockdale Local Environmental Plan 2011 as an amended Clause 4.6 statement has not been submitted to reflect amended plans.
- 4. Pursuant to the provisions of Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposed development including an elevated alfresco, rear deck and rooftop terrace will create significant overlooking to neighbouring properties and does not, therefore, meet the objectives of 4.45 Visual Privacy of the Rockdale DCP 2011.
- 5. Pursuant to the provisions of Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposed development does not meet the objectives of the Rockdale Development Control Plan 2011 including:
 - Part 4.4.6 Noise Impact
- 6. 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 5.1 Building Design General of the Rockdale DCP 2011 in terms of bulk appearance of bare expanse, exceedance of FSR and building height provisions, and potential impacts of window design.
- 7. 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 unnecessary removal of established vegetation; and
 - b) Built Environment approval of the proposal would set a precedent for additional over-development of a similar kind.

- 8. 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 surrounding built environment.
- 9. 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 height, bulk, scale, size and density and would adversely impact upon the amenity of the locality.
- 10. The proposed development, pursuant to the provisions of Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979, is not considered suitable for the site, in terms of height and bulk and is likely to adversely impact on the solar access, and visual and acoustic privacy of neighbouring properties.
- 11. Pursuant to the provisions of Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, and in consideration of the impacts and submissions made the proposed development is not considered to be in the public interest and is likely to set an undesirable precedent.

Background

History

Council's records show no previous applications have been lodged in relation to the subject site.

DA-2019/147 was lodged on 6 May 2019 and open for public comment from 8 May 2019 to 27 May 2019

Following a site inspection, the DA was referred to Ausgrid on 28 May 2019 for comment regarding the existing power pole (northern boundary frontage) to be relocated as part the development. No response was received within the 21 day period, and Council has yet to receive correspondence from Ausgrid regarding the subject DA.

A written request for additional information was issued to the applicant on 5 July 2019 identifying the following issues:

- The Clause 4.6 statement for the proposed 1.3m (15.3%) exceedance in building height was not supported.
- Revised driveway and basement plans were required including amendments to internal width, swept path analysis, sight line splays and stormwater drainage design.
- 3. The height, bulk and scale of the rooftop terrace was not supported. Council has consistently approved rooftop terraces with a usable area of 24m² and a reduction of usable rooftop area was recommended to minimise impacts to neighbouring properties from the rooftop as a noise-generating recreational area.
- 4. The proposed rear deck posed significant impacts to the visual privacy of adjoining properties.
- A re-design was recommended to prevent the re-location of the existing power pole on the Culver Street frontage.

Additional plans were received on 19 July 2019, however outstanding issues remain specifically:

The development still exceeds the maximum 8.5m height of buildings and presents the same

issues of height, bulk and impacts of amenity;

- An amended Clause 4.6 statement has not been submitted to reflect the amended plans;
- The revised 70m² Rooftop is still significantly above the 24m² area as advised

Proposal

Council is in receipt of a development application DA-2019/147 at 6 Culver Street MONTEREY, which seeks consent to carry out the demolition of the existing dwelling, rear garage and existing front fence; and the construction of a new two-storey dwelling with basement and rooftop terrace. Specifically, the proposal consists of:

Ground floor

- Open plan family/informal dining/formal living area
- Kitchen
- Laundry with powder room
- Formal dining area
- Rear deck

First floor

- Master bedroom with WIR, balcony and ensuite
- Three (3) additional bedrooms (with Balcony to Bedroom 1),
- Separate bathroom, living area with separate balcony.

Additional features

- Basement parking
- Rooftop terrace
- Lift access to all floors
- Dumb waiter to ground floor, first floor and rooftop

Site location and context

The subject site is known as Lot 446 DP 11398, 6 Culver Street MONTEREY. The site is a rectangular shape with front and rear boundary widths of 12.19 metres. The side boundaries are a depth of 38.74m (east) and 38.71m (west). The total site area is 472.1m². The topography of the site is relatively flat.

The subject site contains a single-storey brick dwelling with rear lane garage. The site is located on the south side of Culver Street, between Hollywood Street (north), The Grand Parade (east) and Chuter Avenue (west). The site enjoys rear lane access to Emmaline Street (southern boundary). Adjoining development to the sides includes two (2) separate allotments to the east - 231 and 232 The Grand Parade - with a single-storey brick dwelling on each, and a two-story brick dwelling at No.8 Culver Street. There is a mix of single-storey and two-storey residential buildings within close proximity to the subject property.

No trees are to be removed, however appropriate conditions are to be included in the Draft Notice of Determination regarding protection of existing trees.



Statutory Considerations

Environmental Planning and Assessment Act, 1979

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

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

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

The following Environmental Planning Instruments are relevant to this application:

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
The applicant has submitted a BASIX Certificate for the proposed development. The Certificate number is 1006341S.

The commitments made result in the following reductions in energy and water consumption:

Reduction in Energy Consumption 50% Reduction in Water Consumption 40% Thermal Comfort Pass

A condition has been imposed on the consent to ensure that these requirements are adhered to.

State Environmental Planning Policy No 55—Remediation of Land

The provisions of SEPP 55 have been considered in the assessment of the development application, along with the requirements of Part 4.1.5 Contaminated Land of the Rockdale Development Control Plan 2011. The likelihood of encountering contaminated soils on the subject site is considered to be extremely low given the following:

- 1. The site appears to have been continuously used for residential purposes;
- 2. The adjoining and adjacent properties are currently used for residential purposes; and
- 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.

Rockdale Local Environmental Plan 2011

Relevant clauses	Compliance with	Compliance with
	objectives	standard/provision
2.3 Zone R2 Low Density Residential	No - see discussion	No - see discussion
2.7 Demolition requires consent	Yes - see discussion	Yes - see discussion
4.3 Height of buildings	No - see discussion	No - see discussion
4.4 Floor space ratio - Residential	Yes - see discussion	Yes - see discussion
zones		
4.6 Exceptions to development	No - see discussion	No - see discussion
standards		
5.10 Heritage conservation	Yes - see discussion	Yes - see discussion
6.1 Acid Sulfate Soil - Class 4	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 R2 Low Density Residential

The subject site is zoned R2 - Low Density Residential under the provisions of Rockdale Local Environmental Plan 2011 (RLEP 2011). The proposal is defined as a *dwelling house* which constitutes a permissible development only with development consent. The objectives of the zone are:

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

The proposed development is inconsistent with the objectives of the zone, particularly:

 To ensure that land uses are carried out in a context and setting that minimises any impact on the character and amenity of the area.

The proposal will impact significantly on the character and streetscape of Culver Street. The elevated basement design results in a number of cumulative impacts to neighbouring properties including visual

impacts associated with height, bulk and massing, and impact on visual privacy. The proposed rooftop terrace poses significant noise-generating impacts to neighbouring properties and the surrounding area. Ultimately, the proposal does not satisfy the Clause 2.3.

2.7 Demolition requires consent

The proposed development seeks consent for the demolition of the existing dwelling and rear garage and, therefore satisfies the provisions of this Clause.

4.3 Height of buildings

The height of the proposed building is 9.7m, which exceeds the maximum 8.5m height permitted in Clause 4.3 (Height of buildings) of RLEP 2011 BY 14%. In accordance with clause 4.6 of RLEP 2011, the applicant has requested that a variation to the maximum building height requirement be permitted which is discussed later in this report.

The proposed height is required to facilitate a 70m² rooftop terrace which poses a significant impact to the amenity of neighbouring properties and the surrounding area. The development does not, therefore, satisfy the relevant objectives of Clause 4.3 in RLEP 2011 specifically:

(d) to nominate heights that will provide an appropriate transition in built form and land use intensity.

4.4 Floor space ratio - Residential zones

The Gross floor area of the proposed development has been calculated as 236.4m² over a site area of 472.1m². In this regard, the proposed floor space ratio (FSR) for the building is 0.5:1 and therefore does not exceed the maximum 0.5:1 FSR for the land as shown on the Floor Space Ratio Map.

The proposed FSR is in accordance with the desired future character of Rockdale, and will have minimal adverse environmental effects on the use or enjoyment of adjoining properties, and will maintain an appropriate visual relationship between new development and the existing character of area.

Accordingly, the proposed FSR for the development meets the objectives and satisfies the maximum FSR permitted by Clause 4.4 in RLEP 2011.

4.6 Exceptions to development standards

The proposed development will result in a building height of 9.7m which and does not comply with the maximum 8.5m height limit for the R2 Low Density Residential zone in RLEP 2011. Accordingly, a Clause 4.6 variation statement was submitted with the subject DA.

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

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

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

(i) the Applicant's written request is satisfactory in regards to addressing sub-clause (3) above,

and

- (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives of the relevant zone.
- 5(a) The consent authority must also consider whether contravention of the development standard raises any matter of significance for State or Regional environmental planning, and
- 5(b) the public benefit of maintaining the development standard.

The objectives of Clause 4.3 are:

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

In accordance with clause 4.6 RLEP 2011, the applicant has provided a detailed statement requesting that a variation to the maximum 8.5m building height requirement be permitted with Council consent.

Summary of 4.6(3)(a) justification

The submitted Clause 4.6 request for variation does not clearly addressed each element of Clause 4.6, and specific sub-clause has not been accordingly referenced. The statement does, however, cite Method 1 of *Wehbe v Pittwater Council (2007) and* argues that the proposed development achieves the objectives of the development standard notwithstanding non-compliance with the standard for the following reasons:

- While the extent of the variance is 15.29% (1.3m), the area of non-compliance is limited to the roofed stairwell and lift shaft on the roof terrace. All other aspects of the dwelling are fully compliant with the 8.5m height control.
- The stairwell and lift shaft have been situated on the northern side of the dwelling so as to minimise negative impacts in respect of overshadowing of neighbouring properties.
- The height of the development is compatible with the general character of the area which, by observation, exhibit numerous similar height variations where terrace roofs are approved.
 Such roof terraces (and therefore height variations) are also part of the evolving character of the area and the streetscape.
- The development will maintain similar height and scale characteristics with surrounding development in Culver Street and nearby The Grand Parade and therefore no height transition issues are raised.
- The proposal will therefore maintain an acceptable and consistent urban form while this
 variation of the height control provides access to the roof terrace allowing the design to take
 advantage of the site's position and provide views across Botany Bay.

Please note: Amended plans have reduced the overall building height to 9.7m which makes the extent of the variance 1.2m (14.08%).

Officer comment: The justifications offered by the subject cl 4.6 statement are objectively sound, however the proposed 70m² rooftop terrace is inherently linked to issue of amenity, as potential noise impacts from the rooftop terrace pose a significant impact to adjoining properties and the surrounding

area. It is considered that the proposal, therefore, fails to provide an appropriate transition in built form and land use intensity, and does not, therefore satisfy the objectives of Clause 4.3 of the RLEP 2011.

Summary of 4.6(3)(b) justification

With regard to clause 4.6(3)(b), it must be demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard. The subject cl.4.6 statement claims the HOB variation is justified on grounds particular to the circumstances established in 'Four2Five' decision by NSW LEC.

In their 4.6 statement, the Applicant claims that:

- The site is located near the shores of Botany Bay Monterey which has the benefit of significant water views.
- In order to attain and enjoy these views (which is a reasonable expectation for the enjoyment and amenity of the residents) the dwelling has been designed with a roof terrace.
- Such roof terraces are common to the area and in order to access the terrace a stairwell is needed. The stairwell causes a breach of the prescribed building height.
- Strict compliance with the height control would prevent access to the roof terrace which is considered to be unreasonable in the local context where such roof terraces are a common feature of the built environment.
- Strict compliance is unnecessary as the building achieves the qualitative outcomes of the building height control. The stairwell and lift to the roof terrace is situated towards the north and significantly set back from the southern side of the building. It is considered that the non-compliant height in this part of the building will have no negative impacts in respect of urban form, sky exposure, shadow impact or daylight access.
- The proposal is meritorious in that it is highly compliant with Council's controls and the variance is minor in its extent compared to the building envelope. Refer to Statement of Environmental Effects.
- In order to retain the aesthetic qualities and integrity of the architectural design, a variation is needed but the variation will therefore produce a better environmental planning outcome.
- A compliant proposal would force an inferior outcome in terms of resident amenity.
- The variation to the building height is inconsequential as the non compliant portion is set well back from the street (12.2m) and will be viewed at an oblique angle. It will be of an acceptable impact in the streetscape and the amenity of neighbouring properties is not eroded.

Officer comment: With regard to environmental planning grounds, the statement goes as far as to identify the 'meritorious' nature of the design with respect to characteristics that are compliant with Council controls, but does not give proper attention to the non-compliant elements of the design. The Applicant suggests the location of the site in relation to the Botany Bay waterfront should be considered the aspect or feature of the development that contravenes the relevant development standard, however, a property in close proximity to Botany Bay such as the subject site could still achieve sufficient water views without exceeding the maximum height limit for the R2 zone. The statement promotes a number of presumptive benefits (generally speaking) that the development offers, rather than detailing the environmental planning grounds upon which the argument for variation is based. The Applicant has not successfully rationalised how the proposed size and potential holding capacity of the rooftop terrace will be in the public interest. Furthermore, the statement has not successfully demonstrated how the proposed non-compliant building height satisfies the objectives of the R2 Low Density Residential zone in the context of a rooftop recreational area as such.

The statement lacks justification of how the development will <u>ensure that land uses are carried out in a context and setting that minimises any impact on the character and amenity of the area.</u>

Regarding the above stated R2 zone objective, the statement asserts:

'The third objective (of the R2 objectives) is satisfied because the proposed development is consistent with the character and amenity of the area. The character of The Grand Parade and surrounding streets is in transition from a streetscape of older single dwellings of modest size to dwellings of a larger bulk and scale which maximise the development potential of the site and incorporate the benefit of water views into the design.'

It is considered that the statement does not adequately explain how the rooftop terrace has been subsequently designed to minimise impacts on the character and amenity of the area as a consequence of sufficient environmental planning grounds.

The proposed elevated basement design is inherently linked to several key issues with the proposal that pose the biggest impacts to neighbouring properties including impacts to visual privacy by overlooking and noise-generation. The excessive bulk of built form is exacerbated by the elevated basement which, in turn, elevates floor levels above the HOB maximum. This results in a number of issues including significant bulk, massing and overlooking, with the justification of providing water views. The impacts to neighbouring properties outweigh the need for a rooftop terrace of such a size.

In this case, the potential view to Botany Bay is not considered a sufficient environmental planning ground to justify the variation to this control. In summary, the Applicant's Cl.4.6 request for a variation to the height standard is not supported as it is inconsistent with the objectives of Clause 4.3 HOB standards, and moreover, the R2 zone objectives of the RLEP 2011. The statement does not adequately demonstrate that compliance with the standard is unreasonable or unnecessary in the circumstances of the case; it does not demonstrate sufficient environmental planning grounds for the variation; and it is not considered to be in the public interest.

5.10 Heritage conservation

The subject site is not heritage listed nor is it within a heritage conservation area. Cook Park — Item 1168 RLEP 2011 - is located within close proximity to the subject site, however, the proposed development is not anticipated to affect the integrity or character of the heritage item.

Therefore the qualities that makes the heritage item and it's setting significant will not be diminished.

6.1 Acid Sulfate Soil - Class 4

Acid Sulfate Soils (ASS) – Class 4 affect the property. Development Consent is required as the proposal involves works below the natural ground level and the works may lower the watertable. In this regard, an Acid Sulfate Soils Assessment prepared by E.I. Australia (dated 16 April 2019) was prepared for the proposed development. Based on the report findings, the risk posed by ASS is considered low, and management planning is not required.

Additional conditions of consent are imposed in the draft Notice of Determination to ensure soils required to be removed from the site during development are appropriately classified and disposed of at a licensed landfill facility. The Applicant shall have this management plan prepared and agreed to prior to works commencing on the site. Therefore, the proposal is consistent with the objectives and

requirements of clause 6.1.

6.2 Earthworks

Earthworks including excavation are required on site for a basement car park to the depth of 4m. A Geotechnical Investigation Report prepared by Alliance Geotechnical (dated 28 June 2018) was submitted with the application and the objectives and requirements of Clause 6.2 of RLEP 2011 have been considered in this report. It is considered that the proposed earthworks and excavation will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land. However, notwithstanding, relevant conditions are included in the draft Notice of Determination to ensure that the environmental amenity of surrounding land is maintained, and soil erosion, sedimentation, and drainage impacts are minimised.

6.4 Airspace operations

The proposed development is affected by the Obstacle Limitation Surface (OLS) which is set at 45.72m metres to Australian Height Datum (AHD). The proposed building height is at 9.7 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 proposed stormwater drainage plan has been assessed by Council's Development Engineer. The basement must be re-designed as a tanked structure due to the location within the Botany sands aquifer as outlined in Rockdale Technical Specifications - Stormwater Management section 7.7. Subject to these amendments, the stormwater drainage plan is acceptable.

6.12 Essential services

Services will generally be available 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 standard/provision
4.1.1 Views and Vista	Yes - see discussion	Yes - see discussion
4.1.2 Heritage Conservation - Vicinity of Heritage	Yes - see discussion	Yes - see discussion
ltem		
4.1.3 Water Management	Yes - see discussion	Yes - see discussion
4.1.3 Groundwater Protection	Yes - see discussion	Yes - see discussion
4.1.4 Soil Management	Yes - see discussion	Yes - see discussion
4.1.6 Development on Sloping Sites	Yes	Yes
4.1.7 Tree Preservation	Yes - see discussion	Yes - see discussion
4.2 Streetscape and Site Context - General	No - see discussion	No - see discussion

Relevant clauses		Compliance with standard/provision
4.2 Streetscape and Site Context - Fencing	<u> </u>	Yes - see discussion
4.3.1 Open Space & Landscape Design - Low &	Yes - see discussion	Yes - see discussion
medium density residential		
4.3.2 Private Open Space - Low density residential	Yes - see discussion	Yes - see discussion
4.4.1 Energy Efficiency - Residential	Yes - see discussion	Yes - see discussion
4.4.2 Solar Access - Low and medium density residential	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	No - see discussion	No - see discussion
4.4.5 Acoustic privacy	Yes - see discussion	Yes - see discussion
4.4.6 Noise Impact	No - see discussion	No - see discussion
4.6 Parking Rates - Dwelling House	Yes - see discussion	Yes - see discussion
4.6 Basement Parking - General	Yes	Yes
4.6 Driveway Widths	Yes - see discussion	Yes - see discussion
4.7 Air Conditioning and Communication Structures	Yes - see discussion	Yes - see discussion
4.7 Waste Storage and Recycling Facilities	Yes	Yes
4.7 Laundry Facilities and Drying Areas	Yes - see discussion	Yes - see discussion
5.1 Storey Height and Setbacks - Dwelling house and Attached Dwellings	Yes - see discussion	Yes - see discussion
5.1 Building Design - General	No - see discussion	No - see discussion

4.1.1 Views and Vista

The proposed dwelling is setback as such that the first floor balcony views of Botany Bay from the adjoining No.8 Culver Street are unobstructed. The siting of the proposed building will ensure that there is minimal adverse impact on the surrounding views presently enjoyed by adjacent residents.

4.1.2 Heritage Conservation - Vicinity of Heritage Item

The qualities that makes the heritage item and it's setting significant will not be diminished, dominated or overwhelmed by the proposed development. See section RLEP Clause 5.10 of this report for details.

4.1.3 Water Management

The roofwater and runoff is to be directed to a detention tank. A stormwater plan has been submitted as discussed elsewhere in this report.

4.1.3 Groundwater Protection

The site is affected by the Groundwater Protection Zone and the proposal includes excavation for a basement car park to the depth of 2.2m to 2.3m. A Geotechnical Investigation Report prepared by Alliance Geotechnical (dated 28 June 2018) it is considered that excavation in relation to the proposed building is not deep enough to cause any adverse impact on the Zone. Notwithstanding, an appropriate condition is to be included in the consent to ensure the provisions of this Clause are satisfied. See RLEP Clause 6.7 of this report for further details.

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.

4.1.7 Tree Preservation

The development proposal does not propose the removal of any established trees or other significant vegetation.

4.2 Streetscape and Site Context - General

The proposal is located in a R2 Low Density Residential Zone. The immediate context is relatively low scale, consisting of single and two-storey dwellings on Culver Street and Emmaline Street. The local character is maintained through the prominence of gabled and hipped roofs, however there are several examples of similar flat roof housing on Culver Street including No.10 Culver Street. As the east adjoining property is a corner block with frontage to The Grand Parade, the proposed front setback, which is consistent with No.8 Culver Street, is satisfactory in the immediate context.

Regrading horizontal and vertical articulation to the Culver Street façade, the first floor ceiling height, windows and balcony do not overbear the first floor, first floor windows and guttering of No. 8 Culver Street. Furthermore, the development presents a similar bulk and scale to No.10 Culver Sreet. The proposed dwelling is, displays some semblance to prevalent elements in Culver Street such as smooth rendering.

The proposed dwelling is considered to be compatible with that of the surrounding area of Monterey.

4.2 Streetscape and Site Context - Fencing

The streetscape is characterised by low-set masonry fencing with various colours and features. The proposed open construction fence is of a similar height (1.4m) and bulk to the surrounding fences of Culver Street. A 45 degree splay is provided either side of the driveway entrance to ensure driver and pedestrian safety.

Spaced slats or a similar material are conditioned to provide at least 50% transparency to allow for passive surveillance, as well as a maximum 600mm height for solid portions.

4.3.1 Open Space & Landscape Design - Low & medium density residential

A minimum 25% of the site area is required to be provided as landscaped area. The proposal provides 138.2m² (29.3%) of landscaped area, with capability to contain storm water runoff. The development comfortably satisfies the minimum 20% requirement for front setback landscaping, and three (3) new trees are to be planted as part of the proposal.

4.3.2 Private Open Space - Low density residential

The proposal provides 121.8m² of private open space which satisfies the minimum 80m² requirment for the development. Private open spaces are usable, accessible, clearly defined and will meet occupants requirements of privacy, solar access, outdoor activities and landscaping.

4.4.1 Energy Efficiency - Residential

The applicant has submitted a BASIX Certificate for the proposed development. The commitments made result in reductions in energy and water consumption, and will achieve the efficiency target set under SEPP BASIX.

4.4.2 Solar Access - Low and medium density residential

The proposed development will have minimum impact of the level of sunlight currently received by adjoining properties and within the development site.

4.4.3 Natural Lighting and Ventilation - Residential

The proposed development is designed to achieved natural ventilation and lighting, incorporating minimum ceiling heights of 2.7m to the ground and first floors.

4.4.5 Visual privacy

The proposed development has been assessed against the relevant controls of Part 4.4.5 Visual Privacy:

Windows and balconies

- All Ground Floor windows along the eastern wall of the proposed dwelling will face the blank garage walls and carport/parking spaces of 230 and 231 The Grand Parade, and impacts to visual privacy are consider minimal. Privacy screens to both sides of the rear ground floor deck are provided to minimise overlooking to neighbouring properties.
- First floor balconies and several of the first floor windows on the eastern side of the dwelling
 pose significant overlooking into the adjoining properties at 230 and 231. The Grand Parade,
 and the rear yard of 8 Culver Street. The Ground Floor window located on the north-west wall of
 the dwelling, and the stairwell glazing on the western wall are also unresolved.

Appropriate conditions can be imposed to minimise the impacts to the neighbouring property including:

- opaque glazing to all first floor windows on the eastern wall with a sill height below 1.7m
- opaque glazing to the stairwell window and all windows on the western wall with a sill height below 1.7m
- privacy screening by way of aluminium louvres or similar to the southern alfresco wall.

Rooftop Terrace

• The 7.05m rooftop terrace (11.23 RL to AHD), with an area of 70m² is proposed to maximise opportunities to view the Botany Bay water front located more than 116m from the subject property. Internal stair access i provided to the roof top area from within the building; and the usable area of roof is set back at least 1500mm. Despite these measure, issues with potential overlooking are unresolved. The proposed 1.2m high balustrade does not prevent overlooking from the of the rooftop terrace into adjoining properties on both east and west boundaries. The rooftop terrace does not provide a reasonable level of visual privacy to the adjoining properties of 8 Culver Street and 230 and 231 The Grand Parade.

The proposed development is does not satisfy this control.

4.4.5 Acoustic privacy

There will be minimal adverse impact on the acoustic privacy of adjoining and surrounding properties as consideration has been given to the location and design of the building and landscaping in relation to private recreation areas at ground and first floor to minimise noise intrusion on the amenity of adjoining properties. Additional noise impacts are discussed in the next section.

4.4.6 Noise Impact

The likelihood of the proposed 70m² rooftop terrace as a noise-generating recreation area has not been addressed in the Statement of Environmental Effects (SEE). It is indeterminable whether such an elevated design will have more or less of an acoustic impact compared to the proposed first floor balconies. In this regard, a determination cannot be made on the noise impacts to adjoining residential properties.

4.6 Parking Rates - Dwelling House

The development will have minimal impact on access, parking and traffic in the area. The provision of 2 car spaces is in accordance with RDCP 2011.

4.6 Driveway Widths

The proposed driveway width complies with Council's Technical Specifications and hence satisfies the provisions of this Clause.

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 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 residential units. The provisions of this Clause are satisfied.

5.1 Storey Height and Setbacks - Dwelling house and Attached Dwellings

The site is located between two dwellings with frontages to different streets. The 230 The Grand Parade has a zero side setback to Culver Street and 8 Culver Street has a front setback of 7.6m. The proposed front setback is 6.63m, is of a similar setback to the existing dwelling and is consistent with the prevailing street setback and therefore compliant with DCP2011.

DCP2011 requires a 0.9m side setback to the Ground floor and a 1.2m side setback to the First floor. The proposal provides a 1.2m side setback to either side of the dwelling, and a 12.4m rear setback to the building which comfortably satisfies the minimum 3m rear lane setback requirements.

Further, the proposal is not considered to adversely impact upon the adjoining dwelling by way of overshadowing and overlooking, and will not significantly reduce the solar access, light and air received by the adjoining dwelling. Therefore, the proposed setbacks are consistent with the objectives of this control.

It should be noted that, the proposal is described as a two storey dwelling. The 900mm basement podium created by the rise of the basement stair and lift, although not technically a storey, give the appearance of a storey which, in turn, adds to the excessive height, bulk and mass of the overall development.

5.1 Building Design - General

With regard to this control, key points of the development are:

- The building design and architectural style incorporates elements of surrounding Culver Street development, including smooth rendered texture and flat roof design, however, this is weakened by the bulk appearance of bare concrete surfaces from the neighbouring 8 Culver Street.
- Building articulation does not adequately respond to environmental conditions such as noise and privacy impacts to neighbouring properties.
- The design attempts to attenuate large expanses of blank walls on the eastern side of the
 proposed dwelling with a combination of glazing and first floor planting in the articulation zones,
 however, when combined with additional privacy screening, this results in an eastern wall which
 is busy and visually obtrusive.
- The building height is significantly greater than the vast majority of dwellings in the immediate vicinity of the subject site.

In summary, the proposed dwelling is considered to be unsympathetic to the surrounding character of Culver Street and is unacceptable in its current form.

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 proposed two-storey dwelling with basement parking and rooftop terrace has been assessed against relevant controls in regard to potential impacts on the environment and neighbouring properties. The proposal is considered to lack regard for the acoustic and visual privacy of adjoining properties, and presents significant visual impacts of bulk and massing as a cumulative result of the elevated basement.

The size of the proposed rooftop terrace is considered to have little regard for the noise impacts on adjoining properties. A proposed development, in the context of 6 Culver Street MONTEREY, would result in a structure with high noise-generating potential. Such a development poses a significant and negative impact on the amenity and enjoyment of neighbouring residents and is therefore unsatisfactory.

The Application has failed to demonstrate that the site constraints and orientation prohibit the achievement of relevant RDCP standards. The significant impacts as mentioned above result in a development which is unacceptable and cannot be supported.

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. Given the location of the subject site and its relation to neighbouring properties, the proposal in its current form is assessed as posing too great an impact on neighbouring properties and the public domain.

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

If approved, the proposal would set a precedent for continued oversized dwellings and inappropriate

rooftop terracing in this area resulting in significant impacts on the built environment and public domain. As such it is considered that the proposed development is not 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 could imposed in respect to a levy applied under this section, should consent be granted.

Civil Aviation Act, 1988

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

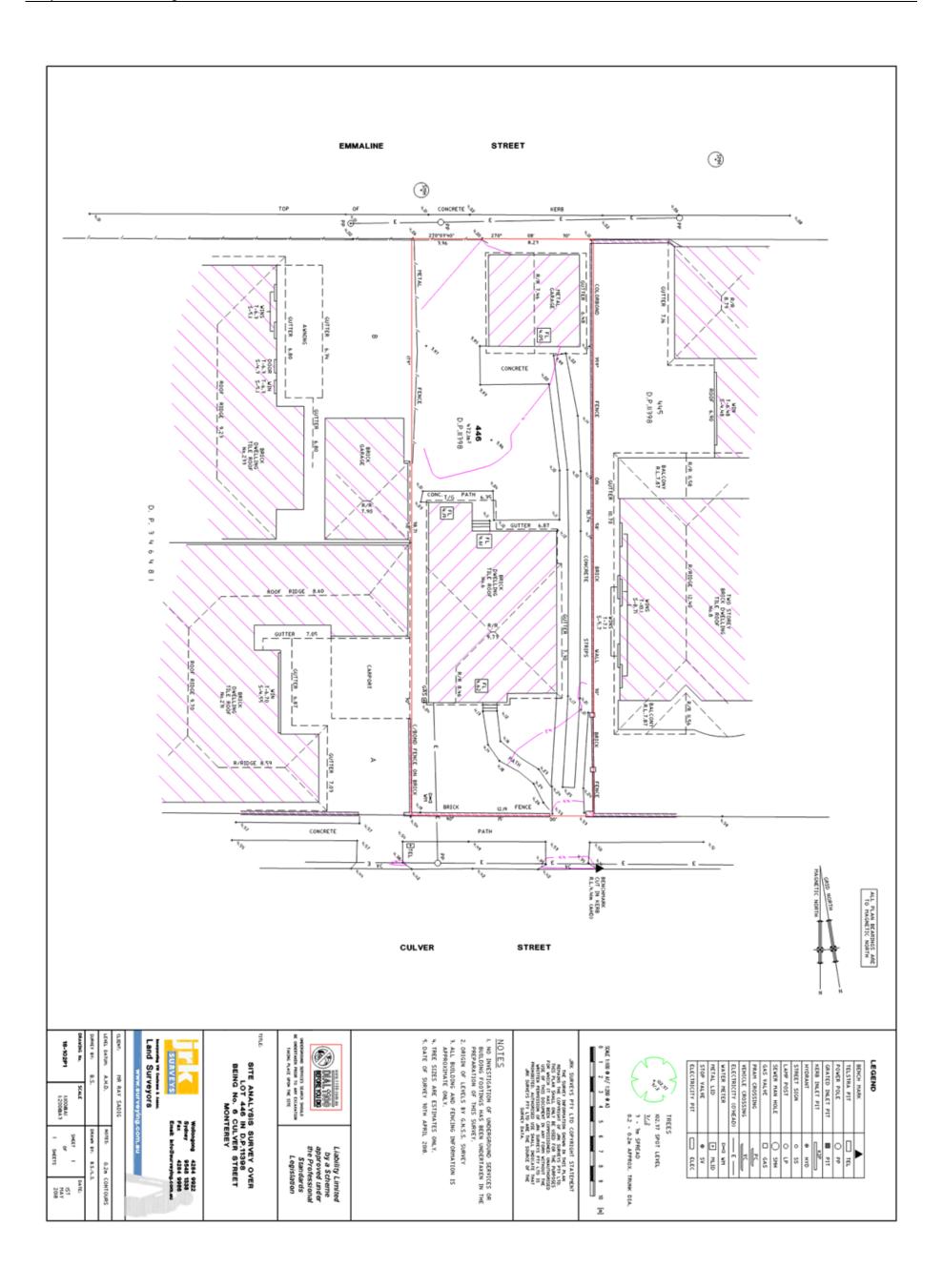
Civil Aviation (Building Control) Regulations 1988

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

Section 6 Prohibition of the construction of buildings of more than 150 feet in height in certain areas

The proposed development is affected by the 45.72m Building Height Civil Aviation Regulations, however the proposed building height at 9.7m will have minimal impact upon the height requirement in the regulations.

Schedule 1 - Draft Conditions of consent









SOURCE: SIX MAPS

DEVELOPMENT APPLICATION

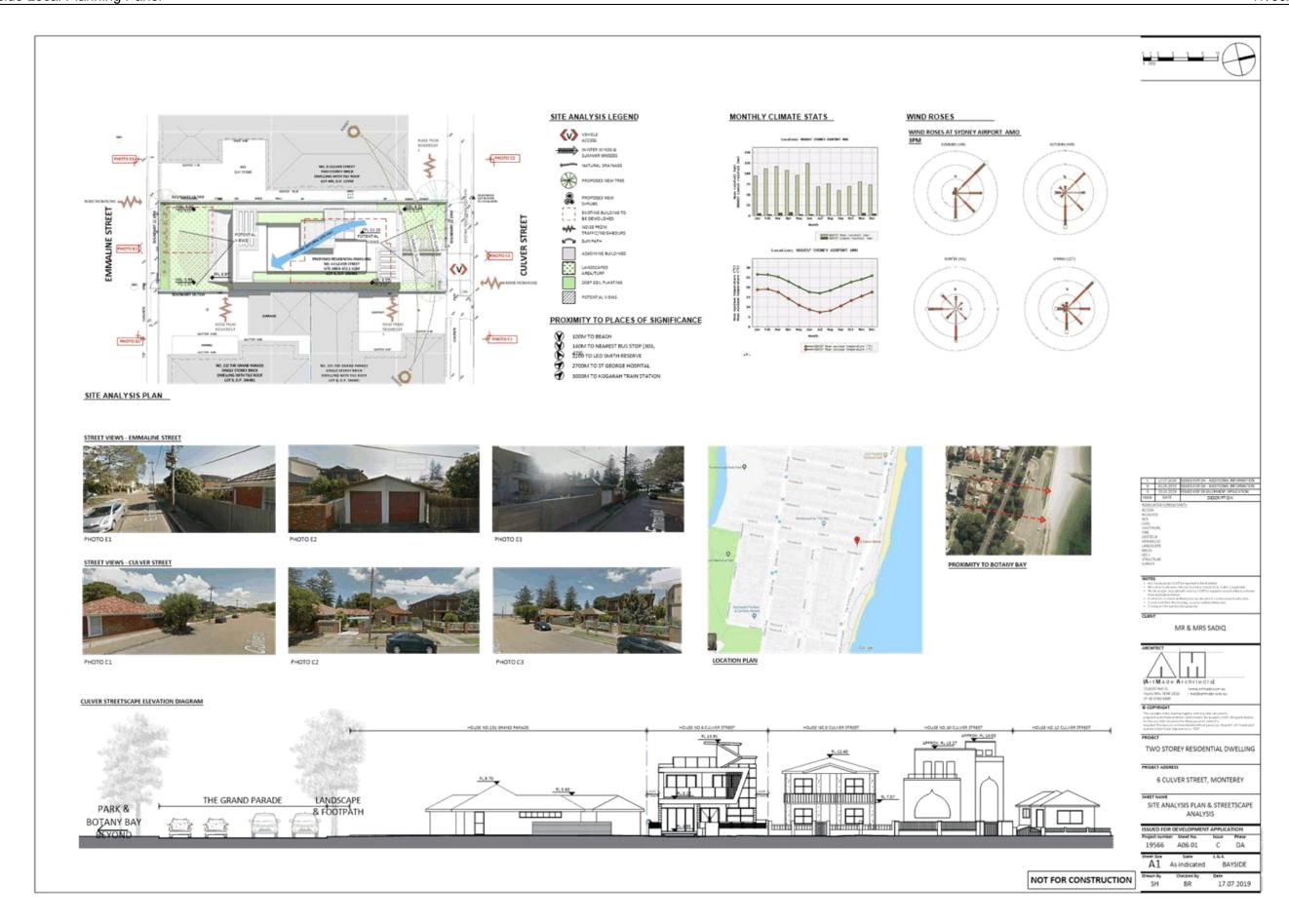
6 CULVER STREET, MONTEREY NSW 2217 RESIDENTIAL DWELLING

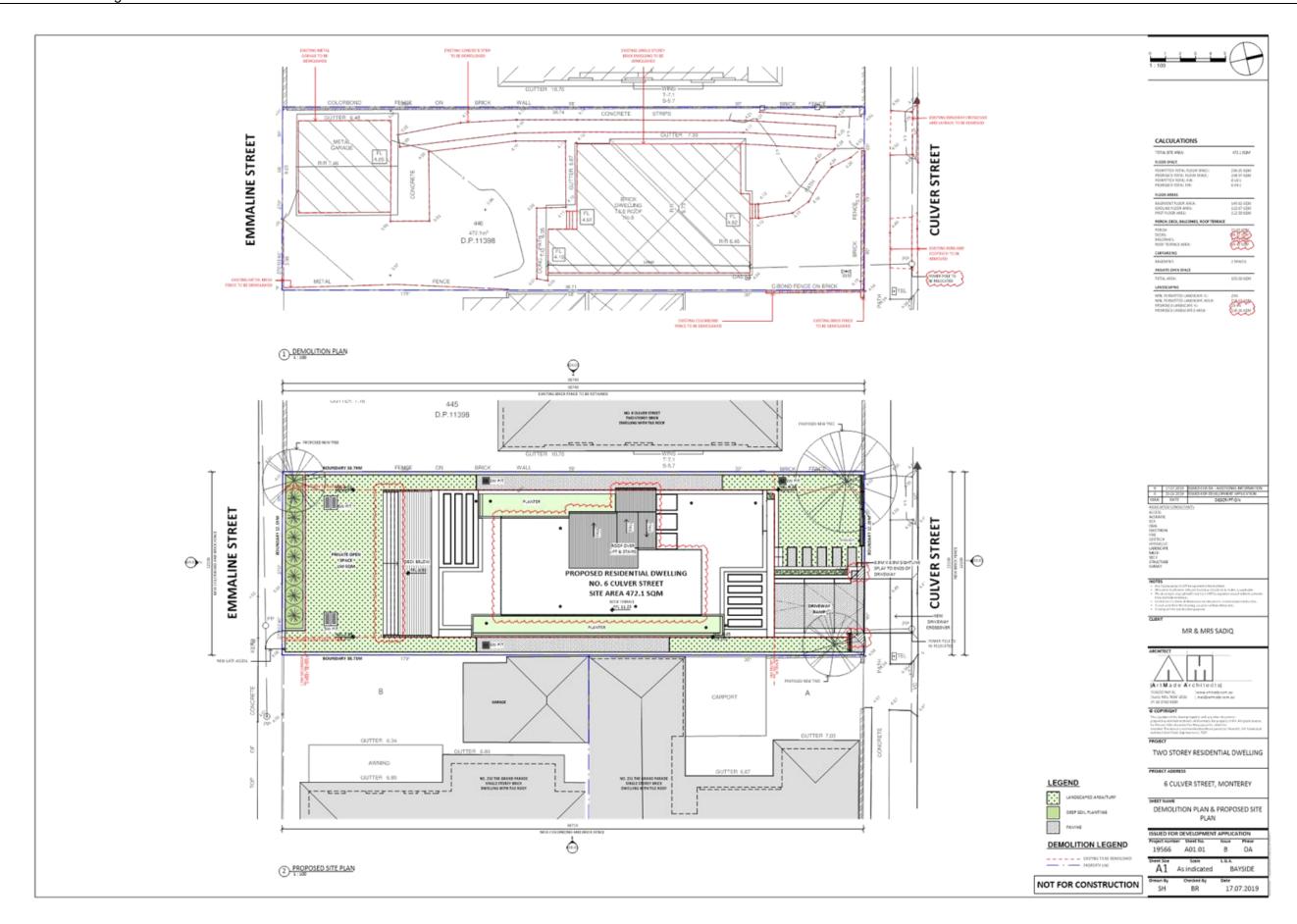
SHEET NUMBER	SHEET NAME	REVIS
A00 SERIES - COVI	ER PAGE & GENERAL INFORMATIONS	
A00.00	COVER PAGE	8
AC1 SERIES - EXIS	TING & DEMOLITION	
A01.01	DEMOLITION PLAN & PROPOSED SITE PLAN	8
A03.01	BASEMENT PLAN & GROUND FLOOR PLAN	8
A03.01	BASEMENT PLAN & GROUND FLOOR PLAN	8
A03.02	FIRST FLOOR PLAN & ROOFTOP PLAN	
A04 SERIES - EXTE	RNAL ELEVATIONS	
A04.01	EXTERNAL ELEVATIONS	- 0
AOS SERIES - BUIL	DING SECTIONS	
ADS SERIES - BUIL ADS.01	DING SECTIONS BUILDING SECTIONS & DRIVEWAY RAMP PROFILE	c
	BUILDING SECTIONS & DRIVEWAY RAMP PROFILE	C
A05.01	BUILDING SECTIONS & DRIVEWAY RAMP PROFILE	C

STOCKES STATEMENT OF A CHIEF CHIEF AND A CHIEF CH
MICHAELSCHILLschillschil
CODE CODE OF STATE OF
DA MAN MAN MAN MAN MAN MAN MAN MAN MAN MA
ACTIVITY WITH A STATE OF THE S
INTERESTANCE OF THE PROPERTY O
MARCHAELE STATES OF THE STATES
INCLUDE INCLUDITATION INCLUDE INCLUDE INCLUDE INCLUDE INCLUDE INCLUDE INCLUDE
PRECINE MASS OFFI THE PROPERTY OF A STORY OF THE PROPERTY OF T
CESS 103 Security Consideration of the control of
in his hard authorized the required in the depth of the control of
IN CASE CONTRIBUTION OF THE CONTRIBUTION OF TH
for service studies. Loss and the medical support refree designation of the control of the cont
MR & MRS SADIQ
MR & MRS SADIQ
MR & MRS SADIQ
ACMITICAL TOTAL TO
ACMITTEET.
/.\ .'.
/ 1 \
ArtMade Architects
SOURCE Hatrib. Development networks company
Suny NSS, NSW SSSI meditertmete.com.se P. St SNot Side
COPYRIGHT
te capatiglica filitis deveraul agentam entranguellam desperants mentral las professos interessos del formations de propertie del filit desta filament
or the contribute about an of the Managarant for substitutes mention. The implication or investigated the Montribute presidence to excell it. All the except of
saltes destributing trapped in Tall
ROJECT
TWO STOREY RESIDENTIAL DWELLING
MOJECT ADDRESS
6 CULVER STREET, MONTEREY
HEET NAME
COVER PAGE
COURT FOR PEUT ORNERS ARRIVESTON
SSUED FOR DEVELOPMENT APPLICATION
roject number. Sheet No. Issue Phase
rojest number Sheet No. House Phase 19566 A00.00 B DA
19566 A00.00 B DA
19566
19566
19566 A00.00 B DA Neet Sire Scale LGA BAYSIDE

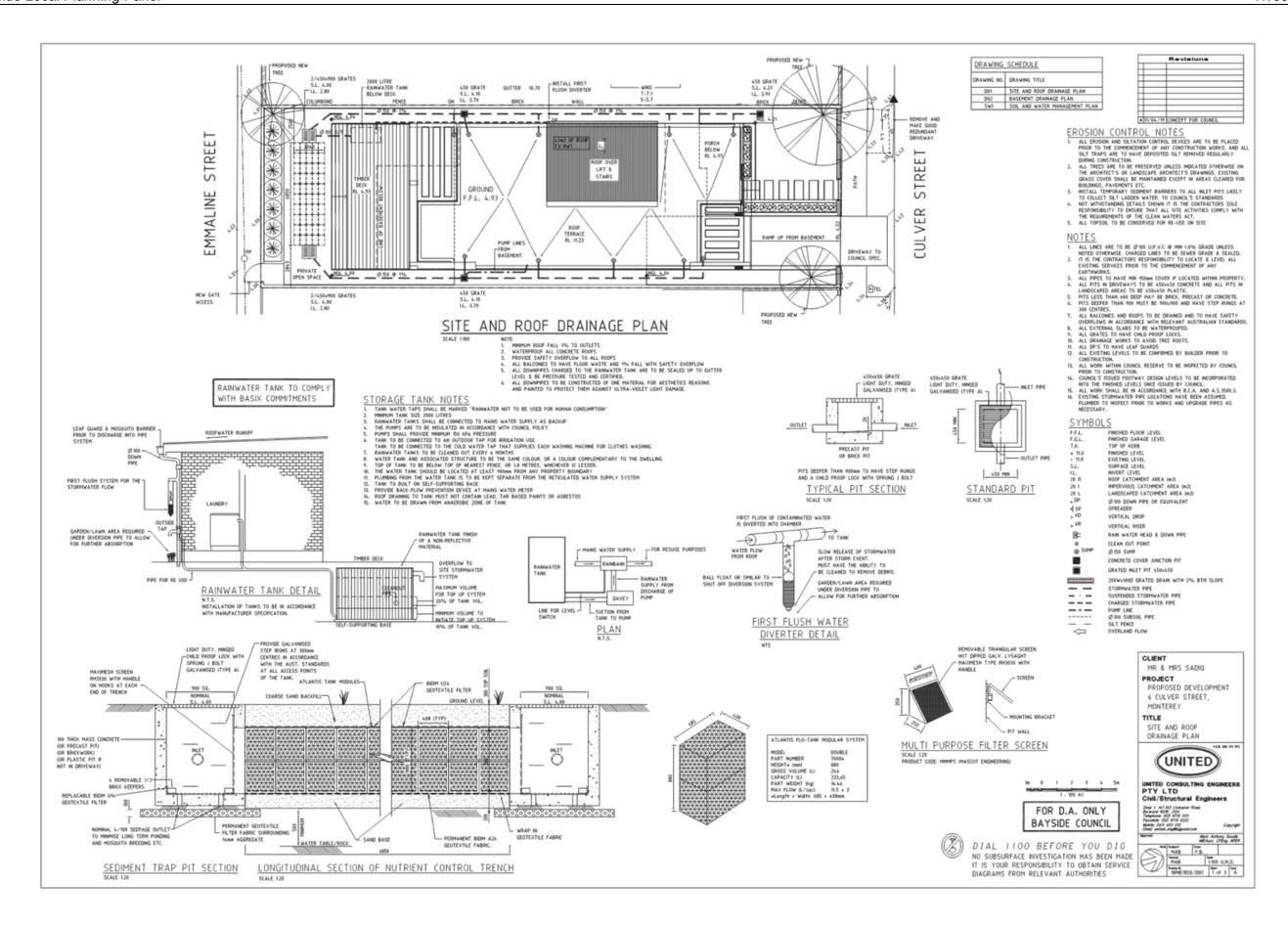
NOT FOR CONSTRUCTION

Bayside Local Planning Panel 17/09/2019

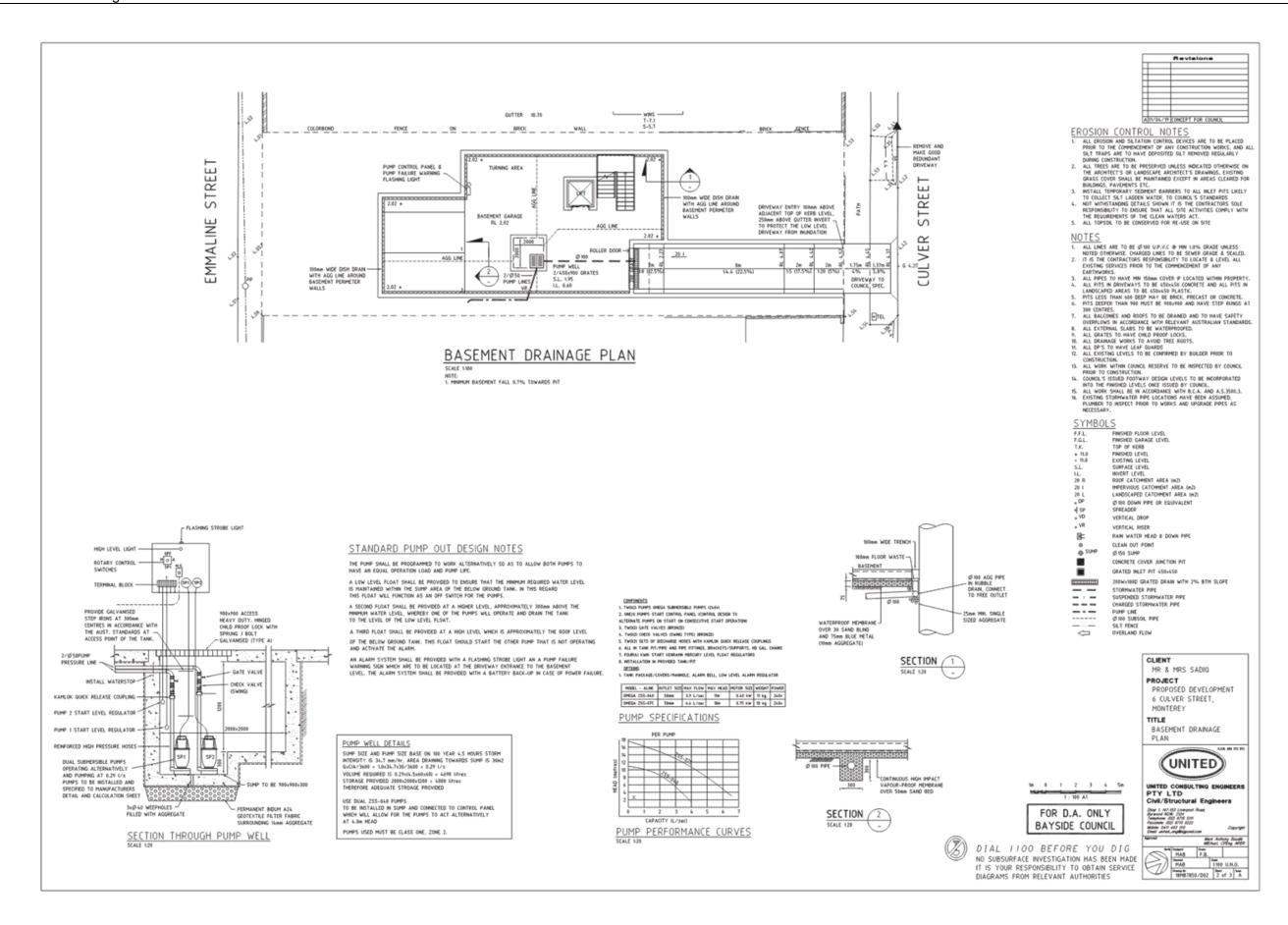


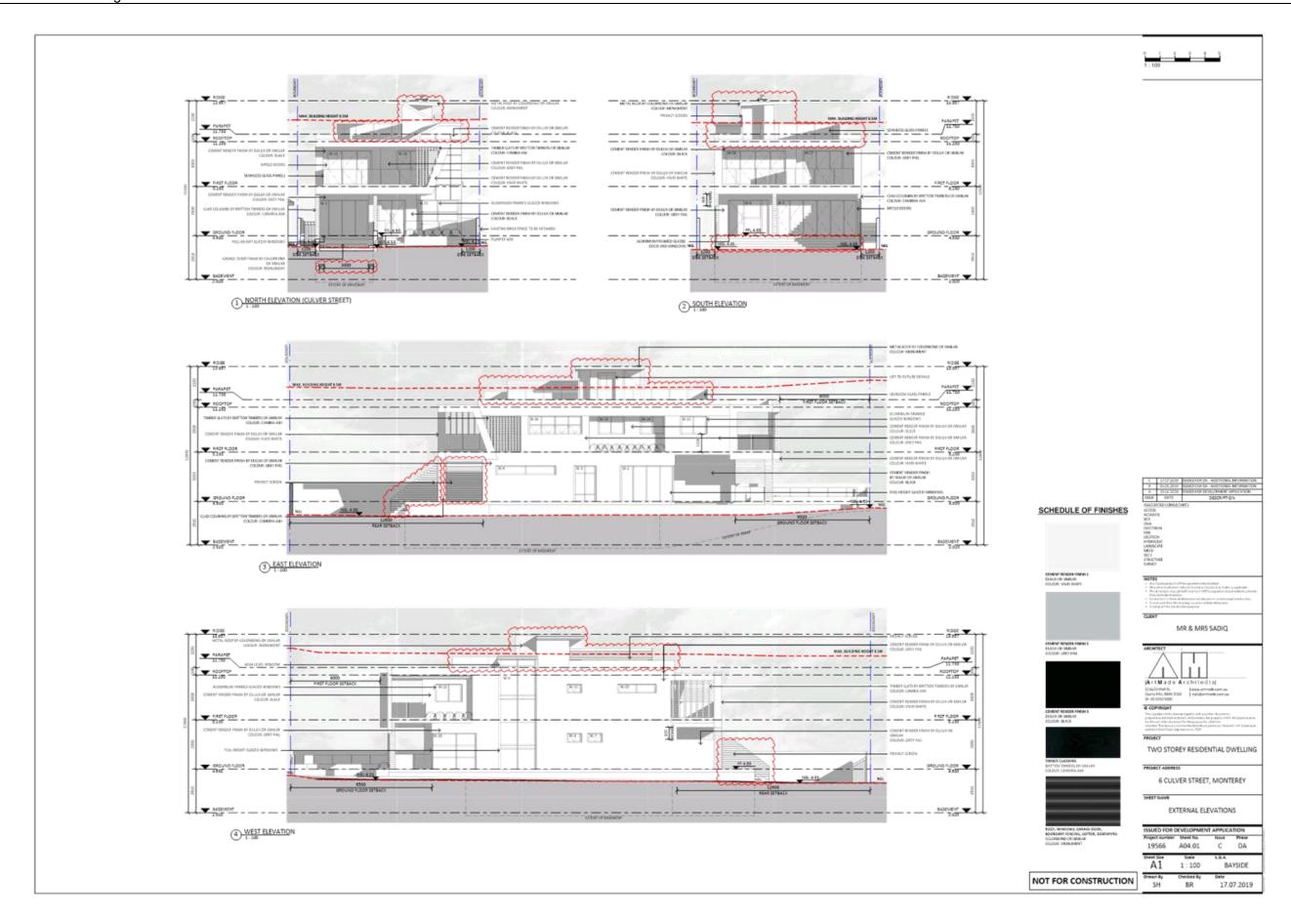


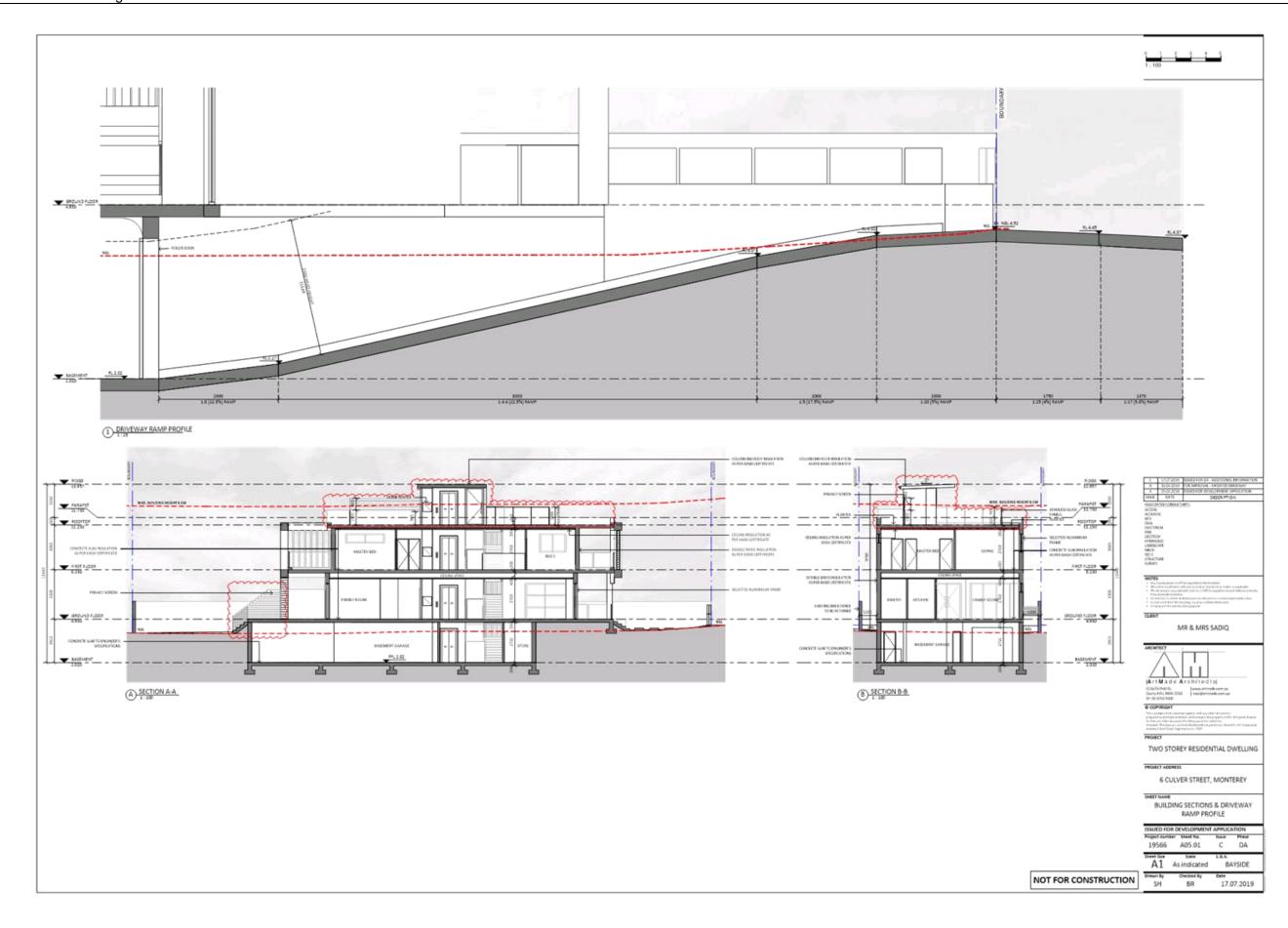
Bayside Local Planning Panel 17/09/2019

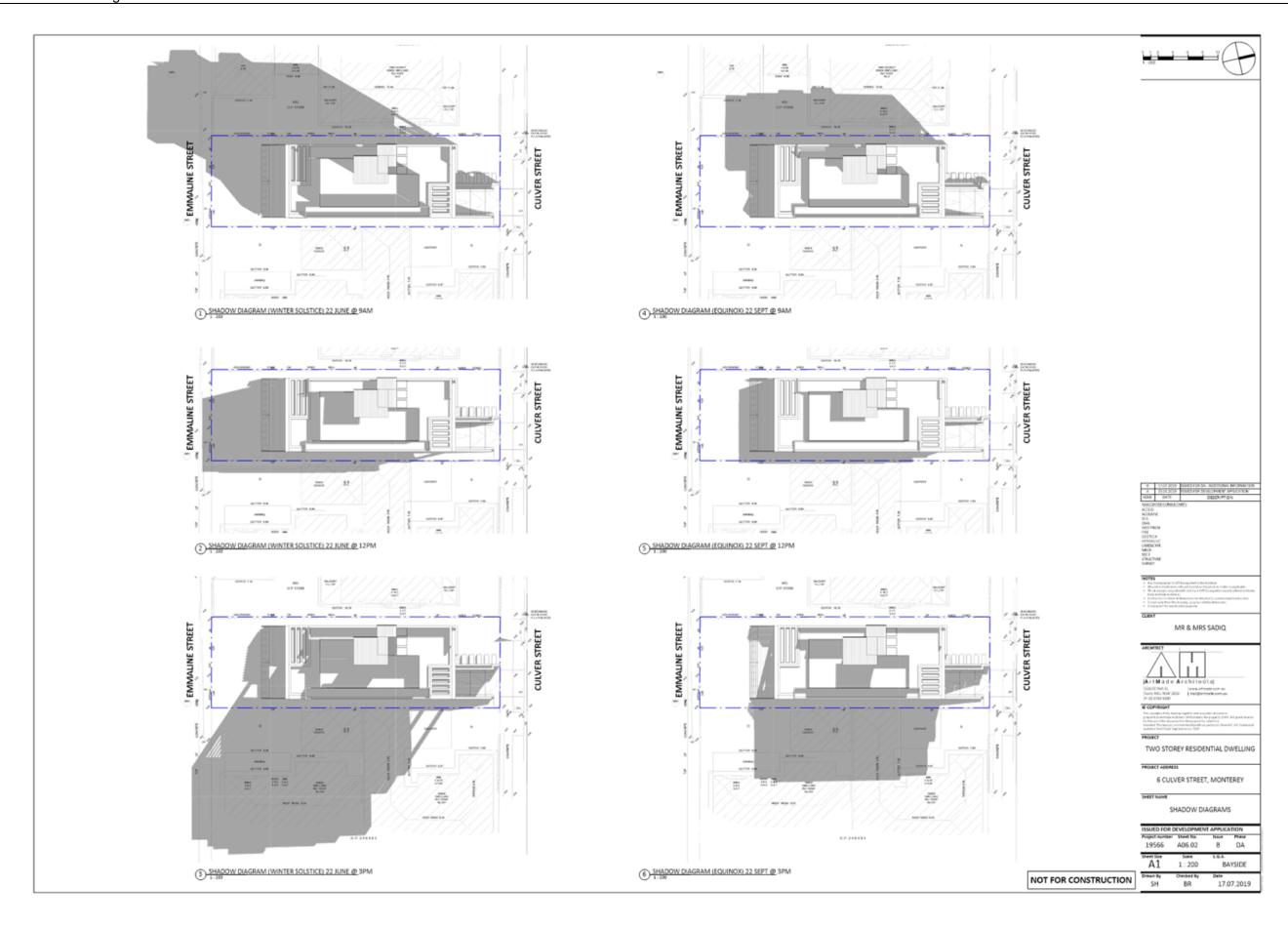


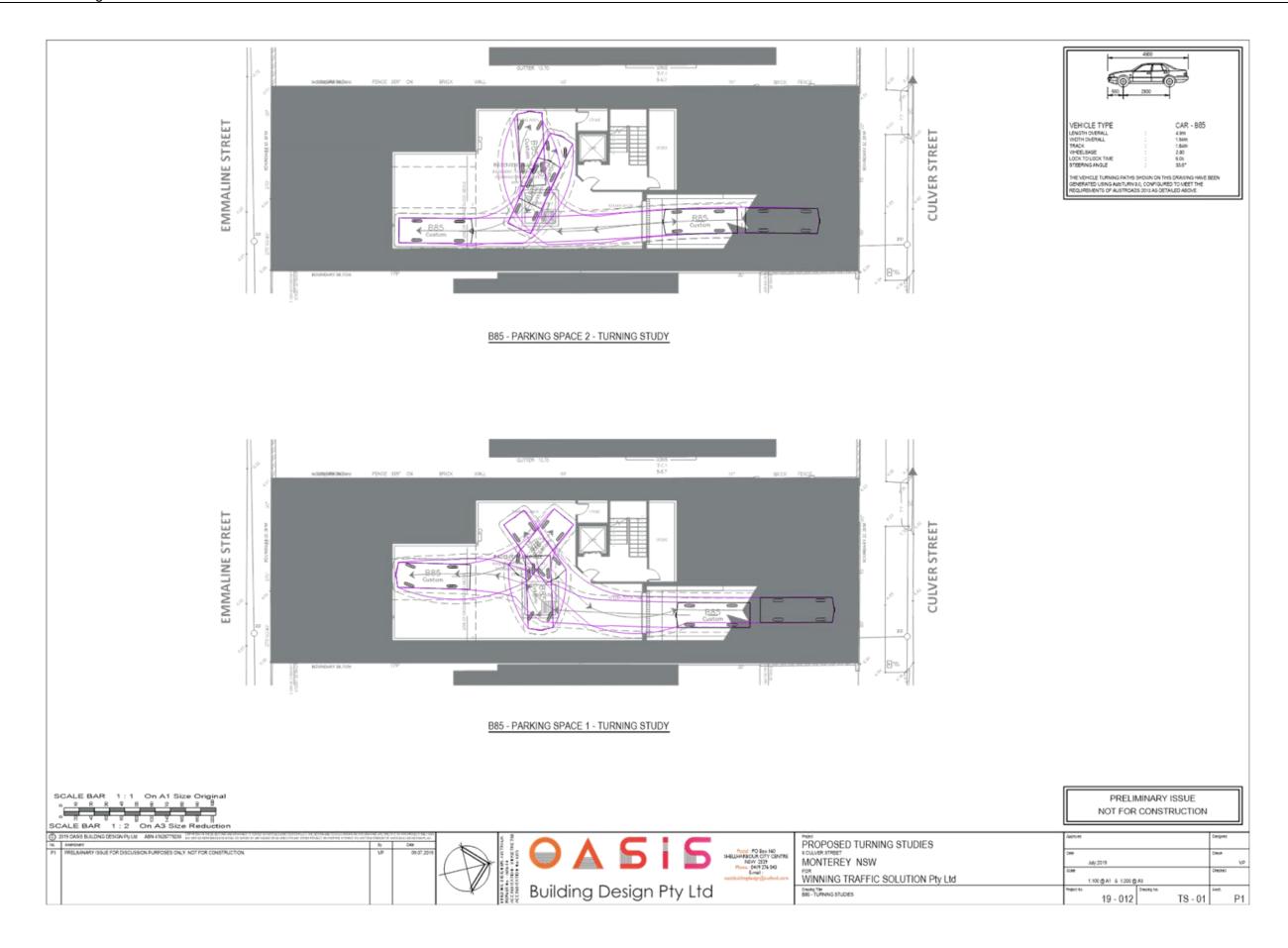
Bayside Local Planning Panel 17/09/2019













General Manager Bayside Council 444-446 Princes Highway ROCKDALE NSW 2216

30 April 2019

CLAUSE 4.6 VARIATION – HEIGHT OF BUILDING
CLAUSE 4.3(2) ROCKDALE LOCAL ENVIRONMENTAL PLAN 2011
DEVELOPMENT APPLICATION – DEMOLITION OF EXISTING DWELLING AND CONSTRUCTION OF NEW DWELLING – 6 CULVER STREET MONTEREY

BACKGROUND

This Clause 4.6 variation is a written request to vary a development standard for building height to support a development application for the demolition of a dwelling and the construction of a new dwelling at **No. 6 Culver Street Monterey**.

The stairwell and lift shaft of the building (including the roof over) will have a height of 9.8m at the highest point. This exceeds the height indicated under the Rockdale Local Environmental Plan Height of Buildings Map which specifies a maximum building height of 8.5m. The variation is 1.3m at the worst point. As a percentage, the variation is 15.29%.

The above numerical standard is identified as a development standard which requires a variation under Clause 4.6 of the LEP to enable the granting of consent to the development application.

The LEP states:-

building height (or height of building) means the vertical distance between ground level (existing) and the highest point of the building, including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.

It should be noted that the majority of the building complies with the 8.5m development standard and the variance is limited to a relatively small section of the proposed dwelling comprising of the stair and lift well on the roof level.

PURPOSE OF CLAUSE 4.6

The Standard Instrument LEP contains its own variations clause being Clause 4.6. Clause 4.6 of the Standard Instrument is similar in tenor to the former State Environmental Planning Policy 1, however the variations clause contains considerations which are different to those in SEPP 1.

There is judicial guidance available on how variations under Clause 4.6 of the Standard Instrument should be assessed, however the language of Clause 4.6(3)(a)(b) suggests a similar approach to SEPP 1 may be taken.

Urbanesque Planning Pty Ltd Suite 16, 895 Pacific Highway Pymble NSW 2073 PO Box 6141 Pymble NSW 2073 T +612 9440 8900 E mail@urbanesque.com.au www.urbanesque.com.au ABN 91 121 122 601

OBJECTIVES OF CLAUSE 4.6

The objectives of Clause 4.6 are as follows:-

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

ONUS ON APPLICANT

Clause 4.6(3) provides that:-

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

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

JUSTIFICATION OF PROPOSED VARIANCE

There is jurisdictional guidance available on how variations under Clause 4.6 of the Standard Instrument should be assessed in *Samadi v Council of the City of Sydney* [2014] NSWLEC 1199.

Paragraph 27 of the judgement states:-

Clause 4.6 of LEP 2013 imposes four preconditions on the Court in exercising the power to grant consent to the proposed development. The first precondition (and not necessarily in the order in cl 4.6) requires the Court to be satisfied that the proposed development will be consistent with the objectives of the zone (cl 4.6(4)(a)(ii)). The second precondition requires the Court to be satisfied that the proposed development will be consistent with the objectives of the standard in question (cl 4.6(4)(a)(ii)). The third precondition requires the Court to consider a written request that demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and with the Court finding that the matters required to be demonstrated have been adequately addressed (cl 4.6(3)(a) and cl 4.6(4)(a)(i)). The fourth precondition requires the Court to consider a written request that demonstrates that there are sufficient environmental planning grounds to justify contravening the development standard and with the Court finding that the matters required to be demonstrated have been adequately addressed (cl 4.6(3)(b) and cl 4.6(4)(a)(i)).

Precondition 1 - Consistency with zone objectives

The land is located in the R2 – Low Density Residential zone. The objectives of the R2 zone are articulated in the land use table in the RLEP:-

6 Culver Street Monterey

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

Comments

The proposal is consistent with the first objective because the development will result in a new dwelling that meets the needs of the community in a low density residential environment. This is achieved despite the requested variation to the building height.

The second objective is not relevant to the application.

The third objective is satisfied because the proposed development is consistent with the character and amenity of the area. The character of The Grand Parade and surrounding streets is in transition from a streetscape of older single dwellings of modest size to dwellings of a larger bulk and scale which maximise the development potential of the site and incorporate the benefit of water views into the design.

The site may be developed with the stated variation to building height (in part) without being inconsistent with the zone objectives. This is because in considering the question of consistency, the adopted approach of the former Chief Judge, Justice Pearlman in *Schaffer Corporation v Hawkesbury City Council (1992)* 77 LGRA 21, is as follows at Paragraph [27]:

"The guiding principle, then, is that a development will be generally consistent with the objectives, if it is not antipathetic to them. It is not necessary to show that the development promotes or is ancillary to those objectives, nor even that it is compatible."

Precondition 2 - Consistency with the objectives of the standard

The customary and accepted approach to sustaining variations to development standards is to assess the proposed variance against the relevant objectives of the development standard. In this case the objective of the height of buildings control are articulated at Clause 4.3(1) of the RLEP as follows:-

- 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,
- to provide building heights that maintain satisfactory sky exposure and daylight to buildings, key areas and the public domain,
- to nominate heights that will provide an appropriate transition in built form and land use intensity.

Considering the terms of the stated objective, we say in support of the variance:-

6 Culver Street Monterey

- While the extent of the variance is 15.29% (1.3m), the area of non-compliance is limited to
 the roofed stairwell and lift shaft on the roof terrace. All other aspects of the dwelling are
 fully compliant with the 8.5m height control.
- The stairwell and lift shaft have been situated on the northern side of the dwelling so as to minimise negative impacts in respect of overshadowing of neighbouring properties.
- The height of the development is compatible with the general character of the area which, by observation, exhibit numerous similar height variations where terrace roofs are approved. Such roof terraces (and therefore height variations) are also part of the evolving character of the area and the streetscape.
- The development will maintain similar height and scale characteristics with surrounding development in Culver Street and nearby The Grand Parade and therefore no height transition issues are raised. Refer to Figure 1.
- The proposal will therefore maintain an acceptable and consistent urban form while this
 variation of the height control provides access to the roof terrace allowing the design to take
 advantage of the site's position and provide views across Botany Bay.



Figure 1: Extract from architectural plans showing streetscape analysis.

Precondition 3 - To a consider a written request that demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case

This document is the written request that demonstrates that compliance with the development standard for building height is unreasonable or unnecessary. As the land has the potential for water views over Botany Bay, the building has been designed with a trafficable roof to allow resident enjoyment of this asset. The dwelling is similar to many other approved dwellings on The Grand Parade and surrounding streets. In this regard, strict compliance with the development standard would be unreasonable as it would preclude access to the roof for use as a deck. This is considered to be inequitable.

It is considered that the resulting design achieves the objectives of the control and the objectives of the zone as demonstrated. Since the development satisfies these objectives, numerical compliance is also unnecessary. For the above reasons, strict compliance is both unreasonable and unnecessary.

Precondition 4 – To consider a written request that demonstrates that there are sufficient environmental planning grounds to justify contravening the development standard and with the Court [or consent authority] finding that the matters required to be demonstrated have been adequately addressed

The consent authority must be indirectly satisfied there are sufficient environmental planning grounds to allow the variation to the development standard.

6 Culver Street Monterey

In this regard I note the following comments which are similar to comments previously made:-

- The proposal is for a dwelling which is otherwise highly compliant with Council's controls for dwelling houses. Bulk and scale are ameliorated through the design of the building with excellent articulation and modulation of the facades. Additionally,
 - $\circ~$ The landscaped area provided is 119.65sqm where the DCP control requires 118sqm.
 - o The floor space ratio is less than the prescribed maximum of 0.5:1 at 0.49:1.
- The design is motivated by the attainment of water views which I a reasonable expectation in a context where such views are available and there are dwellings approved with similar roof terraces.
- The variation has no adverse impact on the streetscape or adjoining properties in terms of external expression, shadow impact or bulk and scale. The variation would not discernible by the casual observer. It should be remembered that the building will be viewed in three dimensions and the two-dimensional representation in the elevations is a distortion. A three-dimensional image is provided on the cover page of the architectural plan set.

For the above reasons and previous reasons, it is considered there are sufficient environmental planning grounds to justify a variation of the development standard for building height.

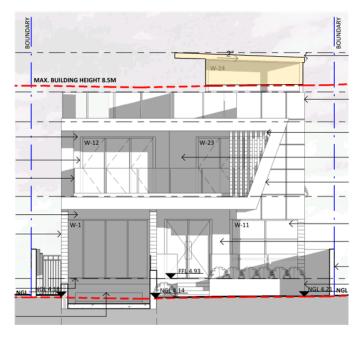


Figure 2: Two dimensional elevation showing the extent of variation (yellow).

6 Culver Street Monterey



Figure 2: 3D image of the proposed façade noting the stairwell

In the recent 'Four2Five' judgement (Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90), Pearson C outlined in her judgement that a Clause 4.6 variation requires identification of grounds that are particular to the circumstances to the proposed development. That is to say that simply meeting the objectives of the development standard is insufficient justification of a Clause 4.6 variation.

However, it should be noted that a Judge of the Court, and later the Court of Appeal, upheld the Four2Five decision but expressly noted that the Commissioner's decision on that point (that she was not "satisfied" because something more specific to the site was required) was simply a discretionary (subjective) opinion which was a matter for her alone to decide. It does not mean that Clause 4.6 variations can only ever be allowed where there is some special or particular feature of the site that justifies the non-compliance. Whether there are "sufficient environmental planning grounds to justify contravening the development standard" is something that can be assessed on a case by case basis and is for the consent authority to determine for itself.

The recent appeal of *Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7* is to be considered. In this case the Council appealed against the original decision, raising very technical legal arguments about whether each and every item of clause 4.6 of the LEP had been meticulously considered and complied with (both in terms of the applicant's written document itself, and in the Commissioner's assessment of it). In February 2017 the Chief Judge of the Court dismissed the appeal, finding no fault in the Commissioner's approval of the large variations to the height and FSR controls.

While the judgment did not directly overturn the *Four2Five v Ashfield* decision, an important issue emerged. The Chief Judge noted that one of the consent authority's obligations is to be satisfied that "the applicant's written request has adequately addressed ...that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case ...and that there are sufficient environmental planning grounds to justify contravening the development standard." He held that this means:

"the Commissioner did not have to be satisfied directly that compliance with each development standard is unreasonable or unnecessary in the circumstances of the

6 Culver Street Monterey

case, but only indirectly by being satisfied that the applicant's written request has adequately addressed the matter in subclause (3)(a) that compliance with each development standard is unreasonable or unnecessary".

Additionally, there is no requirement under Clause 4.6 or case law that a non-compliant development must demonstrate a better planning outcome. (Initial Action Pty Ltd v Woollahra Municipal Council (2018).

Accordingly in regards to the proposed development at 6 Culver Street Monterey, the following environmental planning grounds are considered to be sufficient to allow Council to be satisfied that a variation to the development standard can be supported:-

- The site is located near the shores of Botany Bay Monterey which has the benefit of significant water views.
- In order to attain and enjoy these views (which is a reasonable expectation for the
 enjoyment and amenity of the residents) the dwelling has been designed with a roof
 terrace.
- Such roof terraces are common to the area and in order to access the terrace a stairwell is needed. The stairwell causes a breach of the prescribed building height.
- Strict compliance with the height control would prevent access to the roof terrace which is considered to be unreasonable in the local context where such roof terraces are a common feature of the built environment.
- Strict compliance is unnecessary as the building achieves the qualitative outcomes of
 the building height control. The stairwell and lift to the roof terrace is situated towards
 the north and significantly set back from the southern side of the building. It is
 considered that the non-compliant height in this part of the building will have no
 negative impacts in respect of urban form, sky exposure, shadow impact or daylight
 access.
- The proposal is meritorious in that it is highly compliant with Council's controls and the
 variance is minor in its extent compared to the building envelope. Refer to Statement
 of Environmental Effects.
- In order to retain the aesthetic qualities and integrity of the architectural design, a variation is needed but the variation will therefore produce a better environmental planning outcome.
- · A compliant proposal would force an inferior outcome in terms of resident amenity.
- The variation to the building height is inconsequential as the non compliant portion is set well back from the street (12.2m) and will be viewed at an oblique angle. It will be of an acceptable impact in the streetscape and the amenity of neighbouring properties is not eroded.

The above points, together with the comments under Preconditions 2 and 3, are the environmental planning grounds which merit a variation to the development standard. It is our opinion therefore that the objectives of the development standard is satisfied and strict compliance with the standard is both unreasonable and unnecessary in the circumstances.

6 Culver Street Monterey

According to the relevant case law, common ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary are summarised in Wehbe v Pittwater Council (2007). The five tests under Wehbe are listed below. Only one of the tests needs to be satisfied. Consideration of a variation is not limited to these tests – they are simply the most common ways invoked in considering whether compliance is unreasonable or unnecessary.

 the objectives of the standard are achieved notwithstanding non-compliance with the standard;

Comment: Yes. Refer to comments under 'Justification' above which discusses the achievement of the objectives of the standard.

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

Comment: It is considered that the purpose of the standard is relevant but the purpose is satisfied.

the underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;

Comment: Compliance does not defeat the underlying object of the control however compliance would prevent the approval of an otherwise supportable development. Development standards are not intended to be applied in an absolute manner.

 the development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;

Comment: Yes. It is evident that Council has permitted numerous variations to the development standards in cases where roof terraces have been approved on dwellings.

5. the zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.

Comment: The development standard is applicable to and appropriate to the zone.

CONCLUSION

The proposal seeks a variance of 1.3m to Council's Height of Buildings control found in Clause 4.3 of the Rockdale Local Environment Plan 2011. The breach of the control occurs only where the roof terrace stairwell and lift shaft are situated.

The area of the non-compliant portion of the building is relatively small compared to the building envelope and the subject elements are appropriately located on the northern side of the building with a significant setback to the street. The extent of the variance is inconsequential to the surrounding environment, neighbouring properties and streetscape as discussed in this request.

6 Culver Street Monterey

The height variation will greatly improve the residential amenity of the subject dwelling and the resulting building is considered consistent with the built form and character of Culver Street and surrounding streets.

Therefore, we request that council support the variation on the basis that there are sufficient environmental planning grounds to justify a variance to the development standard.

In my opinion, the proposed variance is supportable and the application is recommended for approval by the Council.

Eugene Sarich

Urbanesque Planning Pty Ltd

6 Culver Street Monterey



Suite 16, 895 Pacific Highway Pymble 2073
Tel 02 9440 8900 Mob 0419 250 600
Email mail@urbanesque.com.au

STATEMENT OF ENVIRONMENTAL EFFECTS

DEMOLITION OF EXISTING DWELLING AND CONSTRUCTION OF NEW DWELLING

LOT 446 DP 11398

6 CULVER STREET

MONTEREY



CONTENTS

1.0	INTRODUCTION3
2.0	PROPERTY DESCRIPTION
3.0	SITE DESCRIPTION4
4.0	PROPOSED DEVELOPMENT8
5.0	ZONING AND DEVELOPMENT CONTROLS8
5.1	Rockdale Local Environmental Plan 20119
	Clause 2.3 Objective of the Residential R2 Zone10
	Clause 2.7 Demolition requires consent
	Clause 6.1 Acid Sulfate Soils
5.3	Rockdale Development Control Plan 201110
6.0	MATTERS FOR CONSIDERATION \$4.15 ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 197917
6.1	The provisions of any environmental planning instrument
6.2	Any draft environmental planning instrument17
6.3	Any development control plan17
6.4	Any planning agreement that has been entered into under section 7.417
6.5	Any matter prescribed by the regulations that apply to the land
6.6	The likely impacts of that development
6.7	Suitability of the Site - Section 4.15(1)(c)17
6.8	Submissions made in accordance with this Act or the regulations
6.9	The public Interest
7.0	CONCLUSION

1.0 INTRODUCTION

This Statement of Environmental Effects accompanies details prepared by ArtMade Architects, Project No. 19566, Issue A, dated 23 March 2019, to undertake demolition of the existing dwelling and construction of a new dwelling at **6 Culver Street, Monterey**.

This Statement describes the subject site and the surrounding area, together with assessment against the relevant planning controls and policies relating to the site and the type of development proposed. As a result of this assessment it is concluded that the development of the site in the manner proposed is considered to be acceptable and is worthy of the support of the Council.

This statement considers relevant planning matters under Section 4.15 of the Environmental Planning and Assessment Act 1979, (as amended) including but limited to:-

- Environmental Planning and Assessment Act 1979
- Rockdale Local Environmental Plan 2011
- Rockdale Development Control Plan 2011

As a result of the assessment it is concluded that the application addresses the controls satisfactorily and that the granting of consent to the application is justified.

2.0 PROPERTY DESCRIPTION

The subject land is described as **6 Culver Street, Monterey**. The site is zoned R2 – Low Density Residential under the Rockdale Local Environmental Plan 2011.

The site is not located within an area of heritage conservation or within the Sydney Airport Australian Noise Exposure Forecast. The land is affected by Class 4 acid sulfate soils.



Figure 1: Location and zoning map. Subject site highlighted in blue.

6 Culver Street Monterey

3.0 SITE DESCRIPTION

The subject site is located on the southern side of Culver Street Monterey. Regular in shape, the site comprises a total area of $472.1m^2$ with a frontage to Culver Street of approximately 12.19m. The site is relatively flat sloping to the rear.

The site currently supports a small brick and tile cottage, detached garage and various paved and landscaped areas. The dwelling is of the immediate post 1945 austerity style and is of modest proportions with few architectural embellishments as is typical of the period.



Figure 2: View of the existing dwelling as viewed from Culver Street.

The front yard supports a modest landscape, simply framed by vegetation along the eastern side boundary. To the rear, the yard is largely grassed, supporting vegetation along the boundaries and the rear of the dwelling.



Figure 3: View of the rear yard of the subject site.

6 Culver Street Monterey

This section of Culver Street has undergone considerable redevelopment over the last 20 years with large 2-3 storey dwellings replacing the original housing stock due to the proximity of scenic Botany Bay and the Georges River.

The subject site is in close proximity to Botany Bay and Cook Park Trail seen in Figure 4. The neighbouring property to the west is a large two-storey brick and tile dwelling shown in Figure 6 and to the east is a single storey brick dwelling shown in Figure 5 which has street frontage to The Grand Parade Monterey.

The rear of the property has access to Emmaline Street. A double garage for the property currently faces Emmaline Street and will be demolished for the proposed dwelling.



Figure 4: Aerial view of 6 Culver Street Monterey noting the local context.

6 Culver Street Monterey



Figure 5: Neighbouring property, No. 231 The Grand Parade, side elevation as viewed from Culver Street.



Figure 6: Neighbouring property, No. 8 Culver Street Monterey.

6 Culver Street Monterey



Figure 7: Streetscape view of dwellings in Culver Street opposite the subject site.



Figure 8: View of garage at rear of site which faces Emmaline Street.

6 Culver Street Monterey

4.0 PROPOSED DEVELOPMENT

It is proposed to demolish the current dwelling and the rear garage and construct a new predominately two-part-three storey dwelling with a terrace roof top and basement parking. The application also proposes to provide a new landscaped scheme. More specifically the application proposes the following:-

Basement Level

 Excavate 2.3m (to base of slab) accommodate double garage with panel lift door. Access via stairwell and lift.

Ground Floor

 Entry porch, formal living and dining, informal dining, laundry, powder room, kitchen, family room, lift and stairwell.

First Floor

 Four bedrooms (Master bedroom with ensuite and walk in wardrobe), living room and front and rear facing balconies.

Roof level

• Open viewing terrace; lift access and enclosed stairwell from lower level living room.

External works

• Construct new driveway and entrance and provide new landscaping.

The new dwelling will be of a contemporary style (Refer Figure 9). Contemporary architecture is common to the area as older housing stock is being redeveloped. This is a sign of the gentrification of the bayside area where water views are available.



Figure 9: 3D image of the front elevation of the proposed dwelling.

6 Culver Street Monterey

5.0 ZONING AND DEVELOPMENT CONTROLS

In accordance with the Environmental Planning and Assessment Act 1979, the following assessment considers the proposal against the relevant planning instruments.

5.1 Rockdale Local Environmental Plan 2011

The site is zoned Residential R2 under the provisions of the Rockdale Local Environmental Plan 2011. Dwelling houses and ancillary development are permissible subject to the consent of Council.

CONTROL	PERMISSIBLE	PROPOSED	COMPLIANCE
Clause 2.2 Zoning	Dwelling houses are permissible in the R2 Zone with the consent of council.	Demolition of existing dwelling and construction of new dwelling.	Complies
Clause 4.3 8.5m Height of Building		Approximately 9.8m	No See Clause 4.6 attached
Clause 4.4 Floor Space Ratio	0.5:1	0.49:1	Complies
Floor Space Ratio Clause 5.10(5)(c) Heritage Conservation Conservation		The rear of the site is diagonally opposite Heritage Item 1168, Cooks Park on Botany Bay. While the park is heritage listed, there is varied development opposite the park in The Grand Parade and General Holmes Drive. This ranges from single dwellings to larger residential flat buildings. The redevelopment of the subject site will have no impact on the heritage significance of Cook Park.	Complies



Figure 10: Extract from Rockdale LEP heritage map, noting Cook Park in proximity to the subject site.

6 Culver Street Monterey

Clause 2.3 Objective of the Residential R2 Zone

The objectives of the Residential R2 zone are as follows:

To provide for the housing needs of the community within a low density residential environment.

To enable other land uses that provides 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 minimizes any impact on the character and amenity of the area.

The proposed demolition of the existing dwelling and the construction of a new dwelling are considered consistent with the zone objectives and will greatly improve the amenity of the residents and the functionality of the site.

Clause 2.7 Demolition requires consent

Demolition may only be carried out with the consent of Rockdale council.

This application seeks consent to demolish the existing building and all ancillary structures and therefore is compliant with this clause.

Clause 6.1 Acid Sulfate Soils

The land is classified as Class 4 on the Council's Acid Sulfate Soils map. Under this classification the following works require development consent:—

- Works more than 2 metre below the natural ground surface.
- Works by which the water table is likely to be lowered more than 2 metre below the natural ground surface.

The construction of the basement parking will require excavation to a depth of 2.02m and therefore this clause must be engaged. In any event, the construction of the new dwelling requires development consent. Accordingly, an acid sulfate soils management plan by eieAustralia, Reference No. E24191.E14.Rev0, dated 16 April 2019 accompanies this statement. The report concludes:-

Based on the laboratory results and observations compiled, EI consider the risk posed by ASS is considered low, and management planning is not required. Soils required to be removed from site during development will require appropriate classification in accordance with the EPA (2014) Waste Classification Guidelines. This requirement is to enable disposal of site soils to an appropriately licensed landfill facility.

5.3 Rockdale Development Control Plan 2011

Rockdale Development Control Plan provides the relevant design guidelines for development within the Rockdale Local Government Area. The following provisions of the document are considered relevant to the proposal.

6 Culver Street Monterey

STATEM	ENIT OF	EENIVID	ONINAENI	TAI CE	ECTE
SIAIEIVI		L EIA A I L	CIMINEIA	TALEFI	FECIS

CONTROL	OBJECTIVES	PROPOSED	COMPLIANCE			
	PART 4 – GENERAL PRIN	CIPLES FOR DEVELOPMENT				
	4.1 Site Planning					
Views and Vistas			Complies			
Water Management	er Development must comply with The proposal will meet council's		Complies			
Water Conservation	Residential development is to demonstrate compliance with the Building Sustainability Index (BASIX)	Above ground water tanks are to be installed with accordance of the council guidelines and the National Plumbing and Drainage Code AS/NZS 3500. The proposed development is consistent with the accompanying BASIX certificate.	Complies			
Management Development must minimise any soil loss from the site to reduce impacts of sedimentation on waterways.		Appropriate measures to minimise soil loss and control sediment are detailed on the accompanying Sediment Control Plan. A standard 600mm high silt fence will be constructed around the boundaries of the site during the demolition and construction phase.	Complies			
Tree Preservation Council consent is required to undertake tree work including removing, pruning, cutting down, lopping, and ringbarking of any tree if the tree: is more than 3 metres tall, or has a circumference in excess of 300mm at a height of 1 metre above the ground.		The site supports no significant trees or vegetation. Vegetation consists of small shrubs and lawn areas which are proposed to be removed. The site is to be re-landscaped upon completion of the dwelling.	Complies			
	4.2 Streetscap	e and Site Context				
Site Context	Development is to respond and sensitively relate to the broader urban context including topography, block patterns and subdivision, street alignments, landscape, views and the patterns of development within the area.	The proposed new dwelling is of an appropriate bulk and scale and is compatible with the locality. The development is consistent with the prevailing modern 1-2 storey dwelling form, bulk and scale within Culver Street.	Complies			

CONTROL	OBJECTIVES	PROPOSED	COMPLIANCE
		The proposal does not conflict with the topography, subdivision patterns, street alignments or view corridors to or from the site.	
		The development will provide improved amenity for the owners through larger living accommodation and access to views over Botany Bay.	
Streetscape Character	The building design and use of materials, roof pitch and architectural features and styles must have regard to those of surrounding buildings.	The proposed new dwelling has regard to the existing neighbouring dwellings and character of the local area	Complies
	Building setbacks from the street boundary are to be consistent with prevailing setbacks of adjoining and nearby buildings.	The proposed finishes will complement those of the general streetscape including the use of cement rendered and painted walls.	Complies
	The front yard is to remain at natural ground level and be landscaped to enhance the front elevation.	The front yard will remain at natural ground level and existing landscaping will be cleared and enhanced.	Complies
	Garages and carports are not permitted between the front building line and the front property boundary.	The proposed development provides for basement parking and will not be located between the front building line and the front property boundary.	Complies
Fencing	Front fences and walls are to enable surveillance of the street from the dwelling.	A new front fence which integrates with the style of the dwelling will be provided at the front. This fence will not be higher than 1.2m and will allow surveillance from the dwelling.	Complies
	4.3 Landscaping	Planning and Design	
Open Space and Landscape	25% of the site is to be landscaped, (equivalent to 118.02sqm).	119.65sqm or 25.3%	Complies
design	At least 20% of the front setback area of a residential development is to be provided as landscaped area.	The proposed dwelling is compliant with landscape area requirements and it is noted that landscape plans are not required for this development application.	Complies
Private Open Space	Minimum private open space requirement of 80sqm with a minimum width of 3m. Private open space must take account of the visual and acoustic	The rear yard area alone provides 150sqm of private open space.	Complies

CONTROL	OBJECTIVES	PROPOSED	COMPLIANCE
	privacy of its occupants and neighbours. Development must ensure that the usability of private open space of adjoining buildings is not reduced through overlooking and overshadowing.	The private open space is located at ground level and overlooking will be minimised by an existing boundary fence and landscaping.	Complies
	4.4 Sustainab	le Building Design	
Energy Efficiency	A BASIX certificate is to be submitted with the development application for residential development.	A BASIX certificate is attached.	Complies
Natural Light and Ventilation	Minimum ceiling heights of 2.7m in habitable spaces.	The proposed ceiling height of the new dwelling will be 2.7m for each storey and 2.710m in the basement parking shown in section A.	Complies
	Buildings must be designed to maximise opportunities for cross flow ventilation by providing clear breeze paths and shallow building depths.	The proposed development has strong cross flow ventilation with all walls of the dwelling (except the basement) containing windows or doors to provide natural light and ventilation.	Complies
Visual and Acoustical Privacy	The windows of a habitable room with a direct sightline to the windows of a habitable room of an adjacent dwelling and located within 9.0m:- a. are sufficiently off-set to preclude views into the windows of the adjacent	The proposed development is setback a minimum of 1.2m along the eastern and western boundary. This separation coupled with the provision of a high dividing fence will provide satisfactory ground floor privacy.	Complies
	building; or b. have sill heights of 1.7m above floor level; or c. have fixed obscure glazing in any part of the window below 1.7m above floor level.	The first-floor west elevation windows have been designed either as highlight windows or obscure glazed windows to maximise privacy to the neighbouring dwelling. The window analysis is as follows. W9 – Full height obscure glazed. W20 & W21 – Highlight (1.7m sills).	Complies
	The location of driveways, open space and recreation areas and ancillary facilities external to the dwelling must be carefully planned to ensure minimal noise impact on adjoining residential properties.	W22 – Bedroom window – recessed with planter box. The east elevation is designed to obtain views of Botany Bay looking over the roof lines of the adjoining dwellings. The garages of the two adjoining dwellings have been erected up to the common boundary with No. 6 Culver Street so that there is no direct overlooking available into	Complies

CONTROL	OBJECTIVES	PROPOSED	COMPLIANCE
		the adjoining rear yards or windows. Refer to Figure 11. The eastern elevation first floor window analysis is as follows:- W13 - Bedroom window looks over adjoining carport roof. W14 & W15 - Bedroom and Bathroom windows which are recessed and provided with a planter box. Also adjacent to garage on the boundary. W16 - Living room window adjacent to neighbouring garage on the boundary. The driveway and basement parking will have minimal noise impacts for the adjoining dwellings. The proposed private open space will be of minimal impact on the adjoining residential properties.	Complies Complies
Solar Access	Building form, separation and plan layout facilitates good solar access to internal and external living spaces. Buildings must be sited to reduce overshadowing on adjoining properties by increasing setbacks, staggering of design, variations in roof form and/or reducing building bulk and height. Development must have adequate solar access as per the following standards. Where existing adjoining properties currently receive less sunlight than these standards, sunlight must not be reduced by more than 20%. Low and medium density residential: Dwellings within the development site and adjoining properties should receive a minimum of 3 hours direct sunlight in habitable rooms and in at least 50% of the private open space between 9am and 3pm in mid-winter.	The shadow cast by the proposed dwelling at 9am in mid-winter allows a high level of solar access to the front yard and south=eastern corner of the rear yard but does impact on the western neighbouring site's rear yard. The shadow at 12pm is cast across the rear yard and allows for solar access for neighbouring properties for more than 3 hours. The shadow at 3pm impacts the dwelling of the south-eastern neighbouring property, however, it has sufficient solar access throughout the rest of the day. The subject and adjoining lots have a favourable solar orientation as the length of the sites run from north to south. This allows for the development site and any adjoining properties to receive more than the minimum of 3 hours direct sunlight during the hours of 9am to 3pm. June 22 nd (Winter Solstice) and September 22 nd (Equinox) shadow diagrams are submitted with the application.	Complies

6 Culver Street Monterey

CONTROL	OBJECTIVES	PROPOSED	COMPLIANCE			
	4.6 Car Parking, Access and Movement					
Parking rates	2 spaces for dwellings with 3 or more bedrooms.	This application seeks to provide a double garage.	Complies			
Car park Location and Design	Car parking areas are to be located so that they do not visually dominate either the development or the public domain.	The proposed basement parking is situated underneath the ground floor therefore it will not visually dominate the streetscape.	Complies			
	4.7 Site	e Facilities				
Waste Storage and Recycling Facilities	Waste storage facilities must be conveniently located.	Waste bins will be concealed behind the front fence or in the basement garage.	Complies			
Laundry facilities and drying areas	Laundry facilities are to be provided.	Laundry facilities are located within the dwelling.	Complies			
	PART 5 – DEV	ELOPMENT TYPE				
	5.1 Low and Medic	ım Density Residential				
Storey Height and Setbacks	Height - Two storeys	The proposed dwelling is 2 storeys. The building will read ostensibly as a two storey dwelling except where the lift and stairs reach to the rooftop terrace.	Complies			
	Space used for car parking will be considered as a storey if the ceiling of the car parking level extends more than 1m above natural ground level.	The basement parking is less than 1m above natural ground level and is therefore not a storey by definition.	Complies			
	Street – Prevailing setback or 6m	Setback is greater than 6m as shown in plans	Complies			
	Side Setback – 900mm	Side setbacks of approximately 1.2m are provided on either side of the proposed dwelling.	Complies			
	Rear Setback ground floor – 3m	14.662m	Complies			
	Rear Setback first floor – 6m	Excess of 6m	Complies			
Building Design	Large expanses of blank walls are to be avoided through the use of architectural design features, modelling and fenestration.	Building facades are articulated on all elevations.	Complies			

CONTROL	OBJECTIVES	PROPOSED	COMPLIANCE
	Garages are to be located a minimum distance of 300mm behind the front building line.	The proposed basement parking is located approximately 2m behind the front building line.	Complies
	The total width of the garage doors must be a maximum width of 6.3m or 40% (being 4.886m) of the site frontage width, whichever is lesser.	Garage door is 2.7m in width.	Complies



Figure 11: View of the rear of No. 231 The Grand Parade. This area will not be overlooked by the upper storey windows of the proposed dwelling. Refer to window analysis at Pages 13-14.

6 Culver Street Monterey

6.0 MATTERS FOR CONSIDERATION \$4.15 ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979

6.1 The provisions of any environmental planning instrument

The proposal is subject to the provisions of the Rockdale Local Environmental Plan 2011 and SEPP BASIX. It is considered that the provisions of these environmental planning instruments have been satisfactorily addressed within this report and that the proposal achieves compliance with their provisions.

There are no other environmental planning instruments applying to the site.

6.2 Any draft environmental planning instrument

There are no draft environmental planning instruments applying to the land.

6.3 Any development control plan

The development has been designed to achieve the objectives of Council's Development Control Plan 2011 for residential development as discussed in this report.

6.4 Any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4

No matters of relevance are raised in regard to the proposed development.

6.5 Any matter prescribed by the regulations that apply to the land to which the development relates.

No matters of relevance are raised in regard to the proposed development.

6.6 The likely impacts of that development

It is considered that the proposal, which seeks approval for demolition of existing dwelling and the construction of a new two-part-three storey dwelling with basement parking and a terrace roof, is reasonable and achieves the objectives of the relevant policies.

It is considered that the resultant development is compatible with and will complement the established character of the area.

The proposal is considered to be well designed having regard to the relevant provisions of the Council's LEP, Development Control Plans and Policies.

6.7 Suitability of the Site - Section 4.15(1)(c)

The subject land is currently zoned R2 low density residential under the Rockdale Local Environmental Plan 2011 and is considered suitable for the proposed development.

6 Culver Street Monterey

The site does not exhibit any unusual constraints in terms of site area and site depth and the design responds well to the setting to produce an appropriate and acceptable planning outcome for the site.

6.8 Submissions made in accordance with this Act or the regulations

This is a matter for Council in the consideration of this proposal.

6.9 The public Interest

The proposal will not unreasonably impact upon the environment, the character of the locality or upon the amenity of adjoining properties and is therefore considered not to be contrary to the public interest.

7.0 CONCLUSION

The proposal for the demolition of the existing dwelling and the construction of a two-partthree storey dwelling including basement parking and a terrace rooftop, has been assessed against the requirements of Section 4.15(1) of the Act, the Rockdale LEP and DCP 2011.

The proposal maintains an appropriate built form and height and scale relationship with the adjacent buildings and satisfies the DCP's requirements, if not numerically, then by satisfying the relevant objectives of the controls.

As the proposed development will not have any unreasonable impacts on the environment, visual quality of the area or the amenity of the adjoining properties, the issue of Development Consent for this development proposal at **6 Culver Street Monterey** under the delegation of Council is requested.

Eugene Sarich

Urbanesque Planning Pty Ltd



Bayside Local Planning Panel

17/09/2019

Item No 6.4

Application Type Development Application

Application No DA-2018/346 Lodgement Date 11/12/2018

Property 29 Kurnell Street, Botany

Ward Mascot

Owner Mirador Kurnell Street Pty Ltd

Applicant Bureau SRH

Proposal Demolition of existing structures, Torrens Title Subdivision

and construction of two(2) semi-detached dwellings; two (2) storey detached garage with loft studio and associated

landscaping.

No. of Submissions One (1)

Cost of Development \$1,042,784

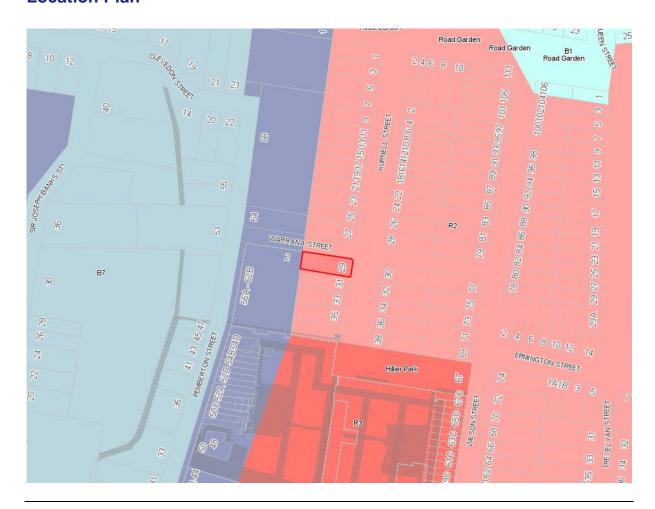
Report by Michael McCabe, Director City Futures

Officer Recommendation

- That the Bayside Local Planning Panel, exercising the functions of the Council as the consent authority pursuant to s4.16 of the Environmental Planning and Assessment Act 1979 approves a variation to the floor space ratio prescribed by cl4.4 Floor Space Ratio of the Botany Bay Local Environmental Plan 2013, as it is satisfied that the applicant's request has adequately addressed the matters required to be demonstrated by cl4.6 of that Plan, and the proposed development would be in the public interest because it is consistent with the objectives of that particular standard and the objectives for development within the zone.
- That development application DA-2018/346 for Demolition of existing structures, Torrens title subdivision into two lots, construction of two semi-detached dwellings, two (2) storey detached garage with loft / studio and associated landscaping at 29 Kurnell Street, Botany be APPROVED pursuant to s4.16(1)(a) of the Environmental Planning and Assessment Act 1979 and subject to the conditions of consent attached to this report.
- 3 That the submitter be notified of the Bayside Local Planning Panel's decision.

Item 6.4 244

Location Plan



Attachments

- 1 Planning Assessment Report <a>J
- 2 Site Plan J
- 3 East West Elevations J
- 4 North South Elevations J.
- 5 Schedule of Colours and Materials <u>4</u>
- 6 Landscape Plan J.
- 7 Shadow Diagram in Plan Form <u>J</u>
- 8 Shadow Diagrams in Elevations J.
- 9 Amended Clause 4.6 Variation to Clause 4.4A Exceptions to Floor Space Ratio &

Item 6.4 245

BAYSIDE COUNCIL

Planning Assessment Report

Application Details

Application Number: DA-2018/346
Date of Receipt: 11 December 2018
Property: 29 Kurnell Street, Botany

Lot & DP/SP No: Lot 47 DP 15704

Owner: Mirador Kurnell Street Pty Ltd

Applicant: Bureau SRH

Applicant Address: 3/2 Verona Street, Paddington

Proposal: Demolition of existing structures, Torrens title subdivision into two

lots, construction of two semi-detached dwellings, two (2) storey detached garage with loft / studio and associated landscaping.

Value: \$ 1,042,784.00

Zoning: Botany Bay Local Environmental Plan 2013

Author: Eric Alessi – Development Assessment Planner

Date of Report: 23.05.2019

Classification of Building: 1a

Present Use: Single Dwelling

No. of submissions: One (1)

Key Issues

The key issues with this application are as follows:

- The proposal exceeds the maximum floor space ratio for the site. A clause 4.6 has been submitted and is supported.
- The proposal involves a Torrens Title subdivision (boundary adjustment).
- The proposal does not meet the minimum required solar access in accordance with part 4A.4.3
 Solar Access of the Botany Bay Development Control Plan.
- · The proposal includes a variation to the secondary street setback.
- One (1) submission has been received.

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 conditions of consent.

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 approves a variation to the floor space ratio prescribed by cl4.4 Floor Space Ratio of the Botany Bay Local Environmental Plan 2013, as it is satisfied that the applicant's request has adequately addressed the matters required to be demonstrated by cl4.6 of that Plan, and the proposed development would be in the public interest because it is consistent with the objectives of that particular standard and the objectives for development within the zone.
- 2. That development application DA-2018/346 for Demolition of existing structures, Torrens title subdivision into two lots, construction of two semi-detached dwellings, two (2) storey detached garage with loft / studio and associated landscaping at 29 Kurnell Street, Botany be APPROVED pursuant to s4.16(1)(a) of the Environmental Planning and Assessment Act 1979 and subject to the conditions of consent attached to this report.
- 3. That the submitter be notified of the Bayside Planning Panels decision.

Site Description

The subject site is located on corner of Warrana Street and Kurnell Street. The subject site is regular in shape with an area of 521.9 m², and a 12.41 metre frontage to Kurnell Street not including a 2.16 splay on the corner. The site is relatively level and is located within the R2 Low Density Residential zone. An existing single storey dwelling and metal shed at the rear is currently located on site.



Development surrounding the site consists of a mix of single storey and two storey detached dwellings located within the low density R2 Low Density Residential zone. The site is located directly adjacent to a B4 mixed use zone at the rear. There is a recently constructed three (3) story townhouse development directly adjacent to the site.

Site History

There are no historic application relating to the subject site. The site has an extended history of residential use.

Description of Development

The development application seeks Council consent for the demolition of the existing structures on site and construction of a new two storey semi-detached dwellings and garage with second storey loft.

The specifics of the proposal are as follow:

· Demolition of all existing structures on the site including the single storey dwelling and garage.

Construction of a two semi-detached dwelling consisting of the following:

Dwelling on proposed Lot 1

- Combined living, dining and kitchen area.
- · Laundry.
- Storeroom.
- · Study.
- Four (4) bedrooms.
- · Two (2) bathrooms.
- Rear balcony.

Outbuilding

- · Loft bedroom with water closet and balcony.
- Two (2) car garage.

Dwelling on proposed Lot 2

- Combined living, dining and kitchen area.
- · Single car garage and carspace within driveway hardstand.
- Four (4) bedrooms.
- Three (3) bathrooms.
- Rear and front balcony.

Torrens Title subdivision consisting of the following:

- Proposed Lot 02 272.12 square metres.
- Proposed Lot 01 249.82 square metres.

Revised plans have been received on 8 July 2019 to include the following changes:

- The provision of an Aircraft Noise Impact Assessment Report.
- Changing the size of the water closet within the loft.
- Provision of a Groundwater Infiltration Assessment Report.
- Additional articulation to northern elevation by extending the rear balcony along the side of the dwelling, incorporating a balcony to bedroom 01 and indentation along the stairwell.
- Increasing the setback for the garage to 0.9 metres.
- Changing the subdivision layout to increase the size of Lot 01.
- Changing the dimensions of the proposed Torrens Title subdivision decreasing the site of Lot 02 and increasing the size of Lot 01. A revised clause 4.6 statement has been provided.
- Revised BASIX and Landscape 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

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 ("BASIX") applies to the proposed development. The development application was accompanied by BASIX Certificates No. 978231S and 978195S. The BASIX certificates were later revised with the date of issue being the 23 August 2019.

The BASIX does not include the loft space above the garage for Lot 1. In this regard the applicant has provided the following justification.

The loft space above the garage was not modelled as BASIX only relates to structures that are "dwellings".

A dwelling means "...a room or suite of rooms occupied or used or so constructed or adapted as to be capable of being occupied or used as a separate domicile", per the Botany Bay Local Environmental Plan 2013.

BASIX applies to "BASIX affected buildings" which is defined as "...any building that contains one or more dwellings, but does not include a hotel or motel", per the Environmental Planning and Assessment Regulation 2000.

The loft space has been designed to not be a dwelling, nor is it reasonably capable of being adapted to become a separate dwelling, as there is no kitchen or shower. As such, the loft space is not a dwelling and BASIX does not apply.

State Environmental Planning Policy No. 55 - Remediation of Land

The provisions of SEPP 55 have been considered in the assessment of the development application, along with the requirements of Part 3K- Contamination of the Botany Bay Development Control Plan 2013. A referral was made to Council's Environmental Scientist. In the referral response it was advised that 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 since at least the 1960's with no evidence of potentially contaminating activities.
- 2 The site is not listed on any contamination databases.

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.

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

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

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

Council's Tree Management Officer has assessed the proposal are provided support subject to conditions of consent. The proposed conditions and comments provided in the referral response are as follows:

- Two (2) juvenile Angophora costata (Smooth Barked Apple) are located in the Public Domain.
- Consent is granted for the removal and stump grinding of the tree that is in the way of the proposed crossover along the Kurnell Street alignment at the applicant's expense.
- A Dial-Before-You-Dig enquiry is required prior to stump grinding.
- Prior to commencing demolition/any works on site, in order to ensure that the retained tree is protected during demolition and construction, and the health and structural stability is ensured a Tree Protection Zone (TPZ) shall be established.
- The applicant is to submit payment for a Tree Preservation Bond of \$2,000.00 to ensure protection of Council's street tree assets.
- To compensate Council for the removal of the Angophora costata (Smooth Barked Apple) the applicant at the time of implementing of the proposed landscape plan shall supply Council with one (1) Corymbia maculata (Spotted Gum) of minimum root ball/pot

size of 75 litres. The tree shall be sourced from a reputable supplier and grown to NATSPEC requirements.

Conditions will be placed on the consent requiring compliance with the above. The proposal has provided sufficient information and therefore is satisfactory with regards to the SEPP (Vegetation in Non-Rural Areas) 2017 and Section 3L.2, part C1 of the City of Botany Bay DCP 2013 (Amendment 8).

Botany Bay Local Environmental Plan 2013

Botany Bay Local Environmental Plan 2013 has been considered in the assessment of the Development Application and the following information is provided:

Part 2 - Permitted or Prohibited Development

The subject site is zoned R2 – Low Density Development. The proposal is classified as Semi-detached dwellings which is a permissible form of development with Council's consent.

Principal Provisions of BBLEP 2013	Compliance Yes/No	Comment
Clause 4.3 – Height of Buildings Maximum height limit: 8.5m	Yes	Proposed Height: 7.45 metres
Clause 4.4 – Floor Space Ratio Clause 4.4A – Exceptions to floor space ratio for residential accommodation Maximum Permissible FSR: 0.5:1 for other development other than dwelling houses. For a dwelling house in proposed Lot 1 the permissible FSR is 0.8:1 and in Lot 2 is 0.75:1. The permissible FSR for a dwelling house on the existing lot is 0.55:1.	No (Written clause 4.6 submitted)	Proposed FSR: Lot 01: 143.83 square metres 0.58:1 Lot 02: 176.58 square metres 0.65:1 (site area 521.9 square metres) The above Gross Floor Areas include areas above voids of stairwell and the loft area to the rear of Lot 01. The land is marked Area 3 in the Botany Bay Local Environmental Plan 2013 Floor Space Ratio map. In accordance with clause 4.4A (3)(a) the maximum floor space ratio for residential accommodation other than a dwelling house is 0.5:1.
Clause 5.1 – Relevant Acquisition Authority	Yes	The land is not reserved for acquisition.

Principal Provisions of BBLEP 2013	Compliance Yes/No	Comment
Is the land affected by road widening? (Clause 5.1 – Relevant Acquisition)	N/A	The land is not reserved for road widening.
Clause 5.10 – Heritage Conservation Is the site listed in Schedule 5 as a heritage item or within a Heritage Conservation Area?	N/A	No heritage item is located on the site.
The following provisions in Part 6 of the LEP apply to the development— • 6.1 – Acid sulfate soils • 6.3 – stormwater management • 6.9 – Development in areas subject to aircraft noise • 6.8 – Airspace Operations	Yes	6.1 The land is affected by Acid Sulfate Soils Class 3 however the proposal does not involve works more than 2 metres below the natural ground level or works which the watertable is likely to be lowered more than 2 metres below the natural ground surface. 6.3 Council's Development Engineers has reviewed the revised stormwater plans and have provided support. 6.8 The OLS is 51 AHD however the maximum building height is 16.6 AHD. 6.9 - The land is located in the 20 to 25 ANEF contour. An Acoustic report has been provided by Rodney Stevens Acoustics titled 'Aircraft Noise Impact Assessment – Residential Use Development 29 Kurnell Street, Botany'.

The objectives and provisions of the BBLEP 2013 have been considered in relation to the subject development application. The clause 4.6 variation to the floor space ratio standard is discussed below. The proposal is satisfactory against the controls and objectives of BBLEP 2013.

Variation to the Floor Space Ratio Standard

The site is located within 'Area 3' on the FSR map and therefore Clause 4.4A of the BBLEP 2013 applies to the proposal. The objectives of this clause are as follows:

- a) To ensure that the bulk and scale of development is compatible with the character of the locality; and
- b) To promote good residential amenity.

Pursuant to Clause 4.4A(3)(d), the proposal is defined as a 'semi-detached dwelling' and not defined as a 'dwelling house' or 'multi-dwelling' housing, and as such would fall under the category of 'all other development for the purpose of residential accommodation'. Therefore the maximum permitted FSR is 0.5:1. The permissible FSR if the proposal were for a dwelling house on each lot would be on Lot 1 0.8:1 and in Lot 2 0.75:1

The proposal is to demolish existing structures, construct a semi-detached dwelling and Torrens Title Subdivision. The following table demonstrates the relevant lot sizes, the proposed gross floor area and floor space ratio of the two allotments:

Proposed	Lot 1	Lot 2
Site Area	249.82 square metres	272.12 square metres
GFA	143.83 square metres	176.58 square metres
FSR	0.58:1	0.65:1
Variation to Standard	15.1% (+18.92sq.m.)	29.8% (+40.52sq.m.)

In Wehbe v Pittwater Council [2007-NSW LEC 827 (Wehbe), the Land and Environment Court set out the following 5 different ways in which an objection to a development standard may be unreasonable and unnecessary:

- The objectives of the standard are achieved notwithstanding non-compliance with the standard:
- The underlying objectives or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;
- The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;
- 4. The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;
- 5. The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard 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 development 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 required 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 Webbe.

The requirements of 4.6(3)(a), 4.6(3)(b), and 4.6(4)(a)(ii) are each addressed separately below: CL.4.6(3)(a): <u>Is the development standard unreasonable or unnecessary in the circumstances of the case?</u>

As required by clause 4.6 (3) of the Botany Bay Local Environmental Plan 2013, the applicant has provide a written justification for the variation to the floor space ratio development standard. The justification is summarised as follows:

 The proposed FSR variation for each semi-detached dwelling represents a minor variation to the maximum permissible FSR to the site is less that what would be permissible for an individual dwelling.

- The semi-detached dwellings provide ample landscaping and private open space in excess of the minimum requirements and are below the minimum required site coverage.
- The additional GFA has not resulted in the lack of capacity for the development to comply with the solar access requirements.
- Privacy has been suitably addressed as part of the design.
- The development has compatible bulk and scale with the character of the locality.

CL. 4.6(3)(b): Are there sufficient environmental planning grounds to justify contravening the development standard:

The issue of whether there are sufficient environmental planning grounds to justify contravening the development standards is discussed on page 12 and 13 of the clause 4.6 statement. The justification is summarised as follows:

- The amenity of the surrounds, existing view corridors and solar access are not negatively impacted by the floor space ratio.
- The proposed development will result in a better planning outcome as the proposed semidetached dwellings fit comfortably within the site without compromising the amenity of adjoining properties more that would be generated by a general increase in density on the site by a two (2) storey dwelling house.
- The proposal is in keeping with the building height control allowing for view lines to be maintained to and from the public domain.
- · The additional floor area allows for efficient and economic use of land.

CL.4.6(4)(a)(i): Whether the applicant's request has adequately addressed the above.

The argument provided by the applicant has adequately addressed the matters in Cl 4.6(3).

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

Objectives of Clause 4.6

The objectives of Clause 4.6 of the Botany Bay Local Environmental Plan 2013 are:

- 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.

Officer's Comments: Council recognises that the proposal meets the objectives of Clause 4.6 and those of the floor space ratio standard notwithstanding the proposed non-compliance. The proposal will facilitate two semi-detached dwelling houses both two storeys in height within the R2 – Low Density Residential Zone, which generally meets the required desired future character of the Botany character precinct. The reasons outlined in the applicants Clause 4.6 variation are will founded and flexibility can be applied for as it achieved a better outcome for the site and surrounding development.

Objectives of the Floor Space Ratio standard

The objectives of the development standard area expressly stated in Clause 4.4(1) of the BBLEP 2013. An assessment against the objectives of the clause is discussed below:

(a) to establish the maximum development density and intensity of land use,

The proposed development is in line with the type of development envisaged for the site. The scale of the building is lower than the residential flat building to the rear which maintains a FSR of 1.38:1. The building is three storeys in height and maintains a higher site coverage than the proposed development. The Floor Space Ratio is lower than what would be permissible for a dwelling house which would be 0.8:1 for Lot 1 and 0.75:1 for Lot 02.

(b) to ensure that buildings are compatible with the bulk and scale of the existing and desired future character of the locality,

The proposed building are not considered excessive given the existing development within the locality. In addition the area is undergoing transition with medium and higher density development being undertaken in the locality. It is noted a three (3) storey residential flat building has recently being approved and constructed adjacent to the site.

(c) to maintain an appropriate visual relationship between new development and the existing character of the areas or locations that are not undergoing, and area not likely to undergo, a substantial transformation.

The bulk and scale of both lots are compatible with the criteria listed within the desired future character statement for the Botany Precinct. The dwellings comply with the 8.5 metre maximum permissible building height and is consistent with the prevailing setbacks within the street. The dwellings are articulated on the front and side elevations, thereby minimising visible bulk and maintaining an appropriate visual relationship along the streetscape.

(d) to ensure that buildings do not adversely affect the streetscape, skyline or landscape when viewed from adjoining roads and other public places such as parks, and community facilities,

The proposal will have no additional impact on the streetscape as a compliant scheme as the proposal incorporates compliant setbacks and building heights.

(e) to minimise adverse environmental effects of the use or enjoyment of adjoining properties and the public domain,

The proposal provides landscaped areas and private open space in accordance with the requirements of the Development Control Plan. The building setbacks are consistent with the prevailing setbacks in the street. Potential impacts on adjoining properties have been considered and are discussed in this report.

(f) to provide an appropriate correlation between the size of a site and the extent of any development on that site,

The proposed size of the dwellings is appropriate given the allotment size and is consistent with the scale of nearby residential development.

(g) to facilitate development that contributes to the economic growth of Botany Bay,

The development is not contrary to the economic growth of the Botany Bay area.

Objectives of the zone

The objectives of the R2 Low Density Residential zone are as follows:

- To provide for the housing needs of the community within a low density residential environment;
- 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.

Officer's Comments:

The proposed semi-detached dwelling houses are a permissible use within the R2 Low Density Residential zone and is in keeping and is consistent with the zone objectives.

Public interest and Public Benefit

The proposed variation to the floor space ratio standard will be in the public interest as it will provide new semi-detached dwellings on the subject site in keeping with the objectives of the zone and relevant controls.

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

There are no current Draft EPIs applicable to this development

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

The following Development Control Plan is relevant to this application;

Botany Bay Development Control Plan 2013

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

Part 3A - Parking & Access

Control C2 of the Botany Bay Development Control Plan 2013 states that car parking provision shall be provided in accordance with Table 1. Table 1 identifies that dwelling houses with two or more bedrooms are to provide two (2) car parking spaces per dwelling.

Each dwelling proposes to provide two (2) car parking spaces on site, which is compliant with the controls.

The proposal is compliant with control 28, which requires a 3m minimum width access driveway at the property boundary.

Part 3L- Landscaping and Tree Management

Control	Proposed	Complies
3L.1.1 Tree Preservation Bonds		
Tree Preservation Bonds required for significant or	Council's tree management	N/A
heritage trees, or trees with a high potential to be	officer has recommended a tree	
impacted during construction.	preservation bond and this has	

Control	Proposed	Complies
	been incorporated into the conditions of consent.	
3L.1.2 Submission Requirements		
C1 Landscape Plan required	Provided	Y
3L.2 General Requirements		
C1 Existing trees including street trees must be preserved	An existing street tree will need to be removed to accommodate the new driveway. Council's tree management officer has provided support subject to replacement trees being planted.	Y
3L.3 Planting Design and Species		
C7 Canopy trees are to be planted in setbacks, particularly the front and rear setbacks of a property, to ameliorate built elements, subduing their appearance in the landscape and to encourage the continuity of landscape patterns.	The landscape plan shows that a tree with a mature height of 6 metres is to be planted at the front of each dwellings.	Υ
3L.4.2 Tree Works Requiring Council Approval		
C12 If consent is granted for the removal or pruning of a tree, suitable replacement tree/s will be required to be planted on the subject property by the property owner or applicant. Council will stipulate the minimum acceptable replacement tree/s pot size and number of trees and may recommend suitable species.	Replacement tree required by condition.	Y
3L.5 Stormwater		
C1 Impervious surfacing is to be minimised. Permeable pavements are to be used where possible C2 Underground on-site stormwater detention (OSD) tanks and infiltration trenches are not to be located within soft landscaped areas.	Accounting for the OSD system, the proposal is compliant with landscaping requirements outlined within Part 4A and therefore no changes to the proposed stormwater design are required.	Y

Part 3N- Waste Minimisation and Management

A waste management plan prepared by Bureau SRH has been provided to Council, which addresses the works involved including minor excavation and fill to the site, in addition to the construction of the works proposed.

Part 4A- Dwelling House

Control 4A.2.4 Streetscape Presentation	Proposed	Complies
C1 New dwellings must be designed to reflect the	The design is in keeping the Desired	Υ
relevant Desired Future Character Statement in	Future Character Statement for the	
Part 8 - Character Precincts and are to reinforce	area in Part 8 – Character Precincts.	

the architectural features and identity which contributes to its character. Applicants must address the design principles outlined in the statement. C2 Development must be designed to reinforce and maintain the existing character of the streetscape. C3 Development must reflect dominant roof lines and patterns of the existing streetscape (refer to Figure 3).	The building is modern and contemporary in design. The street is characterised by brick and roof tile cottages, however the area is undergoing change as shown by the recently approved townhouse development directly behind the site. The proposal maintains a high standards of architectural design, incorporating a skillion roof, varied building materials and articulation to the façade.	
C6 The entrance to a dwelling must be readily apparent from the street. C7 Dwelling houses are to have windows to the street from a habitable room to encourage passive surveillance.	The entry and habitable room windows for the dwellings are readily apparent from the street.	Y
AA.2.7 Site Coverage C1 Refer to Part 3L.1.4 – Definitions for definitions of site coverage, deep soil zones, and soft and hard landscape areas. C2 For sites over 200m² the maximum site coverage is: >300m2 50% of the lot	Site area = 523.8m². Site coverage Lot 01 = 50% (111 square metres) Lot 02 = 37% (110 square metres)	Y
4A.2.8 Building Setbacks	L	
C.1 Dwelling houses must comply with the minimum setbacks as set out in Table 1. Minimum front setback – comply with the prevailing	Front setback = 6 metres	Y
street setback or 6 metres (min)	Tront setback = 6 metres	
Minimum side setback - Assessed on merit based – depending on visual impact to street, pattern of adjoining development, sunlight and natural daylight access, privacy, visual amenity of adjoining residential properties and streetscape	North side setback = 1.5 metres South side setback = 0.9 metres The side setbacks proposed on both sides are 900mm, and are in keeping with the visual pattern of the adjoining development and streetscape. The setback allows for privacy, visual amenity and natural daylight access where possible, given the site orientation for sites adjacent.	Y
Minimum rear setbacks – 4 metres	Rear setbacks	Y
	Lot 02 dwelling = 12.5 metres Lot 01 dwelling = 12.2 metres Setback for loft at the rear = 0.9 metres	

Zero lot lines (with Council Discretion) – On merit based on building type and open space provisions	Proposed garage wall in Lot 2 is on the boundary. Acceptable.	Y
Eaves – 450mm minimum setback C2 New developments on corner lots are to provide a minimum secondary street setback of 3 metres.	Minimum 450mm from boundary The proposed secondary street setback is 2 metres which is less than the stipulated 3 metre, and in this regard a merit assessment has been undertaken. The reduced side setback allows for the bulk of the building to be moved to the north of the site and reduced overshadowing to the dwelling to the south. Accordingly the reduced setback is considered acceptable.	N N
C5 Side and rear setbacks should be modulated to avoid the appearance of bulky or long walls. Side and rear setbacks should be stepped or walls articulated by projecting or recessing window elements.	The plans have been amended to provide additional articulation to the northern side of the dwelling including additional balconies and recessed sections.	Y
4A.2.9 Landscape Area		
C2 Development shall comply with the following minimum landscaped area requirements, based on the area of the site in Table 2 . Table 2 requires the following minimum landscaped area: 250 m² - 350 m² - 20%	Landscape areas for the dwelling on Lot 01 = 54 square metres (Site area 272 square metres) 20% Landscape areas for the dwelling on Lot 02 = 87 square metres (Site area 249.8 square metres) 35%	Y
C3 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).	The landscaped area proposed is predominantly deep soil area. The area for the stormwater infiltration system has been excluded from landscaping calculations.	Y
C8 The front setback is to be fully landscaped with trees and shrubs and is not to contain paved areas other than driveways and entry paths. Paving is restricted to a maximum of 50% of the front setback area. C9 The front setback area must contain at least one tree for frontages up to 11.5 metres in width and 2 trees for frontages greater than this and properties located on corner blocks.	Front landscaped areas are as follows: Proposed Lot 02 dwelling: 30 square metres (Front setback area 37 square metres) 82% Proposed Lot 01 dwelling: 21.1 square metres (South setback area 40 square metres) 53%	Y
4A.3.1 Materials and Finishes		

Discussion

Prevailing Subdivision Pattern

Council generally considers the prevailing subdivision pattern to be the typical characteristic of up to ten allotments on either side of the subject site and corresponding number of allotments directly opposite the subject site. It is noted that the DCP does not provide any exclusions to how this 14 of 42

C10 The exterior walls of new dwellings must incorporate different materials, colours and textures to add interest and articulate the facade.	A Schedule of Colours and Finishes was provided. The materials, colours, architectural detail and finishes are of high quality and are compatible with the desired future character of the area.	Y
4A.3.2 Roofs and Attics/Dormer		
C1 Where roof forms in a street are predominantly pitched, then any proposed roof should provide a similar roof form and pitch.	Each dwelling contains a skillion roof. The roof forms are compatible with the desired future character of the area.	Y
C5 Attics must be contained wholly within the roof form to the front elevation, excluding minor elements such as dormer windows.	No attics or dormer proposed.	N/A
4A.3.3 Fences		
C1 Front fences are to compliment the period or architectural style of the existing dwelling house.	A front fence design has been provided in the elevation plans. The plans show that there is a 0.5 metre high solid section and a 0.6 metre semi permeable section consisting of posts. Fencing is consistent with the desired future character of the area.	Y
C7 Fences (or returns) that are higher than 1 metre are not encouraged along residential frontages but may be constructed to a maximum of 1.2 metres provided the top 600mm of the fence is 50% transparent or open style to allow for passive surveillance (refer to Figure 19).	The proposed fencing complies.	Y
C17 Access gates must be hung so that the direction of swing is inward.	No outward swinging fencing is proposed.	N/A
4A.3.5 Voids		
C1 Void spaces must be designed so as not to be reasonably capable of future infill. Voids in developments which exceed the permitted FSR will not be supported.	Voids are limited to above stairwells.	Y
4A.4.1 Visual Privacy		
 C2 Visual privacy for adjoining properties must be minimised by: using windows which are narrow or glazing Ensuring that windows do not face directly on to windows, balconies or courtyards of adjoining dwellings. Screening opposing windows, balconies and courtyards; and Increasing sill heights to 1.5 metres above floor level. 	First floor windows along the sides have a sill height of 1.8 metres. The rear balconies have privacy screens to both sides.	Y

accessed from a bedroom and sits wholly above the ground floor. Given its size and location, the bar of the dwelling if wholly located over the ground floor, providing the requirements in C1, C2 and C3 above are met. 27 Balconies are to be designed to minimise overlooking to other properties. 28 Balconies are to be designed to minimise properties, the Council may require balconies to be mitted in size and in some cases, fitted with privacy screens or fin walls. Partially recessed palconies are encouraged at the rear to ensure the privacy of surrounding properties is maintained. 29 Buildings (including alterations/ additions/ invitive to standards. This is discussed after this table. The solar panels are to be designed and sited to maintain approximately 2 hours of solar access between 9am and 3pm or 21 June to windows in living areas (family rooms, rumpus, lounge and eithens) and the principal open space areas such its swimming pools, patios and terraces, and drying areas of both the subject site and adjoining oroperties. 20 Each dwelling is to have a private open space hat: 31) Has at least one area with a minimum area of 66m°; 31) Is located at ground level with direct access to the internal living areas of the dwelling; 32) Is located at ground level with direct access to the internal living areas of the dwelling; 33) Is located the ground level with direct access to the internal living areas of the dwelling; 34) Is generally level; 35) Is generally level; 36) Is generally level; 37) Is generally level; 38) Is generally level; 38) Is generally level; 39) Is generally level; 30) Is generally landscaped; and			
C1 Buildings (including alterations/ additions/ extensions) are to be designed and sited to maintain approximately 2 hours of solar access between 9am and 3pm on 21 June to windows in ving areas (family rooms, rumpus, lounge and dirichens) and the principal open space areas such as swimming pools, patios and terraces, and drying areas of both the subject site and adjoining properties. IA.4.4 Private Open Space C1 Each dwelling is to have a private open space hat: i) Has at least one area with a minimum area of 160m²; iii) Is located at ground level with direct access to the internal living areas of the dwelling; iii) Is located at ground level with direct access to the internal living areas of the dwelling; iii) Is visible from a living room door or window of the subject development; v) Minimises overlooking from adjacent properties; vi) Is generally level; vii) Is oriented to provide for optimal year round use; viii) Is appropriately landscaped; and	C3 First floor balconies are only permitted when adjacent to a bedroom. C5 First floor balconies are only permitted at the rear of the dwelling if wholly located over the ground floor, providing the requirements in C1, C2 and C3 above are met. C7 Balconies are to be designed to minimise overlooking to other properties. Note: 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.	accessed from a bedroom and sits wholly above the ground floor. Given its size and location, the balcony is unlikely to create adverse privacy impacts on neighbouring	Y
proposal is unable to comply with to maintain approximately 2 hours of solar access between 9am and 3pm on 21 June to windows in ving areas (family rooms, rumpus, lounge and ditchens) and the principal open space areas such as swimming pools, patios and terraces, and drying areas of both the subject site and adjoining properties. PA.4.4 Private Open Space C1 Each dwelling is to have a private open space hat: i) Has at least one area with a minimum area of 36m²; ii) Is located at ground level with direct access to the internal living areas of the dwelling; iii) Maximises solar access; iv) Is visible from a living room door or window of the subject development; v) Minimises overlooking from adjacent properties; vi) Is oriented to provide for optimal year round use; viii) Is appropriately landscaped; and	4A.4.3 Solar Access		
Private open space is provided at the following rates. Private open space is provided at the following rates. Lot 02 dwelling: 71 square metres to the rear and to the side. Lot 01 dwelling: 67 square metres to the rear. Lot 02 dwelling: 71 square metres to the rear and to the side. Lot 01 dwelling: 67 square metres to the rear. What is located at ground level with direct access to the internal living areas of the dwelling; What is located at ground level with direct access to the internal living areas of the dwelling; What is located at ground level with direct access to the rear and to the side. Lot 01 dwelling: 67 square metres to the rear.	C1 Buildings (including alterations/ additions/ extensions) are to be designed and sited to maintain approximately 2 hours of solar access between 9am and 3pm on 21 June to windows in living areas (family rooms, rumpus, lounge and kitchens) and the principal open space areas such as swimming pools, patios and terraces, and drying areas of both the subject site and adjoining properties.	proposal is unable to comply with the standards. This is discussed after this table. The solar panels are	to
the following rates. Lot 02 dwelling: 71 square metres to the rear and to the side. Lot 01 dwelling: 67 square metres to the rear. iii) Maximises solar access; iiv) Is visible from a living room door or window of the subject development; iv) Minimises overlooking from adjacent properties; ivi) Is generally level; ivii) Is oriented to provide for optimal year round use; iviii) Is appropriately landscaped; and		Private open space is provided at	V
	that: (i) Has at least one area with a minimum area of 36m²; (ii) Is located at ground level with direct access to the internal living areas of the dwelling; (iii) Maximises solar access; (iv) Is visible from a living room door or window of the subject development;	the following rates. Lot 02 dwelling: 71 square metres to the rear and to the side. Lot 01 dwelling: 67 square metres to	•

C1 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 driveway is a minimum width of 3m, and it is not adjacent to a solid structure.	Y
C6 The number of vehicle crossings is to be limited to one (1) per allotment. 4A.4.8 Car Parking	One vehicle crossing is proposed per dwelling.	Y
C3 Car parking is to be located at the rear of the site with access from a rear lane. If rear lane access is not possible, parking must be provided behind the front building alignment. For existing and new dwellings, a garage or carport in order of priority must be: (i) Located at the rear of the site with access from a rear lane; (ii) At the rear of the site with access from the street frontage; (iii) Located at the side of the dwelling house, at least 1 metre behind the front building alignment and 5.5 metres from the front boundary; or (iv) Located at the side of the dwelling house, at least 1 metre behind the front building alignment	Parking is provided on Lot 02 from Warrana Street which the secondary setback. Lot 01 has access from its primary frontage to Kurnell Street. This is the only street access for this dwelling. This is considered an appropriate location for the garage, having regard to the existing site conditions, as well as BBDCP 2013 requirements relating to dwelling design, landscaping and site coverage.	Y
C4 Car parking structures must be located and designed to: (i) Comply with AS2890.1 and (ii) Conveniently and safely serve all users; (iii) Enable efficient use of car spaces, including adequate manoeuvrability for vehicles between the site and the street; (iv) Not dominate or detract from the appearance of the existing dwelling or new development and the streetscape; (v) Be compatible in scale, form, materials and finishes with the associated dwelling; (vi) Not reduce availability of kerbside parking; (vii) Retain any significant trees; and (viii)Have minimal impact on existing fences and garden areas that contribute to the setting of the associated dwelling and the character of the streetscape.	The garage doors for the dwelling on Lot 01 are integrated with the façade. The garage door is 50% of the width of the frontage. The garage for the dwelling on Lot 02 is detached from the primary dwelling and is located on the secondary street setback. The location of driveways does not reduce the availability of on street parking, or detract from the streetscape.	Y
C8 In new development the garage/carport is to be setback 5.5 metres from the front boundary.	Garage front setback = 6m	Y

subdivision pattern should be calculated in terms of zoning, strata subdivided properties or subdivided developments approved prior to the gazettal of the Botany Bay Local Environmental Plan 2013.

The objectives of Part 3E.2.1 – General Torrens Title Subdivision and Amalgamation of the Botany Bay Development Control Plan 2013 is to provide a building envelope that can accommodate an appropriately sized dwelling without resulting in adverse impacts on the surrounding properties. As demonstrated in the assessment of the development application, the proposed dwellings on Lot 1 and Lot 2 at 57 Banksia Street generally comply with the DCP controls for dwellings.

Site Area and Street Frontage Width

The site will be subdivided into two individual allotments namely Lot 1 and Lot 2. Lot 1 is proposed to have a site area of 249.82 square metres and Lot 2 a site area of 272.12 square metres. Proposed Lot 1 has a frontage width of 6.575 metres and Proposed Lot 2 has a frontage width of 5.817 metres.

Below is a map showing the subject site and the surrounding sites that are included within the scope of assessment for subdivision:



The image above and in the table below demonstrates that the relevant subdivision pattern in the vicinity of the site is rectilinear with an average lot size of approximately 400 square metres. Some of these allotments have been subdivided lengthwise for the creation of semi-detached dwellings and it is considered that there is an established precedent for semi-detached dwellings within the street. In particular 21, 19, 17, 15, 13 and 11 Kurnell Street.

An assessment of the lot sizes and street frontage widths of the ten properties on either side of the subject site as well as the properties opposite the site are as follows:

Address	Lot Size (in sqm approx.)	Variation (in sqm) from smallest lot proposed	Street Frontage (in m)	Variation (in m) from smallest lot proposed
29 Kurnell Street (existing)	509.43 square metres	-	12.41 metres	-
Proposed Lot 01	249.82 square metres	-	5.817 metres	-
Proposed Lot 02	272.12 square metres	-	6.567 metres	-
Allotments to the	ne south			'
31 Kurnell Street, Botany	463.64 square metres	213.82 square metres	12.5 metres	6.7 metres
33 Kurnell Street, Botany	464.385 square metres	214.57 square metres	12.2 metres	6.4 metres
35 Kurnell Street, Botany	459.199 square metres	209.38 square metres	12.1 metres	6.3 metres
Allotments to the	ne north		·	
27 Kurnell Street, Botany	488.208 square metres	-238.38 square metres	11.6 metres	5.8 metres
25 Kurnell Street, Botany	476.1 square metres	-226.28 square metres	12.6 metres	6.8 metres
23 Kurnell Street, Botany	478.599 square metres	-228.78 square metres	12.4 metres	6.6 metres
21 Kurnell Street, Botany	324.395 square metres	-74.6 square metres	8.2 metres	2.4 metres
19 Kurnell Street, Botany	316.364 square metres	-95.11 square metres	8.2 metres	2.4 metres
17 Kurnell Street, Botany	312.248 square metres	-62.4 square metres	8 metres	2.2 metres
15 Kurnell Street, Botany	322.592 square metres	-72.8 square metres	8.4 metres	2.6 metres
13 Kurnell Street, Botany	318.46 square metres	-68.6 square metres	8.1 metres	2.3 metres

19 of 42

Address	Lot Size (in sqm approx.)	Variation (in sqm) from smallest lot proposed	Street Frontage (in m)	Variation (in m) from smallest lot proposed
11 Kurnell Street, Botany	321.4 square metres	-71.5 square metres	8.1 metres	2.3 metres
9 Kurnell Street, Botany	480.6 square metres	-230.8 square metres	12 metres	6.2 metres
Semi-detached	dwellings opposi	te the site		
22 Kurnell Street, Botany	235.72 square metres	-14.1 square metres	6 metres	0.2 metres
20 Kurnell Street, Botany	243.07 square metres	-6.8 square metres	6 metres	0.2 metres
18 Kurnell Street, Botany	233.97 square metres	-15.9 square metres	5.6 metres	-0.2 metres
16 Kurnell Street, Botany	246.79 square metres	-3 square metres	6.4 metres	-0.6 metres
14 Kurnell Street, Botany	233.02 square metres	-16.8 square metres	5.5 metres	-0.3 metres
12 Kurnell Street, Botany	253.59 square metres	3.8 square metres	6.7 metres	0.9 metres
10 Kurnell Street, Botany	258.35 square metres	8.5 square metres	6.4 metres	0.6 metres
8 Kurnell Street, Botany	212.99 square metres	-36.8 square metres	5.8 metres	-0.03 metres
6 Kurnell Street, Botany	225.04 square metres	-24.8 square metres	5.5 metres	-0.3 metres

The development is consistent with the desired future character of the Botany Character precinct. As such the proposed subdivision is supported in this instance.

Council generally agrees with the statement provided by the applicant as the development has been designed in comparison to the desired future character of the Botany Character precinct. Greater discussion relating to the desired future character of the site is provided in *Part 8 – Character Precinct* below.

Solar Access

East-West

The Botany Bay Development Control Plan (DCP) 2013 states that the amount of direct solar access to windows in living areas of adjoining dwelling and 50% of adjoining dwellings primary open space area shall not be less than 2 hours between 9:00am and 3:00pm on the 21st June. In addition, Clause 6 states that where an existing development currently receives less than the required amount of sunlight (on 21st of June) the amount of sunlight available on the 21st of March or the 21st of September will be used an alternative standard.

The subject allotment is east-west orientated with east being the rear of the property and west being the front of the property. Therefore any first floor addition or new two storey dwelling will cast a shadow on the allotment located to the south (No. 31 Kurnell Street).

Shadow diagrams have been submitted which demonstrate that the proposal is not able to comply with the solar access requirements of DCP 2013. The elevation shadow diagrams show that at mid-winter between 8:00 am and 4:00 pm the proposal is not able to maintain adequate solar access to the habitable windows to the dwelling to the south. Part 4A of the Botany Bay Development Control Plan requires buildings to be designed and sighted to maintain approximately 2 hours of direct solar access between 9am and 3pm on 21 June.

The applicant's justification for the non-compliance is provided in the Statement of Environmental Effects and 4.6 variation statement. The justification is summarised as follows:

- An adequate amount of solar access is maintained within the private open space within each dwelling.
- The subject lot is an east-west lot which provides challenges.
- The dwellings have been positioned to maximise solar access in the context of the site.
- The overshadowing impact to adjoining properties is considered reasonable given the orientation of the site.

Consideration has been given to the Land and Environment Court planning principle on the impact on solar access of neighbours (Parsonage v Ku-ring-gai (2004) NSWLEC 347) and as amended by (The Benevolent Society v Waverly Council (2010) NSWLEC 1082) is addressed as follows:

 The ease with which sunlight access can be protected is inversely proportional to the density of development. At low densities, there is a reasonable expectation that a dwelling and some of its open space will retain its existing sunlight. (However, even at low densities there are sites and buildings that are highly vulnerable to being overshadowed). At higher densities sunlight is harder to protect and the claim to retain it is not as strong.

<u>Comment:</u> The subdivision pattern along the western side return of Kurnell Street is orientated east-west, with west being the rear boundaries and east being the front boundary. The proposed development is considered to be contemporary in design, within the height control and rear boundary setbacks as required by DCP 2013. The locality is in a mixed medium and low density residential area. The proposed semi-detached dwelling is to cast a shadow south onto the adjoining dwelling. Hourly shadow diagrams have been provided between 8am and 4pm. The diagrams show that the shadows are oriented to the western side in the morning and move to the eastern side in the afternoon. The adjoining dwelling at 31 Kurnell Street is affected by the proposed development in terms of solar access loss in the morning and afternoon with most of the habitable windows not being able to retain a minimum of 2 hours of direct solar access, however more than 50% of the private open space at the rear retains direct solar access in the afternoon. The habitable windows that are to be overshadowed are a bedroom window, lounge room and kitchen.

 The amount of sunlight lost should be taken into account, as well as the amount of sunlight retained.

<u>Comment:</u> The amount of existing sunlight comparative to the amount of sunlight retained has been taken into account. The shadow diagrams submitted show that the adjoining single storey dwelling to the south would be overshadowed on its northern elevation. Solar access would be retained to the solar panels on the adjoining dwelling mid-winter except between 8am and 9am.

Overshadowing arising out of poor design is not acceptable, even if it satisfies numerical
guidelines. The poor quality of a proposal's design may be demonstrated by a more sensitive
design that achieves the same amenity without substantial additional cost, while reducing the
impact on neighbours.

<u>Comment:</u> The proposal is not considered to be of poor design. The setbacks for the dwellings are designed to be compliant with the requirements of the Development Control Plan. The building does not contain any features which add unnecessarily to the bulk of the building such as voids, balconies or other features. The building is under the maximum permissible height for the land.

Notwithstanding this it is proposed a condition be incorporated into the consent requiring the scale of the first floor component of the building on proposed lot 01 adjacent to the southern boundary be reduced to maximise solar access to the neighbouring dwelling. The reduction is to be achieved by removing bedroom 01 from the dwelling.

For a window, door or glass wall to be assessed as being in sunlight, regard should be had not
only to the proportion of the glazed area in sunlight but also to the size of the glazed area itself.
Strict mathematical formulae are not always an appropriate measure of solar amenity. For larger
glazed areas, adequate solar amenity in the built space behind may be achieved by the sun falling
on comparatively modest proportions of the glazed area.

<u>Comment:</u> The windows that are to be overshadowed are three (3) habitable room windows. The elevation plans show that at mid-winter that most of the glazed area between 8 am and 4 pm are to be overshadowed.

Overshadowing by fences, roof overhangs and changes in level should be taken into consideration.
 Overshadowing by vegetation should be ignored, except that vegetation may be taken into account in a qualitative way, in particular dense hedges that appear like a solid fence.

<u>Comment:</u> Overshadowing by fences, roof overhangs and changes in level have been taken into consideration. The site is not affected by any substantial trees, shrubs and or overgrown vegetation. The shadow diagrams show that at mid-winter the majority of the overshadowing of the private open space is to be caused by the boundary fence.

 In areas undergoing change, the impact on what is likely to be built on adjoining sites should be considered as well as existing development.

<u>Comment:</u> The area is a mix of medium and low-density residential development. The area is undergoing changes with new medium density development up to three (3) stories in height being erected directly adjacent to the site. The land directly south and north of the site is zoned R2 – Low Density Residential and is anticipated to be constrained to low density development.

As noted above a condition has been incorporated into the consent requiring the reduction in scale of the dwelling on proposed lot 01 to maximum the retention of solar access to the neighbouring dwelling.

Part 8 - Botany Character Precinct

The site is located within the R2 - Low Density Residential zone of the Botany Character Precinct.

The dwelling has been designed to address the street and is consistent with the streetscape and the adjacent dwellings. The dwelling is compliant regarding FSR, setbacks, site coverage, private open space and is considered to have acceptable height, landscaping and solar access to neighbouring sites. As such the proposal is suitable for the site and is consistent with the desired future character of the Botany Precinct.

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

All provision of the Regulations have been taken into consideration. The proposal is consistent with all the provisions of the regulations.

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

The provisions of the regulations have been considered in the assessment.

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

The subject site is not known to be affected by any natural hazards or other site constraints that are likely to have a significant adverse impact on the proposed development. 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 site is located within the ANEF 20-25 contour. A condition has been placed on the consent requiring the dwellings to be constructed in accordance with the submitted acoustic report.

The site is zoned R2 – Low Density Residential and currently accommodates an existing dwelling. Accordingly, the site is suitable to accommodate the development.

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 from 18 December 2018 to 15 January 2019. One (1) submission was received. The issues raised in the submission are discussed below:

Loss of light and overshadowing: The planning principles set out in Parsonage v Ku-ring-gai have been taken into consideration in the assessment of the proposal and are discussed in this report.

Overlooking loss of privacy: The proposal has been designed to minimise overlooking to adjacent dwellings including incorporating sill height of windows of 1.8 metres, and privacy screens to the rear balconies.

Traffic congestion: Each dwelling provides two (2) off street carparking spaces. The number of off street parking space is consistent with the requirements of the Development Control Plan. In addition the proposal has been designed to minimise the loss of on street parking by minimising driveway widths.

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

Granting approval to the proposed development will be in the public interest. The proposal will facilitate the orderly development of the land.

Developer Contributions (Sections 7.11 and 7.12)

Council's Section 7.11 Officer has advised that the following fees have been calculated in accordance with the adopted Former City of Botany Bay s7.11 Development Contributions Plan 2016 (Amendment 1) and having regard to the Ministerial Directive of 21 August 2012 which caps the fee to \$20,000. The contributions are only used towards the provision or improvement of the amenities and services identified below:

Community Facilities	\$1,637.16
Recreation and Open Space	\$16,890.83
Transport Facilities	\$1,326.38
Administration	\$145.62
	\$20.000.00

Conclusion

Development Application No. DA-2018/346 for Demolition of existing structures, Torrens title subdivision into two lots, construction of two semi-detached dwellings, two (2) storey detached garage with loft / studio and associated landscaping at 29 Kurnell Street, Botany has been assessed in accordance with the relevant requirements of the Environmental Planning and Assessment Act 1979 and is recommended for approval subject to conditions of consent.

Attachment

Schedule 1 - Conditions of Consent

Premises: 29 Kurnell Street, Botany DA No: 2018/346

SCHEDULE OF CONSENT CONDITIONS

GENERAL CONDITIONS

 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
DA-1002 Demolition Plan Revision A	Bureau SRH	06.12.2018
DA-1003 Torrens Title Subdivision		10.07.2019
Plan Revision B		10.07.0010
DA-1004 Site Plan Revision C		10.07.2019
DA-2101 Ground Floor Plan Revision C		10.07.2019
DA-2102 First Floor Plans Revision C		10.07.2019
DA-3101 North and South Elevations		10.07.2019
Revision C		10.07.2019
DA-3102 East and West Elevations		10.07.2019
Revision C		
DA-3201 Section Plans Revision C		10.07.2019
SK 01 29 Landscape Plan Ground Floor	Carmichael Studios	11.08.2019

Reference Documents	Author	Dated
BASIX Certificate No. 978231S and 978195S	GAT and Associates	23 August 2019
Schedule of Finishes	Bureau SRH	06.12.2018
Aircraft Noise Impact Assessment	Rodney Stevens	15.03.2019
Residential Use Development 29	Acoustics	
Kurnell Street, Botany		
Waste Management Plan	Bureau SRH	November 2018

- 2. This Consent relates to land in Lot 47 in DP 15704 and, as such, building works must not encroach on to adjoining lands or the adjoining public place.
- 3. The following shall be complied with:

- All building work must be carried out in accordance with the provisions of the Building Code of Australia;
- b) In accordance with Clause 94 Environment Planning & Assessment Regulation 2000, an automatic smoke detection and alarm system for early warning of occupants must be installed in the building (dwellings). The installation must satisfy the following:
 - i) smoke alarms must comply with AS3786 1993;
 - smoke alarms must be connected to the consumer mains power where consumer power is supplied to the building; and
 - iii) be located in a position as required by Vol 2. BCA.
- Pursuant to clause 97A(3) of the Environmental Planning & Assessment Regulation 2000, it is a condition of this development consent that all the commitments listed in the relevant BASIX Certificate (as referenced at Condition No. 1) for the development are fulfilled.

Note:

- a) Relevant BASIX Certificate means:
 - A BASIX Certificate that was applicable to the development when this development consent was granted (or, if the development consent is modified under Section 96 of the Act, a BASIX Certificate that is applicable to the development when this development consent is modified); or
 - ii) If a replacement BASIX Certificate accompanies any subsequent application for a construction certificate, the replacement BASIX Certificate.
- BASIX Certificate has the meaning given to that term in the Environmental Planning and Assessment Regulation 2000.
- 5. The consent given does not imply that works can commence until such time that:
 - Detailed plans and specifications of the building have been endorsed with a Construction Certificate by:
 - i) The consent authority; or,
 - ii) An accredited certifier; and
 - b) The person having the benefit of the development consent:
 - i) Has appointed a Certifying Authority; and
 - Has notified the consent authority and the Council (if the Council is not the consent authority) of the appointment; and

- iii) The person having the benefit of the development consent has given at least 2 days notice to the council of the persons intention to commence the erection of the building.
- The front and side fencing within the front setbacks is to be a maximum height of 1.2 metres.
- 7. The pergola shown on the site plan on proposed lot 02 is not included in this approval and is to be subject to a separate development application.
- 8. The external walls of the building including attachments must comply with the relevant requirements of the National Construction Code (NCC). Prior to the issue of a Construction Certificate and Occupation Certificate the Certifying Authority and Principal Certifying Authority must:
 - a) Be satisfied that suitable evidence is provided to demonstrate that the products and systems (including installation) proposed for use or used in the construction of external walls, including finishes and claddings such as synthetic or aluminium composite panels, comply with the relevant requirements of the NCC; and
 - Ensure that the documentation relied upon in the approval processes include an appropriate level of detail to demonstrate compliance with the NCC as proposed and as built.

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

 Prior to the issue of the Construction Certificate revised plans are to be produced making the following amendments:

The scale of the first floor component of the dwelling on proposed Lot 01 is to be reduced by the deletion of bedroom 01 and relocation of the rearmost wall to the balcony to the partition between bedroom 01 and 02. The revised plans are to be reviewed and approved by the principal certifying authority prior to the issue of the construction certificate.

10. Prior to the issue of any Construction Certificate, detail design and construction plans in relation to stormwater management and disposal system for the development shall be submitted to the Principal Certifying Authority for assessment and approval. The detail drawings and specifications shall be prepared by a suitably qualified and experienced civil engineer and to be in accordance with Botany Bay Council Development Control Plan 'Stormwater Management Technical Guidelines', AS/NZS 3500 – Plumbing and Drainage Code and the BCA. All drawings shall correspond with the approved architectural plans.

The plans shall incorporate the following measures:

a) The provisions made in the Stormwater Concept Plans by Endepth Engineers, drawing numbers 18AA053/DR01, 18AA053/DR02, 18AA053/SW01, 18AA053/SW01, revision B, dated 30/10/2018.

Design Certification, in the form specified in Botany DCP Part 10 Stormwater Management Technical Guidelines page 6 part (i), and drainage design calculations must be submitted with the detailed plans.

- 11. Prior to the issue of any Construction Certificate, any part of the proposed buildings within 3m of the proposed absorption systems 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.
- Prior to the issue of any Construction Certificate, all driveways/access ramps/vehicular crossings shall be designed to conform to the current Australian Standards AS 2890.1 and Council's Infrastructure Specifications. These include but are not limited to E-01, E-04, E-07 and E-16.

As part of this development, two new concrete driveways shall be constructed. A new three (3) metre wide driveway layback shall be constructed to Kurnell Street and a new five and a half (5.5) metre wide driveway layback shall be constructed to Warana Street as part of the new driveways. A minimum of one (1.0) metre of kerb and gutter either side of the driveway layback shall be replaced to enable the correct tie-in with the existing kerb and gutter. All redundant vehicular crossings shall be removed and replaced to fit the main footpath cross-section.

- 13. An application for Driveway Works (Public Domain Construction Vehicle Entrance/Driveway 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.
- 14. Prior to the issue of the Construction Certificate, the approved plans must be submitted to Sydney Water Tap inTM online service to determine whether the development will affect any Sydney Water sewer or water main, stormwater drains and/or easement, and if further requirements need to be met.

Sydney Water's Tap inTM online service is available at: https://www.sydneywater.com.au/SW/plumbing-building-developing/building/sydney-water-tap-in/index.htm

- 15. The building must be constructed in accordance with the recommendations contained within the acoustic report prepared by Rodney Stevens Acoustics titled 'Aircraft Noise Impact Assessment Residential Use Development 29 Kurnell Street, Botany'.
- 16. 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.
- 17. Prior to the issue of the Construction Certificate, the applicant must pay the following fees:
 - a) Footpath crossing deposit

\$21,350.00

b) Development Control

\$3,081.00

Section 94 Contributions

\$20,000.00

18. 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 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.

- 19. Prior to the issue of any Construction Certificate, the applicant shall lodge a Builder's Damage Deposit of \$21,350.00 (GST Exempt) by way of cash deposit or unconditional bank guarantee to Council against possible damage to Council's asset during the course of the building works. The deposit will be refunded subject to inspection by Council 12 months after the completion of all works relating to the proposed development and Final Occupational Certificate has been issued.
- Prior to the issue of any Construction Certificate, at the proposed point of construction site
 entry, photographic survey showing the existing conditions of Council's infrastructure shall
 be submitted to Council and Certifying Authority.

The survey shall detail the physical conditions and identify any existing damages to the roads, kerbs, gutters, footpaths, driveways, street trees, street signs and any other Council assets fronting the property and extending to a distance of 20m from the development. Failure to do so may result in the applicant/developer being liable for any construction related damages to these assets. Any damage to Council's infrastructure during the course of this development shall be restored at the applicant's cost.

- 21. Prior to the issue of the Construction Certificate, a plan (written and/or diagrammatic) shall be submitted and approved by the Certifying Authority, showing the storage location of construction building materials and plants and the method of access to the property. No storage of construction materials and plants to be allowed in road reserve area.
- 22. Privacy screens to balconies at the rear are to have a minimum density of 80%, shall be constructed in solid materials and are to be oriented to prevent downward looking onto the adjoining property. Details are to be submitted with the Construction Certificate. The screens are to be maintained for the life of the development.

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

- 23. If an excavation associated with the proposal extends below the level of the base of the footings of a building on an adjoining allotment of land or the common boundary fence the person causing the excavation to be made:
 - a) Must preserve and protect the building/ fence from damage; and,
 - b) If necessary, underpin and support such building in an approved manner;

- c) Must at least be 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of the intention to do so to the owner of the adjoining allotment of land and, furnish particulars of the excavation to the owner of the building being erected or demolished;
- d) Existing structures and or services on this and adjoining properties are not endangered during any demolition excavation or construction work associated with the above project. The applicant is to provide details of any shoring, piering, or underpinning prior to the commencement of any work. The construction shall not undermine, endanger or destabilise any adjacent structures.
- e) If the soil conditions required it:
 - i. Retaining walls associated with the erection of a building (swimming pool) or other approved methods of preventing movement or other approved methods of preventing movement of the soil must be provided and:-
 - ii. Adequate provision must be made for drainage.
- 24. The Prior to the commencement of any work the applicant is to submit payment for a Tree Preservation Bond of \$2,000.00 to ensure protection of Council's street tree assets. The duration of the Bond shall be limited to a period of 12 months after the occupation certificate is issued. At completion of the bond period of twelve months (12 months) the Bond shall be refunded pending an inspection of the trees by council. If a tree is found to be dead, pruned or dying and will not recover the applicant will forfeit all or part of the bond to replace or maintain the tree/s.
- 25. Prior to commencing demolition/any works on site, in order to ensure that the retained tree is protected during demolition and construction, and the health and structural stability is ensured a Tree Protection Zone (TPZ) shall be established as follows:
 - In accordance with AS4970-2009 protective fences consisting of chain wire mesh temporary fence panels with a height 1.8m shall be erected outside the drip line.
 The fence panels must be securely mounted and braced to prevent movement.
 The area within the fenced area is to be mulched with leaf mulch to a depth of 100mm and a weekly deep watering program undertaken.
 - The protective fence shall consist of para-webbing or chain wire mesh mounted on star pickets or similar metal posts, shall be placed prior to the commencement of any work on site and shall remain until the completion of all building and hard landscape construction.
 - If there is insufficient space to erect fencing, then the tree is to be physically
 protected by wrapping the trunk with hessian or carpet underlay to a height of 2.5
 meters or to the tree's first lateral branch, whichever is greater, and affix timber
 palings around the tree with strapping or wire (not nails).
 - Before any works commence on site, the Applicant is required to contact Council for an inspection and/or provide photographic evidence of the fenced TPZ's.
- A Dial-Before-You-Dig enquiry is required prior to stump grinding and shall occur without damage to Council infrastructure or underground services / utilities. Council take no

responsibility for any damage incurred to persons, property, or service during the tree removal works.

- 27. Where demolition is proposed, the following shall be provided to Council at least forty-eight (48) hours prior to the commencement of demolition:
 - Written notice, indicating the date when demolition of the building is to commence.
 - b) This persons full name and address.
 - c) Details of Public Liability Insurance.
- 28. The Certifying Authority must be satisfied that:
 - a) In the case of work to be done by a licensee under the Home Building Act: -
 - Has been informed in writing of the licensee name and contractor licence number, and;
 - Is satisfied that the licensee has complied with the requirements of Part 6 of the Home Building Act 1989; or,
 - b) In the case of work to be done by any other person: -
 - Has been informed in writing of the persons name and owner-builder permit number, or;
 - ii) Has been given a declaration signed by the owner of the land that states that the reasonable market cost of the labour and materials involved in the work is less than the amount prescribed for the purposes of the definition of owner builder work in Section 29 the Home Building Act 1989.
 - c) And is given appropriate information and declarations under paragraphs (a) and (b) whenever arrangements for the doing of the work are changed in such a manner as to render out of date any information or declaration previously given under either of those paragraphs.

Prior to the commencement of works, the applicant must inform Council, in writing, of:

- The name of the contractor, and licence number of the licensee who has contracted to do, or intends to do, the work: or
- e) The name and permit number of the owner-builder who intends to do the work;
- f) The Council also must be informed if:
 - i) A contract is entered into for the work to be done by a different licensee; or
 - ii) Arrangements for the doing of the work are otherwise changed.
- The site to which this approval relates must be adequately fenced or other suitable
 measures employed that are acceptable to the 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.

- 30. This Consent shall not preclude the demolisher from giving notice to other statutory authorities, such as Sydney Water Corporation, WorkCover, etc.
- 31. If the land to which the application relates is served by a common sewerage system that is also used by others, then measures must be placed in effect and prior to the commencement of work to ensure the operation of the sewerage system is without disruption to other joint users.
- 32. The principal contractor or owner builder must install and maintain water pollution, erosion and sedimentation controls in accordance with:
 - a) The Soil and Water Management Plan if required under this consent;
 - b) "Do it Right On Site, Soil and Water Management for the Construction Industry" published by the Southern Sydney Regional Organization of Councils, 2001; and
 - "Managing Urban Stormwater Soils and Construction" published by the NSW Department of Housing 4th Edition" ('The Blue Book').
 - d) Where there is any conflict The Blue Book takes precedence.

Note: The International Erosion Control Association – Australasia (http://www.austieca.com.au/) lists consultant experts who can assist in ensuring compliance with this condition. Where Soil and Water Management Plan is required for larger projects it is recommenced that this be produced by a member of the International Erosion Control Association – Australasia.

Note: The "Do it Right On Site," can be downloaded free of charge from Council's website at: http://www.botanybay.nsw.gov.au/council/services/ planning/factsheets.htm, further information on sediment control can be obtained from www.ssroc.nsw.gov.au.

Note: A failure to comply with this condition may result in penalty infringement notices, prosecution, notices and orders under the Act and/or the Protection of the Environment Operations Act 1997 without any further warning. It is a criminal offence to cause, permit or allow pollution.

Note: Section 257 of the Protection of the Environment Operations Act 1997 provides inter alia that "the occupier of premises at or from which any pollution occurs is taken to have caused the pollution".

Warning, irrespective of this condition any person occupying the site may be subject to proceedings under the Protection of the Environment Operations Act 1997 where pollution is caused, permitted or allowed as the result of their occupation of the land being developed.

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

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

- Permit to erect hoarding on or over a public place, including Council's property/road reserve:
- Permit to construction works, place and/or storage building materials on footpaths, nature strips;
- c) Permit for roads and footways occupancy (long term/ short term);
- Permit to construct vehicular crossings, footpaths, kerbs and gutters over road reserve;
- Permit to open road reserve area, including roads, footpaths, nature strip, vehicular crossing or for any purpose whatsoever, such as relocation / re-adjustments of utility services;
- f) Permit to place skip/waste bin on footpath and/or nature strip; and
- g) Permit to use any part of Council's road reserve or other Council lands.

(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)).

DURING WORKS

- 34. Inspections must be conducted by Council's Engineer at the following occasions:
 - Formwork inspection of driveway layback and adjacent kerb and gutter prior to laying of concrete,
 - b) Formwork inspection of Council's kerb and gutter prior to laying of concrete.
 - c) Formwork inspection of Council's footpath prior to laying of concrete,
 - d) Final inspection of driveway layback and adjacent kerb and gutter,
 - e) Final inspection of Council's kerb and gutter,
 - f) Final inspection of Council's footpath.
- 35. During Demolition, Excavation and Construction, care must be taken to protect Council's infrastructure, including street signs, footpath, kerb, gutter and drainage pits etc. Protecting measures shall be maintained in a state of good and safe condition throughout the course of construction. The area fronting the site and in the vicinity of the development shall also be make safe for pedestrian and vehicular traffic at all times. Any damage to Council's infrastructure (including damage caused by, but not limited to, delivery vehicles, waste collection, contractors, sub-contractors, concrete delivery

vehicles) shall be fully repaired in accordance with Council's specification and AUS-SPEC at no cost to Council.

- 36. Consent is granted for the removal and stump grinding of the tree that is in the way of the proposed crossover along the Kurnell Street alignment at the applicant's expense.
- 37. Tree removal shall be undertaken by the Applicant at their own expense and adhere to the following:
 - a) A qualified Arborist with their own public liability insurance must be engaged.
 - b) All work is to take place on the Council road reserve with the appropriate safety and directional signage implemented to ensure public safety and access otherwise road and footpath closures require a Council Road Occupancy Permit.
 - A Dial-Before-You-Dig enquiry is required prior to stump grinding the trunk and shall occur without damage to Council infrastructure or underground services/utilities.

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

- 38. Any demolition work shall be carried out in accordance with Australian Standards AS 2601-2001 Demolition of Structures and the requirements of the NSW WorkCover Authority.
- 39. Any material containing asbestos found on site during the demolition process shall be removed and disposed of in accordance with:
 - WorkCover NSW requirements. An appropriately licensed asbestos removalist must complete all asbestos works if they consist of the removal of more than 10m2 of bonded asbestos and/or any friable asbestos;
 - b) Protection of the Environment Operations Act 1997;
 - c) Protection of the Environment Operation (Waste) Regulation;
 - d) DECC Waste Classification Guidelines 2008.
- 40. No demolition materials shall be burnt or buried on the site.
- All services (Utility, Council, etc) within the road reserve (including the footpath) shall be relocated/adjusted to match the proposed/existing levels as required by the development.
- 42. The proposed development shall comply with the following:
 - A sign must be erected in a prominent position on any work site on which work involved in the erection or demolition of a building is being carried out:
 - i) Stating that unauthorised entry to the work site is prohibited;
 - ii) Showing the name of the person in charge of the work site and a telephone number at which that person may be contacted outside working hours;

- iii) The Development Approval number; and
- The name of the Certifying Authority including an after-hours contact telephone number.
- b) Any such sign is to be removed when the work has been completed.

43.

- To ensure that utility authorities and Council are advised of any effects to their infrastructure by the development, the applicant shall: -
 - Carry out a survey of all utility and Council services within the site including relevant information from utility authorities and excavation if necessary to determine the position and level of services.
 - Negotiate with the utility authorities (e.g. Energy Australia, Sydney Water and Telecommunications Carriers) and Council in connection with: -

The additional load on the system; and

The relocation and/or adjustment of the services affected by the construction.

- b) Any costs in the relocation, adjustment, and provision of land or support of services as requested by the service authorities and Council are to be the responsibility of the developer.
- 44. Should the construction process require a building waste container(s) (builders' skip), then such container must not be placed or left upon the public road, footpath, reserve or the like without the prior approval of the Council. The use of any part of Councils road reserve must also have prior approval of Council.
- 45. Throughout the construction period, Council's warning sign for soil and water management shall be displayed on the most prominent point of the building site, visible to both the street and site workers. A copy of the sign is available from Council's Customer Service Counter.
- 46. The approved Waste Management Plan shall be complied with at all times during construction and on-going use of the site.
- 47. 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.
- 48. If any excavation associated with the proposal extends below the level of the base of the footings of a building on an adjoining allotment of land or the common boundary fence the person causing the excavation to be made:
 - a) Must preserve and protect the building/ fence from damage; and,
 - b) If necessary, underpin and support such building in an approved manner;
 - Must at least be 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of the intention to do so to

the owner of the adjoining allotment of land and, furnish particulars of the excavation to the owner of the building being erected or demolished;

- d) Existing structures and or services on this and adjoining properties are not endangered during any demolition excavation or construction work associated with the above project. The applicant is to provide details of any shoring, piering, or underpinning prior to the commencement of any work. The construction shall not undermine, endanger or destabilise any adjacent structures.
- e) If the soil conditions required it:
 - i) Retaining walls associated with the erection of a building (swimming pool) or other approved methods of preventing movement or other approved methods of preventing movement of the soil must be provided and:-
 - ii) Adequate provision must be made for drainage.
- f) All excavations and backfilling shall be executed safely and in accordance with appropriate professional standards; and all excavations shall be properly guarded and protected to prevent them from being dangerous to life or property.
- 49. The following shall be complied with during construction and demolition:
 - a) Construction Noise

Noise from construction activities associated with the development shall comply with the NSW Environment Protection Authority's Interim Construction Noise Guideline and the Protection of the Environment Operations Act 1997.

- b) Level Restrictions
 - i) Construction period of 4 weeks and under:

The L_{10} sound pressure level measured over a period of not less than 15 minutes when the construction site is in operating must not exceed the background level by more than 20dB(A).

ii) Construction period greater than 4 weeks and not exceeding 28 weeks:

The L_{10} sound pressure level measured over a period of not less than 15 minutes when the construction site is in operating must not exceed the background level by more than 10 dB(A).

c) Time Restrictions

i) Monday to Friday 07:00am to 05:00pmii) Saturday 08:00am to 01:00pm

iii) No Construction to take place on Sundays or Public Holidays.

d) Silencing

All possible steps should be taken to silence construction site equipment.

- 50. Toilet facilities are to be provided at or in the vicinity of the work site on which work involves:
 - construction of a building is being carried out, at the rate of one toilet for every 20 persons or part of 20 persons employed at the site;
 - b) Each toilet provided:
 - i) must be standard flushing toilet; and,
 - ii) must be connected:

to a public sewer; or

- if connection to a public sewer is not practicable to an accredited sewerage management facility approved by the Council; or,
- if connection to a public sewer or an accredited sewerage management facility is not practicable to some other sewerage management facility approved by the Council.
- c) The provisions of toilet facilities in accordance with this condition must be in place before work commences.
- The principal contractor or owner builder must install and maintain water pollution, erosion and sedimentation controls as required by this consent and the Protection of the Environment Operations Act 1997.
- 52. The applicant shall conduct all construction and related deliveries wholly on site. If any use of Council's road reserve is required then separate applications are to be made at Council's Customer Services Department.

53.

- a) In order to prevent vehicles tracking soil or other materials onto public roads and washing of materials into the street drainage system or watercourse, during Excavation, Construction and Deliveries, access to the site shall be available in all weather conditions. The area shall be stabilised and protected from erosion; and,
- b) In addition, concrete trucks and any other trucks that used for the transportation of building materials or similar, shall not traffic soil cement or other materials onto the road reserve. Hosing down of vehicle tyres shall only be conducted in a suitable offstreet area where wash waters do not enter the stormwater system or enter Council's land.
- c) Hosing down or hosing/washing out of any truck (concrete truck), plant (eg concrete pumps) or equipment (eg wheelbarrows) on Council's road reserve or other property is strictly prohibited. Fines and cleaning costs will apply to any breach of this condition.

- d) Pavement surfaces adjacent to the ingress and egress points are to be swept and kept clear of earth, mud and other materials at all times and in particular at the end of each working day or as directed by Council's Engineer.
- Building operations such as brick cutting, washing tools or brushes and mixing mortar shall not be carried out on public roadways or footways or in any other locations which could lead to the discharge of materials into the stormwater drainage system or onto Council's lands.
- 54. During demolition, excavation and construction, care must be taken to protect Council's infrastructure, including street signs, footpath, kerb, gutter and drainage pits etc. Protecting measures shall be maintained in a state of good and safe condition throughout the course of construction. The area fronting the site and in the vicinity of the development shall also be make safe for pedestrian and vehicular traffic at all times. Any damage to Council's infrastructure (including damage caused by, but not limited to, delivery vehicles, waste collection, contractors, sub-contractors, concrete delivery vehicles) shall be fully repaired in accordance with Council's specification and AUS-SPEC at no cost to Council.
- 55. During construction work the Council nature strip shall be maintained in a clean and tidy state at all times. The nature strip shall be suitably replaced where damaged due to construction work in accordance with Council Specification at the completion of construction, and at the Applicant's expense.

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

- Prior to the issue of any Occupation Certificate(s), the applicant shall carry out the following works:
 - a) On Kurnell and Warrana Street, adjacent to development, reconstruct existing Kerb and Gutter for the full length property in accordance with Council Infrastructure Specifications, and
 - b) On Kurnell and Warrana Street, adjacent to development, reconstruct existing Footpath for the full length of the property in accordance with Council Infrastructure Specifications.
- 57. Prior to the issue of any Occupation Certificate(s), inspection reports (formwork and final) for the works on the road reserve shall be obtained from Council's engineer and submitted to the Principal Certifying Authority attesting that this condition has been appropriately satisfied.
- 58. Prior to the issue of a Construction Certificate for the development an application for Property Address Allocation and associated fee are required to be submitted to Council. All new addresses will be allocated in accordance with AS/NZS 4819:2011 Rural and Urban Addressing Standard and Section 5.2 of the NSW Address Policy.

The form is available for download at:

https://www.bayside.nsw.gov.au/sites/default/files/2018-10/Property%20Address%20Allocation%20Form.pdf

Derivation and production of address data components are governed by the NSW Addressing User Manual to ensure consistency of application.

http://www.gnb.nsw.gov.au/ data/assets/pdf file/0007/199411/NSW Addressing User Manual.pdf

- 59. The absorption systems must be inspected prior to back filling and proceeding to subsequent stages of construction to the satisfaction of principal Certifying Authority. Supporting evidence shall be issued by a professional Civil Engineer experienced in stormwater system design and construction. The maximesh screens and removable geotextile are to be installed in the absorption system prior to connection of the downpipes to ensure the effective performance of the system during construction and the long term viability of the system.
- 60. The owner of the premises is required to comply with the following requirements when installing a rainwater tank:
 - 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.
- 61. Prior to the issue of any Occupation Certificates(s), documentation from a practising civil engineer shall be submitted to the Principal Certifying Authority certifying that the stormwater drainage system has been constructed generally in accordance with the approved stormwater management construction plan(s) and all relevant standards. 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.
- 62. Prior to the issue of any Occupation Certificate(s), a restriction on Use of Land and Positive Covenant(s) shall be imposed on the development. The following covenants shall be imposed under Section 88(E) of the Conveyancing Act 1919 and lodged with the NSW Land and Property Information:
 - · Restriction on Use of Land and positive covenant for On-Site Infiltration System. Refer to Appendix A of the Stormwater Management Technical Guidelines for suggested wording.
- 63. All landscape works are to be carried out in accordance with the approved landscape plans prepared by Carmichael Studios, Revision D, prior to the issue of an Occupation Certificate for the approved development. The landscaping is to be maintained to the approved standard at all times.
- 64. A Landscape Architect shall provide a report to the certifying authority (with a copy provided to Council, if Council is not the principal certifying authority) stating that the 39 of 42

- landscape works have been carried out in accordance with the approved plans and documentation.
- 65. To compensate Council for the removal of the Angophora costata (Smooth Barked Apple) the applicant at the time of implementing of the proposed landscape plan SHALL supply Council with one (1) Corymbia maculata (Spotted Gum) of minimum root ball/pot size of 75 litres. The tree shall be sourced from a reputable supplier and grown to NATSPEC requirements.
- 66. Prior to release of the Occupation Certificate the developer must submit to the Principal Certification Authority an acoustic report to verify that the measures stated in the approved acoustic report have been carried out and certify that the construction meets the above requirements. The report must be prepared by a qualified practicing acoustic engineer (who is a member of either the Australian Acoustical Society or the Association of Australian Acoustical Consultants).
- 67. Any damage not shown in the photographic survey submitted to Council before site works have commenced will be assumed to have been caused by the site works (unless evidence to prove otherwise). All damages as a result from site works shall be rectified at the applicant's expense to Council's satisfaction, prior to occupancy of the development and release of damage deposit.
- 68. The Council nature strip at any site frontage shall be repaired and/or replaced and maintained in accordance with Council Specification at the completion of all construction work at the Applicant's expense.
- 69. Prior to the issue of any Occupation Certificate, the approved subdivision is to be registered. The linen plans are to be submitted to Council prior to the release of the Occupation Certificate, and proof of registration with the NSW Land Registry Services is to be submitted prior to occupation and use of any building.
- Prior to use and occupation of the building an Occupation Certificate must be obtained under Section 109C(1)(c) and 109N of the Environmental Planning and Assessment Act, 1979.

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

- 71. 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.
- 72. The subdivision is to occur in accordance with Development Consent No. DA-2018/346 and any subsequent Section 4.55 modifications.
- 73. The submission and approval of a subdivision certificate application. In this regard, a fee is payable in accordance with Council's current adopted Fees and Charges.
- 74. The new lots created are to be numbered lot 700 and lot 701.

75. The endorsed subdivision certificate shall not be released until completion of the development and the issue of the Final Occupation Certificate.

CONDITIONS WHICH MUST BE SATISFIED FOR THE ONGOING USE

- 76. The stormwater drainage system (including all pits, pipes, absorption, detention structures, treatment devices, infiltration systems and rainwater tanks) shall be regularly cleaned, maintained and repaired to ensure the efficient operation of the system from time to time and at all times. The system shall be inspected after every rainfall event to remove any blockage, silt, debris, sludge and the like in the system. All solid and liquid waste that is collected during maintenance shall be disposed of in a manner that complies with the appropriate Environmental Guidelines. The water from the rainwater tank should not be used for drinking, the rainwater tank shall be routinely de-sludged and all contents from the de-sludging process disposed. Solids shall be disposed to the waste disposal and de-sludged liquid shall be disposed to the sewer.
- 77. Street numbers shall be clearly displayed with such numbers being of contrasting colour and adequate size and location for viewing from the footway and roadway.
- 78. Ongoing maintenance of the grass nature strips shall be undertaken by the occupier, strata or owner. Maintenance includes mowing, watering and maintaining an even coverage of grass. Maintenance <u>does not include</u> pruning, trimming or any work to Council's street tree assets located on the Council nature strip under any circumstances at any time, including new street trees. All pruning is undertaken by Council only.
- 79. The buildings are approved as single dwellings on each site for use and occupation by a single family. It shall not be used for separate residential occupation or as separate residential flats. No plumbing fixtures, fittings, walls shall be deleted or added, doorways enclosed or any other changes made from the approved plans in Condition No. 1 of this Consent without the prior Consent of the Council.
- 80. 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.
- 81. 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.
- 32. The operation of all plant and equipment shall not give rise to an equivalent continuous (LAeq) sound pressure level at any point on any residential property greater than 5dB(A) above the existing background LA90 level (in the absence of the noise under consideration).

The operation of all plant and equipment when assessed on any residential property shall not give rise to a sound pressure level that exceeds LAeq 50dB(A) day time and LAeq 40 dB(A) night time.

The operation of all plant and equipment when assessed on any neighbouring commercial/industrial premises shall not give rise to a sound pressure level that exceeds LAeq 65dB(A) day time/night time.

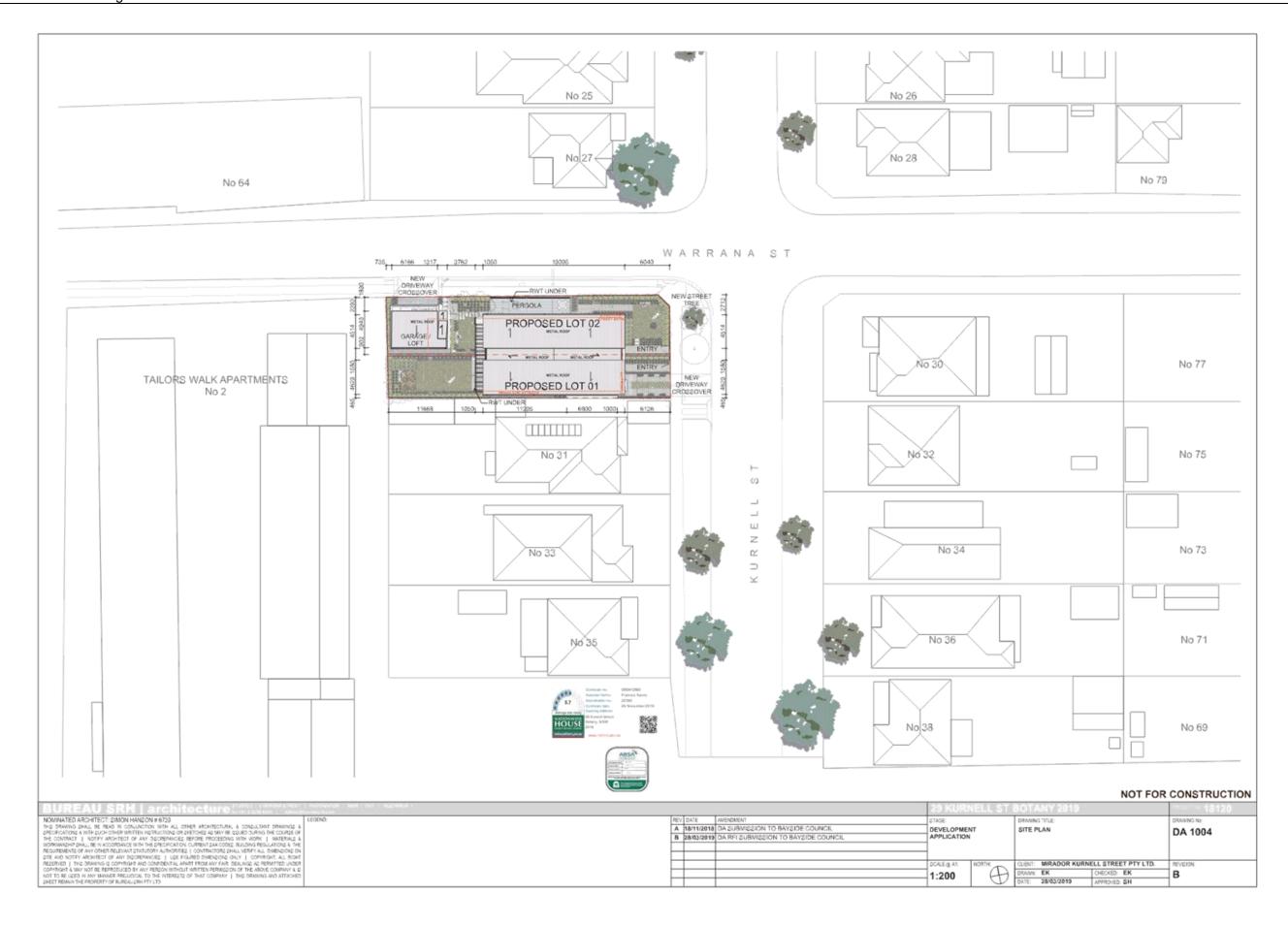
For assessment purposes, the above LAeq sound levels shall be assessed over a period of 10-15 minutes and adjusted in accordance with EPA guidelines for tonality, frequency weighting, impulsive characteristics, fluctuations and temporal content where necessary.

- 83. Air conditioning units are not to be visible from the street or public place and are not to obscure windows/window frames or architectural features of the dwelling.
- 84. The Protection of the Environment Operations (Noise Control) Regulation 2000, states that noise from any air-conditioning units (measured as the Laeq 15 minute) is not to exceed the background level (measured as the La90 15 minute) by more than 5dBA at any time. The measurement is to be taken at boundary of the property. If the noise from the air conditioner contains any annoying characteristics, the measurements are to be corrected in accordance with the New South Wales Industrial Noise Policy. In addition noise from any air conditioning units are not to be audible within habitable room of other residence before 7am or after 10pm (Monday to Friday) or before 8am or after 10pm (Sat/Sun/Public Holidays).

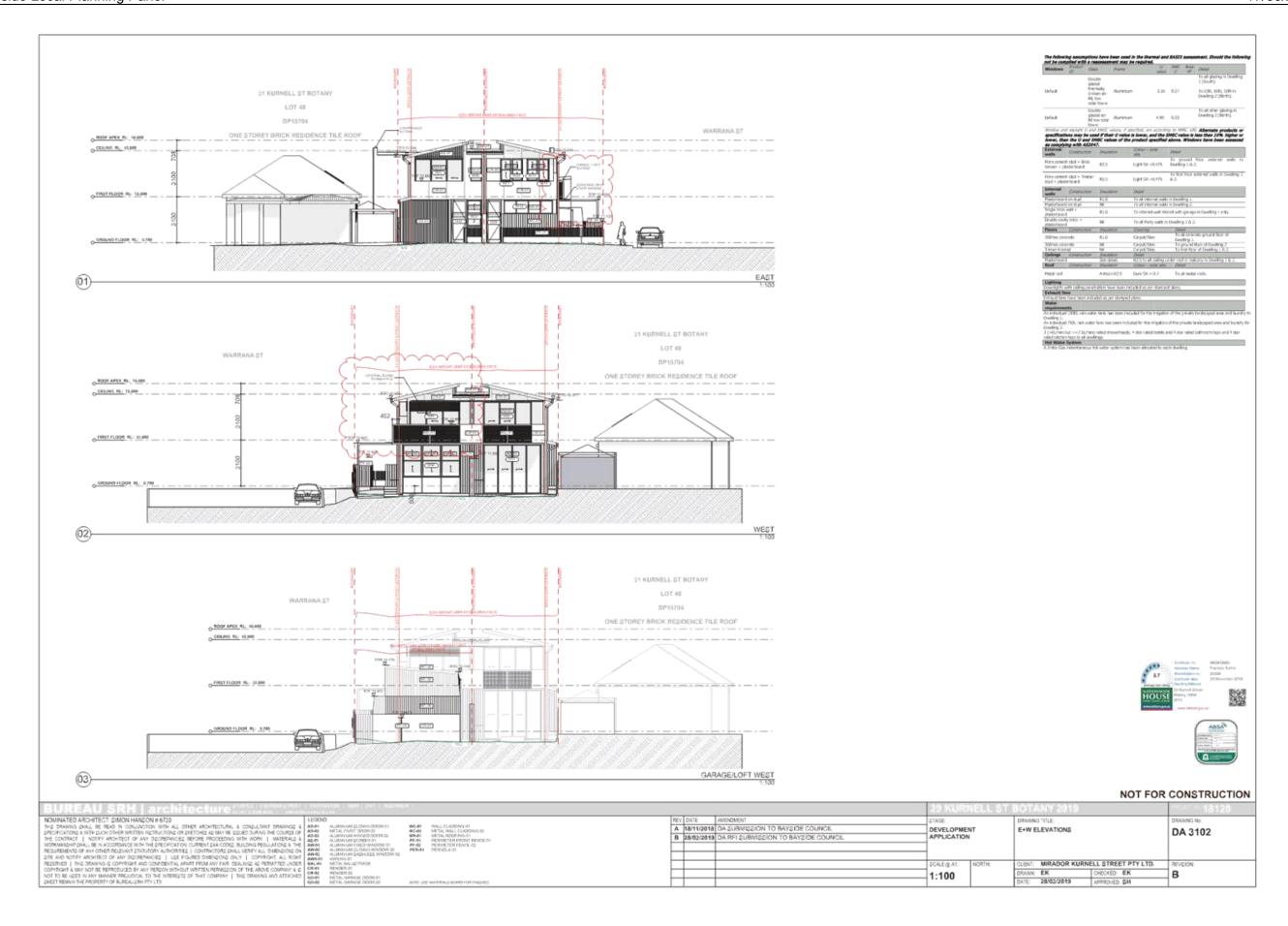
Note: in order to meet this condition the compressors and any other noise generating part of the air conditioning unit is to be located a sufficient distance from any residential boundary to permit the sound from the unit to decay sufficiently to meet the standard, or enclosed in a suitable acoustic enclosure.

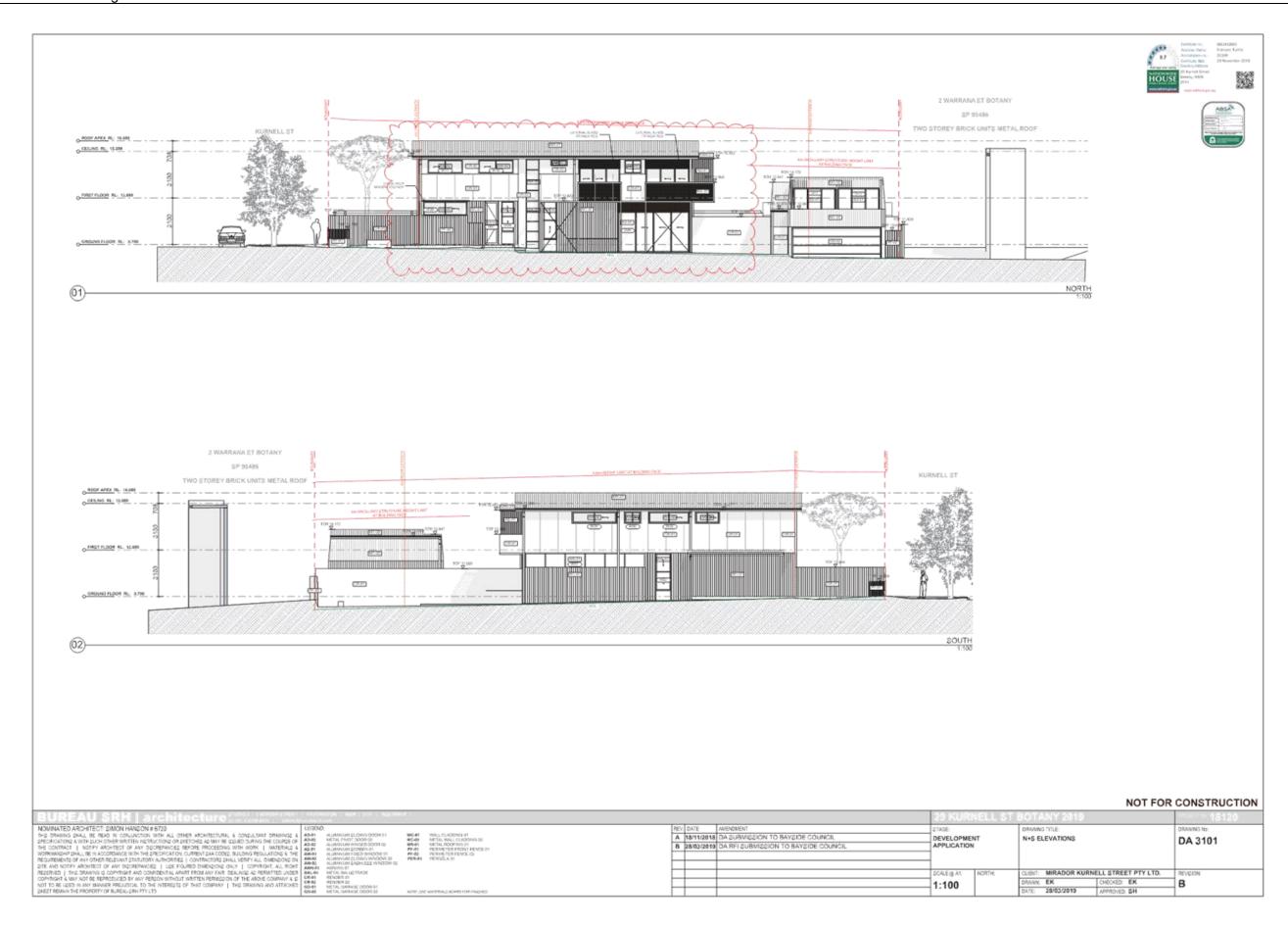
85. All wastewater and the stormwater system (including all pits, pipes, absorption, detention structures, treatment devices and rainwater tanks) shall be regularly maintained (at least once per year) in order to ensure that they remain effective. All solid and liquid waste that is collected during maintenance shall be disposed of in a manner that complies with the appropriate Environmental Guidelines.

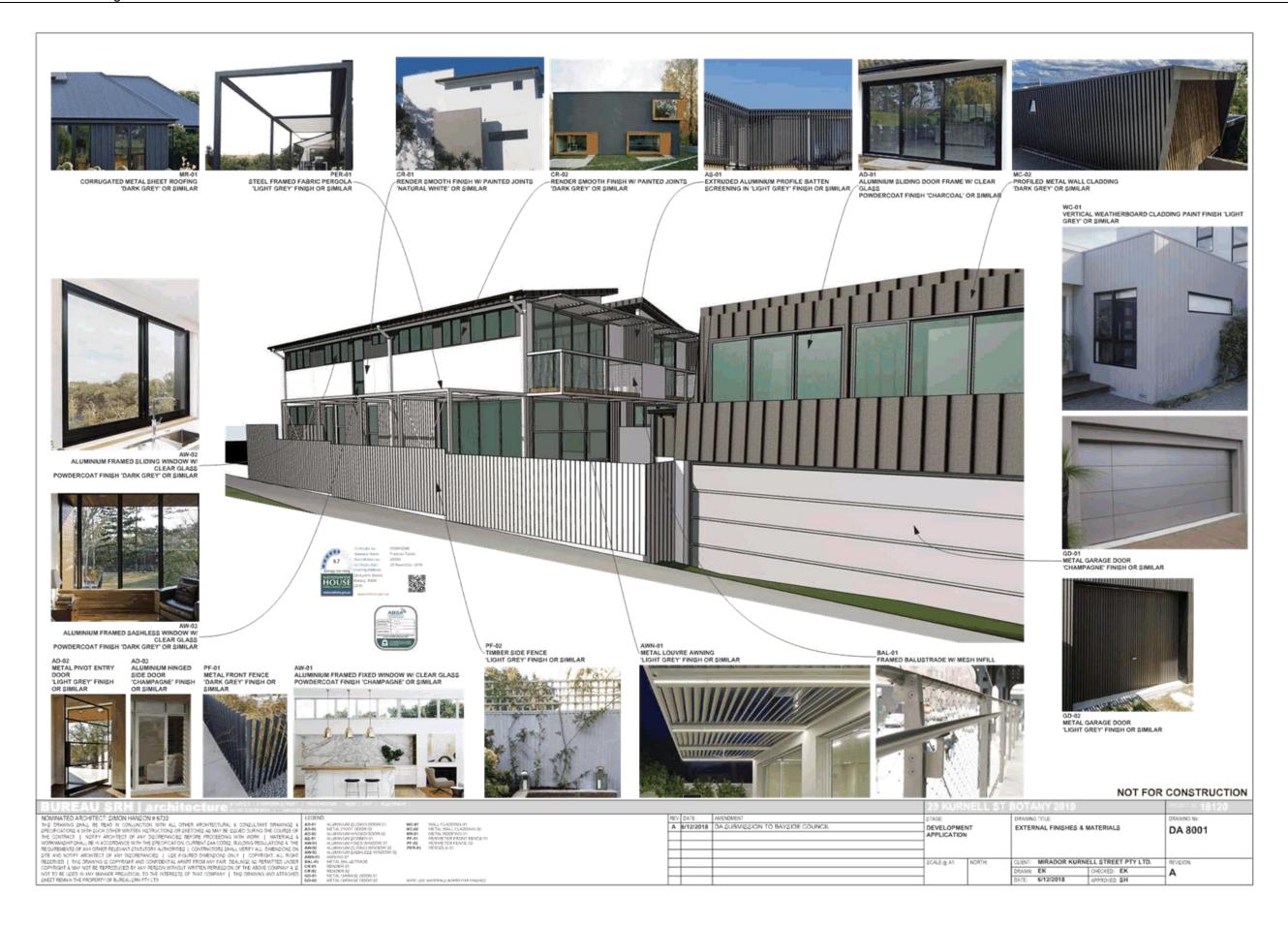
Bayside Local Planning Panel 17/09/2019

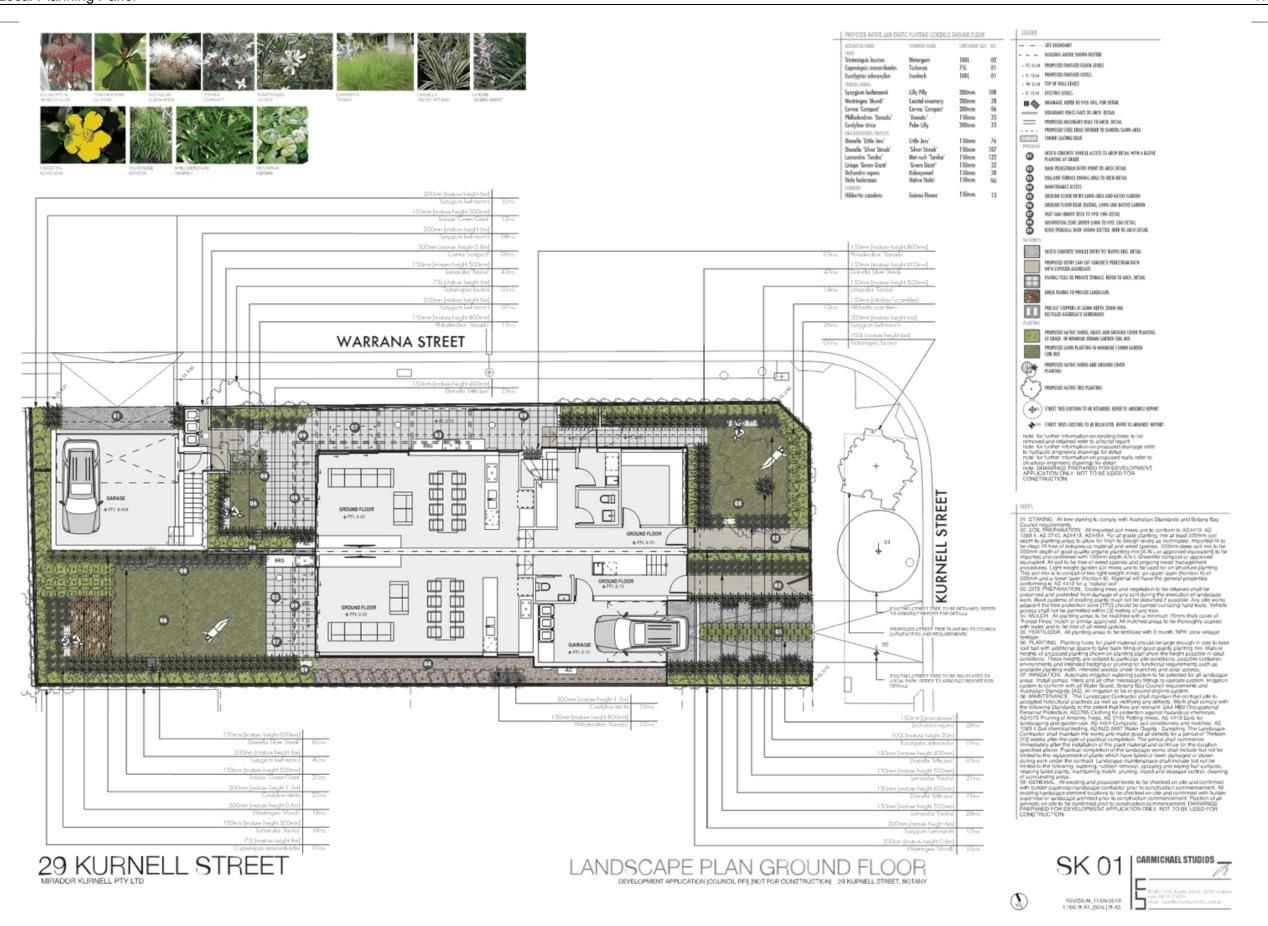


Item 6.4 – Attachment 2

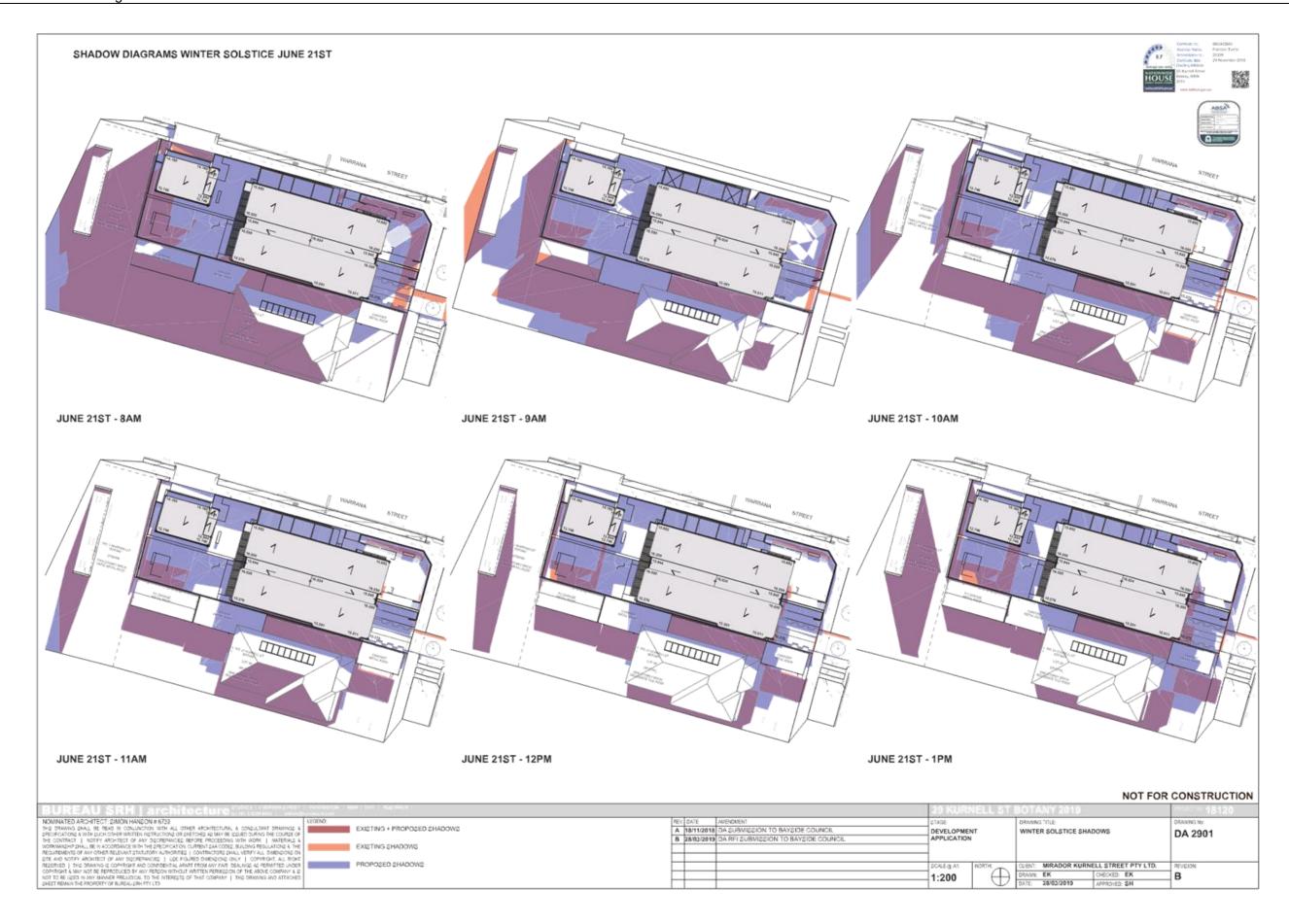








Bayside Local Planning Panel



Bayside Local Planning Panel







& Associates Pty Ltd

CLAUSE 4.6 VARIATION TO CLAUSE 4.4A - EXCEPTIONS TO FLOOR SPACE RATIO FOR RESIDENTIAL ACCOMMODATION OF THE BOTANY BAY LOCAL **ENVIRONMENTAL PLAN 2013**

1. Introduction

This submission seeks a variation to Clause 4.4A of the Botany Bay Local Environmental Plan 2013, which relates to floor space ratio.

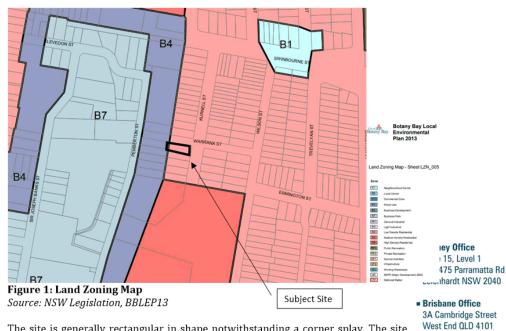
This submission has been prepared with regard to a development application seeking the demolition of all existing structures and the construction of a semi-detached dwelling development with associated Torrens title subdivision at 29 Kurnell Street, Botany.

As detailed in this written request for a variation to floor space ratio being a development standard under the Botany Bay LEP 2013, the proposed development meets the requirements prescribed under Clause 4.6 of the Botany Bay LEP 2013.

2. Site Background

The subject site is commonly known as 29 Kurnell Street, Botany, and is legally defined as Lot 47 in Deposited Plan 15704. The site is located on the south-western corner of Kurnell Street and Warrana Street intersection.

The subject site is zoned R2 Low Density Residential, refer to Figure 1 below.



The site is generally rectangular in shape notwithstanding a corner splay. The site provides for a 12.41 metre frontage to Kurnell Street, a 36.625 metre secondary street frontage and 37.965 metre shared boundary with 31 Kurnell Street, a 2.16 metre splay, and a 13.625 metre rear boundary to 2 Warrana Street. The site provides for a f. 02 9569 1103 total site area of 521.9m2.

- t. 02 9569 1100
- e. gat@gatassoc.com.au
- w. www.gatassoc.com.au

TOWN PLANNERS - BASIX/ENERGY ASSESSORS

The site is currently occupied by a single storey brick dwelling with a tile roof. A metal garage is located to the rear with the vehicle crossover over the secondary street frontage. A shed is also located at the rear of the garage. Two small street trees are located between on the verge on the Kurnell Street frontage, while a power pole is located within the verge along the Warrana Street frontage.

The subject site is located within an established urban area, with each adjoining site being some form of residential property. The site falls within a R2 Low Density Residential zone, however it is worth noting the site borders a B4 Mixed Use zone to the rear and is in proximity to R4 High Density Residential zoned land to the south and B7 Business Park land to the west. Adjoining the site to the south at 31 Kurnell Street is a single storey brick dwelling with a tile roof of the same era. The driveway is adjacent to the shared boundary and a carport covers a hardstand parking space. Further to the south at 33 Kurnell Street is a two storey rendered dwelling with Colorbond roof, more representative of contemporary development beginning to appear in the area.

To the rear of the property at 58 Pemberton Street is a contemporary three storey multidwelling housing development.

The site falls within an R2 Low Density Residential zone and development in the area is characteristic of this zone, generally being the single and two storey dwellings as noted above. The site does adjoin a B4 Mixed Use zone to the rear along Pemberton Street.

The proposal results in a greater FSR than is permissible by Botany Bay Council's Local Environmental Plan 2013. Consequently, this Clause 4.6 variation has been prepared.

3. Clause 4.6

This submission is made under clause 4.6 of the Botany Bay LEP 2013 – 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 RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E3 Environmental Management or Zone E4 Environmental Living.
- (7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).
- (8) This clause does not allow development consent to be granted for development that would contravene any of the following:
 - (a) a development standard for complying development,
 - (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,
 - (b1) clause 4.3 (2A),
 - (b2) clause 4.4B (3),
 - (c) clause 5.4,".

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 Botany Bay LEP 2013.

The development standard to which this variation relates to is Clause 4.4A – Exceptions to Floor Space Ratio for Residential Accommodation, which reads as follows:

- 1) The objectives of this clause are as follows:
 - a) to ensure that the bulk and scale of development is compatible with the character of the locality,
 - b) to promote good residential amenity.
- 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:

Column 1	Column 2 Maximum floor space ratio	
Site area		
< 200 square metres	0.85:1	
200-250 square metres	0.80:1	
251-300 square metres	0.75:1	
301-350 square metres	0.70:1	
351-400 square metres	0.65:1	
401-450 metres	0.60:1	
> 450 metres	0.55:1	

- (b) the maximum floor space ratio for multi dwelling housing is not to exceed 0.8:1,
- (c) the maximum floor space ratio for a residential flat building is not to exceed 1:1,
- (d) the maximum floor space ratio for all other development for the purpose of residential accommodation is 0.5:1.

Council's Floor Space Ratio map identifies the maximum floor space ratio on the site as 1:1. However, Clause 4.4A(3)(d) reduces the applicable floor space ratio to 0.5:1 for the proposed semi-detached dwellings as the site is located within Area 3 and is for 'other development for the purpose of residential accommodation', not being a dwelling house, multi dwelling housing or a residential flat building. Refer to Figure 2 below.



A written justification is therefore required for the proposed variation to the floor space ratio development standard, in accordance with Clause 4.6 of the Botany Bay LEP 2013.

4. Extent of Non-Compliance

As noted above, Clause 4.4 of the Botany Bay LEP 2013 states that the subject land has been determined to have a maximum floor space ratio of 1:1. However, Clause 4.4A(3)(d) reduces this to 0.5:1 as semi-detached dwellings are not a dwelling house, multi dwelling housing or residential flat building, and therefore fall under '...other development for the purposes of residential accommodation'.

The subject site has a total area of 521.9m². However, as part of the development application Torrens title subdivision is sought to create two (2) lots.

Lot 01 is sought to be $249.82m^2$ in size, while Lot 02 is sought to be $272.12m^2$. Accordingly, the maximum floor space permitted under Council's controls would be $124.91m^2$ for Lot 01 and $136.06m^2$ for Lot 02.

Lot 01 proposes a total GFA of $143.83 \,\mathrm{m}^2$, being an FSR of 0.58:1. A variation of $18.92 \,\mathrm{m}^2$ is therefore proposed, exceeding the control by 15.1%.

Lot 02 proposes a total GFA of $176.58m^2$, being an FSR of 0.65:1. A variation of $40.52m^2$ is therefore proposed, exceeding the control by 29.8%.

The proposed variation is considered not to result in unreasonable bulk or scale through compliance with Council's other controls governing building envelope and density, as demonstrated within the Statement of Environmental Effects and within this Clause 4.6 variation.

5. 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 $\it Wehbe~vs~Pittwater~Council~(2007)~LEC~827~are~considered.$

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:

First	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. 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.
Second	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)
Third	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)
Fourth	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 departing from the standard and hence compliance with the standard is unnecessary and unreasonable. (not applicable)
Fifth	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)

In respect of the floor space ratio standard, the first method is invoked.

The objectives supporting the floor space ratio control identified in Clause 4.4A 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 4.4A.

- 1) The objectives of this clause are as follows:
 - a) to ensure that the bulk and scale of development is compatible with the character of the locality,
 - b) to promote good residential amenity.

It is acknowledged that both proposed dwellings seek a variation to the permitted FSR controls in Clause 4.4A(2)(d). The variations are by $18.92m^2$ for Lot 01 and $40.52m^2$ for Lot 02. Notwithstanding this, the development is considered to be of a bulk and scale compatible with the character of the locality.

The context of the site should be acknowledged. The Botany area is an older residential area in the process of being redeveloped. This can be seen in the immediate vicinity of the site through the recent constructions of residential flat buildings to the rear of the site and several doors to the south. Refer to Figures 3 and 4 below. While the site remains zoned R2 Low Density Residential, it is bounded to the west by a B4 Mixed Use zone and several properties to the south is an R4 High Density Residential zone. The site is not located within the middle of a low density area, but on the border to substantially higher densities. Notwithstanding, there is an ongoing transition from older stock dwelling houses to two storey dwellings, semi-detached dwellings and the like can also be seen along Kurnell Street and within the locality. Refer to the photos within the Statement of Environmental Effects (SEE). The proposal itself is for two (2) two-storey semi-detached dwellings, a development type consistent with the character of the area.

It is worth noting that were the two lots not being developed for semi-detached dwellings but for detached dwellings houses, substantially greater FSR would be permitted on the two sites. Clause 4.4A permits up to 0.8:1 FSR on sites between 200-250m², such as Lot 01, and up to 0.75:1 on sites between 250-300m², such as Lot 02. Subdivision is permitted if it matches the subdivision pattern of the immediate area, which has been clearly demonstrated within the SEE with the proposed allotment sizes being consistent with those along Kurnell Street. Therefore, it seems illogical that were a 100mm setback provided to both dwellings, making them detached dwellings, substantially greater FSR than what is proposed would be permitted, subject to compliance with remaining bulk and scale guiding controls such as landscaping, site coverage and private open space, of which the proposed development is notably compliant.



Figure 3 Existing garage and adjoining recent residential flat building development on 2 Warrana Street.



Figure 4 Residential flat building complex to the south of the site. Photo taken outside 31 Kurnell Street.

Regarding controls guiding bulk and scale, both dwellings in the semi-detached dwellings development provide for ample landscaping and private open space in excess of the minimum requirements and provide for considerably below the maximum site coverage. Refer to the Drawing No. DA 1005 Area Calculation in the architectural plan set for a detailed overview of the abovementioned controls. As all controls are easily achieved, the additional GFA sought has not resulted in unreasonable bulk and scale when considering these controls.

In terms of amenity, a key aspect is solar access. The additional GFA has also not resulted in the lack of capacity for the development to comply with the solar access requirements in terms of the subject dwellings and the adjoining properties. The below commentary is separated into sections.

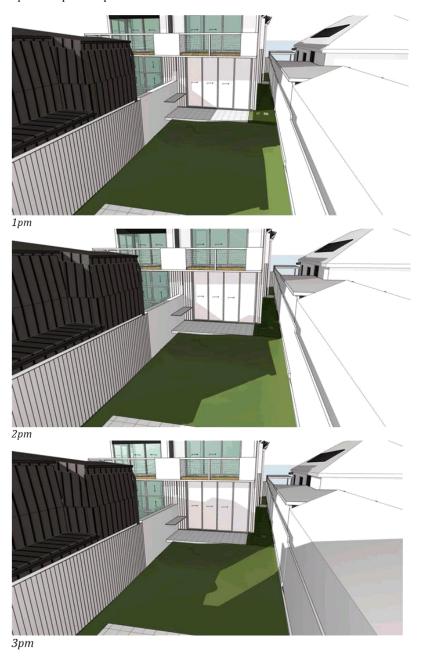
Lot 01

The solar access requirement in Part 4A.4.3 Solar Access of the Botany Bay DCP 2013 is for living room windows and 50% of the private open space to achieve 2 hours of solar access between 9am and 3pm on June 21. Lot 01 is below $250 \, \mathrm{m}^2$, and therefore requires $25 \, \mathrm{m}^2$ of private open space. 50% of this is $12.5 \, \mathrm{m}^2$. The following table details the amount of solar access to the rear private open space of Lot 01. Compliant times are underlined.

Time	POS Receiving Solar Access (m²)
9am	0
10am	7.02
11am	<u>12.5</u>
12pm	<u>16.9</u>
1pm	<u>12.83</u>
2pm	12.43
Зрт	8.26

The minimum solar access is achieved between 11am and 1pm. It is noted that almost 3 hours is achieved by $0.07 \, \mathrm{m}^2$. The proposal is compliant in this regard.

As the below 3D images demonstrate, the sliding doors to the living room are also in sun between 1pm and 3pm. Compliance with the control is achieved for Lot 01.



<u>Lot 02</u>

Lot $02~\rm exceeds~250m^2$ and therefore requires $36m^2$ of private open space. 50% of this is $18m^2$. The following table details the amount of solar access to the rear private open space of Lot 02. Compliant times are underlined.

Time	POS Receiving Solar Access (m²)
9am	7.43
10am	16.71
10:15am	17.81
10:30am	<u>18.35</u>
11am	20.47
12pm	<u>19.12</u>
12:15pm	<u>18.45</u>
12:30pm	17.78
1pm	16.15
2pm	11.63
3рт	3.62

Lot 02 achieves the $18\mathrm{m}^2$ of solar access between $10:30\mathrm{am}$ and $12:15\mathrm{pm}$, being 1 hour and $45\mathrm{min}$. As the table details, there is $17.81\mathrm{m}^2$ of private open space at $10:15\mathrm{am}$ and $17.78\mathrm{m}^2$ at $12:30\mathrm{pm}$, therefore meaning that the proposal is only non-compliant by $0.19\mathrm{m}^2$ and $0.22\mathrm{m}^2$ at both ends of the solar access window, an imperceptible degree of variation. Further, as articulated on the plan shadow diagrams, the area receiving solar access is at the key location adjacent to the living room sliding doors, the key entertainment area that enables the best amenity outcome.

The overshadowing of the private open space of Lot 2 is principally driven by the secondary street frontage fencing being 1.8m as required by the Botany Bay DCP to maintain privacy to the private open space and by the east-west orientation of the lot. In reviewing the plan shadow diagrams it can be clearly seen that the entire secondary street frontage setback is overshadowed by the fencing, removing a substantial amount of the private open space from being included.

Given the extent of variation is minimal (0.19m2 or 0.22m2) and that it is driven by the fencing and orientation, it is considered that the FSR variation on Lot 02 has not resulted in comprised amenity.

Adjoining Property

The property to the south, 31 Kurnell Street, does receive additional overshadowing generated by the proposed development as indicated on the provided plan and elevational shadow diagrams.

In a discussion regarding overshadowing of 31 Kurnell Street, it must be acknowledged that the orientation of the two sites, with the allotments being east-west, inherently generates overshadowing with an increase from a single storey dwelling to any two-storey development.

The northern elevation losing solar access to the windows is a product of a two storey development being proposed on the subject lot, noting the existing dwelling is a single storey. All overshadowing impacts are inherently burdened upon an allotment to the south and a two storey development generates additional overshadowing. Such aspects are acknowledged in the planning principle of solar access from *The Benevolent Society v Waverley Council [2010] NSWLEC 1082* in which it is stated that:

"The ease with which sunlight access can be protected is inversely proportional to the density of development. At low densities, there is a reasonable expectation that a dwelling and some of its open space will retain its existing sunlight. (However, even at low densities there are sites

and buildings that are highly vulnerable to being overshadowed.) At higher densities sunlight is harder to protect and the claim to retain it is not as strong."

A site located to the south of the proposed development with an east-west orientation is such an instance where even at low densities there are sites and buildings that are vulnerable to being overshadowed.

The principle states that even at low densities there is a reasonable expectation that a dwelling and some of its open space will retain its existing sunlight. We submit that this is still easily the

The shadow diagrams submitted with the amended architectural plans demonstrate that the bulk of the new shadows fall on the northern elevation and carport roof on 31 Kurnell Street. The solar access to their private open space is reduced at 9am and to a considerably lesser extent at 10am, however by 11am the impact is negligible and removed by 12pm. This leaves unchanged solar access from between 11am and 12pm onward.

Further, even at 10am substantially more than the minimum 18m² of private open space required for compliance with the solar access control receives direct solar access, being approximately 43m². It is only at 9am where solar access has been removed. Therefore, ample solar access is maintained to the adjoining private open space.

In terms of the rear elevation, being the windows to the living rooms, there is no further reduction to their solar access to that room through those windows. From 12pm to 3pm, direct sunlight is maintained.

The proposed development as amended is generally compliant with the planning controls, noting the development is easily compliant with the maximum height of buildings control, landscaped area, site coverage and setbacks, noting that the side setbacks are based on merit for lots of this width but otherwise are 900mm which is being sought in these amended plans. Therefore, the proposed built form is something that can be accommodated on the site and is aligned with the desired future character of the area. Given this, a reasonable level of solar access is maintained despite the loss the solar access to the north facing windows as a result of a two storey development and meets the objective of the control, being:

"03 To minimise overshadowing impact to adjoining properties."

Finally, it is noted that the increased overshadowing proposed by the two storey development only overshadows the solar panels on 31 Kurnell Street at 9am. From 10am to 3pm, there remains unimpeded solar access.

Therefore, the additional FSR has not resulted in overshadowing beyond what is understood as reasonable per the DCP.

Privacy has been suitably addressed as part of the design, with the southern elevation of Lot 01 consisting of highlight windows exceeding 1.5m sill heights where windows are proposed toward the adjoining property, as required by the DCP. A privacy screen is proposed to the south edge of the rear balcony as well to prevent overlooking to the private open space of 31 Kurnell Street.

As noted, ample private open space and landscaping have been provided to ensure good outdoor space for the amenity of residents. It is therefore submitted that appropriate residential amenity is provided in the current design and objective (b) is achieved.

Given the above, it is submitted that the development has compatible bulk and scale with the character of the locality, in particular the desired future character as driven by the planning

controls and provides good amenity to both dwellings and the adjoining property to the south. The proposal therefore meets the objectives of Clause 4.4A of the Botany Bay LEP 2013.

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 proposed residential development.

It is considered that this submission provides sufficient environmental planning grounds to justify contravening the development standard. As demonstrated, the objectives of the standard have been achieved.

6. Are there Sufficient Environmental Planning Grounds?

The assessment above demonstrates that the resultant environmental impacts of the proposal will be satisfactory.

It is worth noting that the amenity of the site or surrounds, existing view corridors and solar access patterns are not negatively impacted by the breach floor space ratio. The proposed development will result in a better planning outcome as the proposed semi-detached dwellings fit comfortably within the site without compromising the amenity of the subject dwellings or those of the adjoining properties more than a general increase in density on the site would generate in the form of a two storey development. Further, the proposal is in keeping with the building height control allowing for view lines to be maintained to and from the public domain.

The additional floor space ratio allows for the efficient and economic use of the land.

In this case, strict compliance with the development standard for floor space ratio in the Botany Bay LEP 2013 is unnecessary and unreasonable.

7. Is the Variation in the Public Interest?

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 4.4A.

The building contextually has regard to its surrounding properties and provides considerable open space and landscaping for the amenity of future residents and seeks no notable variations notwithstanding this submission.

Furthermore, it is important to also consider the objectives of the R2 Low Density Residential zone in relation to the development, which are as follows:

Zone R2 Low Density Residential

Objectives of zone

- 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.

In response to the above the following is provided:

- The proposed development is for two (2) two-storey semi-detached dwellings which are permissible land uses keeping in with the character of Kurnell Street and the broader low density residential environment of the area. It is noted that the site is unusual in that it straddles a B4 Mixed Use zone to the rear where a sizeable three-storey residential flat building development has been recently constructed, and to the south of the size is an R4 zone where a large residential flat building complex has also been recently constructed. Notwithstanding this, the size and scale of the semi-detached dwellings are reflective of the character of the R2 Low Density Residential zone and serve as a transition between the larger scale development and the remnant older stock single storey dwellings along Kurnell Street.
- No other land use is proposed.
- The subject site is within proximity to bus services, allowing future residents to alternative
 means of transportation. Sufficient space within both dwellings has been provided to
 accommodate bicycles.

The proposed development therefore meets 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 as it satisfies the objectives of the standard and of the zone.

8. Public Benefit of Maintaining the Standard

It is considered that the public benefit will not be undermined by varying the standard. The proposal provides for a high quality detached dwelling in keeping with the residential zoning.

Given the site's orientation, location and context it is considered that the site is well suited for the development.

The development is generally consistent with the current planning controls.

It is not considered that the variation sought raises any matter of significance for State or Regional environmental planning.

The departure from the floor space ratio control within the Botany Bay LEP 2013 allows for the orderly and economic development of the site in a manner which achieves the outcomes and objectives of the relevant planning controls.

9. Is the Variation Well Founded?

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 Botany Bay LEP 2013 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 (floor space ratio) and objectives of the R2 Low Density Residential 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 residential nature of the neighbourhood.

Based on the above, the variation is considered to be well founded.

10. General

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 Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E3 Environmental Management or Zone E4 Environmental Living.

- (7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).
- (8) This clause does not allow development consent to be granted for development that would contravene any of the following:
 - (a) a development standard for complying development,
 - (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,
 - (b1) clause 4.3 (2A),
 - (b2) clause 4.4B (3),
 - (c) clause 5.4".

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 prepared in relation to the proposed development and is submitted under separate cover.

Clauses 4.3 (2A), 4.4B (3) and 5.4 are not applicable in this instance.

11. Conclusion

The proposal does not strictly comply with the floor space ratio control as prescribed by Clause 4.4A of the Botany Bay LEP 2013. Having evaluated the likely affects arising from this non-compliance, we are satisfied that the objectives of Clause 4.6 of the Botany Bay LEP 2013 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 Botany Bay LEP 2013 to vary this development controls is appropriate in this instance.

Based on the above, it is sensible to conclude that strict compliance with the prescribed floor space ratio is not necessary and that a better outcome is achieved for this development by allowing flexibility in the application.

Darren Laybutt **GAT & Associates** Plan 3475