

## **MEETING NOTICE**

A meeting of the  
**Bayside Local Planning Panel**  
will be held in the Committee Room, Botany Town Hall  
Corner of Edward Street and Botany Road, Botany  
on **Tuesday 22 October 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**

4.1 Minutes of the Bayside Local Planning Panel Meeting - 8 October 2019 2

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

Nil

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

6.1	DA-2015/10216/G - 8 Galloway Street, Mascot .....	12
6.2	DA-2019/160 - 10/30 Stephen Road, Botany.....	80
6.3	DA-2018/378 - 13A-17 Swinbourne Street, Botany .....	124
6.4	DA-2018/368 - 1449 Botany Road, Botany .....	275

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**

**22/10/2019**

Item No	4.1
Subject	<b>Minutes of the Bayside Local Planning Panel Meeting - 8 October 2019</b>
Report by	Fausto Sut, Manager Governance & Risk
File	SF18/3008

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### **Recommendation**

That the Bayside Local Planning Panel notes that the Minutes of the Bayside Local Planning Panel meeting held on 8 October 2019 have been confirmed as a true record of proceedings by the Chairperson of that meeting.

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### **Present**

Robert Montgomery, Independent Expert Member  
Stephen Moore, Independent Expert Member  
Greg Wright, Independent Expert Member  
Jesse Hanna, Community Representative

### **Also Present**

Luis Melim, Manager Development Services  
Fausto Sut, Manager Governance & Risk  
Marta Gonzalez-Valdes, Coordinator Development Assessment  
Christopher Mackay, Coordinator Development Assessment  
Petra Blumkaitis, Development Assessment Planner  
Fiona Prodromou, Senior Development Assessment Planner  
Lauren Thomas, Governance Officer  
Wolfgang Gill, IT Technical Support Officer

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The Chairperson opened the meeting in the Committee Room of Botany town Hall at 6:00 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**

Jesse Hanna declared a Less than Significant Non-Pecuniary Interest in Item 6.6 on the basis that he is a member of Bexley RSL Club and the Club has submitted an objection to this item, but stated he would remain in the meeting for consideration of the item.

The Chairperson confirmed that this was appropriate.

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

#### **4.1 Minutes of the Bayside Local Planning Panel Meeting - 10 September 2019**

##### **Decision**

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.

#### **4.2 Minutes of the Bayside Local Planning Panel Meeting - 17 September 2019**

##### **Decision**

That the Bayside Local Planning Panel notes that the Minutes of the Bayside Local Planning Panel meeting held on 17 September 2019 have been confirmed as a true record of proceedings by the Chairperson of that meeting.

#### **4.3 Minutes of the Bayside Local Planning Panel Meeting - 24 September 2019**

##### **Decision**

That the Bayside Local Planning Panel notes that the Minutes of the Bayside Local Planning Panel meeting held on 24 September 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-2019/272 - 139 Forest Road, Arncliffe

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

The following person spoke:

- Mr Jason Furness, Managing Director of Spanline Home Additions, 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 APPROVE development application DA-2019/272 for the construction of a patio roof at Arncliffe Preschool at 139 Forest Road Arncliffe; 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.

Name	For	Against
Robert Montgomery	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Stephen Moore	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Greg Wright	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Jesse Hanna	<input checked="" type="checkbox"/>	<input type="checkbox"/>

#### Reason for Panel Determination

- The Panel agrees with the independent consultant's review and recommendation.

### 6.2 S82-2019/7 - 511 Princes Highway, Rockdale

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

The following people spoke:

- Mr Tony Moody, Town Planner, spoke for the officer's recommendation and responded to the Panel's questions.
- Mr Tom Wyburn, Architect, 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-

2019/7 for a review of determination, resolve to confirm the previous decision for refusal of the development application DA-2018/94, pursuant to Section 8.4 of the Environmental Planning and Assessment Act 1979.

Name	For	Against
Robert Montgomery	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Stephen Moore	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Greg Wright	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Jesse Hanna	<input checked="" type="checkbox"/>	<input type="checkbox"/>

#### Reason for Panel Determination

- The Panel considers that the amended application has not fully resolved the matters listed in the reasons for refusal.
- The proposed advertising sign is inconsistent with the desired future character of the Rockdale Town Centre, as described in the Rockdale town Centre Masterplan.
- The design of the proposed advertising sign is inappropriate in the context of the building upon which it is to be located, being excessive in size.
- The design and location of the proposed illuminated general purpose advertising sign is inappropriate given that the area is undergoing transition and will include high density residential in the form of mixed use development.
- Approval of the sign would set an undesirable precedent in the locality and is therefore considered to be not in the public interest.

#### 6.3 DA-2019/271 - Temporary Use of Mascot Memorial Park for a Food and Wine Festival for Three days (including set up and pack up) During October 2019, and Installation of Associated Temporary Structures (Bayside Food and Wine Festival)

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

#### Determination

It is RECOMMENDED, pursuant to Section 4.16 of the *Environmental Planning and Assessment Act 1979*:

That the Bayside Local Planning Panel, exercising the functions of the Council as the consent authority APPROVE development application DA-2019/271 for the temporary use of Mascot Memorial Park for a food & wine festival for 3 days (including set up and pack up) during October 2019, and installation of associated temporary structures ('Bayside Food and Wine Festival'), pursuant to Section 4.16(1)(a) of the *Environmental Planning and Assessment Act 1979* and subject to the conditions of consent attached

to the Planning Assessment Report in Schedule 1 and one additional condition as follows:

“ Appropriately qualified traffic warden(s) is/are to be available to manage traffic and parking during the event and during bump in and bump out times.”

Name	For	Against
Robert Montgomery	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Stephen Moore	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Greg Wright	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Jesse Hanna	<input checked="" type="checkbox"/>	<input type="checkbox"/>

#### Reason for Panel Determination

- The Panel agrees with the independent consultant's review and recommendation. The additional condition relating to traffic wardens is considered necessary to ensure minimal disruption to traffic.

#### 6.4 DA-2019/243 - 41 Gloucester Street, Rockdale

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

The following people spoke:

- Mrs Antonia Olaes, affected neighbour, spoke against the officer's recommendation.
- Mr Robert Olaes, affected neighbour, spoke against the officer's recommendation.
- Mrs Ivy Lai, affected neighbour, spoke against the officer's recommendation.
- Mr Jack Kwoh, affected neighbour, spoke against the officer's recommendation.
- Mrs Tracey Mitchell, affected neighbour, spoke against the officer's recommendation.
- Mrs Sahar Mustapha, affected neighbour, spoke against the officer's recommendation.
- Ms Lynette Parsons, affected neighbour, spoke against the officer's recommendation.
- Mr Luigi Tisi, affected neighbour, spoke against the officer's recommendation.
- Ms Hala Taouk, affected neighbour, spoke against the officer's recommendation.

- Mr Bruce Coxall, affected neighbour, spoke against the officer's recommendation.
- Mr Mark Savic, affected neighbour, spoke against the officer's recommendation.
- Mr William Karavelas, Building Designer, spoke for the officer's recommendation and responded to the Panel's questions.
- Mr Bernard Moroz, Town Planner, spoke for the officer's recommendation and responded to the Panel's questions.
- A pro-forma letter, objecting to the development, was handed in at the meeting signed by the following affected neighbours:
  - E Russo
  - Maria Vaporis
  - Nello Faraone
  - Ross Moar
  - D Markovski
  - Kevin Burg
  - Leoli Burg
  - D Soufias
  - P Soufias
  - Xuong Vuong
  - Ivy Vuong
  - Ali Ali
  - Donna Anastasovski
  - David Anastasouski
  - George Canelas
  - Thomas Chiu
  - Nathan and Shannon Perkins
  - Catherine Bernasconi
  - Brett Waller
  - Zahrat Bakkour
  - Merri Soeleusua
  - Dafina Lolevska
  - Tina Tisi

- Roberto Tisi
- Vlad Lalievski

### Determination

1. That the Bayside Local Planning Panel, exercising the functions of the Council as the consent authority APPROVE development application DA-2019/243 for demolition of existing structures and construction of a two storey boarding house with 10 rooms, 5 parking spaces and 2 motorcycle parking spaces at 41 Gloucester Street, Rockdale 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 incorporating additional conditions which require:
  - 1 The finished paving level of the walkway along the eastern boundary from the communal open space to the rear car-park shall be no higher than the existing ground level at the boundary to 39 Gloucester Street.
  - 2 Privacy screening, in appropriate materials, be provided along the eastern boundary from the communal open space to the rear of proposed room G06. The screening is to be set back from the boundary to align with the pathway with a minimum height of 2.3 metres.
  - 3 The Plan of Management is to be amended to include the following provisions:
    - a The Plan of Management is to be reviewed annually by Council based on the operation of the premises, including complaints received and the manner in which complaints have been resolved Any amendments required as a consequence of the review shall be imposed as the current Plan of Management following the review
    - b The applicant is to establish a resident consultation group to assist in the ongoing review of the operation and complaints management. This group should meet at least annually.
    - c The name, phone number and other relevant contact details for the property manager are to be displayed at the front of the premises where clearly visible from the public footpath.
    - d Complaints management procedures should be documented, including response to complaints and dispute resolution.
2. That the submitters be notified of the Bayside Local Planning Panel's decision.

Name	For	Against
Robert Montgomery	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Stephen Moore	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Greg Wright	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Jesse Hanna	<input checked="" type="checkbox"/>	<input type="checkbox"/>

**Reason for Panel Determination**

- The Panel agrees with the officer's assessment of the proposal, noting that it complies with all necessary statutory provisions.
- The Panel acknowledges the level of concern expressed by neighbouring and nearby property owners, however the proposal is considered to be satisfactory subject to the additional conditions proposed.
- The additional conditions are proposed by the Panel to assist in the protection of privacy to the adjoining property and to ensure that the local residents are engaged by the operator in the ongoing management of the premises.

**6.5 DA-18/1161 - 31 Albert Street, Botany**

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

The following person spoke:

- Mr David Waghorn, Town Planner, spoke for the officer's recommendation and responded to the Panel's questions.

**Determination**

- 1 That the Bayside Local Planning Panel, exercising the function of the Council as the consent authority, pursuant to Section 4.16 of the EP&A Act 1979 approves a variation to the floor space ratio prescribed by cl4.4 Floor space ratio of the Botany Bay LEP 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-2018/1161 for the demolition of existing structures, Torrens Title subdivision into two lots and the construction of two semi-detached dwellings and one swimming pool at No. 31 Albert 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.

Name	For	Against
Robert Montgomery	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Stephen Moore	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Greg Wright	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Jesse Hanna	<input checked="" type="checkbox"/>	<input type="checkbox"/>

**Reason for Panel Determination**

- The applicant has addressed all of the matters raised at the previous Panel through amended designs.
- The Panel agrees with the officer's assessment of the proposal and is satisfied that the development, as now proposed, represents an appropriate design response to the site and surrounds.

**6.6 DA-2018/254 - 8-18 Stoney Creek Road, Bexley**

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

The following people spoke:

- Mr Joseph El Khawaji, Architect, spoke for the officer's recommendation and responded to the Panel's questions.
- Mr Gerrard Turisi – Town Planner, spoke for the officer's recommendation and responded to the Panel's questions.

**Determination**

1. That the Bayside Local Planning Panel, exercising the functions of the Council as the consent authority APPROVE development application DA-2018/254 for the demolition of existing structures and construction of a part 5 and 6 storey mixed use building comprising 68 residential dwellings, two (2) ground floor commercial premises and two (2) level basement car park at 8-18 Stoney Creek Road, Bexley, 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.
2. That the submitters be notified of the Bayside Local Planning Panel's decision.

<b>Name</b>	<b>For</b>	<b>Against</b>
Robert Montgomery	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Stephen Moore	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Greg Wright	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Jesse Hanna	<input checked="" type="checkbox"/>	<input type="checkbox"/>

**Reason for Panel Determination**

- The Panel agrees with the officer's assessment of the proposal and the recommendation.
- The Panel notes that the entire ground floor is to be commercial floor space which is a positive aspect of this mixed use development.



- The design and presentation of the building is an appropriate response to the site and surrounding properties.

The Chairperson closed the meeting at 8:14pm.

Certified as true and correct.

Robert Montgomery  
**Chairperson**

## Bayside Local Planning Panel

22/10/2019

Item No	6.1
Application Type	Section 4.55(1A) Modification
Application No	DA-2015/10216/G
Lodgement Date	09/08/2019
Property	<b>8 Galloway Street, Mascot</b>
Ward	Ward 3
Owner	The Proprietors of Strata Plan 97178
Applicant	Karimbla Constructions Services (NSW) Pty Ltd
Proposal	Modification to amend condition 39 regarding damage deposit.
No. of Submissions	Nil
Cost of Development	Nil
Report by	Michael McCabe, Director City Futures

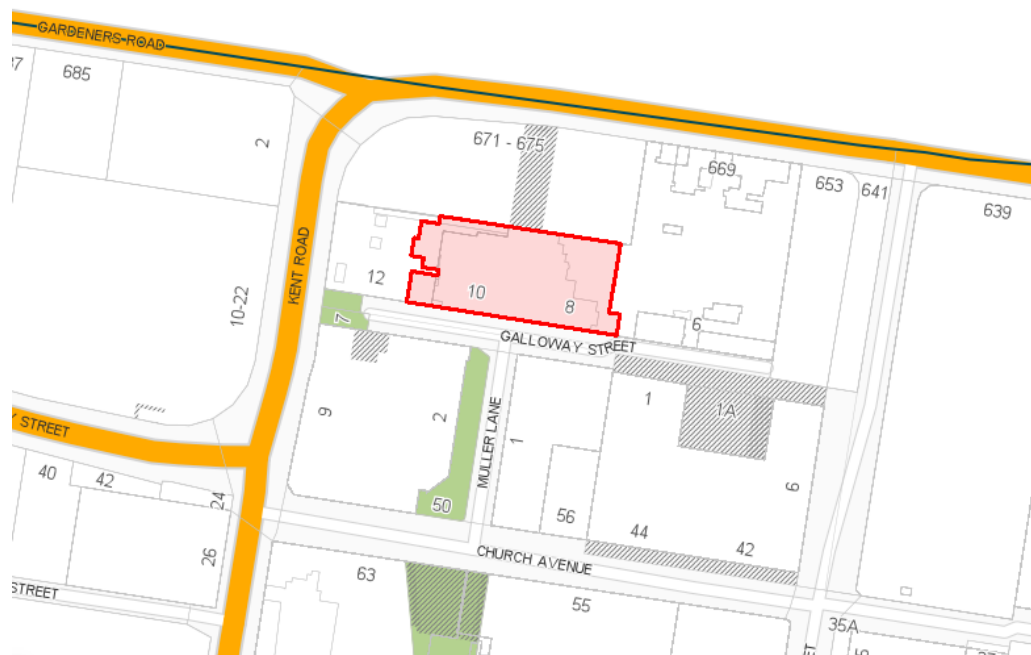
## Officer Recommendation

- 1 That the Bayside Local Planning Panel, exercising the functions of the Council as the consent authority, and pursuant to S4.55(1A) of the Environmental Planning and Assessment Act 1979 be satisfied that the proposed modification:
  - a. is of minimal environmental impact;
  - b. is substantially the same development as the development for which consent was originally granted and before that consent was modified;
  - c. has been assessed having regard to the relevant matters in s4.15 of the Environmental Planning and Assessment Act 1979.
- 2 That modification application DA-2015/10216/G seeking to modify Development Consent No. 2015/216 to amend Condition No. 39 regarding the damage deposit at 8 Galloway Street, Mascot be APPROVED. The proposal is modified as follows:

By amending Condition No. 39 to state the following:

39. *Prior to the issue of the Construction Certificate for above ground works, the applicant shall lodge a Damage Deposit of \$157,500.00 (GST Exempt) by the way of cash deposit or unconditional bank guarantee to Council against possible damage to Council's asset during the course of 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 Occupation Certificate has been issued for the final building under ~~DA16/117~~ DA15/216.*

## Location Plan



## Attachments

- 1 Planning Assessment Report [↓](#)
- 2 Statement of Environmental Effects [↓](#)

# BAYSIDE COUNCIL

## Planning Assessment Report

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### Application Details

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<b>Application Number:</b>	DA-2015/10216/G
<b>Date of Receipt:</b>	9 August 2019
<b>Property:</b>	8 Galloway Street, Mascot (formerly known as 1-5 Kent Road, Mascot) SP 97178 (formerly Lot 11, 12, 16, 17 in DP 1238487)
<b>Owners:</b>	The Proprietors of Strata Plan 97178
<b>Applicant:</b>	Karimbla Constructions Services (NSW) Pty Ltd
<b>Proposal:</b>	Section 4.55(1A) Application to modify Development Consent No. 2015/216 to amend Condition No. 39 regarding the damage deposit.
<b>Recommendation:</b>	Approval, subject to recommended conditions of consent.
<b>Value:</b>	N/A
<b>No. of submissions:</b>	N/A – Not notified
<b>Author:</b>	Ana Trifunovska, Development Assessment Planner
<b>Date of Report:</b>	4 September 2019

### Key Issues

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Development Application No. 2015/216 was approved by the Joint Regional Planning Panel on the 18<sup>th</sup> of July 2016 for the construction of a mixed use development incorporating 229 units across a 4 storey residential podium (including 3 levels of sleeved parking) and 3 x 10 storey residential towers above, 2 levels of basement; at grade parking for 391 cars, a 58sqm retail tenancy; strata subdivision; the construction of the northern half of a new east-west street and dedication to Council; a north-south oriented park and stratum subdivision; and excavation, earthworks, and landscaping at 8 Galloway Street Mascot (formerly known as 1-5 Kent Road, Mascot).

Bayside Council received the subject Section 4.55(1A) Application No. 2015/10216/G on 9 August 2019 to amend Condition No. 39 regarding the release of the damage deposit. Due to the nature of the modification, and in accordance with the requirements of BBDCP2013, the application was not required to be placed on public notification.

There were no major issues in the assessment of the proposed modification. The Section 4.55(1A) Application has been assessed in accordance with the relevant requirements of the *Environmental Planning and Assessment Act 1979* and is recommended for approval, subject to the modifications to the conditions of consent.

Bayside Planning Panel Meeting

## Recommendation

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1. That the Bayside Local Planning Panel, exercising the functions of the Council as the consent authority, pursuant to S4.55(1A) of the Environmental Planning and Assessment Act 1979 be satisfied that the proposed modification:
  - i. is of minimal environmental impact;
  - ii. is substantially the same development as the development for which consent was originally granted and before that consent was modified;
  - iii. has been assessed having regard to the relevant matters in s4.15 of the Environmental Planning and Assessment Act 1979.
2. That modification application DA-2015/10216/G seeking to modify Development Consent No. 2015/216 to amend Condition No. 39 regarding the damage deposit at 8 Galloway Street, Mascot be APPROVED. The proposal is modified as follows:
  - i. By amending Condition No. 39 to state the following:
    39. Prior to the issue of the Construction Certificate for above ground works, the applicant shall lodge a Damage Deposit of \$157,500.00 (GST Exempt) by the way of cash deposit or unconditional bank guarantee to Council against possible damage to Council's asset during the course of 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 Occupation Certificate has been issued for the final building under ~~DA16/117~~ **DA15/216**.

## Background

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### Site Description

The subject site is known as 8 Galloway Street, Mascot (formerly 1-5 Kent Road, Mascot) and is legally described as SP 97178 (formerly Lot 11, 12, 16, 17 in DP 1238487). The subject site is located on the eastern side of Kent Road (classified road) with Gardeners Road (classified road) to the north, Bourke Street to the east and Church Avenue to the south. The site is approximately 315m (as the crow flies) to the north-west of Mascot Railway Station.

The total site area is 7,820sqm (6,480sqm less Council road dedication) with a 53.44m frontage to Kent Road, 54.48m broken rear boundary, 143.03m northern side boundary and 148.48m southern side boundary. The site was previously accessed via two driveway entrances off Kent Road. It can now be accessed via Muller Lane, off Church Avenue.

The site currently contains the approved and finished 14 storey mixed use buildings (4 storey podiums with 3 x 10 storey towers above) with retail tenancies at the ground floor, residential units above, and a north-south orientated linear park through the middle of the site.

The adjoining developments to the north (671-683 Gardeners Road, Mascot) and east (669 Gardeners Road) also consist of mixed use developments with retail tenancies at the ground floor level and residential units above. The surrounding area is characterised by a number of high density mixed use development with predominately commercial and retail premises at the ground level and residential units above.

The site is within the B4 Mixed Use zone of the BBLEP2013 and is within Urban Block 1 of the Mascot Station Town Centre Precinct of the BBDCP2013.

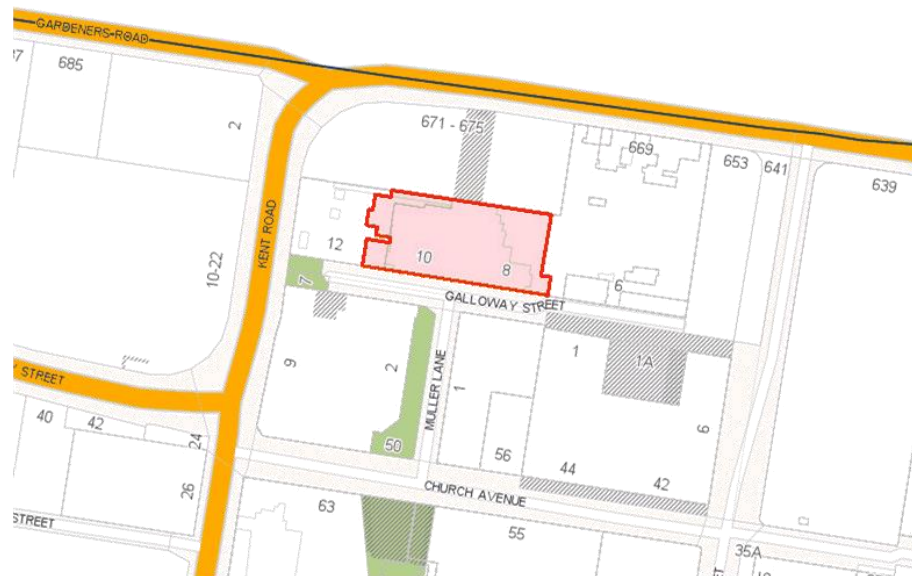


Figure 1 Subject site highlighted in red

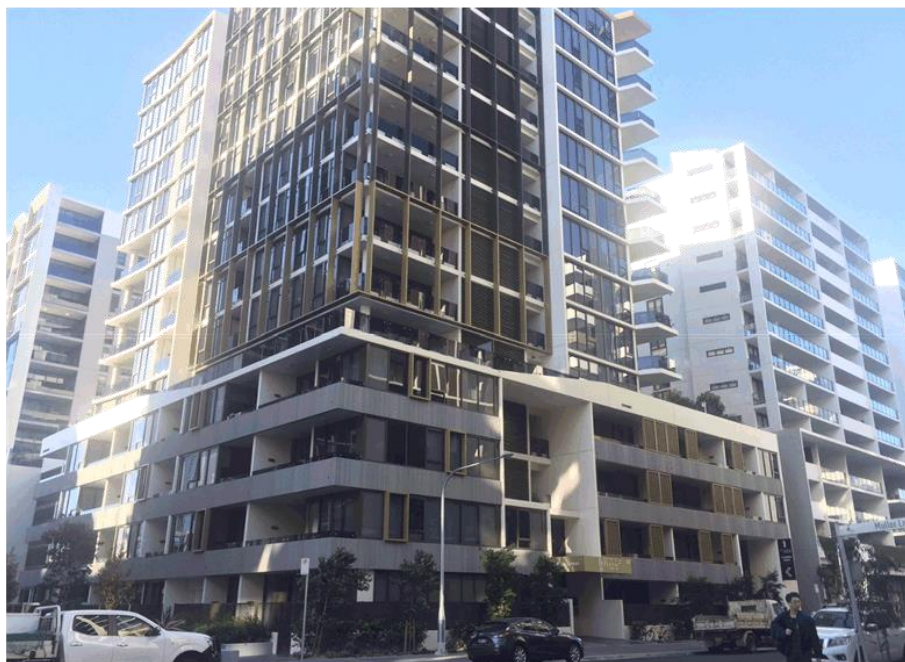


Figure 2 8 Galloway Street Mascot





*Figure 3 10 & 12 Galloway Street Mascot*



*Figure 4 North-south linear park between the buildings*

Bayside Planning Panel Meeting

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### History of Development

Council records show that the following applications were previously lodged:

Application No. & Description	Date of Determination	Determination
<b><u>DA-2015/216/08</u></b> Amendment to Condition No. 88 relating to timing of land dedication.	28 August 2018	Approved by Bayside Planning Panel
<b><u>DA-2015/216/07</u></b> Modification application to amend conditions 1, 11 & 96 to increase the height of Building B fire stair by 200mm	5 April 2019	Withdrawn
<b><u>DA-2015/216/06</u></b> Modification application to delete Condition 90(a) relating to the extinguishment of the easement over the adjoining property	3 August 2018	Withdrawn
<b><u>DA-2015/216/05</u></b> Section 96(1A): Amend various conditions to defer the timing of delivery of public domain work until the issue of the Occupation Certificate for the final building under DA16/117, delete conditions relating to the extinguishment of easements, reduce the time of Council holding the damage deposit.	11 October 2017	Approved under delegation
<b><u>DA-2015/216/04</u></b> Section 96(1A): Amend Condition 75C to allow construction as follows: Monday to Friday 7am - 6pm; and Saturday 8am - 4pm.	13 January 2017	Approved under delegation
<b><u>DA-2015/216/03</u></b> Section 96(1A) Modification Application to modify Development Consent No. DA-15(216) as follows: • Extend the northern wall of the podium level within Building A and B to align with the northern boundary (to allow future integration with the adjoining site to the north under a separate application); • Internal reconfiguration of the pool and gymnasium; • Disabled egress provision to the retail component and minor reconfiguration of plant rooms; • Disabled access provisions and altered fire egress.	10 November 2016	Approved under delegation
<b><u>DA-2015/216/02</u></b> Section 96(2) Alterations to buildings B & C resulting in 4 additional units, amendments to car parking spaces, changes to loading facilities, installation of fencing at ground level, other minor amendments.	30 January 2017	Approved by Sydney Central Planning Panel
<b><u>DA-2015/216</u></b> Joint Regional Planning Panel and Integrated Development Application for the construction of a mixed use development incorporating 229 units across a 4 storey residential podium (including 3 levels of sleeved parking) and 3 x 10 storey residential towers above, 2 levels of basement; at grade parking for 391 cars, a 58sqm retail tenancy; strata subdivision; the construction of the northern half of a	18 July 2016	Approved by Joint Regional Planning Panel



new east-west street and dedication to Council; a north-south oriented park and stratum subdivision; and excavation, earthworks, and landscaping.		
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### Description and Assessment of the Proposed S.4.55 (1A) Modifications

The proposed development in its amended form seeks consent to amend the following:

- **Modify Condition No. 39**

The applicant seeks to modify Condition No. 39 regarding the release of the damage deposit as follows:

39. Prior to the issue of the Construction Certificate for above ground works, the applicant shall lodge a Damage Deposit of \$157,500.00 (GST Exempt) by the way of cash deposit or unconditional bank guarantee to Council against possible damage to Council's asset during the course of 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 Occupation Certificate has been issued for the final building under ~~DA16/117~~ **DA15/216**.

A site inspection was carried out by Council on the 23<sup>rd</sup> March 2018 and a Final Occupation Certificate was subsequently issued for the building under DA-2015/216.

However, the current condition links the damage deposit to the development at 671-675 Gardeners Road which is subject to its own damage deposit under Condition No. 11 of DA-2016/117.

Therefore, this application seeks to tie the condition to the subject consent only to allow for the damage deposit to be released separate from the conditions of the development at 671-675 Gardeners Road (DA-2016/117), for which works have now been completed, and an Interim Occupation Certificate issued. The construction access afforded to 671 Gardeners Road, through the subject site is now redundant as the park has been dedicated to Council.

### Statutory Considerations

#### SECTION 4.55(1A) CONSIDERATIONS

Section 4.55(1A) of the *Environmental Planning & Assessment Act 1979* states that "a consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:"

a) ***It is satisfied that the proposed modification is of minimal environmental impact, and***

The Section 4.55(1A) modification application relates to the amendments of a condition relating to the release of the builder's damage deposit, therefore there will be no changes

to the development. As such, the modification will result in minimal environmental impact.

- b) *It is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and***

The Section 4.55(1A) modification application will not alter any physical aspects of the development as it relates to the release of the builder's damage deposit. Therefore, the development will remain substantially the same as the development to which the consent was originally granted.

- c) *It has notified the application in accordance with (i) the regulations, if the regulations so require, and (ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and***

In accordance with Part 2 – Advertising & Notification of the Botany Bay Development Control Plan (BBDCP) 2013, the modification application was not required to be notified as it relates to the release of the builder's damage deposit.

- d) *It has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.***

No submissions were received.

Section 4.55(3) of the Environmental Planning and Assessment Act 1979 states:

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

The consent authority must also take into consideration the reasons given by the consent authority for the granting of the consent that is sought to be modified.

An assessment of the application has been carried out under the provisions of Section 4.15 of the Environmental Planning and Assessment Act, 1979. The matters of relevance to this application have been considered as follows:

#### **S.4.15(1) – MATTERS FOR CONSIDERATION – GENERAL**

##### **S.4.15(1)(a)(i)-(iii) – Provisions of Environmental Planning Instruments**

The following Environmental Planning Instruments are relevant to the subject development:

- State Environmental Planning Policy No. 55 – Contaminated Land;
- State Environmental Planning Policy 2004 (BASIX);
- Botany Bay Local Environmental Plan 2013;
- Botany Bay Development Control Plan 2013

The proposal seeks to amend Condition 39 regarding the release of the builder's damage deposit. Therefore, the proposal does not require a detailed consideration of any of the abovementioned Planning Instruments, and the granting of approval to the proposed modifications will not be inconsistent with the objectives of these instruments.

There are no current Draft EPIs applicable to this development.

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

There are no additional considerations within the Regulations that are relevant to this modification.

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

It is considered that the proposed development will have no significant adverse environmental, social or economic impacts in the locality.

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

The modification does not impact upon the site and the suitability for development.

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

In accordance with Part 2 – Notification & Advertising of the Botany Bay Development Control Plan 2013, this Section 4.55(1A) Application was not required to be notified to surrounding property owners as the changes are only to conditions relating to the release of the builder's damage deposit.

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

The proposed amendments will have no significant adverse impact upon the public interest as Council's inspections and the Occupation Certificate have been finalised and the release of the damage deposit is no longer required to be tied to the DA-2016/117 consent.

### **Conclusion**

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The Section 4.55(1A) application seeking to modify Development Consent No. 2015/216, to amend Condition No. 39 regarding the damage deposit, at 8 Galloway Street Mascot, has been assessed in accordance with the relevant requirements of the *Environmental Planning and Assessment Act 1979* and is recommended for approval. Any potential issues associated with the amendments are appropriately covered through conditions of consent.

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**Premises: 8 Galloway Street, Mascot  
(Formerly 1-5 Kent Road, Mascot)**

**DA No: 2015/10216/G**

### **SCHEDULE OF CONSENT CONDITIONS**

#### **GENERAL CONDITIONS**

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

<b>Drawing No.</b>	<b>Author</b>	<b>Dated Received</b>
Ground Level (Drawing No. DA-110-000, Revision S4 <del>S3BS4D</del> ) (DA-15/216/03) (DA-15/216/02)	Turner	Dated <del>06/05/2016</del> <del>13/10/2016</del> 20/12/2016 Received by Council <del>26/05/2016</del> <del>26/10/2016</del> 04/01/2017
Level 1 (Drawing No. DA-110-001, Revision S2 <del>S3BS4</del> ) (DA-15/216/03) (DA-15/216/02)	Turner	Dated <del>19/02/2016</del> <del>13/10/2016</del> 30/08/2016 Received by Council <del>26/05/2016</del> <del>26/10/2016</del> 04/01/2017
Level 2 (Drawing No. DA-110-002, Revision S2 <del>S3BS4</del> ) (DA-15/216/03) (DA-15/216/02)	Turner	Dated <del>19/02/2016</del> <del>13/10/2016</del> 30/08/2016 Received by Council <del>26/05/2016</del> <del>26/10/2016</del> 04/01/2017
Level 3 (Drawing No. DA-110-003, Revision S2 <del>S3BS4</del> ) (DA-15/216/03) (DA-15/216/02)	Turner	Dated <del>19/02/2016</del> <del>13/10/2016</del> 30/08/2016 Received by Council <del>26/05/2016</del> <del>26/10/2016</del> 04/01/2017
Level 4 Podium (Drawing No. DA-110-004, Revision S3 <del>BS5</del> ) (DA-15/216/03) (DA-15/216/02)	Turner	Dated <del>06/05/2016</del> <del>13/10/2016</del> 21/09/2016

Drawing No.	Author	Dated Received
		Received by Council 26/05/2016 <del>13/10/2016</del> 01/04/2017
Level 5-8 Lower Tower (Drawing No. DA-110-005, Revision S3)	Turner	Dated 06/05/2016 Received by Council 26/05/2016
Level 9-13 Tower (Drawing No. DA-110-006, Revision S4)	Turner	Dated <del>25/05/2016</del> 30/08/2016 Received by Council 26/05/2016 04/01/2017
Plant Rooms (Drawing No. DA-110-007, Revision S3)	Turner	Dated 06/05/2016 Received by Council 26/05/2016
Roof Plan (Drawing No. DA-110-008, Revision S3)	Turner	Dated 06/05/2016 Received by Council 26/05/2016
Basement 1 (Drawing No. DA-110-B01, Revision S3)	Turner	Dated 30/03/2016 Received by Council 26/05/2016
Basement 2 (Drawing No. DA-110-B02, Revision S3)	Turner	Dated 30/03/2016 Received by Council 26/05/2016
North Elevation (Drawing No. DA-250-001, Revision S4S6) (DA-15/216/02)	Turner	Dated <del>06/05/2016</del> 30/08/2016 Received by Council 26/05/2016 04/01/2017
East Elevation – Adjoining Boundary (Drawing DA-250-002, Revision S3S4) (DA-15/216/02)	Turner	Dated <del>06/05/2016</del> 30/08/2016 Received by Council 26/05/2016 04/01/2017
South Elevation – East West Street (Drawing No. DA-250-003, Revision S5S6) (DA-15/216/02)	Turner	Dated <del>06/05/2016</del> 26/08/2016 Received by Council 26/05/2016 04/01/2017

Drawing No.	Author	Dated Received
West Elevation – Kent Road (Drawing No. DA-250-004, Revision S3S5) (DA-15/216/02)	Turner	Dated 06/05/2016 30/08/2016 Received by Council 26/05/2016 04/01/2017
East Elevation – North-South Street (Drawing No. DA-250-005, Revision S3S4) (DA-15/216/02)	Turner	Dated 06/05/2016 30/08/2016 Received by Council 26/05/2016 04/01/2017
West Elevation – North-South Street (Drawing No. DA-250-006, Revision S3S4) (DA-15/216/02)	Turner	Dated 06/05/2016 30/08/2016 Received by Council 26/05/2016 04/01/2017
West Elevation – Building B (Drawing No. DA-250-007, Revision S4S2) (DA-15/216/02)	Turner	Dated 06/05/2016 30/08/2016 Received by Council 26/05/2016 04/01/2017
East Elevation – Building A (Drawing No. DA-250-008, Revision S2)	Turner	Dated 25/06/2016 Received by Council 26/05/2016
Cross Section looking East (Drawing No. 350-001, Revision S3)	Turner	Dated 06/05/2016 Received by Council 25/05/2016
Longitudinal Section looking North (Drawing DA-350-002, Revision S2)	Turner	Dated 19/02/2016 Received by Council 26/05/2016
Ramp Sections (Drawing DA-350-003, Revision S1)	Turner	Dated 19/02/2016 Received by Council 04/07/2016
Stratum Subdivision Plans (Sheets 1-7, Revision A)	Meriton Property Services Pty Ltd	Dated 11/11/2015 Received by Council 13/11/2015

Referenced documents

Drawing No.	Author	Dated Received
Bulk Excavation & Sections and Sediment Control (Drawing No. E-1000-EX, Revision B)	Karimbla Construction Services (NSW) Pty Ltd	Dated 05/04/2016 Received by Council 05/04/2016
Cover Page (Revision S6 S3BS4E) (DA-15/216/03) (DA-15/216/02)	Turner	Dated 09/11/2016 Received by Council <del>26/05/2016</del> <del>27/10/2016</del> 05/12/2016
Site Plan – Proposed (Drawing No. DA-100-001, Revision S2)	Turner	Dated 19/02/2016 Received by Council 31/03/2016
Level & Feature Survey (Drawing No. 20308 B, Sheet 1 of 3, Revision A)	B & P Surveys	Dated 25/08/2014 Received by Council 13/11/2015
Level & Feature Survey (Drawing No. 20308 B, Sheet 2 of 3, Revision A)	B & P Surveys	Dated 25/08/2014 Received by Council 13/11/2015
Level & Feature Survey (Drawing No. 20308 B, Sheet 3 of 3, Revision A)	B & P Surveys	Dated 25/08/2014 Received by Council 13/11/2015
Site Survey	B & P Surveys	Dated 25/08/2014 Received by Council 13/11/2015
SEPP 65 Report	Turner	Dated November 2015 Received by Council 13/11/2015
Design Verification Statement As amended for DA-15/216/02	Turner	<del>Dated 13/11/2015</del> 06/09/2016 Received by Council <del>13/11/2015</del> 31/10/2016
Apartment Design Guide Workbook for Applicants	Turner	Received by Council 13/11/2015
Statement of Environmental Effects and DCP Assessment Table	Meriton Property Services Pty Ltd	Dated 11/11/2015 Received by Council 13/11/2015
Amended Statement of Environmental Effects (DA-15/216/02)	Meriton Services Pty Ltd	Dated 27/10/2016 Received by Council 31/10/2016

Drawing No.	Author	Dated Received
Letter regarding post JRPP meeting documentation	Karimbla Construction Services (NSW) Pty Ltd	Dated 11/05/2016 Received by Council 11/05/2016
Amended Clause 4.6 Variation	Meriton Property Services Pty Ltd	Dated 10/05/2016 Received by Council 11/05/2016
Retail and Commercial Needs Analysis	Urbis	Dated February 2016 Received by Council 22/02/2016
Thermal Comfort & BASIX Assessment (Issue AF) (DA-15/216/02)	Efficient Living Pty Ltd	Dated 06/11/2015 02/11/2016 Received by Council 13/11/2015 02/11/2016
Acoustic Report (Revision 1)	Acoustic Logic	Dated 12/10/2015 Received by Council 13/11/2015
Waste Management Plan	Elephants Foot	Dated 09/11/2015 Received by Council 13/11/2015
Transport Impact Assessment	Arup	Dated 11/11/2015 Received by Council 13/11/2015
Transport Impact Assessment Letter (237457)	Arup	Dated 29/01/2016 Received by Council 22/02/2016
Transport Impact Assessment Addendum (Revision A)	Arup	Dated 19/02/2016 Received by Council 22/02/2016
Access Report	Wall to Wall Design & Consulting	Dated 07/11/2015 Received by Council 13/11/2015
BCA Compliance Assessment Report (1423-91, Rev 1)	AED Group	Dated 10/11/2015 Received by Council 13/11/2015
Aeronautical Impact Assessment (J0422)	The Ambidji Group Pty Ltd	Dated 16/10/2015 Received by Council 13/11/2015



<b>Drawing No.</b>	<b>Author</b>	<b>Dated Received</b>
Arboricultural Assessment Report	Tree and Landscape Consultants (TALC)	Dated 10/11/2015 Received by Council 13/11/2015
Construction Management Plan	Meriton Property Services Pty Ltd	Dated October 2015 Received by Council 13/11/2015
Construction Traffic Management Plan (Ref: SBMG1151-11)	SBMG	Dated 15/10/2015 Received by Council 13/11/2015
Civil Works Drawings (Drawing No. DAC01, 02, 05, 10, 15, 20, 30, 35, 40, 41, 60, 61, Issue A)	at&l	Dated 11/11/2015 Received by Council 22/02/2016
Sediment and Erosion Control Details (Drawing No. DAC41, Issue A)	At&l	Dated 11/11/2015 Received by Council 13/11/2015
Environmental Site Assessment	Coffey	Dated 23/09/2014 Received by Council 13/11/2015
Geotechnical Site Investigation	Coffey	Dated 19/09/2014 Received by Council 13/11/2015
Groundwater Management Plan	Coffey	Dated 25/02/2016 Received by Council 22/02/2016
Flood Report	Calibre Consulting	Dated 12/10/2015 Received by Council 13/11/2015
Qualitative Wind Impact Assessment (Revision 0)	SLR	Dated 04/11/2015 Received by Council 13/11/2015
Crime Risk and Security Report	Meriton Property Services Pty Ltd	Dated 12/10/2015 Received by Council 13/11/2015
QS Report	Steven Wehbe	Dated 15/10/2015 Received by Council 13/11/2015
Landscape Plan – Cover Sheet (Drawing No. L-001, Issue C)	Context Landscape Design Pty Ltd	Dated 21/09/2015 Received by Council 22/02/2016

Drawing No.	Author	Dated Received
Landscape Plan – Ground Level Streetscape (Drawing No. L-101, Issue C)	Context Landscape Design Pty Ltd	Dated 21/09/2015 Received by Council 22/02/2016
Landscape Plan – Ground Level Courtyard (Drawing No. L-102, Issue C)	Context Landscape Design Pty Ltd	Dated 21/09/2015 Received by Council 22/02/2016
Landscape Plan – Level 4 Podium (Drawing No. L104, Issue C)	Context Landscape Design Pty Ltd	Dated 21/09/2015 Received by Council 22/02/2016
Landscape Plan – Level 1 Courtyard (Drawing No. L103, Issue C)	Context Landscape Design Pty Ltd	Dated 21/09/2015 Received by Council 22/02/2016
Landscape Plan – Level 4 Podium Courtyard 2 (Drawing No. L105, Issue C)	Context Landscape Design Pty Ltd	Dated 21/09/2015 Received by Council 22/02/2016
Site Plan – Existing (Drawing No. DA-100-000, Revision S2)	Turner	Dated 19/02/2016 Received by Council 31/03/2016
Site Analysis Plan (Drawing No. DA-100-002, Revision S2)	Turner	Dated 19/02/2016 Received by Council 31/03/2016
Demolition Plan (Drawing No. DA-101-001, Revision S1)	Turner	Dated 06/11/2015 Received by Council 31/03/2016
GFA Diagrams – Ground Level – L13 (Drawing No. DA-710-000, Revision S4 <del>S3</del> BS4C) (DA-15/216/03) (DA-15/216/02)	Turner	Dated <del>09/05/2016</del> <del>13/10/2016</del> 09/11/2016 Received by Council 26/05/2016, <del>26/10/2016</del> 22/11/2016
Shadow Diagrams, Winter Solstice 9am (Drawing No. DA-720-001, Revision S3)	Turner	Dated 09/05/2015 Received by Council 26/05/2016
Shadow Diagrams, Winter Solstice 12pm (Drawing No. DA-720-002, Revision S3)	Turner	Dated 09/05/2015 Received by Council 26/05/2016
Shadow Diagrams, Winter Solstice 3pm (Drawing No. DA-720-003, Revision S3)	Turner	Dated 09/05/2015 Received by Council 26/05/2016

<b>Drawing No.</b>	<b>Author</b>	<b>Dated Received</b>
Shadow Diagrams, Site Plans Winter Solstice (Drawing No. DA-720-004, Revision S2)	Turner	Dated 09/05/2015 Received by Council 26/05/2016
Shadow Diagrams, Site Plans Spring Equinox (Drawing No. DA-720-005, Revision S2)	Turner	Dated 09/05/2015 Received by Council 26/05/2016
Shadow Diagrams, Winter Solstice 10am (Drawing No. DA-720-006, Revision S2)	Turner	Dated 09/05/2015 Received by Council 26/05/2016
Shadow Diagrams, Winter Solstice 11am (Drawing No. DA-720-007, Revision S2)	Turner	Dated 09/05/2015 Received by Council 26/05/2016
Shadow Diagrams, Winter Solstice 1pm (Drawing No. DA- 720-008, Revision S2)	Turner	Dated 09/05/2015 Received by Council 26/05/2016
Shadow Diagrams, Winter Solstice 2pm (Drawing No. DA- 720-009, Revision S2)	Turner	Dated 09/05/2015 Received by Council 26/05/2016
Shadow Diagrams Gardeners Road Winter Solstice 9am & 10am (Drawing No. DA-720- 010, Revision S2)	Turner	Dated 09/05/2016 Received by Council 26/05/2016
Shadow Diagrams Gardeners Road Winter Solstice 11am & 12pm (Drawing No. DA-720- 011, Revision S2)	Turner	Dated 09/05/2016 Received by Council 26/05/2016
Shadow Diagrams Gardeners Road Winter Solstice 1pm & 2pm (Drawing No. DA-720- 012, Revision S2)	Turner	Dated 09/05/2016 Received by Council 26/05/2016
Shadow Diagrams Gardeners Road Winter Solstice 3pm (Drawing No. DA-720-013, Revision S2)	Turner	Dated 09/05/2016 Received by Council 26/05/2016
Solar Amenity Ground Level – L5 (Drawing No. DA-721-000, Revision S3)	Turner	Dated 09/05/2016 Received by Council 26/05/2016
Solar Amenity 6 – L11 (Drawing No. DA-721-001, Revision S3)	Turner	Dated 09/05/2016 Received by Council 26/05/2016

Drawing No.	Author	Dated Received
Solar Amenity L12 – L13 (Drawing No. DA-721-002, Revision S3)	Turner	Dated 09/05/2016 Received by Council 26/05/2016
Cross Ventilation Ground Level – L5 (Drawing No. DA-722- 000, Revision S3)	Turner	Dated 09/05/2016 Received by Council 26/05/2016
Cross Ventilation Amenity Level 6 – L11 (Drawing No. DA-722-001, Revision S3)	Turner	Dated 09/05/2016 Received by Council 26/05/2016
Cross Ventilation Amenity Level 12 – L13 (Drawing No. DA-722-002, Revision S3)	Turner	Dated 09/05/2016 Received by Council 26/05/2016
Calculations (Drawing No. DA- 723-000, Revision A)	Turner	Dated 30/03/2016 Received by Council 31/03/2016
Supplementary Drawings Adaptable Apartments (Drawing No. DA-813-000, Revision S1)	Turner	Dated 06/11/2015 Received by Council 31/03/2016
Proposed Envelopes for Northern site (Drawings SK001 - 5, Revision A)	Turner	Dated 19/02/2016 Received by Council 22/02/2016
Materials and Finishes (Drawing No. DA-910-001, Revision S1)	Turner	Dated 06/11/2015 Received by Council 31/03/2016
Photomontage – View from South West – Kent Road (Drawing No. DA-920-001, Revision S1)	Turner	Dated 09/11/2015 Received by Council 31/03/2016
Photomontage – View from North West – Kent Road (Drawing No. DA-920-002, Revision S1)	Turner	Dated 09/11/2015 Received by Council 31/03/2016
Photomontage – View West at New Street Junction (Drawing No. DA-920-003, Revision S1)	Turner	Dated 09/11/2015 Received by Council 31/03/2016
8.00 Apartment Schedule (Revision 5 & 8) (DA-15/216/03) (DA-15/216/02)	Turner	Dated <del>31/03/2016</del> <del>25/10/2016</del> 27/10/2016 Received by Council <del>31/03/2016</del>

Drawing No.	Author	Dated Received
		26/10/2016
		31/10/2016

- 2 No construction works (including excavation) shall be undertaken prior to the issue to the Construction Certificate.
- 3 This Consent relates to land in Lot 30 on DP 789177 and, as such, building works must not encroach on to adjoining lands or the adjoining public place.
- 4 The consent given does not imply that works can commence until such time that:
  - (a) Detailed plans and specifications of the building have been endorsed with a Construction Certificate by:
    - (i) The consent authority; or,
    - (ii) An accredited certifier; and,
  - (b) The person having the benefit of the development consent:
    - (i) Has appointed a principal certifying authority; and
    - (ii) Has notified the consent authority and the Council (if the Council is not the consent authority) of the appointment; and,
    - (iii) The person having the benefit of the development consent has given at least 2 days' notice to the council of the person's intention to commence the erection of the building.
- 5 All building work must be carried out in accordance with the provisions of the Building Code of Australia.
- 6 Pursuant to clause 97A(3) of the Environmental Planning & Assessment Regulation 2000, it is a condition of this development consent that all the commitments listed in each relevant BASIX Certificate (*and as amended*) for the each building in the development are fulfilled. (*DA-15/216/03*)
  - (a) Note: Relevant BASIX Certificate means:
    - (i) A BASIX Certificate that was applicable to the development when this development consent was granted (or, if the development consent is modified under Section 96 of the Act, a BASIX Certificate that is applicable to the development when this development consent is modified); or
    - (ii) If a replacement BASIX Certificate accompanies any subsequent application for a construction certificate, the replacement BASIX Certificate.
    - (iii) BASIX Certificate has the meaning given to that term in the Environmental Planning and Assessment Regulation 2000.

- 7 The Right-Of-Carriageway 7.0 wide, over Lot 31 in DP 789177 and benefiting Lot 30 in DP 789177, is to be extinguished within 40 days of alternate public road access being available to Lot 30 (other than Kent Road). The access may be to the Mascot precinct new north-south street (Muller Lane) upon its dedication as public road, or to another public road. The Right-Of-Carriageway is to be extinguished at no cost to the owner(s) of Lot 31, DP 789177 or to the Council.

#### **CONDITIONS IMPOSED BY AN EXTERNAL AUTHORITY**

- 8 The following condition is imposed by **Ausgrid** and is to be complied with:  
Ausgrid has identified the following assets to be affected by the development works:  
Close proximity of overhead and/or underground cable/s on public land.  
The developer is required to make a formal submission to Ausgrid by means of a duly completed Preliminary Enquiry and/ or Connection Application form, to allow Ausgrid to assess any impacts on its infrastructure and determine the electrical supply requirements for the development (e.g. whether a substation is required on site). In general, works to be considered by Ausgrid include, but are not limited to, the following
- a) Changes in electrical load requirements
  - b) Changes to Ausgrid's infrastructure (i.e. asset relocations, decommissioning substations etc.)
  - c) Works affecting Ausgrid's easements, leases and/ or right of ways
  - d) Changing the gradients of any roads or paths
  - e) Changing the level of roads or foot paths
  - f) Widening or narrowing of roads
  - g) Closing roads or laneways to vehicles
  - h) Land subsidence and vibration impact on Ausgrid assets as a result of excavation / reinforcement activities
  - i) In all cases Ausgrid is to have 24 hour access to all its assets.
- Any work undertaken near Overhead Power lines needs to be done in accordance with:
- a) Workcover Document ISSC 23 "Working Near Overhead Power Lines"
  - b) Ausgrid's Network Standards;
  - c) Ausgrids Electrical Safety Rules.
- The developer is to ensure that the proposed works do not contravene Ausgrid's technical standards and statutory requirements, in regards to the safe and reliable operation and maintenance of Ausgrid's network.
- 9 The following conditions are imposed by **Sydney Water** and is to be complied with:
- (a) Water

- (i) A drinking water extension will be required off the proposed 200mm main (to replace part of the existing 150mm main) located at the intersection of Kent Road and Church Street.
  - (ii) An accredited WSC/Designer will need to ensure that the submitted design is sized and configured according to the Water Supply Code of Australia WSA 03-2011-3.1 (Sydney Water Edition - 2012). Evidence of Code compliance should be attached with the design.
  - (iii) Detailed drinking water requirements will be provided at the Section 73 application phase.
- (b) Wastewater
- (i) An extension of the wastewater system will be required from the existing 225mm main located in Kent Road which will provide a point of connection at least 1 m inside all the proposed lot boundaries.
  - (ii) An accredited Hydraulic Designer will be engaged by the developer to ensure that the proposed wastewater infrastructure for this development will be sized & configured according to the Sewerage Code of Australia WSA 02-2002-2.2 (Sydney Water Edition 1 - Version 3). Evidence of Code compliance should be attached with the design.
  - (iii) Detailed wastewater requirements will be provided at the Section 73 application phase.
- (c) Sydney Water E-Planning
- (i) Sydney Water has an email address for planning authorities to submit statutory or strategic planning documents for review. This email address is [urbangrowth@sydneywater.com.au](mailto:urbangrowth@sydneywater.com.au). Further advice and requirements for this proposal are at attachments 1 and 2 (overleaf). If you require any further information, please contact Beau Reid of Urban Growth Strategy on 02 8849 4357 or e-mail [beau.reid@sydneywater.com.au](mailto:beau.reid@sydneywater.com.au)
- Further advice and requirements for this proposal are at attachments 1 and 2 (overleaf). If you require any further information, please contact Beau Reid of Urban Growth Strategy on 02 8849 4357 or e-mail [beau.reid@sydneywater.com.au](mailto:beau.reid@sydneywater.com.au)
- (d) Sydney Water Servicing
- (i) A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained from Sydney Water (prior to the issue of any Occupation Certificate) for that stage. Make an early application for the certificate, as there may be water and wastewater pipes to be built that can take some time. This can also impact on other services and buildings, driveways or landscape designs.
- Applications must be made through an authorised Water Servicing Coordinator. For help either visit [www.sydneywater.com.au](http://www.sydneywater.com.au) > Plumbing, building and developing > Developing Land development or telephone 13 20 92.

(e) Building Plan Approval

- (i) You must have your building plans stamped and approved before any construction is commenced. Approval is needed because construction/building works may affect Sydney Water's assets (e.g. Water, sewer and stormwater mains).

For further assistance please telephone 13 20 92 or refer to the Building over or next to assets page on the Sydney Water website (see Plumbing, building and developing then Building over or next to assets).

(f) Requirements for Business Customers for Commercial and Industrial Property Developments

- (i) If this property is to be developed for Industrial or Commercial operations, it may need to meet the following requirements:

*Trade Wastewater Requirements*

If this development is going to generate trade wastewater, the property owner must submit an application requesting permission to discharge trade wastewater to Sydney Water's sewerage system. You must wait for approval of this permit before any business activities can commence.

The permit application should be emailed to Sydney Water's Business Customer Services at [businesscustomers@sydneywater.com.au](mailto:businesscustomers@sydneywater.com.au). It is illegal to discharge Trade Wastewater into the Sydney Water sewerage system without permission.

A Boundary Trap is required for all developments that discharge trade wastewater where arrestors and special units are installed for trade wastewater pre-treatment.

If the property development is for Industrial operations, the wastewater may discharge into a sewerage area that is subject to wastewater reuse. Find out from Business Customer Services if this is applicable to your development.

(g) Backflow Prevention Requirements

- (i) Backflow is when there is unintentional flow of water in the wrong direction from a potentially polluted source into the drinking water supply.

All properties connected to Sydney Water's supply must install a testable Backflow Prevention Containment Device appropriate to the property's hazard rating. Property with a high or medium hazard rating must have the backflow prevention containment device tested annually. Properties identified as having a low hazard rating must install a non-testable device, as a minimum.

Separate hydrant and sprinkler fire services on non-residential properties, require the installation of a testable double check detector assembly. The device is to be located at the boundary of the property.



*Before you install a backflow prevention device:*

- *Get your hydraulic consultant or plumber to check the available water pressure versus the property's required pressure and flow requirements.*
- *Conduct a site assessment to confirm the hazard rating of the property and its services. Contact PIAS at NSW Fair Trading on 1300889099.*

For installation you will need to engage a licensed plumber with backflow accreditation who can be found on the Sydney Water website: <http://www.sydneywater.com.au/Plumbing/BackflowPrevention/>

(h) Water Efficiency Recommendations

- (i) Water is our most precious resource and every customer can play a role in its conservation. By working together with Sydney Water, business customers are able to reduce their water consumption. This will help your business save money, improve productivity and protect the environment.

Some water efficiency measures that can be easily implemented in your business are:

- Install water efficiency fixtures to help increase your water efficiency, refer to WELS (Water Efficiency Labelling and Standards (WELS) Scheme, <http://www.waterrating.gov.au/>
- Consider installing rainwater tanks to capture rainwater runoff, and reusing it, where cost effective. Refer to <http://www.sydneywater.com.au/Water4Life/InYourBusiness/RWT-Calculator.cfm>
- Install water-monitoring devices on your meter to identify water usage patterns and leaks.
- Develop a water efficiency plan for your business.

It is cheaper to install water efficiency appliances while you are developing than retrofitting them later.

(i) Contingency Plan Recommendations

- (i) Under Sydney Water's customer contract Sydney Water aims to provide Business Customers with a continuous supply of clean water at a minimum pressure of 15 meters head at the main tap. This is equivalent to 146.8kpa or 21.29psi to meet reasonable business usage needs.

Sometimes Sydney Water may need to interrupt, postpone or limit the supply of water services to your property for maintenance or other reasons. These interruptions can be planned or unplanned.

Water supply is critical to some businesses and Sydney Water will treat vulnerable customers, such as hospitals, as a high priority.

- 10 The following conditions are imposed by the **NSW Roads and Maritime Service**
- (a) Roads and Maritime has previously resumed and dedicated a strip of land as road along the Kent Road frontage of the subject property, as shown by grey colour on the attached Aerial- "X" (see Attachment 1 to the conditions).
- Therefore, all buildings and structures, together with any improvements integral to the future use of the site are to be wholly within the freehold property (unlimited in height or depth), along the Kent Road boundary.
- (b) The developer is to submit design drawings and documents relating to the excavation of the site and support structures to Roads and Maritime for assessment, in accordance with Technical Direction GTD2012/001.
- The developer is to submit all documentation at least six (6) weeks prior to commencement of construction and is to meet the full cost of the assessment by Roads and Maritime.
- The report and any enquiries should be forwarded to:
- Project Engineer, External Works  
Sydney Asset Management  
Roads and Maritime Services  
PO Box 973 Parramatta CBD 2124.  
Telephone 8849 2114  
Fax 8849 2766
- If it is necessary to excavate below the level of the base of the footings of the adjoining roadways, the person acting on the consent shall ensure that the owner/s of the roadway is/are given at least seven (7) days notice of the intention to excavate below the base of the footings. The notice is to include complete details of the work.
- (c) The redundant driveways on Kent Road shall be removed and replaced with kerb and gutter to match existing. The design and construction of the kerb and gutter on Kent Road shall be in accordance with Roads and Maritime requirements. Details of these requirements should be obtained from Roads and Maritime Services, Manager Developer Works, Statewide Delivery, Parramatta (telephone 88492138).
- Detailed design plans of the proposed kerb and gutter crossing are to be submitted to Roads and Maritime for approval prior to the issue of a Construction Certificate and commencement of any road works.
- 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 Roads and Maritime.
- (d) Detailed design plans and hydraulic calculations of any changes to the stormwater drainage system are to be submitted to Roads and Maritime for approval, prior to the commencement of any works.
- Details should be forwarded to:
- The Sydney Asset Management  
Roads and Maritime Services

PO Box 973 Parramatta CBD 2124.

A plan checking fee will be payable and a performance bond may be required before Roads and Maritime approval is issued. With regard to the Civil Works requirement please contact the Roads and Maritime Project Engineer, External Works Ph: 8849 2114 or Fax: 88492766

- (e) The proposed development should be designed such that road traffic noise from Kent Road is mitigated by durable materials in order to satisfy the requirements for habitable rooms under Clause 102 (3) of State Environmental Planning Policy (Infrastructure) 2007.
- (f) The developer shall be responsible for all public utility adjustment/relocation works necessitated by the above work and as required by the various public utility authorities and/or their agents.
- (g) Any proposed landscaping and/or fencing must not restrict sight distance to pedestrians and cyclist travelling along the footpath of Kent Road.
- (h) A Road Occupancy Licence should be obtained from Transport Management Centre for any works that may impact on traffic flows on Kent Road during construction activities.
  - (i) 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 Kent Road.
  - (j) All works/regulatory signposting associated with the proposed development are to be at no cost to Roads and Maritime.

11 The following conditions are imposed by the **Sydney Airport Corporation Limited** (SACL) and must be complied with:

- (a) This location lies within an area defined in schedules of the Civil Aviation (Buildings Control) Regulations which limit the height of structures to 15.24 metres above existing ground height (AEGH) without prior approval of the Civil Aviation Safety Authority.
- (b) The application sought approval for the property development to a height of 51.0 metres Australian Height Datum (AHD).
- (c) In the capacity as Airfield Design Manager and an authorised person of the Civil Aviation Safety Authority (CASA) under Instrument Number: CASA 229/11, in this instance, the Airfield Design Manager has no objection to the erection of this development to a maximum height of 51.0 metres AHD. Should you wish to exceed this height a new application must be submitted.
- (d) Should the height of any temporary structure and/or equipment be greater than 15.24 metres AEGH, a new approval must be sought in accordance with the Civil Aviation (Buildings Control) Regulations Statutory Rules 1988 No. 161.
- (e) Construction cranes may be required to operate at a height significantly higher than that of the proposed controlled activity and consequently, may not be approved under the Airports (Protection of Airspace) Regulations. Sydney Airport advises that approval to operate construction equipment (i.e. cranes) should be obtained prior to any commitment to construct.

- (f) "Prescribed airspace" includes "the airspace above any part of either an Obstacle Limitation Surface (OLS) or Procedures for Air Navigation Services – Aircraft Operations (PANS-OPS) surface for the airport (Regulation 6(1)). The height of the prescribed airspace at this location is 51 metres above AHD.
- (g) "Prescribed airspace" includes "the airspace above any part of either an Obstacle Limitation Surface (OLS) or Procedures for Air Navigation Services – Aircraft Operations (PANS-OPS) surface for the airport (Regulation 6(1)). The height of the prescribed airspace at this location is 51 metres above AHD.
- (h) Planning for Aircraft Noise and Public Safety Zones: Current planning provisions (s.117 Direction 3.5 NSW Environmental Planning and Assessment Act 1979) for the assessment of aircraft noise for certain land uses are based on the Australian Noise Exposure Forecast (ANEF). The current ANEF for which Council may use as the land use planning tool for Sydney Airport was endorsed by Airservices in December 2012 (Sydney Airport 2033 ANEF). Whilst there are currently no national aviation standards relating to defining public safety areas beyond the airport boundary, it is recommended that proposed land uses which have high population densities should be avoided.
- (i) Application for Approval of Crane Operation
  - (i) Pursuant to s. 183 of the Airports Act 1996 and Reg 7 of the Airports (Protection of Airspace) Regulations 1996, the Proponent must apply through the Airport to the Secretary of the Department of Infrastructure and Regional Development for approval of the operation ("controlled activity") set out in the Schedule.
  - (ii) An Application for approval must be given to the Airport at least 28 days before commencement of the operation.
  - (iii) The operation must not commence without approval, and must only proceed in compliance with any conditions imposed on such approval.
  - (iv) Sydney Airport has delegated authority from the Secretary to determine "short term" operations (less than 3 months).
  - (v) The Airport is required to invite submissions from CASA and Airservices regarding the proposed operation.
  - (vi) The Secretary and the Airport, as applicable, may request further information before determining an application.
  - (vii) The "Important Notes" must be read and accepted.
  - (viii) The Proponent must complete this Application and provide it to Sydney Airport, with a copy to the Council as part of the relevant Development Application.

**CONDITIONS WHICH MUST BE SATISFIED PRIOR TO THE COMMENCEMENT OF ANY EXCAVATION OR BUILDING WORKS**

- 12 Prior to commencement of any works, the Applicant must indemnify Council against all loss of or damage to the property of others and injury or death to any persons which may arise out of or in consequence of the carrying out of the work and against

all claims, demands, proceedings, costs, charges and expenses whatsoever in respect thereof or in relation thereto. In this regard, the Applicant shall take out a public liability policy during the currency of the works in the sum of not less than \$20,000,000 and to be endorsed with City of Botany Bay Council as principal, and keep such policy in force at the Applicant's own expense. A certificate from the Applicant's insurers to this effect is to be LODGED WITH COUNCIL BEFORE ANY WORK IS COMMENCED. The amount of Common Law liability shall be unlimited.

- 13 Prior to the commencement of excavation or any building works, the required Long Service Levy payable under Section 34 of the Building and Construction Industry Long Service Payments Act 1986 has to be paid. The Long Service Levy is payable at 0.35% of the total cost of the development, however this is a State Government Fee and can change without notice.

- 14 Prior to the commencement of any excavation or building works, at the proposed point of construction site entry, photographic survey showing the existing conditions of Council's and RMS infrastructure shall be submitted to Council and Principal Certifying Authority.

The survey shall detail the physical conditions and identify any existing damages to the roads, kerbs, gutters, footpaths, driveways, street trees, street signs and any other Council assets fronting the property and extending to a distance of 50m from the development. Failure to do so may result in the applicant/developer being liable for any construction related damages to these assets. Any damage to Council's infrastructure during the course of this development shall be restored at the applicant's cost.

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

- any part of the structure within the site. Wherever possible mobile cranes should be located wholly within the site,
- (f) The proposed areas within the site to be used for the storage of excavated materials, construction materials and waste containers during the construction period,
  - (g) The proposed method/device to remove loose material from all vehicles and/or machinery before entering the road reserve, any run-off from the washing down of vehicles shall be directed to the sediment control system within the site,
  - (h) The proposed method of support to any excavation adjacent to adjoining properties, or the road reserve. The proposed method of support is to be designed and certified by an Accredited Certifier (Structural Engineering), or equivalent, Proposed protection for Council and adjoining properties, and
  - (i) The location and operation of any on site crane. Please note that a crane may require prior approval from Sydney Airports Corporation.
  - (j) The location of any Construction Zone (if required) approved by Council's Traffic Committee, including a copy of that approval.
- 16 A detailed Traffic Management Plan for the pedestrian and traffic management of the site during the proposed works shall be prepared and submitted to the relevant road authority (Council or Roads and Maritime Services) for approval. The plan shall:
- (a) be prepared by a RMS accredited consultant,
  - (b) nominate a contact person who is to have authority without reference to other persons to comply with instructions issued by Council's Traffic Engineer or the Police,
  - (c) during construction, if access from Kent Road is required, the applicant is to submit documentary evidence to the Principal Certifying Authority that the required Section 138 Consent under the Roads Act, 1993 has been issued by the New South Wales Roads and Maritime Services, and
  - (d) if required, implement a public information campaign to inform any road changes well in advance of each change. The campaign may be required to be approved by the Traffic Committee.
- Note: Any temporary road closure shall be confined to weekends and off-peak hour times and is subject to Council's Traffic Engineer's approval. Prior to implementation of any road closure during construction, Council shall be advised of these changes and Traffic Control Plans shall be submitted to Council for approval. This Plan shall include times and dates of changes, measures, signage, road markings and any temporary traffic control measures.*
- 17 Prior to the commencement of any excavation or building works, the applicant shall contact "Dial Before You Dig" to obtain a utility service diagram for, and adjacent to the property. The sequence number obtained from "Dial Before You Dig" shall be

forwarded to Principal Certifying Authority. All utilities within the work zone shall be protected during construction.

Any adjustments or damage to public utilities/services as a consequence of the development and associated construction works shall be restored or repaired at the applicant's expense.

- 18 A Stage 3 – Remedial Action Plan (RAP) shall be prepared by a suitably qualified and experienced contaminated land consultant and shall be in accordance with:
  - (a) NSW Office of Environment and Heritage (OEH) 'Contaminated Sites – Guidelines for Consultants Reporting on Contaminated Sites';
  - (b) NSW Environment Protection Authority (NSW EPA) guidelines under the Contaminated Land Management Act 1997; and
  - (c) State Environmental Planning Policy 55 (SEPP55) – Remediation of Land.The RAP shall incorporate all findings and recommendations in the Environmental Site Assessment by Coffey dated 23 September 2014 for the site, it shall clearly state proposed cleanup objectives, and demonstrate how the site can be made suitable for the proposed commercial and residential use.  
The RAP shall be submitted to Council prior to commencement of any remedial action works or any excavation, demolition or other building works undertaken that are not associated with the preparation of the RAP.
- 19 In accordance with SEPP 55, notification of all category 2 remediation work to Council is required at least 30 days prior to commencement of works.
- 20 A Site Audit Statement will be required for this site. To ensure the necessary assessment and remediation is completed a NSW Environment Authority (EPA) Accredited Site Auditor shall be appointed to the site prior to the commencement of any remediation works, excavation or commencement of works at the site. The Site Auditor shall review and endorse the any additional investigation and remediation proposed prior to the commencement of any works. Evidence of this appointment shall be provided to council prior to the issue of any construction certificate.
- 21 The applicant shall provide Council with a 24 hour contact number for the manager of the remediation works prior to the commencement of any works at the site.
- 22 A Soil and Water Management Plan (SWMP) shall be prepared in accordance with the Landcom Managing Urban Stormwater – Soils and Construction 4th Edition (2004). All management measures recommended and contained within the Soil and Water Management Plan (SWMP) shall be implemented in accordance with the Landcom Managing Urban Stormwater – Soils and Construction 4th Edition (2004). This plan shall be implemented prior to commencement of any site works or activities. All controls in the plan shall be maintained at all times. A copy of the SWMP shall be kept on-site at all times and made available to Council Officers on request.

These devices shall be maintained in a serviceable condition AT ALL TIMES throughout the entire demolition, excavation and construction phases of the development and for a minimum one (1) month period after the completion of the development, where necessary.

- 23 The vehicular entry/exits to the site must be protected from erosion and laid with a surface material which will not wash into the street drainage system or watercourse.
- 24 Shaker pads and a wheel washer are to be installed at the entry/exit points to the site to prevent soil material leaving the site on the wheels of vehicles and other plant and equipment.
- 25 The proposed development shall comply with the following:
  - (a) A sign must be erected in a prominent position on any work site on which work involved in the erection or demolition of a building is being carried out:
    - (i) Stating that unauthorised entry to the work site is prohibited;
    - (ii) Showing the name of the person in charge of the work site and a telephone number at which that person may be contacted outside working hours;
    - (iii) The Development Approval number; and
    - (iv) The name of the Principal Certifying Authority including an afterhours contact telephone number.
  - (b) Any such sign is to be removed when the work has been completed.
- 26 Toilet facilities are to be provided at or in the vicinity of the work site on which work involves:
  - (a) demolition and construction of a building is being carried out, at the rate of one toilet for every 20 persons or part of 20 persons employed at the site;
  - (b) Each toilet provided:
    - (i) must be standard flushing toilet; and,
    - (ii) must be connected:
      - (iii) to a public sewer; or
      - (iv) if connection to a public sewer is not practicable to an accredited sewerage management facility approved by the Council; or,
      - (v) 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.
- 27 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.

- 28 Prior to the commencement of any demolition, excavation or remediation works, the applicant must inform Council, in writing, of:
- (a) The name of the contractor, and licence number of the licensee who has contracted to do, or intends to do, the work: or
  - (b) The name and permit number of the owner-builder who intends to do the work;
  - (c) The Council also must be informed if: -
    - (i) A contract is entered into for the work to be done by a different licensee; or
    - (ii) Arrangements for the doing of the work are otherwise changed.
- 29 Prior to commencement of any works, application(s) shall be made to Council's Customer Services Counter and obtained the following approvals and permits on Council's property/road reserve under Road Act 1993 and Local Government Act 1993, where relevant: -
- It should be noted that any works shown within Council's road reserve or other Council Lands on the development approval plans are indicative only and no approval for these works is given until this condition is satisfied.
- (a) Permit to erect hoarding on or over a public place, including Council's property/road reserve,
  - (b) Permit to construction works, place and/or storage building materials on footpaths, nature strips,
  - (c) Permit to install temporary ground anchors in public land,
  - (d) Permit to discharge ground water to Council's stormwater drainage system,
  - (e) Permit for roads and footways occupancy (long term/ short term),
  - (f) Permit to construct vehicular crossings, footpaths, kerbs and gutters over road reserve,
  - (g) Permit to open road reserve area, including roads, footpaths, nature strip, vehicular crossing or for any purpose whatsoever, such as relocation / re-adjustments of utility services,
  - (h) Permit to place skip/waste bin on footpath and/or nature strip, and
  - (i) Permit to use any part of Council's road reserve or other Council lands.
- 30 Where any shoring is to be located on or is supporting Council's property, or any adjoining private property, engineering drawings certified as being adequate for their intended purpose by an appropriately qualified and practicing engineer, showing all details, including the extent of encroachment and the method of removal (or any other method) and de-stressing of shoring elements, shall be submitted with the Construction Certificate to the Principle Certifying Authority. As no owner's consent has been received for any works on private property, evidence that all legal rights to use private property has been obtained is to be provided to

Council and the certifying authority, and approval for rock anchors the like on Council's land is to be submitted, prior to issue of the construction certificate.

- 31 In relation to the Arboricultural Assessment Report by T.A.L.C in Condition No. 1, in order to ensure that tree #9, tree #10 and tree#11 at the north west of the site along Kent Road, together with two (2) *Harpulia pendula* trees and four (4) *Casuarina* trees within the 7-9 Kent Road portion of the pocket park at the western end of the new East West Street are retained and protected during construction, and their health and structural stability ensured, the following is required:
- (a) Trees #9, #10 and #11 and the six (6) existing retained trees (2 x *Harpulia pendula* and 4 x *Casuarina*) within the 7-9 Kent Road portion of the pocket park at the western end of new East West Street shall be shown on all plans.
  - (b) A Consultant Arborist AQF Level 5 shall be engaged from site establishment to the post-construction period to erect tree protection zones and signage, inspect and advise on all works during the entire construction period, monitor tree health and to authorize and undertake tree canopy and root pruning where necessary only and to the minimum only so that the health or structural stability of the trees is not impacted.
  - (c) All tree works and tree management shall be undertaken in accordance with the Arborist report by Tree and Landscape Consultants (TALC) (dated 10th November 2015). For all tree root and canopy work to trees, comply with the recommendations and requirements and management plan contained within this report.
  - (d) Trees to be retained are to be tagged with clearly visible marking tape at a height of approx. 2 metres from ground and numbered with the corresponding number in the Tree Report.
  - (e) Prior to commencing demolition/any works the tree/s is/are to be physically protected by fencing underneath the canopy dripline using 1.8 metre high chainwire fence to form the Tree Protection Zone (TPZ). The area within the fencing is to be mulched with leaf mulch to a depth of 100mm and a weekly deep watering program undertaken during construction. The fence shall remain in place until construction is complete.
  - (f) If there is insufficient space to erect fencing in a particular area, wrap the trunk with hessian or carpet underlay to a height of 2.5 metres or to the tree's first lateral branch, whichever is greater, and affix timber palings around the tree with strapping or wire (not nails).
  - (g) Before any works commence on site, the Applicant is required to contact Council for an inspection and/or provide photographic evidence of the fenced TPZ's. Council approval is required prior commencement of any work.
  - (h) All detailed Construction Certificate plans shall show trees to be protected and the TPZ.
  - (i) The TPZ's are "No-Go" zones. There shall be no access to the property excluding the existing crossover, no stockpiling, storage or sorting of waste or building materials, no construction work, no concrete mixing, strictly no washing down of concrete mixers or tools, no chemicals mixed/disposed of, no excavation or filling, no service trenching. Any unavoidable work within the fenced zone shall be under the direction of Council's Tree Officer or Consultant Arborist.

- (j) Where unavoidable foot access is required in the TPZ, provide temporary access with timber sheets to minimise soil compaction, spillage or root damage.
  - (k) Excavation within the TPZ and within a nominated radial dimension from the tree trunk as determined by the consultant Arborist in accordance with AS 4970 : 2009 – Protection of Trees on Development Sites shall be carried out manually using hand tools or light machinery to minimise root damage or disturbance.
  - (l) No tree roots greater than 30mm in diameter shall be pruned without further assessment by Council's Tree Officer and the consulting Arborist and only following the submission of further Arborists reports to Council so as not to unduly impact or stress the tree.
  - (m) Ensure no damage to the canopy, trunk or root system (including the surrounding soil) of any tree to be retained. There shall be no canopy pruning unless approval has been granted by Council's Tree Officer under application from the consultant Arborist. Approved pruning shall be undertaken by a qualified Arborist in accordance with AS 4373.
  - (n) For retained trees on the private property adjoining, the developer is required to consult with Council and advise prior to any tree works taking place.
  - (o) Care shall be taken with construction work in the primary root zone of all existing neighbouring trees to be retained, including the Council Street tree on the southern corner of Church Avenue and Kent Road. These trees must be retained and construction works are to accommodate tree roots, branches and canopy without damage or impact. Trees are not to be pruned back to the boundary fence line under any circumstances. The canopy may otherwise overhang the property.
  - (p) The Applicant will be required to undertake any tree maintenance or remedial pruning works required by Council or the Consultant Arborist at the completion of construction.
  - (q) If there is any contravention of these tree preservation conditions, or a tree was found to be damaged (including roots), in decline, dead or pruned without permission, then Council may claim all or part of the lodged security bond prior to its release as well as require remedial pruning work. Epicormic growth is evidence of root damage.
- 32 The Applicant has permission to remove trees Tree #1, Tree #2, Tree #3, Tree #4, Tree #5, Tree #6, Tree #7 and Tree #8 as identified by the Consultant Arborist in the report by Tree and Landscape Consultants (TALC) (dated 10th November 2015).
- 33 Tree removal shall be undertaken by the Applicant at their own expense and adhere to the following:
- (a) A qualified Arborist with their own public liability insurance must be engaged.
  - (b) All work is to take place on the Council road reserve with the appropriate safety and directional signage implemented to ensure public safety and

access otherwise road and footpath closures require a Council Road Occupancy Permit.

- (c) A Dial-Before-You-Dig enquiry is required prior to stump grinding the trunk and shall occur without damage to Council infrastructure or underground services/utilities.

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

- 34 The principal contractor or owner builder must install and maintain water pollution, erosion and sedimentation controls in accordance with:
  - (a) The Erosion and Sediment Control Plan;
  - (b) "Managing Urban Stormwater - Soils and Construction" (2004) Landcom ('The Blue Book'); and
  - (c) Protection of the Environment Operations Act 1997.

**CONDITIONS WHICH MUST BE SATISFIED AT THE COMPLETION OF EXCAVATION WORKS**

- 35 An assessment of the status of asbestos in soil at the site shall be prepared by a suitably qualified contaminated land consultant and shall be in accordance with:
  - (a) NSW Office of Environment and Heritage (OEH) 'Contaminated Sites – Guidelines for Consultants Reporting on Contaminated Sites';
  - (b) NSW Environment Protection Authority (NSW EPA) approved guidelines under the Contaminated Land Management Act 1997; and
  - (c) State Environmental Planning Policy 55 (SEPP55) – Remediation of Land.

The validation report shall provide a notice of completion of any required remediation works identified during the additional assessment of asbestos in soils at the site required prior to the issue of the construction certificate and commencement of works on the site, and include a clear statement on the suitability of the site for residential use. The report shall be submitted to the Principal Certifying Authority (and the Council if the Council is not the Principal Certifying Authority). The report is to be submitted after completion of remediation works.
- 36 A Stage 4 – Site Validation Report (SVR) shall be prepared by a suitably qualified contaminated land consultant and shall be in accordance with:
  - (a) NSW Office of Environment and Heritage (OEH) 'Contaminated Sites – Guidelines for Consultants Reporting on Contaminated Sites';
  - (b) NSW Environment Protection Authority (NSW EPA) approved guidelines under the Contaminated Land Management Act 1997; and
  - (c) State Environmental Planning Policy 55 (SEPP55) – Remediation of Land.

The site validation report shall provide a notice of completion of remediation works, whether there are any ongoing site management requirements and a clear statement on the suitability of the likely proposed site use. The report shall be submitted to the Principal Certifying Authority (and the Council if the Council is not the Principal Certifying Authority). The report is to be submitted after completion of remediation works.

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

**The following conditions shall be satisfied prior to the issue of the relevant construction certificate unless otherwise stated**

- 37 The applicant must prior to the issue of any Construction Certificate, pay the following fees:
- |     |                              |                                 |
|-----|------------------------------|---------------------------------|
| (a) | Development Control          | \$12,900.00                     |
| (b) | Damage Deposit               | \$157,500.00 (Condition No. 39) |
| (c) | Street Tree Maintenance Bond | \$10,000.00 (Condition No. 38)  |
- 38 The applicant is to submit payment of a Street Tree Maintenance Bond of \$10,000.00. The duration of the Bond shall be limited to a period of 12 months after final inspection of new street trees by Council. At the completion of the 12 month period the Bond shall be refunded pending a satisfactory inspection of the trees by Council. If any tree is found to be dead or dying then Council will forfeit all or part of the bond to replace or maintain the tree, unless the Applicant undertakes this work.
- 39 Prior to the issue of the Construction Certificate for above ground works, the applicant shall lodge a Damage Deposit of **\$157,500.00** (GST Exempt) by way of cash deposit or unconditional bank guarantee to Council against possible damage to Council's asset during the course of the building works. The deposit will be refunded subject to inspection by Council 12 months after the completion of all works relating to the proposed development and Final Occupation Certificate has been issued *for the final building under ~~DA16/117~~ DA15/216. (DA15/216/05)(DA-2015/10216/G)*
- 40 The City of Botany Bay being satisfied that the proposed development will increase the demand for public amenities within the area, and in accordance with the City of Botany Bay Section 94 Development Contributions Plan 2016. A total contribution of ~~\$3,488,798.56~~ ~~\$3,369,125.87~~ **\$3,557,747.67** is payable prior to the issue of the first construction certificate for above ground works. (DA-15/216/03) (DA-15/216/02)

**Note 1:** The Section 94 Contributions are subject to quarterly review and the current rates are applicable for the quarter year in which your consent is granted. If you pay the contribution in a later quarter you will be required to pay the indexed contribution applicable at the time.

Note 2: Any difference between the original s94 contribution and the amended s94 contribution be paid within 14 days of approval of this s96(2) Modification Application. (DA-15/216/02)

- 41 Prior to the issue of the Construction Certificate for above ground works, detail design and construction plans in relation to stormwater management and disposal system for the development shall be submitted to the Certifying Authority and Council for approval.

The detail drawings and specifications shall be prepared by a suitably qualified and experienced civil engineer and to be in accordance with Council's Development Control Plan 'Stormwater Management Technical Guidelines', AS/NSZ 3500 – Plumbing and Drainage Code and the BCA. All drawings shall correspond with the approved architectural plans.

The plans shall incorporate but not be limited to the following:

- (a) Provision of an On-site Detention system (OSD) in accordance with but not limited to Part 6 of the SMTG,
- (b) The On-Site Detention System (OSD) shall be designed according to Part 6 of the SMTG. It should be noted that OSD systems shall be designed to detain the stormwater runoff from the site for all storm events up to and including 1 in 100 year ARI storm and permissible site discharge (PSD) shall be based on 1 in 5 year ARI peak flow generated from the site under the "State of Nature" condition (i.e. the site is totally grassed/turfed), rather than pre-development condition,
- (c) Stormwater discharge to Council/RMS Kerb & Gutter shall be limited to a single outlet with maximum capacity of 10L/s. If greater discharge rate is proposed (up to the maximum discharge rate stated in the point above), the a direct connection to Council/RMS pit and pipe system is required,
- (d) Provision of a minimum 10kL rainwater tank collection system for internal reuse in accordance with Section 4 of Botany Bay's SMTG,
- (e) The rainwater tank size shall be designed based on a supply/demand management approach. In addition, please note that in order to contribute to environmental sustainability and apply Water Sensitive Urban Design (WSUD) principles, consideration can be given to offset the storage requirements of the onsite detention system provided that the rainwater tank for reuse and all downpipes are connected to the rainwater tank. The volume to be offset from the onsite detention system is equivalent to 50% of the size of the rainwater tank(s),
- (f) No pump-out shall be used to drain seepage from the basement due to the elevated water table level. That is the basement shall be designed as a "fully tanked" structure,
- (g) The pump-out can only be utilized to dispose runoff that may enter the basement carpark from driveway access to the basement,
- (h) The pump out system from the basement carpark proposed shall discharge to the on-site stormwater detention (OSD) system,
- (i) Incorporate a Stormwater Quality Improvement system to ensure compliance with Section 16 of Botany Bay's SMTG,

- (j) The water quality improvement system and WSUD strategy proposal shall be designed to capture and treat at least 85% flows generated from the site.
  - (k) A WSUD Strategy and MUSIC model must be prepared and submitted to Council for the development. The MUSIC model must be prepared in line with the Draft NSW MUSIC Modelling Guidelines (Sydney Metro CMA). Sydney's Water's requirements are that the water quality improvement should meet or exceed the target as described in the "Botany Bay & Catchment Water Quality Improvement Plan" which was prepared by the Sydney Metropolitan Catchment Management Authority in April 2011, and
  - (l) The submission of detailed calculations including computer modelling where required to support the proposal.
- 42 Prior to the issue of the Construction Certificate for above ground works, the applicant shall submit amended plans to Council for approval, showing the following:
- (a) At least ~~three~~ ~~four~~ two car parking spaces allocated to the retail component (DA-15/216/03) (DA-15/216/02);
  - (b) An awning over the ramp (along Kent Road) and outdoor seating area of the retail tenancy;
  - (c) The 2 and 3 bedroom apartments without a dedicated study are to indicate that a desk can be comfortably accommodated within the open-plan living area (Part 4C.4.2, Control 2 of the BBDCP 2013);
  - (d) The balcony size of U202 is at least 10sqm;
  - (e) Internal reconfiguration of Apartment UG01 to provide at least an additional 1m<sup>3</sup> of storage within the apartment in order to comply with the total minimum requirement of storage of 5m<sup>3</sup> (to be provided within the apartment);
  - (f) The bottom half of the gymnasium glass fronting Kent Road as frosted glass up to a maximum height of 1.2m;
  - (g) The southern portion of the car park mechanical ventilation intake at podium level is to be reduced slightly to align with the balustrade of the balcony of Unit U410 so that its height can be integrated into, and hide behind the balustrading of the balcony and not protrude into the balcony. (DA-15/216/02)
- 43 All storage cages, whether floor or ceiling mounted, are to be made of perforated metal and constructed so that no goods can be stored within 500mm of the sprinkler head. This will ensure compliance with Part E1.5 of the BCA & Australian Standard 2118 is maintained. Details are to be submitted to the certifying authority for approval prior to the issue of a Construction Certificate.
- 44 Plans and specifications for the storage room for waste and recyclable materials shall be submitted to the Certifying Authority with the application for the above ground Construction Certificate. The garbage and recycling storage area shall be adequately ventilated, roofed and screened from public view. The floor shall be made of an impervious surface, drained to sewer and include a dry arrestor pit with

- a removable basket. Washing facilities shall be provided within close proximity to the garbage and recycling storage area.
- 45 Prior to the issue of the Construction Certificate for above ground works, the plans and specification including sections information showing compliance with the following requirements are to be submitted to and approved by the Principal Certifying Authority in relation to passenger vehicles
- (a) All driveways/access ramps/vehicular crossings conform with Australian Standards AS 2890.1 and Council requirements including but not limited to Section 8(v) of the DCP Stormwater Management Technical Guidelines, and
  - (b) Longitudinal sections along the extremities and the centre line of each internal driveway/access ramp at a scale of 1:25. These long sections shall extend from the horizontal parking area within the property to the centre line of the roadway. The sections shall also show the clear height from the ramp to any overhead structure.
- 46 Prior to the release of the Construction Certificate, the plans and specification including sections showing the following are to be submitted to and approved by the Principal Certifying Authority in relation to garbage truck access:
- (a) All driveways/access ramps/vehicular crossings conform with Australian Standards AS 2890.2 and Council requirements including but not limited to Section 8(v) of the DCP Stormwater Management Technical Guidelines;
  - (b) All service vehicles shall enter the property front in front out;
  - (c) Demonstrate safe headroom clearance of 4.5m is achieved in the driveway entrance and along the along the travel path, parking and manoeuvring areas of a Medium Rigid Vehicle (MRV), including Council's Garbage Truck;
  - (d) Swept path analysis shall be provided for manoeuvring of commercial vehicles, and
  - (e) A longitudinal section plotting headroom clearance above driveway access.
- 47 Prior to the release of the Construction Certificate for above ground works, plans and specifications including sections are required to be submitted to and approved by the Principal Certifying Authority:
- (a) Disabled car parking spaces shall be provided and clearly marked as per the Transport Impact Assessment, by ARUP, dated 19 February 2016, Australian Standards AS 2890.6, SEPP 65 Design Code and Council requirements, and
  - (b) All off street disabled parking shall have access to the adjacent road(s) and to the communal open space as per Australian Standards AS 2890.6 and Council requirements.



- 48 The drawings for the construction certificate for the basement car park shall show the minimum following parking requirements:

Car Parking Rates	Required
0.6 space / 1 bed unit	30 33 spaces
0.9 space / 2 bed unit	83 77 spaces
1.4 space / 3 bed unit	136 118 132 spaces
1 visitor space / 7 dwellings	35 32 34 spaces
Retail Spaces	3 2 spaces
TOTAL REQUIRED	287 264 275 spaces
TOTAL PROVIDED	371 384 377 spaces

(DA-15/216/03) (DA-15/216/02) (DA-15/216/05)

Any excess parking is to be allocated to an apartment or the retail tenancy.

- 49 Prior to the issue of the Construction Certificate for above ground works, an amended Qualitative Wind Assessment Report is to be submitted to Council modelling the proposed development within the current DA approved context of the immediately surrounding area. Any recommendations from the amended Qualitative Wind Assessment Report are to be incorporated into the design in order to ensure compliance with Council's maximum wind criteria (as set out at Part 9A.4.5.4 Wind Mitigation, Control C1): as follows:
- (a) 10 metres/second along commercial/retail streets;
  - (b) 13 metres/second along main pedestrian streets, parks and public places;  
and
  - (c) 16 metres/second in all other streets.
- 50 The building shall be constructed in accordance with *AS2021- 2000: Acoustics, Aircraft Noise Intrusion, Building Siting and Construction*, the details of which must be prepared by a practicing professional acoustical consultant. The consultant report shall be submitted to the certifying authority prior to the release of the Construction Certificate and the building plans endorsed with the required acoustical measures.
- The measures required in the acoustical assessment report prepared by **Acoustic Logic, dated 12/10/2015, Report reference number 20141049.1 R1** shall be undertaken in accordance with the provisions of *AS 2021 – 2000: Acoustics - Aircraft Noise Intrusion - Building Siting and Construction* to establish components of construction to achieve indoor design sound levels in accordance with Table 3.3 of AS2021 – 2000 shall be incorporated into the construction of the building.
- The work detailed in the report includes:
- (a) Appropriate acoustic glazing to stated windows and doors,
  - (b) Detailed roof and ceiling construction,

- (c) Wall and ceiling corner details and,
- (d) External door specification,
- (e) Acoustically treated mechanical ventilation.

**Note:** In many cases the applicant chooses to install air conditioning to meet mechanical ventilation requirements above. If they do it will require consideration of the noise from the air conditioner.

- 51 A suitable intercom system linked to all units within the development shall be provided at the vehicle entrance to the development to ensure any visitors to the site can gain access to the visitor parking in the car parking area. The details of the intercom system shall be submitted to Certifying Authority prior to the issue of the Construction Certificate and its location and specifications endorsed on the construction drawings.
- 52 In order to maximise visibility in the basement car parks, the ceilings shall be painted white. This requirement shall be reflected on the Construction Certificate plans.
- 53 The private domain landscape areas shown on the plan by Context, Plans L01 to L105 (Issue D, dated 19th February 2016) shall have prepared detailed landscape construction documentation (plans and specifications) to be submitted to and approved by the City of Botany Bay Council Landscape Architect prior to issue of the Construction Certificate for above ground works. The landscape documentation is to be prepared by Context Landscape Architects and shall include, but not be limited to:
- (a) A planting plan at 1:100 showing all plant locations/groupings and plant centres/species. There is to be a dense layered planting scheme consisting of trees, shrubs and groundcovers in all of these areas.
  - (b) Canopy trees are required to be incorporated within the landscape setback along Kent Road frontage and New East West Street frontage.
  - (c) Canopy trees are to be used extensively within the community park between Buildings B and C. Planters are required to be of adequate depth and soil volume to accommodate both large and medium size canopy trees in accordance with DCP Part 10 Part 4.6.
  - (d) Elevated planter box sectional details and drainage details. All planter box depths and dimensions shall be in accordance with Council's DCP and capable of supporting medium and large canopy trees.
  - (e) All deep soil areas to include canopy trees where feasible to mitigate the loss of existing mature trees on site and to provide a level of amelioration to the development that is appropriate to the scale of the building heights.
  - (f) Indicate the location of all basement structures relative to the landscape areas.
  - (g) The six (6) existing retained trees (2 x *Harpulia pendula* and 4 x *Casuarina*) within the 7-9 Kent Road portion of the pocket park at the western end of new East West Street shall be shown on all plans.
  - (h) Covered barbeque facilities to be incorporated within the Level 4 Podium Courtyard 1.

- (i) Within the new community park between Buildings B and C, areas of paving, schedule of materials, edge treatments, tactiles and sectional construction details. Paving to Council Draft Public Domain schedule/specification. Drainage details in specific locations such as the public parks, use of WSUD initiatives or materials.
- (j) The car park vent, which protrudes at the podium level, to be adequately screened from the view of surrounding apartments.
- (k) A way finding strategy proposal.
- (l) Full details of furniture, and lighting to Australian Standards.
- (m) *Details and sections of the interface treatment between the retail component and the Kent Road frontage, due to the difference in levels between the retail and Kent Road street frontage, are to be submitted to Council's Landscape Architect for approval prior to issue of the Construction Certificate for above ground works. (DA-15/216/03).*
- (n) Detailed plans of the treatment of the car park mechanical ventilation intake to be provided as part of the private domain landscape plans that are required to be submitted to Council for approval prior to the issue of the Construction Certificate for above ground works. (DA-15/216/02).

54 A detailed current and future public domain landscape and embellishment plan shall be submitted to and approved by the City of Botany Bay Council Landscape Architect prior to the issue of the public domain Construction Certificate. The applicant shall meet with Council prior to any submission to discuss Council's requirements. Following this, detailed landscape construction documentation (plans and specifications) must be submitted to and approved by the City of Botany Bay Council Landscape Architect. The landscape documentation is to be prepared by a suitably qualified Landscape Architect and shall include, but not be limited to:

- (a) The clear delineation of all public domain areas as follows:
  - (i) Kent Road, New East West Street footpath areas
  - (ii) The public park located at the western end of New East-West Street
- (b) A planting plan at 1:100 showing all plant locations/groupings and plant centres/species. There is to be a dense layered planting scheme consisting of trees, shrubs and groundcovers in all of these areas.
- (c) Street trees are required along Kent Road, the new East West Street, and within the community park north of new North South Street.
- (d) All street trees are to be in tree pits that are at grade with the footpath.
- (e) All deep soil areas are to include evergreen canopy trees where feasible to mitigate the loss of existing mature trees on site and to provide a level of amelioration comparable to the scale of the buildings.
- (f) A plant schedule listing all plants by botanical name, total plant numbers, plant spacings, pot sizes and staking. Canopy trees are to be a minimum litreage of 200 litres and street trees 400 litre.

- (g) Specifications detailing soil and mulch finishes, root barriers, irrigation, edging and other landscape hardworks such as retaining walls, steps, planter walls, feature walls, skateboard restrictors, tree pits, tree grates, tree guards, tree pit treatments and so on in accordance with Council's Draft Public Domain specifications.
- (h) New in road blister islands between parking bays are to be incorporated along New East-West Street. The blister islands shall be of adequate dimensions for the required street tree and are to function as WSUD pits to capture and filter storm water. Full detailing is required.
- (i) Areas of paving, schedule of materials, edge treatments, tactiles and sectional construction details. Paving to Council Draft Public Domain schedule/specification. This includes areas within the new community park at the northern end of New North South Street. Drainage details in specific locations such as the public parks, use of WSUD initiatives or materials.
- (j) Details of all fencing, privacy screening, arbors and the like – elevations and materials, impacting or visible to public domain areas.
- (k) Details of all other hardscape landscape elements such as street furniture, pedestrian amenity lighting, playground and recreational equipment, water features and water stations, bins, bollards, public toilets, signage suite. Locations to be clearly identified on plan. Provide sectional construction details and elevations.
- (l) Rigid polyethylene sheet type tree root barriers are to be specified as required to protect structural elements.
- (m) A way finding signage proposal.
- (n) Elevated planter box sectional details and drainage details. All planter box depths and dimensions shall be in accordance with Council's DCP (Part 10 Part 4.6) and capable of supporting medium and large canopy trees.
- (o) Trees are to be used extensively throughout the site and shall be of an appropriate scale to complement and ameliorate buildings and for appropriate scaling within pedestrian areas – footpaths and open spaces. Deep soil zones must include larger trees. Trees are to be predominantly native, evergreen species using open canopy evergreens or selected deciduous for solar penetration.
- (p) Indicate the location of all basement structures relative to the landscape areas.
- (q) The six (6) existing retained trees (2 x *Harpulia pendula* and 4 x *Casuarina*) within the 7-9 Kent Road portion of the pocket park at the western end of new East West Street shall be shown on all plans.
- (r) The Ausgrid lighting poles along Kent Road, will need to be decommissioned and new lighting poles shall be constructed satisfying V3 lighting requirements for Kent Road and any other requirements as specified by Council, RMS and any other service provider,
- (s) All above ground utilities shall be relocated underground in accordance with Ausgrid and any other affected and relevant service provider, and
- (t) All underground and above ground infrastructure shall be constructed as specified by Ausgrid, RMS, Council and any other affected service provider.

The location of the new electrical pillars, new lighting poles, any new pits and trenches for utilities shall be confirmed with Council. 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.

#### **DURING WORKS**

- 55 An experienced Landscape Contractor shall be engaged to undertake all landscaping (site and public domain) work and shall be provided with a copy of both the approved landscape drawing and the conditions of approval to satisfactorily construct the landscape to Council requirements. The contractor shall be engaged weekly for a minimum period of 52 weeks from final completion of landscaping for maintenance and defects liability, replacing plants in the event of death, damage, theft or poor performance. After that time regular and ongoing maintenance is required.
- 56 To ensure satisfactory growth and maintenance of the landscaping, a fully automatic drip irrigation system is required in all landscaped areas in the private domain, inclusive of the new community park between Building B and C. 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.
- 57 The public footpaths in Kent Road, New East West Street and in the new community park shall be constructed in accordance with the approved Public Domain Plan and Council specifications. The footpath dimensions, location, paver type and construction methods shall be in accordance with these specifications. Hold points and Council inspections are required after formwork setback and to prior pouring the concrete blinding slab, at the commencement of paving works and at final completion as a minimum. Pavers shall be ordered allowing for adequate lead time for manufacture (10-12 weeks).
- 58 New street trees at the pot size specified shall be installed in the accordance with the approved landscape plan. The trees shall be sourced from a reputable supplier that grows stock to the NATSPEC specifications. A Dial-Before-You-Dig enquiry is required prior to all planting - Council is not liable for any damage to subsurface infrastructure during public domain works. Two hold point inspections are required: prior planting trees to ensure plant stock is suitable and post-planting.
- 59 Planter boxes constructed over a concrete slab shall be built in accordance with the following requirements:
- (a) Ensure soil depths and dimensions in accordance with Council's DCP allowing a minimum soil depth of 1 metre to support trees. The base of the planter must be screeded to ensure drainage to a piped internal drainage outlet of minimum diameter 90mm, with no low points elsewhere in the planter. There are to be no external weep holes.

- (b) A concrete hob or haunch shall be constructed at the internal join between the sides and base of the planter to contain drainage to within the planter.
  - (c) Planters are to be fully waterproofed and sealed internally with a proprietary sealing agent and applied by a qualified and experienced tradesman to eliminate water seepage and staining of the external face of the planter. All internal sealed finishes are to be sound and installed to manufacturer's directions prior to backfilling with soil. An inspection of the waterproofing and sealing of edges is required by the Certifier prior to backfilling with soil.
  - (d) Drainage cell must be supplied to the base and sides of the planter to minimize damage to the waterproof seal during backfilling and facilitate drainage. Apply a proprietary brand filter fabric and backfill with an imported lightweight soil suitable for planter boxes compliant with AS 4419 and AS 3743. Install drip irrigation including to lawns.
  - (e) Finish externally with a suitable paint, render or tile to co-ordinate with the colour schemes and finishes of the building.
- 60 Fire booster assemblies and electrical kiosks and the like are to be housed within the building structure or screened by a built screen enclosure and/or landscaping so as not to reduce the visual amenity of the development or the streetscape and public domain. The location of, and screening treatment surrounding these utilities is to be approved by Council's Landscape Architect and relevant approval authority, prior to their installation.
- 61 ~~During Construction, the applicant must ensure compliance with the SWMP, CMP and CTMP. (DA-15/216/02)~~
- 62 During Construction, care must be taken to protect Council's infrastructure, including street signs, footpath, kerb, gutter and drainage pits etc. Protecting measures shall be maintained in a state of good and safe condition throughout the course of demolition, excavation and construction. The area fronting the site and in the vicinity of the development shall also be made safe for pedestrian and vehicular traffic at all times. Any damage to Council's infrastructure (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.
- 63 During Construction and Deliveries, access to the site shall be available in all weather conditions. The area shall be stabilised and protected from erosion to prevent any vehicles (including deliveries) tracking soil materials onto street drainage system/watercourse, Council's lands, public roads and road-related areas.
- 64 During construction, the applicant shall ensure that all works and measures have been implemented in accordance with approved Construction Traffic Management Plan and Construction Management Plan at all times.
- 65 Any new information that comes to light during works which has the potential to alter previous conclusions about site contamination and remediation must be notified to Council and the accredited certifier immediately. All work on site shall cease until the council is notified and appropriate measures to assess and manage the contamination in accordance with any relevant NSW EPA adopted guidelines is completed by an appropriately qualified and experienced environmental consultant.

- 66 The management of potential and actual acid sulfate soils shall be conducted in accordance with all recommendations within the Preliminary Acid Sulfate Soils Management Plan (Consulting Earth Scientists, 2015, or as updated and submitted to council).
- 67 For any water from site dewatering is to be managed in accordance with the Groundwater Management Plan (Coffey, 25 February 2016, or as updated and submitted to council).
- 68 All materials excavated from the site (fill or natural) shall be classified in accordance with the NSW Environment Protection Authority (EPA) Waste Classification Guidelines (2014) prior to being disposed of to a NSW approved landfill or to a recipient site.
- 69 To prevent contaminated soil being used onsite and to ensure that it is suitable for the proposed land use, all imported fill (should this be required) shall be appropriately certified material and shall be validated in accordance with the:
- (a) Office of Environment and Heritage (OEH) approved guidelines; and
  - (b) Protection of the Environment Operations Act 1997; and
  - (c) Protection of the Environment Operations (Waste) Regulation 2014.
  - (d) All imported fill shall be accompanied by documentation from the supplier which certifies that the material has been analysed and is suitable for the proposed land use.
- 70 The principal contractor or owner builder must install and maintain water pollution, erosion and sedimentation controls in accordance with:
- (a) The Erosion and Sediment Control Plan;
  - (b) "Managing Urban Stormwater - Soils and Construction" (2004) Landcom ('The Blue Book'); and
  - (c) Protection of the Environment Operations Act 1997.
- 71 Results of the monitoring of any field parameters such as soil, groundwater, surface water, dust or noise measurements shall be made available to Council Officers on request throughout the construction works.
- 72 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.
- 73 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.
- 74 Vibration caused by excavation and construction at any residence or structure outside the site must be limited to: a) for structural damage vibration, German Standard DIN 4150 Part 3 Structural Vibration in Buildings. Effects on Structures; and b) for human exposure to vibration, the evaluation criteria set out in the Environmental Noise Management Assessing Vibration: a Technical Guideline

(Department of Environment and Conservation, 2006). Vibratory compactors must not be used in the vicinity of residential buildings unless vibration monitoring confirms compliance with the vibration criteria specified above.

75 The following shall be complied with during construction and demolition:

(a) Construction Noise

- (i) Noise from construction activities associated with the development shall comply with the NSW Environment Protection Authority's Environmental Noise Manual – Chapter 171 and the Protection of the Environment Operations Act 1997.

(b) Level Restrictions

- (i) Construction period of 4 weeks and under:
  - (1) The L10 sound pressure level measured over a period of not less than 15 minutes when the construction site is in operating must not exceed the background level by more than 20dB(A).
- (ii) Construction period greater than 4 weeks and not exceeding 26 weeks:
  - (1) The L10 sound pressure level measured over a period of not less than 15 minutes when the construction site is in operating must not exceed the background level by more than 10 dB(A).

(c) Time Restrictions

- (i) Monday to Friday 07:00am to 05:00pm (DA-15/216/04)
- (ii) Saturday 08:00am to 04:00pm (DA-15/216/04)
- (iii) No demolition or construction to take place on Sundays or Public Holidays.

(d) Silencing

- (i) All possible steps should be taken to silence construction site equipment.

76 During excavation and construction work the Council nature strip shall be maintained in a clean and tidy state at all times. The nature strip shall be suitably replaced where damaged due to construction work in accordance with Council Specification at the completion of construction, and at the Applicant's expense.

77 During excavation and construction works, the applicant / builder is required to ensure the protection and preservation of all boundary fencing or boundary walls between the subject site and adjoining properties. Any damage caused as a result of such works will be at the full cost of the applicant/builder.

**CONDITIONS WHICH MUST BE SATISFIED PRIOR TO THE ISSUE OF AN  
OCCUPATION CERTIFICATE FOR THE RELEVANT STAGE, UNLESS OTHERWISE  
STATED**



- 78 Prior to use and occupation of any building an Occupation Certificate must be obtained under Section 109C(1)(c) and 109M of the Environmental Planning and Assessment Act 1979.
- 79 The applicant must prior to the issue of any Occupation Certificate for the final building, pay the following fees:
- (a) Waste Levy \$12,391.20
- 80 Evidence of a Sydney Water permit or consent for discharge of wastewater to the sewer shall be submitted to the Principal Certifying Authority prior to any use or occupation of the premises. Where a permit or consent may not be required from Sydney Water, certification shall be provided verifying that any discharges to the sewer will meet specific standards imposed by Sydney Water.
- 81 A qualified practitioner, with a certificate of attainment in NWP331A Perform Conduit Evaluation, shall undertake a closed circuit television (CCTV) inspection and then report on the existing condition of the existing stormwater drainage infrastructure on Kent Road, and all the new stormwater drainage lines constructed on new East-West Street and Kent Road.
- (a) The camera and its operation shall comply with the following:
- (b) The internal surface of the drainage pipe/culvert shall be viewed and recorded in a clear and concise manner,
- (c) The CCTV camera used shall be capable to pan, tilt and turning at right angles to the pipe axis over an entire vertical circle to view the conduit joints,
- (d) Distance from the manholes shall be accurately measured, and
- (e) The inspection survey shall be conducted from manhole to manhole.
- (f) The written report, together with a copy of the digital video footage of the pipeline shall be submitted to Council for review. Any damage to the culvert/pipeline since the commencement of construction on the site shall be repaired in full to the satisfaction of Council. A written acknowledgement shall be obtained from Council (attesting this condition being appropriately satisfied) and submitted to the Principal Certifying Authority.
- 82 Prior to the issue of the Occupation Certificates, documentation from a practising civil engineer shall be submitted to the Principal Certifying Authority certifying that the stormwater drainage system has been constructed generally in accordance with the approved stormwater management construction plan(s) and all relevant standards.
- 83 Prior to the issue of *any the final* Occupation Certificate the applicant shall construct the new east-west road as per the civil engineering design provided by the Council, in accordance with Council's Infrastructure specifications and with the written approval of *by* Council. The road pavement shall be designed for construction vehicle traffic and certified by a suitably qualified pavement engineer. (DA-15/216/05)

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- (a) Prior to the issue of *any the final* Occupation Certificate for *the relevant any* stage, embellish the public domain of the east-west street opposite that stage as per the approved public domain plan. (DA-15/216/05)
  - ~~(b) Prior to the issue of any Occupation Certificate for the residential component of Buildings B and C, carry out the embellishment of the community park between Buildings B and C as per the approved private domain plans. (Deleted (DA-15/216/05))~~
- 85 Prior to the issue of *any the final* Occupation Certificate for the final building: (DA-15/216/05)
- (a) On Kent Road, adjacent to development, reconstruct existing Kerb and Gutter for the full length of the property in accordance with Council and RMS Infrastructure Specifications. Location of kerb & gutter to be confirmed with RMS and Council prior to construction,
  - (b) On Kent Road, adjacent to development, demolish existing concrete footpath and construct new paved footpath as per Council's Infrastructure and Landscape Architect specifications.
  - (c) Carry out embellishment of the east-west road and pocket park as per the approved public domain plan.
- 86 Prior to the issue of *any the final* Occupation Certificate for the final building, inspection reports (formwork and final) for the works on the road reserve shall be obtained from Council's engineer and submitted to the Principal Certifying Authority attesting that this condition has been appropriately satisfied. (DA-15/216/05)
- 87 Prior to the issue of the Occupation Certificate, a restriction on Use of Land and Positive Covenant(s) shall be imposed on the development. The following covenants shall be imposed under Section 88(E) of the Conveyancing Act 1919 and lodged with the NSW Land and Property Information:
- (a) Restriction on Use of Land for On-Site Detention System. Refer to Appendix B of the SMTG for suggested wording, and
  - (b) Restriction on Use of Land for Stormwater Quality Improvement Device. Refer to Appendix E of the SMTG for suggested wording.
- The terms of the 88 E instruments are to be submitted to Council for review and approval and Proof of registration at the Lands and Property Information Office shall be submitted to the Principal Certifying Authority and Council prior to occupation.*
- ~~88 Prior to the issue of any Occupation Certificate for the final building, the following is to be complied with:~~
- (a) Dedicate to Council and at no expense to the Council and generally in accordance with the draft Subdivision Plan ref. no. 20974 by B & P Surveys, dated 11 November 2015 and the following:
    - (i) Along the southern boundary, dedicate a 9.0metre wide portion of land to Council for the constructed East-West Road and pocket park. The

areas of the land to be dedicated shall be as detailed in the Botany Bay Development Control Plan 2013. The draft Plan of Dedication shall be lodged with Council for approval. The proposed new road shall be unlimited in stratum. Once approval from Council is granted, the plan shall be registered with Land & Property Information prior to the issue of ~~any the~~ Occupation Certificate for the final building under DA-2016/117 at 671-683 Gardeners Road, Mascot. A copy of the registered document shall be submitted to Council for record purposes, (DA-15/216/08) and

- (ii) Over the proposed North-South oriented community park between Buildings B and C, register a new 16.6 wide "Easement for Public Access". The draft plan of easement shall be lodged with Council for approval. The proposed new easement shall be limited in stratum. Once approval from Council is granted, the plan shall be registered with Land & Property Information prior to the issue of ~~any Occupation Certificate for the final building, or following any Occupation Certificate for the residential component of Buildings B and C, whichever is the earlier~~ the Occupation Certificate of the final building under DA16/117 at 671 – 683 Gardeners Road, Mascot.. A copy of the registered document shall be submitted to Council for record purposes. (DA-15/216/05)

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- (a) Amended stratum subdivision plans are to be provided to Council for review and approval which, along with an application for a Stratum Subdivision Certificate, bring the Stratum Subdivision Plan as referenced at Condition No. 1 into line with the approved plans and showing, but not limited to, the following:
  - (i) Removal of the child care centre and replacement with residential units;
  - (ii) Addition of the retail tenancy on ground floor at the corner of Kent Road and the pocket park;
  - (iii) Extension of the basement to the northern site boundary;
  - (iv) Removal of the 10 apartments within Buildings B and C (as per the JRPP deferral dated 28 April 2016);
  - (v) The communal park between Buildings B and C.
- (b) The Stratum Subdivision Certificate must be accompanied by a formal copy of the by-laws which shall be in accordance with the plans and documentation approved under this Consent, and submitted to Council following registration with the Land and Property Information Department, and must also include the following:
  - (i) Responsibilities with regard to the ongoing maintenance of the building and landscaped areas at the property in accordance with the plans and details approved under Development Consent No. 15/216.
  - (ii) Responsibilities with regard to the maintenance of artificial features at the property in accordance with the plans and details approved under Development Consent No. 15/216.

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Bayside Planning Panel Meeting

- (iii) Responsibilities regarding the maintenance of the car wash bay(s) (as required by the Traffic Impact Assessment, prepared by ARUP) the Owners Corporation / building owner.
- (iv) Responsibilities for ensuring owners and/or tenants have adequate and hygienic disposal and collection arrangements and for ensuring the waste storage area is appropriately maintained and kept in a clean and safe state at all times in accordance with a Plan of Management.
- (v) Responsibilities to ensure that wastewater and stormwater treatment devices (including drainage systems, sumps and traps) are regularly maintained in order to remain effective. All solid and liquid wastes collected from the devices shall be disposed of in a manner that does not pollute waters and in accordance with the Protection of the Environment Operations Act 1997.
- (vi) The Owners Corporation/Executive Committee obligations under clauses 177, 182, 183, 184, 185 and 186 of the *Environmental Planning and Assessment Regulation 2000*.
- (vii) The linen plan must include details of any easements, encroachments, rights of way, including right of footway restriction as to user or positive covenants and include a Section 88B Instrument under the *Conveyancing Act, 1919*. Council is to be nominated as the only authority permitted to release, vary or modify any easements, encroachments, rights of way, restriction as to user or positive covenants;
- (viii) A graffiti management plan for the removal of graffiti and similar vandalism within seven (7) days of its occurrence and surface re-instatement;
- (ix) The stormwater drainage system (including all pits, pipes, absorption, detention structures, treatment devices, infiltration systems and rainwater tanks) shall be regularly cleaned, maintained and repaired to ensure the efficient operation of the system from time to time and at all times. The system shall be inspected after every rainfall event to remove any blockage, silt, debris, sludge and the like in the system. All solid and liquid waste that is collected during maintenance shall be disposed of in a manner that complies with the appropriate Environmental Guidelines;
- (x) Maintenance of required acoustic measures of Development Consent No. 15/216; and
- (xi) CCTV surveillance of all public areas within the development site.

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- (a) Prior to the issue of any Occupation Certificate for the development, the Right-Of-Carriageway 7.0 wide, over Lot 31 in DP 789177 and benefiting Lot 30, DP 789177, is to be extinguished. The Right-Of-Carriageway is to be extinguished at no cost to the owner(s) of Lot 31, DP 789177 or to the Council.
- (b) Prior to the issue of any Occupation Certificate, 671-683 Gardeners Road (Lot 1 in DP 777315 and Lot 500 in DP 1030729) and 1-5 Kent Road (Lot 30

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Bayside Planning Panel Meeting

in DP 789177) must be consolidated and the consolidated title registered.  
(DA-15/216/02)

- 91 That before entering a lease/occupancy agreement, all tenants and occupiers of the development are to be advised by the owner of the building that residents are not eligible to participate in on-street resident parking schemes.
- 92 Prior to the issue of the occupation certificate, a sign to this effect shall be located in a prominent place, to Council's satisfaction, such as on a notice board in the communal room, where it can easily be observed and read by persons entering the building.
- 93 Prior to release of the Occupation Certificate the developer must submit to the Principal Certifying Authority an acoustic report to verify that the measures stated in the acoustic report have been carried out and certify that the construction meets the above requirements. The report must be prepared by a qualified practicing acoustic engineer (who is a member of either the Australian Acoustical Society or the Association of Australian Acoustical Consultants).
- 94 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.
- 95 Prior to the issue of any Occupation Certificate for any stage, street numbers shall be clearly displayed for that stage, with such numbers being of contrasting colour and adequate size and location for viewing from the footway and roadway.
- 96 Prior to the issue of any Occupation Certificate for final stage, a Certificate of Survey from a Registered Surveyor shall be submitted to the Principal Certifying Authority and the Council to the effect that:
- (a) A Floor Space Ratio (FSR) of 3.08:1 and height of RL 51m AHD (47.2m) as approved under this Development Consent No. 15/216, have been strictly adhered to and any departures are to be rectified in order to issue the Occupation Certificate.
  - (b) The development as built, stands within Lot 30 in DP 789177.
- 97 The applicant is responsible for the installation and protection of all regulatory/parking / street signs fronting the property. Any damaged or missing street signs as a consequence of the development and associated construction works shall be replaced at full cost to the applicant.
- 98 Any damage not shown in the photographic survey as required under Condition No. 40 of Development Consent DA-15/215 (submitted to Council before excavation works have commenced), will be assumed to have been caused as a result of the site works undertaken as part of DA-15/215 or DA-15/216 and must be rectified at the applicant's expense, prior to the issue of the Occupation Certificate.
- 99 Any air conditioning units are to be located so that they are not visible from the street or public place and are not obscure windows/window frames or architectural features of the development and installed in a manner not be inconsistent with the relevant provisions of the Building Code of Australia (BCA).

- 100 To ensure that the site is suitable for the proposed use, a Site Audit Statement (SAS) completed by an accredited site auditor under the Contaminated Land Management Act 1997 shall be submitted to Council clearly demonstrating that the site is suitable for the proposed commercial and residential development. This shall be provided prior to the release of any Occupation Certificate.
- Any conditions imposed on the SAS shall form part of this consent. The accredited site auditor shall provide Council with a copy of the Site Audit Report (SAR) and Site Audit Statement (SAS) prior to the issuing of any Occupation Certificate. In circumstances where the SAS conditions (if applicable) are not consistent with the consent, a Section 96 application pursuant to the Environmental Planning & Assessment Act 1979 shall be submitted to ensure that they form part of the consent conditions.
- 101 Landscaping on the property and in the current and future public domain must be installed in accordance with the revised landscape plans as approved by Council's Landscape Architect pursuant to Condition No. 53 and 54, prior to the issue of the interim Occupation Certificate for the relevant stage. This amended plan supersedes the original landscape plan prior to the issue of an Occupation Certificate. The landscaped areas on the property shall be maintained up until the issue of the final Occupation Certificate, and then 12 months after the issue of the final Occupation Certificate, and in accordance with the Council stamped and approved landscape documentation and the conditions of development consent.
- 102 Landscaped areas in the public domain are to be maintained up until the issue of the final Occupation Certificate, and then 12 months after issue of the final Occupation Certificate.
- 103 At the completion of landscaping on the site, the Applicant is required to obtain a Certificate of Compliance from the Landscape Consultant to certify that the landscaping has been installed in accordance with the Council approved landscape plan. The Certificate is to be submitted to the City of Botany Bay Council prior to the issue of the interim Occupation Certificate for the relevant stage.

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

- 104 For the purposes of car parking assessment, the commercial tenancy on the ground floor is approved for the use as commercial premises, including food and drink premises (other than a pub or small bar), in accordance with the definition in the Standard Instrument.
- 105 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.

- 106 New street trees shall be maintained by the Applicant/Owner/Strata Corporation for a period of 12 months after final inspection by Council. Maintenance includes twice weekly watering within the first 6 months then weekly thereafter to sustain adequate growth and health, bi-annual feeding, weed removal round the base, mulch replenishment at 3 monthly intervals (to 75mm depth) and adjusting of stakes and ties. Maintenance but does not include trimming or pruning of the trees under any circumstances.
- 107 The use of the premises shall not give rise to any of the following when measured or assessed at "sensitive" positions within any other property. These "sensitive" positions should be selected to reflect the typical use of a property (ie any outdoor areas for day and evening but closer to the façade at night time), unless other positions can be shown to be more relevant.
- (a) The operation of all plant and equipment shall not give rise to an equivalent continuous (LAeq) sound pressure level at any point on any residential property greater than 5dB(A) above the existing background LA90 level (in the absence of the noise under consideration).
  - (b) The operation of all plant and equipment when assessed on any residential property shall not give rise to a sound pressure level that exceeds LAeq 50dB(A) day time and LAeq 40 dB(A) night time.
  - (c) The operation of all plant and equipment when assessed on any neighbouring commercial/industrial premises shall not give rise to a sound pressure level that exceeds LAeq 65dB(A) day time/night time.
  - (d) For assessment purposes, the above LAeq sound levels shall be assessed over a period of 10-15 minutes and adjusted in accordance with EPA guidelines for tonality, frequency weighting, impulsive characteristics, fluctuations and temporal content where necessary.
- 108 Any air conditioning units (where possible) shall comply with the following requirements:
- (a) Air conditioning units are not to be visible from the street or public place and are not to obscure windows/window frames or architectural features of the dwelling.
  - (b) A person must not cause or permit an air conditioner to be used on residential premises in such a manner that it emits noise that can be heard within a habitable room in any other residential premises (regardless of whether any door or window to that room is open):
    - (i) Before 8 am or after 10 pm on any Saturday, Sunday or public holiday, or
    - (ii) Before 7 am or after 10 pm on any other day.
- 109 All loading and unloading associated with the commercial/retail tenancy is to be undertaken within the ground floor of Building C.
- 110 The collection of garbage associated with the whole development (commercial and residential) shall be restricted to 6am to 6pm Monday to Sunday.

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- (a) The adaptable apartments approved under this development consent are to remain as adaptable units at all times; and
- (b) The storage areas located within the basement shall be allocated to the relevant residential dwelling in any future subdivision of the site. In addition, any isolated storage areas and other spaces as identified by the NSW Police, shall be monitored by CCTV cameras at all times.

112 All parking bays shown on the approved architectural plans shall be set aside for parking purpose only and shall not be used for other purposes, e.g. storage of goods. Vehicle turning areas shall be kept clear at all times and no vehicles are permitted to park in these areas.

113 The applicant being informed that this approval shall be regarded as being otherwise in accordance with the information and particulars set out and described in the Development Application registered in Council's records as Development Application No. 15/216 dated as 13 November 2015 *and as amended by s96(1A) Modification Application DA-15/216/03 dated 15 September 2016 and as amended by s96(2) Modification Application DA-15/216/02 dated 15 September 2016 and as amended by Section 96(1A) application (DA15/216/05) received by Council 15 February 2017 and as amended by Section 4.55(1A) application (DA-2015/10216/G) received by Council 9 August 2019* and that any alteration, variation, or extension to the use, would require further approval. (DA-15/216/03) (DA-15/216/02) (DA15/216/05)(**DA-2015/10216/G**)

#### ADVISORY CONDITIONS

The following conditions are imposed by the **NSW Police Service**:

##### Surveillance

- (a) Digital technology should be used to receive, store and process data. Recording equipment should be secured away from public access areas to restrict tampering with the equipment and data. All access areas to the building be covered by such equipment including mail delivery ports. This equipment needs to be checked and maintained on a regular basis.
- (b) It is crucial even in the development stage that these cameras are installed as soon as power is available to the site.
- (c) By angling fire egress inlet walls 45 degrees or more, opportunities for entrapment, loitering and vandalism can be reduced.
- (d) Care should be taken when using glazing in entry foyers. At night the vision of departing occupants can be affected by reflections on the interior of the glass (can't see outside). Mirroring can be reduced by using appropriate external lighting.
- (e) Main entrance of all parking, lift entries and lobbies to be covered with CCTV footage.

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Bayside Planning Panel Meeting



- (f) Uneven building alignments, insert doorways and hidden entrances should be avoided. They can facilitate predatory crimes, thefts, malicious damage and other offences.
- (g) Bicycle parking areas should be located within view of capable guardians. The provision of covered lockable racks to secure bicycles increases the effort required to commit crime.

#### Lighting

- (a) Lighting (lux) levels for this development must be commensurate with a medium crime risk identified in this evaluation. The emphasis should be on installing low glare/high uniformity lighting levels in line with Australian Standard AS:1158.
- (b) Lighting sources should be compatible with requirements of any surveillance system installed within the development. (Poor positioning choices in relation to light can cause glare on the surveillance screens).
- (c) The luminaries (light covers) should be designed to reduce opportunities for malicious damage. Lighting within the development needs to be checked and maintained on a regular basis.
- (d) A limited amount of internal lighting should be left on at night to enable patrolling police, security guards and passing people to monitor activities within the business.
- (e) Improved lighting needs to extend from the development towards adjacent streets. Consideration must be given to pedestrians walking from the development to surrounding streets for the purpose of catching public transport etc. Areas adjoining pathways should be illuminated to avoid opportunities for concealment and entrapment.

#### Territorial Reinforcement

- (a) Clear street number signs should be displayed and appropriately positioned at the front of the business to comply with Local Government Act, 1993 Section 124 (8). Failure to comply with any such order is an offence under Section 628 of the Act. Offences committed under Section 628 of the Act attract a maximum penalty of 50 penalty units (currently \$5500) for an individual and 100 penalty units (currently \$11000) for the corporation. The numbers should be in contrasting colours to the building materials and be larger than 120mm.
- (b) Warning signs should be strategically posted around the buildings to warn intruders of what security treatments have been implemented to reduce opportunities for crime.
  - (i) Warning, trespassers will be prosecuted
  - (ii) Warning, these premises are under electronic surveillance
- (c) Directional signage should be posted at decision making points (eg. Entry/egress points) to provide guidance to the uses of the development. This can also assist in access control and reduce excuse making opportunities by intruders.

- (d) A Fire Safety Statement must be prominently displayed within the development to comply with the Environmental Planning & Assessment Regulations (1994) Clause 80GB. The annual fire safety statement is a statement issued by the owner of a building.
- (e) Signage needs to be provided at fire exits to assist occupants to identify exits in emergency situations.
- (f) Signage needs to be provided to assist occupants to identify fire suppression equipment, e.g. extinguishers, fire hoses etc.
- (g) Graffiti resistant materials and anti-graffiti coating should be utilised throughout the development or at least ground levels situated on the outsides of the buildings.

#### Space/Activity Management

- (a) An Emergency control and evacuation plan which complies with the Australian Standard, Emergency Control Organisation and Procedures for Buildings, Structures and Workplace, AS:3745:2002 should be prepared and maintained by your development to assist management and staff in the event of an emergency. This standard sets out the requirements for the development of procedures for the controlled evacuation of the building, structures and workplaces during emergencies. Further information in relation to planning for emergencies can be obtained from Emergency NSW <http://www.emergency.nsw.gov.au> or Emergency Management Australia <http://www.ema.gov.au>.
- (b) It is NOT advised to install storage cages or similar for the residents in the underground car park. If it is required, consider that they should NOT be constructed in an isolated area. The cages are easy targets when they have little supervision. CCTV cameras must cover this area if they are constructed. Solid steel housing and quality key locks should be used to prevent access. All cages to be at least 8ft in height with adequate roofing, cages below this allow people access over the top.

#### Access Control

- (a) The door and door frames to these premises should be of solid construction.
- (b) Doors should be fitted with locks that comply with the Australian Standard – Mechanical Locksets for doors in buildings, AS:4145:1993, to restrict unauthorised access and the Building Code of Australia (fire regulations). This standard specifies the general design criteria, performance requirements and procedures for testing mechanical lock sets and latch sets for their resistance to forced entry and efficiency under conditions of light to heavy usage. The standard covers lock sets for typical doorways, such as wooden, glass or metal hinged swinging doors or sliding doors in residential premises. Requirements for both the lock and associated furniture are included. Certain areas may require higher level of locking devices not referred to in this standard (eg. Locking bars, electronic locking devices and detection devices) Dead locks are required for residential units.

- (c) There are some doors within the premises which are designated as fire exits and must comply with the Building Code of Australia. This means that they provide egress to a road or open space, an internal or external stairway, a ramp, a fire isolated passageway, a doorway opening to a road or open space.
- (d) The doors in the required exits must be readily open-able without a key from the side that face the person seeking egress, by a single hand downward action or pushing action on a single device which is located between 900mm and 1.2m from the floor.
- (e) Any sliding doors MUST be fitted with lockable bolts in the bottom and top of the door frame.
- (f) The windows and window-frames to these premises should be of solid construction. These windows should be fitted with locks which comply with the Australian Standard – Mechanical Locksets for windows in buildings, AS:4145 <http://www.standards.org.au> to restrict unauthorised access. This standard specifies the general design criteria, performance requirements, and procedures for testing mechanical lock sets and latch sets for their resistance to forced entry and efficiency under conditions of light to heavy usage. The standard covers lock sets for typical windows, such as wooden, glass or metal hinged swinging windows or sliding windows in residential and business premises, including public buildings, warehouses and factories. Requirements for both the lock and associated furniture are included. Certain areas may require higher level of locking devices not referred to in this standard. (e.g. locking bars, electronic locking devices, detection devices, alarms).
- (g) The main access to the underground car park should have restricted access with a security pass. The opening/closing mechanism should be protected from vandalism and tampering. All exit doors from the car park should have striker plates installed to minimise chance of tampering.
- (h) The main entry/egress doors to the development should have an electronically operated lock which requires a security swipe pass for entry. The lifts operating in the building should have the same security swipe pass technology. When an occupant buzzes in a visitor the lift should recognise the floor the occupant resides on and only allow the visitor access to that floor in the lift.

## **Statement Environmental Effects**

Section 4.55(1A) Application

### **8-10 & 12 Galloway Street (1-5 Kent Road, Mascot)** Modify Condition 39

6 August 2019

#### **PREPARED BY**

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**Annexure 1: Damage Deposit Receipt**

**Annexure 2: Site Inspection and Final Occupation Documentation**

## **1 Introduction**

This application has been prepared by Karimbla Constructions Services (NSW) Pty Ltd to support a Section 4.55(1A) modification application to Bayside Council. The proposal seeks to amend Condition 39 to link to Damage Deposit to DA15/216 and not be linked to Gardeners Road.

This application identifies the consent, describes the proposed modifications and provides an assessment of the relevant matters contained in Section 4.55(1A) of the EP&A Act.

## 2 Detailed Description of the Proposed Modifications

This Section 4.55(1A) modification application is to amend the Development Consent (DA15/216) granted on the 18 July 2019 for Integrated Development for the construction of a mixed use development incorporating 229 units across a 4 storey residential podium and 3 x 10 storey residential towers above, 2 levels of basement and at grade parking for 391 cars, 58sqm retail tenancy, strata subdivision, the construction of the northern half of a new east-west street (with pocket park to Kent Road) and dedication to Council; a north-south oriented private park (with public right of way); stratum subdivision; excavation, earthworks and landscaping.

This Section 4.55(1A) application seeks approval for modifications to the conditions of consent:

CONDITION	DESCRIPTION
Condition 39	Modify Condition 39 – Damage Deposit

The proposed modifications described above necessitate amendments to the consent conditions which are identified below. Words proposed to be deleted are shown in **strike through** and words to be inserted are shown in **bold italics**.

The conditions to be modified with associated justification is provided below.

### Modify Condition 39

*39. Prior to the issue of the Construction Certificate for above ground works, the applicant shall lodge a Damage Deposit of \$157,500.00 (GST Exempt) by the way of cash deposit or unconditional bank guarantee to Council against possible damage to Council's asset during the course of building works. The deposit will be refunded subject to inspection by Council 12 months after the completion of all works relating to the proposed and Final Occupation Certificate has been issued for the final building under **DA15/216**. ~~DA16/117. (DA15/216/05)~~*

This condition requires modification to enable the Damage Deposit of \$157,500.00 which relates to 1-5 Kent Road, Mascot paid on the 17 October 2017 (refer to **Annexure 1**) to be refunded as a site inspection was carried out by Council on the 23 March 2018 and subsequently a Final Occupation Certificate has been issued for the final building under DA15/216 (See **Annexure 2**)

The wording of this Condition links to Gardeners Road, which is subject to its own Damage Deposit under Condition 11 in DA16/117. The condition in its current form is considered to be "double dipping" and given all necessary works have been completed, we are eligible to obtain a refund for the damage deposit as it relates to the Development under DA15/216.

### 3 Substantially the same development

Section 4.55(1A) of the EP&A Act states that a consent authority may modify a development consent if:

*"it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all)"*

The development, as proposed to be modified, is substantially the same development as that originally approved in that it:

- The proposed development retains the same use as the approved development and in this respect, there is no material change in the essence of the development;
- The proposed modifications will result in substantially the same development as originally approved under DA15/216.
- The environmental impacts of the modified development are substantially the same as the approved development.
- It is considered that the development is substantially the same as the original approval.

The proposal results in only minor changes to the approved consent conditions. Modifying this condition will enable the Damage Deposit paid on the 17 October 2017 which relates to 1-5 Kent Road, Mascot to be refunded as all necessary works have been completed and a site inspection was carried out by Council on the 23 March 2018.

The wording of this Condition links to Gardeners Road, which is subject to its own Damage Deposit.



## 4 Environmental Planning Assessment

Section 4.55(1A) of the EP&A Act states that a consent authority may modify a development consent if:

*"it is satisfied that the proposed modification is of minimal environmental impact".*

Under Section 4.55(4) the consent Authority must also take into consideration the relevant matters to the application referred to in Section 4.15C (1) of the EP&A Act.

The following assessment considers the relevant matters under Section 4.15C(1) and demonstrates that the development, as proposed to be modified, will be of minimal environmental impact.

### 4.1 Section 4.15(1)(a)(i): Environmental Planning Instruments

#### 4.1.1 Botany Local Environmental Plan 2013

Part 2 of the Botany Local Environmental Plan 2013 (LEP) identifies that the subject site is zoned B4 Mixed Use. The proposal is permitted in the zone subject to consent from the Council.

There are no other clauses of the LEP that are particularly relevant in the assessment of the proposal.

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

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

### 4.3 Section 4.15(1)(a)(iii): Development Control Plans

#### 4.3.1 Botany Development Control Plan 2013

Botany Development Control Plan 2013 (DCP) applies to the subject site. However, none of its provisions are relevant in the assessment of the proposed amended conditions.

### 4.4 Section 4.15(1)(a)(iiia): Planning Agreements

Not applicable.

### 4.5 Section 4.15(1)(a)(iv): Regulations

The Section 4.55(1A) Application has been made in accordance with the requirements contained in Clause 117 of the *Environmental Planning and Assessment Regulation 2000*.

### 4.6 Section 4.15(1)(b): Likely Impacts

There are no impacts that will result from the proposed amendments to conditions.

### 4.7 Section 4.15(1)(c): Suitability of the Site

There are no environmental constraints on the site that would impede the proposal or render it unsuitable for the site.

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**Statement of Environmental Effects**  
8-10 & 12 Galloway Street, Mascot  
Amend Condition 39

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**4.8 Section 4.15(1)(d): Submissions**

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

**4.9 Section 4.15(1)(e): The Public Interest**

For the reasons set out in this Statement, there are no matters of public interest that would be detrimental to the proposed conditions to be amended.

## 5 Conclusion

This application has been prepared by Karimbla Constructions Services (NSW) Pty Ltd to support a Section 4.55(1A) modification application to Bayside Council. The proposal seeks to amend Condition 39 which will enable the Damage Deposit paid on the 17 October 2017 which relates to 1-5 Kent Road, Mascot to be refunded as all necessary works have been completed site inspection was carried out by Council on the 23 March 2018.

In accordance with Section 4.55(1A) of the EP&A Act, Council may modify the consent as:

- the consent, as proposed to be modified, is substantially the same development as that originally approved;
- the proposed modifications will not result in any significant additional environmental impacts in relation to adjoining and surrounding properties;
- the proposed modifications do not result in a development that contravenes the Botany Local Environmental Plan 2013 (LEP) development standards.

In light of the above, we therefore recommend that the proposed modification is supported by Council and we trust that this information is sufficient to enable a prompt assessment of the proposed modification.

**Annexure 1: Damage Deposit Receipt**

**Annexure 2: Site Inspection and Final Occupation  
Documentation**

**Bayside Local Planning Panel**

**22/10/2019**

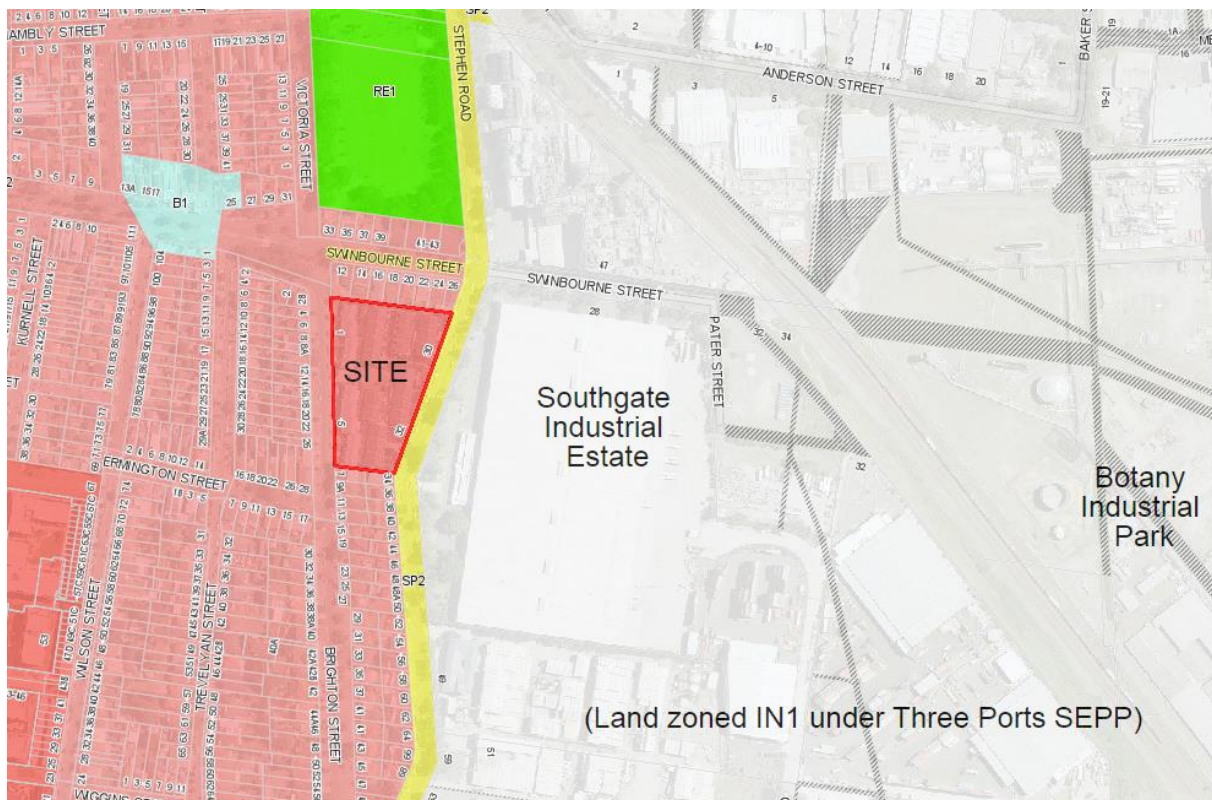
Item No	6.2
Application Type	Development Application
Application No	DA-2019/160
Lodgement Date	20/05/2019
Property	<b>10/30 Stephen Road, Botany</b>
Ward	Ward 1
Owner	Mr M L Li & Mrs M F Li
Applicant	Mr M L Li
Proposal	Conversion of the attic storage area into a bedroom and alterations to existing roof.
No. of Submissions	Nil
Cost of Development	\$35,000
Report by	Michael McCabe, Director City Futures

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**Officer Recommendation**

- 1 That the Bayside Local Planning Panel, exercising the functions of the Council as the consent authority pursuant to s4.16 of the Environmental Planning and Assessment Act 1979, approve a variation to the building height prescribed by Clause 4.3 - Height of Buildings 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 Clause 4.6 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-2019/160, for conversion of the attic storage area into a bedroom and alterations to the existing roof at 10/30 Stephen Road, 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.
-

## Location Plan



## Attachments

- 1 Planning Assessment Report [↓](#)
- 2 Clause 4.6 Variation Statement [↓](#)
- 3 Site Plan [↓](#)
- 4 Elevations [↓](#)
- 5 Roof / Concept Stormwater Plan [↓](#)

# BAYSIDE COUNCIL

## Delegated Planning Assessment Report

### Application Details

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Application Number:	DA-2019/160
Date of Receipt:	20 May 2019
Property:	10 / 30 Stephen Road, Botany
Lot & DP/SP No:	Lot 80 SP 81425
Owner:	Mr M L Li & Mrs M F Li
Applicant:	Mr M L Li
Proposal:	Conversion of the attic storage area into a bedroom and alterations to the existing roof.
Property Location:	10 / 30 Stephen Road, Botany
Value:	\$35,000
Zoning:	R2 – Low Density Residential
	Botany Bay Local Environmental Plan 2013
Author:	Helen Lai – Development Assessment Planner
Date of Report:	1 September 2019
Classification of Building:	Class 1a
Present Use:	Residential
No. of submissions:	Nil.

### Key Issues

The key issues with this application are:

- Definition of development

The original approval (DA-2002/490) was defined as a multi-unit dwelling under the Botany Bay Local Environmental Plan (LEP) 1995.

However, under Botany Bay LEP2013, the development is defined as a residential flat building as the building in which the subject unit (Unit 10) occupies has a shared access. The development cannot be defined as a multi-dwelling house as each unit does not have access at ground level.

An assessment of the proposed development with the relevant policies, including the Apartment Design Guide, was thus undertaken.



- Height

The proposed development involves raising the angle of the roof to the existing storage room on the western elevation to 15 degrees to increase the floor to ceiling height to accommodate an additional bedroom resulting in a building height of 9.95m. Any structure above the maximum 8.5m building height permitted under the Botany Bay LEP2013 is a non-compliance. However, it is important to note that the overall building height of the existing building is 10m. The affected part of the roof will remain below the existing and approved building height (10m).

### Recommendation

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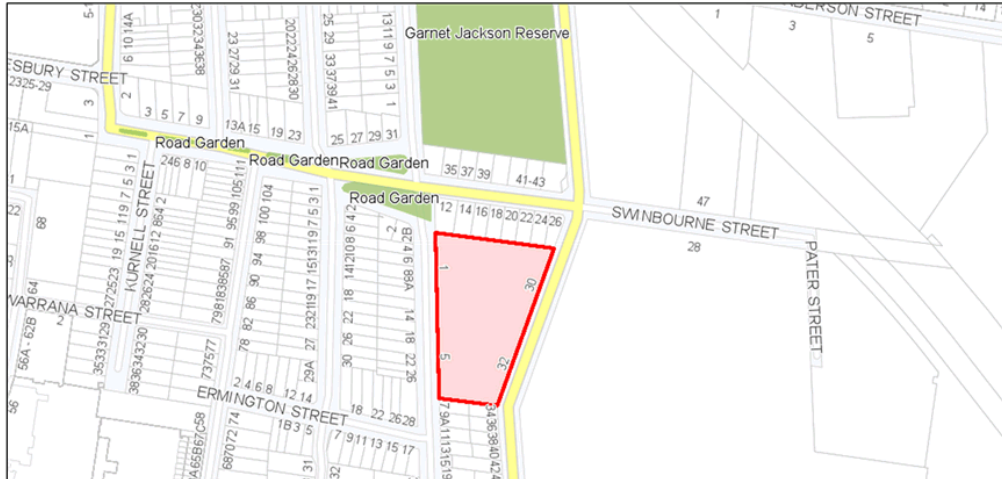
1. That the Bayside Local Planning Panel, exercising the functions of the Council as the consent authority pursuant to s4.16 of the Environmental Planning and Assessment Act 1979, approves a variation to the building height prescribed by Clause 4.3 - Height of Buildings of the Botany Bay Local Environmental Plan 2013, as it is satisfied that the applicant's request has adequately addressed the matters required to be demonstrated by Clause 4.6 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-2019/160, for conversion of the attic storage area into a bedroom and alterations to the existing roof at 10/30 Stephen Road, 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.

### Site Description

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The site is known as Lot 1 SP 81034. The subject unit is known as Lot 80 SP 81425, 30 Stephen Road, Botany (Unit 10). The site is trapezoidal shaped and located on the western side of Stephen Road between Swinbourne Street to the north and Brighton Street to the west. The northern and southern boundaries have lengths of approximately 109.6m and 53.6m while the western and eastern boundaries have lengths of 151.6m and 153.1m. The total site area is approximately 12,247.4m<sup>2</sup>. The topography of the site is relatively flat on the Brighton Street side and steeper on the Stephen Road side.

Unit 10 is part of the East Central Block, which contains eleven (11) units in total, including five (5) units on the ground floor. Unit 10 occupies the first and second floor between Unit 11 to the north and Unit 9 to the south. A separate unit is located below Unit 10. The existing streetscape character is medium scale consisting of multi-dwelling houses and single to two-storey residential dwellings to the north. Southgate Industrial Estate and the Botany industrial area is located opposite the subject site on Stephen Road, with the Botany Industrial Park located further to the east. Existing residential developments on Stephen Road are primarily characterised by pitched roofs.



**Figure 1 – Location Map.**

There are several trees on site.

The site is not a heritage item or located in the vicinity of another heritage item.

The site is located in the R2 – Low Density Residential zone. The subject land is affected by Acid Sulfate Soils (ASS) Class 5 and Stephen Road is identified as a 'Dangerous Goods Route'.

### Site History

Council's records show the following applications were previously lodged for the subject site:

Development Application	Description	Date of Determination	Issuing Authority
DA-2002/490	Construction of a multi-unit residential development comprising of eight-six (86) dwellings, basement parking and garages.	21 November 2002	City of Botany Bay
DA-2003/350	Staged subdivision of a multi-unit residential development comprising eight-six (86) dwellings, associated basement parking, garages and landscaping. Section 96(1A) modification to staged strata subdivision, reduce to four (4) consecutive stages with Section 94 payments.	6 December 2002	City of Botany Bay
DA-2002/490/2	Section 96(2) - Modifications to various conditions of consent	15 October 2003	City of Botany Bay
DA-2002/490/3	Section 96(2) – Delete underground cabling requirements from consent.	2 March 2004	City of Botany Bay
DA-2006/465	Construction of ten (1) multi-unit dwellings.	Withdrawn	City of Botany Bay

DA-2006/466	Construction of twelve (12) multi-unit dwellings.	Withdrawn	City of Botany Bay
DA-2006/467	Construction of seventeen (17) multi-unit dwellings.	Withdrawn	City of Botany Bay
DA-2006/468	Consolidation, staged subdivision, construction of a retaining wall and filling of land to depths of between approximately 0.5m to 1m within proposed Lots 1, 2 and 3. Staged 1 subdivision involves the subdivision of the site into four (4) allotments. Staged 2 subdivision involves the subdivision of proposed Lot 4 (front Brighton Street) into nine (9) residential allotments.	24 April 2007	City of Botany Bay
DA-2002/490/4	Section 96 Application to modify development consent no. DA-2002/490 relating to a multi-unit residential development comprising of eighty-six (86) dwellings and associated at grade and basement parking.	23 May 2007	
DA-2002/490/5	Section 96(1A) modification to staged strata subdivision, reduce to four (4) consecutive stages with Section 94 payments to be paid with the four (4) consecutive stages. Stage 1 = 32 units, Stage 2 = 10 units, Stage 3 = 36 units, Stage 4 = 8 units.	26 October 2007	City of Botany Bay
DA-2003/350/2	Section 96(1A) modification to staged strata subdivision, reduce to four (4) consecutive stages with Section 94 payments to be paid with the four (4) consecutive stages. Stage 1 = 32 units, Stage 2 = 10 units, Stage 3 = 36 units, Stage 4 = 8 units.	29 October 2007	City of Botany Bay
DA-2002/490/6	Section 96(1A) – change from solar powered polar lights to LED lights	25 January 2008	City of Botany Bay
DA-2003/350/3	Section 96(1A) – to amend conditions no. 1, 2 and 7 from development consent no. DA-2003/350.	Withdrawn	City of Botany Bay
DA-2002/490/7	Section 96(1A) – to modify conditions no. 1, 8 and 68 from development consent no. DA-2002/490/3	Withdrawn	City of Botany Bay
DA-2002/490/8	Section 96(1A) application for pathways through the site connecting both Stephen Road and Brighton Street.	13 November 2008	City of Botany Bay
DA-2018/1068	Conversion of attic storage to bedroom.	9 October 2018	Bayside Local Planning Panel
DA-2018/1078	Conversion of attic storage to bedroom.	9 October 2018	Bayside Local Planning Panel

### Description of Development

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Council is in receipt of development application, DA-2019/160, at 10/30 Stephen Road, Botany, which seeks consent to convert the existing attic storage area to a bedroom.

Specifically, the proposal consists of the following:

#### Demolition

- Demolition of part of the existing roof on the western side (rear)

#### Construction

##### Second Floor

- Conversion of existing attic storage room to a bedroom (with dimensions 2.7m x 4m).
- Raising the existing roof on the western side by approximately 1.5m to comply with ceiling height for a habitable room.
- Raising the angle of roof above the new bedroom by 15 degrees.
- New built-in-robe for the bedroom.
- New bedroom window on the western elevation with a 1.2m sill height.
- Connect the new bedroom to the existing AC room.

#### Materials, Colours and Finishes

- New roof to match existing roof tiles and render.

### Referral

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The proposal was not required to be referred to any internal or external authorities.

### Statutory Considerations

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

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

**S.4.15(1) - Matters for Consideration – General****S.4.15(1)(a)(i) - Provisions of Environmental Planning Instruments**

The following Environmental Planning Instruments are relevant to this application:

**State Environmental Planning Policy No. 55 – Remediation of Land**

The provisions of SEPP 55 have been considered in the assessment of the development application, along with the requirements of Part 3K - Contamination of the Botany Bay Development Control Plan 2013. The likelihood of encountering contaminated soils on the subject site is considered to be extremely low given the following:

1. A Site Audit Statement has been issued for the site when redeveloped for townhouses.
2. The proposed works are at the top floor level and no excavation works are proposed.
3. The site has been continuously used for residential purposes since redevelopment.
4. The immediately adjoining and adjacent properties are currently used for residential purposes.

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 (SEPP) No. 65 – Design Quality of Residential Apartment Building**

This application is assessed under the Apartment Design Guide (ADG) and the relevant provisions that relate to the proposed development.

The application has submitted a SEPP 65 assessment of the proposed development as part of the Statement of Environment Effects.

The proposal has been assessed against the ADG requirements and is discussed below:

Control	Proposed	Compliance Yes/No
<b>3F Visual privacy</b>		
Separation between buildings and balconies to ensure visual privacy is achieved. Minimum required separation distances from buildings to the side and rear boundaries are as follows:  Up to 12m (4 storeys) <ul style="list-style-type: none"> <li>• Habitable rooms and balconies = 6m</li> <li>• Non-habitable rooms: 3m</li> </ul>	There are no changes to the existing southern and northern side that is currently the common wall between units.  The proposed rear setback (measured from the new roof to the roof of the unit behind) is approximately 9.1m.	Yes.

Windows should be offset from the windows of adjacent buildings.	<p>The proposed development has been designed to minimise the overlooking of adjoining properties. The proposal will have one (1) new window on the western elevation facing the unit behind with a low sill height of 1.2m. Privacy impacts are adequately minimised by the setback combined with the use of the room as a bedroom (a low use room).</p> <p>All other windows will remain as existing.</p>	Yes.
<b>4A Solar and daylight access</b>		
<p>Living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 2 hours direct sunlight between 9am and 3pm at mid-winter.</p> <p>In all other areas, living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 3 hours direct sunlight between 9am and 3pm at mid-winter.</p>	<p>The proposed development is minor in scale and will cause minimal changes to solar access currently received by the subject unit and adjoining units.</p> <p>There are no changes to the existing overall building height at 10m and the new roof remains below the existing building height. Further, the new roof does not extend further than the existing roof line.</p> <p>In this regard, it is not likely that the proposed development will increase overshadowing to adjoining units or their private open space.</p>	Yes.
<b>4C Ceiling heights</b>		
<p>Measured from the finished floor level to finished ceiling level, minimum ceiling heights are:</p> <p>For 2 storey apartments -</p> <ul style="list-style-type: none"> <li>- 2.7m for main living area floor</li> <li>- 2.4m for second floor, where its area does not exceed 50% of the apartment area</li> </ul>	<p>The proposed ceiling height for the new bedroom on the second floor is 2.44m which complies. The eastern internal wall height will be 3.2m.</p> <p>There are no proposed changes to the existing ceiling height on first floor where the main living area is located.</p>	Yes.
<b>4D Apartment size and layout</b>		
<p>Apartments are required to have the following minimum internal areas:</p> <p>3 bedroom = 90m<sup>2</sup></p>	<p>The proposed development will result in a three (3) bedroom unit. The proposed floor area is 115m<sup>2</sup>.</p>	Yes.
<p>Bedrooms have a minimum dimension of 3m (excluding wardrobe space)</p>	<p>The proposed new bedroom has dimensions 2.7m x 4m.</p>	Yes.

<b>4E Private open space and balconies</b>		
<p>All apartments are required to have primary balconies as follows:</p> <p>3+ bedrooms = 12m<sup>2</sup> and minimum 2.4m depth</p> <p>The minimum balcony depth to be counted as contributing to the balcony area is 1m.</p>	<p>The existing front balcony measures 7.6m<sup>2</sup> and a maximum depth of 2m.</p>	<p>No – refer to Note 1.</p>
<b>4G Storage</b>		
<p>In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided:</p> <p>3+ bedroom apartments = 10m<sup>3</sup></p> <p>At least 50% of the required storage is to be located within the apartment.</p>	<p>The existing storage space measures 14.16m<sup>2</sup> and will be reduced to 3.6m<sup>2</sup> as a result of the additional bedroom.</p>	<p>No – refer to Note 2.</p>
<b>4N Roof Design</b>		
<p>Roof design relates to the street.</p> <p>Roof treatments should be integrated with the building design.</p> <p>Skylights and ventilation systems should be integrated into the roof design.</p>	<p>The proposed modifications to the roof are minor and on the rear elevation, thus, will not be directly visible from Stephen Road. Notwithstanding, the proposed roof form and pitch will be consistent with Unit 11 which was recently approved for a similar development and roof form (refer to DA-2018/1078). The proposed materials and render for the new portion of roof will remain consistent with the existing building.</p> <p>It is satisfied the proposal has been designed to maintain the existing character of the streetscape, further reflects dominant roof lines and patterns of adjoining buildings.</p>	<p>Yes.</p>

**Note 1: Private open space and balconies**

Design criteria 1, Objective 4E-1 of the ADG stipulates that for 3+ bedroom apartment units 12m<sup>2</sup> of private open space with a minimum 2.4m depth should be provided. The existing front balcony measures 7.6m<sup>2</sup> with a maximum depth of 2m. While the existing size does not comply with the ADG, this is considered acceptable as the balcony is an extension of the living space, faces east and obtains in excess of 2 hours solar access, is an existing non-compliance and controls from the ADG would not have been applicable to the original development.

**Note 2: Storage**

Design criteria 1, Objective 4D-1 of the ADG stipulates that for 3+ bedroom apartment units 10m<sup>3</sup> of storage space should be provided. The existing storage space is 14.16m<sup>2</sup>. The proposed development will reduce the storage space to 3.6m<sup>2</sup> as a result of the additional bedroom, therefore, is a non-compliance. However, considering there are other storage areas in the kitchen, bathrooms, bedrooms and further storage in the garage, there is sufficient storage remaining for the occupants' use. As such, the non-compliance is considered acceptable.

**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:

Principal Provisions of BBLEP 2013	Compliance Yes/No	Comment
Land-use Zone	Yes.	The site is located within the R2 - Low Density Residential zone under BBLEP 2013.
Is the proposed use/works permitted with development consent?	Yes.	The proposal seeks consent for alterations and additions to the residential flat building. Residential flat buildings are permissible with development consent in the R2 – Low Density Residential zone.
The relevant objectives of the R2 Low Density zone are: <i>- To provide for the housing needs of the community within a low density residential environment.</i> <i>- To enable other land uses that provide facilities or services to meet the day to day needs of residents.</i> <i>- To encourage development that promotes walking and cycling.</i>	Yes.	The proposed development is consistent with all the relevant objectives of the R2 – Low Density Residential zone, namely the development will continue to provide for the housing needs of the community within a low density residential environment.
What is the height of the building?  Does the height of the building exceed the maximum building height?	Yes.	The maximum building height shown on the Height of Buildings Map is 8.5m.  The proposed height of the new roof is 9.95m. A Clause 4.6 was submitted by the applicant.
What is the proposed FSR?	Yes.	The proposed gross floor area for Unit 20 has been calculated as follows:



Principal Provisions of BBLEP 2013	Compliance Yes/No	Comment
Does the FSR of the building exceed the maximum FSR?		<p>First Floor = 62.3m<sup>2</sup>  Second Floor = 52.7m<sup>2</sup>  Total gross floor area = 115m<sup>2</sup></p> <p>The proposed FSR calculated for the whole site is as follows:</p> <p>Total gross floor area: 11,604.4m<sup>2</sup>  Total site area: 12,247m<sup>2</sup>  Proposed FSR: 0.95:1</p> <p>The subject site is located on land marked "Area 3" as shown on the FSR Map. In this regard, the maximum FSR permissible for a residential flat building is 1:1 as per Clause 4.4.A (3)(b) of the BBLEP 2013. The proposed FSR does not exceed the maximum FSR permissible.</p>
Is the site within land marked "Area 3" on the FSR Map?  If so, does it comply with the sliding scale for FSR in Clause 4.4A?	Yes.	The subject site is within land marked Area 3. In accordance with Clause 4.4A(3)(b) of the BBLEP 2013, the maximum FSR permissible for a residential flat building is 1:1. The proposed FSR complies with this Clause.
6.1 – Acid sulphate soils	Yes.	<p>The site is affected by ASS Class 5 that is defined as works within 500 metres of adjacent Class 1, 2, 3 or 4 land that is below 5 metres Australian Height Datum and by which the water table is likely to be lowered below 1 metre Australian Height Datum on adjacent Class 1, 2, 3 or 4 land.</p> <p>The proposed development does not require excavation and therefore, does not trigger a requirement for ASS assessment.</p>
6.3 – Stormwater management	Yes.	The proposed development involves installation of a new downpipe to the existing roof. As works involved are minor and do not impact on the existing stormwater system, referral to Council's Development Engineer was not required.
6.9 – Development in areas subject to aircraft noise	Yes.	The subject site is not located within an ANEF contour and therefore, not subject to aircraft noise. As such, noise mitigation

Principal Provisions of BBLEP 2013	Compliance Yes/No	Comment
		measures is not required for the proposed development.

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

#### **Clause 4.6 Variation to Height**

The site has a maximum building height of 8.5m on the Height of Building Map, and has a proposed building height of 9.95m, which is a breach by 1.45m (or variation by 17%).

The applicant has provided a written Clause 4.6 variation request, providing justification for the proposals variation to the 8.5m height of building requirement, stating that it is unnecessary and unreasonable in the particular circumstances. Excerpts of the applicant's response are provided below:

#### **Applicant's Submission**

##### Objectives of Clause 4.3 – Height of Building

*"The contravention addressed in this statement is the height of the building. The zoning is a maximum height of 8.5m. The existing height for this building is 10.7m amounting to a 25% increase. The modifications do not seek to change the height of existing building; but are seeking modify the shape of the roofline to incorporate a window and additional floor space for a bedroom, and also to match a previous approved alteration to the adjoining Unit 11.*

*To justify the contravention Clause 4.3 – Height of Buildings, the modifications address the following applicable objectives on environmental planning grounds of the BBLEP 2013:*

*1(a) the building roof line of the modifications will be consistent with the existing design throughout the "East Central" complex. Moreover, they are to be appropriately matched to the existing structure elements such as colour and dimensions and will blend in with the building to be entirely unnoticeable to those in the complex.*

*1(b) and (c) the building height will remain consistent with the desired future character of the complex in question "East Central" and remains contained within this site.*

*1(e) the proposed modifications will not disrupt the existing views, privacy, skyline or streetscape, when viewed from the public realm as it is to the centre of the complex and not visible to the street and will not disrupt views nor alter the existing skyline."*

##### Clause 4.6 Variation

*"Exception (1)(a) The council is asked to provide an appropriate degree of flexibility in applying this development standard to this particular development, to achieve better outcome for the residents.*

*Exception (1)(b) The dwelling is located in an apartment block and currently is configured for 2 bedrooms, the addition of an extra bedroom will achieve a better outcome by increasing the liveability and value of the dwellings significantly.*

*Exception (2) that development consent may be granted to this proposal as it is not expressly excluded from the operation of this clause.*

*Exception 3(a) and (b) is addressed as follows:*

- a) Compliance with the development standard is argued as unreasonable and may be considered irrelevant as the existing building height of the complex 1.07m and the addition of the extra bedroom by change the configuration of the roof will not add to this height in any way. Furthermore, the dwelling adjacent to the site in question has already had a similar addition recently approved and this addition seeks to match this alteration to increase the amenity of the roof lies in the part of the complex. See DA-2018/1068 for confirmation.*
- b) There are sufficient environmental planning grounds, to justify a contravention of the development standard see the explanation for (1)(a) and (b). Additionally, the modifications are to be located in the centre of the complex away from the street frontages of Stephen, Swinbourne and Brighton Street and will not be seen from any of these streets nor increase the bulk of the building as viewed by passer-bys in the street, also meeting 4(a)(ii) of the clause.*

*The proposed development is deemed to create a minimal effect on the properties adjacent to the front and back of the complex, which indicate garages and driveways are immediately overlooked by the addition.*

*4(a)(i) the proposed is deemed to be in the public interest where it relevantly affects them, such as neighbours in the complex, where the modification will match the existing and public domain of the streets of Stephen Road and Brighton Street, where the development will not be visible, therefore having no effect.*

*(4)(a)(ii) the proposed development is not in contravention to the zoning of the site. It will be used for residential purposes and provide a fully useable extension to the housing needs of the residents in a low density residential environment. It is anticipated that it will enhance the use of the existing resident by adding useable, private and quiet bedroom space.*

*Exception (5) this development is deemed to be not of state relevance and otherwise for the secretary to determine."*

#### Demonstration of Compliance

*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 well founded:*

- i. The objectives of the standard are achieved notwithstanding non-compliance with the standard.*
- ii. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary.*
- iii. The underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable.*
- iv. 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.*
- v. 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.*

The applicant has addressed the above as follows:

*"ii. That the council having previously approved a contravention in building height in this zone for the 'East Central' complex and the existing structure is 25% over the height of 8.5m for this zone at 10.7m. In doing so the maximum height standard point iv. has virtually been abandoned. Therefore, iii, underlying purposes of the standard have been thwarted if the modifications were to comply with the height zone standard by creating the need for demolition of the existing structure containing unit 1- and this would create very inconsistent outcome for the site. Therefore, making the points i and ii to be relevant where the modification are achieving the objectives of the development standards by being consistent with the existing structure and making ii. the underlying objective or purpose or the standard not relevant so compliance is not necessary."*

#### **Assessment of Height of Building Variation**

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

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

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

The requirements of Clause 4.6 are each assessed separately below:

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

*Council Officer's Comments:*

The applicant has provided justification for the variation to building height and a Clause 4.6 was submitted. The proposed variation is considered unreasonable and unnecessary. The proposed height will result in minimal increase to bulk or overshadowing and remains below the building height of the existing building. The Floor Space Ratio of the proposal does not exceed the development standard. The proposed development continues to allow for a roof form that is consistent and in line with the existing streetscape and adjoining units (Units 11 and 20) that have obtained approval for a similar type of development. The applicant has demonstrated satisfaction of more than one of the 5 different ways in which an objection to a development standard may be well-founded.

Compliance with the development standard would therefore be unreasonable and unnecessary in this instance.

#### **4.6(3)(b) Are there environmental planning grounds to justify the contravention of the standard**

*Council Officer's Comments:*

There are sufficient planning grounds to justify the contravention of the standard as provided below:

- The proposed alterations and additions are primarily internal.
- There will be minimal visual privacy impacts to adjoining units as a result of the development with the addition of only one (1) window on the western elevation, however, with a low sill height.

- There will be minimal overshadowing to the adjoining units given that there is no increase to the existing overall building height. In addition, the new portion of roof does not extend further than the existing roof line.
- The built form proposed is in keeping with the adjoining units and is compliant with Council's Floor Space Ratio controls.
- Setbacks to the street, sides and rear are compliant. Sufficient landscaping is provided for the street form to be maintained.
- The roof form is existing. The proposal only involves raising the angle of the existing roof on the rear elevation. The overall height of the building (10m) will essentially remain the same. The roof on the eastern elevation will be raised to a 15 degree pitch, however, still remain below the overall building height (10m).

**4.6(4)(a)(i) The applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3)**

*Council Officer's comments:*

The applicant's written submission adequately deals with the requirements of Clause 4.6 in accordance with the principles established in *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*. Consideration may therefore be given to the merits of the request as noted previously.

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

*Council Officer's Comments:*

The proposed variation to building height will be in the public interest as it is consistent with the objectives of the R2 – Low Density Residential zone. The building will continue to facilitate as a residential flat building without adverse impacts on the streetscape and the locality. Furthermore, the proposed development will remain compatible with the existing scale of adjoining units within the subject site.

The proposal is consistent with the objectives of the height of building development standards for the following reasons:-

- The non-compliant height does not create inappropriate scale or bulk for the development.
- Stephens Road is characterised by residential flat buildings, setting the prevailing streetscape and density of the area, which the development is in keeping with and will have minimal impact to the existing character of the area.
- The affected part of the roof is on the rear elevation, therefore, will not be viewed to be noticeably larger in scale than the other buildings within the street.
- There are no changes to the approved overall height of the building (10m).
- The proposed development will not add additional bulk to the building and aims to maintain the pitch and form of the roofs prevalent within the street.
- The proposed dwelling has been designed to be in keeping with the streetscape and has taken into consideration the amenity of the adjoining property regarding solar access and privacy and contributes to the Botany Precinct desired future character.

The proposal meets the objectives of Clause 4.6 and those of the height of building development standards notwithstanding the proposed non-compliance. No objections have been received in relation to the proposed development.

**(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**

*Council Officer's Comments:*

The proposed variation to the height of building development standard will not result in any matters of significance for State or regional environmental planning.

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

*Council Officer's Comments:*

The above justification demonstrates that the proposed building height satisfies the objectives of the standard. It is considered that the variation does not raise any matters of public interest that have not already been addressed in this report.

Given that the proposal is consistent with the desired future character for the area and the proposed development will have minimal adverse impact on the streetscape, locality and adjoining units associated with the height variation, it is considered that there are no public interest matters which would prevent a variation to the height control.

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

*Council Officer's Comments:*

The proposal exceeds the maximum 10% variation to the height standard and is therefore submitted to the Bayside Local Planning Panel for determination.

**Summary of Clause 4.6 Assessment**

The Clause 4.6 exception to the height of building control has been assessed in accordance with relevant case law, being the principles of *Wehbe v Pittwater Council [2007] NSW LEC 827*, *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 1009* & *NSW LEC 90 (Four2Five)* and *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*. The proposal is consistent with the underlying objectives of the zone and of the development standard identified. The proposed development has been assessed against The Apartment Design Guide, Council's Botany Bay Local Environmental Plan 2013 and Botany Bay Development Control Plan 2013 controls and the proposal is compliant with all objectives and the majority of the controls.

Council's assessment of the proposal concludes that compliance with the height of building development standard is unreasonable or unnecessary in the circumstances of the case, and that there are sufficient environmental planning grounds to justify contravening the development standard.

The applicant's Clause 4.6 is well-founded and has demonstrated satisfaction of at least one of the five (5) different ways in which an objection to a development standard may be well-founded as set out in *Wehbe v Pittwater Council [2007] NSW LEC 827 (Wehbe)*. The proposed variation is in the public interest. On this basis, it is recommended that the development standard relating to the maximum height of building for the site pursuant to Clause 4.3 of the Botany Bay Local Environmental Plan 2013 should be varied in the circumstances as discussed above.

**S.4.15(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;

**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 residential flat buildings with two or more bedrooms are to provide two (2) car parking spaces.

The proposed development for Unit 10 will result in a total of three (3) bedrooms, therefore, two (2) parking spaces are required. There are no proposed changes to the existing layout of the basement carpark with two (2) parking spaces currently allocated to Unit 10. In this regard, the proposed development satisfies Part 3A – Parking & Access in BBDP2013.

Access to the basement car park is via Stephen Road.

**Part 3L- Landscaping and Tree Management**

Control	Proposed	Complies
<b>3L.4.2 Tree Works Requiring Council Approval</b>		
<b>C12</b> 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.	No trees proposed for removal.	Yes.

**Part 3N- Waste Minimisation and Management**

A Waste Management Plan prepared by the applicant, dated 1 July 2018 was submitted to Council, which address the works involved including, the removal of certain materials during demolition works and re-use of materials on site.

**Part 4C – Residential Flat Buildings**

Control	Proposed	Complies
<b>4C.2.2 Streetscape Presentation</b>		
<b>C1</b> New development must be compatible in building bulk and scale with adjoining residential developments and reflect the patterns of buildings in the streetscape. It must respond to building setbacks, building height and treatment of the building facades.	<p>The proposed conversion of the attic storage to a bedroom will have minimal impact on streetscape. Proposed modifications are mainly internal and to the rear, thus, will not be directly visible from Stephen Road.</p> <p>The adjoining buildings within the site are similar in style. In particular, the proposed roof form will be similar to the approved development at Unit 20 (DA-2018/1068) and Unit 11 (DA-2018/1078).</p> <p>The majority of buildings in the East Central Complex are three (3) storeys and the proposed new bedroom will be within the roof of the existing unit.</p> <p>The development will be generally consistent with the architectural design, materials and finishes of the existing building.</p>	Yes.
<b>4C.2.4 Landscaped Area and Deep Soil Planting</b>		
<b>C1</b> A residential flat development must have minimum landscaped area of 35% and a maximum hard landscaped area of 20%.	The proposed development will not reduce existing landscaped areas.	Yes.
<b>4A.2.6 Setbacks</b>		
<b>C1</b> Building setbacks from the existing front boundary must match the setback of adjoining properties, but must be a minimum of 3 metres or 4 metres if fronting a classified road.	There are no changes to the existing front setback. The existing front setback to Stephen Road is approximately 10.4m.	Yes
<b>4C.4 Family Friendly Apartment Buildings</b>		
<b>C3</b> Other than the master bedroom, each bedroom is to be large enough to accommodate a single bed, a desk or table, and floor space for playing, to be illustrated on a standard apartment layout plan.	There are no changes to the existing size of bedrooms within the unit. The proposed bedroom is 10.3m <sup>2</sup> , thus, will provide sufficient space for a	Yes.



Control	Proposed	Complies
	double bed, desk/table and floor space for playing.	

#### **Part 8 – Botany Character Precinct**

The proposal reflects the changing needs of owners living within the subject site as demonstrated by the proposed development which is consistent to the approved development at Units 11 and 20. The proposal is compliant with the objectives outlined in the R2 – Low Density Residential zone, FSR, setbacks, site coverage, private open space and is considered to have acceptable height and solar access to neighbouring sites. The existing unit has vehicular access from Stephen Road, a 'dangerous goods route'. The proposal will retain the existing two off-street parking spaces and will not result in any changes that would warrant further assessment of this matter. As such, the proposal is considered suitable for the site and consistent with the desired future character of the Botany Precinct pursuant to Botany Bay Development Control Plan Part 8 Character Precincts.

#### **Discussion**

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

Clauses 92-94 of the Regulations outline the matters to be considered in the assessment of a development application. Clause 92 requires the consent authority to consider the provisions of 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.

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

The proposed development will have no adverse environmental, social or economic impacts in the locality. There are minimal impacts related to the proposed development.

#### **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 zoned R2 – Low Density Residential and currently accommodates approved multi-dwelling houses. Accordingly, the site is suitable to accommodate the proposed 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 from 28 May 2019 to 12 June 2019. No submissions were received.

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

The proposed development is considered satisfactory having regard to the objectives and requirements of Botany Bay Local Environmental Plan 2013 and Development Control Plan 2013. Impacts on adjoining properties have been considered and addressed. As such, it is considered that the proposed development is in the public interest.

**Section 7.11 Contributions**

No contributions are applicable for this proposed development.

---

**Conclusion**

Development Application No. 2019/160 for conversion of attic storage area into a bedroom and alterations to existing roof at 10/30 Stephen Road, 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: 10/30 Stephen Road, Botany

DA No: 2019/160

#### SCHEDULE OF CONSENT CONDITIONS

##### GENERAL CONDITIONS

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

Drawing	Author	Dated
Roof / Concept Stormwater Plan / 01	Segmento Architects	Dated: 13 May 2019 Received: 21 May 2019
Floor Plans / Dwg No. 02		
Sections / Dwg No. 03		
Elevations / Dwg No. 04		

Reference Documents	Author	Dated
Strata Management Approval	gk Strata Management	Dated: 17 April 2019 Received: 21 May 2019
Clause 4.6 Variation Statement	KMontgomery Town Planner	Dated: July 2019 Received: 8 July 2019
Statement of Environmental Effects	Segmento Architects	Dated: 13 May 2019 Received: 21 May 2019
Waste Management Plan	Melvin Li	Dated: 1 July 2018 Received: 21 May 2019

2. This Consent relates to land in Lot 80 SP 81425 and, as such, building works must not encroach on to adjoining lands or the adjoining public place. The following shall be complied with:
  - a) 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;

- ii) 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.
  - c) New bedroom windows shall comply with D2.24 of the BCA.
  - d) All framing works shall comply with AS1684.
3. The consent given does not imply that works can commence until such time that:
- a) Detailed plans and specifications of the building have been endorsed with a Construction Certificate by:-
    - i) The consent authority; or,
    - ii) An accredited certifier; and
  - b) The person having the benefit of the development consent:-
    - i) Has appointed a Certifying Authority; and
    - ii) Has notified the consent authority and the Council (if the Council is not the consent authority) of the appointment; and
    - iii) The person having the benefit of the development consent has given at least 2 days notice to the council of the persons intention to commence the erection of the building.

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

- 4. 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.
- 5. The applicant must prior to the issue of the construction certificate pay the following fees:-
  - a) Development Control \$255.00
- 6. 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.

7. 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.

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

8. Where demolition is proposed, the following shall be provided to Council at least forty-eight (48) hours prior to the commencement of demolition:
- a) Written notice, indicating the date when demolition of the building is to commence.
  - b) This persons full name and address.
  - c) Details of Public Liability Insurance.
9. The Certifying Authority must be satisfied that: -
- a) In the case of work to be done by a licensee under the Home Building Act: -
    - i) Has been informed in writing of the licensee name and contractor licence number, and;
    - ii) Is satisfied that the licensee has complied with the requirements of Part 6 of the Home Building Act 1989; or,
  - b) In the case of work to be done by any other person: -
    - i) Has been informed in writing of the 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.
10. Prior to the commencement of works, the applicant must inform Council, in writing, of:
- a) The name of the contractor, and licence number of the licensee who has contracted to do, or intends to do, the work: or
  - b) The name and permit number of the owner-builder who intends to do the work;
  - c) The Council also must be informed if: -
    - i) A contract is entered into for the work to be done by a different licensee; or

ii) Arrangements for the doing of the work are otherwise changed.

11. 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.
12. This Consent shall not preclude the demolisher from giving notice to other statutory authorities, such as Sydney Water Corporation, WorkCover, etc.
13. 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.)*

- a) Permit to construction works, place and/or storage building materials on footpaths, nature strips,
- b) Permit to place skip/waste bin on footpath and/or nature strip, and
- c) 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**

14. 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.
15. Any material containing asbestos found on site during the demolition process shall be removed and disposed of in accordance with:
  - a) WorkCover NSW requirements. An appropriately licensed asbestos removalist must complete all asbestos works if they consist of the removal of more than 10m<sup>2</sup> of bonded asbestos and/or any friable asbestos;
  - b) Protection of the Environment Operations Act 1997;
  - c) Protection of the Environment Operation (Waste) Regulation 2014;
  - d) DECC Waste Classification Guidelines 2008.
16. No demolition materials shall be burnt or buried on the site.
17. 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.

18. The proposed development shall comply with the following:
- a) A sign must be erected in a prominent position on any work site on which work involved in the erection or demolition of a building is being carried out:
    - i) Stating that unauthorised entry to the work site is prohibited;
    - ii) Showing the name of the person in charge of the work site and a telephone number at which that person may be contacted outside working hours;
    - iii) The Development Approval number; and
    - iv) The name of the Certifying Authority including an after hours contact the Local Environmental Plan phone number.
  - b) Any such sign is to be removed when the work has been completed.
19. Vibration levels induced by the demolition activities shall not exceed 1mm/sec peak particle velocity (ppv) when measured at the footing of any occupied building. The operation of plant and equipment must not give rise to the transmission of vibration nuisance or damage to other premises.
20. 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.
21. The submitted Waste Management Plan, dated March 2018 shall be complied with at all times during construction and on-going use of the site.
22. The following shall be complied with during construction and demolition:
- a) Construction Noise

Noise from construction activities associated with the development shall comply with the NSW Environment Protection Authority's Environmental Noise Manual – Chapter 171 and the Protection of the Environment Operations Act 1997.
  - b) Level Restrictions
    - i) Construction period of 4 weeks and under:

The  $L_{10}$  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 05:00pm
    - ii) 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.
23. Toilet facilities are to be provided at or in the vicinity of the work site on which work involves:
- a) 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.
24. 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.
25. 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 made safe for pedestrian and vehicular traffic at all times. Any damage to Council's infrastructure (including damage caused by, but not limited to, delivery vehicles, waste collection, contractors, sub-contractors, concrete delivery vehicles) shall be fully repaired in accordance with Council's specification and AUS-SPEC at no cost to Council.

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

26. If mechanical ventilation is required, details shall be submitted to Council within 21 days of the installation of the system and prior to the issue of any occupation certificate. A report prepared by a qualified air quality/mechanical engineer certifying that any mechanical



ventilation/exhaust system as installed complies in all respects with the design and operation standards of AS 1668 – Mechanical Ventilation and Air Conditioning Codes, and the relevant provisions of the Protection of the Environment Operations Act 1997.

27. 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.
28. 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 FOR THE ONGOING USE**

29. 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 **does not include** 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.
30. The approved building on site constitutes a multi-dwelling house and the subject unit (10/30 Stephen Road) to which this consent relates to shall be occupied by a single family only. 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.
31. All intruder alarms must be fitted with a timing device in accordance with the requirements of Protection of the Environment Operations (Noise Control) Regulation 2017, and AS2201, Parts 1 and 2 - 1978 Intruder alarm systems.
32. 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.
33. The Protection of the Environment Operations (Noise Control) Regulation 2017, 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.

## CLAUSE 4.6 VARIATION STATEMENT

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**Project:**

The proposal is for modifications to existing dwelling including alterations to roof and conversion of storage area into a bedroom

**Address:**

10/30 Stephen Road, Botany, NSW, 2019

**Property Number/ Lot:**

Lot 1/-/SP8103

**Development Application Number:**

DA-2019/160

**Town Plan Zone:**

R2 Low Density Residential

**Prepared for:**

Melvin Li

**Date:**

July, 2019

**Prepared by:**

KMontgomery Town Planner

[KTMontgomery@outlook.com](mailto:KTMontgomery@outlook.com)

CLAUSE 4.6 VARIATION: DA 2019/160: 10/30 STEPHEN ROAD, BOTANY, NSW, 2019.

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CLAUSE 4.6 VARIATION: DA 2019/160: 10/30 STEPHEN ROAD, BOTANY, NSW, 2019.

## INTRODUCTION

This is a formal written request prepared in accordance with the Clause 4.6 of the Botany Bay Local Environment Plan, 2013 and has been prepared for the applicant of the proposed development. This report is to address the request for a revision of the Clause 4.6 Variation letter DA-2019/160, lodged on the 20 May, 2019 with Bayside Council. The request a revision of this statement was sent to the applicants on the 5 July 2019.

Specifically, this request seeks approval to vary the height of the building development application concerning the proposal for modifications to the existing dwelling including alterations to roof and conversion of storage area into a bedroom on property 10/30 Stephen Road, Botany, NSW, 2019.

This construction is described in detail in plans by the architect *Segmento Architects Pty Ltd* with the development application.

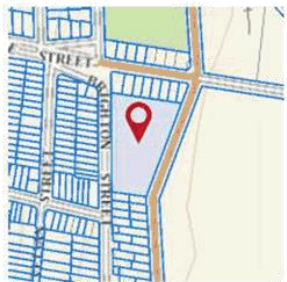
The purpose of this Exceptions Statement is to address the planning issues associated with the development proposal and specifically to assess the request for a revision of the 4.6 Variations Statement of Variation originally submitted to council against the Botany Bay Local Environmental Plan 2013, later referred to as (BBLEP 2013).

This report is to be read in conjunction with the architectural plans submitted with the application and the Statement of Environmental Effects: Document Set Elevations and Floor Plans Dated 13/05/2019.

CLAUSE 4.6 VARIATION: DA 2019/160: 10/30 STEPHEN ROAD, BOTANY, NSW, 2019.

THE SITE

The site is 10/30 Stephen Road, Botany, NSW, 2019. The site has a legal description of CP/-/SP8103 Council: Botany Bay. The following planning controls apply to the site.



**Property Details**

Address: 30-32 STEPHEN ROAD BOTANY 2019  
Lot/Section /Plan No: CP/-/SP81034  
Council: BAYSIDE COUNCIL

**Summary of planning controls**

Planning controls held within the Planning Database are summarised below. The property may be affected by additional planning controls not outlined in this report. Please contact your council for more information.

Height Of Building	8.5 m
Floor Space Ratio	1:1
Local Environmental Plans	Botany Bay Local Environmental Plan 2013 (pub. 21-6-2013)
Land Zoning	R2 - Low Density Residential: (pub. 21-6-2013)

Figure 1 Applicable Planning Controls of site

Aerial image in Figure 2 is of the site in question 10/30 Stephen Road, Botany Bay NSW.

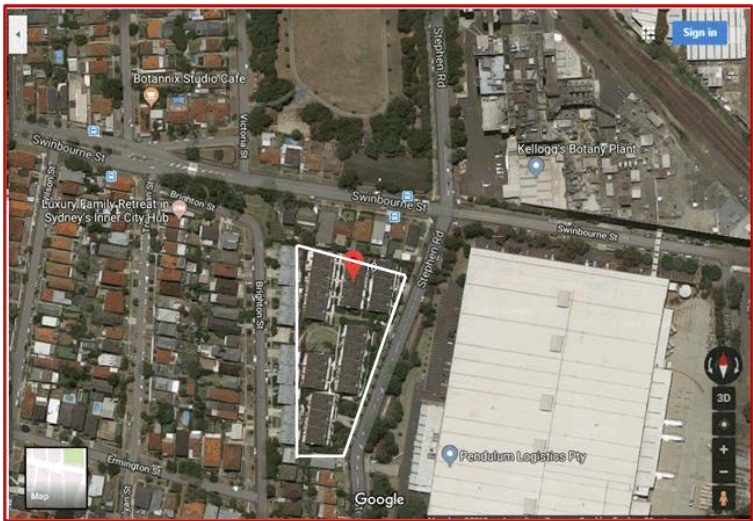


Figure 2 Aerial Image of the Site outlined in white, 10 is in the centre north block red marker (Google Maps, 2019)

CLAUSE 4.6 VARIATION: DA 2019/160: 10/30 STEPHEN ROAD, BOTANY, NSW, 2019.



Figure 3 Height controls of the site - 8.5m outlined in yellow (NSW Government, 2019)

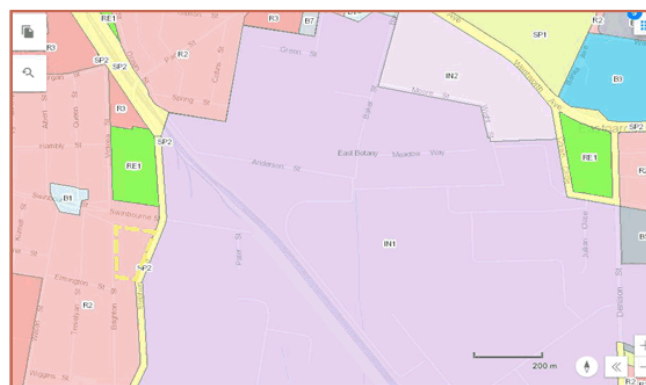


Figure 4 Zoning overlays on the site - R2 Low Density Residential outlined in yellow (NSW Government, 2019)

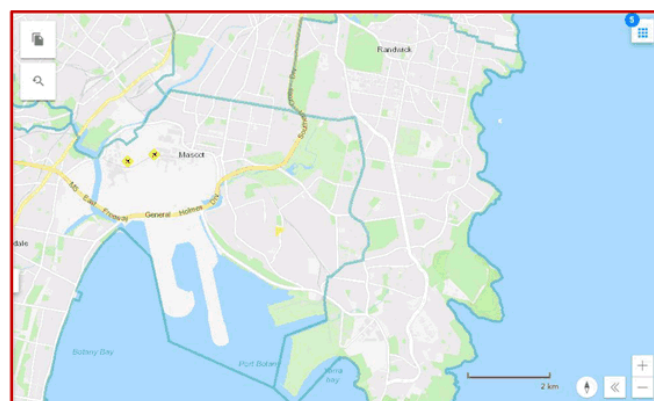


Figure 5 NSW Planning Portal Site Location - yellow

CLAUSE 4.6 VARIATION: DA 2019/160: 10/30 STEPHEN ROAD, BOTANY, NSW, 2019.

The location of the site falls into the Low Density residential Zone in Map Hop-005 of the BBLEP, 2013, see Figure 6 below:

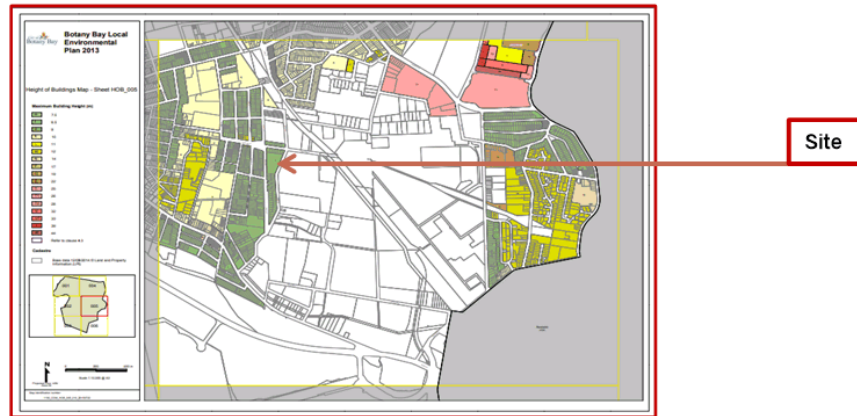


Figure 6 BBLEP, 2013, Land Zoning Map LNZ\_005 – R2 Low Density Residential

Figures 3 and 4 above has been taken from Botany Bay Local Environmental Plan Zoning Maps, which is authored by NSW Government.

### PERFORMANCE STATEMENT - COMPLIANCE

The following document consists of the performance of the development against the Botany Bay Local Environmental Plan 2013, (BBLEP 2013).

#### Zoning Requirements

The following comprise relevant parts of the BBLEP, 2013 which are included as reference in this document: Part 2 Permitted or Prohibited Development and Part 4 Principle Development Standards.

#### Part 2 Permitted or Prohibited Development, Land Use BBLEP 2013

Objectives of the Zone R2 Low Density Residential are as follows:

*“Part 2 - Land Use Table - Zone R2 Low Density Residential*

##### *1 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.”*

*(Quoted from Part 2 - Land Use Table - Zone R2 Low Density Residential BBLEP 2013, which is authored/published by the NSW Government)*



CLAUSE 4.6 VARIATION: DA 2019/160: 10/30 STEPHEN ROAD, BOTANY, NSW, 2019.

The proposed development for the modifications to existing dwelling including alterations to roof and conversion of storage area into a bedroom on property is generally compliant with the requirements of the R2 Low Density residential zoning and will provide for the housing needs of the residents within this Low –Density Residential Zone R2 environment. It enables for these modifications to existing dwelling including alterations to roof and conversion of storage area into a bedroom on property to provide for indoor facilities that meet the day to day needs of the residents of site 10/30 Stephen Road, Botany NSW, 2019. The addition of an extra bedroom will enhance the facilities of the home by providing further living space within the existing structure.

### PERFORMANCE STATEMENT – CONTRAVENTION

The contravention addressed in this statement is the height of the building. The zoning is a maximum height of 8.5m, see Figure 3 above. The existing height for this building is 10.7m amounting to a 25% increase. The modifications do not seek to change the height of the existing building; but are seeking to modify the shape of the roofline to incorporate a window and additional floor space for a bedroom, and also to match a previous approved alteration to the adjoining unit 11. See Figure 7 below.

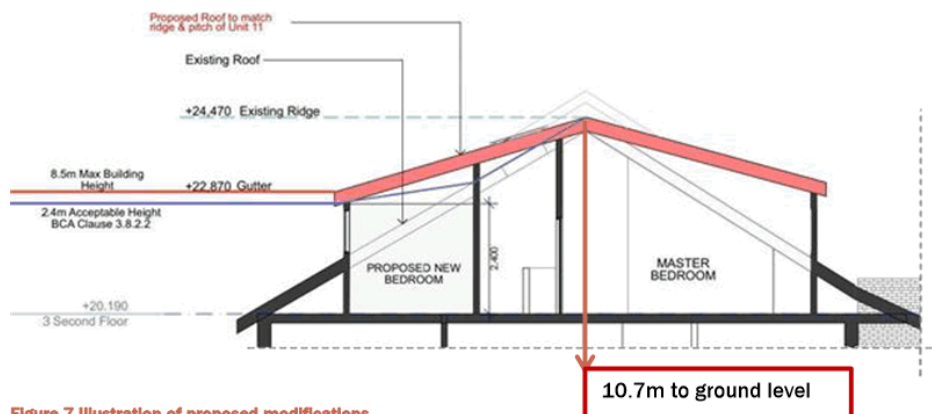


Figure 7 Illustration of proposed modifications

#### Part 4 Principle Development Standards, BBLEP. 2013

The BBLEP, 2013 Part 4 Principle Development Standard that we address is 4.3 Height of Buildings and 4.6 Exceptions to development standards.

#### 4.3 Height of buildings

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

(a) to ensure that the built form of Botany Bay develops in a coordinated and cohesive manner,



CLAUSE 4.6 VARIATION: DA 2019/160: 10/30 STEPHEN ROAD, BOTANY, NSW, 2019.

- (b) to ensure that taller buildings are appropriately located,*
  - (c) to ensure that building height is consistent with the desired future character of an area,*
  - (d) to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development,*
  - (e) to ensure that buildings do not adversely affect the streetscape, skyline or landscape when viewed from adjoining roads and other public places such as parks, and community facilities.*
  - (2) The height of a building on any land is not to exceed the maximum height shown for the land on the [Height of Buildings Map](#).*
- (Quoted from 4.4 Floor space ratio BBLEP 2013, which is authored by the NSW Government)*

To justify the contravention of 4.3 Height of Buildings, the modification address the following applicable objectives on environmental planning grounds of the BBLEP, 2013:

- 1(a) to ensure the Botany Bay built form is developed in a coordinated and cohesive manner: the building roof line of the modifications will be consistent with the existing design throughout “East Central” complex. Moreover, they are to be appropriately matched to the existing structure elements such as colour and dimensions and will blend in with the building to be entirely unnoticeable to those in the complex.**
- 1(b) and (c) the building height will remain consistent with the desired future character of the complex in question “East Central” and remains contained within this site.**
- 1(d) the proposed modifications will have an amenable visual impact on the existing dwellings and will not incur undue loss of privacy or impinge on existing solar access of the neighbouring dwellings as they will be contained entirely within the existing building envelope.**
- 1(e) the proposed modifications will not disrupt the existing views, privacy, skyline or streetscape, when viewed from the public realm as it is to the centre of the complex and not visible to the street and will not disrupt views nor alter the existing skyline.**
- (2) the building height exceeds the maximum height shown on the building height map Figure 3 above and this contravention will be address in this statement.**

CLAUSE 4.6 VARIATION: DA 2019/160: 10/30 STEPHEN ROAD, BOTANY, NSW, 2019.

**Clause 4.6 Variation, BBLEP, 2013**

The purpose of this document is to address the Clause 4.6 Variation, Exceptions to development standards BBLEP, 2013 which exist as a clause for giving further consideration to proposals such as this one when the Height of the Building is over that which is stipulated in the BBLEP, 2013.

Please see the quotation below for the definitions:

*4.6 Exceptions to development standards*

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

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

(2) *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*

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

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

(4) *Development consent must not be granted for development that contravenes a development standard unless:*

- (a) the consent authority is satisfied that:*
  - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
  - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
- (b) the concurrence of the Secretary has been obtained.*

(5) *In deciding whether to grant concurrence, the Secretary must consider:*

- (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
- (b) the public benefit of maintaining the development standard, and*
- (c) any other matters required to be taken into consideration by the Secretary before granting concurrence.*

*(Quoted from 4.6 Exceptions to development standards BBLEP 2013, which is authored /published by the NSW Government)*

Therefore to address the contravention of 25% in Height Ratio, considered significant by the council. We submit the following persuasions:

Exception (1)(a) The council is asked to provide an appropriate degree of flexibility in applying this development standard to this particular development, to achieve a better outcome for the residents 1(b) in providing an additional bedroom living space to the dwelling. The dwelling is

CLAUSE 4.6 VARIATION: DA 2019/160: 10/30 STEPHEN ROAD, BOTANY, NSW, 2019.

located in an apartment block and currently is configured for 2 bedrooms, the addition of an extra bedroom will achieve a better outcome by increasing the liveability and value of the dwelling significantly.

Exception (2) that development consent may be granted to this proposal as it is not expressly excluded from the operation of this clause.

Exception (3) that this document represents the request in writing for the applicant in a variation of this clause.

Exception 3(a) and (b) is addressed as follows:

a) Compliance with the development standard is argued as unreasonable and may be considered irrelevant as the existing building height of the complex 10.7m and the addition of the extra bedroom by changing the configuration of the roof will not add to this height in any way. Furthermore, the dwelling adjacent to the site in question has already had a similar addition recently approved and this addition seeks to match this alteration to increase the amenity of the roof lies in the part of the complex. See DA2018/1068, for a confirmation.

b) There are sufficient environment planning grounds, to justify a contravention of the development standard see the explanation for (1) (a) and (b). Additionally, the modifications are to be located in the centre of the complex away from the street frontages of Stephen, Swinbourne and Brighton streets and will not be seen from any of these streets nor increase the bulk of the building as viewed by passers-by in the street, also meeting 4(a) (ii) of the clause.

The proposed development is deemed to create a minimal effect on the properties adjacent and to the front and back of the complex, which indicate garages and driveways immediately overlooked by the addition see Figure 1.

4(a) i the proposal is deemed to be in the public interest where it relevantly affects them, such as neighbours in the complex, where the modification will match the existing and the public domain of the streets of Stephen Street and Brighton Avenue, where the development will not be visible, therefore having no effect.

4(a) ii the proposed development is not in contravention to the zoning of the site. It will be used for residential purposes and provide a fully useable extension to the housing needs of the residents in a low density residential environment. It is anticipated that it will enhance the use of the existing residence by adding useable, private and quite bedroom space.

Exception (5) this development is deemed to be not of state relevance and otherwise for the secretary to determine.

CLAUSE 4.6 VARIATION: DA 2019/160: 10/30 STEPHEN ROAD, BOTANY, NSW, 2019.

### **Demonstration of Compliance**

To specifically address the planning officers' comments in the email of Friday 5<sup>th</sup> July, by Helen Lai: "The common ways in which an applicant can demonstrate that compliance with a development standard is unreasonable or unnecessary are set out in *Wehbe v Pittwater* as follows:

- i. The objectives of the development standard are achieved notwithstanding the contravention.
- ii. The underlying objective or purpose of the standard is not relevant to the development so compliance is unnecessary.
- iii. The underlying objective or purpose would be defeated or thwarted If compliance was required.
- iv. The development standard has virtually been abandoned or
- v. The zoning of the land was unreasonable or inappropriate."

Where the above are addressed as follows against the Botany Bay Local Environmental Plan 2013, (BBLEP 2013) : ii. That the council having previously approved a contravention in building height in this zone for the 'East Central' complex and the existing structure is 25% over the height of 8.5m for this zone at 10.7m. In doing so the maximum height standard point iv. has virtually been abandoned. Therefore, iii. underlying purposes of the standard have been thwarted if the modifications were to comply with the height zone standard by creating the need for demolition of the existing structure containing unit 10 and this would create a very inconsistent outcome for the site. Therefore, making the points i and ii to become relevant where the modification are achieving the objectives of the development standards by being consistent with the existing structure and making ii. the underlying objective or purpose of the standard not relevant so compliance is not necessary.

CLAUSE 4.6 VARIATION: DA 2019/160: 10/30 STEPHEN ROAD, BOTANY, NSW, 2019.

## CONCLUSION

This document represents the written application to support the Clause 4.6 Variation, BBLEP, 2013, Height variation for this proposal on 10/30 Stephen Street, Botany Bay, NSW.

By addressing the concerns listed in 4.6 Exceptions to development standards, the Part 4 Principle Development Standards, BBLEP, 2013 and the comments made by the planning officer Helen Lai the proposed development to modify an existing dwelling including alterations to roof and conversion of storage area into a bedroom in the present dwelling is deemed to be overall in compliance with the existing structures in the East Central complex on 30 Stephen Street, Botany.

The modifications will have minimal or zero impact upon the streetscape of the two street frontages of Stephen and Brighton Street as it is at the centre of the complex and cannot be seen from either of these streets.

The proposed development has been shown that it will have minimal or zero effect on the adjoining properties in the complex both those adjacent where it is not visible and those immediately adjacent to the proposed development and will not be able to view the proposed enclosed structure in question.

The proposed development is appropriately located within a Low Density Residential R2 zone under the provisions of the Botany Bay Development Control Plan 2013. The variation to the height of the dwelling may be considered as irrelevant in this case as it already exists in the current complex building height. The addition of an extra bedroom will give the added value to the apartment and the addition of useable living space for the residents of the apartment considered as a distinct advantage and not a disadvantage.

The addition of an extra bedroom will greatly increase the amenity for the residents of 10/30 Stephen Street as the entire complex in 30 Stephen Street and the immediately adjoining apartment 11 are already over the maximum building height of the applicable zone for the R2 Low Density Residential site.

The addition of the extra bedroom will be in keeping with the colour and style of the existing structure and offer increased amenity to the residents of 10/30 Stephen Road, Botany Bay to anyone viewing the addition from the grounds of the complex or from the streets if it were viewable.

The modifications are such that compliance with the objectives of the development standard Height of 8.5 m max are consistent as the development standard has been abandoned in the existing structure which are in contravention of the standard by 25% and to try to enforce the building standard would result in an inconsistent outcome and that the objectives of the standard are achieved notwithstanding the contravention.

Therefore, the Local Planning Panel of Botany Bay Council is asked to consider the merits of this application and to allow the variation of standard 4.4 Height of 10.7m or 25% over the maximum for the zone for the proposed modification to the existing dwelling including alterations to roof and conversion of storage area into a bedroom on 10/30 Stephen Street, Botany Bay NSW, 2046.

CLAUSE 4.6 VARIATION: DA 2019/160: 10/30 STEPHEN ROAD, BOTANY, NSW, 2019.

## **BBLIOGRAPHY**

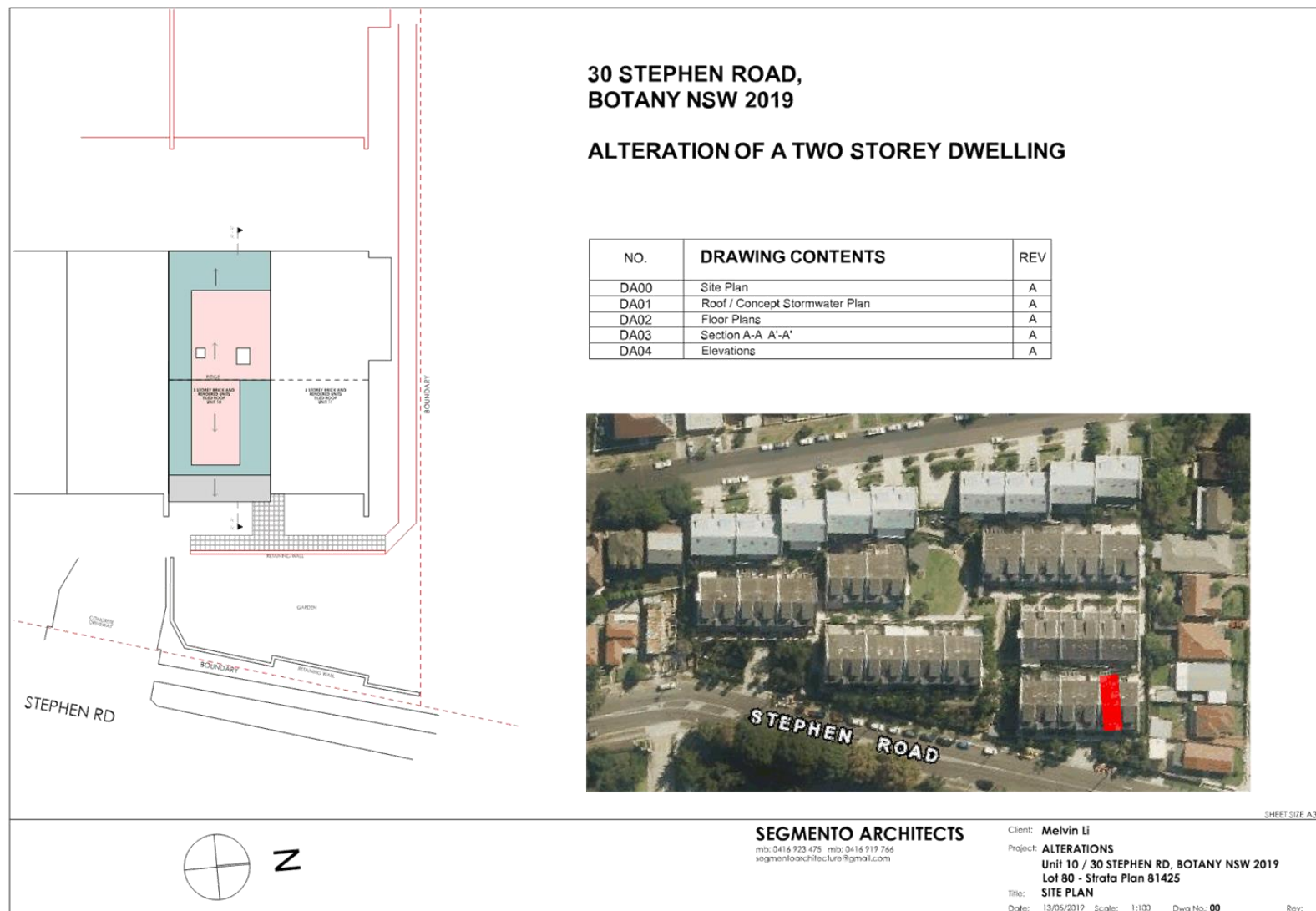
Google Maps. (2019, July). *10/30 Stephen Road, Botany Bay NSW*. Retrieved from Google Maps:  
<https://www.google.com.au/maps>

New South Wales State Department of Planning. (2011). *A Guide to Complying Development: Housing Code*. Sydney: April.

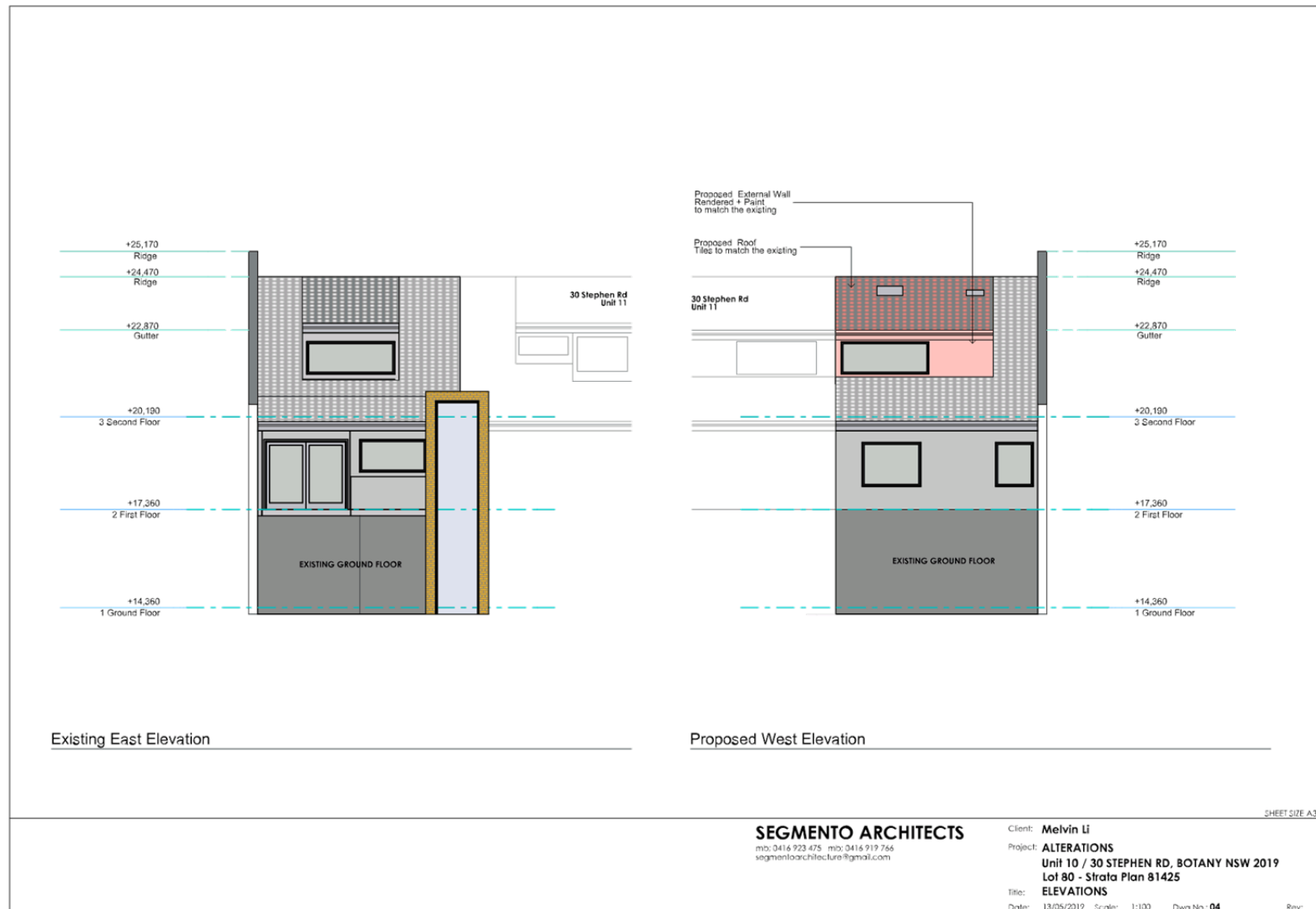
NSW Government. (2019, April). *Find a Property*. Retrieved from NSW Planning Portal :  
[https://www.planningportal.nsw.gov.au/find-a-property/93971\\_1\\_Cook\\_Avenue\\_\\_Canada\\_Bay](https://www.planningportal.nsw.gov.au/find-a-property/93971_1_Cook_Avenue__Canada_Bay)

NSW Planning Department. (2011). *Varying Development Standards : A Guide*. Sydney: NSW Planning Department.

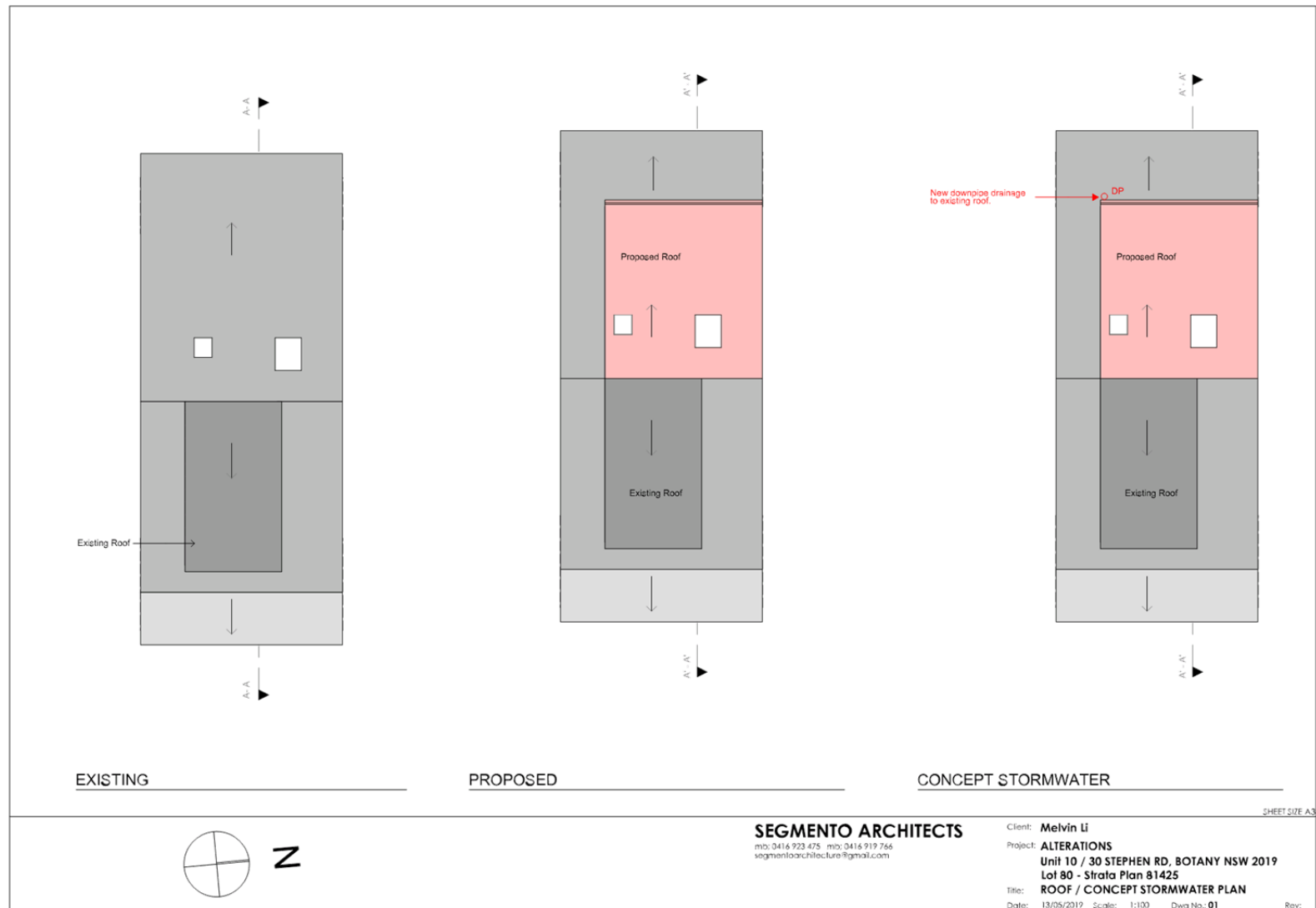
NSW, Government. (2013). *Botany Bay Local Environmental Plan 2013*. Retrieved from  
[http://www5.austlii.edu.au/au/legis/nsw/num\\_epi/bblep20132013313322.pdf](http://www5.austlii.edu.au/au/legis/nsw/num_epi/bblep20132013313322.pdf)











## Bayside Local Planning Panel

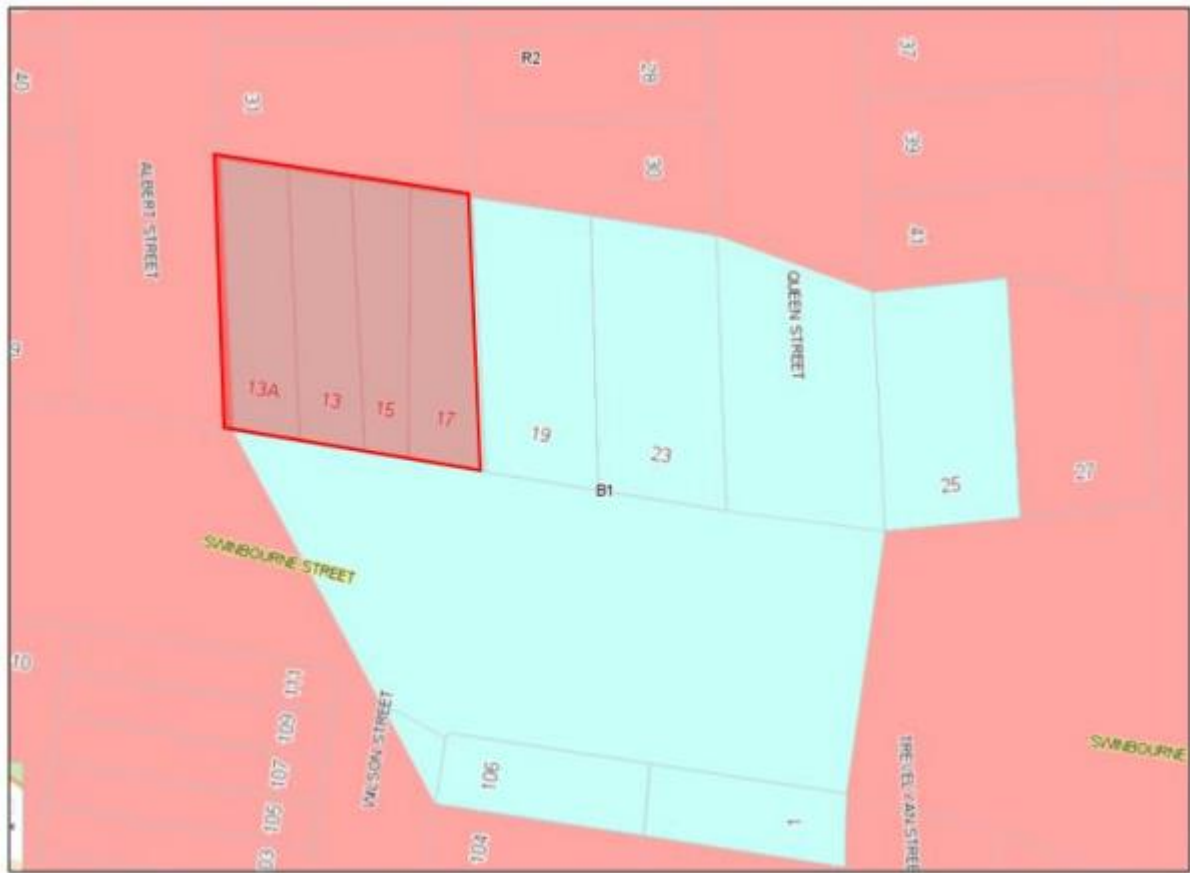
22/10/2019

Item No	6.3
Application Type	Development Application
Application No	DA-2018/378
Lodgement Date	20/12/2018
Property	<b>13A-17 Swinbourne Street, Botany</b>
Ward	Ward 1
Owner	Ms S J Devlin Hemamali Gajadeera Mrs H P Jordan Mr R E Jordan Ms M Ludlow Somapala Rubasinghe
Applicant	Swinbourne Pty Ltd
Proposal	Integrated Development for demolition of existing structures and construction of a three (3) storey shop top housing development comprising one (1) ground floor commercial tenancy, 20 dwellings, basement and ground floor parking and stratum subdivision.
No. of Submissions	First Notification – Two (2) Second Notification – One (1)
Cost of Development	\$6,210,200
Report by	Michael McCabe, Director City Futures

## Officer Recommendation

1. That the Bayside Local Planning Panel, exercising the functions of Council as the consent authority pursuant to s4.16 of the Environmental Planning and Assessment Act 1979 approved a variation to the building height prescribed by clause 4.3 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 clause 4.6 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 No. DA-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 stratum subdivision, 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 submitters be notified of the Bayside Local Planning Panel's decision.

## Location Plan



## Attachments

- 1 Supplementary Assessment Report [↓](#)
- 2 Original Planning Assessment Report [↓](#)
- 3 Site Plan [↓](#)
- 4 Elevations [↓](#)
- 5 Photomontages [↓](#)
- 6 Amended Clause 4.6 - Building Height [↓](#)

# BAYSIDE COUNCIL

## Supplementary Planning Assessment Report

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### Application Details

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<b>Application Number:</b>	DA-2018/378
<b>Date of Receipt:</b>	20 December 2018
<b>Property:</b>	13A-17 Swinbourne Street, Botany
<b>Owner:</b>	Ms S J Devlin Hemamali Gajadeera Mrs H P Jordan Mr R E Jordan Ms M Ludlow Somapala Rubasinghe
<b>Applicant:</b>	Swinbourne Pty Ltd
<b>Proposal:</b>	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 stratum subdivision.
<b>Recommendation:</b>	Approval subject to conditions
<b>No. of submissions</b>	First notification - Two(2) Second notification – One(1)
<b>Value:</b>	\$6,210,200.00
<b>Author:</b>	Patrick Nash- Senior Development Assessment Officer
<b>Date of Report:</b>	8 October 2019

### Background

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The development application the subject of this report was referred to the Bayside Planning Panel (BPP) on 10 September 2019 with a recommendation for approval.

At the meeting the BPP resolved:

1. *The 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 Planning Panel's decision.*

The Panel's stated reasons for the Determination above were:

- *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.*

In response to the above, the applicant submitted amended documentation on 26 September 2019 which includes amended architectural plans and an updated clause 4.6 exception concerning building height. The submitted documentation has adequately addressed the concerns raised by the Bayside Planning Panel. This report should be read in conjunction with the previous Planning Assessment Report which has been included as an attachment.

## Recommendation

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It is RECOMMENDED:

1. THAT the Bayside Local Planning Panel, exercising the functions of Council as the consent authority pursuant to s4.16 of the Environmental Planning and Assessment Act 1979 approved a variation to the building height prescribed by clause 4.3 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 clause 4.6 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 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 stratum subdivision, 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 submitters be notified of the Bayside Local Planning Panel's decision.

### **Modifications made to the proposed development**

The changes made in the amended architectural plans submitted to Council are summarised as follows:

#### Basement Level

- No change

#### Ground Floor Plan

- Rear deep soil landscaped area has been re-labelled as passive communal open space. There is a pedestrian path introduced in the ground floor car parking area.

#### First Floor Plan

- Family friendly dual key apartment foyer added to 1.08 and 1.09.

#### Second Floor Plan

- Family friendly dual key apartment foyer added to 2.08 and 2.09;
- New roof top light/stair well included to 2.08;
- 2 new north facing vertical light shafts provided to the circulation; and
- Glass roof skylights indicated in colour blue to 2.04, 2.05 and 2.06.

#### Roof Plan

- Re-configured communal open space area;
- New 21m<sup>2</sup> lightweight pergola roof to dining area;
- Reduction in the size of the solid roof over the core;
- New private open space area for apartment 2.08;
- 2 new vertical light shafts to promote light penetration to the circulation on Level 2 below;
- PVC's relocated from the northern pebble roof top to the rooftop of the core; and
- Glazed windows incorporated to the side of some of the lightweight rooftop stairwells.

#### Rooftop Plan

- Core rooftop raised from RL20.84 to RL21.55 to create a floor to ceiling height of 3.0m;
- New 21m<sup>2</sup> lightweight pergola roof to dining area; and
- Reduction in the size of the solid roof over the core.

## Assessment of the Panel's deferment

### Deferral Reason

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.

### Comment

The extent of solid roof proposed over the communal open space area has been substantially reduced. A small, lightweight free standing pergola has been introduced in the centre of the communal open space area. Refer to Figure 1 below which identifies the roof elements:

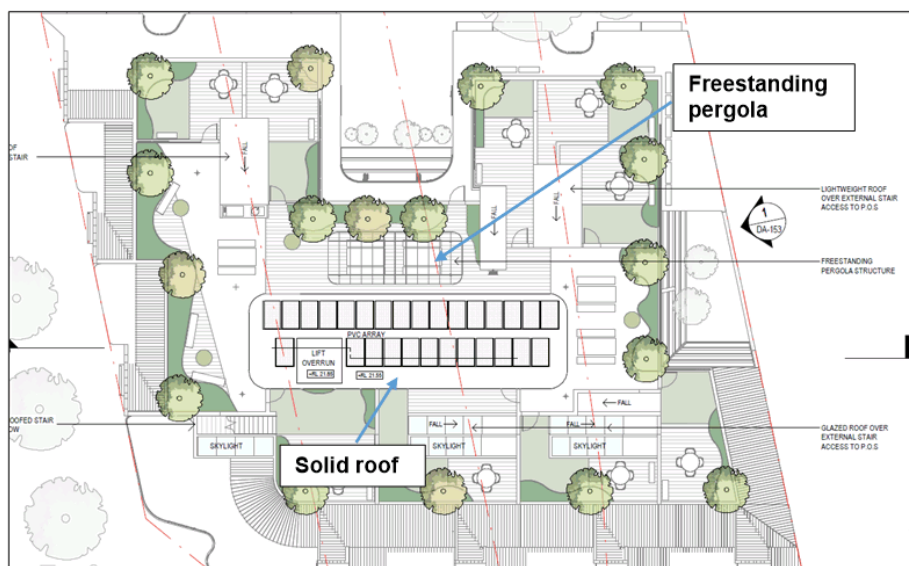


Figure 1: Rooftop plan extract

These design changes effectively reduce the bulk and scale of the roof top structures and are considered to be acceptable. It is further noted that the clearance beneath the roof structure has been increased from 2.7m to 3.0m. The overall maximum height of the development (i.e. – RL21.85 being the lift overrun) remains unaltered. Access to the communal open space is via the lift or stairs. No further concerns are raised in this regard.

In terms of access, there are private open space areas integrated into the design of the roof level. These spaces are directly accessible from inside each of the apartments. The external stairs are covered with roof structures for appropriate weatherproofing and amenity, with the exception of the stairs to the private open space area for apartment 2.04. In the case of the private open space areas for apartments 2.05 and 2.06, there are glazed roofs over the external stairs to facilitate greater light penetration for those south facing apartments. To provide clarification of the design of the private open space areas, the applicant has provided additional drawings which are re-produced below for reference:



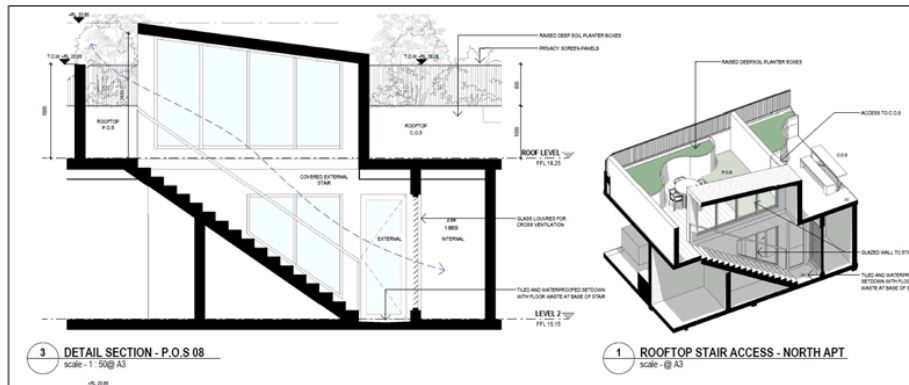


Figure 2: Details of private open space areas

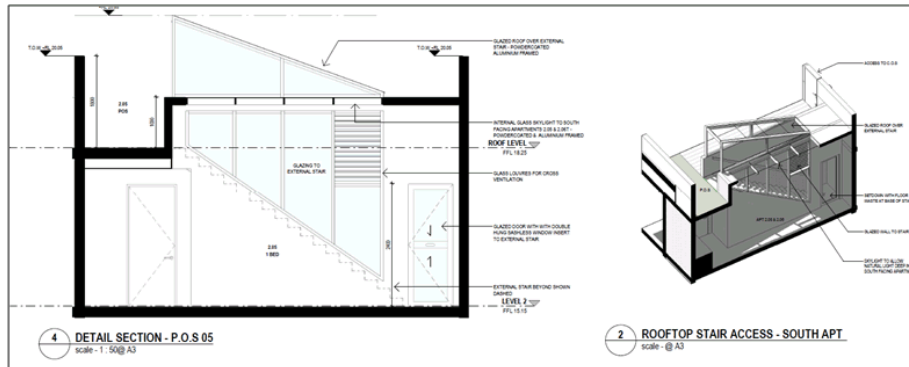


Figure 3: Details of private open space areas

### Deferral Reason

**Consideration of a light weight structure or structures for weather protection of rooftop courtyard/communal open space.**

### Comment

As identified in **Figure 1**, there is a solid roof proposed over a portion of the communal open space area which will provide weather protection. Whilst the roof is not a light weight structure, the size of it has been substantially reduced to ameliorate the concerns raised with respect to visual bulk and scale. A small, lightweight free standing pergola has been introduced in the centre of the communal open space area

The design of the communal open space is considered to achieve an appropriate balance between providing both roofed and unroofed elements, alongside providing suitable consolidated areas that can be used by building occupants.



**Deferral Reason**

**Consider incorporating passive communal open space within the deep soil area and providing access to the area for residents.**

**Comment**

The deep soil area within the rear setback is now identified as being a passive communal open space area. This space is accessible via a door from the ground floor car parking area and there is a dedicated pedestrian path identified on the drawings. It is noted that the pedestrian access to the door is via a portion of the accessible car parking area. However, the re-allocation of car parking required by condition 39 is such that this space becomes a car wash bay/visitors space, which is more appropriate given that access arrangement to the rear communal open space area.

**Changes to conditions**

The recommended conditions have been updated to reflect the plans provided in the amended plan submission. In addition, it is noted that previous condition 32 is recommended to be removed:

32. *The private open space areas 2.01, 2.02 and 2.10 on the Roof level plan must be deleted (including the stairs from each of the respective apartments) and substituted as communal open space. Amended plans demonstrating compliance with this condition shall be provided to the satisfaction of the Certifying Authority prior to the issue of a Construction Certificate.*

This condition was originally included to ensure that the quantum of communal open space provided achieves the minimum requirements (25% of the site area) in the ADG, noting that the ground floor rear setback area was not initially proposed for use as a communal space and therefore not included in the calculation. The ground floor rear setback area has now been incorporated as passive communal open space. Overall, there is a total of 32% of the site area provided as communal open space which complies with Part 3D of the ADG.

**Clause 4.6 – Building Height**

A maximum height of 12 metres applies to the subject site. The proposed development has a height of up to 13.8m and therefore does not comply with the building height development standard. The extent of the breach is 1.8m or 15% at the worst point.

In the amended plans, the maximum extent of the breach has not been altered (i.e. – the lift overrun remains at RL21.85). The elements in breach of the maximum permissible building height do however vary, in view of the design changes made to the roof structures. As such, the applicant has provided an updated clause 4.6 to reflect the modified development.

The following plan extracts illustrate the non-compliant portions of the building:



Figure 4: Section AA extract



Figure 5: Section CC extract

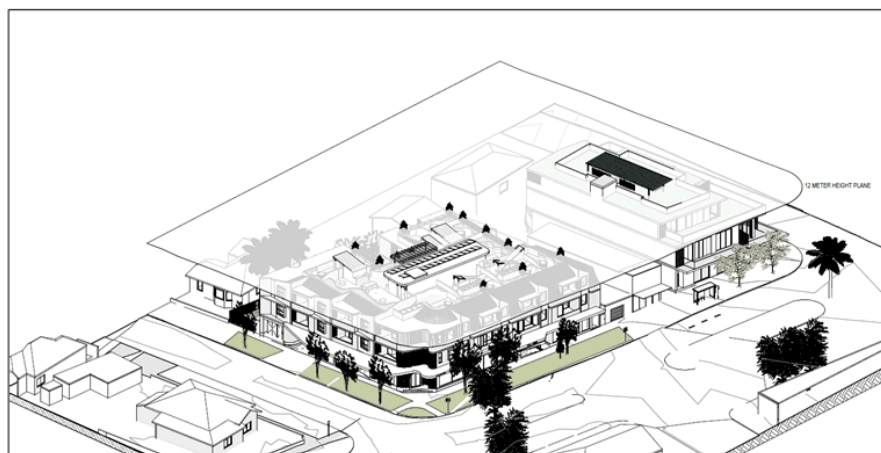


Figure 6: 12m height plane diagram. Approved development at 23 Swinbourne St also shown which does not comply with the height development standard.

As can be seen from Figures 4 - 6 above, the non-compliant building elements relate to the pergola structure/WC within the rooftop communal area, the roofs over the northern private open space areas and the lift overrun/fire stairs.

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

The applicant provided a clause 4.6 variation addressing the building height non-compliance which has been included as an attachment to this report. The relevant provisions of clause 4.6 of BBLEP 2013 have been addressed as follows:

**Clause 4.6(3)(a) – compliance with the development standard is unreasonable or unnecessary in the circumstances of the case; and**

Compliance with the building height development standard is unreasonable or unnecessary because the proposal is consistent with the objectives of the height development standard contained in clause 4.3 of BBLEP 2013. The justification provided by the applicant in this respect is re-produced below:

***OBJECTIVE (A) TO ENSURE THAT THE BUILT FORM OF BOTANY BAY DEVELOPS IN A COORDINATED AND COHESIVE MANNER***

The *Height of Buildings Map* indicates that the 12m height limit that applies to the subject site and also applies to land in the immediate vicinity within Zone B1. Zone B1 extends to the east and south of the site, beyond the B1 Zone is R2 Low Density Residential zone where building height transitions to 8.5m. At present, the built form within the block is characterised by a combination of older housing stock and commercial development with the approval for a three storey shop top housing development to the east at No.23 Swinbourne Street (DA-16/237). As such building heights are varied and no existing development takes up the maximum building height of 12m however, it is noted that DA-16/237 was approved with a variation to the maximum height limit.

As mentioned, the maximum height of the proposal is 13.8m when measured to the top of the lift overrun and rooftop pergola. The structures are set in from the Swinbourne Street and Albert Street facades and therefore present as recessive elements that are not readily apparent from street level. The breach in roof height is a product of providing rooftop communal open space. Communal open space on the roof is encouraged by the ADG and provides superior amenity to future occupants of the development. Accessibility to the roof communal area in the form of lift and stairs is required, thereby requesting a variation to the building height control. The roof pergola will provide protection from the elements, which will increase useability and amenity of the development.

It is considered that the recently approved development at No.23 Swinbourne Street provides an indicative built form as envisioned by Council and it is anticipated that development at the adjoining site, No.19 Swinbourne Street will present similarly. Once the development has been completed within the neighbourhood centre it will present as a coordinated and cohesive streetscape, with acceptable built form outcomes.

***OBJECTIVE (B) TO ENSURE THAT TALLER BUILDINGS ARE APPROPRIATELY LOCATED***

The function of the *Height of Building Map* is, as suggested by objective (b), to identify appropriate locations for taller buildings. The *Height of Buildings Map* indicates that the maximum building height for the site is 12m and is therefore identified as a location where 'taller' buildings are appropriate. The proposal does not strictly comply with this requirement (hence the request to vary the development standard), however is not substantially taller than the height of buildings anticipated in this location. It is submitted that the proposal, which may be considered a 'taller' building, is appropriately located.

***OBJECTIVE (C) TO ENSURE THAT BUILDING HEIGHT IS CONSISTENT WITH THE DESIRED FUTURE CHARACTER OF AN AREA***

Much of the discussion provided against objective (a) is also relevant to this objective. In brief, the desired future character of an area is, to some degree, determined by the building envelope provisions that apply to the site. In this case, future development at No.23 Swinbourne is generally consistent with the 12m height with a minor variation proposed for the lift overrun and pergola structure. It is therefore conceivable that future development in the B1 Zone will have a building height of 12m. It is also conceivable that many sites with similar development forms will seek to vary building height (as seen at No.23 Swinbourne Street and as is anticipated at No.19 Swinbourne Street) to account for the ADG communal open space provision. It is considered that the proposal, although marginally non-compliant with building height, is consistent with the desired future character of the area, noting that the term 'consistent' does not necessarily mean 'the same as'.

***OBJECTIVE (D) TO MINIMISE VISUAL IMPACT, DISRUPTION OF VIEWS, LOSS OF PRIVACY AND LOSS OF SOLAR ACCESS TO EXISTING DEVELOPMENT***

Despite non-compliance, the proposal is designed and located to minimise visual impact, disruption of views, loss of privacy and loss of solar access to neighbouring development as described below:

- The central services and lift core and light weight central communal open space pergola is set in from each street facade and therefore present as recessive elements that are not readily apparent from street level. The part of the building that is non-compliant with building height, does not contribute significantly to the visual bulk of the development. It is submitted that the difference between the proposal and a development that complies with building height will be negligible when viewed from the streetscape.
- It is understood that there are no significant views obtained from or through the site that will be obscured by the non-compliant aspect of the building.
- The central services and lift core and pergola or private stair roofing do not contribute to loss of visual privacy. The communal area is recessed from all boundaries and compliant building height elements of the building such as balconies are provided with privacy screens. These features preclude cross viewing or overlooking of neighbouring properties therefore ensuring visual privacy.
- Solar access diagrams have been prepared and are submitted with the development application. The diagrams demonstrate that, although the building is marginally non-compliant in terms of building height, solar access to neighbouring properties is not unreasonably reduced as a result of the height increase. Due to site orientation the proposal does not excessively overshadow existing adjacent development.

As described above, although non-compliant with building height, the proposal is designed and located to minimise visual impacts, disruption of views, loss of privacy and overshadowing and therefore achieves the objective.

***OBJECTIVE (E) TO ENSURE THAT BUILDINGS DO NOT ADVERSELY AFFECT THE STREETSCAPE, SKYLINE OR LANDSCAPE WHEN VIEWED FROM ADJOINING ROADS AND OTHER PUBLIC PLACES SUCH AS PARKS, AND COMMUNITY FACILITIES***

It is anticipated that the locality will undergo a period of transition as properties are redeveloped to take advantage of the zoning changes and generous height and density controls introduced through the LEP. As previously discussed, the height of the proposal is considered to be compatible with the anticipated



future character of the B1 Zone locality and in this regard makes a positive contribution to the desired streetscape. Until such time as neighbouring and adjoining sites are also developed, the proposal will be a prominent element in the immediate streetscape however will not be evident in the skyline in the same way as a residential tower is visible from a distance.

The proposed development is therefore consistent with the objectives for maximum height, despite the numeric non-compliance.

**Clause 4.6(3)(b) – Are there sufficient environmental planning grounds to justify contravening the development standard?**

The applicant's clause 4.6 exception provides the following justification:

There is no planning purpose to be served by limiting the height strictly to the maximum height allowable given the absence of significant amenity related impacts and consistency with the standard and zone objectives.

With regards to Clause 4.6(3)(b), there are sufficient environmental planning grounds to justify contravening the maximum height standard of the LEP as follows:

- The non-compliant central services and lift core and pergola elements are a functional aspect of the building, ensuring efficient access and weather protection to the roof communal open space. The required ADG communal open space provides superior amenity to future occupants with weather protection.
- The private unit stair access to roof top private open space provide superior private utility for units,
- The discussions provided in this variation request have demonstrated that the minor height breach will have no adverse impact on the character of the locality, the amenity of neighbouring properties. The lift overrun and pergola will not be readily visible, do not cast additional excessive shadows and do not give rise to privacy impacts nor does it result in view loss. In the absence of any adverse impact, it is considered that to require strict compliance with the development standard would, in this instance, be unreasonable and unnecessary; and
- To achieve compliance with the building height standard, the building would need to be reduced by a relatively insignificant margin of 1.8m. The visual bulk associated with the non-compliant 1.8m is negligible when compared to the visual bulk of a compliant scheme. The reduction in height would however have significant implications for the proposal as it would effectively preclude the rooftop communal open space reducing residential amenity.
- The proposed development achieves the objects in Section 1.3 of the EPA Act, specifically:
  - (a) The proposal promotes the orderly and economic use and development of land through the redevelopment of an underutilised site for residential uses (1.3(c));
  - (b) The proposed developed promotes good design and amenity of the built environment through a well-considered design which is responsive to its setting and context (1.3(g)).

**Officer Comment:** It is noted that a similar height non-compliance has been approved at No.23 Swinbourne Street, east of the subject site. This application was approved at the Bayside Local Planning Panel meeting on 28 November 2017. The extent of the height breach on that site was 1.55m or 12.9%. Refer to approved plan extract below:

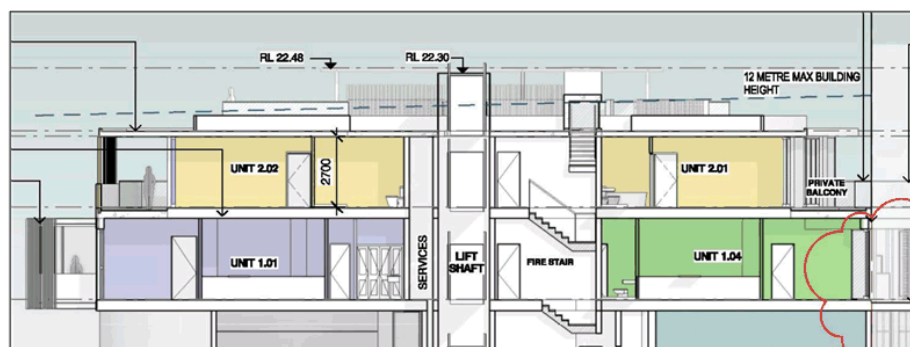


Figure 11: Approved Section – 23 Swinbourne Street

**Clause 4.6(4)(a)(i) – the applicant’s written request has adequately addressed the matters required to be demonstrated by subclause (3)**

The applicant’s written request is considered to adequately address the matters required to be demonstrated by clause 4.6(3) of BBLEP 2013.

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

It is considered that the proposal is consistent with the objectives of the building height development standard within clause 4.3 of BBLEP 2013 for reasons previously identified. The proposed development would also be consistent with the objectives of the B1 – Neighbourhood Centre zone as demonstrated below:

<b>B1 – Neighbourhood Centre zone objective</b>	<b>Comments/assessment</b>
To provide a range of small-scale retail, business and community uses that serve the needs of people who live or work in the surrounding neighbourhood.	The proposed development provides a retail tenancy on the ground floor. This is shown to be a single tenancy with capability to be broken up into two (2) smaller tenancies. This objective is satisfied.
To ensure that development does not adversely impact on residential amenity and is compatible with the existing streetscape.	The proposal is a well-designed and sited shop top housing development that is compatible with the existing and desired future streetscape along this part of Swinbourne Street. The proposed development does not adversely impact upon the amenity of surrounding residential properties, noting that the adjoining R2 zone at the rear is directly to the north and the

	proposal provides sufficient building separation.
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#### Concluding remarks

The request to vary the building height development standard has been assessed in accordance with the provisions of Clause 4.6 and relevant case law, being the principles of *Wehbe v Pittwater Council [2007] NSW LEC 827* and *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 1009 & NSW LEC 90 (Four2Five)*. The proposal is consistent with the underlying objectives of the standard identified and is consistent with the objectives of the B1 – Neighbourhood Centre zone. The proposal and Council's assessment has concluded that compliance with the building height development standard is unreasonable or unnecessary in the circumstances of the case, and that there are sufficient environmental planning grounds to justify contravening the development standard.

The proposed development will be in the public interest because it is consistent with the objectives of the building height development standard and the objectives of the B1 – Neighbourhood Centre zone.

In view of the above, the provisions of clause 4.6(4) of BBLEP 2013 are satisfied.

#### **Notification**

The amended plans were not required to be re-notified in accordance with Botany Bay DCP 2013 because there would be no additional impacts for neighbouring properties and/or the streetscape.

#### **Conclusion**

The issues raised by the Bayside Planning Panel at their meeting of 10 September 2019 have been addressed by way of amended plan submission. The amended plans submitted to Council are considered to be an improved outcome for the site and address the Panel's reasons for deferral. Therefore, it is recommended that the Panel determine the application in accordance with the recommendation provided.

**Attachment****Schedule 1 – Conditions of Consent****GENERAL CONDITIONS**

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

<b>Drawing No.</b>	<b>Author</b>	<b>Date Received</b>
DA-006-2 Issue D Demolition works	Architects Nicholas + Associates	Dated: 26.09.19 Received: 26.09.19
DA-007 Issue G Site Plan		Dated: 26.09.19 Received: 26.09.19
DA-008 Issue G Streetscape Analysis		Dated: 26.09.19 Received: 26.09.19
DA-009 Issue G Standard Abbreviations		Dated: 26.09.19 Received: 26.09.19
DA-010 Issue N Basement Plan		Dated: 26.09.19 Received: 26.09.19
DA-011 Issue Q Ground Floor Plan		Dated: 26.09.19 Received: 26.09.19
DA-012 Issue O First Floor Plan		Dated: 26.09.19 Received: 26.09.19
DA-013 Issue O Second Floor Plan		Dated: 26.09.19 Received: 26.09.19
DA-014 Issue N Roof Plan		Dated: 26.09.19 Received: 26.09.19
DA-015 Issue B Rooftop Plan		Dated: 26.09.19 Received: 26.09.19
DA-030 Issue G Locations of Adaptable units		Dated: 26.09.19 Received: 26.09.19
DA-031 Issue H Adaptable apartment 1.10		Dated: 26.09.19 Received: 26.09.19
DA-032 Issue H Adaptable apartment 1.03/2.03		Dated: 26.09.19 Received: 26.09.19
DA-033 Issue H		Dated: 26.09.19 Received: 26.09.19



Adaptable unit 1.08		
DA-150 Issue J Swinbourne St Elevation		Dated: 26.09.19 Received: 26.09.19
DA-151 Issue I Albert St Elevation		Dated: 26.09.19 Received: 26.09.19
DA-152 Issue H North Elevation		Dated: 26.09.19 Received: 26.09.19
DA-153 Issue G East Elevation		Dated: 26.09.19 Received: 26.09.19
DA-160 Issue J Section AA		Dated: 26.09.19 Received: 26.09.19
DA-161 Issue I Section BB		Dated: 26.09.19 Received: 26.09.19
DA-162 Issue I Section CC		Dated: 26.09.19 Received: 26.09.19
DA-950 Issue G Finishes Schedule		Dated: 26.09.19 Received: 26.09.19
DA-163 Issue H Section DD		Dated: 26.09.19 Received: 26.09.19
DA-170 Issue A Proposed roof POS stair detail	Architects Nicholas + Associates	Dated: 26.09.19 Received: 26.09.19
Cover Page LDA000 Revision F		Dated: 25.07.19 Received: 07.08.19
Landscape Plan 01 Ground Floor LDA100 Revision F	NBRS Architecture	Dated: 25.07.19 Received: 07.08.19
Landscape Plan 02 First Floor LDA101 Revision E		Dated: 18.07.19 Received: 07.08.19
Landscape Plan 03 Roof Terrace LDA102 Revision E		Dated: 18.07.19 Received: 07.08.19
Sections LDA200 Revision E		Dated: 18.07.19 Received: 07.08.19
Planting Palette, Schedule and Details LDA300 Revision F		Dated: 25.07.19 Received: 07.08.19

Materials and Finishes LDA400 Revision E		Dated: 18.07.19 Received: 07.08.19
Plan of proposed subdivision of lots Basement Level and Below	Surveyor: Ivan Victor Sterligov	Dated: 21.08.19 Received: 23.08.19
Plan of proposed subdivision of lots Ground Level		Dated: 21.08.19 Received: 23.08.19
Plan of proposed subdivision of lots Level 1 and above		Dated: 21.08.19 Received: 23.08.19

Reference Document(s)	Author	Date Received
Arborist Report	Urban Arbor	Dated: 26.07.19 Received: 07.08.19
Geotechnical investigation and Acid Sulfate Soil Assessment	STS GeoEnvironmental	Dated: June 2019 Received: 07.08.19
Preliminary Soil Vapour & Groundwater Investigation	Environmental Consulting Services	Dated: 30.04.19 Received: 07.08.19
BASIX Certificate No.982828M	Prepared by Building Sustainability Assessments	Dated: 11.12.18 Received: 20.12.18
Flood Management Report	Endepth Engineers Pty Ltd	Dated: 10.07.19 Received: 07.08.19
Access Report	Wall to Wall	Dated: 20.12.18 Received: 20.12.18

2. This consent relates to land in Lot A DP399233, Lot B DP399233, Lot 1 DP212569 and Lot 2 DP212569 and, as such, building works must not encroach on to adjoining lands or the adjoining public place.
3. The materials and façade details approved under condition 1 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.
4. Separate approval shall be provided for the use of the commercial tenancy on the ground floor.
5. In order to ensure the design quality excellence of the development is retained:
  - i. A registered architect is to have direct involvement in the design documentation, contract documentation and construction stages of the project;
  - ii. The design architect is to have full access to the site and is to be authorised by the applicant to respond directly to the consent authority where information or clarification is required in the resolution of design issues throughout the life of the project;
  - iii. Evidence of the design architect's commission is to be provided to Bayside Council prior to issue of the Construction Certificate.

The design architect of the project is not to be changed without prior notice and approval of Bayside Council.

6. 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
  - b) Ensure that the documentation relied upon in the approval processes include an appropriate level of detail to demonstrate compliance with the NCC as proposed and as built.
7. The following shall be complied with:
  - a) All building work must be carried out in accordance with the provisions of the Building Code of Australia;
  - b) All air conditioning units shall be appropriately treated to ensure that they are concealed from view and compliant with Australian Standard AS1668.2. If they are located on balconies or in public, they are to be appropriately screened;
  - c) The provision of disabled access throughout the development is required and shall be in compliance with the Building Code of Australia Part D3 "Access for People with Disabilities" and Australian Standard AS1428.1 (2001) – Design for Access and Mobility – Part 1 General Requirements for Access – Buildings. This requirement shall be reflected on the Construction Certificate plans;
  - d) The off-street parking areas associated with the subject development shall be designed strictly in accordance with AS2890.1:2004;
  - e) Bicycle parking facilities shall be designed in accordance with AS2890.3:1993; and
  - f) Internal height clearance shall be designed throughout the car park and access driveway in accordance with AS2890.1:2004.
8. 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 Certificates (as referenced at Condition No. 1) for the development are fulfilled.  
 Note:  
 Relevant BASIX Certificate means:
  - i. A BASIX Certificate that was applicable to the development when this development consent was granted (or, if the development consent is modified under Section 96 of the Act, a BASIX Certificate that is applicable to the development when this development consent is modified); or
  - ii. If a replacement BASIX Certificate accompanies any subsequent application for a construction certificate, the replacement BASIX Certificate.

BASIX Certificate has the meaning given to that term in the *Environmental Planning and Assessment Regulation 2000*.

9. 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:-
- iii. The consent authority; or,
  - iv. An accredited certifier; and
- The person having the benefit of the development consent:-
- v. Has appointed a principal certifying authority; and
  - vi. Has notified the consent authority and the Council (if the Council is not the consent authority) of the appointment; and
  - vii. 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.

#### **CONDITIONS IMPOSED BY EXTERNAL AUTHORITIES**

10. The following conditions imposed by **Sydney Airport (SACL)** are as follows:
- a) This location lies within an area defined in schedules of the Civil Aviation (Buildings Control) Regulations which limit the height of structures to 15.24 metres above existing ground height (AEGH) without prior approval of the Civil Aviation Safety Authority.
  - b) No objection has been raised to the erection of this development to a maximum height of 22.0 metres AHD.
  - c) The approved height is inclusive of all lift over-runs, vents, chimneys, aerials, TV antennae, construction cranes etc.
  - d) Should you wish to exceed this height a new application must be submitted.
  - e) Should the height of any temporary structure and/or equipment be greater than 15.24 metres AEGH, a new approval must be sought in accordance with the Civil Aviation (Buildings Control) Regulations Statutory Rules 1988 No. 161.
  - f) Construction cranes may be required to operate at a height significantly higher than that of the proposed development and consequently, may not be approved under the Airports (Protection of Airspace) Regulations.
  - g) Sydney Airport advises that approval to operate construction equipment (ie cranes) should be obtained prior to any commitment to construct.
  - h) "Prescribed airspace" includes "the airspace above any part of either an Obstacle Limitation Surface (OLS) or Procedures for Air Navigation Services – Aircraft Operations (PANS-OPS) surface for the airport (Regulation 6(1)).
  - i) The height of the prescribed airspace at this location is 51 metres above AHD.
11. The following conditions imposed by **Sydney Water** are as follows:
- The approved plans must be submitted to the Sydney Water [Tap in™](#) online service to determine whether the development will affect any Sydney Water sewer or water main, stormwater drains and/or easement, and if further requirements need to be met.
- The Sydney Water Tap in™ online self-service replaces our Quick Check Agents as of 30 November 2015.
- The [Tap in™](#) service provides 24/7 access to a range of services, including:
- i) building plan approvals
  - ii) connection and disconnection approvals
  - iii) diagrams
  - iv) trade waste approvals
  - v) pressure information
  - vi) water meter installations

- vii) pressure boosting and pump approvals
- viii) changes to an existing service or asset, e.g. relocating or moving an asset.

A Section 73 Compliance Certificate under the *Sydney Water Act 1994* must be obtained from Sydney Water. It is recommended that applicants apply early for the certificate, as there may be water and sewer pipes to be built and this can take some time. This can also impact on other services and building, driveway or landscape design. Application must be made through an authorised Water Servicing Coordinator. For help either visit [www.sydneywater.com.au](http://www.sydneywater.com.au) > Plumbing, building and developing > Developing > Land development or telephone 13 20 92.

12. The following conditions imposed by **Ausgrid** are as follows:

**Proximity to Existing Network Assets – Overhead Powerlines**

There are existing overhead electricity network assets in Swinbourne St and Albert St. Safework NSW Document – Work Near Overhead Powerlines: Code of Practice, outlines the minimum safety separation requirements between these mains/poles to structures within the development throughout the construction process. It is a statutory requirement that these distances be maintained throughout construction. Special consideration should be given to the positioning and operating of cranes and the location of any scaffolding.

The “as constructed” minimum clearances to the mains should also be considered. These distances are outlined in the Ausgrid Network Standard, NS220 Overhead Design Manual. This document can be sourced from Ausgrid’s website, [www.ausgrid.com.au](http://www.ausgrid.com.au).

Should the existing overhead mains require relocating due to the minimum safety clearances being compromised in either of the above scenarios, this relocation work is generally at the developers cost. It is also the responsibility of the developer to ensure that the existing overhead mains have sufficient clearance from all types of vehicles that are expected to be entering and leaving the site.

**Underground Cables**

There are existing underground electricity network assets in Swinbourne St and Albert St. Special care should also be taken to ensure that driveways and any other construction activities within the footpath area do not interfere with the existing cables in the footpath. Ausgrid cannot guarantee the depth of cables due to possible changes in ground levels from previous activities after the cables were installed. Hence it is recommended that the developer locate and record the depth of all known underground services prior to any excavation in the area. Safework Australia – Excavation Code of Practice, and Ausgrid’s Network Standard NS156 outlines the minimum requirements for working around ausgrid’s underground cables.

13. The following conditions imposed by **Water NSW** are as follows:

**General Terms of Agreement**

- a) A Water Supply Work Approval from WaterNSW must be obtained prior to commencing dewatering activity on the proposed site. Please complete an Application for approval for water supply works, and/or water use.
- b) An application for a Water Supply Works Approval will only be accepted upon receipt of supporting documentation, and payment of the applicable fee (see

Application fees for New or amended Works and/or Use Approvals). The information required for the processing of the water supply work application may include preparation of a dewatering management plan. Please refer to checklist attached.

- c) If approved, the Approval will be issued for a period of up to 24 months to cover the dewatering requirements during the construction phase. It will include conditions to ensure that impacts are acceptable and that adequate monitoring and reporting procedures are carried out. The Approval will be issued subject to the proponent meeting requirements of other agencies and consent authorities. For example, an authorisation by either Sydney Water or the local Council, depending where the water will be discharged. If contaminants are likely, or are found to be present in groundwater, and are being discharged to stormwater, including high salinities, a discharge licence under the Protection of the Environment Operations Act 1997 (NSW) may also be required.
- d) WaterNSW prefers "tanking" (ie. total water proofing below the seasonal high water table) of basement excavations, and avoids the ongoing extraction of groundwater after the initial construction phase. It is also advised to adopt measures to facilitate movement of groundwater post construction (eg. a drainage blanket behind the water-proof membrane).
- e) If the basement is not "tanked", the proponent will require a Water Access Licence (WAL) and need to acquire groundwater entitlements equivalent to the yearly ongoing take of groundwater. Please note: Acquiring groundwater entitlements could be difficult, and may cause delay in project completion. If a WAL is required, please complete an Application for a new water access licence with a zero share component.

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

14. A dilapidation report, including a photographic survey prepared by a Practising Structural Engineer, shall be undertaken of all properties and Council infrastructure, including but not limited to all buildings, 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.
15. Prior to commencement of any works, application(s) shall be made to Council's Customer Services Counter and obtained the following approvals and permits on Council's property/road reserve under Road Act 1993 and Local Government Act 1993:

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

- 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,
- Permit to install temporary ground anchors in public land,
- Permit to discharge ground water to Council's stormwater drainage system,

- 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,
  - Permit to place skip/waste bin on footpath and/or nature strip, and
  - Permit to use any part of Council's road reserve, work zone or other Council lands.
  - Permit to stand mobile cranes and/or other major plant on public roads and all road reserve area. It should be noted that the issue of such permits may involve approval from RMS and NSW Police. In some cases, the above Permits may be refused and temporary road closures required instead which may lead to longer delays due to statutory advertisement requirements.
16. Erosion and sediment control devices shall be installed and in function prior to the commencement of any demolition, excavation or construction works upon the site in order to prevent sediment and silt from site works (including demolition and/or excavation) being conveyed by stormwater into public stormwater drainage system, natural watercourses, bushland, trees and neighbouring properties. In this regard, all stormwater discharge from the site shall meet the legislative requirements and guidelines. These devices shall be maintained in a serviceable condition AT ALL TIMES throughout the entire demolition, excavation and construction phases of the development and for a minimum one (1) month period after the completion of the development, where necessary.
17. A Soil and Water Management Plan shall be prepared in accordance with Soil and Water Management for Urban Development Guidelines produced by the Southern Sydney Region Organisation of Councils. A copy of the plan must be submitted to Council. The Plan must include details of the proposed erosion and sediment controls to be installed on the building site. A copy of the Soil and Water Management Plan must be kept on-site at all times and made available on request. Sediment control devices shall not be located beneath the driplines of trees, which are to be retained.
18. The vehicular entry/exits to the site must be protected from erosion and laid with a surface material which will not wash into the street drainage system or watercourse.
19. For any water from site dewatering to be permitted to go to the stormwater, the water must meet the relevant default guideline values (DGVs) under the Australian & New Zealand Guidelines for Fresh & Marine Water Quality. The results of all testing must be completed by a NATA accredited laboratory.

All laboratory results must be accompanied by a report prepared by a suitably qualified person indicating the water meets these guidelines and is acceptable to be released into council's stormwater system. If it is not acceptable, details of treatment measures to ensure that the water is suitable for discharge to council's stormwater must be provided in this report.

Reports must be provided to council prior to discharge of any groundwater to the stormwater system.

20. To ensure that relevant engineering and water quality provisions are met during the period of dewatering for construction, prior to any water from site dewatering to be permitted to go to council's stormwater system a permit to discharge to the stormwater

shall be obtained from Council. Dewatering shall not commence until this is issued by Council.

21. 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  
The name and permit number of the owner-builder who intends to do the work;  
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.
22. Prior to the commencement of works, 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.
23. Prior to the commencement of works, separate permits are required to be obtained and approved by Council for all works including but not limited to road opening, road and footpath closure, stand and operate a registered vehicle or plant, occupy road with unregistered item, work zone, hoarding, shoring support (anchoring), tower crane operation, public land access, temporary dewatering, and any excavation and works proposed to be undertaken on public land.
24. The site to which this approval relates must be adequately fenced or other suitable measures employed that are acceptable to the Principal Certifying Authority to restrict public access to the site and building works. Such fencing or other measures must be in place before the approved activity commences.
25. This Consent shall not preclude the demolisher from giving notice to other statutory authorities, such as Sydney Water Corporation, WorkCover, etc.
26. 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.
27. If an excavation associated with the proposal extends below the level of the base of the footings of a building on an adjoining allotment of land or the common boundary fence the person causing the excavation to be made:
  - a) Must preserve and protect the building/ fence from damage; and,
  - b) If necessary, underpin and support such building in an approved manner;
  - c) Must at least be 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of the intention to do so to the owner of the adjoining allotment of land and, furnish particulars of the excavation to the owner of the building being erected or demolished;
  - d) Existing structures and or services on this and adjoining properties are not endangered during any demolition excavation or construction work associated with the above project. The applicant is to provide details of any shoring, piercing, or underpinning prior to the commencement of any work. The construction shall not undermine, endanger or destabilise any adjacent structures.



- e) If the soil conditions required it:
  - i. Retaining walls associated with the erection of a building (swimming pool) or other approved methods of preventing movement or other approved methods of preventing movement of the soil must be provided and:-
  - ii. Adequate provision must be made for drainage.
- 28. Prior to the commencement of demolition work a licensed demolisher who is registered with WorkCover NSW must prepared a Work Method Statement to the satisfaction of the Principal Certifying Authority (Council or an accredited certifier) and a copy shall be sent to Council (if it is not the PCA). A copy of the Statement shall also be submitted to WorkCover NSW.

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

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

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

- 29. Prior to the issue of a Construction Certificate, construction details of all proposed planter boxes in the development in particular the corten steel planters proposed on roof level, FFL 18.25, as indicated in approved architectural plan drawing DA014 prepared by Architects Nicholas + Associates, issue N, dated 26 September 2019 shall be submitted to Bayside Council Landscape Architect for approval. The applicant shall prove that the proposed corten steel planters proposed in architectural and landscape plans are capable of holding the projected planting. Otherwise an alternative construction method shall be proposed.

30. The landscape plan must be updated to be consistent with the approved architectural plans and comprise detailed landscape construction documentation (plans and specifications) to be submitted to, and approved by Bayside Council's Landscape Architect prior to the issue of a Construction Certificate. 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) Elevated planter box sectional details and drainage details. All planter box depths and dimensions shall be in accordance with Council's DCP and capable of supporting medium and large trees.
  - c) Indicate the location of all basement structures relative to the landscape areas.
  - d) Specifications detailing soil and mulch finishes, root barriers, irrigation, edging and other landscape handworks such as retaining walls, steps, planter walls, feature walls, skateboard restrictions, tree pits, tree grates, tree guards, tree pit treat
  - e) Areas of paving, schedule of materials, edge treatments, tactile and sectional construction details.
  - f) Irrigation details in all planting proposed on slabs.
  - g) 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).
31. 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 90 mm, 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.
  - d) An inspection of the waterproofing and sealing of edges is required by the
  - e) Certifier prior to backfilling with soil.
  - f) 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.
  - g) Finish externally with a suitable paint, render or tile to coordinate with the colour schemes and finishes of the building.

- h) All planter boxes shall be irrigated, and shall have the required depth to sustain the proposed plant species.
32. Prior to the issue of a Construction Certificate, at the proposed point of construction site entry, photographic survey showing the existing conditions of Council's and RMS infrastructure shall be submitted to Council and Principal Certifying Authority. The survey shall detail the physical conditions and identify any existing damages to the roads, kerbs, gutters, footpaths, driveways, street trees, street signs and any other Council assets fronting the property and extending to a distance of 50m from the development. Failure to do so may result in the applicant/developer being liable for any construction related damages to these assets. Any damage to Council's infrastructure during the course of this development shall be restored at the applicant's cost
33. Prior to the issue of a Construction Certificate, detailed drainage design plans for the management of stormwater are to be submitted to the Principal Accredited Certifier for assessment and approval. Design certification and drainage design calculations are to be submitted with the plans. Botany Bay DCP Part 10— Stormwater Management Technical Guidelines (SMTG) sets out the minimum documentation requirements for detailed design plans. Stormwater management requirements for the site, including the final discharge/end connection point, must comply with Botany Bay DCP Part 3G and Part 10— Stormwater Management Technical Guidelines. All drawings shall correspond with the approved architectural plans.

The detailed design plans shall incorporate, but not be limited to, the following:

- Incorporate the provisions generally made in the stormwater management plans prepared by LP Consulting Australia PTY LTD, Job No 2018-1533, Issue C, dated 25.07.19 with the revisions specified below, and
- The On-Site Infiltration System shall be designed according to Part 5 of the SMTG and shall be designed to detain and absorb all runoff generated by the development for all storm events up to and including the 1% Annual Exceedance Probability (AEP) design storm events, and for all durations from 6 minutes to 72 hours inclusive, and
- The onsite infiltration system is to be designed to ensure that adequate access for maintenance is available. An absorption tank system will be a more preferable design for the development to provide for maintenance access, and
- The infiltration system must have a minimum 2.0m setback from any adjacent private property boundary. Any part of the proposed building within 3m of the proposed infiltration system shall be designed with consideration for the close proximity of the infiltration system, and
- All subsurface structures must be designed with a waterproof retention system (ie tanking and waterproofing) with adequate provision for future fluctuation of the water table. Subsoil drainage around the subsurface structure must allow free movement of groundwater around the structure and must not be connected to the internal drainage system, and
- A pump-out system shall be provided for the basement, and
- In accordance with Botany Bay DCP SMTG section 4, a minimum capacity 10000L of Rainwater Tank(s) shall be provided for the site. The rainwater tank(s) must be connected all toilets, the cold water tap that supplies each clothes washer in the development and any outdoor taps/landscape irrigation within the development. In order to reduce pollutants entering the tank, a first flush device to divert minimum 1mm initial runoff from the roof area bypassing the tank shall be provided. Overflow from the rainwater tank shall be directed to the site drainage system, and

- Detailed calculations including computer modelling supporting the proposal.

34. Prior to the issue of a Construction Certificate, details of the approved street awning, including plans and sections, must be provided to the Certifying Authority for assessment and approval. The awning shall be consistent with the approved development application plans.

The details must include:

- A minimum setback of 600mm from the face of the kerb, minimum Fascia height 600mm, minimum soffit height 3.3m for sloping sites maximum step of 900mm. The awnings must be entirely self-supporting; posts are not permitted, and
- All stormwater is to be collected and connected to the street gutter. In this regard awning downpipes for drainage are to be fully concealed within or recessed into the ground floor frontage of the building. Awning gutters are to be constructed so that they are not visible from the footpath or are integral to the awning structure, and
- The design and certification by a Structural Engineer for Roof Category R1 in accordance with AS/NZS 1170.1: 2002, AS/NZS 1170.0: 2002, and AS/NZS 1170.3: 2011. The design must incorporate all loads including dead loads, live loads, wind load (lateral, uplift, and downward pressure), and potential impact load, and
- If the awning(s) is to be built over an exit that would be utilised in an emergency it must be constructed of non-combustible material, and
- Lighting is required and must comply with AS/NZS 1158.3.1: 2005 and AS/NZS 1158.0: 2005. Lighting must be recessed into the awning and be integral to its structure with all wiring and conduits concealed, and

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

35. To ensure that utility authorities and Council are advised of any effects to their infrastructure by the development, the applicant must:

- 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 (eg AusGrid, Sydney Water, 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.
- The Ausgrid lighting poles will need to be decommissioned and new lighting poles must be constructed satisfying V2 lighting requirements any other requirements as specified by Council, RMS and any other service provider,
- All above ground utilities must be relocated underground in accordance with Ausgrid and any other affected and relevant service provider, and
- All underground and above ground infrastructure shall be constructed as specified by Ausgrid, RMS, Council and any other affected service provider. The location of the new electrical pillars, new lighting poles, any new pits and trenches for utilities shall be confirmed with Council prior to the issue of a Construction Certificate.

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

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

36. 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 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.

A Public Domain Frontage Design must be prepared by suitably qualified professionals for assessment and approval by Council's Public Domain Team for all frontage works that are required to be constructed within the public domain and which are subject to approval pursuant to Section 138 of the Roads Act 1993. All frontage works shall be in accordance with Council technical manuals, master plans, town centre plans, Australian standards and standard design drawings and specifications.

Public domain frontage works shall include, but not be limited to, civil, drainage, landscaping, undergrounding of services, lighting, traffic signage, line marking, parking and traffic devices.

A 'public domain frontage works application' must be submitted to Bayside Council's Customer Service Centre for assessment of all required works within the road reserve, upon payment of the relevant fee, prior to the issue of a Construction Certificate.

Note: Preliminary consultation with Council's public domain team is recommended.

37. Prior to the issue of a Construction Certificate, a Construction Management Program must be submitted to, assessed and approved by the Principal Accredited Certifier prior to the issue of any Construction Certificate. The program must detail:
  - a) The proposed method of access to and egress from the site for construction vehicles, including access routes through the Council area and the location and type of temporary vehicular crossing for the purpose of minimising traffic congestion and noise in the area, with no access across public parks or public reserves being allowed,
  - b) The proposed phases of construction works on the site and the expected duration of each construction phase,
  - c) The proposed order in which works on the site will be undertaken, and the method statements on how various stages of construction will be undertaken,
  - d) The proposed manner in which adjoining property owners will be kept advised of the timeframes for completion of each phase of development/construction process,

- e) The proposed method of loading and unloading excavation and construction machinery, excavation and building materials, formwork and the erection of any part of the structure within the site. Wherever possible mobile cranes should be located wholly within the site,
  - f) The proposed areas within the site to be used for the storage of excavated materials, construction materials and waste containers during the construction period,
  - g) The proposed method/device to remove loose material from all vehicles and/or machinery before entering the road reserve, any run-off from the washing down of vehicles shall be directed to the sediment control system within the site,
  - h) The proposed method of support to any excavation adjacent to adjoining properties and the road reserve. The proposed method of support is to be designed and certified by an Accredited Certifier (Structural Engineering), or equivalent,
  - i) Proposed protection for Council and adjoining properties, and
  - j) The location and operation of any on site crane. Please note that a crane may require prior approval from Sydney Airports Corporation.
  - k) The location of any Construction Work Zone (if required) approved by Council's Traffic Committee, including a copy of that approval.
  - l) Obtain Permits required under this consent.
38. Prior to the issue of a Construction Certificate, a detailed Traffic Management Plan for the pedestrian and traffic management of the site during construction must be prepared and submitted to the Principal Accredited Certifier for assessment and approval. The plan must:
- be prepared by a RMS accredited consultant,
  - address, but not be limited to, the following matters:
    - ingress and egress of vehicles to the site;
    - loading and unloading, including construction zones;
    - predicted traffic volumes, types and routes; and
    - pedestrian and traffic management methods.
  - nominate a contact person who is to have authority without reference to other persons to comply with instructions issued by Council's Traffic Engineer or the Police, and
  - if required, implement a public information campaign to inform any road changes well in advance of each change. The campaign may be required to be approved by the Traffic Committee.

*Note: Any temporary road closure shall be confined to weekends and off-peak hour times and is subject to Council's Traffic Engineer's approval. Prior to implementation of any road closure during construction, Council shall be advised of these changes and Traffic Control Plans shall be submitted to Council for approval. This Plan shall include times and dates of changes, measures, signage, road markings and any temporary traffic control measures.*

39. Prior to the issue of a Construction Certificate, the following changes are required to be made and shown on the Construction Certificate plans:
- a) Parking space number 1 is to be allocated as a visitor parking space and shall be designed as a car wash bay. A tap shall be provided along with a sign fixed to the wall saying 'Visitor Car Space and Car Wash Bay'. The car wash bay must be bunded in accordance with AS1940 – 1993 and AS/NZS 4452 – 1997 with direct connection to the sewer in accordance with a Sydney Water trade waste agreement.

- b) Parking spaces numbered 2, 3 & 4 are to be redesigned as two accessible spaces, with spaces 2 and 4 being the accessible spaces and space 3 being the shared zone with a bollard as per AS2890.6.
  - c) Parking space number 2 is to be allocated as a visitor parking space.
  - d) Parking space number 3 is no longer to be allocated to any unit/commercial tenancy.
  - e) Parking space number 9 is no longer to be designated as a car wash bay.
  - f) Parking spaces numbered 14 & 15 are to be allocated to the residential component of the development for the residential units.
  - g) The retail loading bay is to be shared between the commercial and residential components of the development. This loading bay is to be designated as a van loading bay (B99 vehicle as stipulated in AS2890.1).
- 40. A link shall be created over the car parking area (eastern side of basement level and ground level) to facilitate future vehicular access to the adjoining site at No.19 Swinbourne Street. Prior to the issue of a Construction Certificate for the basement level, construction details shall be provided to the Certifying Authority demonstrating that the proposed structure is able to achieve the required link without affecting the structural stability of the building.
- 41. The subdivision plans listed in condition 1 shall be updated to reflect compliance with the car parking requirements in condition 39.
- 42. All vertical plumbing, other than roofwater heads and downpipes, shall be concealed within the brickwork of the building. Any electrical kiosks or fire booster valves shall be located in unobtrusive locations toward site boundaries and away from entrances into the building. Utilities shall be softened with landscaping so as not to detract from the overall appearance of the development and amenity of the streetscape. Details demonstrating compliance with this requirement shall be submitted to the Principal Certifying Authority (PCA) prior to the issue of a Construction Certificate.
- 43. 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.
- 44. 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 a Construction Certificate, implemented prior to issue of the Occupation Certificate, and maintained for the lifetime of the development:
  - a) Monitored CCTV facilities shall be implemented throughout the development. Areas of focus include the basement car park (including entry and exits), main entry areas to the development and garbage/storage areas.
  - b) A lighting maintenance policy shall be established for the development. Lighting shall be designed to the Australian and New Zealand Lighting Standards. Australia and New Zealand Lighting Standard 1158.1 - Pedestrian, requires lighting engineers and designers to consider crime risk and fear when selecting lamps and lighting levels.
  - c) Security mirrors shall be installed within corridors and on blind corners to enable users to see around blind corners.
  - d) Graffiti resistant materials shall be used to ground level external surfaces.
  - e) Intercom facilities shall be installed at all vehicular and pedestrian entry/exit points to enable residents to communicate and identify with people prior to admitting them to the development.

- f) The front window of the ground floor tenancy must be kept free of shelves, and a maximum of 15% of the window display area may be covered with promotional materials to ensure passive surveillance is maintained to and from the tenancy.
45. Prior to the issue of a Construction Certificate, the following required section(s) are to be submitted to and approved by the Principal Certifying Authority:
- a) The single lane entry ramp to the basement from the ground floor requires traffic management to manage two-way movement. To this effect a traffic signal management system (including traffic lights and vehicular sensors) to manage conflicting two way movements shall be designed and certified by a suitably qualified traffic engineer for implementation within the parking facility.
  - b) A queueing assessment and probability of conflict analysis must be submitted detailing the 95th Percentile queue length expected at the top of the proposed single lane ramp and the probability of a conflict in any given AM or PM peak hour.
  - c) Line marking and signage must be provided at both the entry to the one way ramp on the ground floor and at the base of the one way ramp in the basement of the development to clearly delineate waiting bay areas that provide for passing of vehicles entering/exiting the basement car park via the ramp. The function of these waiting areas must be demonstrated using swept paths for a B85 passing a B99 vehicle with appropriate clearances as per AS/NZS 2890.1:2004.
  - d) The above requirements are to be designed and certified by a suitably qualified engineer experienced in traffic management, parking design and traffic signalling systems.
46. Prior to the issue of a Construction Certificate, the following required section(s) are to be submitted to and approved by the Principal Certifying Authority:
- All driveways/access ramps/vehicular crossings shall conform with Australian Standards AS 2890.1 and Council requirements,
  - The applicant shall provide longitudinal sections along the extremities and the centre line of each internal driveway/access ramp at a scale of 1:25. These long sections shall extend from the horizontal parking area within the property to the centre line of the roadway. The sections shall also show the clear height from the ramp to any overhead structure.
  - Swept path analysis (utilising a recognised computer software) shall be provided for vehicular circulation areas, ramps, residential parking spaces, commercial parking spaces, indicating they can enter and exit the property in a forward direction
  - Internal height clearance shall be designed throughout the car park at minimum in accordance with AS/NZS 2890.1:2004.
  - A minimum of five (5) bicycle parking spaces are to be provided for the development on the ground floor and designed in accordance with AS 2890.3:2015.
  - The design of the car parking facility is to be certified by a suitably qualified traffic engineer as being in accordance with Australian Standard 2890 parking series.
47. Prior to the issue of a Construction Certificate, the following required section(s) are to be submitted to and approved by the Principal Certifying Authority:



- At least four (4) accessible car parking spaces shall be provided and designed as specified in Australian Standard 2890.6, SEPP 65 Design Code and Council requirements, and
  - All off street accessible parking shall have access to the adjacent road(s) and to the communal open space as per Australian Standards 2890.6 and Council requirements, and
  - All Accessible parking spaces shall be located within close proximity and easy access to the lift systems proposed for the building as per AS2890.6 and AS4299.
48. The subsurface structure must be designed with a waterproof retention system (ie tanking and waterproofing) with adequate provision for future fluctuation of the water table. The subsurface structure is required to be designed with consideration of uplift due to water pressure and "flotation" (buoyancy) effects. Subsoil drainage around the subsurface structure must allow free movement of groundwater around the structure, but must not be connected to the internal drainage system. The design of subsurface structure, tanking and waterproofing, and subsoil drainage must be undertaken by a suitably experienced Chartered Professional Engineer(s). Design details and construction specifications must be included in the documentation accompanying the Construction Certificate.
49. Prior to the issue of a Construction Certificate, 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 chartered professional geotechnical engineer must:
- a) That the construction methodology, parameters and all recommendations contained in the Geotechnical and Acid Sulfate Soil Investigation Report prepared by STS GeoEnvironmental Pty Ltd, Report No: 19/1260, project No:22264/1916D-G, dated June 2019, (including any further geotechnical testing required as deemed necessary by the geotechnical engineer) shall be implemented and relied upon during the preparation of the construction certificate documentation and the construction of the development,
  - b) Provide a certificate that the construction certificate plans are satisfactory from a geotechnical perspective, and
  - c) Prepare a Construction Methodology report demonstrating that the proposed construction methods (including any excavation, and the configuration of the built structures) will have no adverse impact on any surrounding property and infrastructure. The report must be submitted with the application for a Construction Certificate 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) 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.
50. Prior to the issue of a Construction Certificate, a certificate from a practicing Structural Engineer, registered with NER, must be submitted to the Principal Accredited Certifier

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

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

51. A suitably qualified engineer is to certify that the structure can withstand the forces of floodwater, scour, debris and buoyancy in a 1% AEP flood event. All building materials shall be flood resistant, or flood compatible to a height of 500mm above the 1% AEP flood, or flow level. All internal electrical switches, power points or similar utilities liable to flood damage shall be set at a minimum of 500mm above the 1% AEP flood, or flow level. Details shall be provided and approved prior to the issue of a Construction Certificate.
52. Flow through open form fencing (louvres or pool fencing) is required for all new front fencing to albert street and all internal fences and gates up to the 1% AEP flood level. Any new boundary fences adjoining private property shall have an 80mm gap at the bottom to allow flows through. Documentation shall be provided to the Certifying Authority prior to the issue of a Construction Certificate.
53. Prior to the issue of a Construction Certificate, the applicant shall contact "Dial Before You Dig" to obtain a utility service diagram for, and adjacent to the property. The sequence number obtained from "Dial Before You Dig" shall be forwarded to Principal Certifying Authority. All utilities within the work zone shall be protected during construction. Any adjustments or damage to public utilities/services as a consequence of the development and associated construction works shall be restored or repaired at the applicant's expense.
54. Prior to the issue of a Construction Certificate, the approved plans must be submitted to Sydney Water Tap in<sup>TM</sup> 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<sup>TM</sup> online service is available at: <https://www.sydneywater.com.au/SW/plumbing-building-developing/building/sydney-water-tap-in/index.htm>
55. If neighbouring properties or roadway are to be utilised for excavation support, the legal rights of any adjoining properties must be respected including for permanent and temporary excavation supports. In this regard, the written permission of the affected property owners must be obtained and a copy of the owner's consent for excavation support or other material in adjacent lands must be lodged to the principal certifier.
56. Where excavation support materials are proposed to be used in public land, an application must be made to Council for approval under Section 138 of the Roads Act 1993, via a permit application. The submission would need to be supported by an engineering report prepared by a suitably qualified engineer, with supporting details

addressing the following issues:

Demonstrate that any structures will not adversely affect public infrastructure, and the proposed supports within the road reserve are of an adequate depth to ensure no adverse impact on existing or potential future service utilities in the road reserve. All existing services must be shown on a plan and included on cross-sectional details where appropriate.

The report must be supported by suitable geotechnical investigations to demonstrate the efficacy of all design assumptions.

57. Prior to the issue of a Construction Certificate, a design verification statement shall be submitted to the PCA from a qualified designer certifying that the development achieves or improves the design quality of the development as shown in the plans and specifications in respect of which the construction certificate was issued, having regard to Schedule 1 of *State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development*.
58. Prior to the issue of a 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.
59. The applicant must prior to the obtainment of the approved plans and specifications pay the following fees:-
 

Footpath Crossing Deposit	\$213,000.00
Development Control	\$3,081.00
Section 7.11 Contributions	\$320,000.00
60. A Section 7.11 contribution of \$320,000.00 shall be paid to Council. The contribution is calculated according to the provisions contained within Council's adopted Former City of Botany Bay s7.11 Development Contributions Plan 2016 (Amendment 1) and having regard to the Ministerial Directive of 21 August 2012. The amount to be paid is to be adjusted at the time of payment, in accordance with the review process contained in the Contributions Plan. The contribution is to be paid prior to the issue of a Construction Certificate. The contributions are only used towards the provision or improvement of the amenities and services identified below:
 

Community Facilities:	\$26,194.57
Recreation and Open Space:	\$270,253.34
Transport Facilities:	\$21,222.11
Administration:	\$2,329.98
 Total in 2018/9	 \$320,000.00
61. Prior to the issue of a Construction Certificate, the applicant lodge a Builder's Damage Deposit and Performance Bond of **\$213,000.00** (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.
62. An easement shall be created over the car parking area (eastern side of basement level and ground level) to facilitate future vehicular access to the adjoining site at No.19

Swinbourne Street. Prior to the issue of a Construction Certificate for the basement level, construction details shall be provided to the Certifying Authority demonstrating that the proposed structure is able to achieve the required link without affecting the structural stability of the building. The easement is to be registered prior to issue of the subdivision certificate.

63. Prior to the issue of a Construction Certificate, a plan (written and/or diagrammatic) shall be submitted and approved by the Principal 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.

**CONDITIONS WHICH MUST BE SATISFIED DURING WORKS**

- 64.
- a) The applicant shall conduct all construction works and any related deliveries/activities wholly within the site. If any use of Council's road reserve is required, approval and permits shall be obtained from Council.
  - b) Construction operations such as brick cutting, washing tools or brushes and mixing mortar shall not be carried out on park/road reserve or in any other locations which could lead to the discharge of materials into the stormwater drainage system or onto Council's lands.
  - c) Hosing down or hosing/washing out of any truck (concrete truck), plant (eg concrete pumps) or equipment (eg wheelbarrows) on Council's road reserve or other property is strictly prohibited. Fines and cleaning costs will apply to any breach of this condition.
  - d) Pavement surfaces adjacent to the ingress and egress points are to be swept and kept clear of earth, mud and other materials at all times and in particular at the end of each working day or as directed by Council's Engineer.
65. Trees 1,2,3,4 and 7 must be retained and protected in accordance with Arboricultural Impact Assessment Report prepared by Bryce Claassens, dated 26 July 2019. The tree protection requirements detailed within Part 11 of this report must be complied with at all times.
66. During demolition, excavation and construction, care must be taken to protect Council's infrastructure, including street signs, footpath, kerb, gutter and drainage pits etc. Protecting measures shall be maintained in a state of good and safe condition throughout the course of demolition, excavation and construction. The area fronting the site and in the vicinity of the development shall also be made safe for pedestrian and vehicular traffic at all times. Any damage to Council's infrastructure (including damage caused by, but not limited to, delivery vehicles, waste collection, contractors, sub-contractors, concrete delivery vehicles) shall be fully repaired in accordance with Council's specification and AUS-SPEC at no cost to Council.
67. During demolition, excavation, construction and deliveries, access to the site shall be available in all weather conditions. The area shall be stabilised and protected from erosion to prevent any vehicles (including deliveries) tracking soil materials onto street drainage system/watercourse, Council's lands, public roads and road-related areas. Hosing down of vehicle tyres shall only be conducted in a suitable off-street area where wash waters do not enter the stormwater system or Council's land.
68. During construction, the applicant shall ensure that all works and measures have been implemented in accordance with approved Traffic Management Plan and Construction Management Plan at all times.

69. 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. A copy of any written direction required by this condition must be provided to the Principal Certifier 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.

70. Inspections must be conducted by Council's Engineer at the following occasions:
- f) Formwork inspection of driveway layback and adjacent kerb and gutter prior to laying of concrete,
  - g) Formwork inspection of Council's kerb and gutter prior to laying of concrete,
  - h) Formwork inspection of Council's footpath prior to laying of concrete,
  - i) Final inspection of driveway layback and adjacent kerb and gutter,
  - j) Final inspection of Council's kerb and gutter,
  - k) Final inspection of Council's footpath.
71. 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 Council's stormwater system. If it is not acceptable, details of treatment measures to ensure that the water is suitable for discharge to council's stormwater must be provided in this report. Reports must be provided to council prior to discharge of any groundwater to the stormwater system.

72. If an excavation associated with the proposal extends below the level of the base of the footings of a building and/or structure and/or road on an adjoining allotment of land or the common boundary fence the person causing the excavation to be made:
- a) Must preserve and protect the building/ fence from damage; and,
  - b) If necessary, underpin and support such building in an approved manner;
  - c) Must at least be 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of the intention to do so to the owner of the adjoining allotment of land and, furnish particulars of the excavation to the owner of the building being erected or demolished;
  - d) Existing structures and or services on this and adjoining properties are not endangered during any demolition excavation or construction work associated with the above project. The applicant is to provide details of any shoring, piercing, or underpinning prior to the commencement of any work. The construction shall not undermine, endanger or destabilise any adjacent structures.
  - e) If the soil conditions required it:
    - i. Retaining walls associated with the erection of a building or other approved methods of preventing movement or other approved methods of preventing movement of the soil must be provided and:-
    - ii. Adequate provision must be made for drainage.
73. Any new information that comes to light during demolition or construction which has the potential to alter previous conclusions about site contamination and remediation must be notified to Council and the accredited certifier immediately.
74. To prevent contaminated soil being used onsite and to ensure that it is suitable for the proposed land use, all imported fill shall be appropriately certified material and shall be validated in accordance with the:
- a) Office of Environment and Heritage (OEH) approved guidelines;
  - b) Protection of the Environment Operations Act 1997; and
  - c) Protection of the Environment Operations (Waste) Regulation 2014.

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

75. All contractors shall comply with the following during all stages of demolition and construction:
- A Waste Container on Public Road Reserve Permit must be obtained prior to the placement of any waste container or skip bin in the road reserve (i.e. road or footpath or nature strip). Where a waste container or skip bin is placed in the road reserve without first obtaining a permit, the Council's fees and penalties will be deducted from the Footpath Reserve Restoration Deposit. Permits can be obtained from Council's Customer Service Centre.
  - A Road Opening Permit must be obtained prior to any excavation in the road reserve (i.e. road or footpath or nature strip). Where excavation is carried out on the road reserve without first obtaining a permit, the Council's fees and penalties

- will be deducted from the Footpath Reserve Restoration Deposit. Permits can be obtained from Council's Customer Service Centre.
- A Hoarding Permit must be obtained prior to the erection of any hoarding (Class A or Class B) in the road reserve (i.e. road or footpath or nature strip). Where a hoarding is erected in the road reserve without first obtaining a permit, the Council's fees and penalties will be deducted from the Footpath Reserve Restoration Deposit. Permits can be obtained from Council's Customer Service Centre.
  - A Crane Permit must be obtained from Council prior to the operation of any activity involving the swinging or hoisting of goods across or over any part of a public road by means of a lift, hoist or tackle projecting over the footway. Permits can be obtained from Council's Customer Service Centre.
  - A Permit to Dewater or Pump Out a site must be obtained prior to the discharge of pumped water into the road reserve, which includes Council stormwater pits and the kerb and gutter. Permits can be obtained from Council's Customer Service Centre.
76. 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.
77. 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.
78. All disturbed areas shall be stabilised against erosion within 14 days of completion, and prior to removal of sediment controls.
79. 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 councils stormwater system a permit to discharge to the stormwater must be obtained from Council. Dewatering must not commence until this is issued by Council.
80. 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.
81. The principal contractor or owner builder must install and maintain water pollution, erosion and sedimentation controls in accordance with:
- a) The Erosion and Sediment Control Plan;
  - b) "Managing Urban Stormwater - Soils and Construction" (2004) Landcom ('The Blue Book'); and
  - c) Protection of the Environment Operations Act 1997.
82. 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
- iv. The name of the Principal Certifying Authority including an afterhour's contact telephone number.

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

83. The demolisher shall comply with Australian Standard 2601 - 2001 "Demolition of Structures".
84. Precautions to be taken shall include compliance with the requirements of the WorkCover Authority of New South Wales, including but not limited to:
  - a) Protection of site workers and the general public.
  - b) Erection of hoardings where appropriate.
  - c) Asbestos handling and disposal where applicable.
  - d) Any disused service connections shall be capped off.
  - e) The disposal of refuse is to be to an approved waste disposal depot.
85. Hazardous or Special Wastes arising from the demolition process shall be removed and disposed of in accordance with the requirements of WorkCover NSW and the Department of Environment, Climate Change and Water and with the provisions of the:
  - a) Occupational Health and Safety Act, 2000;
  - b) Occupational Health and Safety Regulation 2001;
  - c) Protection Of the Environment Operations Act 1997 (NSW); and
  - d) NSW Department of Environment and Climate Change Waste Classification Guidelines (2008).
86. Any material containing asbestos found on site during the demolition process the shall be removed and disposed of in accordance with:
  - a) WorkCover NSW requirements. An appropriately licensed asbestos removalist must complete all asbestos works if they consist of the removal of more than 10m2 of bonded asbestos and/or any friable asbestos;
  - b) Protection of the Environment Operations Act 1997;
  - c) Protection of the Environment Operation (Waste) Regulation;
  - d) DECC Waste Classification Guidelines 2008.
  - e) No demolition materials shall be burnt or buried on the site.
87. The demolition and disposal of materials incorporating lead such as lead paint and dust shall be conducted in accordance with:
  - a) AS2601-2001 - Demolition of structure.
  - b) AS4361.2-1998 – Guide to Lead Paint Management-Residential and Commercial Buildings.
88. In order to ensure safe handling of asbestos materials, the re-use or sale of asbestos building materials is strictly prohibited.
89. Results of the monitoring of any field parameters such as soil, groundwater, surface water, dust or noise measurements shall be made available to Council Officers on request throughout the remediation and construction works.



90. No demolition materials shall be burnt or buried on the site.
91. To ensure that utility authorities and Council are advised of any effects to their infrastructure by the development, the applicant shall: -
- a) Carry out a survey of all utility and Council services within the site including relevant information from utility authorities and excavation if necessary to determine the position and level of services.
  - b) Negotiate with the utility authorities (eg Ausgrid, Sydney Water and Telecommunications Carriers) and Council in connection with: -
    - 1 The additional load on the system; and
    - 2 The relocation and/or adjustment of the services affected by the construction.
- Any costs in the relocation, adjustment, and provision of land or support of services as requested by the service authorities and Council are to be the responsibility of the developer.
92. Should the demolition 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 Council's road reserve must also have prior approval of Council.
93. 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.
94. 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.
- 95.
- a) 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;
  - b) Existing structures and or services on this and adjoining properties are not endangered during any demolition excavation or construction work associated with the above project. The applicant is to provide details of any shoring, piling, or underpinning prior to the commencement of any work. The construction shall not undermine, endanger or destabilise any adjacent structures.
  - c) As the development involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
    - i. Protect and support the adjoining premises from possible damage from the excavation, and
    - ii. Where necessary, underpin the adjoining premises to prevent any such damage.
96. The following shall be complied with during construction and demolition:
- a) Construction Noise

Noise from construction activities associated with the development shall comply with the NSW Environment Protection Authority's Environmental Noise Manual – Chapter 171 and the Protection of the Environment Operations Act 1997.

b) Level Restrictions

i) Construction period of 4 weeks and under:

The L10 sound pressure level measured over a period of not less than 15 minutes when the construction site is in operating must not exceed the background level by more than 20dB(A).

ii) Construction period greater than 4 weeks and not exceeding 26 weeks:

The L10 sound pressure level measured over a period of not less than 15 minutes when the construction site is in operating must not exceed the background level by more than 10 dB(A).

c) Time Restrictions

i) Monday to Friday 07:00am to 05:00pm

ii) Saturday 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.

97. 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.

98.

- 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 off-street 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.
- e) 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.

99. Construction Operations:

- a) the applicant shall conduct all construction works and any related deliveries/activities wholly within the site. If any use of Council's road reserve is required, approval and permits shall be obtained from Council.
- b) Construction operations such as brick cutting, washing tools or brushes and mixing mortar shall not be carried out on park/road reserve or in any other locations which could lead to the discharge of materials into the stormwater drainage system or onto Council's lands.
- c) Hosing down or hosing/washing out of any truck (concrete truck), plant (eg concrete pumps) or equipment (eg wheelbarrows) on Council's road reserve or

- other property is strictly prohibited. Fines and cleaning costs will apply to any breach of this condition.
- d) Pavement surfaces adjacent to the ingress and egress points are to be swept and kept clear of earth, mud and other materials at all times and in particular at the end of each working day or as directed by Council's Engineer.

100. 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 ANY OCCUPATION CERTIFICATE**

101. The lots shall be consolidated into one allotment. Council requires proof of lodgment of the plan of consolidation with the Land and Property Information Office prior to the issue of any Occupation Certificate.
102. 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. Irrigation system shall be connected to rainwater tank as a WSUD principle.
103. The Applicant is required to obtain a Council inspection of new trees prior to the planting to ensure plant stock is suitable and post planting prior to the maintenance period commencing.
104. The following conditions must be complied with prior to the issue of any Occupation Certificate:
- i) All landscape works are to be carried out in accordance with the approved landscape plans (refer to Condition 1) for the approved development. The landscaping is to be maintained to the approved standard at all times.
  - i) 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.
105. Prior to the issue of any Occupation Certificate, the undergrounding of all electricity cables in that section of the street/s adjacent to the development, including all 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 in accordance with Ausgrid's requirements and approved electrical design.
106. 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.

107. Prior to the issue of any Occupation Certificate, the applicant must carry out the following works, at no cost or expense to Council:

- On Swinbourne Street and Albert Street, adjacent to development, remove redundant driveway crossovers and replace with required tree planting and public domain improvements as specified by Council in accordance with any public domain masterplans and Council's Infrastructure Specifications, and
- On Swinbourne Street and Albert Street, adjacent to development, demolish existing footpath and construct new footpath as per Council's Infrastructure and Landscape Architect specifications, and
- On Swinbourne Street and Albert Street, adjacent to development, reconstruct existing kerb and gutter for the full length of the property in accordance with Council Infrastructure Specifications.

All works within the road reserve, which are subject to approval pursuant to Section 138 of the Roads Act 1993, shall be constructed to the satisfaction of Bayside Council.

108. The public footpaths shall be constructed in accordance with the approved Public Domain Plan and Council specifications. The footpath dimensions, location, paver type and construction methods shall be in accordance with these specifications. Hold points and Council inspections are required after formwork setback and to prior pouring the concrete blinding slab, at the commencement of paving works and at final completion as a minimum. Pavers shall be ordered allowing for adequate lead time for manufacture (10-12 weeks).

109. A full width vehicular entry is to be constructed to service the property. All obsolete vehicular entries are to be removed and reconstructed with kerb and gutter.

110. Prior to the issue of any Occupation Certificate, inspection reports (formwork and final) for the works on the road reserve shall be obtained from Council's engineer and submitted to the Principal Certifying Authority attesting that this condition has been appropriately satisfied.

111. Prior to the issue of any Occupation Certificate, documentation from suitably qualified engineer must be submitted to the Principal Accredited Certifier certifying that the vehicle access and off street parking facilities have been constructed in accordance with the approved construction plans, AS/NZS 2890.1:2004, AS2890.2:2018 and AS/NZS 2890.6, line marked, all signage relating to car parking erected and that the car parking area is clearly and appropriately marked/signposted indicating all the vehicular movements on the site. The internal road network, pedestrian facilities and parking facilities (including visitor parking and parking for persons with disabilities) shall be clearly designated, sign posted and line marked prior to the issuing of an Occupation Certificate. Signage and line marking shall comply with Australian Standards, AS1742, Manual of Uniform Traffic Control Devices and NSW Road Transport (Safety and Traffic Management) Regulations 1999. Concrete wheel stops shall be installed in all car spaces adjoining high obstructions in accordance with AS/NZS 2890.1:2004. The traffic light/sensor system shall be installed and the waiting bays shall be line marked to the satisfaction of a suitably qualified traffic engineer.

112. All vehicles shall enter and exit the site in a forward direction at all times. A plaque with minimum dimensions 300mm x 200mm shall be permanently fixed to a prominent place near the primary vehicular entrance to the site, approved by the principal certifier, stating the following: "All vehicles shall enter and exit the site in a forward direction at all times".

113. Prior to the issue of any Occupation Certificate, a Chartered Professional Engineer must certify that the stormwater system has been constructed in accordance with the approved plans and as required by Botany Bay DCP Part 10 Stormwater Management Technical Guidelines. The certificate shall 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 the issue of any Occupation Certificate, a registered plumber's certification that the Rainwater Tank Re-use system(s) has been fitted with a first flush device and connected for non-potable uses including all toilet flushing, laundry and landscape irrigations must be provided. All works completed shall comply with the current plumbing requirements of Sydney Water and Committee on Uniformity of Plumbing and Drainage Regulations of NSW.
115. Prior to the issue of any Occupation Certificate, 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.
116. Prior to the issue of any Occupation Certificate, a Chartered Professional Engineer competent in geotechnics shall certify that the construction works have been constructed in accordance with the approved geotechnical report/recommendations and include an evaluation of the completed works. A copy of the certificate shall be supplied to the Principal Certifying Authority.
117. A certificate from a Registered Surveyor shall be provided to the Principal Certifying Authority (PCA) certifying that the floor levels of the development are constructed at or above the floor levels from the approved flood study recommendations (section 8 – page 18 of the flood study). A copy of the certificate shall be provided to Council where Council is not the Principal Certifying Authority.
118. Prior to the issue of any Occupation Certificate, the approved flood management plan shall be laminated and permanently attached to a prominent location on the ground floor residential lobby, the commercial/retail tenancies and the ground floor parking area to the satisfaction of the Principal Certifier.
119. Prior to the issue of any Occupation Certificate, a restriction on Use of Land and Positive Covenant(s) must be imposed on the development. The following covenants relating to stormwater and parking shall be imposed under Section 88(E) of the Conveyancing Act 1919 and lodged with the NSW Land and Property Information:
- A positive covenant pursuant to the Conveyancing Act 1919 shall be created on the title of the lots that contain the traffic signal facility to provide for the maintenance of the facility.
  - Positive Covenant and Restriction on Use of Land for On-Site Retention System. Refer to Appendix B of the SMTG for suggested wording.
  - Positive Covenant and Restriction on Use of Land for Pump-Out System. Refer to Appendix C of the SMTG for suggested wording.

*The terms of the 88 E instruments are to be submitted to Council for review and approval and Proof of registration at the Lands and Property Information Office shall be submitted to the Principal Certifying Authority and Council prior to occupation.*

120. Prior to the issue of any Occupation Certificate, a Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained from Sydney Water Corporation.

Application must be made through an authorised Water Servicing Coordinator. Please refer to the Building Developing and Plumbing section of the web site [www.sydneywater.com.au](http://www.sydneywater.com.au) then refer to "Water Servicing Coordinator" under "Developing Your Land" or telephone 13 20 92 for assistance.

Following application a "Notice of Requirements" will advise of water and sewer infrastructure to be built and charges to be paid. Please make early contact with the Coordinator, since building of water/sewer infrastructure can be time consuming and may impact on other services and building, driveway or landscape design. The Section 73 Certificate must be submitted to the Principal Certifier prior to release of the Subdivision/Strata Certificate.

121. Prior to the issue of any 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*.
122. 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 the issue of any Occupation Certificate of the development and release of damage deposit.
123. 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.
124. Construction related activities must not take place on the roadway without Council approval. Short-term activities (including operating plant, materials delivery) that reduce parking spaces, affect access to a particular route or prevent or restrict the passage of vehicles along the road must not occur without a valid Temporary Roadside Closure Permit. Activities involving occupation of the parking lane for durations longer than allowed under a Temporary Roadside Closure Permit require a Construction Zone Permit and must not occur prior to the erection of Construction Zone signs by the RTA.
- Permit application forms should be lodged at Council's Customer Service Centre allowing sufficient time for evaluation. An information package is available on request.
125. The street address and dwellings numbers shall be approved by Council prior to the issue of any Occupation Certificate.
126. 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.

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

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

127. A separate application must be made for the Subdivision Certificate.
128. An easement shall be created over the car parking area (eastern side of basement level and ground level) to facilitate future vehicular access to the adjoining site at No.19 Swinbourne Street. The easement is to be registered prior to issue of the Subdivision Certificate. The easement shall not be varied without the approval of Bayside Council.
129. Prior to the issue of the Subdivision Certificate, documentary evidence demonstrating compliance with all conditions of Development Consent No.2018/378 as well as any other relevant approval.
130. Prior to the issue of a Subdivision Certificate, a Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained from Sydney Water Corporation.

Application must be made through an authorised Water Servicing Coordinator. Please refer to the Building Developing and Plumbing section of the web site [www.sydneywater.com.au](http://www.sydneywater.com.au) then refer to "Water Servicing Coordinator" under "Developing Your Land" or telephone 13 20 92 for assistance.

Following application a "Notice of Requirements" will advise of water and sewer infrastructure to be built and charges to be paid. Please make early contact with the Coordinator, since building of water/sewer infrastructure can be time consuming and may impact on other services and building, driveway or landscape design. The Section 73 Certificate must be submitted to the Principal Certifier prior to release of the Subdivision Certificate.

131. Prior to the issue of a Subdivision Certificate, the linen plans must include details of any easements, encroachments, rights of way, restriction as to user or positive covenants and include a Section 88B Instrument under the Conveyancing Act, 1919. Council is to be nominated as the only authority permitted to release, vary or modify any easements, encroachments, rights of way, restriction as to user or positive covenants.

**CONDITIONS WHICH MUST BE SATISFIED FOR THE ONGOING USE**

132. New street trees shall be maintained by the Applicant/Owner/Strata Corporation for a period of 24 months after final inspection by Council. Maintenance includes twice weekly watering within the first 6 months then weekly thereafter to sustain adequate growth and health, biannual feeding, weed removal round the base, mulch replenishment at 3 monthly intervals (to 75mm depth) and adjusting of stakes and ties.
133. Car parking shall be allocated in accordance with condition 40 and as follows:
- 28 car parking spaces for residential apartments (1 space per 1 bedroom dwelling and 2 spaces per 2 bedroom dwelling);
  - 4 spaces for residential visitors; and
  - 8 spaces for the ground floor commercial/retail tenancy.
134. 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.

135. The operation of the development and movements of vehicles must comply with the following requirements:
  - a) All vehicles shall enter and exit the site in a forward direction;
  - b) Loading and unloading activities associated with the delivery shall take place wholly within the dedicated loading areas;
  - c) All manoeuvring movements of vehicles shall be carried out wholly within the site and vehicle manoeuvring area shall be kept clear at all times;
  - d) The maximum size of vehicle accessing the site shall be limited to a Van (B99 vehicle as denoted in AS2890.1).
136. 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.
137.
  - a) Each residential dwelling (apartment) is approved as a single dwelling. They shall not be used for separate residential occupation or as separate residential flats. No plumbing fixtures, fittings, walls shall be deleted or added, doorways enclosed or any other changes made from the approved plans in Condition No. 1 of this Consent without the prior Consent of the Council;
  - b) The adaptable apartments approved under this development consent is to remain unaltered at all times; and
  - c) The storage areas located within the basement shall be allocated to the relevant residential dwelling in any future subdivision of the site. In addition, any isolated storage areas and other spaces shall be monitored by CCTV cameras at all times.
138. The communal outdoor roof terrace area shall not be used between the hours of 10:00pm – 7:00am each day.
139. A person must not cause or permit an air conditioner to be used on residential premises in such a manner that it emits noise that can be heard within a habitable room in any other residential premises (regardless of whether any door or window to that room is open):
  - a) Before 8 am or after 10 pm on any Saturday, Sunday or public holiday, or
  - b) Before 7 am or after 10 pm on any other day.
140. 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.

# BAYSIDE COUNCIL

## Planning Assessment Report

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### Application Details

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<b>Application Number:</b>	DA-2018/378
<b>Date of Receipt:</b>	20 December 2018
<b>Property:</b>	13A-17 Swinbourne Street, Botany
<b>Owners:</b>	Ms Sharen Josephine Devlin Hemamali Gajadeera Mrs H P Jordan Mr R E Jordan Ms M Ludlow Somapala Rubasinghe
<b>Applicant:</b>	Swinbourne Pty Ltd
<b>Proposal:</b>	Integrated Development for demolition of existing structures and construction of a three (3) storey shop top housing development comprising one (1) ground floor commercial tenancy, 20 dwellings, basement and ground floor parking and stratum subdivision.
<b>Recommendation:</b>	Approval subject to conditions
<b>Value:</b>	\$6,210,200.00
<b>No. of submissions:</b>	First notification – Two (2) Second notification – One (1)
<b>Author:</b>	Patrick Nash - Senior Development Assessment Planner
<b>Date of Report:</b>	26 August 2019

### Key Issues

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Bayside Council received Development Application No.2018/378 on 20 December 2018 seeking consent for the demolition of the existing structures and construction of a three (3) storey shop top housing development comprising one (1) ground floor commercial tenancy, 20 dwellings, basement and ground floor parking and stratum subdivision at 13A-17 Swinbourne Street, Botany.

The application is classified as Integrated Development in accordance with the *Water Management Act 2000* as the development involves a temporary construction dewatering activity. As such the application was referred to Water NSW and general terms of approval have been received and imposed in the recommended conditions of consent.

The key issues identified in the assessment of the development application relate to:

- Minor non-compliance with the building height development standard within BBLEP 2013;
- Non-compliance with the communal open space and solar access requirements identified within the ADG;

- Non-compliance with the front setback requirements within Part 5.2.2.5 of BBDCP 2013; and
- Site isolation

The applicant has provided amended plans and other supporting material to address the concerns raised by Council. The non-compliant aspects of the development are considered to be acceptable for reasons identified within the main body of the report. However, minor design changes are recommended to ensure that the quantum of communal open space achieves the minimum requirements set out within Part 3D of the ADG.

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

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It is RECOMMENDED:

1. THAT the Bayside Local Planning Panel, exercising the functions of Council as the consent authority pursuant to s4.16 of the Environmental Planning and Assessment Act 1979 approved a variation to the building height prescribed by clause 4.3 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 clause 4.6 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 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 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 submitters be notified of the Bayside Local Planning Panel's decision.

## Background

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### History

- **20 December 2018** – DA.2018/378 was submitted to Council.
- **7 January 2019 to 30 January 2019** – The application was notified and advertised in accordance with BBDCP 2013. Two (2) submissions were received.
- **13 February 2019** – The applicant was advised that, to enable further assessment of the application, a report that assesses any potential impacts from ingress of contaminants or vapours into the basement car park from the contaminated groundwater plume on the development is required.
- **7 March 2019** – The application was reviewed by Council's Design Review Panel (DRP).
- **13 March 2019** – The application was referred externally to the NSW Office of Water.

- **4 April 2019** – An additional information letter was sent to the applicant. The concerns identified included: Various comments made by the DRP, incorrect calculation of gross floor area, privacy impacts, location of air conditioning units, various matters raised with respect to traffic, parking and access, stormwater management, flooding, deep soil area and design of the rooftop communal open space.
- **10 April 2019 to 21 May 2019** – The application was re-notified due to it being identified as constituting Integrated Development. One (1) submission was received.
- **17 April 2019** – The applicant requested a time extension to finalise the amended plan submission. This was granted by Council.
- **23 May 2019** - The applicant requested a further time extension to finalise the amended plan submission. This was granted by Council.
- **7 August 2019** – The applicant submitted amended architectural plans and other supporting information. The amended plans were not required to be re-notified in accordance with BBDCP 2013 because the proposal would result in similar or less impacts for the streetscape and/or surrounding properties. In summary, the plans were amended as follows:

#### BASEMENT

- Layout change, lift minor relocation
- Garages removed
- Previously 25 car spaces, revised plans propose 26 car spaces
- Removal of grease arrestor
- Fire hydrant booster and pump relocated to ground floor
- Shared zones for accessible spaces removed from vehicle aisles

#### GROUND FLOOR

- Floor levels raised to RL8.80 in response to flood requirements
- Waterproof reinforced perimeter concrete upstand to RL9.0 implemented in response to flood requirements
- Residential entry lobby relocated to Albert Street and separated from commercial entry
- Lift minor relocation to suit entry lobby
- Fire hydrant booster and pump relocated from basement to ground floor on Albert Street
- 4 commercial tenancies combined to one tenancy (R01) of 298.5sqm
- Demolition of existing wall on boundary to 31 Albert Street and removal of proposed enclosure on Albert street. New lapped and capped timber 1.8m boundary fence proposed
- 2 x car spaces west of garage door and below the non-habitable floor level of RL 8.56 have been removed.
- Previously 16 car spaces provided, revised plans propose 15 car spaces
- Removal of existing tree – T8 as per arborist report. New replacement tree planting proposed
- Removal of hard/active landscaping elements to rear deep soil area to increase deep soil provision
- Relocation of stormwater absorption system towards the Albert Street boundary to facilitate overland flow and increase deep soil area around existing retained tree
- Awning to Swinbourne St steps around existing street trees in response to Arborist's recommendation.
- Commercial loading bay clearance = 3m min
- Internal basement access ramp min width of 4.3m

**FIRST FLOOR**

- Reconfigure APT's 1.07, 1.08 and 1.09 to become north facing and receive additional sunlight to living areas and remove overlooking to internal courtyard
- Increase the set back of APT 1.08 and APT 1.09 by further 1m from northern boundary
- Additional horizontal and vertical privacy blades added to northern facing facade
- Minor internal reconfiguration of apartments to comply with min. room, balcony sizes and ensure compliant solar access is achieved.
- Lift minor relocation

**SECOND FLOOR**

- Increase the set back of APT 2.08 and APT 2.09 by further 1m from northern boundary
- Additional horizontal and vertical privacy blades to northern facing facade
- Minor internal reconfiguration of apartments to comply with min. room, balcony sizes and ensure compliant solar access is achieved.
- Removed Apt 2.08 balcony from east facing courtyard. Horizontal privacy screens added to prevent overlooking from Level 2 windows to P.O.S below.
- Additional horizontal privacy screens to north facing courtyard to prevent overlooking to APT 1.10 terrace below
- Lift minor relocation

**ROOFTOP**

- Lift minor relocation
- Communal Open Space of 254.6sqm reconfigured with detailed landscaping elements and mature planting with provision for deep soil
- Roof and pergola extension with provision for shading plants
- Party walls of POS and COS raised and designed to create privacy and interface with the new roof and pergola
- Mechanical plant located on roof, hidden behind the arrays of PV panels

**ELEVATIONS**

- Façade mounted planter boxes have been removed

**Proposal**

This development application (in its amended form) seeks consent for demolition of the existing structures and construction of a three (3) storey shop top housing development comprising one (1) ground floor commercial tenancy, 20 dwellings, basement and ground floor parking and stratum subdivision.

The proposed development is further summarised as follows:

**Basement**

- 26 car parking spaces, including 2 accessible spaces;
- Bulk storage;
- Plant and equipment; and
- Lift and fire stairs.

**Ground Floor**

- Deep soil area within the rear setback;

- 15 car parking spaces, including 1 accessible space (vehicular access off Albert Street);
- Residential and commercial bin storage;
- Residential lobby off Albert Street;
- 298m<sup>2</sup> retail tenancy at the front of the site;
- New awning.

#### Level 1

- 10 residential dwellings (6 x 1 bed and 4 x 2 bed).

#### Level 2

- 10 residential dwellings (6 x 1 bed and 4 x 2 bed).

#### Roof Level

- Communal roof top terrace (245m<sup>2</sup>); and
- Private open space areas for apartments 2.01, 2.02, 2.04, 2.05, 2.06, 2.07, 2.09 and 2.10.

Externally, the building presents a contemporary architectural appearance and incorporates a mixture of white face brick, clear glazing, metal roof/cladding, timber and powder coat aluminium.

The submitted photomontages of the development are re-produced below for reference:



Figure 1: Perspective – corner of Swinbourne and Albert Street





Figure 2: Perspective – Swinbourne Street



Figure 3: Perspective – Northern elevation

Subdivision

- Consent is sought for stratum subdivision.

### Site Description

The subject site is located on the corner of Swinbourne Street and Albert Street, Botany. The site is commonly known as Nos.13A-17 Swinbourne Street. The site constitutes the following allotments:

Table 1 Legal description of subject site		
Address	Lot	Deposited Plan
13A Swinbourne Street	A	399233
13 Swinbourne Street	B	399233
15 Swinbourne Street	1	212569
17 Swinbourne Street	2	212569

The subject site is irregular in shape with a front boundary to Swinbourne Street of 31.36m, a western boundary to Albert Street of 33.53m, an eastern side boundary of 36.61m, a rear boundary of 34.24m, and a total site area of 1225m<sup>2</sup>. The site is relatively flat with a fall of approximately 500mm from the south-eastern corner of the site to the north-western corner. There are a few trees throughout the site as well as various street tree along the Swinbourne Street/Albert Street verge.



Figure 4: Subject site identified in red





Figure 5: The subject site as viewed from Swinbourne Street



Figure 6: The subject site as viewed from Albert Street

The subject site is located in the B1 – Neighbourhood Centre zone adjacent to an older single storey commercial building to the east. To the west, on the opposite side of Albert Street is the side boundary of No.9 Swinbourne Street. Adjoining the site to the rear (north) is No.31 Albert Street which contains an existing single storey residential dwelling. The remainder of Albert Street is generally characterised by one and two storey dwellings. Swinbourne Street contains a well vegetated median strip that is identified as a heritage listed item in BBLEP 2013 (Item I158 – Streetscape verge planting of Canary Island Date Palm).

It is noted that the Bayside Planning Panel has considered the following development which are in the immediate vicinity of the subject site:

Site	Description of Development	Date
23 Swinbourne Street, Botany	Integrated Development for the demolition of the existing structures on site and construction of a three storey shop top housing development and basement parking.	<b>APPROVED</b> 28 November 2017
31 Albert Street, Botany	Demolition of existing structures, Torrens Title subdivision into two lots and construction of two semi-detached dwellings and swimming pool.	<b>DEFERRED</b> on 28 May 2019

## Statutory Considerations

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

### **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:

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

The relevant requirements under Division 5 of the EP&A Act and Part 6, Division 3 of the EP&A Regulations have been considered in the assessment of the development applications. The development application is Integrated Development in accordance with the *Water Management Act 2000* as the development involves a temporary construction dewatering activity. In this regard, the development application was referred to Water NSW. Water NSW provided its General Terms of Approval (GTA) for the proposed development. This development application has been recommended for approval subject to GTAs from Water NSW.

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

An Arboricultural Impact Assessment report prepared by a qualified Arborist has been submitted with the application. The report provided recommendations for the removal and retention of trees, including tree protection measures for existing and retained trees. There is an existing Jacaranda tree straddling the rear common boundary that is proposed to be retained and protected. The four (4) street trees along the Swinbourne Street frontage are also proposed to be retained. The trees proposed to be removed from the site do not have a high retention value and there are suitable replacement trees proposed in the deep soil area at the rear of the site.

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

The development proposes excavation in or near a gas pipeline corridor therefore Division 9 of the SEPP states that risks associated with development adjacent to the gas pipeline corridor needs to be assessed and those risks included in considerations prior to the determination of the application.

The application was referred to APA Group as the Moomba- Sydney Ethane Pipeline is located approximately 330m north-east of the subject site. They have provided the following comments in regards to the development:

*“The development is not changing the current location class and therefore an SMS is not required and no further risk mitigation measures are necessary. Accordingly, on the basis of the information provided, APA does not object to the proposed development”.*

In view of the above, no further concerns are raised.

The proposed development is within 5m of an exposed overhead electricity power line. Therefore, the application was referred to Ausgrid in accordance with the requirements of clause 45(2) of SEPP (Infrastructure) 2007. Ausgrid raised no concerns to the proposal subject to conditions of consent which have been incorporated into the recommendation.

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

*State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004* ("BASIX") applies to the proposed development. The development application was accompanied by BASIX Certificate No. 982828M prepared by Building Sustainability Assessment committing to environmental sustainable measures.

#### **State Environmental Planning Policy No. 55 – Remediation of Land**

The provisions of SEPP No. 55 have been considered in the assessment of the development application, as the proposed development involves excavation for a basement car park. Clause 7 of State Environmental Planning Policy 55 requires Council to be satisfied that the site is or can be made suitable for its intended use at the time of determination of an application.

The application was referred to Council's Environmental Scientist who requested a groundwater assessment report. This report was prepared by the applicant and submitted to Council. SEPP 55 has been considered in the assessment of the proposal and is acceptable subject to the conditions imposed.

#### **State Environmental Planning Policy (SEPP) No. 65 – Design Quality of Residential Apartment Building**

The provisions of State Environmental Planning Policy No. 65 'Design Quality of Residential Apartment Building' have been considered in the assessment of the Development Application.

During the development application process, the applicant submitted the proposal to the Design Review Panel (DRP) for consideration. The meeting was held on 7 March 2019. The comments made by the DRP have been addressed in the table below:

<b>DRP comment/concern</b>	<b>Design solution/justification</b>
<p><u>Context and Neighbourhood Character</u></p> <p>The Panel considered that generally the development proposal provides for a quality development and indicated support of the overall scheme. The Panel noted the non-compliance with the 3000mm setback (DCP) at the upper level but concluded that the proposed built form provided appropriate articulation and represented a design response that was compatible with the emerging local neighbourhood context.</p>	<p>Noted. The upper level front setback non-compliance has been addressed in more detail within the DCP discussion later in this report.</p>

<p><u>Built Form and Scale</u></p> <p>As noted, the Panel is supportive of the non-compliance with the DCP setback based on the proposed finishes and built form articulation.</p> <p>Design issues raised by the Panel include:</p> <p>The general interface between residential and commercial usages on the site and lack of separation with the ground floor layout favouring the commercial tenancies usages.</p> <p>The residential lobby to the ground floor should be separated from commercial usages and clearly defined. Waste storage facilities need to be reconfigured so that commercial waste is not in direct conflict with residential access and residents do not need to pass through commercial car parking to access their facilities.</p> <p>Accessible parking in the basement carpark should be reconfigured to provide a more usable and safer design outcome with close proximity for lift access and no interface with vehicular movements.</p> <p>Integration of units 108 and 208; the current arrangement results in privacy issues and poor design amenity.</p> <p>Lift lobbies require natural light and ventilation. The current configuration does not achieve this.</p> <p>The use of planter boxes linked to the external façade was questioned in terms of suitability and maintenance.</p> <p>The scale of hardscape proposed in the deep soil zone negates the purpose of deep soil and results in non-compliance and reduced useability of the space by residents. The proximity of the deep soil zone to commercial usage and parking was questioned.</p>	<p>Noted</p> <p>The residential lobby has been moved to the Albert Street frontage.</p> <p>The commercial and residential entry points and bin storage facilities have been clearly separated.</p> <p>The basement car parking layout has been amended accordingly.</p> <p>Whilst these units have not been integrated into a single unit, they are been re-designed to achieve an acceptable level of amenity and privacy.</p> <p>Natural light to the lift lobbies have not been achieved. However, this is not considered to be a determinative matter that would warrant refusal of the application.</p> <p>The external planter boxes have been removed.</p> <p>The finished treatment within the rear setback area has been modified to provide extensive soft landscaping in a consolidated deep soil area.</p>
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Private stairwells and private open spaces on the rooftop were not supported. The rooftop communal and private open spaces should be amalgamated to create a well designed, dynamic, defined communal open space.	The communal open space area has been enlarged with the removal of some of the private open space areas. A further three (3) private open space areas are recommended to be deleted, given there is still a shortfall in the overall quantum of communal open space.
<p><u>Density</u></p> <p>The Panel was generally supportive of the proposed density on site. It was noted that the recommended amalgamation of units 108 and 208 would slightly reduce the resident population and secure enhanced amenity.</p>	These units have not been amalgamated but have re-configured to improve their amenity which is now considered to be satisfactory.
<p><u>Sustainability</u></p> <p>The Panel noted that there are further opportunities to include sustainability initiatives in the design above and beyond those required by BASIX, such as solar energy generation to a revised rooftop scheme.</p> <p>The Panel noted that the nominated deep soil zone provides for the retention of existing trees. However the Panel did not support the extensive paving identified in the landscape design which defeats the objectives associated with the provision of deep soil zones.</p> <p>The Panel also noted that one of the retained trees is in close proximity to the built form and that a root protection zone needs to be considered.</p> <p>The deep soil zone would also benefit from an increased emphasis on soft landscaping and provision of new large scale canopy trees.</p>	<p>PV panels have been added at the northern end of the roof level.</p> <p>The treatment within the deep soil zone has been modified so as to be entirely soft landscaping. The hard surfacing has been removed.</p> <p>An arborist report has been provided. Suitable conditions of consent are imposed in this respect.</p> <p>The amended landscaped plan makes provision for new canopy trees.</p>
<p><u>Landscape</u></p> <p>The Panel noted inconsistencies between the landscape plans provided and architectural plans. The documents should be revised in accordance with the comments below:</p> <p>Revision of the Ground floor landscape deep soil zone (which the Panel did not</p>	

<p>consider an active communal open space) is required. "Permeable paving" in this area is not supported. An emphasis on softscape as a landscape treatment is supported in contrast to an active communal open space with a poor interface with commercial uses.</p> <p>Planter boxes to the façade treatment need an adequate depth and width to support plant material. The documentation provided is unclear and it appears the sizes proposed are too small. In addition the long term maintenance and ease of access of these planter boxes is questioned.</p> <p>Revision of the communal rooftop open space as outlined above, noting the current rooftop communal open space indicates trees that are located under a solid roof structure and are not suitable.</p>	<p>The treatment within the deep soil zone has been modified so as to be entirely soft landscaping. The hard surfacing has been removed.</p> <p>The external planter boxes have been removed.</p> <p>The communal rooftop area has been re-designed so it is a large consolidated space with improved shading devices and landscaping outcomes.</p>
<p><u>Amenity</u></p> <p>The Panel considered the amenity of the proposed development would be improved by:</p> <p>Increased separation between residential and commercial uses at the ground floor level.</p> <p>A signage strategy incorporated into the DA which is designed to maintain the architectural quality of the façade.</p> <p>Internal redesign to ensure natural light and ventilation to the lift lobby area.</p> <p>Deletion of private stairwells and POS on the rooftop. Redesign and arrangement of the rooftop communal area to provide for a meaningful open space and shade as well as providing for solar passive energy generation.</p>	<p>The relationship of the residential and commercial uses on the ground floor has been re-worked to ensure that they are suitably separated.</p> <p>No signage is proposed under this DA.</p> <p>Refer to previous comments.</p> <p>The number of POS areas on the rooftop has been reduced from 9 to 8 and the communal area subsequently increased in size. A larger pergola structure has been provided. A further 3 rooftop POS areas are recommended to be removed so as to ensure a compliant sized COS area is provided.</p>

<p><u>Safety</u></p> <p>The Panel noted three key areas of concern:</p> <p>Ground floor interface between residential and commercial uses.</p> <p>Privacy and poor surveillance issues between units 108 and 208.</p> <p>Poor relationship of spaces to the rooftop POS and COS uses.</p>	<p>The residential and commercial entry points have been clearly separated on the ground floor.</p> <p>See previous comments</p> <p>See previous comments</p>
<p><u>Housing Diversity and Social Interaction</u></p> <p>The Panel was generally supportive of the apartment mix. Social interaction could be enhanced by providing clarity/security for the residential entry lobby and minimising conflicts with commercial functions.</p>	<p>The residential and commercial entry points have been well delineated in the amended plans.</p>
<p><u>Aesthetics</u></p> <p>The Panel was generally supportive of the proposed design subject to the comments above.</p>	<p>Noted</p>

### Design Quality Principles and Apartment Design Guide

A Design Verification Statement has been prepared by *AN+A Architects* and was submitted with the development application. The proposed amended development is considered to satisfy the Design Quality Principles contained within SEPP 65.

An assessment of the proposed development against Part 3 and 4 of the ADG has been undertaken. The key ADG design requirements are detailed in the table below.

Clause 30(1) of SEPP 65 states that if a development application satisfies the following design criteria, the consent authority cannot refuse an application because of those matters. These are deep soil, ceiling heights and building separation.

SEPP 65 – ADG			
Control	Requirement	Proposed	Complies
<b>Dwelling Size</b>	<p>Minimum internal areas as follows:</p> <p>1 bed unit: 50sqm</p> <p>2 bed unit: 70sqm</p>	<p>1 bed units: 50-62sqm</p> <p>2 bed units: 76-90sqm</p>	<p>Yes</p> <p>Yes</p>

	2 bed unit with 2 <sup>nd</sup> bathroom: 75sqm 3 bed unit: 90sqm 3 bed unit with 2 <sup>nd</sup> bathroom: 95sqm		
<b>Ceiling Height</b>	Habitable Rooms: 2.7m Non-habitable: 2.4m Mixed Use: 3.3m for ground and first floor	Floor to floor height for residential levels: 3.1 metres which enables a compliant floor to ceiling height to be achieved  Ground floor retail is provided with a 3.49m floor to floor height which enables a compliant floor to ceiling height.	Yes  Yes
<b>Deep Soil</b>	Objective 3E-1 requires 7% of the site as deep soil area (requires 85.75sqm)	138sqm(11%)	Yes
<b>Communal Open Space</b>	25% of site (306sqm)	254sqm (20%)	No – refer to note 1
<b>Solar Access</b>	50% direct sunlight to the principal usable part of the COS for a minimum of 2 hours during mid-winter	More than 50% of COS on the roof level receives greater than 2 hours of sun due to its location.	Yes
	Living rooms and POS for at least 70% of apartments (and in neighbouring development) to achieve 2 hours between 9am and 3pm	70% (14/20) of apartments will receive at least two hours of sunlight during June 21 <sup>st</sup> .	Yes
	A maximum of 15% of apartments in a building receive no direct sunlight between 9am and 3pm at mid-winter	20% (4/20) of apartments (1.05, 1.06, 2.05 and 2.06) are south facing and do not receive direct sunlight between 9am and 3pm in mid-winter.	No – refer to Note 2
<b>Building Separation</b>	<u>Up to 4 storeys (approx. 12m):</u>	The rear of the development is proposed to be setback 6m-7m from the northern	



	3m from non-habitable rooms to site boundary 6m from habitable rooms/balconies to site boundary	boundary. The additional 3m setback to the lower density zone to the rear is not provided.	<b>No – refer to Note 3</b>
<b>Balcony Sizes</b>	1 bed: 8sqm 2 bed: 10sqm 3 bed: 12sqm	1 bed: 8-10sqm 2 bed: 10sqm	Yes Yes
<b>Cross Ventilation</b>	At least 60% of apartments are naturally cross ventilated in the first 9 storeys of the building.	70% (14/20 units)	Yes
<b>Storage</b>	1 bed: 6m3 2 bed: 8m3 3 bed: 10m3	Storage spaces within the units and in the basement area has been identified on the plans. The submitted apartment storage schedule indicates that the extent of storage provided exceeds the minimum requirements.	Yes

**Note 1: Communal Open Space**

The proposal is required to provide 25% of the site area (equivalent to 306m<sup>2</sup>) as communal open space in accordance with Part 3D of the ADG. The information submitted with the application indicates that there will a total of 254m<sup>2</sup> (roof top communal open space) which equates to 20.6%. The extent of the non-compliance is 52m<sup>2</sup> or 4.4%.

The design of the rooftop area also incorporates private open space areas for 8 of the proposed dwellings. It is noted that these spaces are secondary areas of private open space, as each dwelling is also provided with a separate balcony on Level 2. They are therefore not relied upon to satisfy Part 4E – Private open space and balconies of the ADG. The Design Review Panel advised that the rooftop communal and private open spaces should be amalgamated to create a well-designed, dynamic, defined communal open space. Whilst improvements have been made to the design in this respect, there are insufficient planning reasons identified to support a variation to the ADG.

In view of the above, a condition of consent has been recommended for the rooftop private open space areas 2.01, 2.02 and 2.10 to be converted to communal open space and incorporated into the design accordingly. This would result in a compliant level of communal open space to satisfy the ADG requirements (a total of 314.09m<sup>2</sup> or 25.6%).

**Note 2: Solar Access**

Part 4A – Solar and daylight access of the ADG specifies that a maximum of 15% of apartments in a building receive no direct sunlight between 9am and 3pm at mid-winter. Based on 20 apartments, this equates to a maximum of 3. There are however 4 proposed apartments (1.05, 1.06, 2.05 and 2.06 facing Swinbourne Street) which do not receive direct sunlight in mid-winter. This equates to 20% of the development, not complying with the 15% maximum. The extent of the breach is considered to be minor (i.e. – 1 dwelling). Further, apartments 2.05 and 2.06 are provided with secondary private open space areas on the rooftop which will receive solar access to improve the amenity of these apartments. On balance, the variation (being 1 apartment) is considered to be a function of the orientation of the site as opposed to shortcomings in the design/apartment layouts.

**Note 3: Building separation**

The site adjoins the R2 – Low Density Residential zone to the north in Albert Street. It is noted that Part 2F – Building separation states the following:

*At the boundary between a change in zone from apartment buildings to a lower density area, increase the building setback from the boundary by 3m.*

The above guideline would dictate a 9m rear setback to the northern boundary. The proposed building setbacks to the north are 6m (ground floor) and 6-7m (first and second floor). The additional 3m setback to the lower density zone has not been provided. The proposal is supported in its current form for the following reasons:

- The proposed development provides greater rear setbacks than the approved mixed use building at No.23 Swinbourne Street. That development was approved with rear setbacks of 3m (first floor) and 6m (second floor); and
- BBDCP 2013 does not stipulate a setback requirement. Rather, it states “***The setback from the rear is to be determined following a detailed site analysis at development application stage and must satisfy Council that the amenity of neighbouring residential properties are protected in terms of sunlight and natural daylight access, privacy and visual amenity***”. There are no overshadowing impacts, given the orientation. Privacy has been addressed through the provision of timber privacy screens as well privacy blades to the rear balconies. There is also an existing tree which is to be retained and provides some screening. Visually, the development incorporates a large break in the centre of the building to regulate the bulk and scale. The development is well below the LEP height limit at the northern most end of the building. See below:

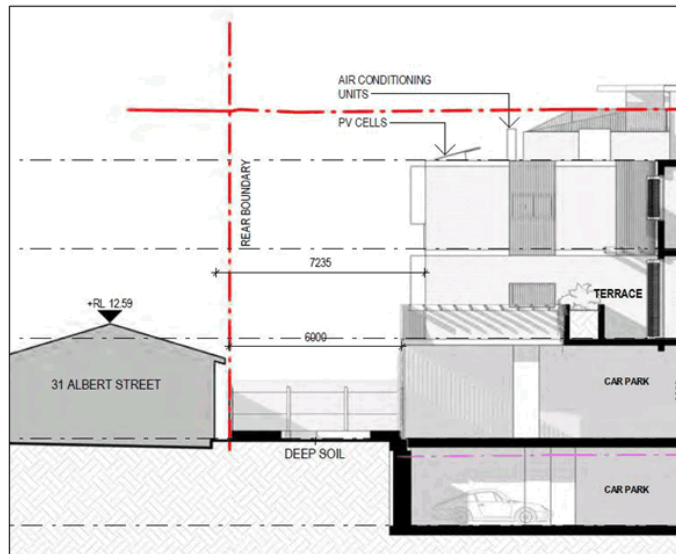


Figure 7 - Section extract demonstrating compliant building height at the rear most plane

#### SEPP 65 Design Principles

The assessment of the proposal has had regard to the SEPP 65 Design Principles. The following summary against each of those principles is provided:

##### *Context and Neighbourhood Character*

The character of this area of Botany is evolving and it is considered that the proposal responds well to the anticipated future character.

##### *Built Form and Scale*

The built form and scale of the development is generally appropriate for the site and its surroundings. The proposal is compliant with the FSR development standard and provides acceptable building setbacks and articulation.

##### *Density*

The density is acceptable, noting that the extent of gross floor area proposed is compliant with the floor space ratio development standard within BBLEP 2013.

##### *Sustainability*

The BASIX Certificate provided is relied upon as a sustainability measure. PV panels are also proposed on the roof top of the building.

*Landscape*

The landscaping outcomes proposed are generally satisfactory. A 6m wide deep soil zone is provided within the northern rear setback area.

*Amenity*

The proposal is generally compliant with the solar access, natural ventilation and apartment layout guidelines set out in the Apartment Design Guide.

*Safety*

The development provides an acceptable activation of the ground floor facing Swinbourne Street which enables additional casual surveillance opportunities. The building entries are legible. Overall, a positive relationship between public and private spaces is achieved.

*Housing Diversity and Social Interaction*

The proposal provides an appropriate mix of 1 and 2 bedroom dwellings. There are social interaction opportunities by virtue of the communal open space areas.

*Aesthetics*

The design achieves an acceptable aesthetic quality.

**Botany Bay Local Environmental Plan 2013**

Botany Bay Local Environmental Plan 2013 has been considered in the assessment of the Development Application and the following information is provided:

<b>Relevant Clauses Principal Provisions of Botany Bay Local Environmental Plan 2013</b>	<b>Compliance Yes/No</b>	<b>Comment</b>
Land use Zone	Yes	The site is zoned B1 Neighbourhood Centre zone under the Botany Bay Local Environmental Plan 2013.
Is the proposed use/works permitted with development consent?	Yes	The proposed use as <i>shop top housing</i> is permissible with Council's consent under the Botany Bay Local Environmental Plan 2013.
Does the proposed use/works meet the objectives of the zone?	Yes	The proposed development is consistent with the following objectives of the B1 Neighbourhood Centre: <ul style="list-style-type: none"> <li>To provide a range of small-scale retail, business and community uses that serve the needs of people who live or work in the surrounding neighbourhood.</li> <li>To ensure that development does not adversely impact on residential amenity and is compatible with the existing streetscape.</li> </ul>

Relevant Clauses Principal Provisions of Botany Bay Local Environmental Plan 2013	Compliance Yes/No	Comment
Does Schedule 1 – Additional Permitted Uses apply to the site?  If so what additional uses are permitted on the site?	N/A	Schedule 1 does not apply to the site.
What is the height of the building?  Does the height of the building comply with the maximum building height?	No – Refer to Note 1	A maximum height of 12 metres applies to the subject site. The proposed development has a height of up to 13.8m and therefore does not comply with the building height development standard. The non-compliant elements relate to the lift overrun, fire stairs and roof top pergola structure only.  A Clause 4.6 variation was provided with the application and is discussed in Note 1 below.
What is the proposed Floor Space Ratio?  Does the Floor Space Ratio of the building comply with the maximum Floor Space Ratio?	Yes	The maximum Floor Space Ratio requirement is 1.5:1 (1837.5sqm). The proposed gross floor area is 1832sqm which is compliant.
Is the proposed development in a R3/R4 zone? If so does it comply with site of 2000m <sup>2</sup> min and maximum height of 22 metres and maximum Floor Space Ratio of 1.5:1?	N/A	The site is not located within the R3 Medium Density Residential or R4 High Density Residential zone.
Is the site within land marked "Area 3" on the Floor Space Ratio Map?  If so, does it comply with the sliding scale for Floor Space Ratio in Clause 4.4A?	N/A	The site is not located in an Area 3 zone.
Is the land affected by road widening?	N/A	The subject site is not affected by road widening.
Is the site listed in Schedule 5 as a heritage item or within a Heritage Conservation Area?	Yes	The site is not listed as a heritage item, nor is it located within a Heritage Conservation Area. However, Heritage Item I158 'Streetscape- Verge Plantings Canary

Relevant Clauses Principal Provisions of Botany Bay Local Environmental Plan 2013	Compliance Yes/No	Comment
		Island Date Palm' is adjacent to the site along the south. The proposed development would not adversely impact the heritage significance of these trees. No further concerns are raised in this regard.
The following provisions in Part 6 of Botany Bay Local Environmental Plan apply–		
• 6.1 – Acid Sulfate Soils	Yes	The site is located in a Class 4 Acid Sulfate Soils Area. A preliminary Acid Sulfate Soils Assessment and Geotechnical investigation has been provided with the application. Appropriate conditions have been recommended in the consent.
• 6.2 – Earthworks	Yes	The proposal includes excavation of one basement level. The development will encounter the groundwater table and the application was referred to Water NSW who had no objections to the proposal. Appropriate conditions have been imposed in the consent.
• 6.3 – Stormwater Management	Yes	The proposal has been reviewed by Council's Development Engineer who has no objection subject to conditions in the consent.
• 6.9 – Development in areas subject to aircraft noise	N/A	The site falls outside the 20 ANEF Contour.
• 6.15 – Active Street frontage	Yes	The proposal is in area where active street frontage is required along Swinbourne St. The development will have a retail space on the ground floor fronting Swinbourne Street and Albert Street. A suitable active street frontage is therefore enabled.

### Note 3 – Clause 4.6 variation relating to height non-compliance

The applicant has provided a Clause 4.6 variation to the maximum permissible building height of 12 metres pursuant under Clause 4.3 of the BBLEP 2013. The proposal has a maximum building height of 13.8m, a breach of 1.8m or 15% at the worst point.

The following plan extracts illustrate the non-compliant portions of the building:



Figure 8: Section CC extract



Figure 9: Section AA extract

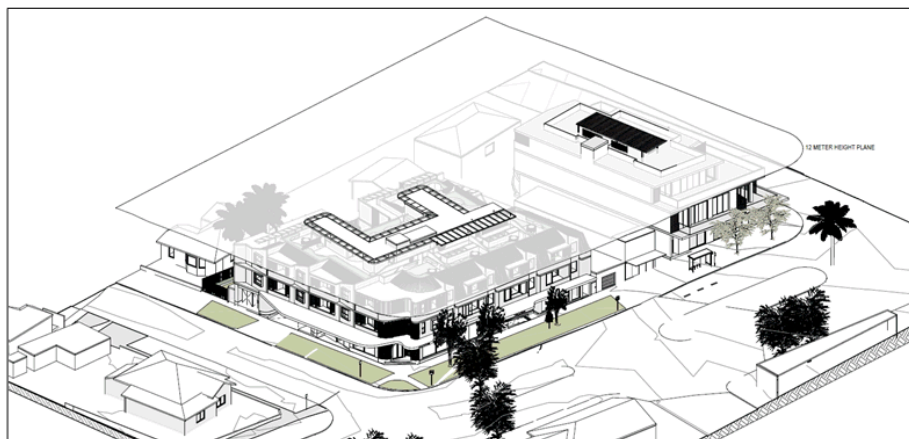


Figure 10: 12m height plane diagram. Approved development at No.23 Swinbourne Street also shown which does not comply with the height development standard.

As can be seen from Figures 8 - 10 above, the non-compliant building elements relate to the pergola structure/WC within the rooftop communal area and the lift overrun/fire stairs.

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

The applicant provided a clause 4.6 variation addressing the building height non-compliance which has been included as an attachment to this report. The relevant provisions of clause 4.6 of BBLEP 2013 have been addressed as follows:

**Clause 4.6(3)(a) – compliance with the development standard is unreasonable or unnecessary in the circumstances of the case; and**

Compliance with the building height development standard is unreasonable or unnecessary because the proposal is consistent with the objectives of the height development standard contained in clause 4.3 of BBLEP 2013. The justification provided by the applicant in this respect is re-produced below:

***OBJECTIVE (A) TO ENSURE THAT THE BUILT FORM OF BOTANY BAY DEVELOPS IN A COORDINATED AND COHESIVE MANNER***

The *Height of Buildings Map* indicates that the 12m height limit that applies to the subject site and also applies to land in the immediate vicinity within Zone B1. Zone B1 extends to the east and south of the site, beyond the B1 Zone is R2 Low Density Residential zone where building height transitions to 8.5m. At present, the built form within the block is characterised by a combination of older housing stock and commercial development with the approval for a three storey shop top housing development to the east at No.23 Swinbourne Street (DA-16/237). As such building heights are varied and no existing development takes up the maximum building height of 12m however, it is noted that DA-16/237 was approved with a variation to the maximum height limit.

As mentioned, the maximum height of the proposal is 13.8m when measured to the top of the lift overrun and rooftop pergola. The structures are set in from the Swinbourne Street and Albert Street facades and therefore present as recessive elements that are not readily apparent from street level. The breach in roof height is a product of providing rooftop communal open space. Communal open space on the roof is encouraged by the ADG and provides superior amenity to future occupants of the development. Accessibility to the roof communal area in the form of lift and stairs is required, thereby requesting a variation to the building height control. The roof pergola will provide protection from the elements, which will increase useability and amenity of the development.

It is considered that the recently approved development at No.23 Swinbourne Street provides an indicative built form as envisioned by Council and it is anticipated that development at the adjoining site, No.19 Swinbourne Street will present similarly. Once the development has been completed within the neighbourhood centre it will present as a coordinated and cohesive streetscape, with acceptable built form outcomes.

***OBJECTIVE (B) TO ENSURE THAT TALLER BUILDINGS ARE APPROPRIATELY LOCATED***

The function of the *Height of Building Map* is, as suggested by objective (b), to identify appropriate locations for taller buildings. The *Height of Buildings Map* indicates that the maximum building height for the site is 12m and is therefore identified as a location where 'taller' buildings are appropriate. The proposal does not strictly comply with this requirement (hence the request to vary the development standard), however is not substantially taller than the height of buildings anticipated in this location. It is submitted that the proposal, which may be considered a 'taller' building, is appropriately located.



**OBJECTIVE (C) TO ENSURE THAT BUILDING HEIGHT IS CONSISTENT WITH THE DESIRED FUTURE CHARACTER OF AN AREA**

Much of the discussion provided against objective (a) is also relevant to this objective. In brief, the desired future character of an area is, to some degree, determined by the building envelope provisions that apply to the site. In this case, future development at No.23 Swinbourne is generally consistent with the 12m height with a minor variation proposed for the lift overrun and pergola structure. It is therefore conceivable that future development in the B1 Zone will have a building height of 12m. It is also conceivable that many sites with similar development forms will seek to vary building height (as seen at No.23 Swinbourne Street and as is anticipated at No.19 Swinbourne Street) to account for the ADG communal open space provision. It is considered that the proposal, although marginally non-compliant with building height, is consistent with the desired future character of the area, noting that the term 'consistent' does not necessarily mean 'the same as'.

**OBJECTIVE (D) TO MINIMISE VISUAL IMPACT, DISRUPTION OF VIEWS, LOSS OF PRIVACY AND LOSS OF SOLAR ACCESS TO EXISTING DEVELOPMENT**

Despite non-compliance, the proposal is designed and located to minimise visual impact, disruption of views, loss of privacy and loss of solar access to neighbouring development as described below:

- The lift overrun and rooftop pergola is set in from each street facade and therefore present as recessive elements that are not readily apparent from street level. The part of the building that is non-compliant with building height, does not contribute significantly to the visual bulk of the development. It is submitted that the difference between the proposal and a development that complies with building height will be negligible when viewed from the streetscape.
- It is understood that there are no significant views obtained from or through the site that will be obscured by the non-compliant aspect of the building.
- The lift overrun and pergola do not contribute to loss of visual privacy. The communal area is recessed from all boundaries and compliant building height elements of the building such as balconies are provided with privacy screens. These features preclude cross viewing or overlooking of neighbouring properties therefore ensuring visual privacy.
- Solar access diagrams have been prepared and are submitted with the development application. The diagrams demonstrate that, although the building is marginally non-compliant in terms of building height, solar access to neighbouring properties is not unreasonably reduced as a result of the height increase. Due to site orientation the proposal does not excessively overshadow existing adjacent development.

As described above, although non-compliant with building height, the proposal is designed and located to minimise visual impacts, disruption of views, loss of privacy and overshadowing and therefore achieves the objective.

**OBJECTIVE (E) TO ENSURE THAT BUILDINGS DO NOT ADVERSELY AFFECT THE STREETScape, SKYLINE OR LANDSCAPE WHEN VIEWED FROM ADJOINING ROADS AND OTHER PUBLIC PLACES SUCH AS PARKS, AND COMMUNITY FACILITIES**

It is anticipated that the locality will undergo a period of transition as properties are redeveloped to take advantage of the zoning changes and generous height and density controls introduced through the LEP. As previously discussed, the height of the proposal is considered to be compatible with the anticipated future character of the B1 Zone locality and in this regard makes a positive contribution to the desired streetscape. Until such time as neighbouring and adjoining sites are also developed, the proposal will be a prominent element in the immediate streetscape however will not be evident in the skyline in the same way as a residential tower is visible from a distance.

The proposed development is therefore consistent with the objectives for maximum height, despite the numeric non-compliance.

**Clause 4.6(3)(b) – Are there sufficient environmental planning grounds to justify contravening the development standard?**

The applicant's clause 4.6 exception provides the following justification:

**Environmental Planning Grounds**

There is no planning purpose to be served by limiting the height strictly to the maximum height allowable given the absence of significant amenity related impacts and compliance with the standard and zone objectives.

With regards to Clause 4.6(3)(b), there are sufficient environmental planning grounds to justify contravening the maximum height standard of the LEP as follows:

- The non-compliant lift overrun and pergola elements are a functional aspect of the building, ensuring efficient access to the roof communal open space. The required ADG communal open space provides superior amenity to future occupants with weather protection.
- The discussions provided in this variation request have demonstrated that the marginal height breach will have no adverse impact on the character of the locality, the amenity of neighbouring properties. The lift overrun and pergola will not be readily visible, do not cast additional excessive shadows and do not give rise to privacy impacts nor does it result in view loss. In the absence of any adverse impact, it is considered that to require strict compliance with the development standard would, in this instance, be unreasonable and unnecessary; and
- To achieve compliance with the building height standard, the building would need to be reduced by a relatively insignificant margin of 1.8m. The visual bulk associated with the non-compliant 1.8m is negligible when compared to the visual bulk of a compliant scheme. The reduction in height would however have significant implications for the proposal as it would effectively preclude the rooftop communal open space reducing residential amenity.

**Officer Comment:** It is noted that a similar height non-compliance has been approved at No.23 Swinbourne Street, east of the subject site. This application was approved at the Bayside Local Planning Panel meeting on 28 November 2017. The extent of the height breach on that site was 1.55m or 12.9%. Refer to approved plan extract below:

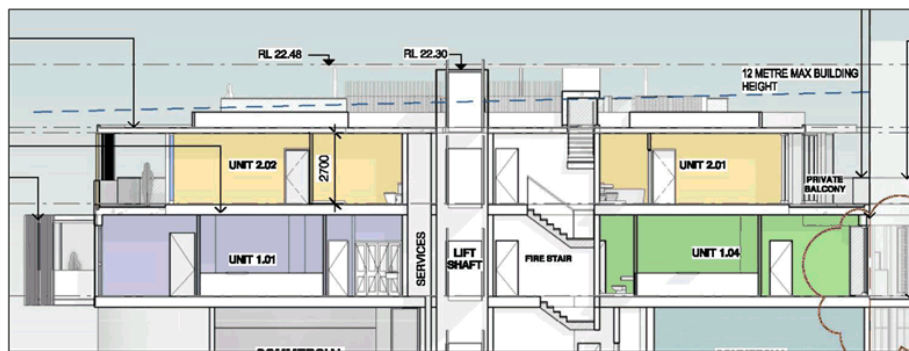


Figure 11: Approved Section – 23 Swinbourne Street

**Clause 4.6(4)(a)(i) – the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3)**

The applicant's written request is considered to adequately address the matters required to be demonstrated by clause 4.6(3) of BBLEP 2013.

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

It is considered that the proposal is consistent with the objectives of the building height development standard within clause 4.3 of BBLEP 2013 for reasons previously identified. The proposed development would also be consistent with the objectives of the B1 – Neighbourhood Centre zone as demonstrated below:

<b>B1 – Neighbourhood Centre zone objective</b>	<b>Comments/assessment</b>
To provide a range of small-scale retail, business and community uses that serve the needs of people who live or work in the surrounding neighbourhood.	The proposed development provides a retail tenancy on the ground floor. This is shown to be a single tenancy with capability to be broken up into two (2) smaller tenancies. This objective is satisfied.
To ensure that development does not adversely impact on residential amenity and is compatible with the existing streetscape.	The proposal is a well-designed and sited shop top housing development that is compatible with the existing and desired future streetscape along this part of Swinbourne Street. The proposed development does not adversely impact upon the amenity of surrounding residential properties, noting that the adjoining R2 zone at the rear is directly to the north and the proposal provides sufficient building separation.

**Concluding remarks**

The request to vary the building height development standard has been assessed in accordance with the provisions of Clause 4.6 and relevant case law, being the principles of *Wehbe v Pittwater Council* [2007] NSW LEC 827 and *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009 & NSW LEC 90 (*Four2Five*). The proposal is consistent with the underlying objectives of the standard identified and is consistent with the objectives of the B1 – Neighbourhood Centre zone. The proposal and Council's assessment has concluded that compliance with the building height development standard is unreasonable or unnecessary in the circumstances of the case, and that there are sufficient environmental planning grounds to justify contravening the development standard.

The proposed development will be in the public interest because it is consistent with the objectives of the building height development standard and the objectives of the B1 – Neighbourhood Centre zone.

In view of the above, the provisions of clause 4.6(4) of BBLEP 2013 are satisfied.

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

There are no current Draft EPIs applicable to this development

**S4.15(1)(a)(iii) - Provisions of any Development Control Plan****Botany Bay Development Control Plan 2013**

The development proposal has been assessed against the controls contained in the Botany Bay Development Control Plan 2013 as follows:

*Part 3A – Parking and Access*

The proposed development complies with the car parking rates specified within BBDCP 2013. It is noted that Council's Development Engineer has imposed conditions of consent to ensure that the car parking layout is workable and achieve the DCP requirements.

Dwelling size	Required	Provided	Compliance
1 bedroom unit (12)	1 space/unit = 12 spaces	12	Yes
2 bedroom unit (8)	2 spaces/unit = 16 spaces	16	Yes
Visitors Parking	1 space/5 dwellings = 20/5 = 4 spaces	4	Yes
<b>Residential total (20 units)</b>	<b>32 spaces</b>	<b>32</b>	<b>Yes</b>
Service bay residential	1 space per 50 dwellings = 1 MRV space	0	Van accepted instead
Business premises (298.53m <sup>2</sup> )	1 space/40m <sup>2</sup> = 7.46 = 8 spaces	8	8
Service bay retail/business	1 MRV space required	0	Van accepted instead
<b>Overall total</b>	<b>40 spaces</b>	<b>40</b>	<b>Yes</b>
Adaptable unit (4)	0.5 of adaptable units = 2 spaces 1 for retail/business 1 for visitor	4	Yes
Bicycle parking	1 space/10 car spaces = 4.7 = 5 spaces	5	Yes (conditioned)
Car wash bay (can be a visitor space)	Min 1 visitor space	1	Yes (conditioned)

*Part 3B – Heritage*

The subject site is not a heritage item and is not located within a heritage conservation area. However, it is in close proximity to Item 158 'Streetscape- Verge Plantings Canary Island Date Palm' adjacent to the site to the south. The proposed development would not adversely impact the heritage significance of these trees. No further concerns are raised in this regard.

*Part 3C – Access and Mobility*

An access report has been provided with the development application. Four (4) adaptable units are provided. All common areas such as the lobby and the rooftop communal area are

accessible either through levelled entry or through lift. A 1:14 ramp is provided along the front of the building to facilitate access into the retail tenancy. The application satisfies Part 3C of BBDCP 2013.

*Part 3E – Subdivision and Amalgamation*

The proposed development includes stratum subdivision into 2 lots (one for the residential component and the other for the commercial/retail tenancy). Suitable conditions of consent have been included (i.e. – before the issue of a Subdivision Certificate) to ensure that compliant with the requirements with Part 3E.

*Part 3G – Stormwater Management*

The amended application was referred to Council's Development Engineer for comment who had no objection to the proposal subject to conditions of consent which have been incorporated into the recommendation.

*Part H – Sustainable Design*

A BASIX Certificate accompanies the proposal and demonstrates a commitment to sustainability measures.

*Part I – Crime Prevention, Safety & Security*

The proposal has been designed to have casual surveillance over Swinbourne Street and Albert Street. Internally, the proposed development includes secure pedestrian and vehicle access. Suitable conditions have been imposed with respect to incorporating safer by design principles.

*Part 3K – Contamination*

Refer to the discussion above in State Environmental Planning Policy (SEPP) No. 55 – Remediation of Land section of the report addressing contamination.

*Part 3L – Landscaping & Tree Management*

The street trees along Swinbourne Street and the Jacaranda along the rear boundary have been identified as warranting retention. The applicant has provided an Arboricultural Impact Assessment Report prepared by Bryce Claassens, dated 26 July 2019 which details suitable tree protection requirements (Part 11 of the report). Suitable conditions of consent have been included in this regard.

*Part 3N – Waste Minimisation and Management*

The proposal incorporates suitable waste management facilities. There is a bulk storage area within the basement level. Separate residential and commercial bin storage facilities are provided at the rear of the ground floor which will enable convenient kerb side collection from Albert Street.

*Part 5 – Business Centres*

The site is located within the Swinbourne Street Neighbourhood Centre. The objectives of the Centre that apply to the site under Part 5.2.2.5 of the BBDCP is as follows:

Objective	Response
<b>O1</b> To promote a viable and attractive Neighbourhood Centre with an improved and safer public domain	The proposal will replace existing dwelling houses with a mixed use development. The retail tenancy have floor to ceiling windows which will allow for adequate surveillance. Additionally, the front residential lobby has been designed to allow for safe surveillance. The architectural style of the building is attractive through the use of different materials and articulation.
<b>O2</b> To ensure that development recognises predominant streetscape qualities (i.e. setbacks & design features);	The development reflects the streetscape qualities of the surrounding site through the use of face brick. The three storey form proposed is an acceptable response, given the relevant planning controls.
<b>O3</b> To ensure development complements the height and architectural style found in the immediate vicinity, particularly where this has a clearly established character;	The proposal is generally consistent with the maximum height of 12 metres with exception to the pergola and lift overrun to the rooftop. The development is one of the first that is proposed to be redeveloped therefore the scale and height of the existing built stock does not reflect the proposal however it is anticipated that the surrounding shops will be redeveloped in this manner. The architectural style proposed is visually aesthetic and complements the character of the locality.
<b>O4</b> To retain existing heritage trees and supplement existing landscaping within the streetscape;	None of the trees on the site are heritage listed. The development will not impact on the trees located on the island strip along Swinbourne Street which are heritage listed.
<b>O5</b> To allow reasonable redevelopment and to improve the architectural quality of building stock;	The proposal will replace older residential dwellings with a new mixed use development. The architectural quality of the building is visually aesthetic and is not out of character with the surrounding locality.
<b>O6</b> To retain a coherent streetscape with a consistent street wall and parapet line	The proposal will create a consistent street wall along the front elevation to Swinbourne Street and the western side elevation to Albert Street.
<b>O7</b> To ensure that access driveways do not dominate the streetscape; and	The driveway is not located along Swinbourne Street but along Albert Street which is a secondary street. The driveway design is not considered to dominate the streetscape.

<b>O8</b> To ensure that shop top housing provides passive surveillance, resident interaction and addresses the street. To encourage development of awnings as balconies for residential and commercial units above (to improve amenity for unit dwellers and promote passive surveillance of streets).	The size and location of the units and balconies are large enough to provide for adequate surveillance from the residences.
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The following controls apply to the Swinbourne Street Neighbourhood Centre and are as follows:

Control	Proposed	Complies
<b>5.2.2.5 Swinbourne Street Neighbourhood Centre</b>		
<b>C1</b> Development must provide landscaping, street trees, lighting, public seating, paving and other public domain improvements identified by Council, generally in accordance with <b>Figure 20</b> .	A condition of consent has been incorporated which requires a public domain works plan to be prepared.	Yes
<b>C2</b> Pedestrian amenity and connectivity must be enhanced in conjunction with new development.	The pedestrian amenity has been considered within the proposal and is acceptable.	Yes
<b>C3</b> Redevelopment is encouraged through logical lot consolidation of sites and infill development. Avoid inappropriate lot consolidation patterns that would isolate and unreasonably restrict redevelopment on a single lot.	The proposed development potentially isolates No.19 Swinbourne. Refer to discussion later in this report which addresses this matter in detail.	No – refer to Note 2
<b>C4</b> The design of development must be generally consistent with the Desired Future Character of the centre identified in Figure 20	The proposal complies and has been designed to reflect Figure 20 within the Desired Future Character section of the DCP.	Yes
<b>C5</b> A maximum height of 12 metres applies under BBLEP 2013. Notwithstanding the 12 metre height limit, a maximum height of two stories applies along the street frontage with a third level permitted which is setback from the street frontages and the rear.	The proposal exceeds the height of the development with the lift overrun and the pergola protruding by 1.8m above the height requirement. This has been addressed in the previous Clause 4.6 discussion.  The proposed development is three (3) storeys along the street frontage, which exceeds the two (2) storey maximum.	No – refer to previous discussion  No – refer to Note 1

<p>The setback from the rear is to be determined following a detailed site analysis at development application stage and must satisfy Council that the amenity of neighbouring residential properties are protected in terms of sunlight and natural daylight access, privacy and visual amenity. Applicants must therefore demonstrate at development application stage that impacts on the residential area are minimised.</p>	<p>Figure 20 in the DCP identifies that the third storey must be setback 3m from the front boundary. The proposal does not provide that setback. This is addressed below in Note 1.</p> <p>The proposed rear setback has been addressed in the SEPP 65 discussion.</p>	Yes
<p><b>C6</b> With redevelopment of the shops, landscape planting must be provided along the rear boundary where a site adjoins a residential property, to provide a visual separation between the shops and the residential area.</p>	<p>There is a significant deep soil zone provided within the rear setback area which provides visual separation and an amenity buffer to the adjacent low density zone to the north.</p>	Yes
<p><b>C7</b> New development is to take into account and respond sympathetically to an established streetscape with strong architectural features and identity. New buildings are to reinforce these features and contribute to its character.</p>	<p>The proposed development presents a contemporary form with high quality materials that will achieve the desired future character of this area.</p>	Yes
<p><b>C8</b> Alterations and additions are to reflect the architectural design of the existing building. Materials and finishes are to be compatible with the existing building.</p>	<p>The proposal will be for a new building and not for alterations and additions to the existing building.</p>	N/A
<p><b>C9</b> Contemporary architectural design solutions are encouraged, however designs will need to demonstrate that they will not lead to a replacement or diminution of a street's existing character. Council encourages diversity in building designs provided that development outcomes</p>	<p>The development utilises a range of high quality external materials and colours. The development is sympathetic to the character of the area.</p>	Yes



complement the existing character of the suburb.		
<b>C10</b> Shop top housing must be provided in any redevelopment of the existing shops.	The proposal is a new development and will incorporate a retail tenancy on the ground floor and residential on the upper levels.	Yes
<b>C11</b> The design must improve the residential amenity for the housing above the shops by providing direct access to balconies and private open space; and provide for passive surveillance of the surrounding streets and pedestrian walkways.	All units have direct access to balconies from principal living areas and will provide passive surveillance on the street.	Yes
<b>C12</b> All development must address the street frontage	The development has dual street frontages along Swinbourne Street and Albert Street. Residential access is off Albert Street and retail access off Swinbourne Street.	Yes
<b>C13</b> All designs must provide awnings above the footpath on the Swinbourne Street frontage.	The proposal has awnings along the Swinbourne Street frontage.	Yes
<b>C14</b> Awnings above the footpath are encouraged as trafficable verandahs for the use of residents on the first floor. If the verandah is built over the street then a lease fee is payable to Council. The fee is set out in <b>Council's Fees and Charges</b> .	This outcome is not sought by Council due to on-going legal and leasing complications.	No
<b>C15</b> The design must provide good residential amenity for the housing above the shops by providing direct access to balconies and private open space; and provide for passive surveillance of the surrounding streets and pedestrian walkways.	The development has been designed to provide good amenity to the units in regard to ventilation, solar amenity and passive surveillance.	Yes
<b>C16</b> The design must encourage active street life while providing a high residential amenity and provide for small scale shops that will serve the local community.	The development provides an active street frontage along Swinbourne Street and Albert Street which is supported.	Yes
<b>C17</b> A street number for the property is to be clearly identifiable from the street.	A condition of consent has been imposed in this regard.	Yes

<b>C18</b> Awnings must be provided continuously and at the same height along the shop frontages to provide weather protection for pedestrians.	Awnings have been provided and are consistent in height.	Yes
<b>C19</b> Air conditioners must not be installed on street awnings or the front façade of buildings.	There are no air conditioners proposed on the street awning or the front façade.	Yes
<b>C20</b> Development must comply with Council's sustainable development requirements as identified in <b>Part 3H - Sustainable Design</b> .	The application has provided a BASIX certificate which complies.	Yes
<b>C21</b> Development must comply with <b>Part 3A - Car Parking</b> .	Complies - Refer to previous assessment addressing Part 3A – Car parking.	Yes
<b>C22</b> Maintain limited advertisements and business signage to minimise visual impact on the surrounding residential area.	There is no signage proposed as part of the application.	N/A
<b>C23</b> Restrict signage to the awning fascia, under the awning or behind the shop window at street level	There is no signage proposed at this stage.	N/A
<b>C24</b> Development must comply with <b>Part 3D - Signage</b>	There is no signage proposed at this stage.	N/A
<b>C25</b> A Stormwater Management System is to be provided in accordance with <b>Part 3G - Stormwater Management</b> .	Stormwater management complies with the requirements under Part 3G of the BBDCP.	Yes

**Note 1 – Front setback/Number of storeys**

Figure 20 specifies a 3m front setback and restricts development to two (2) storeys along the street frontage. See below:

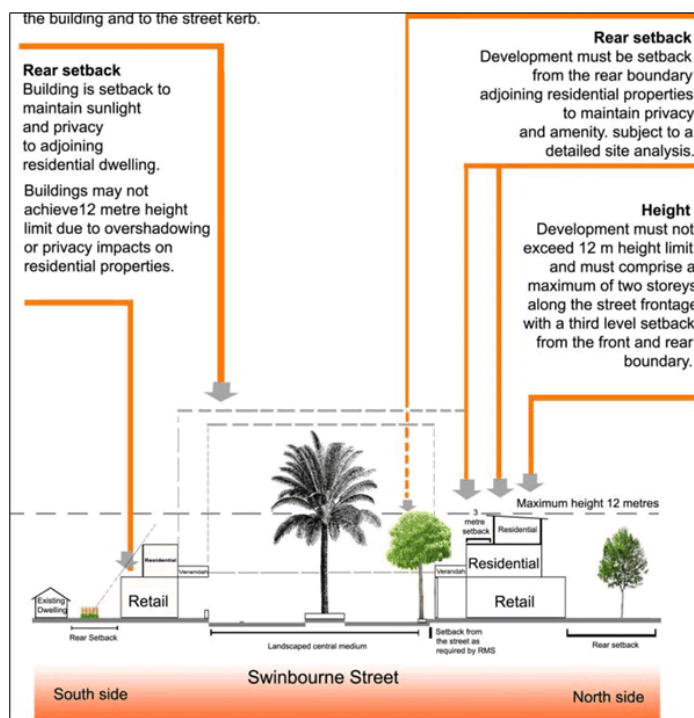


Figure 12 – Extract of Figure 20 in Part 5.2.2.5 of BBDCP 2013

The proposed development encroaches into the 3m front setback area, however it utilises architectural design and elements to give the appearance of a greater setback, when viewed from the street. The following is noted in this regard:

- The roof form of the upper level along the Swinbourne Street frontage is visually recessive and varies in colour from the remainder of the development;
- There are a series of vertical elements along the front façade which have been setback from the boundary alignment; and
- The Design Review Panel are supportive of the setback as proposed.

The comments made above are demonstrated in the perspective below:

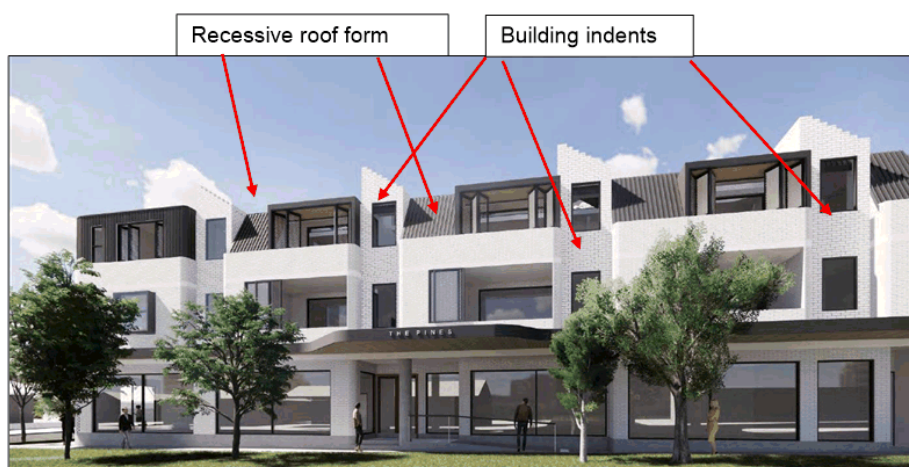


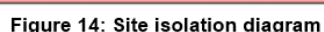
Figure 13: Photomontage along Swinbourne Street

**Note 2 – Lot consolidation/site isolation**

Control C3 within Part 5.2.2.5 of BBDCP 2013 stipulates the following:

***C3** Redevelopment is encouraged through logical lot consolidation of sites and infill development. Avoid inappropriate lot consolidation patterns that would isolate and unreasonably restrict redevelopment on a single lot.*

The development is proposed to be constructed over four (4) existing lots which creates a site area of 1225m<sup>2</sup>. The proposal would however potentially isolate the adjoining allotment to the east at No.19 Swinbourne Street, noting that an approval for a three (3) storey mixed use development has been issued at No.21 Swinbourne Street (that being the easternmost lot on the corner). Refer to map below for reference:



Importantly, the proposed car parking arrangements (basement and ground floor) have been designed in a manner which would enable the provision of a future access link into the rear of the allotment at No.19 Swinbourne Street. Extracts of the concept plans provided are reproduced below:

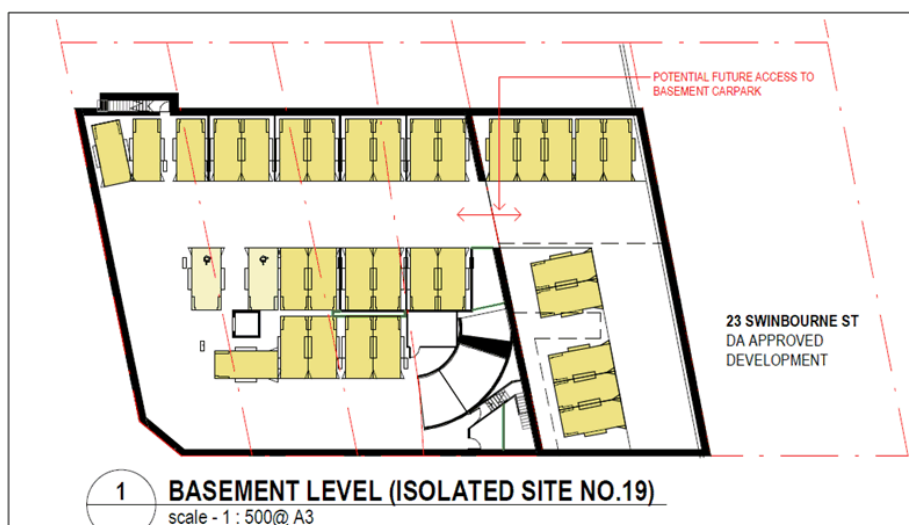


Figure 15: Isolated site plans

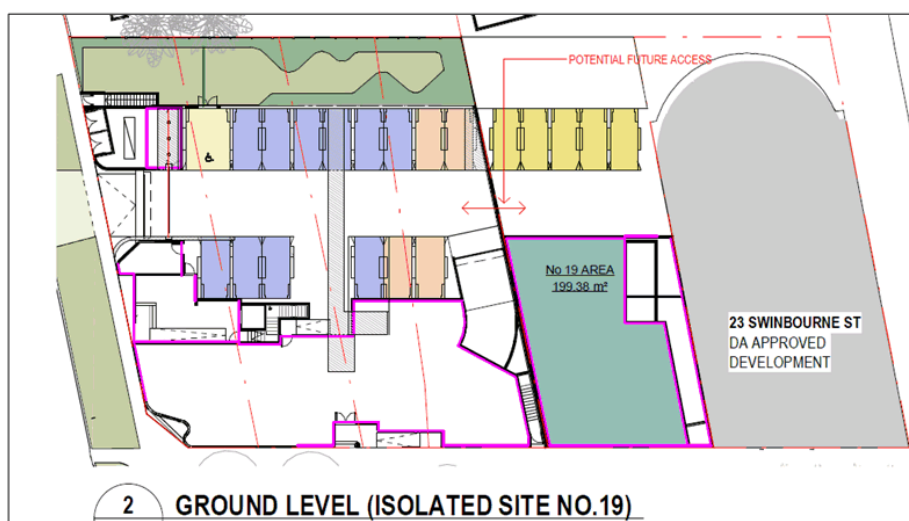


Figure 16: Isolated site plans

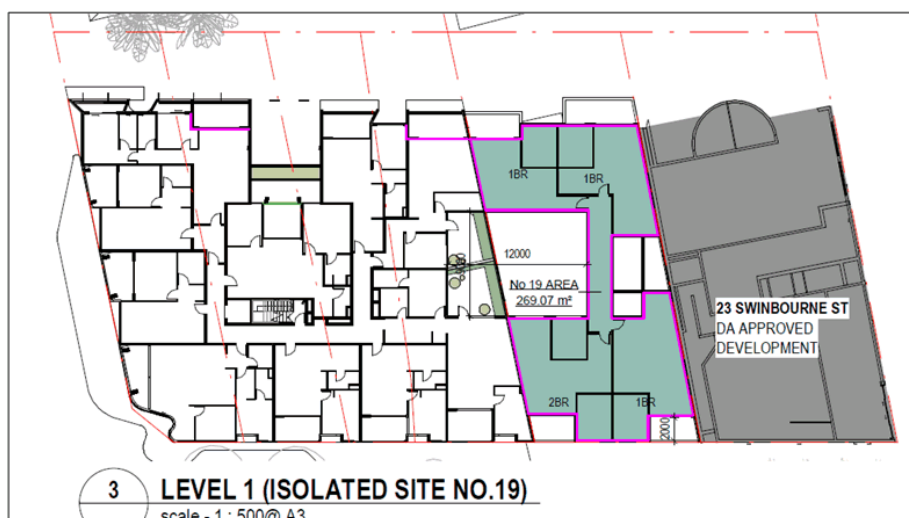


Figure 17: Isolated site plans

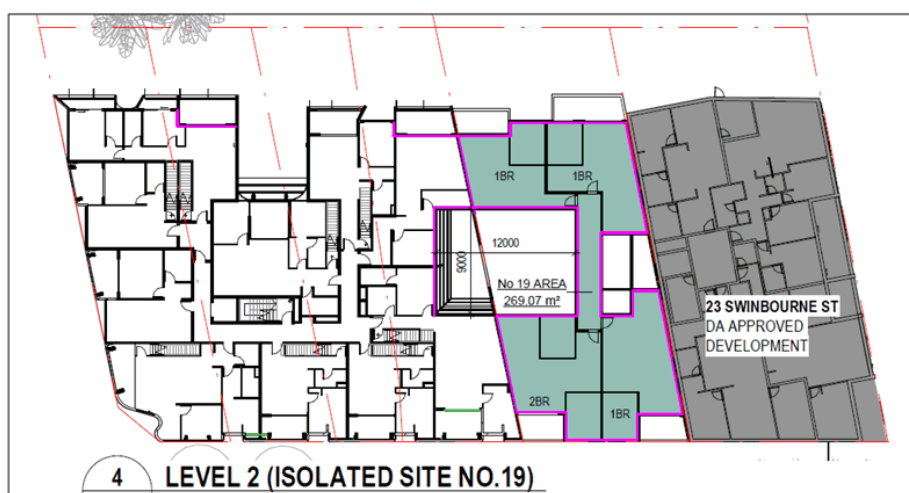


Figure 18: Isolated site plans

The remainder of the relevant General Controls within Part 5.3 – Business Centres are addressed below:

<b>5.3 General Controls</b>		
5.3.1.1 Floor Space Ratio	<b>C2</b> In determining an appropriate FSR, applicants must demonstrate to Council that the bulk and scale of development is acceptable and will not result in adverse impacts on adjoining dwellings or the streetscape in terms of loss of privacy, overshadowing, loss of views, visual amenity and increased traffic generation.	The maximum permissible FSR for the subject site is 1.5:1. The development complies with this requirement.
5.3.1.2 Height	<b>C1</b> The maximum height of buildings must comply with the Height of Buildings Map and Clause 4.3 of the Botany Bay Local Environmental Plan 2013.	A maximum height of 12 metres applies to the subject site. The maximum height of the development does not comply with Council's requirements under the Botany Bay Local Environmental Plan 2013. A Clause 4.6 variation was provided with the application and is discussed elsewhere in this report.
	<b>C2 &amp; C3</b> In addition to C1, new buildings must also consider and respond to the predominant and characteristic height of buildings within the Centre; and consider the topography and shape of the site. In this regard, the maximum number of storeys must not exceed the maximum number of storeys identified in the relevant character statement for each Business Centre as set out in Part 5.2 - Character Statements for the Business Centres. If the maximum number of storeys is not identified in the Character Precinct, the maximum number of storeys must be	The proposal is consistent with the desired future character of the area.



	consistent with the characteristic building height.	
5.3.1.5 Built Form and Streetscape	C2 Building must have a consistent street wall height and provide a continuous street frontage and awning height along the street frontage where appropriate.	The development is one of the first site to be redeveloped in the area therefore there is no existing street wall height however the development achieves with the desired future character.
5.3.2.1 Design Excellence	C2 The Development Application must identify how design excellence will be achieved in the proposed development.	The applicant has provided a SEPP 65 Design Verification Statement with the development application. The document addressed the design excellence of the proposed development.
5.3.2.2 Building Design	C2 All development applications that contain residential development or are adjacent to residential development must provide a design statement addressing privacy and overshadowing of residential dwellings from the business component.	The applicant has provided a SEPP 65 Design Verification Statement with the development application.
	C4 If residential dwellings are proposed as part of a mixed use development, balconies, private open space area and communal open space areas must be screened to address any privacy impacts on adjoining residential properties.	The balconies have been designed to overlook the street where possible. There are some balconies facing north towards the R2 sites, however these incorporate screening devices to ensure that overlooking impacts are minimised. The roof top communal area is well setback from the rear boundary.
	C7 A schedule of external finishes and materials must be submitted at development application stage to articulate the building's design complements the Business Centre.	A Schedule of Colours and Finishes has been provided with the development application.
5.3.2.4 Awnings and Verandahs	C1 New development must provide awnings above the footpath to	The development proposes an awning on the ground floor.

	provide weather protection for pedestrians.	
5.3.2.5 Public Domain Interface at Ground Level	C1 Development must comply with the Desired Future Character objectives and controls identified in Part 5.2 - Character Statements for the Business Centres.	This is discussed above in the report.
	C2 Development must be designed so that it has a clearly definable entry and addresses the street.	The building addresses Swinbourne Street (retail entry) and Albert Street (residential entry).
	C3 For mixed use development which contains residential dwellings, the primary area of outdoor private open space must not be located on the street frontage, unless it is on the first floor or above.	All apartments are located on Level 1 and above and private open space is via balconies. All units have access to a communal open roof terrace.
	C4 The visual and physical connection between the building frontage and the public domain must be considered in all development applications to ensure that the interface at ground level promotes a high level of pedestrian amenity.	Council's Landscape Architect has conditioned that a Public Domain Plan is required prior to the Construction Certificate.
5.3.2.6 Active Street Frontages	C1 Development is to provide active street frontages in accordance with the Active Street Frontages Map and Clause 6.15 Active Street Frontages under BBLEP 2013.	The development provides an active street frontage on the ground floor.
5.3.2.8 Interface between Business Zones and Adjoining Landuses	C1 Clear boundaries between the public and private domain must be created to enhance security, privacy and safety.	Clear boundaries are demonstrated by separate entries to the residential and commercial components as well as to the car parking area.

	C2 Shadow diagrams must be provided for all development proposals for the summer and winter solstices. Shadow diagrams must show shadow impacts at 9am, 12 noon and 3pm for both solstices. Additional building setbacks may be required where internal site shadow impacts or impacts on adjoining properties are considered by Council to be unreasonable.	The site has a north-south orientation therefore a majority of the shadow cast by the proposed development will be to Swinbourne Street. The applicant has provided shadow diagrams demonstrating the proposed development will not cause any adverse overshadowing impacts.
5.3.2.9 Landscaped Area	C1 Residential setbacks from streets and parks are to support planting, at a scale that allows passive surveillance of the public domain. This requirement may vary with each block	There is no residential on the ground floor. However there is a landscaped buffer located on the northern side of the site between the residential property and subject site. There is no planting along the street frontage due to active frontages.
5.3.2.10 Private Open Space and Communal Open Space	C1 The primary area of outdoor private open space must not be located at grade on the street frontage.	There is no residential proposed at grade. All private open space is off a balcony.
	C2 Communal open space can be provided at grade or on podiums and roof tops. The space must be appropriately landscaped and provided with a recreational facilities or features, for example BBQ area, seating, children's play area, landscape features or the like and must include pedestrian scale lighting, to be shown in the detailed landscape plan.	The communal open space is located on rooftop and will be appropriately landscaped as well as providing for, seating, BBQ area and planter beds.
	C3 More than 70% of the communal open space area must be capable of growing plants, grasses and trees.	As the communal terrace is located on the rooftop, the space will receive full sunlight.

5.3.2.11 Materials and Finishes	C1 A Schedule of Finishes and a detailed Colour Scheme for the building facade is to accompany all Development Applications involving building works	A Schedule of Colours and Finishes has been provided with the development application.
5.3.2.12 Servicing	C1 New commercial or mixed use buildings must provide a loading dock on-site. Where this is not viable loading and unloading may be permitted from to a rear lane or side street subject to Council's engineer approval.	There is a loading space provided within the car parking area on the ground floor.
5.3.2.14 Access and Mobility	<p>C1 Development must comply with Part 3C – Access and Mobility</p> <ul style="list-style-type: none"> <li>▪ Residential flat buildings (RFB), conversion of non-residential buildings into RFBs, shop top housing, multi dwelling housing and live/work buildings – Statement of consistency lodged.</li> <li>▪ In developments containing 10 or more dwellings, a minimum of 20% of the dwellings are to be adaptable dwellings designed in accordance with Adaptable Housing Australian Standard 4299 Class B. Refer to AS4299 Class B.</li> <li>▪ Appropriate access for all persons through the principal entrance of a building and access to all common facilities. Refer to BCA and AS1428.1.</li> <li>▪ In developments containing 10 or more dwellings, accessible</li> </ul>	<p>An Access Report has been prepared and provided with the development application.</p> <p>The development proposes four (4) adaptable units.</p> <p>Appropriate access through the front entrance and through the building is provided.</p> <p>The development proposes three (3) adaptable parking spaces.</p>

	resident parking is required at 10% to be allocated to adaptable dwellings with a preference for AS4299 designs for at least 80% of the accessible spaces and a maximum of 20% of spaces complying with AS2890.6.	
5.3.3.1 Acoustic Privacy	C1 Dwellings close to high noise sources such as busy roads, railway lines and airports must be designed to locate noise sensitive rooms and secluded private open spaces away from noise sources and be protected by appropriate noise shielding techniques.	The site is located outside of the ANEF Contour area and is not in close proximity to a busy road.
5.3.3.2 Visual Privacy	C1 In some cases potential visual privacy impacts can be mitigated by incorporation of one or more of the following design measures:  (i) Fixed screens of a reasonable density (min 75% block out); (ii) Fixed windows with translucent glazing (providing natural ventilation is not compromised); (iii) Appropriate screen planting or planter boxes.	Refer to discussion below regarding the proposed visual privacy outcomes.
5.3.3.5 Solar Access & Shadow	C1 Development must demonstrate: (i) Neighbouring developments will obtain at least two hours of direct sunlight to 50% of the primary private open space and 50% of windows to habitable rooms; and (ii) 30% of any common open space will	The site has a north-south orientation therefore a majority of the shadow cast by the proposed development will be to Swinbourne Street. No further concerns are raised in this regard.  The communal open space on the roof top will receive full sunlight.

	obtain at least two hours of direct sunlight between 9am and 3pm on 21 June.	
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#### **Visual privacy discussion**

The site adjoins the R2 – Low Density Residential zone at the rear (to the north) in Albert Street. During the assessment of the application, Council requested the applicant to revise the treatment of the northern façade to ensure that overlooking opportunities from the rear balconies are minimised. Given this is the northern façade of the building, there needs to be an equitable balance of facilitating solar access into the proposed apartments whilst reasonably preserving the visual privacy of the adjacent residential dwellings.

The rear northern balconies incorporating sliding, full height and closely spaced timber batten screens as well as horizontal and vertical privacy blades which are designed to minimise overlooking on oblique angles. It is noted that there is a proposed development for the constructed of two storey semi-detached dwellings on the adjoining site to the north at No.31 Albert Street. The proposed first floor southern elevation of the development is relatively blank with window openings being restricted.

The proposed development is considered to satisfy Part 5.3.3.2 of BBDCP 2013 concerning visual privacy.



**Figure 19 - Photomontage of northern elevation showing privacy devices**

*Part 8 – Botany Character Precinct*

While Part 8 contains general objectives for the future character of the Botany Area, Part 5 of the BBDCP contained specific controls and objectives for the desired future character of the Swinbourne Street Neighbourhood Centre which has been addressed in detail above.

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

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

**S.4.15(1)(b) - Likely Impacts of Development**

As outlined in the assessment above, the proposed development will have no significant adverse environmental, social or economic impacts in the locality.

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

The site is located in a groundwater management zone and is proposing basement level. The applicant has provided geotechnical reports demonstrating that the development will encounter groundwater. Appropriate conditions imposed by Water NSW has been provided in the consent. 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 proposed development is permissible in the zone and satisfies the objectives of the zone. The traffic impacts are not considered to be significant given the relatively small scale of the development and no significant planning issues are raised that would warrant the refusal of the proposed development.

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

- **7 January 2019 to 30 January 2019** – The application was notified and advertised in accordance with BBDCP 2013. Two (2) submissions were received.
- **10 April 2019 to 21 May 2019** – The application was re-notified due to it being identified as constituting Integrated Development. One (1) submission was received.

The concerns raised in the submissions have been addressed below:

Concern: Insufficient amount of car parking provided. Adverse traffic impacts.

Comment: The amount of car parking provided complies with the BBDCP 2013 requirements. Council's Development Engineer has reviewed the proposal on traffic grounds and it is considered that the proposal will not generate unacceptable traffic impacts that would warrant refusal of the DA.

Concern: The developer/Council should consider adding 45 degree angle parking outside the proposed development area in Albert Street as well as out the front on Swinbourne Street.

Comment: The existing vehicular crossings along Swinbourne Street will become redundant and are required to be re-instated. This will result in the provision of some additional on-street car parking spaces. It is noted that the proposed development does not preclude the establishment of potential future on-street car parking along Albert Street. This would however be subject to a separate approval process outside of this DA.

Concern: There is no need for additional apartments in the area. The development would look out of place with the rest of the area. There are not apartment buildings more than 2 storeys.

Comment: The external appearance of the development is acceptable given that this particular area is anticipated to transition to new building forms, given the applicable planning controls. The LEP height is 11m, which therefore anticipates a 3 storey form.

Concern: DA site signs were not provided.

Comment: The appropriate DA notification signs were provided along the Swinbourne Street frontage during both notification periods.

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

It is considered that granting approval to the proposed development will be in the public interest.

#### **Section 7.11 Contributions**

A Section 7.11 contribution \$320,000.00 shall be paid to Council. The contribution is calculated according to the provisions contained within Council's adopted Former City of Botany Bay s7.11 Development Contributions Plan 2016 (Amendment 1) and having regard to the Ministerial Directive of 21 August 2012 (the \$20,000 cap). Suitable conditions have been included.

#### **Conclusion**

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Bayside Council received Development Application No.2018/378 on 20 December 2018 seeking consent for the demolition of the existing structures and construction of a three (3) storey shop top housing development comprising one (1) ground floor commercial tenancy, 20 dwellings, basement and ground floor parking and strata subdivision at 13A-17 Swinbourne Street, Botany.

The applicant has provided amended plans and other supporting material to addresses the concerns raised by Council. The non-compliant aspects of the development are considered to be acceptable for reasons identified within the main body of the report. However, minor design changes are recommended to ensure that the quantum of communal open space achieves the minimum requirements set out within Part 3D of the ADG.

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.



## Attachment

### Schedule 1 – Conditions of Consent

Premises: 13A-17 Swinbourne Street, Botany

DA No: 2018/378

### GENERAL CONDITIONS

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

Drawing No.	Author	Date Received
DA-006-2 Issue C Demolition works	Architects Nicholas + Associates	Dated: 05.08.19 Received: 07.08.19
DA-007 Issue F Site Plan		Dated: 05.08.19 Received: 07.08.19
DA-008 Issue F Streetscape Analysis		Dated: 05.08.19 Received: 07.08.19
DA-009 Issue F Standard Abbreviations		Dated: 05.08.19 Received: 07.08.19
DA-010 Issue M Basement Plan		Dated: 05.08.19 Received: 07.08.19
DA-011 Issue O Ground Floor Plan		Dated: 05.08.19 Received: 07.08.19
DA-012 Issue M First Floor Plan		Dated: 05.08.19 Received: 07.08.19
DA-013 Issue M Second Floor Plan		Dated: 05.08.19 Received: 07.08.19
DA-014 Issue L Roof Plan		Dated: 05.08.19 Received: 07.08.19
DA-030 Issue F Locations of Adaptable units		Dated: 05.08.19 Received: 07.08.19
DA-031 Issue G Adaptable apartment 1.10		Dated: 05.08.19 Received: 07.08.19
DA-032 Issue G		Dated: 05.08.19 Received: 07.08.19

Adaptable apartment 1.03/2.03		
DA-033 Issue F Adaptable unit 1.08		Dated: 05.08.19 Received: 07.08.19
DA-150 Issue I Swinbourne St Elevation		Dated: 05.08.19 Received: 07.08.19
DA-151 Issue H Albert St Elevation		Dated: 05.08.19 Received: 07.08.19
DA-152 Issue G North Elevation		Dated: 05.08.19 Received: 07.08.19
DA-153 Issue F East Elevation		Dated: 05.08.19 Received: 07.08.19
DA-160 Issue I Section AA		Dated: 05.08.19 Received: 07.08.19
DA-161 Issue H Section BB		Dated: 05.08.19 Received: 07.08.19
DA-162 Issue H Section CC		Dated: 05.08.19 Received: 07.08.19
DA-950 Issue G Finishes Schedule		Dated: 05.08.19 Received: 07.08.19
DA-163 Issue G Section DD		Dated: 05.08.19 Received: 07.08.19
Cover Page LDA000 Revision F	NBRS Architecture	Dated: 25.07.19 Received: 07.08.19
Landscape Plan 01 Ground Floor LDA100 Revision F		Dated: 25.07.19 Received: 07.08.19
Landscape Plan 02 First Floor LDA101 Revision E		Dated: 18.07.19 Received: 07.08.19
Landscape Plan 03 Roof Terrace LDA102 Revision E		Dated: 18.07.19 Received: 07.08.19
Sections LDA200 Revision E		Dated: 18.07.19 Received: 07.08.19
Planting Palette, Schedule and Details LDA300		Dated: 25.07.19 Received: 07.08.19

Revision F		
Materials and Finishes LDA400 Revision E		Dated: 18.07.19 Received: 07.08.19
Plan of proposed subdivision of lots Basement Level and Below	Surveyor: Ivan Victor Sterligov	Dated: 21.08.19 Received: 23.08.19
Plan of proposed subdivision of lots Ground Level		Dated: 21.08.19 Received: 23.08.19
Plan of proposed subdivision of lots Level 1 and above		Dated: 21.08.19 Received: 23.08.19

Reference Document(s)	Author	Date Received
Arborist Report	Urban Arbor	Dated: 26.07.19 Received: 07.08.19
Geotechnical investigation and Acid Sulfate Soil Assessment	STS GeoEnvironmental	Dated: June 2019 Received: 07.08.19
Preliminary Soil Vapour & Groundwater Investigation	Environmental Consulting Services	Dated: 30.04.19 Received: 07.08.19
BASIX Certificate No.982828M	Prepared by Building Sustainability Assessments	Dated: 11.12.18 Received: 20.12.18
Flood Management Report	Endepth Engineers Pty Ltd	Dated: 10.07.19 Received: 07.08.19
Access Report	Wall to Wall	Dated: 20.12.18 Received: 20.12.18

2. This consent relates to land in Lot A DP399233, Lot B DP399233, Lot 1 DP212569 and Lot 2 DP212569 and, as such, building works must not encroach on to adjoining lands or the adjoining public place.
3. The materials and façade details approved under condition 1 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.
4. Separate approval shall be provided for the use of the commercial/retail tenancy on the ground floor.
5. In order to ensure the design quality excellence of the development is retained:
  - i. A registered architect is to have direct involvement in the design documentation, contract documentation and construction stages of the project;
  - ii. The design architect is to have full access to the site and is to be authorised by the applicant to respond directly to the consent authority where information or clarification is required in the resolution of design issues throughout the life of the project;
  - iii. Evidence of the design architect's commission is to be provided to Bayside Council prior to issue of the Construction Certificate.

The design architect of the project is not to be changed without prior notice and approval of Bayside Council.

6. 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
  - b) Ensure that the documentation relied upon in the approval processes include an appropriate level of detail to demonstrate compliance with the NCC as proposed and as built.
7. The following shall be complied with:
  - a) All building work must be carried out in accordance with the provisions of the Building Code of Australia;
  - b) All air conditioning units shall be appropriately treated to ensure that they are concealed from view and compliant with Australian Standard AS1668.2. If they are located on balconies or in public, they are to be appropriately screened;
  - c) The provision of disabled access throughout the development is required and shall be in compliance with the Building Code of Australia Part D3 "Access for People with Disabilities" and Australian Standard AS1428.1 (2001) – Design for Access and Mobility – Part 1 General Requirements for Access – Buildings. This requirement shall be reflected on the Construction Certificate plans;
  - d) The off-street parking areas associated with the subject development shall be designed strictly in accordance with AS2890.1:2004;
  - e) Bicycle parking facilities shall be designed in accordance with AS2890.3:1993; and
  - f) Internal height clearance shall be designed throughout the car park and access driveway in accordance with AS2890.1:2004.
8. 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 Certificates (as referenced at Condition No. 1) for the development are fulfilled.

Note:

  - a) Relevant BASIX Certificate means:
    - i) A BASIX Certificate that was applicable to the development when this development consent was granted (or, if the development consent is modified under Section 96 of the Act, a BASIX Certificate that is applicable to the development when this development consent is modified); or
    - ii) If a replacement BASIX Certificate accompanies any subsequent application for a construction certificate, the replacement BASIX Certificate.
  - b) BASIX Certificate has the meaning given to that term in the *Environmental Planning and Assessment Regulation 2000*.

9. The consent given does not imply that works can commence until such time that:
  - a) Detailed plans and specifications of the building have been endorsed with a Construction Certificate by:-
    - i) The consent authority; or,
    - ii) An accredited certifier; and
  - b) The person having the benefit of the development consent:-
    - i) Has appointed a principal certifying authority; and
    - ii) Has notified the consent authority and the Council (if the Council is not the consent authority) of the appointment; and
    - iii) The person having the benefit of the development consent has given at least 2 days notice to the council of the persons intention to commence the erection of the building.

#### **CONDITIONS IMPOSED BY EXTERNAL AUTHORITIES**

10. The following conditions imposed by **Sydney Airport (SACL)** are as follows:
  - a) This location lies within an area defined in schedules of the Civil Aviation (Buildings Control) Regulations which limit the height of structures to 15.24 metres above existing ground height (AEGH) without prior approval of the Civil Aviation Safety Authority.
  - b) No objection has been raised to the erection of this development to a maximum height of 22.0 metres AHD.
  - c) The approved height is inclusive of all lift over-runs, vents, chimneys, aerials, TV antennae, construction cranes etc.
  - d) Should you wish to exceed this height a new application must be submitted.
  - e) Should the height of any temporary structure and/or equipment be greater than 15.24 metres AEGH, a new approval must be sought in accordance with the Civil Aviation (Buildings Control) Regulations Statutory Rules 1988 No. 161.
  - f) Construction cranes may be required to operate at a height significantly higher than that of the proposed development and consequently, may not be approved under the Airports (Protection of Airspace) Regulations.
  - g) Sydney Airport advises that approval to operate construction equipment (ie cranes) should be obtained prior to any commitment to construct.
  - h) "Prescribed airspace" includes "the airspace above any part of either an Obstacle Limitation Surface (OLS) or Procedures for Air Navigation Services – Aircraft Operations (PANS-OPS) surface for the airport (Regulation 6(1)).
  - i) The height of the prescribed airspace at this location is 51 metres above AHD.
11. The following conditions imposed by **Sydney Water** are as follows:
  - a) The approved plans must be submitted to the Sydney Water [Tap in™](#) online service to determine whether the development will affect any Sydney Water sewer or water main, stormwater drains and/or easement, and if further requirements need to be met.
  - b) The Sydney Water Tap in™ online self-service replaces our Quick Check Agents as of 30 November 2015.  
The [Tap in™](#) service provides 24/7 access to a range of services, including:
    - i) building plan approvals
    - ii) connection and disconnection approvals
    - iii) diagrams
    - iv) trade waste approvals
    - v) pressure information
    - vi) water meter installations

- vii) pressure boosting and pump approvals
  - viii) changes to an existing service or asset, e.g. relocating or moving an asset.
- c) A Section 73 Compliance Certificate under the *Sydney Water Act 1994* must be obtained from Sydney Water. It is recommended that applicants apply early for the certificate, as there may be water and sewer pipes to be built and this can take some time. This can also impact on other services and building, driveway or landscape design. Application must be made through an authorised Water Servicing Coordinator. For help either visit [www.sydneywater.com.au](http://www.sydneywater.com.au) > Plumbing, building and developing > Developing > Land development or telephone 13 20 92.

12. The following conditions imposed by **Ausgrid** are as follows:

- a) **Proximity to Existing Network Assets – Overhead Powerlines**  
 There are existing overhead electricity network assets in Swinbourne St and Albert St. Safework NSW Document – Work Near Overhead Powerlines: Code of Practice, outlines the minimum safety separation requirements between these mains/poles to structures within the development throughout the construction process. It is a statutory requirement that these distances be maintained throughout construction. Special consideration should be given to the positioning and operating of cranes and the location of any scaffolding.
- The “as constructed” minimum clearances to the mains should also be considered. These distances are outlined in the Ausgrid Network Standard, NS220 Overhead Design Manual. This document can be sourced from Ausgrid’s website, [www.ausgrid.com.au](http://www.ausgrid.com.au).
- Should the existing overhead mains require relocating due to the minimum safety clearances being compromised in either of the above scenarios, this relocation work is generally at the developers cost. It is also the responsibility of the developer to ensure that the existing overhead mains have sufficient clearance from all types of vehicles that are expected to be entering and leaving the site.
- b) **Underground Cables**  
 There are existing underground electricity network assets in Swinbourne St and Albert St. Special care should also be taken to ensure that driveways and any other construction activities within the footpath area do not interfere with the existing cables in the footpath. Ausgrid cannot guarantee the depth of cables due to possible changes in ground levels from previous activities after the cables were installed. Hence it is recommended that the developer locate and record the depth of all known underground services prior to any excavation in the area. Safework Australia – Excavation Code of Practice, and Ausgrid’s Network Standard NS156 outlines the minimum requirements for working around ausgrid’s underground cables.

13. The following conditions imposed by **Water NSW** are as follows:

General Terms of Agreement

- a) A Water Supply Work Approval from WaterNSW must be obtained prior to commencing dewatering activity on the proposed site. Please complete an Application for approval for water supply works, and/or water use.
- b) An application for a Water Supply Works Approval will only be accepted upon receipt of supporting documentation, and payment of the applicable fee (see

Application fees for New or amended Works and/or Use Approvals). The information required for the processing of the water supply work application may include preparation of a dewatering management plan. Please refer to checklist attached.

- c) If approved, the Approval will be issued for a period of up to 24 months to cover the dewatering requirements during the construction phase. It will include conditions to ensure that impacts are acceptable and that adequate monitoring and reporting procedures are carried out. The Approval will be issued subject to the proponent meeting requirements of other agencies and consent authorities. For example, an authorisation by either Sydney Water or the local Council, depending where the water will be discharged. If contaminants are likely, or are found to be present in groundwater, and are being discharged to stormwater, including high salinities, a discharge licence under the Protection of the Environment Operations Act 1997 (NSW) may also be required.
- d) WaterNSW prefers "tanking" (ie. total water proofing below the seasonal high water table) of basement excavations, and avoids the ongoing extraction of groundwater after the initial construction phase. It is also advised to adopt measures to facilitate movement of groundwater post construction (eg. a drainage blanket behind the water-proof membrane).
- e) If the basement is not "tanked", the proponent will require a Water Access Licence (WAL) and need to acquire groundwater entitlements equivalent to the yearly ongoing take of groundwater. Please note: Acquiring groundwater entitlements could be difficult, and may cause delay in project completion. If a WAL is required, please complete an Application for a new water access licence with a zero share component.

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

14. A dilapidation report, including a photographic survey prepared by a Practising Structural Engineer, shall be undertaken of all properties and Council infrastructure, including but not limited to all buildings, 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.
15. Prior to commencement of any works, application(s) shall be made to Council's Customer Services Counter and obtained the following approvals and permits on Council's property/road reserve under Road Act 1993 and Local Government Act 1993:

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

- 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,
- Permit to install temporary ground anchors in public land,
- Permit to discharge ground water to Council's stormwater drainage system,

- 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,
  - Permit to place skip/waste bin on footpath and/or nature strip, and
  - Permit to use any part of Council's road reserve, work zone or other Council lands.
  - Permit to stand mobile cranes and/or other major plant on public roads and all road reserve area. It should be noted that the issue of such permits may involve approval from RMS and NSW Police. In some cases, the above Permits may be refused and temporary road closures required instead which may lead to longer delays due to statutory advertisement requirements.
16. Erosion and sediment control devices shall be installed and in function prior to the commencement of any demolition, excavation or construction works upon the site in order to prevent sediment and silt from site works (including demolition and/or excavation) being conveyed by stormwater into public stormwater drainage system, natural watercourses, bushland, trees and neighbouring properties. In this regard, all stormwater discharge from the site shall meet the legislative requirements and guidelines. These devices shall be maintained in a serviceable condition AT ALL TIMES throughout the entire demolition, excavation and construction phases of the development and for a minimum one (1) month period after the completion of the development, where necessary.
17. A Soil and Water Management Plan shall be prepared in accordance with Soil and Water Management for Urban Development Guidelines produced by the Southern Sydney Region Organisation of Councils. A copy of the plan must be submitted to Council. The Plan must include details of the proposed erosion and sediment controls to be installed on the building site. A copy of the Soil and Water Management Plan must be kept on-site at all times and made available on request. Sediment control devices shall not be located beneath the driplines of trees, which are to be retained.
18. The vehicular entry/exits to the site must be protected from erosion and laid with a surface material which will not wash into the street drainage system or watercourse.
19. For any water from site dewatering to be permitted to go to the stormwater, the water must meet the relevant default guideline values (DGVs) under the Australian & New Zealand Guidelines for Fresh & Marine Water Quality. The results of all testing must be completed by a NATA accredited laboratory.

All laboratory results must be accompanied by a report prepared by a suitably qualified person indicating the water meets these guidelines and is acceptable to be released into council's stormwater system. If it is not acceptable, details of treatment measures to ensure that the water is suitable for discharge to council's stormwater must be provided in this report.

Reports must be provided to council prior to discharge of any groundwater to the stormwater system.



20. To ensure that relevant engineering and water quality provisions are met during the period of dewatering for construction, prior to any water from site dewatering to be permitted to go to council's stormwater system a permit to discharge to the stormwater shall be obtained from Council. Dewatering shall not commence until this is issued by Council.
21. Prior to the commencement of works, the applicant must inform Council, in writing, of:
  - a) The name of the contractor, and licence number of the licensee who has contracted to do, or intends to do, the work: or
  - b) The name and permit number of the owner-builder who intends to do the work;
  - c) The Council also must be informed if: -
    - i) A contract is entered into for the work to be done by a different licensee; or
    - ii) Arrangements for the doing of the work are otherwise changed.
22. Prior to the commencement of works, 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.
23. Prior to the commencement of works, separate permits are required to be obtained and approved by Council for all works including but not limited to road opening, road and footpath closure, stand and operate a registered vehicle or plant, occupy road with unregistered item, work zone, hoarding, shoring support (anchoring), tower crane operation, public land access, temporary dewatering, and any excavation and works proposed to be undertaken on public land.
24. The site to which this approval relates must be adequately fenced or other suitable measures employed that are acceptable to the Principal Certifying Authority to restrict public access to the site and building works. Such fencing or other measures must be in place before the approved activity commences.
25. This Consent shall not preclude the demolisher from giving notice to other statutory authorities, such as Sydney Water Corporation, WorkCover, etc.
26. 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.
27. If an excavation associated with the proposal extends below the level of the base of the footings of a building on an adjoining allotment of land or the common boundary fence the person causing the excavation to be made:
  - a) Must preserve and protect the building/ fence from damage; and,
  - b) If necessary, underpin and support such building in an approved manner;
  - c) Must at least be 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of the intention to do so to the owner of the adjoining allotment of land and, furnish particulars of the excavation to the owner of the building being erected or demolished;

- d) Existing structures and or services on this and adjoining properties are not endangered during any demolition excavation or construction work associated with the above project. The applicant is to provide details of any shoring, piercing, or underpinning prior to the commencement of any work. The construction shall not undermine, endanger or destabilise any adjacent structures.
  - e) If the soil conditions required it:
    - i. Retaining walls associated with the erection of a building (swimming pool) or other approved methods of preventing movement or other approved methods of preventing movement of the soil must be provided and:-
    - ii. Adequate provision must be made for drainage.
28. Prior to the commencement of demolition work a licensed demolisher who is registered with WorkCover NSW must prepared a Work Method Statement to the satisfaction of the Principal Certifying Authority (Council or an accredited certifier) and a copy shall be sent to Council (if it is not the PCA). A copy of the Statement shall also be submitted to WorkCover NSW.

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

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

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

29. Prior to the issue of a Construction Certificate, construction details of all proposed planter boxes in the development in particular the corten steel planters proposed on roof level, FFL 18.25, as indicated in approved architectural plan drawing DA014 prepared by Architects Nicholas + Associates, issue L, dated 05th August 2019 shall be submitted

to Bayside Council Landscape Architect for approval. The applicant shall prove that the proposed corten steel planters proposed in architectural and landscape plans are capable of holding the projected planting. Otherwise an alternative construction method shall be proposed.

30. The final landscape plan shall be generally in accordance with the approved landscape plan (refer to condition 1) and comprise detailed landscape construction documentation (plans and specifications) to be submitted to, and approved by Bayside Council's Landscape Architect prior to the issue of a Construction Certificate. 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) Elevated planter box sectional details and drainage details. All planter box depths and dimensions shall be in accordance with Council's DCP and capable of supporting medium and large trees.
  - c) Indicate the location of all basement structures relative to the landscape areas.
  - d) Specifications detailing soil and mulch finishes, root barriers, irrigation, edging and other landscape handworks such as retaining walls, steps, planter walls, feature walls, skateboard restrictions, tree pits, tree grates, tree guards, tree pit treat
  - e) Areas of paving, schedule of materials, edge treatments, tactile and sectional construction details.
  - f) Irrigation details in all planting proposed on slabs.
  - g) 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).
31. 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 90 mm, 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.
  - d) An inspection of the waterproofing and sealing of edges is required by the
  - e) Certifier prior to backfilling with soil.
  - f) 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.
- g) Finish externally with a suitable paint, render or tile to coordinate with the colour schemes and finishes of the building.
  - h) All planter boxes shall be irrigated, and shall have the required depth to sustain the proposed plant species.
32. The private open space areas 2.01, 2.02 and 2.10 on the Roof level plan must be deleted (including the stairs from each of the respective apartments) and substituted as communal open space. Amended plans demonstrating compliance with this condition shall be provided to the satisfaction of the Certifying Authority prior to the issue of a Construction Certificate.
33. Prior to the issue of a Construction Certificate, at the proposed point of construction site entry, photographic survey showing the existing conditions of Council's and RMS infrastructure shall be submitted to Council and Principal Certifying Authority. The survey shall detail the physical conditions and identify any existing damages to the roads, kerbs, gutters, footpaths, driveways, street trees, street signs and any other Council assets fronting the property and extending to a distance of 50m from the development. Failure to do so may result in the applicant/developer being liable for any construction related damages to these assets. Any damage to Council's infrastructure during the course of this development shall be restored at the applicant's cost
34. Prior to the issue of a Construction Certificate, detailed drainage design plans for the management of stormwater are to be submitted to the Principal Accredited Certifier for assessment and approval. Design certification and drainage design calculations are to be submitted with the plans. Botany Bay DCP Part 10— Stormwater Management Technical Guidelines (SMTG) sets out the minimum documentation requirements for detailed design plans. Stormwater management requirements for the site, including the final discharge/end connection point, must comply with Botany Bay DCP Part 3G and Part 10— Stormwater Management Technical Guidelines. All drawings shall correspond with the approved architectural plans.

The detailed design plans shall incorporate, but not be limited to, the following:

- Incorporate the provisions generally made in the stormwater management plans prepared by LP Consulting Australia PTY LTD, Job No 2018-1533, Issue C, dated 25.07.19 with the revisions specified below, and
- The On-Site Infiltration System shall be designed according to Part 5 of the SMTG and shall be designed to detain and absorb all runoff generated by the development for all storm events up to and including the 1% Annual Exceedance Probability (AEP) design storm events, and for all durations from 6 minutes to 72 hours inclusive, and
- The onsite infiltration system is to be designed to ensure that adequate access for maintenance is available. An absorption tank system will be a more preferable design for the development to provide for maintenance access, and
- The infiltration system must have a minimum 2.0m setback from any adjacent private property boundary. Any part of the proposed building within 3m of the proposed infiltration system shall be designed with consideration for the close proximity of the infiltration system, and
- All subsurface structures must be designed with a waterproof retention system (ie tanking and waterproofing) with adequate provision for future fluctuation of the water table. Subsoil drainage around the subsurface structure must allow

free movement of groundwater around the structure and must not be connected to the internal drainage system, and

- A pump-out system shall be provided for the basement, and
- In accordance with Botany Bay DCP SMTG section 4, a minimum capacity 10000L of Rainwater Tank(s) shall be provided for the site. The rainwater tank(s) must be connected all toilets, the cold water tap that supplies each clothes washer in the development and any outdoor taps/landscape irrigation within the development. In order to reduce pollutants entering the tank, a first flush device to divert minimum 1mm initial runoff from the roof area bypassing the tank shall be provided. Overflow from the rainwater tank shall be directed to the site drainage system, and
- Detailed calculations including computer modelling supporting the proposal.

35. Prior to the issue of a Construction Certificate, details of the approved street awning, including plans and sections, must be provided to the Certifying Authority for assessment and approval. The awning shall be consistent with the approved development application plans.

The details must include:

- a) A minimum setback of 600mm from the face of the kerb, minimum Fascia height 600mm, minimum soffit height 3.3m for sloping sites maximum step of 900mm. The awnings must be entirely self-supporting; posts are not permitted, and
- b) All stormwater is to be collected and connected to the street gutter. In this regard awning downpipes for drainage are to be fully concealed within or recessed into the ground floor frontage of the building. Awning gutters are to be constructed so that they are not visible from the footpath or are integral to the awning structure, and
- c) The design and certification by a Structural Engineer for Roof Category R1 in accordance with AS/NZS 1170.1: 2002, AS/NZS 1170.0: 2002, and AS/NZS 1170.3: 2011. The design must incorporate all loads including dead loads, live loads, wind load (lateral, uplift, and downward pressure), and potential impact load, and
- d) If the awning(s) is to be built over an exit that would be utilised in an emergency it must be constructed of non-combustible material, and
- e) Lighting is required and must comply with AS/NZS 1158.3.1: 2005 and AS/NZS 1158.0: 2005. Lighting must be recessed into the awning and be integral to its structure with all wiring and conduits concealed, and

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

36. To ensure that utility authorities and Council are advised of any effects to their infrastructure by the development, the applicant must:
- a) Carry out a survey of all utility and Council services within the site including relevant information from utility authorities and excavation if necessary to determine the position and level of services,
  - b) Negotiate with the utility authorities (eg AusGrid, Sydney Water, Telecommunications Carriers) and Council in connection with:
    - i) The additional load on the system, and

- ii) The relocation and/or adjustment of the services affected by the construction.
- c) The Ausgrid lighting poles will need to be decommissioned and new lighting poles must be constructed satisfying V2 lighting requirements any other requirements as specified by Council, RMS and any other service provider,
- d) All above ground utilities must be relocated underground in accordance with Ausgrid and any other affected and relevant service provider, and
- e) All underground and above ground infrastructure shall be constructed as specified by Ausgrid, RMS, Council and any other affected service provider. The location of the new electrical pillars, new lighting poles, any new pits and trenches for utilities shall be confirmed with Council prior to the issue of a Construction Certificate.

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

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

37. 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 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.

A Public Domain Frontage Design must be prepared by suitably qualified professionals for assessment and approval by Council's Public Domain Team for all frontage works that are required to be constructed within the public domain and which are subject to approval pursuant to Section 138 of the Roads Act 1993. All frontage works shall be in accordance with Council technical manuals, master plans, town centre plans, Australian standards and standard design drawings and specifications.

Public domain frontage works shall include, but not be limited to, civil, drainage, landscaping, undergrounding of services, lighting, traffic signage, line marking, parking and traffic devices.

A 'public domain frontage works application' must be submitted to Bayside Council's Customer Service Centre for assessment of all required works within the road reserve, upon payment of the relevant fee, prior to the issue of a Construction Certificate.  
Note: Preliminary consultation with Council's public domain team is recommended.

38. Prior to the issue of a Construction Certificate, a Construction Management Program must be submitted to, assessed and approved by the Principal Accredited Certifier prior to the issue of any Construction Certificate. The program must detail:

- a) The proposed method of access to and egress from the site for construction vehicles, including access routes through the Council area and the location and type of temporary vehicular crossing for the purpose of minimising traffic congestion and noise in the area, with no access across public parks or public reserves being allowed,
  - b) The proposed phases of construction works on the site and the expected duration of each construction phase,
  - c) The proposed order in which works on the site will be undertaken, and the method statements on how various stages of construction will be undertaken,
  - d) The proposed manner in which adjoining property owners will be kept advised of the timeframes for completion of each phase of development/construction process,
  - e) The proposed method of loading and unloading excavation and construction machinery, excavation and building materials, formwork and the erection of any part of the structure within the site. Wherever possible mobile cranes should be located wholly within the site,
  - f) The proposed areas within the site to be used for the storage of excavated materials, construction materials and waste containers during the construction period,
  - g) The proposed method/device to remove loose material from all vehicles and/or machinery before entering the road reserve, any run-off from the washing down of vehicles shall be directed to the sediment control system within the site,
  - h) The proposed method of support to any excavation adjacent to adjoining properties and the road reserve. The proposed method of support is to be designed and certified by an Accredited Certifier (Structural Engineering), or equivalent,
  - i) Proposed protection for Council and adjoining properties, and
  - j) The location and operation of any on site crane. Please note that a crane may require prior approval from Sydney Airports Corporation.
  - k) The location of any Construction Work Zone (if required) approved by Council's Traffic Committee, including a copy of that approval.
  - l) Obtain Permits required under this consent.
39. Prior to the issue of a Construction Certificate, a detailed Traffic Management Plan for the pedestrian and traffic management of the site during construction must be prepared and submitted to the Principal Accredited Certifier for assessment and approval. The plan must:
- be prepared by a RMS accredited consultant,
  - address, but not be limited to, the following matters:
    - ingress and egress of vehicles to the site;
    - loading and unloading, including construction zones;
    - predicted traffic volumes, types and routes; and
    - pedestrian and traffic management methods.
  - nominate a contact person who is to have authority without reference to other persons to comply with instructions issued by Council's Traffic Engineer or the Police, and
  - if required, implement a public information campaign to inform any road changes well in advance of each change. The campaign may be required to be approved by the Traffic Committee.

*Note: Any temporary road closure shall be confined to weekends and off-peak hour times and is subject to Council's Traffic Engineer's approval. Prior to implementation of any road closure during construction, Council shall be advised of these changes and Traffic Control Plans shall be submitted to Council for approval. This Plan shall include*

*times and dates of changes, measures, signage, road markings and any temporary traffic control measures.*

40. Prior to the issue of a Construction Certificate, the following changes are required to be made and shown on the Construction Certificate plans:
  - a) Parking space number 1 is to be allocated as a visitor parking space and shall be designed as a car wash bay. A tap shall be provided along with a sign fixed to the wall saying 'Visitor Car Space and Car Wash Bay'. The car wash bay must be bunded in accordance with AS1940 – 1993 and AS/NZS 4452 – 1997 with direct connection to the sewer in accordance with a Sydney Water trade waste agreement.
  - b) Parking spaces numbered 2, 3 & 4 are to be redesigned as two accessible spaces, with spaces 2 and 4 being the accessible spaces and space 3 being the shared zone with a bollard as per AS2890.6.
  - c) Parking space number 2 is to be allocated as a visitor parking space.
  - d) Parking space number 3 is no longer to be allocated to any unit/commercial tenancy.
  - e) Parking space number 9 is no longer to be designated as a car wash bay.
  - f) Parking spaces numbered 14 & 15 are to be allocated to the residential component of the development for the residential units.
  - g) The retail loading bay is to be shared between the commercial and residential components of the development. This loading bay is to be designated as a van loading bay (B99 vehicle as stipulated in AS2890.1).
41. The subdivision plans listed in condition 1 shall be updated to reflect compliance with the car parking requirements in condition 40.
42. All vertical plumbing, other than roofwater heads and downpipes, shall be concealed within the brickwork of the building. Any electrical kiosks or fire booster valves shall be located in unobtrusive locations toward site boundaries and away from entrances into the building. Utilities shall be softened with landscaping so as not to detract from the overall appearance of the development and amenity of the streetscape. Details demonstrating compliance with this requirement shall be submitted to the Principal Certifying Authority (PCA) prior to the issue of a Construction Certificate.
43. 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.
44. 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 a Construction Certificate, implemented prior to issue of the Occupation Certificate, and maintained for the lifetime of the development:
  - a) Monitored CCTV facilities shall be implemented throughout the development. Areas of focus include the basement car park (including entry and exits), main entry areas to the development and garbage/storage areas.
  - b) A lighting maintenance policy shall be established for the development. Lighting shall be designed to the Australian and New Zealand Lighting Standards. Australia and New Zealand Lighting Standard 1158.1 - Pedestrian, requires lighting engineers and designers to consider crime risk and fear when selecting lamps and lighting levels.
  - c) Security mirrors shall be installed within corridors and on blind corners to enable users to see around blind corners.
  - d) Graffiti resistant materials shall be used to ground level external surfaces.



- e) Intercom facilities shall be installed at all vehicular and pedestrian entry/exit points to enable residents to communicate and identify with people prior to admitting them to the development.
  - f) The front window of the ground floor tenancy must be kept free of shelves, and a maximum of 15% of the window display area may be covered with promotional materials to ensure passive surveillance is maintained to and from the tenancy.
45. Prior to the issue of a Construction Certificate, the following required section(s) are to be submitted to and approved by the Principal Certifying Authority:
- a) The single lane entry ramp to the basement from the ground floor requires traffic management to manage two-way movement. To this effect a traffic signal management system (including traffic lights and vehicular sensors) to manage conflicting two way movements shall be designed and certified by a suitably qualified traffic engineer for implementation within the parking facility.
  - b) A queueing assessment and probability of conflict analysis must be submitted detailing the 95th Percentile queue length expected at the top of the proposed single lane ramp and the probability of a conflict in any given AM or PM peak hour.
  - c) Line marking and signage must be provided at both the entry to the one way ramp on the ground floor and at the base of the one way ramp in the basement of the development to clearly delineate waiting bay areas that provide for passing of vehicles entering/exiting the basement car park via the ramp. The function of these waiting areas must be demonstrated using swept paths for a B85 passing a B99 vehicle with appropriate clearances as per AS/NZS 2890.1:2004.
  - d) The above requirements are to be designed and certified by a suitably qualified engineer experienced in traffic management, parking design and traffic signalling systems.
46. Prior to the issue of a Construction Certificate, the following required section(s) are to be submitted to and approved by the Principal Certifying Authority:
- All driveways/access ramps/vehicular crossings shall conform with Australian Standards AS 2890.1 and Council requirements,
  - The applicant shall provide longitudinal sections along the extremities and the centre line of each internal driveway/access ramp at a scale of 1:25. These long sections shall extend from the horizontal parking area within the property to the centre line of the roadway. The sections shall also show the clear height from the ramp to any overhead structure.
  - Swept path analysis (utilising a recognised computer software) shall be provided for vehicular circulation areas, ramps, residential parking spaces, commercial parking spaces, indicating they can enter and exit the property in a forward direction
  - Internal height clearance shall be designed throughout the car park at minimum in accordance with AS/NZS 2890.1:2004.
  - A minimum of five (5) bicycle parking spaces are to be provided for the development on the ground floor and designed in accordance with AS 2890.3:2015.
  - The design of the car parking facility is to be certified by a suitably qualified traffic engineer as being in accordance with Australian Standard 2890 parking series.

47. Prior to the issue of a Construction Certificate, the following required section(s) are to be submitted to and approved by the Principal Certifying Authority:
- At least four (4) accessible car parking spaces shall be provided and designed as specified in Australian Standard 2890.6, SEPP 65 Design Code and Council requirements, and
  - All off street accessible parking shall have access to the adjacent road(s) and to the communal open space as per Australian Standards 2890.6 and Council requirements, and
  - All Accessible parking spaces shall be located within close proximity and easy access to the lift systems proposed for the building as per AS2890.6 and AS4299.
48. The subsurface structure must be designed with a waterproof retention system (ie tanking and waterproofing) with adequate provision for future fluctuation of the water table. The subsurface structure is required to be designed with consideration of uplift due to water pressure and "flotation" (buoyancy) effects. Subsoil drainage around the subsurface structure must allow free movement of groundwater around the structure, but must not be connected to the internal drainage system. The design of subsurface structure, tanking and waterproofing, and subsoil drainage must be undertaken by a suitably experienced Chartered Professional Engineer(s). Design details and construction specifications must be included in the documentation accompanying the Construction Certificate.
49. Prior to the issue of a Construction Certificate, 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 chartered professional geotechnical engineer must:
- a) That the construction methodology, parameters and all recommendations contained in the Geotechnical and Acid Sulfate Soil Investigation Report prepared by STS GeoEnvironmental Pty Ltd, Report No: 19/1260, project No:22264/1916D-G, dated June 2019, (including any further geotechnical testing required as deemed necessary by the geotechnical engineer) shall be implemented and relied upon during the preparation of the construction certificate documentation and the construction of the development,
  - b) Provide a certificate that the construction certificate plans are satisfactory from a geotechnical perspective, and
  - c) Prepare a Construction Methodology report demonstrating that the proposed construction methods (including any excavation, and the configuration of the built structures) will have no adverse impact on any surrounding property and infrastructure. The report must be submitted with the application for a Construction Certificate 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) 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.

50. Prior to the issue of a Construction Certificate, a certificate from a practicing Structural Engineer, registered with NER, must be submitted to the Principal Accredited Certifier stating that the subsurface structural components located on the boundary of the public road and neighbouring properties, including but not limited to the slabs, walls and columns, have been designed in accordance with all SAA Codes for the design loading from truck and vehicle loads. An engineering design certificate is required to be submitted for the design of the Basement system including shoring wall. The certificate shall be issued by a Chartered Professional Engineer competent in Structural engineering.

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

51. A suitably qualified engineer is to certify that the structure can withstand the forces of floodwater, scour, debris and buoyancy in a 1% AEP flood event. All building materials shall be flood resistant, or flood compatible to a height of 500mm above the 1% AEP flood, or flow level. All internal electrical switches, power points or similar utilities liable to flood damage shall be set at a minimum of 500mm above the 1% AEP flood, or flow level. Details shall be provided and approved prior to the issue of a Construction Certificate.
52. Flow through open form fencing (louvres or pool fencing) is required for all new front fencing to albert street and all internal fences and gates up to the 1% AEP flood level. Any new boundary fences adjoining private property shall have an 80mm gap at the bottom to allow flows through. Documentation shall be provided to the Certifying Authority prior to the issue of a Construction Certificate.
53. Prior to the issue of a Construction Certificate, the applicant shall contact "Dial Before You Dig" to obtain a utility service diagram for, and adjacent to the property. The sequence number obtained from "Dial Before You Dig" shall be forwarded to Principal Certifying Authority. All utilities within the work zone shall be protected during construction. Any adjustments or damage to public utilities/services as a consequence of the development and associated construction works shall be restored or repaired at the applicant's expense.
54. Prior to the issue of a Construction Certificate, the approved plans must be submitted to Sydney Water Tap in™ online service to determine whether the development will affect any Sydney Water sewer or water main, stormwater drains and/or easement, and if further requirements need to be met. Sydney Water's Tap in™ online service is available at: <https://www.sydneywater.com.au/SW/plumbing-building-developing/building/sydney-water-tap-in/index.htm>
55. If neighbouring properties or roadway are to be utilised for excavation support, the legal rights of any adjoining properties must be respected including for permanent and temporary excavation supports. In this regard, the written permission of the affected property owners must be obtained and a copy of the owner's consent for excavation support or other material in adjacent lands must be lodged to the principal certifier.

56. Where excavation support materials are proposed to be used in public land, an application must be made to Council for approval under Section 138 of the Roads Act 1993, via a permit application. The submission would need to be supported by an engineering report prepared by a suitably qualified engineer, with supporting details addressing the following issues:

Demonstrate that any structures will not adversely affect public infrastructure, and the proposed supports within the road reserve are of an adequate depth to ensure no adverse impact on existing or potential future service utilities in the road reserve. All existing services must be shown on a plan and included on cross-sectional details where appropriate.

The report must be supported by suitable geotechnical investigations to demonstrate the efficacy of all design assumptions.

57. Prior to the issue of a Construction Certificate, a design verification statement shall be submitted to the PCA from a qualified designer certifying that the development achieves or improves the design quality of the development as shown in the plans and specifications in respect of which the construction certificate was issued, having regard to Schedule 1 of *State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development*.
58. Prior to the issue of a 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.
59. The applicant must prior to the obtainment of the approved plans and specifications pay the following fees:-
- |    |                            |              |
|----|----------------------------|--------------|
| a) | Footpath Crossing Deposit  | \$213,000.00 |
| b) | Development Control        | \$3,081.00   |
| c) | Section 7.11 Contributions | \$320,000.00 |
60. A Section 7.11 contribution of \$320,000.00 shall be paid to Council. The contribution is calculated according to the provisions contained within Council's adopted Former City of Botany Bay s7.11 Development Contributions Plan 2016 (Amendment 1) and having regard to the Ministerial Directive of 21 August 2012. The amount to be paid is to be adjusted at the time of payment, in accordance with the review process contained in the Contributions Plan. The contribution is to be paid prior to the issue of a Construction Certificate. The contributions are only used towards the provision or improvement of the amenities and services identified below:
- |                 |                            |              |
|-----------------|----------------------------|--------------|
| a)              | Community Facilities:      | \$26,194.57  |
| b)              | Recreation and Open Space: | \$270,253.34 |
| c)              | Transport Facilities:      | \$21,222.11  |
| d)              | Administration:            | \$2,329.98   |
| Total in 2018/9 |                            | \$320,000.00 |
61. Prior to the issue of a Construction Certificate, the applicant lodge a Builder's Damage Deposit and Performance Bond of **\$213,000.00** (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.

62. An easement shall be created over the car parking area (eastern side of basement level and ground level) to facilitate future vehicular access to the adjoining site at No.19 Swinbourne Street. Prior to the issue of a Construction Certificate for the basement level, construction details shall be provided to the Certifying Authority demonstrating that the proposed structure is able to achieve the required link without affecting the structural stability of the building. The easement is to be registered prior to issue of the subdivision certificate.
63. Prior to the issue of a Construction Certificate, a plan (written and/or diagrammatic) shall be submitted and approved by the Principal 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.

#### **CONDITIONS WHICH MUST BE SATISFIED DURING WORKS**

64.
  - a) The applicant shall conduct all construction works and any related deliveries/activities wholly within the site. If any use of Council's road reserve is required, approval and permits shall be obtained from Council.
  - b) Construction operations such as brick cutting, washing tools or brushes and mixing mortar shall not be carried out on park/road reserve or in any other locations which could lead to the discharge of materials into the stormwater drainage system or onto Council's lands.
  - c) Hosing down or hosing/washing out of any truck (concrete truck), plant (eg concrete pumps) or equipment (eg wheelbarrows) on Council's road reserve or other property is strictly prohibited. Fines and cleaning costs will apply to any breach of this condition.
  - d) Pavement surfaces adjacent to the ingress and egress points are to be swept and kept clear of earth, mud and other materials at all times and in particular at the end of each working day or as directed by Council's Engineer.
65. Trees 1,2,3,4 and 7 must be retained and protected in accordance with Arboricultural Impact Assessment Report prepared by Bryce Claassens, dated 26 July 2019. The tree protection requirements detailed within Part 11 of this report must be complied with at all times.
66. During demolition, excavation and construction, care must be taken to protect Council's infrastructure, including street signs, footpath, kerb, gutter and drainage pits etc. Protecting measures shall be maintained in a state of good and safe condition throughout the course of demolition, excavation and construction. The area fronting the site and in the vicinity of the development shall also be made safe for pedestrian and vehicular traffic at all times. Any damage to Council's infrastructure (including damage caused by, but not limited to, delivery vehicles, waste collection, contractors, sub-contractors, concrete delivery vehicles) shall be fully repaired in accordance with Council's specification and AUS-SPEC at no cost to Council.
67. During demolition, excavation, construction and deliveries, access to the site shall be available in all weather conditions. The area shall be stabilised and protected from erosion to prevent any vehicles (including deliveries) tracking soil materials onto street drainage system/watercourse, Council's lands, public roads and road-related areas.

Hosing down of vehicle tyres shall only be conducted in a suitable off-street area where wash waters do not enter the stormwater system or Council's land.

68. During construction, the applicant shall ensure that all works and measures have been implemented in accordance with approved Traffic Management Plan and Construction Management Plan at all times.
69. 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. A copy of any written direction required by this condition must be provided to the Principal Certifier 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.

70. Inspections must be conducted by Council's Engineer at the following occasions:
  - a) Formwork inspection of driveway layback and adjacent kerb and gutter prior to laying of concrete,
  - b) Formwork inspection of Council's kerb and gutter prior to laying of concrete,
  - c) Formwork inspection of Council's footpath prior to laying of concrete,
  - d) Final inspection of driveway layback and adjacent kerb and gutter,
  - e) Final inspection of Council's kerb and gutter,

f) Final inspection of Council's footpath.

71. 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 Council's stormwater system. If it is not acceptable, details of treatment measures to ensure that the water is suitable for discharge to council's stormwater must be provided in this report. Reports must be provided to council prior to discharge of any groundwater to the stormwater system.
72. If an excavation associated with the proposal extends below the level of the base of the footings of a building and/or structure and/or road 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, piling, or underpinning prior to the commencement of any work. The construction shall not undermine, endanger or destabilise any adjacent structures.
  - e) If the soil conditions required it:
    - i. Retaining walls associated with the erection of a building or other approved methods of preventing movement or other approved methods of preventing movement of the soil must be provided and:-
    - ii. Adequate provision must be made for drainage.
73. Any new information that comes to light during demolition or construction which has the potential to alter previous conclusions about site contamination and remediation must be notified to Council and the accredited certifier immediately.
74. To prevent contaminated soil being used onsite and to ensure that it is suitable for the proposed land use, all imported fill shall be appropriately certified material and shall be validated in accordance with the:
  - a) Office of Environment and Heritage (OEH) approved guidelines;
  - b) Protection of the Environment Operations Act 1997; and
  - c) Protection of the Environment Operations (Waste) Regulation 2014.

All imported fill shall be accompanied by documentation from the supplier which certifies that the material has been analysed and is suitable for the proposed land use.
75. All contractors shall comply with the following during all stages of demolition and construction:
  - A Waste Container on Public Road Reserve Permit must be obtained prior to the placement of any waste container or skip bin in the road reserve (i.e. road or footpath or nature strip). Where a waste container or skip bin is placed in the

- road reserve without first obtaining a permit, the Council's fees and penalties will be deducted from the Footpath Reserve Restoration Deposit. Permits can be obtained from Council's Customer Service Centre.
- A Road Opening Permit must be obtained prior to any excavation in the road reserve (i.e. road or footpath or nature strip). Where excavation is carried out on the road reserve without first obtaining a permit, the Council's fees and penalties will be deducted from the Footpath Reserve Restoration Deposit. Permits can be obtained from Council's Customer Service Centre.
  - A Hoarding Permit must be obtained prior to the erection of any hoarding (Class A or Class B) in the road reserve (i.e. road or footpath or nature strip). Where a hoarding is erected in the road reserve without first obtaining a permit, the Council's fees and penalties will be deducted from the Footpath Reserve Restoration Deposit. Permits can be obtained from Council's Customer Service Centre.
  - A Crane Permit must be obtained from Council prior to the operation of any activity involving the swinging or hoisting of goods across or over any part of a public road by means of a lift, hoist or tackle projecting over the footway. Permits can be obtained from Council's Customer Service Centre.
  - A Permit to Dewater or Pump Out a site must be obtained prior to the discharge of pumped water into the road reserve, which includes Council stormwater pits and the kerb and gutter. Permits can be obtained from Council's Customer Service Centre.
76. 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.
  77. 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.
  78. All disturbed areas shall be stabilised against erosion within 14 days of completion, and prior to removal of sediment controls.
  79. 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 councils stormwater system a permit to discharge to the stormwater must be obtained from Council. Dewatering must not commence until this is issued by Council.
  80. 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.
  81. The principal contractor or owner builder must install and maintain water pollution, erosion and sedimentation controls in accordance with:
    - a) The Erosion and Sediment Control Plan;
    - b) "Managing Urban Stormwater - Soils and Construction" (2004) Landcom ('The Blue Book'); and
    - c) Protection of the Environment Operations Act 1997.



82. The proposed development shall comply with the following:
  - a) A sign must be erected in a prominent position on any work site on which work involved in the erection or demolition of a building is being carried out:
    - i) Stating that unauthorised entry to the work site is prohibited;
    - ii) Showing the name of the person in charge of the work site and a telephone number at which that person may be contacted outside working hours;
    - iii) The Development Approval number; and
    - iv) The name of the Principal Certifying Authority including an afterhour's contact telephone number.
  - b) Any such sign is to be removed when the work has been completed.
83. The demolisher shall comply with Australian Standard 2601 - 2001 "Demolition of Structures".
84. Precautions to be taken shall include compliance with the requirements of the WorkCover Authority of New South Wales, including but not limited to:
  - a) Protection of site workers and the general public.
  - b) Erection of hoardings where appropriate.
  - c) Asbestos handling and disposal where applicable.
  - d) Any disused service connections shall be capped off.
  - e) The disposal of refuse is to be to an approved waste disposal depot.
85. Hazardous or Special Wastes arising from the demolition process shall be removed and disposed of in accordance with the requirements of WorkCover NSW and the Department of Environment, Climate Change and Water and with the provisions of the:
  - a) Occupational Health and Safety Act, 2000;
  - b) Occupational Health and Safety Regulation 2001;
  - c) Protection Of the Environment Operations Act 1997 (NSW); and
  - d) NSW Department of Environment and Climate Change Waste Classification Guidelines (2008).
86. Any material containing asbestos found on site during the demolition process the shall be removed and disposed of in accordance with:
  - a) WorkCover NSW requirements. An appropriately licensed asbestos removalist must complete all asbestos works if they consist of the removal of more than 10m2 of bonded asbestos and/or any friable asbestos;
  - b) Protection of the Environment Operations Act 1997;
  - c) Protection of the Environment Operation (Waste) Regulation;
  - d) DECC Waste Classification Guidelines 2008.
  - e) No demolition materials shall be burnt or buried on the site.
87. The demolition and disposal of materials incorporating lead such as lead paint and dust shall be conducted in accordance with:
  - a) AS2601-2001 - Demolition of structure.
  - b) AS4361.2-1998 – Guide to Lead Paint Management-Residential and Commercial Buildings
88. In order to ensure safe handling of asbestos materials, the re-use or sale of asbestos building materials is strictly prohibited.

89. Results of the monitoring of any field parameters such as soil, groundwater, surface water, dust or noise measurements shall be made available to Council Officers on request throughout the remediation and construction works.
90. No demolition materials shall be burnt or buried on the site.
- 91.
- a) To ensure that utility authorities and Council are advised of any effects to their infrastructure by the development, the applicant shall: -
    - i) 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.
    - ii) Negotiate with the utility authorities (eg Ausgrid, Sydney Water and Telecommunications Carriers) and Council in connection with: -
      - 1 1 The additional load on the system; and
      - 2 2 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.
92. Should the demolition 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 Council's road reserve must also have prior approval of Council.
93. 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.
94. 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.
- 95.
- a) 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;
  - b) Existing structures and or services on this and adjoining properties are not endangered during any demolition excavation or construction work associated with the above project. The applicant is to provide details of any shoring, piercing, or underpinning prior to the commencement of any work. The construction shall not undermine, endanger or destabilise any adjacent structures.
  - c) As the development involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
    - i) Protect and support the adjoining premises from possible damage from the excavation, and
    - ii) Where necessary, underpin the adjoining premises to prevent any such damage.

96. The following shall be complied with during construction and demolition:
- a) Construction Noise  
Noise from construction activities associated with the development shall comply with the NSW Environment Protection Authority's Environmental Noise Manual – Chapter 171 and the Protection of the Environment Operations Act 1997.
  - b) Level Restrictions
    - i) Construction period of 4 weeks and under:  
The L10 sound pressure level measured over a period of not less than 15 minutes when the construction site is in operating must not exceed the background level by more than 20dB(A).
    - ii) Construction period greater than 4 weeks and not exceeding 26 weeks:  
The L10 sound pressure level measured over a period of not less than 15 minutes when the construction site is in operating must not exceed the background level by more than 10 dB(A).
  - c) Time Restrictions
    - i) Monday to Friday 07:00am to 05:00pm
    - ii) Saturday 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.
97. 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.
- 98.
- 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 off-street 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.
  - e) 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.
99. Construction Operations:
- a) the applicant shall conduct all construction works and any related deliveries/activities wholly within the site. If any use of Council's road reserve is required, approval and permits shall be obtained from Council.
  - b) Construction operations such as brick cutting, washing tools or brushes and mixing mortar shall not be carried out on park/road reserve or in any other locations which

- could lead to the discharge of materials into the stormwater drainage system or onto Council's lands.
- c) Hosing down or hosing/washing out of any truck (concrete truck), plant (eg concrete pumps) or equipment (eg wheelbarrows) on Council's road reserve or other property is strictly prohibited. Fines and cleaning costs will apply to any breach of this condition.
  - d) Pavement surfaces adjacent to the ingress and egress points are to be swept and kept clear of earth, mud and other materials at all times and in particular at the end of each working day or as directed by Council's Engineer.

100. 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 ANY OCCUPATION CERTIFICATE**

101. The lots shall be consolidated into one allotment. Council requires proof of lodgement of the plan of consolidation with the Land and Property Information Office prior to the issue of any Occupation Certificate.
102. 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. Irrigation system shall be connected to rainwater tank as a WSUD principle.
103. The Applicant is required to obtain a Council inspection of new trees prior to the planting to ensure plant stock is suitable and post planting prior to the maintenance period commencing.
104. The following conditions must be complied with prior to the issue of any Occupation Certificate:
- i) All landscape works are to be carried out in accordance with the approved landscape plans (refer to Condition 1) for the approved development. The landscaping is to be maintained to the approved standard at all times.
  - i) 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.
105. Prior to the issue of any Occupation Certificate, the undergrounding of all electricity cables in that section of the street/s adjacent to the development, including all 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 in accordance with Ausgrid's requirements and approved electrical design.
106. 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.

107. Prior to the issue of any Occupation Certificate, the applicant must carry out the following works, at no cost or expense to Council:

- On Swinbourne Street and Albert Street, adjacent to development, remove redundant driveway crossovers and replace with required tree planting and public domain improvements as specified by Council in accordance with any public domain masterplans and Council's Infrastructure Specifications, and
- On Swinbourne Street and Albert Street, adjacent to development, demolish existing footpath and construct new footpath as per Council's Infrastructure and Landscape Architect specifications, and
- On Swinbourne Street and Albert Street, adjacent to development, reconstruct existing kerb and gutter for the full length of the property in accordance with Council Infrastructure Specifications.

All works within the road reserve, which are subject to approval pursuant to Section 138 of the Roads Act 1993, shall be constructed to the satisfaction of Bayside Council.

108. The public footpaths shall be constructed in accordance with the approved Public Domain Plan and Council specifications. The footpath dimensions, location, paver type and construction methods shall be in accordance with these specifications. Hold points and Council inspections are required after formwork setback and to prior pouring the concrete blinding slab, at the commencement of paving works and at final completion as a minimum. Pavers shall be ordered allowing for adequate lead time for manufacture (10-12 weeks).

109. A full width vehicular entry is to be constructed to service the property. All obsolete vehicular entries are to be removed and reconstructed with kerb and gutter.

110. Prior to the issue of any Occupation Certificate, inspection reports (formwork and final) for the works on the road reserve shall be obtained from Council's engineer and submitted to the Principal Certifying Authority attesting that this condition has been appropriately satisfied.

111. Prior to the issue of any Occupation Certificate, documentation from suitably qualified engineer must be submitted to the Principal Accredited Certifier certifying that the vehicle access and off street parking facilities have been constructed in accordance with the approved construction plans, AS/NZS 2890.1:2004, AS2890.2:2018 and AS/NZS 2890.6, line marked, all signage relating to car parking erected and that the car parking area is clearly and appropriately marked/signposted indicating all the vehicular movements on the site. The internal road network, pedestrian facilities and parking facilities (including visitor parking and parking for persons with disabilities) shall be clearly designated, sign posted and line marked prior to the issuing of an Occupation Certificate. Signage and line marking shall comply with Australian Standards, AS1742, Manual of Uniform Traffic Control Devices and NSW Road Transport (Safety and Traffic Management) Regulations 1999. Concrete wheel stops shall be installed in all car spaces adjoining high obstructions in accordance with AS/NZS 2890.1:2004. The traffic light/sensor system shall be installed and the waiting bays shall be line marked to the satisfaction of a suitably qualified traffic engineer.

112. All vehicles shall enter and exit the site in a forward direction at all times. A plaque with minimum dimensions 300mm x 200mm shall be permanently fixed to a prominent place near the primary vehicular entrance to the site, approved by the principal certifier, stating the following: "All vehicles shall enter and exit the site in a forward direction at all times".
113. Prior to the issue of any Occupation Certificate, a Chartered Professional Engineer must certify that the stormwater system has been constructed in accordance with the approved plans and as required by Botany Bay DCP Part 10 Stormwater Management Technical Guidelines. The certificate shall 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 the issue of any Occupation Certificate, a registered plumber's certification that the Rainwater Tank Re-use system(s) has been fitted with a first flush device and connected for non-potable uses including all toilet flushing, laundry and landscape irrigations must be provided. All works completed shall comply with the current plumbing requirements of Sydney Water and Committee on Uniformity of Plumbing and Drainage Regulations of NSW.
115. Prior to the issue of any Occupation Certificate, 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.
116. Prior to the issue of any Occupation Certificate, a Chartered Professional Engineer competent in geotechnics shall certify that the construction works have been constructed in accordance with the approved geotechnical report/recommendations and include an evaluation of the completed works. A copy of the certificate shall be supplied to the Principal Certifying Authority.
117. A certificate from a Registered Surveyor shall be provided to the Principal Certifying Authority (PCA) certifying that the floor levels of the development are constructed at or above the floor levels from the approved flood study recommendations (section 8 – page 18 of the flood study). A copy of the certificate shall be provided to Council where Council is not the Principal Certifying Authority.
118. Prior to the issue of any Occupation Certificate, the approved flood management plan shall be laminated and permanently attached to a prominent location on the ground floor residential lobby, the commercial/retail tenancies and the ground floor parking area to the satisfaction of the Principal Certifier.
119. Prior to the issue of any Occupation Certificate, a restriction on Use of Land and Positive Covenant(s) must be imposed on the development. The following covenants shall be imposed under Section 88(E) of the Conveyancing Act 1919 and lodged with the NSW Land and Property Information:
  - A positive covenant pursuant to the Conveyancing Act 1919 shall be created on the title of the lots that contain the traffic signal facility to provide for the maintenance of the facility.
  - Positive Covenant and Restriction on Use of Land for On-Site Retention System. Refer to Appendix B of the SMTG for suggested wording.

- Positive Covenant and Restriction on Use of Land for Pump-Out System. Refer to Appendix C of the SMTG for suggested wording.

*The terms of the 88 E instruments are to be submitted to Council for review and approval and Proof of registration at the Lands and Property Information Office shall be submitted to the Principal Certifying Authority and Council prior to occupation.*

120. Prior to the issue of any Occupation Certificate, a Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained from Sydney Water Corporation.

Application must be made through an authorised Water Servicing Coordinator. Please refer to the Building Developing and Plumbing section of the web site [www.sydneywater.com.au](http://www.sydneywater.com.au) then refer to "Water Servicing Coordinator" under "Developing Your Land" or telephone 13 20 92 for assistance.

Following application a "Notice of Requirements" will advise of water and sewer infrastructure to be built and charges to be paid. Please make early contact with the Coordinator, since building of water/sewer infrastructure can be time consuming and may impact on other services and building, driveway or landscape design. The Section 73 Certificate must be submitted to the Principal Certifier prior to release of the Subdivision/Strata Certificate.

121. Prior to the issue of any 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*.

122. 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 the issue of any Occupation Certificate of the development and release of damage deposit.

123. 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.

124. Construction related activities must not take place on the roadway without Council approval. Short-term activities (including operating plant, materials delivery) that reduce parking spaces, affect access to a particular route or prevent or restrict the passage of vehicles along the road must not occur without a valid Temporary Roadside Closure Permit. Activities involving occupation of the parking lane for durations longer than allowed under a Temporary Roadside Closure Permit require a Construction Zone Permit and must not occur prior to the erection of Construction Zone signs by the RTA.

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

125. The street address and dwellings numbers shall be approved by Council prior to the issue of any Occupation Certificate.

126. 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.

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

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

127. Separate applications must be made for Subdivision Certificate. Submission of a subdivision certificate application is to be accompanied by a linen plan with three (3) copies and appropriate fees.
128. An easement shall be created over the car parking area (eastern side of basement level and ground level) to facilitate future vehicular access to the adjoining site at No.19 Swinbourne Street. Prior to the issue of a Construction Certificate for the basement level, construction details shall be provided to the Certifying Authority demonstrating that the proposed structure is able to achieve the required link without affecting the structural stability of the building. The easement is to be registered prior to issue of the Subdivision Certificate.
129. Prior to the issue of the Subdivision Certificate, documentary evidence demonstrating compliance with all conditions of Development Consent No.2018/378 as well as any other relevant approval.
130. Prior to the issue of a Subdivision Certificate, a Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained from Sydney Water Corporation.

Application must be made through an authorised Water Servicing Coordinator. Please refer to the Building Developing and Plumbing section of the web site [www.sydneywater.com.au](http://www.sydneywater.com.au) then refer to "Water Servicing Coordinator" under "Developing Your Land" or telephone 13 20 92 for assistance.

Following application a "Notice of Requirements" will advise of water and sewer infrastructure to be built and charges to be paid. Please make early contact with the Coordinator, since building of water/sewer infrastructure can be time consuming and may impact on other services and building, driveway or landscape design. The Section 73 Certificate must be submitted to the Principal Certifier prior to release of the Subdivision/Strata Certificate.

131. Prior to the issue of a Subdivision Certificate, the linen plans must include details of any easements, encroachments, rights of way, restriction as to user or positive covenants and include a Section 88B Instrument under the Conveyancing Act, 1919. Council is to be nominated as the only authority permitted to release, vary or modify any easements, encroachments, rights of way, restriction as to user or positive covenants.

**CONDITIONS WHICH MUST BE SATISFIED FOR THE ONGOING USE**

132. New street trees shall be maintained by the Applicant/Owner/Strata Corporation for a period of 24 months after final inspection by Council. Maintenance includes twice weekly watering within the first 6 months then weekly thereafter to sustain adequate growth and



health, biannual feeding, weed removal round the base, mulch replenishment at 3 monthly intervals (to 75mm depth) and adjusting of stakes and ties.

133. Car parking shall be allocated in accordance with condition 40 and as follows:

- 28 car parking spaces for residential apartments (1 space per 1 bedroom dwelling and 2 spaces per 2 bedroom dwelling);
- 4 spaces for residential visitors; and
- 8 spaces for the ground floor commercial/retail tenancy.

134. 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.

135. The operation of the development and movements of vehicles must comply with the following requirements:

- a) All vehicles shall enter and exit the site in a forward direction;
- b) Loading and unloading activities associated with the delivery shall take place wholly within the dedicated loading areas;
- c) All manoeuvring movements of vehicles shall be carried out wholly within the site and vehicle manoeuvring area shall be kept clear at all times;
- d) The maximum size of vehicle accessing the site shall be limited to a Van (B99 vehicle as denoted in AS2890.1).

136. 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.

137.

- a) Each residential dwelling (apartment) is approved as a single dwelling. They shall not be used for separate residential occupation or as separate residential flats. No plumbing fixtures, fittings, walls shall be deleted or added, doorways enclosed or any other changes made from the approved plans in Condition No. 1 of this Consent without the prior Consent of the Council;
- b) The adaptable apartments approved under this development consent is to remain unaltered at all times; and
- c) The storage areas located within the basement shall be allocated to the relevant residential dwelling in any future subdivision of the site. In addition, any isolated storage areas and other spaces shall be monitored by CCTV cameras at all times.

138. The communal outdoor roof terrace area shall not be used between the hours of 10:00pm – 7:00am each day.

139. A person must not cause or permit an air conditioner to be used on residential premises in such a manner that it emits noise that can be heard within a habitable room in any

other residential premises (regardless of whether any door or window to that room is open):

- a) Before 8 am or after 10 pm on any Saturday, Sunday or public holiday, or
- b) Before 7 am or after 10 pm on any other day.

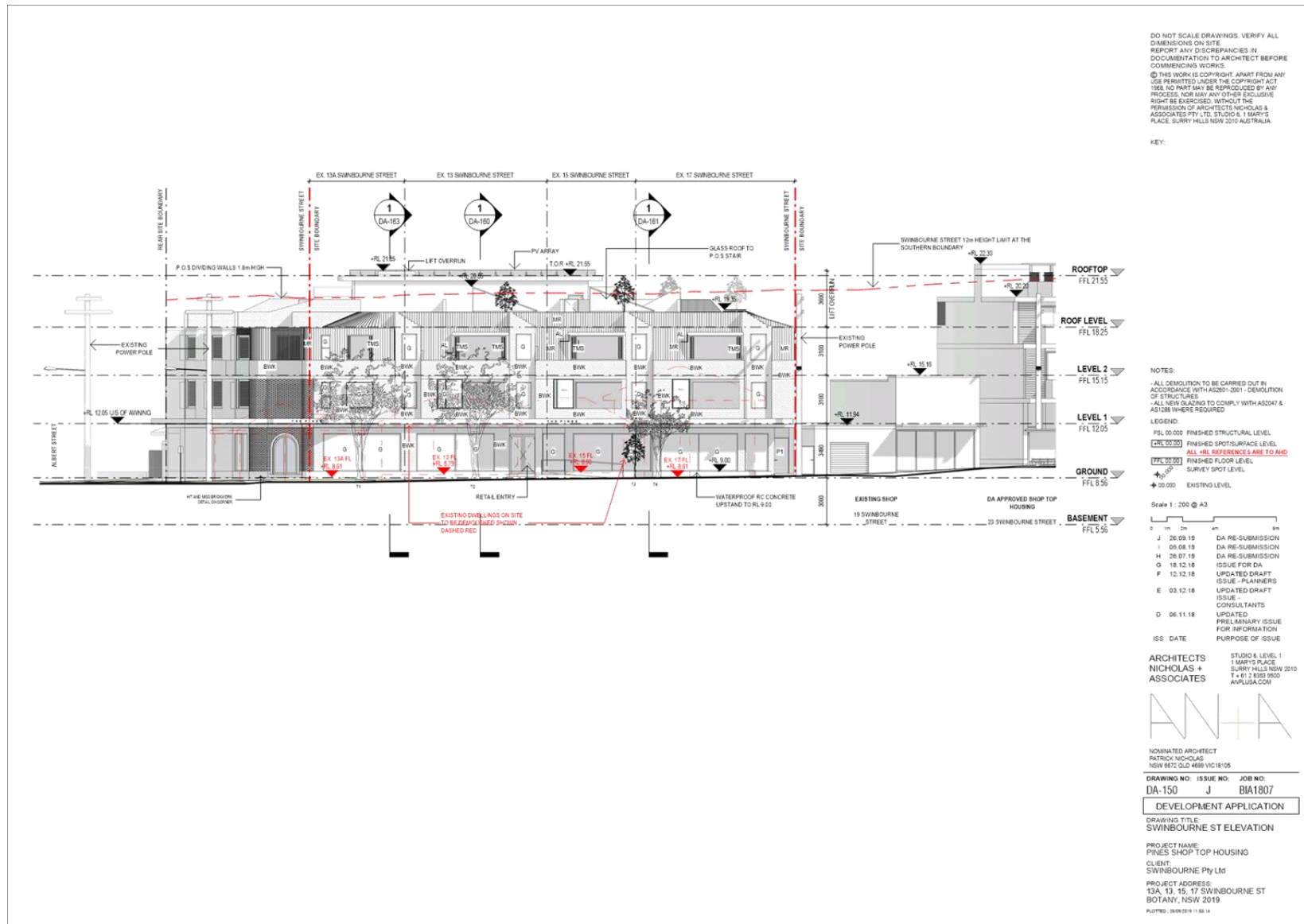
140. The operation of all plant and equipment shall not give rise to an equivalent continuous (LAeq) sound pressure level at any point on any residential property greater than 5dB(A) above the existing background LA90 level (in the absence of the noise under consideration).

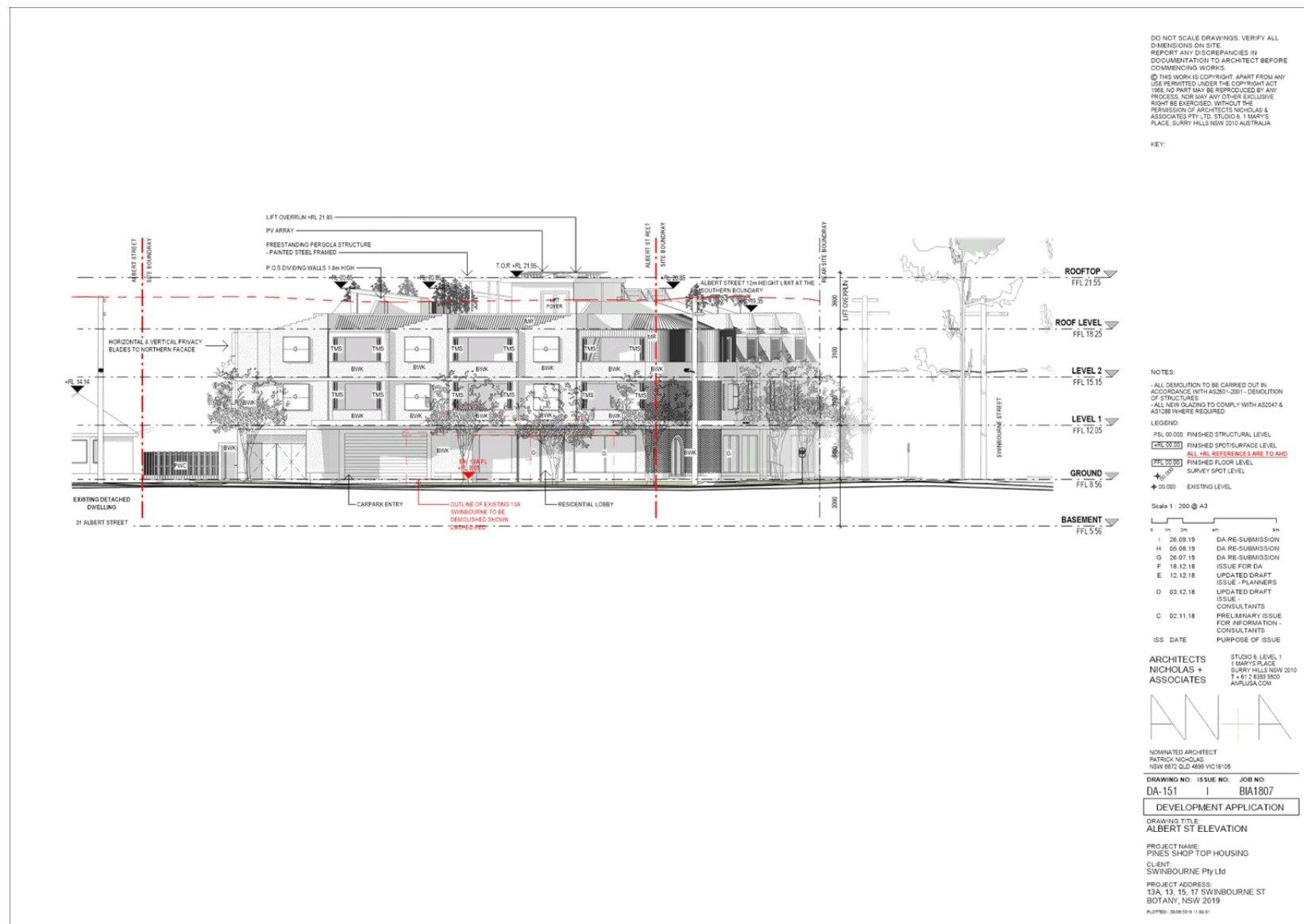
The operation of all plant and equipment when assessed on any residential property shall not give rise to a sound pressure level that exceeds LAeq 50dB(A) day time and LAeq 40 dB(A) night time.

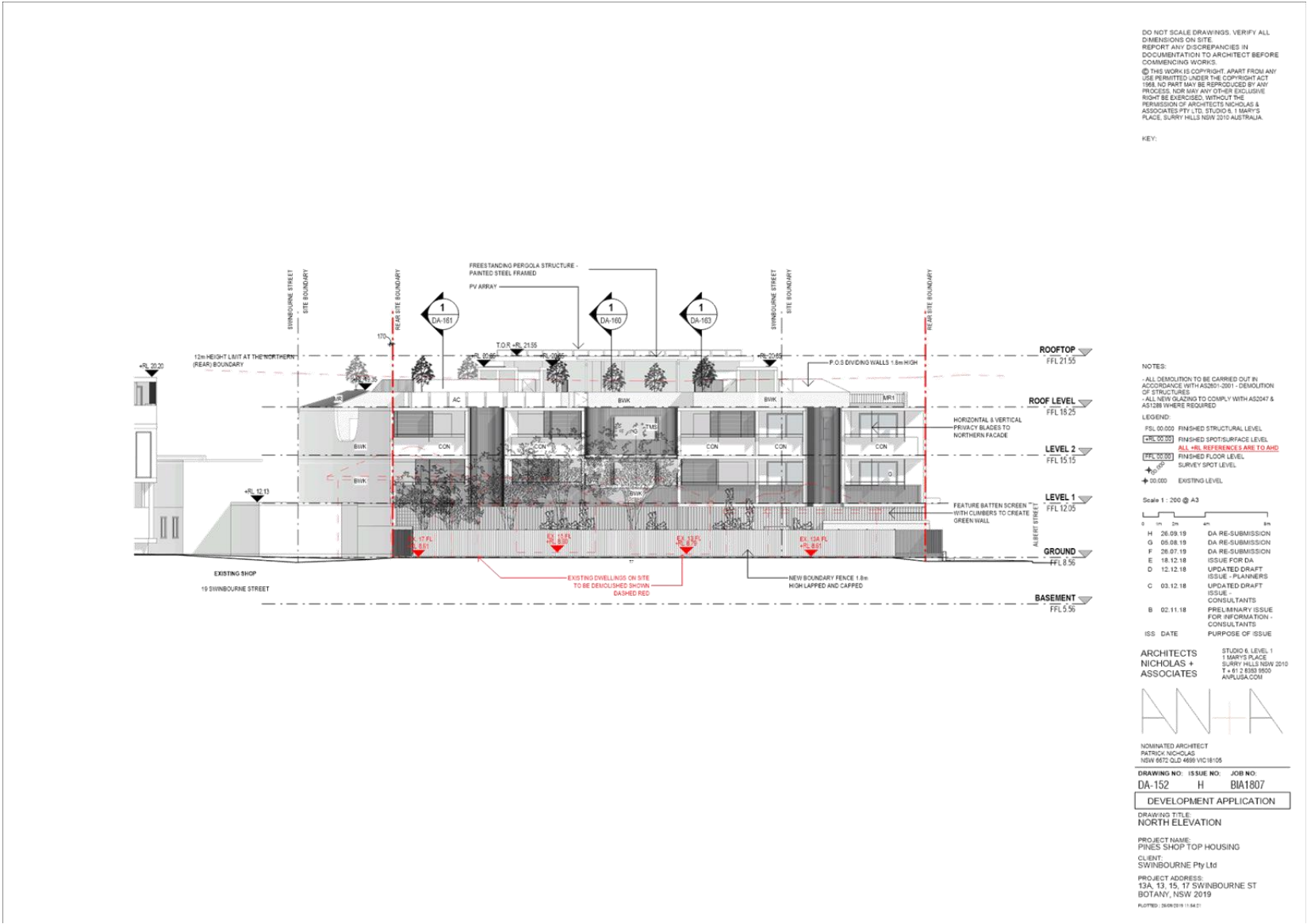
The operation of all plant and equipment when assessed on any neighbouring commercial/industrial premises shall not give rise to a sound pressure level that exceeds LAeq 65dB(A) day time/night time.

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.

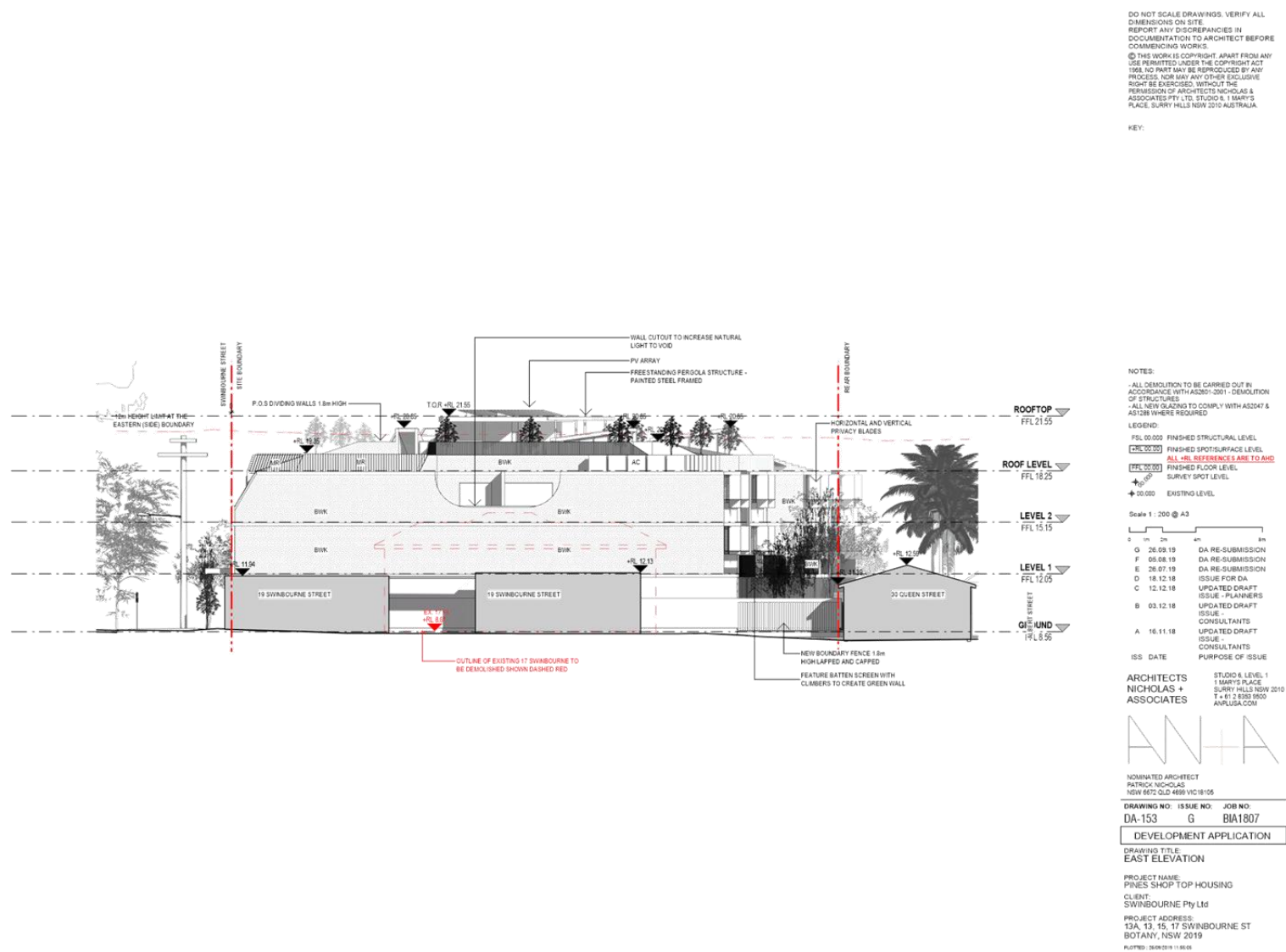














PERSPECTIVE - CORNER SWINBOURNE & ALBERT ST

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KEY:

NOTES:  
- ALL DEMOLITION TO BE CARRIED OUT IN ACCORDANCE WITH AS2901-2001 - DEMOLITION OF STRUCTURES  
- ALL NEW GLAZING TO COMPLY WITH AS2047 & AS1288 WHERE REQUIRED  
LEGEND:  
FSL 00.000 FINISHED STRUCTURAL LEVEL  
+00.000 FINISHED SPOTSURFACE LEVEL  
FSL 00.000 FINISHED FLOOR LEVEL  
+00.000 SURVEY SPOT LEVEL  
+00.000 EXISTING LEVEL

ISS	DATE	PURPOSE OF ISSUE
G	26.09.19	DA RE-SUBMISSION
F	09.09.19	DA RE-SUBMISSION
E	26.07.19	DA RE-SUBMISSION
D	18.12.18	ISSUE FOR DA
C	12.12.18	UPDATED DRAFT
B	02.11.18	ISSUE - PLANNERS
A	04.10.18	PRELIMINARY ISSUE FOR INFORMATION - CONSULTANTS
		PRELIMINARY ISSUE FOR INFORMATION - CLIENT

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NOMINATED ARCHITECT  
PATRICK NICHOLAS  
NSW 6572 QLD 4696 VIC 18105

DRAWING NO.	ISSUE NO.	JOB NO.
DA-001	G	BIA1807

DEVELOPMENT APPLICATION  
DRAWING TITLE  
3D PERSPECTIVES

PROJECT NAME  
PINES SHOP TOP HOUSING  
CLIENT  
SWINBOURNE Pty Ltd  
PROJECT ADDRESS  
13A, 13, 15, 17 SWINBOURNE ST  
BOTANY, NSW 2019  
PLOTED: 26/09/2019 11:00:28





PERSPECTIVE - SWINBOURNE ST

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+RL 00.000 FINISHED SPOTSURFACE LEVEL  
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G	26.08.19	DA RE-SUBMISSION
F	05.08.19	DA RE-SUBMISSION
E	26.07.19	DA RE-SUBMISSION
D	18.12.18	ISSUE FOR DA
C	12.12.18	UPDATED DRAFT ISSUE - PLANNERS
B	02.11.18	PRELIMINARY ISSUE FOR INFORMATION - CONSULTANTS
A	04.10.18	PRELIMINARY ISSUE FOR INFORMATION - CLIENT

ISS	DATE	PURPOSE OF ISSUE
ARCHITECTS NICHOLAS + ASSOCIATES		
STUDIO 6 LEVEL 1 1 MARYS PLACE SURRY HILLS NSW 2015 T + 61 2 9393 1850 ANPLUSA.COM		

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NOMINATED ARCHITECT  
PATRICK NICHOLAS  
NSW 6572 QLD 4696 VIC 18105

DRAWING NO:	ISSUE NO:	JOB NO:
DA-002	G	BIA1807

DEVELOPMENT APPLICATION  
DRAWING TITLE:  
3D PERSPECTIVES

PROJECT NAME:  
PINES SHOP TOP HOUSING  
CLIENT:  
SWINBOURNE Pty Ltd  
PROJECT ADDRESS:  
13A, 13, 15, 17 SWINBOURNE ST  
BOTANY, NSW 2019  
PLOTED: 26/08/2019 11:00:29



PERSPECTIVE - NORTH FACADE

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KEY:

NOTES:

- ALL DEMOLITION TO BE CARRIED OUT IN  
ACCORDANCE WITH AS2901-2001 - DEMOLITION  
OF STRUCTURES
- ALL NEW GLAZING TO COMPLY WITH AS2047 &  
AS1288 WHERE REQUIRED

LEGEND:

- PSL 00.000 FINISHED STRUCTURAL LEVEL
- +SL 00.000 FINISHED SPOTSURFACE LEVEL
- ALL +RL REFERENCES ARE TO AHD
- FFL 00.000 FINISHED FLOOR LEVEL
- ↑ SURVEY SPOT LEVEL
- ↑ 00.000 EXISTING LEVEL

G	26.09.19	DA RE-SUBMISSION
F	05.08.19	DA RE-SUBMISSION
E	26.07.19	DA RE-SUBMISSION
D	18.12.18	ISSUE FOR DA
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B	02.11.18	PRELIMINARY ISSUE FOR INFORMATION - CONSULTANTS
A	04.10.18	PRELIMINARY ISSUE FOR INFORMATION - CLIENT
ISS	DATE	PURPOSE OF ISSUE

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NOMINATED ARCHITECT  
PATRICK NICHOLAS  
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DRAWING NO: DA-003 ISSUE NO: G JOB NO: BIA1807

DEVELOPMENT APPLICATION  
DRAWING TITLE:  
3D PERSPECTIVES

PROJECT NAME:  
PINES SHOP TOP HOUSING  
CLIENT:  
SWINBOURNE Pty Ltd  
PROJECT ADDRESS:  
13A, 13, 15, 17 SWINBOURNE ST  
BOTANY, NSW 2019  
PLOTED: 26/09/2019 11:00:00



NOMINATED ARCHITECT  
PATRICK NICHOLAS  
NSW 6072 QLD 4699 VIC 18105

DRAWING NO: ISSUE NO: JOB NO:  
DA-004 G BIA1807

DEVELOPMENT APPLICATION

DRAWING NO TITLE  
3D PERSPECTIVES

PROJECT NAME:  
PINES SHOP TOP HOUSING

CLIENT:  
SWINBORNE Pty Ltd

PROJECT ADDRESS:  
13A, 13, 15, 17 SWINBORNE ST  
BOTANY, NSW 2019

PLOTTED: 26/06/2019 11:05:36



## CLAUSE 4.6 VARIATION STATEMENT (REV A)

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Construction of a three (3) storey shop top housing development and basement parking

13A - 17 Swinbourne Street  
Botany

Prepared for: Swinbourne Pty Ltd

Ref. M180153

DATE: 26 September 2019







## Clause 4.6 variation statement – maximum height (Clause 4.3)

### 1. Development Standard – Height of Buildings

Clause 4.3(2) of Botany Bay LEP 2013 relates to the maximum height requirements and refers to the *Height of Buildings Map*. The relevant map identifies the subject site as having a maximum height of 12m. Building height is defined as:

- " **building height (or height of building)** means:
- (a) in relation to the height of a building in metres—the vertical distance from ground level (existing) to the highest point of the building, or
  - (b) in relation to the RL of a building—the vertical distance from the Australian Height Datum to the highest point of the building,
- including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like."

### 2. Proposed Variation to Development Standard

Figures 1, 2 and 3 below demonstrate the proposed height variation via a height blanket diagram (including 23 Swinbourne for context) and the section plans indicating that the building has been designed to comply with the maximum permitted height, however, results in non-compliances that predominantly relate to the stair, lift overrun and pergola at the centre of the rooftop that extend to a maximum height of 13.8m (equivalent to a 15% variation) – RL21.85.

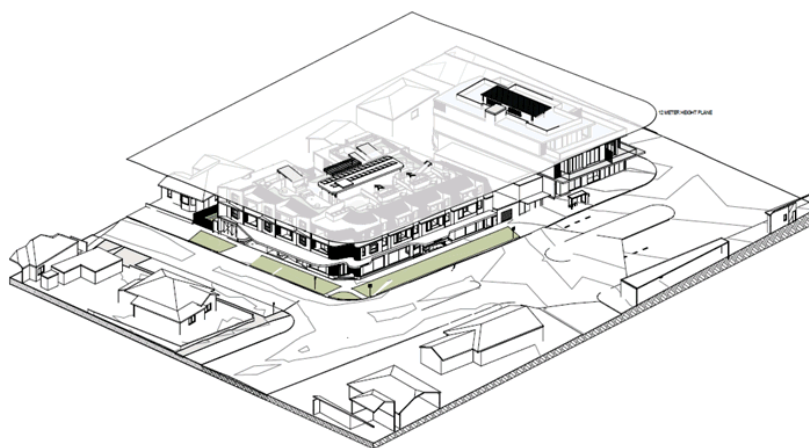


Figure 1: Height blanket diagram (Plan ref: DA-920(G))



Planning Ingenuity Pty Ltd

Clause 4.6 Variation Statement (REV a)  
Ref. M180153 2





Figure 2 Section Plan AA (Plan Ref: DA160(J)) demonstrating height non-compliance



Figure 3 Section Plan CC (Plan Ref: DA-162(I)) demonstrating height non-compliance

As indicated, the height non-compliance is limited to the central services and lift core, light weight central communal open space pergola and lightweight roofing to individual unit stairs providing access to roof top. The proposed development is however considered to be generally consistent with the scale of development expected at the site.



Maximum height control is a "development standard" to which exceptions can be granted pursuant to clause 4.6 of the LEP.

### 3. Clause 4.6 Exceptions to Development Standards

The objectives and provisions of clause 4.6 are as follows:

#### " 4.6 Exceptions to development standards

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

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

(2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.

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

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

(4) Development consent must not be granted for development that contravenes a development standard unless:

- (a) the consent authority is satisfied that:
  - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and
  - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and
- (b) the concurrence of the Secretary has been obtained.

(5) In deciding whether to grant concurrence, the Secretary must consider:

- (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and
- (b) the public benefit of maintaining the development standard, and
- (c) any other matters required to be taken into consideration by the Secretary before granting concurrence.

(6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if:

- (a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or
- (b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.

Note.

When this Plan was made it did not include Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone 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 development standards in clause 4.3 are not "expressly excluded" from the operation of clause 4.6.

Objective 1(a) of clause 4.6 is satisfied by the discretion granted to a consent authority by virtue of subclause 4.6(2) and the limitations to that discretion contained in subclauses (3) to (8).

This submission will address the requirements of subclauses 4.6(3) & (4) in order to demonstrate to Council that the exception sought is consistent with the exercise of "an appropriate degree of flexibility" in applying the development standard, and is therefore consistent with objective 1(a). In this regard, the extent of the discretion afforded by subclause 4.6(2) is not numerically limited in contrast with the development standards referred to in subclause 4.6(6).

Objective 1(b) of clause 4.6 is addressed later in this request.

#### **4. Compliance is unreasonable or unnecessary in the circumstances of the case (Clause 4.6(3)(a))**

Of relevance to Clause 4.6(3)(a), in *Wehbe v Pittwater Council* (2007) NSW LEC 827 Preston CJ sets out ways of establishing that compliance with a development standard is unreasonable or unnecessary. It states, inter alia:

*"An objection under SEPP 1 may be well founded and be consistent with the aims set out in clause 3 of the Policy in a variety of ways. The most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard."*

The judgement goes on to state that:

*"The rationale is that development standards are not ends in themselves but means of achieving ends. The ends are environmental or planning objectives. Compliance with a development standard is fixed as the usual means by which the relevant environmental or planning objective is able to be achieved. However, if the proposed development proffers an alternative means of achieving the objective strict compliance with the standard would be unnecessary (it is achieved anyway) and unreasonable (no purpose would be served)."*

Preston CJ in the judgement then expressed the view that there are 5 different ways in which an objection may be well founded and that approval of the objection may be consistent with the aims of the policy, as follows (with emphasis placed on number 1 for the purposes of this Clause 4.6 variation [our underline]):







1. *The objectives of the standard are achieved notwithstanding non-compliance with the standard;*
2. *The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;*
3. *The underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;*
4. *The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;*
5. *The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard that would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.*

Relevantly, in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 (paragraph 16), Preston CJ makes reference to *Wehbe* and states:

*"...Although that was said in the context of an objection under State Environmental Planning Policy No 1 – Development Standards to compliance with a development standard, the discussion is equally applicable to a written request under cl 4.6 demonstrating that compliance with a development standard is unreasonable or unnecessary."*

Clause 4.6(3)(a) requires that the written request to vary a development standard demonstrate that compliance with the development standard is unnecessary or unreasonable in the circumstances of the case. Requiring strict compliance with the standard is unreasonable or unnecessary because:

- The development is consistent with the standard and zone objectives, even with the proposed variation (refer to Section 7 below); and
- There are no additional significant adverse impacts arising from the proposed non-compliance.

On this basis, the requirements of Clause 4.6(3)(a) are satisfied.

#### **5. Sufficient environmental planning grounds (Clause 4.6(3)(b))**

Having regard to Clause 4.6(3)(b) and the need to demonstrate that there are sufficient environmental planning grounds to justify the development standards. Specifically, Preston CJ in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 (paragraph 24) states:

*The environmental planning grounds relied on in the written request under cl 4.6 must be "sufficient". There are two respects in which the written request needs to be "sufficient". First, the environmental planning grounds advanced in the written request must be sufficient "to justify contravening the development standard". The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds. The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole: see *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248 at [15]. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl*





*4.6(4)(a)(i) that the written request has adequately addressed this matter: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [31].*

The assessment of this numerical non-compliance is also guided by the recent decisions of the NSW LEC in *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 whereby Justice Pain ratified the decision of Commissioner Pearson and in *Moskovich v Waverley Council* [2016] NSWLEC 1015.

There is no planning purpose to be served by limiting the height strictly to the maximum height allowable given the absence of significant amenity related impacts and consistency with the standard and zone objectives.

With regards to Clause 4.6(3)(b), there are sufficient environmental planning grounds to justify contravening the maximum height standard of the LEP as follows:

- The non-compliant central services and lift core and pergola elements are a functional aspect of the building, ensuring efficient access and weather protection to the roof communal open space. The required ADG communal open space provides superior amenity to future occupants with weather protection.
- The private unit stair access to roof top private open space provide superior private utility for units,
- The discussions provided in this variation request have demonstrated that the minor height breach will have no adverse impact on the character of the locality, the amenity of neighbouring properties. The lift overrun and pergola will not be readily visible, do not cast additional excessive shadows and do not give rise to privacy impacts nor does it result in view loss. In the absence of any adverse impact, it is considered that to require strict compliance with the development standard would, in this instance, be unreasonable and unnecessary; and
- To achieve compliance with the building height standard, the building would need to be reduced by a relatively insignificant margin of 1.8m. The visual bulk associated with the non-compliant 1.8m is negligible when compared to the visual bulk of a compliant scheme. The reduction in height would however have significant implications for the proposal as it would effectively preclude the rooftop communal open space reducing residential amenity.
- The proposed development achieves the objects in Section 1.3 of the EPA Act, specifically:
  - (a) The proposal promotes the orderly and economic use and development of land through the redevelopment of an underutilised site for residential uses (1.3(c));
  - (b) The proposed developed promotes good design and amenity of the built environment through a well-considered design which is responsive to its setting and context (1.3(g)).

It is noted that in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, Preston CJ clarified what items a Clause 4.6 does and does not need to satisfy. Importantly, there does not need to be a "better" planning outcome:

*86. The second way is in an error because it finds no basis in cl 4.6. Clause 4.6 does not directly or indirectly establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant development. This test is also inconsistent with objective (d) of the height development standard in cl 4.3(1) of minimising the impacts of new development on adjoining or nearby properties from disruption of views or visual intrusion. Compliance with the height development standard might be unreasonable or unnecessary if the non-compliant development achieves this objective of minimising view loss or visual intrusion. It is not necessary, contrary to what the Commissioner held, that the non-compliant development have no view loss or less view loss than a compliant development.*





87. *The second matter was in cl 4.6(3)(b). I find that the Commissioner applied the wrong test in considering this matter by requiring that the development, which contravened the height development standard, result in a "better environmental planning outcome for the site" relative to a development that complies with the height development standard (in [141] and [142] of the judgment). Clause 4.6 does not directly or indirectly establish this test. The requirement in cl 4.6(3)(b) is that there are sufficient environmental planning grounds to justify contravening the development standard, not that the development that contravenes the development standard have a better environmental planning outcome than a development that complies with the development standard.*

As outlined above, it is considered that in many respects, the proposal will provide for a better planning outcome than a strictly compliant development. At the very least, there are sufficient environmental planning grounds to justify contravening the development standard

**6. The applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3). (Clause 4.6(4)(a)(i))**

Preston CJ in *Initial Action Pty Ltd v Woollahra Municipal Council* details how Clause 4.6(4)(a) needs to be addressed (paragraphs 15 and 26 are rephrased below):

The first opinion of satisfaction, in clause 4.6(4)(a)(i), is that a written request seeking to justify the contravention of the development standard has adequately addressed the matters required to be demonstrated by clause 4.6(3). These matters are twofold: first, that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (clause 4.6(3)(a)) and, secondly, that there are sufficient environmental planning grounds to justify contravening the development standard (clause 4.6(3)(b)). This written request has addressed Clause 4.6(3)(a) in Section 4 above (and furthermore in terms of meeting the objectives of the development standard, this is addressed in Section 7 below). Clause 4.6(3)(b) is addressed in Section 5 above.

The second opinion of satisfaction, in clause 4.6(4)(a)(ii), is that the proposed development will be in the public interest because it is consistent with the objectives of the particular development standard that is contravened and the objectives for development for the zone in which the development is proposed to be carried out. The second opinion of satisfaction under cl 4.6(4)(a)(ii) differs from the first opinion of satisfaction under clause 4.6(4)(a)(i) in that the consent authority, or the Court on appeal, must be directly satisfied about the matter in clause 4.6(4)(a)(ii), not indirectly satisfied that the applicant's written request has adequately addressed the matter in clause 4.6(4)(a)(ii). The matters in Clause 4.6(4)(a)(ii) are addressed in Section 7 below.

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

**7a. Objectives for Clause 4.3 Height of Buildings**

The objectives and relevant provisions of clause 4.3 are as follows, inter alia:

**4.3 Height of buildings**

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

- (a) *to ensure that the built form of Botany Bay develops in a coordinated and cohesive manner,*
- (b) *to ensure that taller buildings are appropriately located,*
- (c) *to ensure that building height is consistent with the desired future character of an area,*



- (d) to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development,
- (e) to ensure that buildings do not adversely affect the streetscape, skyline or landscape when viewed from adjoining roads and other public places such as parks, and community facilities.

The *Height of Buildings Map* nominates a maximum height of 12m for the site. It is hereby requested that an exception to this development standard be granted pursuant to Clause 4.6 so as to permit a maximum height of 13.8m for the development.

In order to address the requirements of subclause 4.6(4)(a)(ii), each of the relevant objectives of Clause 4.3 are addressed in turn below.

**OBJECTIVE (A) TO ENSURE THAT THE BUILT FORM OF BOTANY BAY DEVELOPS IN A COORDINATED AND COHESIVE MANNER**

The *Height of Buildings Map* indicates that the 12m height limit that applies to the subject site and also applies to land in the immediate vicinity within Zone B1. Zone B1 extends to the east and south of the site, beyond the B1 Zone is R2 Low Density Residential zone where building height transitions to 8.5m. At present, the built form within the block is characterised by a combination of older housing stock and commercial development with the approval for a three storey shop top housing development to the east at No.23 Swinbourne Street (DA-16/237). As such building heights are varied and no existing development takes up the maximum building height of 12m however, it is noted that DA-16/237 was approved with a variation to the maximum height limit.

As mentioned, the maximum height of the proposal is 13.8m when measured to the top of the lift overrun and rooftop pergola. The structures are set in from the Swinbourne Street and Albert Street facades and therefore present as recessive elements that are not readily apparent from street level. The breach in roof height is a product of providing access to and weather protection to the rooftop communal and private open space. Communal open space on the roof is encouraged by the ADG and provides superior amenity to future occupants of the development. Furthermore, the private open space to individual units provides superior amenity for units as a second area for private recreation. Access to the roof top communal and private spaces is required as well as protection from the weather, thereby this request seeks a variation to the building height control. The roof pergola is centrally located and lightweight in structure and will provide protection from the elements, which will increase useability and amenity of the development. The roofing over private stair access is also of lightweight construction, unlikely readily apparent to the casual observer.

It is considered that the approved development at No.23 Swinbourne Street provides an indicative built form as envisioned by Council and it is anticipated that development at the adjoining site, No.19 Swinbourne Street will present similarly. Once the development has been completed within the neighbourhood centre it will present as a coordinated and cohesive streetscape, with acceptable built form outcomes.

**OBJECTIVE (B) TO ENSURE THAT TALLER BUILDINGS ARE APPROPRIATELY LOCATED**

The function of the *Height of Building Map* is, as suggested by objective (b), to identify appropriate locations for taller buildings. The *Height of Buildings Map* indicates that the maximum building height for the site is 12m and is therefore identified as a location where 'taller' buildings are appropriate. The proposal does not strictly comply with this requirement (hence the request to vary the development standard), however is not substantially taller than the height of buildings anticipated in this location. It is submitted that the proposal, which may be considered a 'taller' building, is appropriately located.



**OBJECTIVE (C) TO ENSURE THAT BUILDING HEIGHT IS CONSISTENT WITH THE DESIRED FUTURE CHARACTER OF AN AREA**

Much of the discussion provided against objective (a) is also relevant to this objective. In brief, the desired future character of an area is, to some degree, determined by the building envelope provisions that apply to the site. In this case, future development at No.23 Swinbourne is generally consistent with the 12m height with a minor variation proposed for the central services and lift core, light weight central communal open space pergola and lightweight roofing to individual unit stairs providing access to roof top. It is therefore conceivable that future development in the B1 Zone will have a building height of 12m. It is also conceivable that many sites with similar development forms will seek to vary building height (as seen at No.23 Swinbourne Street and as is anticipated at No.19 Swinbourne Street) to account for the ADG communal open space provision. It is considered that the proposal, although marginally non-compliant with building height, is consistent with the desired future character of the area, noting that the term 'consistent' does not necessarily mean 'the same as'.

**OBJECTIVE (D) TO MINIMISE VISUAL IMPACT, DISRUPTION OF VIEWS, LOSS OF PRIVACY AND LOSS OF SOLAR ACCESS TO EXISTING DEVELOPMENT**

Despite non-compliance, the proposal is designed and located to minimise visual impact, disruption of views, loss of privacy and loss of solar access to neighbouring development as described below:

- The central services and lift core and light weight central communal open space pergola is set in from each street facade and therefore present as recessive elements that are not readily apparent from street level. The part of the building that is non-compliant with building height, does not contribute significantly to the visual bulk of the development. It is submitted that the difference between the proposal and a development that complies with building height will be negligible when viewed from the streetscape.
- It is understood that there are no significant views obtained from or through the site that will be obscured by the non-compliant aspect of the building.
- The central services and lift core and pergola or private stair roofing do not contribute to loss of visual privacy. The communal area is recessed from all boundaries and compliant building height elements of the building such as balconies are provided with privacy screens. These features preclude cross viewing or overlooking of neighbouring properties therefore ensuring visual privacy.
- Solar access diagrams have been prepared and are submitted with the development application. The diagrams demonstrate that, although the building is marginally non-compliant in terms of building height, solar access to neighbouring properties is not unreasonably reduced as a result of the height increase. Due to site orientation the proposal does not excessively overshadow existing adjacent development.

As described above, although non-compliant with building height, the proposal is designed and located to minimise visual impacts, disruption of views, loss of privacy and overshadowing and therefore achieves the objective.

**OBJECTIVE (E) TO ENSURE THAT BUILDINGS DO NOT ADVERSELY AFFECT THE STREETScape, SKYLINE OR LANDSCAPE WHEN VIEWED FROM ADJOINING ROADS AND OTHER PUBLIC PLACES SUCH AS PARKS, AND COMMUNITY FACILITIES**

It is anticipated that the locality will undergo a period of transition as properties are redeveloped to take advantage of the zoning changes and generous height and density controls introduced through the LEP. As previously discussed, the height of the proposal is considered to be compatible with the anticipated







future character of the B1 Zone locality and in this regard makes a positive contribution to the desired streetscape. Until such time as neighbouring and adjoining sites are also developed, the proposal will be a prominent element in the immediate streetscape however will not be evident in the skyline in the same way as a residential tower is visible from a distance.

The proposed development is therefore consistent with the objectives for maximum height, despite the numeric non-compliance.

#### **7b. Objectives for development in Zone B1 Neighbourhood Centre**

Clause 4.6(4)(ii) also requires consideration of the relevant zone objectives. The objectives of the B1 Neighbourhood Centre zone are as follows:

- "
- To provide a range of small-scale retail, business and community uses that serve the needs of people who live or work in the surrounding neighbourhood.
  - To ensure that development does not adversely impact on residential amenity and is compatible with the existing streetscape."

The proposal will provide a medium density residential development that provides two small scale retail uses that serve the needs of people who live or work in the surrounding area. The proposal is a well-designed and sited shop top housing development that is compatible with the future scale and form of development of the surrounding area. The development also offers high levels of residential amenity and is entirely consistent with the intentions of the zone. As such the proposed development is entirely consistent with the zone objectives.

#### **8. The concurrence of the Secretary has been obtained (Clause 4.6(4)(b))**

The second precondition in cl 4.6(4) that must be satisfied before the consent authority can exercise the power to grant development consent for development that contravenes the development standard is that the concurrence of the Secretary (of the Department of Planning and the Environment) has been obtained (cl 4.6(4)(b)). Under cl 64 of the Environmental Planning and Assessment Regulation 2000, the Secretary has given written notice, attached to the Planning Circular PS 18-003 issued on 21 February 2018, to each consent authority, that it may assume the Secretary's concurrence for exceptions to development standards in respect of applications made under cl 4.6, subject to the conditions in the table in the notice.

#### **9. Whether contravention of the development standard raises any matter of significance for State or Regional environmental planning (Clause 4.6(5)(a))**

Contravention of the maximum height development standard proposed by this application does not raise any matter of significance for State or regional environmental planning.

#### **10. The public benefit of maintaining the development standard (Clause 4.6(5)(b))**

As detailed in this request there are no unreasonable impacts that will result from the proposed variation to the maximum building height. As such there is no public benefit in maintaining strict compliance with the development standard. The proposed development is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out. It is the proposed development's consistency with the objectives of the development standard and the objectives of the zone that make the proposed development in the public interest.





### 11. Conclusion

This written request has been prepared in relation to the proposed variation to the height of buildings development standard contained in Botany Bay LEP 2013.

Despite the non-compliance with the height of buildings development standard, the proposed built form is compatible with the likely future of the character of locality as anticipated by the planning controls and existing approvals.

The variation to building height will have no adverse impact on neighbouring properties and is compatible with existing development and in keeping with the desired future character for the area. Given these circumstances, the proposed variation would not set an undesirable precedent or undermine the standard. The request explains that, with the proposed variation, the development satisfies the objective of the standard and the objectives the zone. It further explains why it is therefore unreasonable and unnecessary to require strict compliance with the height of buildings development standard. In addition, this request demonstrates that there are sufficient site specific environmental planning grounds to justify the variation, and therefore the proposal is considered to be in the public interest.

The proposal exhibits a level of design excellence, therefore being consistent with the objects of metropolitan planning and the EP&A Act, 1979.







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**Bayside Local Planning Panel**

**22/10/2019**

Item No	6.4
Application Type	Construction of a four storey mixed use development
Application No	DA-2018/368
Lodgement Date	19/12/2018
Property	<b>1449 Botany Road, Botany</b>
Ward	Ward 2
Owner	Joseph Samia and Sarkis Pennikian
Applicant	AGM Studio
Proposal	Demolition of existing building and construction of a four storey mixed use development containing nine (9) units with basement parking and associated landscaping.
No. of Submissions	Five (5) submissions
Cost of Development	\$4,691,459.00
Report by	Michael McCabe, Director City Futures

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**Officer Recommendation**

1. That development application DA-2018/368 for the demolition of the existing building and construction of a four storey mixed use development containing nine (9) units with basement parking and associated landscaping at 1449 Botany Road, Botany be **REFUSED** pursuant to s4.16(1)(b) of the Environmental Planning and Assessment Act 1979 for the following reasons:
    - a) The proposed development, pursuant to the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, is not consistent with the State Environmental Planning Policy – BASIX as the applicant has failed to provide an amended BASIX Certificate.
    - b) The proposed development, pursuant to the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, is not consistent with the State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment and the design criteria and guidelines of the following sections of the Apartment Design Guide with respect to the following:
      - (i) Part 4C - Ceiling Heights – the proposed development does not comply with the 3.3 metre floor to ceiling height for the ground floor commercial/office premises;
      - (ii) Part 4K – Unit Mix – the proposed development has not demonstrated a variety of unit types.
    - c) Pursuant to the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, it is considered that the proposed development does not satisfy Clause 6.15- Active Street frontages of the Botany Bay Local Environmental Plan 2013 as the development provides insufficient active street frontage along Botany Road.
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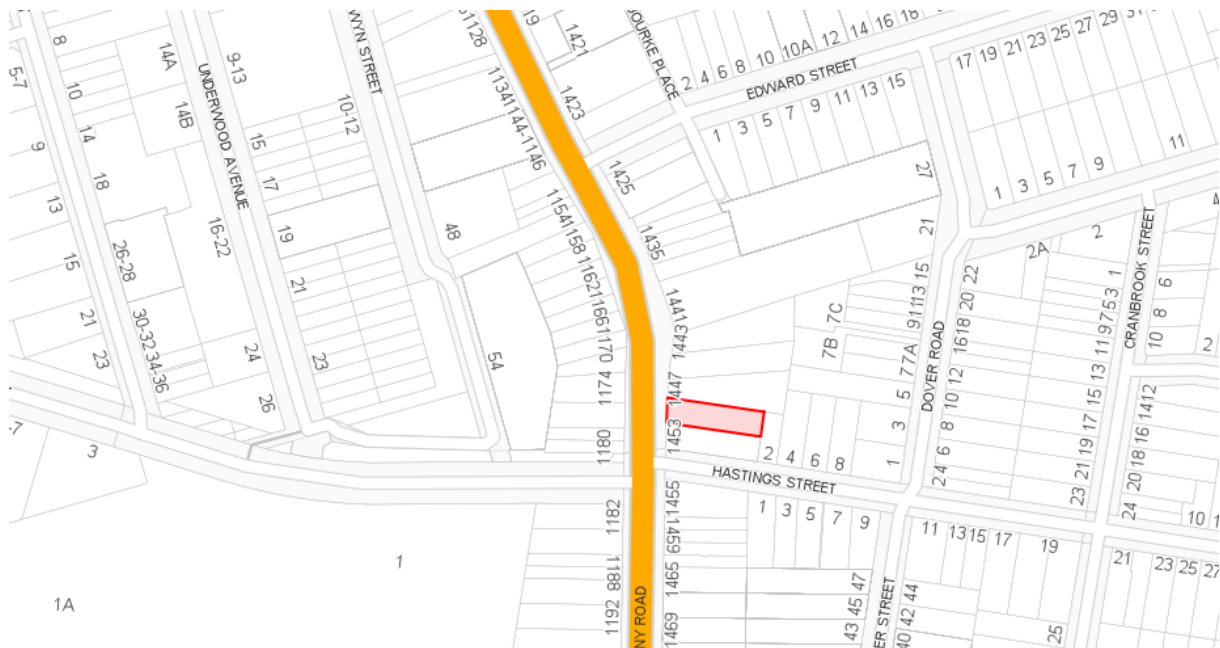
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- d) Pursuant to the provisions of Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposed development does not meet the following sections of the Botany Bay Development Control Plan 2013 with respect to the following:
- (i) Part 3A – Car Parking and Access. The proposed development does not comply with the minimum car parking requirement under Table 1 of Part 3A.2- Parking Provisions of Specific Uses and does not provide loading and unloading facilities on site. The basement car parking level does not provide an appropriate layout and manoeuvring;
  - (ii) Part 3B – Heritage. The proposed development is not compatible or consistent with the existing built form and character of the Botany Township Heritage Conservation Area in addition to conserving the existing dwelling on the site;
  - (iii) Part 3C – Access and Mobility. The proposed development does not provide appropriate pedestrian access to units and has not allocated any units as adaptable units;
  - (iv) Part 3G – Stormwater Management. The proposed development does not comply with Section 7.1(i) of Part 10 of the Botany Bay Development Control Plan 2013 and does not provide sufficient detail as to the On-site detention system proposed on the site;
  - (v) Part 3N – Waste Minimisation and Management. The proposed development does not comply with the required garbage bins required as well as does not distinguish between the residential and commercial uses;
  - (vi) Part 4C.4.2- Family Friendly Apartment Buildings within High Density Residential. The proposed development does not comply with the family friendly controls relating to separate living areas, waterproofing common areas, having two separate bathrooms and storage space requirements;
  - (vii) Part 5 – Business Centres. The proposed development do not comply with the objectives and controls of Part 5.2.2.7- Botany Local Centre of the Botany Bay Development Control Plan 2013 relating to site consolidation, desired future character, setbacks, material choice, car parking, design excellence, building design, active street frontage, solar amenity, servicing.
- e) Pursuant to the provisions of Section 4.15(1)(b) and Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979, insufficient information has been provided by the applicant, including stormwater plans, landscape plans, BASIX Certificate, Access Report, Acoustic Report and Traffic report, to allow a proper and thorough assessment of the impacts of the proposed development and the suitability of the site for the development.
- f) Pursuant to the provisions of Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979, the proposed development is excessive in terms of bulk, scale, size, density and would adversely impact upon the amenity of the locality.
- g) The proposed development, pursuant to the provisions of Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979, is unsatisfactory given the inadequate proposed means of access to and from the development site
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and the area available for the loading and unloading of goods and manoeuvring of vehicles.

- h) Pursuant to the provisions of Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979, the proposed development is unsatisfactory as it fails to demonstrate acceptable disposal of stormwater from the subject land.
- i) Pursuant to the provisions of Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979, the proposed development is excessive in terms of bulk, scale, size, height, density, inconsistent with local character and would adversely impact upon the amenity of the locality.
- j) The proposed development, pursuant to the provisions of Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979, is not considered suitable for the site, in terms of its size of the site and density proposed in correlation with the existing heritage context of the street and is likely to adversely impact on the adjoining heritage items and heritage conservation area.
- k) Having regard to the advice received from Roads and Maritime Services, pursuant to the provisions of Section 4.15(1)(d) of the Environmental Planning and Assessment Act 1979, the development application cannot be supported on the basis of sightlines and right turn access.
- l) Having regard to the issues raised in submissions received by Council in opposition to the proposed development, pursuant to the provisions of Section 4.15(1)(d) of the Environmental Planning and Assessment Act 1979, the proposal results in unacceptable visual privacy, solar amenity, excessive density and heritage impacts on adjoining /nearby properties.
- m) Pursuant to the provisions of Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, and in consideration of the impacts and submissions made, the proposed development is not considered to be in the public interest and is likely to set an undesirable precedent.

2. That the submitters be notified of the Bayside Local Planning Panel's decision.
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## Location Plan



## Attachments

- 1 Planning Assessment Report [↓](#)
- 2 Site Analysis Plan [↓](#)
- 3 Site Plan [↓](#)
- 4 Streetscape Elevation [↓](#)
- 5 Western and Eastern Elevation [↓](#)
- 6 Northern and Southern Elevation [↓](#)
- 7 Solar Diagrams [↓](#)
- 8 Demolition Plan [↓](#)
- 9 Calculations [↓](#)
- 10 Design Review Panel meeting minutes [↓](#)

# BAYSIDE COUNCIL

## Planning Assessment Report

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### Application Details

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<b>Application Number:</b>	DA-2018/368
<b>Date of Receipt:</b>	19 December 2018
<b>Property:</b>	1449 Botany Road, Botany Lot 12 in DP 666561
<b>Owners:</b>	Joseph Samia and Sarkis Pennikian
<b>Applicant:</b>	AGM Studio
<b>Proposal:</b>	Demolition of existing building and construction of a four storey mixed use development containing nine (9) dwellings with basement parking and associated landscaping
<b>Recommendation:</b>	Refusal, subject to reasons of refusal in the attached schedule
<b>Value:</b>	\$4,691,459.00
<b>No. of submissions:</b>	Five (5) objections
<b>Author:</b>	Angela Lazaridis, Senior Development Assessment Planner
<b>Date of Report:</b>	1 October 2019

### Key Issues

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Bayside Council received Development Application No. DA-2018/368 on 19 December 2018 seeking consent for the demolition of the existing building and construction of a four (4) storey mixed use development containing nine (9) apartments with basement parking and associated landscaping at 1449 Botany Road, Botany.

The application was placed on public exhibition for a fourteen (14) day period from 11 January to 25 January 2019. Five (5) objections were received and this is discussed in the report below.

Key issues in the assessment of the development application include non-compliances in car parking, loading and unloading, site isolation, heritage considerations, streetscape presentation, active street frontage, commercial floor to ceiling heights, landscaping and accessibility. The application has not received concurrence from Roads and Maritime Services (RMS).

The site is located within the Botany Township Heritage Conservation Area and is located adjoining and opposite heritage items. The proposal has not sufficiently considered the heritage items with regards to scale and retention. The application was referred to Council's Heritage Advisor who had strong objections to the proposal.

The development has a shortfall of six car parking spaces within the basement level which are associated with the residential component. Additionally, the applicant has proposed four car stackers which have not been designed to comply with the Australian Standard dimensions. The development does not propose any loading bay on site and therefore would be reliant on

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loading and unloading carried out from the street. This also applies for garbage collection. Council's Development Engineer has reviewed the proposal and does not support loading/unloading to be carried out from the street. Further to Council's concerns, RMS has not provide concurrence for the proposal as there is issues with the location of the driveway, departure in car parking and vehicle access.

The proposal provides a commercial tenancy at ground level which has a width of 4 metres and a total area of 40sqm. The width of the premises is considered to be too small and does not satisfy the objectives of Clause 6.15 – Active Street Frontages within the BBLEP 2013. Additionally, the commercial premises has a floor to ceiling height of 2.5 metres which does not comply with Part 4C of the ADG control which requires ground floor commercial tenancies to have a minimum floor to ceiling height of 3.3 metres. This non-compliance is unacceptable.

Site isolation has not been considered as part of this proposal as the development is bound by sites to the north and south that, should they be left isolated, would result in a development that may not be compatible with the area and the heritage considerations for the locality. The applicant has not demonstrated how the proposal has met the site isolation principle as outlined in case law *Melissa Grech v Auburn Council [2004] NSWLEC 40* and *Cornerstone Property Group v Waringah Council [2004] NSWLEC 189*. There is no evidence that attempts have been made to consolidate with the northern and southern sites to provide a larger development site. There is concerns that approval of this proposal will have implications on the site to the south at 1451-1453 Botany Road.

The development has not allocated any accessible units and concerns are raised that the design of the building prevents the majority of the units being accessible as access from the lift to the units are obstructed by stairs. This is also the case with access to the private open space area at ground level for Units 4, 5 and 6.

The applicant has not provided an amended landscape plan as requested by Council's landscape architect. The applicant has demonstrated the stormwater system to be located within the deep soil zone which is not acceptable.

The development application has been assessed in accordance with the relevant requirements of the Environmental Planning and Assessment Act 1979 (EPA Act) and is recommended for refusal, subject to the reasons of refusal in the attached schedule.

### Recommendation

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It is RECOMMENDED:

1. That development application DA-2018/368 for the demolition of the existing building and construction of a four storey mixed use development containing nine (9) units with basement parking and associated landscaping at 1449 Botany Road, Botany be REFUSED pursuant to s4.16(1)(b) of the *Environmental Planning and Assessment Act 1979* for the following reasons:
  - a) The proposed development, pursuant to the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, is not consistent with the State Environmental Planning Policy – BASIX as the applicant has failed to provide an amended BASIX Certificate.
  - b) The proposed development, pursuant to the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, is not consistent with the State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment and

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the design criteria and guidelines of the following sections of the Apartment Design Guide with respect to the following:

- (i) Part 4C - Ceiling Heights – the proposed development does not comply with the 3.3 metre floor to ceiling height for the ground floor commercial/office premises;
  - (ii) Part 4K – Unit Mix – the proposed development has not demonstrated a variety of unit types.
- c) Pursuant to the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, it is considered that the proposed development does not satisfy Clause 6.15- Active Street frontages of the Botany Bay Local Environmental Plan 2013 as the development provides insufficient active street frontage along Botany Road.
- d) Pursuant to the provisions of Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposed development does not meet the following sections of the Botany Bay Development Control Plan 2013 with respect to the following:
- (i) Part 3A – Car Parking and Access. The proposed development does not comply with the minimum car parking requirement under Table 1 of Part 3A.2- Parking Provisions of Specific Uses and does not provide loading and unloading facilities on site. The basement car parking level does not provide an appropriate layout and manoeuvring;
  - (ii) Part 3B – Heritage. The proposed development is not compatible or consistent with the existing built form and character of the Botany Township Heritage Conservation Area in addition to conserving the existing dwelling on the site;
  - (iii) Part 3C – Access and Mobility. The proposed development does not provide appropriate pedestrian access to units and has not allocated any units as adaptable units;
  - (iv) Part 3G – Stormwater Management. The proposed development does not comply with Section 7.1(i) of Part 10 of the Botany Bay Development Control Plan 2013 and does not provide sufficient detail as to the On-site detention system proposed on the site;
  - (v) Part 3N – Waste Minimisation and Management. The proposed development does not comply with the required garbage bins required as well as does not distinguish between the residential and commercial uses;
  - (vi) Part 4C.4.2- Family Friendly Apartment Buildings within High Density Residential. The proposed development does not comply with the family friendly controls relating to separate living areas, waterproofing common areas, having two separate bathrooms and storage space requirements;
  - (vii) Part 5 – Business Centres. The proposed development do not comply with the objectives and controls of Part 5.2.2.7- Botany Local Centre of the Botany Bay Development Control Plan 2013 relating to site consolidation, desired future character, setbacks, car parking, design excellence, building design, active street frontage, solar amenity, servicing.

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- e) Pursuant to the provisions of Section 4.15(1)(b) and Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979, insufficient information has been provided by the applicant, including stormwater plans, landscape plans, BASIX Certificate, Access Report, Acoustic Report and Traffic report, to allow a proper and thorough assessment of the impacts of the proposed development and the suitability of the site for the development.
  - f) Pursuant to the provisions of Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979, the proposed development is excessive in terms of bulk, scale, size, density and would adversely impact upon the amenity of the locality.
  - g) The proposed development, pursuant to the provisions of Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979, is unsatisfactory given the inadequate proposed means of access to and from the development site and the area available for the loading and unloading of goods and manoeuvring of vehicles.
  - h) Pursuant to the provisions of Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979, the proposed development is unsatisfactory as it fails to demonstrate acceptable disposal of stormwater from the subject land.
  - i) Pursuant to the provisions of Section 4.15(1)(b) of the *Environmental Planning and Assessment Act 1979*, the proposed development is excessive in terms of bulk, scale, size, height, density, inconsistent with local character and would adversely impact upon the amenity of the locality.
  - j) The proposed development, pursuant to the provisions of Section 4.15(1)(c) of the *Environmental Planning and Assessment Act 1979*, is not considered suitable for the site, in terms of its size of the site and density proposed in correlation with the existing heritage context of the street and is likely to adversely impact on the adjoining heritage items and heritage conservation area.
  - k) Having regard to the advice received from Roads and Maritime Services, pursuant to the provisions of Section 4.15(1)(d) of the *Environmental Planning and Assessment Act 1979*, the development application cannot be supported on the basis of sightlines and right turn access.
  - l) Having regard to the issues raised in submissions received by Council in opposition to the proposed development, pursuant to the provisions of Section 4.15(1)(d) of the *Environmental Planning and Assessment Act 1979*, the proposal results in unacceptable visual privacy, solar amenity, excessive density and heritage impacts on adjoining /nearby properties.
  - m) Pursuant to the provisions of Section 4.15(1)(e) of the *Environmental Planning and Assessment Act 1979*, and in consideration of the impacts and submissions made, the proposed development is not considered to be in the public interest and is likely to set an undesirable precedent.
2. That the submitters be notified of the Bayside Local Planning Panel's decision.

## Background

## History

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There is no existing town planning history on the site.

Development Application History

19 December 2018 – Development Application was lodged with Council

11 January to 25 January 2019 – Development Application was publicly notified

7 February 2019 – The application was presented to a design review panel

30 July 2019 – Request for additional information was sent by Council

15 August 2019 – Amended architectural plans and highlighted additional information letter were received. No other information was received.

**Proposal**

The development application, in its amended form, seeks consent for the demolition of existing building and construction of a four storey mixed use development containing nine (9) apartments with basement parking and associated landscaping.

The proposed development is described in detail below:

Basement Floor:

- Fifteen (15) car spaces which are broken down as follows:
  - Twelve (12) residential spaces with six (6) of the spaces within a car stacker and two (2) accessible car spaces;
  - Two (2) visitor spaces, provided within a car stacker arrangement;
  - One (1) car space for the commercial premises.
- Ramp access from ground level; and
- One lift is provided.

Ground Floor:

- Three (3) three x two bedroom cross over units (Units 4-6) with access to deck and landscaped area;
- One (1) commercial tenancy measuring 40sqm;
- Four (4) bicycle spaces;
- One (1) lift with access to basement and upper levels;
- Vehicular access and ramp down to basement located on the north-western side of the site;
- Bin room to accommodate residential waste;
- Residential lobby; and
- Landscaping.

First Floor:

- Bedrooms and bathrooms of the cross over units (Units 1-6).

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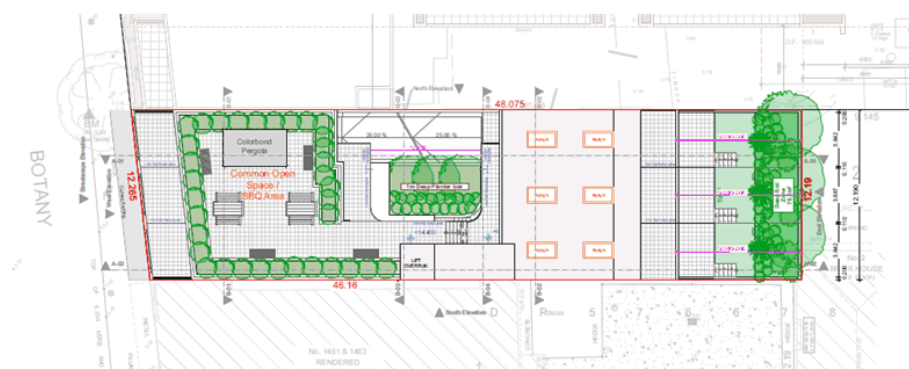
Second Floor:

- Three (3) x two bedroom cross over units (Units 1-3) with balconies fronting Botany Road;
- Bedrooms and bathrooms of cross over units (Units 7-9); and
- Lift and fire stair access.

Third Floor:

- Three (3) x two bedroom cross over units (Units 7-9) with balconies facing the rear;
- Lift and fire stair access;
- Communal rooftop terrace located at the front of the site which includes landscape planter, seating and tables, pergola and BBQ area;
- Skylights are provided over Units 7-9.

The following figures demonstrate the proposed development as amended:



**Figure 1. Proposed Site Plan**



**Figure 2. Proposed Western (Front) Elevation**

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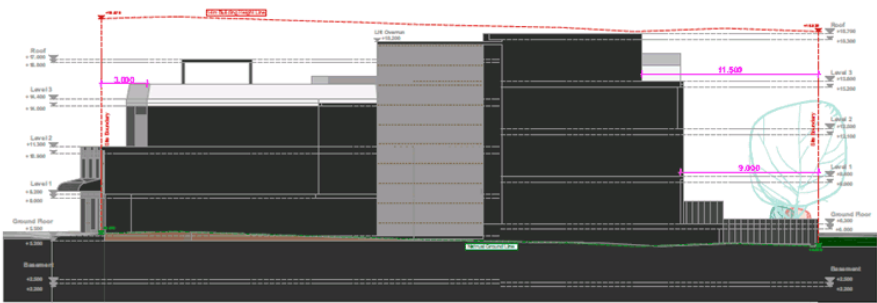


Figure 3. Proposed Southern (Side) Elevation

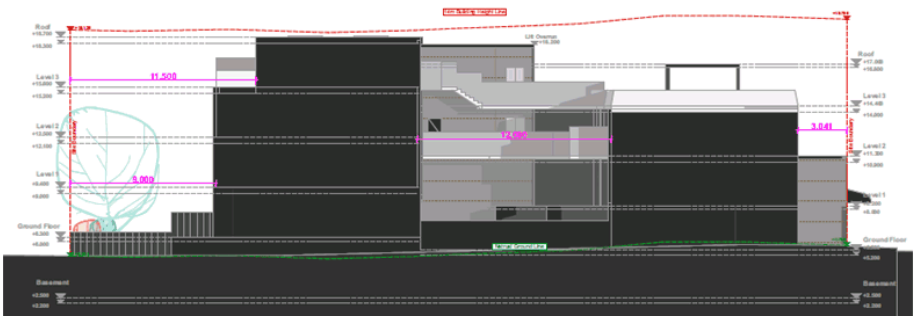


Figure 4. Proposed Northern (Side) Elevation



Figure 5. Proposed Eastern (Rear) Elevation

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### Site Description

The subject site is legally known as Lot 12 in DP 666561 and is identified as 1449 Botany Road, Botany. The site is located on the eastern side of Botany Road between Hastings Street to the south and Edward Street to the north. The site has an east-west orientation with west being the front of the site and east being the rear of the site.



Figure 6. Locality Plan

The site has a total area of 577.8sqm and is irregular in shape with a western street frontage of 12.265 metres along Botany Road, a rear eastern boundary width of 12.19 metres, a northern side boundary length of 48.075 metres and a southern side boundary length of 46.16 metres. The site has a fall of 950mm from the western side to the eastern side of the site. The site comprises a single storey fibro dwelling house with metal roof with a detached fibro garage located along the southern side of the site.



Figure 7. Subject site viewed from Botany Road

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The site directly to the north at 1447 Botany Road contains a detached brick dwelling house with vegetation at its rear and is identified as a Heritage Item No. 58 – House under Schedule 5 – Environmental Heritage of the BBLEP 2013. The site to the south at 1451-1453 Botany Road comprises a single storey shop and attached dwelling with the shopfront along Botany Road and vehicular access off Hastings Street. Directly to the rear is 2 Hastings Street which comprises a single storey detached brick dwelling house with tiled roof with shed in the rear yard.

Development surrounding the site is generally single and two storey dwelling houses. The site is zoned B2 – Local Centre under the BBLEP 2013. There are a number of heritage items surrounding the site which include 1158-1168 Botany Road (Item 49- House Group), 1441 Botany Road (Item 24- Police Station (circa 1871), 1443 Botany Road (Item 57- Boarding House- front building) and 1447 Botany Road (Item 58- House). The site is located within the Botany Township Heritage Conservation Area as well as located on Botany Road which is a classified road. The site is located within the 25-30 ANEF Contour and is impacted by road noise.

### Statutory Considerations

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

#### **S.4.15(1) - Matters for Consideration – General**

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

The following Environmental Planning Instruments are relevant to this application:

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

The State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 (Vegetation SEPP) regulates the clearing of native vegetation on urban land and land zoned for environmental conservation/management that does not require development consent and applies to the Sydney and Newcastle metropolitan areas. The aims of the policy are (a) to protect the biodiversity values of trees and other vegetation in non-rural areas of the State, and (b) to preserve the amenity of non-rural areas of the State through the preservation of trees and other vegetation.

The Vegetation SEPP repeals clause 5.9 and 5.9AA of the Standard Instrument - Principal Local Environmental Plan and substantially reproduces the effect of these clauses in the Vegetation SEPP. Council will continue to regulate the clearing of vegetation (including native vegetation below the BOS thresholds through the DCP.

The plans demonstrate that the proposed basement structure encroaches within the TPZ area of two trees which are located on the neighbouring property to the north-east and the street tree located directly to the west of the site. Council's Tree Management Officer has reviewed the plans and arborist report and has no issues with the proposed development subject to the imposition of conditions. Additionally, the plans rely on the neighbouring tree to be removed as part of another development application at 1445-1447 Botany Road Botany. This application is currently under assessment and it is not guaranteed that this tree will be

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permitted to be removed. Therefore the conditions that are provided by Council's Tree Management Officer may be preliminary in this case.

As the application is recommended for refusal, the conditions that are imposed by Council's Tree Management Officer are not applied in this instance.

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

The following clauses of the State Environmental Planning Policy (Infrastructure) 2007 apply to the development:

##### Clause 45 – Determination of development applications- other development

The site is within 5 metres of an exposed overhead electricity powerline along Botany Road which may create a safety issue as the proposal provides balconies at Level 2 along the street frontage. The application was referred to Ausgrid for comment however no response has been provided to this date. As the proposal is recommended for refusal, there is no requirement to proceed with concurrence. However should the application have been recommended for approval, a condition of consent would have been imposed requiring the overhead powerlines be undergrounded along Botany Road.

##### Clause 101 – Development with frontage to classified road

The development is located on Botany Road which is a classified road. As the proposal involves a new road opening located on the north-western side of the site off Botany Road, the application was referred to RMS for concurrence. On 6 February 2019, a response letter was received by RMS stating that concurrence was not given and requesting additional information. The points that were raised in the letter include the following:

- *"The swept path of the longest vehicle (including garbage trucks, building maintenance vehicles and removalists) entering and exiting the subject site, as well as manoeuvrability through the site, shall be in accordance with AUSTROADS.*

*The swept paths provided appear inadequate as the submitted swept paths encroach the building envelope and other structures on site. Therefore, adequate swept paths should be provided for review in compliance with AUSTROADS.*

- *The on-site parking provisions do not meet Council DCP requirements. In this regard, the proposal should be amended to cater for the appropriate parking provisions on site. Roads and Maritime does not support off site car parking mitigation measures suggested in the submission.*
- *The layout of the proposed car parking areas associated with the subject development (including, driveways, grades, turn paths, sight distance requirements in relation to landscaping and/or fencing, aisle widths, aisle lengths, and parking bay dimensions) should be in accordance with AS 2890.1- 2004, AS2890.6-2009 and AS 2890.2 – 2002 for heavy vehicle usage. Parking Restrictions may be required to maintain the required sight distances at the driveway."*

Amended plans were provided to Council for assessment however the modifications did not address the points raised above. As there has been no changes to the development, the application was not forwarded onto RMS and their comments still apply. Therefore the proposal continues to not be compliant in this regard.

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

As Botany Road is a classified road which allows trucks to traverse down through to Port Botany and the industrial area of botany, noise and vibration is to be considered as part of the proposal. The application was accompanied by a road traffic and aircraft noise intrusion report and an environmental noise assessment, both commissioned by Day Design Pty Ltd. The reports go into detail of the road and its impact of vibration and noise onto the development. The reports have not been updated to reflect the amended plans.

Schedule 3 – Traffic generating development to be referred to Roads and Maritime

The development proposes nine units therefore is not considered to be a traffic generating development under the table within Schedule 3 of the SEPP.

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

*State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004* ("BASIX") applies to the proposed development. The development application was accompanied by BASIX Certificate No. 982946M dated 18 December 2018 prepared by Certified Energy. The proposal has been amended which may have affected the thermal comfort, water and energy targets. No amended BASIX Certificate has been provided therefore does not comply with the SEPP requirements.

**State Environmental Planning Policy No. 55 – Remediation of Land**

The provisions of SEPP No. 55 have been considered in the assessment of the development application, as the proposed development. Clause 7 of State Environmental Planning Policy 55 requires Council to be satisfied that the site is or can be made suitable for its intended use at the time of determination of an application.

The proposal seeks to excavate for one level of basement car parking. The applicant has provided a geotechnical report dated 12 December 2018 and an Acid Sulfate Soils report prepared by 17 December 2018, both prepared by Dirt Doctors Geotechnical Testing Services.

The acid sulfate soils report has stated that the site is located within an area of 'Low Probability' of acid sulfate soils and that laboratory analysis suggest that no acidic conditions are present in the soil. Therefore an acid sulfate soils management plan is not warranted in this case. The geotechnical report states that excavation for boreholes extended down 3 metres below ground where no groundwater was encountered. This does not trigger the development to be integrated. The report provides conditions relating to the foundations and the subsurface conditions as well as further recommendations that would need to be carried out during construction.

The application was referred to Council's Environmental Scientist however no final comments were provided as the applicant had failed to provide a contamination report which was required to carry out an assessment of the site to deem any residential development be suitable.

An assessment for one level of car parking has been carried out only. The development generates a greater number of car parking spaces that is provided on the site which would require a second level of basement car parking. The conclusions in the geo-technical report relate to excavation up to 3 metres below ground. Should a second basement car parking level be proposed, the development may trigger dewatering and result in an integrated development.

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**State Environmental Planning Policy (SEPP) No. 65 – Design Quality of Residential Apartment Building**

The provisions of State Environmental Planning Policy No. 65 'Design Quality of Residential Apartment Building' have been considered in the assessment of the Development Application.

Design Review Panel

During the development application process, the applicant submitted the proposal to the DRP for consideration. The meeting was held on 15 February 2019. A copy of the minutes from the meeting are attached to the report. The Design Review Panel did not support the design and their comments are attached to the report and are further elaborated on below:

**Principle 1: Context and Neighbourhood Character**Panel Comments:

*The Panel notes that the degree to which the design responds to the context and neighbourhood character is one of two critical issues in relation to this application, and is in many ways dependent on the outcome of at least two other development applications currently with the Council but not yet determined.*

*The Panel notes, consistent with its advice in relation to DA-2018/329 for five storey mixed use development at 1445-1447 Botany Road provided in the report of the 13 December 2018 meeting, that this part of Botany Road has significant challenges. These arise from an inherent conflict between Council's zoning of the site and adjacent sites along Botany Rd as B2 Local Centre with a FSR of 2:1 and a height limit of 15m - and Council's heritage listing of several single buildings within the zone. Preservation of single dwellings with related curtilage in a B2 Local Centre zone clashes with the intent of the zone – i.e. a coherent streetscape of commercial premises fronting the street, with multi-dwelling housing over.*

*As a result it is the Panel's view that it is possible to construe two very different desired future characters for this part of the street from the planning controls. Essentially, these are:*

*1. That despite the LEP controls for FSR and Height, there should be a low rise built form along Botany Road that contributes to and is sympathetic to the Botany Township Heritage Conservation Area as well as the peppering of heritage items and contributory items along the street frontage, and a result is unlikely to be more than two levels high (possibly with a recessive third storey appropriately set back from the frontage and from any heritage items on the same or adjacent sites) with the potential for slightly larger building forms up to 4 storeys at the rear of deeper sites with substantial setbacks that were respectful to the rear curtilage of heritage items on the same site and on adjacent and nearby sites, as well as to the ADG requirements for building separation and visual privacy)*

*2. Alternatively, that the plans envisage a desired future character that still responds sympathetically to the heritage context but with a more sharp bulk and scale interface with a mid-rise built form of generally 4 storeys set back behind a consistent 2 storey street frontage on the boundary (ie a nil front setback for the first two levels), and a taller built form set back from the street frontage up to a maximum of 4 storeys, with the potential for a 4 storey built form*

*The essential difference between these streetscape characters in terms of built form is whether the building fronting Botany Road can be 2-3 storeys maximum or 4 storeys, and*

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*whether it can be built to the side boundaries or must set back to achieve an appropriately sympathetic response to the heritage context*

*The Panel understands that a separate DA is currently before the Council but not yet determined, for demolition of the existing heritage listed dwelling house on the adjacent site. The subject design submission makes the assumption that removal of the heritage item will be approved, which is far from certain. If the demolition of the heritage item is not approved it would be reasonable to expect its continued existence and protection as a part of the heritage streetscape. In such a scenario, the Panel considers that the design as currently proposed would not be in keeping with the heritage conservation area, and would not provide an appropriate scale relationship or interface with the heritage item. In particular the fourth and fifth storeys of the proposal would not be appropriate and the third level would need to be very sensitively treated to manage bulk and scale impacts on the heritage item and streetscape.*

*If the heritage item is approved for demolition, then the Panel considers that it would be reasonable to conclude that Council's vision for the streetscape is for a larger though still heritage sympathetic built form (up to 4 storeys) at the front of the site.*

*On the basis of the facts before it, and on the basis that we do not have a development approval to demolish the heritage item at 1447 Botany Road, but we do have an LEP that lists it as a heritage item, it is the opinion of the Panel that the design does not successfully respond to and contribute to the context and neighbourhood character of the site.*

*While the applicant has demonstrated reasonable compliance with built form of DA-2018/329 for 1445-1447 Botany Road, the Panel considers that not only is this envelope too high and contrary to the LEP height control, reliance on an unapproved envelope is premature at this stage compared to responding to the existing and heritage listed context. As a result the Panel considers that the applicant has not provided sufficient information to demonstrate how the design responds to and contributes to its context, and in particular no heritage impact assessment was provided.*

*Were the site not immediately adjacent a heritage item that is set back from the street, and from the north-western boundary of the subject site, the design might, in general terms, be an appropriate response to desired future character. However, given that Council has chosen to list and preserve this item, the design must respond appropriately to it.*

*Given the complexity of the area and the challenges proposed by the planning controls in relation to built form and heritage, the Panel recommends that either the Council or the Applicant should consider preparing an urban design study that examines appropriate responses to street frontages, building wall heights and heritage in this block of Botany Road in order to demonstrate that individual applications can contribute to a cohesive built form for the block's frontage.*

#### Officer Comments:

The conflict between the density controls and the heritage conservation area of the street is still present. The applicant has sought to address point number 1 above which seeks a low rise building fronting Botany Road with a taller building at the rear. It is considered that the second floor is not appropriately setback from the street and should have a greater setback. The design has not taken into consideration the existing heritage item at 1447 Botany Road but rather has relied on a proposed scheme that is currently under assessment with Council.

#### **Principle 2: Built Form and Scale**

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Panel Comments:

*In addition to the comments above, the Panel does not support the proposed building's overall height, which exceeds the LEP height of buildings control and has serious concerns regarding the building's ceiling heights (see comments under amenity), which can only be ameliorated to achieve ADG compliance by further raising the overall height of the building. This is the second critical issue.*

*The Panel considers that for new buildings in heritage conservation area it is always more challenging to demonstrate that increased height above a height of buildings development standard should be supported. It is the Panel's applicant has not demonstrated why the height of the proposed design should be supported.*

*The Panel notes that the maximum number of storeys that can be reasonably achieved in compliance with the LEP 15m height limit is four. This is based on achieving compliance with Section 4C-1 of the*

*ADG and providing floor-to-floor heights of 3.6m (3.3m ceilings) for ground floor spaces and 3.1m (2.7m ceilings) for three floors above, and resulting in a building of 12.9m minimum height plus an allowance for roofing and parapets and plus the lift overrun. The Panel notes that a 5th storey, which would also generally be required to achieve a ceiling height of 2.7m for its habitable spaces, would automatically lead a building that was at least 16m height plus roof and lift overrun.*

*The Panel also notes that for a rear building that does not have a frontage to Botany Road, and is therefore not required to provide a ceiling height of 3.3m to the ground floor the maximum number of storeys that could be reasonably achieved is still four, with a total minimum building height of 12.4m (4 x 3.1) plus roof and lift overruns. A 5th storey to such a building would similarly also cause the building to breach the LEP height control at 15.5m plus roofing and lift overruns.*

*The Panel considers that the built form and scale of the design is inappropriate to the existing heritage character of this section of Botany Road, in particular its relationship to the heritage listed building on the site immediately north-west of the subject site. In this context any height above the LEP control should not supported without a compelling justification of how the height increase results in a superior planning outcome specifically in relation to heritage (As well as in relation to the other criteria of LEP Clause 4.6)*

*The Panel recommends that design must be amended to remove the fifth floor and fourth floor of the Botany Road facing building and the fifth floor of the rear building.*

*In addition and further to the comments above and under "Context", the Panel considers that the built form must better respond to the scale and setback of the 1447 Botany Road, which may involve further setbacks and height reductions in its vicinity and view catchments that include the heritage building.*

*In the Panel's view, a far better design response, streetscape character and sympathetic relationship to heritage items in the immediate area can be achieved through site amalgamation to the adjoining site at 1445 & 1447 Botany Road, Botany and ideally 1449 Botany Road as well. This site amalgamation would potentially enable an appropriate develop that provides a balanced bulk and scale to the proposed development*

*The Panel notes that the design exceeds the maximum height under the current LEP, does not provide sufficient floor to floor separation (see below under amenity) and exceeds the number of proposed storeys within the local future character of this portion of Botany Road, and as such cannot be supported.*

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*The Panel notes the floor to ceiling height within the commercial tenancy does not comply with the required 3.3m minimum, the tenancy no separate toilet facilities, shares the residential foyer, is not provided with loading dock facilities or the required parking and is not supported.*

*The Panel also notes the design does not provide for essential services and facilities such as a Fire Hydrant and possibly a substation (subject to confirmation from Ausgrid) has a large garage door dominating the ground floor interface to the public realm resulting in a poor quality streetscape. Appropriate consideration of all required elements would modify the current layout and visualisations, further diminishing the design quality of the development.*

*In addition, compliant separation to the interface of the R2 zone at the rear (east) of the site has not been provided, and the rear setbacks should be increased to achieve ADG compliance of 9m up to level 4 and, and 12m for Level 5 should this level be supported contrary to the Panel's recommendations. The applicant has not justified the departure from the ADG controls for this increased setback and the Panel is not aware of any reason it cannot be provided.*

Officer Comments:

The height has now been reduced so that it is compliant with the BBLEP height of 14 metres and removed the fifth storey. This eliminates the majority of the issues raised under this design principle. The relationship between the subject proposal and the neighbouring heritage items has not been demonstrated. Site amalgamation has not been considered and the ceiling heights at ground level continue to be an issue.

**Principle 3: Density**

Panel Comments:

The Panel does not support the proposed density on the site.

Officer Comments:

The proposal has not been put forward to a second meeting however there are still some issues that were initially raised that remain outstanding.

**Principle 4: Sustainability**

Panel Comments:

*The Panel notes that there are further opportunities for including sustainability initiatives in the design above and beyond those required by BASIX and the ADG, such as solar energy generation, rainwater harvesting and irrigation and community productive gardens, and building materials that are sustainable, recyclable and minimise carbon emissions*

Officer Comments:

The applicant has not provided any rainwater harvesting or irrigation or solar panels to address sustainability. The applicant has not provided an amended BASIX Certificate.

**Principle 5: Landscape**

Panel Comments:

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*The Panel notes the provision of communal open rooftop space including pergola structure and BBQ facilities with a series of internal planters for landscape treatment and ground floor deep soil landscaped areas to the rear. The Panel however notes that the minimum required landscape area and minimum the widths of the proposed planters have not been provided.*

*Accordingly the Panel does not consider that the current design exhibits high quality in this regard, and recommends that it should at the very least achieve the minimum standards and have a high quality landscape design. The Panel also considers that the current landscaping design for the deep soil zone is not inadequate in terms of the scale and size of trees. Large scale canopy trees should be provided in the deep soil zone. Green walls, climbing plants, shade structures and medium to large scale trees on podium are encouraged to be included in the proposed submission, particularly to soften the internal courtyard space and the ground floor streetscape presentation.*

*The Panel notes that no documentation was provided in relation to the streetscape treatment for the public domain and the Panel has concerns about the close proximity of the proposed driveway on the site to an existing mature street tree that appears likely to impede vehicular movements, constructability of the driveway and sightlines for vehicles entering and exiting the site. The Panel would not support the removal of the street tree in order to provide for the driveway location, noting that even though it does not appear to be currently proposed for removal, its removal may arise out of these other considerations. The Panel recommends that the driveway should be moved rather than the tree removed.*

Officer Comments:

The applicant has not provided amended landscape plans or greater details relating to planter depths and sizes. The applicant has provided greater large scale canopy trees along the eastern boundary in the deep soil zone however the stormwater system is located partially in this area. Streetscape treatment continues to not be addressed and removal of the street tree continues to apply. The applicant has not relocated the driveway.

**Principle 6: Amenity**

Panel Comments:

*The Panel notes the floor-to-floor heights proposed in the design are typically 2.9m. This is inconsistent with the ADG's recommended minimum floor-to-floor height of 3.1m. The Panel considers that it is unlikely that the design will be able to provide ceiling heights of 2.7m without the extensive use of bulkheads, which is discouraged by the ADG.*

*The Panel also notes that proposed changes included in the Deemed-to-Satisfy (DTS) Provisions of Volume One of the NCC 2019 Public Comment Draft released on 8 February 2018 involve sprinkler protection for Class 2 (apartment buildings) and 3 buildings (hotel and dormitory style accommodation) over 3 storeys and under 25m in effective height with associated fire safety offsets as outlined below. Should these changes be introduced in 2109, as expected, these would further impact on the ability of the design to provide ceiling heights that were compliant with the ADG, due to the need to run sprinkler piping along the ceiling.*

*As a result, the Panel considers that the design should be amended so that the floor-to-floor heights are increased to 3.1m minimum, in order to ensure that the residential amenity of the interiors is of an appropriately high quality. That Panel also advises that a typical habitable room section at a larger scale should be prepared to demonstrate to the Council that the*

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*building can achieve 2.7m ceiling heights to all habitable spaces and can include concealed sprinkler piping without the use of bulkheads.*

*The Panel considers that the amenity of the individual apartments is generally acceptable subject to the following:*

- *Provision of privacy screens to bedroom overlooking walkways*
- *A better interface and design resolution between the driveway and Unit 6*
- *Design resolution to the foyer that currently provides a corridor access to Botany Road that is considered to be inappropriately long and narrow*
- *The building entries should be reconfigured so that the residential entry is not shared with the commercial entry*

*The Panel considers that the amenity of the basement carpark is not satisfactory for reasons including:*

- *Insufficient parking spaces that does not adequately provide for the density proposed on the site*
- *Concerns over the current layout and functionality to access and use the spaces provided (for example the apparent difficulty maneuvering out of space 5)*
- *No provision of storage areas within the garage*
- *No loading dock or provision of parking for the commercial space*
- *No separation of residential and commercial garbage*
- *No visitor parking*

Officer Comments:

The floor to floor heights of the units have been amended to comply with the ADG and the BCA however the ground floor commercial tenancy does not comply. Privacy screens have not been demonstrated within the amended plans, the interface between the basement ramp and Unit 6 has not been addressed, entry to the residential component has not been reconfigured, the car parking level has not been redesigned to address shortfall in car parking, maneuvering, and loading bay.

**Principle 7: Safety**

Panel Comments:

*The Panel considers that the design as presented generally provides satisfactory safety to residents subject to the following:*

- *Separation of commercial tenancy and residential uses*
- *Site lines for vehicular access to the streetscape and the street tree to the north of the subject site may provide a visual conflict*
- *Vehicular swept paths and movements within the basement to demonstrate compliance*

Officer Comments:

This has not changed from the original scheme.

**Principle 8: Housing Diversity and Social Interaction**

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Panel Comments:

*The Panel notes the proposal only provides for two bedroom apartments and recommends that Council should review whether this lack of variation in apartment sizes will be appropriate for the locality taking to account the area's existing housing provision. The Panel notes the design is deficient in its provision of communal open space with reduced opportunities for social interaction among residents.*

Officer Comments:

The proposal contains nine x 2 bedroom units therefore the applicant has not addressed the lack of unit mix variation.

**Principle 9: Aesthetics**Panel Comments:

*The Panel considers that the design exhibits a generally acceptable visual appearance but notes the potential for the parapet windows and level 2 streetscape appearance to present poorly. The large expanse of paint finish to the side walls is not considered to be high quality design and requires further articulation and variation of materials and finishes in order to reduce their scale and achieve a better interface with adjacent heritage items and the heritage conservation area. The Panel notes the assumption by the applicant is that both sides of this development will be built against, however the Panel notes this may not occur for a considerable period and as a result the quality of the side elevations should be improved. The Panel also recommends that further consideration and justification of the built form, materials and finishes should be provided within the framework of any heritage consultation and report.*

Officer Comments:

Articulation has not been provided along the side elevations and the materiality and finishes presented could be explored further.

Apartment Design Guide

A Design Verification Statement has been prepared by AGM Studio and was submitted with the development application however there was no revised verification accompanying the amended plans.

The applicant has submitted an assessment against Part 3 and 4 of the ADG and has not demonstrated that adequate regard has been given to the design quality principles and objectives specified in the ADG for the relevant design criteria. An assessment against the significant non-compliances is provided in detail below.

Clause 30(1) of SEPP 65 states that if a development application satisfies the following design criteria, the consent authority cannot refuse an application because of those matters. These are deep soil, ceiling heights and building separation.

The key points of non-compliance with the ADG are discussed below:

SEPP 65 – ADG			
Control	Requirement	Proposed	Complies

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<b>Dwelling Size</b>	Minimum internal areas as follows: Studio: 35sqm 1 bed unit: 50sqm 2 bed unit: 70sqm 2 bed unit with 2 <sup>nd</sup> bathroom: 75sqm 3 bed unit: 90sqm 3 bed unit with 2 <sup>nd</sup> bathroom: 95sqm	2 bed units: 75sqm – 89.9sqm	Yes
<b>Ceiling Height</b>	Habitable Rooms: 2.7m Non-habitable: 2.4m Mixed Use: 3.3m for ground and first floor	Habitable rooms: 2.7 metres Non-habitable rooms: 2.7 metres Floor to floor height for residential levels: 3.1 metres Mixed Use (GF): 2.5 metres ground floor (floor to ceiling) and 2.7 metres first floor (floor to ceiling)	<b>No – Refer to Note 1</b>
<b>Deep Soil</b>	Objective 3E-1 requires 7% of the site (for sites less than 650sqm) as deep soil area (requires 40.45sqm)	83.6sqm (14.5%)	Yes
<b>Communal Open Space</b>	25% of site (144.45sqm)	149sqm (26%)	Yes
<b>Solar Access</b>	50% direct sunlight to the principal usable part of the COS for a minimum of 2 hours during mid-winter Note: Part 4C requires that COS receives 3 hours in winter.	The communal open space located on the rooftop will receive full sunlight.	Yes
	Living rooms and POS for at least 70% of apartments (and in neighbouring development) to achieve 2 hours between 9am and 3pm	All apartments receive a minimum 2 hours of sunlight.	Yes
<b>Building Depth</b>	Use a range of appropriate maximum apartment depths of 12-18 metres	The apartments do not exceed 18 metres in depth.	Yes
<b>Building Separation</b>	<u>Up to 4 storeys (approx. 12m):</u> 3m from non-habitable rooms to site boundary	<u>Western (front) setback:</u> • Ground and Level 2 = Nil	Yes

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	6m from habitable rooms/balconies to site boundary Additional 3 metres from low density zone	<u>Northern (side) setback:</u> <ul style="list-style-type: none"> <li>Ground to Level 3 = Nil</li> </ul> <u>Southern (side) setback:</u> <ul style="list-style-type: none"> <li>Ground to Level 3 = Nil</li> </ul> <u>Eastern (rear) setback:</u> <ul style="list-style-type: none"> <li>Ground to Level 3 = 9 metres</li> </ul> <u>Between buildings</u> 12 metres separation between eastern and western buildings.	
<b>Balcony Sizes</b>	Studios: 6sqm 1 bed: 8sqm 2 bed: 10sqm 3 bed: 12sqm Ground Floor: 15sqm	2 bed: 10.4sqm-13.6sqm Ground Floor: 34.2sqm to 35sqm	Yes Yes
<b>Cross Ventilation</b>	60% (6 units)	100% (9/9 units)	Yes
<b>Storage</b>	Studio: 4m <sup>3</sup> 1 bed: 6m <sup>3</sup> 2 bed: 8m <sup>3</sup> 3 bed: 10m <sup>3</sup>	2 bed: 8m <sup>3</sup> -8.3m <sup>3</sup>	Yes
<b>Unit Mix</b>	Variety of unit types	The development provides 9 x two bedroom units. There is no variety provided in the development	<b>No – Refer to Note 2</b>

#### Note 1 – Ceiling Heights

Part 4C of the ADG requires development to have the following floor to ceiling heights:

- Habitable rooms: 2.7 metres
- Non-habitable rooms: 2.4 metres
- Located in a mixed use area: 3.3 metres for ground and first floors

The commercial tenancy on the ground floor has a floor to ceiling height of 2.5 metres with a floor to floor distance of 2.7 metres. This is inconsistent with the design criteria provided above. The applicant has attempted to align the parapet and ceiling height with the existing neighbouring shopfront to the south. This should not dictate the height of the commercial tenancy particularly should the neighbouring property be developed at a future date.

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Additionally, the 2.5 metre ceiling height does not allow for the flexibility and adaptability of the use. The development contains limited space between the ground and first floor to accommodate any services within the ceiling particularly which may be relevant should the shop be used as a café or restaurant which requires mechanical ventilation.

The portion of the development where the commercial tenancy falls is significantly under the height limit therefore there is no reason as to why the commercial tenancy cannot achieve compliance with this control. Consideration of the overall height and scale of the development will need to be taken on how it impacts on the heritage nature of the street and surrounding heritage items which is further assessed in the report below.

#### **Note 2 – Unit Mix**

Part 4K of the ADG requires developments to provide a mix of apartment types to provide housing choice and support equitable housing access. The proposal provides for nine x two bedroom units which targets a certain demographic and market. This generally excludes family types. The proposal does not achieve the design guidance and criteria of the ADG and provides a variety in apartment mix.

#### **Botany Bay Local Environmental Plan 2013**

Botany Bay Local Environmental Plan 2013 has been considered in the assessment of the Development Application and the following information is provided:

<b>Relevant Clauses Principal Provisions of Botany Bay Local Environmental Plan 2013</b>	<b>Compliance Yes/No</b>	<b>Comment</b>
Land use Zone	Yes	The site is zoned B2 Local Centre zone under the Botany Bay Local Environmental Plan 2013.
Is the proposed use/works permitted with development consent?	Yes	The proposed use as a residential flat building with commercial tenancy is permissible with Council's consent under the Botany Bay Local Environmental Plan 2013.
Does the proposed use/works meet the objectives of the zone?	Yes	The proposed development is consistent with the following objectives of the B2 Local Centre: <ul style="list-style-type: none"> <li>• To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.</li> <li>• To encourage employment opportunities in accessible locations.</li> <li>• To maximise public transport patronage and encourage walking and cycling</li> </ul>

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Relevant Clauses Principal Provisions of Botany Bay Local Environmental Plan 2013	Compliance Yes/No	Comment
<u>Clause 4.3:</u> What is the height of the building?  Does the height of the building comply with the maximum building height?	-  Yes	A maximum height of 14 metres applies to the subject site.  Lift Overrun- 12.9m (RL18.20) Building- 13.8m (RL18.70)  The maximum height of the development complies with Council's requirements under the Botany Bay Local Environmental Plan 2013.
<u>Clause 4.4:</u> What is the proposed Floor Space Ratio?  Does the Floor Space Ratio of the building comply with the maximum Floor Space Ratio?	-  Yes	The maximum Floor Space Ratio requirement is 2:1 (1,155.6sqm).  GFA: 867.3sqm FSR: 1.5:1  The Floor Space Ratio of the development complies with Council's requirements under the Botany Bay Local Environmental Plan 2013.
<u>Clause 4.4A:</u> Is the site within land marked "Area 3" on the Floor Space Ratio Map?  If so, does it comply with the sliding scale for Floor Space Ratio in Clause 4.4A?	N/A	The site is not located in an Area 3 zone.
<u>Clause 5.1:</u> Is the land affected by road widening?	N/A	The subject site is not affected by road widening.
<u>Clause 5.10:</u> Is the site listed in Schedule 5 as a heritage item or within a Heritage Conservation Area?	Yes	The site is not a heritage item however is located in close proximity to a number of heritage items at 1447 Botany Road (Item 58- House), 1158-1168 Botany Road (Item 49- House Group), 1441 Botany Road (Item 24- Police Station (circa 1871) and 1443 Botany Road (Item 57- Boarding House- front building). The site is located within the Botany Township Heritage Conservation Area. This is

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Relevant Clauses Principal Provisions of Botany Bay Local Environmental Plan 2013	Compliance Yes/No	Comment
		discussed in greater detail in Part 3B of the DCP.
<p>The following provisions in Part 6 of Botany Bay Local Environmental Plan apply–</p> <ul style="list-style-type: none"> <li>6.1 – Acid Sulfate Soils</li> <li>6.2 – Earthworks</li> <li>6.3 – Stormwater Management</li> <li>6.9 – Development in areas subject to aircraft noise</li> <li>6.15 – Active Street frontage</li> </ul>	<p>Yes</p> <p>Yes</p> <p><b>No – Refer to Part 3G below</b></p> <p>Yes</p> <p><b>No - Refer to Note 3</b></p>	<p>The site is located within a Class 4 ASS zone. The proposed development is seeking to excavate greater than 2 metres below ground. A geotechnical report has been received.</p> <p>The proposal seeks one level of basement car parking. The proposal has provided the relevant reports to address excavation. The proposal was referred to Council's Environmental Scientist who had no issue to the proposal subject to conditions of consent.</p> <p>The development proposes OSD and pump out system. The proposal was referred to Council's Development Engineer who had issues with the stormwater system and required additional information which has not been addressed.</p> <p>The site falls within the 25-30 ANEF contour. The development provided an acoustic report which made an assessment for the development.</p> <p>The proposal provides a commercial tenancy on the ground floor however the proposal does not significantly address active street frontage as the shop does not extend more than 50% of the frontage.</p>

#### Note 3- Active Street Frontage

The site has been marked as 'Active Street Frontage' within the BBLEP 2013. Therefore the ground floor of the development is to be dedicated for retail and commercial businesses. The development proposes one commercial tenancy on the ground floor with a 40sqm GFA. The site has a street frontage width of 12.265 metres however the commercial tenancy has a frontage that is a one-third of the street frontage along Botany Road. This does not satisfy Clause 6.15 of the BBLEP 2013. The development has a small portion of the ground floor as retail with the rest being a driveway and basement car parking access as well as access to the residential lobby. This could be contributed to the size and narrowness of the site to accommodate appropriate commercial space as well as cater for the residential uses above.

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**S.4.15(1)(a)(ii) - Provisions of any Draft EPI's**

There are no current Draft EPIs applicable to this development

**S4.15(1)(a)(iii) - Provisions of any Development Control Plan****Botany Bay Development Control Plan 2013**

The development proposal has been assessed against the controls contained in the Botany Bay Development Control Plan 2013 as follows:

*Part 3A –Parking and Access*

The proposal accommodates a total of fifteen (15) car parking spaces in association with the residential and commercial uses. These spaces are contained within the basement car parking level. The breakdown in the amount of car parking required across the site as per the ADG and Part 3A is as follows:

- Office Premises: 1 space/40sqm (one space required)
- Residential units: 1 space per studio/one bedroom unit, 2 spaces per two and more bedroom units, 1 visitor space per 5 units (18 residential spaces, 2 visitor spaces- total 20 car spaces)

The development generates a total of 21 car parking spaces. The proposal has a shortfall of six (6) car spaces.

**Note 4 – Departure in Car Parking and loading/unloading**

There are a number of non-compliances with the development with regard to the development. The issues are outlined below:

Car Park Shortfall

As stated above, there is a non-compliance of six car spaces within the site. This is predominately related to the residential component. The proposal provides four car stackers to accommodate eight spaces with one of the car stackers allocated to two visitor spaces.

A traffic report which was prepared by Motion Traffic Engineers does not adequately address the shortfall in car parking. The report states that the development complies with the car parking requirements under State Environmental Planning Policy No. 65 and the RMS Guidelines for Traffic Generating Development. The site is not located on land that is zoned or sites within 400 metres of land zoned B3 or B4 or equivalent within a nominated regional centre. The site is not located within a regional centre but within the Sydney Metropolitan Area and as the site is not located within 400 metres of a train station, this control does not apply. Therefore the development is to comply with the DCP controls.

The use of car stackers is unacceptable in this instance, particularly for the visitor spaces. No car stacker manufacturing details have been provided to demonstrate that the basement has appropriate head clearance or width to accommodate stackers has been provided to council. Additionally, the use of car stackers further demonstrates how constrained the site is as the

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applicant cannot provide the required amount of car parking spaces within one level. The proposal also provides a lack of motorcycle spaces within the basement.

#### Loading/unloading

The development does not provide for any loading/unloading within the site which is not supported particularly as there is a commercial component included and that the site has sole frontage to a classified road. The traffic report has not discussed how loading and unloading will occur as part of the development. It is assumed that this will be carried out from the street which will also include waste collection being carried out.

The proposed driveway is located in position of the existing bus stop that is directly outside the site. There is no documentation relating to a discussion with STA about its relocation. In addition to above, should waste collection be carried out from Botany Road, this will negatively impact the bus zone as a number of bins will be located along the frontage.

The development has not provided appropriate head clearance for an MRV vehicle which would be required to carry out deliveries and furniture removals. As provided by Council's Development Engineer, the width of the site as well as the layout of the basement make it impossible to accommodate a loading as well as full compliance with the number of car parking spaces required on the site. This further presents the point that the site is not suitable for the development put forward by the applicant.

#### Design of basement

Council's Development Engineer has reviewed the amended scheme and has provided the following comment:

*"The basement parking facility is not supported. The excessive use of one way roadways within the basement presents a multitude of vehicular conflicts which are not supported. Nor is there any adequate details provided for the proposed traffic management systems within the basement.*

*It has not been demonstrated that at the intersections of one way and two way aisles (e.g. top and the bottom of the basement ramp), that two vehicles can pass one another. Areas in which it is necessary for two vehicles to pass one another need to be designed for a B85 vehicle to pass a B99 vehicle. In both cases, areas shall be checked using single turn swept path templates for the B99 vehicles and the B85 vehicle, generated in accordance with Appendix B, Paragraph B3.1, which include the swept path clearances specified in Paragraph B3.2.*

*Additionally, the parking layout is not functional and involves excessive 3 or more point turns to access the parking spaces. A revised layout is necessary."*

The Design Review Panel minutes have assessed the amenity of the basement car park and have stated that it is not satisfactory for reasons including insufficient parking spaces that do not adequately provide for the density proposed on the site, concerns over the current layout and functionality to access and use the spaces provided (for example the apparent difficulty manoeuvring out of space no. 5), no provision of storage areas within the garage, no loading dock or provision of parking for the commercial space, no separation of residential and commercial garbage and no visitor parking. The applicant has not addressed these issues as no amended traffic report has been provided therefore the issues continue to be outstanding.

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#### Waste Collection

The proposal does not provide any on-site waste collection with the applicant indicating that waste is to be collected from the street. The proposal seeks nine units and while this is not considered to be an excessive amount of units, the site fronts onto Botany Road which is a classified road and is located immediately next to a bus stop. Any on-site waste collection will disrupt bus drop off and pick. Additionally, the proposal provides one garbage holding room for both the residential and commercial uses which is unacceptable. There should be two separate holding rooms particularly if the applicant seeks to utilise commercial garbage collection for the commercial use.

#### Roads and Maritime Services

The original design was referred to Roads and Maritime Services (RMS) for concurrence. After a review of the plans and documentation, RMS did not provide concurrence to the development in its original form and provided the following reasons for not supporting the proposal:

- *"The swept path of the longest vehicle (including garbage trucks, building maintenance vehicles and removalists) entering and exiting the subject site, as well as manoeuvrability through the site, shall be in accordance with AUSTROADS.*

*The swept paths provided appear inadequate as the submitted swept paths encroach the building envelope and other structures on site. Therefore, adequate swept paths should be provided for review in compliance with AUSTROADS.*

- *The on-site parking provisions do not meet Council DCP requirements. In this regard, the proposal should be amended to cater for the appropriate parking provisions on site. Roads and Maritime does not support off site car parking mitigation measures suggested in the submission.*
- *The layout of the proposed car parking areas associated with the subject development (including, driveways, grades, turn paths, sight distance requirements in relation to landscaping and/or fencing, aisle widths, aisle lengths, and parking bay dimensions) should be in accordance with AS 2890.1- 2004, AS2890.6-2009 and AS 2890.2 – 2002 for heavy vehicle usage. Parking Restrictions may be required to maintain the required sight distances at the driveway."*

The amended plans provided for assessment have not addressed the points raised above therefore they were not re-referred to RMS for comment as their initial comments would remain. The comments above form part of the refusal of the development proposal.

#### Part 3B – Heritage

The site is located within the Botany Township Heritage Conservation Area and is located in close proximity to a number of heritage items along Botany Road. The heritage items that are in the immediate vicinity include 1158-1168 Botany Road (Item 49- House Group), 1441 Botany Road (Item 24- Police Station (circa 1871), 1443 Botany Road (Item 57- Boarding House- front building) and 1447 Botany Road (Item 58- House). Additionally, the site is located within a visible distance of the Botany Town Hall which is located on the corner of Botany Road and Edward Street.

The application was referred to Council's Heritage Advisor who provided the following comments:

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*"The proposed development is located in the Botany Town Centre Heritage Conservation Area and is adjacent to a Federation house which is a heritage item. Both the HCA and the heritage item are listed in schedule 5 of Botany Bay LEP 2013.*

*The bulk, scale, setbacks and height of the building are intrusive and would have an adverse impact upon the heritage significance of the heritage item at 1447 Botany Road and the Botany Town Centre HCA. The building is out of scale with the predominant historic scale of this end of the HCA.*

*The existing building at 1449 Botany Road is contributory to the heritage significance of the HCA. The building is a weatherboard Victorian cottage that has been clad in fire cement sheet. It retains details such as the veranda columns and the weatherboards can be seen above the veranda roof. The demolition of contributory buildings in the HCA is not supported."*

The subject site contains a small cottage which is contributory to the heritage significance of the HCA. In managing a HCA, the first aim should be retention and conservation of existing intact buildings from the significant historical periods represented within the heritage conservation area- in this case 1449 Botany Road appears to be a Victorian period cottage, detached, weatherboard, with veranda columns. The cottage therefore appears to be a building of significance to the Botany Road heritage conservation area, which is also located within a context of buildings of similar age, some of these listed heritage items, and therefore demolition of the cottage should be refused on heritage grounds as its loss would cause erosion of the significance of the HCA. It also adjoins a heritage cottage located at 1447 Botany Road which should be retained.

It is acknowledged that the controls under the BBLEP 2013 prescribe an FSR of 2:1 and a height limit of 14 metres to this portion of Botany Road. This is contextually incompatible and does not reflect the true nature of the existing built form in this area as well as does not acknowledge the existing heritage items that are located in close proximity to the site. In comparison to the controls, the controls that are provided under Part 3B of the BBDCP 2013 that relate to heritage are more practical and applicable in this instance and when taking into consideration the curtilage of the surrounding heritage items and the subject site.

Part 3B.4 of the BBDCP 2013 goes into details relating to heritage conservation areas. As stated above, the site is located within the Botany Township HCA. The controls within this section predominantly relate to the existing shopfronts and shop top housing developments that are located within the main local centre of Botany. However Part 3B.7 of the BBDCP 2013 which relates to development in the vicinity of heritage items or HCA's would be more applicable in this case. The proposed massing, scale, proportion, symmetry and articulation that is proposed in the development does not reflect the existing building architectural style of the adjoining heritage items or buildings in the HCA.

The amended proposal has reduced the overall bulk and scale of the development which originally presented a five storey building. The amended scheme demonstrates a three storey bulk along Botany Road with a four storey building to the rear. The development is under the height limit and the FSR proposed has been reduced to 1.5:1. While this is an improvement, the proposal does not factor the surrounding heritage items, the desired future character of a two storey street wall with significant setback of the upper levels and the heritage context of the site. Additionally, having a four storey component to the rear of the site which adjoins a single and two storey low density residential context presents issues in of itself.

Additionally, the development is incompatible to the scale of the adjoining single storey heritage cottage at 1447 Botany Road or takes into consideration the setback of the heritage items further north along Botany Road. The proposed driveway which leads to the basement

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dominates the street frontage and is located on the northern side of the site. This is the closest point to the heritage items. On the adjoining site to the south, there exists a single storey shopfront which has been classified as a contributory item. The applicant has attempted to align the street elevation to contain the same parapet however as explained above, this presents issues with ceiling heights and floor levels.

The proposal is not complimentary or orientated to the HCA and surrounding buildings therefore should not be supported.

#### *Part 3C – Access and Mobility*

The proposal has provided for levelled entry and two disabled car parking spaces within the development as well as lift access to the units. However the proposal has resulted in amendments which have not taken into consideration accessibility to key areas. While the development does identify Units 1, 2 and 3 as being adaptable, the remaining units would generally have issues regarding to accessibility. Units 7, 8 and 9 have access off the top floor however this is obstructed by a set of steps which would make prams or wheeling other items difficult. This also applies to the Units 4,5 and 6 which are also hindered by stairs between their front door and the lift. Additionally, the private open space of the ground floor units is only accessible again by stairs. The accessibility report prepared by Building Innovations Australia has not been updated to reflect the amended plans therefore is out of date.

#### *Part 3E – Subdivision and Amalgamation*

The proposed development does not seek to subdivide or consolidate with neighbouring sites. Site consolidation is discussed in greater detail in the report below.

#### *Part 3G- Stormwater Management*

The development proposes OSD and pump out systems at basement level. Council's Development Engineer reviewed the original stormwater plans and has found it insufficient. No amended stormwater plans have been provided with the amended architectural plans therefore the comments provided below by Council's Engineer continue to apply. The comments provided by Council's Development Engineer is as follows:

*"The location of the stormwater systems are not supported at the rear of the development in the deep soil zone as it will conflict with the proposed landscaping and also an infiltration system with nil setback to adjacent privately owned property boundaries will not be supported. No amended stormwater plans have been received and the issues raised prior still remain and unsatisfactory stormwater management has been provided. The issues that still remain outstanding include:*

- *A minimum capacity 10,000L rainwater tank is required for roof water re-use within the development (toilets, clothes washers and landscaping)*
- *A functioning stormwater system is required that complies with Botany Bay DCP part 10*
- *Stormwater discharge from the site is to meet water quality requirements specified in Botany Bay DCP Part 3G.*
- *The location of these systems needs to be designed to not impact deep soil provision for tree planting."*

As discussed above, no amended documentation relating to the concerns raised by Council's Development Engineer has been received therefore the points of concern raised have not been addressed and form part of the refusal of the application.

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

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The site is located within the 25-30 ANEF Contour which generally finds it unacceptable to allow residential intensification within this contour. Council has approved development within this section subject to the buildings being designed and acoustically treated from aircraft noise and traffic noise. The development application was accompanied by an environmental noise assessment report prepared by Day Design Pty Ltd. Generally the assessment and recommendations of the report are supportable and could be conditioned however an amended acoustic report for assessment of this nature was not provided to Council with the amended plans and therefore is an outstanding issues which forms the refusal of the development.

#### *Part 3K – Contamination*

Refer to SEPP 55 section above which discusses the contamination of the site.

#### *Part 3L – Landscaping and Tree Management*

The proposed development provides landscaping within the rear yard, planters at ground level and the rooftop terrace. The landscaped area along the eastern side of the site provides the required amount of deep soil under the ADG. The overall amount of landscaping on the site is considered acceptable however Council's Landscape Architect had required the applicant to provide an amended landscape plan to detail and amend the following:

- a) Relocate the stormwater system from the deep soil area
- b) Provide details of the fence boundary treatment with the adjoining properties
- c) Provide greater amount of landscaped area within the communal open space
- d) Landscape Maintenance schedule is to be provided

The applicant has addressed the landscaping in the communal open space however has not provided amended landscape plans, amended stormwater plans or a landscape maintenance schedule. It can be argued that the location of the stormwater system prevents adequate deep soil planting to be provided along the eastern side of the site to allow for an appropriate landscape buffer between the building and the low density residential developments to its east.

#### *Part 3N – Waste Minimisation and Management*

As detailed within Part 3A above, the proposal does not provide waste collection on site. The proposal seeks to carry out all waste on the street. While the development does not provide a large amount of units, the proposed location of removal would occur from Botany Road which is a classified road. Additionally, any waste collection may interfere with the bus stop which is located directly outside the site. It was recommended to address Council's and RMS' concerns that a loading bay be provided on the site however this has not been accommodated.

Additionally, the proposal does not provide a separate waste room for the commercial tenancy with both the residential and commercial garbage collection all located in the one area. This is not supported particularly if the commercial tenancy is relying on waste collection from Council's garbage trucks.

#### *Part 4C – High Density Residential*

The subject development is identified as a high density development with residential and commercial proposed. Part 5 of the BBDCP 2013 is more applicable to the development however there are some controls which relate to the site which are not included within Part 5 but rather in Part 4C. This is predominantly around family friendly controls as identified below.

##### **4C.4.1 Dwelling Mix and Layout**

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<p><b>C2</b> The combined total number of one-bedroom dwellings shall not exceed 25% of the total number of dwellings within any single site area in residential zones.</p> <p>All 2 and 3 bedroom apartments are to satisfy the family friendly controls.</p>	<p>The development proposes 9 x two (2) bedroom units with no studios or one bedroom units proposed.</p>	<p>Yes</p>
<b>4C.4.2 Family Friendly Apartment Buildings</b>		
<p><b>C1</b> Family apartments are apartments with two or more bedrooms designed so as to accommodate the living needs of families with children.</p>	<p>Floor plans have been provided to demonstrate that the units are all two bedroom units.</p>	<p><b>Yes</b></p>
<p><b>C2</b> Family apartments are to include a study to meet the needs of couple families with dependents households. The design of the study should allow for a parent to easily work from home whilst supervising a child</p>	<p>None of the two bedroom apartments have demonstrated a separate study area or a study nook.</p>	<p><b>No – Refer to Note 5</b></p>
<p><b>C3</b> Other than the master bedroom, each bedroom is to be large enough to accommodate a single bed, a desk or table, and floor space for playing, to be illustrated on a standard apartment layout plan</p>	<p>Given the size of the apartments, there is considered to be sufficient space in a secondary bedroom for a bed and desk or within the living room to accommodate a desk however this has not been demonstrated.</p>	<p><b>No – Refer to Note 5</b></p>
<p><b>C4</b> The floor surface of the entry, dining room and kitchen floor and internal storage area are to be water-resistant and easy to be cleaned and maintained, not carpet</p>	<p>Has not been demonstrated.</p>	<p><b>No – Refer to Note 5</b></p>
<p><b>C5</b> Two bathrooms are required. One bathroom is to be a shared bathroom which is accessible off a common corridor. This shared bathroom is to have a bathtub, and is to be large enough to allow for parental supervision</p>	<p>All units have two bathrooms with one of them containing a bathtub.</p>	<p>Yes</p>
<p><b>C6</b> The private outdoor space is to be clearly visible from the kitchen</p>	<p>All apartments have POS clearly visible from the kitchen.</p>	<p>Yes</p>
<p><b>C7</b> The entry areas and main corridors within apartments are to be generous in proportion to permit room for toys and sporting equipment, and for drying of wet shoes, boots and clothing</p>	<p>The layout of the units does not allow for storage to be provided directly adjoining the entry. It is not clear whether storage is provided under the staircase.</p>	<p><b>No – Refer to Note 5</b></p>
<p><b>C8</b> The Apartment Design Guide sets out storage space requirements. The storage room is to be located near the entry, and be of adequate proportions to accommodate large household items including strollers, wheeled toys, suitcases, and sporting equipment</p>	<p>Storage is provided within each unit.</p>	<p>Yes</p>

#### Note 5 – Family Friendly Apartments

Part 4C.4.2 requires 2 + bedrooms are to be meet the family friendly controls of the BBDCP 2013. The amended plans that were provided with the development application did not demonstrate a second living area/study or study nook, did not demonstrate whether the units would be waterproofed or catered for families with children or whether adequate amount of

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storage was provided within the units. A majority of these issues could be conditioned to comply however as the development is recommended for refusal, no conditions will be imposed.

*Part 5 – Business Centre*

The site is located within the Botany Local Centre. The objectives of the Centre that apply to the site under Part 5.2.2.7 of the BBDCP is as follows:

Objective	Response
<b>O1</b> To retain and conserve the Botany Local Centre and encourage a viable and attractive Local Centre by improving the public domain and the public/private interface	The proposal does not retain or conserve the heritage conservation area or the town centre. The proposal did not provide any improvements to the public domain other than demonstrate the relocation of the existing bus stop bench.
<b>O2</b> To protect and reinforce the distinctive and characteristic elements (i.e. setbacks & traditional facades and design features) of the Botany Township Heritage Conservation Area	The proposal does not emulate the existing setbacks of the heritage items, density and materials of the HCA.
<b>O3</b> To conserve and respect the main architectural features and form of Heritage Items	The existing dwelling is not a heritage item however is a contributory item that should be retained. The proposal seeks to demolish this structure and replace it with a four storey development.
<b>O4</b> To improve and extend the pedestrian environment and to encourage appropriate outdoor uses with good solar access, such as cafes	The proposal does not provide appropriate outdoor use and proposes an office premises at ground level. The proposed office tenancy is not considered to respond to the active street frontage that is required on the site.
<b>O5</b> To ensure new development complements the height and architectural style found in the immediate vicinity, particularly where this has a clearly established character	The proposal is under the height limit however the architectural style of the development does not reflect the style of the neighbouring development which is inconsistent with the predominantly single and two storey streetscape and character of the lower section of the Botany Township HCA.
<b>O6</b> To retain existing trees and provide additional trees within the streetscape	There are no trees located within the site to be retained however there is a street tree in close proximity to the front boundary and a neighbouring tree which may be impacted by the proposed excavation.
<b>O7</b> To retain a coherent streetscape with a consistent street wall and parapet line	The proposal is the first of its kind at this end of the Botany Township HCA. The proposal attempts to be consistent with the single storey parapet of the adjoining shopfront at 1451-1453 Botany Road however in its attempt of doing this, the proposal does not comply with the minimum floor to ceiling heights required under the ADG.
<b>O8</b> To ensure that dwellings provide passive surveillance, resident interaction and addresses the street	Balconies are proposed at Level 2 as well as large windows fronting Botany Road.

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<b>O9</b> To encourage development of awnings as balconies for residential and commercial units above (to improve amenity for unit dwellers and promote passive surveillance of streets); and	This is not encouraged and has not been provided.
<b>O10</b> To encourage site consolidation and provision of through site pedestrian links and arcades	This has not been considered however it is recommended that the subject site and the sites to the north and south at 1447 and 1451-1453 Botany Road be consolidated to allow for an appropriate density and compliant development.

Figure 24 - Desired Future Character - Botany Local Centre

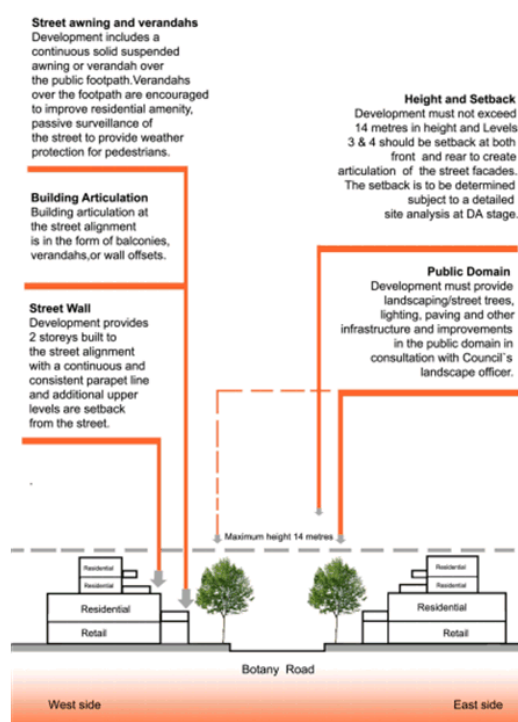


Figure 8. Reproduction of Figure 24 from Part 5 of the BBDP 2013

The following controls apply to the Botany Local Centre and are as follows:

Control	Proposed	Complies
<b>5.2.2.7 Botany Local Centre</b>		
<b>C1</b> Development must provide landscaping, street trees, lighting, public seating, paving and other public domain improvements	The proposal does not provide an appropriate public domain setting. All landscaping is contained away from the street frontage. The	<b>No</b>

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identified by Council, generally in accordance with Figure 24	existing Sydney buses bench will be relocated away from the proposed driveway.	
<b>C2</b> Pedestrian amenity and connectivity must be enhanced in conjunction with new development. Through site links and arcades are encouraged with redevelopment to improve pedestrian access, amenity and safety	There are no site links proposed and it is unreasonable to request site links as there is low density residential directly behind the site.	Acceptable
<b>C3</b> Redevelopment is encouraged through logical lot consolidation of sites and infill development. Avoid inappropriate lot consolidation patterns that would isolate and unreasonably restrict redevelopment on a single lot.	Site consolidation has not been considered as part of the proposal. The site is too narrow and too small to accommodate a development of this size and density. The applicant has not provided any evidence that negotiations with the neighbour to consolidate have been carried out.	<b>No – Refer to Note 7 below</b>
<b>C4</b> New development is to take into account and respond sympathetically to the established heritage streetscape, within the Botany Local Heritage Conservation Area, which exhibits strong architectural features and identity. New buildings are to reinforce these features and contribute to its character by incorporating traditional shopfronts and building facades.	The development does not respond to the heritage character of the street or the HCA and does not reflect an appropriate scale and setback from the heritage items and off Botany Road.	<b>No – Refer to Part 3B of the report above</b>
<b>C5</b> The design of development must be generally consistent with the desired future character of the centre identified in Figure 24 and the existing character of buildings within the Botany Township Heritage Conservation Area.	The desired future character allows for four stories with the top two stories setback further away from the street. The proposal has four stories with limited setback from Botany Road at Level 2. The setback of 3.5 metres at Level 2 is inconsistent with the desired future character of the area.	<b>No</b>
<b>C6</b> New development is to take into account and respond sympathetically to an established heritage streetscape with strong architectural features and identity. New buildings are to reinforce these historic features and contribute to its character.	The proposal does not sympathetically fit in with the surrounding built form and will form a precedent of high density development in the area that has not been designed or considered with the HCA streetscape.	<b>No</b>
<b>C7</b> A maximum height of 14 metres applies under BBLEP 2013. Building height along the street frontage is a maximum of two stories, with Levels 3 and 4 to be setback from the street in accordance with the desired future	The development proposes a maximum height of 13.8 metres which complies with the 14 metre height limit. However the setback proposed at Level 2 along Botany Road is considered insufficient.	<b>No</b>

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character identified for the centre in Figure 24.		
<b>C8</b> A setback to the rear may be required where a site adjoins a residential area and is to be determined following a detailed site analysis at development application stage. Applicants must therefore demonstrate to Council with the development application that the amenity of neighbouring residential properties are protected in terms of sunlight and natural daylight access, privacy and visual amenity.	The rear is bound at the rear by low density residential dwellings. The proposal has provided a 9 metre setback which is compliant with the setback required under the ADG for development within a transitional zone.	Yes
<b>C9</b> Buildings must address the street and their entries are to be readily apparent from the street. Developments on sites with two or more frontages must address both frontages, to promote, add prominence and diversity to the streetscape. Buildings that are orientated across sites, contrary to the established development pattern, are intrusive and often overlook adjoining properties (refer to Figure 17).	The building entry to both the residential and commercial tenancy have access off Botany Road.	Yes
<b>C10</b> Dwellings within a mixed use development and shop top housing are to have windows and/or verandahs in the street elevation to encourage surveillance of the street. If the Verandah is built over the street then a lease fee is payable to Council. The fee is set out in Council's Fees and Charges.	The west facing units have balconies or windows positioned looking onto Botany Road which provides passive surveillance.	Yes
<b>C11</b> Alterations and additions are to reflect the architectural design of the existing building. Materials and finishes are to be compatible with the existing building.	No alterations and additions are proposed. The materials used attempt to be consistent with the materials found in the existing streetscape with the use of facebrick.	Acceptable
<b>C12</b> New development when viewed from the street is to be compatible with the character of buildings within the site's visible locality by using similar shaped windows, doors and similar building materials.	The development as stated above is inconsistent with the existing heritage streetscape of the HCA due to built form, bulk, setbacks.	No

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<b>C13</b> Building design is to ensure individual dwellings can be identified clearly from public streets.	The proposal is for shop top housing not individual dwellings	N/A
<b>C14</b> A street number for the property is to be clearly identifiable from the street.	This has not been demonstrated on the development.	No
<b>C15</b> Awnings must be provided continuously along the shop frontages to provide pedestrian shelter to the footpath area.	An awning along Botany Road is provided for the development.	Yes
<b>C16</b> Air conditioners must not be installed on street awnings or the front facade of buildings.	This has not been demonstrated on the proposal.	No
<b>C17</b> Development design is to encourage active street life while providing a high residential amenity	The proposal does not provide high residential amenity with limited car parking on site, activation of the street	No
<b>C18</b> Development must comply with Council's sustainable development requirements as identified in Part 3H - Sustainable Design.	A Basix Certificate has been provided however as the design has been modified no amended BASIX Certificate has been provided.	No
<b>C19</b> Vehicular access on Botany Road must be avoided where access is available from a side street or rear laneway.	Access is provided off Botany Road as there is no secondary street.	Acceptable
<b>C20</b> Where a rear laneway exists loading and unloading must occur from the laneway.	No rear lane exists	N/A
<b>C21</b> Development must comply with Part 3A - Car Parking.	The development does not comply with car parking	No – Refer to Part 3A above
<b>C22</b> Through site links and arcades are encouraged with new development to improve pedestrian access and safety.	No site links proposed and are not warranted as industrial is located behind the site.	N/A
<b>5.3 General Controls</b>		
5.3.1.2 Height	C2 & C3 In addition to C1, new buildings must also consider and respond to the predominant and characteristic height of buildings within the Centre; and consider the topography and shape of the site. In this regard, the maximum number of storeys must not exceed the maximum number of storeys identified in the relevant character statement for each Business Centre as set out in Part 5.2 - Character Statements for the Business Centres. If the maximum number of storeys	While the development complies with the 14 metre building height, the proposal is inconsistent with Figure 24 particularly with the setback provided on Level 2 which fronts Botany Road. The plans demonstrate a 3.5 metre setback with the balcony located on the boundary. This is not supported.
		No – Refer to Note 6

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	is not identified in the Character Precinct, the maximum number of storeys must be consistent with the characteristic building height.		
5.3.1.3 Street Setbacks	C1 Buildings are to be aligned along the street frontage to create a consistent street wall no higher than two storeys. A variation to the two storey street wall height along the street frontage will only be permitted in certain circumstances where the height of adjoining buildings on the street exceeds two storeys. In this instance, the applicant is to submit a written justification to Council for this variation and will be considered by Council on its merits.	As mentioned above, the development provides two storey street wall however the balconies located on Level 2 are located along the street boundary. The units on level 2 are setback 3.5 metres however this is not considered an appropriate setback particularly considering the setbacks established by neighbouring heritage items. The scale proposed in the amended plans is significantly better than the original proposal however continues to present issues regarding to character.	<b>No – Refer to Note 6</b>
5.3.1.4 Side and Rear Setbacks and Building Separation	C1 Where a site adjoins residential development appropriate rear or side setbacks must be provided to ensure that potential impacts on adjoining or surrounding residential properties are minimised in terms of loss of privacy, sunlight and daylight access and visual amenity.	The proposal provides for a nil boundary setback along the northern and southern elevations with an opening on its northern side to allow for sunlight and appropriate building separation between the two buildings. The rear setback proposes 9 metres which complies with the ADG controls.	Yes
	C2 Development to which SEPP 65 applies are to adhere to the Apartment Design Guide for building separation.	SEPP 65 and ADG assessment has been carried out above.	See above
5.3.1.5 Built Form and Streetscape	C2 Building must have a consistent street wall height and provide a continuous street frontage and awning height along the street frontage where appropriate.	The proposal is the first of its kind in this portion of Botany Road and will set a precedent in street wall height. The development seeks to align with the northern development that is currently under assessment at 1445-1447 Botany Road. This should not be relied on. Additionally, the applicant seeks to align the parapet and awning of the proposal with the existing shopfront to the south. Again this results in non-compliances with the ceiling heights proposed to the ground floor.	<b>No – Refer to Note 6</b>

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5.3.2.1 Design Excellence	C2 The Development Application must identify how design excellence will be achieved in the proposed development.	The applicant has provided a SEPP 65 assessment however this is not supported.	<b>No – Refer to SEPP 65 assessment</b>
5.3.2.2 Building Design	C2 All development applications that contain residential development or are adjacent to residential development must provide a design statement addressing privacy and overshadowing of residential dwellings from the business component.	A design verification statement has been provided by the applicant however has not adequately outstanding issues.	<b>No</b>
	C4 If residential dwellings are proposed as part of a mixed use development, balconies, private open space area and communal open space areas must be screened to address any privacy impacts on adjoining residential properties.	Louvres are only proposed on Level 2 fronting Botany Road. The communal open space has been orientated to the western side of the site away from the low density residential dwellings located on the eastern side.	Yes
	C7 A schedule of external finishes and materials must be submitted at development application stage to articulate the building's design complements the Business Centre.	A schedule of materials was submitted with the amended architectural plans.	Yes
5.3.2.3 Reflectivity	C3 The solar reflectance value of building materials must not exceed 20%.	This has not been considered.	<b>No</b>
5.3.2.4 Awnings and Verandahs	C1 New development must provide awnings above the footpath to provide weather protection for pedestrians.	The proposal provides for an awning over the front of the site.	Yes
5.3.2.5 Public Domain Interface at Ground Level	C1 Development must comply with the Desired Future Character objectives and controls identified in Part 5.2 - Character Statements for the Business Centres.	.The proposal does not comply with the desired future character of the Botany Local Centre.	<b>No</b>
	C2 Development must be designed so that it has a clearly definable entry and addresses the street.	The front entries to the commercial and residential are distinguishable however the residential lobby results in a long corridor which leads to the lobby and lifts.	<b>Not acceptable</b>

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	C3 For mixed use development which contains residential dwellings, the primary area of outdoor private open space must not be located on the street frontage, unless it is on the first floor or above.	The primary communal open space area is located on the third level.	Yes
5.3.2.6 Active Street Frontages	C1 Development is to provide active street frontages in accordance with the Active Street Frontages Map and Clause 6.15 Active Street Frontages under BBLEP 2013.	The proposal provides one commercial tenancy at ground level however the size of the tenancy is less than 50% of the street frontage therefore is not considered active.	<b>No – Refer to Note 3 above</b>
5.3.2.8 Interface between Business Zones and Adjoining Landuses	C1 Clear boundaries between the public and private domain must be created to enhance security, privacy and safety.	The front entry to the residential lobby is accessible from the public areas.	Yes
	C2 Shadow diagrams must be provided for all development proposals for the summer and winter solstices. Shadow diagrams must show shadow impacts at 9am, 12 noon and 3pm for both solstices. Additional building setbacks may be required where internal site shadow impacts or impacts on adjoining properties are considered by Council to be unreasonable.	Shadow diagrams have been provided for the development.	Provided
5.3.2.9 Landscaped Area	C1 Residential setbacks from streets and parks are to support planting, at a scale that allows passive surveillance of the public domain. This requirement may vary with each block	The proposal does not provide any setback from the street for landscaping however this contradicts the active street frontage requirement.	Acceptable
	C3 Provide a sufficient depth of soil on podium areas in accordance with the Councils Technical Guideline for Landscape in Development Sites.	Deep soil is provided within the rear setback which complies with the ADG requirements. However the stormwater system is located within this area therefore there is an argument that a portion of the deep soil area should not be included.	Yes
5.3.2.10 Private Open Space and Communal Open Space	C1 The primary area of outdoor private open space must not be located at grade on the street frontage.	The private open space is not located on the ground level at the front of the site.	Yes

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	C2 Communal open space can be provided at grade or on podiums and roof tops. The space must be appropriately landscaped and provided with a recreational facilities or features, for example BBQ area, seating, children's play area, landscape features or the like and must include pedestrian scale lighting, to be shown in the detailed landscape plan.	Communal open space is located on the third floor and complies with the 25% required under the ADG. The space provides seating and BBQ area.	Yes
	C4 Where a site adjoins a residential property, 3 metre wide landscape planting must be provided along the common boundary to provide a visual separation between the residential and the non-residential development. The area is to be mass planted with tall shrubs and suitable dense trees.	Landscaping has been provided along the eastern boundary of the site as a landscape buffer.	Yes
5.3.2.12 Servicing	C1 New commercial or mixed use buildings must provide a loading dock on-site. Where this is not viable loading and unloading may be permitted from to a rear lane or side street subject to Council's engineer approval.	The proposal does not allow for any loading and unloading to be carried out from within the site.	<b>No- Refer to Part 3A above</b>
5.3.2.14 Access and Mobility	C1 Development must comply with Part 3C – Access and Mobility <ul style="list-style-type: none"> <li>▪ Residential flat buildings (RFB), conversion of non-residential buildings into RFBs, shop top housing, multi dwelling housing and live/work buildings – Statement of consistency lodged.</li> <li>▪ In developments containing 10 or more dwellings, a minimum of 20% of the dwellings are to be adaptable dwellings designed in accordance with Adaptable Housing Australian Standard 4299 Class B. Refer to AS4299 Class B.</li> </ul>	Access and mobility has partially been accounted for within the development.	<b>Refer to Part 3C above</b>

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	<ul style="list-style-type: none"> <li>▪ Appropriate access for all persons through the principal entrance of a building and access to all common facilities. Refer to BCA and AS1428.1.</li> <li>▪ In developments containing 10 or more dwellings, accessible resident parking is required at 10% to be allocated to adaptable dwellings with a preference for AS4299 designs for at least 80% of the accessible spaces and a maximum of 20% of spaces complying with AS2890.6.</li> </ul>		
5.3.3.1 Acoustic Privacy	C1 Dwellings close to high noise sources such as busy roads, railway lines and airports must be designed to locate noise sensitive rooms and secluded private open spaces away from noise sources and be protected by appropriate noise shielding techniques.	The proposal provided an acoustic report which details aircraft and road noise. No amended acoustic report has been provided to address the amended design.	<b>No- Refer to Part 3J above</b>
5.3.3.2 Visual Privacy	<p>C1 In some cases potential visual privacy impacts can be mitigated by incorporation of one or more of the following design measures:</p> <ul style="list-style-type: none"> <li>(i) Fixed screens of a reasonable density (min 75% block out);</li> <li>(ii) Fixed windows with translucent glazing (providing natural ventilation is not compromised);</li> <li>(iii) Appropriate screen planting or planter boxes.</li> </ul>	The proposal has provided an additional 3 metre setback in addition to the 6 metre setback required in the ADG from the eastern boundary. Landscape buffer has been provided at ground level and the proposal has limited all the private open space to be located either on the top floor or the ground floor. No louvres have been proposed on this elevation however the setback is acceptable.	Acceptable
5.3.3.5 Solar Access & Shadow	<p>C1 Development must demonstrate:</p> <ul style="list-style-type: none"> <li>(i) Neighbouring developments will obtain at least two hours of direct sunlight to 50% of the primary private open space and 50% of windows to habitable rooms; and</li> </ul>	The application was accompanied by shadow diagrams at both mid-winter and equinox. The proposal will overshadow the shop to the south. As the use of the premises is a shop, the impact is not as significant if it was residential. The eastern	Acceptable

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	(ii) 30% of any common open space will obtain at least two hours of direct sunlight between 9am and 3pm on 21 June.	properties will only be impacted in the afternoon by the subject site with shadow falling onto the street in the morning hours.	
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#### Note 6 – Desired Future Character

The site is located within the Botany Township Heritage Conservation Area which is formed by a row of two storey shop top housing with shopfronts at ground level and residential dwellings above. The portion of Botany Road in which the site falls is surrounded by low density dwelling developments with a number of heritage items within close proximity to the site. The street in general is predominantly of a low scale nature with only a few high density developments approved or under construction/built located to the north of the site. The applicant has used these approved developments to justify exceeding the height and FSR standards however these sites are in a different context to the site and are adjoining different uses that are not single storey cottages.

The current site contains a single dwelling house which has heritage (contributory) merit. Additionally, this portion of Botany Road contains dwellings that predominantly do not have off-street car parking where road openings and driveways do not form part of the character of the street. The street has a number of trees that help ameliorate and visually hide the built form.

The proposed development seeks to provide a two storey street wall with the upper level (Level 2) setback 3.5 metres off the boundary. Figure 24 does not provide any dimensions regarding to the required setback of the upper levels however it is demonstrated that any storey that is located above the second level will need to set in the balconies as well as any built form away from the boundary to reduce the visible bulk perceived from the street. The applicant has demonstrated that their balconies for units on Level 2 are located on the boundary with the built form 3.5 metres from the boundary. This is not considered to be an appropriate setback from the street and still presents a significant bulk. The applicant has also designed their development on the basis that the adjoining development application that is currently under assessment on 1445 to 1447 Botany Road has been approved. This is not the case and should not be relied upon. The proposal also seeks to provide a consistent and transitional built form with the development to the south by aligning their parapet with the existing shopfront. The proposal also seeks to build to the southern boundary for the majority of the length. The applicant is anticipating that the adjoining development will be developed similarly to the subject proposal however by maintaining the existing parapet of the adjoining building, there are issues in compliance with ADG requirements such as ceiling height controls. Additionally, consideration of both the existing cottage on the site and the adjoining sites as contributory items have not been considered by the applicant.

The proposal also lends itself in providing all car parking access off Botany Road through a double driveway which breaks the existing traditional streetscape. The construction of the development will also remove on-street car spaces to allow for access as well as maintain the bus zone.

The development is not considered to be suitable within the local context and does not reflect the existing streetscape presentation or character of the southern Botany area.

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**Note 7 – Site Consolidation**

Site isolation has not been considered as part of this proposal as the development is bound by sites to the north and south that, should they be left isolated, would result in a development that may not be compatible with the area and the heritage considerations for the locality. The applicant has not demonstrated how the proposal has met the site isolation principle as outlined in case law *Melissa Grech v Auburn Council [2004] NSWLEC 40* and *Cornerstone Property Group v Waringah Council [2004] NSWLEC 189*. There is no evidence that attempts have been made to consolidate with the northern and southern sites to provide a larger development site. There is concerns that approval of this proposal will have implications on the site to the south at 1451-1453 Botany Road.

A majority of the issues that have been raised throughout the report could be addressed and satisfied with consolidation of sites. This primarily relates to the car parking and access issue, active street frontage and distribution of bulk across more than one site. As the applicant has not demonstrated compliance, site isolation could be used as a reason for refusal in this case.

**Part 8 – Botany Character Precinct**

See above for a discussion on local character.

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

The proposed development is inconsistent with the relevant provisions of the *Environmental Planning and Assessment Regulation 2000*.

**S.4.15(1)(b) - Likely Impacts of Development**

As outlined in the assessment above, the proposed development will have significant adverse environmental, social or economic impacts in the locality.

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

The site involves excavation for a basement level. The applicant has not provided a contamination report as well as only have carried out an assessment on the basis of one car parking level in depth. The proposal is short in car parking spaces therefore there is the necessity to provide a second level of basement which may intrude into the groundwater level and trigger integrated development. This has not been assessed.

The site is located within a 25-30 ANEF contour and is affected by traffic noise. An acoustic report was provided with the development application however modifications to the design of the development involving changes to the material have not been taken into consideration within the report.

As mentioned above, the issue of site isolation has been raised particularly as the width of the site creates issues with regard to active street frontage, vehicle entry, car parking and loading and unloading. It is recommended that the site is consolidated with the neighbouring site to achieve a larger site that would be able to address the issues as well as maintain the heritage nature of the street and surrounding heritage items. Additionally, a larger site would be able to retain the contributory items that could be incorporated within the design.

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The proposed development is permissible in the zone however it does not satisfy the objectives of the zone.

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

In accordance with Part 2 of the Botany Bay DCP 2013 – Notification and Advertising, the application was placed on public exhibition for a fourteen (14) day period from 11 January to 25 January 2019. Five (5) objections have been received and a summary of the issues is as below:

- Departs from the local heritage character and desired future character of the area;
- Scale and bulk are excessive;
- Reliance of the undetermined development on the adjoining site to the north to dictate the subject application;
- Overshadowing of neighbouring sites;
- Car parking and vehicle access do not comply;
- Traffic generation;
- Overdevelopment of the area;
- Safety and risk issues;
- Visual privacy;
- Demolition and construction management should development be approved;
- Noise impacts from the rooftop terrace;
- Adversely affects the streetscape;
- Storm and groundwater management;
- Potential contamination during excavation works;
- Inconsistencies in the SEE;

The proposed issues raised within the submissions have been summarised in different notes in the report above. Council agrees with the submissions received and recommends refusal based on these issues.

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

It is considered that granting approval to the proposed development will have significant adverse impact on the public interest.

#### **Section 7.11 Contributions**

The proposed development would generate Section 7.11 Contributions however as the proposal is recommended for refusal, the contributions have not been calculated.

#### **Conclusion**

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Development Application No. 2018/368 for the demolition of existing building and construction of a four storey mixed use development containing nine (9) dwellings with basement parking and associated landscaping at 1449 Botany Road Botany has been assessed in accordance with Section 4.15 of the Environmental Planning and Assessment Act 1979.

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The non-compliances as listed above relate to heritage conservation, car parking shortfall and design, loading and unloading, site isolation, ceiling heights, active street frontage, family friendly units and solar amenity that fall under the ADG, BBLEP and BBDCP 2013 and have not been addressed. It is considered that the proposed development is not suitable for this site. The proposal is within a heritage context and it is considered that the proposal has not been designed to be compatible or consistent with the heritage nature of the HCA or the surrounding heritage items as well as the local character of the street. It is considered that the site is too small and narrow to accommodate a design and development of this size and nature.

The issues as raised in the submissions have been addressed throughout the report. Therefore, the proposed development is recommended for refusal, subject to the reasons in the attached schedule.

## Attachment

### Schedule 1 – Reasons for refusal

Premises: 1449 Botany Road, Botany

DA No.: DA-2018/368

#### REASONS FOR REFUSAL

1. The proposed development, pursuant to the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, is not consistent with the State Environmental Planning Policy – BASIX as the applicant has failed to provide an amended BASIX Certificate.
2. The proposed development, pursuant to the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, is not consistent with the State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment and the design criteria and guidelines of the following sections of the Apartment Design Guide with respect to the following:
  - (i) Part 4C – Ceiling Heights – the proposed development does not comply with the 3.3 metre floor to ceiling height for the ground floor commercial/office premises;
  - (ii) Part 4K – Unit Mix – the proposed development has not demonstrated a variety of unit types.
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 6.15- Active Street frontages of the Botany Bay Local Environmental Plan 2013 as the development provides insufficient active street frontage along Botany Road.
  - a) Pursuant to the provisions of Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposed development does not meet the following sections of the Botany Bay Development Control Plan 2013 with respect to the following:
    - b) Part 3A – Car Parking and Access. The proposed development does not comply with the minimum car parking requirement under Table 1 of Part 3A.2- Parking Provisions

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of Specific Uses and does not provide loading and unloading facilities on site. The basement car parking level does not provide an appropriate layout and manoeuvring;

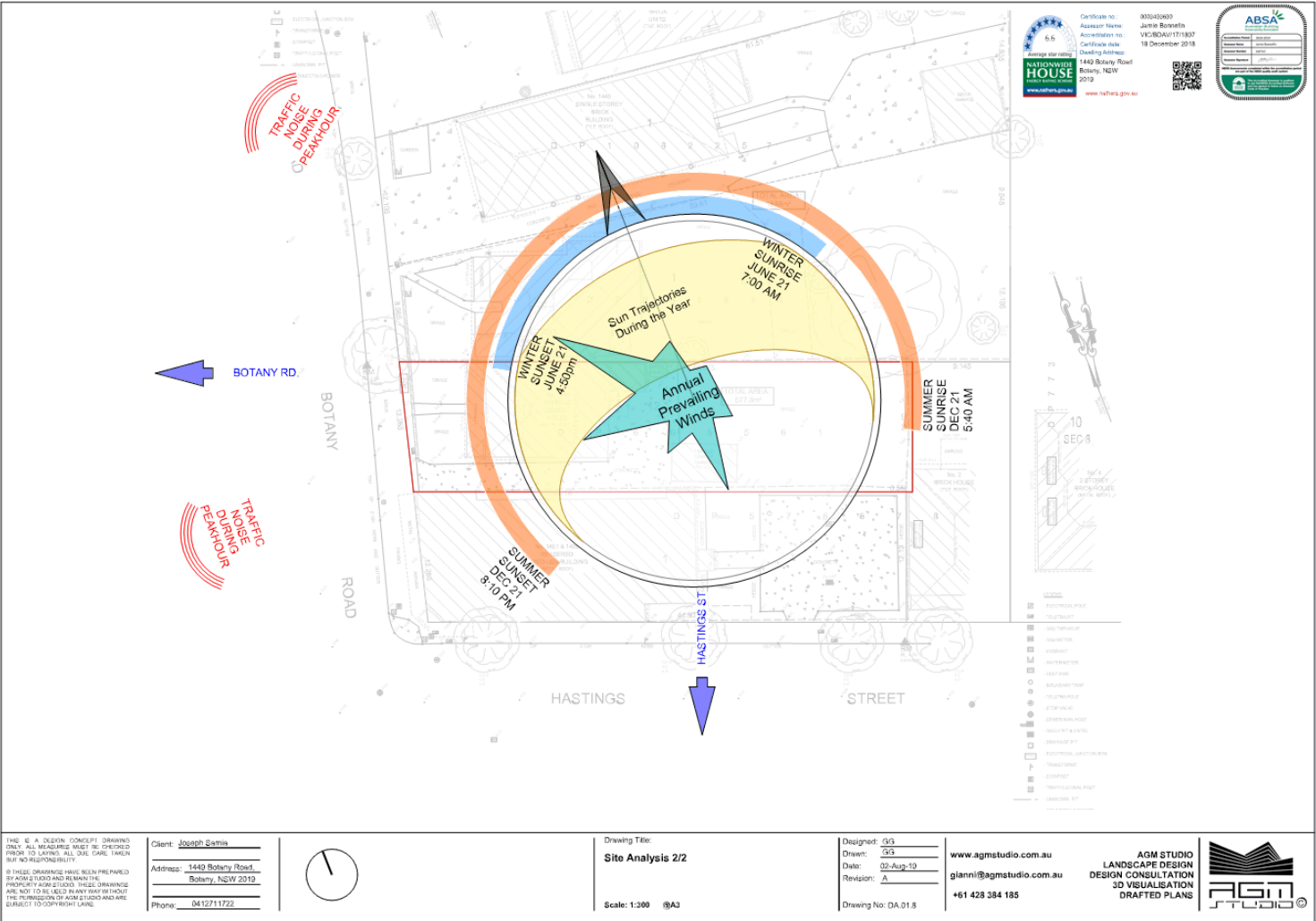
- c) Part 3B – Heritage. The proposed development is not compatible or consistent with the existing built form and character of the Botany Township Heritage Conservation Area in addition to conserving the existing dwelling on the site;
  - d) Part 3C – Access and Mobility. The proposed development does not provide appropriate pedestrian access to units and has not allocated any units as adaptable units;
  - e) Part 3G – Stormwater Management. The proposed development does not comply with Section 7.1(i) of Part 10 of the Botany Bay Development Control Plan 2013 and does not provide sufficient detail as to the On-site detention system proposed on the site;
  - f) Part 3N – Waste Minimisation and Management. The proposed development does not comply with the required garbage bins required as well as does not distinguish between the residential and commercial uses;
  - g) Part 4C.4.2- Family Friendly Apartment Buildings within High Density Residential. The proposed development does not comply with the family friendly controls relating to separate living areas, waterproofing common areas, having two separate bathrooms and storage space requirements;
  - h) Part 5 – Business Centres. The proposed development do not comply with the objectives and controls of Part 5.2.2.7- Botany Local Centre of the Botany Bay Development Control Plan 2013 relating to site consolidation, desired future character, setbacks, car parking, design excellence, building design, active street frontage, solar amenity, servicing.
4. 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, including stormwater plans, landscape plans, BASIX Certificate, Access Report, Acoustic Report and Traffic report, to allow a proper and thorough assessment of the impacts of the proposed development and the suitability of the site for the development.
  5. Pursuant to the provisions of Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979, the proposed development is excessive in terms of bulk, scale, size, density and would adversely impact upon the amenity of the locality.
  6. The proposed development, pursuant to the provisions of Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979, is unsatisfactory given the inadequate proposed means of access to and from the development site and the area available for the loading and unloading of goods and manoeuvring of vehicles.
  7. Pursuant to the provisions of Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979, the proposed development is unsatisfactory as it fails to demonstrate acceptable disposal of stormwater from the subject land.
  8. Pursuant to the provisions of Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979, the proposed development is excessive in terms of bulk, scale,

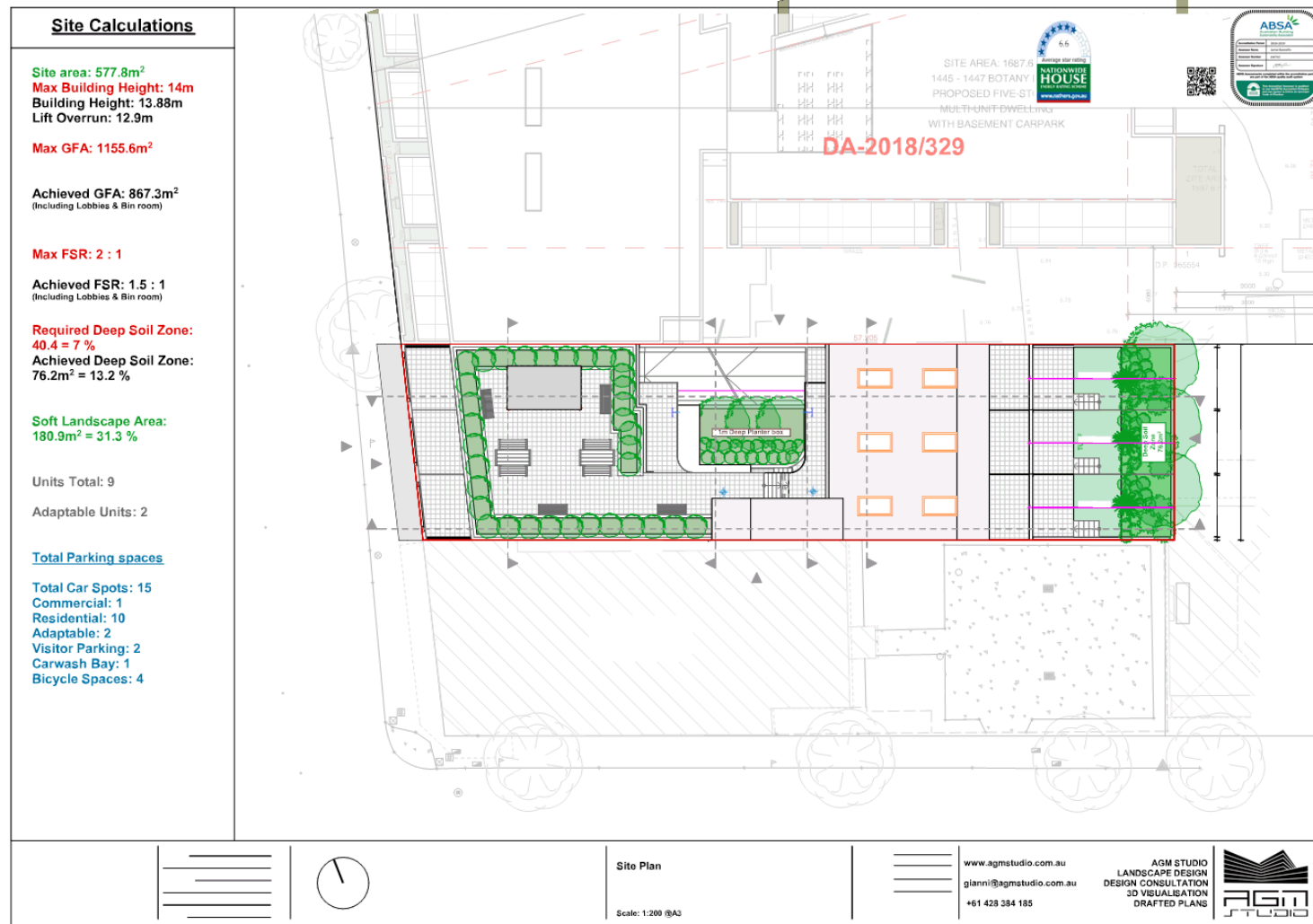
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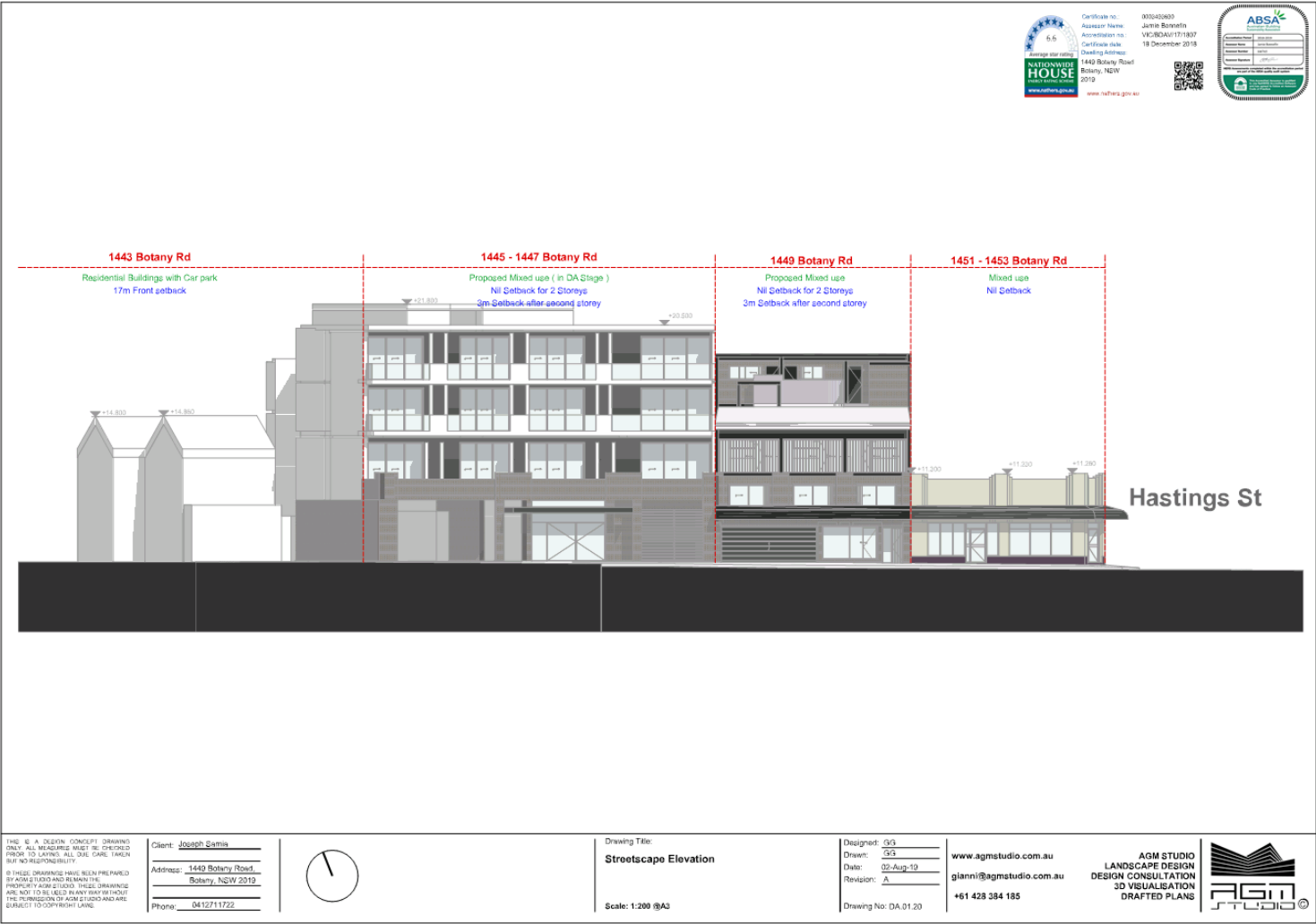
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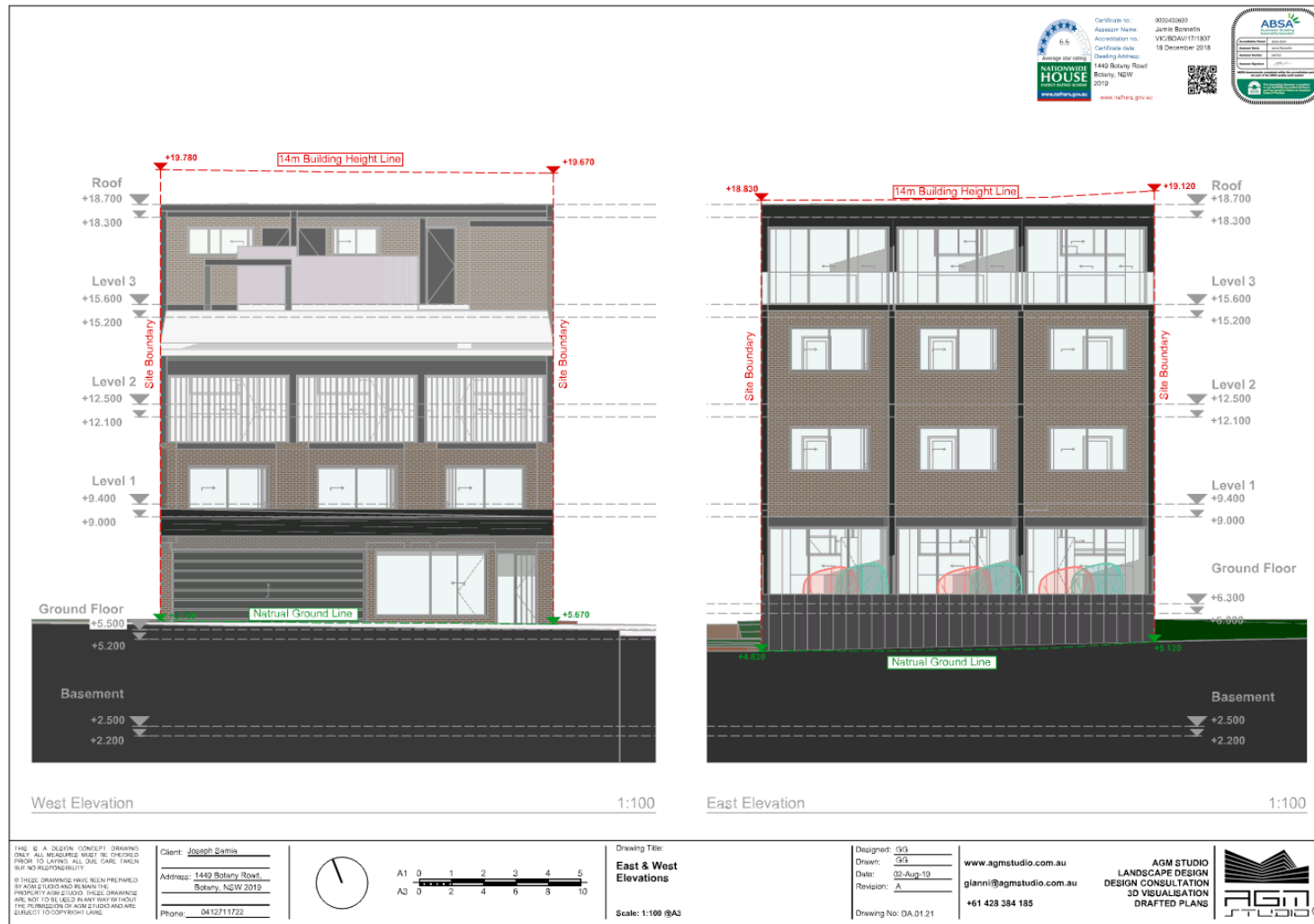
size, height, density, inconsistent with local character and would adversely impact upon the amenity of the locality.

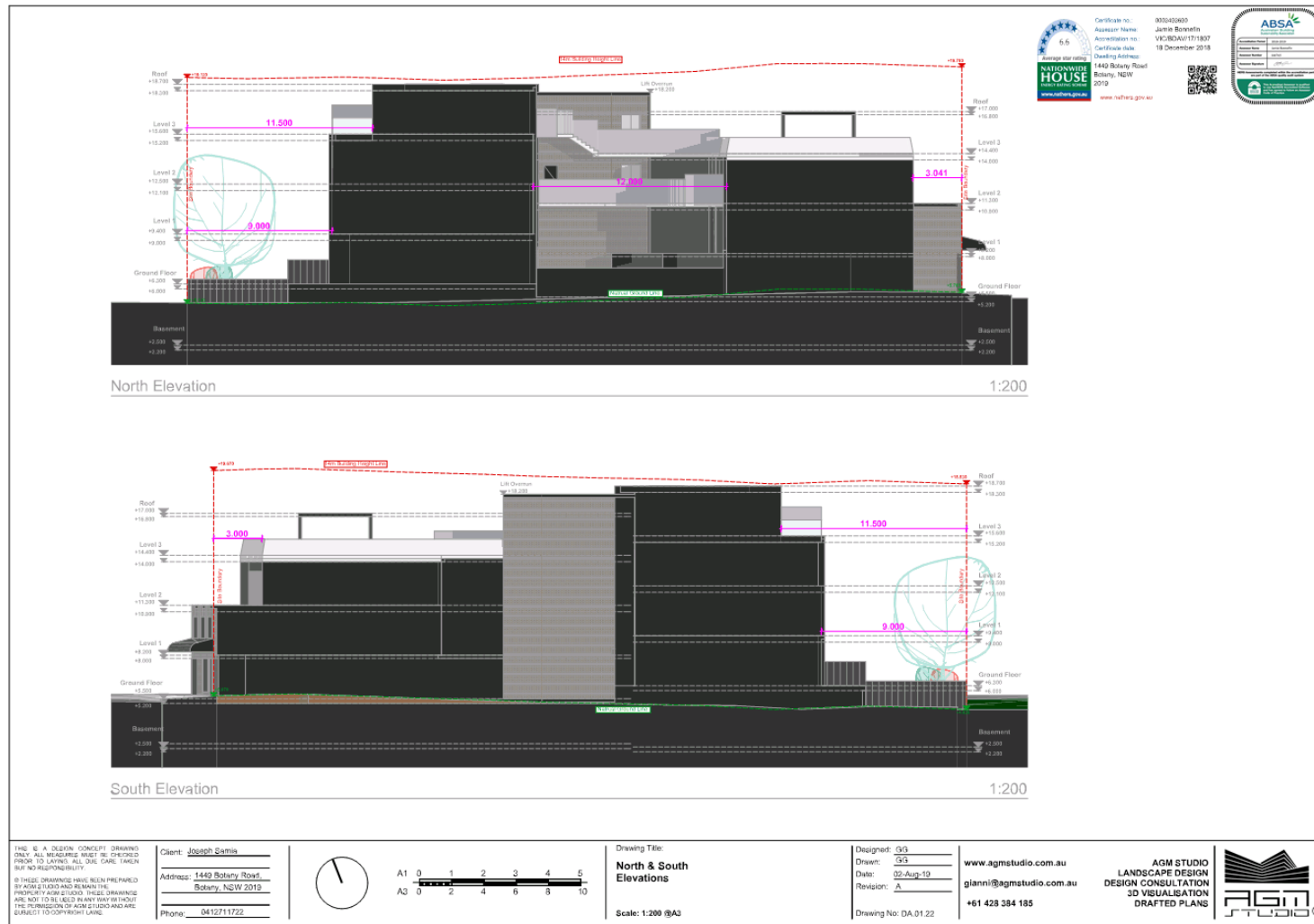
9. The proposed development, pursuant to the provisions of Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979, is not considered suitable for the site, in terms of its size of the site and density proposed in correlation with the existing heritage context of the street and is likely to adversely impact on the adjoining heritage items and heritage conservation area.
10. Having regard to the advice received from Roads and Maritime Services, pursuant to the provisions of Section 4.15(1)(d) of the Environmental Planning and Assessment Act 1979, the development application cannot be supported on the basis of sightlines and right turn access.
11. Having regard to the issues raised in submissions received by Council in opposition to the proposed development, pursuant to the provisions of Section 4.15(1)(d) of the Environmental Planning and Assessment Act 1979, the proposal results in unacceptable visual privacy, solar amenity, excessive density and heritage impacts on adjoining /nearby properties.
12. Pursuant to the provisions of Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, and in consideration of the impacts and submissions made, the proposed development is not considered to be in the public interest and is likely to set an undesirable precedent.

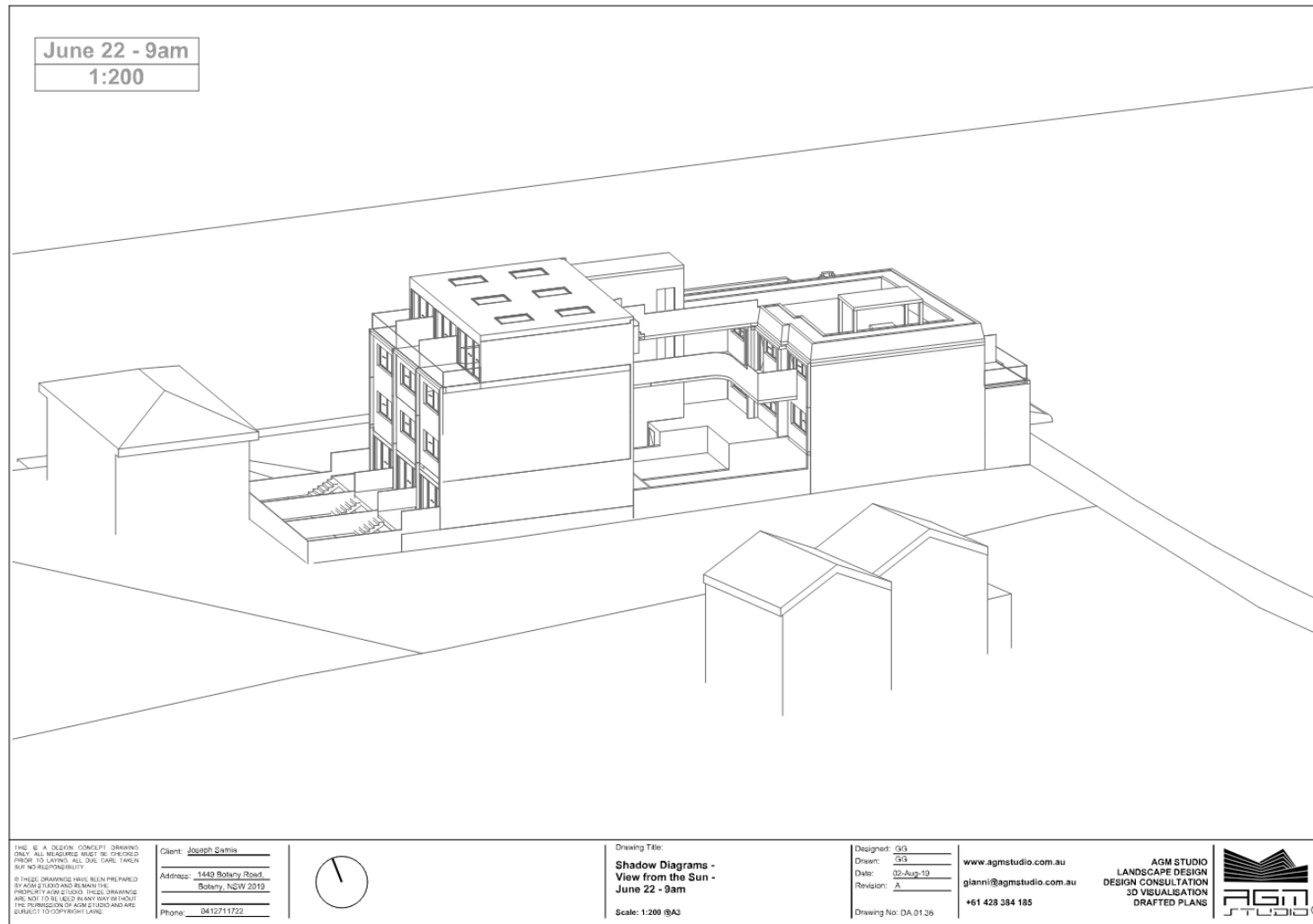




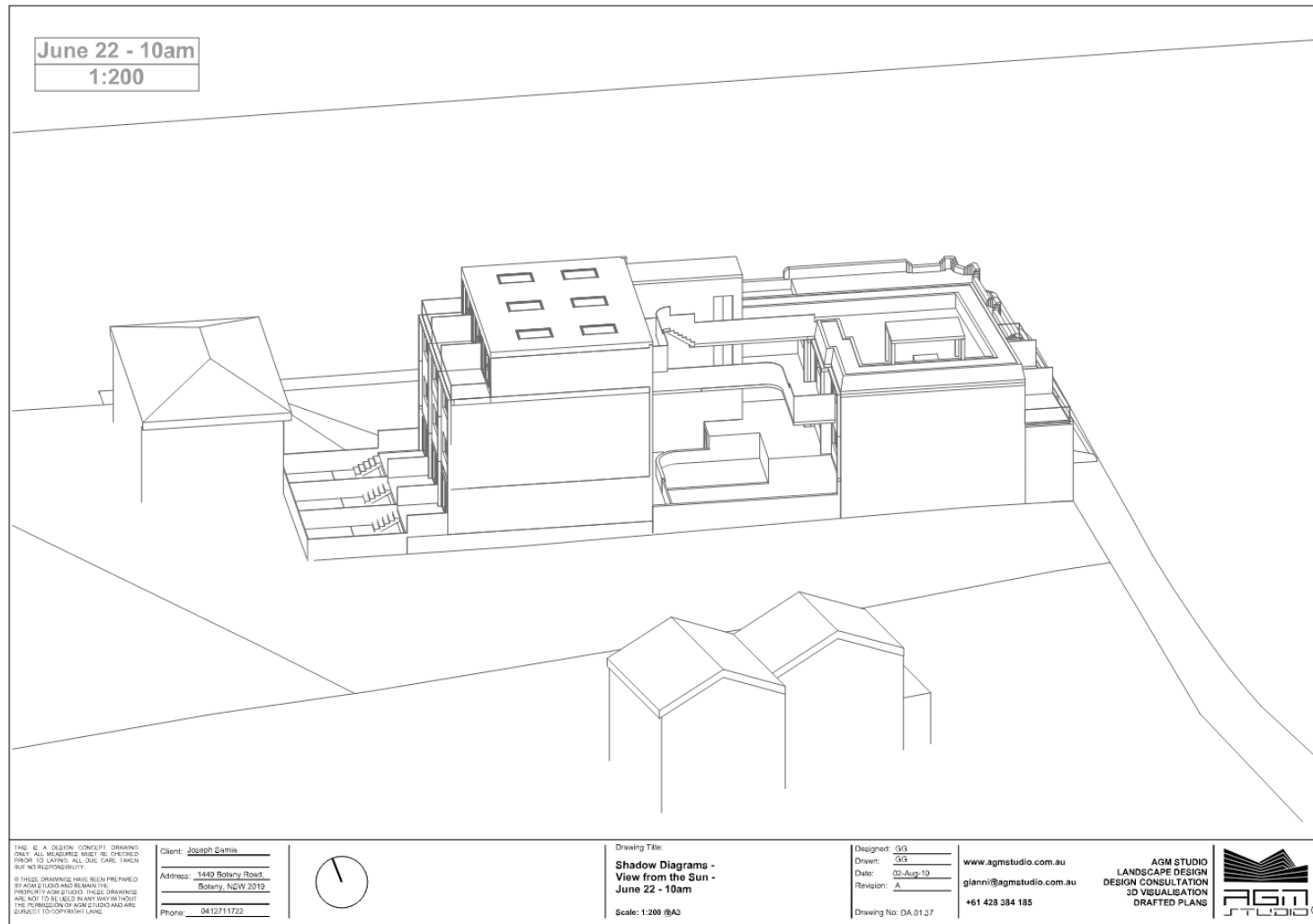


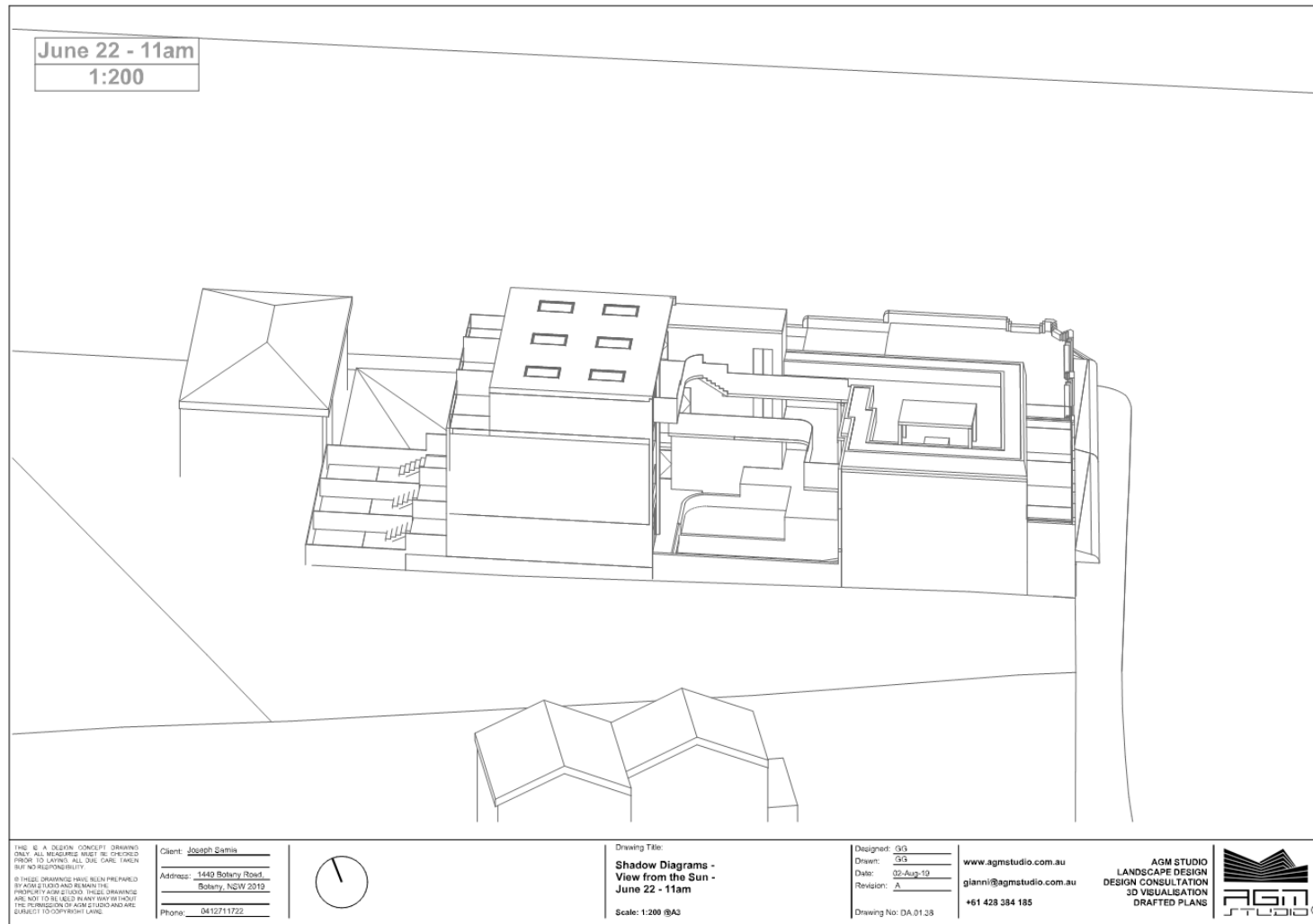


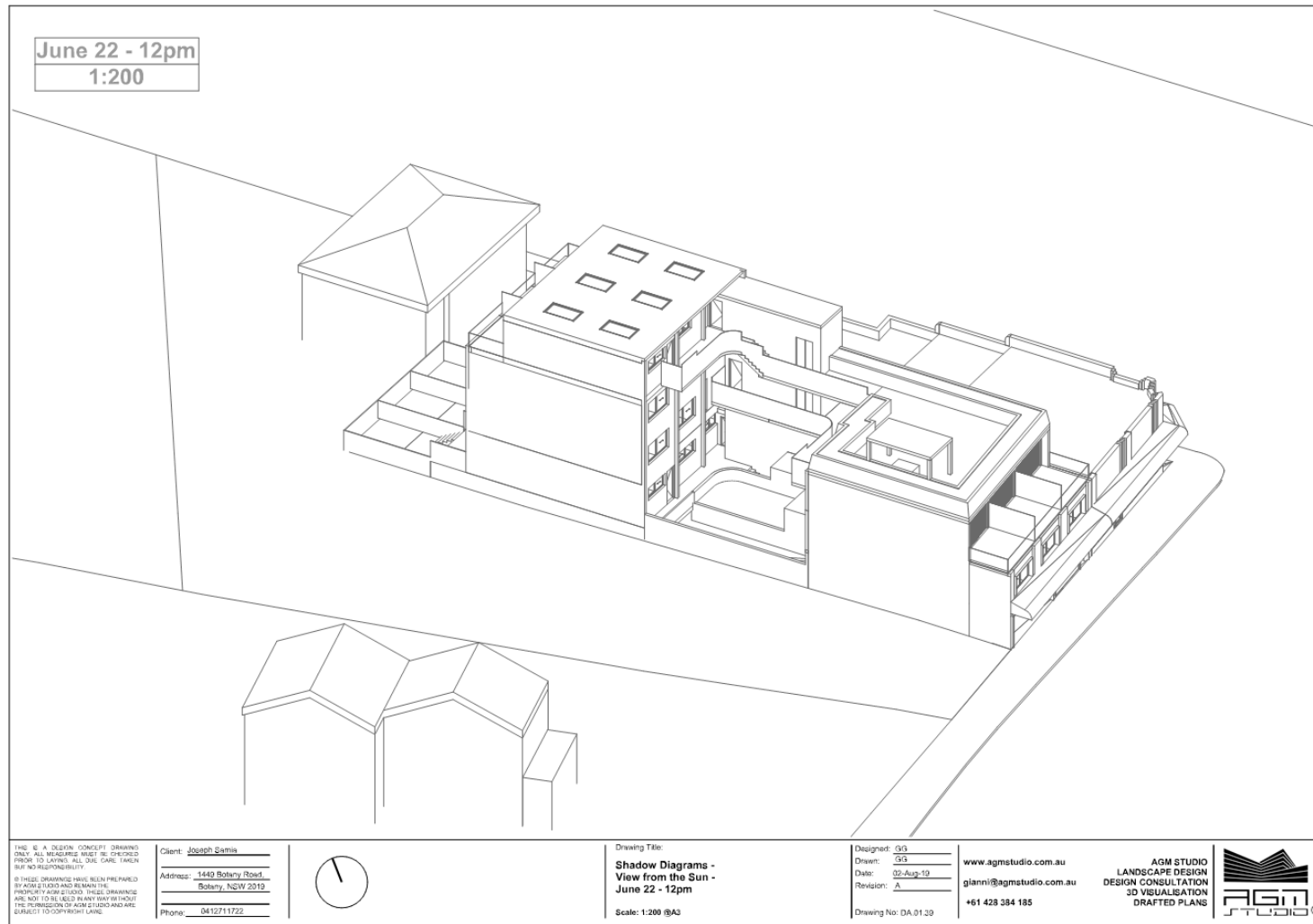




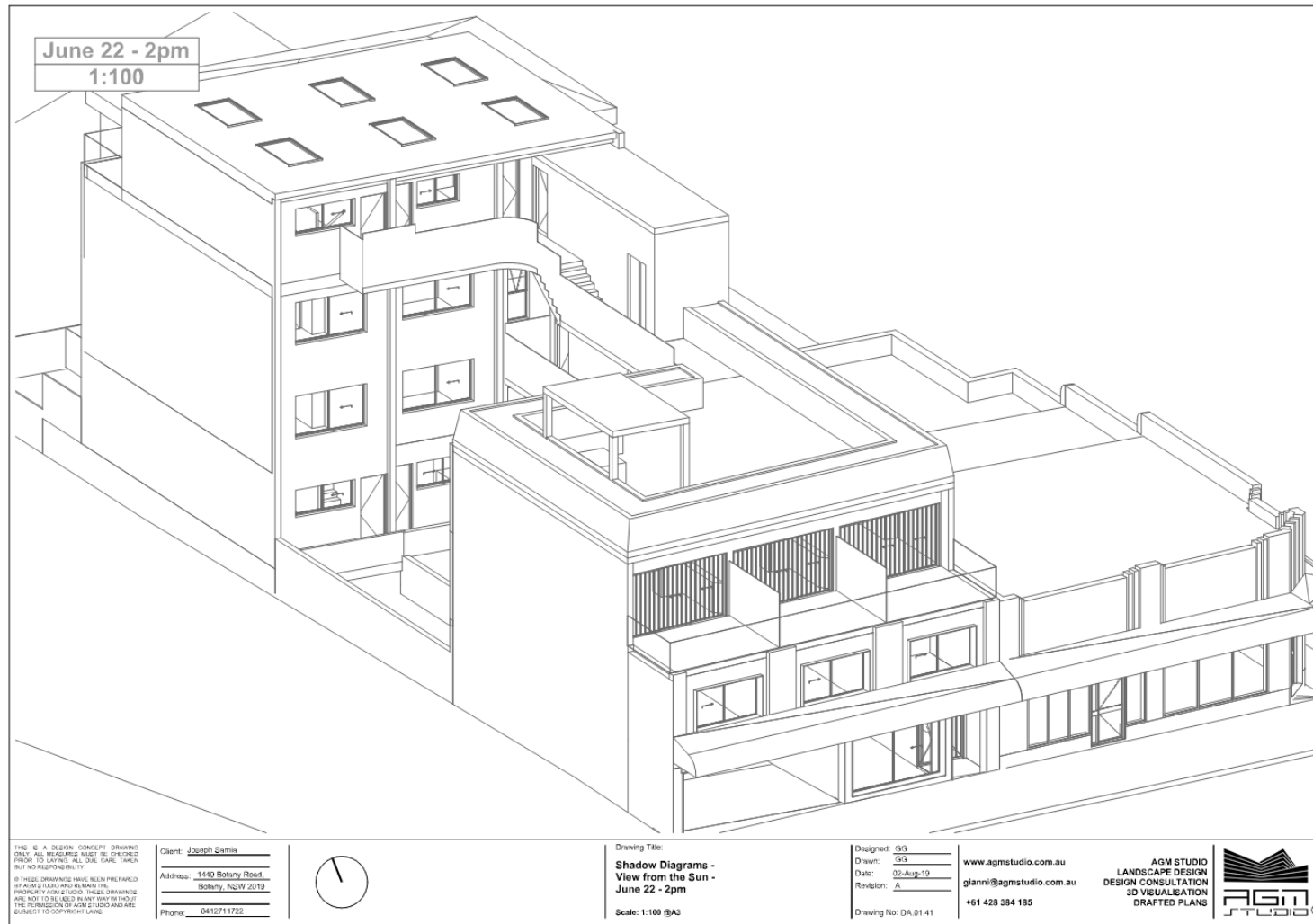


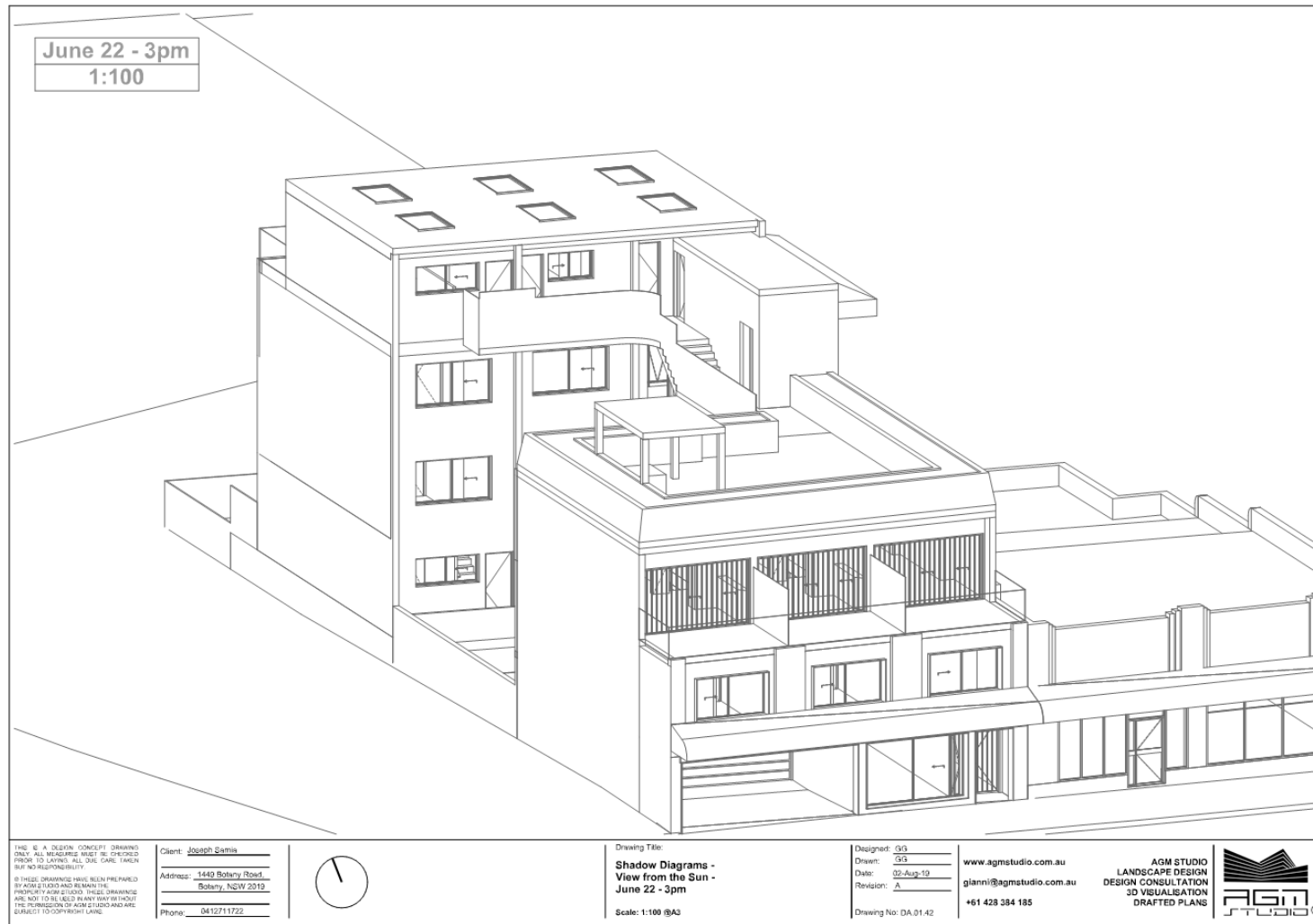


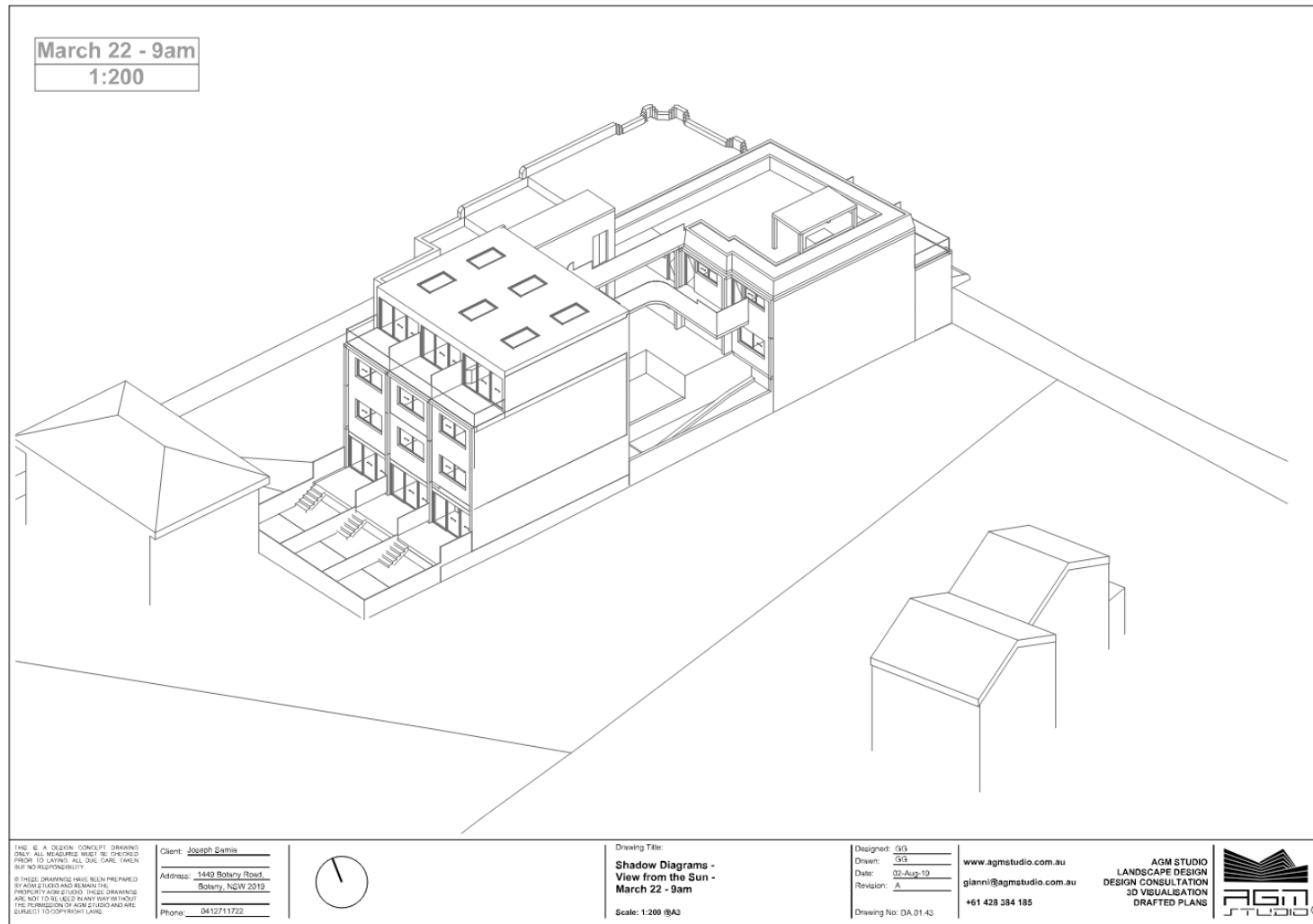


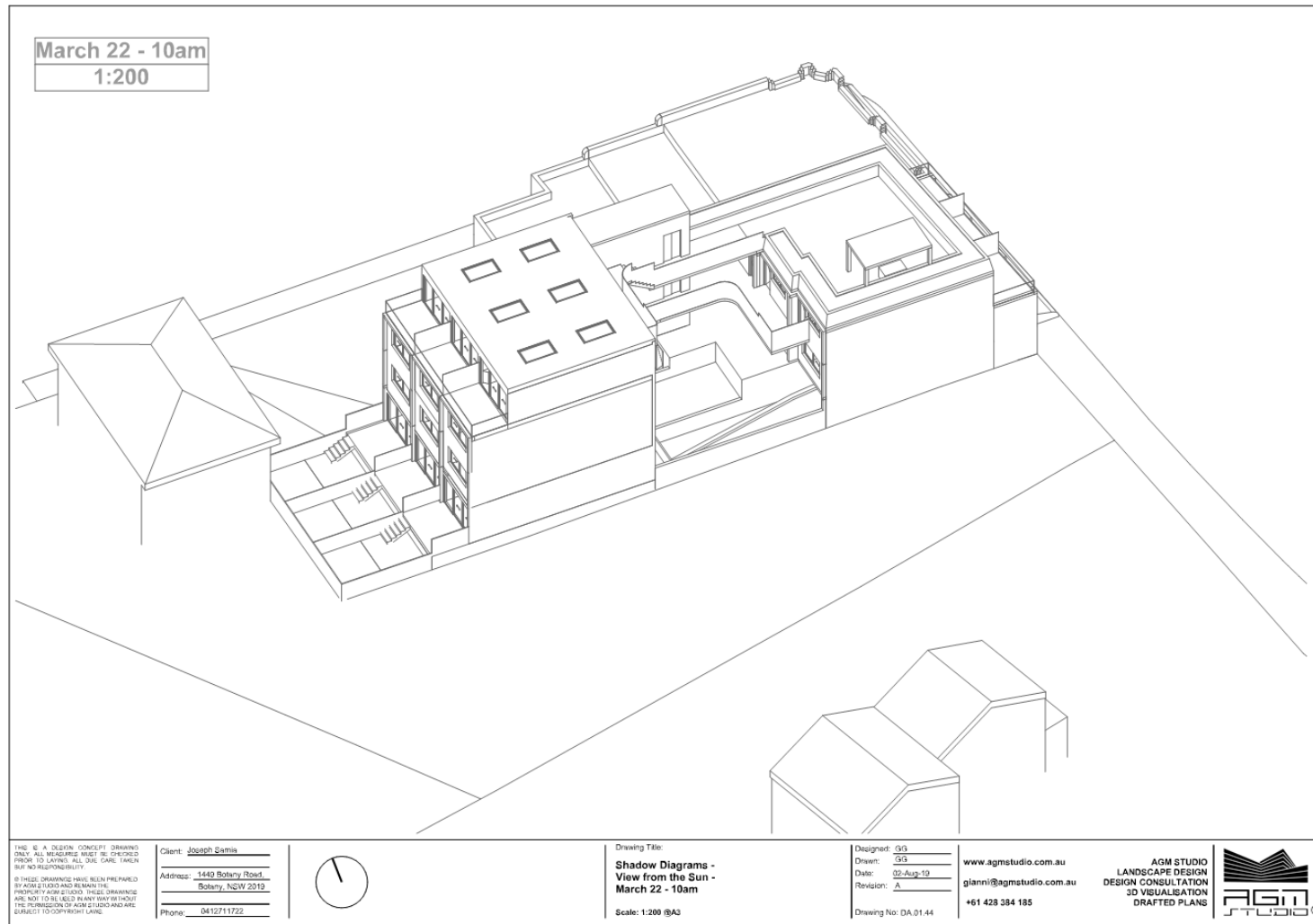




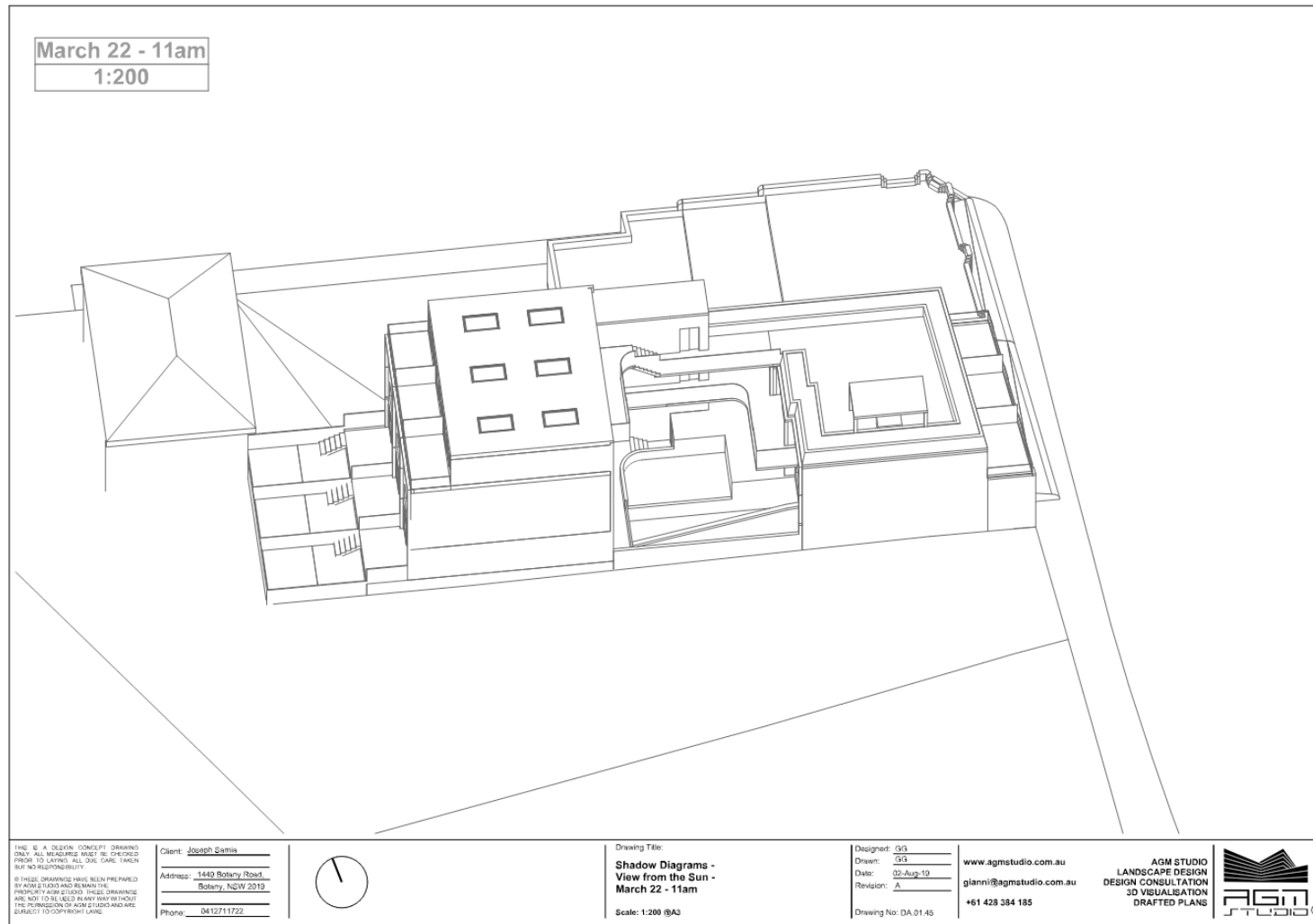


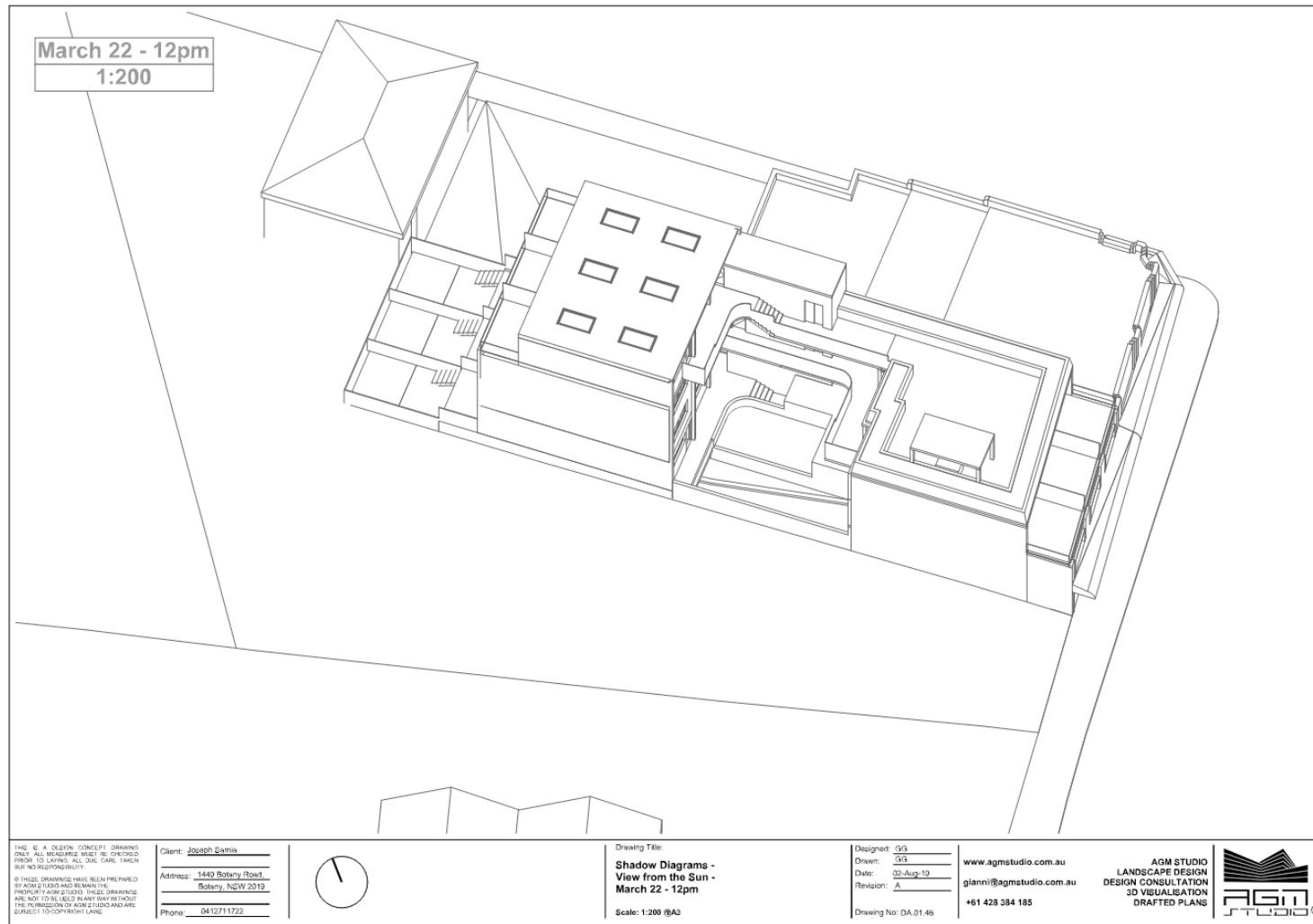


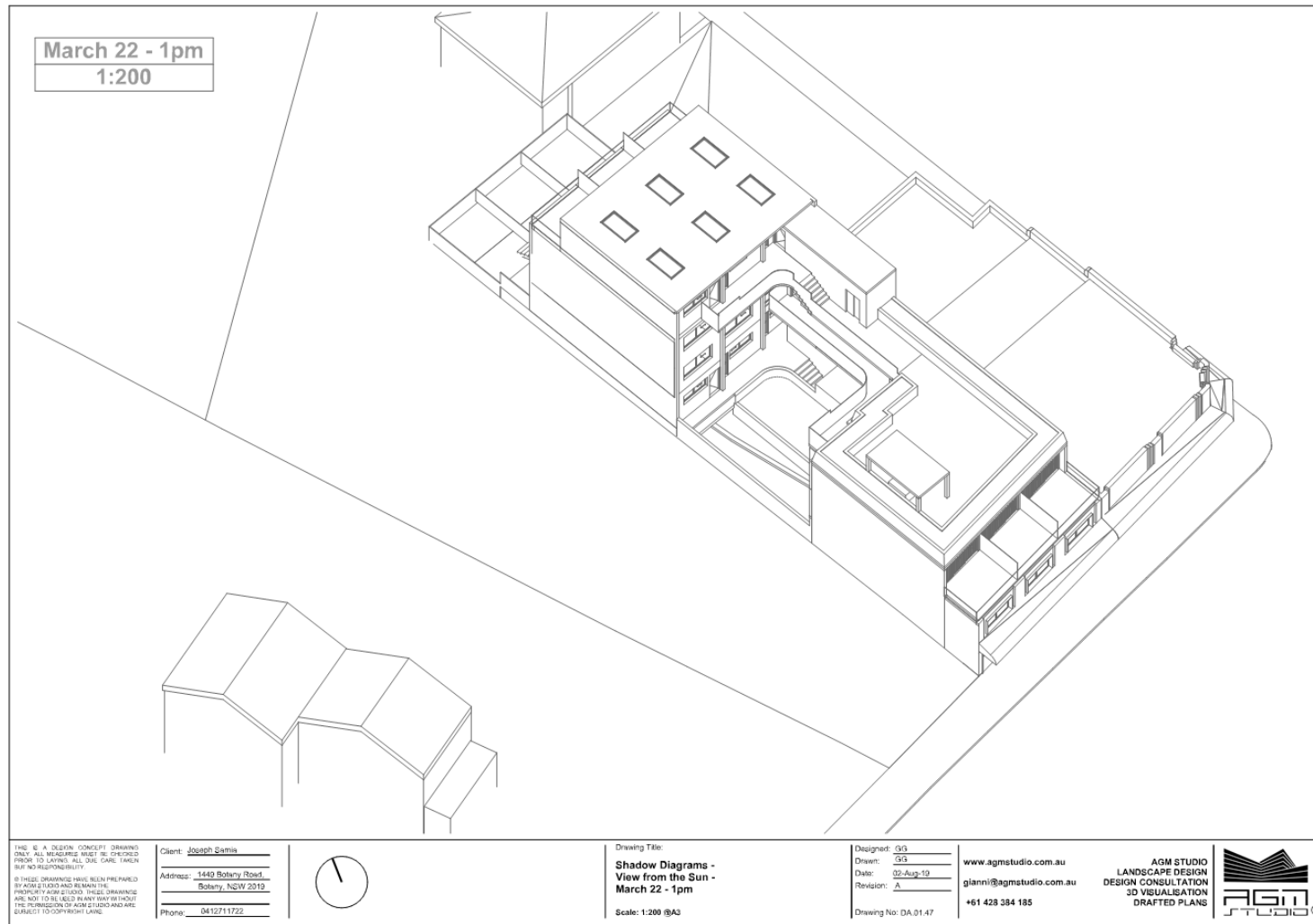


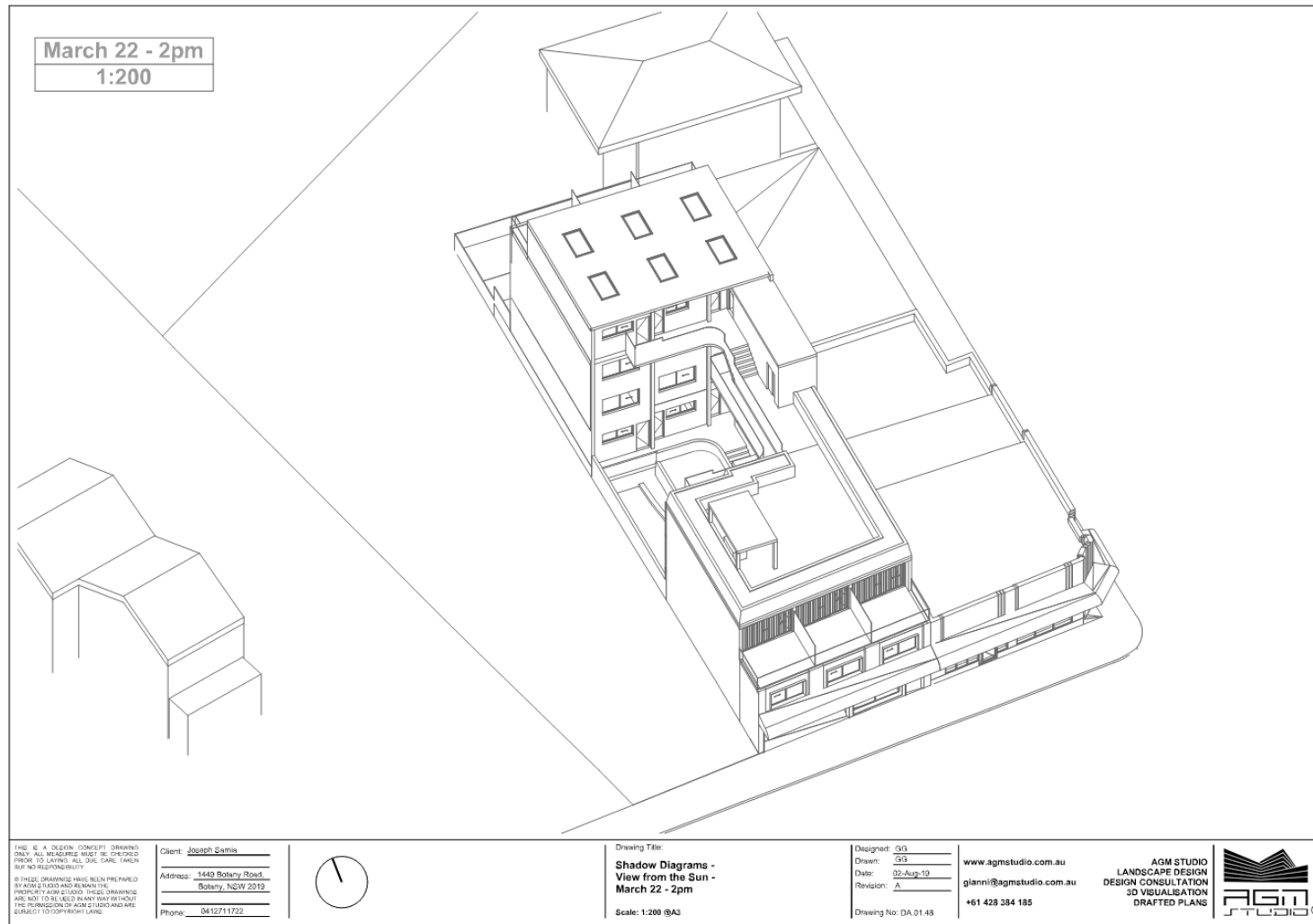


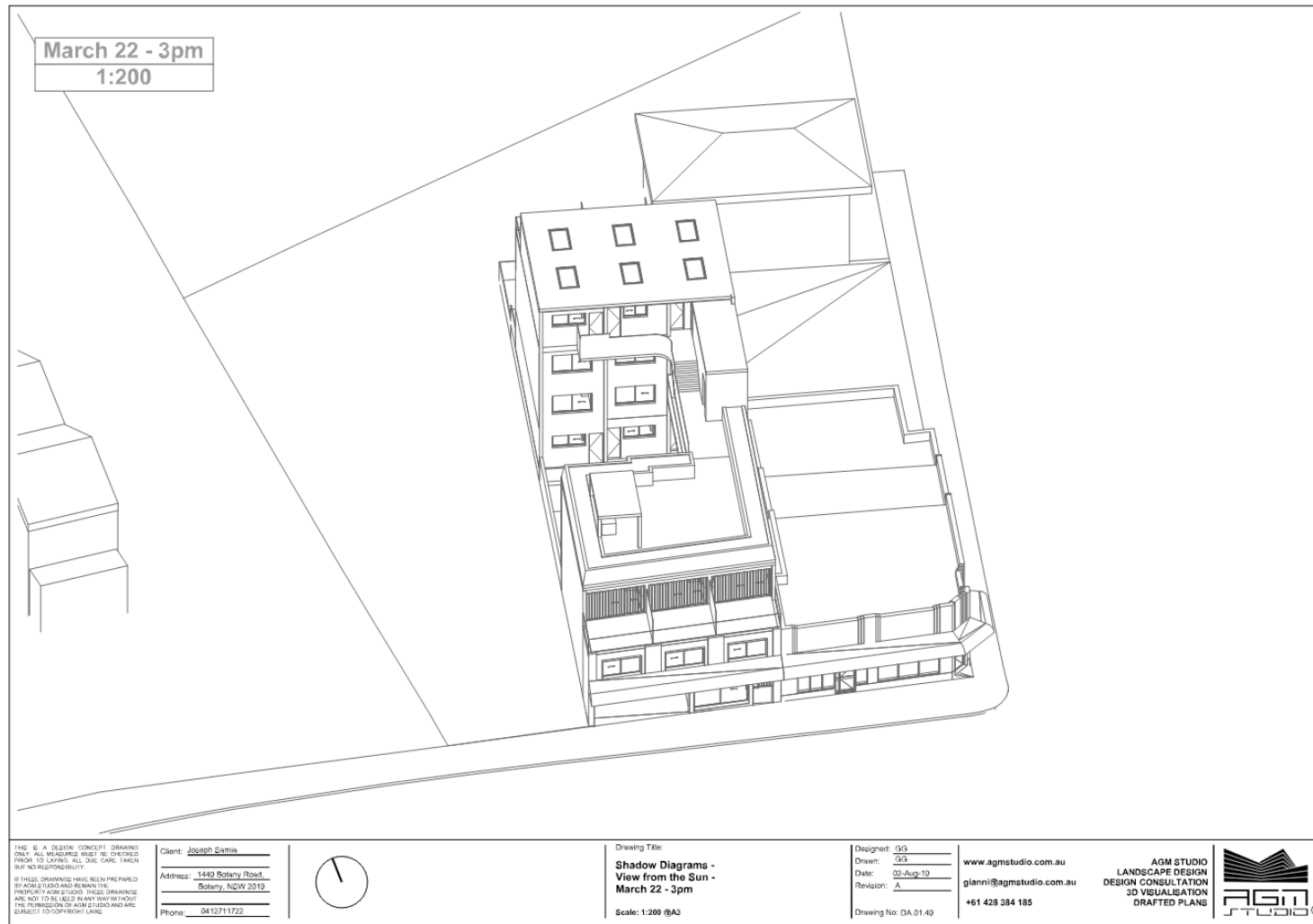
















## Bayside Design Review Panel

### REPORT OF THE BAYSIDE DESIGN REVIEW PANEL

Meeting held on Thursday, 7 February 2019 at Bayside Council

[Panel members: Alan Cadogan, Obelia Tait and Dean Boone]

#### ITEM 4

<b>Date of Panel Assessment:</b>	7 February 2019
<b>Applicant:</b>	AGM Studio
<b>Architect:</b>	AGM Studio
<b>Property Address:</b>	1449 Botany Road, Botany
<b>Description:</b>	Demolition of existing building and construction of a five-storey mixed use development containing twelve (12) units with basement car parking and associated landscaping
<b>No. of Buildings:</b>	1
<b>No. of Storeys:</b>	5
<b>No. of Units:</b>	12 units - 12 x two-bedroom units
<b>Consent Authority Responsible:</b>	Bayside Council
<b>Application No.:</b>	DA-2018/368
<b>Declaration of Conflict of Interest:</b>	Nil

The Panel inspected the site, reviewed the submitted documentation and met with representatives of the applicant including Joseph Samia (Manager EZM Group), Gianni Georges (Designer AGM Studio), Andrew Darroch (Planner Mersonn), Alan M Hanna (Architect AGM Studio), Marta Gonzalez- Valdes (Council's Coordinator Development Assessment) and Angela Lazaridis (Senior Development Assessment Planner).



Design Principle	Comments
<p><b>Context and Neighbourhood Character</b></p> <p>Good design responds and contributes to its context. Context is the key natural and built features of an area, their relationship and the character they create when combined. It also includes social, economic, health and environmental conditions.</p> <p>Responding to context involves identifying the desirable elements of an area's existing or future character. Well designed buildings respond to and enhance the qualities and identity of the area including the adjacent sites, streetscape and neighbourhood.</p> <p>Consideration of local context is important for all sites, including sites in established areas, those undergoing change or identified for change.</p>	<p>The Panel notes that the degree to which the design responds to the context and neighbourhood character is one of two critical issues in relation to this application, and is in many ways dependent on the outcome of at least two other development applications currently with the Council but not yet determined.</p> <p>The Panel notes, consistent with its advice in relation to DA-2018/329 for five storey mixed use development at 1445-1447 Botany Road provided in the report of the 13 December 2018 meeting, that this part of Botany Road has significant challenges. These arise from an inherent conflict between Council's zoning of the site and adjacent sites along Botany Rd as B2 Local Centre with a FSR of 2:1 and a height limit of 15m - and Council's heritage listing of several single buildings within the zone. Preservation of single dwellings with related curtilage in a B2 Local Centre zone clashes with the intent of the zone – i.e. a coherent streetscape of commercial premises fronting the street, with multi-dwelling housing over.</p> <p>As a result it is the Panel's view that it is possible to construe two very different desired future characters for this part of the street from the planning controls. Essentially, these are:</p> <ol style="list-style-type: none"> <li>1. That despite the LEP controls for FSR and Height, there should be a low rise built form along Botany Road that contributes to and is sympathetic to the Botany Township Heritage Conservation Area as well as the peppering of heritage items and contributory items along the street frontage, and a result is unlikely to be more than two levels high (possibly with a recessive third storey appropriately set back from the frontage and from any heritage items on the same or adjacent sites) with the potential for slightly larger building forms up to 4 storeys at the rear of deeper sites with substantial setbacks that were respectful to the rear curtilage of heritage items on the same site and on adjacent and nearby sites, as well as to the ADG requirements for building separation and visual privacy)</li> <li>2. Alternatively, that the plans envisage a desired future character that still responds sympathetically to the heritage context but with a more sharp bulk and scale interface with a mid-rise built form of generally 4 storeys set back behind a consistent 2 storey street frontage on the boundary (ie a nil front setback for the first two levels), and a taller built form set back from the street frontage up to a maximum of 4 storeys, with the potential for a 4 storey built form</li> </ol> <p>The essential difference between these streetscape characters in terms of built form is whether the building fronting Botany Road can be 2-3 storeys maximum or 4 storeys, and whether it can be built to the side boundaries or must set back to achieve an appropriately sympathetic response to the heritage context</p> <p>The Panel understands that a separate DA is currently before the Council but not yet determined, for demolition of the existing heritage listed dwelling house on the adjacent site. The subject design submission makes the assumption that removal of the heritage item will be approved, which is far from certain. If the demolition of the heritage item is not approved it would be reasonable to expect its continued existence and protection as a part of the heritage streetscape. In such a scenario, the Panel considers that the design as currently proposed would not be in keeping with the heritage conservation area, and would not provide an appropriate scale relationship or interface with the heritage item. In particular the fourth and fifth storeys of the proposal would not be appropriate and the third</p>

Design Principle	Comments
	<p>level would need to be very sensitively treated to manage bulk and scale impacts on the heritage item and streetscape.</p> <p>If the heritage item is approved for demolition, then the Panel considers that it would be reasonable to conclude that Council's vision for the streetscape is for a larger though still heritage sympathetic built form (up to 4 storeys) at the front of the site.</p> <p>On the basis of the facts before it, and on the basis that we do not have a development approval to demolish the heritage item at 1447 Botany Road, but we do have an LEP that lists it as a heritage item, it is the opinion of the Panel that the design does not successfully respond to and contribute to the context and neighbourhood character of the site.</p> <p>While the applicant has demonstrated reasonable compliance with built form of DA-2018/329 for 1445-1447 Botany Road, the Panel considers that not only is this envelope too high and contrary to the LEP height control, reliance on an unapproved envelope is premature at this stage compared to responding to the existing and heritage listed context. As a result the Panel considers that the applicant has not provided sufficient information to demonstrate how the design responds to and contributes to its context, and in particular no heritage impact assessment was provided.</p> <p>Were the site not immediately adjacent a heritage item that is set back from the street, and from the north-western boundary of the subject site, the design might, in general terms, be an appropriate response to desired future character. However, given that Council has chosen to list and preserve this item, the design must respond appropriately to it.</p> <p>Given the complexity of the area and the challenges proposed by the planning controls in relation to built form and heritage, the Panel recommends that either the Council or the Applicant should consider preparing an urban design study that examines appropriate responses to street frontages, building wall heights and heritage in this block of Botany Road in order to demonstrate that individual applications can contribute to a cohesive built form for the block's frontage.</p>
<p><b>Built Form and Scale</b></p> <p>Good design achieves a scale, bulk and height appropriate to the existing or desired future character of the street and surrounding buildings.</p> <p>Good design also achieves an appropriate built form for a site and the building's purpose in terms of building alignments, proportions, building type, articulation and the manipulation of building elements.</p> <p>Appropriate built form defines the public domain, contributes to the character of streetscapes and parks, including their views and vistas, and provides internal amenity and outlook.</p>	<p>In addition to the comments above, the Panel does not support the proposed building's overall height, which exceeds the LEP height of buildings control and has serious concerns regarding the building's ceiling heights (see comments under amenity), which can only be ameliorated to achieve ADG compliance by further raising the overall height of the building. This is the second critical issue.</p> <p>The Panel considers that for new buildings in heritage conservation area it is always more challenging to demonstrate that increased height above a height of buildings development standard should be supported. It is the Panel's applicant has not demonstrated why the height of the proposed design should be supported.</p> <p>The Panel notes that the maximum number of storeys that can be reasonably achieved in compliance with the LEP 15m height limit is four. This is based on achieving compliance with Section 4C-1 of the ADG and providing floor-to-floor heights of 3.6m (3.3m ceilings) for ground floor spaces and 3.1m (2.7m ceilings) for three floors above, and resulting in a building of 12.9m minimum height plus an allowance for roofing and parapets and plus the lift overrun. The Panel notes that a 5th storey, which would also generally be required to achieve a</p>

Design Principle	Comments
	<p>ceiling height of 2.7m for its habitable spaces, would automatically lead a building that was at least 16m height plus roof and lift overrun.</p> <p>The Panel also notes that for a rear building that does not have a frontage to Botany Road, and is therefore not required to provide a ceiling height of 3.3m to the ground floor the maximum number of storeys that could be reasonably achieved is still four, with a total minimum building height of 12.4m (4 x 3.1) plus roof and lift overruns. A 5th storey to such a building would similarly also cause the building to breach the LEP height control at 15.5m plus roofing and lift overruns.</p> <p>The Panel considers that the built form and scale of the design is inappropriate to the existing heritage character of this section of Botany Road, in particular its relationship to the heritage listed building on the site immediately north-west of the subject site. In this context any height above the LEP control should not supported without a compelling justification of how the height increase results in a superior planning outcome specifically in relation to heritage (As well as in relation to the other criteria of LEP Clause 4.6)</p> <p>The Panel recommends that design must be amended to remove the fifth floor and fourth floor of the Botany Road facing building and the fifth floor of the rear building.</p> <p>In addition and further to the comments above and under "Context", the Panel considers that the built form must better respond to the scale and setback of the 1447 Botany Road, which may involve further setbacks and height reductions in its vicinity and view catchments that include the heritage building.</p> <p>In the Panel's view, a far better design response, streetscape character and sympathetic relationship to heritage items in the immediate area can be achieved through site amalgamation to the adjoining site at 1445 &amp; 1447 Botany Road, Botany and ideally 1449 Botany Road as well. This site amalgamation would potentially enable an appropriate develop that provides a balanced bulk and scale to the proposed development</p> <p>The Panel notes that the design exceeds the maximum height under the current LEP, does not provide sufficient floor to floor separation (see below under amenity) and exceeds the number of proposed storeys within the local future character of this portion of Botany Road, and as such cannot be supported.</p> <p>The Panel notes the floor to ceiling height within the commercial tenancy does not comply with the required 3.3m minimum, the tenancy no separate toilet facilities, shares the residential foyer, is not provided with loading dock facilities or the required parking and is not supported.</p> <p>The Panel also notes the design does not provide for essential services and facilities such as a Fire Hydrant and possibly a substation (subject to confirmation from Ausgrid) has a large garage door dominating the ground floor interface to the public realm resulting in a poor quality streetscape. Appropriate consideration of all required elements would modify the current layout and visualisations, further diminishing the design quality of the development.</p> <p>In addition, compliant separation to the interface of the R2 zone at the rear (east) of the site has not been provided, and the rear setbacks should be increased to achieve ADG compliance of 9m up to level 4 and, and 12m for Level 5 should this level be supported contrary to the Panel's recommendations. The applicant has not justified the</p>

Design Principle	Comments
	departure from the ADG controls for this increased setback and the Panel is not aware of any reason it cannot be provided.
<b>Density</b> Good design achieves a high level of amenity for residents and each apartment, resulting in a density appropriate to the site and its context.  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.	The Panel does not support the proposed density on the site
<b>Sustainability</b> Good design combines positive environmental, social and economic outcomes.  Good sustainable design includes use of natural cross ventilation and sunlight for the amenity and liveability of residents and passive thermal design for ventilation, heating and cooling reducing reliance on technology and operation costs. Other elements include recycling and reuse of materials and waste, use of sustainable materials and deep soil zones for groundwater recharge and vegetation.	The Panel notes that there are further opportunities for including sustainability initiatives in the design above and beyond those required by BASIX and the ADG, such as solar energy generation, rainwater harvesting and irrigation and community productive gardens, and building materials that are sustainable, recyclable and minimise carbon emissions.
<b>Landscape</b> Good design recognises that together landscape and buildings operate as an integrated and sustainable system, resulting in attractive developments with good amenity. A positive image and contextual fit of well designed developments is achieved by contributing to the landscape character of the streetscape and neighbourhood.  Good landscape design enhances the development's environmental performance by retaining positive natural features which contribute to the local context, coordinating water and soil management, solar access, micro-climate, tree canopy, habitat values and preserving green networks.  Good landscape design optimises usability, privacy and opportunities for social interaction, equitable access, respect for neighbours' amenity and	The Panel notes the provision of communal open rooftop space including pergola structure and BBQ facilities with a series of internal planters for landscape treatment and ground floor deep soil landscaped areas to the rear. The Panel however notes that the minimum required landscape area and minimum the widths of the proposed planters have not been provided.  Accordingly the Panel does not consider that the current design exhibits high quality in this regard, and recommends that it should at the very least achieve the minimum standards and have a high quality landscape design. The Panel also considers that the current landscaping design for the deep soil zone is not inadequate in terms of the scale and size of trees. Large scale canopy trees should be provided in the deep soil zone. Green walls, climbing plants, shade structures and medium to large scale trees on podium are encouraged to be included in the proposed submission, particularly to soften the internal courtyard space and the ground floor streetscape presentation.  The Panel notes that no documentation was provided in relation to the streetscape treatment for the public domain and the Panel has concerns about the close proximity of the proposed driveway on the site to an existing mature street tree that appears likely to impede vehicular movements, constructability of the driveway and sightlines for vehicles entering and exiting the site. The Panel would not support the removal of the street tree in order to provide for the driveway

Design Principle	Comments
provides for practical establishment and long term management.	location, noting that even though it does not appear to be currently proposed for removal, its removal may arise out of these other considerations. The Panel recommends that the driveway should be moved rather than the tree removed.
<p><b>Amenity</b></p> <p>Good design positively influences internal and external amenity for residents and neighbours. Achieving good amenity contributes to positive living environments and resident well being.</p> <p>Good amenity combines appropriate room dimensions and shapes, access to sunlight, natural ventilation, outlook, visual and acoustic privacy, storage, indoor and outdoor space, efficient layouts and service areas and ease of access for all age groups and degrees of mobility.</p>	<p>The Panel notes the floor-to-floor heights proposed in the design are typically 2.9m. This is inconsistent with the ADG's recommended minimum floor-to-floor height of 3.1m. The Panel considers that it is unlikely that the design will be able to provide ceiling heights of 2.7m without the extensive use of bulkheads, which is discouraged by the ADG.</p> <p>The Panel also notes that proposed changes included in the Deemed-to-Satisfy (DTS) Provisions of Volume One of the NCC 2019 Public Comment Draft released on 8 February 2018 involve sprinkler protection for Class 2 (apartment buildings) and 3 buildings (hotel and dormitory style accommodation) over 3 storeys and under 25m in effective height with associated fire safety offsets as outlined below. Should these changes be introduced in 2109, as expected, these would further impact on the ability of the design to provide ceiling heights that were compliant with the ADG, due to the need to run sprinkler piping along the ceiling.</p> <p>As a result, the Panel considers that the design should be amended so that the floor-to-floor heights are increased to 3.1m minimum, in order to ensure that the residential amenity of the interiors is of an appropriately high quality. That Panel also advises that a typical habitable room section at a larger scale should be prepared to demonstrate to the Council that the building can achieve 2.7m ceiling heights to all habitable spaces and can include concealed sprinkler piping without the use of bulkheads.</p> <p>The Panel considers that the amenity of the individual apartments is generally acceptable subject to the following:</p> <ul style="list-style-type: none"> <li>• Provision of privacy screens to bedroom overlooking walkways</li> <li>• A better interface and design resolution between the driveway and Unit 6</li> <li>• Design resolution to the foyer that currently provides a corridor access to Botany Road that is considered to be inappropriately long and narrow</li> <li>• The building entries should be reconfigured so that the residential entry is not shared with the commercial entry</li> </ul> <p>The Panel considers that the amenity of the basement carpark is not satisfactory for reasons including:</p> <ul style="list-style-type: none"> <li>• Insufficient parking spaces that does not adequately provide for the density proposed on the site</li> <li>• Concerns over the current layout and functionality to access and use the spaces provided (for example the apparent difficulty maneuvering out of space 5)</li> <li>• No provision of storage areas within the garage</li> <li>• No loading dock or provision of parking for the commercial space</li> <li>• No separation of residential and commercial garbage</li> <li>• No visitor parking</li> </ul>

Design Principle	Comments
<p><b>Safety</b></p> <p>Good design optimises safety and security within the development and the public domain. It provides for quality public and private spaces that are clearly defined and fit for the intended purpose. Opportunities to maximise passive surveillance of public and communal areas promote safety.</p> <p>A positive relationship between public and private spaces is achieved through clearly defined secure access points and well lit and visible areas that are easily maintained and appropriate to the location and purpose.</p>	<p>The Panel considers that the design as presented generally provides satisfactory safety to residents subject to the following:</p> <ul style="list-style-type: none"> <li>• Separation of commercial tenancy and residential uses</li> <li>• Site lines for vehicular access to the streetscape and the street tree to the north of the subject site may provide a visual conflict</li> <li>• Vehicular swept paths and movements within the basement to demonstrate compliance</li> </ul>
<p><b>Housing Diversity and Social Interaction</b></p> <p>Good design achieves a mix of apartment sizes, providing housing choice for different demographics, living needs and household budgets.</p> <p>Well designed apartment developments respond to social context by providing housing and facilities to suit the existing and future social mix.</p> <p>Good design involves practical and flexible features, including different types of communal spaces for a broad range of people and providing opportunities for social interaction among residents.</p>	<p>The Panel notes the proposal only provides for two bedroom apartments and recommends that Council should review whether this lack of variation in apartment sizes will be appropriate for the locality taking to account the area's existing housing provision.</p> <p>The Panel notes the design is deficient in its provision of communal open space with reduced opportunities for social interaction among residents.</p>
<p><b>Aesthetics</b></p> <p>Good design achieves a built form that has good proportions and a balanced composition of elements, reflecting the internal layout and structure. Good design uses a variety of materials, colours and textures.</p> <p>The visual appearance of a well designed apartment development responds to the existing or future local context, particularly desirable elements and repetitions of the streetscape.</p>	<p>The Panel considers that the design exhibits a generally acceptable visual appearance but notes the potential for the parapet windows and level 2 streetscape appearance to present poorly.</p> <p>The large expanse of paint finish to the side walls is not considered to be high quality design and requires further articulation and variation of materials and finishes in order to reduce their scale and achieve a better interface with adjacent heritage items and the heritage conservation area. The Panel notes the assumption by the applicant is that both sides of this development will be built against, however the Panel notes this may not occur for a considerable period and as a result the quality of the side elevations should be improved.</p> <p>The Panel also recommends that further consideration and justification of the built form, materials and finishes should be provided within the framework of any heritage consultation and report.</p>

#### RECOMMENDATION

- The design cannot be supported in its present form and should be amended as outlined above for reconsideration by the Panel but only after the determination of the DA seeking to demolish the heritage item at 1447 Botany Road.

It is noted that the design verification statement provided does not appear to be written by the architects that designed the building.