

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 26 November 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 - 12 November 20192

5 REPORTS – PLANNING PROPOSALS

Nil

6 REPORTS – DEVELOPMENT APPLICATIONS

- 6.1 DA-2017/139/A - 142 Queen Victoria Street, Bexley12
6.2 DA-2016/10065/B - 5 Finch Drive Eastgardens68
6.3 DA-2013/10056/D - 13A Church Avenue, Mascot116
6.4 DA-2019/150 - 2 Princes Highway, Wolli Creek221
6.5 DA-2019/191 - 32 William Street, Botany266
6.6 DA-2019/147 - 6 Culver Street, Monterey332
6.7 DA-2019/143 - 24 Albert Street, Botany377

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

26/11/2019

Item No	4.1
Subject	Minutes of the Bayside Local Planning Panel Meeting - 12 November 2019
Report by	Michael McCabe, Director City Futures
File	SF18/3010

Recommendation

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

Present

Jan Murrell, Chairperson
Helen Deegan, Independent Expert Member
Stephen Moore, Independent Expert Member
Amber O'Connell, Community Representative

Also present

Luis Melim, Manager Development Services
Marta Gonzalez-Valdes, Coordinator Development Assessment
Christopher Mackay, Coordinator Development Assessment
Patrick Nash, Senior Development Assessment Planner
Christopher Lazaro, Development Assessment Planner
Petra Blumkaitis, Development Assessment Planner
Andrew Ison, Senior Development Assessment Planner
Fiona Prodromou, Senior Development Assessment Planner
Taif George, IT Technical Support Officer
Anne Suann, Governance Officer

The Chairperson opened the meeting in the Botany Town Hall Committee Room 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

There were no disclosures of interest.

4 Minutes of Previous Meetings

4.1 Minutes of the Bayside Local Planning Panel Meeting - 22 October 2019

Decision

That the Bayside Local Planning Panel notes that the Minutes of the Bayside Local Planning Panel meeting held on 22 October 2019 have been confirmed as a true record of proceedings by the Chairperson of that meeting.

5 Reports – Planning Proposals

Nil

6 Reports – Development Applications

6.1 S82-2019/9 - 29 Caledonian Street, Bexley

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

Determination

- 1 The Bayside Local Planning Panel, exercising the functions of the Council as the consent authority, pursuant to Division 8.2 relating to development application No. S82-2019/9 for a review of the determination, resolve to confirm the previous decision to refuse the development application DA-017/216/A, pursuant to Section 8.4 of the Environmental Planning and Assessment Act 1979.
- 2 The development application DA-2019/216/A for the modification to reduce the setback of the retaining wall from the side boundary at the rear at 29 Caledonian Street, Bexley is REFUSED pursuant to s4.16(1)(b) of the Environmental Planning and Assessment Act 1979 for the following reasons:
 - a The proposal is not of minimal environmental impact and therefore does not satisfy the provisions of Section 4.55(1A)(a) of the *Environmental Planning and Assessment Act 1979*.
 - b The location and amount of fill proposed is a significant variation to the original approval as shown in the approved plans and as required by Conditions of consent, particularly with regards to Condition 10. The proposed development is therefore not substantially the same

development as the development for which consent was originally granted and does not satisfy the provisions of Section 4.55(1A)(b) of the *Environmental Planning and Assessment Act 1979*.

- 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 amenity impacts on adjoining properties resulting from the proposal do not satisfy the objectives of the R3 - Medium Density Residential zone in *Rockdale Local Environmental Plan 2011*, including:
 - *To ensure that land uses are carried out in a context and setting that minimises any impact on the character and amenity of the area.*
- d Pursuant to the provisions of Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, the proposed development does not satisfy the following Clauses under the *Rockdale Local Environmental Plan 2011*:
 - Clause 6.2 - Earthworks
 - Clause 6.6 - Flood planning
 - Clause 6.7 – Stormwater
- e Pursuant to the provisions of Section 4.15(1)(b) of the *Environmental Planning and Assessment Act 1979* insufficient information has been provided to demonstrate that the proposed development will not result in the following adverse environmental impacts:
 - Natural Environment – quality of, and stability of, significant filling carried out on site.
 - Built Environment – Structural adequacy of retaining wall, and failure to demonstrate acceptable disposal of stormwater from the filled part of the land.
- f Pursuant to the provisions of Section 4.15(1)(e) of the *Environmental Planning and Assessment Act 1979*, and in consideration of the issues raised in the submission made, the proposed development is not considered to be in the public interest and is likely to set an undesirable precedent.

3 That the submitter be notified of the Bayside Local Planning Panel's decision.

Name	For	Against
Jan Murrell	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Helen Deegan	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Stephen Moore	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Amber O'Connell	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Reason for the Panel's Refusal

The Panel concurs with the Officer's report and recommendation and has determined the modification would result in unreasonable impacts on the environment and adjoining neighbours.

By way of comment the panel notes the property has been sold and the unauthorized works remains on the property.

6.2 DA-2016/86/D - 15-17 Gertrude Street, Wolli Creek

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

The following person spoke:

- Alfredo Pagano, architect, spoke in support of the modification application and responded to the Panel's questions.

Determination

That this item be deferred to allow the applicant to provide further information to Council to investigate connecting the third bedroom to the unit above, Unit 2, and information with amended plans is to be provided to Council within 21 days to allow the matter to be further considered.

Name	For	Against
Jan Murrell	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Helen Deegan	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Stephen Moore	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Amber O'Connell	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Reason for the Panel's Determination

The Panel considers the previous modification to convert a 3 bedroom unit on the upper level to a 2 bedroom and one bedroom unit has changed the unit mix, and the further loss of this 3 bedroom unit the subject of the current modification is not acceptable in the circumstances.

6.3 DA-2018/151 - 238-242 Rocky Point Road, Ramsgate

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

The following people spoke:

- Nathan Richau, affected neighbour, spoke against the officer's recommendation and responded to the Panel's questions.
- Elaine Timbs, affected neighbour, spoke against the officer's recommendation and responded to the Panel's questions.
- Clifford Bernard, affected neighbour, spoke against the officer's recommendation and responded to the Panel's questions.
- Daisy Buchanan, affected neighbour, spoke against the officer's recommendation and responded to the Panel's questions.
- Suzanne O'Connor, interested resident, spoke against the officer's recommendation and responded to the Panel's questions.
- Michael Gheorghiu, Town Planning Consultant from Tudor Planning and Design, spoke for the officer's recommendation and responded to the Panel's questions.
- Chris Tsioulos, Architect from CMT Architects Australia Pty Ltd / applicant, spoke for the officer's recommendation and responded to the Panel's questions.

Determination

- 1 The development application for the construction of a Boarding House with 70 rooms on the above site is deferred for the applicant to address the following:
 - A recalculation of the FSR to include access corridors that should be included as GFA and for any necessary amended plans.
 - Consideration to the allocation of an additional Manager's residence in the plans to allow 24 hour management of the property together with details of management.
 - The Plan of Management must be revised to be comprehensive given the large number of rooms.
 - Details of the management of the communal open space on the rooftop to restrict use of the eastern portion from the hours after 6 pm and how numbers are to be generally monitored to maintain reasonable residential amenity of the area.
 - The social impact statement is to include the likely range and mix of tenants.
 - Consideration of the amenity impact on ground floor apartments of the adjoining RFB and how this is addressed.
 - Greater detail required of the availability and access to a range of goods and services, including convenience stores for daily requirements.
 - The Plan of Management is to reference details of a Community Liaison Committee to be formed to address concerns of the local community that may arise from time to time with the operation of the boarding house. The

Manager is responsible to arrange such forums on a regular basis.

- Details of a Complaints Register including how it is to operate and made available for Council inspection at any time.

The Applicant is to submit the further information and amended plans if necessary to the Council by mid-January 2020. A further assessment report is to then be prepared with the draft conditions to include: a condition that the development is not to be converted to another form of development or strata subdivided at any time for the life of the development; and prior to the commencement of demolition, the Development Consent dated 27 February 2018 (DA-2017/174) is to be surrendered if the applicant acts on this consent, or alternatively this consent is surrendered if the applicant acts on the previous consent.

2 That the submitters be notified of the Bayside Local Planning Panel's decision.

Name	For	Against
Jan Murrell	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Helen Deegan	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Stephen Moore	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Amber O'Connell	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Reason for the Panel's Determination

The majority of the Panel considers that the application for a large 70 room Boarding House on the subject site is deficient to allow a determination at this time. Furthermore, the FSR calculation appears to be incorrect.

The Community Representative voted against the development application as she considered it was an overdevelopment of the site. In considering the merits of the development as a whole she could not reconcile the aspects of non-compliance including height exceedance and solar access to the common room. Regard was also given to the distance of train services and a range of services and conveniences for everyday living.

6.4 DA-2016/150/A - 401-405 Princes Highway, Rockdale

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

The following people spoke:

- James Alexander-Hatziplac, architect, spoke for the officer's recommendation and responded to the Panel's questions.
- Craig Munnings, Development Manager, Munnings & Associates, spoke for the officer's recommendation and responded to the Panel's questions.

Determination

- 1 The Bayside Local Planning Panel, exercising the functions of the Council as the consent authority, pursuant to S4.55(2) of the Environmental Planning and Assessment Act 1979 is satisfied that the proposed modification:
 - i is substantially the same development as the development for which consent was originally granted and before that consent was modified;
 - ii has been notified; and
 - iii has been assessed having regard to the relevant matters in s4.15 of the Environmental Planning and Assessment Act 1979.
- 2 The modification application DA-2016/150/A seeking to modify development consent DA-2016/150 to: increase apartment numbers from 39 to 43; reduce the extent of excavation by deleting one basement level; reduce plant requirements; changes to internal layout; podium level; and changes to facade details at 401-405 Princes Highway Rockdale is APPROVED subject to the conditions as recommended in the Council officer's report that the description, 'deferred commencement' and consent conditions 2, 5, 13, 30, 36, 39, 41, 43, 48, 112, 117, 118, 123, 137 are modified and conditions 39A, 41A, 42A, 99A, 111A and 140A are inserted.

Name	For	Against
Jan Murrell	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Helen Deegan	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Stephen Moore	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Amber O'Connell	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Reason for the Panel's Determination

The Panel is satisfied the modification application warrants approval and the development will benefit by the changes.

6.5 DA-2019/117 - 19 Gladstone Street, Bexley

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

The following people spoke:

- Ken James, affected neighbour, spoke against the officer's recommendation.
- Peter O'Kane, affected neighbour, spoke against the officer's recommendation and responded to the Panel's questions.

- Miceal Bradley, affected neighbour, spoke against the officer's recommendation.
- Liz Barlow, interested resident, spoke against the officer's recommendation and responded to the Panel's questions.
- Peter Smith, Urban Designer, spoke for the officer's recommendation and responded to the Panel's questions.
- Andrew Bova, applicant, spoke for the officer's recommendation and responded to the Panel's questions.

Determination

The Panel has considered the submissions received, including both oral and written, the Council Officer's Report and has the benefit of a site inspection before making this determination.

- 1 The Bayside Local Planning Panel, exercising the functions of the Council as the consent authority pursuant to S4.16(3) of the Environmental Planning and Assessment Act 1979 grants DEFERRED COMMENCEMENT consent to development application DA-2019/119 for demolition of existing structures and construction of part two (2) and part three (3) storey boarding house comprising 13 rooms with basement parking and single storey communal room at 19 Gladstone Street, Bexley, The consent does not operate until the Deferred Commencement Condition below is satisfied.

DEFERRED COMMENCEMENT CONDITION

The consent shall not operate until the Director City Futures is satisfied as to the following matters:

- a An easement to drain water shall be legally registered with NSW Land Registry Services over the rear property at 26 Caledonian Street, Bexley benefiting the subject site 19 Gladstone Street, Bexley. The width, length and the location of the easement shall be in accordance with Stormwater management plan prepared by Donovan Associates drawing number E288259 sheet number D3, Revision D dated 26.03.2019.*
- b Boarding room 202 on the Level 02 Plan shall be deleted with the roof form modified and lowered in height, the rear dormer deleted, this results in a secondary roof form below the primary roof.
(Reason: to allow improved solar access to adjoining rear yards.)*
- c Deletion of the larger southern window (not including bathroom) from the common room.
(Reason: to mitigate impacts of noise on adjoining properties.)*
- d Reduce setback of the rear building on the northern boundary to 900 mm and as a consequence increase landscaping along southern boundary of rear building.
(Reason: to provide opportunity for screen planting for adjoining semi-detached houses at No.'s 21 and 23 Gladstone Street.)*
- e Increase setback of garage door 1.5 m .further from front boundary*

(Reason: to attenuate noise from door opening and closing by being located further into the building.)

*f Provide lapped and capped acoustic fencing along southern boundary.
(Reason: to provide further attenuation of noise for southern neighbour.)*

g Update Plan of Management to also include:

- *A Community Liaison Committee to allow residents to meet with the Manager and raise any concerns.*
- *Details of Complaints Register including action and time taken to address concerns and the Register is to be available for Council to inspect at any time.*
- *Manager's phone number is to be clearly displayed on outside of building.*
- *Information to be provided to Tenants in relation to the use and operation of basement car park to minimise disturbance to neighbours.*
- *A copy of the approved Plan of Management is to be made available by the manager to neighbours on request.*

(Reason: to provide mechanism for neighbours to raise any concerns with the manager and for issues to be addressed in a timely manner.)

h The brickwork is to be of lighter tones to provide improved light reflection for adjoining properties.

The above Deferred Commencement conditions are to be addressed within 12 months from the date of this determination.

Upon receiving written satisfaction from Council that the above Deferred Commencement requirements have been approved, the consent will then become operational subject to conditions.

2 That the submitters be notified of the Bayside Local Planning Panel's decision.

Name	For	Against
Jan Murrell	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Helen Deegan	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Stephen Moore	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Amber O'Connell	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Reason for the Panel's Determination

The Panel has carefully considered the submissions received and has decided to grant a deferred commencement consent with the need for the applicant to provide updated plans and an amended Plan of Management to the satisfaction of the Director City Futures.

The Panel must determine the application having regard to the Legislative Planning framework and this permits Boarding Houses in residential areas. Apart from providing a built form that does not create unreasonable impacts, at the same time the Panel is aware that the management and operation is important to ensure residential amenity is reasonably maintained for all. The Panel has therefore imposed the above additional Deferred Commencement conditions for this purpose.

The removal of the upper level room on Building 1 and amended roof form will allow for improved solar access to the neighbours' yards. The common room window facing the yard of dwelling No 21 is to be deleted to improve acoustic and potential privacy issues.

Building 2 is to be moved closer to the northern boundary with a setback of 900 mm to allow an increased separation and opportunities for landscaping along the southern boundary, to improve visual impact, privacy and impact to adjoining neighbours.

To improve acoustics between neighbouring properties, especially in relation to the basement garage, the door has been moved into the building by 1.5 m and a lapped and capped fence has been required along the southern boundary.

An updated comprehensive Plan of Management, including a Community Liaison Committee and details of a Complaints Register, are required to respond to concerns of neighbours and provide a clear operational framework for the boarding house to minimize impacts in the locality.

The Chairperson closed the meeting at 9.30 pm.

Certified as true and correct.

Jan Murrell
Chairperson

Bayside Local Planning Panel

26/11/2019

Item No	6.1
Application Type	Section 4.55(1A) Application
Application No	DA-2017/139/A
Lodgement Date	23/09/2019
Property	142 Queen Victoria Street, Bexley
Ward	Ward 1
Owner	Aston (NSW) Pty Ltd
Applicant	Mr Anthony Sahyoung
Proposal	Modification to include ventilation shaft, internal modifications and alteration to window size
No. of Submissions	Nil
Cost of Development	Nil
Report by	Michael McCabe, Director City Futures

Officer Recommendation

- 1 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, is satisfied that the proposed modification as amended above:
 - 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 not been notified as this is not required; and
 - iv has been assessed having regard to the relevant matters in s4.15(1A) of the Environmental Planning and Assessment Act 1979.
 - 2 The Modification Application No. DA-2017/224/E, being a Section 4.55(1A) application to amend Development Consent No. DA-2017/224, to permit subdivision into two (2) stages at 152-200 & 206 Rocky Point Road, Rockdale, is **APPROVED** pursuant to Section 4.55(1A) of the Environmental Planning and Assessment Act 1979 and subject to the modifications of conditions of consent attached to the Council officer's report.
 - i By amending condition 2 and 5.
-

Location Plan



Attachments

- 1 Planning Assessment Report [↓](#)
- 2 Photo Montage [↓](#)
- 3 Statement of Environmental Effects [↓](#)
- 4 SEPP 65 Certificate [↓](#)
- 5 Elevations [↓](#)
- 6 Site Plan [↓](#)

BAYSIDE COUNCIL

Planning Assessment Report

Application Details

Application Number:	DA-2017/139/A
Date of Receipt:	23 September 2019
Property:	142 Queen Victoria Street, BEXLEY (Lot A DP 384344)
Owner:	Aston (NSW) Pty Ltd
Applicant:	Mr Anthony Sahyoun
Proposal:	Modification to include relocation of bicycle parking, relocation of electrical room, and provision of ventilation shaft resulting in modifications to window and/or door sizes for Units G.01, 1.01, 2.01 and 3.01
Recommendation:	Approved
No. of submissions:	N/A - notification not required.
Author:	Helen Lai
Date of Report:	30 October 2019

Key Issues

Nil.

Recommendation

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 not been notified as this is not required and,
- (iv) has been assessed having regard to the relevant matters in s4.15(1A) of the Environmental Planning and Assessment Act 1979.

2. That modification application DA-2017/139/A seeking to modify development consent DA-2017/139 to include ventilation shaft, internal modifications and alteration to window size at 142 Queen Street, Bexley, be APPROVED. The proposal is modified in the following manner:

(i) By amending condition 2 as follows:

The development must be implemented substantially in accordance with the plans listed below, the

application form and on any supporting information received with the application, except as may be amended in red on the attached plans and by the following conditions.

Plan/Dwg No.	Issue No.	Dated	Received
ARCHITECTURAL PLANS – prepared by Cornerstone Design			
Site Plan - DA 00	C	24 September 2019	24 September 2019
Site Analysis Plan – DA 01	B	20 April 2018	1 May 2018
Basement Plan & Ground Floor Plan – DA 02	DE	24 July 2018 18 September 2019	31 July 2018 23 September 2019
First Floor Plan & Second Floor Plan – DA 03	DE	24 July 2018 18 September 2019	31 July 2018 23 September 2019
Third Floor Plan & Roof Plan – DA 04	DE	24 July 2018 18 September 2019	31 July 2018 23 September 2019
Elevations – DA 05	DE	24 July 2018 18 September 2019	31 July 2018 23 September 2019
Elevations – DA 06	D	24 July 2018	31 July 2018
Section & Driveway Profile – DA 07	D	24 July 2018	1 May 2018
Schedule of Finishes			20 October 2016
Photomontage			30 April 2018 23 September 2019
LANDSCAPE PLANS – prepared by Zenith Landscape Designs			
Landscape Plan – 16-3278 LO1	A	19 April 2018	1 May 2018
Existing Tree Plan – 16-3278 LO2	A	19 April 2018	1 May 2018
DRAINAGE PLANS – prepared by United Consulting Engineers			
Drainage Plan - 16MB7166/D01	B	6 April 2018	1 May 2018
Ground Floor and Basement Drainage Plan - 16MB7166/D02	B	6 April 2018	1 May 2018
Soil & Water Management Plan - 16MB7166/SW01	B	6 April 2018	1 May 2018
BASIX CERTIFICATE – prepared by Building & Energy Consultants Australia			

761061M_023	-	30 April 2018 20 September 2019	1 May 2018 23 September 2019
Other			
Schedule of Finishes	A	undated	31 July 2018

Where there is any inconsistency between the plans prepared by Cornerstone and the plans prepared by either Zenith Landscape Designs or United Consulting Engineers, the plans prepared by Cornerstone Design shall prevail.

(ii) By amending condition 5 as follows:

The development must be implemented and all BASIX commitments thereafter maintained in accordance with BASIX Certificate Number 761061M_023 other than superseded by any further amended consent and BASIX certificate.

Note: Clause 145(1)(a1) of the Environmental Planning & Assessment Regulation 2000 provides: A certifying authority must not issue a construction certificate for building work unless it is satisfied of the following matters: -

- (a1) that the plans and specifications for the building include such matters as each relevant BASIX certificate requires.

Note: Clause 154B(2) of the Environmental Planning & Assessment Regulation 2000 provides: "A certifying authority must not issue a final occupation certificate for a BASIX affected building to which this clause applies unless it is satisfied that each of the commitments whose fulfilment it is required to monitor has been fulfilled."

Note: For further information please see <http://www.basix.nsw.gov.au>.

Background

History

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

- DA-2008/266 - Conversion of an existing mixed-use development to a residential flat building containing 1 x 1 bedroom unit, 1 x 2 bedroom unit and 1 x 4 bedroom unit with on-site parking for 5 vehicles, approved on 30 June 2008.
- DA-2017/139 - Construction of a four (4) storey residential flat building, comprising seven (7) units, basement level, strata subdivision and demolition of existing structures, approved on 28 August 2018 by the Bayside Local Planning Panel.

Proposal

Council is in receipt of a development application, DA-2017/139/A, at 142 Queen Victoria Street, Bexley, which seeks consent to carry out modifications to the approved development to include relocation of bicycle parking, relocation of electrical room and provision of a ventilation shaft resulting in modifications to window and/or door sizes for Units G.01, 1.01, 2.01 and 3.01.

Specifically, the proposal consists of the following:

Basement Floor Level

- Mechanical riser provided adjacent to the lift;
- Bicycle parking relocated to the eastern corner of the basement adjacent to the shared zone (originally the meters and NBN area)
- Electrical room relocated adjacent to the motorcycle parking space and lift (originally the storage area)
- Visitor car wash bay increased in width from 2.95m to 3.5m.

Ground Floor Level

- Mechanical riser provided on the south-east side adjacent to the lift
- Bedroom 3 window of Unit G.01 reduced in size from 2.4w x 1.4m high to 1.8w x 1.4m high

First Floor Level

- Mechanical riser provided on the south-east side adjacent to the lift
- Sliding door in bedroom 3 of Unit 1.01 reduced in size from 2.4w x 2.4m high to 1.8w x 1.4m high

Second Floor Level

- Mechanical riser provided on the south-east side adjacent to the lift
- Sliding door in bedroom 3 of Unit 2.01 reduced in size from 2.4w x 2.4m high to 1.8w x 1.4m high

Third Floor Level

- Mechanical riser provided on the south-east side adjacent to the lift.

The proposal seeks to modify the following conditions:

- Condition 2
- Condition 5

Site location and context

The subject site is known as Lot A DP 384344, 142 Queen Victoria Street, Bexley. The site is a rectangular shaped lot on the corner of Queen Victoria Street and Caledonian Street. The site has a frontage of 20.725m to Queen Victoria Street and a secondary street frontage of 32.615m to Caledonian Street. The total site area is approximately 675.9m². The site has a slight fall across the site in a southerly direction.

The site is located to the south of Forest Road, which runs directly to Hurstville's commercial centre, and west of Kogarah and Rockdale Railway Station, providing access to several other commercial and city centres. The site is serviced by buses on nearby streets, including Queen Victoria Street and Caledonian Street.

The north-eastern side of Queen Victoria Street is characterised by three storey residential flat buildings, and the south-western side of Queen Victoria Street is primarily characterised by single and

double storey residential dwellings. The northern and southern side of Caledonian Street is characterised by single residential dwellings.

The site is not a heritage item however, is located in the vicinity of a heritage item being heritage item no. 156 - Street plantings along Queen Victoria Street and no. 170 - Street plantings along Caledonian Street.

The site is located in the R4 - High Density Residential zone and affected by Acid Sulfate Soils (ASS) Class 5.

A row of five (5) street trees are located on Council's nature strip on Caledonian Street.

Demolition of the buildings on site and construction works have substantially commenced on site.



Figure 1 - Location Map

Statutory Considerations

Environmental Planning and Assessment Act, 1979

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

S4.55 (1A) - Modification

Section 4.55(1A) of the Environmental Planning & Assessment Act 1979 states:

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

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

Comment: The application seeks consent to carry out minor modifications to include a ventilation shaft, minor internal modifications and alterations to window and door sizes. The proposed modifications are minor in nature and will be of minimal environmental impact.

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

Comment: The application is only for minor modifications to the approved development. The proposal remains as previously approved, namely a residential flat building. The proposed modifications will not change the land use or substantially alter the nature of the development. As such it is considered substantially the same development.

c) it has notified the application in accordance with:

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

Comment: The application was not required to be notified as per Rockdale DCP 2011.

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

Comment: Not applicable given the application was not notified.

S4.55(3) OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT

S4.55(3) of the Environmental Planning and Assessment Act 1979 states:

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

The consent authority must also take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified and no issued are identified. The application was deferred by the Bayside Local Planning Panel at their meeting of 10 July 2018, subject to the following reasons:

"...the applicant is requested to provide amended plans and supplementary documentation to address the relationship of the proposed building to surrounding development. In particular, the following matters are to be clarified:

- site coverage;*
- setbacks;*
- deep soil zones; and*
- details of front fence construction.*

The amended plans should address:

- *privacy screens where required;*
- *the treatment of the balustrades;*
- *the resolution of the corner; and*
- *resolution of the roof element to level 4.*

These matters were discussed with the applicant. In addition, the applicant should address the minimum width requirement of the DCP".

Amended plans were submitted to Council and the application was referred back to the BLPP on 28 August 2019 who approved the development subject to the following reason for Determination:

"The applicant has provided appropriate responses to the matters raised by the previous Panel, resulting in a better design resolution for the site".

An assessment of the application has been carried out under the provisions of Section 4.15 of the Environmental Planning and Assessment Act, 1979. The matters of relevance to this application have been considered. The following is an assessment of the proposed development under the provisions of Section 4.15(1) of the Environmental and Planning Assessment Act.

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

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

The following Environmental Planning Instruments are relevant to this application:

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

The applicant has submitted a revised BASIX Certificate for the proposed modifications. The Certificate number is 761061M_03.

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

Reduction in Energy Consumption 30%
Reduction in Water Consumption 40%
Thermal Comfort Pass

Condition 5 of the consent will be amended to reflect the revised certificate number and ensure that these requirements are adhered to.

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

Consideration has been given to the relevant matters contained in SEPP 65. In this case, the application relates only to modifications to include a ventilation shaft, internal modifications and alteration to some window and door sizes. The proposed modification is not required to be considered by the Design Review Panel, and the proposal remains satisfactory with regards to the nine (9) design quality principles contained in Schedule 1 of SEPP 65.

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

CLAUSE	DESIGN CRITERIA			COMMENTS	COMPLIES
3F Visual Privacy	Min separation - side & rear boundaries:			<p>The proposed changes to windows on the south-eastern elevation will have reduced privacy impacts to adjoining properties as these windows provide views to the secondary street (i.e. Caledonian Street) not to any adjoining properties., and the window sizes will be reduced as a result of the proposed modifications.</p> <p>There are no proposed changes to the approved side and rear setbacks.</p> <p>Given the above, the proposed modifications are considered acceptable with regard to visual privacy.</p>	Acceptable.
	Building height	Habitable rooms and balconies	Non habitable rooms		
	Up to 12m (4 storeys)	6m	3m		
	Up to 25m (5-8 Storeys)	9m	4.5m		
	Over 25m (9+storeys)	12m	6m		
	Buildings on the same site combine required building separations. Gallery treated as habitable space				

3J Bicycle and car parking	<p>Conveniently located and sufficient numbers of parking spaces should be provided for motorbikes and scooters.</p> <p>Secure undercover bicycle parking should be provided that is easily accessible from both the public domain and common areas.</p>	<p>The relocation of the bicycle parking to the eastern corner of the basement does not reduce the number of bicycle parking originally approved. The development retains one (1) bicycle parking space in the basement.</p> <p>The proposed relocation of the bicycle parking is within the basement and accessible.</p> <p>The visitor / car wash bay has increased in width from 2.95m to 3.5m as required by conditions of consent, however does not impact on existing parking.</p> <p>There are no proposed changes to the approved layout and number of parking spaces for the approved units.</p>	Acceptable.															
4E – Private open space and balconies	<p>Primary balconies as follows:</p> <table><tr><th>Dwelling type</th><th>Minimum area</th><th>Minimum depth</th></tr><tr><td>Studio</td><td>4m²</td><td>-</td></tr><tr><td>1 bed</td><td>8m²</td><td>2m</td></tr><tr><td>2 bed</td><td>10m²</td><td>2m</td></tr><tr><td>3+ bed</td><td>12m²</td><td>2.4m</td></tr></table> <p>Min balcony depth contributing to the balcony area is 1m.</p> <p>Ground level, podium or similar - POS provided instead of a balcony: min area 15m² and min depth of 3m.</p>	Dwelling type	Minimum area	Minimum depth	Studio	4m ²	-	1 bed	8m ²	2m	2 bed	10m ²	2m	3+ bed	12m ²	2.4m	<p>The units affected are three (3) bedroom units. The balcony size each Unit 1.01, 2.01 and 3.01 will reduce in size by a minor portion as a result of the proposed ventilation shaft, however, the proposed balcony sizes remain compliant as follows:</p> <ul style="list-style-type: none">- Unit 1.01 = 32m²- Unit 2.01 = 32m²- Unit 3.01 = 45m²	Yes
Dwelling type	Minimum area	Minimum depth																
Studio	4m ²	-																
1 bed	8m ²	2m																
2 bed	10m ²	2m																
3+ bed	12m ²	2.4m																

Rockdale Local Environmental Plan 2011

Relevant clauses	Compliance with objectives	Compliance with standard/provision
2.3 Zone R4 High Density Residential	Yes	Yes - see discussion
4.3 Height of buildings	Yes	Yes - see discussion
4.4 Floor space ratio - Residential zones	Yes	Yes - see discussion
5.10 Heritage conservation	Yes	Yes - see discussion
6.1 Acid Sulfate Soil - Class 5	Yes	Yes
6.12 Essential services	Yes	Yes

2.3 Zone R4 High Density Residential

The subject site is zoned R4 - High Density Residential under the provisions of Rockdale Local Environmental Plan 2011 (RLEP 2011). The proposal is for modifications to an approved residential flat building which constitutes a permissible development only with development consent. The objectives of this zone are:

- To provide for the housing needs of the community within a high density residential environment.
- To provide a variety of housing types within a high density residential environment.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.

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

4.3 Height of buildings

There are no proposed changes to the approved building height at approximately 13.5m.

4.4 Floor space ratio - Residential zones

There are no proposed changes to the approved FSR at 1:1.

5.10 Heritage conservation

The subject site is not a heritage item or located within a heritage conservation area. However, the site is in the vicinity of heritage items no. 156 - Streets plantings along Queen Victoria Street and no. 170 - Street plantings along Caledonian Street as identified within Schedule 5 of the Rockdale Local Environmental Plan 2011.

The proposed modifications will have minimal impact on the integrity or character of these heritage items given the proposed modifications are mainly internal. Modifications to the window sizes on the south-eastern elevation will not impact on the existing street plantings.

It is satisfied that the qualities that make the heritage items and their setting significant will not be diminished by the proposed modifications. The proposal is acceptable in this regard.

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

No relevant proposed instruments are applicable to this proposal.

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

The following Development Control Plan is relevant to this application:

Rockdale Development Control Plan 2011

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

Relevant clauses	Compliance with objectives	Compliance with standard/provision
4.1.2 Heritage Conservation - Vicinity of Heritage Item	Yes	Yes
4.2 Streetscape and Site Context - General	Yes	Yes - see discussion
4.4.5 Visual privacy	Yes	Yes
4.6 Parking Rates Residential Flat Buildings	Yes	Yes - see discussion
4.6 Basement Parking - Residential Flat Buildings	Yes	Yes
4.7 Air Conditioning and Communication Structures	Yes	Yes
4.7 Waste Storage and Recycling Facilities	Yes	Yes
4.7 Laundry Facilities and Drying Areas	Yes	Yes
5.2 RFB Secondary Street/Laneway Setback	Yes	Yes - see discussion
5.2 RFB - Building Design	Yes	Yes

4.2 Streetscape and Site Context - General

The proposed modifications involves changes to the south-eastern elevation fronting Caledonian Street. However, the proposed changes are minor including reduced window sizes to Units G.01, 1.01 and 2.02 and installation of a ventilation shaft adjacent to the approved lift. The proposed external materials and finishes of the ventilation shaft will be consistent with the approved development to ensure the modified changes to the south-eastern elevation will not be visually dominant. Furthermore, there will be minimal amenity and or visual impacts on the public domain or adjoining properties as a result of the proposed changes. There are no proposed changes to the south-west elevation facing Queen Victoria Street which will remain as originally approved.

Given the above, the proposed changes are considered acceptable.

4.6 Parking Rates Residential Flat Buildings

There are no proposed changes to the approved number of parking spaces in the basement which includes thirteen (13) spaces in total:

- One (1) parking space for Units G.02, 1.02 and 2.02 (two bedroom units)
- Two (2) parking space for Units G.01, 1.01, 2.01 and 3.01 (three bedroom units)
- One (1) visitor parking space / car wash bay
- One (1) adaptable car space

In addition:

- One (1) bicycle parking space

- One (1) motorcycle parking space

5.2 RFB Secondary Street/Laneway Setback

The proposed side setback as measured from the new ventilation shaft to the south-eastern boundary is as follows:

- Ground Floor = 2.74m
- First Floor = 2.74m
- Second Floor = 2.74m
- Third Floor = 4.1m

The proposed side setbacks are consistent with the side setbacks as originally approved. The ventilation shaft does not result in an increase in side setback from the secondary street (i.e. Caledonian Street).

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

Potential impacts related to the proposal have been considered in response to SEPPs, LEP and DCP controls, as well as in the original assessment (and assessment of previous modifications). There are minimal impacts related to the proposal.

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

The relevant matters pertaining to the suitability of the site for the proposed modifications have been considered in the assessment of the proposal, and the conclusions reached are generally the same as for the original approval. There are no known major physical constraints, environmental impacts, natural hazards or exceptional circumstances that would hinder the suitability of the site for the proposed modifications.

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

The proposed development did not require notification in accordance with the provisions of Rockdale DCP2011.

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

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

Civil Aviation Act, 1988

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

Civil Aviation (Building Control) Regulations 1988

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

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

The proposed development is affected by the 15.24m Building Height Civil Aviation Regulations. There are no proposed changes to the approved building height at 13.5m which will have minimal impact upon the height requirement in the regulations.

Schedule 1 - Draft Conditions of consent

General Conditions

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

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

Plan/Dwg No.	Issue No.	Dated	Received
ARCHITECTURAL PLANS – prepared by Cornerstone Design			
Site Plan - DA 00	C	24 September 2019	24 September 2019
Site Analysis Plan – DA 01	B	20 April 2018	1 May 2018
Basement Plan & Ground Floor Plan – DA 02	DE	24 July 2018 18 September 2019	31 July 2018 23 September 2019
First Floor Plan & Second Floor Plan – DA 03	DE	24 July 2018 18 September 2019	31 July 2018 23 September 2019
Third Floor Plan & Roof Plan – DA 04	DE	24 July 2018 18 September 2019	31 July 2018 23 September 2019
Elevations – DA 05	DE	24 July 2018 18 September 2019	31 July 2018 23 September 2019
Elevations – DA 06	D	24 July 2018	31 July 2018
Section & Driveway Profile – DA 07	D	24 July 2018	1 May 2018
Schedule of Finishes			20 October 2016
Photomontage			30 April 2018 23 September 2019
LANDSCAPE PLANS – prepared by Zenith Landscape Designs			

Landscape Plan – 16-3278 LO1	A	19 April 2018	1 May 2018
Existing Tree Plan – 16-3278 LO2	A	19 April 2018	1 May 2018
DRAINAGE PLANS – prepared by United Consulting Engineers			
Drainage Plan - 16MB7166/D01	B	6 April 2018	1 May 2018
Ground Floor and Basement Drainage Plan - 16MB7166/D02	B	6 April 2018	1 May 2018
Soil & Water Management Plan - 16MB7166/SW01	B	6 April 2018	1 May 2018
BASIX CERTIFICATE – prepared by Building & Energy Consultants Australia			
761061M_023	-	30 April 2018 20 September 2019	1 May 2018 23 September 2019
Other			
Schedule of Finishes	A	undated	31 July 2018

Where there is any inconsistency between the plans prepared by Cornerstone and the plans prepared by either Zenith Landscape Designs or United Consulting Engineers, the plans prepared by Cornerstone Design shall prevail.

[Amendment A - S4.55(1A) amended on #####]

3. All new building work must be carried out in accordance with the provisions of the Building Code of Australia (BCA).
4. **A Construction Certificate must be obtained from Council or an Accredited Certifier prior to any building work commencing.**
5. The development must be implemented and all BASIX commitments thereafter maintained in accordance with BASIX Certificate Number 761061M_023 other than superseded by any further amended consent and BASIX certificate.

Note: Clause 145(1)(a1) of the Environmental Planning & Assessment Regulation 2000 provides: A certifying authority must not issue a construction certificate for building work unless it is satisfied of the following matters: -

- (a1) that the plans and specifications for the building include such matters as each relevant BASIX certificate requires.

Note: Clause 154B(2) of the Environmental Planning & Assessment Regulation 2000 provides: "A certifying authority must not issue a final occupation certificate for a BASIX affected building to which this clause applies unless it is satisfied that each of the commitments whose fulfilment it is required to monitor has been fulfilled."

Note: For further information please see <http://www.basix.nsw.gov.au>.

[Amendment A - S4.55(1A) amended on #####]

6. The balconies and courtyard areas shall not be enclosed at any future time without prior development consent.
7. This approval is not to be construed as permission to erect any structure on or near a boundary contrary to the provisions of the Dividing Fences Act.
8. Excavation, filling of the site (with the exception of the area immediately under the building envelope), or construction of retaining walls are not permitted unless shown on the approved plans and authorised by a subsequent construction certificate.
9. The materials and façade details approved under condition 2 and any other relevant condition of this consent shall not be altered or amended at the construction certificate stage without a prior S4.55 application and approval under the EP&A Act.
10. Mail boxes must be installed along the street frontage of the property boundary in accordance with Australia Post Guidelines. Prominent house numbers are to be displayed, with a minimum number size of 150 mm in height for each number and letter in the alphabet.
11. Parking spaces shall be allocated to residential apartments / non-residential units in the development in the following manner and this shall be reflected in any subsequent strata subdivision of the development:

Allocated Spaces

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

3 bedroom apartments and 3+ bedroom apartments 2 spaces per apartment

Non-Allocated Spaces

Residential Visitor Spaces 1 space per 5 apartments

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

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

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

Development specific conditions

The following conditions are specific to the Development Application proposal.

12. Safer by Design
To maximise security in and around the development the following shall be incorporated into the development. Details for the following are to be approved by the Principal Certifying Authority prior to the issue of the Construction Certificate, implemented prior to issue of the Occupation Certificate, and maintained for the lifetime of the development:
 - a) Monitored CCTV facilities shall be implemented throughout the development. Areas of focus include the basement car park (including entry and exits), main entry areas to the development and garbage/storage areas.

- b) A lighting maintenance policy shall be established for the development. Lighting shall be designed to the Australian and New Zealand Lighting Standards. Australia and New Zealand Lighting Standard 1158.1 - Pedestrian, requires lighting engineers and designers to consider crime risk and fear when selecting lamps and lighting levels.
 - c) Security mirrors shall be installed within corridors and on blind corners to enable users to see around blind corners.
 - d) Graffiti resistant materials shall be used to ground level external surfaces.
 - e) Intercom facilities shall be installed at all vehicular and pedestrian entry/exit points to enable residents to communicate and identify with people prior to admitting them to the development.
- 13. The use of the premises, building services, equipment, machinery and, ancillary fittings shall not give rise to an "offensive noise" as defined under the provisions of the Protection of the Environment Operations Act, 1997.
- 14. The use of mechanical plant including air conditioners, fans, compressors, condensers, freezers, swimming pool or spa pumps (whether commercial or domestic) shall not cause sound pressure levels in excess of the criteria given in the NSW Industrial Noise Policy – 2000.
- 15. Residential air conditioners shall not cause 'offensive noise' as defined by the Protection of the Environment Operations Act 1997 or contravene provisions of the Protection of the Environment (Noise Control) Regulation 2008 where emitted noise from a residential air conditioner can be heard within a habitable room in any other residential premises at night.
- 16. The visible light reflectivity from building materials used on the façade of the building shall not exceed 20% and shall be designed so as not to result in glare that causes any nuisance or interference to any person or place. A statement demonstrating compliance with these requirements shall be submitted to the satisfaction of the Certifying Authority prior to the issue of a Construction Certificate for the relevant stage of works.
- 17. All proposed lights shall comply with the Australian Standard AS4282 - 1997 "Control of the Obtrusive Effects of Outdoor Lighting". In this regard, the lighting of the premises shall be directed so as not to cause nuisance to the owners or occupiers of adjacent/adjoining premises or to motorists on adjoining or nearby roads.
- 18. (b) In order to ensure the design quality I excellence of the development is retained:
 - i) A registered architect is to have direct involvement in the design documentation, contract documentation and construction stages of the project;
 - ii) The design architect is to have full access to the site and is to be authorised by the applicant to respond directly to the consent authority where information or clarification is required in the resolution of design issues throughout the life of the project;
 - iii) Evidence of the design architect's commission is to be provided to Bayside Council prior to issue of the Construction Certificate.
- (c) The design architect of the project is not to be changed without prior notice and approval of Bayside Council.
- 19. Services

- (a) Fire Boosters - The fire hydrant booster valves shall not be located on a corner. They should be located in a discreet location and shall be enclosed by a door. The door shall be provided with appropriate locks and signage in accordance with AS2419.1. The details of the location and structure shall be provided to Council for approval prior to the issue of the construction certificate.
 - (b) Substation - If a substation is required by Ausgrid, a s4.55 modification application will be required.
 - (c) Antenna / Satellite Dishes - The proposal may include the installation of a single master antenna for the development in accordance with Controls C1 and C2, Part 4.7 of RDCP 2011. No further antennas or satellite dishes may be installed without obtaining further approval (unless permitted as exempt development).
 - (d) All vertical plumbing shall be concealed within the brickwork of the building. Details demonstrating compliance with this requirement shall be submitted to the Principal Certifying Authority (PCA) prior to the issue of the Construction Certificate.
20. Ceiling heights for all habitable areas shall be a minimum of 2.7 metres and ceiling heights for all non-habitable areas shall be a minimum of 2.4 m as measured vertically from finished floor level to the underside of the ceiling. Details shall be shown in the Construction Certificate documentation.
 21. Podium landscaping and paved areas shall be drained into the stormwater drainage system. All waterproofing for planters on slab shall be installed and certified by a licensed waterproofing contractor.
 22. All pavements shall comply with AS/NZ 4586:1999 standards Class W (low) for slip resistance on both private and Council property.
 23. The approved completed landscape works shall be maintained for a period not less than 12 months.
On completion of the maintenance period, a Landscape Architect shall provide a report to the certifying authority (with a copy provided to Council if Council is not the principal certifying authority) stating the landscape maintenance has been carried out in accordance with approved landscape plans and designated specifications before release of the nominated landscape bond.
 24. 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.

Prior to issue of the construction certificate

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

25. The following fees shall be paid to Council prior to the issue of a Construction Certificate. If payment is made after the end of the financial year, the amount shall be adjusted in accordance with Council's adopted fees and charges.
 - i. A Footpath Reserve Restoration Deposit of \$22,745. This is to cover repair of any damages, or other works to be done by Council. This includes construction, removal, or repair as required to: kerb and guttering, existing or new driveways; paved areas and concrete footpaths. The deposit may be lodged with Council in the form of a Bank Guarantee (Any proposed Bank Guarantee must not have an expiry date). The deposit will not be returned by Council until works are completed and all damage is restored and all specified works are completed by Council.
 - ii. An environmental enforcement fee of 0.25% of the cost of the works.
 - iii. A Soil and Water Management Sign of \$18.00.
26. For work costing \$25,000 or more, a Long Service Leave Levy shall be paid. For further information please contact the Long Service Payments Corporation on their Helpline 13 1441.
27. An application for Driveway Works (Public Domain Construction – Vehicle Entrance/Driveway Application) / Frontage Works (Public Domain Frontage Works Construction Application) shall be made to Council's Customer Service Centre prior to issue of the Construction Certificate. All boundary frontage works, egress paths, driveways and fences shall comply with the approval. A fee is payable to Council. If payment is made after the end of the financial year, the amount shall be adjusted in accordance with Council's adopted fees and charges.
28. A Section 7.11 contribution of \$43567.61 shall be paid to Council. Such contributions are only used towards the provision or improvement of the amenities and services identified below. The amount to be paid is adjusted at the time of payment, in accordance with the contribution rates contained in Council's current Adopted Fees and Charges. The contribution is to be paid prior to the issue of any construction certificate for works above the floor level of the ground floor. (Payment of the contribution is not required prior to any separate construction certificates issued only for demolition, site preparation works and the construction of basement levels). The contribution is calculated from Council's adopted Section 7.11 contributions plan in the following manner:

Open Space	\$37,663.7	
Community Services & Facilities	\$1,988.29	
Town Centre & Streetscape Improvements	\$747.28	
Pollution Control	\$2,948.6	
Plan Administration & Management	\$219.74	

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

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

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

b) The walls separating one sole occupancy unit from another or one sole occupancy unit from a corridor, staircase, plant room, or lift shaft shall comply with AS/NZS 1276.1.

c) Walls within the development shall be constructed to satisfy the requirements of the Building Code of Australia.

d) A report shall be submitted to the Principal Certifying authority for approval prior to the issue of the relevant Construction Certificate. The report is to include details of compliance with BCA requirements and the requirements listed above. Floor coverings within apartments shall be identified within the report.

e) A suitably qualified acoustic engineer with MIE Australia membership or employed by a consulting firm eligible for AAAC membership is to certify that the details provided in the report required by (d) above satisfies the requirements of this condition, with the certification to be submitted to the Principal Certifying Authority for approval prior to the issue of the relevant Construction Certificate.

30. Compliance with Council's Development Control Plan (DCP) 2011 – Requirements for Access. Access in accordance with Australian Standard 4299 must be provided to and within one (1) residential unit, and between this unit(s) and its allocated carparking space. The allocated parking space will be located in close proximity to the access points of the building. The adaptable unit is to be unit number G.02. Please note that compliance with this condition requires the relevant unit(s) to be constructed to comply with all the essential (Type C) requirements of AS4299.

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

31. Prior to the issue of the Construction Certificate, the approved plans must be submitted to Sydney Water Tap in™ online service to determine whether the development will affect any Sydney Water sewer or water main, stormwater drains and/or easement, and if further requirements need to be met.

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

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

32. An investigation by a suitably qualified geotechnical engineer shall be carried out to determine the level of groundwater at the site and whether it is likely that groundwater will be encountered during works. If the geotechnical engineer determines that groundwater is likely to be encountered, then the applicant must consult with NSW Department of Industry – Water to determine whether an Activity Approval is required pursuant to the Water Management Act 2000. All below ground structures shall be tanked up to 1m higher than any investigated groundwater table.

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

33. Prior to the issue of the Construction Certificate, the design and construction of the off-street car & bicycle parking facilities shall comply with Australian Standard AS 2890 parking series and shall be certified accordingly by a suitably qualified engineer.
 - (a) Car Wash Bay - The required car wash bay shall be a minimum 3.5m wide and shall be signposted and appropriately line- marked to state that this space shall be used as a car wash bay.
 - (b) Parking spaces must not be enclosed without further approval of Council. The enclosure of car spaces is not permitted unless the enclosure complies with the design requirements of AS2890.1.2004.
 - (c) The longitudinal profile of the access and any ramps within the parking facilities must comply with the Ground Clearance requirements of the Standard.
 - (d) The car parking facilities must be appropriately line marked and signposted in accordance with the requirements of Section 4 of AS/NZS2890.1-2004.
34. A geotechnical investigation shall be carried out to determine the level of groundwater. All below ground structures shall be tanked up to 1m higher than any investigated groundwater table.
35. Prior to the issue of the construction certificate, a Soil and Water Management Plan (prepared in accordance with Soil and Water Management for Urban Development Guidelines produced by the Southern Sydney Region Organisation of Councils) shall be submitted to the Principal Certifying Authority and enacted prior to the commencement of work
36. Prior to the issue of the Construction Certificate, detailed drainage design plans for the management of stormwater are to be submitted to Principal Certifying Authority for assessment and approval. Design certification, in the form specified in Rockdale Technical Specification Stormwater Management, and drainage design calculations are to be submitted with the plans. Council's Rockdale Technical Specification Stormwater Management sets out the minimum documentation requirements for detailed design plans. Stormwater management requirements for the development site, including the final discharge/end connection point, must comply with Rockdale Technical Specification Stormwater Management.
37. Prior to the issue of a construction certificate, a design verification statement shall be submitted to the PCA from a qualified designer certifying that the development achieves or improves the design quality of the development as shown in the plans

and specifications in respect of which the construction certificate was issued, having regard to Schedule 1 of *State Environmental Planning Policy No 65—Design Quality of Residential Flat Development*.

38. Prior to the issue of the construction certificate - the approved landscape plan shall be amended as follows:
 - a) The *Lomandra longifolia* proposed along the north western boundary, between the adjoining property and the proposed driveway, shall be replaced with *Syzygium 'Cascade'* to provide screening to private open spaces areas of units facing to the north-west.
 - b) Details on any retaining wall required for the change in levels in the vicinity of the north-eastern boundary are to be provided.
 - c) Retaining walls higher than 600 mm in height require construction details and specifications from a certified structural engineer.
39. The approved landscape plan shall be amended as below. The amended landscape plan shall be submitted to the Principal Certifier for approval prior to the issue of the Construction Certificate.
 - a) The *Lomandra longifolia* proposed along the north western boundary, between the adjoining property and the proposed driveway, shall be replaced with *Syzygium 'Cascade'* to provide screening to private open spaces areas of units facing to the north-west.
 - b) Details on any retaining wall required for the change in levels in the vicinity of the north-eastern boundary are to be provided.Note: Retaining walls higher than 600 mm in height require construction details and specifications from a certified structural engineer.

Prior to commencement of works

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

40. 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.
41. A Soil and Water Management Plan shall be prepared. The Plan must include details of the proposed erosion and sediment controls to be installed on the building site. A copy of the Soil and Water Management Plan must be kept on-site at all times and made available on request.

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

Council's warning sign for soil and water management must be displayed on the most prominent point on the building site, visible to both the street and site workers.

The sign shall be erected prior to commencement of works and shall be displayed throughout construction.

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

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

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

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

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

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

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

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

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

Where there is any movement in foundations such that damaged is occasioned to any adjoining building or such that there is any removal of support to supported land the professional engineer, principal contractor and any sub-contractor responsible for

such work must immediately cease all work, inform the owner of that supported land and take immediate action under the direction of the professional engineer to prevent any further damage and restore support to the supported land.

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

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

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

44. Prior to the commencement of work, Tree Protection Zones shall be established in accordance with AS4970-2009 (Protection of trees on Development Sites) with protective fences at least 1.8 metres high erected outside the drip lines where possible around each tree or group of trees, including street trees, which is required to be retained. The protective fences shall consist of chain wire mesh temporary fence panels securely mounted and braced to prevent movement, shall be in place prior to the commencement of any work on site and shall remain until the completion of all building and hard landscape construction. Excavations for services, waste bins, storage of materials and equipment, site residue, site sheds, vehicle access or cleaning of tools and equipment are not permitted within the Tree Protection Zones at any time.
45. Prior to the commencement of any work on site, a sign shall be placed in a prominent position on each protective fence identifying the area as a Tree Protection Zone and prohibiting vehicle access, waste bins, storage of materials and equipment, site residue and excavations within the fenced off area.
46. The site shall be secured by a 1800 mm (minimum) high temporary fence for the duration of the work. Gates shall be provided at the opening points.
47. Where construction/building works require the use of a public place including a road or footpath, approval under Section 68 of the Local Government act 1993 for a Barricade Permit is to be obtained from Council prior to commencement of work. Details of the barricade construction, area of enclosure and period of work are required to be submitted to the satisfaction of Council.
48. (a) A hoarding or fence shall be erected between the work site and the public place when the work involved in the erection or demolition of a building:
 - (i) is likely to cause pedestrian or vehicular traffic in a public place to be obstructed or rendered inconvenient, or
 - (ii) building involves the enclosure of a public place,
- (b) Where the development site adjoins a public thoroughfare, the common boundary between them must be fenced for its full length with a hoarding, unless, the least horizontal distance between the common boundary and the nearest part of the structure is greater than twice the height of the structure. The hoarding must be constructed of solid materials (chain wire or the like is not acceptable) to a height of not less than 1.8m adjacent to the thoroughfare.
- (c) Where a development site adjoins a public thoroughfare with a footpath alongside the common boundary then, in addition to the hoarding required above, the footpath must be covered by an overhead protective structure, type B Hoarding, and the facing facade protected by heavy duty scaffolding unless either:
 - (i) the vertical height above footpath level of the structure being demolished is less than 4m; or

(ii) the least horizontal distance between footpath and the nearest part of the structure is greater than half the height of the structure.

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

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

(d) The principal contractor or owner builder must pay all fees and rent associated with the application and occupation and use of the road (footway) for required hoarding or overhead protection.

49. Toilet facilities must be available or provided at the work site before works begin and must be maintained until the works are completed at a ratio of one toilet plus one additional toilet for every 20 persons employed at the site.

During demolition / excavation / construction

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

- 50. A copy of the Construction Certificate and the approved plans and specifications must be kept on the site at all times and be available to Council officers upon request.
- 51. Hours of construction shall be confined to between 7 am and 6.30 pm Mondays to Fridays, inclusive, and between 8 am and 3.30 pm Saturdays with no work being carried out on Sundays and all public holidays.
- 52. Ground water shall only be pumped or drained to Council's stormwater system if the water is clean and unpolluted. The standard used to determine the acceptability of the quality of the water is the 'Australian and New Zealand Environment and Conservation Council - Australian Water Quality Guidelines for Fresh and Marine Waters 1992'.

Note: Prior treatment and/or filtration of the water may be necessary to achieve acceptable quality, including a non-filterable residue not exceeding 50 milligrams/litre or small quantities may be removed by the services of a Licenced Liquid Waste Transporter. It is an offence under the provisions of the Protection of the Environment Operations Act 1997 to pollute the stormwater system.

- 53. Demolition operations shall not be conducted on the roadway or public footway or any other locations, which could lead to the discharge of materials into the stormwater drainage system.
- 54. All waste generated on site shall be disposed of in accordance with the submitted Waste Management Plan.
- 55. All excavation and backfilling associated with the erection or demolition of a building

must be executed safely and in accordance with appropriate professional standards and guarded and protected to prevent them from being dangerous to life or property.

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

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

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

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

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

56. When soil conditions require it:
 - i. retaining walls associated with the erection or demolition of a building or other approved methods of preventing movement of the soil shall be provided, and
 - ii. adequate provision shall be made for drainage.
57. All contractors shall comply with the following during all stages of demolition and construction:
 - A Waste Container on Public Road Reserve Permit must be obtained prior to the placement of any waste container or skip bin in the road reserve (i.e. road or footpath or nature strip). Where a waste container or skip bin is placed in the road reserve without first obtaining a permit, the Council's fees and penalties will be deducted from the Footpath Reserve Restoration Deposit. Permits can be obtained from Council's Customer Service Centre.
 - A Road Opening Permit must be obtained prior to any excavation in the road reserve (i.e. road or footpath or nature strip). Where excavation is carried out on the road reserve without first obtaining a permit, the Council's fees and penalties will be deducted from the Footpath Reserve Restoration Deposit. Permits can be obtained from Council's Customer Service Centre.
 - A Hoarding Permit must be obtained prior to the erection of any hoarding (Class A or Class B) in the road reserve (i.e. road or footpath or nature strip). Where a hoarding is erected in the road reserve without first obtaining a permit, the Council's fees and penalties will be deducted from the Footpath Reserve Restoration Deposit. Permits can be obtained from Council's Customer Service Centre.
 - A Crane Permit must be obtained from Council prior to the operation of any activity involving the swinging or hoisting of goods across or over any part of a public road by means of a lift, hoist or tackle projecting over the footway.

- Permits can be obtained from Council's Customer Service Centre.
- A current Permit to Dewater or Pump Out a site must be obtained prior to the discharge of pumped water into the road reserve, which includes Council stormwater pits and the kerb and gutter. Permits can be obtained from Council's Customer Service Centre.
58. All demolition work shall be carried out in accordance with AS2601 – 2001: The Demolition of Structures and with the requirements of the WorkCover Authority of NSW.
59. The following conditions are necessary to ensure minimal impacts during construction:
- i. Building, demolition and construction works not to cause stormwater pollution and being carried out in accordance with Section 2.8 of Council's Stormwater Pollution Control Code 1993. Pollutants such as concrete slurry, clay and soil shall not be washed from vehicles onto roadways, footways or into the stormwater system. Drains, gutters, roadways and access ways shall be maintained free of sediment. Where required, gutters and roadways shall be swept regularly to maintain them free from sediment.
 - ii. Stormwater from roof areas shall be linked via a temporary downpipe to an approved stormwater disposal system immediately after completion of the roof area.
 - iii. All disturbed areas shall be stabilised against erosion within 14 days of completion, and prior to removal of sediment controls.
 - iv. Building and demolition operations such as brickcutting, washing tools or paint brushes, and mixing mortar shall not be performed on the roadway or public footway or any other locations which could lead to the discharge of materials into the stormwater drainage system.
 - v. Stockpiles are not permitted to be stored on Council property (including nature strip) unless prior approval has been granted. In addition stockpiles of topsoil, sand, aggregate, soil or other material shall be stored clear of any drainage line or easement, natural watercourse, kerb or road surface.
 - vi. Wind blown dust from stockpile and construction activities shall be minimised by one or more of the following methods:
 - a) spraying water in dry windy weather
 - b) cover stockpiles
 - c) fabric fences
 - vii. Access to the site shall be restricted to no more than two 3m driveways. Council's footpath shall be protected at all times. Within the site, provision of a minimum of 100mm coarse crushed rock is to be provided for a minimum length of 2 metres to remove mud from the tyres of construction vehicles.

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

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

- viii. Any noise generated during construction of the development shall not exceed limits specified in any relevant noise management policy prepared pursuant to the Protection of the Environment Operations Act, 1997 or exceed approved noise limits for the site.
- 60. Council's warning sign for soil and water management must be displayed on the most prominent point on the building site, visible to both the street and site workers. The sign must be displayed throughout construction. A copy of the sign is available from Council.
- 61. All existing trees located within the site may be removed.
- 62. No other trees located within adjoining properties or Council's nature strip shall be removed or pruned without the prior written consent of Council in the form of a Permit issued under Council's Development Control Plan 2011.
- 63. Where drainage or paving works are proposed to be constructed in the area below the dripline of trees, the proposed works and construction methods must not damage the tree. Where either the trees or works were not shown in detail on the approved plans, then Council approval must be obtained by contacting Council's Tree Management Officer.
- 64. Underground Services such as pipelines or cables to be located close to trees, must be installed by boring or by such other method that will not damage the tree rather than open trench excavation. The construction method must be approved by Council's Tree Management Officer.
- 65. Existing soil levels within the drip line of trees to be retained shall not be altered without reference to Council's Tree Management Officer.
- 66. Building materials, site residue, machinery and building equipment shall not be placed or stored under the dripline of trees required to be retained.
- 67. If groundwater is encountered, all work must cease on the site and an application be made and approval obtained from NSW Office of Water for a controlled activity to interfere with the groundwater/Aquifer.

Prior to issue of occupation certificate or commencement of use

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

- 68. An Occupation Certificate shall be obtained in relation to the approved works prior to any use or occupation of the building.
- 69. Where Council's park/reserve is damaged as a result of building work or vehicular building traffic, this area shall be restored by Council at the applicant's expense. Repairs shall be completed prior to the issue of the Occupation Certificate.
- 70. A by-law shall be registered and maintained for the life of the development, which requires that :

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

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

- 71. All landscape works are to be carried out in accordance with the approved landscape plans prior to the issue of an Occupation Certificate for the approved development. The landscaping is to be maintained to the approved standard at all times.
- 72. 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.
- 73. Prior to completion of the building works, a full width vehicular entry is to be constructed to service the property. Any obsolete vehicular entries are to be removed and reconstructed with kerb and gutter. This work may be done using either a Council quote or a private contractor. There are specific requirements for approval of private contractors.
- 74. The width of the single driveway shall be a minimum of 3 metres and a maximum of 4.5 metres.
- 75. Prior to the issue of the Final Occupation Certificate, a Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained from Sydney Water.

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

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

- 76. Prior to occupation, a registered surveyor shall certify that the driveway(s) over the footpath and within the property have been constructed in accordance with the approved driveway profile(s). The certification shall be based on a survey of the completed works. A copy of the certificate and a works-as-executed driveway profile shall be provided to Council if Council is not the Principal Certifying Authority.
- 77. The noise reduction measures specified in the noise report required under condition 29 of this consent shall be validated by a Certificate of Compliance prepared by the

acoustic consultant and submitted to the Principal Certifying Authority (PCA) prior to the issue of an Occupation Certificate. If Council is not the PCA, a copy shall be submitted to Council concurrently.

78. 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.
79. Prior to occupation a suitably qualified engineer shall certify that the stormwater system has been constructed in accordance with the approved plans and as required by Rockdale Technical Specification Stormwater Management. The certificate shall be in the form specified in Rockdale Technical Specification Stormwater Management and include an evaluation of the completed drainage works. A works-as-executed drainage plan shall be prepared by a registered surveyor based on a survey of the completed works. A copy of the certificate and works-as-executed plan(s) shall be supplied to the Principal Certifying Authority. A copy shall be provided to Council if Council is not the Principal Certifying Authority.
80. A positive covenant pursuant to the Conveyancing Act 1919 shall be created on the title of the lots that contain the stormwater detention facility to provide for the maintenance of the detention facility.
81. The drainage system shall be constructed in accordance with the approved drainage plans. All stormwater drainage plumbing work shall comply with the NSW Code of Practice: Plumbing and Drainage and Australian Standard AS3500.

Drainage grates shall be provided at the boundary. Width of the drainage grates shall be in accordance with Rockdale Technical Specification Stormwater Management.

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

82. Prior to the issue of an Occupation Certificate for occupation or use of residential flat development, a design verification statement shall be submitted to the PCA from a qualified designer certifying that the development achieves the design quality of the development as shown in the plans and specifications in respect of which the construction certificate was issued, having regard to Schedule 1 of *State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development*.

Prior to issue of subdivision certificate

The following conditions must be complied with prior to the issue of the Subdivision Certificate or the Strata Certificate.

83. The subdivision is to occur in accordance with Development Consent No. DA-2017/139 and any subsequent Section 4.55 modifications, particularly in regard to conditions, which have not yet been satisfactorily completed prior to release of the Subdivision/ Strata Certificate.
84. Where Council is the Principal Certifying Authority, a Strata Certificate and four (4) copies of the plans for the endorsement of the General Manager shall be submitted prior to lodgement with the Land and Property Information office. If applicable, an original and four (4) copies of the 88B Instrument are to be submitted.

85. As construction of the building nears completion, or after it has been completed, council or an accredited certifier shall inspect the building, and the common property areas around the building so as to be satisfied that:
- The floors, external walls and ceilings depicted in the proposed strata plan for the building correspond to those of the building as constructed.
 - The floors, external walls and ceilings of the building as constructed correspond to those depicted in the building plans that accompanied the construction certificate for the building.
 - Any facilities required by the relevant development consent (such as parking spaces, terraces and courtyards) have been provided in accordance with those requirements.
86. A Strata Certificate must be obtained prior to registration of the Strata Plan with the Land and Property Information Office. Where Council is the Principal Certifying Authority for the Strata Title Subdivision, an application form and associated fee are required to be submitted to Council's Customer Service Centre with lodgment of the Strata Plan.
87. All visitor car parking spaces are to be clearly shown as common property on the Subdivision/Strata Certificate for the strata subdivision.
88. A Strata by-law shall be registered and maintained for the life of the development, which requires that:
- a) An owner of a lot must ensure that the lot complies with the acoustic conditions for floors as specified in this consent;
 - b) Notwithstanding subclause (b), in the event that a floor covering in the lot is removed, the newly installed floor covering shall have a weighted standardized impact sound pressure level not greater than L'nT,w 45 measured in accordance with AS ISO 140.7 and AS ISO 717.2. A test report from a qualified acoustic engineer employed by a firm eligible to membership of the Association of Australian Acoustical Consultants shall be submitted to the Owners Corporation within 14 days of the installation of the new floor covering demonstrating compliance with that standard. In the event that the standard is not complied with, the floor covering shall be removed and replaced with a floor covering that conforms to that standard in accordance with any directions given by the Owners Corporation.

Integrated development/external authorities

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

89. **AUSGRID CONDITIONS**

Method of Electricity Connection

The method of connection will be in line with Ausgrid's Electrical Standard (ES)1 – 'Premise Connection Requirements.

Supply of Electricity

It is recommended for the nominated electrical consultant/contractor to provide a preliminary enquiry to Ausgrid to obtain advice for the connection of the proposed development to the adjacent electricity network infrastructure. An assessment will be

carried out based on the enquiry which may include whether or not:

- The existing network can support the expected electrical load of the development
- A substation may be required on-site, either a pad mount kiosk or chamber style and;

- site conditions or other issues that may on the method of supply.

Please direct the developer to Ausgrid's website, www.ausgrid.com.au about how to connect to Ausgrid's network.

Conduit Installation

The need for additional electricity conduits in the footway adjacent to the development will be assessed and documented in Ausgrid's Design Information, used to prepare the connection project design.

Proximity to Existing Network Assets

Overhead Powerlines

There are existing overhead electricity network assets in Queen Victoria Street and Caledonian 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 locating and operations of cranes and the location of any scaffolding. The developer is to ensure that Tiger Tails are fitted to the existing overhead low voltage mains adjacent to the construction site for the duration of construction.

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. In particular the South Eastern corner of the development is expected to be in close proximity to existing overhead LV mains.

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 be entering and leaving the site.

Underground Cables

There are existing underground electricity network assets in Queen Victoria Street and in Caledonian Street. 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.

Please do not hesitate to contact Adam Bradford on Ph: (02) 93946627 (please quote our ref: Trim 2017/7/8) should you require any further information.

Roads Act

90. The following works will be required to be undertaken in the road reserve at the applicant's expense:

1. construction of new concrete vehicular entrance/s;
 2. removal of the existing concrete vehicular entrance/s, and/or kerb laybacks which will no longer be required;
 3. Reconstruction of footpath fronting the site on both street frontages including Queen Victoria street and Caledonian Street.
 4. Removal of asphaltic concrete paving located between kerb and footpath fronting Queen Victoria Street and replace it with grass vegetation.
91. All footpath, or road and drainage modification and/or improvement works to be undertaken in the road reserve shall be undertaken by Council, or by a Private Licensed Contractor subject to the submission and approval of a Private Contractor Permit, together with payment of all inspection fees. An estimate of the cost to have these works constructed by Council may be obtained by contacting Council. The cost of conducting these works will be deducted from the Footpath Reserve Restoration Deposit, or if this is insufficient the balance of the cost will be due for payment to Council upon completion of the work.
 92. This Roads Act approval does not eradicate the need for the Contractor to obtain a Road Opening Permit prior to undertaking excavation in the road or footpath.
 93. Any driveway works to be undertaken in the footpath reserve by a private contractor requires an "Application for Consideration by a Private Contractor" to be submitted to Council together with payment of the application fee. Works within the footpath reserve must not start until the application has been approved by Council.
 94. Following completion of concrete works in the footpath reserve area, the balance of the area between the fence and the kerb over the full frontage of the proposed development shall be turfed with either buffalo or couch (not kikuyu).

Development consent advice

- a. You are advised to consult with your utility providers (i.e. Energy Aust, Telstra etc) in order to fully understand their requirements before commencement of any work.
- b. Where Council is not engaged as the Principal Certifying Authority for the issue of the Subdivision Certificate (Strata), and the Section 88B Instrument contains easements and/or covenants to which Council is a Prescribed Authority, the Council must be provided with all relevant supporting information (such as works-as-executed drainage plans and certification) prior to Council endorsing the Instrument.
- c. Hazardous and/or intractable wastes arising from the demolition process shall be removed and disposed of in accordance with the requirements of the relevant statutory authorities (NSW WorkCover Authority and the NSW Environment Protection Authority), together with the relevant regulations, including:
 - Work Health and Safety Act 2011
 - Work Health and Safety Regulation 2011
 - Protection of the Environment Operations (Waste) Regulation 2005.
- d. Demolition and construction shall minimise the emission of excessive noise and prevent "offensive noise" as defined in the Protection of the Environment Operations Act 1997. Noise reduction measures shall include, but are not limited to the following strategies:
 - choosing quiet equipment

- choosing alternatives to noisy activities
 - relocating noise sources away from affected neighbours
 - educating staff and contractors about quiet work practices
 - informing neighbours of potentially noisy activities in advance
 - equipment, such as de-watering pumps, that are needed to operate on any evening or night between the hours of 8 p.m. and 7 a.m. or on any Sunday or Public Holiday, shall not cause a noise nuisance to neighbours of adjoining or nearby residences. Where the emitted noise exceeds 5 dB(A) [LAeq(15m)] above the background sound level [LA90] at the most affected point on the nearest residential boundary at any time previously stated, the equipment shall be acoustically insulated, isolated or otherwise enclosed so as to achieve the sound level objective.
- e. In the event of any inconsistency between conditions of this approval and the drawings/documents referred to in condition 2, the conditions of this approval prevail.





Section 4.55 Modification
Development Application DA-2017/139
142 Queen Victoria Street, Bexley

BMAURBAN

Submitted to: Bayside Council
On behalf of: Cornerstone Design
Date: 23 September 2019

CONTACT			
Bernard Moroz	Managing Director	bernard@bmaurban.com	+61 2 80678644

This document has been prepared by:



Bernard Moroz

Reproduction of this document or any part thereof is not permitted without prior written permission of BMA Urban Pty Ltd.

VERSION NO.	DATE OF ISSUE	REVISION BY	APPROVED BY
1	22.9.19	BM	BM

BMA Urban
ACN 623 236 608
Suite 5, Level 24
300 Barangaroo Avenue,
Sydney NSW 2000

www.bmaurban.com

CERTIFICATION

This report has been authorised by BMA Urban, with input from a number of other expert consultants. The accuracy of the information contained herein is to the best of our knowledge not false or misleading. The comments have been based upon information and facts that were correct at the time of writing this report.

Copyright © BMA Urban P/L ABN 33 623 236 608

All Rights Reserved. No material may be reproduced without prior permission. While we have tried to ensure the accuracy of the information in this publication, the Publisher accepts no responsibility or liability for any errors, omissions or resultant consequences including any loss or damage arising from reliance in information in this publication

Table of Contents

1. INTRODUCTION	4
2. SITE DESCRIPTION	5
2.1 The Site	5
2.2 Surrounding Context	5
3. PROPOSED MODIFICATIONS	6
3.1 Planning History and Consent to be modified	6
3.2 Proposed Modifications	6
4. SECTION 4.55 ASSESSMENT	7
4.1 Section 4.55 of the EP&A Act 1979 – Other Modifications.....	8
4.2 Matters for Consideration	10
5. SECTION 4.15 ASSESSMENT	11
5.1 Statutory and Policy Controls	11
5.2 State Environmental Planning Policy No.55 – Remediation of Land	11
5.3 State Environmental Planning Policy (Basix) 2004	11
5.4 State Environmental Planning Policy (Infrastructure) 2007	11
5.5 State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment development.....	12
5.6 State Environmental Planning Policy (Vegetation in Non Rural Areas)	12
5.7 Rockdale Local Environmental Plan 2011	13
5.6 Rockdale Development Control Plan 2011	15
5.7 The provisions of any exhibited Draft Environmental Planning Instruments	15
5.8 Environmental Planning and Assessment Regulations 2000	16
5.9 The Likely Impacts of the Development	16
5.10 The Suitability of the Site for the Development	17
5.11 The Public Interest	17
6. CONCLUSION	17

1. INTRODUCTION

This Planning Statement has been prepared by BMA Urban Pty Ltd on behalf of Cornerstone Design. It is submitted to Bayside Council in support of a modification application made under Section 4.55 (formerly Section 96) of the Environmental Planning & Assessment Act 1979. This modification seeks consent for alterations to the approved development DA-2017/139 at 142 Queen Victoria Street, Bexley (Lot A DP 384244). Development approval DA-2017/139 relates to the demolition of existing structures and construction of a four (4) storey residential flat building comprising of seven (7) apartments, basement level parking and strata subdivision.

The purpose of this report is to describe the proposed amendments, review the applicable planning regime relating to the proposal, assess the degree of compliance and examine the environmental effects of the development when measured against the relevant requirements of the Environmental Planning and Assessment Act, 1979.

A detailed description of the proposal is provided under Section 3. The statutory planning policy framework is identified at Section 4 and a statutory assessment against the relevant planning controls is provided at Section 5.

Further information on the proposed amendments are provided in Section 3 of this report. The application has been prepared after taking into account the following key issues:

- Legislative requirements relating to the modification of a consent;
- Compliance with environmental planning instruments;
- Likely impacts of the development as amended;
- Suitability of the site; and
- The public interest.

This report has been prepared in association with a series of architectural plans prepared by Cornerstone Design. It is considered that the proposed modifications result in substantially the same development and do not result in adverse environmental impacts materially over and above that which were originally approved under delegation by the Bayside Planning Panel during their meeting held on 28 August, 2018.

2. SITE DESCRIPTION

2.1 The Site

The subject site is located on the north eastern corner of Queen Victoria Street and Caledonian Street. The site is known as No. 142 Queen Victoria Street, Bexley and has a legal description of Lot A in Deposited Plan 384344. The site is rectangular in shape, with a south western frontage to Queen Victoria Street of approximately 20.725m, a south eastern frontage to Caledonian Street of approximately 32.615m in length. The north eastern boundary has a length of 20.725m and the north western boundary is 32.615m in length.

The site falls approximately 2.67m from the northern most point in a southern direction towards the intersection of Queen Victoria Street and Caledonian Street. The site has a total area of 675.9m².



Figure 1: Aerial view of the site
Source: Six Maps

Subject site 

2.2 Surrounding Context

Evidenced by the remnant corner shops, this intersection historically would have been a neighbourhood convenience destination for local residents with a shop located on three out of the four corners.

On the southern corner of the intersection, diagonally opposite the subject site to the south west, is No. 115A Queen Victoria Street. This site contains a traditional two storey shop top housing building built to street alignment with a high parapet. Two shops are located on the ground floor. Located on the eastern corner of the intersection is a single storey building built to street alignment containing a convenience store. This property is known as No. 140A Queen Victoria Street. Located on the western

corner of the intersection is a dual occupancy known No. 117 Queen Victoria Street. The private open space for one of the dwellings is positioned within the front setback to Queen Victoria Street and so the presentation to Queen Victoria Street and Caledonian Street is a timber fence.

Adjoining the site to the west is a part 2/part 3 storey residential flat building over basement parking called Modena and has an address of Nos. 144-146 Queen Victoria Street. Further west along Queen Victoria Street are three storey walk up flat building's. Immediately adjoining the site to the north is a single storey detached dwelling that has an address of 66a Caledonian street.

3. PROPOSED MODIFICATIONS

3.1 Planning History and Consent to be modified

Development Application – DA-2017/139 at 142 Queen Victoria Street, Bexley involving the demolition of existing structures and construction of a four (4) storey residential flat building comprising of seven (7) apartments, basement level parking and strata subdivision was approved by Delegated Authority – Bayside Planning Panel on 28 August, 2018.

3.2 Proposed Modifications

The application seeks approval for modifications to the approved development. A breakdown of the modifications is provided below while a summary of the key controls is provided at Table 1.

1. Basement Floor Level

- a) Mechanical riser provided adjacent to the lift space;
- b) Bicycle parking relocated to the eastern corner of the basement adjacent to the shared zone;
- c) Electrical room relocated to an area between the motorcycle parking space and lift; and
- d) Visitor car wash bay increased to a width of 3.5m;

Overall, the proposed basement has increased in area by a total 4.21m² in order to enable to aforementioned modification works.

2. Ground Floor Level

- a) Mechanical riser provided; and
- b) Size of bedroom 3 window reduced in size from 2.4w x 1.4m h to 1.8w x 1.4m high.

3. First Floor Level

- a) Mechanical riser provided; and
- b) Sliding door to Unit 1.01 reduced in size from 2.4w x 2.4m h to 1.8w x 1.4m high.

4. Second Floor Level

- a) Mechanical riser provided; and
- b) Sliding door to Unit 2.01 reduced in size from 2.4w x 2.4m h to 1.8w x 1.4m high.

Element	Approved Under DA2017/139	Proposed Modification	Required Under LEP/DCP	Complies
Height	4 stories Max. RL: 50.7 13.62m.	4 stories Max RL: RL 50.7 13.62m	LEP: 14.5m	Yes: Overall height as approved remains unchanged
Gross Floor Area	675.81m ² or 0.99:1	675.81m ² or 0.99:1	675.9m ² or 1:1	Yes: Overall FSR as approved remains unchanged
Car parking spaces	13 spaces	13 spaces	13 spaces	Yes: Car parking numbers as approved remain unchanged
Deep Soil	211.89m ² or 31.35%	207.68m ² or 30.7%	101.385m ² or 15%	Yes: Noting a 4.21m ² reduction in deep soil area.

Table 1: Key Compliance Controls

The proposal also seeks amendment of Condition 33 (a) of the consent with an extract provided below that reads as follows:

33. Prior to the issue of the Construction Certificate, the design and construction of the off-street car & bicycle parking facilities shall comply with Australian Standard AS 2890 parking series and shall be certified accordingly by a suitably qualified engineer.
 (a) Car Wash Bay - The required car wash bay shall be a minimum 3.5m wide and shall be signposted and appropriately line- marked to state that this space shall be used as a car wash bay.

3.3 Development Perspective



Figure 1: Building perspective (as modified)
 Source: Cornerstone Design

4. SECTION 4.55 ASSESSMENT

4.1 Section 4.55 of the EP&A Act 1979 – Other Modifications

Section 4.55 (2) of the Environmental Planning and Assessment Act 1979 (the Act) addresses modifications and provides that Council may modify a consent if:

- (a) *it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and*
 - (b) *it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 4.8) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and*
 - (c) *it has notified the application in accordance with:*
 - (i) *the regulations, if the regulations so require, or*
 - (ii) *a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and*
 - (d) *it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be.*
- Subsections (1) and (1A) do not apply to such a modification.*
- (3) *In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application. The consent authority must also take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified.*
 - (4) *The modification of a development consent in accordance with this section is taken not to be the granting of development consent under this Part, but a reference in this or any other Act to a development consent includes a reference to a development consent as so modified.*
 - (5) *(Repealed)*

In response to the above criteria it is noted that:

- The development proposes the same land use as approved under delegation by Bayside Planning Panel under DA-2017/139;
- The general form of the development remains the same in so far as it comprises a residential flat building development with basement car parking;
- Section 4.55(2) allows for amendments to the built form to be considered where such amendments do not have a determinative impact on the acceptability of the proposal;
- The proposed modifications would not result in adverse visual and or amenity impacts, as demonstrated at Section 5 below;
- The consent, if modified as proposed, would result in substantially the same development as that which is presently approved; and,
- Notification of this application is a matter for Council. Should Council notify the application and receive any submissions we request the opportunity to provide a response to any issues raised, prior to the application being determined.

Further detail is provided having regard to the requirements of 4.55 (2) (a) below:

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

Pearlman C.J. in *Schroders Australian Property Management Ltd v Shoalhaven City Council and Anor* (1999) NSWLEC 251 held "substantially the same development" to mean "essentially or materially or having the same essence". We note that the development, as modified would essentially and materially have the same essence being a '**residential flat building**'.

In addition, it is noted that during the proceedings of *Tipalea Watson Pty Ltd v Ku-ring-gai Council* (NSWLEC 253) 2003 "substantially the same development" had the meaning of "essential characteristics" of the approved development. In addition, during the Court proceedings of *Moto Projects (No. 2) Pty Ltd v North Sydney Council* (1999) 106 LGERA 298, Bignold, J held that: -

"The requisite factual finding obviously requires a comparison between the development, as currently approved, and the development as proposed to be modified. The result of the comparison must be a finding that the modified development is "essentially or materially" the same as the (current) approved development."

The proposed amendments will '**not**' result in any of the following: -

- Significant change to the nature or intensity of the use;
- Significant change to the relationship to adjoining properties;
- Adverse impact on neighbours from the changes (overshadowing; visual and acoustic privacy; traffic generation, etc);
- Significant change to streetscape; and
- Change to the scale or character of the development.

In our opinion, therefore, the proposed modifications do not change the essential features of the approved development and do not substantially alter the approved built form or use of the site.

Overall, the built form as approved under DA-2017/139 will remain substantially the same. Other matters such as the setbacks, general layout and access remain consistent with the approved design.

Quantitative impact

The proposed modifications do not alter the extent of gross floor area as highlighted in the key compliance controls (Table 1) nor do the modifications result in any additional height increase to the built form over that established by way of approved development. Accordingly, it is considered that the modification results in substantially the same development as approved under DA-2017/139.

b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and,

We understand that there are no conditions imposed on the consent by a relevant Minister, public authority or approval body and hence consultation is not required.

c) it has notified the application in accordance with:

- i. **the regulations, if the regulations so require, or**
- ii. **a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and**

Notification of the application is a matter for Council.

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.

Should Council notify the application and receive any submissions, we request the opportunity to provide a response to any issues raised, prior to the application being determined.

4.2 Matters for Consideration

Section 4.53(3) of the Act requires that in determining an application for modification of a consent, Council must take into consideration such of the matters referred to in Section 4.15 (1) of the Act as are of relevance to the development the subject of the application.

Section 4.15(1) identifies the matters to be considered by Council when assessing a development application, being:

- (a) *the provisions of:*
 - (i) *any environmental planning instrument, and*
 - (ii) *any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Planning Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and*
 - (iii) *any development control plan, and*
 - (iiia) *any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4, and*
 - (iv) *the regulations (to the extent that they prescribe matters for the purposes of this paragraph),*
 - (v) *(Repealed)*
- that apply to the land to which the development application relates,*
- (b) *the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,*
- (c) *the suitability of the site for the development,*
- (d) *any submissions made in accordance with this Act or the regulations,*
- (e) *the public interest.*

These issues are considered in Section 5 below

5. SECTION 4.15 ASSESSMENT

5.1 Statutory and Policy Controls

The statutory and policy controls relevant to the proposed development include:

- State Environmental Planning Policy No. 55 - Remediation of Land;
- State Environmental Planning Policy (BASIX) 2004;
- State Environmental Planning Policy No.65 – Design Quality of Residential Flat Development
- State Environmental Planning Policy (Infrastructure) 2007;
- State Environmental Planning Policy (Vegetation in Non-Rural Areas);
- Rockdale Local Environmental Plan 2011;
- Rockdale Development Control Plan 2011.

An assessment of the proposal against the relevant provisions of the above statutory and policy controls is provided in the following sections.

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

The requirement at Clause 7 of SEPP 55 for the consent authority to be satisfied that the site is suitable or can be made suitable to accommodate the proposed development was considered as part of the assessment of the original application. In this regard, the proposed modifications do not raise any new concerns regarding site contamination.

5.3 State Environmental Planning Policy (Basix) 2004

The aim of this Policy is to establish a scheme to encourage sustainable residential development (the BASIX scheme). This on-line assessment tool calculates the dwelling's energy and water scores based on a range of design data.

This SEPP requires the submission of a BASIX certificate to accompany an application for development consent for any "BASIX affected building". The proposal continues to achieve the applicable BASIX commitments notwithstanding the proposed modifications.

5.4 State Environmental Planning Policy (Infrastructure) 2007

Clause 45 – Determination of development applications (Other development)

Clause 45 of SEPP Infrastructure requires the Consent Authority to consider any DA for any development carried out:

This clause applies to a development application (or an application for modification of a consent) for development comprising or involving any of the following:

- (a) the penetration of ground within 2m of an underground electricity power line or an electricity distribution pole or within 10m of any part of an electricity tower,
- (b) development carried out:
 - (i) within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists), or
 - (ii) immediately adjacent to an electricity substation, or

(iii) within 5m of an exposed overhead electricity power line,

The proposed street façade along Queen Victoria Street is located within 5m of the overhead electricity power line. In this regard, the provisions of Clause 45 of the ISEPP apply to the proposed modifications.

Before determining a development application (or an application for modification of a consent) for development to which this clause applies, the consent authority must:

- (a) *give written notice to the electricity supply authority for the area in which the development is to be carried out, inviting comments about potential safety risks, and*
- (b) *take into consideration any response to the notice that is received within 21 days after the notice is given.*

Subject to the consent authority providing written notice to the electricity supply authority and appropriate consideration being given to any response to the notice received within twenty-one (21) days, the modifications are considered to satisfy the provisions of Clause 45 SEPP Infrastructure.

5.5 State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment development

This Policy aims to improve the design quality of residential flat development to:

- Ensure such buildings contribute to sustainable development
- Provide sustainable housing in social and environmental terms
- Achieve better built form and aesthetics of buildings, streetscapes and the public spaces they define
- Better satisfy the increasing demand, changing social and demographic profile of the community
- Maximise amenity, safety and security for the benefit of occupants and the wider community
- Minimise the consumption of energy from non-renewable resources

To support these aims the SEPP specifies nine (9) design quality principles. These principles do not generate design solutions, but provide a guide to achieving good design and the means of evaluating the merit of proposed solutions. The proposed development continues to provide a positive contribution to its locality in terms of its design quality, the internal and external amenity it provides, and a suitable mix of apartments and retail spaces. Furthermore, the proposed development remains consistent with the criteria and guidelines of the ADG.

5.6 State Environmental Planning Policy (Vegetation in Non Rural Areas)

The Vegetation SEPP regulates clearing of native vegetation on urban land and land zoned for environmental conservation/management that does not require development consent.

The Vegetation SEPP applies to clearing of:

1. Native vegetation above the Biodiversity Offset Scheme (BOS) threshold where a proponent will require an approval from the Native Vegetation Panel established under the *Local Land Services Amendment Act 2016*; and
2. Vegetation below the BOS threshold where a proponent will require a permit from Council if that vegetation is identified in the council's development control plan (DCP).

The Vegetation SEPP repeals clause 5.9 and 5.9AA of the *Standard Instrument - Principal Local Environmental Plan* with regulation of the clearing of vegetation (including native vegetation) below the BOS threshold through any applicable DCP.

The proposed modifications do not result in the removal of any additional trees or vegetation. In this regard, the modifications will have no bearing on the ability for the provisions of this SEPP to remain satisfied.

5.7 Rockdale Local Environmental Plan 2011

The Rockdale Local Environmental Plan 2011 (RLEP 2011) applies to the subject site which is identified as being within Zone R4- High Density Zone. The proposed development is best characterised as a '**Residential Flat Building**' which is permissible with consent in Zone R4.

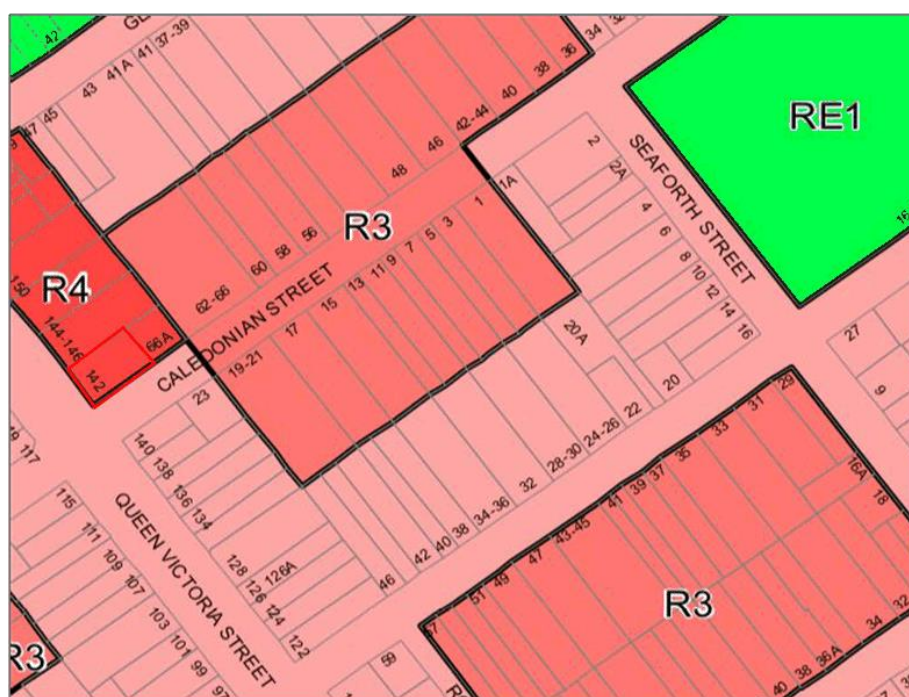


Figure 2: Land Zoning Map
Source: RLEP 2011

Subject site 
 R4 High Density Residential

The objectives of the R4 Zone are as follows:

- To provide for the housing needs of the community within a high density residential environment.
- To provide a variety of housing types within a high density residential environment.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents

The proposed modifications will not adversely compromise on the ability for the development (**as modified**) to remain consistent with the objectives for the zone.

Clause 4.3 Height of Buildings

The proposal does not result in any modification to the overall maximum building height (**as approved**).

Clause 4.4 Floor Space Ratio

The proposal does not result in any modification to the overall maximum FSR (**as approved**).

Clause 5.10 Heritage Conservation

The site is not listed as an item of environmental heritage; however, the street planting's along both Caledonian Street are identified in Schedule 5 as Item I107 and those along Queen Victoria Street as Item I156. It is not anticipated that the proposed modifications will have any additional impact on these items outside of that already considered acceptable as part of the original DA approval.

Clause 6.1 Acid Sulfate Soils

The site is located in a Class 5 area for acid sulfate soils. The original development application submission was accompanied by a Geotechnical Site Investigation prepared by geo-environmental Engineering. This report highlights the following:

"The DLWC 'Botany Bay' Acid Sulfate Soil Risk Map (reference 3), indicates that the site lies within an area with no known occurrences of acid sulphate soil and land activities within this area are "...not likely to be affected by acid sulphate soil materials".

The Acid Sulfate Soils Map produced by Rockdale City Council, via interactive online mapping, indicates that the site lies within an area defined as "Class 5". In accordance with Clause 6.1 of Council's Local Environment Plan (LEP) 2011, a preliminary assessment of acid sulfate soil and potentially a management plan is recommended for any "Works within 500 metres of adjacent Class 1, 2, 3 or 4 land that is below 5 metres Australian Height Datum by which the watertable is likely to be lowered below 1 metre Australian Height Datum on adjacent Class 1, 2, 3 or 4 land".

Firstly, the surface elevation is greater than 5m AHD (approximately 38m AHD). Secondly, the maximum depth of proposed excavation is expected to be 4.5m below the ground surface (bgs) which equates to a bulk excavation level which is significantly greater 1m AHD. Additionally, there is no need for de-watering which would reduce the water table in adjoining Class 1 to Class 4 land below 1m AHD, which according to the acid sulphate maps produced by Council, is over 500m east of the site. In this regard, there is no need for an acid sulphate soil assessment or management plan.

Having regard to the above, the provisions of Clause 6.1 remain satisfied.

Clause 6.2 Earthworks

An additional 4.21m² of excavation work is proposed to be carried out at basement level. The extent of additional earthwork proposed will not result in any adverse impacts to the environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land,

Clause 6.3 Development in Area' subject to Aircraft Noise

The subject site falls between the Sydney Airport 20 and 25 ANEF contour. Dwellings are listed as conditionally acceptable according to Table 2.1 (Building Site Acceptability Based on ANEF Zones) in AS 2021—2000. The proposed modifications do not alter the acoustic attenuation measures already considered as part of the original DA submission.

5.6 Rockdale Development Control Plan 2011

The Rockdale Development Control Plan 2011 ("RDCP") provides detailed provisions to guide development to achieve the objectives of the RLEP. In terms of the proposed modifications, these exhibit a high degree of compliance with the relevant design provisions and underlying objectives of the DCP.

5.7 The provisions of any exhibited Draft Environmental Planning Instruments

5.7.1 The Draft Environment SEPP

The planning provisions for waterways, catchments, world heritage and urban bushland are currently contained in seven State Environmental Planning Policies (SEPPs), the Standard Instrument – Principal Local Environmental Plan (Standard Instrument), and in Ministerial Directions for plan making issued under the Environmental Planning and Assessment Act 1979.

An Explanation of Intended Effect for the SEPP (Environment) was publicly notified between 31 October 2017 to 31 January 2018. The SEPP (Environment) will integrate provisions from seven existing SEPPs relating to catchments, waterways, urban bushland and world heritage, and to reduce the complexity and streamline the planning system.

The proposed SEPP (Environment) will:

- Encourage the proper management, development and conservation of natural resources and the protection of the environment, in line with the objectives of the Act
- Enable growth that maintains and enhances the health and integrity of our natural and cultural heritage for the benefit and enjoyment of the present community and for future generations
- Streamline development assessment by identifying and considering environmental values and constraints at the earliest possible stage in the development decision making process, using evidenced based planning methods
- Promote ecologically sustainable development that supports a balanced approach to the use of land and natural resources, and provides for long term environmental, economic and social wellbeing
- Adopt a risk based approach to minimise cumulative negative impacts of development on both the immediate site and on a surrounding area or region
- The proposed SEPP fits within a range of plans and strategies including A Plan for Growing Sydney, draft District Plans, Regional Plans, local environmental plans, Ministerial Directions, and development control plans

Having regard to the information of the Explanation of Intended Effect of the SEPP (Environment), it is considered that the proposed modifications are consistent with the draft planning instrument being, the proposed SEPP (Environment).

5.7.2 Draft Remediation of Land SEPP

The Draft Remediation of Land SEPP was on public exhibition until 31 March 2018 and is a review of SEPP No 55 – Remediation of Land which along with the *Managing Contaminated Land Planning Guidelines* has been in place for almost 20 years. Both documents needed to be updated to respond to changes in federal and state legislation and policy, and to reflect new land remediation practices.

The new SEPP aims for the better management of remediation works by aligning the need for development consent with the scale, complexity and risks associated with the proposed works and will:

- *provide a state-wide planning framework for the remediation of land*
- *require consent authorities to consider the potential for land to be contaminated when determining development applications*
- *clearly list the remediation works that require development consent*
- *introduce certification and operational requirements for remediation works that can be undertaken without development consent*

Given that it has already been established that the site has not been identified as contaminated, the proposed modifications will in no way conflict with the provisions of this Draft SEPP.

5.8 Environmental Planning and Assessment Regulations 2000

5.8.1 Clause 98 – Compliance with the BCA

Pursuant to the prescribed conditions under Clause 98 of the Regulation, any building work *"must be carried out in accordance with the requirements of the Building Code of Australia"*. In this regard, the proposed modifications will have no adverse bearing on the ability for the works associated with this development (**as modified**) to be carried out in accordance with the relevant provisions of the BCA.

5.9 The Likely Impacts of the Development

5.9.1 Built Form

The outward appearance of the modified built form resembles a massing arrangement that is visually indistinguishable from that currently approved. Furthermore, no unreasonable amenity and or visual impacts will result to neighbouring developments or the public domain given the appropriately applied fenestration and functional façade arrangements which remain commensurate with that of the approved building.

5.9.2 Servicing/Waste

The proposed modifications do not alter the approved waste storage arrangements provided to the development.

5.9.3 Accessibility

Compliance with the revised Access requirements for the proposal will be demonstrated with the Construction Certificate documentation.

5.10 The Suitability of the Site for the Development

The suitability of the site for this form of development was established by the Delegated Authority – Bayside Planning Panel approval on 28 August, 2018.

5.11 The Public Interest

The proposed modification of the building is relatively minor and predominately carried out within the curtilage of the approved envelope. The modifications sought will in no way preclude the ability for the development to remain commensurate with the established and emerging character of the of the area. Given that there are no unreasonable impacts that will result from the proposed modifications, the extent of benefit provided for by the modifications will outweigh any disadvantage and as such, the proposed development will have an overall public benefit.

6. CONCLUSION

This application seeks approval for a Section 4.55 modification to the approved 'residential flat building' development at 142 Queen Victoria Street, Bexley ("**the site**").

A comprehensive assessment of the proposed modifications has been made against all of the applicable environmental planning provisions. The development has been found to be compliant in relation to all relevant planning controls in terms of standards, underlying objectives and merit. Arising from that assessment the amended proposal is considered to be:

- Substantially the same development as that which was originally approved;
- A suitable and desirable use for the site which meets the relevant heads of consideration under Section 4.15 of the Act;
- In accordance with the aims, objectives and provisions of the planning instruments and controls; and,
- An appropriate and acceptable development that will not generate any unreasonable environmental impacts over and above that which was originally approved by way of the Bayside Planning Panel on 28 August, 2018.

We are satisfied that this proposal has properly responded to all relevant matters for consideration within the Environmental Planning and Assessment Act, and the accompanying Regulation.

Accordingly, it is considered that the proposed modifications are worthy of Council support.

N. Lycenko Architect Reg. No. 3010
226 Wardell Road
Dulwich Hill NSW 2203

20 September 2019

Attention:
General Manager
Bayside Council

Dear Sir/Madam

Re: **DA 2017/139 Section 4.55**
Proposed Apartment Building at 142 Queen Victoria St Bexley

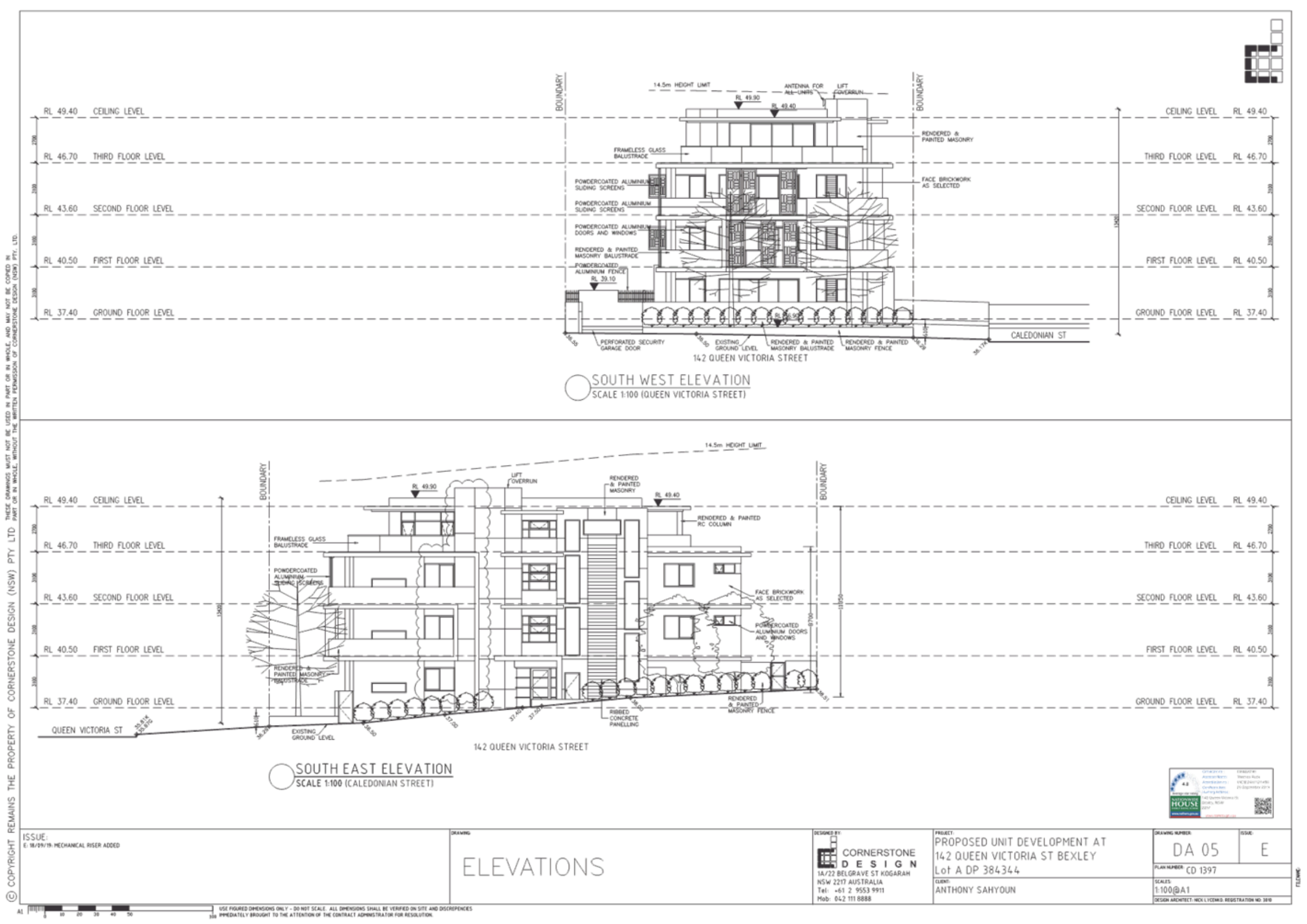
For: Construction of a residential apartment development comprising 8
residential apartments over a common parking basement.

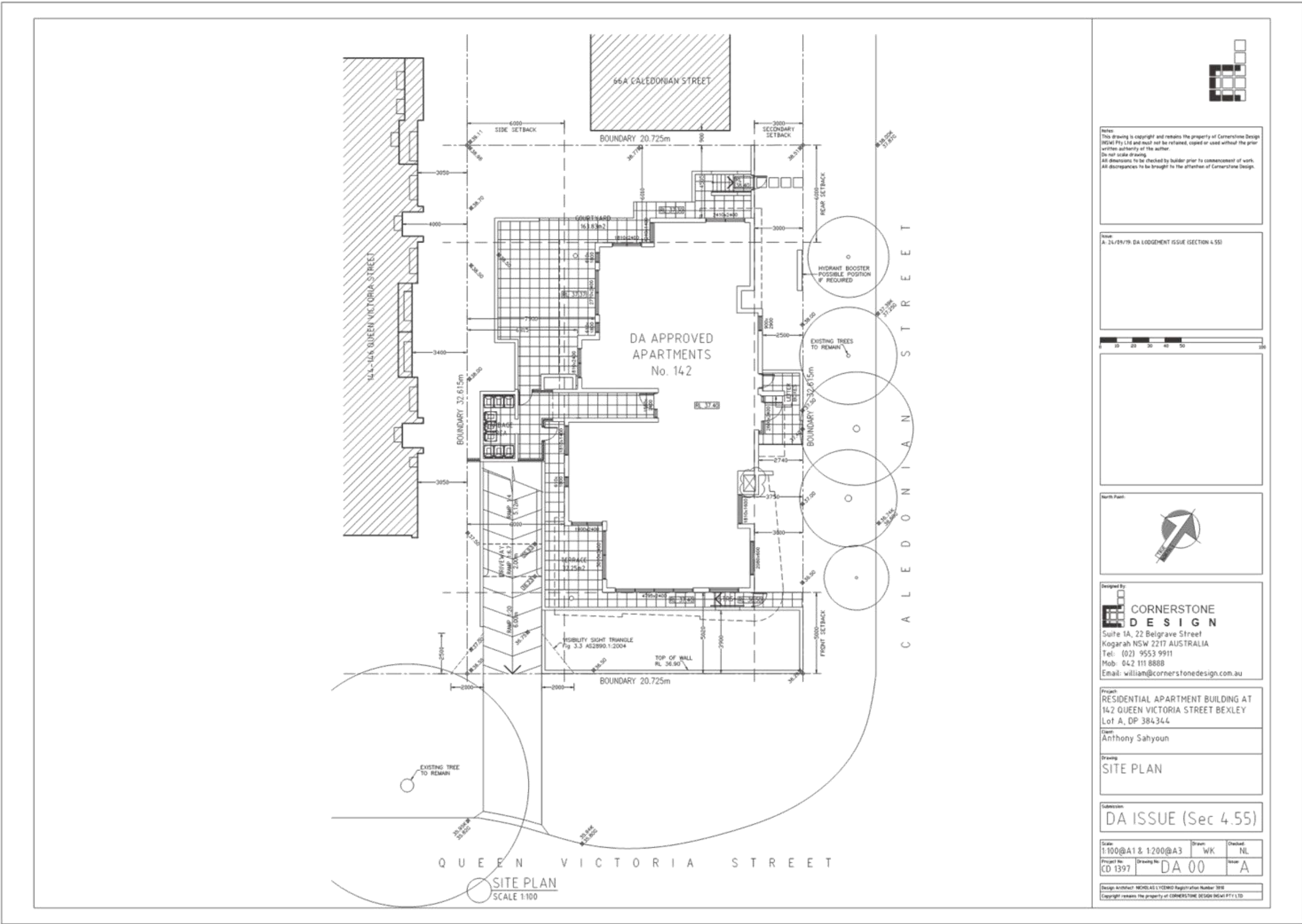
This is to certify that I directed the design of this proposed development.
The proposed changes achieve the SEPP 65 design quality principles, as
described in the SEPP 65 Design Quality Principles statement which was
originally lodged with the DA.

Yours Sincerely



.....
Mr. N. Lycenko





Bayside Local Planning Panel

26/11/2019

Item No	6.2
Application Type	Section 4.55(1A) Modification Application
Application No	DA-2016/10065/B
Lodgement Date	09/09/2019
Property	5 Finch Drive Eastgardens
Ward	Ward 3
Owner	Karimbla Properties (No. 39) Pty Ltd
Applicant	Karimbla Constructions Services (NSW) Pty Ltd
Proposal	Section 4.55(1A) Application to modify Development Consent No. 2016/65 to amend Condition 44 regarding timing for return of tree preservation bond
No. of Submissions	Nil (Notification n/a)
Cost of Development	N/A
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, pursuant to S.4.55(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 not been notified; and
 - iv Has been assessed having regard to the relevant matters in s.4.15 of the Environmental Planning and Assessment Act 1979.

- 2 That modification application DA-2016/10065/B seeking to modify development consent DA-2019/65 to amend Condition 44 regarding timing for return of tree preservation bond at 5 Finch Drive, Eastgardens, be APPROVED. The proposal is modified in the following manner:

Amend Condition No. 44 as follows:

44. *Prior to the issue of the Construction Certificate, the applicant is to submit payment for a Tree Preservation Bond of \$1,136,565.00 to ensure protection of trees No. 1-14, 22-39 and 47-50 (trees along the eastern alignment of Finch Drive (North-South Street 1) and within the central park) from damage that have failed prior to construction due to vandalism and the insufficient maintenance including watering. The duration of the Bond shall be limited to a period of 24 months after the issue (or cease upon issue of) of the Occupation Certificate 12 months after Practical Completion. At the completion of the maintenance period 12-month period, the Tree Preservation Bond shall be refunded pending a satisfactory inspection by Council or a qualified Arborist. If the trees were found*

to be in decline, damaged (including roots), dead, excessively pruned or removed without Council permission or, if tree protection measures were not satisfied at any time, then all or part thereof of the bond shall be forfeited. The Tree Preservation Bond was calculated using the Thyer Tree Evaluation method.

Location Plan



Attachments

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

BAYSIDE COUNCIL

Planning Assessment Report

Application Details

Application Number:	DA-2016/10065/B
Date of Receipt:	9 September 2019
Property:	5 Finch Drive, Eastgardens (formerly 130-150 Bunnerong Road, Eastgardens) Lot 21 DP 1242288 (formerly Lot 2 in DP 1187426)
Owners:	Karimbla Properties (No. 39) Pty Ltd
Applicant:	Karimbla Constructions Services (NSW) Pty Ltd
Proposal:	Section 4.55(1A) Application to modify Development Consent No. 2016/65 to amend Condition 44 regarding timing for return of tree preservation bond.
Recommendation:	Approval, subject to recommended conditions of consent.
Value:	N/A
No. of submissions:	Nil (Notification n/a)
Author:	Ana Trifunovska, Development Assessment Planner
Date of Report:	21 October 2019

Key Issues

Bayside Council received the subject Section 4.55(1A) Application No. 2016/10065/B on 9 September 2019 seeking consent to modify Development Consent No. 2016/65 to amend Condition No. 44 regarding the timing for the return of the tree preservation bond, at 5 Finch Drive, Eastgardens.

In accordance with Part 2 of the BBDCP2013, the application was not required to be publicly notified.

The application is a modification to a Stage 2 application. The Stage 1 application (DA-2014/96) was received by Council on 5 May 2014. On the 12 September 2014, the applicant filed a Class 1 Appeal and the application was considered at a series of Section 34 conferences. Council and the applicant reached a Section 34 agreement and the appeal was upheld with court orders issued on 7 August 2015. The Stage 1 consent is a concept approval for the overall site, including an indicative 2,223 apartments across 7 urban blocks.

The Stage 2 application (DA-2016/65) for the embellishment of the public domain across the site including the construction of two public parks, and embellishing the approved road network with landscaping, street furniture, lighting and paving, was received by Council on 3 May 2016. The application was approved by the Bayside Planning Panel on 24 July 2018.

Item	Bayside Planning Panel Meeting
------	--------------------------------

A Section 4.55(1A) modification (DA-2016/65/A) to delete Condition 36(a) in relation to the installation of bollards, was received by Council on the 28th February 2019. The modification was approved on the 26 June 2019.

The application was reviewed by Council's Tree Management Officer as the amendment is associated with changes to a tree related condition. There were no objections or major issues with the proposed amendment. However, the time period is to be amended from the requested 6 months to 12 months which is consistent with other similar determinations made by the Planning Panel.

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.

Recommendation

1. That the Bayside Local Planning Panel, exercising the functions of the Council as the consent authority, pursuant to S.4.55(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 not been notified; and
 - iv. Has been assessed having regard to the relevant matters in s.4.15 of the Environmental Planning and Assessment Act 1979.
2. That modification application DA-2016/10065/B seeking to modify development consent DA-2019/65 to amend Condition 44 regarding timing for return of tree preservation bond at 5 Finch Drive, Eastgardens, be APPROVED. The proposal is modified in the following manner:
 - a) Amend Condition No. 44 as follows:
 44. *Prior to the issue of the Construction Certificate, the applicant is to submit payment for a Tree Preservation Bond of \$1,136,565.00 to ensure protection of trees No. 1-14, 22-39 and 47-50 (trees along the eastern alignment of Finch Drive (North-South Street 1) and within the central park) from damage that have failed prior to construction due to vandalism and the insufficient maintenance including watering. The duration of the Bond shall be limited to a period of 24 months after the issue (or cease upon issue of) of the Occupation Certificate 12 months after Practical Completion. At the completion of the maintenance period 12-month period, the Tree Preservation Bond shall be refunded pending a satisfactory inspection by Council or a qualified Arborist. If the trees were found to be in decline, damaged (including roots), dead, excessively pruned or removed without Council permission or, if tree protection measures were not satisfied at any time, then all or part thereof of the bond shall be forfeited. The Tree Preservation Bond was calculated using the Thyer Tree Evaluation method.*

Background

Site Description

The overall Stage 1 Master plan site is contained within the block bound by Bunnerong Road to the east, Banks Avenue to the west, Heffron Road to the north, and Westfield Drive to the south. The north eastern portion of this block is the consolidated British American Tobacco Australia (BATA) operations which does not form part of the subject site. The site is made up of one allotment legally described as Lot 21 DP1242288, with a total site area of 103,547sqm.

The site is irregular in shape with frontages to Bunnerong Road, Heffron Road, Banks Avenue and Westfield Drive of 194.21m, 107.22m, 419.85m and 342.34m respectively. The site also has two internal boundaries of 237.75m and 238.20m with the remaining BATA site.

Most works across the site are complete excepting works relating to DA-2017/1224 (5 Finch Drive) and DA-2018/1003 (5 Oscar Place) which are currently under construction. The public parks and embellishment of the road networks are complete. In the north-western portion of the site, a large warehouse building from the former BATA operations remains.

A variety of development is located in the vicinity of the site. To the north is the suburb of Pagewood consisting primarily of low density residential development. To the east is the suburb of Maroubra which is also primarily low density residential development falling under the LGA of Randwick Council. To the immediate south of the site is Westfield Eastgardens which is a large regional shopping centre. To the immediate west is the Bonnie Doon Golf Course.

The site is generally flat however it is slightly elevated and retained by a wall along Banks Avenue in the north-west (up to 2m), retained by a lower 450-600mm wall in the south to Banks Avenue and is cut below the level of Bunnerong Road in the south-east by up to 5m.

In terms of vegetation, landscaping beds including medium and large sized mature trees form the perimeter of the site along the Bunnerong Road, Westfield Drive, Banks Avenue, and Heffron Road frontages. Internally, the most significant vegetation is an avenue of large Lemon Scented Gum trees running north-south in the southern half of the site.

External vehicular access to the site is provided via an existing road that provides access to the BATA facility from Bunnerong Road. External vehicular access is also available from Banks Avenue and Westfield Drive.

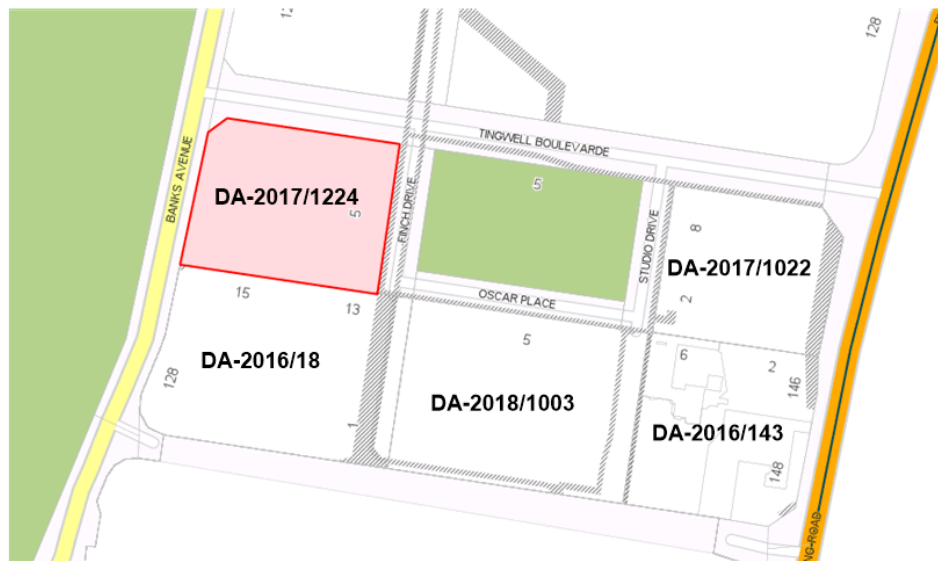


Figure 1 Subject site and respective DA's for each parcel of land.

Approved Development

- **Stage 1 – Masterplan (DA-2014/96 and subsequent amendments)**

Stage 1 masterplan and concept development application for a mixed use development at the former BATA site. The application was received by Council on 5 May 2014 and the applicant filed a Class 1 Appeal. The application was considered at a series of Section 34 conferences, whereby a series of amended plans were considered. Council and the applicant reached a Section 34 agreement and the appeal was upheld with court orders issued on 7 August 2015.

The Stage 1 consent is a concept approval for the overall site including an indicative 2,223 apartments across 7 urban blocks. The Stage 1 Masterplan consent is a concept approval and does not grant consent for any demolition, remediation, excavation or building works.

The key details of the approved Master plan, are as follows:

- The applicant must enter into a Planning Agreement including the following:
 - Central Park embellished and dedicated to Council;
 - Roads within the site constructed, embellished and dedicated to Council;
 - Traffic lights and any other necessary traffic control systems constructed;
 - Monetary contribution of \$10.5 million towards the cost of providing transport infrastructure in the form of upgrade to the intersection of Page Street and Wentworth Avenue.
- Concept subdivision of the site;
- Central Park of 8,000sqm;
- Linear Park of 2,703sqm;

- Building envelopes, setbacks, maximum GFA and FSR for each urban block;
- Indicative maximum of 2,223 residential apartments, up to 5,000sqm of retail space and four child care centres;
- Residential unit mix – max 20% 1 bedroom, 50% 2 bedroom, min 30% 3 bedroom.
- Residential unit sizes; and
- Car parking rates including an indicative minimum number of 3,693 spaces.

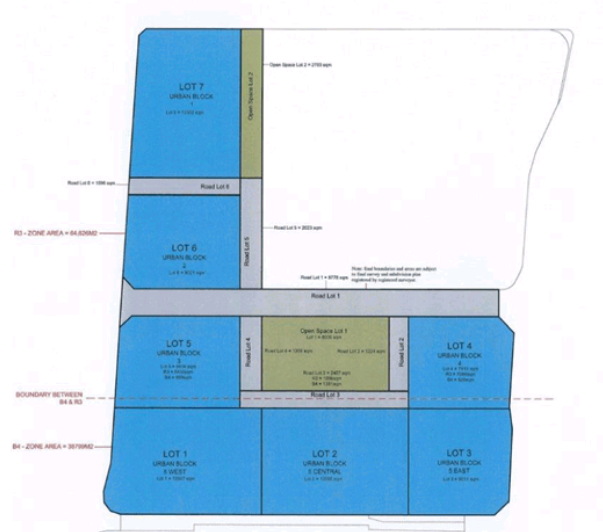


Figure 2 Approved Master Plan concept subdivision plan (DA-14/96)

- **Stage 2 – East-West Boulevard and realignment of Sydney Water Stormwater Culvert (DA-2014/159)**

On 15 July 2014, Council received a Stage 2 Development Application which was originally for the construction of the entire road network and civil works associated with the Stage 1 DA. Over subsequent amendments, the proposed development was reduced to only include the kerb-to-kerb construction of East-West Boulevard and the realignment of the existing Sydney Water stormwater channel.

On 9 March 2015, Karimbla Constructions (NSW) Pty Ltd filed a Class 1 Appeal against Council's refusal of the application. The application was considered in conjunction with the ongoing Section 34 conferences for the Stage 1 DA. Council and the applicant reached a Section 34 agreement and on 7 August 2015, the development consent was issued in conjunction with the Stage 1 Masterplan consent.

- **Stage 2 – Subdivision of the site and construction of the road network (excluding East-West Blvd and the private access ways) and associated civil works (DA-2015/104)**

On 26 June 2015, Council received a Stage 2 Development Application for the abovementioned works. The application was subsequently amended to also include the subdivision of the site in accordance with the Stage 1 Master plan and the private access

roads were excluded from the proposal. The CIV for the works was \$2,707,356 and therefore Council was the consent authority.

The proposal was generally consistent with the Stage 1 consent DA-2014/96 and was approved on 8 January 2016. Multiple modifications have been approved previously relating to construction of the internal roads with one of the modifications including the internal private roads within the development.

- **1 Finch Drive, Eastgardens - Stage 2 – Integrated Development Application for the construction of a mixed use development incorporating 487 apartments and a childcare centre within a building consisting of a 5 storey podium including 847 car spaces sleeved with apartments and 2 x 16 storey and 2 x 20 storey towers above (DA-2016/18)**

On 16 February 2016, Council received a Stage 2 Development Application for the works described above. The CIV for the works was \$116,742,078 and the application was therefore referred to the former Sydney East Joint Regional Planning Panel. On 9 June 2016, the development application was approved subject to conditions of consent amended at the Panel Meeting. Construction of this development has been completed and occupation has been carried out.

- **2-6 Studio Drive, Eastgardens & 148 Bunnerong Road, Eastgardens - Stage 2 – Integrated Development Application for the construction of a residential flat building consisting of one level of basement car parking, a 3 storey podium including car parking sleeved with apartments, and 2 x 6 storey, 1 x 8 storey and 1 x 16 storey towers above (DA-2016/143)**

On 17 August 2016, Council received a Stage 2 Development Application for the works described above. The CIV for the works was \$69,616,383.00 and therefore the application was referred to the Sydney Central Planning Panel. On 16 February 2017, the development application was approved subject to conditions of consent amended at the Panel Meeting. Construction of this development has been completed and occupation has been carried out.

- **8 Studio Drive, Eastgardens - Stage 2 - Integrated Development Application for the construction of a residential flat building consisting of one level of basement car parking, a podium and two towers, 1 x 6 storeys and 1 x 8 storeys (DA-2017/1022)**

On 13 February 2017, Council received a Stage 2 Development Application for the works listed above. On 5 October 2017, the development application was approved subject to conditions of consent amended at the Panel meeting. Construction of this development has been completed and occupation has been carried out.

- **5 Finch Drive, Eastgardens - Stage 2 – Integrated Development Application for the construction of two residential apartment buildings up to 16 storeys (maximum building height of RL 76m) comprising of 368 units with three basement levels (DA-2017/1224)**

On 27 November 2017, Council received a Stage 2 Development Application for the works listed above. The development application was approved by the Joint Regional Planning Panel on the 2 August 2018 and is currently under construction.

- **5 Oscar Place, Eastgardens - Stage 2 – Integrated Development Application** for the construction of a mixed use development of six (6) residential towers with the tallest tower having a maximum building height of 21 storeys (RL 90.5m), ground floor retail tenancies, associated landscaping and site works. The development proposes a total of 515 apartments (DA-2018/1003)

On 11 January 2018, Council received a Stage 2 Development Application for the works described above. The development application was approved by the Sydney Eastern City Planning Panel on 29 November 2018 and the works are currently under construction. A development application seeking the conversion of the approved residential apartments to hotel suites in Building D is currently under assessment (DA-2019/235).

The following applications specifically relate to the subject modification:

- **DA-2016/65 – Embellishment of public domain**

On 3 May 2016, Council received a development application for the embellishment of the public domain across the site which included the construction of two public parks, and embellishing the approved road network with landscaping, street furniture, lighting, and paving was approved on 24 July 2018 by the Bayside Planning Panel. The subject modification seeks to modify this consent.



Figure 3 Approved landscaping and embellishment of the site under DA-2016/65

- **DA-2016/65/A – Modification to delete condition 36(a) relating to the installation of bollards**

On 28 February 2019, Council received a modification application for the amendment described above. The application was approved by Council on the 26 June 2018.

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

The applicant seeks to modify Development Consent No. DA-2016/65 as follows:

- Amend Condition No. 44 as follows:

44. *Prior to the issue of the Construction Certificate, the applicant is to submit payment for a Tree Preservation Bond of \$1,136,565.00 to ensure protection of trees No. 1-14, 22-39 and 47-50 (trees along the eastern alignment of Finch Drive (North-South Street 1) and within the central park) from damage that have failed prior to construction due to vandalism and the insufficient maintenance including watering. The duration of the Bond shall be limited to a period of 24 months after the issue (or cease upon issue of) of the Occupation Certificate 6 months after Practical Completion. At the completion of the maintenance period 6-month period, the Tree Preservation Bond shall be refunded pending a satisfactory inspection by Council or a qualified Arborist. If the trees were found to be in decline, damaged (including roots), dead, excessively pruned or removed without Council permission or, if tree protection measures were not satisfied at any time, then all or part thereof of the bond shall be forfeited. The Tree Preservation Bond was calculated using the Thyer Tree Evaluation method.*

The applicant seeks amendment to reduce the duration of the Bond to a period of 6 months after practical completion rather than 24 months. The reduction in duration would be consistent with Clause 4.17(6) of the EP&A Act which states the following:

(6) Conditions and other arrangements concerning security

A development consent may be granted subject to a condition, or a consent authority may enter into an agreement with an applicant, that the applicant must provide security for the payment of the cost of any one or more of the following:

- (b) Completing any public work (such as road work, kerbing and guttering, footway construction, stormwater drainage and environmental controls) required in connection with the consent,*
- (c) Remedying any defects in any such public work that arise within 6 months after the work is completed,*

Assessment of Modification: The proposed amendment was referred to Council's Tree Management Officer for comment who finds no issue with the amendment of the condition to allow for the return of the tree preservation bond 6 months after practical completion.

However, Council has previously considered other similar applications also seeking the earlier return of a tree preservation bond. Council has generally supported the return of the bond for these types of applications to a period of **12 months** after practical completion rather than 6 months. Examples of these applications include the following:

- DA-2016/150/07 - 42 Church Avenue, Mascot – Modify Condition No. 135 to reflect the reduction in the timing of the landscaping works bond from 5 years to 12 months;
- DA-2017/1022/04 - 130-150 Bunnerong Road, Eastgardens – Modify Condition No. 65 to modify the period of the bond from 24 months to 12 months;

This provides a sufficient window to ensure the protection and maintenance of all relevant trees for the duration of a year. Therefore, taking into consideration the above, the condition is recommended to be amended for the deposit to be returned 12 months after practical completion, not 6 months as requested by the applicant.

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 timing for the return of the tree preservation bond, and as such, the modifications will result in minimal environmental impact. It is considered that the proposed amendment is suitable in the context of the site and the locality.

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

The modification application is substantially the same development to which the consent was originally granted, as the amendment only involves a change in the timing for the return of the tree preservation bond.

- 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.

- 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.***

There were no submissions as the application was not notified.

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)-(iv) – Provisions of Environmental Planning Instruments

The following Environmental Planning Instruments were considered in the assessment of the original application:

- State Environmental Planning Policy No. – Remediation of Land
- Botany Bay Local Environmental Plan (BBLEP) 2013
- Botany Bay Development Control (BBDCP) 2013

The proposed modification is to change the timing for the return of the tree preservation bond. There are no relevant provisions from the abovementioned EPI's that apply to this particular amendment. Therefore, the amendment is consistent with this Clause.

There are no current Draft EPIs applicable to this development and the proposed amendment is not inconsistent with the relevant provisions of the *Environmental Planning and Assessment Regulation 2000*.

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

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

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

The proposed modification does not alter the conclusion made in the assessment of the original application, regarding site suitability.

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

In accordance with Part 2 - Notification & Advertising of the Botany Bay Development Control Plan 2013, the Section 4.55(1A) Application was not notified, and no submissions were received.

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

The proposed amendments will have no significant adverse impact upon the public interest.

Conclusion

Section 4.55(1A) Application No. 2016/10065/B lodged on 9 September 2019 seeks to modify Development Consent No. 2016/65 to amend Condition 44 regarding timing for return of tree preservation bond at 5 Finch Drive, Eastgardens. The modification application has been assessed in accordance with the relevant requirements of the Environmental Planning and Assessment Act 1979 and is recommended for approval, subject to the conditions of consent in the attached schedule.

Attachment**Schedule 1 – Conditions of Consent**

**Premises: 5 Finch Drive, Eastgardens
(formerly 130-150 Bunnerong Road, Eastgardens)**

DA No: 2016/10065/B

SCHEDULE OF 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.

Drawing No.	Author	Date Received
Public Domain Report and Landscape Plans- Rev 10	Arcadia Landscape Architect	Dated April 2017; Received 28 April 2017

Reference Document(s)	Author	Date Received
Statement of Environmental Effects	Meriton Group	Dated 21 April 2016; Received 3 May 2016
Materials Schedule	Arcadia Landscape Architect	Received April 2017
Automatic Irrigation System Overall Plan- Sheets 1-3 Rev 1	Hydroplan	Dated 4 March 2016; Received 3 May 2016
DWG. 6542-ES-2- Internal Road Lightning Location Layout	Shelmerdines Consulting Engineers	Dated 22 March 2016; Received 3 May 2016
DWG. 6543-ES-1- Lightning Layout Central Park	Shelmerdines Consulting Engineers	Dated 18 March 2016; Received 3 May 2016
DWG. 6543-ES-2- Lighting Layout Linear Park	Shelmerdines Consulting Engineers	Dated 22 March 2016; Received 3 May 2016
Waste Management Plan		Dated 8 April 2016; Received 3 May 2016
Access Report	Wall to Wall Design and Consulting	Dated 11 April 2016; Received 3 May 2016
Acid Sulfate Soils Management Plan	Consulting Earth Scientists	Dated 21 January 2016; Received 3 May 2016

2. This Consent relates to land in Lot 2 in DP 1187426 and, as such, building works must not encroach on to adjoining lands or the adjoining public place.
3. All building work must be carried out in accordance with the provisions of the Building Code of Australia.
4. This development is a Stage 2 consent. The development must comply with all conditions of the Stage 1 consent DA-14/96 unless modified and agreed upon by Council within this consent.
5. All public domain works approved and associated with DA-16/65 shall be embellished and dedicated at no cost to Council.
6. 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.
7. A separate site audit statement for the park that is to be dedicated to council is required and Council will require that there is no ongoing management of any land that is to be dedicated to Council.
8.
 - a) Service Alterations – All mains, services, poles, etc., which require alteration due to works associated with the development, shall be altered at the applicant's expense.
 - b) In designing the street tree layout, the consultant shall check and ensure that all new street trees are positioned such that there are no conflicts with the proposed street lights, utilities and driveway accesses. The proposed street lights will have priority over the street trees. All costs associated with the removal of existing street trees, where required, will be borne by the Developer.
 - c) All telecommunication and utility services are to be placed underground along the Street frontages. The extent of works required in order to achieve this outcome may involve works beyond the frontage of the development site. Plans are to be prepared and certified by a suitably qualified Electrical Design Consultant for decommissioning the existing network and constructing the new network; and are to be submitted to, and approved by Council and relevant utility authorities, prior to commencement of undergrounding utility services around the park street frontages.
 - d) Street trees are to be provided in accordance with the Botany Street Tree Master Plan 2014. The designated species are *Quercus illex* (Holm Oak) for Bunnerong Road,

Araucaria columnaris (Cook Pine) for Banks Avenue, *Eucalyptus botryoides* on the southern side of Heffron Road.

- e) In designing the street tree layout, the consultant shall check and ensure that all new street trees are positioned such that there are no conflicts with the proposed street lights, utilities and driveway accesses. The proposed street lights will have priority over the street trees. All costs associated with the removal of existing street trees, where required, will be borne by the Developer.

CONDITIONS IMPOSED BY AN EXTERNAL AUTHORITY

Where relevant, the following external authority conditions apply:

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

- a) Any work undertaken near Overhead Power lines needs to be done in accordance with
 - i) WorkCover Document ISSC 23 "Working Near Overhead Power Lines"
 - ii) Ausgrid Network Standards
 - iii) Ausgrid Electrical Safety Rules
- b) The location of underground cables by using Dial Before You Dig and comply with the requirements of Ausgrid's Network Standard 156: Working Near or Around Underground Cables before any excavation works are undertaken.
- c) Existing Ausgrid easements, leases and/or right of ways must be maintained at all times to ensure 24 hour access. No temporary or permanent alterations to this property tenure can occur without written approval from Ausgrid. For further details refer to Ausgrid's Network Standard 143.
- d) 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 (eg. whether a substation is required on site).
- e) The developer is to ensure that the proposed works do not contravene Ausgrid's technical standards and statutory requirements, in regards to the safe and reliable operation of Ausgrid's network.

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

- 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.

Sydney Water's [Tap in™](https://www.sydneypwater.com.au/SW/plumbing-building-developing/building/sydney-water-tap-in/index.htm) online service is available at:
<https://www.sydneypwater.com.au/SW/plumbing-building-developing/building/sydney-water-tap-in/index.htm>

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

11. 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 structure/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.
12. 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.
13. A dilapidation report, including a photographic survey prepared by a Practising Structural Engineer, 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.
14. A Site Audit Statement will be required for this site prior to the issue of any Occupation Certificate. To ensure the necessary assessment and remediation is completed a NSW Environment Authority (EPA) Accredited Site Auditor shall be appointed to the site prior to the commencement of any remediation works, excavation or commencement of works at the site. The Site Auditor shall review and endorse any additional investigation and remediation proposed prior to the commencement of any works.

Evidence of this appointment shall be provided to council prior to the issue of any construction certificate.

15. Prior to commencement of the relevant works, application(s) shall be made to Council's Customer Services Counter and obtained the following approvals and permits on Council's property/road reserve under Road Act 1993 and Local Government Act 1993:
- (It should be noted that any works shown within Council's road reserve or other Council Lands on the development approval plans are indicative only and no approval for these works is given until this condition is satisfied.)
 - a) Permit to erect hoarding on or over a public place, including Council's property/road reserve,
 - b) Permit to construction works, place and/or storage building materials on footpaths, nature strips,
 - c) Permit to install temporary ground anchors in public land,
 - d) Permit to discharge ground water to Council's stormwater drainage system,
 - e) Permit for roads and footways occupancy (long term/ short term),
 - f) Permit to construct vehicular crossings, footpaths, kerbs and gutters over road reserve,
 - g) Permit to open road reserve area, including roads, footpaths, nature strip, vehicular crossing or for any purpose whatsoever, such as relocation / re-adjustments of utility services,
 - h) Permit to place skip/waste bin on footpath and/or nature strip, and
 - i) Permit to use any part of Council's road reserve or other Council lands.
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 sufficient area shall be provided onsite to enable separate stockpiling of excavated materials for sampling and analysis prior to removal or re-use on site. Details of this area shall be provided in the Soil and Water Management Plan (SWMP). This plan shall incorporate and reference the construction environmental management plan and address site limitations.
18. Building plans must be lodged at a Sydney Water Quick Agent for approval prior to commencement of works.
19. Toilet facilities are to be provided at or in the vicinity of the work site on which work involves:
 - a) demolition and construction of a building is being carried out, at the rate of one toilet for every 20 persons or part of 20 persons employed at the site;
 - b) Each toilet provided:
 - i) must be standard flushing toilet; and,
 - ii) must be connected:

to a public sewer; or

if connection to a public sewer is not practicable to an accredited sewerage management facility approved by the Council; or,

if connection to a public sewer or an accredited sewerage management facility is not practicable to some other sewerage management facility approved by the Council.

- c) The provisions of toilet facilities in accordance with this condition must be in place before work commences.
- 20. This Consent shall not preclude the demolisher from giving notice to other statutory authorities, such as Sydney Water Corporation, WorkCover, etc.
- 21. Prior to the commencement of any works, the site to which this approval relates must be adequately fenced or other suitable measures employed that are acceptable to the Principal Certifying Authority to restrict public access to the site and building works. Such fencing or other measures must be in place before the approved activity commences.
- 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.
- 23. In accordance with the Contaminated Land Management Act 1997, notification of all category 2 remediation work to Council is required at least 30 days prior to commencement of works.
- 24. All telecommunication and utility services are to be placed underground along the flowing streets:
 - a) Civic Avenue (recently gazetted name: Oscar Place),
 - b) North-South Street 1 (recently gazetted name: Finch Drive),
 - c) North-South Street 2 (recently gazetted name: Studio Drive), and
 - d) Meriton Boulevard (recently gazetted name: Tingwell Boulevard) Street frontages.

The extent of works required in order to achieve this outcome may involve works beyond the frontage of the development site. Plans are to be prepared and certified by a suitably qualified Electrical Design Consultant for decommissioning the existing network and constructing the new network; and are to be submitted to, and approved by Council and relevant utility authorities, prior to commencement of the relevant work.

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

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

- | | | |
|----|------------------------------------|----------------------------|
| a) | Development Control | \$ 3,000.00 |
| b) | Footpath Crossing Deposit | \$ 415,471.00 (See below) |
| c) | Tree Preservation Bond | \$1,136,565.00 (See below) |
| d) | Tree Maintenance Bond | \$ 25,000.00 (See below) |
| e) | Street Tree Planting Bond | \$ 25,000.00(See below) |
| f) | Public Works Defect Liability Bond | \$ 25,000.00 (See below) |
26. Prior to the issue of any Construction Certificate, the required Long Service Levy payable under Section 34 of the Building and Construction Industry Long Service payments Act 1986 must be paid. The Long Service Levy is payable at 0.35% of the total cost of the development, however, this is a State Government fee and can change without notice.
27. Prior to the issue of any Construction Certificate, the applicant shall lodge a Footpath Crossing Deposit of \$415,471.00 (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 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.
28. Prior to the issue of any Construction Certificate, at the proposed point of construction site entry, photographic survey showing the existing conditions of Council's and RMS infrastructure shall be submitted to Council and Principal Certifying Authority. The survey shall detail the physical conditions and identify any existing damages to the roads, kerbs, gutters, footpaths, driveways, street trees, street signs and any other Council assets fronting the property and extending to a distance of 50m from the development. Failure to do so may result in the applicant/developer being liable for any construction related damages to these assets. Any damage to Council's infrastructure during the course of this development shall be restored at the applicant's cost.
29. Prior to the issue of any Construction Certificate, a Construction Management Program shall be submitted to the Principal Certifying Authority prior to the issue of a Construction Certificate. The program shall detail:
- 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,
 - The proposed phases of construction works on the site and the expected duration of each construction phase,
 - 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,
 - The proposed manner in which adjoining property owners will be kept advised of the timeframes for completion of each phase of development/construction process,

- e) The proposed method of loading and unloading excavation and construction machinery, excavation and building materials, formwork and the erection of any part of the structure within the site. Wherever possible mobile cranes should be located wholly within the site,
 - f) The proposed areas within the site to be used for the storage of excavated materials, construction materials and waste containers during the construction period,
 - g) The proposed method/device to remove loose material from all vehicles and/or machinery before entering the road reserve, any run-off from the washing down of vehicles shall be directed to the sediment control system within the site,
 - h) The proposed method of support to any excavation adjacent to adjoining properties, or the road reserve. The proposed method of support is to be designed and certified by an Accredited Certifier (Structural Engineering), or equivalent,
 - i) Proposed protection for Council and adjoining properties,
 - j) The location and operation of any on site crane. Please note that a crane may require prior approval from Sydney Airports Corporation,
 - k) The location of any Construction Zone (if required) approved by Council's Traffic Committee, including a copy of that approval, and
 - l) The methodology to control dust on site;
 - m) Tree protection management measures for all protected and retained trees shall be implemented at all times to ensure the healthy retention of the line of existing Lemon Scented Gums on the western edge of Central Park (Chauvel Green). This information is to be informed by an Arborist report detailing protection requirements and is to refer to the landscape plans and civil plans for proposed works within and proximate to the TPZ of the trees.
30. Prior to the issue of any Construction Certificate, a detailed Traffic Management Plan for the pedestrian and traffic management of the site during construction shall be prepared and submitted to the relevant road authority (Council or Roads and Maritime Services). 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, and
 - c) if required, implement a public information campaign to inform any road changes well in advance of each change. The campaign may be required to be approved by the Traffic Committee.

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

31. Prior to the issue of any Construction Certificate, the applicant shall contact "Dial Before You Dig" to obtain a utility service diagram for, and adjacent to the property. The sequence number obtained from "Dial Before You Dig" shall be forwarded to Principal Certifying Authority. All utilities within the work zone shall be protected during construction. Any adjustments or damage to public utilities/services as a consequence of the development and associated construction works shall be restored or repaired at the applicant's expense.
32. Prior to the issue of the relevant Construction Certificate, to ensure that utility authorities and Council are advised of any effects to their infrastructure by the development, the applicant shall:
- a) Carry out a survey of all utility and Council services within the site including relevant information from utility authorities and excavation if necessary to determine the position and level of services,
 - b) Negotiate with the utility authorities (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.
- 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.
33. All publically accessible areas including Chauvel Green (Central Park), Open Space Lot 2 (Linear Park) and footpaths should be designed to a minimum category P7 rating. Plans are to indicate the Australian Standard P rating that the lighting has been designed to. Lighting details are to be provided for Civic Avenue (Oscar Place), lighting in Open Space Lot 2 should be alternated and the locations for meter/switchboards and finish/treatment for both parks is required prior to the issue of the relevant Construction Certificate.
34. Prior to the issue of the relevant Construction Certificate, detail design and construction plans in relation to stormwater management and disposal system for the parks shall be submitted to the Principal Certifying Authority or 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.)
35. Prior to the issue of the relevant Construction Certificate, appropriately dimensioned set-out plan(s), finishes/levels plan(s) and construction details are to be submitted and approved by Council for all landscape works. All product details are to be referenced in a full landscape specification schedule and cross referenced on the drawings, specifically:
- a) Specifications and details of the proposed pavement types, finishes, level, edging, garden beds, turf, imported soil;
 - b) Signage and branding details need to be defined;

- c) Landscape Specification and Maintenance Schedule;
 - d) All hard-work details are to be provided including compliant paving slip resistance and tactile contrast/luminance. This is to be demonstrated within any Access Report;
 - e) Split kerb details for median swales;
 - f) Surface materials legend/palette to correspond with the plan and all associated construction and edging detail;
 - g) The in-situ concrete seating wall is to be Class 1 finish and requires skate restrictors; and
 - h) Tree grove surfacing.
36. Prior to the issue of the Construction Certificate for Oscar Place (Civic Avenue), the following amendments to the plans are to be carried out and submitted to Council's Landscape Architect for review:
- a) ~~Bollards- Oscar Place shall include removable bollards at both ends, to allow access of maintenance and emergency services to the park. Also include fitted bollards where necessary to prevent general car access to pedestrian areas and park.~~
 - b) Tree pit details are required. The current pits shown are 1.3m. Larger pits with low planting are suggested to increase the quantum of landscaping and water and air exchange to tree roots. Larger grated pits are to be considered. The pits are to be irrigated and a modular subsurface root cell system utilised. Porous paving modules should also be investigated.
 - c) Soft Landscape- Tree planter pits shall provide a generous area for root development, and enhance the lower strata with accent plants, low shrubs and groundcovers. Tree pits in Oscar Place shall be open and size maximised as a WSUD principle.
 - d) 108-A Civic Avenue Private Access Way, and Park- More detail is required to be provided as the planting plan on southern verge is not specified. This is adjacent to UB5W.
 - e) Seat, Bins and Bicycle Racks- Consideration of seats, bins and bicycle racks are to be included along Oscar Place. There are no bins, seating or bike racks shown in Oscar Place (Dwg 104) but depicted in Dwg 16. Oscar Place could include seating on the southern row of *Fraxinus pennsylvanica* with three or four seats with back and rest arms.
 - f) Public Art- Oscar Place is a suitable location for public art installation.
 - g) Pavement treatment- Different pavement treatment to distinguished between pedestrian and share zones are to be provided.
 - h) Consider lighting hierarchy example wall/uplighting and coordination with lighting engineer.

- i) Include the use of a modular subsurface root cell system similar to Citygreen's Stratacell or Strata vault to promote the healthy growth of trees and their roots planted within paved areas.
- j) Consider the use of a share zone of raised threshold and pavers/cobbles at the intersection of Oscar Place and both Finch Drive (North-South Street 1) and Studio Drive (North-South Street 2) given proximity to Chauvel Green and pedestrian nature of area.
- k) Consider the use of a raingardens.
- l) All tree pits require irrigation.

[Amendment A – S4.55(1A) deleted on 26 June 2019] (DA-2016/65/A)

37. Prior to the issue of the Construction Certificate for Central Park (Chauvel Green), the following amendments to the plans are to be carried out and submitted to Council's Landscape Architect for review:

- a) The existing trees on the western edge of the park are to be numbered to correspond with the Arborist report and ensure the landscape design of Oscar Place (Civic Avenue) is sympathetic to their retention with respect to surface treatments etc.
- b) The triangular shaped grassed area, corner Civic Avenue/ North South Street No.1, proposes a grid of paved bands with trees at each intersection & seats at various points along the bands. The bands and relationship to trees is very problematic – and impractical. The area should be simplified. The banding should be deleted, and seating provided on existing paved areas such as along Civic Avenue, and the diagonal path.
- c) Use evergreen trees around the fitness area to reduce future maintenance/liability associated with leaf drop, similarly near the playground.
- d) Provide a bush recreation area on western turfed open area. The area shall be 400 square meters, measuring 25 x 32 x 10 meters approx. The planting design shall consider CPTED principals. Bush area shall consist of a mixed of native indigenous canopy trees, shrubs and groundcovers, with mulch, feature stones, boulders and large rocks.
- e) Furniture should be provided in the large lawn area near to trees for passive supervision/recreation.
- f) Substitute the Lappsett fitness equipment with Council's standard supplier – ParkFit for Parks for ease of maintenance selecting equipment to projected younger resident age groups.
- g) There is no playground shade structure indicated in the palette/plans. This is to be provided.
- h) A Statement of Conformance of inclusions to current Australian Standards is to be provided on plans and specifications for all playground elements. Following approval and construction, an independent post installation inspection by a fully qualified recognised independent playground certifier of all installed playground equipment to assess conformity to current Australian Standards for playgrounds,

playground equipment, and surfacing (AS4685, AS4422 as a minimum) is to be provided to Council. The applicant is to resolve any reported issues to the satisfaction of Council prior to handover to and acceptance by Council.

- i) Detailed specifications need to be provided for the proposed play equipment, playground finishes, fitness equipment, basketball court, BBQ area, pergolas, seating and picnic table settings. All of these elements will need to be approved by Council prior to approval of the plans.
 - j) Planting within the park is to promote decorative foliage or flowering shrubbery rather than native grasses which can feature along roadways due to lower maintenance requirements. Decorative specimen plants will enhance the space, especially for passive users.
 - k) Provide more/larger feature shrub beds around the lawn area.
 - l) Basketball court shall be replaced with two half basketball courts. The basketball courts area shall be restrained physically from Meriton Boulevard, to avoid incidents with balls in the carriageway. This can be achieved by providing a bigger planter bed along Tingwell Boulevard walkway, a built seat/retaining wall and planting considering CPTED principals contemporaneously.
38. Prior to the issue of the relevant Construction Certificate, the irrigation plans are to be updated as follows:
- a) The southern half of Chauvel Green and the western boundary planting shall be included within the irrigation system
 - b) A separate controller to Chauvel Green is to be provided as this option is more cost effective and allows greater control of the open spaces with different irrigation needs.
 - c) Detail is required regarding the meter location, backflow and subsurface for Chauvel Green and Oscar Place (Civic Avenue).
 - d) Planters around the active areas (playground, BBQ areas) are to be included.
39. Prior to the issue of the relevant Construction Certificate, all paved materials and construction specifications in Oscar Place and Chauvel Green Park shall be submitted and approved by Council.
40. Prior to the issue of the relevant Construction Certificate, paving details are required for the tree pits within Open Space Lot 2. The use of a modular root cell system in paved areas to promote healthy tree growth is to be included.
41. Prior to the issue of the Construction Certificate for Central Park (Chauvel Green Park), the following information is to be submitted to Council's Landscape Architect for review:
- a) Details regarding to the proposed amenities/kiosk buildings;
 - b) Public art designs and locations shall be defined. The proposed public art installations (type and locations) may require further review by Council management;
 - c) Playground certifications and specifications shall be provided;

- d) Define surfacing to the playground, BBQ area, ping pong, fitness area and the two half-court basketball courts;
 - e) Supply details for pergolas, fences, arbors and shelters as the plan appearance provided for submission does not correlate with shelters in the materials palette. A shade structure is to be included over the playground;
 - f) Details regarding to the location of timber benched atop concrete seating walls is to be demonstrated on revised plans and specifications;
 - g) The materials palette is to include lighting types in addition to water bottle refill stations/bubblers and dog bubbler;
 - h) The plans are to be amended to include a bush play area with indigenous species and rocks along the western side of the central turf area adjacent to the playground;
 - i) The verge along the western side of the park shall be planted with native groundcovers and not turf;
 - j) Civic Avenue/Oscar Place shall redesign tree pits providing avenue to include seating bands in planter bed around a number of avenue tree. Planter beds shall be bigger to include accent plants and groundcovers. This is to be provided in a seating plan to be approved by Council; and
 - k) Treatment to the northern verge of the park adjacent to the basketball courts is to be improved to keep balls from accessing the carriageway. This could include mounding or fencing.
42. Prior to the issue of the relevant Construction Certificate, amended landscaped plans are to be submitted to Council demonstrating the following:
- a) Bunnerong Road frontage- Replace *Angophora costata* with *Quercus ilex*, pot size 400 Litre. These trees shall be pre-ordered to ensure availability when planting. If supply of *Quercus ilex* is not possible in a proper size, replacement with *Quercus virginiana* shall be requested to Council. Bunnerong Street tree planting shall be with *Quercus ilex*, as per Botany Bay Street Tree Management Plan 2014. Trees shall be planted every 10 meters between footpath and kerb. Planter pit shall be planted with *Dianella 'Cassa Blue'*, 150mm pot size. Tree provided shall conform to NATSPEC guide. Container volume shall be not less than 400Litre, height above container 5.5meters, calliper at 300mm greater than 70mm, with a clear trunk height of 1.5 meters. Trees supplied shall be healthy and vigorous, free of pest and disease, free from injuries. Interface between turf and tree pit shall be concrete edge to be constructed as a flush kerb finished level with the front edge of footpath and top of kerb. The flush kerb to be 150mm wide and 200mm deep. The finish level of the nature strip can then be adjusted to match.
 - b) Banks Avenue- Street Tree Master Plan 2014, defines Banks Av. as a main Road managed by LGA, and the proposed long term vision species is *Araucaria columnaris* (Cook Pine). The corner of Banks Avenue and Westfield Drive already have four Cook Pines established on the road verge. Banks Avenue shall be planted with *Araucaria columnaris* as a grand avenue to tie in with others already planted.

- c) Tingwell Boulevard- On Dwg No. 106B, the median is very narrow (600mm), groundcovers were added, but not supportive of tree planting. Area shall be as wide as feasible possible. Proposed *Angophora costata* and *Corymbia citriodora*, with 14-16 m tree spacing is suitable.
43. Prior to the issue of the relevant Construction Certificate, the Arborist shall submit to Council a management plan for the remaining existing trees on the eastern alignment of Finch Drive. The plan shall encompass an ongoing watering and mulching program to ensure the sustainability and viability of the trees as well as suitable methods and intervals for soil improvement and fertilizer cultural applications to improve the growing conditions of the trees during construction to minimize street impacts to the trees. The management plan shall stipulate the intervals for the above and inspection timeframes and is to be submitted for review to Council's Landscape and Tree Officers for review.
44. Prior to the Issue of the Construction Certificate, the applicant is to submit payment for a Tree Preservation Bond of \$1,136,565.00 to ensure protection of trees No. 1-14, 22-39 and 47-50 (trees along the eastern alignment of Finch Drive (North-South Street 1) and within the central park) from damage that have failed prior to construction due to vandalism and the insufficient maintenance including watering. The duration of the Bond shall be limited to a period of ~~24 months after issue (or cease upon issue of) of the Occupation Certificate~~ **12 months after Practical Completion**. At the completion of the ~~maintenance period~~ **12-month period**, the Tree Preservation Bond shall be refunded pending a satisfactory inspection by Council or a qualified Arborist. If the trees were found to be in decline, damaged (including roots), dead, excessively pruned or removed without Council permission or, if tree protection measures were not satisfied at any time, then all or part thereof of the bond shall be forfeited. The Tree Preservation Bond was calculated using the Thyer Tree Evaluation method.

[Amendment B – S4.55(1A) deleted on 26 November 2019] (DA-2016/10065/B)

45. The applicant is to submit payment of a Tree Maintenance Bond of \$25,000.00. The duration of the Bond shall be limited to a period of 6 months after planting of the new street trees and a satisfactory inspection from Council. At the completion of the Bond period the Bond shall be refunded pending an inspection of the trees by Council. If a tree is found to be dead, pruned or dying and will not recover Council will forfeit all or part of the bond to replace or maintain the tree/s, unless the Applicant undertakes this work under instruction from Council.
46. Prior to the issue of the Construction Certificate, the applicant is to submit payment for a Street Tree Planting Bond of \$25,000.00 to ensure the installation and establishment of street trees within the site (species to be advised) in accordance with Condition mentioned below and Councils Street Tree Master Plan. Establishment includes watering for a period of six months following installation. The duration of the Bond shall be limited to a period of 6 months after Council approval of the planted tree. At the completion of the 6 month period the Street Tree Planting Bond shall be refunded pending a satisfactory inspection by Council. If the tree was found to be in decline, damaged, dead, excessively pruned or removed then all or part thereof of the bond shall be forfeited to allow Council to replace or maintain the tree.
47. Prior to the issue of the Construction Certificate, the applicant is to submit payment for a Public Works Defects Liability Bond of \$25,000.00. The duration of the Bond shall be limited to a period of 12 months after Council approval of all public domain works. At the completion of the 12 month period the Bond shall be refunded pending a satisfactory inspection of the new public domain work by Council. If rectification or maintenance work

is required in this period then Council will forfeit all or part of the bond to undertake the required work, unless the Applicant undertakes this work.

48. A frontage works approval be submitted to council prior to any construction certificate being issued. Prior to the issue of the relevant Construction Certificate, a public domain improvements plan be completed and submitted for approval by Council. The Plan will 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, maintenance and finishing details. 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.

CONDITIONS WHICH MUST BE SATISFIED DURING WORKS

49. Construction operations shall comply with the following:
- (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.
 - (e) Concrete trucks and trucks 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 be conducted in a suitable off-street area where wash waters do not enter the stormwater system or enter Council's land.
 - (f) 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.
 - (g) All vehicles transporting soil, sand or similar materials to or from the site shall cover their loads at all times.
50. Vibration levels induced by the demolition activities shall not exceed levels listed in Standard DIN 4150-3 (1999-02), *Structural vibration Part 3 – Effects of vibration on structures Table 12-7*. The operation of plant and equipment must not give rise to the transmission of vibration nuisance or damage to other premises. Prior to

commencement a specific vibration monitor shall be set up to monitor and record the vibration levels affecting surrounding buildings.

51. During demolition, excavation and construction, care must be taken to protect Council's infrastructure and surrounding buildings, including street signs, footpath, kerb, gutter and drainage pits etc. Protecting measures shall be maintained in a state of good and safe condition throughout the course of demolition, excavation and construction. The area fronting the site and in the vicinity of the development shall also be made safe for pedestrian and vehicular traffic at all times. Any damage to Council's infrastructure and surrounding buildings (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.
52. 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.
53. 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.
54. Any material containing asbestos found on site during the demolition process shall be removed and disposed of in accordance with:
 - a) SafeWork NSW requirements. An appropriately licensed asbestos removalist must complete all asbestos works if they consist of the removal of more than 10m² of bonded asbestos and/or any friable asbestos.
 - b) Protection of the Environment Operations Act 1997.
 - c) Protection of the Environment Operations (Waste) Regulation 2014.
 - d) NSW Environment Protection Authority Waste Classification Guidelines 2014.
55. The development is to be constructed to meet the following construction noise requirements:
 - a) Construction Noise
 - i) Noise from construction activities associated with the development shall comply with the NSW Environment Protection Authority's Interim Construction Noise Guideline and the Protection of the Environment Operations Act 1997.
 - b) Level Restrictions
 - i) Construction period of 4 weeks and under:
 - 1 The L10 sound pressure level measured over a period of not less than 15 minutes when the construction site is in operation must not exceed the background level by more than 10dB(A).

- ii) Construction period greater than 4 weeks and not exceeding 26 weeks:
 - 1 The L10 sound pressure level measured over a period of not less than 15 minutes when the construction site is in operating must not exceed the background level by more than 10 dB(A).
 - c) Time Restrictions
 - i) Monday to Friday 07:00am to 06:00pm;
 - ii) Saturday 07:00am to 03:00pm
 - iii) No Construction to take place on Sundays or Public Holidays.
 - d) Silencing
 - i) All possible steps should be taken to silence construction site equipment.
- 56. The principal contractor or owner builder must install and maintain water pollution, erosion and sedimentation controls in accordance with:
 - a) The Soil and Water Management Plan if required under this consent;
 - b) "Managing Urban Stormwater - Soils and Construction" (2004) ('The Blue Book'); and
 - c) Protection of the Environment Operations Act 1997.
- 57. Any new information that comes to light during demolition or construction which has the potential to alter previous conclusions about site contamination and remediation must be notified to Council and the accredited certifier immediately. All work on site shall cease until the council is notified and appropriate measures to assess and manage the contamination in accordance with any relevant NSW EPA adopted guidelines is completed by an appropriately qualified and experienced environmental consultant.
- 58. The management of potential and actual acid sulfate soils shall be conducted in accordance with all recommendations within the '*Acid Sulfate Soils Management Plan – 130-150 Bunnerong Road, Pagewood, NSW*', Reference CES130805-MG-AD by Consulting Earth Scientists dated 21 January 2016.
- 59. All remediation work must be carried out in accordance with:
 - a) NSW Office of Environment and Heritage (OEH) 'Contaminated Sites – Guidelines for Consultants Reporting on Contaminated Sites';
 - b) NSW Environment Protection Authority (NSW EPA) guidelines under the Contaminated Land Management Act 1997;
 - c) State Environmental Planning Policy 55 (SEPP55) – Remediation of Land; and
 - d) The Remedial Action Plan 'Updated Remediation Action Plan - Proposed Mixed Use / Medium Density Residential Zone, Part Lot 1 in D.P. 776089, Westfield Drive, Eastgardens, NSW' prepared by Douglas Partners, Project 71631.12, dated September 2013 and
 - e) The 'Proposed Remediation Action Plan Amendment – Revision 1 Part 130 - 150 Bunnerong Road, Pagewood' prepared by Douglas Partners, Project 85009 Rev 1 dated 2 September 2015.

60. For any water from site dewatering to be permitted to go to stormwater, the water must meet ANZECC 2000 Water Quality Guidelines for Fresh and Marine Water for the 95% protection trigger values for Marine Water. All testing must be completed by a NATA accredited laboratory. All laboratory results must be accompanied by a report prepared by a suitably qualified and experienced person indicating the water is acceptable to be released into Council's stormwater system. If the groundwater does not meet these guideline levels a Trade Waste permit from Sydney Water must be sought to put the groundwater to sewer.
61. 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.
62. 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 stormwater a permit to discharge to the stormwater shall be obtained from Council. Dewatering shall not commence until this is issued by Council.
63. To prevent contaminated soil being used onsite and to ensure that it is suitable for the proposed land use, all imported fill shall be appropriately certified material and shall be validated in accordance with the:
 - a) Office of Environment and Heritage (OEH) approved guidelines; and
 - b) Protection of the Environment Operations Act 1997; and
 - c) Protection of the Environment Operations (Waste) Regulation 2014.
 - 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.
64. During demolition, excavation, construction and any associated delivery activities, access to the site shall be available in all weather conditions. The area shall be stabilised and protected from erosion to prevent any construction-related vehicles (including deliveries) tracking soil materials onto street drainage system/watercourse, Council's lands, public roads and road-related areas. Hosing down of vehicle tyres shall only be conducted in a suitable off-street area where wash waters do not enter the stormwater system or Council's lands.
65. The approved Waste Management Plan shall be complied with at all times during demolition, construction and on-going use of the site.
66. 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 10m² of bonded asbestos and/or any friable asbestos.
 - b) Protection of the Environment Operations Act 1997.
 - c) Protection of the Environment Operations (Waste) Regulation 2014.
 - d) NSW Environment Protection Authority Waste Classification Guidelines 2014.

67. 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.
68. All tree related works are to comply with the following:
- a) Australian Standard AS4373-2007 – Pruning of amenity trees
 - b) Australian Standard AS4970-2009 – Protection of trees on development sites
 - c) WorkCover NSW Code of Practice: Amenity Tree Industry, 1998
69. Landscape construction should be carried out by a qualified landscape contractor to ensure that adequate standards of workmanship are achieved. Landscape contractors who are members of the Landscape Contractors Association of NSW should be engaged.
70. In accordance with councils DCP, the following activities are prohibited beneath the canopy drip line of any tree required to be retained and protected unless otherwise approved under the development consent/plans:
- a) Excavations and trenching (with exception of the approved foundations and underground services);
 - b) Ripping or cultivation of soil;
 - c) Mechanical removal of vegetation;
 - d) Soil disturbance or movement of natural rock;
 - e) Soil level changes including the placement of fill material (excluding and suspended floor slab);
 - f) Movement and storage of plant, equipment & vehicles;
 - g) Erection of site sheds;
 - h) Affixing of signage or hoardings to trees;
 - i) Storage of building materials, waste and waste receptacles;
 - j) Disposal of waste materials and chemicals including paint, solvents,

In accordance with AS 4970 – 2009, inspections shall be conducted by the Project Arborist in accordance with the following key milestones:

Prior to any work commencing on-site (including demolition, earthworks or site clearing) and following installation of tree protection fences, tags and trunk protection;

During any excavations, building works and any other structure within the TPZ of the tree to be retained & protected, including any landscape works; A minimum of every month during the construction phase from Commencement to issue of the Occupation Certificate; and Following completion of the building works.

The Project Manager shall be responsible to notify the Project Arborist prior to any works within the Tree Protection Zones of protected tree within a minimum of 24 hours' notice.

71. In order to ensure that the trees nos. 1-14, 22-39 and 47-50 listed in the arborist report in Condition No. 1 above are protected during all stages of construction, and their health and structural stability ensured, the following is required:
- a) Engage the Consultant Arborist for all tree root and canopy work to trees. Comply with recommendations and requirements and management plan contained within the Arborist's report.
 - b) 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/Landscape Plan.
 - c) Comply with all recommendations of the Tree Management Plan to be submitted as a condition of approval and any other Council requirement.
 - d) 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 or 1.5 metre steel pickets and nylon para-webbing/hessian to form the Tree Protection Zone (TPZ). The fence shall remain in place until construction is complete.
 - i) 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.
 - ii) Fencing shall be erected to ensure the public footway is unobstructed.
 - ii) 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).
 - e) 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.
 - f) All detailed Construction Certificate plans shall show trees to be protected and the TPZ.
 - g) All TPZ's as well as the entire Council nature strip are a "No-Go" zone. 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).
 - h) Where unavoidable foot access is required in the TPZ, provide temporary access with timber sheets to minimise soil compaction, spillage or root damage.

- i) Excavation within the canopy dripline or within an area extending 3 metres outward of the canopy dripline of any tree shall be carried out manually using hand tools to minimise root damage or disturbance.
 - j) Tree roots 40mm in diameter or greater that require pruning shall be done only under the direction of Council's Tree Officer (or the consulting Arborist) after a site inspection so as not to unduly impact or stress the tree.
 - k) It is the Applicant's responsibility to ensure that there is no damage to the canopy, trunk or root system (including the surrounding soil) of any tree. There shall be no canopy pruning unless approval has been granted by Council's Tree Officer under separate application. Approved pruning shall be undertaken by a qualified Arborist in accordance with AS 4373.
 - l) Masonry boundary fencing/walls or retaining walls shall be of pierced or bridged construction to minimise damage to major or structural tree roots. Trench or strip footings are not permitted. If a tree root 40mm diameter or greater is in the location of a pier and the root cannot be cut without compromising the tree (must be obtained after Council inspection and advice), the pier will need to be relocated and the root bridged.
 - m) There shall be no walls retaining or otherwise, pavements, change in levels, trenching for new subsurface utilities or the location of new overhead services within the primary root zone or canopy of any tree. Any such structures in close proximity to trees must accommodate tree roots without damage or pruning.
 - n) All waste concrete and debris shall be removed from areas to be landscaped on the site, not buried, to minimise soil contamination.
 - o) The Applicant shall undertake any tree maintenance/remedial pruning as required by Council (or the Consultant Arborist) at the completion of construction.
 - p) Required Council or Arborist inspections and certifications at various stages of the construction process.
 - 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.
72. If kerb and gutter and footpath replacement is required **all work** must be undertaken under the supervision and direction of Council's Tree Management Officer. This includes the demolition of existing structures, to be undertaken with small machinery only, excavation for required subgrades/drainage and the construction of formwork. Tree roots 35mm in diameter or greater that require pruning shall be done **only** under the direction of Council's Tree Management Officer after site inspection so as not to impact or harm the existing street tree.
73. To ensure satisfactory growth and maintenance of the landscaping, a fully automatic drip irrigation system is required in all landscape areas, installed by a qualified landscape contractor prior to landscaping works commencement. The system shall provide full coverage of all planted areas with no more than 300mm between drippers, automatic controller and backflow prevention device and shall be connected to a recycled water source, where provided. Irrigation shall comply with both Sydney Water

and Council requirements as well as Australian Standards, and be maintained in effective working order at all times.

74. Planter boxes constructed over a concrete slab shall be built in accordance with the following requirements:
 - a) Ensure soil depths in accordance with Council's Landscape DCP. The base of the planter must be screeded to ensure drainage to a piped internal drainage outlet of minimum diameter 90mm, with no low points elsewhere in the planter. There are to be no external weep holes.
 - b) A concrete hob or haunch shall be constructed at the internal join between the sides and base of the planter to contain drainage to within the planter.
 - c) Planters are to be fully waterproofed and sealed internally with a proprietary sealing agent and applied by a qualified and experienced tradesman to eliminate water seepage and staining of the external face of the planter. All internal sealed finishes are to be sound and installed to manufacturer's directions prior to backfilling with soil. An inspection of the waterproofing and sealing of edges is required by the Certifier prior to backfilling with soil.
 - d) Drainage cell must be supplied to the base and sides of the planter to minimize damage to the waterproof seal during backfilling and facilitate drainage. Apply a proprietary brand filter fabric and backfill with an imported lightweight soil suitable for planter boxes compliant with AS 4419 and AS 3743. Install drip irrigation including to lawns.
 - e) Finish externally with a suitable paint, render or tile to co-ordinate with the colour schemes and finishes of the building.

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

75. All applications associated with works on Council's land must be made at least 7-10 days prior to the programmed completion of works and all construction must be completed and approved by Council.
76. 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.
77. Prior to the issue of the relevant Occupation Certificate, documentation from a practising civil engineer shall be submitted to the Principal Certifying Authority certifying that the stormwater drainage system has been constructed generally in accordance with the approved stormwater management construction plan(s) and all relevant standards.
78. The work to public footpath shall be constructed in accordance with Council specifications *outlined in the 'Frontage Works Approval'* Council document. The footpath dimensions, location, paver type and construction methods shall be in accordance with this specification only. Pavers shall be ordered accounting for adequate lead time for manufacture.

Construction hold points and Council inspections are required at the following points:

- a) after formwork installation and to prior pouring the concrete blinding slab,
- b) at the commencement of paving works, and
- c) at final completion.

All dedicated roads to Council – including ‘Tingwell Boulevard’ (East-West Boulevard (lot 1)), Finch Drive (North-South Street 1), Studio Drive (North-South Street 2), Oscar Place (Civic Avenue) shall comply with Council frontage works approval prior to the issue of the relevant Occupation Certificate.

79. Prior to the issue of the relevant Occupation Certificate, a restriction on Use of Land and Positive Covenant(s) shall be imposed on the development where required. 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 88E 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.

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 the issue of the interim Occupation Certificate. 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. Prior to the issues of the relevant Occupation Certificate, the following must comply and approved by Council:

- a) All footpaths are to be provided with kerb ramps at intersections to facilitate access for the less mobile and disables;
- b) All street furniture including bins, bollards, seating and drinking fountains are to be coordinated throughout the Precinct and to Council's city identity specification;
- c) Street furniture should be located in a one-metre zone along the kerb line that is out of the main line of pedestrian traffic;
- d) Street name signs as per Council's Graphics Standard Manual are to be located at all street intersections;
- e) Street lighting should be evenly spaced and meet the relevant requirements of AS/NZS1158 – Public Lighting Code; and
- f) All existing and new aboveground power lines and cables are required to be located below ground.

82. Prior issue of an Occupation Certificate the Council footpath in front of the property is to be suitably repaired and made good after completion of construction works to Council specification and at the Applicant's expense. If existing pavers are damaged, subject to Council inspection and instruction, the Applicant is to source and purchase new pavers

to match existing pavers in the street. If a significant number of new pavers are required Council may require that the entire frontage be replaced to allow for a uniform appearance. The footpath shall be maintained in a clean and tidy state at all times by the occupiers. Maintenance includes the removal of weeds and rubbish and periodic cleaning.

83. 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 Bayside Council prior to the Issue of an Occupation Certificate.
84. 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 and prior to the issue of any occupation certificate.

85. To ensure that the site is suitable for the proposed use, a Site Audit Statement (SAS) completed by an accredited site auditor under the *Contaminated Land Management Act 1997* shall be submitted to Council for clearly demonstrating that the site is suitable for the proposed development. A separate SAS shall be provided for any land dedication to council, such as parks or roadways and the site audit statement shall not be subject to any ongoing management measures. This shall be provided

Any conditions imposed on the SAS shall form part of this consent. The accredited site auditor shall provide Council with a copy any Site Audit Report (SAR) and Site Audit Statement (SAS) prior to the release of any applicable Occupation Certificate or applicable dedication of land to Council. In circumstances where the SAS conditions (if applicable) are not consistent with the consent, a Section 96 application pursuant to the *Environmental Planning & Assessment Act 1979* shall be submitted to ensure that they form part of the consent conditions.

86. All Lighting, fences, signage/artwork, pathways, bike stands, furniture, playground and exercise equipment, tree pits, irrigation, toilet block, kiosk, bbq facilities, lawn, paving and kerbs to be inspected prior to the issue of the relevant Occupation Certificate by Council Public Domain Engineer and Landscape Architect.
87. Prior to the issue of the Occupation Certificate, a site works review is required demonstrating:
 - a) Extent and minimum dimensions of the site dedicated to landscaping comply with the Detailed landscaping plans

- b) All detailed works comply with detailed schedules and specifications included in the detailed landscape plans
 - c) Any modifications to the design were an equivalent or better solutions to the requirements of the detailed landscape plans and do not affect the ability of the landscape treatment to achieve the design intent.
 - d) Site cultivation, quality and depth of soil and mulches as a minimum complies with Council specifications and standards.
 - e) Drainage of all open space and soft landscaping complies with detailed landscape plans and to Council standards
88. Prior to the issue of the Occupation Certificate, the following applies for landscape works specification for construction documents:
- a) The Specification is to be read in conjunction with the Landscape Drawing Set, all other Consultant's documentation and revisions. Discrepancies are to be noted and clarified through a 'Request For Information' prior to construction. Allowance is to be made for all specified products. Equivalent alternatives to be documented when required and updated on As-Builts. All Australian Standards nominated in this Specification are to be the current issue.
89. Entry and directional signage is to be provided consistent with Council's signage requirements. The signage is to be provided at the entry to each precinct and appropriate directional signage to relevant amenities and facilities within the park.
90. Prior to the issue of the relevant Occupation Certificate, the following is to be complied with:
- a) Dedicate to Council and at no expense to the Council and generally in accordance with the Public Domain Plans prepared by Arcadia Landscape Architecture Issue 10, dated April 2017 and the timing within Condition No. 11 of DA-14/96, the following:
 - i) Dedicate the portion of land to Council for the purpose of a public park central to the site (Chauvel Green). The total area of public domain dedication shall be 8,000sqm. Construction of paving and landscaping within this area is to be in accordance with the approved landscape plans identified in Condition No.1 of DA-16/65;
 - ii) Dedicate the portion of land to Council for the purpose of a public park at Open Space Lot 2 (Linear Park). The total area of public domain dedication shall be 2,703sqm. Construction of paving and landscaping within this area is to be in accordance with the approved landscape plans identified in Condition No. 1 of DA-16/65;
 - iii) Dedicate the portion of land to Council for the purpose of a road reserve as follows:
 - 1 Tingwell Boulevard (East-West Boulevard)- total area of 8,744sqm
 - 2 Oscar Place (Civic Avenue)- total area of 1,857sqm
 - 3 Finch Drive (North- South Street 1)- total area of 1,671sqm

- 4 Studio Drive (North-South Street 2)- total area of 1,504sqm
- 5 Local Road (Road Lot 6)- total area of 1,636sqm
- iv) Embellishment of the road reserves and open spaces is to be carried out in accordance with the approved public domain plan within DA-16/65;
- 91. Prior to the issue of the Occupation Certificate, ensure that there is no vehicular access off Westfield Avenue from Finch Drive (North-South Street 1). The private road is approved with a Right of Way for pedestrian access only. Bollards and/or a pocket park is to be installed.
- 92. Prior to use and occupation of the building an Occupation Certificate must be obtained under Section 109C(1)(c) and 109M of the Environmental Planning and Assessment Act 1979.

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

- 93. 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.
- 94. The landscaped areas on the property shall be maintained in accordance with the approved landscape documentation, the conditions of development approval and Council's Landscape DCP at all times. The Landscape Contractor shall be engaged weekly for a minimum period of 52 weeks from completion of the landscape installation to maintain the landscaping. After that time regular maintenance is required.
- 95. The automatic drip irrigation system shall be repaired and maintained in working order and in accordance with the approved landscape plan at all times.
- 96. The landscaped areas on the property shall be maintained in a clean and tidy state and with a dense, even coverage of plants to Council's satisfaction, and in accordance with conditions of consent and Council's Landscape DCP, at all times.
- 97. New street trees shall be maintained by the Applicant for the duration of the landscape bond period after planting. Maintenance includes periodic watering at a frequency to sustain adequate growth, annual feeding and weed removal but does not include trimming or pruning of the trees under any circumstances.
- 98. Ongoing maintenance of the road verges and footpaths on Tingwell Boulevard, Oscar Place, Studio Drive and Finch Drive nature strips shall be undertaken by the owner until dedication to Council has been completed. Maintenance includes mowing, watering and maintaining the landscaping in these areas at all times. Maintenance does not include trimming or pruning of the trees under any circumstances.
- 99. The landscaped areas on the property shall be maintained in accordance with the Council stamped and approved landscape documentation, and the conditions of development consent.

Statement of Environmental Effects

Section 4.55 (1A) Application

5 Finch Drive, Eastgardens (Public Domain)

Amend Condition 44 in DA/2016/65

5 September 2019

PREPARED BY

Meriton Property Services Pty Ltd
ABN 69 115 511 281

Karimbla Constructions Services (NSW) Pty Ltd
ABN 67 152 212 809

Level 11 Meriton Tower
528 Kent Street, Sydney NSW 2000

Tel (02) 9287 2888

meriton.com.au



Contents

1	Introduction	1
2	Detailed Description of the Proposed Modifications.....	2
3	Substantially the same development.....	4
4	Environmental Planning Assessment.....	5
	4.1 Section 4.15(1)(a)(i): Environmental Planning Instruments	5
4.1.1	Botany Local Environmental Plan 2013	5
	4.2 Section 4.15(1)(a)(ii): Draft Environmental Planning Instruments	5
	4.3 Section 4.15(1)(a)(iii): Development Control Plans.....	5
4.3.1	Botany Development Control Plan 2013.....	5
	4.4 Section 4.15(1)(a)(iiia): Planning Agreements	5
	4.5 Section 4.15(1)(a)(iv): Regulations	5
	4.6 Section 4.15(1)(b): Likely Impacts	5
	4.7 Section 4.15(1)(c): Suitability of the Site.....	6
	4.8 Section 4.15(1)(d): Submissions	6
	4.9 Section 4.15(1)(e): The Public Interest	6
5	Conclusion.....	7

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 44 which relates to the duration of the tree preservation bond.

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 (DA/2016/65) granted on the 24 July 2018 for the embellishment of the public domain across the site. Works include the construction of two public parks, and embellishing the approved road network with landscaping, street furniture, lighting and paving.

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

CONDITION	REASON FOR MODIFICATION
44 Tree Preservation Bond	<p>Amend bond return period from 24 months after issue of the Occupation Certificate to 6 months after Practical Completion.</p> <p>As specified at Clause 4.17(6) of the EP&A Act, the time period that may be applied for the remedying of any defects in public works is 6 months. The clause states the following:</p> <p>(6) Conditions and other arrangements concerning security</p> <p><i>A development consent may be granted subject to a condition, or a consent authority may enter into an agreement with an applicant, that the applicant must provide security for the payment of the cost of any one or more of the following:</i></p> <p><i>(b) completing any public work (such as road work, kerbing and guttering, footway construction, stormwater drainage and environmental controls) required in connection with the consent,</i></p> <p><i>(c) remedying any defects in any such public work that arise within <u>6 months</u> after the work is completed.</i></p>

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 44

*44. Prior to the Issue of the Construction Certificate, the applicant is to submit payment for a Tree Preservation Bond of \$1,136,565.00 to ensure protection of trees No. 1-14, 22- 39 and 47-50 (trees along the eastern alignment of Finch Drive (North-South Street 1) and within the central park) from damage that have failed prior to construction due to vandalism and the insufficient maintenance including watering. The duration of the Bond shall be limited to a period of ~~24 months after issue (or cease upon issue of) of the Occupation Certificate~~ ***6 months after Practical Completion***. At the completion of the ~~maintenance period~~ ***6-month period*** the Tree Preservation Bond shall be refunded pending a satisfactory inspection by Council or a qualified Arborist. If the trees were found to be in decline, damaged (including roots), dead, excessively pruned or removed without Council permission or, if tree protection measures were not satisfied at any time, then all or part thereof of the bond shall be forfeited. The Tree Preservation Bond was calculated using the Thyer Tree Evaluation method.*

Statement of Environmental Effects
Stage 2 DA - Public Domain Works
5 Finch Drive, Eastgardens

Reason for Modification

As specified at Clause 4.17(6) of the EP&A Act, the time period that may be applied for the remedying of any defects in public works is 6 months. This condition requires modification to enable the duration of the Bond to be reduced to a period of 6 months after Practical Completion. The modified wording is consistent with Clause 4.17(6) of the EP&A Act.

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 DA/2016/65. The proposed modifications will not have any impact on the nature, scale, location or form of the public domain.
- 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. Most of the changes relate to the fees to be paid prior to the issue of any Construction Certificate.

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 R3 Medium Density Residential and B4 Mixed use.

The proposal relates to the approved public domain works associated with the future use of the land for residential use. The modifications are permissible with Council consent.

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 applies to the subject site. An explanation of the amendment to the conditions where relevant to the DCP are listed under Section 2 of this report.

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. The changes are generally minor and will not have any amenity impacts on the existing surrounding buildings or other parts of the existing approved development.

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.

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 44 which relates to the duration of the tree preservation bond.

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.

Bayside Local Planning Panel

26/11/2019

Item No	6.3
Application Type	Modification of a Development Application
Application No	DA-2013/10056/D
Lodgement Date	12/09/2019
Property	13A Church Avenue, Mascot
Ward	Ward 2
Owner	S & A & S Mohebbaty
Applicant	S & A & S Mohebbaty
Proposal	Modification to change unit mix to increase the number of two (2) bedroom units, increase in gross floor area, changes to car parking and Section 7.11 contributions
No. of Submissions	Four (4)
Cost of Development	N/A
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, pursuant to S4.55(2) of the Environmental Planning and Assessment Act 1979 be satisfied that the proposed modification:
 - i is substantially the same development as the development for which consent was originally granted and before that consent was modified;
 - ii has been notified; and
 - iii has been assessed having regard to the relevant matters in S4.15 of the Environmental Planning and Assessment Act 1979.
 - 2 That the Bayside Local Planning Panel consider the submissions concerning the proposed modification and take into consideration the reasons of the consent authority that granted the consent that is sought to be modified.
 - 3 That modification application DA-2013/10056/D seeking to modify Development Consent DA-2013/10056 to change unit mix to increase the number of two (2) bedroom units, increase in gross floor area, changes to car parking and Section 7.11 contributions at 13A Church Avenue, Mascot be APPROVED. The proposal is modified in the following manner;
 - (a) *Amend Condition 1 to now read:*

The development is to be carried out 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 (DA13/056/01) **[Amended 26 November 2019 DA-2013/10056/D]**.
-

Drawing N°	Author	Date Received
Architectural Plans		
S96-101 S4.55 101 Revision A	Bureau SRH	28 November 2017 12 September 2019 (DA-2013/10056/D)
S96 101.5	Bureau SRH	28 November 2017
S96-102 S4.55 102 Revision A	Bureau SRH	28 November 2017 12 September 2019 (DA-2013/10056/D)
S96103 S4.55 103 Revision A	Bureau SRH	6 April 2018 12 September 2019 (DA-2013/10056/D)
S96-104 S4.55 104 Revision A	Bureau SRH	28 November 2017 12 September 2019 (DA-2013/10056/D)
S96-105 S4.55 105 Revision A	Bureau SRH	28 November 2017 12 September 2019 (DA-2013/10056/D)
S96-106 S4.55 106 Revision A	Bureau SRH	28 November 2017 12 September 2019 (DA-2013/10056/D)
S96-107 S4.55 107 Revision A	Bureau SRH	6 April 2018 12 September 2019 (DA-2013/10056/D)
S96-108 S4.55 108 Revision A	Bureau SRH	28 November 2017 12 September 2019 (DA-2013/10056/D)
S96 200	Bureau SRH	28 November 2017
S96 201	Bureau SRH	6 April 2018
S96 202	Bureau SRH	6 April 2018
S96 203	Bureau SRH	6 April 2018
S96 300	Bureau SRH	28 November 2017
Architectural Plans		
11170-01 Issue A	Simmons Architects	13 May 2014
11170-02 Issue I		
11170-03 Issue O		
11170-04 Issue F		
11170-05 Issue D		
11170-06 Issue D		
11170-07 Issue A		
11170-08 Issue E		
Landscape Plans		
L/01 Issue A	ATC	15 November 2013
L/02 Issue B		17 November 2017

<i>L/03 L/01 Issue C L/02 Issue C</i>		
Survey Plan Ref No. 582AA 01	Mitchell Land Surveyors Pty Ltd	28 March 2013
Stormwater Plans C01_B C02_B C03_B C04_A	Alan L Wright & Associates	15 November 2013

Documents	Author	Date Received
Statement of Environmental Effects	LJB Urban Planning Pty Ltd	27 March received by Council 28 March 2014
<i>Statement of Environmental Effects (DA-2013/10056/C)</i>	<i>LJB Urban Planning Pty Ltd (DA-2013/10056/C)</i>	<i>23 November 2017 (DA-2013/10056/C)</i>
State Environmental Planning Policy No.1 (SEPP 1) Objection	LJB Urban Planning Pty Ltd	November 2013 received by Council 15 November 2013 – amendment received 30 April 2014
Preliminary Geotechnical Report	Grant Alexander & Associates Pty Ltd	30 July 2009 received by Council 28 March 2013
Ground Water Levels	Grant Alexander & Associates Pty Ltd	30 July 2009 received by Council 28 March 2013
<i>Traffic Report Traffic and Parking Impact Assessment (DA-2013/10056/C)</i>	<i>Integral Services group Motion Traffic Engineers (DA-2013/10056/C)</i>	<i>August 2009 received by Council 20 May 2013 November 2017 (DA-2013/10056/C)</i>
Estimated Construction Cost	Newton, Fisher & Associates Pty Ltd	20 January 2014 received by Council 22 January 2014
Soil Contamination Investigation	Pacific Environmental	30 October 2009 received by Council 28 March 2013
Addendum to Soil Contamination Audit Investigation	Pacific Environmental	1 January 2010 received by Council 28 March 2013
Addendum to Soil Contamination Audit Investigation – Groundwater Investigation	Pacific Environmental	13 May 2013 received by Council 28 March 2013
Acid Sulphate Soil Assessment	Pacific Environmental	2 November 2009 received by Council 28 March 2013
Pedestrian Wind Statement	Windtech	22 October 2009 received by Council 28 March 2013
<i>BASIX Certificate No. 474684M 47468M_02 47468M_03 (DA-2013/10056/C) (DA-2013/10056/D)</i>	<i>Department of Planning Gradwell Consulting (DA-2013/10056/C) (DA-2013/10056/D)</i>	<i>28 March 2013 received by Council 28 March 2013 23 November 2017 12 September 2019 (DA-2013/10056/C) (DA-2013/10056/D)</i>

Access Report Access Compliance Report (DA-2013/10056/C)	PSE Consulting	7 May 2013 received by Council 20 May 2013 22 November 2017 (DA-2013/10056/C)
Design Verification	Simmons Architects Bureau SRH Architecture (DA-2013/10056/C)	21 March received by Council 28 March 2013 20 November 2017 (DA-2013/10056/C)
Aircraft Noise Assessment	Acoustic Services Pty Ltd	14 May 2013 received by Council 20 May 2013
Letter regarding Offer of VPA	Norton Rose Fulbright	20 March 2014

No construction works (including excavation) shall be undertaken prior to the issue of the Construction Certificate. (DA13/056/02) (DA13/056/03) (Amended 9 July 2019 DA-2013/10056/C) **[Amended 26 November 2019 DA-2013/10056/D]**.

(b) Condition 2 to be amended to now read:

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

- a) Landscape Bond \$10,000.00
- b) Landscape Bond Preparation Fee \$550.00
- c) Waste Levy \$5,000.00
- d) Section 94 Contribution ~~\$1,600,000.00~~ **\$1,821,458.36**
\$1,544,472.13
- e) Damage Deposit \$50,000.00
- f) Development Control \$11,200.00

(DA-13/56/03) **[Amended 26 November 2019 DA-2013/10056/D]**.

(c) Condition 3 to be amended to now read:

The payment of the following monetary contributions in accordance with Council's Section 94 Contributions Plan 2005-2010 to be paid prior to the issue of Construction Certificate:

- a) Section 94 Contribution 2005 – 2010
 - i) Residential component ~~\$1,600,000~~ **\$1,821,458.36**
\$1,544,472.13

~~Note: The Section 94 Contribution fees are subject to annual review and the current rates are applicable for the financial year in which your consent is granted. If you pay the contribution in a later financial year you will be required to pay the fee applicable at the time.~~ (DA13/56/03) **[Amended 26 November 2019 DA-2013/10056/D]**.

- (d) Condition 14 to be amended to now read:

~~Submit a further Development Application for the construction of the road widening sections of, and public domain works in, Church Avenue (including the under-grounding of existing above ground electricity and telecommunication cables in Church Avenue, adjoining the site together with the provision of appropriate street light standards, drainage (if any) kerb and gutter, footway, bicycle paths, landscaping, traffic signs). Details shall be submitted by the applicant to Council's satisfaction.~~

An application for Frontage Works (Public Domain Frontage Works Construction Application) shall be made to Council's Customer Service Centre prior to issue of the Construction Certificate. All boundary frontage works, egress paths, driveways and fences shall comply with the approval. A fee is payable to Council. If payment is made after the end of the financial year, the amount shall be adjusted in accordance with Council's adopted fees and charges. [Amended 26 November 2019 DA-2013/10056/D]

- (e) Condition 15 to be deleted.
- (f) Condition 16 to be deleted.
- (g) Condition 53 to be amended to now read:

Plans submitted with the Construction Certificate shall demonstrate compliance with the following:

- a) All residential unit size excluding balconies as minimum must be as following:
- i) Studio = ~~60~~ 35m²
 - ii) 1 bedroom = ~~75~~ 50m²
 - iii) 2 bedroom = ~~100~~ 70m²
 - iv) 3 bedroom = 90m² [Amended 26 November 2019 DA-2013/10056/D].**
- b) Adaptable units must be provided in accordance with Section 4C.6.1 of Botany Bay Development Control Plan 2013. Such units shall be designed in accordance with AS 4299 and BBDCP 2013 (Section 4C.6.1). Details to be submitted with the Construction Certificate.

- (h) Condition 65 to be amended to now read:

Prior to the issue of any Construction Certificate, detail design and construction plans in relation to stormwater management and disposal system for the development shall be submitted to the Principal Certifying Authority for approval. The detail drawings and specifications shall be prepared by a suitably qualified and experience civil engineer and be in accordance with Council's 'Development Control Plan – "Stormwater Management Technical Guidelines"', AS/NSZ 3500 – Plumbing and Drainage Code and the BCA. All drawing shall correspond with the approved architectural plans. The plans shall incorporate:

- a) the provisions made in the stormwater drainage drawings C1-C4, by Alan. L. Wright & Associates, dated Oct 2013;

- b) the provision for the connection of the overflow pipe from Storage Tank 1 to either Pit C or Pit D of the Absorption Tank and the deletion of Pit A;
- c) the provision for new kerb inlet pit(s) with a minimum 1.8 metre lintel, in accordance with City of Botany Bay Standard Drawing E-09 to facilitate connection of stormwater outlet to Council's stormwater drainage system; and
- d) the provisions meet or exceed the BASIX Certificate No. 474684M issued 28 March 2013 ~~474684M_02 issued 23 November 2017~~ **474684M_03 issued 11 September 2019.**

Note: All underground parking structures are to be "tanked" so that there is no intrusion of waters into the structure. (DA-2013/10056/C) **[Amended 26 November 2019 DA-2013/10056/D]**

(i) *Condition 76 to be amended to now read:*

The following car parking spaces shall be made available to residents and visitors:

- a) a total of ~~one hundred and thirty four (138)~~ **one hundred and six (106)** car parking spaces on site; and
- b) the following conditions apply to the car parking:
 - i) the on-site car parking spaces, exclusive of service and visitor spaces, are not to be used by those other than the occupants, tenant or resident of the subject building. Any occupant, tenant, lessee or registered proprietor of the development site or part thereof shall not enter into an agreement to lease, licence or transfer ownership of any car parking spaces to those other than an occupant, tenant, lessee or resident of a unit in the building.
 - ii) prior to Construction Certificate under the Environmental Planning and Assessment Act 1979 a documentary Restrictive Covenant, is to be registered on the Title of the development site pursuant to Section 88E of the Conveyance Act 1919, to the effect of (a) above. The Covenant is to be created appurtenant to Council, at no cost to and to the satisfaction of Council.
 - iii) any future strata subdivision of the site is to include a Restriction on User pursuant to Section 39 of the Strata Titles (Freehold Development) Act 1973, as amended, burdening all utility car parking allotments in the Strata Plan and/or an appropriate Restrictive Covenant pursuant to Section 88B of the Conveyancing Act 1919 burdening all car parking pat-lots in the strata scheme.
[Amended 26 November 2019 DA-2013/10056/D]

(j) *Condition 77 to be amended to now read:*

Pursuant to clause 97A(3) of the Environmental Planning & Assessment Regulation 2000, it is a condition of this development consent that all the commitments listed in the relevant BASIX Certificate No. ~~474684M dated 28 March 2014 received by Council 28 March 2014~~ **474684M_02 dated 23 November 2017** **474684M_03 issued 11 September 2019** for the development are fulfilled.

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. (DA-2013/10056/C)
[Amended 26 November 2019 DA-2013/10056/D]

(k) *Condition 79 to be amended to now read:*

The Architect is to confirm in writing that the apartment sizes in metres squared (sq.m) and the balconies comply with ~~Council's Building Design and Construction Development Control Plan the Apartment Design Guide.~~
[Amended 26 November 2019 DA-2013/10056/D]

4 That the submitters be notified of the Bayside Local Planning Panel's decision.

Location Plan



Attachments

- 1 Planning Assessment Report [↓](#)
- 2 Statement of Environmental Effects [↓](#)
- 3 Elevations [↓](#)
- 4 Site Plan [↓](#)
- 5 Basement Level 1 [↓](#)
- 6 Basement Level 2 [↓](#)

BAYSIDE COUNCIL

Planning Assessment Report

Application Details

Application Number:	DA-2013/10056/D
Date of Receipt:	12 September 2019
Property:	13A Church Avenue, Mascot Lot 1 DP 547700
Owner:	S & A & S Mohebbaty
Applicant:	S & A & S Mohebbaty
Proposal:	Modification to change unit mix to increase the number of two (2) bedroom units, increase in gross floor area, changes to car parking and Section 7.11 contributions
Recommendation:	Approval subject to amended conditions
Value:	Nil
Zoning:	B4 Mixed Use under Botany Bay Local Environmental Plan 2013
No. of submissions:	Five (5)
Author:	Andrew Ison, Senior Development Assessment Planner
Date of Report:	26 November 2019

Key Issues

The key issues relate to the following:

- Administrative changes to conditions.
- Extension of south western corner of the approved development on the upper levels by 3.7 metres
- Amendments to the western façade (with materiality, window and balcony positions)

Recommendation

1. That the Bayside Local Planning Panel, exercising the functions of the Council as the consent authority, pursuant to S4.55(2) of the Environmental Planning and Assessment Act 1979 be satisfied that the proposed modification:
 - i. is substantially the same development as the development for which consent was originally granted and before that consent was modified;

- ii. has been notified; and
 - iii. has been assessed having regard to the relevant matters in S4.15 of the Environmental Planning and Assessment Act 1979.
2. That the Bayside Local Planning Panel consider the submissions concerning the proposed modification and take into consideration the reasons of the consent authority that granted the consent that is sought to be modified.
3. That modification application DA-2013/10056/D seeking to modify Development Consent DA-2013/10056 to change unit mix to increase the number of two (2) bedroom units, increase in gross floor area, changes to car parking and Section 7.11 contributions at 13A Church Avenue, Mascot be APPROVED. The proposal is modified in the following manner;

(a) Amend Condition 1 to now read:

The development is to be carried out 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 (DA13/056/01). **[Amended 26 November 2019 DA-2013/10056/D]**

Drawing N°	Author	Date Received
Architectural Plans		
S96-101 S4.55 101 Revision A	Bureau SRH	28 November 2017 12 September 2019 (DA-2013/10056/D)
S96 101.5	Bureau SRH	28 November 2017
S96-102 S4.55 102 Revision A	Bureau SRH	28 November 2017 12 September 2019 (DA-2013/10056/D)
S96-103 S4.55 103 Revision A	Bureau SRH	6 April 2018 12 September 2019 (DA-2013/10056/D)
S96-104 S4.55 104 Revision A	Bureau SRH	28 November 2017 12 September 2019 (DA-2013/10056/D)
S96-105 S4.55 105 Revision A	Bureau SRH	28 November 2017 12 September 2019 (DA-2013/10056/D)
S96-106 S4.55 106 Revision A	Bureau SRH	28 November 2017 12 September 2019 (DA-2013/10056/D)
S96-107 S4.55 107 Revision A	Bureau SRH	6 April 2018 12 September 2019 (DA-2013/10056/D)
S96-108	Bureau SRH	28 November 2017

S4.55 108 Revision A		12 September 2019 (DA-2013/10056/D)
S96 200	Bureau SRH	28 November 2017
S96 201	Bureau SRH	6 April 2018
S96 202	Bureau SRH	6 April 2018
S96 203	Bureau SRH	6 April 2018
S96 300	Bureau SRH	28 November 2017
Architectural Plans 11170-01 Issue A 11170-02 Issue I 11170-03 Issue O 11170-04 Issue F 11170-05 Issue D 11170-06 Issue D 11170-07 Issue A 11170-08 Issue E	Simmons Architects	13 May 2014
Landscape Plans L/01 Issue A L/02 Issue B L/03 L/01 Issue C L/02 Issue C	ATC	15 November 2013 17 November 2017
Survey Plan Ref No. 582AA 01	Mitchell Land Surveyors Pty Ltd	28 March 2013
Stormwater Plans C01_B C02_B C03_B C04_A	Alan L Wright & Associates	15 November 2013

Documents	Author	Date Received
Statement of Environmental Effects	LJB Urban Planning Pty Ltd	27 March received by Council 28 March 2014
Statement of Environmental Effects (DA-2013/10056/C)	LJB Urban Planning Pty Ltd (DA-2013/10056/C)	23 November 2017 (DA-2013/10056/C)

State Environmental Planning Policy No.1 (SEPP 1) Objection	LJB Urban Planning Pty Ltd	November 2013 received by Council 15 November 2013 – amendment received 30 April 2014
Preliminary Geotechnical Report	Grant Alexander & Associates Pty Ltd	30 July 2009 received by Council 28 March 2013
Ground Water Levels	Grant Alexander & Associates Pty Ltd	30 July 2009 received by Council 28 March 2013
Traffic Report Traffic and Parking Impact Assessment (DA-2013/10056/C)	Integral Services group Motion Traffic Engineers (DA-2013/10056/C)	August 2009 received by Council 20 May 2013 November 2017 (DA-2013/10056/C)
Estimated Construction Cost	Newton, Fisher & Associates Pty Ltd	20 January 2014 received by Council 22 January 2014
Soil Contamination Investigation	Pacific Environmental	30 October 2009 received by Council 28 March 2013
Addendum to Soil Contamination Audit Investigation	Pacific Environmental	1 January 2010 received by Council 28 March 2013
Addendum to Soil Contamination Audit Investigation – Groundwater Investigation	Pacific Environmental	13 May 2013 received by Council 28 March 2013
Acid Sulphate Soil Assessment	Pacific Environmental	2 November 2009 received by Council 28 March 2013
Pedestrian Wind Statement	Windtech	22 October 2009 received by Council 28 March 2013
BASIX Certificate No. 474684M 47468M_02 47468M_03 (DA-2013/10056/C) (DA-2013/10056/D)	Department of Planning Gradwell Consulting (DA-2013/10056/C) (DA-2013/10056/D)	28 March 2013 received by Council 28 March 2013 23 November 2017 12 September 2019 (DA-2013/10056/C) (DA-2013/10056/D)
Access Report Access Compliance Report (DA-2013/10056/C)	PSE Consulting	7 May 2013 received by Council 20 May 2013 22 November 2017 (DA-2013/10056/C)
Design Verification	Simmons Architects Bureau SRH Architecture (DA-2013/10056/C)	21 March received by Council 28 March 2013 20 November 2017 (DA-2013/10056/C)

Aircraft Noise Assessment	Acoustic Services Pty Ltd	14 May 2013 received by Council 20 May 2013
Letter regarding Offer of VPA	Norton Rose Fulbright	20 March 2014

No construction works (including excavation) shall be undertaken prior to the issue of the Construction Certificate. (DA13/056/02) (DA13/056/03)

(b) Condition 2 to be amended to now read:

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

- | | |
|-----------------------------------|--|
| a) Landscape Bond | \$10,000.00 |
| b) Landscape Bond Preparation Fee | \$550.00 |
| c) Waste Levy | \$5,000.00 |
| d) Section 94 Contribution | \$1,600,000.00 \$1,821,458.36 |
| | \$1,544,472.13 |
| e) Damage Deposit | \$50,000.00 |
| f) Development Control | \$11,200.00 |
- (DA13/56/03) [Amended 26 November 2019 DA-2013/10056/D]

(c) Condition 3 to be amended to now read:

The payment of the following monetary contributions in accordance with Council's Section 94 Contributions Plan 2005-2010 to be paid prior to the issue of Construction Certificate:

a) Section 94 Contribution 2005 – 2010

- i) **Residential component** **~~\$1,600,000~~ ~~\$1,821,458.36~~ ~~\$1,544,472.13~~**

Note: The Section 94 Contribution fees are subject to annual review and the current rates are applicable for the financial year in which your consent is granted. If you pay the contribution in a later financial year you will be required to pay the fee applicable at the time. (DA13/56/03) [Amended 26 November 2019 DA-2013/10056/D]

(d) Condition 14 to be amended to now read:

Submit a further Development Application for the construction of the road widening sections of, and public domain works in, Church Avenue (including the under-grounding of existing above ground electricity and telecommunication cables in Church Avenue, adjoining the site together with the provision of appropriate street light standards, drainage (if any) kerb and gutter, footway, bicycle paths, landscaping, traffic signs). Details shall be submitted by the applicant to Council's satisfaction. **An application for Frontage Works (Public Domain Frontage Works Construction Application) shall be made to Council's Customer Service Centre prior to issue of the Construction Certificate. All boundary frontage works, egress paths, driveways and fences shall comply with the approval. A fee is payable to Council. If payment is made after the end of the financial year, the amount shall be adjusted in accordance with Council's adopted fees and charges. [Amended 26 November 2019 DA-2013/10056/D]**

(e) Condition 15 to be deleted

(f) Condition 16 to be deleted

(g) Condition 53 to be amended to now read:

Plans submitted with the Construction Certificate shall demonstrate compliance with the following:

- a) **All residential unit size excluding balconies as minimum must be as following:**
 - i) **Studio = ~~60m²~~ 35m²**
 - ii) **1 bedroom = ~~75m²~~ 50m²**
 - iii) **2 bedroom = ~~100m²~~ 70m²**
 - iv) **3 bedroom = 90m² [Amended 26 November 2019 DA-2013/10056/D]**
- b) Adaptable units must be provided in accordance with Section 4C.6.1 of Botany Bay Development Control Plan 2013. Such units shall be designed in accordance with AS 4299 and BBDCP 2013 (Section 4C.6.1). Details to be submitted with the Construction Certificate.

(h) Condition 65 to be amended to now read:

Prior to the issue of any Construction Certificate, detail design and construction plans in relation to stormwater management and disposal system for the development shall be submitted to the Principal Certifying Authority for approval. The detail drawings and specifications shall be prepared by a suitably qualified and experienced civil engineer and be in accordance with Council's 'Development Control Plan – "Stormwater Management Technical Guidelines"', AS/NSZ 3500 – Plumbing and Drainage Code and the BCA. All drawing shall correspond with the approved architectural plans. The plans shall incorporate:

- a) the provisions made in the stormwater drainage drawings C1-C4, by Alan. L. Wright & Associates, dated Oct 2013;
- b) the provision for the connection of the overflow pipe from Storage Tank 1 to either Pit C or Pit D of the Absorption Tank and the deletion of Pit A;
- c) the provision for new kerb inlet pit(s) with a minimum 1.8 metre lintel, in accordance with City of Botany Bay Standard Drawing E-09 to facilitate connection of stormwater outlet to Council's stormwater drainage system; and
- d) **the provisions meet or exceed the BASIX Certificate No. 474684M issued 28 March 2013 ~~474684M_02 issued 23 November 2017~~ 474684M_03 issued 11 September 2019.**

Note: All underground parking structures are to be "tanked" so that there is no intrusion of waters into the structure. (DA-2013/10056/C) [Amended 26 November 2019 DA-2013/10056/D]

(i) Condition 76 to be amended to now read:

The following car parking spaces shall be made available to residents and visitors;

- a) **a total of ~~one hundred and thirty four (138)~~ one hundred and six (106) car parking spaces on site;** and

- b) the following conditions apply to the car parking:
- i) the on-site car parking spaces, exclusive of service and visitor spaces, are not to be used by those other than the occupants, tenant or resident of the subject building. Any occupant, tenant, lessee or registered proprietor of the development site or part thereof shall not enter into an agreement to lease, licence or transfer ownership of any car parking spaces to those other than an occupant, tenant, lessee or resident of a unit in the building.
 - ii) prior to Construction Certificate under the Environmental Planning and Assessment Act 1979 a documentary Restrictive Covenant, is to be registered on the Title of the development site pursuant to Section 88E of the Conveyance Act 1919, to the effect of (a) above. The Covenant is to be created appurtenant to Council, at no cost to and to the satisfaction of Council.
 - iii) any future strata subdivision of the site is to include a Restriction on User pursuant to Section 39 of the Strata Titles (Freehold Development) Act 1973, as amended, burdening all utility car parking allotments in the Strata Plan and/or an appropriate Restrictive Covenant pursuant to Section 88B of the Conveyancing Act 1919 burdening all car parking pat-
lots in the strata scheme. **[Amended 26 November 2019 DA-2013/10056/D]**

(j) Condition 77 to be amended to now read:

Pursuant to clause 97A(3) of the Environmental Planning & Assessment Regulation 2000, it is a condition of this development consent that all the commitments listed in the relevant BASIX Certificate No. 474684M dated 28 March 2014 received by Council 28 March 2014 474684M_02 dated 23 November 2017 474684M_03 dated 11 September 2019 for the development are fulfilled.

- 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. (DA-2013/10056/C) **[Amended 26 November 2019 DA-2013/10056/D]**

(k) Condition 79 to be amended to now read:

The Architect is to conform in writing that the apartment sizes in metres squared (sq.m) and the balconies comply with Council's Building Design and Construction Development Control Plan the Apartment Design Guide. [Amended 26 November 2019 DA-2013/10056/D]

Site Description

The subject site is commonly known as 13A Church Avenue, Mascot (Lot 1 in DP 547700). The site is rectangular in shape, has an area of 1,953m², and currently contains an industrial building, which will be demolished to accommodate the approved development. The surrounding area is characterised primarily by various forms of mixed use and residential flat building developments to the north, south and west and commercial development to the east. The subject site is located on the within the Mascot Station Precinct, between Bourke Street to the west and O'Riordan Street to the east.



Figure 1: Aerial showing subject site, marked in red (Source: Bayside IntraMaps)



Figure 2: Site photo (taken 1 November 2019)

Description of approved development and proposed modifications

Approved Development DA-2013/56

Development Application (DA) 2013/56 was approved on 11 June 2014 by the former City of Botany Bay Development Committee for the following:

- Demolition of all existing buildings and structures on the site;
- Construction of a 12 storey residential flat building;
- A three level car park comprising 138 car parking spaces, including 2 wash bays and 3 turning spaces;
- Vehicular access via a Right of Way from Church Avenue;
- Associated new landscaping works.

Approved Modification DA-2013/56/02

On 8 May 2018, the Bayside Local Planning Panel approved a Section 4.55(1A) application modification under the former Section 96(1) provisions (now Section 4.55(1)) for the following:

- Amend the description of the approved development to "Demolition of the existing building and construction of a new residential flat building comprising of 80 residential units and car parking for 138 vehicles including 15 visitor parking spaces and new landscaping works"
- Amend Conditions 1 and 141.

Approved Modification DA-2013/56/03

On 27 March 2018, a Section 4.55(1A) application report was put up to the Bayside Local Planning Panel with the recommendation for refusal for the following modifications:

- Changes to the building footprint;
- Increase overall building height by 2.7 metres from RL 46.94 AHD (39.8 metres) to RL 49.64 AHD (42.5 metres) measured to the top of the lift over run;
- Reconfiguration of unit layouts and modify unit mix by increasing number of units from 80 to 103, including an additional 3 bedroom unit on the roof top;
- Increase the size of communal room on the roof top;
- Delete basement (Level 3) and reduce the number of car parking spaces from 138 to 110;
- Increase all floor levels including ground floor level from RL 7.44 AHD to RL 7.59 AHD, floor to ceiling height of the ground floor from 3.35 metres to 3.5 metres, and floor to ceiling height of typical floor level from 3 metres to 3.1 metres. The floor level increases consequently raises the building height as measured to the roof top floor level by 1.1 metres from RL 43.94 AHD to RL 45.04 AHD;
- Delete condition requiring roof mounted solar collector on the roof top, which was required for hot water to the units;
- Increase height of lift over run from 3 metres to 4.6 metres;
- Review Section 94 contribution;
- Amend various conditions to reflect proposed modifications; and
- External façade changes, including modification to the approved colours and materials.

The resolution of the Panel was to defer the application, subject to the following amendments:

- Relocation and minimisation of the rooftop plant room with the majority being placed in the basement. It was recognised that this may require car parking spaces to be deleted however the proposal is in excess of the requirement.
- A reduction in the height of the parapet on the west side of the building by a minimum of 1.1 metres.
- The bulk on the north-western corner of the building is to be reduced such that it does not exceed the envelope approved (clear glazing is to be provided only with no privacy screen). The reduction is to be for the top three levels.
- The privacy screens are to be notated as fixed on the east elevation.
- Investigation of the provision of solar panels.

On 8 May 2018, the modification application was reported back to the Bayside Local Planning Panel, with the recommendation for approval subject to the amendments as per the 27 March resolution being satisfied. The Panel supported the recommendations and the application was approved, subject to the following:

- Amend Condition 1 to refer to the amended plans and reference documents;
- Amend Conditions 2 and 3 to refer to the updated Section 94 contributions;
- Amend Condition 141 to refer to the subject modification application; and
- Delete Condition 142 requiring roof mounted solar panels.

Approved Modifications DA-2013/10056/C

On 9 July 2019, the Bayside Local Planning Panel approved a Section 4.55(1) application modification under Section 4.55(1) for the following:

- Amend Condition 1 to update the landscape plans, statement of environmental effects, traffic and parking impact assessment, BASIX certificate, access compliance report and design verification to reflect what had been lodged as part of DA-2013/56/03 but were not updated as part of Condition 1.
- Amend Condition 65 with relation to the BASIX certificate.
- Amend Condition 77 with relation to the BASIX certificate.

Proposed Modifications DA-2013/10056/D (subject to this report)

The applicant seeks the following amendments:

Modified unit mix

	Approved mix	Proposed mix	Modification
Studio apartments	22	12	-10
One bedroom	22	22	No change
Two bedroom	56	66	+10
Three bedroom	3	3	No change
TOTAL	103	103	

As specified in the table above, the total number of units will not change, with a reduction in the number of studio apartments by 10, from 22 to 12 and an increase in the number of two bedroom units by 10 from 56 to 66.

Further detail is provided below:

Unit	Approved size	Bedrooms	Proposed size	Bedrooms
G-01 (two storey)	107	3	108m ²	3
G-02 (two storey)	111	2	105 m ²	2
1-01	53	1	54m ²	1
1-06	87		77m ²	2
2-01	53m ²	1	55m ²	1
2-07	80m ²	2	81m ²	2
2-08	84m ²	2	92m ²	2
2-09	39m ²	Studio	78m ²	2
3-01	53m ²	1	55m ²	1
2-07	80m ²	2	81m ²	2
3-08	84m ²	2	92m ²	2
3-09	39m ²	Studio	78m ²	2
4-01	53m ²	1	55m ²	1
4-07	80m ²	2	81m ²	2
4-08	84m ²	2	92m ²	2
4-09	39m ²	Studio	78m ²	2
5-01	53m ²	1	55m ²	1
5-07	80m ²	2	81m ²	2
5-08	84m ²	2	92m ²	2
5-09	39m ²	Studio	78m ²	2
6-01	53m ²	1	55m ²	1
6-07	80m ²	2	81m ²	2

6-08	84m ²	2	92m ²	2
6-09	39m ²	Studio	78m ²	2
7-01	53m ²	1	55m ²	1
7-07	80m ²	2	81m ²	2
7-08	84m ²	2	92m ²	2
7-09	39m ²	Studio	78m ²	2
8-01	53m ²	1	55m ²	1
8-07	80m ²	2	81m ²	2
8-08	84m ²	2	92m ²	2
8-09	39m ²	Studio	78m ²	2
9-01	53m ²	1	55m ²	1
9-07	80m ²	2	81m ²	2
9-08	84m ²	2	92m ²	2
9-09	39m ²	Studio	78m ²	2
10-01	53m ²	1	55m ²	1
10-07	80m ²	2	81m ²	2
10-08	84m ²	2	92m ²	2
10-09	39m ²	Studio	78m ²	2
11-01	53m ²	1	55m ²	1
11-07	80m ²	2	81m ²	2
11-08	84m ²	2	92m ²	2
11-09	39m ²	Studio	78m ²	2

Other amendments

Southern elevation	Increase in the building depth on the south western elevation for levels 2 to 11 by 3.7 metres primarily to accommodate a larger unit size from studio to 2 bedrooms for T-09
Western elevation	Infill of small triangular area between T-01 and T-09 to create one straight building line
Basement Level 2	Ramp moved 300mm to west Minor amendments in layout of car spaces, reduction of 2 spaces from 50 to 48
Basement Level 1	Ramp moved 300mm to west Minor amendments in layout of car spaces & plant room.
Ground Level	Ramp moved 300mm to west. Minor amendments in layout of car spaces. Relocation of fire stair 02 and amendment to exit path. Minor amendments in layout of garbage room. Layout of units G-01 & G-02 amended.
Level 1	Relocation of fire stair 02. Layout of units G-01, G-02, 1-01 & 1-06 amended.
Levels 2-11	Relocation of fire stair 02.

	Layout of units T-01, T-07 & T-09 amended. Unit T-09 converted from studio to 2 bed unit. Extension of South West corner to the South by 3.7m. Extension of South middle part by 1.3m.
Level 12	Relocation of fire stair 02 Layout of common room amended.

The gross floor area (GFA) of the approved development is proposed to increase by 584.33m² with a total proposed GFA of 8,381.96m², thus providing a floor space ratio (FSR) of 4.18:1.

As stated above, this increase is a result of the amendments on the southern and western elevations, and there is no increase in the number of units.

Statutory Considerations

Environmental Planning and Assessment Act, 1979

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

S.4.55(2) – Other modifications

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

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

The modifications result in an increase to the approved gross floor area. Whilst there is no change in the number of storeys or the number of units, there is a minor increase to the depth of the building on the upper floors on the south western edge of the building and a minor reconfiguration of the building line along the western elevation. However, it does not impact on solar access, building separation to the property directly to the south of the subject site nor change the bulk and scale of the building when viewed from the street.

With all of the above considered, it can be concluded that the consent authority is satisfied that the proposed modifications will result in substantially the same development.

- (b) *it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 4.8) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent*

No concurrence was required.

- (c) *it has notified the application in accordance with:*
i. *the regulations, if the regulations so require, or*

- ii. *a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and*

The application was placed on public exhibition from 23 September to 7 October 2019.

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

A total of four submissions were received and further consideration is made later in this report.

S.4.55(3) – Consideration such of the matters referred to in Section 4.15(1) as are of relevance to the development the subject of the application

In the assessment of this modification, the original reasons for granting consent has been considered and is satisfied that the proposal as modified is appropriate in regards to the provisions of this Clause.

S.4.15(1) - Matters for Consideration – General

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

The following Environmental Planning Instruments are relevant to this application:

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 an amended BASIX Certificate (Ref: 474684M_03) committing to environmental sustainable measures. The Certificate is in accordance with the SEPP, subject to imposition of amended conditions where applicable.

State Environmental Planning Policy (Infrastructure) 2007

Given the nature of proposed modifications, the proposal remains consistent with the relevant provisions of the SEPP.

State Environmental Planning Policy No. 55 – Remediation of Land

Consideration of this SEPP was undertaken as part of the original assessment, with the site deemed suitable for the proposal. There is no further information as part of this modification which would alter previous conclusions regarding the suitability of the site. The site remains suitable for the proposal as modified.

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

The proposed modifications is considered to be consistent with the Schedule 1 Design quality principles as assessed under the Development Application (DA).

Apartment Design Guide

An assessment of the proposed modified against the relevant 'Design Criteria' controls of the Apartment Design Guide (ADG) is demonstrated in the table below. It is noted that the approved DA was lodged before the implementation of the ADG in June 2015, and hence was not considered as part of the assessment of the approved development under DA-2013/56.

Section	Design Criteria	Proposed	Complies
Part 3 Siting the Development			
Part 3F: Visual Privacy	For developments up to 8 storeys: <ul style="list-style-type: none"> 9m between habitable/balconies and non-habitable 4.5m between non-habitable rooms 	The modified building footprint still ensures that the building separation is greater than these requirements against the existing development on the neighbouring sites.	Yes
	For developments up to 9 storeys: <ul style="list-style-type: none"> 12m between habitable/balconies and non-habitable 6m between non-habitable rooms 	The modified building footprint still ensures that the building separation is greater than these requirements against the existing development on the neighbouring sites.	Yes
Part 3J: Car Parking	On sites that are within 800 metres of a railway station or light rail stop in the Sydney Metropolitan Area the minimum car parking requirement for residents and visitors is set out in the Guide to Traffic Generating Developments, or the car parking requirement prescribed by the relevant council, whichever is less	A total of 106 spaces are provided for the development, across two levels of basement and also at grade at the rear of the site. Based on the Guide to Traffic Generating Developments, a total of 105 spaces are required which incorporates the unit mix as well as additional spaces for visitors.	Yes

Part 4 Designing the Building			
Part 4A: Solar and Daylight Access	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.	The amended proposal will maintain the previously approved 76% out of 103 units, thus continuing to comply with the minimum number of units requiring sunlight at mid-winter. The POS of all these units receive direct sunlight.	Yes
Part 4B: Natural Ventilation	At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building. Apartments at ten storeys or greater are deemed to be cross ventilated only if any enclosure of the balconies at these levels allows adequate natural ventilation and cannot be fully enclosed.	The amended proposal will maintain the previously approved 60% of the units in the first 9 storeys being naturally ventilated.	Yes
Part 4D: Apartment Size and Layout	Apartment are required to have the following minimum internal areas: - Studio: 35m ² - 1 bedroom: 50m ² - 2 bedrooms: 70m ² - 3 bedrooms: 90m ² The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m ² each.	The proposed unit sizes comply. Studio = min. 39m ² 1 bed = min. 50m ² 2 bed = min. 75m ² 3 bed = min. 95m ²	Yes
	Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms.	All habitable rooms have windows of acceptable size to facilitate acceptable solar access and natural ventilation.	Yes
	Habitable room depths are limited to a maximum of 2.5 x the ceiling height.	The habitable room depths do not exceed a depth of 7.5m.	Yes

	Master bedrooms have a minimum area of 10m ² and other bedrooms 9m ² (excluding wardrobe space).	The size of the master bedrooms for all the units are 12m ² , whilst the secondary bedrooms are 10.5m ² .	Yes
	Bedrooms have a minimum dimension of 3m (excluding wardrobe space).	All bedrooms have a minimum dimension of 3m, excluding wardrobe space.	Yes
	Living rooms or combined living/dining rooms have a minimum width of: - 3.6m for studio and 1 bedroom apartments - 4m for 2 and 3 bedroom apartments	The width of the studio and 1 bedroom units is at or greater than 3.6m, and the width of the 2 bedroom units is at or greater than are 4m.	Yes
	The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts.	The width of each apartment is at least 4m.	Yes
Part 4E: Private Open Space and Balconies	All apartments are required to have primary balconies as follows: - Minimum area of 8m ² and minimum depth of 2m for 1 bedroom units - Minimum area of 10m ² and minimum depth of 2m for 2 bedroom units - Minimum area of 12m ² and minimum depth of 2m for 3 bedroom units The minimum balcony depth to be counted as contributing to the balcony area is 1m.	The proposed balcony sizes comply. Studio = min. 8m ² 1 bed = min. 8m ² 2 bed = min. 11m ² 3 bed = min. 15m ² All balconies have minimum depth of 2m.	Yes
Part 4F: Common Circulation and Spaces	Maximum of 8 units off a circulation core on a single level	Two lifts are provided for each floor with a maximum of 9 units on each level	Yes

Part 4G: Storage	In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided: - 6m ³ for 1 bedroom units - 8m ³ for 2 bedroom units - 10m ³ for 3 bedroom units At least 50% of the required storage is to be located within the apartment.	All units continue to have storage within the units and within the basement. Condition No. 141(c) continues to comply in regards to allocation of storage within the basement. The condition has been amended to ensure that compliance with the minimum storage areas has been met.	Yes
------------------	---	---	-----

Botany Bay Local Environmental Plan 2013 (LEP)

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 B4 Mixed Use zone.
Is the proposed use/works permitted with development consent?	Yes	The proposed development is permissible in the zone.
Does the proposed use/works meet the objectives of the zones?	Yes	The proposed development is consistent with the relevant objectives.
What is the height of the building?	---	The maximum building height allowed on the subject site is 44m.
Does the height of the building exceed the maximum building height?	Yes	The currently approved height is 42.5 metres and this application does not propose to further modify the height and thus continues to comply with the maximum LEP height requirement.
What is the proposed FSR? Does the FSR of the building exceed the maximum FSR?	No – see Note 1	The site has a maximum FSR of 3.2:1 as per Clause 4.4 of the LEP. The gross floor area (GFA) of the approved development is proposed to increase by 584.33m ² with a total proposed GFA of 8,381.96m ² , thus providing a floor space ratio (FSR) of 4.18:1.
Is the site within land marked "Area 3" on the FSR Map?	No	N/A
6.3 – Stormwater management	Yes	The subject application involves no significant physical changes at

Principal Provisions of BBLEP 2013	Compliance Yes/No	Comment
		ground level. Accordingly, the approved stormwater management systems require no further amendments to accommodate the additional units.
6.9 – Development in areas subject to aircraft noise	Yes	The subject site is located primarily within the 20 to 25 ANEF area. Condition 60 of the development consent issued under DA-2014/146 prescribed the implementation of measures as recommended under the aircraft noise assessment prepared for the DA.

Note 1 – Floor Space Ratio

The original development application was considered under the Botany LEP 1995 and was approved with a Gross Floor Area (GFA) of 8,994m² and a Floor Space Ratio (FSR) of 4.24:1.

The development as approved under a previous Section 96 amendments had reduced the GFA of 7,797.63m² which provides an FSR of 3.89:1.

The amendments the subject of this Section 4.55(2) application result in an additional GFA of 584.33m², with a total proposed GFA of 8,381.96m² which provides an FSR of 4.18:1.

Based on the above the proposed increase of GFA results in a total that is still less than what was approved originally on 11 June 2014.

Whilst a Clause 4.6 statement is not required for a modification application, the applicant has provided a justification for the exceedance in the FSR standard with the following:

- The additional floor space is distributed across 11 floors and does not increase bulk and scale of the building to one that has a visual impact on the public domain or when viewed from adjoining properties, noting that the western element of the building is setback a further 8.12m to the street elevation which provides articulation to the street.
- The building height does not change as a result of the increased GFA.
- The proposed increase in GFA does not result in any adverse impact on the public domain.
- The FSR has been varied in the past by both Council and the Sydney Eastern Central Planning Panel to enable FSRs of a similar density to that proposed.
- While the FSR exceeds that prescribed for the land, it remains that it is less than what was originally granted consent for the land and could have been constructed.
- The amended development does not create any adverse impacts on the amenity of the future residents of the development or the amenity of neighbouring developments.

Council agrees with the above points, particularly on the basis that the additional floor area will be at the rear of the property and not seen from the street and the levels of amenity will not be reduced by way of the communal open space remaining the same size and also no further impacts on solar access and visual privacy to neighbouring properties.

Based on the above, it is recommended that the Panel supports the variation to this development standard.

S.4.15(1)(a)(ii) - Provisions of any Draft EPI's

There are no current Draft EPIs applicable to this development.

S.4.15(1)(a)(iii) - Provisions of any Development Control Plan

The following Development Control Plan is relevant to this application:

Botany Bay Development Control Plan 2013

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

Section	Design Criteria	Proposed	Complies
3C.2 – Access and Mobility	C3 - All residential development must comply with AS4299 - 1995 Adaptable Housing for those developments required to provide adaptable housing.	The proposed amendments do not change the number of approved adaptable housing units.	Yes
3G.2 – Stormwater Management	C1 - Development shall not be carried out on or for any lands unless satisfactory arrangements have been made with and approved by Council to carry out stormwater drainage works.	The subject application involves no significant physical changes at ground level. Accordingly, the approved stormwater management systems require no further amendments to accommodate the additional units.	Yes
3J.2 Aircraft Noise Exposure Forecast	C2 Where building site is classified as "conditional", development may take place, subject to Council consent and compliance with AS2021-2000.	The subject site is located primarily within the 20 ANEF and partly within the 25 ANEF area. Condition 60 of the development consent issued under DA-2014/146 prescribed the implementation of measures as recommended under the aircraft noise assessment prepared for the DA.	Yes

Section	Design Criteria	Proposed	Complies
9A.4.5.4 Solar Access and Shadow	Development must demonstrate: (i) Neighbouring developments will obtain at least three hours of direct sunlight to 50% of the primary private open space and 50% of windows to habitable rooms; and (i) 30% of any common open space will obtain at least two hours of direct sunlight between 9am and 3pm on 21 June.	Amended solar access modelling has been provided by the applicant, and demonstrates that these requirements can still be maintained. It is noted that the property directly to the south at 13B Church Avenue currently contains an industrial building and to date has no approved residential development on site	Yes, considered acceptable

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

Clause 92 of the Regulation has been considered and there are no applicable provisions to the development.

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

Solar access to communal open space

The additional building depth in the south west corner will have some impact on the communal open space which is located along the southern part of the subject property, as well as the neighbouring property to the south at 13B Church Avenue, which is subject to a current application for re-development.

The applicant has provided amended winter solstice drawings to demonstrate the additional bulk on this area. Whilst there will be a minor increase in the amount of shadow cast in this area, on balance it is considered that an acceptable portion of the communal open space, in particular the south western corner will receive a minimum of two hours of natural light between 9am and 3pm in mid-winter.

Public domain

Council's Development Engineer as part of the assessment of this modification noted Conditions 14, 15 and 16 relating to the public domain. The requirements contained within these three conditions are considered outdated, and hence it is recommended that Condition 14 is amended to reflect the current policy and Conditions 15 and 16 are deleted, and a new condition 132A be created.

Other modified conditions

The applicant has also recommended the following conditions to be amended as part of this application:

- Condition 1 to be amended to include the landscape plans that were approved under DA-2013/56/03 on 8 May 2018 but were not marked up on the consent at the time of issue;
- Condition 53 to be amended to condition the unit sizes in accordance with the Apartment Design Guide;
- Condition 76 to be amended to condition the revised number of car parking spaces; and
- Condition 79 to be amended to condition the balcony sizes in accordance with the Apartment Design Guide.

The above is considered acceptable and worthy of support from the Panel.

As discussed previously in this report, the proposed amendments will have no significant adverse environmental, social or economic impacts on the locality.

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

Site suitability was assessed as part of the original Development Application, and the modifications to the conditions do not change the deemed acceptable suitability of the approved development on the subject site.

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

In accordance with Part 2 of the Botany Bay Development Control Plan 2013 – Notification and Advertising the development application was notified to surrounding property owners for 14 days. A total of 4 submissions were received and are further addressed below.

Will result in minimal solar access to neighbouring properties

Comment: It is considered that the proposed amendments subject to this application will provide the same amount of solar access to neighbouring properties as has been previously approved.

Will result in further if not complete visibility of the sky

Comment: It is considered that the proposed amendments subject to this application will not cause any further loss of views as has been previously approved as there is no change to the approved height of the building.

Why were these changes not included in the application approved on 9 July 2019

Comment: The previous modification application related to administrative changes to approved conditions to allow for the issuing of a Construction Certificate for demolition and did not involve amended plans.

Do the amendments meet the planning rules?

Comment: As described earlier in the report the proposed amendments comply with the relevant environmental planning instruments, with the exception of the floor space ratio however it is less than what had been lawfully approved with the original development application.

Are the shadow diagrams accurate?

Comment: It is considered that the shadow diagrams as provided as part of this application are accurate.

What is the maximum site coverage with the amendments and what is the permitted maximum site coverage?

Comment: There are no site coverage requirements for this type of development, with a floor space ratio development standard and building setbacks providing scope to the footprint of this type of development.

Impacts on car parking

Comment: As described earlier in this report the required number of parking spaces are provided with a surplus of one space.

The common driveway between 13A and 19-21 Church Avenue has a history of unlawful parking and this will make it worse

Comment: Whilst this is noted, this is not deemed to be a relevant planning matter related to this application and is a compliance matter.

The proposed amendments will require more parking which means more excavation and may result in impacts similar to that of the nearby Mascot Towers development

Comment: No additional parking is required and thus no further excavation will take place other than the approved two levels (as amended).

Mascot needs more parks instead of high rise

Comment: The Mascot Centre Precinct Plan, as endorsed by Council provides details to new parks and changes to existing open space areas which are to be provided to cater for the increase in population that will occur as a result of the new development in this area.

The original development application was considered more appropriate for the area

Comment: It is noted that there was a previous application for 52 residential units, which was approved as a Deferred Commencement on 20 October 2010 however the requirements subject to the deferred commencement were not met and hence the consent lapsed. A fresh application was lodged for what was a larger development in terms of the number of units and was subsequently approved.

What common grounds or parks are being contributed to the area by the development?

Comment: A communal open space has been provided on site for the residents. The developer contributions that are payable by the applicant in part contribute to the acquisition and/or further embellishment of existing parks in the Mascot Station precinct.

The front and side setbacks are not in keeping with the area

Comment: The front and side setbacks are lawfully approved and are not being modified as part of this modification application.

What is the plan in place for the removal of asbestos?

Comment: There are conditions imposed in the development consent that relate to asbestos handling and disposal, and to be undertaken in compliance with the requirements of the WorkCover Authority of New South Wales.

How is the risk of damage to existing buildings being managed by Council?

Comment: There are conditions imposed in the development consent that relate to a dilapidation report of the immediate adjoining properties including photographic survey prepared by a Practising Structural or Geotechnical Engineer

Landscape details for the approved development including mature greenery

Comment: The approved landscape plans refer to a number of larger trees within the front setback and public domain, including 4 Chinese Elms in the footpath area which will have a maturity height of 15 metres.

Is there space on site for dedicated onsite work trucks and deliveries?

Comment: There are conditions imposed in the development consent that relate to a Construction Management Plan. As a general practice, construction vehicles are not permitted to park on the street and must be within the subject property during construction times.

Church Avenue should only be accessed by local traffic and having it closed again at Bourke Road

Comment: There were temporary measures in place for a few months earlier this year for traffic movements along Church Avenue between Bourke Road and O'Riordan Street to be two way, however these have now been restored to its original state with eastbound one way movements only between Bourke Road and O'Riordan Street.

25 Church Avenue should be acquired by Council for public space and amenities

Comment: There are no records for 25 Church Avenue existing as a property.

Will heavy trucks that use Church Avenue impact on the fragile water pipes that lay underneath the linear park to the east of the site

Comment: There are no heavy vehicle restrictions imposed for Church Avenue between Bourke Road and O'Riordan Street and therefore no concerns about any vehicles and their size and weight accessing the subject site.

What are the plans to improve the linear park as the current state is nothing like the original plans and commitment made by Council

Comment: Council is currently undertaking a tender process for the next stage of embellishment works for the linear park with work expected to commence some time in 2020.

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

Granting approval to the modified conditions will have no adverse impact on the public interest.

Section 7.11 Contributions

The proposed modification will change the approved contributions that are payable given a change in the unit mix, and the relevant prescribed conditions will be modified where applicable.

Conclusion

Modification Application No. 2013/10056/D to change unit mix to increase the number of two (2) bedroom units, increase in gross floor area, changes to car parking and Section 7.11 contributions at 13A Church Avenue, Mascot has been assessed in accordance with the relevant requirements of the Environmental Planning and Assessment Act 1979 and is recommended for approval subject to modified conditions of consent.

SCHEDULE OF CONSENT CONDITIONS

Premises: 13A Church Avenue, Mascot

DA No: 2013/10056/D

GENERAL CONDITIONS

- The development is to be carried out 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 (DA13/056/01). **[Amended 26 November 2019 DA-2013/10056/D]**

Drawing N°	Author	Date Received
<i>Architectural Plans</i>		
<i>S96-101</i> <i>S4.55 101 Revision A</i>	<i>Bureau SRH</i>	<i>28 November 2017</i> <i>12 September 2019</i> <i>(DA-2013/10056/D)</i>
<i>S96 101.5</i>	<i>Bureau SRH</i>	<i>28 November 2017</i>
<i>S96-102</i> <i>S4.55 102 Revision A</i>	<i>Bureau SRH</i>	<i>28 November 2017</i> <i>12 September 2019</i> <i>(DA-2013/10056/D)</i>
<i>S96-103</i> <i>S4.55 103 Revision A</i>	<i>Bureau SRH</i>	<i>6 April 2018</i> <i>12 September 2019</i> <i>(DA-2013/10056/D)</i>
<i>S96-104</i> <i>S4.55 104 Revision A</i>	<i>Bureau SRH</i>	<i>28 November 2017</i> <i>12 September 2019</i> <i>(DA-2013/10056/D)</i>
<i>S96-105</i> <i>S4.55 105 Revision A</i>	<i>Bureau SRH</i>	<i>28 November 2017</i> <i>12 September 2019</i>

		<i>(DA-2013/10056/D)</i>
S96-106 S4.55 106 Revision A	Bureau SRH	28 November 2017 12 September 2019 (DA-2013/10056/D)
S96-107 S4.55 107 Revision A	Bureau SRH	6 April 2018 12 September 2019 (DA-2013/10056/D)
S96-108 S4.55 108 Revision A	Bureau SRH	28 November 2017 12 September 2019 (DA-2013/10056/D)
S96-200	Bureau SRH	28 November 2017
S96-201	Bureau SRH	6 April 2018
S96-202	Bureau SRH	6 April 2018
S96-203	Bureau SRH	6 April 2018
S96-300	Bureau SRH	28 November 2017
Architectural Plans 11170-01 Issue A 11170-02 Issue I 11170-03 Issue O 11170-04 Issue F 11170-05 Issue D 11170-06 Issue D 11170-07 Issue A 11170-08 Issue E	Simmons Architects	13 May 2014
Landscape Plans L/01 Issue A L/02 Issue B L/03	ATC	15 November 2013
Survey Plan Ref No. 582AA 01	Mitchell Land Surveyors Pty Ltd	28 March 2013
Stormwater Plans C01_B C02_B C03_B C04_A	Alan L Wright & Associates	15 November 2013
Documents	Author	Date Received

Statement of Environmental Effects	LJB Urban Planning Pty Ltd	27 March received by Council 28 March 2014
<i>Statement of Environmental Effects (DA-2013/10056/C)</i>	<i>LJB Urban Planning Pty Ltd (DA-2013/10056/C)</i>	<i>23 November 2017 (DA-2013/10056/C)</i>
State Environmental Planning Policy No.1 (SEPP 1) Objection	LJB Urban Planning Pty Ltd	November 2013 received by Council 15 November 2013 – amendment received 30 April 2014
Preliminary Geotechnical Report	Grant Alexander & Associates Pty Ltd	30 July 2009 received by Council 28 March 2013
Ground Water Levels	Grant Alexander & Associates Pty Ltd	30 July 2009 received by Council 28 March 2013
<i>Traffic Report Traffic and Parking Impact Assessment (DA-2013/10056/C)</i>	<i>Integral Services group Motion Traffic Engineers (DA-2013/10056/C)</i>	<i>August 2009 received by Council 20 May 2013 November 2017 (DA-2013/10056/C)</i>
Estimated Construction Cost	Newton, Fisher & Associates Pty Ltd	20 January 2014 received by Council 22 January 2014
Soil Contamination Investigation	Pacific Environmental	30 October 2009 received by Council 28 March 2013
Addendum to Soil Contamination Audit Investigation	Pacific Environmental	1 January 2010 received by Council 28 March 2013
Addendum to Soil Contamination Audit Investigation – Groundwater Investigation	Pacific Environmental	13 May 2013 received by Council 28 March 2013
Acid Sulphate Soil Assessment	Pacific Environmental	2 November 2009 received by Council 28 March 2013
Pedestrian Wind Statement	Windtech	22 October 2009 received by Council 28 March 2013
BASIX Certificate No. 474684M 47468M_02 47468M_03 (DA-2013/10056/C) (DA-2013/10056/D)	Department of Planning Gradwell Consulting (DA-2013/10056/C) (DA-2013/10056/D)	28 March 2013 received by Council 28 March 2013 23 November 2017 12 September 2019 (DA-2013/10056/C) (DA-2013/10056/D)
<i>Access Report Access Compliance Report (DA-2013/10056/C)</i>	<i>PSE Consulting</i>	<i>7 May 2013 received by Council 20 May 2013 22 November 2017</i>

		(DA-2013/10056/C)
Design Verification	Simmons Architects Bureau SRH Architecture (DA-2013/10056/C)	21 March received by Council 28 March 2013 20 November 2017 (DA-2013/10056/C)
Aircraft Noise Assessment	Acoustic Services Pty Ltd	14 May 2013 received by Council 20 May 2013
Letter regarding Offer of VPA	Norton Rose Fulbright	20 March 2014

No construction works (including excavation) shall be undertaken prior to the issue of the Construction Certificate. (DA13/056/02) (DA13/056/03)

2. The applicant must prior to the issue of the Construction Certificate pay the following fees:-

- | | |
|--|--------------------------------------|
| a) Landscape Bond | \$10,000.00 |
| b) Landscape Bond Preparation Fee | \$550.00 |
| c) Waste Levy | \$5,000.00 |
| d) Section 94.11 Contribution | \$1,600,000.00 \$1,821,458.36 |
| | \$1,544,472.13 |
| e) Damage Deposit | \$50,000.00 |
| f) Development Control | \$11,200.00 |
| (DA-13/56/03) [Amended 26 November 2019 DA-2013/10056/D] | |

3. The payment of the following monetary contributions in accordance with Council's Section 94 Contributions Plan 2005-2010 to be paid prior to the issue of Construction Certificate:

a) Section 94 Contribution 2005 – 2010

- ii) **Residential component \$1,600,000 \$1,821,458.36 \$1,544,472.13**

Note: The Section 94 Contribution fees are subject to annual review and the current rates are applicable for the financial year in which your consent is granted. If you pay the contribution in a later financial year you will be required to pay the fee applicable at the time. (DA13/56/03) [Amended 26 November 2019 DA-2013/10056/D]

4. This Consent relates to land in Lot 1 in DP 547700 (subject to right of way) and, as such, building works (other than public domain work) must not encroach on to adjoining lands or the adjoining public place.
5. Prior to the release of the Construction Certificate the required Long Service Leave Levy payable under Section 34 of the Building and Construction Industry Long Service Payment Act 1986 must be paid. The Long Service Levy is payable at 0.35% of the total cost of the development, however, this is a State Government fee and can change without notice.
- 6.
- a) All building work must be carried out in accordance with the provisions of the Building Code of Australia; and

- b) All air-conditioning units shall be appropriately treated to ensure that they are concealed from view; and
 - c) It is a condition of this consent that BCS Performance Provision FP1.5 applies to the Class 7 part of the building.
7. The consent given does not imply that works can commence until such time that:-
- a) Detailed plans and specifications of the building have been endorsed with a Construction certificate by:-
 - i) the consent authority; or,
 - ii) an accredited certifier; and,
 - b) The person having the benefit of the development consent:-
 - i) has appointed a principal certifying authority; and,
 - ii) has notified the consent authority and the Council (if the Council is not the consent authority) of the appointment; and,
 - iii) the person having the benefit of the development consent has given at least 2 days' notice to the Council of the person's intention to commence the erection of the building.
- 8.
- a) A detailed Site Contamination Investigation shall be carried out by an appropriately qualified contamination consultant in accordance with the requirements of the relevant NSW EPA Guidelines approved under the Contaminated Land Management Act 1997 including the EPA Guidelines for the site for the proposed development and shall be submitted to Council prior to the commencement of any excavation of the site soils. If investigations find that remediation is required, a Remedial Action Plan (RAP) must be submitted to Council prior to Council making a determination. Council reserves the right to require a site audit of the RAP.
 - b) The detailed Site Contamination Investigation must address whether a Risk Assessment is required to manage the potential contaminated groundwater identified in the Soil Contamination Audit Investigation report dated 30 October 2009 prepared by Pacific Environmental and the Addendum to Soil Contamination Audit Investigation prepared by Pacific Environment dated 13 May 2010. If deemed appropriate a Risk Assessment must be prepared prior to the issue of an Occupation Certificate. Depending on the findings of the detailed site assessment an RAP may be required.
 - c) The RAP will be required to cover the eventuality that the site groundwater, if encountered, be monitored for hydrocarbon contamination.
 - d) The RAP will also require that all site contaminated groundwater be removed during excavation and construction activities and be transported to a NSW APE licensed waste facility or be discharged to sewer via a trade waste agreement with Sydney Water or meets ANECC 2000 Water Quality Guidelines for Fresh and Marine Water for the 95% protection trigger values for Marine Water to discharge to Council's stormwater system.
 - e) A site Audit Statement (SAS) completed by an accredited site auditor under the Contaminated Land Management Act 1997 is requested by Council prior to the issue of the Occupation Certificate.

9. Any new information that comes to light during demolition or construction which has the potential to alter previous conclusions about the contamination and remediation must be notified to Council and the accredited certifier immediately.
10. 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.
11. All materials excavated from the site (fill or natural) shall be classified in accordance with the NSW Department of Environment and Climate Change (DECC) Waste Classification Guidelines (2008) prior to being disposed of to a NSW approved landfill or to a recipient site.
12. 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;
 - c) Protection of the Environment Operations (Waste) Regulation 2005.
13. It is a condition of approval that the Applicant must, at no cost or expense to Council:
 - a) Dedicate the portion of land for the Church Avenue road widening, the dimensions of which will extend for the full width of the site and to a depth, which is determined by measuring from the centreline of Church Avenue, a horizontal distance of 12 metres and as detailed in the Botany Bay Development Control Plan 2013 and determined;
 - b) Upgrade the public domain and installation of new footpath area with new paving installed by the applicant and at the applicant's expense. All improvements shall be in accordance with the approved landscape plan and Council's Landscaping and Engineering specifications and requirements, and shall be constructed and complete prior to the issue of an Occupational Certificate; and
 - c) The existing above ground electricity and telecommunications cables within the road reserve and within the site shall be replaced at the applicant's expense, by underground cable and appropriate street light standards in accordance with the energy provider's guidelines. The applicant shall bear the cost of the new installation. These works and payment shall be completed prior to the issue of the Occupation Certificate;
 - d) Shall ensure that all drainage from the property shall be led to the existing pit(s) in Church Avenue and shall include all associated construction within the roadway area; and
 - e) Land dedication, road construction, kerb and gutter, drainage, street trees and associated works including the footpath construction to be completed prior to the issue of the Occupation Certificate for the development under this consent being DA 13/056.
- ~~14. Submit a further Development Application for the construction of the road widening sections of, and public domain works in, Church Avenue (including the undergrounding of existing above ground electricity and telecommunication cables in~~

~~Church Avenue, adjoining the site together with the provision of appropriate street light standards, drainage (if any) kerb and gutter, footway, bicycle paths, landscaping, traffic signs). Details shall be submitted by the applicant to Council's satisfaction. An application for Frontage Works (Public Domain Frontage Works Construction Application) shall be made to Council's Customer Service Centre prior to issue of the Construction Certificate. All boundary frontage works, egress paths, driveways and fences shall comply with the approval. A fee is payable to Council. If payment is made after the end of the financial year, the amount shall be adjusted in accordance with Council's adopted fees and charges. [Amended 26 November 2019 DA-2013/10056/D]~~

~~15. The application required in (14) is to be accompanied by a detailed streetscape/public domain landscape plan for Church Avenue Road verges. A suitably qualified landscape architect shall prepare the public domain plan with relevant qualifications in landscape architecture. [Amended 26 November 2019 DA-2013/10056/D]~~

~~16. All costs for the construction, submission of a Development Application and documentation, deed preparation and execution and design shall be borne by the applicant. [Amended 26 November 2019 DA-2013/10056/D]~~

CONDITIONS THAT HAVE TO BE SATISFIED PRIOR TO DEMOLITION

17. Prior to the issue of Demolition, at the proposed point of construction site entry, photographic survey showing the existing conditions of Council's Infrastructure shall be submitted to Council and the Principal Certifying Authority. The survey shall detail the physical conditions and identify any existing damages to the 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.
18. A dilapidation Report of the immediate adjoining properties including photographic survey prepared by a Practising Structural or Geotechnical Engineer, must be prepared and submitted as follows:
 - a) a copy of the dilapidation report together with the accompanying photographs shall be given to the above owners, and a copy lodged with the Principal Certifying Authority and the Council prior to the commencement of excavation and any dewatering and demolition works. The report should be agreed to by the adjacent building owners as a fair record of existing conditions prior to commencement of works;
 - b) a second Dilapidation Report, including a photographic survey shall then be submitted at least one month after the completion of demolition/excavation works. A copy of the second dilapidation report, together with the accompanying photographs must be given to the above property owners, and a copy lodged with the Principal Certifying Authority and the Council prior to the issue of an Occupation Certificate;
 - c) any damage to buildings, structures, lawns, trees, sheds, gardens and the like must be fully rectified by the applicant or owner, at no cost to the affected property owner;

- d) it is a condition of consent that should demolition and/or construction works cause rise to public safety and/or workplace safety, work must halt until absolute safety is restored.

Note: Prior to the commencement of the building surveys, the applicant/owner shall advise (in writing) all property owners of buildings to be surveyed of what the survey will entail and of the process for making a claim regarding property damage. A copy of this information shall be submitted to Council.

- 19. During demolition works, the applicant/builder is required to ensure the protection and preservation of all building fencing 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.
- 20. Prior to the commencement of works, the Applicant shall contact "Dial Before you Dig on 1100" to obtain a Service Diagram for and adjacent to the property. The sequence number obtained from "Dial Before You Dig" shall be forwarded to Council for our records.
- 21. The Applicant shall conduct all demolition/construction and related deliveries wholly on site. If any use of Council's road reserve is required then separate applications are to be made to Council's Customer Service Department.
- 22. The use of any part of Council's road reserve or other Council lands must have prior approval of Council. For example, should the development require a building waste container(s) (building skip), then such container shall not be placed or left on a public road or road related area (e.g. footpath, nature strip, shoulder, road reserve, public carparks, service stations etc.) without prior approval of Council's Engineering and Regulatory Services Department.
- 23. The operations of the demolition shall be conducted in such a manner as not to interfere with or materially affect the amenity of the neighbourhood by reason of noise, vibration, odour, fumes, vapour, steam soot, ash, dust, particulate matter, waste water, waste products or other impurities which are a nuisance or injurious to health.
- 24. The approved Waste Management Plan for the site dated 28/03/13 shall be complied with at all times during demolition works.
- 25. 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.
- 26.
 - a) Demolition 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 operation must not exceed the background level by more than 20dB(A).

- b) Demolition period greater than 4 weeks and not exceeding 26 weeks

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

- c) Time Restrictions for Demolition Works:

Monday to Friday	07:00am to 5:00pm
Saturday	07:00am to 01:00pm
No demolition/construction to take place on Sundays or Public Holidays.	

- d) Silencing:

All possible steps should be taken to silence demolition site equipment.

- 27. The demolition and use of the premises shall not give rise to any of the following when measured or assessed at "sensitive" positions within any other property.

- a) 'offensive noise' as defined in the Protection of the Environmental Operations Act 1997;
- b) transmission of vibration to any place of different occupancy above the requirements of AS2670;
- c) a sound pressure LA_{eq} period at any noise sensitive position of any other premises or occupancy greater than the recommended amenity noise criteria detailed in the Department of Environment and Conservation, New South Wales Industrial Noise Policy;
- d) a sound pressure LA_{eq} , 15 min at any noise sensitive position greater than the intrusiveness criteria determined in accordance with the Department of Environment and Conservation, New South Wales (EPA) Industrial Noise Policy and does not contain any tones, low frequency or impulsive factors as defined in the Department of Environment and Conservation, New South Wales (EPA) Industrial Noise Policy table 4.1;
- e) the following additional criteria:
 - i) the operation of all plant and equipment shall not give rise to an equivalent continuous (LA_{eq}) sound pressure level at any point on any residential property greater than 5dB(A) above the existing background LA_{90} level (in the absence of the noise under construction);
 - ii) the operation of all plant and equipment when assessed on any residential property shall not give rise to a sound pressure level that exceeds LA_{eq} 50dB(A) night time;
 - iii) the operation of all plant and equipment when assessed on any neighbouring commercial/industrial premises shall not give rise to a sound pressure level that exceeds LA_{eq} 65dB(A) day time/night time;

- iv) for assessment purposes, the above LA_{eq} sound levels shall be a
28. There shall be no loss of support to the Council's nature strip area as a result of the demolition within the site. Details prepared by the Structural Engineer of how this support will be maintained during the demolition works shall be submitted to Council prior to commencement of works.
29. If the work involved in the demolition of a building:
- a) are likely to cause pedestrians or vehicular traffic in a public place to be obstructed or rendered inconvenient; or
 - b) involves the enclosure of a public place:
 - i) a hoarding or fence must be erected between the work site and the public place;
 - ii) if necessary an awning is to be erected sufficient to prevent any substance from or in connection with the work falling into the public place;
 - iii) any such hoarding, fence or awning is to be removed when the work has been completed.
30. Suitable consent shall be obtained from Council prior to the erection of any hoarding at the property.
- 31.
- a) Toilet facilities are to be provided at or in the vicinity of the work site on which work involves:
 - i) demolition 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:-
 - a) to a public sewer; or
 - b) if connected to a public sewer or an accredited sewerage management facility approved by the Council.
 - c) The provisions of toilet facilities in accordance with this clause must be completed before any work is commenced.
32. A sign must be erected in a prominent position on any work site on which work involved in the erection or demolition of a building is being carried out;
- a) stating that unauthorised entry to the work site is prohibited;
 - b) showing the name of the person in charge of the work site and a telephone number at which that person may be contacted outside working hours;
 - c) the Development Approval number;

- d) the name of the Principal Certifying Authority including an afterhours contact telephone number; and
 - e) any sign is to be removed when the work has been completed.
- 33. All excavations and backfilling shall be executed safely and in accordance with appropriate professional standards; and
 - a) all excavations shall be properly guarded and protected to prevent them from being dangerous to life or property; and
 - b) if the soil conditions require it: -
 - i) retaining walls associated with the erection or demolition of a building or other approved methods of preventing movement of the soil must be provided and: -
 - ii) adequate provision must be made for drainage.
- 34. The following shall be complied with:
 - a) Soil and Water Management Plan shall be prepared in accordance with the requirements of Southern Sydney Regional Organisation of Councils (SSROC)'s booklet '*Do It Right On-Site*'- *Soil and Water Management for the Construction Industry*. A copy of the Soil & Water Management Plan/Waste Management Plan shall be kept on-site at all times and made available to Council Officers on request;
 - b) the Waste Management Plan shall require that all demolished materials from the site being recycled and reused wherever possible rather than being placed in landfill.
- 35. A Lead Management Work Plan shall be prepared in accordance with *AS2601-2001 Demolition of structures* by a person with suitable expertise and experience and submitted to the Principal Certifying Authority for approval prior to the commencement of works. The Lead Management Work Plan shall outline the identification of any hazardous materials, including surfaces coated with lead paint, method of demolition, the precautions to be employed to minimise any dust nuisance and the disposal methods for hazardous materials. The Lead Management Work Plan shall be prepared in accordance with:
 - a) AS 4361:1998 Guide to lead paint management;
 - b) Australian Standards AS 2601:2001 "*Demolition of Structures*";
 - c) Lead Safe a renovator's guide to the dangers of lead, NSW EPA, 1998 (booklet).
- 36. In relation to the demolition of the existing building (or part of a building) on the site:
 - a) The demolisher shall:-
 - i) lodge with Council, and at least forty-eight (48) hours prior to the commencement of work (due to the potential impact on Council's infrastructure):-
 - ii) written notice, indicating the date when demolition of the building is to commence:
 - 1 the person's full name and address;

- 2 details of Public Liability Insurance;
 - 3 compliance with Australian Standard 2601-2001 "Demolition of Structures";
 - 4 have a current public liability/risk insurance to cover claims up to \$10 million, and policy of such shall be submitted to Council for its records;
 - 5 this Consent shall not preclude the demolisher from giving notice to other statutory authorities, such as Sydney Water Corporation, WorkCover, etc.
37. 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.
38. The following shall be complied with:
- a) vibration levels induced by the demolition activities shall not exceed 1mm/sec peak particle velocity (ppv) when measured at the footing of any occupied building;
 - b) vibration levels induced by the demolition activities shall not exceed 3mm/sec peak particle velocity (ppv) when measured at the footing of any unoccupied building;.
 - c) the upper noise level from the demolition operations measured over a period of 10 minutes must not exceed the background noise level by more than 10dB(A).
39. No demolition materials shall be burnt or buried on the site.
40. During demolition the nature strip in front of the premises and for the full width of the site, shall be maintained at all times and kept clean and tidy.
41. All vehicles associated with the demolition works are to be parked wholly within the subject site and not upon Church Avenue or other public roads contiguous with the site.
42. All unloading and loading of vehicles associated with the demolition works is to occur wholly within the subject site and not to Church Avenue or any other public places or street.
43. The demolisher shall:-
- a) cause motor vehicles leaving the site with demolition material and the like to have their loads covered; and
 - b) ensure that the wheels of vehicles leaving the site do not track soil and other waste material on to the public roads adjoining the site.
44. Any proposed demolition works shall be carried out in accordance with the requirements of AS2601-2001 "*Demolition of Structures*". Amongst others, 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.

45. The demolition and disposal of materials incorporating lead such as lead paint and dust shall be conducted in accordance with *AS2601-2001* Demolition of structures. Removal, cleaning and disposal of lead-based paint shall conform with relevant EPA guidelines including the Lead Safe a renovator's guide to dangers of lead, NSW EPA, 1998. Hazardous dust shall not be allowed to escape from the site. Any existing accumulations of dust (e.g. ceiling voids and wall cavities) shall be removed by the use of an industrial vacuum fitted with a high efficiency particulate air (HEPA) filter. All dusty surfaces and dust created from work shall be suppressed by a fine water spray. Water shall not be allowed to enter the street and stormwater systems. Demolition shall not be performed during high winds, which may cause dust to spread beyond the site boundaries.

46.

- a) A Work Plan shall be prepared in accordance with Australian Standard AS 2601-2001, Demolition of Structure by a person with suitable expertise and experience and submitted to Council for approval prior to commencement of any demolition or site works. The Work Plan shall outline the identification of any hazardous materials, including surface coated with lead paint, method of demolition, the precautions to be employed to minimise any dust nuisance and the disposal methods for hazardous materials.
- b) Hazardous or intractable wastes arising from the demolition process shall be removed and disposed of in accordance with the requirements of WorkCover NSW and the Department of Environment and Conservation and with the provisions of;
 - i) New South Wales Occupational Health and Safety Act 2000;
 - ii) The Occupational Health and Safety (Hazardous Substances) Regulation 2001;
 - iii) The Occupational Health and Safety (Asbestos Removal Work) Regulation 2001;
 - iv) Protection of the Environmental Operations Act 1997 (NSW) and
 - v) Department of Environment and Climate Change (DECC) Waste Classification Guidelines 2008.

47. This Consent shall not preclude the demolisher from giving notice to other statutory authorities, such as Sydney Water Corporation, WorkCover etc.

48. In order to ensure safe handling of asbestos materials, the re-use or sale of asbestos building material is prohibited.

49.

- a) Care must be taken to protect Council's roads, including the made footway, kerbs etc., and where plant and vehicles enter the site, the footway shall be protected against damage by deep-sectioned timber members laid crosswise, held together by hoop iron straps and chamfered at their ends;
- b) This construction shall be maintained safe and in a state of good repair and condition throughout the course of construction;
- c) Any damage to Council's road reserve will be repaired and the full cost shall be borne by the Applicant.

CONDITIONS IMPOSED BY AN EXTERNAL AUTHORITY

50. The proposed development is to comply with the General Terms of Approval dated 3 July 2013 issued by Sydney Airport Corporation Limited (SACL). The conditions are as follows:

- a) Height Restrictions:
 - i) the PROPERTY DEVELOPMENT at 13 CHURCH AVENUE, MASCOT lies within an area defined in schedules of the Civil Aviation (Buildings Control) Regulations which limit the height of structures to 50 feet (15.24 metres) above existing ground height (AEGH) without prior approval of the Civil Aviation Safety Authority;
 - ii) in this instance, Peter Bleasdale, an authorised person of the Civil Aviation Safety Authority (CASA), under instrument Number CASA 229/11 in the capacity as Airfield Design Manager, have no objection to the proposed development to a maximum height of 46.94 metres above Australian Height Datum (AHD);
 - iii) the approved height is inclusive of all its over-runs, vents chimneys, aerials, TV antennae, construction cranes etc.;
 - iv) should you wish to exceed 46.94 metres above Australian Height Datum (AHD), a new application must be submitted;
 - v) should the height of any temporary structure and/or equipment be greater than 50 feet (15.24 metres) above existing ground height (AEGH), a new approval must be sought in accordance with the Civil Aviation (Buildings Control) Regulations Statutory Rules 1988 No. 161;
 - vi) 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;
 - vii) Sydney Airport advises that approval to operate construction equipment (i.e. cranes) should be obtained prior to any commitment to construct;
 - viii) Information required by SACL prior to any approval is to include:
 - 1 the location of any temporary structure or equipment, i.e. construction cranes, planned to be used during construction relative to Mapping Grid of Australia 1994 (MGA94);
 - 2 the swing circle of any temporary structure/equipment used during construction;

- 3 the maximum height, relative to Australian Height Datum (AHD), of any temporary structure or equipment i.e. construction cranes, intended to be used in the erection of the proposed structure/activity;
- 4 the period of the proposed operation (i.e. construction cranes) and desired operating hours for any temporary structures.
- ix) any application for approval containing the above information, should be submitted to this Corporation at least 35 days prior to commencement of works in accordance with the Airports (Protection of Airspace) Regulations Statutory Rules 1996 No.293, which now apply to this Airport;
- x) for further information on Height Restrictions please call Peter Bleasdale on (02) 9667 9246;
- xi) under Section 186 of the Airports Act 1996, it is an offence not to give information to the Airport operator that is relevant to a proposed "controlled activity" and is punishable by a fine of up to 50 penalty units;
- xii) the height of the prescribed airspace at the site is 51 metres above Australian Height Datum (AHD). In accordance with Regulation 9 of the Airport (Protection of Airspace) Regulations Statutory Rules 1996 No. 293, "a thing to be used in erecting the building, structure or thing would, during the erection of the building, structure or thing, intrude into PANS OPS airspace for the Airport, cannot be approved."
- b) Bird and Obstacle Hazard Management:
 - i) the area in which the proposed development is located is in the vicinity of Sydney (KS) Airport;
 - ii) to minimise the potential for bird habitation and roosting, the Proponent must ensure that non-bird attracting plant species are used in any landscaping design;
 - iii) any landscaping design must minimise the attractiveness for foraging birds, i.e. site is kept clean regularly, refuse bins are covered, and detention ponds are netted;
 - iv) all trees to be planted shall not be capable of intruding into the Obstacle Limitation Surface when mature.
- c) Planning for Aircraft Noise and Public Safety Zones:
 - i) 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 planning tool for Sydney Airport was endorsed by Airservices Australia on 13 March 2009 (Sydney Airport 2029 ANEF);
 - ii) 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.

51. The following conditions are imposed by Sydney Water:

- a) the approved Building Plans must be submitted to a Sydney Water Quick Check agent 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. Plans will be appropriately stamped.
- b) Sydney Water will assess the impact of the development when the proponent applies for a Section 73 Certificate. This assessment will enable Sydney Water to specify any works required as a result of the development and to assess if amplification and/or changes to the system are applicable. The proponent must fund any adjustments needed to Sydney Water Infrastructure as a result of any development;
 - c) the proponent should engage a Water Servicing Coordinator to get a Section 73 Certificate and manage the servicing aspects of the development. The Water Servicing Coordinator must ensure submitted infrastructure designs are sized and configured according to the Water Supply Code of Australia (Sydney Water Edition WSA 03-2002) and the Sewerage Code of Australia (Sydney Water Edition WSA 02-2002).
52. The proposed development is to comply with the recommendations provided by NSW Police Botany Bay Local Area Command, dated 25 June 2013. The conditions are outlined as follows, and relevant details shall be included in the plans and documentation submitted with the Construction Certificate:
- a) Passive Surveillance:
 - i) as the proposed development may be exposed to Break Enter and Steals, Stealing, Steal from persons, Malicious Damage and Steal from Motor Vehicle offences, a closed circuit television system (CCTV) which complies with Australian Standard – Closed Circuit Television System (CCTV) AS: 4806:2006 needs to be implemented to receive, hold or process data for the identification of people involved in anti-social or criminal behaviour. The system is obliged to conform to Federal, State or Territory Privacy and Surveillance Legislation;
 - ii) this system should consist of surveillance cameras strategically located in and around the development to provide maximum surveillance coverage of the area, particularly in areas which are difficult to supervise:
 - 1. cameras should be strategically mounted outside the development buildings and within the car parking areas to monitor activity within these areas;
 - 2. one or more cameras should be positioned at the entry and exit points to monitor these areas (underground car park, foyer entrance).
 - iii) digital technology should be used to receive, store and process data. Recording equipment should be secured away from public access areas to restrict tampering with the equipment and data. This equipment needs to be checked and maintained on a regular basis;
 - iv) it is crucial even in the development stage that these cameras are installed as soon as power is available to the site;
 - v) any proposed landscaping and vegetation should adhere to the following principles:
 - 1. shrubs, bushes, plants should remain under 900mm in height;
 - 2. branches of larger trees should start at a height of two (2) metres and higher. This will assist with natural surveillance and reduce hiding spots and dark areas for potential offenders.

b) Lighting:

- i) 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 Standards AS: 1158;
- ii) 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);
- iii) 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;
- iv) 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;
- v) 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.

c) Territorial Reinforcement:

- i) 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 \$5,500) for an individual and 100 penalty units (currently \$11,000) for the corporation. The numbers should be in contrasting colours to the building materials and be larger than 120mm;
- ii) warning signs should be strategically posted around the buildings to warn intruders of what security treatments have been implemented to reduce opportunities for crime:
 - 1. warning, trespassers will be prosecuted;
 - 2. warning, these premises are under electronic surveillance.
- iii) directional signage should be strategically posted at decision making points (e.g. 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;
- iv) 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;
- v) signage needs to be provided at fire exits to assist occupants to identify exits in emergency situations;
- vi) a graffiti management plan needs to be incorporated into the maintenance plan for the development. Research has shown that the most effective strategy for reducing graffiti attacks is the quick removal of such material generally within 24 hours;

- vii) graffiti resistant materials and anti-graffiti coating should be utilised throughout the development.
- d) Space Management:
 - i) 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 development of procedures for the controlled evacuation of the building, structures and workplaces during emergencies. Further information can be obtained from Emergency NSW <http://www.emergency.nsw.gov.au> or Emergency Management Australia <http://www.ema.gov.au>;
 - ii) 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.
- e) Access Control:
 - i) the door and door frames to these premises should be of solid construction;
 - ii) 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 (e.g. Locking bars, electronic locking devices and detection devices) Dead locks are required for residential units;
 - iii) 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; 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 hard downward action or pushing action on a single device which is located between 900mm and 1.2m from the floor.
 - iv) any sliding doors MUST be fitted with lockable bolts in the bottom and top of the door frame;
 - v) 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 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);

- vi) 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 to minimise chance of tampering;
- vii) the main entry/egress doors to the development should have an electronically operated lock which require security swipe pass for entry. The lifts operating in the building should have the same security swipe pass technology. When an occupant buzzes in a visitor the lift should recognise the floor the occupant resides and only allow the visitor access to that floor in the lift.

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

53. Plans submitted with the Construction Certificate shall demonstrate compliance with the following:
 - a) ***All residential unit size excluding balconies as minimum must be as following:***
 - i) ***Studio = ~~60m²~~ 35m²***
 - ii) ***1 bedroom = ~~75m²~~ 50m²***
 - iii) ***2 bedroom = ~~100m²~~ 70m²***
 - iv) ***3 bedroom = 90m² [Amended 26 November 2019 DA-2013/10056/D]***
 - b) Adaptable units must be provided in accordance with Section 4C.6.1 of Botany Bay Development Control Plan 2013. Such units shall be designed in accordance with AS 4299 and BBDCP 2013 (Section 4C.6.1). Details to be submitted with the Construction Certificate.
54. It is a condition of this consent that the person acting on this consent must obtain a report from a Geotechnical Engineer that the erection of the building will not:-
 - a) have an impact on the stability of the building stock of the locality, nor,
 - b) have an adverse impact on the water table, again in relation to the locality and any undue rise and or fall other than by natural circumstances.
55. The Applicant is to enter into an agreement with Council, to be prepared by Council's solicitors, at the applicant's expense, providing for the lodgement of a bond in the sum of \$10,000.00, for a period of five (5) years after practical completion of landscape works, to ensure establishment and maintenance of the landscaping in accordance with the

plan. The lodgement of the bond shall not preclude the Council from initiating legal proceedings, should the landscaping not be established and maintained in accordance with this Consent, and is not intended to limit the period of compliance with the landscaping requirements to five (5) years.

- a) The bond may be applied by Council to the establishment and maintenance of the landscaping in accordance with the plan and Council should be entitled to recover any monies expended in excess of the bond in establishing, re-establishing, or maintaining the landscape in accordance with the plan.
- b) The applicant is to note that the bond specified under this condition must be remitted to Council, either in the form of monies held in trust, or as a certified banker's guarantee, together with a sum of \$550 (cash or cheque) for disbursements associated with the preparation of the agreement, prior to the issue of an Occupation Certificate by the Principal Certifying Authority.

56. The proposed development is to comply with the recommendations provided by the Roads and Maritime Services (RMS) dated 9 July 2013. The conditions are outlined as follows, and relevant details shall be included in the plans and documentation submitted with the Construction Certificate:

- a) the swept path of the longest vehicle (including garbage trucks) entering and exiting the subject site, as well as manoeuvrability through the site, shall be in accordance with AUSTROADS. In this regard, a plan shall be submitted to Council for approval, which shows that the proposed development complies with this requirement;
- b) the number of car and bicycle parking spaces should be provided to Council's satisfaction;
- c) the layout of the proposed car parking areas associated with the subject development (including driveways, grades, turn paths, sight distance requirements, aisle widths, aisle lengths and parking bay dimensions) should be in accordance with AS 2890.1-20004, AS2890.2-2002 for heavy vehicles usage and AS2890.6:2009 for the disabled;
- d) a Construction Traffic Management Plan detailing construction vehicle routes, number of trucks, hours of operation, access arrangements and traffic control should be submitted to Council prior to the issue of a Construction Certificate;
- e) all vehicles are to enter and leave the site in forward direction.

57.

- a) Prior to the issue of the Construction certificate, the applicant must obtain and complete to the satisfaction of the NSW Office of Water, an Application for a Water Licence.
- b) Proof of a Part 3A Permit having been issued for the proposed works must be submitted to the Principal Certifying Authority and to Council prior to the issue of the Construction Certificate and prior to any works commencing on the site.
- c) The licence is to be submitted to Council for Council's records.
- d) The basement must be designed and built to achieve when complete a 'fully tanked' structure.

Note: The reason for this is that no works that can impact upon groundwater can commence before a licence is obtained (See Condition No. 67 for the General Terms and Approval issued by the NSW Office of Water on 19 June 2013).

58. A Soil and Water Management Plan (SWMP) shall be prepared in accordance with the Landcom Managing Urban Stormwater – Soils and Construction 4th Edition (2004) and submitted to the Principal Certifying Authority prior to the release of the Construction certificate. This plan shall be implemented prior to the commencement of any site works or activities. All controls in the plan shall be maintained at all times during the construction works. A copy of the SWMP shall be kept on-site at all times and made available to Council Officers on request.
59. Prior to the issue of the Construction Certificate The landscape area shown on the plan A Total Concept (ATC) Issue B dated February 2010 shall be the subject of detailed landscape construction documentation (plans and specifications) that are to be submitted to and approved by the City of Botany Bay Council's Landscape Architect. The landscape documentation is to be prepared by a suitably qualified Landscape Architect and shall include, but not be limited to:
- a) A planting plan at 1:100 scale showing all plant locations, groupings and centres and a plant schedule listing all plants by botanical name with plant numbers, spacings, pot sizes and staking.
 - b) The scheme shall be in accordance with DCP 2013 and all other Council specifications for public domain inclusions.
 - c) Specifications detailing soil and mulch finishes, root barriers, irrigation, edging and other landscape handworks such as retaining walls. Planter box external finishes. Areas of paving, schedule of materials, edge treatments and sectional construction details. All fencing, privacy screening and pergolas – elevations and materials. Details of other landscape elements such as furniture (required), pedestrian lighting, water features and so on. Provide sectional construction details and elevations.
 - d) Planter box on slab sectional construction details. All planter boxes on podium to be 900-1m soil depth to support healthy, well developed canopy trees. The planter box on slab details must indicate the waterproofing treatment extent.
 - e) A detail is to be provided for turf on slab showing soils depths and drainage.
 - f) Provide irrigation details (irrigation required for common area and setbacks).
 - g) Canopy trees shall be used extensively throughout the site – private courtyards, through the centre of the site and in setbacks. Trees must be of an appropriate scale to complement and scale with the building form (setbacks, communal open space) and to provide amenity for users of the space. 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. All trees on the site to be min. 100 litre, 200 litre preferred. All street trees to be 400 litre.
 - h) The Blueberry Ash across the rear boundary are to be replaced with Native Quandong, pot sizes 100L. The Metrosideros Tahiti should be replaced with a more shade tolerant hedge plant.

- i) All public domain work shall be in accordance with Council specification – tree planting, landscaping and turfing, footpath location and dimensions etc.
 - j) An alternative configuration for the stormwater absorption trench within the front setback is required in liaison with the Hydraulics Engineer and Applicant. The trench shall be relocated or re-configured to allow substantial landscaping including trees and shrubs within the setback. Note that a second row of street trees is required on the southern side of the public footpath between the footpath and property boundary in accordance with Council specification (*Michelia dolstopa*).
 - k) Show the location of electrical kiosks/substations and fire booster assemblies and their locational impact on landscape areas.
- 60. The building shall be designed in accordance with AS2021- 2000: Acoustics, Aircraft Noise Intrusion, Building Siting and Construction. The report is to include any required noise attenuation to the structure of the building to meet the above standard and acoustically treated mechanical ventilation, if necessary, to comply with the above standard. If the applicant chooses to install air conditioning to meet the mechanical ventilation requirements, the installation must be designed to meet the additional requirements, applying to air conditioners on residential properties contained in the Protection of the Environment Operations (Noise Control) Regulation 2000. (Information attached in the Advisory section). Details shall be submitted to Principal Certifying Authority prior to the issue of the Construction Certificate.
- 61. Prior to the issue of the Construction Certificate the following required section(s) are to be submitted and approved by Council. All driveways/access ramps/vehicular crossings shall conform to the current version of Australian Standards AS 2890.1 and Council requirements. With regard to Industrial and Multi Unit Housing, 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. With regard to other housing, only a centre line longitudinal section is required. These long sections shall extend from the horizontal parking area within the property to the centre line of the roadway. The section shall also show the clear height from the ramp to any overhead structure.
- 62. A Construction Management Program shall be submitted to, and approved in writing by the Council prior to the issue of a Construction Certificate. The program shall detail:
 - a) the proposed method of access to and egress from the site for construction vehicles , including access routes through the Council area and the location and type of temporary vehicular crossing for the purpose of minimising traffic congestion and noise in the area.
 - b) the proposed phases of construction works on the site and the expected duration of each construction phase;
 - c) The proposed order in which works on the site will be undertaken, and the method statements on how various stages of construction will be undertaken;
 - d) the proposed manner in which adjoining property owners will be kept advised of the timeframes for completion of each phase of development/construction process;
 - e) the proposed method of loading and unloading excavation and construction machinery, excavation and building materials, formwork and the erection of any

- part of the structure within the site. Wherever possible mobile cranes should be located wholly within the site;
- f) the proposed areas within the site to be used for the storage of excavated materials, construction materials and waste containers during the construction period;
 - g) The proposed method/device to remove loose material from all vehicles and/or machinery before entering the road reserve, any run-off from the washing down of vehicles shall be directed to the sediment control system within the site;
 - h) the proposed method of support to any excavation adjacent to adjoining properties, or the road reserve. The proposed method of support is to be designed and certified by an Accredited Certifier (Structural Engineering), or equivalent;
 - i) proposed protection for Council and adjoining properties;
 - j) the location and operation of any on site crane. Please note that a crane may require prior approval from Sydney Airports Corporation; and
 - k) the location of any Construction Zone (if required) approved by Council's Traffic Committee, including a copy of that approval.
63. Prior to the issue of a Construction Certificate, the Applicant is to submit payment for a Tree Maintenance Bond of \$7,500.00. The duration of the Bond shall be limited to a period of 12 months after planting of the street trees. At the completion of the 12 months period the Bond shall be refunded pending a satisfactory inspection by Council. If the tree is found to be dead or dying then Council will forfeit all or part of the bond to replace or maintain the tree, unless the Applicant undertakes the work.
64. Prior to the issue of any Construction Certificate, the applicant shall contact "Dial Before You Dig" to obtain a utility service diagram for, and adjacent to the property. The sequence number obtained from "Dial Before You Dig" shall be forwarded to the 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.
65. Prior to the issue of any Construction Certificate, detail design and construction plans in relation to stormwater management and disposal system for the development shall be submitted to the Principal Certifying Authority for approval. The detail drawings and specifications shall be prepared by a suitably qualified and experienced civil engineer and be in accordance with Council's 'Development Control Plan – "Stormwater Management Technical Guidelines"', AS/NSZ 3500 – Plumbing and Drainage Code and the BCA. All drawing shall correspond with the approved architectural plans. The plans shall incorporate:
- a) the provisions made in the stormwater drainage drawings C1-C4, by Alan. L. Wright & Associates, dated Oct 2013;
 - b) the provision for the connection of the overflow pipe from Storage Tank 1 to either Pit C or Pit D of the Absorption Tank and the deletion of Pit A;
 - c) the provision for new kerb inlet pit(s) with a minimum 1.8 metre lintel, in accordance with City of Botany Bay Standard Drawing E-09 to facilitate connection of stormwater outlet to Council's stormwater drainage system; and

- d) ***the provisions meet or exceed the BASIX Certificate No. 474684M issued 28 March 2013 474684M_02 issued 23 November 2017 474684M_03 issued 11 September 2019.***

Note: All underground parking structures are to be "tanked" so that there is no intrusion of waters into the structure. (DA-2013/10056/C) [Amended 26 November 2019 DA-2013/10056/D]

66. The access pits(s) to On Site Detention Tank (OSD) shall have a solid lid to avoid a potential trip hazard as a result of perforated grates.
67. A detailed Traffic Management Plan for the pedestrian and traffic management of the site during construction shall be prepared and submitted to the relevant road authority (Council or Roads Traffic Authority) 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; and
 - c) if required, implement a public information campaign to inform any road changes well in advance of each change. The campaign may be required to be approved by the Traffic Committee.
- Note:** Any temporary road closure shall be confined to weekends and off-peak hour times and is subject to Council's Traffic Engineer's approval. Prior to implementation of any road closure during construction, Council shall be advised of these changes and Traffic Control Plans shall be submitted to Council for approval. This Plan shall include times and dates of changes, measures, signage, road markings and any temporary traffic control measures.
68. 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 adjacent Council drainage pipeline. The camera and its operation shall comply with the following:
- a) the internal surface of the drainage pipe shall be viewed and recorded in a clear and concise manner;
 - b) the CCTV camera shall be capable to pan, tilt and turning at right angles to the pipe axis over an entire vertical circle to view the conduit joints;
 - c) distance from the manholes shall be accurately measured;
 - d) the inspection survey shall be conducted from manhole to manhole; and
 - e) the written report, together with a copy of the digital video footage of the pipeline shall be submitted to Council prior the commencement of any works. A written acknowledgement shall be obtained from Council (attesting to this condition being appropriately satisfied) and submitted to the Principal Certifying Authority.
69. 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 level of services;
 - b) negotiate with the utility authorities (e.g. Ausgrid, Sydney Water, Telecommunications Carriers and Council in connection with:
 - i) the additional load on the system; and
 - ii) the relocation and/or adjustment of the services affected by the construction. Any costs in 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.
70. All services (Utility, Council etc.) within the road reserve (including footpaths) shall be relocated/adjusted to match the proposed/existing levels.
71. A suitable intercom system linked to all units within the development shall be provided at all vehicle accesses to the development to ensure that visitors to the site can gain access to the visitor parking located within the basement car park. The details of the intercom system shall be submitted prior to the issue of a Construction Certificate and its location and specifications endorsed on the construction drawings.
- 72.
- a) Suitable street lighting to a high decorative standard shall be provided to the street boundaries of the site so as to provide safety and illumination for residents of the development;
 - b) The street Lighting (electricity cables) shall be undergrounded at the applicant's expense and shall meet relevant electricity authority requirements and plans and specifications of such are to be approved by Council prior to the issue of a Construction Certificate;
 - c) The Council footpath in Church Avenue if to be upgraded with new paving installed by the applicant at the applicant's expense. All improvements shall be in accordance with Council Specifications and requirements for the Church Avenue Public Domain, and shall be constructed and completed prior to the issue of an Occupational Certificate. The footpath shall be maintained in a clean and tidy state at all times by the occupiers.
- 73.
- a) Planter boxes constructed over a concrete slab shall be built so as to ensure soil depth strictly in accordance with Council's Landscape DCP. The base of the planter must be screeded to ensure drainage to a piped internal drainage outlet of minimum diameter 90mm, with no low points elsewhere in the planter. There are to be no external weep holes. Turfed areas require a min. 5% cross fall.
 - b) Planters are to be fully waterproofed and sealed internally with a proprietary sealing agent 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.

- c) Drainage sell must be supplied to the base and sides of the planter to minimize damage to the waterproof seal during backfilling. Apply a proprietary brand filter fabric and backfill with an imported lightweight soil suitable for planter boxes and which complies with AS 4419 and AS 3743. Install drip irrigation. Pop-ups may be provided to lawn areas provided they use recycled water.
- d) Planter boxes shall be finished externally with a suitable paint or render to coordinate with the colour schemes of the building.

74.

- a) Any electrical kiosk required by the energy provider shall be located in an unobtrusive and discreet location away from vehicle and pedestrian entrances to the property, preferably towards a side boundary, and/or setback into the site off the street boundary, and shall be softened with built screens and/or landscaping so as not to reduce streetscape and visual amenity.
- b) The location of and screening treatment surrounding the kiosk shall be approved by Council's Landscape Architect prior to installation.
- c) Fire booster valves shall be housed within the external face of the building structure and/or screened from view from the public domain area. Booster shall be located in an unobtrusive and discreet location away from vehicle and pedestrian entrances to the property.

75. 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
 - b) 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.
 - c)

76. The following car a parking spaces shall be made available to residents and visitors;

- a) ***a total of ~~one hundred and thirty four (138)~~ one hundred and six (106) car parking spaces on site***; and
- b) the following conditions apply to the car parking:
 - i) the on-site car parking spaces, exclusive of service and visitor spaces, are not to be used by those other than the occupants, tenant or resident of the subject building. Any occupant, tenant, lessee or registered proprietor of

- the development site or part thereof shall not enter into an agreement to lease, licence or transfer ownership of any car parking spaces to those other than an occupant, tenant, lessee or resident of a unit in the building.
- ii) prior to Construction Certificate under the Environmental Planning and Assessment Act 1979 a documentary Restrictive Covenant, is to be registered on the Title of the development site pursuant to Section 88E of the Conveyance Act 1919, to the effect of (a) above. The Covenant is to be created appurtenant to Council, at no cost to and to the satisfaction of Council.
 - iii) any future strata subdivision of the site is to include a Restriction on User pursuant to Section 39 of the Strata Titles (Freehold Development) Act 1973, as amended, burdening all utility car parking allotments in the Strata Plan and/or an appropriate Restrictive Covenant pursuant to Section 88B of the Conveyancing Act 1919 burdening all car parking pat-lots in the strata scheme. **[Amended 26 November 2019 DA-2013/10056/D]**
77. ***Pursuant to clause 97A(3) of the Environmental Planning & Assessment Regulation 2000, it is a condition of this development consent that all the commitments listed in the relevant BASIX Certificate No. 474684M dated 28 March 2014 received by Council 28 March 2014 474684M_02 dated 23 November 2017 474684M_03 dated 11 September 2019 for the development are fulfilled.***
- 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. (DA-2013/10056/C) **[Amended 26 November 2019 DA-2013/10056/D]**
78. Prior to the issue of the Construction Certificate design verification is required to be submitted from a qualified Architect to confirm the development is in accordance with the approved plans and details and continues to satisfy the design quality principles in State Environmental Planning Policy No. 65 Design Quality of Residential Flat Development.
79. ***The Architect is to conform in writing that the apartment sizes in metres squared (sq.m) and the balconies comply with Council's Building Design and Construction Development Control Plan the Apartment Design Guide. [Amended 26 November 2019 DA-2013/10056/D]***
80. As this development involves an excavation below the watertable these works are subject to a Council Drainage Charge for discharge of site dewatering to storm water and as such an application is required to be submitted to Council.

Note: Council will not give permission for contaminated groundwater to be discharged into its stormwater system. To discharge groundwater into the Council's stormwater drain the applicant must supply the following:

- a) an Application is to be made to Council for permission to discharge site dewatering to Council's stormwater drainage system;
- b) a copy of a current bore licence from Department of Natural Resources for dewatering;
- c) a report from a suitably qualified person is to be provided together with results from NATA approved laboratory confirming that the quality of water meets the 95% freshwater trigger values applying to typically slightly-moderately disturbed systems as detailed in the Australian and New Zealand Environment and Conservation Council and Agriculture and Resource Management Council of Australia and New Zealand, Paper No 4, October 2000;
- d) any proposed treatment to be applied to the water prior to being discharged.

81. It is a condition of approval that the Applicant must, at no cost or expense to Council:

- a) dedicate the portion of land for Church Avenue road widening, the dimensions of which will extend for the full width of the site including the right of way and to a depth, which is determined by measuring from the centreline of Church Avenue, a horizontal distance of 12 metres and as detailed in the Mascot Station Precinct Development Control Plan;
- b) upgrade the public domain and installation of new footpath area with new paving installed by the applicant and at the applicant's expense. All improvements shall be in accordance with the approved landscape plan and Council's Landscaping and Engineering specifications and requirements, and shall be constructed and complete prior to the issue of an Occupational Certificate; and
- c) shall ensure that all drainage from the property shall be led to the existing pit(s) in Church Avenue and shall include all associated construction within the roadway area; and
- d) land dedication, road construction, kerb and gutter, drainage, street trees and associated works including the footpath construction to be completed prior to the issue of the Occupation certificate for the development under this consent being DA 13/056.

82. The following conditions from the General Terms of Approval dated 19 June 2013 by the NSW Office of Water and must be complied with:

- a) General:
 - i) an authorisation shall be obtained for the take of groundwater as part of the activity, groundwater shall not be pumped or extracted for any purpose other than temporary construction dewatering at the site identified in the development application. The authorisation shall be subject to a currency period of 12 months from the date of issue and will be limited to the volume of groundwater take identified;
 - ii) the design and construction of the structure shall preclude the need for permanent dewatering by waterproofing those areas that may be impacted by any water table (i.e. a fully tanked structure) with adequate provisions for unforeseen fluctuations of water table levels to prevent potential future inundation;

- iii) construction methods and materials used in and for construction shall not cause pollution of the groundwater.
- b) Prior to excavation:
 - i) measurements of groundwater levels beneath the site from a minimum of three monitoring bores shall be taken and a report provided to the NSW Office of Water. A schedule and indicative plans of the proposed ongoing water level monitoring from the date of consent until at least two months after the cessation of pumping shall be included in the report;
 - ii) a reasonable estimate of the total volume of groundwater to be extracted shall be calculated and a report provided to the NSW Office of Water. Details of the calculation method shall be included in the report;
 - iii) a copy of a valid development consent for the project shall be provided to the NSW Office of Water;
 - iv) groundwater quality testing shall be conducted and a report supplied to the NSW Office of Water. Samples must be taken prior to the commencement of pumping, and a schedule of the ongoing testing throughout the dewatering activity shall be included in the report. Collection and testing interpretation of results must be done by suitably qualified persons and NATA certified laboratory identifying the presence of any contaminants and comparison of the data against accepted water quality objectives or criteria;
 - v) the method of disposal of pumped water shall be nominated (i.e. street drainage to the stormwater system or discharge to sewer) and a copy of the written permission from the relevant controlling authority shall be provided to the NSW Office of Water. The disposal of any contaminated pumped groundwater (tailwater) must comply with the provisions of the *Protection of the Environment Operations Act 1997* and any requirements of the relevant controlling authority;
 - i) contaminated groundwater shall not be reinjected into any aquifer. The reinjection system design and treatment methods to remove contaminants shall be nominated and a report provided to the NSW Office of Water. The quality of any pumped water (tailwater) that is to be reinjected must be compatible with, or improve the intrinsic or ambient groundwater in the vicinity of the reinjection site.
- c) During excavation:
 - i) piping or other structures used in the management of pumped groundwater (tailwater) shall not create a flooding hazard. Control of pumped groundwater (tailwater) is to be maintained at all times during dewatering to prevent unregulated off-site discharge;
 - ii) measurement and monitoring arrangements to the satisfaction of the NSW Office of Water are to be implemented. Monthly records of the volumes of all groundwater pumped and the quality of any water discharged are to be kept and a report provided to the NSW Office of Water after dewatering has ceased. Daily records of groundwater levels are to be kept and a report provided to the NSW Office of Water after dewatering has ceased;
 - iii) pumped groundwater (tailwater) shall not be allowed to discharge off-site (e.g. adjoining roads, stormwater system, sewer system, etc.) without the

- controlling authorities approval and/or owners consent. The pH of discharge water shall be managed to be between 6.5 and 8.5. The requirements of any other approval for the discharge of pumped groundwater (tailwater) shall be complied with;
- iv) dewatering shall be undertaken in accordance with groundwater extraction works that are abandoned are to be recorded and a report provided to the NSW Office of Water after dewatering has ceased. The method of abandonment is to be identified in the documentation;
 - v) access to groundwater management works used in the activity is to be provided to permit inspection when required by the NSW Office of Water under appropriate safety precautions.
- d) Following excavation:
- i) all monitoring records must be provided to the NSW Office of Water after the required monitoring period has ended together with the detailed interpreted hydrogeological report identifying all actual resource and third party impacts.
83. Plans and specifications for the storage room for waste and recyclable materials shall be submitted to the Principal Certifying Authority with the application for the Construction Certificate. Storage of Waste and recycling shall meet the following requirements:
- a) the rooms for the storage of garbage and recyclable materials shall be fully enclosed and adequately ventilated;
 - b) constructed with a concrete floor, concrete or cement rendered walls coved to the floor;
 - c) the floor shall be graded to an approved sewer connection incorporating a sump and galvanised grate cover or basket in accordance with the requirements of Sydney Water Corporation;
 - d) washing facilities shall be provided within close proximity to the garbage and recycling storage area.
84. The *principal contractor* must install and maintain water pollution, erosion and sedimentation controls in accordance with:
- a) the *Soil and Water Management Plan* if required under this consent;
 - b) "Do it Right On Site, Soil and Water Management for the Construction Industry" published by Southern Sydney Regional Organisation of Councils, 2001; and
 - c) "Managing Urban Stormwater – Soils and Construction" published by the NSW Department of Housing 4th Edition" ('The Blue Book');
 - d) where there is any conflict The Blue Book takes precedence;
 - i) Note: The International Erosion Control Association – Australasia (<http://www.austieca.com.au/>) lists consultant experts who can assist in ensuring compliance with this condition. Where a Soil and Water Management Plan is required for larger projects it is recommended that this be produced by a member of the International Erosion Control Association – Australasia.
 - ii) Note: The "Do it Right On Site," can be downloaded free of charge from Council's website at:

<http://www.botanybay.nsw.gov.au/council/services/planning/factsheets.htm> further information on sediment control can be obtained from www.ssroc.nsw.gov.au.

- iii) Note: A failure to comply with this condition may result in penalty infringement notices, prosecution, notices and orders under the Act and/or the Protection of the Environment Operations Act 1997 without any further warning. It is a criminal offence to cause, permit or allow pollution.
 - iv) Note: Section 257 of the Protection of the Environment Operations Act 1997 provides inter alia that "the occupier of premises at or from which any pollution occurs is taken to have caused the pollution."
 - v) Warning: irrespective of this condition any person occupying the site may be subject to proceedings under the *Protection of the Environment Operations Act 1997* where pollution is caused, permitted or allowed as the result of their occupation of the land being developed.
85. The wind mitigating treatments, as recommended in the Pedestrian Wind Environment Statement Report (Windtech, Dated: 13 May 2013) shall be incorporated into the design of the building as part of the construction certificate.
86. Signs incorporating the international symbol of access for disabled persons must be provided to identify each accessible:
- a) entrance;
 - b) lift or bank of lifts; and
 - c) sanitary facility;
 - d) this requirement shall be submitted to the Principal Certifying Authority prior to the release of a Construction certificate.
- 87.
- a) Toilet facilities are to be provided at or in the vicinity of the work site on which work involves:
 - i) erection of a building 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 a standard flushing toilet; and
 - ii) must be connected:-
 - 1 to a public sewer; or
 - 2 if connection to a public sewer is not practicable to an accredited sewerage management facility approved by the Council; or

- 3 if connection to a public sewer or an accredited sewerage management facility is not practicable to some sewerage management facility approved by the Council.
 - c) The provision of toilet facilities in accordance with this clause must be completed before any other work is commenced.
88. The proposed traffic movements and parking arrangements within and adjoining the development shall conform to the current versions of Council's off-street parking DCP; Australian Standard AS 2890-1, Australian Road Rules; and the NSW Road Transport (Safety and Traffic Management) Regulation (and any other relevant legislation) unless otherwise stipulated by another condition of this Consent.
- 89.
- a) Existing structures and or services on this and adjoining properties shall not be endangered during any demolition 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; and
 - b) As the development involves demolition 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 demolition;
 - ii) when necessary, underpin the adjoining premises to prevent any such damage.

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

90. All management measures recommended and contained within the Soil and Water Management Plan (SWMP) submitted as part of the construction certificate shall be implemented in accordance with the *Landcom Managing Urban Stormwater – Soils and Construction 4th Edition (2004)*. This plan shall be implemented prior to commencement of any site works or activities. All controls in the plan shall be maintained at all times and made available to council officers on request.
91. The principal contractor or owner building must install and maintain water pollution, erosion and sedimentation controls in accordance with:
- a) the Soil and Water Management Plan;
 - b) "Managing Urban Stormwater – Soils and Construction" (2004) Landcom ("The Blue Book"); and
 - c) Protection of the Environment Operations Act 1997.

92. Erosion and sediment control devices are to 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 project, where necessary.
93. 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.
94. Erosion and sediment control devices shall be installed 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 Council's stormwater system, natural watercourses, bushland, trees and neighbouring properties. In this regard, all stormwater discharge from the site shall meet the requirements of the Protection of Environment Operations Act 1997 and the Department of Environment, Climate Change and Water 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 three (3) month period after the completion of the development, where necessary.
95. Prior to commencement of any works, application(s) shall be made to Council's Customer Services Counter for the following approvals and permits on Council's property/road reserve under Road Act 1993 and Local Government Act 1993 as appropriate: -
(It should be noted that any works shown within Council's road reserve or other Council Lands on the development approval plans are indicative only and no approval for these works is given until this condition is satisfied.)
 - a) Permit to erect hoarding on or over a public place, including Council's property/road reserve
 - b) Permit to construction works, place and/or storage building materials on footpaths, nature strips
 - c) Permit for roads and footways occupancy (long term/ short term)
 - d) Permit to construct vehicular crossings, footpath, kerb and gutter over road reserve
 - e) Permit to open road reserve area, including roads, footpaths, nature strip, vehicular crossing or for any purpose whatsoever
 - f) Permit to place skip/waste bin on footpath and/or nature strip
 - g) Permit to use any part of Council's road reserve or other Council lands

DURING WORKS

96. 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.
97. Building works associated with the erection of the building shall be carried out between the following hours:
- Monday to Friday, inclusive – 7:00am to 5:00pm
- Saturday – 7:00am to 1:00pm
- Sunday and Public Holidays – No work.
98. The demolisher shall comply with Australian Standard 2601 - 2001 "Demolition of Structures".
99. 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.
100. 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).
101. 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.
- 102.
- 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 and brushes and mixing mortar shall not be carried out on park/road reserve or in any other locations which could lead to the discharge of materials into the stormwater drainage system or onto Council's lands.
 - c) Hosing down or hosing/washing out of any truck (concrete truck), plant (e.g. concrete pumps) or equipment (e.g. wheelbarrows) on Council's road reserve or other property is strictly prohibited. Fines and cleaning costs will apply to any breach of this condition;
 - d) Pavement surfaces adjacent to the ingress and egress points are to be swept and kept clear of earth, mud and other materials at all times and in particular at the end of each working day or as directed by Council's Engineer.
103. During 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 specifications and AUS-SPEC at no cost to Council.
104. If groundwater is encountered during excavation works, site de-watering shall be subject to the following requirements:
- a) site de-watering to be undertaken under the guidance of an experienced professional engineer;
 - b) the groundwater extracted from the dewatering process is to be passed through a sand filter prior to its disposal to the street water table. The discharged water is to be visually clear of suspended solids; and
 - c) the pump used to de-water must be electricity powered.
 - d) For any water from site dewatering to be permitted to go to stormwater the water must meet ANZEC 2000 Water Quality Guidelines for Fresh and Marine Water for the 95% protection trigger values for Marine Water. All testing must be completed by a NATA accredited laboratory. All laboratory results must be accompanied by

a report prepared by a suitably qualified and experienced person indicating the water is acceptable to be released into Council's stormwater system. If the groundwater does not meet these guideline levels a Trade Waste permit from Sydney Water must be sought to put the groundwater to sewer.

105. During construction, the applicant shall ensure that all works and measures have been implemented in accordance with an approved Traffic Management Plan and Construction Management Plan at all times.
106. 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.
107. The approved Waste Management Plan shall be complied with at all times during demolition, construction and on-going use of the site.
108. 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.
109.
 - 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) 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.
110. 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 operation must not exceed the background level by more than 20dB(A).

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

c) Time Restrictions

- i) Monday to Friday 07:00am to 06:00pm
- ii) Saturday 07:00am to 01:00pm
- iii) No Construction to take place on Sundays or Public Holidays.

d) Silencing

All possible steps should be taken to silence construction site equipment.

111. 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 THE OCCUPATION CERTIFICATE

112. The building and land shall display a conspicuous street number of legible numerals that has been allocated by Council for the allotment.
113. Prior to the issue of the Occupation Certificate the applicant must submit to the Principal Certifying Authority an acoustic report to verify that the measures stated in the above report in condition 60 have been carried out and certify that the construction meets the above requirements and the indoor sound levels of AS2021-2000. The report must be prepared by a qualified practicing acoustic engineer (who is a member of either the Australian Acoustical Society or the Association of Australia Acoustical Consultants).
114. All vehicular crossings are to be constructed prior to the issuing of an Occupational Certificate (or the completion of work or the use of the building). The applicant shall make a separate application to Council's Customer Service Counter to construct (or reconstruct) a vehicular crossing (either using Council or own forces) to all vehicular entry points to the site. All vehicular crossings, which were shown on submitted plans, shall be in the correct location. All redundant vehicular crossings shall be removed and replaced to fit the main footpath cross-section. If any applicant wants to retain an existing vehicular crossing an application still has to be submitted with the matter highlighted.
115. Landscaping shall be installed in accordance with the Council approved landscape plan only, as stamped by Council's Landscape Architect. The landscaped areas on the

property shall be maintained in accordance with the approved landscape documentation, the conditions of consent and Council's Landscape DCP at all times. 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 an Occupation Certificate.

The Church Avenue public footpath shall be constructed in accordance with Council. The footpath dimensions, location, paver type and construction methods shall be in accordance with this specification only. Pavers shall be ordered accounting for adequate lead time for manufacture. Construction hold points and Council inspections are required at the following points :

- a) after formwork installation and to prior pouring the concrete blinding slab,
- b) at the commencement of paving works, and
- c) at final completion.

Council approval of public domain works is required prior issue of Occupation Certificate.

116. New street trees at the pot size specified shall be installed in the Church Avenue road the approved landscape plan and Council specification. The trees shall be sourced from a reputable supplier that grows to NATSPEC. A Dial-Before-You-Dig enquiry is required prior planting - Council is not liable for any damage to subsurface infrastructure during public domain works.
- a) The trees shall be planted in an area measuring approx. 1 metre square ensuring adequate space for the root ball, backfilled with water holding additive and fertiliser and mulched to a depth of 75mm and at a diameter of 1 metre. Trees are to be double staked.
 - b) Two hold point inspections are required: prior to planting trees to ensure plant stock is suitable and post planting.
117. The Applicant is to submit payment for a Public Works Defects Liability Bond of \$10,000.00. The duration of the Bond shall be limited to a period of 12 months after Council approval of all public domain works. At the completion of the 12 month period the Bond shall be refunded pending a satisfactory inspection of the new public domain work by Council. If rectification or maintenance work is required in this period then Council will forfeit all or part of the bond to undertake the required work, unless the Applicant undertakes this work.
118. All works completed by the applicant on Council's Road Reserve or other Council lands are subject to a 6 months defect liability period from the date of final completion. The date of final completion will be determined by Council's Engineering and Regulatory Services Department.
119. Prior to the issue of the Occupation Certificate, a Certificate of Survey from a Registered Surveyor shall be submitted to the Principal Certifying Authority to the effect that all reduced levels shown upon the plans approved under the Development Application, with

relation to drainage, car parking structures, boundary and road reserve levels, have been strictly adhered to.

120. Prior to the issuing of the Occupation Certificate, all applications associated with works on Council's land must be made at least 7-10 days prior to the programmed completion of works and all construction must be completed and approved by Council.
121. Prior to the issue of the Occupational Certificate the boundary fences adjoining the site shall be replaced with suitable and decorative fence or wall in accordance with Council requirements.
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 of 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.
123. A qualified practitioner, with a certificate of attainment in NWP331A Perform Conduit Evaluation, shall undertake a close circuit television (CCTV) inspection and then report on the existing condition of the adjacent Council drainage pipeline. The camera and its operation shall comply with the following:
 - a) the internal surface of the drainage pipe shall be viewed and recorded in a clear and concise manner;
 - b) the CCTV camera used shall be capable to pan, tilt and turning at right angles to the pipe axis over an entire vertical circle to view the conduit joints;
 - c) distance from the manholes shall be accurately measured; and
 - d) the inspection survey shall be conducted from manhole to manhole.
 - e) the written report, together with a copy of the digital video footage of the pipeline shall be submitted to Council prior to the commencement of any works. A written acknowledgement shall be obtained from Council (attesting to this condition being appropriately satisfied) and submitted to the Principal Certifying Authority.
124. 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.
125. 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.
126. Prior to the issue of the Occupation Certificate, the redundant vehicular crossing, together with any necessary works shall be removed and the footpath, nature strip and kerb and gutter shall be reinstated in accordance with Council's specification.

127. Prior to the issue of the Occupational Certificate, the applicant shall reconstruct the footpath and kerb and guttering along the full site frontage in accordance with Council's standard drawings E01, E06 and CHUR RW/SS1.
128. Prior to the issue of the Occupation certificate, inspection reports (formwork and final) for the works on the road reserve shall be obtained from Council's engineer and submitted to the Principal Certifying Authority attesting that this condition has been appropriately satisfied.
129. Prior to the issue of the Occupation Certificate:
 - a) the construction of the stormwater drainage system of the proposed development shall be completed generally in accordance with the approved stormwater management construction plan(s), Council's 'Guidelines for the Design of Stormwater Drainage Systems within City of Botany Bay', AS/NSZ 3500 – Plumbing and Drainage Code and the BCA.
 - b) documentation shall be submitted to the Principal Certifying Authority certifying that the stormwater drainage system has been constructed generally in accordance with the approved stormwater management construction plan(s) and accepted practice.
130. Any damage not shown in the photographic survey and dilapidation survey submitted to Council before site works have commenced, will be assumed to have been caused as a result of the site works undertaken and must be rectified at the applicant's expense, prior to occupancy of the development.
131. Prior to the issue of an Occupation Certificate, the fencing adjacent to the site vehicular entrance shall be designed and constructed to ensure there is adequate sight distance between the pedestrians and the vehicles leaving the site.
132.
 - a) Prior to use and occupation of the building an Occupation Certificate must be obtained under Section 109C(1)(c) and 109N of the Environmental Planning and Assessment Act, 1979; and
 - b) Conditioned numbered 8(e), 13 and 112-131 are all pre-conditioned to the issue of the Occupational Certificate;
 - c) The terms of the Voluntary Planning Agreement must be complied with prior to the issue of the Occupational Certificate.
- 132A. *Prior to the issue of any Occupation Certificate, at no expense to the Council dedicate the portion of land to Council for the purpose of widening Church Avenue. The areas of the land to be dedicated shall be the full length of Church Avenue Street frontage of the development site and as detailed in the Botany Bay Development Control Plan 2013. The Plan of Dedication shall be lodged with Council and registered with Land & Property Information prior to the issue of any Occupation Certificate. A copy of the registered document shall be submitted to Council for record purposes.***

CONDITIONS WHICH MUST BE SATISFIED FOR THE ONGOING USE

133. All waste and recycling containers shall be stored in the designated waste storage area. The waste containers are not to be over filled and the lids kept closed at all times except when material is being put in them. The Owners Corporation or building owner shall be responsible for movement of the waste and recycling containers to the footpath for weekly collections, and the return of waste and recycling containers to the waste storage area. The Owners Corporation or building owner shall be responsible for cleaning the waste storage area, dry arrestor pit and waste collection containers.
134. An experienced Landscape Contractor shall be engaged to undertake the landscaping work and shall be provided with a copy of both the approved landscape drawing and the conditions of approval to satisfactorily construct the landscape to Council requirements. The contractor shall be engaged weekly for a minimum period of 26 weeks from final completion of landscaping for maintenance and defects liability, replacing plants in the event of death, damage, theft or poor performance. After that time regular and ongoing maintenance is required.
135. Ongoing maintenance of the nature strip shall be undertaken by the occupier, owner or strata. Maintenance includes mowing, watering and maintaining an even coverage of grass at all times. Maintenance does not include pruning, trimming, shaping or any work to street trees located on the nature strip under any circumstances at any time. Pruning is undertaken by Council only.
136. New street trees shall be maintained by the Applicant/Owner/Strata Corporation for the duration of the landscape bond period after planting. Maintenance includes periodic watering at a frequency to sustain adequate growth, annual feeding and weed removal but does not include trimming or pruning of the trees under any circumstances.
137. 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.
138. A subdivision application must be accompanied by the following documentation that indicates:
 - a) The requirement for the employment of a person to manage the collection of waste material by Council, including, but not limited to bin placement at the road edge and retrieval of bins soon after collection of contents, cleansing of bins, storage of bins in the compound and the like.
 - (a) 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 this Development Consent.

- b) Responsibilities with regard to the operation maintenance of artificial features at the property in accordance with the plans and details approved under this Development Consent.
 - c) Responsibilities for ensuring owners and/or tenants have adequate and hygienic waste 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.
 - d) Responsibilities to ensure that receptacles for the removal of waste, recycling etc. are put out for collection between 4.00pm and 7.00pm the day prior to collection, and, on the day of collection, being the day following, returned to the premises by 12.00 noon.
 - e) The Owners Corporation obligations under clauses 177, 182, 183, 184, 185 and 186 of the Environmental Planning and Assessment Regulation 2000.
 - f) The Owners Corporation/Executive Committee obligations to ensure all 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.
139. A Positive Covenant and Restriction on Use of the land shall be created to all proposed lots to ensure that car parking for the residential part is not to be to sublet or used for any other purposes.
140. All vehicles shall enter and exit the premises in a forward direction.
141. 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. 13/056 dated 28 March 2013 and as amended by Section 96(1) Application No. 13/056/01 received by Council on 18 June 2014 and as amended by Section 96(2) application No. 13/56/03 received by Council 24 November 2017 and that any alteration, variation, or extension to the use, for which this approval has been given, would require further Approval from Council. (DA13/56/03)
- 142 ~~Prior to the issue of the Construction Certificate, subject to the approval of CASA, the applicant is to provide roof mounted solar collector panels below a height of 46-94m AHD, to the rooftop of the building, of which 20% of power generated shall be returned to the Ausgrid network together with tariff rebates. Details of the panel system are to be provided with a Construction Certificate including the approval from the Civil Aviation Safety Authority. (DA13/56/03)~~
- 143 The development must on completion contain within the basement carpark 15 carparking spaces for use by visitors.



STATEMENT OF ENVIRONMENTAL EFFECTS

SECTION 4.55 AMENDMENT APPLICATION

**13A CHURCH AVENUE
MASCOT**



SEPTEMBER 2019

This report has relied upon the information available at the time of its preparation. All views and conclusions contained in the report are based on the aforementioned circumstances. The report is for the use of the client and Bayside Council and no responsibility will be taken for its use by other parties.

© Reproduction of this report in full or in part is prohibited, except without the prior written permission from Cohesive Planning.

Contents

Purpose	4
1. What is the consent being modified?	4
2. History	
2.1 Development approval history	4
3. What is sought to be modified	6
4. The modifications	
4.1 Condition 1 – Amended plans and document references	7
4.1.1 SEPP 65/ADG matters	7
4.1.2 Botany Bay LEP 2013 matters	10
4.1.3 Botany Bay DCP 2013 matters	11
4.1.4 Amended landscape plans	12
4.1.5 Amended document references	12
4.2 Conditions 2 and 3 – Contributions under Section 94 (Now Section 7.11)	12
4.3 Conditions 53 and 79 – Apartment sizes	13
4.4 Condition 76 – Number of car parking spaces	14
4.5 Conditions 65 and 77 – BASIX Certificate	14
5. Consideration of Section 4.55	
5.1 Section 4.55(2)	16
5.2 The modifications satisfy the test of subsection 2	17
5.3 Consideration under Section 4.15(1) of the Act	18
6. Summary and Conclusion	19

APPENDIX A Justification of the FSR exceedance

Purpose

This Statement of Environmental Effects has been prepared to accompany the lodgement of an application made under Section 4.55(2) of the Environmental Planning and Assessment Act, 1979 (the “**Act**”) to seek approval for amended plans to provide an improved apartment mix and to modify certain conditions of consent to correct references to plans and BASIX certification.

1. What is the consent being modified?

The Section 4.55(2) application relates to Notice of Determination No.2013/056, dated 11 June, 2014 (the “**consent**”).

The consent approved a residential flat building comprising 103 apartments with associated car parking, landscaping and other associated works.

The consent relates to:

- Lot 1, DP 547700, 13A Church Avenue, Mascot

2. History

2.1 Development approval history

For completeness and context, it is useful to understand the history of the development application and subsequent amendments pertaining to this modification.

Application	Purpose	Date of approval
DA-2013/056	Demolition of the existing building and the redevelopment of the site for a new multi-unit building with associated car parking for 138 vehicles and new landscaping works.	11 June 2014
DA-2013/56/2	Section 96(1) Application to modify Development Consent 13/056 by amending Condition 1 to reflect the correct issue number of the Architectural Plans and to amend the description to include the number of units approved, being 80.	1 July 2014
DA-2013/56/3	Section 96(2) Application to modify Development Consent 13/056 to alter the design of the building & increase height, amend apartment size, car parking,	8 May 2018

cohesiveplanning

car parking layout, unit mix and to increase height and FSR. In particular, the development amends the number of units from 80 to 103 and reflects a change to the number of car parking spaces from 138 to 110.

DA-2013/56/C	Section 4.55(1) Application to modify Development Consent 13/056 to updated references in the consent to plan numbers and supporting documentation.	9 July 2019
--------------	---	-------------

As a result of the aforementioned amendments, the development for which consent has been granted can be described as:

The demolition of the existing building and the construction of a residential flat building comprising 103 apartments with 108 car parking spaces, landscaping and associated works.

3. What is sought to be modified?

This Section 4.55(2) application seeks to modify the consent as follows:

Condition	Purpose	Amendment sought	Paragraph reference
1	Approved plan references	Replace approved architectural and landscape plans to reflect the amendments.	
	Approved document references	Replace approved document references with the correct references to ensure consistency.	4.1
2	Section 94 contributions	Revise the Section 94 (now Section 7.11) contributions to reflect the revised apartment mix.	
3			4.2
53	Apartment sizes	Amend references in the consent to reflect the minimum apartment sizes under the Apartment Design Guide.	
79			4.3
76	Car parking	Correct an inconsistency between the approved plans and condition 76.	
			4.4
65	BASIX	Amend the conditions to reflect the revised BASIX certificate.	
77			4.5

4. The modifications

4.1 Condition 1 – Amended plans and document references

Condition 1 lists the approved plans. It is proposed to replace the architectural plans with the following plans:

Drawing Number	Title	Prepared By	Date
S4.55 101 Revision A	Site Plan	Bureau SRH Architecture	12 September 2019
S4.55 102 Revision A	Basement L02	Bureau SRH Architecture	9 September 2019
S4.55 103 Revision A	Basement L01	Bureau SRH Architecture	9 September 2019
S4.55 104 Revision A	Ground Floor	Bureau SRH Architecture	9 September 2019
S4.55 105 Revision A	Level 01	Bureau SRH Architecture	9 September 2019
S4.55 106 Revision A	Typical Level 2-11	Bureau SRH Architecture	9 September 2019
S4.55 107 Revision A	Level 12	Bureau SRH Architecture	9 September 2019
S4.55 108 Revision A	Roof Plan	Bureau SRH Architecture	9 September 2019
S4.55 150 Revision A	GFA & ADG Calculations	Bureau SRH Architecture	9 September 2019
S4.55 200 Revision A	North Elevation	Bureau SRH Architecture	9 September 2019
S4.55 201 Revision A	East Elevation	Bureau SRH Architecture	9 September 2019
S4.55 202 Revision A	South Elevation	Bureau SRH Architecture	9 September 2019
S4.55 203 Revision A	West Elevation	Bureau SRH Architecture	9 September 2019

4.1.1 SEPP 65/ADG matters

The amendments primarily seek to introduce an improved apartment mix to the development. The amendments do not seek to increase the apartment yield.

The apartment mix is proposed to be amended as follows:

	Approved mix	Proposed mix
Studio apartments	22 (21.36%)	12 (11.65%)
One bedroom	22 (21.36%)	22 (21.36%)
Two bedroom	56 (54.36%)	66 (64.04%)
Three bedroom	3 (2.92%)	3 (2.92%)
TOTAL	103	103

The amendments to the plans to effect these changes are summarised as follows:

Plan	Changes
Basement Level 02	<ul style="list-style-type: none"> - Ramp moved 300mm to west - Minor amendments in layout of car spaces, reduction of 2 spaces from 50 to 48
Basement Level 01	<ul style="list-style-type: none"> - Ramp moved 300mm to west - Minor amendments in layout of car spaces & plant room.
Ground	<ul style="list-style-type: none"> - Ramp moved 300mm to west.

	<ul style="list-style-type: none"> - Minor amendments in layout of car spaces. - Relocation of fire stair 02 and amendment to exit path. - Minor amendments in layout of garbage room. - Layout of units G-01 & G-02 amended.
Level 1	<ul style="list-style-type: none"> - Relocation of fire stair 02. - Layout of units G-01, G-02, 1-01 & 1-06 amended.
Levels 2-11	<ul style="list-style-type: none"> - Relocation of fire stair 02. - Layout of units T-01, T-07 & T-09 amended. - Unit T-09 converted from studio to 2 bed unit. - Extension of South West corner to the South by 3.7m. - Extension of South middle part by 1.3m.
Level 12	<ul style="list-style-type: none"> - Relocation of fire stair 02 - Layout of common room amended.

Apartment mix is a matter for consideration under Section 4K of the *Apartment Design Guide* which provides as follows:

Objective 4K-1

A range of apartment types and sizes is provided to cater for different household types now and into the future

Design guidance	Comment
A variety of apartment types is provided	The amended design provides an improved mix of apartments across studio, 1, 2 and 3 bedroom typologies.
<p>The apartment mix is appropriate, taking into consideration:</p> <ul style="list-style-type: none"> • the distance to public transport, employment and education centres • the current market demands and projected future demographic trends • the demand for social and affordable housing • different cultural and socioeconomic groups 	<p>The revised apartment mix effectively replaces 10 studio apartments for 10 x 2 bedroom apartments. Given the proximity of the land to public transport at Mascot station, as well as the proximity to employment areas, the airport and universities, the preference of the local market is for 2 bedroom options over studio apartments.</p> <p>The apartment mix is considered appropriate for the current market and local circumstances.</p>
Flexible apartment configurations are provided to support diverse household types and stages of life including single person households, families, multi-generational families and group households	The range of apartments continues to support a range of household types.

Objective 4K-2**The apartment mix is distributed to suitable locations within the building****Design guidance****Comment**

Different apartment types are located to achieve successful facade composition and to optimise solar access (see figure 4K.3)

The proposed amendment does not result in a change to the façade composition.

Larger apartment types are located on the ground or roof level where there is potential for more open space and on corners where more building frontage is available

The proposed amended does not alter the layout of the floorplates in any substantial manner.

Apartment size is a matter under Section 4D of the *Apartment Design Guide* which provides as follows:

Apartment	Minimum internal area required	Minimum internal area provided
Studio	35m ²	40m ²
1 bedroom	50m ²	51m ²
2 bedroom	70m ²	75m ²
3 bedroom	90m ²	95m ²

All apartments exceed the minimum sizes under the *Apartment Design Guide*.

Balcony size is a matter under Section 4E of the *Apartment Design Guide* which provides as follows:

Apartment	Minimum internal area required	Minimum internal area provided
Studio	4m ²	4m ²
1 bedroom	8m ²	8m ²
2 bedroom	10m ²	10m ²
3 bedroom	12m ²	15m ²

All apartments meet or exceed the minimum balcony sizes under the *Apartment Design Guide*.

The setback to the rear boundary is 12.705m, which is compliant with the rear setback required of 12m imposed under 3F-1 of the *Apartment Design Guide*.

Solar access is compliant with the *Apartment Design Guide* with 78% of apartments achieving a minimum of 2 hours solar access to the balcony and living room on the winter solstice. This represents an increase in solar compliant apartments from 78 to 81.

60% of dwellings achieve natural cross ventilation in accordance with the *Apartment design Guide*.

Parking is a matter under Section 3J of the *Apartment Design Guide* which provides that:

For development in the following locations:

- on sites that are within 800 metres of a railway station or light rail stop in the Sydney Metropolitan Area

the minimum car parking requirement for residents and visitors is set out in the Guide to Traffic Generating Developments, or the car parking requirement prescribed by the relevant council, whichever is less.

RMS Guide to Traffic Generating Development			Botany Bay DCP 2013	
	Rate	Required	Rate	Required
Studio	0.6	7.2	1.0	12
1 bedroom	0.6	13.2	1.0	22
2 bedroom	0.9	59.4	2.0	132
3 bedroom	1.4	4.2	2.0	6
Visitors	1 per 5	20.6	1 per 5 1 per 7 (MSPDCP)	20.6 14.7
TOTAL		105 (104.6)		193 (192.6) 187 (186.7)

A minimum of 105 car parking spaces is required (Botany Bay DCP 2013). 99 car parking spaces would be required by applying the visitor parking rate from the Mascot Station Precinct DCP. The proposed development maintains 106 off street car parking spaces.

The provision of off-street car parking is sufficient for the revised apartment mix.

The amended design continues to provide a car wash bay and secure bicycle parking.

4.1.2 Botany Bay LEP 2013 Matters

Clause 4.4 of the Botany Bay LEP provides a maximum FSR of 3.2:1 for the subject land.

The original development application was considered under the Botany LEP 1995 and was approved with a GFA of 8,994m² and an FSR of 4.24:1.

The development as approved under previous Section 96 amendments has a GFA of 7,797.63m² which provides an FSR of 3.89:1.

The amendments the subject of this Section 4.55(2) application result in an additional GFA of 584.33m², with a total proposed GFA of 8,381.96m² which provides an FSR of 4.18:1.

A justification of the exceedance of the maximum FSR is provided at **Appendix A** to this statement.

The proposed amendments do not require a variation to any other numerical standard contained in the Botany LEP 2013. In particular, it is not sought to increase the height of the building.

4.1.3 Botany Bay DCP 2013 Matters

The following assessment against the provisions of the Botany Bay DCP 2013 has been carried out of those matters for consideration that have changed as a result of the proposed amendments.

Control	Provided	Comment
4C.2.4 Landscaped Area and Deep Soil Planting		
C1 A residential flat development must have a minimum landscaped area of 35% and a maximum hard landscaped area of 20%.	The proposed development provides 663m ² (33%) of soft landscaping and 181m ² (9%) of hard landscaping.	No change to the provision of landscaping is proposed by the amended application.
4C.2.6 Setbacks		
C2 All front, side and rear setbacks are to provide deep soil zones to allow unencumbered planting areas.		The amended plans do not lessen or alter the provision of deep soil.
C3 Development is to be designed to create spatial separation between the buildings to:	The increased floor space is distributed across 11 floors and over 2 building elements.	The additional floor space is distributed across 11 floors and does not increase bulk and scale of the building to one that has a visual impact on the public domain or when viewed from adjoining properties, noting that the western element of the building is setback a further 8.12m to the street elevation providing articulation to the streetscape.
(i) Minimise bulk and scale of the building;	The additional 3.7m depth on the western element does not impact on solar access, deep soil or the bulk of the building.	
(ii) Allow contiguous deep soil planting and landscaping;		
(iii) Ensure adequate exposure to sunlight and ventilation; and		
(iv) Create a buffer for visual and acoustic privacy.		

Control C2 of paragraph 4C.4.1 of the Botany Bay DCP 2013 establishes a maximum proportion of studio and one bedroom apartments of 25%. The revised apartment mix reduces the percentage of studio and one bedroom apartments from 42% to 33%. The amended proposal is more in keeping with this figure than that originally approved.

The amendments do not result in other matters under the Botany Bay DCP needing to be given further consideration.

4.1.4 Amended landscape plans

The landscape plans are to be amended to reflect the amended architectural plans.

Condition 1 should be amended to incorporate the following landscape plans:

Drawing No.	Author	Date
Landscape Plans		
L/01 Issue C	ATC	17 November 2017
L/02 Issue C		

4.1.5 Amended document references

Condition 1 also lists the documents upon which the assessment and consent relied. The BASIX certification needs to be amended to reflect the BASIX certification provided with the amended plans as follows:

Document	Author	Date
BASIX Certificate No. 474684M_03	Gradwell Consulting	11 September 2019

4.2 Conditions 2 and 3 – Contributions under Section 94 (Now Section 7.11)

The contributions payable under Section 7.11 of the Environmental Planning and Assessment Act are to be amended as a consequence of the revised apartment mix, resulting in an amendment to the figures in condition No.2(d) and condition No.3.

The total contribution is \$1,012,665 (plus indexation at time of payment) based on the following figures:

Section 94 Contributions Plan 2005-2010			
Unit type	Units	Rate	Contributions
Small	34	\$4,089	\$139,026
Medium	68	\$6,947	\$472,396
Large	1	\$9,427	\$9,427
Subtotal			\$620,849
Mascot Station Precinct Section 94 Plan			
Unit type	Units		Contributions
One bedroom	34		\$77,452
Two bedroom	66		\$300,696
Three bedroom	3		\$13,668
Subtotal			\$391,816
TOTAL			\$1,012,665

4.3 Conditions 53 and 79 – Apartment sizes

Condition 53(a) states

53. *Plans submitted with the Construction Certificate shall demonstrate compliance with the following:*

a) *All residential unit size excluding balconies as minimum must be as follows:*

- i) *Studio = 60m²*
- ii) *1 bedroom = 75m²*
- iii) *2 bedroom = 100m²*

These apartment sizes are redundant in light of the provisions of Section 4E of the *Apartment Design Guide*. The amended plans have been designed to satisfy those controls and as such the consent should be amended accordingly so that condition 53(a) reads:

53. *Plans submitted with the Construction Certificate shall demonstrate compliance with the following:*

a) *All residential unit size excluding balconies as minimum must be as follows:*

- i) *Studio = 35m²*
- ii) *1 bedroom = 50m²*
- iii) *2 bedroom = 70m²*
- iv) *3 bedroom = 90m²*

As noted at 4.1.1 above, the proposed amendments are consistent with these numerical controls.

Condition 79 states:

79. *The Architect is to conform in writing that the apartment sizes in metres squared (sq.m) and the balconies comply with Council's Building Design and Construction Development Control Plan.*

Condition 79 should likewise be amended to reflect the provisions of the *Apartment Design Guide* as follows:

79. *The Architect is to confirm in writing that the apartment sizes in metres squared (sq.m) and the balconies comply with the Apartment Design Guide.*

4.4 Condition 76 – Number of carparking spaces

Condition 76(a) states

76. *The following car parking spaces shall be made available to residents and visitors:*

a) a total of one hundred and thirty four (138) car parking spaces on site; and

The number of parking spaces was sought to be reduced under Section 96(2) application No. DA-2013/56/B which was approved on 8 May 2018. The plans approved under the application reduced the number of parking spaces to 108 however condition 76 was not amended to reflect that change. The opportunity exists to rectify that oversight to reflect the new plans by amending condition 76(a) to read:

76. *The following car parking spaces shall be made available to residents and visitors:*

a) a total of one hundred and six (106) car parking spaces on site; and

The remaining paragraphs of condition 76 may remain as is.

As noted at 4.1.1 above, the proposed amended apartment mix does not result in a non-compliance with the provision of carparking within the development.

4.5 Conditions 65 and 77 – BASIX

Condition 65 states:

65. *Prior to the issue of any Construction Certificate, detail design and construction plans in relation to stormwater management and disposal system for the development shall be submitted to the Principal Certifying Authority for approval.*

The detail drawings and specifications shall be prepared by a suitably qualified and experience civil engineer and be in accordance with Councils "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"

.....

d) The provisions meet or exceed the BASIX Certificate No.474684M issued 28 March 2013.

.....

It is proposed to amend the BASIX Certificate number so that paragraph (d) to condition 65 reads as follows:

- d) *The provisions meet or exceed the BASIX Certificate No.474684M_03 issued 11 September 2019.*

Condition 77 states:

77. *Pursuant to clause 97A(3) of the Environmental Planning & Assessment Regulation 2000, it is a condition of this development consent that all the commitments listed in the relevant BASIX Certificate No. 474684M dated 28 March 2014 received by Council 28 March 2014 for the development are fulfilled.*

- 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.*

It is proposed to amend the BASIX Certificate number so that the first paragraph of condition 77 reads as follows:

77. *Pursuant to clause 97A(3) of the Environmental Planning & Assessment Regulation 2000, it is a condition of this development consent that all the commitments listed in the relevant BASIX Certificate No.474684M_03 dated 11 September 2019 for the development are fulfilled.*

Paragraphs a and b may remain as imposed.

5. Consideration of Section 4.55

5.1 Section 4.55(2)

The proposed modifications can be considered under Section 4.55(2) of the Act which states:

4.55 Modification of consents—generally

(2) Other modifications involving minimal environmental impact

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

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

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

- (3) In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application. The consent authority must also take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified.*

- (4) *The modification of a development consent in accordance with this section is taken not to be the granting of development consent under this Part, but a reference in this or any other Act to a development consent includes a reference to a development consent as so modified.*

5.2 The modification satisfies the test of subsection 2

As demonstrated in the assessment in Section 4 of this statement, the modification is of minimal environmental impact.

The modified development is substantially the same as that for which consent was granted. The test of what constitutes "substantially the same development" was considered in *Moto Projects (No 2) Pty Ltd v North Sydney Council* [1999] NSWLEC 280 where at paragraphs 55 and 56, His Honour Justice Bignold described the process for consideration of a proposed modification of development as follows:

- "55. *The requisite factual finding obviously requires a comparison between the development, as currently approved, and the development as proposed to be modified. The result of the comparison must be a finding that the modified development is "essentially or materially" the same as the approved development.*
56. *The comparative task does not merely involve a comparison of the physical features or components of the development as approved and modified where that comparative exercise is undertaken in some type of sterile vacuum. Rather, the comparison involves an appreciation, qualitative, as well as quantitative, of the developments being compared in their proper contexts (including the circumstances in which the development consent was granted)."*

In quantitative terms, the amended development does not increase the number of apartments, rather it seeks to provide an improved mix of apartment options. The increased floorspace and building form is insignificant, being a 7.5% increase in GFA.

In qualitative terms, the impacts of the increased GFA are minimal and are not the cause of any detriment to neighbouring properties. The development remains essentially and materially the same development.

The consideration of this application under Section 4.55(2) is a proper exercise of that provision of the Act.

5.3 Consideration under Section 4.15(1) of the Act

The following assessment has been carried out under the Matters for Consideration contained in Section 4.15 of the Environmental Planning and Assessment Act, 1979.

Matter for consideration	Comment
(a) the provisions of:	
(i) any environmental planning instrument, and	The modified development complies with the objectives and provisions of relevant planning instruments with the exception of an exceedance with the prescribed FSR under the LEP. This issue is dealt with specifically in Appendix A .
(ii) any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and	There are no draft planning instruments pertaining to the site or to the development.
(iii) any development control plan, and	The proposal is compliant with the provisions of the Botany Bay DCP.
(iia) any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4, and	There are no planning agreements applicable to the subject land.
(iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph),	N/A
(b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,	The modification does not cause adverse impacts on the natural or built environments. The modification does not result in adverse social impacts or economic impacts.
(c) the suitability of the site for the development,	The site remains suitable for the modified proposed development.
(d) any submissions made in accordance with this Act or the regulations,	Should notification of the Development Application result in the receipt of submissions, the Applicant would welcome the opportunity to address those matters.
(e) the public interest.	The modification does not raise issues of public interest.

6. Summary and Conclusion

DA-2013/56 was approved on 11 June 2014 for the demolition of the existing structures at 13A Church Avenue, Mascot and the construction of a residential flat building with associated car parking, landscaping and associated works.

The subject Section 4.55(2) application seeks to improve the apartment mix. A number of subsequent amendments result from the changes to the apartment mix, such as increased floor area and the relocation fire stairs and basement ramps.

The development remains substantially and essentially the same as that for which consent been granted. The amendments do not result in environmental impacts over those considered in the assessment of the development application as it was approved.

The amendments are recommended for approval.



Glenn Apps
Town Planner

cohesiveplanning

APPENDIX A

JUSTIFICATION OF THE FSR EXCEEDANCE

Preliminary

The following justification is provided to address the exceedance of the prescribed FSR.

Although Clause 4.6 variations do not apply to applications made under Section 4.55 of the Environmental Planning and Assessment Act 1979, this justification follows the principles outlined in caselaw for the preparation of a Clause 4.6 variation, particularly *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118.

The statutory framework

The relevant planning instrument

The environmental planning instrument to which this variation relates is the Botany Bay LEP 2015.

Zoning

The subject land is zoned B4 Mixed Use under the Botany Bay LEP 2013.

Residential flat buildings are permissible with consent on land so zoned.

Zone objectives

The objectives of the B4 Mixed Use zone are:

- *To provide a mixture of compatible land uses; and*
- *To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.*

Objectives of the development standard

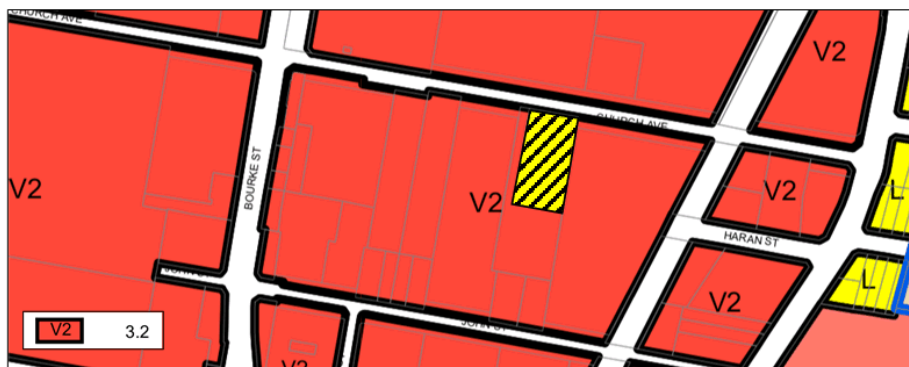
The stated objectives of Clause 4.4 are:

- (a) *to establish standards for the maximum development density and intensity of land use,*
- (b) *to ensure that buildings are compatible with the bulk and scale of the existing and desired future character of the locality,*

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

The numeric values of the development standard and the development

Clause 4.4 of the Botany Bay LEP 2013 provides a maximum FSR of 3.2:1 for the subject land.



The amendments the subject of this Section 4.55(2) application result in an additional GFA of 584.33m², with a total proposed GFA of 8,381.96m² which provides an FSR of 4.18:1.

Compliance with the standard is unreasonable or unnecessary in the circumstances

Pursuant to *Initial Action v Woollahra*, the five “tests” in *Wehbe v Pittwater* are appropriate to determine whether compliance with a development standard is unreasonable or unnecessary, noting that an applicant does not need to establish all of the tests. It is sufficient to establish under only one test.

1. *Is compliance with the development standard unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard?*

The objectives of the standard are discussed below:

Objective	Comment
(a) to establish standards for the maximum development density and intensity of land use	This is a higher order objective of Clause 4.4 itself.
(b) to ensure that buildings are compatible with the bulk and scale of the existing and desired future character of the locality	The additional floor space is distributed across 11 floors and does not increase bulk and scale of the building to one that has a visual impact on the public domain or when viewed from adjoining properties, noting that the western element of the building is setback a further 8.12m to the street elevation which provides articulation to the street.
(c) to maintain an appropriate visual relationship between new development and the existing character of areas or locations that are not undergoing, and are not likely to undergo, a substantial transformation,	Not applicable as the proposed development is within an area that is undergoing a transformation to apartment development.
(d) to ensure that buildings do not adversely affect the streetscape, skyline or landscape when viewed from adjoining roads and other public places such as parks, and community facilities,	The increased GFA is provided to the rear of the building where it does not impact on the streetscape. The building height does not change as a result of the increased GFA.
(e) to minimise adverse environmental effects on the use or enjoyment of adjoining properties and the public domain,	The proposed increase in GFA does not result in any adverse impact on the public domain.
(f) to provide an appropriate correlation between the size of a site and the extent of any development on that site,	The FSR is less than that approved for the land under the original consent.
(g) to facilitate development that contributes to the economic growth of Botany Bay.	The proposed development is permissible in the zone and meets this objective by providing housing within the Mascot Station Precinct.

The proposed development satisfies the first test in *Wehbe v Pittwater* as it meets the relevant objectives of the control.

2. *Is the underlying objective or purpose relevant to the development with the consequence that compliance is unnecessary.*

It is accepted that the objectives and purpose are relevant. We do not rely on this test.

3. *Is the underlying objective or purpose defeated or thwarted if compliance was required with the consequence that compliance is unreasonable.*

Compliance with the standard would not defeat or thwart the objective. We do not rely on this test.

4. *Has the development standard been virtually abandoned or destroyed by the Council's own decisions in granting development consents that depart from the standard and hence compliance with the standard is unnecessary and unreasonable.*

Council has approved other development in the precinct that exceeds the prescribed FSR.

Address	Prescribed FSR	Approved FSR
141 O'Riordan Street	3.2:1	4.0:1
214 Coward Street	2.5:1	4.5:1
230 Coward Street	2.5:1	4.0:1
7 Bourke Street	2.9:1	4.2:1
8 Bourke Street	3.3:1	4.24:1
208-210 Coward Street	2.5:1	4.44:1

The FSR has been varied in the past by both Council and the Sydney Eastern Central Planning Panel to enable FSRs of a similar density to that proposed.

5. *Is the zoning of the particular land on which the development is proposed to be carried out unreasonable or inappropriate so that the development standard, which was appropriate for that zoning, was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in the circumstances of the case would also be unreasonable or unnecessary.*

The zoning is appropriate. We do not rely on this test.

Compliance with the development standard is unreasonable and unnecessary as the objectives of the development standard are achieved notwithstanding non-compliance with the standard.

There are sufficient environmental planning grounds to justify the variation

There are sufficient grounds to justify contravening the development standard as follows.

- **The amended development application provides a lesser FSR than the development the subject of the original consent**

The original development application was considered under the Botany LEP 1995. The development was approved with a GFA of 8,994m² and an FSR of 4.24:1.

The amendments the subject of this Section 4.55(2) application result in a total proposed GFA of 8,381.96m² which provides an FSR of 4.18:1.

While the FSR exceeds that prescribed for the land, it remains that it is less than what was originally granted consent for the land and could have been constructed.

- **The variation does not offend the objectives of Part 4C of the Botany Bay DCP 2013**

Notwithstanding the exceedance of the prescribed FSR, the development remains consistent with the objectives for residential flat development in the DCP, as follows:

O1 To ensure residential flat development is compatible with and complementary to the streetscape and consistent with the relevant Character Precinct

Comment: The Section 4.55 modification does not alter the streetscape presentation of the development. The development remains consistent and complementary to the desired character of the precinct.

O2 To provide detailed design objectives and controls that encourage innovative design, which positively responds to the character and context of the locality

Comment: This is a higher order objective of the controls. The proposal does not hinder this objective being met.

O3 To maintain and encourage compatible architectural styles within residential areas

Comment: The Section 4.55 modification does not alter the architectural presentation of the development which is compatible with the precinct.

O4 To encourage development which creates a high standard of amenity, promotes a safe living environment; and makes better use of existing infrastructure

Comment: The development provides a high standard of amenity, promotes a safe living environment and makes better use of existing infrastructure particularly the proximity to the Mascot railway station.

O5 To ensure that new development considers the principles of ecologically sustainable development (ESD)

Comment: The proposal is accompanied by BASIX certification demonstrating energy efficiency. This aspect of the development is unchanged by the Section 4.55 application.

O6 To provide for a range of housing types and forms to accommodate a diverse and changing population

Comment: The development provides higher density housing options. The amendments sought by this application result in an improved apartment mix which meets this objective by meeting the needs of differing household types.

O7 To ensure apartment buildings comply with the principles and provisions of State Environmental Planning Policy No. 65 and the Apartment Design Guide.

Comment: As demonstrated in the body of the statement, the amended proposal satisfies the *Apartment Design Guide*. A Design Verification Statement has been provided with the Section 4.55 application.

- **There is no impact on the amenity of the area or loss of amenity to the occupants of the development**

The amended development does not create any adverse impacts on the amenity of the future residents of the development or the amenity of neighbouring developments.

The proposed development is consistent with the objectives of the development standard and the zone

It has been demonstrated above that the proposal remains consistent with the objectives of the development standard itself.

The following table sets out how the relevant zone objectives are satisfied.

Objective	Comment
To provide a mixture of compatible land uses	The proposed development provides a residential flat development close to public transport and in proximity to major employment areas including the airport, Sydney CBD and established logistics and industrial areas.
To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling	The proposed development benefits from the opportunities created by the zoning of the land for mixed use and higher density purposes.

The proposed development is consistent with the relevant objectives of the development standard and the zone.

The proposed development is in the public interest

In *Initial Action v Woollahra* (pgh 27) His Honour Chief Justice Preston noted that “...*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.*”

It is considered that the proposed development is in the public interest by virtue of satisfying the relevant objectives of the development standard and the zone.

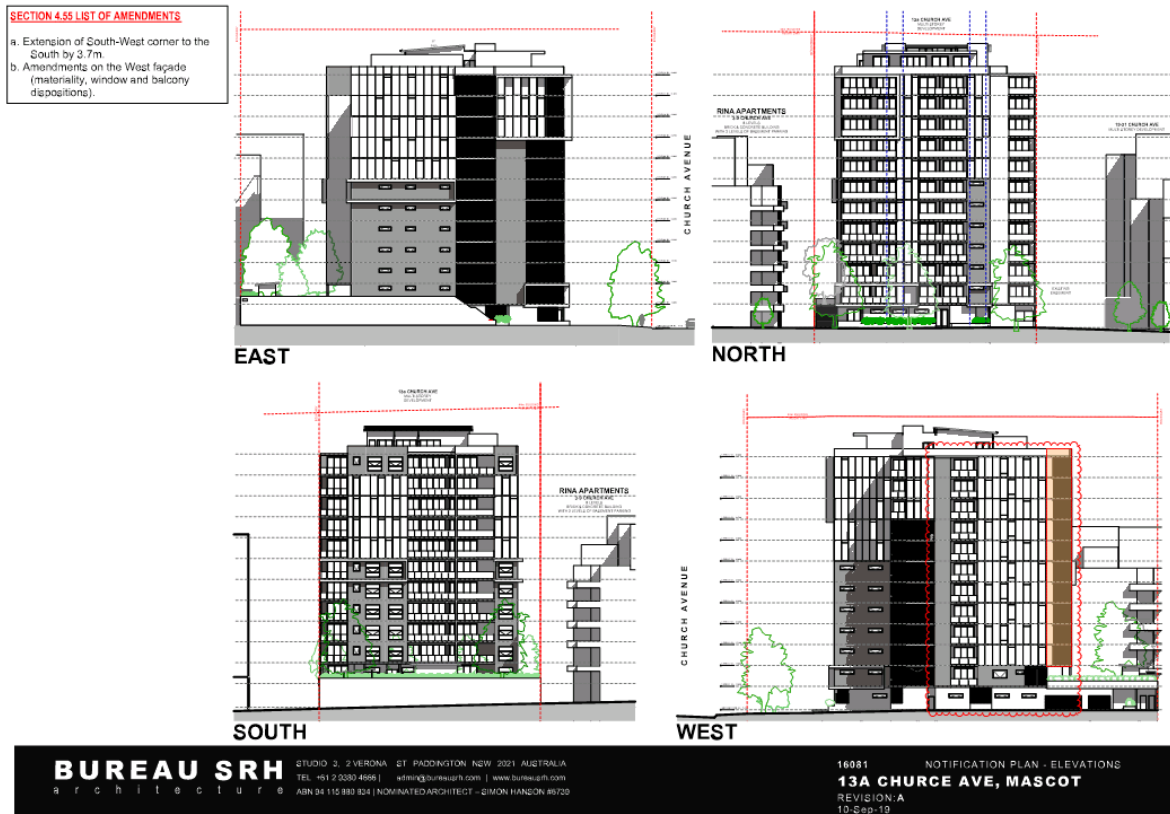
There is no public benefit in maintaining the development standard in the circumstances

In *Ex Gratia Pty Ltd v Dungog Council* [NSWLEC 148] the question was posed “*whether the public advantages of the proposed development outweigh the public disadvantages of the proposed development*”.

The benefit to allowing the variation to the development standard is that the proposal is able to provide a better apartment mix to meet diverse household needs.

The variation to the prescribed FSR does not result in any public disadvantage.

There is no public benefit in maintaining strict compliance with the development standard in this case as there are no adverse impacts that will result from the breach of the standard.









Bayside Local Planning Panel

26/11/2019

Item No	6.4
Application Type	Café and public amenities to park
Application No	DA-2019/150
Lodgement Date	06/05/2019
Property	2 Princes Highway, Wolli Creek
Ward	Ward 2
Owner	Crown Lands Office
Applicant	Bayside Council
Proposal	Integrated Development for the construction of a cafe and public amenities building at Cahill Park
No. of Submissions	3 submissions
Cost of Development	\$2,182,000
Report by	Michael McCabe, Director City Futures

Officer Recommendation

- 1 That development application DA-2019/150 of an Integrated Development for the construction of a cafe and public amenities building at Cahill Park at 2 Princes Highway, Wolli Creek, 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.
 - 2 That the submitters be notified of the Bayside Local Planning Panel's decision.
-

Location Plan



Attachments

- 1 Planning Assessment Report
- 2 Architectural Plans [↓](#)

BAYSIDE COUNCIL

Planning Assessment Report

Application Details

Application Number:	DA-2019/150
Report Date:	12 November 2019
Lodgement Date:	Lodged: 6 May 2019 Amended Plans: 13 September 2019
Property:	2 Princes Highway, Wolli Creek Lot 50 in DP 1223957
Owner:	Crown Lands Office
Applicant:	Bayside Council
Proposal:	Integrated Development for the construction of a cafe and public amenities building at Cahill Park
Submissions:	Three
Recommendation:	Approval
Author:	James Arnold – Principal at Arnold Urban

Key Issues

The key issues that were considered during the assessment process were as follows:

- **Pedestrian/Cyclist Conflict** – The gap between the proposed café and public amenities buildings was initially raised as an issue due to safety concerns for conflict between cyclists and pedestrians on the shared footpath. In response, the applicant amended the proposal to 'smooth' out the edge of the buildings adjacent to the gap to ensure satisfactory sightlines for pedestrians and cyclists crossing the shared zone. Further, pavement treatments and signage is proposed to make it clear that the area is shared and to encourage cyclists to slow down or to dismount. These amendments are considered satisfactory to resolve this issue.
- **Independent Assessment and Determination** – As Bayside Council is the applicant, an independent planning consultant was engaged to assess the application and prepare this report. Further, the development application is referred to the Bayside Local Planning Panel for determination under the 'conflict of interest' criteria of the ministerial directions for Local Planning Panels.

Recommendation

1. That development application DA-2019/150 of an Integrated Development for the construction of a cafe and public amenities building at Cahill Park at 2 Princes Highway,

Wolli Creek, 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.

2. That the submitters be notified of the Bayside Local Planning Panel's decision.

Background

- 2018 – Masterplan – A Masterplan was prepared by McGregor Coxall on behalf of Bayside Council for Cahill Park. The proposed café and amenities is identified in the Masterplan in the location that is proposed in the subject development application.
- 1 March 2019 – Pre-DA Meeting – The proposal was considered at a Pre-DA meeting with Council officers.
- 6 May 2019 – Development Application Lodgement – The subject DA-2019/150 was lodged with Council. The application was referred to various external agencies and internal Council officers for review of specialist matters.
- 15 May 2019 – Independent Assessor Engaged – Bayside Council is the applicant for the proposal and in accordance with Council policies, an independent planning consultant (James Arnold from Arnold Urban) was engaged to assess the application.
- 23 May 2019 to 6 June 2019 – Public Notification – The application was publicly notified and advertised in accordance with the Rockdale Development Control Plan (RDCP) 2011. In response, three submissions were received which were all in support of the proposal. These have been considered in the assessment as detailed in the submissions section of this report.
- 26 July 2019 – Request for Additional Information – Council's consultant assessment officer reviewed the application and raised the following key issues:
 - Development Engineer – Issues were raised in relation to traffic, parking, stormwater and flood management. Specifically, the key issues were swept paths and the layout of the car park, the footpath width between the buildings, and insufficient information on existing stormwater infrastructure.
 - Landscape Officer – Issues were raised in relation to the footpath width between the buildings due to the potential conflict between pedestrians and bicycles, and planting details.
 - Waste – The plans did not clearly identified a bin storage area for the café.
 - Gas easement – The plans indicated a gas easement to the east and north of the buildings with footpaths to be constructed over. Further information was requested on the nature of the easements.
- 13 September 2019 – Amended Plans – These are the amended plans which are the subject of the assessment herein. The amended plans and associated documents satisfactorily resolved the issues raised in the RFI letter. The key amendments and additional information submitted were as follows:
 - Development Engineer – The car park layout was amended to ensure adequate swept paths were available for access to the proposed loading zone. Stormwater and flooding issues were resolved via amended stormwater plans and conditions of consent. The issue of pedestrian and cyclist conflict in the zone between the

buildings was resolved via an adjusted building design to open up sightlines in the gap and pavement treatments to clearly indicate a slowed and shared zone for cyclists and pedestrians.

- Landscape Officer – The issue of pedestrian and cyclist conflict in the zone between the buildings was resolved via an adjusted building design to open up sightlines in the gap and pavement treatments to clearly indicate a slowed and shared zone for cyclists and pedestrians.
- Waste – The amended plans show an appropriate bin room within the café space.
- Gas easement – Referral comments were received from the beneficiary of the gas easement, APA, which raised no objections and provided conditions.

Proposal

The proposal (as amended) is for the construction of a cafe and public amenities building at Cahill Park at 2 Princes Highway, Wolli Creek.

Details of the proposal are as follows:

- Construction of a single storey café and amenities building within Cahill Park. The development is located immediately to the north of the existing children's playground and 20 metres from the Princes Highway. The building is separated into two sections with a single roof over. The southern pavilion is the café comprising a space for a future kitchen fitout, and indoor and outdoor seating areas. The northern pavilion is an amenities block comprising eight water closets including an accessible and family WC and service corridor;
- Construction of new footpaths to meet the existing paths;
- Line marking of the existing car park located to the north of the new building accessed off the Princes Highway;
- Associated landscaping and stormwater works; and,
- Details of the operation of the café were not provided with the application, however the following restrictions on the use have been deemed as appropriate by the assessment officer:
 - Hours of operation restricted to Monday to Saturday 6am to 10pm and Sundays 6am to 8pm; and,
 - Maximum five employees.

The proposal is shown in **Figures 1 to 2** below.

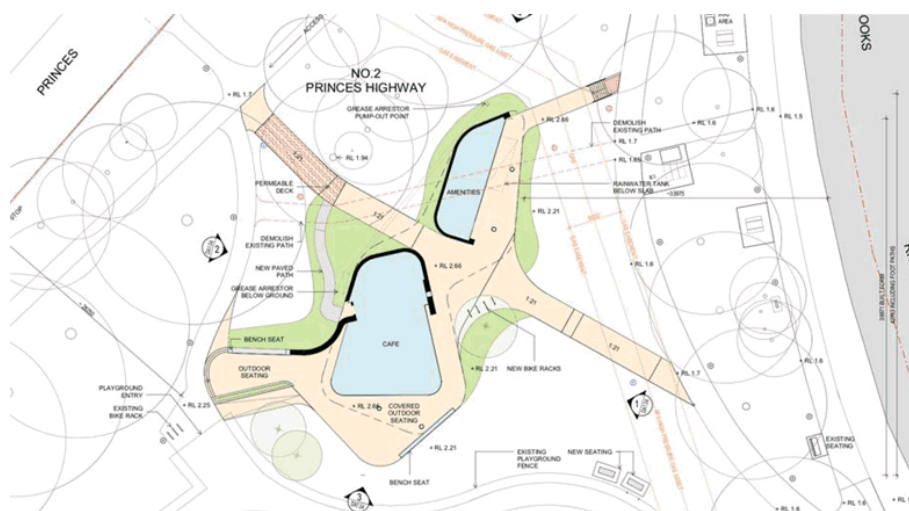


Figure 1. Site Plan
Source: Hayball, 2019



Figure 2. Perspective
Source: Hayball, 2019

Site and Locality Description

The subject site is Cahill Park which is addressed as 2 Princes Highway, Wolli Creek and is legally described as Lot 50 in DP 1223957. The park bound by the Princes Highway to the west, the Cooks River to the north, Levey Street to the east, and Gertrude Street to the south. The park is irregular in shape and has an area of 5.77Ha. The park is zoned RE1 Public Recreation with a strip of SP2 Infrastructure: Classified Roads in the eastern section.

The park contains a cricket oval, tennis courts, children's playground, open grassed areas, stands of mature trees, cycling paths, changing rooms, amenities, seating, barbecue facilities and a car park.

The café and amenities building in the subject application is proposed to be located in the north-western portion of the park, within an open grassed area immediately to the north of the children's playground.

Development in the area surrounding Cahill Park comprises commercial and high density residential to the west and south, the Cooks River and public recreation areas to the north, and hotels and airport related developments to the east.

Images of the site are shown in **Figure 3** to **7** below.



Figure 3. Marked up aerial image showing the location of the proposed development within Cahill Park
Source: maps.six.nsw.gov.au / Marked: Arnold Urban, 2019



Figure 4. Location of proposed development looking north towards the Cooks River
Source: Arnold Urban, 2019



Figure 5. Location of proposed development looking south
Source: Arnold Urban, 2019



Figure 6. The Cooks River adjacent to Cahill Park
Source: Arnold Urban, 2019



Figure 7. Existing car park to be line marked as part of the proposal
Source: Arnold Urban, 2019

Referrals

Internal

The development application was referred to Council's Development Engineer, Building Surveyor, Environmental Health Officer, Environmental Scientist, Landscape Officer, Transport Planner, Tree Management Officer and Waste Management Officer. A number of referrals requested additional information with the originally submitted proposal. The amended proposal was re-referred to those referral officers that raised issue and no further objections were raised subject to conditions which have been included on the draft consent.

External

The development application was referred to the Roads and Maritime Services (RMS), APA, Sydney Water, NSW Police, Ausgrid and Water NSW. No objections were raised subject to conditions by RMS, Sydney Water and APA which have been included on the draft consent. No response was received from Water NSW, NSW Police and Ausgrid.

Statutory Considerations

An assessment of the application has been undertaken in accordance with the matters for consideration under section 4.15 of the *Environmental Planning and Assessment Act 1979*.

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 proposal involves works within 40 metres of a watercourse (ie. 'waterfront land') which requires approval under the Water Management Act and therefore the application is considered integrated development pursuant to Division 5 of the EP&A Act.

The development application was referred to Water NSW for approval under the Water Management Act as works are proposed within 40 metres of the Cooks River.

The application was referred to Water NSW and after repeated requests from Council, no comments or general terms of approval have been received at the time of writing of this report. In accordance with Clause 4.47(5)(a) of the EP&A Act and Clause 70(1)(a) of the EP&A Regulations, if Council have not received a response within 40 days of the agency being notified of the development, then it may determine the application. Accordingly, this application may be determined without a response from Water NSW.

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

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

State Environmental Planning Policy (Infrastructure) 2007

State Environmental Planning Policy (Infrastructure) 2007 (Infrastructure SEPP) applies to the proposed development as the subject site has a frontage to the Princes Highway which is a classified road. The relevant clauses have been considered below.

Clause 101 – Development with frontage to a Classified Road

Pursuant to Clause 101(2), a consent authority must not grant consent to development on land that has a frontage to a classified road unless it is satisfied that:

- (a) *Where practicable, vehicular access to the land is provided by a road other than the classified road, and*
- (b) *The safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development as a result of:*
 - (i) *The design of the vehicular access to the land, or*
 - (ii) *The emission of smoke or dust from the development, or*
 - (iii) *The nature, volume or frequency of vehicles using the classified road to gain access to the land, and*
- (c) *The development is of a type that is not sensitive to traffic noise or vehicle emissions or is appropriately located and designed, or includes measures, to ameliorate potential traffic noise or vehicle emissions within the site of the development arising from the adjacent classified road*

The site has a frontage to a classified road being the Princes Highway and therefore this clause applies. The proposal does not include any new access or changes to access to the Princes Highway. There is likely to be an increase in the usage of the adjacent car park which is to be line marked as part of the proposal, however the car park only contains 17 spaces and the proposal was referred to the RMS who raised no objections subject to conditions which have been imposed. Accordingly, the proposal complies with this clause.

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

The proposed development is for a café and public amenities building which is not a type of development listed as being sensitive to road noise or vibration and therefore this clause does not apply.

Clause 104 – Traffic-generating development

Pursuant to Clause 104, certain development must be referred to the Roads and Maritime Services (RMS) for comment based on the type, capacity or location of the proposal. The proposal does not meet the criteria to be considered traffic-generating development (food and drink premises floor area >300m²) and therefore an RMS referral is not required under this clause. Nevertheless, the application was referred to RMS no objections were raised subject to conditions which have been imposed.

State Environmental Planning Policy No. 55 – Remediation of Land

The *State Environmental Planning Policy No. 55 – Remediation of Land* applies to the proposed development. Clause 7 requires a consent authority to consider the contamination status of the land and be satisfied that the land is, or will be made, suitable for the purpose for which the development is proposed to be carried out.

The application included the following technical reports in relation to contamination:

- 'Preliminary Site Investigation: Cahill Park Amenities and Café – Princes Highway, Wolli Creek, NSW', (Report P1907098JR01V01) by Martens & Associates, dated 3 May 2019.
- 'Remediation Action Plan: Cahill Park Amenities and Café – 2 Princes Highway, Wolli Creek, NSW', (Report P1807098JR04V01, dated 24 May 2019).

Council's Environmental Scientist has reviewed these reports and the proposal and raised no objections subject to conditions. An extract of the comments provided is as follows:

The Preliminary Site Investigation reported that the site has been open space and subsequently a public park prior to 1951 based on the aerial photographs. Six boreholes were drilled within the proposed development footprint (approx. 640m²). Selected soil samples were analysed for a range of chemicals of concern including asbestos. PAHs exceeding the site criteria (ESL and/or HIL) for parks and open space were detected at four of the six borehole locations. The report recommended preparation of a Remediation Action Plan.

The Remediation Action Plan recommended a cap and contain strategy, comprising stripping of impacted fill and replacing with a 100mm thick concrete cap or a thicker clean soil cap with vegetation.

Given the above, subject to the successful implementation of the Remediation Action Plan, the site will be made suitable for the proposed use and therefore the requirements of the SEPP have been satisfied.

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

The *State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017* (Vegetation SEPP) has been taken into consideration. The Vegetation SEPP provides approval pathways for the removal of vegetation in non-rural areas and matters for consideration in the assessment of applications to remove vegetation.

The proposal seeks to retain and protect all trees located near to the development site. There is a stand of mature trees to the west and north of the proposed building and some of the root zones will be encroached by footpaths. The proposal seeks to use porous materials or pavers in those areas that will impact roots zones. Council's Tree Management Officer has reviewed the proposal and raised no objections subject to conditions.

State Environmental Planning Policy (Coastal Management) 2018

The aim of the *State Environmental Planning Policy (Coastal Management) 2018* (the 'Coastal Management SEPP') is to promote an integrated and co-ordinated approach to land use planning in the coastal zone in a manner consistent with the objects of the Coastal Management Act 2016.

The Coastal Management SEPP applies to the proposal as the subject site is mapped as a 'coastal environmental area' and a 'coastal use area'. The following clauses are relevant:

Clause 13 Development on land within the coastal environment area

(1) Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:

- (a) the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,*
- (b) coastal environmental values and natural coastal processes,*
- (c) the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,*
- (d) marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,*
- (e) existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*
- (f) Aboriginal cultural heritage, practices and places,*
- (g) the use of the surf zone.*

(2) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:

- (a) the development is designed, sited and will be managed to avoid an adverse impact referred to in subclause (1), or*
- (b) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or*
- (c) if that impact cannot be minimised—the development will be managed to mitigate that impact.*

Comment: The proposed development is located in an open grassed area of Cahill Park and as such will not have any adverse impact on the natural features of the foreshore. An appropriate stormwater management system is proposed and the submitted flood studies indicate the proposal will have a negligible influence on flood patterns. Minimal excavation is proposed and site contamination will be capped and contained in accordance with the RAP.

Clause 14 Development on land within the coastal use area

(1) Development consent must not be granted to development on land that is within the coastal use area unless the consent authority:

- (a) has considered whether the proposed development is likely to cause an adverse impact on the following:*
 - (i) existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*
 - (ii) overshadowing, wind funnelling and the loss of views from public places to foreshores,*
 - (iii) the visual amenity and scenic qualities of the coast, including coastal headlands,*
 - (iv) Aboriginal cultural heritage, practices and places,*
 - (v) cultural and built environment heritage, and*

(b) is satisfied that:

- (i) the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or
- (ii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or
- (iii) if that impact cannot be minimised—the development will be managed to mitigate that impact, and
- (c) has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.

Comment: The proposed development is located in an open grassed area of Cahill Park and will not involve the removal or disturbance of any trees, vegetation or any natural coastal features. The building is single storey and relatively modest in size which will ensure it will be compatible with its surroundings. The flood affectation of the site has been addressed with a raised floor level for the buildings that complies with Council's standards.

Rockdale Local Environmental Plan 2011

An assessment of the proposal against the relevant clauses of the RLEP 2011 is provided in the table below.

RLEP 2011 Clauses	Compliance
2.3 Zoning – RE1 Public Recreation	Yes – See below discussion
4.3 Height of buildings	N/A – No maximum height on the land
4.4 Floor space ratio	N/A – No maximum FSR on the land
5.10 Heritage conservation	N/A – No heritage items on or near the site and not within a heritage conservation area.
6.1 Acid Sulfate Soils	Yes – See below discussion
6.2 Earthworks	Yes – See below discussion
6.3 Aircraft noise	N/A – The site is not affected by ANEF contour of 20 or greater.
6.4 Airspace operations	Yes – The proposal does not penetrate the Limitations or Operations Surface of Sydney Airport.
6.5 Foreshore building line	N/A – The site not is affected by the foreshore building line
6.6 Flood planning	Yes – see below discussion.
6.7 Stormwater	Yes – see below discussion.
6.8 Biodiversity protection	N/A – The portion of the site where the development is proposed is not mapped as biodiversity land.
6.9 Riparian land	N/A – The portion of the site where the development is proposed is not mapped as riparian land.
6.10 Wetlands	N/A – The portion of the site where the development is proposed is not mapped as wetlands.
6.12 Essential services	Yes – The site has access to all essential services including water, electricity, sewerage, stormwater drainage, and road.

2.3 Permissibility and Zone Objectives

The portion of the site where the development is proposed is zoned RE1 Public Recreation pursuant to the RLEP 2011. It is noted that part of the far eastern part of Cahill Park is zoned SP2 Infrastructure: Classified Roads.

The proposal is for the construction and use of a café and public amenities building. The public amenities portion of the development is considered to be ancillary to the primary use of the land which is for 'public recreation (outdoor)' which is permitted with consent. Whilst cafes are prohibited in the land use table, they are permitted with consent pursuant to the additional permitted uses clause (Clause 7A of Schedule 1- Additional Permitted Uses).

The proposal is consistent with the objectives of the RE1 zone as it will provide a café and public amenities building that will service the public open space area.



Figure 8. RLEP 2011 zoning map extract – Cahill Park is primarily zoned RE1 with a strip of SP2 to the eastern part

Source: NSW Legislation

6.1 Acid Sulfate Soils

The site is identified as Class 3 Acid Sulfate Soils.

The application included an Acid Sulfate Soils Assessment (prepared by Martens and Associates, dated 3 May 2019) which involved screening and laboratory tests and confirmed the presence of potential acid sulfate soils. The report concludes that the proposed development is unlikely to impact any Acid Sulfate Soils and that an Acid Sulfate Soils Management Plan is not required. Council's Environmental Scientist has reviewed the report and raised no objections subject to conditions.

6.2 Earthworks

No bulk excavation works are proposed other than some minor and shallow foundation/footings work. The proposal does include filling of approximately 900m³ to create a raised platform of 100-800mm above existing ground levels to achieve the required floor levels to mitigate flooding risks. The finished levels will batter down to marry into existing levels in the surrounding area and will not result in any adverse impacts.

6.6 Flood Planning

The site is mapped as a flood planning area. Flooding has been addressed in the submitted Civil Engineering DA Report and Flood Evacuation and Management Plan (prepared by WSP, dated 3 May 2019). Council has provided a flood advice letter that identifies the 1% AEP flood level at 2.16m AHD and the PMF at 3.46m AHD. The letter states that the development is not within a floodway and is subject to tidal inundation. Council's DCP requires a minimum habitable floor level of 500mm above the 1% AEP which is 2.66m AHD with all electricals to be set above this point. The proposal complies with the required levels with a floor level of 2.66m AHD and Council's Development Engineer has reviewed and raised no objections subject to conditions.

6.7 Stormwater

Amended Stormwater plans prepared by WSP were submitted with the application. The amended stormwater plans have been reviewed by Council's Development Engineer who raised no objection subject to conditions.

6.9 Riparian Land, Watercourses and Artificial Waterbodies

The proposed development is located within 40 metres of the Cooks River therefore this clause applies. It is not considered that the proposal will cause any adverse impact on the water quality within the watercourse, impact on the aquatic and riparian species, habitats and ecosystems, impact the stability of the bed, shore and banks of a watercourse, prevent any future rehabilitation of the watercourse or riparian areas and impact free passage of fish and other aquatic organisms.

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

No draft environmental planning instruments are of relevance in the assessment of the proposed development.

S4.15(1)(a)(iii) – Provisions of any Development Control Plan

The following development control plan is relevant to this application:

Rockdale Development Control Plan 2011

The proposal has been assessed against the relevant provisions of the RDCP 2011 and a summary is provided below.

RDCP 2011 Provisions	Compliance
4.1 Site Planning	Yes – see discussion below
4.2 Streetscape and Site Context	Yes – see discussion below
4.3 Landscape Planning and Design	Yes – see discussion below
4.4 Sustainable Building Design	Yes – see discussion below
4.5 Social Equity – Equitable Access	Yes – see discussion below
4.6 Car Parking	Yes – see discussion below
4.7 Site facilities	Yes – see discussion below
7.1 Wolli Creek Special Precinct	Yes – see discussion below

RDCP 2011 Part 4 – General Principles for Development

4.1 Site Planning

Assessment: A Site Analysis Plan was submitted with the application. The proposal is appropriately located adjacent to the regularly used children's playground and near to the car park for easy vehicular access and servicing. The design opens out to the east to capture morning winter sun and the roof will provide relief from the harsh summer sun. The eastern orientation will also assist in shielding the development from traffic noise from the Princes Highway to the west. The two pavilion design with a central thoroughfare will provide pedestrians and cyclists with direct access to the Wolli Creek precinct and station to the west.

4.2 Streetscape and Site Context

Assessment: The development sits within a green space context. The design is sensitive to the scale and character of the park, providing a modest single storey design broken up into two pavilions. The curved roof and building form and soft earthen colour palette reflects the surrounding natural setting. The proposed landscaping around the building and the existing stand of trees to the west will ensure the building will sit comfortably in the park.

4.3 Landscape Planning and Design

Assessment: The proposed landscaping comprises native ground cover grasses in sections around the concourse, planting of three trees, and new turf. The stand of mature fig trees along the Princes Highway side of the development is proposed to be retained and protected. Council's Landscape Officer and Tree Management Officer have reviewed the amended proposal and raised no objections subject to conditions.

4.4 Sustainable Building Design

Assessment: The café will naturally cross ventilate with large openings extending across most of the eastern and southern sides and will have good levels of sunlight throughout the year. The western side is designed defensively to protect from afternoon sun and the roof over will also assist in providing relief from the high summer sun. The amended proposal has also included a rainwater tank to capture roof water to be re-used in the toilets.

4.5 Social Equity – Equitable Access

Assessment: A BCA report was submitted with the application that indicates that the proposal has been designed and will be constructed to comply with the relevant access requirements of the Disability Discrimination Act and the Building Code of Australia.

4.6 Car parking

Assessment: The proposal will utilise the existing at-grade car parking area located to the immediate north and accessed off the Princes Highway. The car parking is currently informal with no line marking. The proposal seeks to formalise the car park with 90 degree space line marking, the provision of an accessible space, pram ramps, and an SRV loading bay for deliveries and garbage collection for the development. This will result in a total of 17 car parking spaces including one accessible space. The DCP provides a car parking rate of 1 space per 40m² of GFA for cafes (ie. food and drink premises) which equates to a requirement of 3.75 spaces which has been achieved.

Council's Development Engineer has reviewed the proposed design and raised no objections subject to conditions.

4.7 Site Facilities

Assessment: The proposal includes an amenities pavilion with a total of eight water closets including an accessible WC, two ambulant WCs and a family WC.

RDCP 2011 Part 7.1 – Wolli Creek Special Precinct

Assessment:

Part 7.1 of the RDCP 2011 provides controls for the Wolli Creek Redevelopment Area which Cahill Park forms part of. The controls include a vision for the area, a structure plan, land use strategy, road network, open space and movement, built form, street character, and environmental management.

The specific controls relating to open space areas in Wolli Creek relate to implementing a pedestrian and cycle network in accordance with the DCP, providing safe pedestrian movement paths, providing level crossings across the Princes Highway and the provision of a plaza at 94 Arncliffe Street.

The cycle and pedestrian path network shown as it relates to Cahill Park has already been implemented, the proposal will be an addition to the network, providing a new access through the building to the crossing at the Princes Highway. In relation to safe movement paths, extensive discussions were had during the assessment process regarding potential cyclist and pedestrian conflicts on the path between the buildings. As a result, the amended proposal created a splay for improved sightlines. Pavement treatments have also been introduced as tactile indicators for cyclists to slow down on the concourse and space between the buildings. Appropriate signage is also proposed to ensure cyclists are aware to slow down and be aware of pedestrians in the vicinity of the building.

S4.15(1)(a)(iv) – Provisions of the Regulations

The *Environmental Planning and Assessment Regulation 2000* (the Regulations) have been considered in the assessment and no issues have been identified.

S4.15(1)(b) – Likely Impacts of Development

The likely impacts of the development have been considered throughout the preceding assessment against the relevant Environmental Planning Instruments and Development Control Plans. No significant adverse impacts have been identified. Potential impacts during construction will be mitigated and managed through standard conditions of consent and relevant standards. The development will provide a much needed amenities block and café within this important public open space that will service the growing Wolli Creek community.

Café Use Impact Assessment

The RLEP 2011 and RDCP 2011 do not contain any provisions that control the specific operations of the proposed café at this site and as such an assessment is provided herein. Details of the operation of the café were not provided with the application, however given the location is not in the vicinity of any residential properties and is adjacent to a major arterial road, the potential for disturbance to the amenity of the surrounding area is minimal. Accordingly, relatively wide hours of operation of Monday to Saturday 6am to 10pm and Sundays 6am to 8pm are considered acceptable and a condition has been imposed as such. Furthermore, a maximum number of five employees is considered sufficient for the size of the

café and there is more than sufficient car parking to accommodate this number; a condition has been imposed to this effect.

S4.15(1)(c) – Suitability of the Site

The proposed café and amenities block is a permissible use within the RE1 Public Recreation zone. The proposal is appropriately located adjacent to the regularly used children's playground and near to the car park for easy vehicular access and servicing. No trees or important natural landforms will be removed or disturbed as part of the proposal. The issue of site contamination has been considered in this assessment and subject to conditions of consent including successful implementation of Remediation Action Plan, the site will be made suitable for the proposed use.

S4.15(1)(d) – Submissions

The application was publicly notified from 23 May 2019 to 6 June 2019 in accordance with the RDCP 2011. In response, three submissions were received, which were all in support of the proposal. It is noted that amended plans were submitted which are the subject of this assessment. These plans were not re-notified as the amendments were minor and would not result in any change to impacts on adjoining properties.

The issues raised in the submissions have been taken into consideration in the assessment as detailed below.

Issue 1: Café may not be commercially successful and could be vacant

Comment: The submitters' concerns are acknowledged, however the commercial viability of the proposed café is not a matter for consideration in the assessment of a development application. Should the use not be viable, there is the option of a future change of use application.

Issue 2: Seating areas should be expanded for greater capacity and future flexibility

Comment: The proposed seating areas are considered appropriate for the scale of café proposed. Any modification to the seating will be subject to a future modification application.

S4.15(1)(e) – Public Interest

The proposed development is considered to be in the public interest as it will provide amenities and a location for food and drink within Cahill Park that will meet the needs of the local community.

Conclusion

The proposal is for the construction of a café and public amenities building at Cahill Park. The proposal is consistent with the key planning provisions contained within the RLEP 2011 and the RDCP 2011 and it aligns with the master plan for Cahill Park.

The development is permissible in the RE1 zone and is consistent with the objectives as it will provide a café and public amenities that will service the public open space area. The design appropriately integrates into the parkland setting with landscaping and trees proposed to surround the buildings. The proposal is appropriately located adjacent to the regularly used children's playground and near to the car park for easy vehicular access and servicing. The

design opens out to the east to capture morning winter sun and the roof will provide relief from the harsh summer sun. The eastern orientation will also assist in shielding the development from traffic noise from the Princes Highway to the west. The two pavilion design with a central thoroughfare will provide pedestrians and cyclists with direct access to the Wolli Creek precinct and station to the west. No trees or important natural landforms will be removed or disturbed. There are no properties within the vicinity of the proposal and as such there will be no impacts of amenity.

For these reasons, the development application is recommended for approval subject to conditions of consent.

Schedule 1 - Draft Conditions of consent

General Conditions

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

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

Plan/Dwg No.	Drawn by	Dated	Received by Council
DA0.000- Rev 7- Cover Sheet	Hayball	06/05/19	13/09/19
DA0.01- Rev 7- Locality Plan	Hayball	06/05/19	13/09/19
DA0.02- Rev 7- Site Analysis Plan	Hayball	06/05/19	13/09/19
DA0.03- Rev 7- Existing Site Plan	Hayball	06/05/19	13/09/19
DA0.04- Rev 9- Proposed Site Plan	Hayball	28/08/19	13/09/19
DA1.01- Rev 9- Ground Floor Plan	Hayball	28/08/19	13/09/19
DA1.02- Rev 8- Roof Plan	Hayball	16/08/19	13/09/19
DA1.03- Rev 8- Reflected Ceiling Plan	Hayball	16/08/19	13/09/19
DA1.04- Rev 8- Elevations	Hayball	16/08/19	13/09/19
DA1.05- Rev 7- Sections	Hayball	06/05/19	13/09/19
DA1.06- Rev 7- Materials and Colours	Hayball	06/05/19	13/09/19
DA1.07- Rev 7- Planting Palette	Hayball	06/05/19	13/09/19

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

Development specific conditions

The following conditions are specific to the Development Application proposal.

5. The hours of operation of the approved cafe use shall be restricted to between 6:00am and 10:00pm Mondays to Saturdays and Sundays between 6am and 8 pm.
6. Signs or goods shall not be displayed or placed on the public footpath or any other part of the public road at any time without Council's consent.
7. Commercial vehicle facilities shall be designed strictly in accordance with AS2890.2:2002. Loading and unloading to service the development shall be restricted to commercial vehicles not exceeding the size and mass description of the SRV from AS2890.2:2002.
8. 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.
9. All wastewater and stormwater treatment devices (including drainage systems, sumps, stormwater quality improvement devices 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.
10. Bicycle parking facilities shall be designed in accordance with AS2890.3:2015.
11. The off-street parking areas associated with the subject development shall be designed strictly in accordance with AS2890.1 and AS2890.6.
12. Adequate lighting shall be provided for the development and designed with respect to the AS/NZS 1158 lighting series. All existing and proposed lights shall comply with the Australian Standard AS4282 - 1997 "Control of the Obtrusive Effects of Outdoor Lighting". In this regard, the lighting of the premises shall be directed so as not to cause nuisance to the owners or occupiers of adjacent/adjoining premises or to motorists on adjoining or nearby roads.
13. The proposed development shall be designed, constructed and operated in compliance with the requirements of the Food Act 2003, Food Regulations 2004 and the Australian Standard AS 4674 – 2004 "Design, Construction and Fit out of Food Premises".
14. Prior to issue of any Occupation Certificate, the following must be complied with:

- a) All landscape works are to be carried out in accordance with the approved landscape plans (refer to Condition 2) for the approved development. The landscaping is to be maintained to the approved standard at all times.
- b)
 - b) A Landscape Architect shall provide a report to the certifying authority (with a copy provided to Council, if Council is not the principal certifier) stating that the landscape works have been carried out in accordance with the approved plans and documentation.

Prior to the issue of the construction certificate

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

- 15. Detailed plans of the kitchen and café fit out is to be provided to the Manager of Development Services and Environmental Health Officers prior to the issue of the Construction Certificate for the fit out of the kitchen.
- 16. Prior to the issue of the Construction Certificate, the required Long Service Levy payable under Section 34 of the Building and Construction Industry Long Service Payments Act 1986 has to be paid. The Long Service Levy is payable at 0.35% of the total cost of the development, however this is a State Government Fee and can change without notice.
- 17. A suitable qualified engineer is to certify that the structure can withstand the forces of floodwater, scour, debris and buoyancy in a 1% AEP flood event.
- 18. 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.
- 19. Prior to the issue of the Construction Certificate, the approved plans must be submitted to Sydney Water Tap in™ online service to determine whether the development will affect any Sydney Water sewer or water main, stormwater drains and/or easement, and if further requirements need to be met.

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

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

- 20. Any part of the proposed building located in the vicinity of the existing pipeline shall be constructed on a pier and beam type foundation (or as otherwise recommended by a structural/civil engineer), piers shall extend to a depth of no less than 300mm below the pipeline invert. See Rockdale Technical Specification Stormwater Management section 8.6-8.8. This requirement shall be reflected on the Construction Certificate plans and supporting documentation.
- 21. Any part of the proposed building within 3m of the proposed rainwater tank shall be constructed on a pier and beam foundation with piers extending no less than 300mm below the bottom of the tank or trench base (or as otherwise recommended by a

structural/civil engineer). This requirement shall be reflected on the Construction Certificate plans and supporting documentation.

22. Prior to the issue of the Construction Certificate, excavation shall be undertaken to confirm the location of the Council stormwater pipeline that traverses the property in close proximity to the proposed development.
23. Prior to the issue of the Construction Certificate, detailed drainage design plans for the management of stormwater are to be submitted to Principal Certifying Authority for assessment and approval.

The detailed plans shall include the following measures:

- a) Incorporate the provisions generally made in the concept civil engineering DA report prepared by WSP, ref 190502_PS113379 - DA REPORT.DOCX, dated May 2019 and the amended general arrangement plan prepared by WSP, drawing number PS113379 C010, issue P3, dated 29.08.2019. All plans and documentation must be updated to accurately reflect the approved architectural plans.
- b) A minimum capacity 8000L rainwater tank must be provided with a catchment of at least 75% of the roof area of the development. The rainwater tank shall service all toilets in the development for non-potable stormwater re-use, designed in accordance with the requirements of Sydney Water and AS/NZS 3500 – National Plumbing and Drainage Code. First flush device shall also be incorporated into the tank systems. Overflow from the rainwater tank shall connect to the proposed site drainage system.
- c) A Stormwater Quality Improvement Device (SQID) must be provided prior to the discharge of stormwater from the site. The water quality improvement system shall be designed to capture and treat at least 85% flows generated from the site and meet the water pollution reduction targets described in Rockdale Technical Specification Stormwater Management section 7.5.
- d) The existing Council owned Stormwater Infrastructure adjacent to the proposed development shall be relined and concrete encased (where it is proposed to fill over existing pipe) as determined and specified by a suitably qualified engineer.

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

24. Prior to the issue of the Construction Certificate for the fit out of the kitchen/cafe, a copy of Permission to Discharge Trade Waste Water shall be obtained from Sydney Water prior to the discharge of trade waste water to the sewer system. A copy shall be provided to Principal Certifying Authority (PCA) prior to issuing the Construction Certificate. A copy shall also be provided to Council if Council is not the PCA.

25. Prior to the issue of the Construction Certificate for the fit out of the kitchen/cafe, rooms and areas designated for the storage and washing of garbage receptacles shall be designed and constructed in accordance with the following requirements;
- a) Contained within a room the floors and walls shall be constructed of a suitable material which is durable, smooth, resistant to corrosion, impervious to moisture and coved with a minimum radius of 25mm at the intersection of walls with floors;
 - b) The floor shall be graded and drained to a floor waste gully connected to the sewerage system and traps of the premises in accordance with all Sydney Water requirements;
 - c) Provide a hose tap connected to the water supply. Water used for cleaning garbage receptacles may be either potable or non-potable water
 - d) The room shall be ventilated with either natural ventilation or alternatively mechanically ventilated in accordance with the requirements of Australian Standards Access AS 1668.

Access to garbage receptacles area for emptying shall not be through areas where open food is handled or stored or where food contact equipment and packaging materials are handled or stored.

Prior to commencement of works

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

26. A Soil and Water Management Plan shall be prepared. The Plan must include details of the proposed erosion and sediment controls to be installed on the building site. A copy of the Soil and Water Management Plan must be kept on-site at all times and made available on request.

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

Council's warning sign for soil and water management must be displayed on the most prominent point on the building site, visible to both the street and site workers. The sign shall be erected prior to commencement of works and shall be displayed throughout construction.

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

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

- a) ingress and egress of vehicles to the site;
- b) loading and unloading, including construction zones;

- c) predicted traffic volumes, types and routes; and
- d) pedestrian and traffic management methods.

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

28. Prior to the commencement of work, Tree Protection Zones shall be established in accordance with AS4970-2009 (Protection of trees on Development Sites) with protective fences at least 1.8 metres high erected outside the drip lines from the trunks around each tree or group of trees which are required to be retained and are surrounding the proposed site. The protective fences shall consist of chain wire mesh temporary fence panels securely mounted and braced to prevent movement, shall be in place prior to the commencement of any work on site and shall remain until the completion of all building and hard landscape construction. Excavations for services, waste bins, storage of materials and equipment, site residue, site sheds, vehicle access or cleaning of tools and equipment are not permitted within the Tree Protection Zones at any time.
29. Prior to the commencement of any work on site, a sign shall be placed in a prominent position on each protective fence identifying the area as a Tree Protection Zone and prohibiting vehicle access, waste bins, storage of materials and equipment, site residue and excavations within the fenced off area.

During demolition/ excavation/ construction

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

30. If a Construction Certificate is required, a copy of the Construction Certificate and the approved plans and specifications must be kept on the site at all times and be available to Council officers upon request.
31. Hours of construction shall be confined to between 7 am and 6.30 pm Mondays to Fridays, inclusive, and between 8 am and 3.30 pm Saturdays with no work being carried out on Sundays and all public holidays.
32. For Class 5-9 structures, the building works are to be inspected during construction, by the principal certifying authority (or other suitably qualified person on behalf of the principal certifying authority) to monitor compliance with Council's approval and the relevant standards of construction encompassing the following stages:
 - a) after excavation for and before the placement of, any footing, and
 - b) prior to covering any stormwater drainage connections, and
 - c) after the building work has been completed and prior to any occupation certificate being issued in relation to the building.

Documentary evidence of compliance with Council's approval and relevant standards of construction is to be obtained prior to proceeding to the subsequent stages of construction and copies of the documentary evidence are to be maintained by the principal certifying authority and be made available to Council officers upon request.

33. Upon inspection of each stage of construction, the Principal Certifying Authority (or other suitably qualified person on behalf of the Principal Certifying Authority) is also required

to ensure that adequate provisions are made for the following measures (as applicable), to ensure compliance with the terms of Council's approval:

- a) Sediment control measures
 - b) Provision of perimeter fences or hoardings for public safety and restricted access to building sites.
 - c) Maintenance of the public place free from unauthorised materials, waste containers or other obstructions.
34. Any new information that comes to light during demolition or construction, which has the potential to alter previous conclusions about site contamination and remediation, must be notified to Council and the accredited certifier immediately. All work on site must cease until the council is notified of the appropriate measures to be implemented, by an appropriately qualified and experienced environmental consultant, to assess and manage the contamination in accordance with any relevant NSW EPA adopted guidelines.
35. All contractors shall comply with the following during all stages of demolition and construction:
- a) A Waste Container on Public Road Reserve Permit must be obtained prior to the placement of any waste container or skip bin in the road reserve (i.e. road or footpath or nature strip). Where a waste container or skip bin is placed in the road reserve without first obtaining a permit, the Council's fees and penalties will be deducted from the Footpath Reserve Restoration Deposit. Permits can be obtained from Council's Customer Service Centre.
 - b) A Road Opening Permit must be obtained prior to any excavation in the road reserve (i.e. road or footpath or nature strip). Where excavation is carried out on the road reserve without first obtaining a permit, the Council's fees and penalties will be deducted from the Footpath Reserve Restoration Deposit. Permits can be obtained from Council's Customer Service Centre.
 - c) A Hoarding Permit must be obtained prior to the erection of any hoarding (Class A or Class B) in the road reserve (i.e. road or footpath or nature strip). Where a hoarding is erected in the road reserve without first obtaining a permit, the Council's fees and penalties will be deducted from the Footpath Reserve Restoration Deposit. Permits can be obtained from Council's Customer Service Centre.
 - d) A Crane Permit must be obtained from Council prior to the operation of any activity involving the swinging or hoisting of goods across or over any part of a public road by means of a lift, hoist or tackle projecting over the footway. Permits can be obtained from Council's Customer Service Centre.
 - e) A current Permit to Dewater or Pump Out a site must be obtained prior to the discharge of pumped water into the road reserve, which includes Council stormwater pits and the kerb and gutter. Permits can be obtained from Council's Customer Service Centre.
36. The following conditions are necessary to ensure minimal impacts during construction:
- a) Building, demolition and construction works not to cause stormwater pollution and being carried out in accordance with Section 2.8 of Council's Stormwater Pollution

Control Code 1993. Pollutants such as concrete slurry, clay and soil shall not be washed from vehicles onto roadways, footways or into the stormwater system. Drains, gutters, roadways and access ways shall be maintained free of sediment. Where required, gutters and roadways shall be swept regularly to maintain them free from sediment.

- b) Stormwater from roof areas shall be linked via a temporary downpipe to an approved stormwater disposal system immediately after completion of the roof area.
- c) All disturbed areas shall be stabilised against erosion within 14 days of completion, and prior to removal of sediment controls.
- d) 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.
- e) 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.
- f) Wind blown dust from stockpile and construction activities shall be minimised by one or more of the following methods:
 - i) spraying water in dry windy weather
 - ii) cover stockpiles
 - iii) fabric fences
- g) Access to the site shall be restricted to no more than two 3m driveways. Council's footpath shall be protected at all times. Within the site, provision of a minimum of 100mm coarse crushed rock is to be provided for a minimum length of 2 metres to remove mud from the tyres of construction vehicles.

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

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

- h) Any noise generated during construction of the development shall not exceed limits specified in any relevant noise management policy prepared pursuant to the

Protection of the Environment Operations Act, 1997 or exceed approved noise limits for the site.

37. Council's warning sign for soil and water management must be displayed on the most prominent point on the building site, visible to both the street and site workers. The sign must be displayed throughout construction. A copy of the sign is available from Council.
38.
 - a) All remediation work must be carried out in accordance with:
 - b) NSW Office of Environment and Heritage (OEH) 'Contaminated Sites – Guidelines for Consultants Reporting on Contaminated Sites';
 - c) NSW Environment Protection Authority (NSW EPA) guidelines under the Contaminated Land Management Act 1997;
 - d) State Environmental Planning Policy 55 (SEPP55) – Remediation of Land; and
 - e) the Remediation Action Plan: Cahill Park Amenities and Cafe – 2 Princes Highway, Wollie Creek, NSW, (P1807098JR04V01), dated May 2019.
39. 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.
40. To prevent contaminated soil being used onsite and to ensure that it is suitable for the proposed land use, all imported fill must be appropriately certified material and must be validated in accordance with the:
 - a) Office of Environment and Heritage (OEH) approved guidelines; and
 - b) Protection of the Environment Operations Act 1997; and
 - c) Protection of the Environment Operations (Waste) Regulation 2014.All imported fill must be accompanied by documentation from the supplier which certifies that the material has been analysed and is suitable for the proposed land use.
41. No trees located within the site, or around the site shall be removed or pruned without the prior written consent of Council in the form of a Permit issued under Council's Development Control Plan 2011.
42. Where drainage or paving works are proposed to be constructed in the area below the dripline of trees, the proposed works and construction methods must not damage the tree. Where either the trees or works were not shown in detail on the approved plans, then Council approval must be obtained by contacting Council's Tree Management Officer.
43. Underground Services such as pipelines or cables to be located close to trees, must be installed by boring or by such other method that will not damage the tree rather than open trench excavation. The construction method must be approved by Council's Tree Management Officer.
44. Existing soil levels within the drip line of trees to be retained shall not be altered without reference to Council's Tree Management Officer.

45. Building materials, site residue, machinery and building equipment shall not be placed or stored under the dripline of trees required to be retained.
46. The recommendations contained in the previous advice given by the Tree Management Officer in regard to where the proposed pathway will encroach upon any tree's Structural Root Zone (SRZ) during the construction of the footpath are to be applied. Materials recommended for use should be either porous or the laying of pavers be used, for the purposes of allowing water, oxygen and nutrients to access the root zones in the areas where the raised pathway will be constructed as they pass over those root zones.

Prior to the issue of occupation certificate or commencement of use

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

47. An Occupation Certificate shall be obtained in relation to the approved works prior to any use or occupation of the relevant section of the building.
48. Appropriate signage and tactile information indicating accessible facilities shall be provided at the main entrance directory, or wherever directional signage such as lifts or building directories or information is provided to those buildings where access and facilities for people with disabilities has been provided. Such signage shall have regard to the provisions of AS1428.1 and AS1428.2.
49. Tactile differentiation on floor surfaces indicating change of gradient shall be provided to those buildings where access and facilities for people with disabilities has been provided. This includes the external parts of the building, eg. access walkways and ramps. Such differentiation shall have regard to the provisions of AS1428.4.
50. Where Council's park/reserve is damaged as a result of building work or vehicular building traffic, this area shall be restored by Council at the applicant's expense. Repairs shall be completed prior to the issue of the Occupation Certificate.
51. All excess excavated material, demolition material, vegetative matter and builder's rubbish shall be removed to the Waste Disposal Depot or the Regional Tip prior to final inspection.
Note: Burning on site is prohibited.
52. Ground level surfaces are to be treated with anti-graffiti coating to minimise the potential of defacement. In addition, any graffiti evident on the exterior facades and visible from a public place shall be removed forthwith.
53. Trading shall not commence until a final fit out inspection has been carried out by Council's Environmental Health Officer and all conditions of consent have been complied with relating to the fit out of the cafe. Council's Environmental Health Officer shall be given 2 business days advance notice of an inspection.
54. Any 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.
55. All off-street car spaces shall be provided in accordance with the approved plans and shall be sealed and linemarked to a suitably qualified engineer's satisfaction. Bollards shall be erected for all accessible parking spaces in accordance with AS2890.6 and signage shall be erected as per the approved plan. At least four bicycle parking racks shall be provided within close proximity to the café as per the approved plans.

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

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

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

57. On completion of the installation of the mechanical ventilation systems and prior to the issue of the Occupation Certificate, a certificate of completion and performance from the design engineer shall be submitted to Council certifying that the system has been installed, inspected, commissioned, tested and performs in accordance with Australian Standards AS1668.
58. A Stage 4 – Site Validation Report (SVR) must be prepared by a suitably qualified contaminated land consultant and must be in accordance with:
- a) NSW Office of Environment and Heritage (OEH) 'Contaminated Sites – Guidelines for Consultants Reporting on Contaminated Sites';
 - b) NSW Environment Protection Authority (NSW EPA) approved guidelines under the Contaminated Land Management Act 1997; and
 - c) State Environmental Planning Policy 55 (SEPP55) – Remediation of Land.

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

59. A certificate from a Registered Surveyor shall be provided to the Principal Certifying Authority (PCA) certifying that the habitable/commercial floor level is constructed a minimum of 500mm above the 1% Annual Exceedance Probability (A.E.P) Flood Level. A copy of the certificate shall be provided to Council where Council is not the Principal Certifying Authority.
60. Prior to occupation a Chartered Professional Engineer shall certify that the stormwater system has been constructed in accordance with the approved plans and as required by Rockdale Technical Specification Stormwater Management. The certificate shall be in the form specified in Rockdale Technical Specification Stormwater Management and include an evaluation of the completed drainage works. A works-as-executed drainage plan shall be prepared by a registered surveyor based on a survey of the completed works. A copy of the certificate and works-as-executed plan(s) shall be supplied to the Principal Certifying Authority. A copy shall be provided to Council if Council is not the Principal Certifying Authority.
61. Once a tenant has occupied the premise, the premises shall be registered with Councils Environmental Health Unit by the proprietor of the food business by completing the registration form available from Council.

62. The premises shall be registered with the NSW Food Authority by the proprietor of the food business, once occupied, by completing the registration form available online at www.foodnotify.nsw.gov.au/nafsis/ and providing documentary evidence to the Principal Certifying Authority of the completion of this notification with the Food Authority.
63. Prior to commencement of operations, an advisory plaque shall be fixed to a prominent location in such a way that it cannot be removed, containing the wording "Cahill Park may be subject to flooding in heavy storms. Keep clear of the area when flows occur". The owners shall preserve the plaque in good condition and keep it visible.
64. Signs shall be displayed adjacent to all stormwater drains on the premises, clearly indicating "Clean water only - No waste".
65. Prior to the issue of any Occupation Certificate, a registered plumber's certification that the Rainwater Tank Re-use system(s) have been fitted with a first flush device and have been connected for non-potable uses in the development including all toilet flushing has been provided for the development.
66. Prior to the issue of any occupation certificate, a flood management plan is to be prepared for the development in order to ensure adequate flood awareness is provided, an example is attached to the flood advice letter issued for the site dated 4 March 2019 (Our Ref: FA-2019/2001). The flood management plan is to be assessed and approved by the Principal Certifier. The approved flood management plan shall be laminated and permanently attached to a prominent location within the cafe to the satisfaction of the Principal Certifier.

Integrated development / external authorities

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

67. Roads and Maritime Services Conditions

- a) Roads and Maritime understands that Bayside Council proposes to re-develop the existing nearby car park. 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 (off-street car parking), AS 2890.2-2018 (off-street commercial vehicle facilities), AS2890.6-2009 (off-street parking for people with disabilities) and for heavy vehicle usage.

Parking Restrictions may be required to maintain the required sight distances at the access and egress points.

- b) Consideration should also be given to providing bicycle parking facilities either within the development or close to it to support and encourage active transport.
- c) The swept path of the longest vehicle (including garbage trucks, building & cafe maintenance vehicles and removalists) entering and exiting the subject car park, as well as manoeuvrability through the site, shall be in accordance with AUSTROADS. In this regard, a plan shall be submitted to Council for approval, which shows that the proposed development complies with this requirement.

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

68. Sydney Water Conditions

- 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. *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.

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>

- b) 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 can be made through an authorised Water Servicing Coordinator. For help either visit www.sydneywater.com.au > Plumbing, building and developing > Developing > Section 73 Compliance Certificates or telephone 13 20 92.

69. APA Group Conditions

- a) **No improvements within three metres of pipeline**
 Buildings, structures, roadway, pavement, pipeline, cable, fence or any other improvement on or under the land within three metres of the gas transmission pipeline must not be constructed without prior consent in writing from the pipeline licensee/operator. No structure or vegetation will be permitted within three metres of the gas transmission pipeline that prohibits maintenance of line of sight along the pipeline.
- b) **Third Party Works Authorisation**
 Prior to the commencement of any works within 3 metres of the gas transmission pipeline, the proponent must provide details of the proposed works to APA, and seek a Third Party Works approval from APA.
- c) **Amend Architectural Plans**

The Architectural Plans should be amended to ensure the proposed stairs and power, traffic, and light poles and site office are located more than 3 metres from APA's pipeline.

d) **No Earthworks within three metres of pipeline**

No earthworks or changes in ground level are permitted within 3 metres of the pipeline without prior consent in writing from APA. Earthworks near the pipeline must not alter or concentrate water flows which may cause erosion and loss of cover over the pipeline.

e) **Changes in Pipeline Depth of Cover**

Any changes to the natural ground level within 3 metres of the gas transmission pipeline, must only occur with the authorisation of APA. Detailed engineering plans will be required to be submitted in support of an application for such authorisation. APA must be satisfied that any change in depth of cover does not compromise the integrity of the pipeline.

f) **Construction Management Plan**

Prior to the commencement of any works, including demolition, on land within 50 metres of the pipeline, a construction management plan must be submitted to and approved by APA. The plan must:

- i. Prohibit the use of rippers or horizontal directional drills unless otherwise agreed by the operator of the gas transmission pipeline.
- ii. Avoid significant vibration, heavy loadings stored over the pipeline and heavy vehicle / plant crossings of the pipeline.
- iii. Be endorsed by the operator of the gas transmission pipeline where the works are within the road reserve.

The construction management plan must be implemented to the satisfaction of APA. The construction management plan may be amended to the satisfaction of APA.

g) **Detailed Engineering Plans required**

Prior to development commencing for any stage which include the gas transmission pipeline, detailed engineering plans for the proposed crossings over the transmission gas pipeline must be submitted to and approved by APA. These crossings must not result in any reduction in the cover over the pipeline asset. Council will seek the view of the APA in this matter.

h) **Landscape Plans**

Prior to the development commencing for any stage which includes the gas transmission pipeline, landscape plans depicting any planned landscaping, including the planting of vegetation, species details, surface treatments, furniture, structures or improvements on or immediately abutting the gas transmission pipeline be submitted to and approved by the assessment manager. A three-metre minimum clearance between the pipeline and any vegetation with a mature height greater than 0.5 metres must be maintained. The assessment manager will seek the view of the APA in this matter.

i) **Notation of Gas Pipeline on Plans**

All plans which include the gas pipeline must have it clearly notated as 'high pressure gas transmission pipeline - no works to occur without the prior authorisation of the pipeline operator'.

j) **Services**

The design of any infrastructure mains and reticulation shall be designed to minimise encroachment on the gas transmission pipeline (either crossing or within three metres). Any such encroachments will require the approval of APA. The assessment manager will seek the view of APA in considering any operational works applications required for services.

Note

If you are planning on undertaking any physical works on property containing or proximate to a pipeline, or are seeking details on the physical location of a pipeline, please contact Dial Before you Dig on 1100, or APA directly on APAprotection@apa.com.au.

Note

An early works agreement from APA is required for any assessments/approvals that require greater than 3 days assessment or supervision. Lead in times for agreements can be up to 12 weeks. Please contact APA at APAprotection@apa.com.au or 1800 103 452.

Note

APA has a suite of standard engineering drawings to assist with detailed design. These are available upon request. Please contact APA at APAprotection@apa.com.au or 1800 103 452.

Development Consent Advicea) *Dial Before You Dig*

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

b) *Telstra Advice - Telecommunications Act 1997 (Commonwealth)*

Telstra (and its authorised contractors) are the only companies that are permitted to conduct works on Telstra's network and assets. Any person interfering with a facility or installation owned by Telstra is committing an offence under the Criminal Code Act 1995 (Commonwealth) and is liable for prosecution. Furthermore, damage to Telstra's infrastructure may result in interruption to the provision of essential services and significant costs. If you are aware of any works or proposed works which may affect or impact on Telstra's assets in any way, you are required to contact: Telstra's Network Integrity Team on phone number 1800810443.

c) All site works shall comply with the occupational health and safety requirements of the NSW WorkCover Authority.

An architectural rendering of a proposed new building for the University of California, Berkeley. The building is a long, low-profile structure with a flat roof and large glass windows, partially obscured by mature trees and landscaping. A paved walkway leads towards the building, and a grassy area is in the foreground. The scene is set against a backdrop of dense green trees and a clear blue sky.

7	OA SUBMISSION	08/05/2011
6	DRAFT OA SUBMISSION	30/04/2011
5	FOR CONSULTANT COORDINATION	23/04/2011
4	95% COUNCIL REVIEW	28/02/2011
3	75% COORDINATION	23/02/2011
2	50% SUBMISSION	15/02/2011
1	95% COUNCIL MEETING	01/02/2011
See	Discussion	Date

hayba

McKeesport	Bytney	Irishboro
41°35'	Ground Floor	Level 12,
State Street Southpark,	11-17 Buxtonplace Street,	324 Queen Street
PA 15106	Sunnyvale PA 15070	Scranton PA 17403
T 412 3 5888 3044	T 412 2 8828 9324	T 417 3 3211 95

APR 04 08 304251 1525N Northwood Architects Firm Jackson MS 29211
Richard Leonard 7522, David Tordoff 8028

Project Title
CAHILL PARK CAFE AND AMENIT

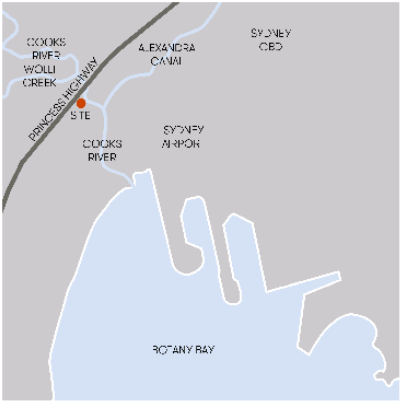
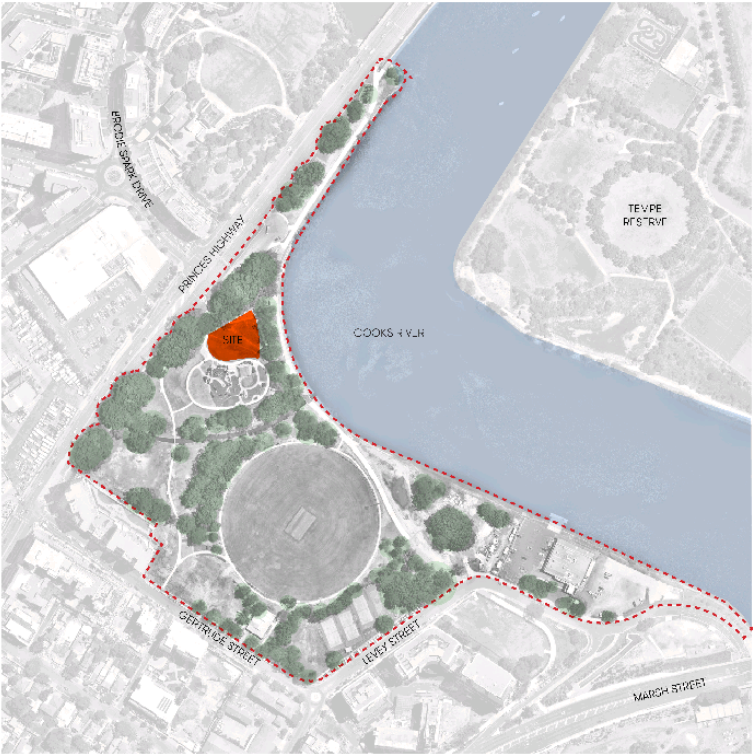
2 PRINCES HIGHWAY, WOLLI
CREEK, NSW, 2205

Drawing Title
COVER SHEET

28/1/19

Drawn By	Checked By	Date Filed	\$
----------	------------	------------	----

Project No.	Drawing No.	Revision
2338	DA0.00	7



--- CAHILL PARK
● SITE

7	CA SUBMISSION	08/02/19
6	CA SUBMISSION	08/02/19
5	CA SUBMISSION	08/02/19
4	CA SUBMISSION	08/02/19
3	CA SUBMISSION	08/02/19
2	CA SUBMISSION	08/02/19
1	CA SUBMISSION	08/02/19
0	CA SUBMISSION	08/02/19

hayball

Website: www.hayball.com.au
Email: info@hayball.com.au
Phone: 02 9550 1234
Fax: 02 9550 1234

Project Name: CAHILL PARK CAFE AND AMENITIES

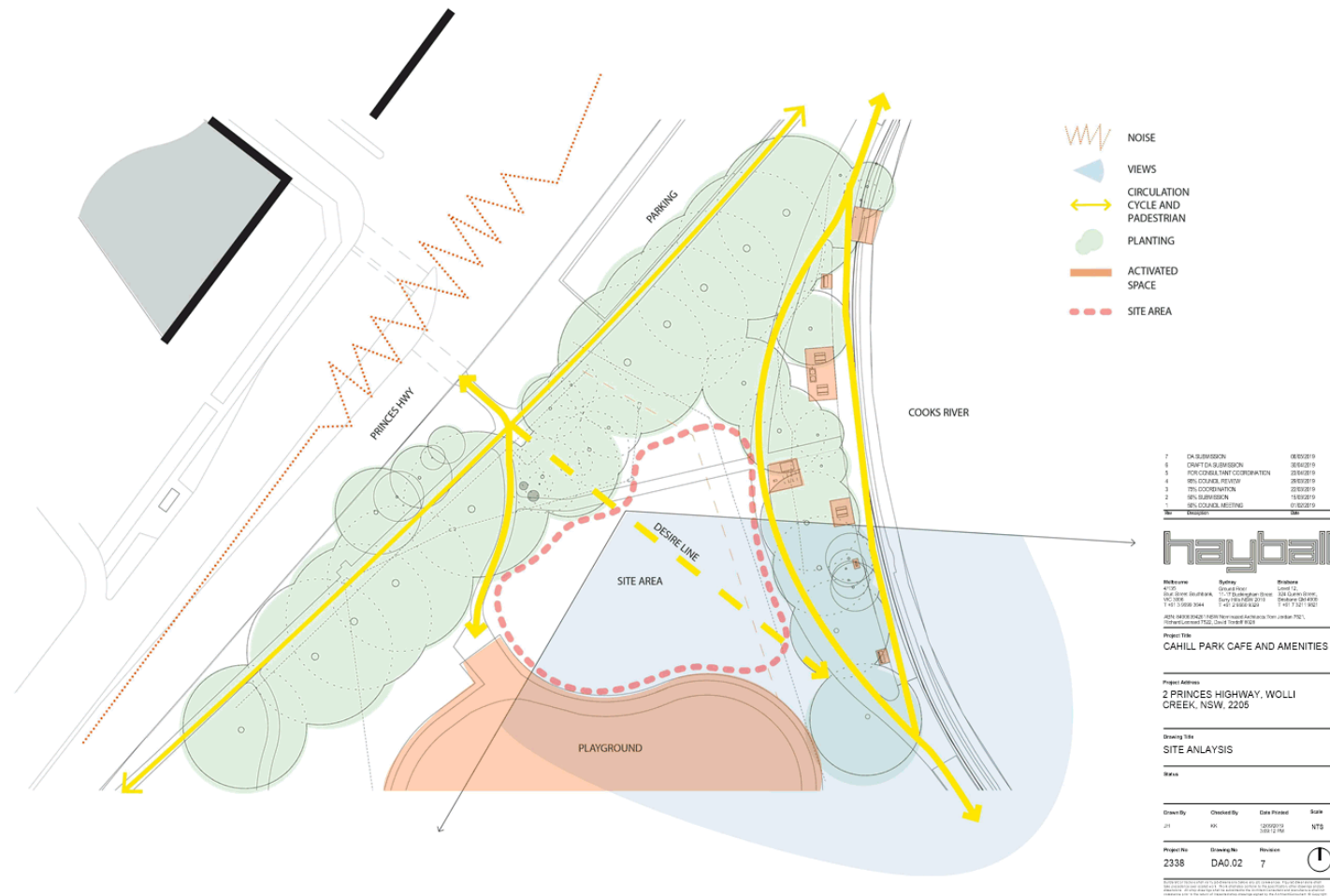
Project Address: 2 PRINCES HIGHWAY, WOLLI CREEK, NSW, 2205

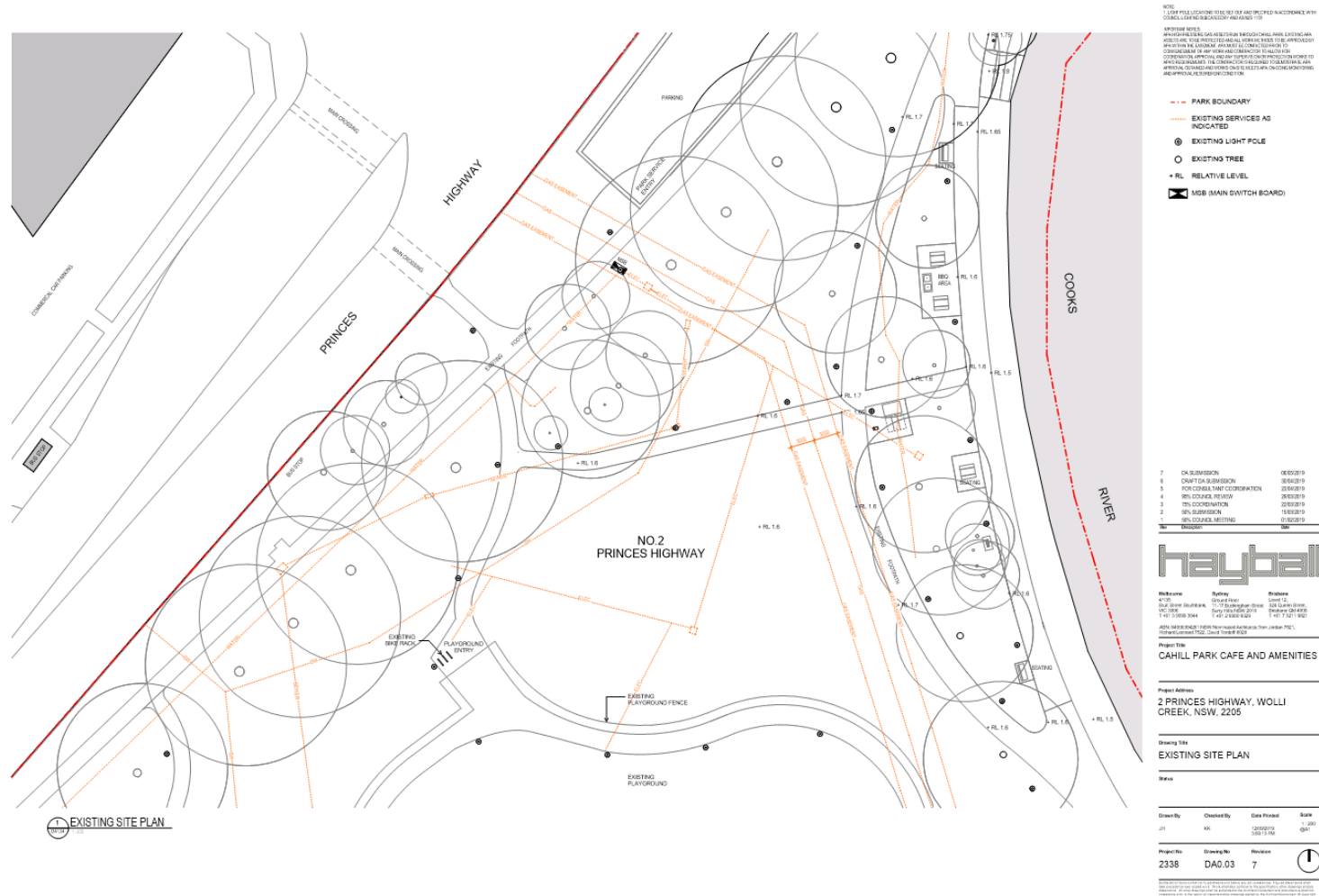
Drawing Title: LOCALITY PLAN

Status:

Drawn By	Checked By	Date Printed	Scale
21	KK	20/02/19	NTS

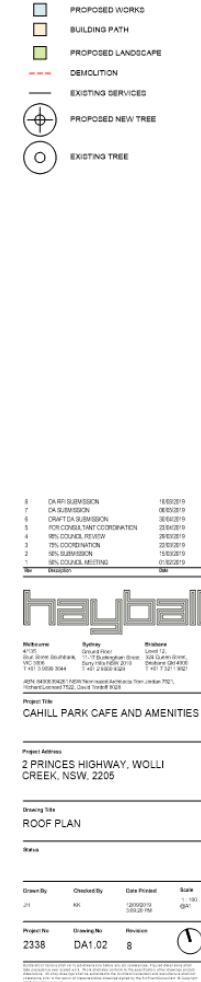
Project No	Drawing No	Revision
2338	DA0.01	7















NOTE:
1. REFER TO DA1.06 FOR MATERIALS AND FINISHES
2. CAFE SIGNAGE TO BE LINEAR, CONTEMPORARY, AND IN KEEPING WITH CAFE ARCHITECTURAL LANGUAGE.
SIGNAGE FOR REVIEW BY ARCHITECT AND COUNCIL

6	CAHILL SUBMISSION	18/03/19
7	CA SUBMISSION	05/03/19
8	CAHILL CA SUBMISSION	28/04/19
9	WOLLEBERRIE WETLANDS WATER	28/04/19
4	WOLLEBERRIE WETLANDS	28/04/19
3	WOLLEBERRIE WETLANDS	28/04/19
2	WOLLEBERRIE WETLANDS	18/03/19
1	WOLLEBERRIE WETLANDS	01/03/19

hayball

Website: www.hayball.com.au Sydney: 02 9550 1234
Email: info@hayball.com.au Sydney: 02 9550 1234
Fax: 02 9550 1234 Sydney: 02 9550 1234
100-110-120-130-140-150-160-170-180-190-200-210-220-230-240-250-260-270-280-290-300-310-320-330-340-350-360-370-380-390-400-410-420-430-440-450-460-470-480-490-500-510-520-530-540-550-560-570-580-590-600-610-620-630-640-650-660-670-680-690-700-710-720-730-740-750-760-770-780-790-800-810-820-830-840-850-860-870-880-890-900-910-920-930-940-950-960-970-980-990-1000-1010-1020-1030-1040-1050-1060-1070-1080-1090-1100-1110-1120-1130-1140-1150-1160-1170-1180-1190-1200-1210-1220-1230-1240-1250-1260-1270-1280-1290-1300-1310-1320-1330-1340-1350-1360-1370-1380-1390-1400-1410-1420-1430-1440-1450-1460-1470-1480-1490-1500-1510-1520-1530-1540-1550-1560-1570-1580-1590-1600-1610-1620-1630-1640-1650-1660-1670-1680-1690-1700-1710-1720-1730-1740-1750-1760-1770-1780-1790-1800-1810-1820-1830-1840-1850-1860-1870-1880-1890-1900-1910-1920-1930-1940-1950-1960-1970-1980-1990-2000-2010-2020-2030-2040-2050-2060-2070-2080-2090-2100-2110-2120-2130-2140-2150-2160-2170-2180-2190-2200-2210-2220-2230-2240-2250-2260-2270-2280-2290-2300-2310-2320-2330-2340-2350-2360-2370-2380-2390-2400-2410-2420-2430-2440-2450-2460-2470-2480-2490-2500-2510-2520-2530-2540-2550-2560-2570-2580-2590-2600-2610-2620-2630-2640-2650-2660-2670-2680-2690-2700-2710-2720-2730-2740-2750-2760-2770-2780-2790-2800-2810-2820-2830-2840-2850-2860-2870-2880-2890-2900-2910-2920-2930-2940-2950-2960-2970-2980-2990-3000-3010-3020-3030-3040-3050-3060-3070-3080-3090-3100-3110-3120-3130-3140-3150-3160-3170-3180-3190-3200-3210-3220-3230-3240-3250-3260-3270-3280-3290-3300-3310-3320-3330-3340-3350-3360-3370-3380-3390-3400-3410-3420-3430-3440-3450-3460-3470-3480-3490-3500-3510-3520-3530-3540-3550-3560-3570-3580-3590-3600-3610-3620-3630-3640-3650-3660-3670-3680-3690-3700-3710-3720-3730-3740-3750-3760-3770-3780-3790-3800-3810-3820-3830-3840-3850-3860-3870-3880-3890-3900-3910-3920-3930-3940-3950-3960-3970-3980-3990-4000-4010-4020-4030-4040-4050-4060-4070-4080-4090-4100-4110-4120-4130-4140-4150-4160-4170-4180-4190-4200-4210-4220-4230-4240-4250-4260-4270-4280-4290-4300-4310-4320-4330-4340-4350-4360-4370-4380-4390-4400-4410-4420-4430-4440-4450-4460-4470-4480-4490-4500-4510-4520-4530-4540-4550-4560-4570-4580-4590-4600-4610-4620-4630-4640-4650-4660-4670-4680-4690-4700-4710-4720-4730-4740-4750-4760-4770-4780-4790-4800-4810-4820-4830-4840-4850-4860-4870-4880-4890-4900-4910-4920-4930-4940-4950-4960-4970-4980-4990-5000-5010-5020-5030-5040-5050-5060-5070-5080-5090-5100-5110-5120-5130-5140-5150-5160-5170-5180-5190-5200-5210-5220-5230-5240-5250-5260-5270-5280-5290-5300-5310-5320-5330-5340-5350-5360-5370-5380-5390-5400-5410-5420-5430-5440-5450-5460-5470-5480-5490-5500-5510-5520-5530-5540-5550-5560-5570-5580-5590-5600-5610-5620-5630-5640-5650-5660-5670-5680-5690-5700-5710-5720-5730-5740-5750-5760-5770-5780-5790-5800-5810-5820-5830-5840-5850-5860-5870-5880-5890-5900-5910-5920-5930-5940-5950-5960-5970-5980-5990-6000-6010-6020-6030-6040-6050-6060-6070-6080-6090-6100-6110-6120-6130-6140-6150-6160-6170-6180-6190-6200-6210-6220-6230-6240-6250-6260-6270-6280-6290-6300-6310-6320-6330-6340-6350-6360-6370-6380-6390-6400-6410-6420-6430-6440-6450-6460-6470-6480-6490-6500-6510-6520-6530-6540-6550-6560-6570-6580-6590-6600-6610-6620-6630-6640-6650-6660-6670-6680-6690-6700-6710-6720-6730-6740-6750-6760-6770-6780-6790-6800-6810-6820-6830-6840-6850-6860-6870-6880-6890-6900-6910-6920-6930-6940-6950-6960-6970-6980-6990-7000-7010-7020-7030-7040-7050-7060-7070-7080-7090-7100-7110-7120-7130-7140-7150-7160-7170-7180-7190-7200-7210-7220-7230-7240-7250-7260-7270-7280-7290-7300-7310-7320-7330-7340-7350-7360-7370-7380-7390-7400-7410-7420-7430-7440-7450-7460-7470-7480-7490-7500-7510-7520-7530-7540-7550-7560-7570-7580-7590-7600-7610-7620-7630-7640-7650-7660-7670-7680-7690-7700-7710-7720-7730-7740-7750-7760-7770-7780-7790-7800-7810-7820-7830-7840-7850-7860-7870-7880-7890-7900-7910-7920-7930-7940-7950-7960-7970-7980-7990-8000-8010-8020-8030-8040-8050-8060-8070-8080-8090-8100-8110-8120-8130-8140-8150-8160-8170-8180-8190-8200-8210-8220-8230-8240-8250-8260-8270-8280-8290-8300-8310-8320-8330-8340-8350-8360-8370-8380-8390-8400-8410-8420-8430-8440-8450-8460-8470-8480-8490-8500-8510-8520-8530-8540-8550-8560-8570-8580-8590-8600-8610-8620-8630-8640-8650-8660-8670-8680-8690-8700-8710-8720-8730-8740-8750-8760-8770-8780-8790-8800-8810-8820-8830-8840-8850-8860-8870-8880-8890-8900-8910-8920-8930-8940-8950-8960-8970-8980-8990-9000-9010-9020-9030-9040-9050-9060-9070-9080-9090-9100-9110-9120-9130-9140-9150-9160-9170-9180-9190-9200-9210-9220-9230-9240-9250-9260-9270-9280-9290-9300-9310-9320-9330-9340-9350-9360-9370-9380-9390-9400-9410-9420-9430-9440-9450-9460-9470-9480-9490-9500-9510-9520-9530-9540-9550-9560-9570-9580-9590-9600-9610-9620-9630-9640-9650-9660-9670-9680-9690-9700-9710-9720-9730-9740-9750-9760-9770-9780-9790-9800-9810-9820-9830-9840-9850-9860-9870-9880-9890-9900-9910-9920-9930-9940-9950-9960-9970-9980-9990-10000-10010-10020-10030-10040-10050-10060-10070-10080-10090-10100-10110-10120-10130-10140-10150-10160-10170-10180-10190-10200-10210-10220-10230-10240-10250-10260-10270-10280-10290-10300-10310-10320-10330-10340-10350-10360-10370-10380-10390-10400-10410-10420-10430-10440-10450-10460-10470-10480-10490-10500-10510-10520-10530-10540-10550-10560-10570-10580-10590-10600-10610-10620-10630-10640-10650-10660-10670-10680-10690-10700-10710-10720-10730-10740-10750-10760-10770-10780-10790-10800-10810-10820-10830-10840-10850-10860-10870-10880-10890-10900-10910-10920-10930-10940-10950-10960-10970-10980-10990-11000-11010-11020-11030-11040-11050-11060-11070-11080-11090-11100-11110-11120-11130-11140-11150-11160-11170-11180-11190-11200-11210-11220-11230-11240-11250-11260-11270-11280-11290-11300-11310-11320-11330-11340-11350-11360-11370-11380-11390-11400-11410-11420-11430-11440-11450-11460-11470-11480-11490-11500-11510-11520-11530-11540-11550-11560-11570-11580-11590-11600-11610-11620-11630-11640-11650-11660-11670-11680-11690-11700-11710-11720-11730-11740-11750-11760-11770-11780-11790-11800-11810-11820-11830-11840-11850-11860-11870-11880-11890-11900-11910-11920-11930-11940-11950-11960-11970-11980-11990-12000-12010-12020-12030-12040-12050-12060-12070-12080-12090-12100-12110-12120-12130-12140-12150-12160-12170-12180-12190-12200-12210-12220-12230-12240-12250-12260-12270-12280-12290-12300-12310-12320-12330-12340-12350-12360-12370-12380-12390-12400-12410-12420-12430-12440-12450-12460-12470-12480-12490-12500-12510-12520-12530-12540-12550-12560-12570-12580-12590-12600-12610-12620-12630-12640-12650-12660-12670-12680-12690-12700-12710-12720-12730-12740-12750-12760-12770-12780-12790-12800-12810-12820-12830-12840-12850-12860-12870-12880-12890-12900-12910-12920-12930-12940-12950-12960-12970-12980-12990-13000-13010-13020-13030-13040-13050-13060-13070-13080-13090-13100-13110-13120-13130-13140-13150-13160-13170-13180-13190-13200-13210-13220-13230-13240-13250-13260-13270-13280-13290-13300-13310-13320-13330-13340-13350-13360-13370-13380-13390-13400-13410-13420-13430-13440-13450-13460-13470-13480-13490-13500-13510-13520-13530-13540-13550-13560-13570-13580-13590-13600-13610-13620-13630-13640-13650-13660-13670-13680-13690-13700-13710-13720-13730-13740-13750-13760-13770-13780-13790-13800-13810-13820-13830-13840-13850-13860-13870-13880-13890-13900-13910-13920-13930-13940-13950-13960-13970-13980-13990-14000-14010-14020-14030-14040-14050-14060-14070-14080-14090-14100-14110-14120-14130-14140-14150-14160-14170-14180-14190-14200-14210-14220-14230-14240-14250-14260-14270-14280-14290-14300-14310-14320-14330-14340-14350-14360-14370-14380-14390-14400-14410-14420-14430-14440-14450-14460-14470-14480-14490-14500-14510-14520-14530-14540-14550-14560-14570-14580-14590-14600-14610-14620-14630-14640-14650-14660-14670-14680-14690-14700-14710-14720-14730-14740-14750-14760-14770-14780-14790-14800-14810-14820-14830-14840-14850-14860-14870-14880-14890-14900-14910-14920-14930-14940-14950-14960-14970-14980-14990-15000-15010-15020-15030-15040-15050-15060-15070-15080-15090-15100-15110-15120-15130-15140-15150-15160-15170-15180-15190-15200-15210-15220-15230-15240-15250-15260-15270-15280-15290-15300-15310-15320-15330-15340-15350-15360-15370-15380-15390-15400-15410-15420-15430-15440-15450-15460-15470-15480-15490-15500-15510-15520-15530-15540-15550-15560-15570-15580-15590-15600-15610-15620-15630-15640-15650-15660-15670-15680-15690-15700-15710-15720-15730-15740-15750-15760-15770-15780-15790-15800-15810-15820-15830-15840-15850-15860-15870-15880-15890-15900-15910-15920-15930-15940-15950-15960-15970-15980-15990-16000-16010-16020-16030-16040-16050-16060-16070-16080-16090-16100-16110-16120-16130-16140-16150-16160-16170-16180-16190-16200-16210-16220-16230-16240-16250-16260-16270-16280-16290-16300-16310-16320-16330-16340-16350-16360-16370-16380-16390-16400-16410-16420-16430-16440-16450-16460-16470-16480-16490-16500-16510-16520-16530-16540-16550-16560-16570-16580-16590-16600-16610-16620-16630-16640-16650-16660-16670-16680-16690-16700-16710-16720-16730-16740-16750-16760-16770-16780-16790-16800-16810-16820-16830-16840-16850-16860-16870-16880-16890-16900-16910-16920-16930-16940-16950-16960-16970-16980-16990-17000-17010-17020-17030-17040-17050-17060-17070-17080-17090-17100-17110-17120-17130-17140-17150-17160-17170-17180-17190-17200-17210-17220-17230-17240-17250-17260-17270-17280-17290-17300-17310-17320-17330-17340-17350-17360-17370-17380-17390-17400-17410-17420-17430-17440-17450-17460-17470-17480-17490-17500-17510-17520-17530-17540-17550-17560-17570-17580-17590-17600-17610-17620-17630-17640-17650-17660-17670-17680-17690-17700-17710-17720-17730-17740-17750-17760-17770-17780-17790-17800-17810-17820-17830-17840-17850-17860-17870-17880-17890-17900-17910-17920-17930-17940-17950-17960-17970-17980-17990-18000-18010-18020-18030-18040-18050-18060-18070-18080-18090-18100-18110-18120-18130-18140-18150-18160-18170-18180-18190-18200-18210-18220-18230-18240-18250-18260-18270-18280-18290-18300-18310-18320-18330-18340-18350-18360-18370-18380-18390-18400-18410-18420-18430-18440-18450-18460-18470-18480-18490-18500-18510-18520-18530-18540-18550-18560-18570-18580-18590-18600-18610-18620-18630-18640-18650-18660-18670-18680-18690-18700-18710-18720-18730-18740-18750-18760-18770-18780-18790-18800-18810-18820-18830-18840-18850-18860-18870-18880-18890-18900-18910-18920-18930-18940-18950-18960-18970-18980-18990-19000-19010-19020-19030-19040-19050-19060-19070-19080-19090-19100-19110-19120-19130-19140-19150-19160-19170-19180-19190-19200-19210-19220-19230-19240-19250-19260-19270-19280-19290-19300-19310-19320-19330-19340-19350-19360-19370-19380-19390-19400-19410-19420-19430-19440-19450-19460-19470-19480-19490-19500-19510-19520-19530-19540-19550-19560-19570-19580-19590-19600-19610-19620-19630-19640-19650-19660-19670-19680-19690-19700-19710-19720-19730-19740-19750-19760-19770-19780-19790-19800-19810-19820-19830-19840-19850-19860-19870-19880-19890-19900-19910-19920-19930-19940-19950-19960-19970-19980-19990-20000-20010-20020-20030-20040-20050-20060-20070-20080-20090-20100-20110-20120-20130-20140-20150-20160-20170-20180-20190-20200-20210-20220-20230-20240-20250-20260-20270-20280-20290-20300-20310-20320-20330-20340-20350-20360-20370-20380-20390-20400-20410-20420-20430-20440-20450-20460-20470-20480-20490-20500-20510-20520-20530-20540-20550-20560-20570-20580-20590-20600-20610-20620-20630-20640-20650-20660-20670-20680-20690-20700-20710-20720-20730-20740-20750-20760-20770-20780-20790-20800-20810-20820-20830-20840-20850-20860-20870-20880-20890-20900-20910-20920-20930-20940-20950-20960-20970-20980-20990-21000-21010-21020-21030-21040-21050-21060-21070-21080-



7	CA SUBMISSION	06/02/2019
6	DRAFT CA SUBMISSION	06/04/2019
5	FOR CONSULTANT COORDINATION	23/04/2019
4	95% COUNCIL REVIEW	28/03/2019
3	75% COORDINATION	22/03/2019
2	55% SUBMISSION	15/03/2019
1	55% COUNCIL MEETING	01/02/2019
0%	0%	0%

haybali

McKenzie	Sydney	Waltham
4105	Ground Floor	Level 12
Blue Street Southpark,	11-17 Dunnington Street,	328 Queen Street,
WMC 3000,	Sydney NSW 2013	Waltham Qld 4300
T 061 5 5555 3044	F 061 2 6555 8129	T 061 7 5211 9821

JOHN 0438 394261 NEW! Newmarket Architects from Jordan 7521,
Richard Leonard 7522, David Tordoff 8028

Project Title

CAHILL PARK CAFE AND AMENITIES

Project Address
2 PRINCES HIGHWAY, WOLLI
CREEK, NSW, 2205

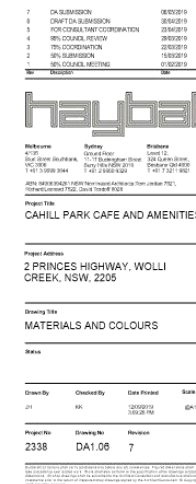
SECTIONS

Status

Drawn By	Checked By	Date Printed	Scale
JH	KK	12/09/2019 3:02:26 PM	1:10 9A1

Project No	Drawing No	Revision
2338	DA1.05	7

Results are not comparable with other studies because of the different design of the study. The study design was not randomized and included only a single diagnosis, which is the limitation of the study. The study included only one group of patients, which is the limitation of the study. The study included only one group of patients, which is the limitation of the study.





Hardenbergia Violacea Climber



Hibiscus Tiliaceus Rubra



Helichrysum Petiolare



Poa Eskdale



LOMANDRA TANIKA



ISOLEPIS NODOSA

7	DA SUBMISSION	08/09/2019
8	DRAFT DA SUBMISSION	30/04/2019
9	FOR CONSULTANT COORDINATION	23/04/2019
4	95% COUNCIL REVIEW	28/09/2019
	Task	Date

hayball

McKenzie	Sydney	Waltham
4105	Ground Floor	Level 12
Blue Street, Southbank,	11-17 Brougham Street,	328 Quinn Street,
VIC 3006	Sydney NSW 2010	Waltham Qld 4300
T 01 5 5555 3044	T 01 2 6920-8329	T 01 7 5321 9821

JOHN 0438 394261 NEER Northmead, Australia, Tom Jordan 7521,
 Richard Leonard 7522, David Todd 81028

Project Title
CAHILL PARK CAFE AND AMENITIES

Project Address
2 PRINCES HIGHWAY, WOLLI
CREEK, NSW, 2205

Drawing Title
PLANTING PALETTE

Status

Drawn By	Checked By	Date Printed	Scale
Author	Checker	12/09/2019 3:59:27 PM	6A1

Project No	Drawing No	Revision
2338	DA1.07	7

Bayside Local Planning Panel

26/11/2019

Item No	6.5
Application Type	Development application
Application No	DA-2019/191
Lodgement Date	05/06/2019
Property	32 William Street, Botany
Ward	Ward 1
Owner	Jovanovic Pty Ltd
Applicant	Mr Henry Huang and Mr Danny Jovanovic
Proposal	Demolition of existing structures and construction of two (2) semi-detached dwellings and Torrens title subdivision
No. of Submissions	Nil
Cost of Development	\$464,000
Report by	Michael McCabe, Director City Futures

Officer Recommendation

- 1 That the Bayside Local Planning Panel, exercising the function of the Council as the consent authority 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-2019/191 for the demolition of existing structures and construction of two semi-detached dwellings and Torrens title subdivision at No. 32 William 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.
-

Location Plan



Attachments

- 1 Planning Assessment Report [↓](#)
- 2 Site Plan [↓](#)
- 3 Streetscape Elevation [↓](#)
- 4 East Elevation [↓](#)
- 5 North Elevation [↓](#)
- 6 South Elevation [↓](#)
- 7 West Elevation [↓](#)
- 8 Cross Section [↓](#)
- 9 Long Section [↓](#)
- 10 Landscape plan [↓](#)
- 11 Materials and Finishes [↓](#)
- 12 Shadow Diagrams [↓](#)
- 13 CI4.6 Justification to FSR variation [↓](#)

BAYSIDE COUNCIL

Planning Assessment Report

Application Details

Application Number:	2019/191
Date of Receipt:	5 June 2019
Property:	32 William Street, Botany
Lot & DP/SP No:	Lot 21 Sec G DP939785
Owner:	Jovanovic Pty Ltd
Applicant:	Mr Henry Huang and Mr Danny Jovanovic
Proposal:	Demolition of existing structures and construction of two (2) semi-detached dwellings and Torrens title subdivision.
Recommendation:	Approval subject to conditions
Value:	\$464,000.00
No. of submissions:	Nil
Author:	Petra Blumkaitis – Senior Development Assessment Planner
Date of Report:	13 November 2019

Key Issues

Key issues are:

- FSR non-compliance requiring a cl4.6 variation request. The proposed FSR for the subdivided sites are 0.67:1 and 0.64:1, a variation of 35% and 28% respectively, from the 0.5:1 FSR development standard.
- The streetscape presentation needs to be improved. A condition of consent is proposed to address this.

Recommendation

It is RECOMMENDED:

- 1 That the Bayside Local Planning Panel, exercising the function of the Council as the consent authority 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-2019/191 for the demolition of existing structures and construction of two (2) semi-detached dwellings and Torrens title subdivision at No. 32 William 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.

Site Description

The site, legally identified as Lot 21, Sec G, DP939785, is located on the eastern side of William Street, between Morgan and Hambly Streets. The site is regular in shape and has a total area of 465m² with a frontage to William Street of 12.19 metres. The site is currently accommodated by a single storey fibro dwelling house with detached fibro sheds and various trees and plantings.

Surrounding development comprises of low density residential with single and two storey detached dwelling houses and townhouses along William Street, and Albert Street to the rear.



Figure 1: Location Map

Site History

The subject DA was lodged with Council on 5 June 2019. No previous applications are recorded. The site appears to have been in residential use for some time.

Description of Development

Council is in receipt of the subject application which seeks consent for the following:

- Demolition of existing structures and associated site clearing,
- Torrens Title subdivision of the existing lot into proposed Lots 700 and 701, of 232.5m² each,
- Construction of two x 2 storey dwellings,

- Ground floor: living, dining, kitchen, bathroom, single garage with laundry space, staircase, and deck at the rear.
 - First floor: four (north-side) or three (south-side) bedrooms, two bathrooms, and staircase.
- Associated landscaping, including driveways, paths and planting.

Statutory Considerations

Environmental Planning and Assessment Act, 1979

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

S.4.15(1) - Matters for Consideration – General

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

The following Environmental Planning Instruments are relevant to this application:

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

The application is considered under the remit of the SEPP (BASIX). Accordingly, the application is accompanied by BASIX Certificate Number 1017854M dated Wednesday 29 May 2019. The Certificate demonstrate the proposed development satisfies the relevant water; thermal comfort and energy commitments as required by SEPP (BASIX).
The provisions of the SEPP are satisfied in this instance.

State Environmental Planning Policy No. 55 – Remediation of Land

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

- 1 The site appears to have been continuously used for residential purposes.
- 2 The adjoining and adjacent properties are currently used for residential purposes.
- 3 The site and surrounding land were not previously zoned for purposes identified under Table 1 of the contaminated land-planning guide in State Environmental Planning Policy 55, in particular industrial, agricultural or defence uses.

On this basis, the site is considered suitable in its present state for the proposed residential development. No further investigations of contamination are considered necessary.

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

Council's Tree Management Officer considered the application and advised that no significant trees on the site or adjoining properties will be impacted by the proposed development. Consent is granted, should the owner consent, to minor crown pruning of two (2) *Mangifera indica* (Mango tree) located in the adjacent property at 34 William Street. The removal of the street tree *Shinus areria*

(Peppercorn tree) is approved provided one (1) Cupanopsis anacardiodes (Tuckeroo) tree of minimum root ball/pot size 75 litres is planted in replacement.

The proposal is considered to be satisfactory with regards to the SEPP and Botany Bay DCP 2013.

Botany Bay Local Environmental Plan 2013

The application is considered under the remit of the Botany Bay Local Environmental Plan 2013 (BBLEP 2013) and the following information is provided:

Principal Provisions of BBLEP 2013	Compliance	Comment
2.1 Landuse Zone	Yes	The site is zoned R2 – Low Density Residential under the BBLEP 2013.
2.2 Is the proposed use/works permitted with development consent?	Yes	The proposed use as semi-detached dwellings is permissible with Council's consent under the BBLEP 2013.
2.3 Does the proposed use/works meet the objectives of the zones?	Yes	The proposed development is consistent with the following objectives in the BBLEP 2013: <ul style="list-style-type: none"> To provide for the housing needs of the community within a low density residential environment.
2.7 Demolition of a building or work may be carried out only with development consent.	Yes	The proposal includes demolition of the existing detached dwelling house and ancillary structures on site.
4.3 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.	Yes	Clause 4.3 permits a maximum building height of 8.5 metres as measured from NGL (existing) for the subject site. The proposed development seeks an overall building height of 6.8m.
4.4 The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map.	No	The site is in an identified 'Area 3' on the Floor Space Ratio Map. Clause 4.4A(3)(d) permits a maximum FSR of 0.5:1 for the development type (semi-detached dwellings) on the subject site. If a dwelling house was proposed on the site, the allowable FSR would be 0.55:1. If the site was subdivided into two (2) lots of 232.5m ² each and a dwelling house was proposed on each lot the allowable FSR would be 0.8:1. The proposed GFA is 306m ² , over a site area of 465m ² , resulting in a FSR of 0.65:1 for the un-subdivided lot.

Principal Provisions of BBLEP 2013	Compliance	Comment
		<p>The proposed development, following subdivision, would result in an FSR of 0.67:1 and 0.64:1 for the proposed north and south lots, respectively. This is a variation of 35% and 28% respectively, from the development standard.</p> <p>A Cl4.6 variation request has been submitted to Council seeking to justify the proposed variation. (See below.)</p>
5.10 - Heritage	N/A	The site is not listed as a heritage item or located within a Heritage Conservation Area. There are no heritage items located in the vicinity of the site.
<p>The following provisions in Part 6 of the LEP apply to the development–</p> <ul style="list-style-type: none"> • 6.1 – Acid sulfate soils • 6.2 – Earthworks • 6.3 – Stormwater Management • 6.9 – Development in areas subject to aircraft noise 	<p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p>	<p>6.1 – Acid sulfate soils: Class 4. The proposed works will involve minimal excavation (surface scraping) mainly associated with preparing the site for the new dwellings. Further investigation is not warranted.</p> <p>6.2 – Earthworks on site will be required for site preparation. The anticipated impact from the earthworks is acceptable.</p> <p>6.3 – Stormwater management: Council's Development Engineer has reviewed the application supported the proposal, subject to recommended conditions.</p> <p>6.9 – Development in areas subject to aircraft noise: ANEF contour 20-25. An Acoustic Report prepared by Alan Parks Consulting, dated May 2019, was submitted in support of the proposal. Any construction will be required to comply with the recommendations in this report.</p>

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 for Floor space ratio

The site is nominated as having a maximum floor space ratio (FSR) of 0.5:1 on the BBLEP FSR map.

The site is proposed to be subdivided into lots of 232.5m² each. The proposed semi-detached dwellings for each of the new lots have different designs and floor areas. The proposed and permitted GFA and FSR, and the variation requested, for each lot is represented in the below table:

	Permitted	Proposed	Variation
Unit 1 (north side)			
GFA	116.2m ²	157m ²	40.8m ²
FSR	0.5:1	0.67:1	35%
Unit 2 (south side)			
GFA	116.2m ²	149m ²	32.8m ²
FSR	0.5:1	0.64:1	28%

The applicant has provided a written Clause 4.6 variation request, providing justification for the proposals variation to the 0.5:1 FSR development standard, stating that it is unnecessary and unreasonable in the particular circumstances.

Consent may be granted for the proposal subject to Clause 4.6, notwithstanding that the proposal would contravene this development standard, as the FSR development standard is not expressly excluded from this Clause (CI 4.6(2)). The applicant has provided a written request justifying the contravention of the development standard pursuant to Clause 4.6(3) of Botany Bay Local Environmental Plan 2013, which is considered below. The matters for consideration pursuant to Clause 4.6(4) are also considered below.

4.6 Variation request assessment

Clause 4.6(3)

Clause 4.6(3) states consent must not be granted for development which contravenes a development standard unless the consent authority has considered a written request from the applicant which seeks to justify the contravention of the development standard by demonstrating:

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

The applicant has argued the FSR standard is unreasonable or unnecessary in the following:

- *"The proposal complies with the objectives of the development standard and the R2 Low Density Residential zone.... Furthermore, compliance with the development standard is unreasonable and unnecessary as it is in the public interest given it is consistent with the objectives for the development within the zone.*
- *Provision of a high level of internal amenity as demonstrated by compliance with the key amenity criteria within the DCP, including solar access, cross ventilation, landscape area, and site coverage.*
- *Compliance with established front and rear building alignments, plus side setbacks, ensures the proposed additional floor space provides a good level of building separation, access, landscaping, privacy, plus natural lighting and ventilation for both the new development and adjoining properties.*
- *It would be unreasonable and unnecessary to remove the excess FSR, given that the proposals outperformance of the site coverage (43.8%), and deep soil landscaped area (16.41%) requirements within the DCP.*

- *The proposal does not generate unreasonable privacy impacts as the proposed windows to side elevations are appropriately treated, being high windows and do not overlook and primary living or private open space areas, and no first-floor decks are proposed.*
- *The site is well serviced by public transport being within close proximity to bus routes/stops within William Street, with accessible access to shops, facilities and services.*
- *The proposed height of approximately 7.95m above natural ground level is significantly below the 8.5m maximum height that is permitted under the LEP, which demonstrates that a potentially larger built form could be provided in comparison to that proposed.*
- *...the proposed semi-detached dwelling is contained within a building envelope that is compatible with the established built form of the surrounding area. It is therefore considered that the proposed development does not represent an overdevelopment of the site, or a development with an FSR expressed as bulk and scale that is not compatible with the context in which it is located."*

Comment: The bulk and size of the proposed semi-detached dwellings is consistent with the future character of Botany and the scale is also consistent with the emerging character of subdivided lots. The proposed development will increase the amount of overshadowing experienced by the property to the south.

Clause 4A.4.3 Solar Access of BBDCP2013 requires two hours of solar access between 9am and 3pm in mid-winter to the living areas and 50% of the private open space areas of both the subject site and adjoining properties. The applicant was requested to reduce the bulk of the proposed semi-detached dwellings to improve solar access for the adjoining property to the south.

The shadow drawings (plan and elevation) and photographs submitted with the development application show two hours of solar access will be maintained to 50% of the private open space of the adjoining property to the south and the private open spaces at the rear of the subject site. The living rooms of the proposed semis are anticipated to receive a minimum of two hours of solar access between 9am and midday.

The windows of all the habitable rooms on the ground floor of the neighbouring dwelling to the south will not receive a minimum of two hours of solar access between 9am and 3pm during mid-winter. The proposed development will overshadow the ground floor level windows of the neighbouring dwelling from 9am until midday. Incremental solar access will increase to the west and north facing (western end of the dwelling) living room windows from midday until 3pm.

It is considered that the reduced bulk of the proposal and the minimum of two hours of solar access to the main living room located in the north-west area of the adjoining dwelling is satisfactory.

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

The applicant argues there is sufficient grounds to justify the variation in the below extract from the written variation request:

"It is considered that there are sufficient environmental planning ground to justify varying the FSR development standard, which include:

- No unacceptable adverse impacts on neighbouring development or the streetscape, given that the proposal will not result in any additional adverse overshadowing, visual or acoustic privacy impacts, visual bulk and scale impacts, or view loss, additional to the impact from a two-storey dwelling house on the site.*
- The proposed FSR does not compromise other environmental factors such as landscaping and site coverage.*
l
- Visual and acoustic privacy impacts to adjoining neighbours has also been carefully considered, with living rooms oriented to the rear of the site, while windows to side elevations are high windows, and compliant side setbacks confirms good separation distances exist between adjoining neighbours.*
- The proposed minor variation to the FSR will not have any unreasonable visual bulk and scale impacts onto the William Street streetscape. The FSR variation contributes to a compatible streetscape outcome with the existing developments in the locality...*
- There are no internal amenity grounds that would determine that the additional FSR should not be granted. The internal performance of the semi-detached dwellings is high, noting that the proposal meets all DCP requirements.*
- It is considered that an environmental benefit has been achieved from the replacements of an existing dwelling house with poor amenity, with two semi-detached dwellings that achieve high internal amenity without compromising the amenity of neighbouring properties. The combination of the internal and external amenity factors demonstrates that there are sufficient environmental grounds to permit the FSR variation in this instance."*

Comment: There are no physical factors on the site which may justify a variation from the development standard, such as a steep slope, contamination, flood affectation, critical habitat, heritage items or the like.

There are planning grounds on which the development standard may be varied; these are the compliances of the proposal with all other relevant development controls and that the proposal is otherwise assessed as resulting in a satisfactory development and use of the land which is consistent with the locality and has minimal impacts on the site and neighbouring properties.

The subject site is within an identified "Area 3" on the BBLEP 2011 Floor Space Ratio Map. "Area 3" permits a different FSR for dwelling houses on sites of varying sizes. Should a dwelling house be proposed on the subject site, with a site area greater than 450m², the permitted FSR would be 0.55:1. Should the subject site be subdivided into two lots of 232.5m² each and a dwelling house built on each lot the permitted FSR would be 0.8:1

As the proposed semi-detached dwellings achieve a FSR less than 0.8:1 had the proposal been for subdivision and detached dwellings the proposed FSR would be compliant.

The proposed FSR non-compliance rests on the inclusion of semi-detached dwellings in Clause 4.4A(3)(d) which would not apply to a detached dwelling with the same FSR. As such there is sufficient planning grounds to justify contravening the development standard.

Clause 4.6 (4)

Clause 4.6(4) states consent may not be granted for development that contravenes a development standard unless:

(a) The consent authority is satisfied that:

- (i) The applicant's written request has adequately addressed the matter required to be demonstrated by subclause (3)

Comment: Council is satisfied that the written request has adequately addressed the matters required to be demonstrated in subclause (3).

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

Comment: The following matters pursuant to Clause 4.6 are therefore also considered:-

- Objectives of the Floor Space Ratio Standard
- Objectives of the L2 Low Density Residential Zone
- Public Interest
- Objectives of Botany Bay LEP 2013 Clause 4.6

Objectives of Clause 4.4 Floor space ratio

The objectives of Clause 4.4 FSR of the Botany Bay Local Environmental Plan 2013 are:

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

The applicant submits the proposal meets the objectives of the development standard in the following:

"This objective is considered to be a strategic objective to stipulate a development standard for FSR which applies to the site and the immediate locality, as shown on the FSR map. The objective also seeks to establish a maximum intensity of land use. Given the proposed FSR allows for two semi-detached dwellings each with a single garage, whilst also being below the site cover requirements and above the landscaping requirements, there is no evidence to suggest that the intensity of development is beyond that which can be accommodated on the site. Notwithstanding the numeric departure, the lack of external impacts and consistency with the scale of the built form in the

surrounding area confirms that the intensity of development is appropriate for the site, and conforms with other recent semi-detached dwelling developments (in the locality).

The proposed development represents a high degree of compliance with the predominant LEP and DCP building envelope controls which therefore demonstrates that the FSR can be supported on the site and that strict compliance with the development standard is unreasonable or unnecessary.

The semi-detached dwelling are neatly integrated with the character and presentation of the street, thereby maintaining the attractive appearance of the dwelling in the streetscape, and as it appears to surrounding properties.

The proposed semi-detached dwellings have been suitably articulated to minimise the visual bulk of the proposal. All facades to the built form are highly articulated, with provision of indentations to the facades and recessed openings contributing to breaking down the scale of the built form on the subject site.

The extent and siting of the built form of the dwellings are also consistent with or compatible with recent developments. It is also evident that the existing locality includes older housing stock which may also be redeveloped in a similar manner. The area is therefore considered to be in transition. The additional FSR does not generate a height, bulk or scale or impacts which are incompatible or out of character with what is anticipated by the suite of building envelope or amenity provisions of the LEP and DCP.

The proposal includes a number of design features to reduce the visual impact of the bulk and mass of the proposed development including:

- *Compliant front, rear and side building setbacks,*
- *Compliant maximum height and wall height,*
- *Outperformance of the site coverage,*
- *Outperformance of the landscaped deep soil area.*

Impacts to adjoining neighbours visual and acoustic privacy is mitigated given good separation with compliant setbacks, plus primary openings and balconies orientated to the front and rear of dwellings, and high windows to side elevations.

Given the east-west orientation of the lot pattern is it acknowledged that access to sunlight is reduced to the POS, and the north-facing wall and window openings of the adjoining dwelling to the south. However, two hours of sunlight to east and west facing windows and to 50% of the POS is maintained between 9am and 3pm during midwinter...

As outlined above the proposed height, bulk, scale and siting of development is suitable for the site as the proposed built form will be consistent and compatible with the character, siting and orientation of dwellings in the immediate and broader locality. Compliance with the height limit, landscaping, site cover and parking, combined with the lack of impact to surrounding properties confirms that the built form (and associated FSR) is suitable and correlates with the size of the sites."

Comments: The proposal is consistent with the objectives of the FSR development standard because it complies with all development controls (except for FSR) including height and setbacks, is compatible with the bulk and scale of the character of the area, does not adversely affect the streetscape and results in minimal adverse impacts on adjoining properties.

Objectives of the R2 Low density residential zone

The objectives of the R2 Low density residential zone are:

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

- To enable other land uses that provide facilities or services to meet the day to day needs of residents
- To encourage development that promotes walking and cycling

The applicant states the following about compliance with the zone objectives:

"The proposal provides for a variety of housing types, with a mix of three- and four-bedroom dwellings within a low-density context. The replacement of an existing outdated dwelling house with high quality contemporary residential accommodation will provide improved internal amenity for residents with no adverse external amenity impacts to adjoining neighbours. The proposed FSR variation is therefore not considered to generate any inconsistency with the zone objectives."

Comments: The proposed development is consistent with the objectives of the R2 Low density residential zone because it provides additional housing to serve the housing needs of the community and is consistent with the low density scale of development in William Street.

The proposal may encourage walking and cycling as it is located within a reasonable proximity to employment, recreation and retail opportunities.

Public Interest and Public Benefit

The proposed variation is considered to be in the public interest as the proposed development will provide additional housing to the community.

The applicant argues: *"There is no public benefit in maintaining the FSR standard given the limited amenity impacts associated with the development and the positive streetscape outcome that would arise from the redevelopment of the subject site."*

During the public notification period for the development application no submissions opposing the proposal were received.

Summary

The Clause 4.6 variation request to the floor space ratio control has been assessed in accordance with relevant case law, being the principles of *Wehbe v Pittwater Council (2007) NSW LEC 827* and *Four2Five Pt Ltd v Ashfield Council (2015) NSWLEC 1009 & NSW LEC 90 (Four2Five)*.

The proposed development has been assessed against Councils' Botany Bay Local Environmental Plan 2013 and Botany Bay Development Control Plan 2013 controls and is compliant with all controls except for the FSR development standard.

It has been established that the proposed development is appropriate and adherence to the development standard in this instance is unreasonable and unnecessary.

The applicant's Clause 4.6 request is well-founded and the proposed departure from the FSR development standard for 32 William Street, Botany is in the public interest. On this basis it is recommended that the development standard relating to the maximum FSR for the site pursuant to Clause 4.4 of the Botany Bay Local Environmental Plan 2013 should be varied.

S. 4.15(1)(a)(ii) - Provisions of any Draft EPI's

There are no current Draft EPIs applicable to this development.

S. 4.15(1)(a)(iii) - Provisions of any Development Control Plan

The following Development Control Plan is relevant to this application:

Botany Bay Development Control Plan 2013

The application has been assessed against the controls contained in the BBDCP 2013. The discussion below compares the proposal with the relevant provisions of this Policy.

Part 3A – Parking & Access

The table below compares the proposal with the relevant provisions of this Part of the DCP.

Control	Proposed	Complies
3A.2 – Parking provisions of specific uses		
C2 – Semi-detached dwellings		
One space per dwelling	Two spaces per dwelling are proposed with a single garage and one driveway parking space for each dwelling.	Yes
C4 – Tandem or stack parking	One garage space and one driveway space aligned with the garage are allocated to each dwelling.	Yes
3A.3.1 – Car park design		
C10 – Off street parking facilities are not permitted within the front setback	Both single garages are behind the front building line.	Yes
C13 – Pedestrian and vehicular paths separated.	The driveway and pedestrians access to the dwellings are separated from each other.	Yes
C14 – One vehicle access point per property	One vehicle access point for each semi-detached dwelling is proposed.	Yes
C26 – Tandem car parking only permitted where spaces allocated to the same single dwelling	Tandem parking (garage and driveway) are allocated to the same single dwelling.	Yes
C28 – Min 3m wide access driveway for dwelling houses	The proposed driveways are a maximum of 3m in width.	Yes

Part 3E – Subdivision and Amalgamation

The table below compares the proposal with the relevant provisions of this Part of the DCP with a merit assessment discussed further below.

Control	Proposed	Complies
3E.2.1 General Torrens Title Subdivision and Amalgamation		
C1 – Subdivision shall be consistent with the desired future character of the area under Part 8 of the DCP	The proposed subdivision is generally consistent with the future desired character of the area (Refer to discussion at Part 8 – Botany Character	Yes

Control	Proposed	Complies
	Precinct, following the DCP tables, page 19).	
C2 – Subdivision must not compromise any significant features of existing or adjoining sites including streetscape character, landscape features or trees.	The subdivision will not compromise the streetscape character or landscape features. It will retain a street tree. Onsite trees are proposed to be removed.	Yes
C3 – Subdivision must have similar characteristics to the prevailing street pattern of lots fronting the same street.	The existing subdivision is a regular grid pattern. The proposal will result in 'halving' the rectangular blocks fronting William Street. This size subdivision has been completed in the same block at 16 and 16A William Street.	Yes
C4 – Applications which propose the creation of new allotments must be accompanied by a conceptual building plan that demonstrates compliance with all relevant DCP controls.	The proposed semi-detached dwellings have demonstrated compliance with all relevant DCP controls.	Yes
C5 – Applications must demonstrate that certain matters have been considered, being (i) through (xi)	The proposed development is capable of meeting all requirements including those relating to site topography and other natural and physical features.	Yes
C6 – Subdivision must not result in the creation of a new lot that contains significant site features that would render the land unable to be developed.	The proposed subdivision results in two residential allotments with no significant features which would prohibit development of the land.	Yes
C7 – Subdivision which results in additional residential allotments of land within ANEF contour of 30+ is not permitted.	The site is located between ANEF contours 20 and 25 and therefore not subject to C7.	Yes
C8 – Subdivision is not permitted in areas identified to be affected by projected 2100 sea level rise by NSW State Government.	The site has not been identified to be affected by projected 2100 sea level rise.	N/A

The subdivision pattern in the locality is rectangular sites within an approximately rectangular grid street pattern. The proposed subdivision will result in two rectangular lots with an area of 232.5m² each.

Along William Street seven lots have previously been subdivided in a similar manner as proposed at No. 32; these are Nos. 8, 10, 12, 14 and 14a, and 16 and 16A. (see Figure 2: Subdivision pattern, below)



Figure 2: Subdivision pattern

In the vicinity a number of lots in Kurnell, Albert, Swinbourne and Queen Streets have also been subdivided in a similar manner. The size of these lots are shown in the table below, and the average size of these lots is 215m², while the median is 238m².

Address	Lot size (m2)
8 William Street	265
10 William Street	265
12 William Street	271
14 William Street	278
14A William Street (substation)	124
16 William Street	238
16A William Street	242
23 Albert Street	206
24 Albert Street	201
25 Albert Street	197
12 Hambley Street	267
12A Hambley Street	238
24 Hambley Street	213

Given the above the proposed subdivision is consistent with development in the area.

Part 3G – Stormwater Management

The table below compares the proposal with the relevant provisions of this Part of the DCP.

Control	Proposed	Complies
C1 – Development shall not be carried out on or for any lands unless satisfactory arrangements have been made with and approved by Council to carry out stormwater drainage works.	The application is accompanied by Concept Stormwater Plans prepared by Quantum Engineers, dated 28.08.2019 which were referred to Council's Development Engineer for review and comment and found satisfactory.	Yes

Part 3H – Sustainable Design

The table below compares the proposal with the relevant provisions of this Part of the DCP.

Control	Proposed	Complies
C1 – For all proposed residential development where BASIX applies, the application is to be accompanied by a BASIX Certificate.	An assessment against the relevant provisions of the SEPP (BASIX) is undertaken in S. 4.15(1)(a)(i) above.	Yes

Part 3J – Development affecting operations at Sydney Airport

The table below compares the proposal with the relevant provisions of this Part of the DCP.

Control	Proposed	Complies
C2 – Where the building site is classified as <i>conditional</i> under Table 2.1 of AS2021-2000 development may take place subject to Council consent, and compliance with the requirements of AS2021-2000.	The site is located within ANEF 20-25 contours. A Noise Assessment Report, prepared by Alan Parks Consulting, dated May 2019, was submitted with the development application. The proposed development is permissible and satisfactory with regards to Council's DCP, subject to the imposition of recommended conditions including compliance with AS2021-2000.	Yes

Part 3K – Contamination

DCP Requirement	Proposed	Complies
O1 – To ensure that the development of contaminated or potentially contaminated land does not pose a risk to human health or the environment.	An assessment against the relevant provisions of the SEPP 55 is undertaken in S. 4.15(1)(a)(i) above.	Yes

Part 3L- Landscaping and Tree Management

Control	Proposed	Complies
3L.1.2 – Development Application Submission Requirements		
C1 – Landscape documentation is required to be submitted in accordance with Table 1. New residential dwellings = Landscape plan	The application is accompanied by a Landscape Plan prepared by Canvas landscape architects, dated 30.08.2019. The Plan was referred to Council's Landscape Architect who advised the plan is acceptable.	Yes
C2 – Landscaping will be designed to reduce the bulk, scale and size of buildings and to shade and soften hard paved areas.	The proposed landscaping, in particular the two trees at the front of the site will soften the appearance of the development and provide shade to the subject site and the street.	Yes
C4 – Landscape screening or buffers are to be included and designed so as to enhance privacy between properties and softening of walls and facades.	Proposed planting will contribute to enhancing privacy between properties.	Yes
C9 – A deep soil landscape zone is required for all developments.	The proposal will allow for deep soil planting in the rear garden areas of both semis and an area sufficient for two medium canopy trees in the front setback.	Yes
C12 – Areas containing trees are to be of suitable dimensions to allow for lateral root growth as well as adequate water penetration and air exchange to the soil substrate.	The front setback and rear garden areas are sufficient for tree growth.	Yes
3L.2 – General Requirements		
C1 – Existing trees including street trees must be preserved.	The street tree in front of the site is to be retained. Council's Tree Management Officer has assessed and supported the proposal, subject to consent conditions.	Yes

Part 3N- Waste Minimisation and Management

The application is accompanied by a Waste Minimisation and Management Plan, prepared in accordance with the BBDCP 2013. The Plan addresses works involved including demolition, construction and on-going use of the site is acceptable with regards to the relevant parts of this Part of the BBDCP 2013.

Part 4A- Dwelling House

The application is accompanied by a Site Analysis Plan which identifies opportunities and affectations of the site.

The table below compares the proposal with the relevant provisions of this Part.

Control	Proposed	Complies
4A.2.4 Streetscape Presentation		
C1 – New dwellings must be designed to reflect the Desired Future Character Statement in Part 8 – Character Precincts and are to reinforce the architectural features and identity which contributes to its character.	The desired future character of the Botany Character Precinct is addressed later in this report.	Yes
C2 – Development must be designed to reinforce and maintain the existing character of the streetscape.	The proposal is consistent with the existing character of William Street as it maintains a low density residential development with sufficient front setback to allow for landscape planting. However the proposed front façade is of limited architectural merit and provides limited articulation. The proposed building is very symmetrical and is provides a greater setback from the street as compared to surrounding development. To create more interest in the front facade a condition of consent is proposed requiring the addition of two balconies at first floor level and the windows being converted to sliding doors.	Yes – Subject to condition
C3 Development must reflect dominant roof lines and patterns of the existing streetscape (refer to Figure 3). Contemporary architectural design solutions are encourage, however designs will need to demonstrate that they will not lead or a replacement or diminution of a street's existing character.	The proposed development includes a pitched roof which is consist with the dominant roof lines and patterns in William Street, where all current existing roofs are pitched to some greater or lesser degree.	Yes
C4 – Building must appropriately address the street.	The proposed dwellings address William Street with easily identifiable pedestrian and vehicular access from the street.	Yes
C6 – The entrance to a dwelling must be readily apparent from the street.	The entrances to each dwelling will be readily apparent from William Street.	Yes

C7 – Dwellings are to have windows to the street from a habitable room to encourage passive surveillance.	Both semi-detached dwellings will present a first floor bedroom window and balcony to the street. The ground floor presents garage and front doors, and no windows.	Yes
C10 – Development must retain characteristic design features prevalent in houses in the street, including verandahs, front gables, window awnings, bay windows, face brickwork or stone details.	There is one design feature prevalent in the street; pitched roofs, which the proposal incorporates. William Street presents a mix of architectural styles, dwelling heights, features and materials.	Yes
C15 – A two storey dwelling is not considered appropriate where the majority of surrounding dwelling houses in a street are single storey.	William Street contains a mix of single and two storeys dwellings.	Yes
4A.2.5 Height		
C1 – Maximum height of buildings must be in accordance with the Height of Buildings Map.	The proposed development seeks a building height of 6.8m which is compliant with the maximum permitted 8.5m.	Yes
C3 – New buildings are to consider and respond to the predominant and characteristic height and storeys of buildings within the neighbourhood. Note: Characteristic building height is defined as the average building height of the two adjoining buildings.	The proposal is consistent with the height of adjoining dwellings and the streetscape in general.	Yes
4A.2.6 Floor space ratio		
C1 - The maximum FSR of development must comply with the Floor space ratio Map and Clause 4.4 and 4.4A of BBELP2013	Clause 4.4A permits an overall FSR of 0.5:1 for the subject site. A s4.6 variation request has been submitted with the application and is addressed elsewhere in this report.	No
4A.2.7 Site Coverage		
C2 - For sites between 200 - 250m ² the maximum site coverage is 65% of the lot.	The proposed site coverage is 50% of the site area. The total site area is 465m ² and the proposed area of site coverage is 232m ² .	Yes
4A.2.8 Building Setbacks		
C1 – Dwelling houses must comply with the minimum setbacks in table 1 For lot widths less than 12.5m: a) front setback – prevailing or 6m b) side setback – merit c) rear setback – 4m	a) proposed: 6m b) 900mm c) 9m to rear wall of building, 4m to rear of deck	Yes Yes Yes

d) eaves – 450mm from boundary	d) 900mm	Yes
C5 – To avoid the appearance of bulky or long walls side and rear setbacks should be stepped or walls articulated by projecting or recessing window elements, or a variation in materials.	The side walls of the proposal are to be articulated along their length with an indent. This will contribute to lessening the bulk appearance of the proposal.	Yes
4A.2.9 Landscape Area		
C2 - Development shall comply with the following minimum landscaped area requirements in Table 2 < 250m ² = 15% of site area	Landscape area = 57m ² for each semi-detached dwelling (24% of site area), made up of 31m ² of deck area and 26m ² of soft landscape area.	Yes
C3 - Landscaped Area is to be fully permeable deep soil zones which are areas of natural ground or soil, not planter boxes (refer to definition in Part 3L – Landscaping).	The proposed landscaped area is predominantly deep soil area in the rear garden and some deep soil areas in the front yard, interspersed with pavers to create a pathway between street and front doors.	Yes
C4 – Site structures to retain existing trees.	The existing street tree is to be retained. Onsite trees are to be removed. Council's Tree Management Officer has approved removal of the site trees.	Yes
C5 – A landscape plan shall be submitted with all Development Applications.	A landscape plan prepared by Canvas Landscape Architects, dated 30.8.19 was submitted.	Yes
C8 - The front setback is to be fully landscaped with trees and shrubs and is not to contain paved areas other than driveways and entry paths. Paving is restricted to a maximum of 50% of the front setback area.	The proposal provides for landscaping within the front setback which is 35% of the front setback site area. This area includes a deep soil area between the driveways and a landscape strip adjacent to the outside boundaries of the site. The landscape plan (Rev C dated 30.8.19), shows the driveways to be constructed of permeable paving, which will contribute to on-site stormwater management. The deficiency in landscape area (65% of the area is to be paved instead of a maximum 50%) is acceptable as the proposal will provide a deep soil planting area and suitable landscaping to soften the dwellings and enhance the streetscape. Council's Landscape Architect is satisfied with the landscape plan.	Yes

C9 – The front setback area must contain at least one tree for frontages up to 11.5 metres in width and 2 trees for frontages greater than this.	The submitted landscape plan shows provision for two trees to be planted in the front setback.	Yes
4A.3.1 Materials and Finishes		
C1 - A Schedule of Finishes and a detailed Colour Scheme must accompany all Development Applications.	A Schedule was submitted.	Yes
C3 – Materials, colours, architectural details and finishes must be sympathetic to the surrounding locality.	The proposed finishes are a mix of light and dark grey colours, wood, metal and glass balustrades. The surrounding locality shows a wide range of materials and colours. However the proposed grey colour is not characteristic of the area. A condition of consent is proposed requiring a colour in the front façade of a red range consistent with the predominant colour of buildings in the locality	Yes – Subject to condition
C4 – The use of materials with different textures are to be used to break up uniform buildings.	A mix of concrete, glazing, timber and painted surfaces are proposed for the development.	Yes
C5 – All materials and finishes must have low reflectivity.	The proposed materials are low reflectivity.	Yes
C7 – Terracotta roof tiles must be used where this is the predominant roofing material.	There is no dominant roofing material in the area. A mix of different types of tiles, and metal roofs are found along William Street.	Yes
C10 - The exterior walls of new dwellings must incorporate different materials, colours and textures to add interest and articulate the facade.	The proposed materials, colours, architectural detail and finishes need to be improved – Refer to 4A.2.4 C1 and 4A.3.1 C3 above.	Yes – Subject to condition
C11 – New development must incorporate colour schemes that are consistent with the predominant colour schemes in the street. No expansive use of white, light or primary colours which dominate the streetscape are permitted.	The proposed colour scheme is not consistent with the scheme in the street. Refer to 4A.2.4 C1 and 4A.3.1 C3 above.	No - Conditioned
4A.3.2 Roofs and Attics/Dormer		
C1 - Where roof forms in a street are predominantly pitched, then any proposed roof should provide a similar roof form and pitch.	The development proposes a low pitched roof.	Yes
C3 - A variety of roof forms will be considered, provided that they relate appropriately to the architectural style of the proposed house and respect the scale and character of adjoining dwellings.	The low pitch of the roof relates appropriately to the architectural style of the modern semis and is in keeping with the scale and character of adjoining and nearby development.	Yes

4A.3.3 Fences		
C1 - Front fences are to compliment the period or architectural style of the existing dwelling house.	A low (1.0m) solid front fence is proposed which will complement the architectural style of the proposed dwellings. The fence is visible on the elevation and section drawings, with a TOW of 1m.	Yes
4A.4.1 Visual Privacy		
C2 - Visual privacy for adjoining properties must be minimised by: <ul style="list-style-type: none"> ▪ using windows which are narrow or glazing ▪ Ensuring that windows do not face directly on to windows, balconies or courtyards of adjoining dwellings ▪ Screening opposing windows, balconies and courtyards; and ▪ Increasing sill heights to 1.5 metres above floor level. 	The proposed semi-detached dwellings will limit a loss of privacy to adjoining properties by limiting windows along the side elevations and using high sills on the side elevation windows.	Yes
C3 - First floor balconies are only permitted when adjacent to a bedroom.	No balconies are proposed. However a condition is proposed requiring a balcony adjacent to the bedroom fronting the street	Yes
4A.4.3 Solar Access		
C1 - Buildings are to be designed and sited to maintain approximately 2 hours of solar access between 9am and 3pm on 21 June to windows in living areas (family rooms, rumpus, lounge and kitchens) and to 50% of the primary private open space areas of both the subject site and adjoining properties.	The development application was accompanied by an examination of the proposal with regard to the Land and Environment Court's Planning Principle for solar access. This is addressed at the end of this table, see below.	Partial
4A.4.4 Private Open Space		
C1 - Each dwelling is to have a private open space that:		
(iii) Has at least one area with a minimum area of 36m ² ;	The private open space located at the rear of each semi-detached dwelling is 53m ² .	Yes
(iv) Is located at ground level with direct access to the internal living areas of the dwelling;	The POS is at ground level and accessed from a deck adjacent to the living room of the dwellings.	Yes
(v) Maximises solar access;	The POS faces approximately east and will benefit from solar access in the morning.	Yes
(vi) Is visible from a living room door or window of the subject development;	The POS is visible from the living room door.	Yes

(vii) Minimises overlooking from adjacent properties;	The POS is adjacent to the rear gardens of adjoining properties and will be screened from overlooking by planting.	Yes
(viii) Is generally level;	The POS is level.	Yes
(ix) Is oriented to provide for optimal year round use;	The POS has an easterly orientation which will facilitate year round use with morning sun and shading from westerly sun.	Yes
(x) Is appropriately landscaped; and	The submitted landscape plan shows appropriate landscaping for the proposed development.	Yes
(xi) Is located or screened to ensure privacy; Note: Private open space is not to include: (i) Non-recreational structures (including garages, tool sheds and such like structures); (ii) Swimming pools; and (iii) Driveways, turning areas and car spaces, drying areas and pathways.	The POS is located at the rear of the proposed dwellings with boundary fences and planting providing privacy from neighbouring properties.	Yes
C2 – Sites less than 250m ² may have a minimum area of 25m ² .	The proposed POS is 53m ² thereby meeting this requirement.	Yes
C5 – The primary private open space is to be located at the rear of the property.	The POS is located at the rear of the property.	Yes
4A.4.5 Safety and Security		
C1 – Dwellings must be designed to encourage passive surveillance of the street.	The proposal encourages passive surveillance of the street through the first floor street elevation balcony (as per the condition of consent) and the clear addressing and accessing of the site for pedestrians and vehicles from the street.	Yes
4A.4.7 Vehicle Access		
C1 - Driveways within a property shall have a minimum width of 3 metres. Note: An additional clearance of 300mm is required (for each side) if the driveway is located adjacent to a solid structure (i.e. masonry wall).	The proposed driveways are a minimum width of 3m, and are not adjacent to a solid structure.	Yes

C4 – Vehicular crossing shall be sited so that existing street trees, bus stops, bus zones, power lines and other services are not affected.	The existing street tree will be retained as the proposed driveways will pass with sufficient clearance to either side of it.	Yes
C6 - The number of vehicle crossings is to be limited to one (1) per allotment.	One (1) vehicle crossing is proposed to each of the proposed allotments.	Yes
4A.4.8 Car Parking		
C1 - Development must comply with Part 3A – Car Parking	The proposed development includes two (2) off street parking spaces for each dwelling; a single garage and driveway parking.	Yes
C2 - The provision of car parking must reasonably satisfy the need of current and future residents, but recognise the need to balance car parking access and provision with design, heritage, landscape and streetscape objectives.	The provision of two parking spaces for each dwelling is considered a suitable balance between resident need and design objectives.	Yes
C3 - Car parking is to be located at the rear of the site with access from a rear lane. If rear lane access is not possible, parking must be provided behind the front building alignment.	No rear lane exists. The garages are behind the front building alignment and setback from the front boundary by 5.5m.	Yes

Solar Access – Planning Principle

The subject site sits on an east-west orientation.

The proposed development will maintain two hours of solar access between 9am and 3pm in mid-winter to 50% of the primary private open space areas of the adjoining properties and the subject site.

The ground floor windows on the northern elevation of the property to the south (No. 30 William Street) will receive no sunlight during mid-winter until noon, at which time the west-facing and the western end, north-facing window will begin to incrementally receive direct solar access. These windows are to a living room.

The applicant submits the following:

“The Court’s consolidated and revised planning principle on solar access is now in the following terms:

Where guidelines dealing with the hours of sunlight on a window or open space leave open the question what proportion of the window or open space should be in sunlight, and whether the sunlight should be measured at floor, table or a standing person’s eye level, assessment of the adequacy of solar access should be undertaken with the following principles in mind, where relevant:

- *The ease with which sunlight access can be protected is inversely proportional to the density of development. At low densities, there is a reasonable expectation that a dwelling and some of its open space will retain its existing sunlight. (However, even at low densities there are sites and buildings that are highly vulnerable to being overshadowed.) At higher densities sunlight is harder to protect and the claim to retain it is not as strong.*

The proposal is for low density development, being two semi-detached dwellings in the R2 Low density zone.

- *The amount of sunlight lost should be taken into account, as well as the amount of sunlight retained.*

Given the east-west orientation of the lot pattern, it is acknowledged that access to sunlight is reduced to the POS, and the north-facing wall and window openings of the adjoining dwelling to the south. However, two hours of sunlight to east and west facing windows, plus skylights to the deck roof, and to 50% of the POS is maintained between 9am and 3pm during midwinter in accordance with the shadow diagrams submitted with this application.

- *Overshadowing arising out of poor design is not acceptable, even if it satisfies numerical guidelines. The poor quality of a proposal's design may be demonstrated by a more sensitive design that achieves the same amenity without substantial additional cost, while reducing the impact on neighbours.*

The proposed semi-detached dwellings as described in the plans are in accordance with the desired future character of the area envisaged by the development standards and DCP controls with the exception of the floor space ratio (FSR) standard applying to the site including for height, site coverage and landscaped deep soil zone, demonstrating that the proposal is a high quality design and not an over-development of the site.

Furthermore, the proposed GFA of each semi-detached dwelling provide an FSR of no greater than 0.66:2 for the site, with the LEP providing for a maximum FSR of 0.8:1 for dwelling houses. In this regard, the proposed design would have an impact to overshadowing the adjoining southerly neighbour consistent with a fully compliant dwelling house development.

- *For a window, door or glass wall to be assessed as being in sunlight, regard should be had not only to the proportion of the glazed area in sunlight but also to the size of the glazed area itself. Strict mathematical formulae are not always an appropriate measure of solar amenity. For larger glazed areas, adequate solar amenity in the built space behind may be achieved by the sun falling on comparatively modest portions of the glazed area.*

It is acknowledged that the proposal will cast additional shadows onto the north facing windows of the adjoining dwelling to the south at No. 30 William Street. However, access to sunlight for living areas is available from the east and west facing windows of the adjoining dwelling, plus skylights to the deck roof. In this regard, the proposal will maintain two hours of sunlight to the adjoining dwellings living areas between 9am and 3pm during mid-winter.

- *For private open space to be assessed as receiving adequate sunlight, regard should be had of the size of the open space and the amount of it receiving sunlight. Self-evidently, the smaller the open space, the greater the proportion of it requiring sunlight for it to have adequate solar amenity. A useable strip adjoining the living area in sunlight usually provided better solar amenity, depending on the size of the space. The amount of sunlight on private open space should ordinarily be measured at ground level but regard should be had to the size of the space as, in a smaller private open space, sunlight falling on seated residents may be adequate.*

It is acknowledged that the proposal will cast additional shadows onto the POS of the adjoining dwelling to the south. However, the proposal will maintain two hours of sunlight to the adjoining dwellings PIS areas between 9am and 3pm during mid-winter.

- *Overshadowing by fences, roof overhangs and changes in level should be taken into consideration. Overshadowing by vegetation should be ignored, except that vegetation may be taken into account in a qualitative way, in particular dense hedges that appear like a solid fence.*

The proposal is for no significant change overshadowing from the existing provision of fencing, with 1.8m high metal side boundary fencing currently present on the site.

- *In areas undergoing change, the impact of what is likely to be built on adjoining sites should be considered as well as the existing development.*

The adjoining sites are zoned R2 Low density residential, with a height limit of 8.5m and a maximum FSR of 1:1. In this regard, the proposed new development with a maximum height of 7.95m and FSR maximum of 0.66:1, will be consistent with any proposed adjoining or surrounding development."

Comment: The extent of overshadowing of the adjoining property to the south has been thoroughly addressed via the Solar Access Planning Principle, by the applicant. The additional shadow will not result in an unacceptable impact on the amenity enjoyed by the residents of the neighbouring property, and will maintain sufficient solar access during mid-winter.

Part 8 – Botany Character Precinct

Part 8.4.2 Desired Future Character of the Botany Precinct has been considered in the assessment of the application in the below table and generally complies with the controls contained therein. In particular, development is required to promote and encourage site layout as well as buildings that promote commonality and complement existing development patterns.

The following comments are made with respect to the relevant character guidelines desired by the DCP.

Item	Comment
<i>Function and Diversity</i>	The proposed development is considered to enhance the public domain and contribute to the anticipated future streetscape within the Precinct.
<i>Form, Massing, Scale and Streetscape</i>	The proposed development maintains low density residential development which complements the existing character of William Street.
<i>Setbacks</i>	The proposed development generally complies with the prevailing street setbacks for William Street. Front setbacks include deep soil planting with one (1) tree for each allotment. The proposed side setbacks comply with the minimum 900mm required.
<i>Landscaping</i>	Appropriate landscaping is provided within the primary setbacks and rear, private open space areas for each allotment. The scale and form of landscaping contributes to the privacy and amenity of the subject site and adjoining properties.

<i>Heritage</i>	The site is not affected by heritage requirements.
<i>Fencing</i>	The existing side fences are to remain and no front fence is proposed. An absent front fence will not detract from the streetscape, which in William Street, consists of low fences of a mix of materials and colours.
<i>Noise</i>	The site is not affected noise criterion listed in this control.
<i>Subdivision</i>	The proposed subdivision is discussed above and considered to respond appropriately to the pattern established by the surrounding low density zone.
<i>Public Domain and Environment</i>	The proposed development will not raise any inconsistencies with the provisions of this control.
<i>Solar Access</i>	Matters relating to solar access are discussed in Part 4A.4.3 above.
<i>Traffic and Access</i>	Adequate off-street parking arrangements are provided for each dwelling house with negligible traffic and parking impacts to the surrounding street network.
<i>Views</i>	The proposed development does not detract from existing views.
<i>Risk</i>	Not applicable in this instance.

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

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

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

Likely impacts on the natural and built environments, and social and economic impacts in the locality have been considered in the assessment of the application and no unacceptable negative impacts on the current built environment due to the size, bulk and style of the proposal are anticipated. The architectural style of the current proposal is somewhat out of character with the existing streetscape, though this may change over time as housing stock is replaced as well as architectural fashion changing.

No negative social or economic impacts are anticipated as a result of 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.

Council's Development Engineer has assessed the potential for flooding on the site affecting the proposed development and is satisfied no major impact would occur and the floor levels are compliant.

The general compliance of the proposal with controls in both the Botany Bay LEP 2013 and DCP 2013 and the minimal impacts resulting from the proposal make the site suitable to the proposed development.

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

In accordance with Part 2 of the BBDCP 2013, the development application was notified to surrounding property owners for a 14 day period from 18 June 2019 to 2 July 2019. No submissions were received.

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

Granting approval to the proposed development will have no adverse impact on the public interest. The proposal will facilitate the orderly development of the land.

Section 94 Contributions

Council's S7.11 Planner has confirmed that a levy of \$20,000 applies to the proposed development and accordingly, is imposed as a condition of consent.

Conclusion

Development Application No. 2019/191 for the demolition of existing structures and construction of two (2) semi-detached dwellings and Torrens title subdivision at No. 32 William Street, Botany, has been assessed in accordance with the relevant requirements of the Environmental Planning and Assessment Act 1979 and is recommended for approval subject to conditions of consent.

Attachment**Schedule 1 – Conditions of Consent****Premises: 32 William Street Botany****DA No: 2019/191****SCHEDULE OF CONSENT CONDITIONS****GENERAL CONDITIONS**

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

Drawing	Author	Dated
Architectural Plan Set		
Site Plan Job No. A19026, Issue H, Drawing No. A1.00	MOMA Architects	18/10/2019 Rec: 25/10/2019
Demolition Plan Job No. A19026, Issue H, Drawing No. A0.04	MOMA Architects	18/10/2019 Rec: 25/10/2019
Subdivision Plan Job No. A19026, Issue H, Drawing No. A0.03	MOMA Architects	18/10/2019 Rec: 25/10/2019
Ground Level Plan Job No. A19026, Issue H, Drawing No. A1.01	MOMA Architects	18/10/2019 Rec: 25/10/2019
Level 1 Plan Job No. A19026 Issue H, Drawing No. A1.02	MOMA Architects	18/10/2019 Rec: 25/10/2019
Elevations Job No. A19026 Issue H, Drawing Nos A2.00 and A2.01 and A2.02 and A2.03 and A2.04	MOMA Architects	18/10/2019 Rec: 25/10/2019
Sections – Long Section, Long Section 2 and Cross Job No. A19026, Issue H Drawing Nos A3.00 and A3.01 and A3.02	MOMA Architects	18/10/2019 Rec: 25/10/2019
Schedule of Materials and Finishes Job No A19026, Issue H Drawing No. A 6.00	MOMA Architects	18/10/2019 Rec: 25/10/2019
Landscape Plan, Drawing No. DA-L101 Rev C	Canvas Landscape Architects	30/08/19 Rec: 2/09/2019
BASIX certificate 1017854M	Outsource Ideas P/L	29 May 2019
Stormwater Plans		
Stormwater Management Plan, Job No. 190137 Drawing No. D1 and D2 and D3 and D4 and D5 and D6 and D7 and D8, Rev C.	Quantum Engineers	28.08.2019 Rec: 29/08/2019
Stormwater Plan Job No. A19026, Issue D, Drawing No. A8.00	MOMA Architects	09/09/2019 Rec: 11/09/2019
Waste Management Plan	MOMA Architects	30.05.2019

2. This Consent relates to land in Lot 21 Sec G DP939785 and, as such, building works must not encroach on to adjoining lands or the adjoining public place.
3. All building work must be carried out in accordance with the provisions of the Building Code of Australia.
4. The maximum height of the front and side return fences (fences on the side boundaries between the front boundary and the building line) shall not exceed 1 metre. Details shall be provided prior to issue of the Construction Certificate.
5. 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 dwellings. The installation must satisfy the following:-
 - a) smoke alarms must comply with AS3786 - 1993;
 - b) smoke alarms must be connected to the consumer mains power where consumer power is supplied to the building; and
 - c) be located in a position as required by Vol 2. BCA.
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 the relevant BASIX Certificate 1017854M, 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*.

7. The consent given does not imply that works can commence until such time that:
 - a) Detailed plans and specifications of the building have been endorsed with a Construction Certificate by:-
 - i) The consent authority; or,
 - ii) An accredited certifier; and
 - b) The person having the benefit of the development consent:-
 - i) Has appointed a Certifying Authority; and
 - ii) Has notified the consent authority and the Council (if the Council is not the consent authority) of the appointment; and

- c) 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

8. Prior to the issue of the Construction Certificate, the following amendments to the approved plans and documents must be submitted to Council for approval:
 - (i) A balcony, no more than 1 metre depth and the width of the sliding window shown on the approved plans shall be provided within the front elevation of both dwellings and adjacent to Bedroom 1. The sliding window is to be converted into a sliding door to access the balcony.
 - (ii) A colour scheme compatible with the predominant colours of buildings in the streetscape.
9. The approved Waste Management Plan shall be updated to refer only to 32 William Street, Botany (the subject site) and shall be approved by the Principal Certifying Authority prior to issue of the Construction Certificate.
10. Prior to the issue of a Construction Certificate 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/NZ 4819:2011 Rural and Urban Addressing Standard and Section 5.2 of the NSW Address Policy.

The form is available for download at:

<https://www.bayside.nsw.gov.au/sites/default/files/2018-10/Property%20Address%20Allocation%20Form.pdf>

Derivation and production of address data components are governed by the NSW Addressing User Manual to ensure consistency of application.

http://www.gnb.nsw.gov.au/__data/assets/pdf_file/0007/199411/NSW_Addressing_User_Manual.pdf

11. A Section 7.11 contribution of \$20,000 shall be paid to Council. The contribution is calculated according to the provisions contained within Council's adopted Former City of Botany Bay s7.11 Development Contributions Plan 2016 (Amendment 1) and having regard to the Ministerial Directive of 21 August 2012 (the \$20,000 cap). The amount to be paid is to be adjusted at the time of payment, in accordance with the review process contained Contributions Plan. The contribution is to be paid prior to the issue of any compliance certificate; subdivision certificate or construction certificate. The contributions are only used towards the provision or improvement of the amenities and services identified below.

Community Facilities	\$ 1,637.16
Recreation and Open Space	\$ 16,890.83
Transport Facilities	\$ 1,326.38
Administration	\$ 145.62
Total in 2018/19	\$ 20,000.00

12. Prior to issue of any Construction Certificate detailed drainage design plans for the management of stormwater are to be submitted to the Principal Certifying Authority

for assessment and approval. Design certification and drainage design calculations are to be submitted with the plans. Botany DCP Part 10— Stormwater Management Technical guidelines 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 DCP Part 10 — Stormwater Management Technical Guidelines. All drawings shall correspond with the approved architectural plans.

The plans shall incorporate the following measures:

- a) The provisions made in the Stormwater Concept Plans by Quantum Engineers, Job Number 190137, revision B, dated 25.07.2019.
- b) the provision for an On-site Stormwater Infiltration System designed to retain all 1 in 100 year storm events and satisfying all relevant Council and Australian Standards,
- c) a rainwater tank system shall be provided with a minimum capacity of 2000L for each proposed dwelling. The rainwater tank shall service the toilets, clothes washers and any landscaping in accordance with the requirements of Sydney Water and AS/NZS 3500 – National Plumbing and Drainage Code. First flush device shall also be incorporated into the tank systems. Overflow from the rainwater tank shall connect to the proposed site drainage system.

Design Certification and drainage design calculations must be submitted with the detailed plans.

13. Prior to Construction Certificate any part of the proposed building within 3m of the proposed underground rainwater tank or absorption trench shall be constructed on a pier and beam foundation with piers extending no less than 300mm below the bottom of the tank or trench base. This requirement shall be reflected on the Construction Certificate plans and supporting documentation.
14. Prior to the issue of any Construction Certificate, the driveway over the absorption trench shall be either constructed on a pier and beam foundation with piers extending no less than 300mm below the bottom of the trench base or constructed as a structural slab so that no load is transferred to the plastic trench. This requirement shall be reflected on the Construction Certificate plans and supporting documentation.
15. 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 RL 7.58m AHD. All internal electrical switches, power points or similar utilities liable to flood damage shall be set at or above RL 7.58m AHD. Details shall be provided and approved prior to the issue of a construction certificate.
16. Prior to Construction Certificate all vehicular crossings shall be designed to conform to the current Australian Standards AS 2890.1 and Council's Infrastructure Specifications. These include but are not limited to E-01, E-04, E-07 and E-16.

As part of this development, two new concrete driveways shall be constructed. Two new three (3) metre wide driveway laybacks shall be constructed as part of the new driveways, separated by 6.0m. A minimum of one (1.0) metre of kerb and gutter either side of the driveway layback shall be replaced to enable the correct tie-in with

the existing kerb and gutter. All redundant vehicular crossings shall be removed and replaced to fit the main footpath cross-section.

17. An application for Driveway Works (Public Domain Construction – Vehicle Entrance/Driveway Application) shall be made to Council's Customer Service Centre prior to issue of the Construction Certificate. All boundary frontage works, egress paths, driveways and fences shall comply with the approval. A fee is payable to Council. If payment is made after the end of the financial year, the amount shall be adjusted in accordance with Council's adopted fees and charges.
18. Prior to Construction Certificate the approved plans must be submitted to Sydney Water Tap in™ online service to determine whether the development will affect any Sydney Water sewer or water main, stormwater drains and/or easement, and if further requirements need to be met.

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

19. 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.
20. The following fees are to be paid prior to the issue of the Construction Certificate:-

Builders Security Deposit	\$5419.00
Development Control (Environmental Enforcement Fee)	\$1290.00

21. The applicant shall contact "Dial Before You Dig on 1100" to obtain a Service Diagram for, and adjacent to, the property. The sequence number obtained from "Dial Before You Dig" shall be forwarded to Principal Certifying Authority. Any damage to utilities/services will be repaired at the applicant's expense.
22. The building shall be constructed in accordance with AS2021- 2000: Acoustics, Aircraft Noise Intrusion, Building Siting and Construction. The Noise Assessment Report by Alan Parks Consulting dated May 2019 submitted with the development application shall be updated to reflect the approved plans and submitted to principal certifier prior to the release of the Construction Certificate and the building plans endorsed with the required acoustical measures.

CONDITIONS WHICH MUST BE SATISFIED PRIOR TO THE COMMENCEMENT OF ANY DEVELOPMENT OR WORK (INCLUDING DEMOLITION)

23. The demolisher shall lodge with 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.
24. The Principal 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 license number, and;
 - ii) Is satisfied that the licensee has complied with the requirements of Part 6 of the Home Building Act 1989; or,
 - b) In the case of work to be done by any other person: -
 - i) Has been informed in writing of the person's name and owner-builder permit number, or;
 - ii) Has been given a declaration signed by the owner of the land that states that the reasonable market cost of the labour and materials involved in the work is less than the amount prescribed for the purposes of the definition of *owner builder work* in Section 29 the Home Building Act 1989.
 - c) And is given appropriate information and declarations under paragraphs (a) and (b) whenever arrangements for the doing of the work are changed in such a manner as to render out of date any information or declaration previously given under either of those paragraphs.
25. The applicant must inform Council, in writing, of:
- a) The name of the contractor, and license 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;
26. The Council also must be informed if: -
- a) A contract is entered into for the work to be done by a different licensee; or
 - b) Arrangements for the doing of the work are otherwise changed.
27. Dewatering is not permitted on this site without NSW-EPA approval.
28. 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, 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 (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.
 - 29. 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.
 - 30. Building plans must be lodged through a Sydney Water Tap In Service for approval prior to commencement of works.
 - 31. This Consent shall not preclude the demolisher from giving notice to other statutory authorities, such as Sydney Water Corporation, WorkCover, etc.
 - 32. 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 and a copy of the Plan submitted to Council's Customer Service Centre for registration. The Plan must include details of the proposed erosion and sediment controls to be installed on the building site and must be kept on site at all times and made available upon request.
- Sediment control devices shall not be located beneath the dripline of any trees nominated for retention.
- 33. Soil and sedimentation controls are to be put in place prior to the commencement of any work on site. The controls are to be maintained in effective working order during construction.
 - 34. 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
35. Application(s) shall be made to Council's Customer Services Counter for the following approvals and permits on Council's property/road reserve under Road Act 1993 and Local Government Act 1993 as appropriate: -
- (It should be noted that any works shown within Council's road reserve or other Council Lands on the development approval plans are indicative only and no approval for these works is given until this condition is satisfied.)
- a) Permit to erect hoarding on or over a public place, including Council's property/road reserve
 - b) Permit to construction works, place and/or storage building materials on footpaths, nature strips
 - c) Permit for roads and footways occupancy (long term/ short term)
 - d) Permit to construct vehicular crossings, footpath, kerb and gutter over road reserve
 - e) Permit to open road reserve area, including roads, footpaths, nature strip, vehicular crossing or for any purpose whatsoever
 - f) Permit to place skip/waste bin on footpath and/or nature strip
 - g) Permit to use any part of Council's road reserve or other Council lands

CONDITIONS TO BE SATISFIED DURING WORKS

36. 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 PCA including an after-hours contact telephone number.
 - b) Any such sign is to be removed when the work has been completed.
37. 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.
38. 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.
39. No demolition material shall be burnt or buried on the site.
40. 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 Council. The use of any part of Council's road reserve must also have prior approval of Council.
41. The approved Waste Management Plan shall be complied with at all times during demolition, construction and on-going use of the site.
42. 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.
43. Stockpiles are not permitted to be stored on Council property (including the nature strip) unless prior approval has been granted. In addition, stockpiles of topsoil, sand,

- aggregate, soil or other material shall be stored clear of any drainage line or easement, natural watercourse, kerb or road surface.
44. Demolition operations shall not be conducted on the roadway or public footway or any other locations which could lead to the discharge of materials into the stormwater drainage system.
 45. 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.
 46. 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.
 47. 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).
 48. Any material containing asbestos found on site during the demolition process the shall be removed and disposed of in accordance with
 - a) WorkCover NSW requirements. An appropriately licensed asbestos removalist must complete all asbestos works if they consist of the removal of more than 10m² of bonded asbestos and/or any friable asbestos;
 - b) Protection of the Environment Operations Act 1997;
 - c) Protection of the Environment Operation (Waste) Regulation;
 - d) DECC Waste Classification Guidelines 2008; and
 - e) No demolition materials shall be burnt or buried on the site.
 49. 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.

50. In order to ensure safe handling of asbestos materials, the re-use or sale of asbestos building materials is strictly prohibited.
51. Building, demolition and construction works not to cause stormwater pollution and being carried out in accordance with Section 2.8 of Council's Stormwater Pollution Control Code 1993. Pollutants such as concrete slurry, clay and soil shall not be washed from vehicles onto roadways, footways or into the stormwater system. Drains, gutters, roadways and access ways shall be maintained free of sediment. Where required, gutters and roadways shall be swept regularly to maintain them free from sediment.

 Note: The Applicant may be liable to prosecution under the Environmental Planning and Assessment Act 1979 for a breach of an approval condition, or under the Protection of the Environment Operations Act 1997, if its employees, agents or sub-contractors allow sediment, including soil, excavated material, building materials, or other materials to be pumped, drained or allowed to flow to the street, stormwater pipes or waterways. The Applicant shall ensure that its employees, agents or sub-contractors understand and maintain sediment control measures.
52. 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.
53. 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 Energy Australia, 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.
54. 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.
55. 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.
56. 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:
 - a) Protect and support the adjoining premises from possible damage from the excavation, and
 - b) Where necessary, underpin the adjoining premises to prevent any such damage.

57. The following shall be complied with during construction and demolition:
- a) Construction Noise
 - i) Noise from construction activities associated with the development shall comply with the NSW Environment Protection Authority's Interim Construction Noise Guideline and the Protection of the Environment Operations Act 1997.
 - ii) Level Restrictions
 - 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).
 - 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).
 - b) Time Restrictions
 - Monday to Friday 07:00am to 05:00pm
 - Saturday 08:00am to 01:00pm
 - No Construction to take place on Sundays or Public Holidays.
 - c) Silencing
 - All possible steps should be taken to silence construction site equipment.
58. The applicant shall conduct all construction and related deliveries wholly on site. If any use of Council's road reserve is required then separate applications are to be made at Council's Customer Services Centres.
59. 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,
- 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.
- 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.

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.

60. 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 AN OCCUPATION CERTIFICATE

61. Prior to the issue of any Occupation Certificate(s), inspection reports (formwork and final) for the works on the road reserve shall be obtained from Council's engineer and submitted to the Principal Certifying Authority attesting that this condition has been appropriately satisfied.
62. Prior to the issue of any Occupation Certificate(s), the applicant shall carry out the following works:
 - a) On William Street, adjacent to development, reconstruct existing Kerb and Gutter for the full length property in accordance with Council Infrastructure Specifications, and
 - b) On William Street, adjacent to development, reconstruct existing Footpath 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 completed to the satisfaction of Council.
63. All absorption trenches must be inspected prior to back filling and proceeding to subsequent stages of construction to the satisfaction of the Principal Certifying Authority. Supporting evidence shall be issued by a professional Civil Engineer experience in stormwater system design and construction. The maximesh screens and removable geotextile are to be installed in the absorption system prior to connection of the downpipes to ensure the effective performance of the system during construction and the long term viability of the system.
64. The owner of the premises is required to comply with the following requirements when installing a rainwater tank:
 - a) The overflow from the rainwater tank shall be directed to the stormwater system.
 - b) All plumbing work proposed for the installation and reuse of rainwater shall comply with the NSW Code of Practice: Plumbing and Drainage and be installed in accordance with Sydney Water "Guidelines for Rainwater Tanks on Residential Properties".
 - c) A first flush device shall be installed to reduce the amount of dust, bird faeces, leaves and other matter entering the rainwater tank.
65. Prior to the issue of an Occupation Certificate, Certification from a licensed plumber shall be provided certifying the installation of the required minimum capacity 2000L rainwater tank(s) in each lot in accordance with the requirements of Sydney Water and AS/NZS 3500 – National Plumbing and Drainage Code. The rainwater tanks shall be certified as servicing the toilets, clothes washers and all landscaping on the site.

First flush device shall be installed and overflow from the rainwater tank shall be connected to the proposed site drainage system.

66. Prior to the issue of an Occupation Certificate documentation from a practicing civil engineer shall be submitted to the Principal Certifying Authority certifying that the stormwater drainage system has been constructed generally in accordance with the approved stormwater management construction plan(s) and all relevant standards. A works-as-executed drainage plan shall be prepared by a registered surveyor based on a survey of the completed works. A copy of the certificate and works-as-executed plan(s) shall be supplied to the Principal Certifying Authority. A copy shall be provided to Council if Council is not the Principal Certifying Authority.
67. Prior to the issue of an 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) Positive Covenant and Restriction on Use of Land for On-Site Infiltration System. Refer to appendix A of the Stormwater Management Technical Guidelines for suggested wording.
68. A certificate from a Registered Surveyor shall be provided to the Principal Certifying Authority (PCA) certifying that the habitable floor level is constructed at or above RL 7.58m AHD. A copy of the certificate shall be provided to Council where Council is not the Principal Certifying Authority.
69. A certificate from a Registered Surveyor shall be provided to the Principal Certifying Authority certifying that the garage floor level/non-habitable floor level (storage shed floor, patio, deck and/or garage floor) is constructed at or above RL 7.58m AHD. A copy of the certificate shall be provided to Council where Council is not the Principal Certifying Authority.
70. Flow through open form fencing (louvres or pool fencing) is required for all new front fencing and all internal fences and gates up to the 1% AEP level. Any new boundary fences adjoining private property shall have an 80mm gap at the bottom to allow flows through. Details of approved types of flow through fencing can be obtained from Council. Documentation shall be provided to Certifying Authority prior to occupation.
71. All trees shall be located within mulched landscaped bed except where this may interfere with the performance of an on-site detention system.
72. The noise reduction measures specified in the noise assessment report approved under condition 22 of this consent shall be validated by a Certificate of Compliance prepared by an acoustic consultant and submitted to the Principal Certifier (PC) prior to the issue of an Occupation Certificate. If Council is not the PC, a copy shall be submitted to Council concurrently.
73. Prior to the issue of any Occupation Certificate, the following must be complied with:
 - a) All landscape works are to be carried out in accordance with the approved Landscape Plan prepared by Canvas Landscape Architects, issue C, dated 30th August 2019 for the approved development. One (1) canopy tree shall be included in the frontage setback of each proposed dwelling. The landscaping is to be maintained to the approved standard at all times.

- b) A landscape Architect shall provide a report to the certifying authority (with a copy provided to Council, if Council is not the principal certifier) stating that the landscape works have been carried out in accordance with the approved plans and documentation.
74. The existing street tree shall be retained and protected during construction. The exact location of the driveway shall be based on the recommendations of a Consultant arborist with minimum AQF (Australian Qualification Framework) Level 5 qualifications or equivalent e.g. TAFE NSW Diploma of Horticulture (Arboriculture), and experienced in the protection of trees on development sites. The Arborist's report shall also identify necessary protective measures (including fencing and delivery/access points), the location and installation methods for any services or works and ongoing maintenance to the tree/s during construction. All recommendations of the Arborist shall be adhered to at all times.
75. Prior to the issue of any Occupation Certificate, the approved subdivision is to be registered. The linen plans are to be submitted to Council, prior to the release of the Occupation Certificate, and proof of registration with the Land and Property Information office is to be submitted prior to occupation and use of any building.

CONDITIONS TO BE SATISFIED PRIOR TO ISSUE OF A SUBDIVISION CERTIFICATE

76. The subdivision is to occur in accordance with Development Consent No. 2019/191 and any subsequent Section 4.55 modification conditions relevant to the release of the Subdivision Certificate.
77. A Subdivision Certificate and four (4) copies of the plans for the endorsement of the General Manager shall be submitted to Council prior to lodgment with the Land and Property Information office. If applicable, an original and four (4) copies of the 88B Instrument are to be submitted.
78. The endorsed subdivision certificate shall not be released until completion of the development and the issue of the Occupation Certificate.
79. A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained from the Sydney Water Corporation.
- Application must be made through an authorised Water Servicing Coordinator. Please refer to the Building Development and Plumbing section of the website www.sydneywater.com.au, then refer to "Water Servicing Coordinator" under "Developing Your Land" or call 13 20 92 for assistance.
- (a) 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.
 - (b) The Section 73 Certificate must be submitted to the PCA prior to the release of the linen plan.
80. Prior to the issue of a Subdivision Certificate, a Certificate of Survey from a Registered Surveyor shall be submitted to the Principal Certifying Authority showing all the structures are wholly located within the property boundary.

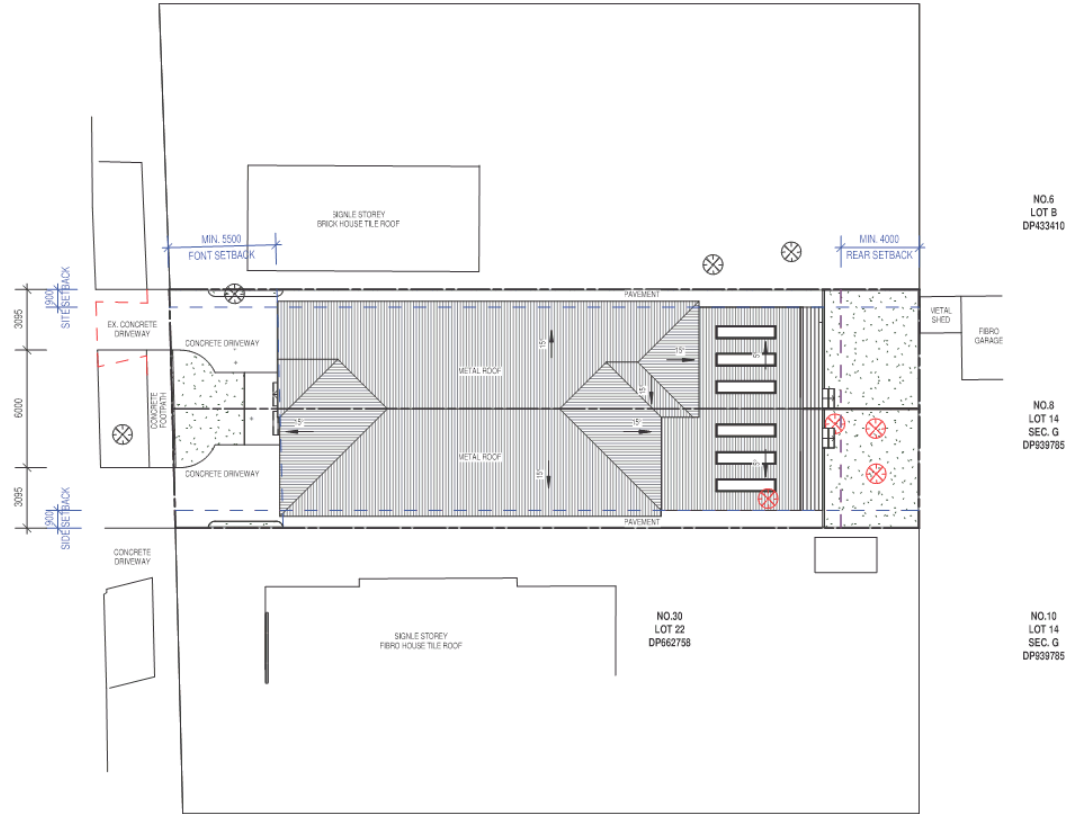
81. A Positive Covenant shall be provided over the on-site retention systems on each new lot. A Section 88B instrument and four copies shall be lodged with the Linen Plans.
82. All existing and proposed services on the property shall be shown on a plan, and shall be submitted to Council. This includes electricity, gas, water, sewer, stormwater and telephone services. Where any service crosses one lot but benefits another lot, it is to be covered by an easement. The service easement is to be covered by a Section 88B Instrument, which may only be varied or extinguished with the consent of Council. These provisions are to be put into effect prior to the release of the Subdivision Certificate.

ONGOING USE

83. The use of mechanical plant including air conditioners, fans, compressors, freezers, swimming pool or spa pumps shall not give rise to an 'offensive noise' as defined under the provisions of the Protection of the Environment Operations Act, 1997.
84. Residential air conditioners shall not cause "offensive noise" as defined by the Protection of the Environment Operations Act 1979 or contravene provisions of the Protection of the Environment (Noise Control) Regulation 2008 where emitted noise from a residential air conditioner can be heard within a habitable room in any other residential premises at night.
85. All existing and proposed lights shall comply with the Australian Standard AS4282 – 1997 "Control of the Obtrusive Effects of Outdoor Lighting". In this regard, the lighting of the premises, including swimming pools, shall be directed so as not to cause nuisance to the owners or occupiers of adjacent/adjoining premises or to motorists on adjoining or nearby roads.
86. 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.
87. Each semi-detached dwelling is to be used as a single occupancy.

ADVISORY NOTES

88. The water from the rainwater tank should not be used for drinking. Sydney Water shall be advised of the installation of the approved rainwater tanks.



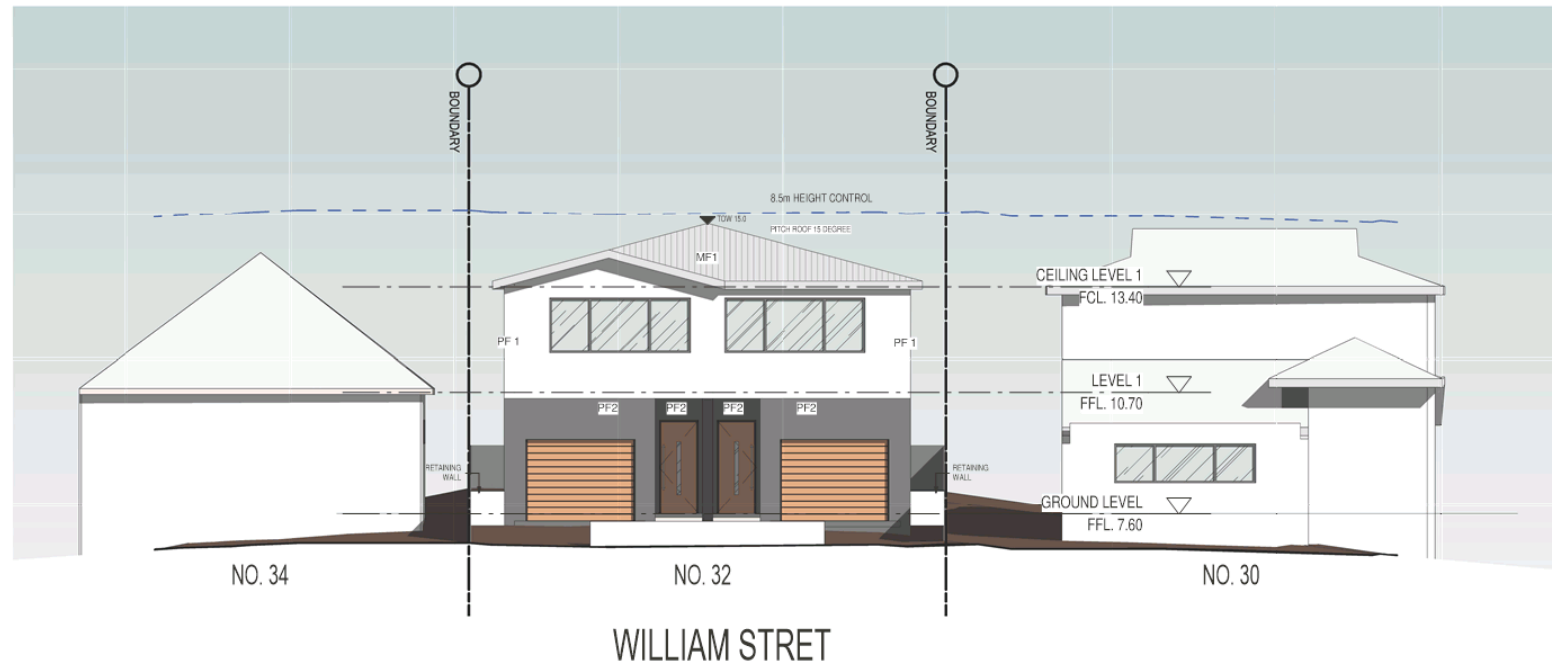
t: (02) 8056 7464
w: www.themoma.com.au
e: info@themoma.com.au
a: suite 20, 33 waterloo rd, macquarie park nsw 2113
Nominated Architects
Henry Huang NSW.8992 Eric Kim NSW.9185

Issue	Description	Date
A	Issue for coordination	18/07/2019
B	Issue for DA amendment	26/07/2019
C	Issue for DA stw update	30/08/2019
D	Issue for DA amendment	09/09/2019
E	Issue for DA amendment	20/09/2019
G	Issue for DA amendment	14/10/2019
H	Issue for DA amendment	18/10/2019

Client Name
DANNY JOVANOVIC
Project Name
32 WILLIAM STREET, BOTANY



Drawing Title PLAN - SITE				
Job No.	Scale	Drawing No.	Stage	ISSUE
A19026	1 : 200@A3	A 1.00	DA	H



t: (02) 8056 7464
 w: www.themoma.com.au
 e: info@themoma.com.au
 a: suite 20, 33 waterloo rd, macquarie park nsw 2113
 Nominated Architects
 Henry Huang NSW.8992 Eric Kim NSW.9185

Issue	Description	Date
1	Issue for DA amendment	22/10/2019

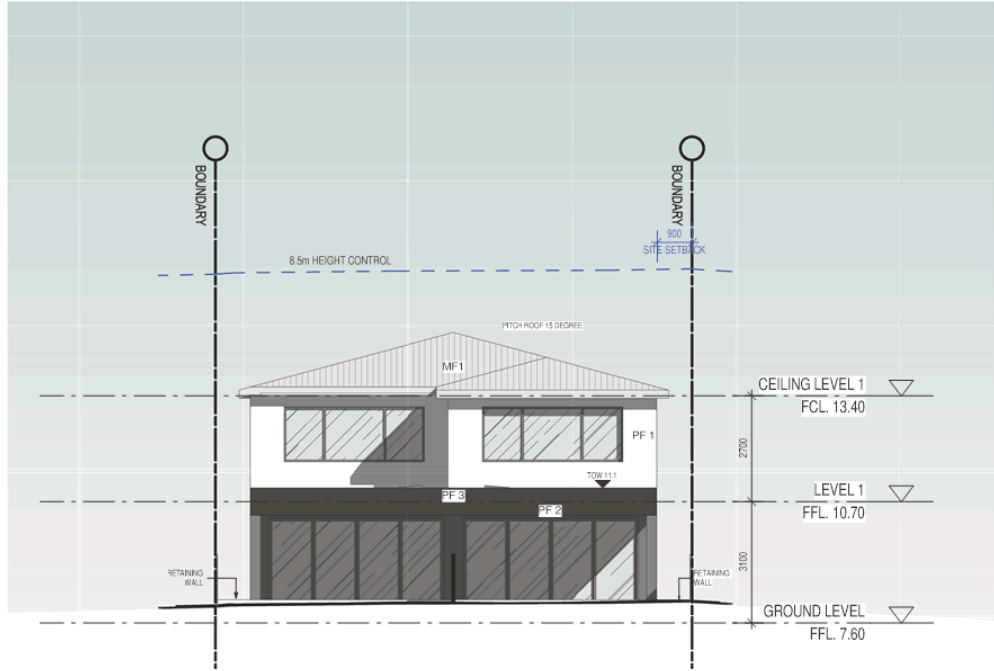
Client Name
DANNY JOVANOVIĆ

Project Name
32 WILLIAM STREET, BOTANY

Drawing Title
STREETSCAPE

FOR INFORMATION ONLY
 NOT FOR CONSTRUCTION

Job No.	Scale	Drawing No.	Stage	ISSUE
A19026	1 : 100 @ A3	A 2.05	DA	I



ABBREVIATION	
Key Value	Keynote Text
MF1	Metal Roof
PF1	Paint Finish (White)
PF2	Paint Finish (Grey)
PF3	Paint Finish (Charcoal)



t: (02) 8056 7464
w: www.themoma.com.au
e: info@themoma.com.au
a: suite 20, 33 Waterloo rd, Macquarie Park NSW 2113
Nominated Architects
Henry Huang NSW.8992 Eric Kim NSW.9185

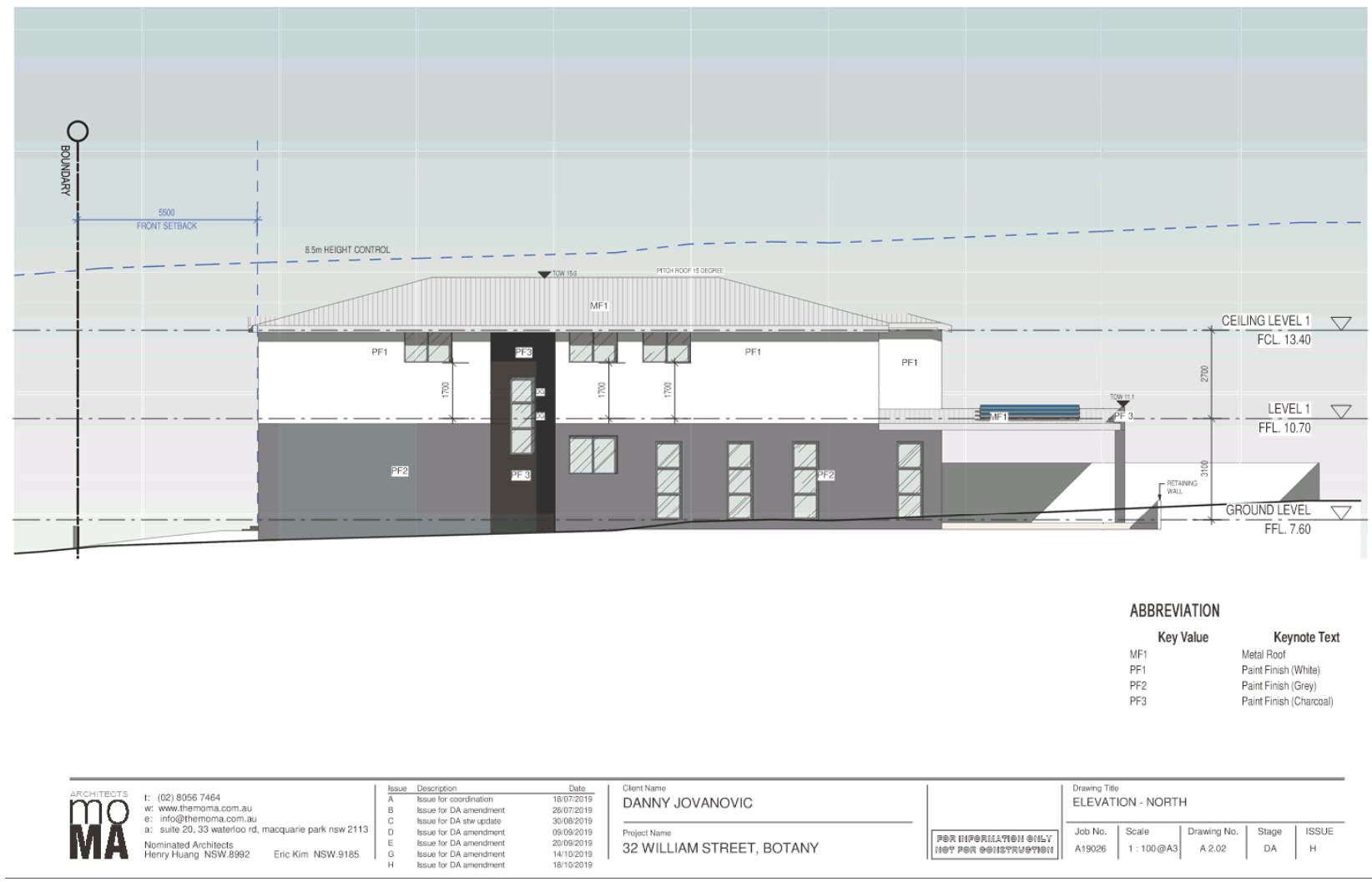
Issue	Description	Date
A	Issue for coordination	18/07/2019
B	Issue for DA amendment	26/07/2019
C	Issue for DA stw update	30/08/2019
D	Issue for DA amendment	09/09/2019
E	Issue for DA amendment	20/09/2019
G	Issue for DA amendment	14/10/2019
H	Issue for DA amendment	18/10/2019

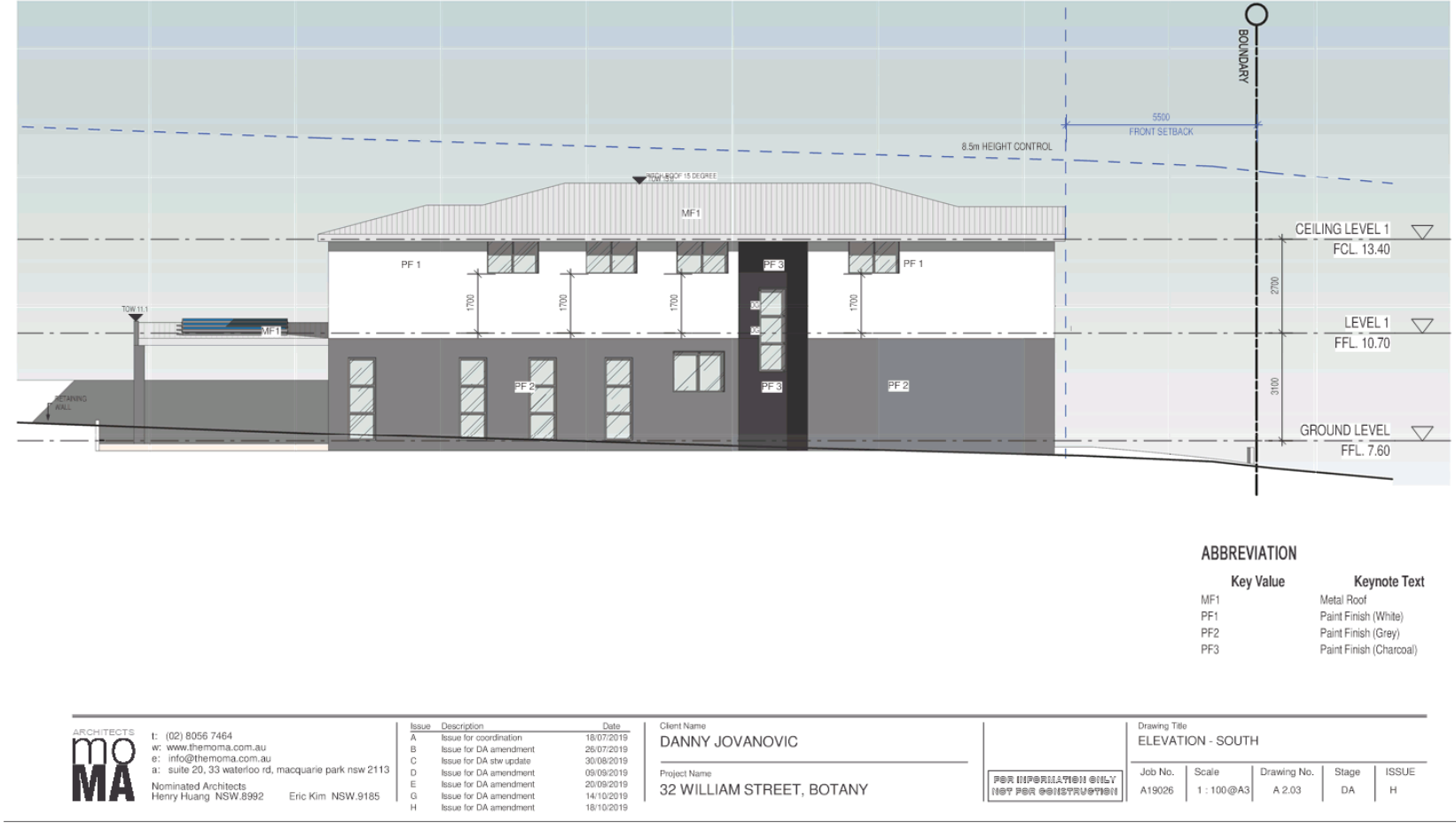
Client Name
DANNY JOVANOVIĆ
Project Name
32 WILLIAM STREET, BOTANY

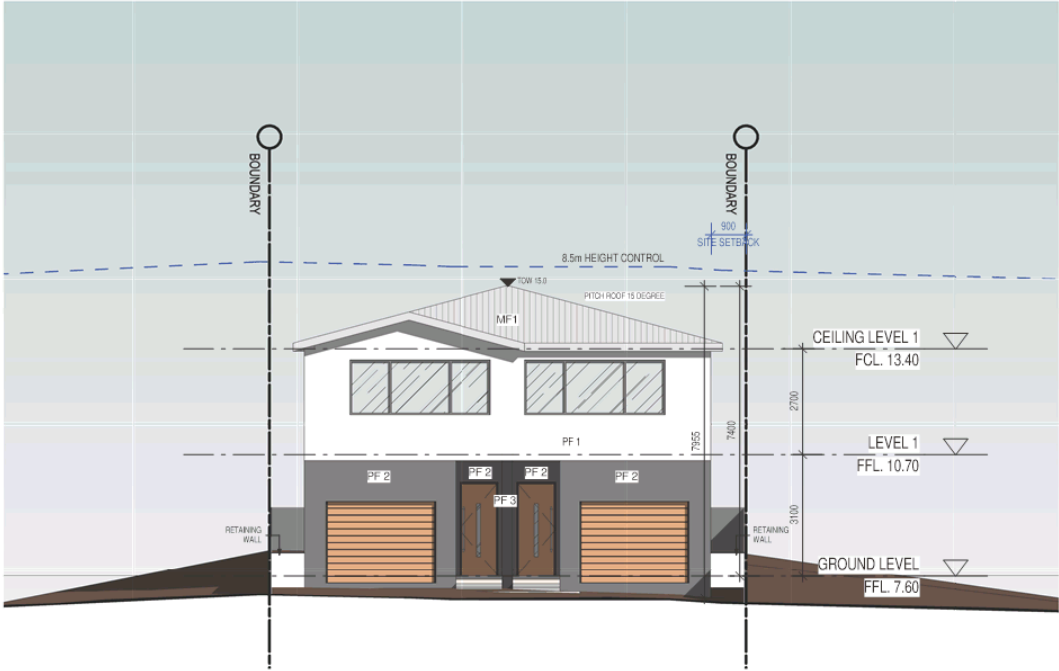
Drawing Title
ELEVATION - EAST

FOR INFORMATION ONLY
NOT FOR CONSTRUCTION

Job No.	Scale	Drawing No.	Stage	ISSUE
A19026	1 : 100@A3	A 2.00	DA	H







ABBREVIATION	
Key Value	Keynote Text
MF1	Metal Roof
PF1	Paint Finish (White)
PF2	Paint Finish (Grey)
PF3	Paint Finish (Charcoal)



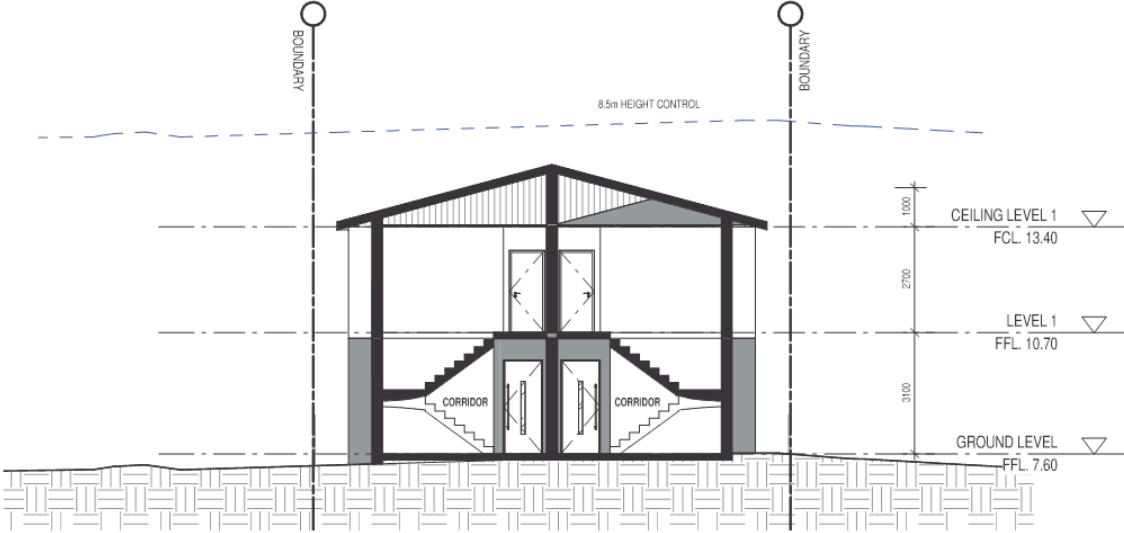
t: (02) 8056 7464
w: www.themoma.com.au
e: info@themoma.com.au
a: suite 20, 33 Waterloo rd, macquarie park nsw 2113
Nominated Architects
Henry Huang NSW.8992 Eric Kim NSW.9185

Issue	Description	Date
A	Issue for coordination	18/07/2019
B	Issue for DA amendment	26/07/2019
C	Issue for DA stw update	30/08/2019
D	Issue for DA amendment	09/09/2019
E	Issue for DA amendment	20/09/2019
G	Issue for DA amendment	14/10/2019
H	Issue for DA amendment	18/10/2019

Client Name
DANNY JOVANOVIC
Project Name
32 WILLIAM STREET, BOTANY

FOR INFORMATION ONLY
NOT FOR CONSTRUCTION

Drawing Title ELEVATION - WEST				
Job No.	Scale	Drawing No.	Stage	ISSUE
A19026	1 : 100@A3	A 2.01	DA	H



t: (02) 8056 7464
w: www.themoma.com.au
e: info@themoma.com.au
a: suite 20, 33 waterloo rd, macquarie park nsw 2113
Nominated Architects
Henry Huang NSW.8992 Eric Kim NSW.9185

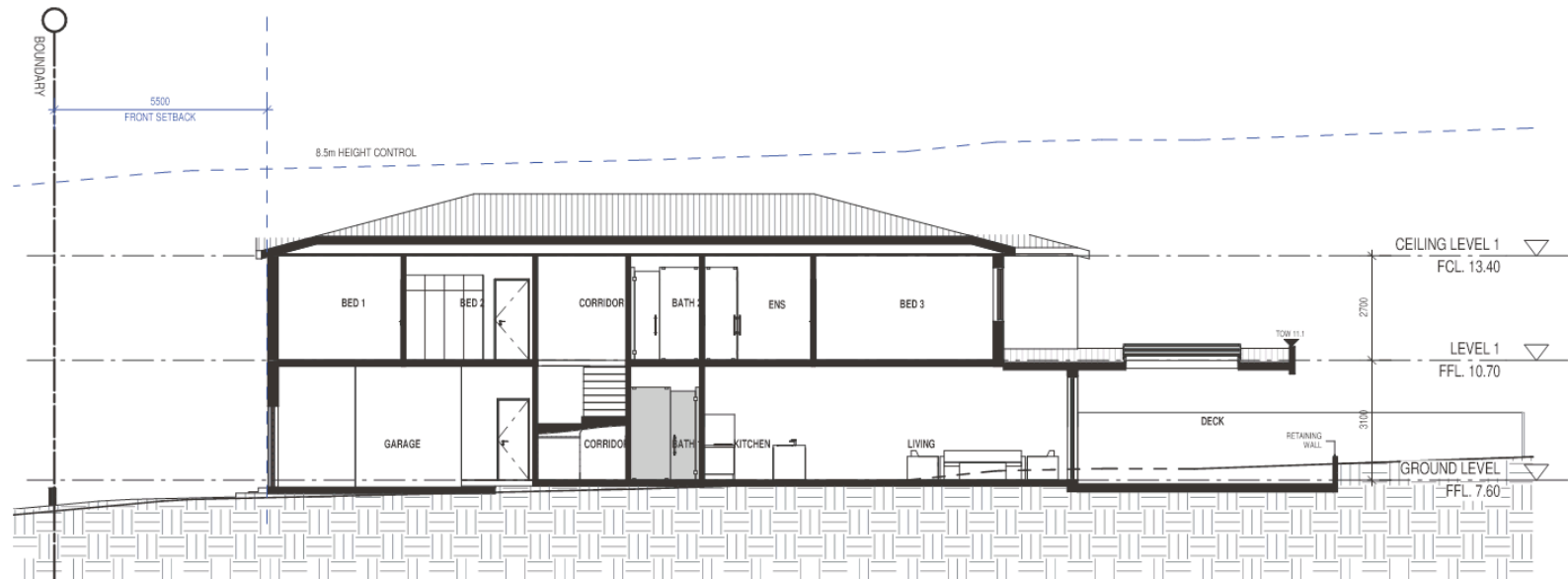
Issue	Description	Date
A	Issue for coordination	18/07/2019
B	Issue for DA amendment	26/07/2019
C	Issue for DA stw update	30/08/2019
D	Issue for DA amendment	09/09/2019
E	Issue for DA amendment	20/09/2019
G	Issue for DA amendment	14/10/2019
H	Issue for DA amendment	18/10/2019

Client Name
DANNY JOVANOVIC
Project Name
32 WILLIAM STREET, BOTANY

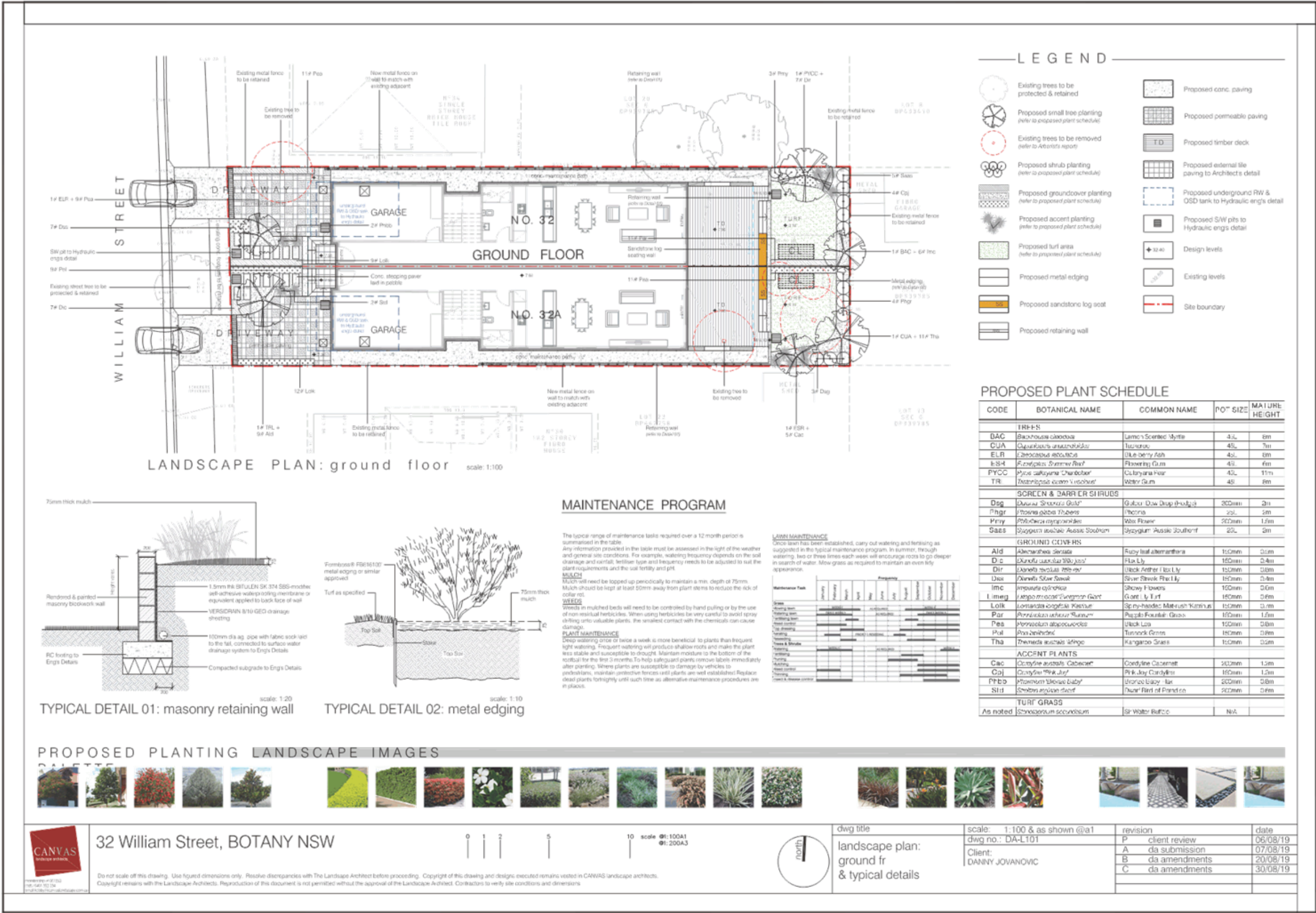
FOR INFORMATION ONLY
NOT FOR CONSTRUCTION

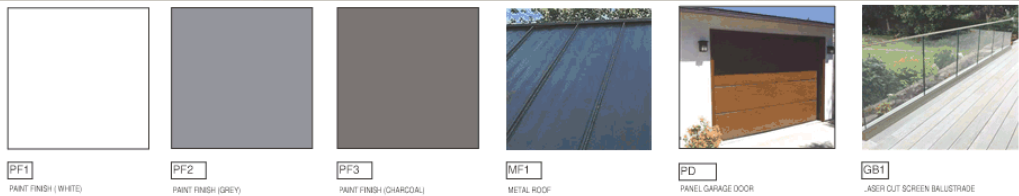
Drawing Title
SECTION - CROSS

Job No.	Scale	Drawing No.	Stage	ISSUE
A19026	1 : 100@A3	A 3.02	DA	H



<div>ARCHITECTS</div> <div>moMA</div>	t: (02) 8056 7464		Issue	Description	Date	Client Name	<div>Drawing Title</div> <div>SECTION - LONG SECTION 2</div>					
	w: www.themoma.com.au		A	Issue for coordination	18/07/2019	<div>DANNY JOVANOVIC</div> <div>Project Name</div> <div>32 WILLIAM STREET, BOTANY</div>		<div>Job No.</div> <div>A19026</div>	<div>Scale</div> <div>1 : 100 @A3</div>	<div>Drawing No.</div> <div>A.3.01</div>	<div>Stage</div> <div>DA</div>	<div>ISSUE</div> <div>H</div>
	e: info@themoma.com.au		B	Issue for DA amendment	26/07/2019							
	a: suite 20, 33 Waterloo rd, macquarie park nsw 2113		C	Issue for DA stw update	30/08/2019							
			D	Issue for DA amendment	09/09/2019							
			E	Issue for DA amendment	20/09/2019							
			G	Issue for DA amendment	14/10/2019							
			H	Issue for DA amendment	18/10/2019							
Nominated Architects												
Henry Huang NSW.8992 Eric Kim NSW.9185												





t: (02) 8056 7464
w: www.themoma.com.au
e: info@themoma.com.au
a: suite 20, 33 waterloo rd, macquarie park nsw 2113
Nominated Architects
Henry Huang NSW.8992 Eric Kim NSW.9185

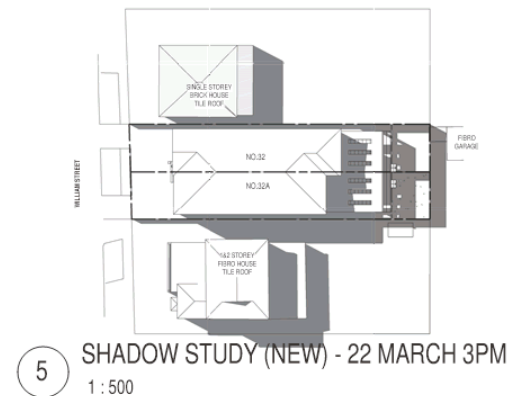
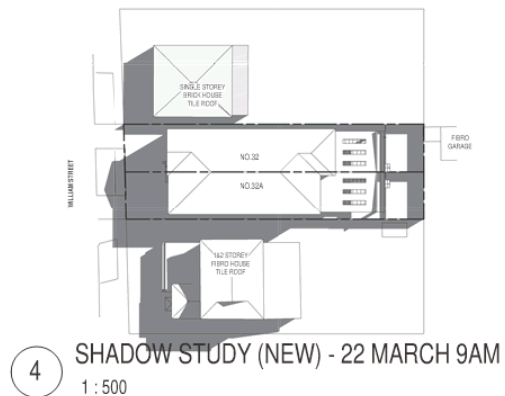
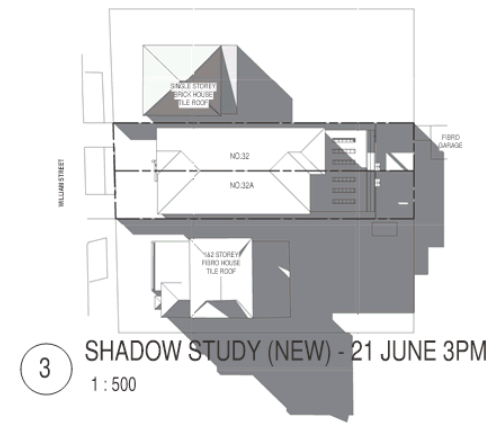
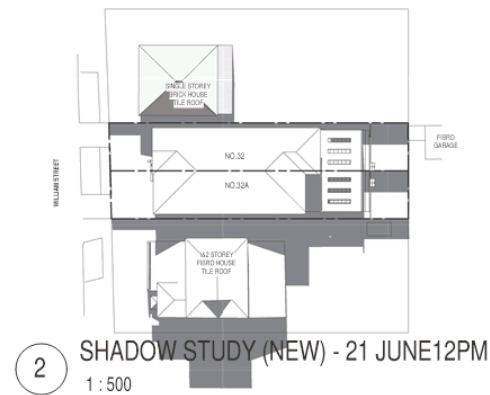
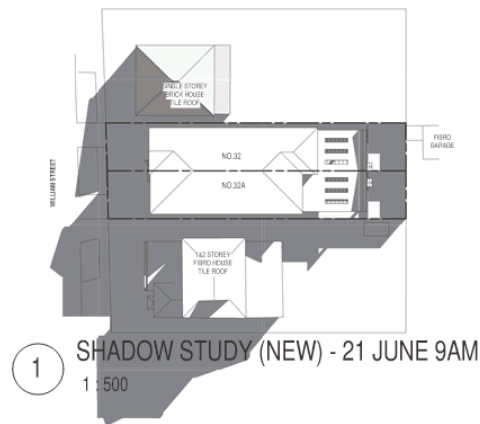
Issue	Description	Date
A	Issue for coordination	18/07/2019
B	Issue for DA amendment	26/07/2019
C	Issue for DA stw update	30/08/2019
D	Issue for DA amendment	09/09/2019
E	Issue for DA amendment	20/09/2019
G	Issue for DA amendment	14/10/2019
H	Issue for DA amendment	18/10/2019

Client Name
DANNY JOVANOVIĆ
Project Name
32 WILLIAM STREET, BOTANY

FOR INFORMATION ONLY
NOT FOR CONSTRUCTION

Drawing Title
SCHEDULE OF MATERIALS & FINISHES

Job No.	Scale	Drawing No.	Stage	ISSUE
A19026	1:50 @A3	A 6.00	DA	H



t: (02) 8056 7464
w: www.themoma.com.au
e: info@themoma.com.au
a: suite 20, 33 waterloo rd, macquarie park nsw 2113
Nominated Architects
Henry Huang NSW.8992 Eric Kim NSW.9185

Issue	Description	Date
C	Issue for DA shw update	30/08/2019
D	Issue for DA amendment	09/09/2019
E	Issue for DA amendment	20/09/2019
G	Issue for DA amendment	14/10/2019
H	Issue for DA amendment	18/10/2019
I	Issue for DA amendment	22/10/2019

Client Name
DANNY JOVANOVIC

Project Name
32 WILLIAM STREET, BOTANY



FOR INFORMATION ONLY
NOT FOR CONSTRUCTION

Drawing Title
SHADOW STUDY(NEW)

Job No.	Scale	Drawing No.	Stage	ISSUE
A19026	1:500@A3	A 5.00	DA	I

Clause 4.6 - FSR

32 William Street Botany

CLAUSE 4.6 TO CLAUSE 4.4 OF BOTANY BAY LEP 2013
EXCEPTIONS TO DEVELOPMENT STANDARDS – **FSR VARIATION**

Demolition of the existing dwelling on the site, and construction of a new semi-detached dwellings, plus Torrens title subdivision.

at

32 WILLIAM STREET BOTANY

PREPARED BY
ABC PLANNING PTY LTD

October 2019

BOTANY BAY LEP 2013 - CLAUSE 4.6 EXCEPTION TO DEVELOPMENT STANDARDS

This Clause 4.6 variation request has been prepared to accompany the development application for the demolition of the existing dwelling, subdivision, and the erection of two semi-detached dwellings at Lot 21 Section G in DP 939785, commonly known as 32 William Street, Botany 2019.

Clause 4.6 of the *Botany Bay Local Environmental Plan 2013 (BBLEP2013)* allows the consent authority to grant consent for development even though the development contravenes a development standard imposed by the LEP. The clause aims to provide an appropriate degree of flexibility in applying certain development standards.

This Clause 4.6 variation request takes into account the relevant aspects of the Land and Environment Court judgement from *Initial Action Pty Ltd v Woollahra Council [2017] NSWLEC 1734*, as revised by the NSW Court of Appeal in *RebelMH Neutral Bay Pty Limited v North Sydney Council [2019] NSWCA 130*.

Clause 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 Director-General has been obtained.
- (5) In deciding whether to grant concurrence, the Director-General must consider:
- (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and
 - (b) the public benefit of maintaining the development standard, and
 - (c) any other matters required to be taken into consideration by the Director-General before granting concurrence.

Development Standard to be Varied

The proposal seeks a variation to the development standard contained within Clause 4.4A of the BBLEP2013 - maximum FSR of 0.5:1 after subdivision of the lot, given that the site is within Area 3, as demonstrated on the LEP map in **Figure 1** below.

Clause 4.6 - FSR

32 William Street Botany

The proposed FSR is a variation from the maximum permitted, with Unit 32 having an FSR of 0.67:1, and Unit 32A having an FSR of 0.64:1, being a variation of 35% and 28% respectively above the development standard of 0.5:1.

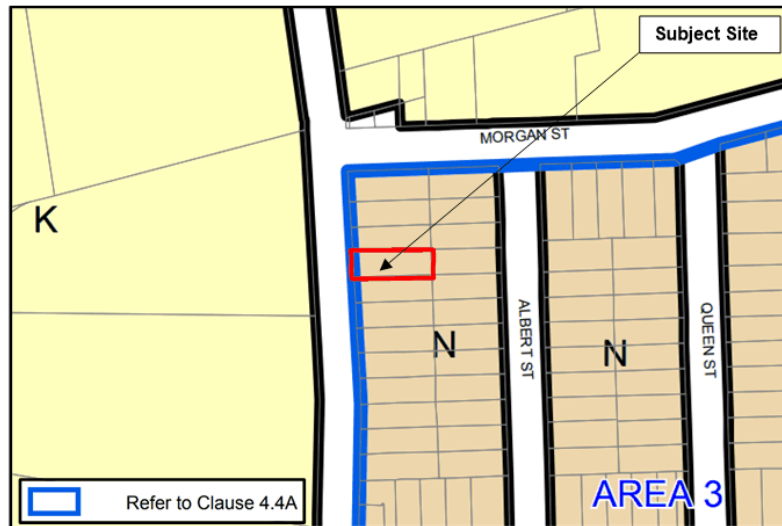


Figure 1: FSR Map

Justification for Contravention of the Development Standard

This written request is considered to justify the contravention of the development standard and addresses the matters required to be demonstrated by Clause 4.6(3), of which there are two aspects. Both aspects are addressed below:

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

Assessment: It is considered that strict compliance with the development standard for FSR on the site is unreasonable and unnecessary in the circumstances for the following reasons:

- The proposal complies with the objectives of the development standard and the R2 Low Density Residential zone, indicated in the assessment at **Table 1** below. Furthermore, compliance with the development standard is unreasonable and unnecessary as it is in the public interest given it is consistent with the objectives for the development within the zone.
- Provision of a high level of internal amenity as demonstrated by compliance with the key amenity criteria within the DCP, including solar access, cross ventilation, landscaped area, and site coverage.
- Compliance with established front and rear building alignments, plus side setbacks, ensures the proposed additional floor space provides a good level of building separation, access, landscaping, privacy, plus natural lighting and ventilation for both the new development and adjoining properties.

Clause 4.6 - FSR

32 William Street Botany

- It would be unreasonable and unnecessary to remove the excess FSR, given that the proposal outperformance of the site coverage (43.8%), and deep soil landscaped area (16.41%) requirements within the DCP.
- The proposal does not generate any unreasonable privacy impacts as the proposed windows to side elevations are appropriately treated, being high windows and do not overlook any primary living or private open space areas, and no first-floor decks are proposed.
- The site is well serviced by public transport being within close proximity to bus routes/stops within William Street, with accessible access to shops, facilities and services.
- The proposed height of approximately 7.95m above natural ground level is significantly below the 8.5m maximum height that is permitted under the LEP, which demonstrates that a potentially larger built form could be provided in comparison to that proposed.
- As illustrated in the street streetscape elevations in **Figures 2 and 3**, the proposed semi-detached dwelling is contained within a building envelope that is compatible with the established built form of the surrounding area. It is therefore considered that the proposed development does not represent an overdevelopment of the site, or a development with an FSR expressed as bulk and scale that is not compatible with the context in which it is located. In this regard, it is considered that the proposed FSR would be compatible with and subservient in the context of the surrounding built environment.

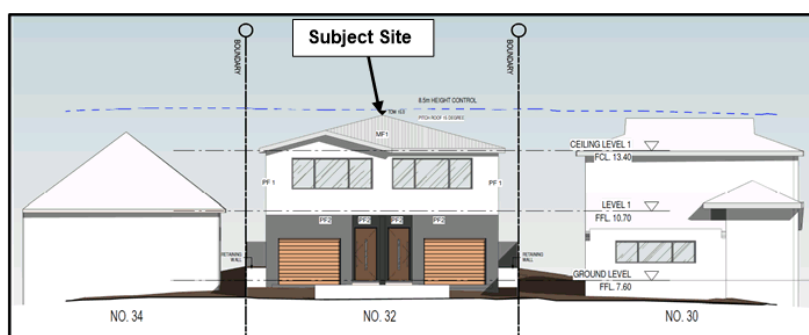


Figure 2: William Street

Clause 4.6 - FSR

32 William Street Botany

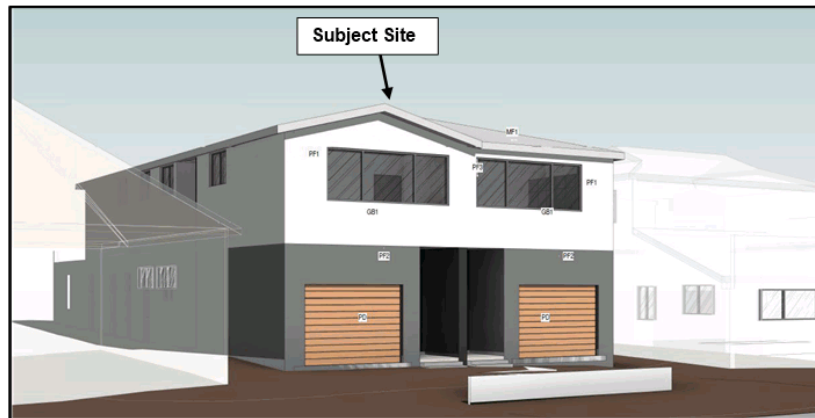


Figure 3: Proposed Semi-detached William Street elevation

Despite the non-compliance, the proposal achieves the objectives of the development standard and the zoning, as demonstrated in the following table:

Table 1: Assessment against the Objectives of the Development Standard and Land Use zone.

Consistency with the objectives of the FSR standard in the LEP

Objectives	Assessment
4.4 <i>(1)(a) to establish standards for the maximum development density and intensity of land use</i>	<p>Complies</p> <p>The proposed FSR is a variation from the maximum permitted, with Unit 32 having an FSR of 0.67:1, and Unit 32A having an FSR of 0.64:1, being a variation of 35% and 28% respectively above the development standard of 0.5:1, given that the site is within Area 3 and Clause 4.4A of the LEP applies.</p> <p>This objective is considered to be a strategic objective to stipulate a development standard for FSR which applies to the site and the immediate locality, as shown on the FSR map. The objective also seeks to establish a maximum intensity of land use. Given the proposed FSR allows for two semi-detached dwellings (1x three-bedroom and 1 x four bedroom), each with a single garage, whilst also being below the site cover requirements and above the landscaping requirements, there is no evidence to suggest that the intensity of development is beyond that which can be accommodated on the site. Notwithstanding the numeric departure, the lack of external impacts and consistency with the scale of the built form in the surrounding area confirms that the intensity of development is appropriate for the site, and conforms with other recent semi-detached dwelling developments including DA 2017/1023 - 79 Middlemiss Street Mascot, DA 2018/361- 8 Frogmore Street Mascot, and DA 2017/1158 - 12 Hambly Street Mascot, illustrated in Figures 4, 5, and 6 below.</p> <p>The proposed development represents a high degree of compliance with the predominant LEP and DCP building envelope controls which therefore demonstrates that the FSR can be supported on the site and that strict compliance with the development standard is unreasonable or unnecessary.</p>

Clause 4.6 - FSR

32 William Street Botany

<p>4.4 <i>(1)(b) to ensure that buildings are compatible with the bulk and scale of the existing and desired future character of the locality</i></p>	<p>Complies The semi-detached dwellings are neatly integrated with the character and presentation of the street, thereby maintaining the attractive appearance of the dwelling in the streetscape, and as it appears to surrounding properties.</p> <p>The proposed semi-detached dwellings have been suitably articulated to minimise the visual bulk of the proposal. All facades to the built form are highly articulated, with provision of indentations to the facades and recessed openings contributing to breaking down the scale of the built form on the subject site.</p>
<p>4.4 <i>(1)(c) to maintain an appropriate visual relationship between new development and the existing character of areas or locations that are not undergoing, and are not likely to undergo, a substantial transformation</i></p>	<p>Complies The extent and siting of the built form of the dwellings are also consistent with or compatible with recent developments. It is also evident that the existing locality includes older housing stock which may also be redeveloped in a similar manner. The area is therefore considered to be in transition. The additional FSR does not generate a height, bulk or scale or impacts which are incompatible or out of character with what is anticipated by the suite of building envelope or amenity provisions of the LEP and DCP.</p>
<p>4.4 <i>(1)(d) to ensure that development does not adversely impact on the amenity of adjoining and neighbouring land in terms of visual bulk, loss of privacy, overshadowing and views</i></p>	<p>Complies An adverse impact on the amenity of the streetscape or adjoining or neighbouring land is avoided with the proposal not resulting in any adverse additional visual or acoustic privacy impacts, visual impact from the height, bulk and scale, overshadowing, or loss of views.</p> <p>The proposal includes a number of design features to reduce the visual impact of the bulk and mass of the proposed development including:</p> <ul style="list-style-type: none"> • Compliant front, rear and side building setbacks • Compliant maximum height and wall height • Outperformance of the site coverage • Outperformance of the landscaped deep soil area. <p>Impacts to adjoining neighbours visual and acoustic privacy is mitigated given good separation with compliant setbacks, plus primary openings and balconies orientated to the front and rear of dwellings, and high windows to side elevations.</p> <p>As demonstrated on the accompanying shadow diagrams, some additional overshadowing of the adjoining east-west orientated lot to the south, associated with the proposed two-storey dwellings is expected. However, shadow diagrams submitted with this application indicate that the proposal maintains two hours of sunlight to the POS, and to front and rear living areas between 9am – 3pm during midwinter, of the adjoining dwelling to the south at 30 William Street</p> <p>View sharing for adjoining properties is not unreasonably impacted by the proposed development, given the proposed compliant height, and setbacks which provide adequate separation distance between the proposed development and neighbouring dwellings to the north, east and south and opposite to the west.</p>

Clause 4.6 - FSR

32 William Street Botany

<p>4.4 (1)(e) to minimise adverse environmental effects on the use or enjoyment of adjoining properties and the public domain</p>	<p>Given the east-west orientation of the lot pattern, it is acknowledged that access to sunlight is reduced to the POS, and the north-facing wall and window openings of the adjoining dwelling to the south. However, two hours of sunlight to east and west facing windows and to 50% of the POS is maintained between 9am and 3pm during midwinter in accordance with the shadow diagrams submitted with this application.</p> <p>The sensitive siting and orientation of windows and balconies to the east and west with limited side-facing openings also ensures that the proposed built forms (inclusive of the additional FSR) do not generate any unreasonable visual or acoustic privacy impacts.</p> <p>Furthermore, the modest nature of the proposed built form which is significantly below the height limit ensures that the additional FSR is not responsible for any adverse view impacts. Outperformance of the site cover and landscape requirements is another indicator that the additional FSR can be accommodated on the site and that there are no adverse environmental factors which would determine that the proposal is an over-development of the site.</p>
<p>4.4 (1)(f) to provide an appropriate correlation between the size of a site and the extent of any development on that site</p>	<p>As outlined above, the proposed height, bulk, scale and siting of development is suitable for the site as the proposed built form will be consistent and compatible with the character, siting and orientation of dwellings in the immediate and broader locality. Compliance with the height limit, landscaping, site cover and parking, combined with the lack of impact to surrounding properties, confirms that the built form (and associated FSR) is suitable and correlates with the size of the sites.</p>
<p>4.4 (1)(g) to facilitate development that contributes to the economic growth of Botany Bay.</p>	<p>The provision of two high quality dwellings (as proposed with additional FSR) represent a desirable form of housing which will contribute to housing choice and affordability in contrast to a potential alternative to a single detached dwelling. The provision of two families potentially occupying these sites is therefore considered to contribute to the economic growth of Botany Bay.</p> <p>Furthermore, the proposed semi-detached dwellings will provide a positive economic benefit to the locality by providing employment during construction through the local sourcing of tradesmen and other construction-related professionals, and through the local sourcing of construction materials.</p>
<p>Consistency with the objectives of the</p> <ul style="list-style-type: none"> • To provide for the housing needs of the community within a low-density residential environment. • To enable other land uses that provide facilities or services to meet the day to day needs of residents. • To encourage development that promotes walking and cycling. 	<p>R2 Low Density Zone</p> <p>Complies</p> <p>The proposed demolition of an existing dwelling and the construction of a new semi-detached development is permissible in the R2 Low Density zone.</p> <p>The proposal provides for a variety of housing types, with a mix of three and four-bedroom dwellings within a low-density context. The replacement of an existing outdated dwelling house with high-quality contemporary residential accommodation will provide improved internal amenity for residents with no adverse external amenity impacts to adjoining neighbours.</p> <p>The proposed FSR variation is therefore not considered to generate any inconsistency with the zone objectives.</p>

Based on the above assessment, it is considered that strict compliance with the LEP FSR standard is unreasonable and unnecessary in this instance.

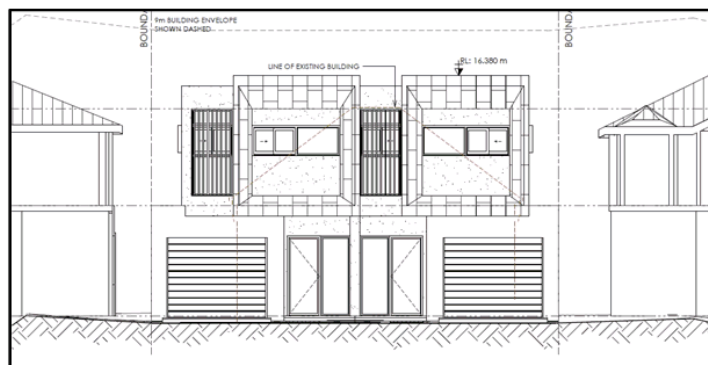


Figure 4: DA 2017/1023 - 79 Middlemiss Street Mascot

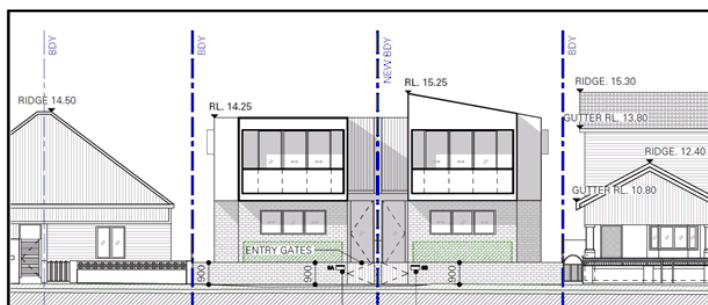


Figure 5: DA 2018/361- 8 Frogmore Street Mascot



Figure 6: DA 2017/1158 - 12 Hambly Street Mascot

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

Assessment: It is considered that there are sufficient environmental planning grounds to justify varying the FSR development standard, which include:

- The proposed FSR is a variation from the maximum permitted, with Unit 32 having an FSR of 0.66:1, and Unit 32A having an FSR of 0.62:1, being a variation of 35% and 28% respectively above the development standard of 0.5:1 in the LEP, given that the site is within Area 3 and Clause 4.4A of the LEP applies.
- No unacceptable adverse impacts on neighbouring development or the streetscape, given that the proposal will not result in any additional adverse overshadowing, visual or acoustic privacy impacts, visual bulk and scale impacts, or view loss, additional to the impact from a two-storey dwelling house on the site.
- The proposed FSR also does not compromise other environmental factors such as landscaping and site coverage.
- Visual and acoustic privacy impacts to adjoining neighbours has also been carefully considered, with living rooms oriented to the rear of the site, while windows to side elevations are high windows, and compliant side setbacks confirm good separation distance exists between adjoining neighbours.
- The proposed minor variation to the FSR will not have any unreasonable visual bulk and scale impacts onto the William Street streetscape. The FSR variation contributes to a compatible streetscape outcome with the existing developments in the locality including DA 2017/1023 - 79 Middlemiss Street Mascot, DA 2018/361 - 8 Frogmore Street Mascot, DA 2017/1158 - 12 Hambly Street Mascot.
- There are no internal amenity grounds that would determine that the additional FSR should not be granted. The internal performance of the semi-detached dwellings is high, noting that the proposal meets all DCP requirements.
- It is considered that an environmental benefit has been achieved from the replacement of an existing dwelling house with poor amenity, with two semi-detached dwellings that achieve high internal amenity without compromising the amenity of neighbouring properties. The combination of the internal and external amenity factors demonstrates that there are sufficient environmental grounds to permit the FSR variation in this instance.

Based on the above points, it is considered that there are sufficient environmental planning grounds to permit the FSR variation in this instance.

Other Matters for Consideration

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

Assessment: The above assessment demonstrates that the proposed FSR satisfies the objectives of the FSR standard and the R2 Low Density zone.

Furthermore, it is considered that the variation does not raise any matters of public interest as there are no public views or detrimental streetscape outcomes associated with the minor FSR variation.

The development is in the public interest given the proposed FSR variation allows for the provision of a semi-detached dwelling development comprising 1 x three-bedrooms and 1x four-bedrooms, all with excellent internal amenity, in an accessible location, being in close proximity to public transport and local services.

Given that the proposal is consistent with the desired future character for the area nominated by the specific controls in the LEP and DCP, and that there are no adverse or unreasonable impacts to the broader community, it is considered that there are no public interest matters which would prevent a variation to the FSR control.

(5) In deciding whether to grant concurrence, the Director-General must consider:

(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning

Assessment: The proposed FSR variation allows for the orderly and economic use of land as envisaged by the *Environmental Planning and Assessment Act, 1979*.

The proposed FSR allows for achievement of a compatible building envelope without creating a development with overbearing height, bulk or scale, and without compromising the desired future character of the area.

The proposed FSR is therefore consistent with the State and Regional Policies, particularly urban consolidation principles which seek to provide additional height and density near transport and established services.

Concurrence

The Secretary's concurrence under clause 4.6(4) of the LEP has been delegated to the Council by written notice dated 21 February 2018, attached to the Planning Circular PS 18-003 issued on 21 February 2018. That concurrence may also be assumed by the Court pursuant to s39(6) of the Land and Environment Court Act.

(b) the public benefit of maintaining the development standard

Assessment: There is no public benefit in maintaining the FSR standard given the limited amenity impacts associated with the development and the positive streetscape outcome that would arise from the redevelopment of the subject site.

(c) any other matters required to be taken into consideration by the Director-General before granting concurrence.

Assessment: It is not considered there are any additional matters to consider beyond those discussed above.

Conclusion

For reasons mentioned herein, this Clause 4.6 variation is forwarded in support of the development proposal at No. 32 William Street, Botany and is requested to be looked upon favourably by the consent authority.

Bayside Local Planning Panel

26/11/2019

Item No	6.6
Application Type	Residential – New Single Dwelling
Application No	DA-2019/147
Lodgement Date	DA-2019/147
Property	6 Culver Street, Monterey
Ward	Ward 5
Owner	Mrs Diana Sadig
Applicant	Artmade Architects
Proposal	Demolition of existing structures and construction of a two (2) storey dwelling with a basement garage and rooftop terrace
No. of Submissions	NIL
Cost of Development	\$948,294.00
Report by	Michael McCabe, Director City Futures

Officer Recommendation

That development application DA-2019/147 for the demolition of existing structures and construction of a two (2) storey dwelling with a basement garage and rooftop terrace at 6 Culver Street, Monterey, be 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 Supplementary Planning Assessment Report [↓](#)
- 2 Demolition Plan and Site Plan [↓](#)
- 3 Elevations [↓](#)
- 4 Sections [↓](#)
- 5 Original Planning Assessment Report [↓](#)

BAYSIDE COUNCIL

Planning Assessment Report

Application Details

Application Number:	DA-2019/147
Date of Receipt:	6 May 2019
Property:	6 Culver Street, MONTEREY (Lot 446 DP 11398)
Owner(s):	Mrs Diana Sadig Mr Raymond Edward Sadig
Applicant:	Artmade Architects
Proposal:	Demolition of existing structures and construction of a two (2) storey dwelling with a basement garage and rooftop terrace
Recommendation:	Approved
No. of submissions:	NIL
Author:	Gary Choice
Date of Report:	6 November 2019

Key Issues

Council received development application DA-2019/147 at 6 Culver Street MONTEREY, which sought consent to carry out the demolition of all existing structures and the construction of a two (2) storey dwelling, including basement car parking, roof top terrace and rear deck.

The development was notified in accordance with the provisions of Rockdale DCP 2011 and no (NIL) submissions were received. Revised plans were received by Council on 3 October 2019, including amendments to reduce the size of the rooftop terrace area and rooftop terrace entrance, and a new Clause 4.6 statement.

DA-2019/147 has been assessed in accordance with the relevant requirements of the *Environmental Planning and Assessment Act 1979* (the Act); including State Environmental Planning Policy (Building Sustainability Index) BASIX 2004 and State Environmental Planning Policy No 55—Remediation of Land. The site is zoned R2 - Low Density Residential and the proposed use as a Dwelling House is permitted with Council consent.

The subject DA was considered by Bayside Local Planning Panel on 17 September 2019, deferring the determination of the application as follows:

- (1) *The Panel has decided that this matter (DA-2019/147) be deferred to allow amended plans to be submitted to Council to: reduce the size of the rooftop terrace area to a maximum of 24m²; and reduce the footprint and height of the lift overrun and stair access. Access to the reduced roof top terrace is to be designed to present as a minimalist element and the area of the roof outside the 24m sq area is to be finished with a non-trafficable material.*

- (2) *The amended plans must be accompanied by a new cl.4.6 written request to vary the height.*

The new Clause 4.6 statement can not be supported and the Applicant has since submitted amended plans on 5 November 2019. The amended plans address matters deferred in the first BPP meeting to be reported back to the Panel for consideration. With regard to the rooftop terrace, amended plans incorporate a hatch design to access the rooftop, which results in a development that no longer exceeds the maximum building height for the site. This amendment, in turn, obviate the need for a Clause 4.6 statement.

The proposal is recommended for approval, subject to the recommended conditions of consent.

Recommendation

That development application DA-2019/147 for the demolition of existing structures and construction of a two (2) storey dwelling with a basement garage and rooftop terrace at 6 Culver Street, Monterey, be 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.

Background

History

DA-2019/147 went to the Bayside Local Planning Panel meeting for consideration on 17 September 2019. The Panel made the following determination:

The subject DA was considered by Bayside Local Planning Panel on 17 September 2019, deferring the determination of the application as follows:

- (1) *The Panel has decided that this matter (DA-2019/147) be deferred to allow amended plans to be submitted to Council to: reduce the size of the rooftop terrace area to a maximum of 24m²; and reduce the footprint and height of the lift overrun and stair access. Access to the reduced roof top terrace is to be designed to present as a minimalist element and the area of the roof outside the 24m sq area is to be finished with a non-trafficable material.*
- (2) *The amended plans must be accompanied by a new cl.4.6 written request to vary the height.*

The Applicant submitted amended plans on 5 November 2019. The amended plans are assessed in the relevant sections of this supplementary report.

Proposal

Council is in receipt of a development application DA-2019/147 at 6 Culver Street MONTEREY, which seeks consent to carry out the demolition of the existing dwelling, rear garage and existing front fence; and the construction of a new two-storey dwelling with basement and rooftop terrace. Specifically, the amended proposal consists of:

Ground floor

- Open plan family/informal dining/formal living area
- Kitchen

- Laundry with powder room
- Formal dining area
- Rear deck

First floor

- Master bedroom with WIR, balcony and en suite
- Three (3) additional bedrooms (with Balcony to Bedroom 1),
- Separate bathroom, living area with separate balcony.

Additional features

- Basement parking
- Rooftop terrace
- Lift access from basement to first floor
- Dumb waiter from ground floor to first floor

Site location and context

The subject site is known as Lot 446 DP 11398, 6 Culver Street MONTEREY. The site is a rectangular shape with front and rear boundary widths of 12.19 metres. The side boundaries are a depth of 38.74m (east) and 38.71m (west). The total site area is 472.1m². The topography of the site is relatively flat.

The subject site contains a single-storey brick dwelling with rear lane garage. The site is located on the south side of Culver Street, between Hollywood Street (north), The Grand Parade (east) and Chuter Avenue (west). The site enjoys rear lane access to Emmaline Street (southern boundary). Adjoining development to the sides includes two (2) separate allotments to the east - 231 and 232 The Grand Parade - with a single-storey brick dwelling on each, and a two-story brick dwelling at No.8 Culver Street. There is a mix of single-storey and two-storey residential buildings within close proximity to the subject property.

No trees are to be removed, however appropriate conditions are to be included in the Draft Notice of Determination regarding protection of existing trees.



Figure 1: Aerial site locality

Statutory Considerations

Environmental Planning and Assessment Act, 1979

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

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

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

The following Environmental Planning Instruments are relevant to this application:

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

Satisfied as part of the initial assessment.

State Environmental Planning Policy No 55—Remediation of Land

Satisfied as part of the initial assessment.

Rockdale Local Environmental Plan 2011

2.3 Zone R2 Low Density Residential

The development as a dwelling house continues to be a permissible use within the zone. The

subsequent changes to the development design will significantly reduce the impact on the amenity and streetscape of Culver Street. The proposed rooftop terrace poses significantly less noise impacts, and will impact far less on the visual privacy of neighbouring properties. Additionally, the reduction in height will lessen the visual impacts of bulk and massing for neighbouring 8 Culver Street. The proposal is considered to satisfy the objectives of the zone.

4.3 Height of buildings

The amended height of the proposed building is 8.5m as is the maximum building height allowable shown for the land on the Height of Buildings Map.

The amended development design will result in quality urban form, maintain satisfactory sky exposure and daylight to buildings, key areas and public domain, and will provide an appropriate transition in built form and land use intensity. Accordingly, the proposed height of the building satisfies the objectives of this clause.

4.4 Floor space ratio - Residential zones

FSR continues to comply.

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

No relevant proposed instruments are applicable to this proposal.

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

The following Development Control Plan is relevant to this application:

Rockdale Development Control Plan 2011

The application is subject to Rockdale DCP 2011.

4.4.2 Solar Access - Low and medium density residential

The amended proposal will have minimum impact of the level of sunlight currently received by adjoining properties and within the development site.

4.4.5 Visual privacy

The key design elements affecting visual privacy are:

Windows and balconies

- All Ground Floor windows along the eastern wall of the proposed dwelling will face the blank garage walls and carport/parking spaces of 230 and 231 The Grand Parade, and impacts to visual privacy are considered minimal. Privacy screens to both sides of the rear ground floor deck are provided to minimise overlooking to neighbouring properties.
- First floor balconies and several of the first floor windows on the eastern side of the dwelling pose significant overlooking into the adjoining properties at 230 and 231. The Grand Parade, and the rear yard of 8 Culver Street. The Ground Floor window located on the north-west wall of the dwelling, and the stairwell glazing on the western wall are also unresolved.

Appropriate conditions are imposed to minimise the impacts to the neighbouring property including:

- opaque glazing to all first floor windows on the eastern wall with a sill height below 1.7m
- opaque glazing to the stairwell window and all windows on the western wall with a sill height

- below 1.7m
- privacy screening by way of aluminium louvres or similar to the southern alfresco wall.

Rooftop Terrace

The reduction in building height to 8.5m now provides a reasonable level of visual privacy to the adjoining properties of 231 and 232 The Grand Parade. The reduction in the size of the terrace to 24 sqm as well as the width of the proposed planter beds on the sides of the balconies and non-trafficable roof provides for less opportunity for direct overlooking onto the neighbouring properties.

4.4.6 Noise Impact

With regard to the rooftop terrace and its potential to be a noise-generating recreation area, the balustrade perimeter has been reduced to 24m²; and a condition is imposed for the rooftop terrace to be surfaced with a non-trafficable material, such as pebble aggregate or metal roofing, beyond the balustrade. These measures as such will minimise impacts associated with noise generated from overloading the rooftop with large groups of people. This is considered to satisfy the provisions of this control.

5.1 Building Design - General

With regard to this control, amended plans have resolved the following key issues:

- The reduction of building height to the maximum 8.5m limit of the R2 zone lessens the bulk appearance of bare concrete surfaces from the neighbouring 8 Culver Street; and
- The reduction of building height serves to minimise impacts on visual and acoustic privacy of neighbouring properties associated with the rooftop terrace.

With regard to the above mentioned design changes, the proposal is considered to be more sympathetic to the surrounding built form and topographical features of the site, and the amenity and enjoyment of residents at the neighbouring property of 8 Culver Street and 231 and 232 The Grand Parade. The height, bulk and scale of the proposed two-storey dwelling with rooftop terrace will result in a development that is appropriate in the local context.

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

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

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

Potential impacts related to the proposal have been considered in response to SEPPs, LEP and DCP controls and it is considered that all relevant impacts have been addressed.

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

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

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

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

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

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

S7.12 Fixed development consent levies

Section 7.12 of the Environmental Planning and assessment Act 1979 (as amended) applies to the proposal. In this regard, a standard condition of development consent has been imposed in respect to a levy applied under this section.

Schedule 1 - Draft Conditions of consent

General Conditions

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

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

Plan/Dwg No.	Drawn by	Dated	Received by Council
Demolition Plan & Proposed Site Plan Issue D	ArtMade Architects	1/11/2019	1/11/2019
Basement Plan & Ground Floor Plan Issue C	ArtMade Architects	26/09/2019	3/10/2019
First Floor Plan & Rooftop Plan Issue D	ArtMade Architects	1/11/2019	1/11/2019
External Elevations Issue F	ArtMade Architects	5/11/2019	5/11/2019
Building Sections & Driveway Ramp Profile Issue F	ArtMade Architects	5/11/2019	5/11/2019
Soil and Water Management Plan Issue A	United Consulting Engineers Pty Ltd	11/04/2019	19/07/2019
Documents	Prepared by	Dated	Received by Council

Site Analysis Survey over Lot 446 in D.P.11397 Being No. 6 Culver Street Monterey NDrawing No.18-102P1	JRK Land Surveyors	01/05/2018	06/05/2019
Geotechnical Investigation Report No: 7240-GR-1-1	Alliance Geotechnical Pty Ltd	28/06/2018	06/05/2019
BASIX Cert No. 1006341S	Sustainability-Z Pty Ltd	01/04/2019	06/05/2019
Acid Sulfate Soils Assessment No. E24191.E14.Rev0	EI Australia	16/04/2019	06/05/2019

3. All new building work must be carried out in accordance with the provisions of the Building Code of Australia (BCA).
4. **A Construction Certificate must be obtained from Council or an Accredited Certifier prior to any building work commencing.**
5. The development must be implemented and all BASIX commitments thereafter maintained in accordance with BASIX Certificate Number (1006341S) other than superseded by any further amended consent and BASIX certificate.
Note: Clause 145(1)(a1) of the Environmental Planning & Assessment Regulation 2000 provides: A certifying authority must not issue a construction certificate for building work unless it is satisfied of the following matters: -
 - (a1) that the plans and specifications for the building include such matters as each relevant BASIX certificate requires.**Note:** Clause 154B(2) of the Environmental Planning & Assessment Regulation 2000 provides: "A certifying authority must not issue a final occupation certificate for a BASIX affected building to which this clause applies unless it is satisfied that each of the commitments whose fulfilment it is required to monitor has been fulfilled."
 Note: For further information please see <http://www.basix.nsw.gov.au>.
6. New building work shall not commence without the prior Development Consent of Council.
7. The rear deck or any balcony shall be enclosed at any future time without prior development consent.
8. The dwelling shall be used as a single occupancy only.
9. This approval is not to be construed as permission to erect any structure on or near a boundary contrary to the provisions of the Dividing Fences Act.
10. Excavation, filling of the site (with the exception of the area immediately under the building envelope), or construction of retaining walls are not permitted unless shown on the approved plans and authorised by a subsequent construction certificate.
11. The materials and façade details approved under condition 2 and any other relevant condition of this consent shall not be altered or amended at the construction certificate stage without a prior S4.55 application and approval under the EP&A Act.

Development specific conditions

The following conditions are specific to the Development Application proposal.

12. Any part of a window with a sill height less than 1.7m above the floor level of any habitable room will have fixed obscure glazing in any part of the window below

- 1.7m above floor level.
13. The existing and future owners (Registered Proprietor) of the property will be responsible for the operation and maintenance of the retention system. The registered proprietor will:
 - (i) permit stormwater to be retained by the system;
 - (ii) keep the system clean and free of silt, rubbish and debris;
 - (iii) maintain, renew and repair the whole or parts of the system so that it functions in a safe and efficient manner, and in doing so complete the same within the time and in the manner specified in written notice issued by the Council;
 - (iv) carry out the matters referred to in paragraphs (ii) and (iii) at the proprietor's expense;
 - (v) not make any alterations to the system or elements thereof without prior consent in writing of the Council;
 - (vi) permit the Council or its authorised agents from time to time upon giving reasonable notice (but at any time and without notice in the case of emergency) to enter and inspect the land for compliance with the requirements of this clause;
 - (vii) comply with the terms of any written notice issued by the Council in respect to the requirements of this clause within the time stated in the notice.
 14. The rainwater tank shall be routinely de-sludged and all contents from the de-sludging process disposed – solids to the waste disposal and de-sludged liquid to the sewer.
 15. A 1.7 metre high privacy screen along the eastern and western sides of the rear balcony shall be installed.
 16. The rooftop terrace shall be non-trafficable beyond the balustrade. The roof area surrounding the balustrade shall be surfaced with non-trafficable material such as pebble aggregate or metal roofing.

Prior to issue of the construction certificate

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

17. The following fees shall be paid to Council prior to the issue of a Construction Certificate. If payment is made after the end of the financial year, the amount shall be adjusted in accordance with Council's adopted fees and charges.
 - i. A Footpath Reserve Restoration Deposit of \$2,640.00. This is to cover repair of any damages, or other works to be done by Council. This includes construction, removal, or repair as required to: kerb and guttering, existing or new driveways; paved areas and concrete footpaths. The deposit may be lodged with Council in the form of a Bank Guarantee (Any proposed Bank Guarantee must not have an expiry date). The deposit will not be returned by Council until works are completed and all damage is restored and all specified works are completed by Council.
 - ii. An environmental enforcement fee of 0.25% of the cost of the works.
 - iii. A Soil and Water Management Sign of \$18.00.
18. An application for Driveway Works (Public Domain Construction – Vehicle Entrance/Driveway Application) / Frontage Works (Public Domain Frontage Works

Construction Application) shall be made to Council's Customer Service Centre prior to issue of the Construction Certificate. All boundary frontage works, egress paths, driveways and fences shall comply with the approval. A fee is payable to Council. If payment is made after the end of the financial year, the amount shall be adjusted in accordance with Council's adopted fees and charges.

19. a. Pursuant to Section 7.12 of the Environmental Planning and Assessment Act 1979 and Rockdale Section 94A (Section 7.12) Development Contributions Plan 2008, a report is to be submitted to Council, prior to approval of the first Part 4A certificate required for the development, identifying the proposed cost of carrying out the development, as follows:
 - i. Where the proposed cost of carrying out the development is less than \$1,000,000, a cost summary report prepared and certified by a building industry professional, or
 - ii. Where the proposed cost of carrying out the development is \$1,000,000 or more, a detailed cost report prepared and certified by a quantity surveyor registered with the Australian Institute of Quantity Surveyors or a person who can demonstrate equivalent qualifications. This report is to be prepared in the form specified in Rockdale Section 94A Development Contributions Plan 2008 and the costs must be determined in accordance with clause 25J of the Environmental Planning and Assessment Regulation 2000.

Note:

1. Council may review the costs contained in the report and may seek the services of an independent person to verify them. In such a case, all costs associated with obtaining this advice will be at the expense of the applicant and no Part 6 certificate is to be issued until such time as these costs have been paid.

2. The proposed cost of carrying out the development excludes any part of the proposed development that is exempt from the Section 7.12 levy by reason of a Ministerial direction or an exemption specified in Rockdale Section 94A (Section 7.12) Development Contributions Plan 2008. Where the applicant considers that the proposed development, or any part of it, is or should be exempt from the levy they may submit to Council, prior to approval of the required certificate, an application for exemption giving reasons and providing any necessary evidence for the exemption.

b. Where the proposed cost of carrying out the development, as specified in the cost summary report, the registered surveyor's detailed cost report or the independent review of costs obtained by Council (as the case may be), is more than \$100,000 a Section 7.12 levy is to be paid to Council for the following amount:

- i. Where the proposed cost of carrying out the development is greater than \$100,000 but not more than \$200,000 – 0.5% of that cost, or
- ii. Where the proposed cost of carrying out the development is greater than \$200,000 – 1% of that cost.

This levy is to be paid prior to the issue of the first Part 4A certificate required for the development.

If the levy is not paid within the same financial year as the date on which Council accepted the cost summary report, the registered surveyor's detailed cost report or the independent review of costs (as the case may be), the amount of the levy is to be adjusted at the time of actual payment to reflect changes in construction costs, in

accordance with the provisions of Rockdale Section 94A (Section 7.12) Development Contributions Plan 2008.

Note: This requirement to pay the Section 7.12 levy does not apply if the proposed cost of carrying out the development is \$100,000 or less or Council has confirmed in writing that the proposed development is exempt from the levy.

20. In the case of residential building work for which the Home Building Act 1989 requires there to be a contract of insurance or owner builder's permit in force in accordance with Part 6 of that Act, that such a contract or permit is in place.
21. The relocation of the existing electricity supply pole in the road reserve is required to avoid conflict with the new driveway. The relocation works shall be undertaken in accordance with the requirements of Ausgrid. The applicant shall enter into a contract with Ausgrid for the relocation works prior to the issue of the Construction Certificate, and the works must be completed prior to the commencement of the driveway works and issue of the Occupation Certificate. The applicant is responsible for all relocation costs, including costs associated with other cabling such as telecommunications cables.
22. Prior to the issue of the Construction Certificate, the approved plans must be submitted to Sydney Water Tap in™ online service to determine whether the development will affect any Sydney Water sewer or water main, stormwater drains and/or easement, and if further requirements need to be met.

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

23. Prior to issue of the Construction Certificate, a longitudinal driveway profile shall be submitted to Principal Certifying Authority for assessment and approval. The profile shall start in the centre of the road and be along the critical edge (worst case) of the driveway. Gradients and transitions shall be in accordance with AS 2890.1 The profile shall be drawn to a scale of 1 to 25 and shall include all relevant levels, grades (%) and lengths.
24. The subsurface structure shall be designed with a waterproof retention system (ie tanking and waterproofing) with adequate provision for future fluctuation of the water table. The subsurface structure is required to be designed with consideration of uplift due to water pressure and "flotation" (buoyancy) effects. Subsoil drainage around the subsurface structure must allow free movement of groundwater around the structure, but must not be connected to the internal drainage system. The design of subsurface structure, tanking and waterproofing, and subsoil drainage shall be undertaken by a suitably experienced Chartered Professional Engineer(s). Design details and construction specifications shall be included in the documentation accompanying the Construction Certificate.
25. Prior to the issue of any construction certificate, as the basement floor is being proposed closer to existing built structures on neighbouring properties, which may be in the zone of influence of the proposed works and excavations on this site, a qualified practicing geotechnical engineer must:
 - (a) Ensure that the all recommendations contained in the Geotechnical Investigation Report prepared by Alliance Geotechnical, Report No. 7240-GR-1-1, dated 28th June 2018 shall be implemented into the construction certificate detailed design.
 - (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.

- 26. Any part of the proposed building within 3m of the proposed rainwater tank or absorption system shall be constructed on a pier and beam foundation with piers extending no less than 300mm below the bottom of the tank or trench base. This requirement shall be reflected on the Construction Certificate plans and supporting documentation.
- 27. A geotechnical engineer shall determine the soil absorption rate and satisfy the other requirements of Rockdale Technical Specification Stormwater Management relating to the water table, impact on footings, etc prior to design of the drainage system. A copy of the report shall be forwarded to Council prior to the issue of the Construction Certificate.
- 28. Prior to the issue of the Construction Certificate, detailed drainage design plans for the management of stormwater generally in accordance with the stormwater concept plans prepared by United Consulting Engineers PTY LTD, drawing number 18MB7850/D01 & /D02, issue A, dated 11/04/19 are to be submitted to Principal Certifying Authority for assessment and approval. Design certification, in the form specified in Rockdale Technical Specification Stormwater Management, and drainage design calculations are to be submitted with the plans. Council's Rockdale Technical Specification Stormwater Management sets out the minimum documentation requirements for detailed design plans. Stormwater management requirements for the development site, including the final discharge/end connection point, must comply with Rockdale Technical Specification Stormwater Management.
- 29. Amended plans shall be provided to the Principal Certifying Authority including the following details to minimise visual privacy impacts to neighbouring properties:
 - (a) opaque glazing to all first floor windows on the eastern wall with a sill height below 1.7m
 - (b) opaque glazing to the stairwell window and all windows on the western wall with a sill height below 1.7m
 - (c) privacy screening by way of aluminium louvres or similar to the southern alfresco

wall.

Prior to commencement of works

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

30. 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.
31. A Soil and Water Management Plan shall be prepared. The Plan must include details of the proposed erosion and sediment controls to be installed on the building site. A copy of the Soil and Water Management Plan must be kept on-site at all times and made available on request.

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

Council's warning sign for soil and water management must be displayed on the most prominent point on the building site, visible to both the street and site workers. The sign shall be erected prior to commencement of works and shall be displayed throughout construction.

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

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

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

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

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

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

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

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

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

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

33. A sign must be erected at the front boundary of the property clearly indicating the Development Approval Number, description of work, builder's name, licence number and house number before commencement of work. If owner/builder, the Owner/Builder Permit Number must be displayed.
34. A sign must be erected in a prominent position on any work site on which work involved in the erection or demolition of a building is being carried out:
 - i. stating that unauthorised entry to the work site is prohibited, and
 - ii. showing the name of the person in charge of the work site and a telephone number at which that person may be contacted outside working hours. Any such sign is to be removed when the work has been completed. This condition does not apply to:
 - iii. building work carried out inside an existing building or
 - iv. building work carried out on premises that are to be occupied continuously (both during and outside working hours) while the work is being carried out.
35. The site shall be secured by a 1800 mm (minimum) high temporary fence for the duration of the work. Gates shall be provided at the opening points.
36. Toilet facilities must be available or provided at the work site before works begin and must be maintained until the works are completed at a ratio of one toilet plus one additional toilet for every 20 persons employed at the site.
37. Consultation with Ausgrid is essential prior to commencement of work. Failure to notify Ausgrid may involve unnecessary expense in circumstances such as:
 - i) where the point of connection and the meter board has been located in positions other than those selected by Ausgrid or
 - ii) where the erection of gates or fences has restricted access to metering equipment.

During demolition / excavation / construction

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

38. If a CC is required, a copy of the Construction Certificate and the approved plans and specifications must be kept on the site at all times and be available to Council

- officers upon request.
39. Hours of construction shall be confined to between 7 am and 6.30 pm Mondays to Fridays, inclusive, and between 8 am and 3.30 pm Saturdays with no work being carried out on Sundays and all public holidays.
 40. For Class 1 and 10 structures, the building works are to be inspected during construction, by the principal certifying authority (or other suitably qualified person on behalf of the principal certifying authority) to monitor compliance with Council's approval and the relevant standards of construction encompassing the following stages:
 - i) after excavation for, and prior to the placement of, any footings,
 - a. Trench and steel for footings
 - b. Pier/pad holes, and
 - ii) prior to pouring any in-situ reinforced concrete building element,
 - a. Ground floor steel
 - b. First floor steel, and
 - iii) prior to covering the framework for any floor, wall, roof or other building element,
 - a. Bearers and joists
 - b. First floor joists
 - c. Framework
 - d. Damp proof course, and
 - iv) prior to covering waterproofing in any wet areas, and
 - v) prior to covering any stormwater drainage connections, and
 - vi) after the building work has been completed and prior to any occupation certificate being issued in relation to the building.

Documentary evidence of compliance with Council's approval and relevant standards of construction is to be obtained prior to proceeding to the subsequent stages of construction and copies of the documentary evidence are to be maintained by the principal certifying authority and be made available to Council officers upon request. If Council is appointed as the Principal Certifying Authority, 48 hours notice is to be given that the above works is ready for inspection.

 - 41. Upon inspection of each stage of construction, the Principal Certifying Authority (or other suitably qualified person on behalf of the Principal Certifying Authority) is also required to ensure that adequate provisions are made for the following measures (as applicable), to ensure compliance with the terms of Council's approval:
 - Sediment control measures
 - Provision of perimeter fences or hoardings for public safety and restricted access to building sites.
 - Maintenance of the public place free from unauthorised materials, waste containers or other obstructions.
 - 42. Ground water shall only be pumped or drained to Council's stormwater system if the water is clean and unpolluted. The standard used to determine the acceptability of the quality of the water is the 'Australian and New Zealand Environment and Conservation Council - Australian Water Quality Guidelines for Fresh and Marine Waters 1992'.

Note: Prior treatment and/or filtration of the water may be necessary to achieve acceptable quality, including a non-filterable residue not exceeding 50 milligrams/litre or small quantities may be removed by the services of a Licenced Liquid Waste Transporter. It is an offence under the provisions of the Protection of the Environment Operations Act 1997 to pollute the stormwater system.
 - 43. Demolition operations shall not be conducted on the roadway or public footway or any other locations, which could lead to the discharge of materials into the

stormwater drainage system.

44. All waste generated on site shall be disposed of in accordance with the submitted Waste Management Plan.
45. All excavation and backfilling associated with the erection or demolition of a building must be executed safely and in accordance with appropriate professional standards and guarded and protected to prevent them from being dangerous to life or property.

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

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

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

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

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

46. When soil conditions require it:
 - i. retaining walls associated with the erection or demolition of a building or other approved methods of preventing movement of the soil shall be provided, and
 - ii. adequate provision shall be made for drainage.
47. All contractors shall comply with the following during all stages of demolition and construction:
 - A Waste Container on Public Road Reserve Permit must be obtained prior to the placement of any waste container or skip bin in the road reserve (i.e. road or footpath or nature strip). Where a waste container or skip bin is placed in the road reserve without first obtaining a permit, the Council's fees and penalties will be deducted from the Footpath Reserve Restoration Deposit. Permits can be obtained from Council's Customer Service Centre.
 - A Road Opening Permit must be obtained prior to any excavation in the road reserve (i.e. road or footpath or nature strip). Where excavation is carried out on the road reserve without first obtaining a permit, the Council's fees and penalties will be deducted from the Footpath Reserve Restoration Deposit. Permits can be obtained from Council's Customer Service Centre.
 - A Hoarding Permit must be obtained prior to the erection of any hoarding (Class A or Class B) in the road reserve (i.e. road or footpath or nature strip). Where a hoarding is erected in the road reserve without first obtaining a permit, the Council's fees and penalties will be deducted from the Footpath Reserve Restoration Deposit. Permits can be obtained from Council's

- Customer Service Centre.
- A Crane Permit must be obtained from Council prior to the operation of any activity involving the swinging or hoisting of goods across or over any part of a public road by means of a lift, hoist or tackle projecting over the footway. Permits can be obtained from Council's Customer Service Centre.
 - A current Permit to Dewater or Pump Out a site must be obtained prior to the discharge of pumped water into the road reserve, which includes Council stormwater pits and the kerb and gutter. Permits can be obtained from Council's Customer Service Centre.
48. All demolition work shall be carried out in accordance with AS2601 – 2001: The Demolition of Structures and with the requirements of the WorkCover Authority of NSW.
49. The following conditions are necessary to ensure minimal impacts during construction:
- i. Building, demolition and construction works not to cause stormwater pollution and being carried out in accordance with Section 2.8 of Council's Stormwater Pollution Control Code 1993. Pollutants such as concrete slurry, clay and soil shall not be washed from vehicles onto roadways, footways or into the stormwater system. Drains, gutters, roadways and access ways shall be maintained free of sediment. Where required, gutters and roadways shall be swept regularly to maintain them free from sediment.
 - ii. Stormwater from roof areas shall be linked via a temporary downpipe to an approved stormwater disposal system immediately after completion of the roof area.
 - iii. All disturbed areas shall be stabilised against erosion within 14 days of completion, and prior to removal of sediment controls.
 - iv. Building and demolition operations such as brickcutting, washing tools or paint brushes, and mixing mortar shall not be performed on the roadway or public footway or any other locations which could lead to the discharge of materials into the stormwater drainage system.
 - v. Stockpiles are not permitted to be stored on Council property (including nature strip) unless prior approval has been granted. In addition stockpiles of topsoil, sand, aggregate, soil or other material shall be stored clear of any drainage line or easement, natural watercourse, kerb or road surface.
 - vi. Wind blown dust from stockpile and construction activities shall be minimised by one or more of the following methods:
 - a) spraying water in dry windy weather
 - b) cover stockpiles
 - c) fabric fences
 - vii. Access to the site shall be restricted to no more than two 3m driveways. Council's footpath shall be protected at all times. Within the site, provision of a minimum of 100mm coarse crushed rock is to be provided for a minimum length of 2 metres to remove mud from the tyres of construction vehicles.

An all weather drive system or a vehicle wheel wash, cattle grid, wheel shaker or other appropriate device, shall be installed prior to commencement of any site works or activities, to prevent mud and dirt leaving the site and being deposited on the street. Vehicular access is to

be controlled so as to prevent tracking of sediment onto adjoining roadways, particularly during wet weather or when the site is muddy. Where any sediment is deposited on roadways it is to be removed by means other than washing and disposed of appropriately.

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

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

Prior to issue of occupation certificate or commencement of use

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

- 51. An Occupation Certificate shall be obtained in relation to the approved works prior to any use or occupation of the building.
- 52. Where Council's park/reserve is damaged as a result of building work or vehicular building traffic, this area shall be restored by Council at the applicant's expense. Repairs shall be completed prior to the issue of the Occupation Certificate.
- 53. All excess excavated material, demolition material, vegetative matter and builder's rubbish shall be removed to the Waste Disposal Depot or the Regional Tip prior to final inspection.
Note: Burning on site is prohibited.
- 54. 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.
- 55. 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 within the basement approved by the Principal Certifying Authority, stating the following: "Vehicles shall enter and exit the site in a forward direction at all times".
- 56. Prior to completion of the building works, a full width vehicular entry is to be constructed to service the property. Any obsolete vehicular entries are to be removed and reconstructed with kerb and gutter. This work may be done using either a Council quote or a private contractor. There are specific requirements for approval of private contractors.
- 57. The width of the single driveway shall be minimum width of 3.0m and maximum of 4.5m at the property boundary.
- 58. Prior to occupation, a registered surveyor shall certify that the driveway(s) over the footpath and within the property have been constructed in accordance with the approved driveway profile(s). The certification shall be based on a survey of the

- completed works. A copy of the certificate and a works-as-executed driveway profile shall be provided to Council if Council is not the Principal Certifying Authority.
59. Prior to occupation, a chartered professional engineer shall certify that the tanking and waterproofing has been constructed in accordance with the approved design and specification. A copy shall be provided to Council if council is not the Principal Certifying Authority.
 60. Prior to occupation a Chartered Professional Engineer shall certify that the stormwater system has been constructed in accordance with the approved plans and as required by Rockdale Technical Specification Stormwater Management. The certificate shall be in the form specified in Rockdale Technical Specification Stormwater Management and include an evaluation of the completed drainage works. A works-as-executed drainage plan shall be prepared by a registered surveyor based on a survey of the completed works. A copy of the certificate and works-as-executed plan(s) shall be supplied to the Principal Certifying Authority. A copy shall be provided to Council if Council is not the Principal Certifying Authority.
 61. All absorption trenches/modular drainage cell installations must be inspected prior to back filling and proceeding to subsequent stages of construction to the satisfaction of principal Certifying Authority. Supporting evidence shall be issued by a professional Civil Engineer experienced in stormwater system design and construction.
Copies of documentary evidence are to be maintained by the Principal Certifying Authority and be made available to Council officers upon request.
 62. The maximesh screens and removable geotextile are to be installed in the absorption system prior to connection of the downpipes to ensure the effective performance of the system during construction and the long term viability of the system.
 63. A positive covenant pursuant to the Conveyancing Act 1919 shall be created on the title of the lots that contain the stormwater retention facility to provide for the maintenance of the retention facility.
 64. The drainage system shall be constructed in accordance with the approved drainage plans and any amendments in red. All stormwater drainage plumbing work shall comply with the NSW Code of Practice: Plumbing and Drainage and Australian Standard AS3500.
- Drainage grates shall be provided prior to the entrance to the garage structure. Width of the drainage grates shall be in accordance with Rockdale Technical Specification Stormwater Management.
65. The owner of the premises is required to comply with the following requirements when installing a rainwater tank:
 - Inform Sydney Water that a Rainwater tank has been installed in accordance with applicable requirements of Sydney Water.
 - The overflow from the rainwater tank shall be directed to the storm water system.
 - All plumbing work proposed for the installation and reuse of rainwater shall comply with the NSW Code of Practice: Plumbing and Drainage and be installed in accordance with Sydney Water "Guidelines for rainwater tanks on residential properties.
 - A first flush device shall be installed to reduce the amount of dust, bird faeces,

leaves and other matter entering the rainwater tank.

66. Prior to occupation a Chartered Professional Engineer competent in geotechnics shall certify that the construction works has been constructed in accordance with the approved geotechnical report and include an evaluation of the completed works. A copy of the certificate shall be supplied to the Principal Certifying Authority. A copy shall be provided to Council if Council is not the Principal Certifying Authority.
67. The Principal Certifying Authority shall certify that the rooftop terrace is non-trafficable beyond the balustrade, and that the roof area surrounding the balustrade is surfaced with non-trafficable material such as pebble aggregate of metal roofing.
68. A 1.7m high privacy screen shall be included on both sides of the rear all first floor balconies of the rear terrace, the screen shall be constructed of obscure glass or louvres which are angled so as not to allow downward viewing of the adjacent properties to the east and west.

Roads Act

69. Construction related activities must not take place on the roadway without Council approval.

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

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

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

70. The following works will be required to be undertaken in the road reserve at the applicant's expense:
 - i) construction of a concrete footpath along the frontage of the development site;
 - ii) construction of a new fully constructed concrete vehicular entrance/s;
 - iii) removal of the existing concrete vehicular entrance/s, and/or kerb laybacks which will no longer be required;
 - iv) reconstruction of selected areas of the existing concrete Footpath/vehicular entrances and/or kerb and gutter;
 - v) construction of paving between the boundary and the kerb;
 - vi) removal of redundant paving;
 - vii) construction of kerb and gutter.
71. All footpath, or road and drainage modification and/or improvement works to be undertaken in the road reserve shall be undertaken by Council, or by a Private Licensed Contractor subject to the submission and approval of a Private Contractor Permit, together with payment of all inspection fees. An estimate of the cost to have

these works constructed by Council may be obtained by contacting Council. The cost of conducting these works will be deducted from the Footpath Reserve Restoration Deposit, or if this is insufficient the balance of the cost will be due for payment to Council upon completion of the work.

72. This Roads Act approval does not eradicate the need for the Contractor to obtain a Road Opening Permit prior to undertaking excavation in the road or footpath.
73. Any driveway works to be undertaken in the footpath reserve by a private contractor requires an "Application for Consideration by a Private Contractor" to be submitted to Council together with payment of the application fee. Works within the footpath reserve must not start until the application has been approved by Council.
74. Following completion of concrete works in the footpath reserve area, the balance of the area between the fence and the kerb over the full frontage of the proposed development shall be turfed with either buffalo or couch (not kikuyu).
75. All works associated with the proposed development shall be at no cost to the RMS.

Development consent advice

- a. You are advised to consult with your utility providers (i.e. Energy Aust, Telstra etc) in order to fully understand their requirements before commencement of any work.
- b. *Telstra Advice - Telecommunications Act 1997 (Commonwealth)*

Telstra (and its authorised contractors) are the only companies that are permitted to conduct works on Telstra's network and assets. Any person interfering with a facility or installation owned by Telstra is committing an offence under the Criminal Code Act 1995 (Commonwealth) and is liable for prosecution. Furthermore, damage to Telstra's infrastructure may result in interruption to the provision of essential services and significant costs. If you are aware of any works or proposed works which may affect or impact on Telstra's assets in any way, you are required to contact: Telstra's Network Integrity Team on phone number 1800810443.

- c. If Council is appointed as the Principal Certifying Authority (PCA), a fee shall be paid before a Construction Certificate is issued. If the fee is paid after the end of the financial year, it will be adjusted in accordance with Council's adopted fees and charges. The fees charged encompass all matters related to ensuring that the proposed development is carried out in accordance with the approved plans and any post inspection issues that may arise.
- d. If Council is the Principal Certifying Authority for the development, a drainage inspection fee shall be paid prior to the issue of the Construction Certificate. If payment is made after the end of the financial year, the amount shall be adjusted in accordance with Council's adopted fees and charges.

NB: This fee does not include a confined space entry into the on-site detention tank. Where a confined space entry is required, an additional fee is payable. A confined space entry will be required where:

- a) Information provided in the works-as-executed drawing and engineering certification is inconclusive as to the compliance of the system with the approved plans; and/or
- b) Visual inspection from outside the tank is inconclusive as to the compliance of the system with the approved plans.
- e. Section 88E Instrument contains easements and/or covenants to which Council is a Prescribed Authority, the Council must be provided with all relevant supporting

information (such as works-as-executed drainage plans and certification) prior to Council endorsing the Instrument.

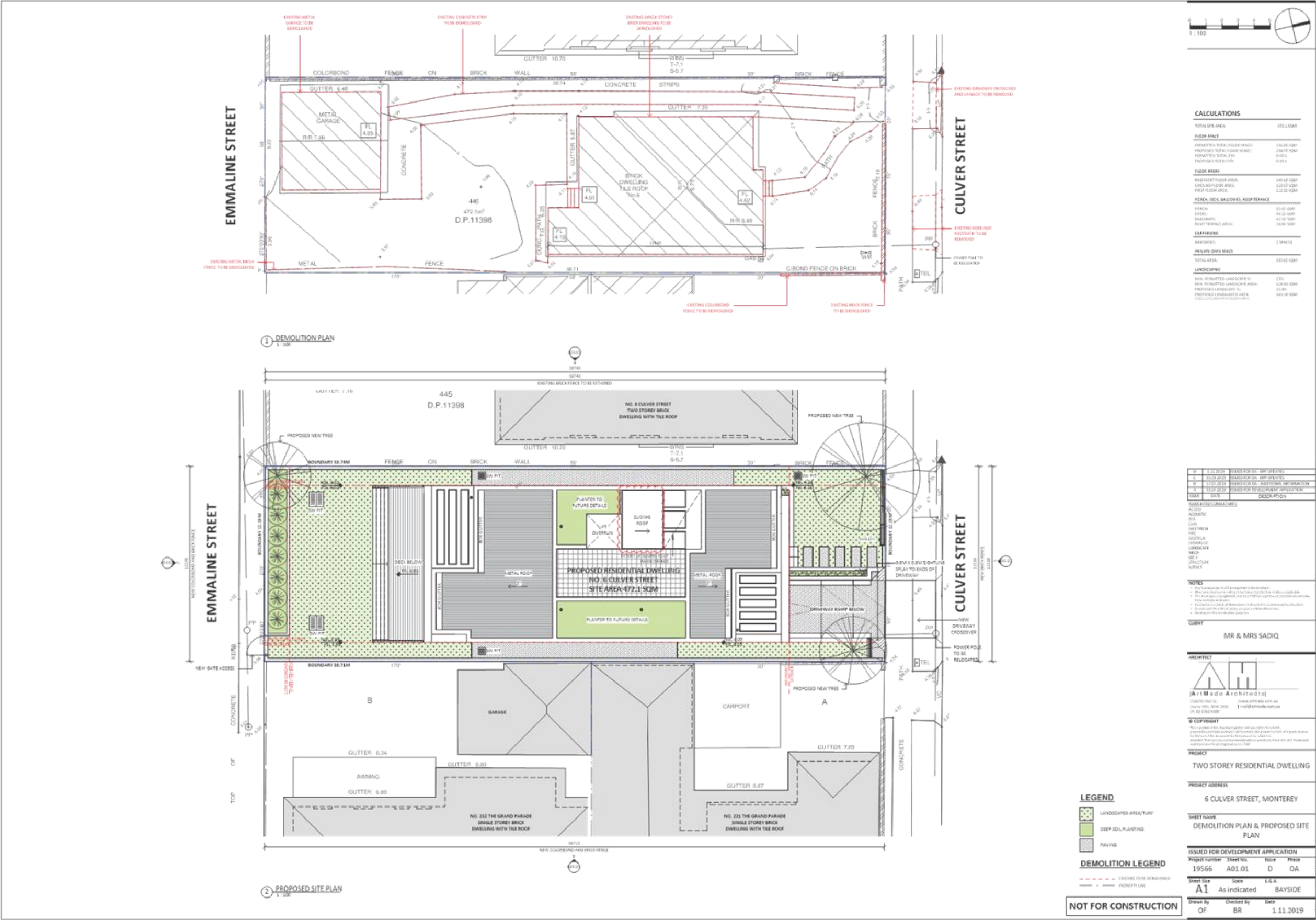
- f. All asbestos fibre demolition material and asbestos dust shall be handled, stored and removed in accordance with the relevant legislation and guidelines including:
- Work Health and Safety Act 2011
 - Work Health and Safety Regulation 2011
 - Code of Practice for the Safe Removal of Asbestos [NOHSC: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

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

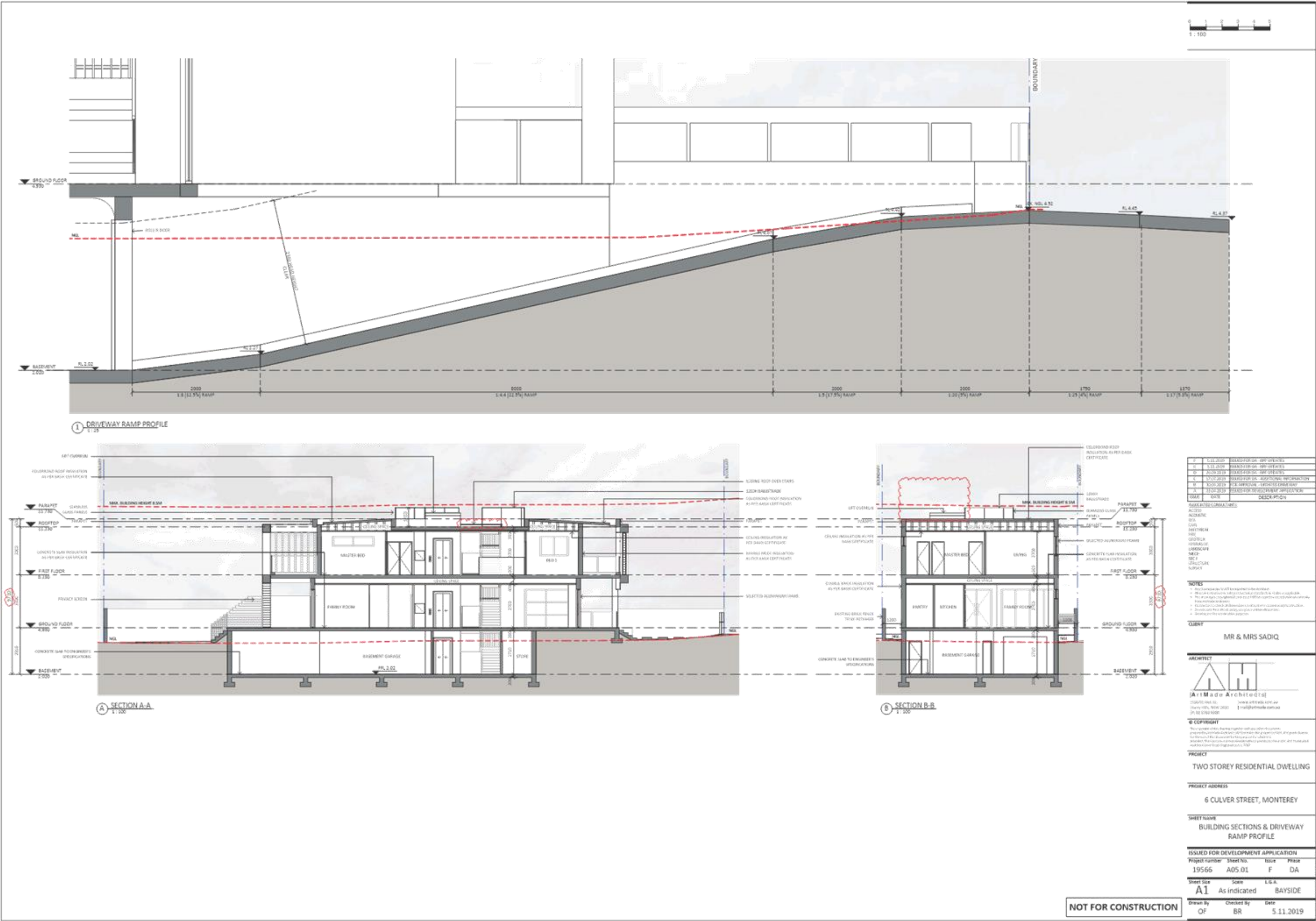
- g. Hazardous and/or intractable wastes arising from the demolition process shall be removed and disposed of in accordance with the requirements of the relevant statutory authorities (NSW WorkCover Authority and the NSW Environment Protection Authority), together with the relevant regulations, including:
- Work Health and Safety Act 2011
 - Work Health and Safety Regulation 2011
 - Protection of the Environment Operations (Waste) Regulation 2005.
- h. Demolition and construction shall minimise the emission of excessive noise and prevent “offensive noise” as defined in the Protection of the Environment Operations Act 1997. Noise reduction measures shall include, but are not limited to the following strategies:
- choosing quiet equipment
 - choosing alternatives to noisy activities
 - relocating noise sources away from affected neighbours
 - educating staff and contractors about quiet work practices
 - informing neighbours of potentially noise activities in advance
 - equipment, such as de-watering pumps, that are needed to operate on any evening or night between the hours of 8 p.m. and 7 a.m. or on any Sunday or Public Holiday, shall not cause a noise nuisance to neighbours of adjoining or nearby residences. Where the emitted noise exceeds 5 dB(A) [LAeq(15m)] above the background sound level [LA90] at the most affected point on the nearest residential boundary at any time previously stated, the equipment shall be acoustically insulated, isolated or otherwise enclosed so as to achieve the sound level objective.
- i. The water from the rainwater tank should not be used for drinking, Sydney Water shall be advised of the installation of the rainwater tank.
- j. The removal, cleaning and disposal of lead-based paint shall conform with the

requirements of the NSW Environment Protection Authority's guideline - "Lead Alert - Painting Your Home".

- k. All site works shall comply with the occupational health and safety requirements of the NSW WorkCover Authority.
- l. In the event of any inconsistency between conditions of this approval and the drawings/documents referred to in condition 2, the conditions of this approval prevail.







BAYSIDE COUNCIL

Planning Assessment Report

Application Details

Application Number:	DA-2019/147
Date of Receipt:	6 May 2019
Property:	6 Culver Street, MONTEREY (Lot 446 DP 11398)
Owner(s):	Mrs Diana Sadig Mr Raymond Edward Sadig
Applicant:	Artmade Architects
Proposal:	Demolition of existing structures and construction of a two (2) storey dwelling with a basement garage and rooftop terrace
Recommendation:	Refused
No. of submissions:	NIL
Author:	Gary Choice
Date of Report:	21 August 2019

Key Issues

The key issues related to this application are:

- Non-compliance with the maximum 8.5m building height requirement for the R2 zone;
- An amended Clause 4.6 Statement has not been submitted that reflects the amended plans;
- The development is not sympathetic to the surrounding streetscape in terms of height and bulk and features such as a rooftop terrace;
- The elevated ground floor area and rooftop terrace pose visual and acoustic privacy impacts as well as impacts to neighbouring properties; and
- The proposed size and potential holding capacity of the rooftop terrace poses significant noise-generating impacts to neighbouring properties and the surrounding area.

Recommendation

That the Bayside Local Planning Panel, exercising the functions of the Council as the consent authority pursuant to s4.16 of the Environmental Planning and Assessment Act 1979 not support the variation to the building height prescribed by cl4.3 Height of Buildings of the Rockdale Local Environmental Plan 2011, as it is not satisfied that the applicant's request has adequately addressed the matters required to be demonstrated by cl4.6 of that Plan, and the proposed development would not be in the public interest because it is not consistent with the objectives of that particular standard and the objectives for development within the zone.

That development application DA-2019/147 for demolition of existing structures and construction of a two (2) storey dwelling with a basement garage and rooftop terrace at 6 Culver Street MONTEREY be REFUSED pursuant to s4.16(1)(b) of the Environmental Planning and Assessment Act 1979 for the following reasons:

1. Pursuant to the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, it is considered that the proposed development does not satisfy the objectives of the R2 Low Density Residential zone as contained in Part 2.3 of the zone under Rockdale Local Environmental Plan 2011, including:

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

2. Pursuant to the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, it is considered that the proposed development does not satisfy Clause 4.3 Height of Buildings of the Rockdale Local Environmental Plan 2011 relating to the following objectives:

- *to permit building heights that encourage high quality urban form,*
- *to nominate heights that will provide an appropriate transition in built form and land use intensity.*

3. Pursuant to the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, it is considered that the proposed development does not satisfy Clause 4.6 of the Rockdale Local Environmental Plan 2011 as an amended Clause 4.6 statement has not been submitted to reflect amended plans.

4. Pursuant to the provisions of Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposed development including an elevated alfresco, rear deck and rooftop terrace will create significant overlooking to neighbouring properties and does not, therefore, meet the objectives of 4.45 *Visual Privacy* of the Rockdale DCP 2011.

5. Pursuant to the provisions of Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposed development does not meet the objectives of the Rockdale Development Control Plan 2011 including:

- *Part 4.4.6 Noise Impact*

6. Pursuant to the provisions of Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposed development does not meet the objectives of 5.1 *Building Design - General* of the Rockdale DCP 2011 in terms of bulk appearance of bare expanse, exceedance of FSR and building height provisions, and potential impacts of window design.

7. Pursuant to the provisions of Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979 the proposed development is likely to result in the following adverse environmental impacts:

- a) Natural Environment – unnecessary removal of established vegetation; and
- b) Built Environment - approval of the proposal would set a precedent for additional over-development of a similar kind.

8. The proposed development, pursuant to the provisions of Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979, results in an undesirable and unacceptable impact on the surrounding built environment.
9. Pursuant to the provisions of Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979, the proposed development is excessive in terms of height, bulk, scale, size and density and would adversely impact upon the amenity of the locality.
10. The proposed development, pursuant to the provisions of Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979, is not considered suitable for the site, in terms of height and bulk and is likely to adversely impact on the solar access, and visual and acoustic privacy of neighbouring properties.
11. Pursuant to the provisions of Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, and in consideration of the impacts and submissions made the proposed development is not considered to be in the public interest and is likely to set an undesirable precedent.

Background

History

Council's records show no previous applications have been lodged in relation to the subject site.

DA-2019/147 was lodged on 6 May 2019 and open for public comment from 8 May 2019 to 27 May 2019.

Following a site inspection, the DA was referred to Ausgrid on 28 May 2019 for comment regarding the existing power pole (northern boundary frontage) to be relocated as part the development. No response was received within the 21 day period, and Council has yet to receive correspondence from Ausgrid regarding the subject DA.

A written request for additional information was issued to the applicant on 5 July 2019 identifying the following issues:

1. The Clause 4.6 statement for the proposed 1.3m (15.3%) exceedance in building height was not supported.
2. Revised driveway and basement plans were required including amendments to internal width, swept path analysis, sight line splays and stormwater drainage design.
3. The height, bulk and scale of the rooftop terrace was not supported. Council has consistently approved rooftop terraces with a usable area of 24m² and a reduction of usable rooftop area was recommended to minimise impacts to neighbouring properties from the rooftop as a noise-generating recreational area.
4. The proposed rear deck posed significant impacts to the visual privacy of adjoining properties.
5. A re-design was recommended to prevent the re-location of the existing power pole on the Culver Street frontage.

Additional plans were received on 19 July 2019, however outstanding issues remain specifically:

- The development still exceeds the maximum 8.5m height of buildings and presents the same

issues of height, bulk and impacts of amenity;

- An amended Clause 4.6 statement has not been submitted to reflect the amended plans;
- The revised 70m² Rooftop is still significantly above the 24m² area as advised

Proposal

Council is in receipt of a development application DA-2019/147 at 6 Culver Street MONTEREY, which seeks consent to carry out the demolition of the existing dwelling, rear garage and existing front fence; and the construction of a new two-storey dwelling with basement and rooftop terrace.

Specifically, the proposal consists of:

Ground floor

- Open plan family/informal dining/formal living area
- Kitchen
- Laundry with powder room
- Formal dining area
- Rear deck

First floor

- Master bedroom with WIR, balcony and ensuite
- Three (3) additional bedrooms (with Balcony to Bedroom 1),
- Separate bathroom, living area with separate balcony.

Additional features

- Basement parking
- Rooftop terrace
- Lift access to all floors
- Dumb waiter to ground floor, first floor and rooftop

Site location and context

The subject site is known as Lot 446 DP 11398, 6 Culver Street MONTEREY. The site is a rectangular shape with front and rear boundary widths of 12.19 metres. The side boundaries are a depth of 38.74m (east) and 38.71m (west). The total site area is 472.1m². The topography of the site is relatively flat.

The subject site contains a single-storey brick dwelling with rear lane garage. The site is located on the south side of Culver Street, between Hollywood Street (north), The Grand Parade (east) and Chuter Avenue (west). The site enjoys rear lane access to Emmaline Street (southern boundary). Adjoining development to the sides includes two (2) separate allotments to the east - 231 and 232 The Grand Parade - with a single-storey brick dwelling on each, and a two-story brick dwelling at No.8 Culver Street. There is a mix of single-storey and two-storey residential buildings within close proximity to the subject property.

No trees are to be removed, however appropriate conditions are to be included in the Draft Notice of Determination regarding protection of existing trees.



Statutory Considerations

Environmental Planning and Assessment Act, 1979

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

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

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

The following Environmental Planning Instruments are relevant to this application:

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

The applicant has submitted a BASIX Certificate for the proposed development. The Certificate number is 1006341S.

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

Reduction in Energy Consumption 50%
Reduction in Water Consumption 40%
Thermal Comfort Pass

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

State Environmental Planning Policy No 55—Remediation of Land

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

1. The site appears to have been continuously used for residential purposes;
2. The adjoining and adjacent properties are currently used for residential purposes; and
3. The site and surrounding land were not previously zoned for purposes identified under Table 1 of the contaminated land planning guide in State Environmental Planning Policy 55, in particular industrial, agricultural or defence uses.

On this basis, the site is considered suitable in its present state for the proposed residential development. No further investigations of contamination are considered necessary.

Rockdale Local Environmental Plan 2011

Relevant clauses	Compliance with objectives	Compliance with standard/provision
2.3 Zone R2 Low Density Residential	No - see discussion	No - see discussion
2.7 Demolition requires consent	Yes - see discussion	Yes - see discussion
4.3 Height of buildings	No - see discussion	No - see discussion
4.4 Floor space ratio - Residential zones	Yes - see discussion	Yes - see discussion
4.6 Exceptions to development standards	No - see discussion	No - see discussion
5.10 Heritage conservation	Yes - see discussion	Yes - see discussion
6.1 Acid Sulfate Soil - Class 4	Yes - see discussion	Yes - see discussion
6.2 Earthworks	Yes - see discussion	Yes - see discussion
6.4 Airspace operations	Yes - see discussion	Yes - see discussion
6.7 Stormwater	Yes - see discussion	Yes - see discussion
6.12 Essential services	Yes - see discussion	Yes - see discussion

2.3 Zone R2 Low Density Residential

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

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

The proposed development is inconsistent with the objectives of the zone, particularly:

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

The proposal will impact significantly on the character and streetscape of Culver Street. The elevated basement design results in a number of cumulative impacts to neighbouring properties including visual

impacts associated with height, bulk and massing, and impact on visual privacy. The proposed rooftop terrace poses significant noise-generating impacts to neighbouring properties and the surrounding area. Ultimately, the proposal does not satisfy the Clause 2.3.

2.7 Demolition requires consent

The proposed development seeks consent for the demolition of the existing dwelling and rear garage and, therefore satisfies the provisions of this Clause.

4.3 Height of buildings

The height of the proposed building is 9.7m, which exceeds the maximum 8.5m height permitted in Clause 4.3 (Height of buildings) of RLEP 2011 BY 14%. In accordance with clause 4.6 of RLEP 2011, the applicant has requested that a variation to the maximum building height requirement be permitted which is discussed later in this report.

The proposed height is required to facilitate a 70m² rooftop terrace which poses a significant impact to the amenity of neighbouring properties and the surrounding area. The development does not, therefore, satisfy the relevant objectives of Clause 4.3 in RLEP 2011 specifically:

(d) to nominate heights that will provide an appropriate transition in built form and land use intensity.

4.4 Floor space ratio - Residential zones

The Gross floor area of the proposed development has been calculated as 236.4m² over a site area of 472.1m². In this regard, the proposed floor space ratio (FSR) for the building is 0.5:1 and therefore does not exceed the maximum 0.5:1 FSR for the land as shown on the Floor Space Ratio Map.

The proposed FSR is in accordance with the desired future character of Rockdale, and will have minimal adverse environmental effects on the use or enjoyment of adjoining properties, and will maintain an appropriate visual relationship between new development and the existing character of area.

Accordingly, the proposed FSR for the development meets the objectives and satisfies the maximum FSR permitted by Clause 4.4 in RLEP 2011.

4.6 Exceptions to development standards

The proposed development will result in a building height of 9.7m which does not comply with the maximum 8.5m height limit for the R2 Low Density Residential zone in RLEP 2011. Accordingly, a Clause 4.6 variation statement was submitted with the subject DA.

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

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

(3)(b) that there are sufficient environmental planning grounds to justify the variation.

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

(i) the Applicant's written request is satisfactory in regards to addressing sub-clause (3) above,

and

(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives of the relevant zone.

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

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

The objectives of Clause 4.3 are:

- (a) to establish the maximum limit within which buildings can be designed and floor space can be achieved,
- (b) to permit building heights that encourage high quality urban form,
- (c) to provide building heights that maintain satisfactory sky exposure and daylight to buildings, key areas and the public domain,
- (d) to nominate heights that will provide an appropriate transition in built form and land use intensity.

In accordance with clause 4.6 RLEP 2011, the applicant has provided a detailed statement requesting that a variation to the maximum 8.5m building height requirement be permitted with Council consent.

Summary of 4.6(3)(a) justification

The submitted Clause 4.6 request for variation does not clearly address each element of Clause 4.6, and specific sub-clause has not been accordingly referenced. The statement does, however, cite Method 1 of *Wehbe v Pittwater Council (2007)* and argues that the proposed development achieves the objectives of the development standard notwithstanding non-compliance with the standard for the following reasons:

- *While the extent of the variance is 15.29% (1.3m), the area of non-compliance is limited to the roofed stairwell and lift shaft on the roof terrace. All other aspects of the dwelling are fully compliant with the 8.5m height control.*
- *The stairwell and lift shaft have been situated on the northern side of the dwelling so as to minimise negative impacts in respect of overshadowing of neighbouring properties.*
- *The height of the development is compatible with the general character of the area which, by observation, exhibit numerous similar height variations where terrace roofs are approved. Such roof terraces (and therefore height variations) are also part of the evolving character of the area and the streetscape.*
- *The development will maintain similar height and scale characteristics with surrounding development in Culver Street and nearby The Grand Parade and therefore no height transition issues are raised.*
- *The proposal will therefore maintain an acceptable and consistent urban form while this variation of the height control provides access to the roof terrace allowing the design to take advantage of the site's position and provide views across Botany Bay.*

Please note: Amended plans have reduced the overall building height to 9.7m which makes the extent of the variance 1.2m (14.08%).

Officer comment: The justifications offered by the subject cl 4.6 statement are objectively sound, however the proposed 70m² rooftop terrace is inherently linked to issue of amenity, as potential noise impacts from the rooftop terrace pose a significant impact to adjoining properties and the surrounding

area. It is considered that the proposal, therefore, fails to provide an appropriate transition in built form and land use intensity, and does not, therefore satisfy the objectives of Clause 4.3 of the RLEP 2011.

Summary of 4.6(3)(b) justification

With regard to clause 4.6(3)(b), it must be demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard. The subject cl.4.6 statement claims the HOB variation is justified on grounds particular to the circumstances established in 'Four2Five' decision by NSW LEC.

In their 4.6 statement, the Applicant claims that:

- *The site is located near the shores of Botany Bay Monterey which has the benefit of significant water views.*
- *In order to attain and enjoy these views (which is a reasonable expectation for the enjoyment and amenity of the residents) the dwelling has been designed with a roof terrace.*
- *Such roof terraces are common to the area and in order to access the terrace a stairwell is needed. The stairwell causes a breach of the prescribed building height.*
- *Strict compliance with the height control would prevent access to the roof terrace which is considered to be unreasonable in the local context where such roof terraces are a common feature of the built environment.*
- *Strict compliance is unnecessary as the building achieves the qualitative outcomes of the building height control. The stairwell and lift to the roof terrace is situated towards the north and significantly set back from the southern side of the building. It is considered that the non-compliant height in this part of the building will have no negative impacts in respect of urban form, sky exposure, shadow impact or daylight access.*
- *The proposal is meritorious in that it is highly compliant with Council's controls and the variance is minor in its extent compared to the building envelope. Refer to Statement of Environmental Effects.*
- *In order to retain the aesthetic qualities and integrity of the architectural design, a variation is needed but the variation will therefore produce a better environmental planning outcome.*
- *A compliant proposal would force an inferior outcome in terms of resident amenity.*
- *The variation to the building height is inconsequential as the non compliant portion is set well back from the street (12.2m) and will be viewed at an oblique angle. It will be of an acceptable impact in the streetscape and the amenity of neighbouring properties is not eroded.*

Officer comment: With regard to environmental planning grounds, the statement goes as far as to identify the 'meritorious' nature of the design with respect to characteristics that are compliant with Council controls, but does not give proper attention to the non-compliant elements of the design. The Applicant suggests the location of the site in relation to the Botany Bay waterfront should be considered the aspect or feature of the development that contravenes the relevant development standard, however, a property in close proximity to Botany Bay such as the subject site could still achieve sufficient water views without exceeding the maximum height limit for the R2 zone. The statement promotes a number of presumptive benefits (generally speaking) that the development offers, rather than detailing the environmental planning grounds upon which the argument for variation is based. The Applicant has not successfully rationalised how the proposed size and potential holding capacity of the rooftop terrace will be in the public interest. Furthermore, the statement has not successfully demonstrated how the proposed non-compliant building height satisfies the objectives of the R2 Low Density Residential zone in the context of a rooftop recreational area as such.

The statement lacks justification of how the development will ensure that land uses are carried out in a context and setting that minimises any impact on the character and amenity of the area.

Regarding the above stated R2 zone objective, the statement asserts:

'The third objective (of the R2 objectives) is satisfied because the proposed development is consistent with the character and amenity of the area. The character of The Grand Parade and surrounding streets is in transition from a streetscape of older single dwellings of modest size to dwellings of a larger bulk and scale which maximise the development potential of the site and incorporate the benefit of water views into the design.'

It is considered that the statement does not adequately explain how the rooftop terrace has been subsequently designed to minimise impacts on the character and amenity of the area as a consequence of sufficient environmental planning grounds.

The proposed elevated basement design is inherently linked to several key issues with the proposal that pose the biggest impacts to neighbouring properties including impacts to visual privacy by overlooking and noise-generation. The excessive bulk of built form is exacerbated by the elevated basement which, in turn, elevates floor levels above the HOB maximum. This results in a number of issues including significant bulk, massing and overlooking, with the justification of providing water views. The impacts to neighbouring properties outweigh the need for a rooftop terrace of such a size.

In this case, the potential view to Botany Bay is not considered a sufficient environmental planning ground to justify the variation to this control. In summary, the Applicant's Cl.4.6 request for a variation to the height standard is not supported as it is inconsistent with the objectives of Clause 4.3 HOB standards, and moreover, the R2 zone objectives of the RLEP 2011. The statement does not adequately demonstrate that compliance with the standard is unreasonable or unnecessary in the circumstances of the case; it does not demonstrate sufficient environmental planning grounds for the variation; and it is not considered to be in the public interest.

5.10 Heritage conservation

The subject site is not heritage listed nor is it within a heritage conservation area. Cook Park — Item 1168 RLEP 2011 - is located within close proximity to the subject site, however, the proposed development is not anticipated to affect the integrity or character of the heritage item.

Therefore the qualities that makes the heritage item and it's setting significant will not be diminished.

6.1 Acid Sulfate Soil - Class 4

Acid Sulfate Soils (ASS) – Class 4 affect the property. Development Consent is required as the proposal involves works below the natural ground level and the works may lower the watertable. In this regard, an Acid Sulfate Soils Assessment prepared by E.I. Australia (dated 16 April 2019) was prepared for the proposed development. Based on the report findings, the risk posed by ASS is considered low, and management planning is not required.

Additional conditions of consent are imposed in the draft Notice of Determination to ensure soils required to be removed from the site during development are appropriately classified and disposed of at a licensed landfill facility. The Applicant shall have this management plan prepared and agreed to prior to works commencing on the site. Therefore, the proposal is consistent with the objectives and

requirements of clause 6.1.

6.2 Earthworks

Earthworks including excavation are required on site for a basement car park to the depth of 4m. A Geotechnical Investigation Report prepared by Alliance Geotechnical (dated 28 June 2018) was submitted with the application and the objectives and requirements of Clause 6.2 of RLEP 2011 have been considered in this report. It is considered that the proposed earthworks and excavation will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land. However, notwithstanding, relevant conditions are included in the draft Notice of Determination to ensure that the environmental amenity of surrounding land is maintained, and soil erosion, sedimentation, and drainage impacts are minimised.

6.4 Airspace operations

The proposed development is affected by the Obstacle Limitation Surface (OLS) which is set at 45.72m metres to Australian Height Datum (AHD). The proposed building height is at 9.7 metres to AHD and in this regard, it is considered that the proposed development will have minimal adverse impact on the OLS and hence is acceptable with regards to this Clause.

6.7 Stormwater

The proposed stormwater drainage plan has been assessed by Council's Development Engineer. The basement must be re-designed as a tanked structure due to the location within the Botany sands aquifer as outlined in Rockdale Technical Specifications - Stormwater Management section 7.7. Subject to these amendments, the stormwater drainage plan is acceptable.

6.12 Essential services

Services will generally be available on the site.

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

No relevant proposed instruments are applicable to this proposal.

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

The following Development Control Plan is relevant to this application:

Rockdale Development Control Plan 2011

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

Relevant clauses	Compliance with objectives	Compliance with standard/provision
4.1.1 Views and Vista	Yes - see discussion	Yes - see discussion
4.1.2 Heritage Conservation - Vicinity of Heritage Item	Yes - see discussion	Yes - see discussion
4.1.3 Water Management	Yes - see discussion	Yes - see discussion
4.1.3 Groundwater Protection	Yes - see discussion	Yes - see discussion
4.1.4 Soil Management	Yes - see discussion	Yes - see discussion
4.1.6 Development on Sloping Sites	Yes	Yes
4.1.7 Tree Preservation	Yes - see discussion	Yes - see discussion
4.2 Streetscape and Site Context - General	No - see discussion	No - see discussion

Relevant clauses	Compliance with objectives	Compliance with standard/provision
4.2 Streetscape and Site Context - Fencing	Yes - see discussion	Yes - see discussion
4.3.1 Open Space & Landscape Design - Low & medium density residential	Yes - see discussion	Yes - see discussion
4.3.2 Private Open Space - Low density residential	Yes - see discussion	Yes - see discussion
4.4.1 Energy Efficiency - Residential	Yes - see discussion	Yes - see discussion
4.4.2 Solar Access - Low and medium density residential	Yes - see discussion	Yes - see discussion
4.4.3 Natural Lighting and Ventilation - Residential	Yes - see discussion	Yes - see discussion
4.4.5 Visual privacy	No - see discussion	No - see discussion
4.4.5 Acoustic privacy	Yes - see discussion	Yes - see discussion
4.4.6 Noise Impact	No - see discussion	No - see discussion
4.6 Parking Rates - Dwelling House	Yes - see discussion	Yes - see discussion
4.6 Basement Parking - General	Yes	Yes
4.6 Driveway Widths	Yes - see discussion	Yes - see discussion
4.7 Air Conditioning and Communication Structures	Yes - see discussion	Yes - see discussion
4.7 Waste Storage and Recycling Facilities	Yes	Yes
4.7 Laundry Facilities and Drying Areas	Yes - see discussion	Yes - see discussion
5.1 Storey Height and Setbacks - Dwelling house and Attached Dwellings	Yes - see discussion	Yes - see discussion
5.1 Building Design - General	No - see discussion	No - see discussion

4.1.1 Views and Vista

The proposed dwelling is setback as such that the first floor balcony views of Botany Bay from the adjoining No.8 Culver Street are unobstructed. The siting of the proposed building will ensure that there is minimal adverse impact on the surrounding views presently enjoyed by adjacent residents.

4.1.2 Heritage Conservation - Vicinity of Heritage Item

The qualities that makes the heritage item and it's setting significant will not be diminished, dominated or overwhelmed by the proposed development. See section RLEP Clause 5.10 of this report for details.

4.1.3 Water Management

The roofwater and runoff is to be directed to a detention tank. A stormwater plan has been submitted as discussed elsewhere in this report.

4.1.3 Groundwater Protection

The site is affected by the Groundwater Protection Zone and the proposal includes excavation for a basement car park to the depth of 2.2m to 2.3m. A Geotechnical Investigation Report prepared by Alliance Geotechnical (dated 28 June 2018) it is considered that excavation in relation to the proposed building is not deep enough to cause any adverse impact on the Zone. Notwithstanding, an appropriate condition is to be included in the consent to ensure the provisions of this Clause are satisfied. See RLEP Clause 6.7 of this report for further details.

4.1.4 Soil Management

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

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

4.1.7 Tree Preservation

The development proposal does not propose the removal of any established trees or other significant vegetation.

4.2 Streetscape and Site Context - General

The proposal is located in a R2 Low Density Residential Zone. The immediate context is relatively low scale, consisting of single and two-storey dwellings on Culver Street and Emmaline Street. The local character is maintained through the prominence of gabled and hipped roofs, however there are several examples of similar flat roof housing on Culver Street including No.10 Culver Street. As the east adjoining property is a corner block with frontage to The Grand Parade, the proposed front setback, which is consistent with No.8 Culver Street, is satisfactory in the immediate context.

Regrading horizontal and vertical articulation to the Culver Street façade, the first floor ceiling height, windows and balcony do not overbear the first floor, first floor windows and guttering of No. 8 Culver Street. Furthermore, the development presents a similar bulk and scale to No.10 Culver Street. The proposed dwelling is, displays some semblance to prevalent elements in Culver Street such as smooth rendering.

The proposed dwelling is considered to be compatible with that of the surrounding area of Monterey.

4.2 Streetscape and Site Context - Fencing

The streetscape is characterised by low-set masonry fencing with various colours and features. The proposed open construction fence is of a similar height (1.4m) and bulk to the surrounding fences of Culver Street. A 45 degree splay is provided either side of the driveway entrance to ensure driver and pedestrian safety.

Spaced slats or a similar material are conditioned to provide at least 50% transparency to allow for passive surveillance, as well as a maximum 600mm height for solid portions.

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

A minimum 25% of the site area is required to be provided as landscaped area. The proposal provides 138.2m² (29.3%) of landscaped area, with capability to contain storm water runoff. The development comfortably satisfies the minimum 20% requirement for front setback landscaping, and three (3) new trees are to be planted as part of the proposal.

4.3.2 Private Open Space - Low density residential

The proposal provides 121.8m² of private open space which satisfies the minimum 80m² requirement for the development. Private open spaces are usable, accessible, clearly defined and will meet occupants requirements of privacy, solar access, outdoor activities and landscaping.

4.4.1 Energy Efficiency - Residential

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

4.4.2 Solar Access - Low and medium density residential

The proposed development will have minimum impact of the level of sunlight currently received by adjoining properties and within the development site.

4.4.3 Natural Lighting and Ventilation - Residential

The proposed development is designed to achieved natural ventilation and lighting, incorporating minimum ceiling heights of 2.7m to the ground and first floors.

4.4.5 Visual privacy

The proposed development has been assessed against the relevant controls of Part 4.4.5 Visual Privacy:

Windows and balconies

- All Ground Floor windows along the eastern wall of the proposed dwelling will face the blank garage walls and carport/parking spaces of 230 and 231 The Grand Parade, and impacts to visual privacy are consider minimal. Privacy screens to both sides of the rear ground floor deck are provided to minimise overlooking to neighbouring properties.
- First floor balconies and several of the first floor windows on the eastern side of the dwelling pose significant overlooking into the adjoining properties at 230 and 231. The Grand Parade, and the rear yard of 8 Culver Street. The Ground Floor window located on the north-west wall of the dwelling, and the stairwell glazing on the western wall are also unresolved.

Appropriate conditions can be imposed to minimise the impacts to the neighbouring property including:

- opaque glazing to all first floor windows on the eastern wall with a sill height below 1.7m
- opaque glazing to the stairwell window and all windows on the western wall with a sill height below 1.7m
- privacy screening by way of aluminium louvres or similar to the southern alfresco wall.

Rooftop Terrace

- The 7.05m rooftop terrace (11.23 RL to AHD), with an area of 70m² is proposed to maximise opportunities to view the Botany Bay water front located more than 116m from the subject property. Internal stair access i provided to the roof top area from within the building; and the usable area of roof is set back at least 1500mm. Despite these measure, issues with potential overlooking are unresolved. The proposed 1.2m high balustrade does not prevent overlooking from the of the rooftop terrace into adjoining properties on both east and west boundaries. The rooftop terrace does not provide a reasonable level of visual privacy to the adjoining properties of 8 Culver Street and 230 and 231 The Grand Parade.

The proposed development is does not satisfy this control.

4.4.5 Acoustic privacy

There will be minimal adverse impact on the acoustic privacy of adjoining and surrounding properties as consideration has been given to the location and design of the building and landscaping in relation to private recreation areas at ground and first floor to minimise noise intrusion on the amenity of adjoining properties. Additional noise impacts are discussed in the next section.

4.4.6 Noise Impact

The likelihood of the proposed 70m² rooftop terrace as a noise-generating recreation area has not been addressed in the Statement of Environmental Effects (SEE). It is indeterminable whether such an elevated design will have more or less of an acoustic impact compared to the proposed first floor balconies. In this regard, a determination cannot be made on the noise impacts to adjoining residential properties.

4.6 Parking Rates - Dwelling House

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

4.6 Driveway Widths

The proposed driveway width complies with Council's Technical Specifications and hence satisfies the provisions of this Clause.

4.7 Air Conditioning and Communication Structures

The plans do not depict the location of proposed residential air conditioning units on site. Accordingly, a condition is imposed requiring air conditioning units to be obscured from public view should they be provided and operate in accordance with the relevant provisions of the Protection of the Environment Operations Act, 1997. Subject to conditions, the development is acceptable with regards to this Clause.

4.7 Laundry Facilities and Drying Areas

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

5.1 Storey Height and Setbacks - Dwelling house and Attached Dwellings

The site is located between two dwellings with frontages to different streets. The 230 The Grand Parade has a zero side setback to Culver Street and 8 Culver Street has a front setback of 7.6m. The proposed front setback is 6.63m, is of a similar setback to the existing dwelling and is consistent with the prevailing street setback and therefore compliant with DCP2011.

DCP2011 requires a 0.9m side setback to the Ground floor and a 1.2m side setback to the First floor. The proposal provides a 1.2m side setback to either side of the dwelling, and a 12.4m rear setback to the building which comfortably satisfies the minimum 3m rear lane setback requirements.

Further, the proposal is not considered to adversely impact upon the adjoining dwelling by way of overshadowing and overlooking, and will not significantly reduce the solar access, light and air received by the adjoining dwelling. Therefore, the proposed setbacks are consistent with the objectives of this control.

It should be noted that, the proposal is described as a two storey dwelling. The 900mm basement podium created by the rise of the basement stair and lift, although not technically a storey, give the appearance of a storey which, in turn, adds to the excessive height, bulk and mass of the overall development.

5.1 Building Design - General

With regard to this control, key points of the development are:

- The building design and architectural style incorporates elements of surrounding Culver Street development, including smooth rendered texture and flat roof design, however, this is weakened by the bulk appearance of bare concrete surfaces from the neighbouring 8 Culver Street.
- Building articulation does not adequately respond to environmental conditions such as noise and privacy impacts to neighbouring properties.
- The design attempts to attenuate large expanses of blank walls on the eastern side of the proposed dwelling with a combination of glazing and first floor planting in the articulation zones, however, when combined with additional privacy screening, this results in an eastern wall which is busy and visually obtrusive.
- The building height is significantly greater than the vast majority of dwellings in the immediate vicinity of the subject site.

In summary, the proposed dwelling is considered to be unsympathetic to the surrounding character of Culver Street and is unacceptable in its current form.

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

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

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

The proposed two-storey dwelling with basement parking and rooftop terrace has been assessed against relevant controls in regard to potential impacts on the environment and neighbouring properties. The proposal is considered to lack regard for the acoustic and visual privacy of adjoining properties, and presents significant visual impacts of bulk and massing as a cumulative result of the elevated basement.

The size of the proposed rooftop terrace is considered to have little regard for the noise impacts on adjoining properties. A proposed development, in the context of 6 Culver Street MONTEREY, would result in a structure with high noise-generating potential. Such a development poses a significant and negative impact on the amenity and enjoyment of neighbouring residents and is therefore unsatisfactory.

The Application has failed to demonstrate that the site constraints and orientation prohibit the achievement of relevant RDCP standards. The significant impacts as mentioned above result in a development which is unacceptable and cannot be supported.

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

The relevant matters pertaining to the suitability of the site for the proposed development have been considered in the assessment of the proposal. Given the location of the subject site and its relation to neighbouring properties, the proposal in its current form is assessed as posing too great an impact on neighbouring properties and the public domain.

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

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

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

If approved, the proposal would set a precedent for continued oversized dwellings and inappropriate

rooftop terracing in this area resulting in significant impacts on the built environment and public domain. As such it is considered that the proposed development is not in the public interest.

S7.12 Fixed development consent levies

Section 7.12 of the Environmental Planning and assessment Act 1979 (as amended) applies to the proposal. In this regard, a standard condition of development consent could imposed in respect to a levy applied under this section, should consent be granted.

Civil Aviation Act, 1988

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

Civil Aviation (Building Control) Regulations 1988

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

Section 6 Prohibition of the construction of buildings of more than 150 feet in height in certain areas

The proposed development is affected by the 45.72m Building Height Civil Aviation Regulations, however the proposed building height at 9.7m will have minimal impact upon the height requirement in the regulations.

Schedule 1 - Draft Conditions of consent

Bayside Local Planning Panel

26/11/2019

Item No	6.7
Application Type	Development Application
Application No	DA-2019/143
Lodgement Date	01/05/2019
Property	24 Albert Street, Botany
Ward	Ward 2
Owner	Mr J O'Rourke & Mrs J V O'Rourke
Applicant	Champion Homes Pty Ltd
Proposal	Demolition of existing structures, Torrens Title Subdivision into two (2) lots and construction of two (2) semi-detached dwellings
No. of Submissions	One (1) – Original Application Nil – Amended design
Cost of Development	\$696,598
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 pursuant to s4.16 of the Environmental Planning and Assessment Act 1979 approves a variation to the floor space ratio prescribed by cl4.4 Floor Space Ratio of the Botany Bay Local Environmental Plan 2013, as it is satisfied that the applicant's request has adequately addressed the matters required to be demonstrated by cl4.6 of that Plan, and the proposed development would be in the public interest because it is consistent with the objectives of that particular standard and the objectives for development within the zone.
 - 2 That development application DA-2019/143 for demolition of existing structures, Torrens Title subdivision into two (2) lots and construction of two (2) semi-detached dwellings at 24 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.
 - 3 That the submitter be notified of the Bayside Local Planning Panel's decision.
-

Location Plan



Attachments

- 1 Supplementary Planning Assessment Report [↓](#)
- 2 Site Plan [↓](#)
- 3 East & West Elevations [↓](#)
- 4 North & South Elevations [↓](#)
- 5 Shadow Diagrams [↓](#)
- 6 Rear Shadow Elevations [↓](#)
- 7 Side Shadow Elevations [↓](#)
- 8 Landscape Plan [↓](#)
- 9 Clause 4.6 [↓](#)
- 10 Previous Planning Assessment Report - BPP Meeting 10/09/2019 [↓](#)

BAYSIDE COUNCIL

Supplementary Planning Assessment Report

Application Details

Application Number:	DA-2019/143
Date of Receipt:	1 May 2019
Property:	24 Albert Street, Botany Lot 1 in DP 518481
Owners:	Mr J O'Rourke & Mrs J V O'Rourke
Applicant:	Champion Homes Sales Pty Ltd
Proposal:	Demolition of existing structures, Torrens Title subdivision into two (2) lots and construction of two (2) semi-detached dwellings.
Recommendation:	Approval
Value:	\$698,598.00
No. of submissions:	One (1) – Original proposal Nil – Amended design
Author:	Christopher Lazaro, Development Assessment Planner
Date of Report:	8 November 2019

Key Issues

Bayside Council received Development Application No. 2019/143 on 1 May 2019 seeking consent for the demolition of existing structures, Torrens Title subdivision into two (2) lots, construction of two (2) semi-detached dwellings at 24 Albert Street, Botany.

The application was referred to the BPP meeting held on the 10 September 2019 where it was recommended for refusal. At the meeting, the Panel resolved the following:

1. *That the Development Application No. 2019/143 for the demolition of existing structures, Torrens Title subdivision into two (2) lots and construction of two (2) semi-detached dwellings, be DEFERRED to allow the applicant an opportunity to consider an overall redesign of the proposal to address the following matters:*
 - *Impact on solar access and privacy to the private open space on land adjoining to the south.*
 - *A more appropriate streetscape presentation which may or may not include the provision of a single driveway but gives consideration to the established residential streetscape, particularly in terms of the balance of hard surfaces and landscaping.*

Item Bayside Planning Panel Meeting

- *Consider a revised internal layout to achieve improved amenity for future occupants of the buildings.*
- *Provide a better urban design outcome considering the site constraints and the adjoining and surrounding residential development.*
- *Resolution of the stormwater design for the site.*
- *That the amended plans be notified in accordance with the DCP prior to the matter coming back to the Panel.*

2 *That the submitter be notified of the Bayside Local Planning Panel's decision.*

Amended plans were received on 14 October 2019 addressing the non-compliances, specifically with regards to car parking and solar access. Whilst the FSR still exceeds the maximum allowed for the site, an amended Clause 4.6 adequately justifies the contravention. Additionally, a second round of notification was carried out for the amended plans. No submissions were received. The amended plans are considered to address the concerns raised by the BPP.

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

It is RECOMMENDED:

1. That the Bayside Local Planning Panel, exercising the functions of the Council as the consent authority pursuant to s4.16 of the Environmental Planning and Assessment Act 1979 approves a variation to the floor space ratio prescribed by cl4.4 Floor Space Ratio of the Botany Bay Local Environmental Plan 2013, as it is satisfied that the applicant's request has adequately addressed the matters required to be demonstrated by cl4.6 of that Plan, and the proposed development would be in the public interest because it is consistent with the objectives of that particular standard and the objectives for development within the zone.
2. That development application DA-2019/143 for demolition of existing structures, Torrens Title subdivision into two (2) lots and construction of two (2) semi-detached dwellings at 24 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.
3. That the submitter be notified of the Bayside Local Planning Panel's decision.

Background

Application History

The history of the subject development application is summarised as follows:

- **1 May 2019** - DA-2019/143 was lodged
- **10 September 2019** - BPP considered and deferred application
- **14 October 2019** - Amended plans, SEE & Clause 4.6 submitted

Proposed amendments made to the development

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

Ground Floor Plan

- Separation of garages to opposite side of the dwellings;
- Re-arrange ground floor layout of rooms, which remain as laundry, W/C, kitchen, pantry, living and dining rooms (study/guest bedroom now located at ground floor in Dwelling 1); and
- Relocation of staircase.

First Floor Plan

- Re-arrange first floor layout of rooms, which remain as four bedrooms, bathroom, and ensuite (Dwelling 1 now has 3 bedrooms); and
- Relocation of staircase.

External

- Driveway relocation.

Assessment of Panel's deferment

The Bayside Planning Panel has decided that this item be deferred to allow the applicant an opportunity to consider an overall redesign of the proposal to address the following matters:

- Impact on solar access and privacy to the private open space on land adjoining to the south.
- A more appropriate streetscape presentation which may or may not include the provision of a single driveway but gives consideration to the established residential streetscape, particularly in terms of the balance of hard surfaces and landscaping.
- Consider a revised internal layout to achieve improved amenity for future occupants of the buildings.

- Provide a better urban design outcome considering the site constraints and the adjoining and surrounding residential development.
- Resolution of the stormwater design for the site.

Deferral Reason

Impact on solar access and privacy to the private open space on land adjoining to the south.

The applicant has submitted amended plans reducing the bulk on the first floor of Dwelling 1 by removing Bedroom 4 and replacing it with a study/guest bedroom on the ground floor. The applicant has provided the following justification for the proposed amendments:

- *We have drastically reduced the extent of the upper floor with our latest design and provided extensive shadow diagrams and elevation shadows of both the side and rear of the Unit to the south of our proposal at 12 Hambly Street. It is clear now that we no longer over shadow either the unit's side and rear glazing or private open space.*
- *The upper floor to Dwelling 1 was reduced in depth by 6.3m. The upper floor was also stepped away from the side boundary to Dwelling 1 by an additional 500mm.*

Officer's Comment: The proposal now complies with the solar access requirements of the BDDCP 2013.

Deferral Reason

A more appropriate streetscape presentation which may or may not include the provision of a single driveway but gives consideration to the established residential streetscape, particularly in terms of the balance of hard surfaces and landscaping.

The applicant has submitted amended plans separating the driveways to either end of the site. Additionally, the bulk created from the entry porches have been reduced through cantilevering the first floor. The applicant has provided the following justification for the proposed amendments:

- *We have taken on board the comments made to the façade by both yourself and the planning panel. We have removed the bulky front entry porches and provided a slightly recessed front entry which is covered by a cantilevered first floor. This style of entry was evident on the double storey units to 12 Hambly Street.*
- *The original design offered a lack of glazing to the ground floor. This has been improved by providing a sidelight to each side of the entry door. It was noted that a sidelight was provided to the entry door of the Unit directly adjacent to our property at 12 Hambly Street.*
- *Upper floor glazing has been significantly increased by proposing larger windows which complement the double storey units to 12 Hambly Street.*
- *We have maintained our use of building materials, brick, render, cladding etc. as this style of home was never really in questions and is our clients preferred method of construction. This style and look is very much in keeping with 16 William Street.*

Officer's Comment: The proposed amendments are supported.

Deferral Reason

Consider a revised internal layout to achieve improved amenity for future occupants of the buildings.

Officer's Comment: The amended plans reduce the amount of floor space dedicated to corridors and incorporate a more appropriate location for the staircases. The proposed amendments are supported.

Deferral Reason

Provide a better urban design outcome considering the site constraints and the adjoining and surrounding residential development.

Officer's Comment: The amended design addresses the site constraints as demonstrated in the above amendments to the bulk and scale and streetscape presentation of the original proposal. The proposed amendments are supported.

Deferral Reason

Resolution of the stormwater design for the site.

Officer's Comment: The amended stormwater design is supported by Council's Development Engineers subject to conditions.

Statutory Considerations

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

S.4.15(1) - Matters for Consideration – General

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

The following Environmental Planning Instruments are relevant to this application:

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

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 ("BASIX") applies to the proposed development. The development application was accompanied by amended BASIX Certificate No. 993642M_02 dated 3 October 2019 prepared by Building & Energy Consultants Australia committing to environmental sustainable measures.

State Environmental Planning Policy No. 55 – Remediation of Land

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

1. The site appears to have been continuously used for residential purposes;
2. The adjoining and adjacent properties are currently used for residential purposes;
3. The site and surrounding land were not previously zoned for purposes identified under Table 1 of the contaminated land-planning guide in SEPP 55, in particular industrial, agricultural or defence uses.

On this basis, the site is considered suitable in its present state for the proposed residential development. No further investigations of contamination are considered necessary.

Botany Bay Local Environmental Plan 2013

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

Relevant Clauses Principal Provisions of Botany Bay Local Environmental Plan 2013	Compliance Yes/No	Comment
Land use Zone		The site is located within the R2 Low Density Residential zone.
Is the proposed use/works permitted with development consent?	Yes	The proposed semi-detached dwellings are permissible in the R2 – Low Density Residential area with Council's consent under the BBLEP 2013.
Does the proposed use/works meet the objectives of the zone?	Yes	The proposed development is consistent with all the relevant objectives of the R2 – Low Density Residential zone. The proposal continues to provide for the housing needs of the community within a low density residential environment.
What is the proposed Floor Space Ratio? Does the Floor Space Ratio of the building comply with the maximum Floor Space Ratio?	No- Refer to Note 1 – Clause 4.6 Variation relating to FSR Standard	The subject site is located within Area 3 as shown on the FSR map. The proposed lots 11 and 12 have areas of 218m ² and 203m ² respectively which allows a maximum FSR of 0.5:1 as per Clause 4.4A (3)(d) of the BBLEP 2013. The proposed FSR for lots 11 and 12 is 0.55:1 and 0.59:1 respectively. In this regard, the proposed FSR is non-compliant with this provision. Refer to Clause 4.6 discussion.
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?	No- Refer to Note 1 – Clause 4.6 Variation relating to FSR Standard	The site is located in an Area 3 zone. The proposal does not comply with the maximum permitted FSR.

Relevant Clauses Principal Provisions of Botany Bay Local Environmental Plan 2013	Compliance Yes/No	Comment
6.3 – Stormwater Management	Yes	An absorption system has been provided with a total capacity of 5806L which satisfies Councils stormwater requirements. The application has been referred to Council's Development Engineer who is in support of the proposed stormwater system subject to conditions of consent.

Note 1 – Clause 4.6 Variation relating to FSR Standard

The site is located within 'Area 3' on the FSR map and therefore is subject to Clause 4.4A of the BBLEP2013. The objectives of this Clause are as follows:

- a) *To ensure that the bulk and scale of development is compatible with the character of the locality; and*
- b) *To promote good residential amenity.*

Pursuant to Clause 4.4A(3)(d), the proposal is defined as '*semi-detached dwelling*' and not defined as '*dwelling houses*' or '*multi-dwelling*' housing. As such the building type would fall under the category of '*all other development for the purpose of residential accommodation*'. Given the above, the maximum permitted FSR for the subject site is 0.5:1. The permissible FSR for a dwelling house on a lot of the same size is 0.8:1.

The proposed design amendments has resulted in a decrease to the FSR for both dwellings, however, still exceeds the maximum Floor Space Ratio development standard of 0.5:1 under the BBLEP2013.

The proposed FSR for Lot 11 is 0.57:1 or 13% variation to the development standard. The proposed FSR for Lot 12 is 0.62:1 or a 23% variation to the development standard.

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

4.6(3)(a) Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case

Applicant's Comment:

The applicant puts forth the argument that compliance with the Floor Space Ratio Development Standard would be 'unreasonable' or 'unnecessary'. The written request invokes a number of common ways in which a development standard can be found unreasonable or unnecessary as established by the Land and Environment Court in *Wehbe v Pittwater Council*.

The written request states that:

- The objectives of the development standard have been met through skilful design and that compliance with the numerical requirements would prevent the objectives of the standard from being met.
- Additionally, on lots of the same size, detached dwellings have a higher permitted FSR than what is permitted for semi-detached dwellings and would inherently undermine the objectives of the standard that relate to bulk and scale.

Planner's Comment:

Council supports the argument put forward in the applicant's written request that compliance with the development standard is unreasonable or unnecessary. The following comments are made in this respect:

- The development has satisfied the objectives relating to bulk and scale through skilful design given the proposal complies with the solar access requirements despite exceeding the maximum FSR.

4.6(3)(b) There are environmental planning grounds to justify the contravention of the standard

Applicant's comment:

In order to justify contravening the development standard, sufficient environmental planning grounds must be advanced in the applicant's written request. Furthermore, the justification must specifically relate to aspect of the proposal that contravenes the development standard, in this case the floor space ratio, and not the development as a whole as established in *Initial Action Pty Ltd v Woollahra Municipal Council 2018*. Additionally, the environmental planning grounds advanced must justify the contravention of the development standard, and not simply promote the benefits of carrying out the development as a whole.

The planning grounds advanced in the applicant's written request are as follows:

- The public will benefit from increasing the supply and diversity as well as renewing the existing housing stock.
- That a reduction in floor space will limit the internal amenities of the dwelling such as amount of bedrooms and size of living areas. Additionally, the proposal provides these amenities without creating adverse impacts to the surrounding properties.

Planner's comment:

Council supports the argument put forward in the applicant's written request that there are sufficient planning grounds to justify the contravention. The following comments are made in this respect:

- The increased internal amenity resulting from the additional FSR will benefit any future occupants without comprising the amenity of the surrounding residential area. Additionally, compliance with the development standard in this instance will reduce the internal amenity of the dwellings.

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

Planner's Comment: In this regard, Council supports the argument put forward by the applicant demonstrating the requirements of subclause (3).

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

Applicant's Comment:

The objectives of the development standard are:

- *To ensure that the bulk and scale of development is compatible with the character of the locality,*
- *To promote good residential amenity.*

The objectives of the zone are:

- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents*
- *To encourage development that promotes walking and cycling.*

The proposed development satisfies the above objectives as follows:

- The proposed scale of development (i.e., semi-detached dwellings to replace the existing aging dwelling house) will meet the housing needs of the community and add to the range of housing within the low density residential zone.
- Consideration has been given to the existing amenity and character of the area and it is considered that the proposed development is sympathetic and harmonious with nearby development in the Botany locality and will complement the existing character.
- The proposed development will enhance the amenity of the residential area by the provision of new housing stock and landscaping.
- Public transport is available within walking distance.

Planners Comments:

As established in *Initial Action Pty Ltd v Woollahra Municipal Council 2018*, if a development will be in the public interest if it is consistent with the objectives of the development standard and the objectives of the zone in which the development is proposed to be carried out. Council is satisfied that the proposed development is in the public interest as it is consistent with the following objectives:

- Floor Space Ratio Objectives:
 - The proposed bulk and scale is compatible with the character as it does not compromise the amenity of the surrounding residential environment; and
 - As such, the proposed development promotes good residential amenity.
- R2 – Low Density Residential Zone Objectives:
 - The proposed development provides for the needs of the community within a low density area by minimising impacts onto adjoining development.

With consideration given to the above, the proposal is consistent with the objectives of the FSR development standard and the objectives of the R2 – Low Density zone. Therefore it is concluded that the proposed development is in the public interest. In this regard, Council is satisfied that the applicant's written request provides adequate justification to vary the FSR development standard.

S.4.15(1)(a)(ii) - Provisions of any Draft EPI's

There are no current Draft EPIs applicable to this development:

S.4.15(1)(a)(iii) - Provisions of any Development Control Plan

Botany Bay Development Control Plan 2013

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

Part 3A – Parking & Access

The modification separates the two garages to opposite ends to the dwelling which complies streetscape presentation and both on and off-street parking requirements. As such, the controls in Part 3A – Parking & Access have been satisfied.

Part 3G – Stormwater Management

The amended plans include a revised stormwater design which is supported by Council's Development Engineer subject to conditions and therefore satisfies the controls outlined in Part 3G – Stormwater Management.

Part 4A – Dwelling Houses

Control	Proposed	Complies
4A.2.2 Site Analysis		
C1 A Site Analysis Plan shall be submitted with all Development Applications to Council. For information regarding what should be identified on a Site Analysis Plan, refer to Council's Development Application Guide which is available at the Customer Services Centre or online via Council's website.	A site analysis plan has been provided.	Y
C2 An effective site analysis will: a. Identify key opportunities and affectations of the site; b. Demonstrate reasoning behind key design decisions; c. Influence design decisions to minimise negative impacts on amenity; and	The proposal has been designed with consideration given to the various affectations influencing the site. Additionally, the design responds to neighbourhood characteristics such as solar access and level of on-street car parking.	Y

d. Demonstrate and uncover neighbourhood characteristics which the design will respond to.		
4A.2.3 Local Character		
C1 Development must be designed to respond to the opportunities and constraints identified in the Site Analysis.	The development has been designed to respond to the constraints of the site with regards to overshadowing impacts and visual privacy.	Y
C2 Development must comply with the relevant Desired Future Character Statements in Part 8 - Character Precincts.	The development complies with the desired future of the area. Refer to <i>Part 8 – Botany Character Precinct</i> .	Y
4A.2.4 Streetscape Presentation		
C1 New dwellings must be designed to reflect the relevant Desired Future Character Statement in Part 8 - Character Precincts and are to reinforce the architectural features and identity which contributes to its character. Applicants must address the design principles outlined in the statement.	The proposal is located in a R2 Low Density Residential Zone. The immediate context is relatively low scale, consisting of single and double storey detached residential dwellings. The existing character of the streetscape is relatively consistent in relation to dwelling typology and subdivision pattern. These include approximately 12m wide frontages, 0.9m side setbacks, gabled or hipped roof forms and detached single dwelling forms. Notwithstanding, newer developments have introduced more contemporary architectural styles to the streetscape, most notably at 12, 12a and 12b Hambly Street.	Y
C2 Development must be designed to reinforce and maintain the existing character of the streetscape.		
C3 Development must reflect dominant roof lines and patterns of the existing streetscape (refer to Figure 3).		
C4 Buildings must appropriately address the street. Buildings that are intrusive or inconsistent with the established development pattern will not be permitted.	The proposed dwellings will present to Albert Street and maintain a consistent building line. The entrances to both dwellings are apparent from the street.	Y
C6 The entrance to a dwelling must be readily apparent from the street.	The existing streetscape consists of a mix of gable and hipped roof forms. There are also a variety of materials used, most notably, brickwork and weatherboards. The proposal incorporates a hipped roof form as well as face and rendered brick for the façade.	Y
C7 Dwelling houses are to have windows to the street from a habitable room to encourage passive surveillance.		
C10 Development must retain characteristic design features prevalent in houses in the street including: verandas, front gables, window awnings, bay windows, face brickwork or stone details.		
4A.2.6 Floor Space Ratio		
C1 The maximum FSR of development must comply with the Floor Space Ratio Map and Clause 4.4 and 4.4A of the	Maximum FSR: 0.5:1 Proposed FSR:	No – Refer to Note 1 – FSR Variation

Botany Bay Local Environmental Plan 2013 (refer to Figure 12).	Dwelling 1: 0.55:1 (10.53% exceedance) Dwelling 2: 0.59:1 (18.13% Exceedance)	
4A.2.8 Building Setbacks		
<p>C.1 Dwelling houses must comply with the following minimum setbacks as set out in Table 1.</p> <p><i>Lot Width of less than 12.5m:</i> <i>Minimum front setback</i> – comply with the prevailing street setback or 6 metres (min) <i>Minimum side setback</i> - Up to 2 floors 900mm (Council may require an increased setback due to streetscape and bulk considerations) <i>Minimum rear setbacks</i> – 6 metres (min) <i>Zero lot lines (with Council Discretion)</i> – On merit based on building type and open space provisions <i>Eaves</i> – 450mm minimum setback</p>	<p><u>Proposed Front Setback:</u></p> <p><i>Dwelling 01:</i> 4.46m (460mm behind main building line) <i>Dwelling 02:</i> 4.46m (460mm behind main building line)</p> <p>This is considered acceptable however given the constraints of the site with regards to minimum garage setback being 5.5m. In this regard, achieving the 4m setback will result in additional GFA on top of the maximum permitted GFA for the site. The variation to the prevailing streetscape setback is considered minimal and will not adversely impact on the appearance of the streetscape.</p> <p><u>Proposed Side Setbacks:</u></p> <p><i>Dwelling 01:</i> Northern – Nil (common wall), Southern – 916mm <i>Dwelling 02:</i> Northern – Nil , Southern – Nil (common wall)</p> <p>A merit assessment of the side setbacks has been carried out and is discussed in detail in <i>Note 4 – Boundary Setbacks</i></p> <p><u>Proposed Rear Setbacks:</u></p> <p><i>Dwelling 01:</i> 6.95m <i>Dwelling 02:</i> 6.95m</p>	<p>Refer to Note 4 – Boundary Setbacks for merit assessment</p>
<p>C5 To avoid the appearance of bulky or long walls side and rear setbacks should be stepped or walls articulated by projecting or recessing window elements, or a variation in materials.</p> <p>C9 In certain circumstances where terrace house dwelling forms are proposed, Council may grant consent to a development with a 0 metre setback to a side boundary. However, Council must not grant consent, unless the applicant has satisfactorily addressed the questions identified in the Land and Environment Court Planning Principle “Building to the side boundary in</p>	<p>The proposal incorporates indents to both dwellings to ensure that large expanses of blank walls along the side boundaries between neighbouring properties are avoided and internal amenity of indoor living spaces is achieved.</p> <p>Refer to <i>Note 4 – Boundary Setbacks</i> for a detailed merit assessment.</p>	<p>Y</p> <p>Refer to Note 4 – Building Setbacks</p>

residential areas" established in Galea v Marrickville Council [2003] NSWLEC 113 (or as updated) and consideration has been given to that statement. The Planning Principle is available to view on the Land and Environment Court's website (www.lawlink.nsw.gov.au/lec).		
4A.2.9 Landscape Area		
<p>C1 Landscaped areas are to be designed accordance with Part 3L - Landscaping.</p> <p>C2 Development shall comply with the following minimum landscaped area requirements, based on the area of the site in Table 2.</p> <p>Table 2 requires the following minimum landscaped area:</p> <p>Less than 250 m² - 15%</p> <p>Landscaped Area is to be fully permeable deep soil zones which are areas of natural ground or soil, not planter boxes (refer to definition in Part 3L – Landscaping).</p> <p>C3 Landscaped Area is to be fully permeable deep soil zones which are areas of natural ground or soil, not planter boxes (refer to definition in Part 3L – Landscaping).</p> <p>C7 Where a building, driveway or pool is sited at the location of an existing tree, Council may require plans to be modified.</p> <p>C8 The front setback is to be fully landscaped with trees and shrubs and is not to contain paved areas other than driveways and entry paths. Paving is restricted to a maximum of 50% of the front setback area.</p>	<p>Landscaped areas for each lot listed below:</p> <p>Lot 11: 60.74 sqm / 25.6%</p> <p>Lot 12: 53.32 sqm / 26.1%</p> <p>The proposed landscaped area is predominantly deep soil area.</p> <p>The proposed driveways will result in the removal of one street tree. However, this is unavoidable and there is sufficient space to accommodate a mature street tree.</p>	<p>Y</p> <p>Y – Subject to condition</p> <p>Y</p> <p>No – Considered acceptable</p>
4A.4.1 Visual Privacy		
<p>C1 The privacy needs of residents should be considered in designing a new dwelling or alterations and additions to a dwelling. Windows are to be located so they do not provide direct or close views into the windows of other</p>	<p>The proposal minimises visual privacy impacts to neighbouring properties by preventing direct sightlines to adjoining windows and private open space areas.</p>	<p>Y</p>

<p>dwelling, particularly those of living areas.</p> <p>C2 Visual privacy for adjoining properties must be minimised by:</p> <ul style="list-style-type: none"> ▪ Using windows which are narrow or glazing which is translucent or obscured ▪ Ensuring that windows do not face directly on to windows, balconies or courtyards of adjoining dwellings ▪ Screening opposing windows, balconies and courtyards; and ▪ Increasing sill heights to 1.5 metres above floor level. 	<p>Additionally, windows for habitable rooms that face side and rear boundaries have sill heights of 1.6m above the FFL and are offset from neighbouring windows.</p>	
<p>4A.4.3 Solar Access</p>		
<p>C1 Buildings (including alterations/additions/extensions) are to be designed and sited to maintain approximately 2 hours of solar access between 9am and 3pm on 21 June to windows in living areas (family rooms, rumpus, lounge and kitchens) and to 50% of the primary private open space areas of both the subject site and adjoining properties.</p> <p>C2 Solar panels on adjoining houses that are used for domestic needs within that dwelling must not be overshadowed for more than two hours between 9am to 3pm in mid-winter.</p> <p>C3 Where the primary private open space of an adjoining development currently receives less than the required amount of sunlight on 21 June (50% coverage for a minimum of 2 hours), the proposed development must not further reduce the amount of solar access to the private open space of the adjoining development.</p> <p>C4 Council may grant consent to a development that does not comply with the 2 hours of solar access requirement. However, Council must not grant consent, unless the applicant has satisfactorily addressed the questions identified in the Land and Environment Court Sunlight Planning Principle. The Planning Principle is updated by Court decisions and is available to view on the Land and Environment Court's website (www.lawlink.nsw.gov.au/lec).</p>	<p>Shadow diagrams were provided with the subject application. The lots are east-west orientated. There are no solar panels on the adjoining dwellings. The property to the south will receive solar access to more than 50% of their private open space area from 12.30pm onwards. Additionally more than 50% of the surface area of the rear living room window will receive solar access from 12.30pm onwards. In this regard the proposal complies with Council's solar access requirements.</p>	<p>Y</p>

<p>C5 Where a neighbouring development currently receives less than the required amount of sunlight (on 21 June) the amount of sunlight available on the 21 March or the 21 September will be assessed and form a merit based assessment of the Development Application.</p>		
<p>4A.4.7 Vehicle Access</p>		
<p>C1 Driveways within a property shall have a minimum width of 3 metres. Note: An additional clearance of 300mm is required (for each side) if the driveway is located adjacent to a solid structure (i.e. masonry wall).</p> <p>C2 The width of the vehicular crossing over the Council's road reserve shall be a minimum of 3 metres for a single garage and a maximum of 5.5 metres for a double garage at the property boundary and at 90° to the kerb.</p> <p>C3 Driveways must be designed to comply with AS2890.1 (also refer to Part 3A - Car Parking).</p> <p>C4 Vehicular crossings shall be sited so that existing street trees, bus stops, bus zones, power lines and other services are not affected.</p> <p>C6 The number of vehicle crossings is to be limited to one (1) per allotment.</p> <p>C7 Vehicular crossings shall be sited so as minimise any reduction in on-street kerb side parking.</p>	<p>The development proposes two driveways each 3m wide. The layout of the driveways maintains the existing amount of on-street car parking A replacement tree condition will be imposed as a condition of consent.</p> <p>The application was referred to Council's Development Engineer who in support of the proposed layout. The proposed car parking situation has been discussed in detail in Part 3A of the report.</p>	<p>Y</p>
<p>4A.4.8 Car Parking</p>		
<p>C1 Development must comply with Part 3A - Car Parking.</p> <p>C4 Car parking structures must be located and designed to:</p> <p>(i) Comply with AS2890.1 and</p> <p>(ii) Conveniently and safely serve all users;</p> <p>(iii) Enable efficient use of car spaces, including adequate manoeuvrability for vehicles between the site and the street;</p> <p>(iv) Not dominate or detract from the appearance of the existing dwelling or new development and the streetscape;</p> <p>(v) Be compatible in scale, form,</p>	<p>The proposal complies with Part 3A – Car Parking.</p> <p>The proposed driveway layout is considered to be suitable for the site as it allows for adequate manoeuvrability, minimises the amount of paved area, maintains existing on-street car parking spaces and provides sufficient room for street tree.</p>	<p>Y</p>

<p>materials and finishes with the associated dwelling;</p> <p>(vi) Not reduce availability of kerbside parking;</p> <p>(vii) Retain any significant trees; and</p> <p>(viii) Have minimal impact on existing fences and garden areas that contribute to the setting of the associated dwelling and the character of the streetscape.</p> <p>C8 In new development the garage/carport is to be setback 5.5 metres from the front boundary. This may be difficult for small allotments with a frontage of 12.5 metres or less. In these cases Council will consider whether or not to require a setback of 5.5 metres on merit – this merit based assessment will include whether or not the proposed garage will have a dominant impact on the streetscape.</p> <p>C9 Garages, parking structures (i.e. carports & car spaces) and driveways are not to dominate the street.</p>	<p>The garage is setback 5.5m from front boundary and is therefore compliant with this control.</p> <p>The proposed garages and driveway layouts are not considered to dominate the street. Additionally, sufficient space for landscaping has been provided which will ensure landscaping can subdue the appearance of the building.</p>	<p>Y</p> <p>Y</p>
--	---	-------------------

Note 2 – Building Setbacks

Zero lot lines on sites with a lot width less than 12.5m are to be assessed on merit depending on building type and open space provisions. The objectives for Part 4A.2.8 Building Setbacks area as follows:

O1.To ensure that the relationship between side and rear setbacks and building heights maintain the amenity of neighbouring residential sites.

As discussed in the Land and Environment Court (Galea v Marrickville Council [2005] NSWLEC 113) planning principle, to determine whether building on the boundary is appropriate, the following questions should be asked:

1. Is the street characterised by terrace housing?

The street is not characterised by terrace housing; the most prominent building typology is detached dwellings. One semi-detached dwelling is located at 23-25 Albert Street with a number of other examples present in the immediate locality.

2. What is the height and length of the wall on the boundary?

The northern boundary wall has a length of 6m and a height of 4.03m which includes a 1m high parapet.

3. Has the applicant control over the adjoining site(s) or the agreement of their owners?

The applicant has not provided Council with any evidence to show that they have control over the adjoining site(s) or the agreement of their owners.

4. What are the impacts on the amenity and/or development potential of adjoining sites?

The impacts on the amenity relate to the reduction in daylight able to be received as the boundary wall will impact the southern elevation of the neighbour to the north. The unnecessary height of the parapet further impacts on the amenity and adds to the bulk and scale of the development.

5. Are there arrangements in place for the maintenance of the wall or gutters?

Currently there are no arrangements in place for the maintenance of walls, gutters and downpipes to the adjoining properties.

Officer's Comment:

The nil setback for the garage wall is considered acceptable as it is single-storey and is for a relatively short depth of 5.9m. Additionally, providing a 900mm setback cannot be achieved due to the narrow width of the allotment. In this regard the proposed nil setback is considered acceptable.

Part 8- Botany Character Precinct

The site is located within the R2 Low Density Residential Zone of the Botany Precinct on the western side of Albert Street between Morgan Street to the north and Hambly Street to the south. Refer to the table below which addresses each point regarding the 'Desired Future Character' for Botany.

Control	Proposed	Complies
Function and Diversity <ul style="list-style-type: none"> Enhance the public domain and streetscapes within the Precinct. Development should: <ul style="list-style-type: none"> promote neighbourhood amenity and enhance pedestrian comfort; encourage site layout and building styles and designs that promote commonality and a visual relationship with the surrounding built form and dwelling styles; encourage dwelling styles that maintain and complement existing development patterns; encourage a strong landscape and vegetation theme within both the public and private domain; 	The proposal promotes neighbourhood amenity and has responded to the various constraints of the site. Additionally, the proposal will not detract from the existing streetscape.	Y

Form, Massing, Scale and Streetscape <ul style="list-style-type: none"> Encourage development to follow the topography of the land. Maintain and enhance low density residential accommodation in the form of detached/attached dwellings with a maximum height of 2 storeys in the remainder of the Precinct. Promote site access and parking facilities that do not dominate the streetscape. Encourage new development or alterations and additions to existing development to complement the height and architectural style found in the immediate vicinity, particularly where there is an established character. Maintain roof forms to reflect the characteristics of the prevailing designs within the street. 	<p>The proposed hipped roof form is consistent with other roof forms found in the street which is predominantly made up of gable and hipped roof forms. In this regard, the proposed roof form and dwelling style is acceptable. The proposed driveway layouts are suitable for the site.</p>	Y
Setbacks <ul style="list-style-type: none"> Retain front setbacks which are consistent within a street and promote landscaping to soften the built form. Retain side setbacks, where they are consistent within a street 	<p>The proposed setbacks have been assessed and are considered acceptable for the site.</p>	Y
Landscaping <ul style="list-style-type: none"> Encourage landscaping within the front and side setback to soften the built form particularly in high density terrace, unit and residential flat buildings. Promote landscaping in rear private open space areas to provide privacy to adjoining properties. Maintain street trees. 	<p>Landscaping has been proposed within the front and rear setbacks. The existing mature tree in the rear yard is to be retained. Additionally, the street tree is to be replaced.</p>	Y
Subdivision <ul style="list-style-type: none"> Retain and preserve the rectilinear grid pattern within the Precinct 	<p>The proposed subdivision is considered to preserve the rectilinear grid within the Precinct by maintain site depth and shape.</p>	Y
Solar Access <ul style="list-style-type: none"> Encourage buildings to maximise solar access to surrounding residential properties and to public and private open spaces. Preserve solar access to adjoining properties. 	<p>The proposed development maintains acceptable levels of solar access to the neighbouring properties, particularly the southern neighbour which will be the most affected.</p>	Y

Traffic and Access <ul style="list-style-type: none"> • Encourage new development to have a minimal impact on traffic flow and demand for on street parking spaces. • Encourage development to provide adequate on-site parking to assist in reducing traffic congestion on local road networks. 	The proposed driveway layout maintains the existing level of on-street car parking. The proposal will have minimal impacts on traffic flow.	Y
---	---	---

As such the proposal is suitable for the site and is consistent with the desired future character of the Botany Precinct pursuant to Botany Bay Development Control Plan, Part 8 – Character Precincts.

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

The relevant provisions of the *Environmental Planning and Assessment Regulation 2000* have been considered in the assessment of the application. No concerns have been identified.

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

The likely impacts of the development have been outlined throughout the report and are considered acceptable.

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

The site is located within a 20-25 ANEF contour and is affected by aircraft noise. An acoustic report has been providing addressing the requirement in the relevant Standards. There are no other site constraints affecting the suitability of the site for the development. In this regard, the site is suitable for the type of development being proposed.

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

In accordance with Part 2 of the Botany Bay Development Control Plan 2013 – Notification and Advertising, a second round of notification was sent to the surrounding property owners for a 14 day period from 1 to 16 October 2019. No submissions were received.

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

The proposed development is consistent with the objectives of the zone and maintains an acceptable level of residential amenity currently experienced in the area. As such, the proposal is considered to be in the public interest.

Section 7.11 Contributions

The following Section 7.11 Contributions would need to be paid at the following rates should approval be granted.

Community Facilities:	\$ 1,637.16
Recreation and Open Space:	\$ 16,890.83
Transport Facilities:	\$ 1,326.38
Administration:	\$ 145.62
Total in 2018/19:	\$ 20,000.00

Conclusion

Development Application No. 2019/143 was lodged on 1 May 2019 seeking consent for the demolition of existing structures, Torrens Title subdivision into two (2) lots and the construction of two (2) semi-detached dwellings at 24 Albert Street, Botany.

The proposal has been assessed in accordance with Section 4.15 of the *Environmental Planning and Assessment Act*. The non-compliances of the original application are considered to have been resolved in the amended plans received on 26 September 2019. Additionally, there were no submissions resulting from the amended plans. Therefore the proposed development is recommended for approval subject to conditions in the attached schedule.

Attachment**Schedule 1 – Conditions of Consent****Premises: 24 Albert Street, Botany****DA No: 2019/143****SCHEDULE OF CONSENT CONDITIONS****GENERAL CONDITIONS**

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

Drawing	Author	Dated
Site Plan – Rev B – Sheet 3	Champion Homes	Dated: 11/10/2019 Received: 14/10/2019
Ground Floor Plan – Rev B – Sheet 7		Dated: 11/10/2019 Received: 14/10/2019
First Floor Plan – Rev B – Sheet 8		Dated: 11/10/2019 Received: 14/10/2019
E&W Elevations – Rev B – Sheet 9		Dated: 11/10/2019 Received: 14/10/2019
N&S Elevations – Rev B – Sheet 10		Dated: 11/10/2019 Received: 14/10/2019
Section – Rev B – Sheet 12		Dated: 11/10/2019 Received: 14/10/2019
Landscape Plan	iScape Landscape Architecture	Dated: -/10/2019 Received: 14/10/2019

Reference Documents	Author	Dated
BASIX Certificate No. 993642M_02	Building & Energy Consultants Australia	Dated: 3/10/2019 Received: 14/10/2019
Colour Schedule	Champion Homes	Dated: - Received: 14/10/2019
Aircraft Noise Acoustic Report	Acoustic, Vibration & Noise Pty Ltd	Dated: 29/04/2019 Received: 1/05/2019
Waste Management Plan	D-Plan Urban Planning Consultants Pty Ltd	Dated: - Received: 1/05/2019
Soil Drainage Plan	ANAcivil Pty Ltd	Dated: 30/09/2019 Received: 14/10/2019

- This Consent relates to land in Lot 1 in DP 518481 and, as such, building works must not encroach on to adjoining lands or the adjoining public place.

3. 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.
4. Pursuant to clause 97A(3) of the *Environmental Planning & Assessment Regulation 2000*, it is a condition of this development consent that all the commitments listed in the relevant BASIX Certificate (as referenced at Condition No. 1) for the development are fulfilled.
- Note:
- a) Relevant BASIX Certificate means:
 - 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*.
5. The consent given does not imply that works can commence until such time that:
- a) Detailed plans and specifications of the building have been endorsed with a Construction Certificate by:-
 - i) The consent authority; or,
 - ii) An accredited certifier; and
 - b) The person having the benefit of the development consent:-
 - i) Has appointed a 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.
- 6. Any changes to the approved materials of the dwelling will require a lodgement of a Section 4.55 Modification of Consent Application to assess the proposed changes.

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

- 7. Prior to the issue of the Construction Certificate, a detailed stormwater drainage management plan for the disposal of all roof-water, surface water and subsoil water from the site shall be submitted and approved by the Principal Certifier. The drainage management plan for the Construction Certificate shall comply with the requirements as detailed in the Botany Bay Development Control Plan Stormwater Management Technical Guidelines.

The following amendments are also to be included in the design:

- a) The plans shall be generally in accordance with stormwater management plans prepared by ANA civil Pty Ltd drawing number 2019034H01 Revision 3 Dated 30-09-2019.
 - b) The assumed jumbo trench volume must be estimated in accordance with product specifications.
- 8. Prior to the issue of the Construction Certificate, the approved plans must be submitted to Sydney Water Tap in™ online service to determine whether the development will affect any Sydney Water sewer or water main, stormwater drains and/or easement, and if further requirements need to be met.

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

<https://www.sydneywater.com.au/SW/plumbingbuildingdeveloping/building/sydneywaterapin/index.htm>

- 9. Prior to the issue of any Construction Certificate, any part of the proposed building within 3m of the proposed detention tank, underground rainwater tank or absorption trench shall be constructed on a pier and beam foundation with piers extending no less than 300mm below the bottom of the tank or trench base.
- 10. Prior to the issue of the Construction Certificate, a certificate prepared by an appropriately qualified Geo-technical Engineer shall be submitted to the Principal Certifier certifying the infiltration rate of the underlying material and the level of the ground water table and is to be utilised in the design of the onsite infiltration/absorption system. The reporting requirements are to be as described in Council's Stormwater Management Technical Guidelines. A copy of the report is to be provided to the council.
- 11. Prior to the issue of the Construction Certificate, a Construction Traffic Management Plan (CTMP) must be submitted to and approved by Principal Certifier. Approval of the CTMP may require endorsement from the Bayside Traffic Committee. The CTMP shall include, but not limited to the following: vehicle routes, number of construction vehicles, hours of operation, access arrangements, pedestrian management, construction vehicle turning templates and parking management for workers.

The CTMP shall be certified by an appropriately accredited person and/or Roads and Traffic Authority Traffic Controller. The TMP shall be supported by a traffic control plan prepared by a suitably qualified and RTA accredited Work Site Traffic Controller, designed in accordance with the requirements of the Roads and Traffic Authority's Manual, Traffic Control at Work Sites current version, and the current Australian Standards, Manual of Uniform Traffic Control Devices Part 3, 'Traffic Control Devices for Works on Roads'.

12. Driveway width shall comply the Council with Council's technical specification for traffic, parking and access. the driveway width at the boundary must not exceed 3m wide for each dwelling. The driveway layout design shall provide for a distance of 5.6m between the driveways at the kerb face to provide an on-street parking space.
13. The approved elements including driveways, stormwater connections, (etc.) prevail over the location of existing utility services and power poles. All services shall be adjusted at the applicant's cost to suit the construction of approved design elements. Applicants must seek approval from the relevant public utility, state authority or service provider.
14. 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.
15. The Development is to be constructed to meet all recommendations and requirements that have been detailed in the acoustical construction report prepared by Acoustic, Vibration & Noise Pty Ltd, dated 29 April 2019. The measures as detailed in the acoustic assessment report 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 AS 2021-2000 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 (advice concerning noise from air conditioners is attached below).

16. A Public Domain Frontage Works application shall be submitted separately to Council, with Civil and Landscape works plans prior issue of Construction Certificate. All public domain landscape works shall be carried out as per Council specifications.
17. 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.
18. The applicant must prior to the issue of the construction certificate pay the following fees:-
 - a) Footpath Crossing Deposit \$3,254.00 (Refer to Condition No. 21)
 - b) Development Control \$899.00
 - c) Section 94 Contributions \$20,000.00 (Refer to Condition No.22)
19. Prior to the issue of the Construction Certificate, revised plans are to be provided to the Certifying Authority for approval requiring the following modifications;
 - a) In accordance with the City of Botany Bay Street Tree Masterplan, one (1) street tree of at least 45 litre pot size is to be planted in the verge strip at the front of 24 Albert Street. The proposed species for the street are *Eucalyptus mannifera*, *Eucalyptus haemastoma* or *Corymbia maculate*.
 - b) The boundary wall adjacent to 22 Albert Street is to be of a high standard of construction and consist of low maintenance materials such as face brick.
20. Prior to the issue of any Construction Certificate, the applicant shall contact "Dial Before You Dig" to obtain a utility service diagram for, and adjacent to the property. The sequence number obtained from "Dial Before You Dig" shall be forwarded to Certifying Authority. All utilities within the work zone shall be protected during construction.

Any adjustments or damage to public utilities/services as a consequence of the development and associated construction works shall be restored or repaired at the applicant's expense.
21. Prior to the issue of any Construction Certificate, the applicant shall lodge a Footpath Crossing Deposit of \$3,254.00 (GST Exempt) by way of cash deposit or unconditional bank guarantee to Council against possible damage to Council's asset during the course of the building works. The deposit will be refunded subject to inspection by Council 12 months after the completion of all works relating to the proposed development and Final Occupational Certificate has been issued.
22. The payment of the following monetary contributions in accordance with Council's Section 94 Contributions Plan 2016. This results in a total contribution of **\$20,000.00**, to be paid to Council prior to the issue of the Construction Certificate.

23. Prior to the issue of any Construction Certificate, all driveways/access ramps/vehicular crossings shall conform to the current Australian Standards AS 2890.1 and Council's Infrastructure Specifications.

As part of this development, a new concrete driveway shall be constructed. A new three (3) metre wide driveway layback shall be constructed as part of the new driveway. A minimum of one (1.0) metre of kerb and gutter either side of the driveway layback shall be replaced to enable the correct tie-in with the existing kerb and gutter.

24. 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.
25. Prior to the issue of a Construction Certificate for the development an application for Property Address Allocation and associated fee are required to be submitted to Council. All new addresses will be allocated in accordance with AS/NZS 4819:2011 Rural and Urban Addressing Standard and Section 5.2 of the NSW Address Policy.

The form is available for download at:

<https://www.bayside.nsw.gov.au/sites/default/files/2018-10/Property%20Address%20Allocation%20Form.pdf>

Derivation and production of address data components are governed by the NSW Addressing User Manual to ensure consistency of application.

http://www.gnb.nsw.gov.au/data/assets/pdf_file/0007/199411/NSW_Addressing_User_Manual.pdf

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

26. Prior to the commencement of any work on site, a **Tree Protection Zone (TPZ)** shall be installed around the *Angophora costata* (Smooth Barked Apple) located along the rear boundary and shall remain until the completion of all building and hard landscape construction.

The **TPZ** must incorporate the following measures:

- a) Compliance with AS 4970-2009 protective fences consisting of chain wire mesh temporary fence panels with a height 1.8m shall be erected outside the drip line. The fence panels must be securely mounted and braced to prevent movement. The area within the fenced area is to be mulched with leaf mulch to a depth of 100mm and a weekly deep watering program undertaken.
- b) The protective fence shall consist of para-webbing or chain wire mesh mounted on star pickets or similar metal posts, shall be placed prior to the commencement of any work on site and shall remain until the completion of all building and hard landscape construction.
- c) The TPZ is a "No-Go" zone. There shall be 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 the applicants Arborist or Council's Tree Officer.

27. 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.

Additionally a dilapidation survey of the adjoining dwelling's southern elevation (22 Albert Street, Botany), including a photographic survey prepared by a Practicing Structural Engineer, must be prepared in relation to the proposed development at 24 Albert Street, Botany. A copy of the dilapidation survey together with the accompanying photographs shall be provided to the above property owner of 22 Albert Street, Botany. 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.

28. 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.
29. 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.

30. 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.
31. 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.
32. Building plans must be lodged through a Sydney Water Tap In Service for approval prior to commencement of works.
33. This Consent shall not preclude the demolisher from giving notice to other statutory authorities, such as Sydney Water Corporation, WorkCover, etc.
34. 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.
35. The principal contractor or owner builder must install and maintain water pollution, erosion and sedimentation controls in accordance with:
- a) The *Soil and Water Management Plan*;
 - b) "Do it Right On Site, Soil and Water Management for the Construction Industry" published by the Southern Sydney Regional Organization of Councils, 2001; and
 - c) "*Managing Urban Stormwater – Soils and Construction*" published by the NSW Department of Housing 4th Edition" ('The Blue Book').
 - d) Where there is any conflict The Blue Book takes precedence.

Note: The International Erosion Control Association – Australasia (<http://www.austieca.com.au/>) lists consultant experts who can assist in ensuring compliance with this condition. Where Soil and Water Management Plan is required for larger projects it is recommended that this be produced by a member of the International Erosion Control Association – Australasia.

Note: The "Do it Right On Site," can be downloaded free of charge from Council's website at: <http://www.botanybay.nsw.gov.au/council/services/>

planning/factsheets.htm, further information on sediment control can be obtained from www.ssroc.nsw.gov.au.

Note: A failure to comply with this condition may result in penalty infringement notices, prosecution, notices and orders under the Act and/or the Protection of the Environment Operations Act 1997 without any further warning. It is a criminal offence to cause, permit or allow pollution.

Note: Section 257 of the Protection of the Environment Operations Act 1997 provides inter alia that "the occupier of premises at or from which any pollution occurs is taken to have caused the pollution".

Warning, irrespective of this condition any person occupying the site may be subject to proceedings under the Protection of the Environment Operations Act 1997 where pollution is caused, permitted or allowed as the result of their occupation of the land being developed.

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

(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)).

CONDITIONS WHICH MUST BE SATISFIED DURING WORKS

37. 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.
38. Separate permits are required to be obtained and approved by Council for all works including but not limited to 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.
39. 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 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 2014;
 - d) DECC Waste Classification Guidelines 2008.
40. No demolition materials shall be burnt or buried on the site.
41. All services (Utility, Council, etc) within the road reserve (including the footpath) shall be relocated/adjusted to match the proposed/existing levels as required by the development.
42. The proposed development shall comply with the following:
 - a) 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.
43. 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.
44.
 - 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 Energy Australia, 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.
 - 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.
- 45. Throughout the construction period, Council's warning sign for soil and water management shall be displayed on the most prominent point of the building site, visible to both the street and site workers. A copy of the sign is available from Council's Customer Service Counter.
- 46. The approved Waste Management Plan shall be complied with at all times during construction and on-going use of the site.
- 47. All possible and practicable steps shall be taken to prevent nuisance to the inhabitants of the surrounding neighbourhood from wind-blown dust, debris, noise and the like.
- 48. If any excavation associated with the proposal extends below the level of the base of the footings of a building on an adjoining allotment of land or the common boundary fence the person causing the excavation to be made:
 - a) Must preserve and protect the building/ fence from damage; and,
 - b) If necessary, underpin and support such building in an approved manner;
 - 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 (swimming pool) or other approved methods of preventing movement or other approved methods of preventing movement of the soil must be provided and:-
 - ii) Adequate provision must be made for drainage.

- f) All excavations and backfilling shall be executed safely and in accordance with appropriate professional standards; and all excavations shall be properly guarded and protected to prevent them from being dangerous to life or property.
49. Any dewatering is not permitted on this site without NSW-EPA approval.
50. 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:
 - (a) 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:
 - (b) 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
 - (c) All possible steps should be taken to silence construction site equipment.
51. 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:
 - 3 to a public sewer; or

- 4 if connection to a public sewer is not practicable to an accredited sewerage management facility approved by the Council; or,
 - 5 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.
- 52. The principal contractor or owner builder must install and maintain water pollution, erosion and sedimentation controls as required by this consent and the Protection of the Environment Operations Act 1997.
- 53. 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.
- 54.
 - 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.
- 55. During demolition, excavation and construction, care must be taken to protect Council's infrastructure, including street signs, footpath, kerb, gutter and drainage pits etc. Protecting measures shall be maintained in a state of good and safe condition throughout the course of construction. The area fronting the site and in the vicinity of the development shall also be make safe for pedestrian and vehicular traffic at all times. Any damage to Council's infrastructure (including damage caused by, but not limited to, delivery vehicles, waste collection, contractors, sub-contractors, concrete delivery vehicles) shall be fully repaired in accordance with Council's specification and AUS-SPEC at no cost to Council.

56. 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.
57. 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.

PRIOR TO THE ISSUE OF SUBDIVISION CERTIFICATE

58. An appropriate instrument in accordance with Council Specification must be registered on the title of the property, concerning the presence and ongoing operation of the On-Site Retention system. A Works-as-Executed plan must be submitted Council at the completion of the works, the plan must clearly illustrate dimensions and details of the site drainage and the On-Site Retention system. The plan shall be prepared by a registered surveyor or an engineer. A construction compliance certification must be provided to verify, that the constructed stormwater system and associate works have been carried out in accordance with the approved plan(s), relevant codes and standards.

A Section 88B Instrument and four copies shall be lodged with the Subdivision/Strata Certificate

59. The Granting of service easement shall be undertaken to the satisfaction of Council consideration shall be given to the following:
- a) Right of carriageway
 - b) Provision of Drainage Easement
60. A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained from Sydney Water Corporation.

An application must be made through an authorised Water Servicing Coordinator. Please refer to the Building Developing and Plumbing section of the website 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 the release of the Subdivision/Strata Certificate.

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

61. Prior to the issue of any Occupation Certificate, the approved subdivision is to be registered. The linen plans are to be submitted to Council prior to the release of the Occupation Certificate, and proof of registration with the Land and Property Information is to be submitted prior to occupation and use of any building.
62. Prior to the issue of any Occupation Certificate, the Principal Certifying Authority shall confirm that all tree works as per Condition No. 19 a) and 26 have been suitably carried out. If the tree was found to be in decline, damaged (including roots), dead, excessively pruned or removed without Council permission or, if tree protection measures were not satisfied at any time, a replacement tree will be required to be planted.
63. Prior to issue of any Occupation Certificate, the following must be complied with:
 - a) All landscape works are to be carried out in accordance with the approved landscape plans (refer to Condition 1) for the approved development. The landscaping is to be maintained to the approved standard at all times.
 - b) A Landscape Architect shall provide a report to the certifying authority (with a copy provided to Council, if Council is not the principal certifier) stating that the landscape works have been carried out in accordance with the approved plans and documentation.
 - c) All trees shall be located within mulched landscaped beds except where this may interfere with the performance of an on-site detention system.
 - d) Stormwater and drainage systems are not to be located in, or under those areas shown as landscaped beds, or where existing or proposed trees are located.
 - e) Any irrigation system or outdoor tap shall be connected to rainwater tank as a Water Sensitive Urban Design principle.
64. Prior to the issue of an Occupation Certificate, the following works will be required to be undertaken in the road reserve at the applicant's expense.
 - a) Construction of a concrete footpath and /or grass verge along the frontage of the development site;
 - b) Construction of a new fully constructed concrete vehicular entrance/s; and
 - c) Removal of the existing concrete vehicular entrance/s, and/or kerb laybacks which will no longer be required.

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

65. Prior to the issue of an Occupation Certificate, the constructed stormwater drainage system shall be inspected and certified by a suitably qualified engineer. The certification shall demonstrate compliance with the approved plans, relevant Australian Standards, Council Specifications.
66. Prior to release of the Occupation Certificate the developer must submit to the Principal Certification Authority an acoustic report to verify that the measures stated in the approved acoustic report have been carried out and certify that the construction meets the above requirements. The report must be prepared by a qualified practicing acoustic engineer (who is a member of either the Australian Acoustical Society or the Association of Australian Acoustical Consultants).
67. Prior to the issue of any Occupation Certificate, satisfactory inspection reports (formwork and final) for any works on the road reserve shall be obtained from Council's engineer and submitted to the Certifying Authority.
68. 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.
69. The Council nature strip at any site frontage shall be repaired and/or replaced and maintained in accordance with Council Specification at the completion of all construction work at the Applicant's expense.
70. 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

71. Street numbers shall be clearly displayed with such numbers being of contrasting colour and adequate size and location for viewing from the footway and roadway.
72. 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.
73. 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.
74. 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.

75. 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.

76. 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.

NOTE:

FINAL LOCATION & SHAPE OF ALL LANDSCAPING WORKS, INCLUDING DRIVEWAY, IS TO BE DETERMINED ON SITE AT THE DIRECTION OF THE BUILDER.

FINAL RIDGE AND FLOOR LEVELS ARE ACCEPTED TO VARY BY $\pm 100\text{mm}$ FROM THE APPROVED DOCUMENTS, ALL DUE TO CONDITIONS ENCOUNTERED ON SITE DURING BUILDING WORKS.

WHERE RETAINING WALLS ARE REQUIRED TO CONTAIN FILL, THE BUILDER MAY USE DEEPENED EDGE BEAMS TO SLABS INSTEAD.

LEGEND

- HOT WATER TANK
- WATER METER
- TELECOM PIT
- MANHOLE (SEWER/STORMWATER)
- SEWER TERMINAL MAINTENANCE SHIFT
- VEHICLE CROSSING
- KERB INLET PIT
- LIGHT POLE
- ELECTRICITY POLE
- ELECTRICITY PILLAR
- HYDRANT
- STOP VALVE
- KERB OUTLET
- SERVICE CONDUIT
- TREE (DIAMETER)
- GARDEN BED
- SHRUB
- DENOTES PHOTO POINT

ALL KERB LEVELS REPRESENT TOP OF KERB.

DATUM OF LEVELS: AUSTRALIAN HEIGHT DATUM

ORIGIN OF LEVELS: PM 29516

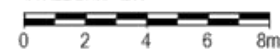
RL 6.795

SOURCE OF LEVELS: SCIMS

www.dialbeforeyoudig.com.au



SCALE BAR 1:200



Figured dimensions to be used in preference to scaling this drawing.
Do not assume - if in doubt ASK.



CHAMPION HOMES

Suite 1, Level 1 600 Hoxton Park Road, Hoxton Park NSW 2171
Telephone: (02) 9825 8000 Fax: (02) 9825 8110
www.championhomes.com.au
Builders Licence No. 92732C

NOT FOR CONSTRUCTION

ALBERT STREET

Soil Classification:

TBC

Slab Classification:

TBC

Wind Speed Class:

TBC

Rev	Date	Amendment
B	11.10.19	BASIX INFO, ADDED - SI
A	25.09.19	REDESIGN PLANS - SI

Copyright. ©

This plan is the property of Champion Homes and may not be used in whole or part.

Legal action will be taken against any person who infringes the copyright.

Proposed: Land Subdivision & Semi-Detached Dwellings

Lot:1 DP:518481
No.24 Albert Street
Botany, NSW 2019

Client :

John O'Rourke & Jean O'Rourke

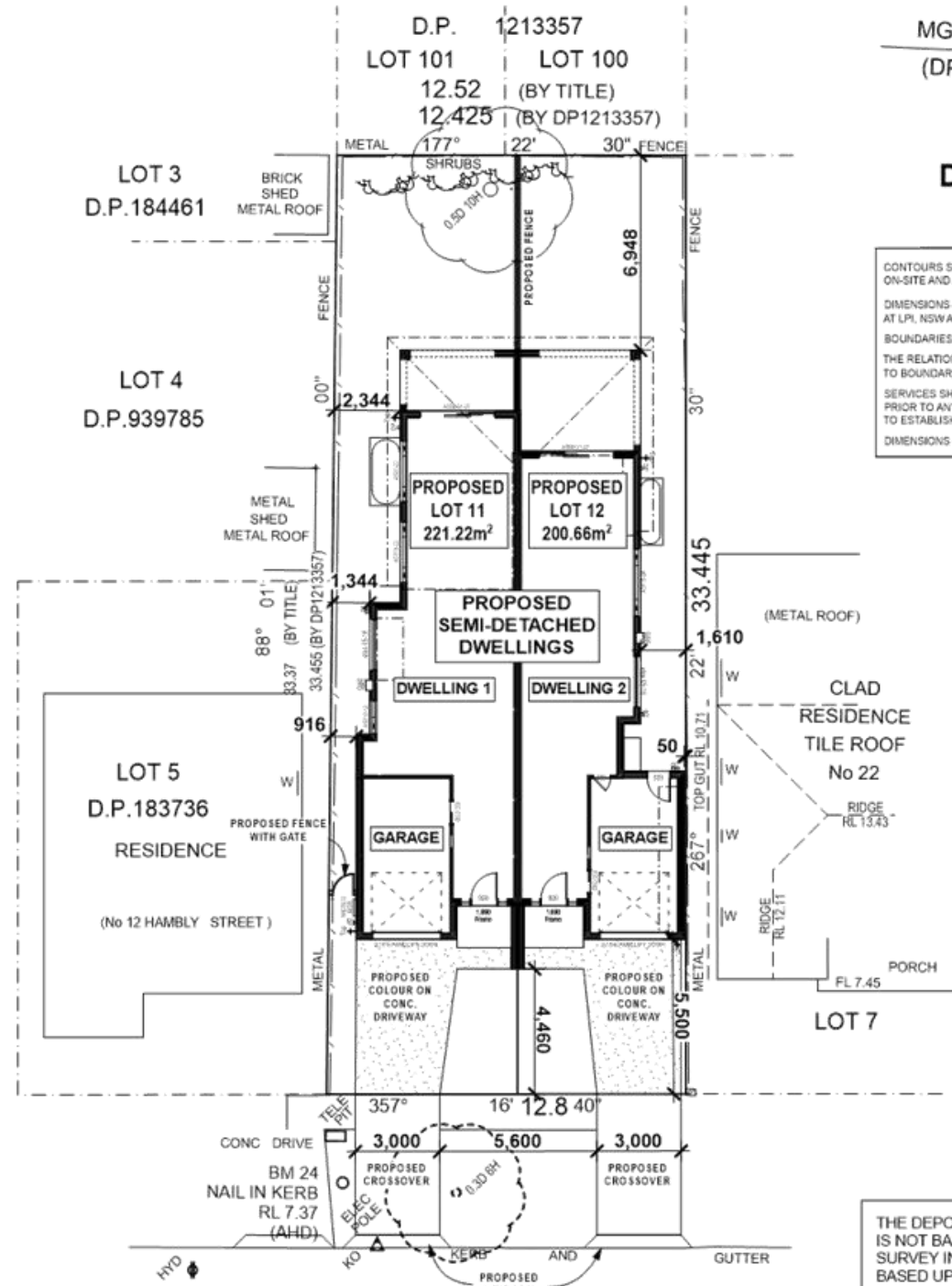
LGA: Bayside Council

Date: 25.09.19

Design : Custom Design

Job No: 4052N Sheet Size: A3 Sheet No: 3 of 15

Plot Date: Monday, 14 October 2019



MGA (TRUE)
(DP1213357)

LOT 1
DP: 518481
421.9m²

CONTOURS SHOWN HAVE BEEN INTERPOLATED FROM SPOT LEVELS TAKEN ON-SITE AND ARE A REPRESENTATION OF THE TOPOGRAPHY ONLY.
DIMENSIONS AND AREAS HAVE BEEN DETERMINED FROM PLANS MADE AVAILABLE AT LPI, NSW AND ARE SUBJECT TO FINAL SURVEY.
BOUNDARIES HAVE NOT BEEN ACCURATELY DETERMINED.
THE RELATIONSHIP OF IMPROVEMENTS & SURVEYED DETAIL TO BOUNDARIES IS DIAGRAMMATIC ONLY.
SERVICES SHOWN HAVE BEEN LOCATED WHERE POSSIBLE BY FIELD SURVEY. PRIOR TO ANY SITE WORKS, THE RELEVANT AUTHORITY SHOULD BE CONTACTED TO ESTABLISH ACCURATE POSITION AND DEPTH OF ANY SERVICES.
DIMENSIONS OF ANY TREES SHOWN ON THE PLAN ARE APPROXIMATE

Proposed Site Plan

SCALE 1:200

LOCATION PLAN

UBD REF: 276, D11
LAT: -33.946075
LONG: 151.205799



STORMWATER NOTE:

STORMWATER AS PER HYDRAULICS ENGINEER'S PLANS AND BASIX REQUIREMENTS ALL IN ACCORDANCE WITH AUSTRALIAN STANDARD 3500.3



Certificate no.: 0004249100
Assessor Name: Thomas Ruck
Accreditation no.: VIC/BDV/12/1456
Certificate date: 03 October 2019
Dwelling Address: 24 Albert Street Botany, NSW 2019

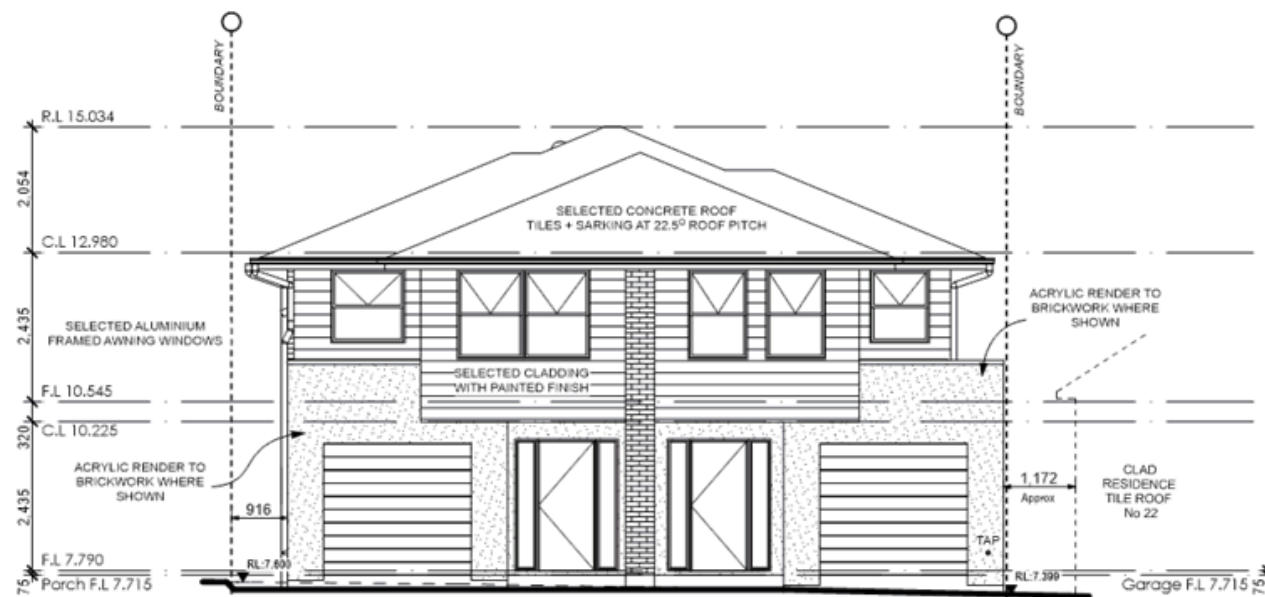
www.nathers.gov.au



THE DEPOSITED PLAN DP518481 IS A COMPILED DEPARTMENTAL PLAN DRAFTED IN THE LAND TITLES OFFICE AT THE TIME AND IS NOT BASED ON GROUND INFORMATION. SURVEY INVESTIGATION HAS REVEALED SIGNIFICANT DISCREPANCIES IN THE BOUNDARY DIMENSIONS OF THE PROPERTY BASED UPON A NEW SUBDIVISION (DP1213357) AT THE REAR OF THE SUBJECT PROPERTY. IT IS RECOMMENDED THAT A REDEFINITION SURVEY BE CARRIED OUT PRIOR TO FINAL DESIGN & CONSTRUCTION TO FULLY DEFINE THE SUBJECT BOUNDARIES AND CONFIRM THE FINAL DIMENSIONS OF THE PROPERTY.

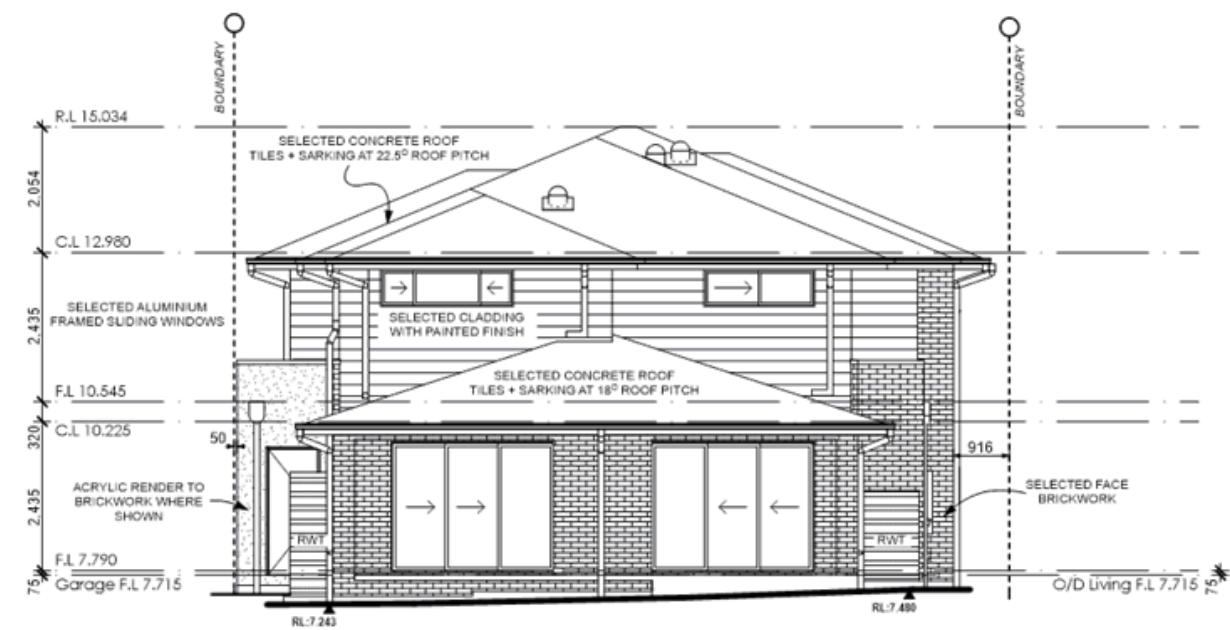
TREES TO BE RETAINED

TREES TO BE REMOVED



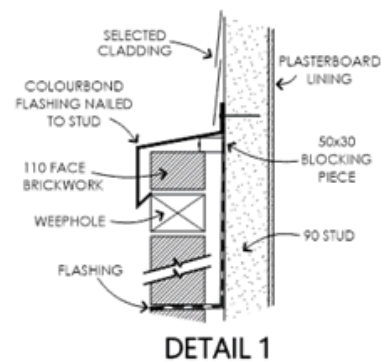
Eastern Elevation

SCALE 1:100



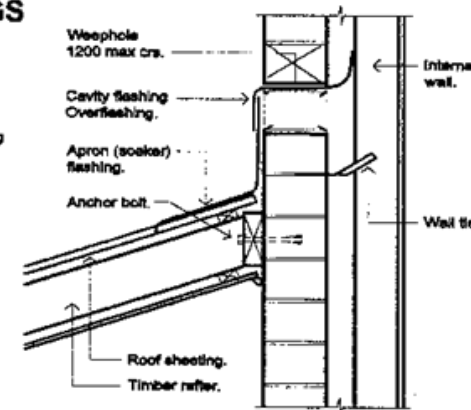
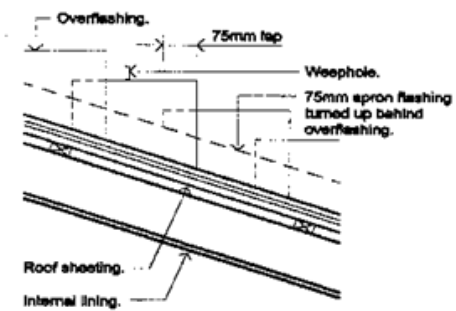
Western Elevation

SCALE 1:100



DETAIL 1

STEPPED CAVITY FLASHINGS



SARKING REQUIREMENTS FOR PROPOSED ROOF TO BE AS PER TABLE 3.5.1.1(a) and TABLE 3.5.1.1(b) AS SET OUT IN THE BUILDING CODE OF AUSTRALIA.



Certificate no.: 0004249100
Assessor Name: Thomas Ruck
Accreditation no.: VIC/BDAV/12/1456
Certificate date: 03 October 2019
Dwelling Address:

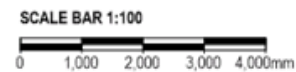
24 Albert Street
Botany, NSW
2019

www.nathers.gov.au




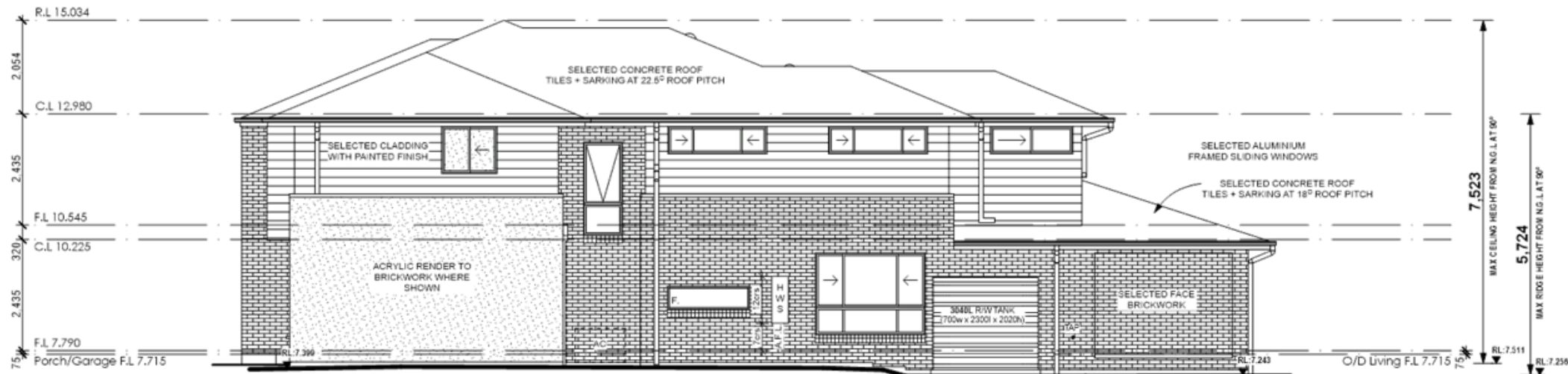
PROTECTION OF OPENABLE WINDOWS AS PER B.C.A CONDITION 3.9.2.5

A WINDOW OPENING MUST BE PROVIDED WITH PROTECTION IF THE FLOOR BELOW THE WINDOW IN A BEDROOM IS 2m OR MORE ABOVE THE SURFACE BENEATH. WHERE THE LOWEST LEVEL OF A WINDOW OPENING IS LESS THAN 1.7m ABOVE THE FLOOR, A KEYED LOCK MUST BE FITTED SO AS TO RESTRICT THE WINDOW OPENING TO A MAX 125mm



Figured dimensions to be used in preference to scaling this drawing.
Do not assume - if in doubt ASK.

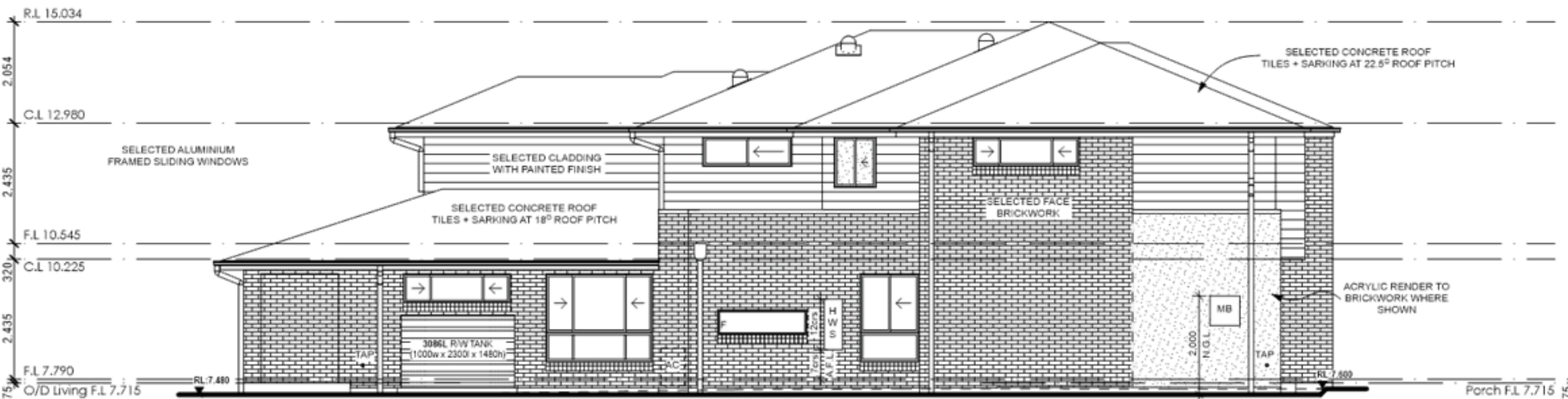
<div><div><div>CHAMPION HOMES</div><div>Suite 1, Level 1 600 Hoxton Park Road, Hoxton Park NSW 2171 Telephone: (02) 9825 8000 Fax: (02) 9825 8110 www.championhomes.com.au Builders Licence No.92732C</div></div></div>	<div>NOT FOR CONSTRUCTION</div>	<table><tr><td>Soil Classification:</td><td>TBC</td><td></td><td></td><td></td></tr><tr><td>Slab Classification:</td><td>TBC</td><td></td><td></td><td></td></tr><tr><td>Wind Speed Class:</td><td>TBC</td><td></td><td></td><td></td></tr><tr><td></td><td></td><td>B</td><td>11.10.19</td><td>BASIX INFO, ADDED - SI</td></tr><tr><td></td><td></td><td>A</td><td>25.09.19</td><td>REDESIGN PLANS - SI</td></tr><tr><td></td><td></td><td>Rev</td><td>Date</td><td>Amendment</td></tr></table>	Soil Classification:	TBC				Slab Classification:	TBC				Wind Speed Class:	TBC						B	11.10.19	BASIX INFO, ADDED - SI			A	25.09.19	REDESIGN PLANS - SI			Rev	Date	Amendment	<div>Copyright. © This plan is the property of Champion Homes and may not be used in whole or part. Legal action will be taken against any person who infringes the copyright.</div>	<div>Proposed: Land Subdivision & Semi-Detached Dwellings</div> <div>Lot:1 DP:518481 No.24 Albert Street Botany, NSW 2019</div>	<div>Client : John O'Rourke & Jean O'Rourke</div> <table><tr><td>LGA:</td><td>Bayside Council</td><td>Date:</td><td>25.09.19</td></tr><tr><td colspan="4">Design : Custom Design</td></tr><tr><td>Job No:</td><td>4052N</td><td>Sheet Size:</td><td>A3</td></tr><tr><td colspan="2"></td><td>Sheet No:</td><td>9 of 15</td></tr></table>	LGA:	Bayside Council	Date:	25.09.19	Design : Custom Design				Job No:	4052N	Sheet Size:	A3			Sheet No:	9 of 15
Soil Classification:	TBC																																																		
Slab Classification:	TBC																																																		
Wind Speed Class:	TBC																																																		
		B	11.10.19	BASIX INFO, ADDED - SI																																															
		A	25.09.19	REDESIGN PLANS - SI																																															
		Rev	Date	Amendment																																															
LGA:	Bayside Council	Date:	25.09.19																																																
Design : Custom Design																																																			
Job No:	4052N	Sheet Size:	A3																																																
		Sheet No:	9 of 15																																																



Northern Elevation
SCALE 1:100



Certificate no.: 0004249100
Assessor Name: Thomas Ruck
Accreditation no.: VIC/BDV/12/1456
Certificate date: 03 October 2019
Dwelling Address: 24 Albert Street Botany, NSW 2019

Southern Elevation
SCALE 1:100




Figured dimensions to be used in preference to scaling this drawing.
Do not assume - if in doubt ASK.

SARKING REQUIREMENTS FOR PROPOSED ROOF TO BE AS PER TABLE 3.5.1.1(a) and TABLE 3.5.1.1(b) AS SET OUT IN THE BUILDING CODE OF AUSTRALIA.

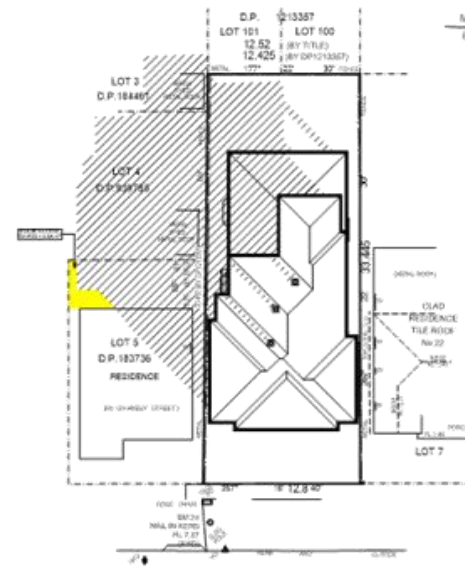
PROTECTION OF OPENABLE WINDOWS AS PER B.C.A CONDITION 3.9.2.5

A WINDOW OPENING MUST BE PROVIDED WITH PROTECTION IF THE FLOOR BELOW THE WINDOW IN A BEDROOM IS 2m OR MORE ABOVE THE SURFACE BENEATH. WHERE THE LOWEST LEVEL OF A WINDOW OPENING IS LESS THAN 1.7m ABOVE THE FLOOR, A KEYED LOCK MUST BE FITTED SO AS TO RESTRICT THE WINDOW OPENING TO A MAX 125mm

Plot Date: Monday, 14 October 2019

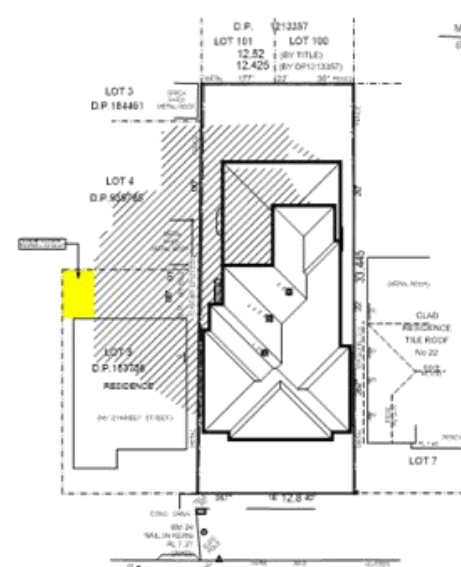
<div><div><div>CHAMPION HOMES</div><div>Suite 1, Level 1 600 Hoxton Park Road, Hoxton Park NSW 2171</div><div>Telephone: (02) 9825 8000 Fax: (02) 9825 8110</div><div>www.championhomes.com.au</div><div>Builders Licence No.92732C</div></div></div>	<div>NOT FOR CONSTRUCTION</div>	Soil Classification:	TBC	<div>Copyright. ©</div> <div>This plan is the property of Champion Homes and may not be used in whole or part.</div> <div>Legal action will be taken against any person who infringes the copyright.</div>	Proposed: Land Subdivision & Semi-Detached Dwellings		Client : John O'Rourke & Jean O'Rourke										
		Slab Classification:	TBC		Lot:1 DP:518481 No.24 Albert Street Botany, NSW 2019		LGA: Bayside Council		Date: 25.09.19								
		Wind Speed Class:	TBC				Design : Custom Design										
							Job No: 4052N	Sheet Size: A3	Sheet No: 10 of 15								
					<table><tr><td>B</td><td>11.10.19</td><td>BASIX INFO, ADDED - SI</td></tr><tr><td>A</td><td>25.09.19</td><td>REDESIGN PLANS - SI</td></tr><tr><td>Rev</td><td>Date</td><td>Amendment</td></tr></table>	B	11.10.19	BASIX INFO, ADDED - SI	A	25.09.19	REDESIGN PLANS - SI	Rev	Date	Amendment			
B	11.10.19	BASIX INFO, ADDED - SI															
A	25.09.19	REDESIGN PLANS - SI															
Rev	Date	Amendment															

Shadow Diagrams



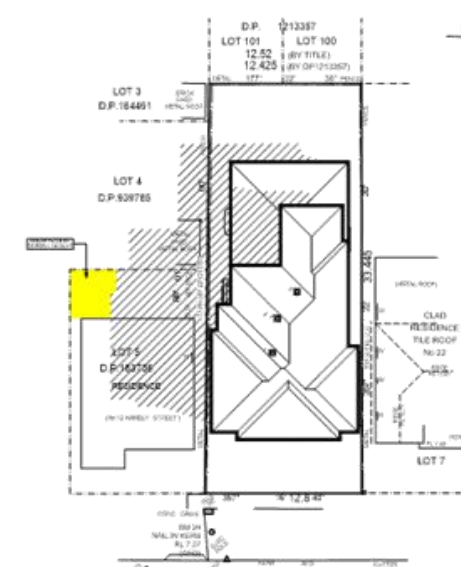
June 21st - 9am

SCALE 1:500



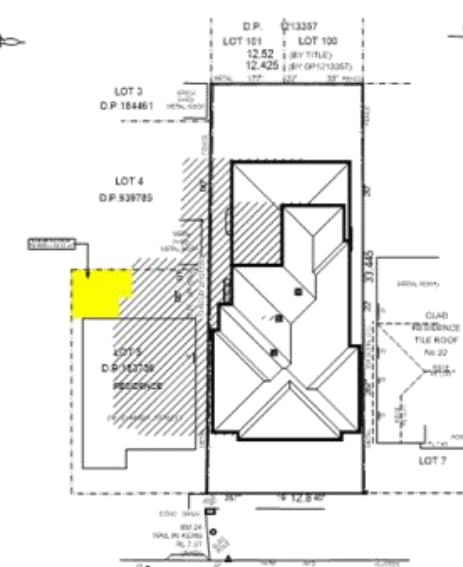
June 21st - 10am

SCALE 1:500



June 21st - 11am

SCALE 1:500



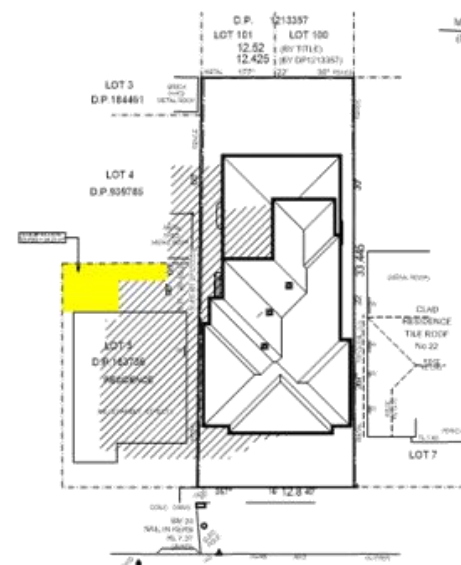
June 21st - 12pm

SCALE 1:500



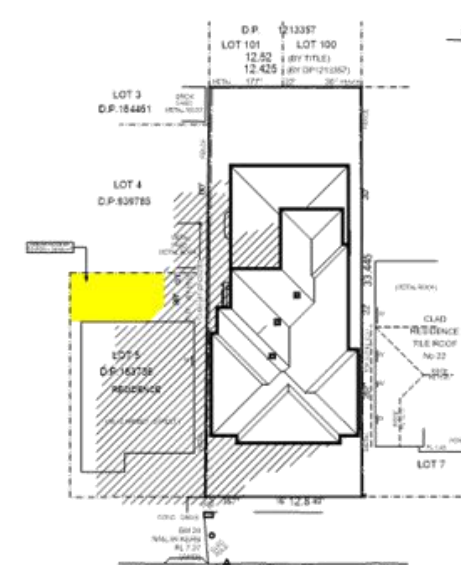
Certificate no.: 0004249100
 Assessor Name: Thomas Ruck
 Accreditation no.: VIC/BDV/12/1456
 Certificate date: 03 October 2019
 Dwelling Address: 24 Albert Street
 Botany, NSW 2019

www.nathers.gov.au



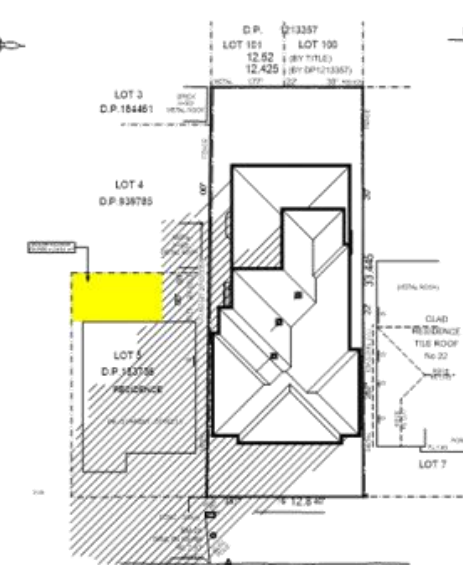
June 21st - 1pm

SCALE 1:500



June 21st - 2pm

SCALE 1:500



June 21st - 3pm

SCALE 1:500

Plot Date: Monday, 14 October 2019

Figured dimensions to be used in preference to scaling this drawing.
 Do not assume - if in doubt ASK.



CHAMPION HOMES
 Suite 1, Level 1 600 Hoxton Park Road, Hoxton Park NSW 2171
 Telephone: (02) 9825 8000 Fax: (02) 9825 8110
www.championhomes.com.au
 Builders Licence No. 92732C

NOT FOR CONSTRUCTION

Soil Classification:
TBC
 Slab Classification:
TBC
 Wind Speed Class:
TBC

Rev	Date	Amendment
B	11.10.19	BASIX INFO, ADDED - SI
A	25.09.19	REDESIGN PLANS - SI

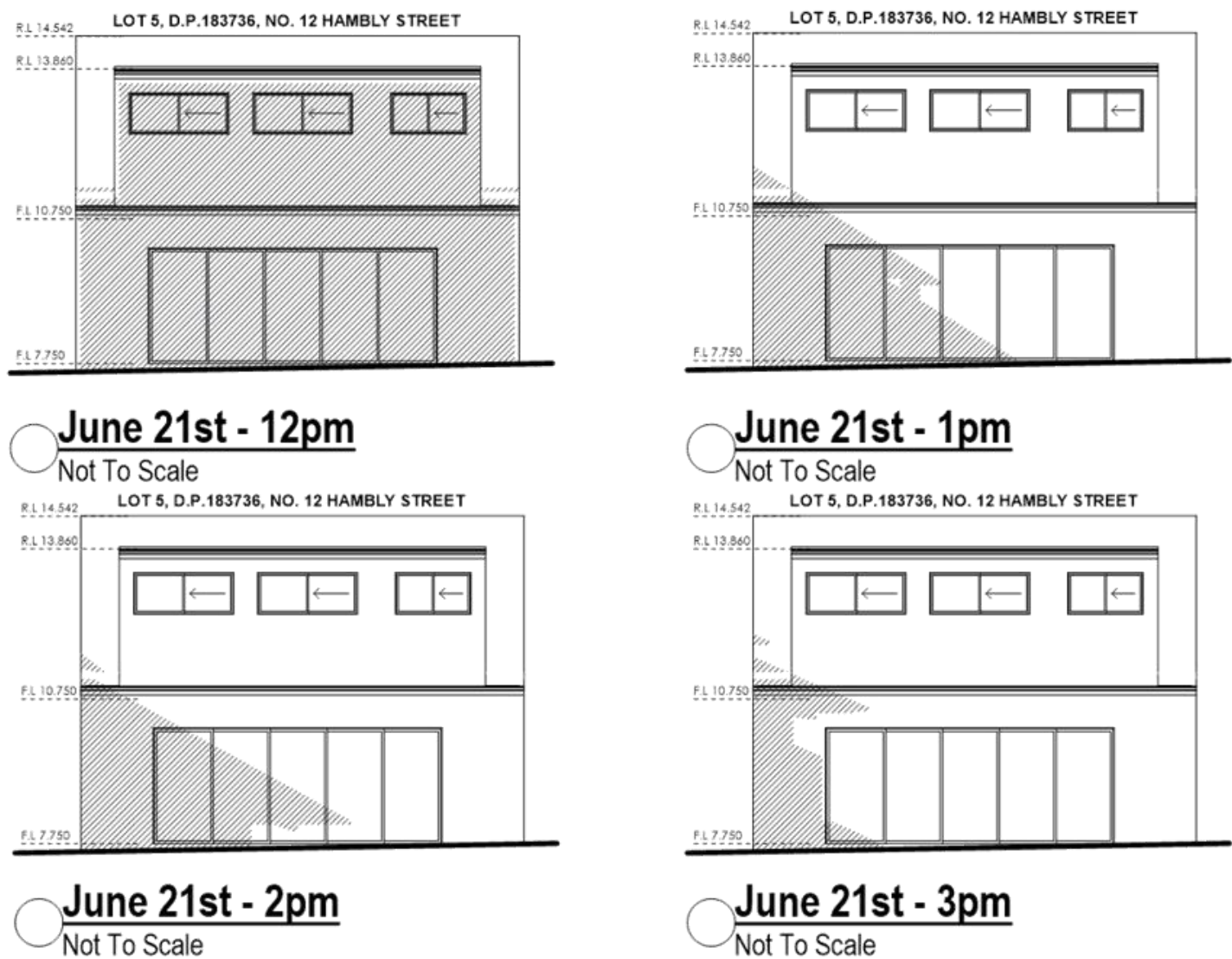
Copyright. ©
 This plan is the property of Champion Homes and may not be used in whole or part.
 Legal action will be taken against any person who infringes the copyright.

Proposed: Land Subdivision & Semi-Detached Dwellings

Lot:1 DP:518481
 No.24 Albert Street
 Botany, NSW 2019

Client :
John O'Rourke & Jean O'Rourke
 LGA: Bayside Council Date: 25.09.19
 Design : Custom Design
 Job No: 4052N Sheet Size: A3 Sheet No: 13 of 15

The logo for the Nathers Energy Rating Scheme is displayed. It features a blue arch with white stars at the top, containing the number '5.3'. Below this, the text 'Average star rating' is written. The main part of the logo is a green rectangle with 'NATIONWIDE HOUSE' in large white letters, 'ENERGY RATING SCHEME' in smaller white letters below it, and the website 'www.nathers.gov.au' at the bottom. To the right of the green rectangle, the following information is listed: 'Certificate no.: 0004249100', 'Assessor Name: Thomas Ruck', 'Accreditation no.: VIC/BD/AV/12/1456', 'Certificate date: 03 October 2019', 'Dwelling Address: 24 Albert Street Botany, NSW 2019'. A QR code is located at the bottom right of the logo area.



 **CHAMPION
HOMES**

Suite 1, Level 1 600 Hoxton Park Road, Hoxton Park NSW 2171

Telephone: (02) 9825 8000 **Fax:** (02) 9825 8110

www.championhomes.com.au

Builders Licence No.92732C

[illegible]

ATTACHMENT 1

REQUEST TO VARY A DEVELOPMENT STANDARD

(CLAUSE 4.6 Botany LEP 2013)

Property:	24 Albert Street, Botany
Date:	14th October 2019
Planning Instrument:	Botany Local Environmental Plan 2013
Development Standard:	Floor Space Ratio [Clause 4.4A(3)(d)]

Introduction

Consideration has been given to the following matters within this assessment:

- Relevant planning principles and judgements issued by the Land and Environment Court. The Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118 court judgement is the most relevant of recent case law. Commissioner Preston confirmed the following:
 1. *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].*
 2. *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].*
- Justice Preston in the decision of *Wehbe v Pittwater Council* [2007] NSWLEC 827 at 43 as to why it is unreasonable and unnecessary to apply a development standard to a particular case.
- The L&E Court judgment in *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90, Pearson C outlined that a Clause 4.6 Variation requires identification of grounds that are particular to the circumstances to the proposed development (i.e., simply meeting the objectives of the development standard is insufficient justification of a Clause 4.6 Variation).
- A more recent case where Commissioner Tuor of the Land and Environment Court applied the Court of Appeal's approach in *Moskovitch v Waverley Council* [2016] NSWLEC 1015 and in effect confirmed a greater flexibility.

The Variation Request satisfies the requirements of Clause 4.6 of Botany LEP as follows:

- It identifies the development standard to be varied.
- Discusses the extent of the variation sought.
- Establishes that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.
- Demonstrates there are sufficient environmental planning grounds to justify the contravention (*Note: the focus being on the contravention NOT the development as a whole*).
- Demonstrates that the proposed variation is in the public interest, being consistent with the objectives of the particular standard, and the objectives of the relevant zone in which the development is proposed.

Clause 4.6

Clause 4.6 of Botany LEP 2013 states:

- (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 Director-General has been obtained.
- (5) In deciding whether to grant concurrence, the Director-General must consider:
 - (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and
 - (b) the public benefit of maintaining the development standard, and
 - (c) any other matters required to be taken into consideration by the Director-General before granting concurrence.
- (6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if:
 - (a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or
 - (b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.
- (7) 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.
- (8) 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).
- (9) 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.

Development Standard & Extent of Variation

In this particular case, the development standard relates to the maximum floor space ratio for development under the provisions of the Botany Local Environmental Plan 2013, Clause 4.4(2) in particular.

The EP&A Act defines development standard as follows:

"development standards" means provisions of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of:

- (a) *the area, shape or frontage of any land, the dimensions of any land, buildings or works, or the distance of any land, building or work from any specified point,*
- (b) *the proportion or percentage of the area of a site which a building or work may occupy...*

NOTE: It is clear from the above definition that the 'maximum floor space ratio' requirement of Botany LEP 2013 is a 'development standard'.

A variation is sought to Clause 4.4A(3)(d), which states the following:

(3) Despite clause 4.4 (2), the following provisions relate to floor space ratios on land to which this clause applies:

(a) the maximum floor space ratio for a dwelling house is not to exceed the floor space ratio applicable to the site area of the land on which the dwelling house is situated:

Site Area	Maximum Floor Space Ratio
<200 square metres	0.85:1
200–250 square metres	0.80:1
251–300 square metres	0.75:1
301–350 square metres	0.70:1
351–400 square metres	0.65:1
401–450 square metres	0.60:1
>450 square metres	0.55:1

(b) the maximum floor space ratio for multi dwelling housing is not to exceed 0.8:1,

(c) the maximum floor space ratio for a residential flat building is not to exceed 1:1,

(d) the maximum floor space ratio for all other development for the purpose of residential accommodation is 0.5:1.

Botany LEP 2013 defines 'gross floor area' as follows:

gross floor area means the sum of the floor area of each floor of a building measured from the internal face of external walls, or from the internal face of walls separating the building from any other building, measured at a height of 1.4 metres above the floor, and **includes**:

- (a) the area of a mezzanine, and
- (b) habitable rooms in a basement or an attic, and
- (c) any shop, auditorium, cinema, and the like, in a basement or attic, but **excludes**:
 - (d) any area for common vertical circulation, such as lifts and stairs, and
 - (e) any basement:
 - (i) storage, and
 - (ii) vehicular access, loading areas, garbage and services, and
 - (f) plant rooms, lift towers and other areas used exclusively for mechanical services or ducting, and
 - (g) car parking to meet any requirements of the consent authority (including access to that car parking), and
 - (h) any space used for the loading or unloading of goods (including access to it), and
 - (i) terraces and balconies with outer walls less than 1.4 metres high, and
 - (j) voids above a floor at the level of a storey or storey above.

The proposed development involves the erection of a semi-detached dwellings development in conjunction with a two (2) lot subdivision. Based on the abovementioned generation rates, the total permissible 'Floor Area' for each allotment is:

Lot	Requirement	Proposal	Variation
11	110.61m ² (0.5:1)	125.18m ² (0.57:1)	14.57m ² (13%)
12	100.33m ² (0.5:1)	123.74m ² (0.62:1)	23.41m ² (23%)

The Department of Planning's "Guidelines for the Use of State Environmental Planning Policy No.1" (refer to DOP Circular No. B1 - issued 17th March 1989) state that:

"As numerical standards are often a crude reflection of intent, a development which departs from the standard may in some circumstances achieve the underlying purpose of the standard as much as one which complies. In many cases the variation will be numerically small and in other cases it may be numerically large, but nevertheless be consistent with the purpose of the standard..."

In deciding whether to consent to a development application the Council should test whether the proposed development is consistent with the State, regional or local planning objectives for the locality; and in particular the underlying objective of the standard. If the development is not only consistent with the underlying purposes of the standard, but also with the broader planning objectives of the locality, strict compliance with the standard would be unnecessary and unreasonable."

It is a well-known fact that the strict application of numeric requirements in the planning process restricts the design process and often produces poor urban design outcomes. In this instance the variation will not cause the development to be unreasonable in terms of bulk and scale as it satisfies all other parameters in the LEP/DCP that influence this consideration.

Compliance with Development Standard is Unreasonable and Unnecessary

The application must address whether strict compliance with the standard in this particular case, would be unreasonable or unnecessary and why – that being, in this instance, the purpose behind the 0.5:1 FSR requirement has been achieved. In other words, it can be argued that the non-compliant elements of the development assist in the provision of effective articulation that correspond with the slightly angled side boundaries and relatively shallow depth of the site, without undermining the objectives behind the standard.

A decision in the Land and Environment Court **Wehbe v Pittwater Council** outlines a number of ways to establish that compliance with a development standard would be 'unreasonable' or 'unnecessary.' These include:

1. *The objectives of the standard are achieved notwithstanding non-compliance with the standard;*
2. *The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;*
3. *The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;*
4. *The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;*
5. *The compliance with development standard is unreasonable or inappropriate due to existing use of land and current environmental character of the particular parcel of land. That is, the particular parcel of land should not have been included in the zone.*

Specifically, the **first method** is relied upon in establishing that compliance with the standard is unreasonable or unnecessary.

The underlying purpose of the maximum floor space ratio can be deduced from the following objectives contained in Clause 4.4A(1) of Botany Bay LEP 2013:

- (1) *The objectives of this clause are as follows:*
- (a) *to ensure that the bulk and scale of development is compatible with the character of the locality - the locality is characterised by a variety of building forms, including very large two storey construction. As such, it is envisaged that the future character of the locality will continue to comprise buildings of a similar bulk and scale as the proposed development. The additional floor space (non-compliant element) does not impact on the visual compatibility of the development with the character of the locality (i.e., it would not be interpreted as a non-compliance, being indistinguishable from other compliant development and development that equates to FSR's greater than that proposed with this application).*
 - (b) *to promote good residential amenity - the additional floorspace will not result in any significant adverse environmental impacts on surrounding properties, in regard to visual bulk, overshadowing and privacy. Articulation, limiting the height of the building and increased setbacks ensure that the visual bulk and scale is reduced, and the accompanying Shadow Diagrams demonstrate that adjoining properties will receive solar access in accordance with the DCP requirements.*

In summary, the underlying purpose of the maximum floor space ratio requirement is to ensure that new housing is of a comparable bulk and scale to existing dwellings in the zone. It is considered that the development satisfies the abovementioned objectives as follows:

Large dwellings and sites with much greater building to land ratios (FSR's) are not uncommon in the locality, some of which comprise FSR's much greater than proposed with this application. As such, the proposed development is generally consistent in form with other buildings in the immediate locality. The proposed design measures significantly reduce the environmental impacts of the development compared to a more substantial two-storey "dwelling house" that complies with the FSR requirement (i.e., dwelling house development can achieve an FSR of at least 0.6:1, and greater under the SEPP (E&CD Codes) 2006, as such, there is absolutely no nexus between bulk/scale and the FSR standard). The FSR standards in the LEP discriminate against development types other than dwelling house development, as such, there is no planning purpose to the standard. The proposed development is a far better outcome than a compliant more substantial two-storey "dwelling house" development. It should be noted that the recently approved adjoining development achieves significantly greater FSR's simply because the dwellings are detached.

- The objectives are satisfied by the skillful design of the development which contains articulation, design elements and the effective use of colours and materials to create a **base, middle and top** appearance, to reduce the overall bulk and scale of the building.
- Residential amenity will be available to each dwelling in the development and the accompanying Shadow Diagrams comprehensively demonstrate that amenity will be maintained to adjoining properties.
- Floor Space Ratio is a poor indicator of true bulk and scale, as the relationship involves the size of the land on which the building is to be erected, i.e., if the allotment was slightly deeper there would be no issue yet the appearance of the building when viewed from the street would be the same. The proposed dwellings forming part of the development are not excessive in size, being only approximately **125m²** and **123m²** in floor area respectively. They comprise an open floor plan with functional rooms common to most contemporary style dwellings. First floor bedrooms and bathrooms are effectively placed within the articulated spaces and are modest in size (**Note: average sized dwellings are not inconsistent or antipathetic with the aims and objectives of the zone**).
- Landscaping will be provided in the front and rear yards to further minimise the visual impact of the building.
- Other LEP/DCP requirements have been met, ensuring that the proposed development achieves a reasonable level of amenity and is within the environmental capacity of the zone.

Environmental Planning Grounds

The L&E Court judgment in *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90, Pearson C outlined that a Clause 4.6 Variation requires identification of grounds that are particular to the circumstances to the proposed development (i.e., simply meeting the objectives of the development standard is insufficient justification of a Clause 4.6 Variation).

On 20 August 2015, the NSW Court of Appeal handed down its decision on appeal from the Land and Environment Court's decision: *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248. The case upheld Commissioner Pearson's original decision in regard to Clause 4.6 but it interpreted the approach taken by the Commissioner differently to Pain J. In doing so, the decision largely confines Commissioner Pearson's decision to the particular facts of that case and the particular exercise of discretion by the Commissioner.

More recently, Commissioner Tuor of the Land and Environment Court applied the Court of Appeal's approach in *Moskovitch v Waverley Council* [2016] NSWLEC 1015 and in effect confirmed a greater flexibility.

Basically, Commissioners and consent authorities have a broad discretion as to the approach they take, in addition to the standard planning grounds, such as:

- Public benefit arising from additional housing, and
 - An increase in the variety of housing stock¹.
1. The state government strategies for the delivery of housing includes the push for semi-detached and attached development and increased floor space ratio ranges.

The more specific environmental planning grounds [*Four2Five Pty Ltd v Ashfield Council*] are that specific design measures are required to address the opportunities of the site, that being an allotment with slightly angled side boundaries and relatively shallow depth, which as a consequence of providing articulation and design measures to minimise the bulk and scale for development, has resulted in an exceedance to the FSR requirement (i.e., the proposed FSR would achieve better internal and external amenity outcomes, such as, reasonably sized rooms, solar access, privacy and streetscape presentation. Furthermore, the emerging streetscape along Albert Street and surrounding street blocks comprises contemporary development of a similar bulk and scale, therefore the context of the site amongst such development should also be taken into account.

Likewise, a compliant development with less floor area would not, for all intents and purposes, achieve a better environmental outcome in the zone or enhance the residential amenity of residents living in the dwellings. In fact, compliance with the development standard would in this particular case, result in:

- Bedrooms being lost (Note: it is important that housing caters to a wide spectrum of the community, including a growing family situation, especially in areas where the population is aging and existing infrastructure, such as, schools, is under utilised or on the verge of being lost to developing areas. Semi-detached dwelling development per say is more affordable than single dwelling development, and better utilises a scarce resource (land)); or
- Crucial internal living areas being further reduced in size, which given the required articulation would make them unfeasible.

Public Interest

The construction of an attractive semi-detached development with all residential amenities represents an orderly and economic use of the land which promotes the objectives of the EP&A Act.

The interface of the development with the public domain will be consistent with the intent of the clause (i.e., the development will have a two-storey appearance when viewed from the street and effective vertical and horizontal articulation ensures that the development is visually pleasing when viewed from adjoining properties).

From an urban design viewpoint, the development (in its current form) is consistent with the building character in the locality and will generally enhance the amenity of the streetscape, thus satisfying the planning principles established in *Project Venture Developments v Pittwater Council* [2005] NSWLEC 191.

It provides for all residential amenities, including off-street carparking expected for the lifestyle of its occupants, without any significant adverse environmental impacts to adjoining properties. There will be sufficient accommodation and realistic leisure areas to ensure the building is fit for its designed purpose. The design has sensible living areas that are not in any way considered excessive.

Furthermore, the proposed development will be in the public interest because it is consistent with the objectives of the R2 – Low Density Residential zone (i.e., the objectives of the zone encourage a variety of housing forms).

The objectives of the zone are:

- To provide for the housing needs of the community within a low density residential environment.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- To encourage development that promotes walking and cycling.

The proposed development satisfies the above objectives as follows:

- The proposed development will meet the housing needs of the community and add to the range of housing within the low density residential zone (i.e., the proposal will increase the quantity and quality of housing stock within an area which is within close proximity to transport links, public infrastructure and high amenity public spaces, including Sir Joseph Banks Park, Golf Courses, Several Local Parks).
- The locality is under transition with older single storey dwellings being replaced with larger two storey dwellings and increased densities, as such, the proposal will contribute to the desired future character of the area.
- Semi-detached dwelling development per say is a more affordable form of housing.
- The proposed development will enhance the amenity of the residential area by the provision of new housing stock and landscaping.

Given the above, it is considered that the proposed development is within the environmental capacity of the R2 – Low Density Residential zone and the variation will not undermine the standard, hence it is in the public interest and satisfies Clause 4.6(4)(a)(ii).

No state or regional issues will arise should Council approve the variation.

CONCLUSION

In summary, the variation to the development standard is due to specific design and site circumstances associated with the shape and depth of the site and the architectural merits of the design.

The purpose behind the development standard is achieved through a skillful design that results in a development of a comparable bulk and scale to adjoining and nearby development, hence, an alternative means of achieving the objectives or purpose behind the development standard has been realised, and strict compliance with the standard would be unnecessary (i.e., it is achieved anyway) and unreasonable (no purpose would be served). Consequently, the Variation Request is considered within the parameters of Clause 4.6 of the LEP.

Although the development exceeds the floor space ratio requirement, it has been demonstrated that the additional floor area will not significantly add to the visual bulk and scale of the building. Site constraints and opportunities were also taken into account with the design, in particular the location and the architectural style of nearby development.

The variation will not be interpreted as an inconsistency given that development of a similar or greater bulk and scale is not uncommon in the locality.

Accepting the variation will result in an orderly and economic use of the land by accommodating an attractive new development appropriate for the low density residential zone in which it is located.



David Bobinac
Town Planner

ATTACHMENT 2

CONTROL TABLE – SEMI-DETACHED DWELLINGS

Control	Requirement	Development Proposal	Complies
Frontage	N/A (existing allotment)	Proposed Lot 11 – 6.8m Proposed Lot 12 – 6m	N/A N/A
Lot Size	No Minimum	Proposed Lot 11 – 221.2m ² Proposed Lot 12 – 200.7m ²	N/A N/A
Building Height	8.5m (max)	Dwelling 1 – 7.523m Dwelling 2 – 7.523m	Yes Yes
Floor Space Ratio	Residential Accommodation (Semi-detached dwellings) – 0.5:1	Dwelling 1 – 0.57:1 Dwelling 2 – 0.62:1	No No
Site Coverage	Sites 200m ² – < 250m ² = 65%	Dwelling 1 – 42% Dwelling 2 – 41%	Yes Yes
Landscaped Area	< 250m ² – 15% (min)	Dwelling 1 – 28% Dwelling 2 – 29%	Yes Yes
<u>Setbacks</u>			
Front	Prevailing setback OR 6.0m	4.46m (generally consistent with adjoining development)	Yes
Side	Merit	916mm & Zero (50mm)	Yes
Rear	Lot width < 12.5m = 4.0m	Dwelling 1 – 6.948m Dwelling 2 – 6.948m	Yes Yes
Garage	5.5m (min)	5.5m	Yes
Car Parking	1 space per dwelling	1 space per dwelling	Yes
	Single width garage permitted on sites less than 12.5m in width	single garage per dwelling	Yes
Garages	1m behind front building alignment	➤ 1m behind front building alignment	Yes
Private Open Space	< 250m ² - 25m ² (min)	Dwelling 1 – 58.99m ² Dwelling 2 – 62.9m ²	Yes Yes
Paving	Max 50% of the front setback area	Dwelling 1 - < 50% Dwelling 2 – < 50%	Yes Yes

BAYSIDE COUNCIL

Planning Assessment Report

Application Details

Application Number:	DA-2019/143
Date of Receipt:	1 May 2019
Property:	24 Albert Street, Botany Lot 1 in DP 518481
Owners:	Mr J O'Rourke & Mrs J V O'Rourke
Applicant:	Champion Homes Sales Pty Ltd
Proposal:	Demolition of existing structures, Torrens Title subdivision into two (2) lots and construction of two (2) semi-detached dwellings.
Recommendation:	Refusal
Value:	\$698,598.00
No. of submissions:	One (1)
Author:	Christopher Lazaro, Development Assessment Planner
Date of Report:	26 August 2019

Key Issues

Bayside Council received Development Application No. 2019/143 on 1 May 2019 seeking consent for the demolition of existing structures, Torrens Title subdivision into two (2) lots, construction of two (2) semi-detached dwellings at 24 Albert Street, Botany.

The application was placed on public exhibition for a 14 day period from the 10 May 2019 till the 24 May 2019. One (1) submission was received in response.

The development application includes a number of non-compliances, specifically, with relation to the FSR development standard within the Botany Bay Local Environmental Plan 2013, and non-compliances with the BBDCP 2013 requirements for car parking, setbacks, visual privacy, solar access, stormwater management and streetscape presentation.

The key issues are in relation to the FSR exceedance which is found to create unnecessary bulk and scale resulting in solar access issues that can be avoided with a more appropriate design. Secondly, the driveway layouts result in the removal of one on-street car parking space with the driveways considered to dominate the streetscape despite there being more appropriate designs available.

In accordance with the Botany Bay Local Environmental Plan 2013, the proposal does not comply with the maximum 0.5:1 FSR development standard as the proposal seeks an overall

Item Bayside Planning Panel Meeting

FSR of 0.61:1. The applicant has provided a Clause 4.6 variation for the FSR, however Council does not support the variation.

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

Recommendation

It is RECOMMENDED:

1. That the Bayside Local Planning Panel, exercising the functions of the Council as the consent authority pursuant to s4.16 of the *Environmental Planning and Assessment Act 1979* not support the variation to the floor space ratio prescribed by cl4.4 Floor Space Ratio of the Botany Bay Local Environmental Plan 2013, as it is not satisfied that the applicant's request has adequately addressed the matters required to be demonstrated by cl4.6 of that Plan, and the proposed development would not be in the public interest because it is not consistent with the objectives of that particular standard and the objectives for development within the zone.
2. That the Development Application No. 2019/143 for the demolition of existing structures, Torrens Title subdivision into two (2) lots and construction of two (2) semi-detached dwellings, be REFUSED pursuant to Section 4.6(1)(b) of the *Environmental Planning and Assessment Act 1979* (EPA Act) and is recommended for refusal subject to the following reasons:
 - a) Pursuant to the provisions of Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, it is considered that the proposed development does not satisfy Clause 4.4A of the Botany Bay Local Environmental Plan 2013 relating to non-compliance with the floor space ratio development standard of 0.5:1. Council is not satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by Clause 4.6(3) of the Botany Bay Local Environmental Plan 2013 in regards to floor space ratio.
 - b) Pursuant to the provisions of Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979*, the proposed development does not meet the following sections of the Botany Bay Development Control Plan 2013 with respect to the following:
 - i) Part 3A – Car Parking and Access. The proposed development does not comply with the requirements of Part 3A.3.1 C16 iii) relating to loss of on-street parking;
 - ii) Part 3G – Stormwater Management. The proposed development does not comply with Part 10 – Stormwater Management Technical Guidelines does not provide accurate detail on the on-site detention system proposed on the site;

- iii) Part 4A.2.8 - Building Setbacks. The proposed development does not comply with the minimum side setback requirements imposed in control 1 and 9, and is inconsistent with the dominant pattern along the street;
 - iv) Part 4A.4.1 – Visual Privacy. The proposed development does not comply with control 1, 2, 3, 4, and 5, as it will pose overlooking impacts upon the adjoining properties;
 - v) Part 4A.3 – Solar Access. The proposed development does not comply with control 1 regarding to the minimum sunlight required for proposed and adjoining properties; and
 - vi) Part 8 – Character Precincts. The proposed development does not comply as it is inconsistent with the desired future character of the Botany Precinct.
- c) 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 and scale resulting in unnecessary overshadowing impacts to the property to the south.
 - d) The proposed development, pursuant to the provisions of Section 4.15(1)(b) of the *Environmental Planning and Assessment Act 1979*, results in an undesirable and unacceptable impact on the streetscape and adverse impact on the surrounding built environment.
 - e) Pursuant to the provisions of Section 4.15(1)(b) of the *Environmental Planning and Assessment Act 1979*, the proposed development is unsatisfactory as it fails to demonstrate acceptable disposal of stormwater from the subject land.
 - f) Having regard to the issues raised in the submission received by Council in opposition to the proposed development, pursuant to the provisions of Section 4.15(1)(d) of the *Environmental Planning and Assessment Act 1979*, the proposal results in unacceptable levels solar amenity and excessive bulk and scale impacts onto neighbouring properties.
 - g) Pursuant to the provisions of Section 4.15(1)(e) of the *Environmental Planning and Assessment Act 1979*, the proposed development is not considered to be in the public interest as it is inconsistent with the existing and desired future character of the locality resulting in excessive bulk and scale impacts such as overshadowing and the unnecessary reduction in on-street car parking spaces.
3. That the submitter be notified of the Bayside Local Planning Panel's decision.

Background

Application History

Activity	Date
Application lodged	1 May 2019
Site Inspection	16 May 2019

The application was notified in accordance with BBDCP 2013. One submission was received as a result.	Notification period (10 – 24 May 2019)
Request for additional information letter issued requiring the following: <ul style="list-style-type: none"> Reduction in FSR, particularly to the rear to reduce bulk and scale and comply with solar access requirements. Amalgamation of the driveways to accommodate an on-street car parking space and street tree. Incorporate a 900mm setback on the northern boundary of lot 12. An amended landscape plan stating the tree along the rear boundary is to be retained rather than removed. Maintain consistency with the front building line of the street. Provide a geotechnical report to demonstrate an appropriate absorption rate and the depth of the ground water table. 	30/31 May 2019
Amended plans/documentation received: <ul style="list-style-type: none"> FSR/ Solar Access – No change Amalgamation of the driveways – No change 900mm setback on the northern boundary – No change An amended landscape plan - Provided Maintain consistency with the front building line - Provided Provide a geotechnical report to demonstrate an appropriate absorption rate and the depth of the ground water table – Provided, insufficient 	14 June 2019

Description of Proposal

The development application seeks Council consent for the demolition of the existing structures, Torrens Title subdivision into two (2) lots and construction of two (2) semi-detached dwellings at 24 Albert, Botany.

The specifics of the proposal are as follow:

- Demolition of existing structures on site including single storey detached dwelling and detached rear shed;
- Construction of two (2) double-storey semi-detached dwellings consisting of the following:
 - Ground floor – Single garage, bathroom, laundry, kitchen, family room and outdoor living area;
 - First floor – Bedroom 1 with ensuite, Bedroom 2, 3 & 4 and bathroom.
- Construction of two new driveways;
- Associated landscape and stormwater drainage works including the removal of a street tree; and
- Torrens Title subdivision into two (2) lots
 - Lot 11 – 218.1m²
 - Lot 12 – 203.8m²

Site Description

The subject site is located on the western side of Albert Street, Botany between Morgan Street to the north and Hambly Street to the south. The subject site is rectangular in shape with a total area of 421.9m² and is oriented east to west with east being the front. The northern and southern side boundaries have lengths of 33.46m and the eastern front and western rear

boundaries have widths of 12.8m and 12.43m respectively. The site is relatively flat and consists of a single-storey detached dwelling with a shed at the rear. The site is located in the R2 Low Density Residential zone.



Figure 1 – Location of subject site

Statutory Considerations

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

S.4.15(1) - Matters for Consideration – General

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

The following Environmental Planning Instruments are relevant to this application:

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

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 ("BASIX") applies to the proposed development. The development application was accompanied by BASIX Certificate No. 993642M dated 27 February 2019 prepared by Building & Energy Consultants Australia committing to environmental sustainable measures.

State Environmental Planning Policy No. 55 – Remediation of Land

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

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

3. The site and surrounding land were not previously zoned for purposes identified under Table 1 of the contaminated land-planning guide in SEPP 55, in particular industrial, agricultural or defence uses.

On this basis, the site is considered suitable in its present state for the proposed residential development. No further investigations of contamination are considered necessary.

Botany Bay Local Environmental Plan 2013

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

Relevant Clauses Principal Provisions of Botany Bay Local Environmental Plan 2013	Compliance Yes/No	Comment
Land use Zone		The site is located within the R2 Low Density Residential zone.
Is the proposed use/works permitted with development consent?	Yes	The proposed development is for two semi-detached dwellings, which is permissible with consent in the R2 zone. The proposed semi-detached dwellings are permissible with Council's consent under the BBLEP 2013.
Does the proposed use/works meet the objectives of the zone?	No- Refer to Note 1 – Clause 4.6 Variation relating to FSR Standard	The proposed development is not consistent with all the relevant objectives of the R2 – Low Density Residential zone. The proposal does not continue providing for the housing needs of the community within a low density residential environment given it creates adverse overshadowing impacts and reduces on street car parking.
What is the height of the building? Does the height of the building comply with the maximum building height?	Yes	The height of the proposed building is 7.47m (RL 14.951 – NGL RL 7.480) and therefore does not exceed the maximum 8.5m height shown for the land on the Height of Buildings Map. Furthermore, the proposed height of the development is consistent with the desired future character of the area and does not adversely affect the streetscape or adjoining properties with regards to visual privacy, solar access and view corridors. Accordingly, the proposed height of the building satisfies the objectives of this clause.
What is the proposed Floor Space Ratio?	No- Refer to Note 1 – Clause 4.6 Variation	The subject site is located within Area 3 as shown on the FSR map. The proposed lots 11 and 12 have areas of 218m ² and 203m ² respectively which allows a

Relevant Clauses Principal Provisions of Botany Bay Local Environmental Plan 2013	Compliance Yes/No	Comment
Does the Floor Space Ratio of the building comply with the maximum Floor Space Ratio?	relating to FSR Standard	maximum FSR of 0.5:1 as per Clause 4.4A (3)(d) of the BBLEP 2013. The proposed FSR for lots 11 and 12 is 0.59:1 and 0.60:1 respectively. In this regard, the proposed FSR is non-compliant with this provision. Refer to Clause 4.6 discussion.
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?	No- Refer to Note 1 – Clause 4.6 Variation relating to FSR Standard	The site is located in an Area 3 zone. The proposal does not comply with the maximum permitted FSR.
Is the site listed in Schedule 5 as a heritage item or within a Heritage Conservation Area?	N/A	The site is not listed as a heritage item, nor is it located within a Heritage Conservation Area.
6.1 – Acid Sulphate Soils	Yes	The site is affected by ASS Class 4 that is defined as works more than 2 metres below the natural ground surface or works by which the water table is likely to be lowered more than 2 metres below the natural ground surface. The proposed works will involve minor excavation and will therefore not trigger a requirement for ASS assessment.
6.3 – Stormwater Management	No – Refer Part 3G Stormwater Management	An absorption system needs to be provided in order mitigate stormwater runoff. The application has been referred to Council's Development Engineer who does not support the proposed stormwater system as discussed in more detail in Part 3G Stormwater Management.
6.8 – Airspace Operations	Yes	The subject site is affect by the 51m OLS height limit. However, the maximum RL height of the building sits at 14.951m AHD and will therefore not penetrate the maximum height limit.
6.9 – Development in areas subject to aircraft noise	Yes	The subject site is located within the 20 and 25 ANEF contours and is therefore subject to aircraft noise. As a result, noise mitigation measures are required for the proposed development. An acoustic report was submitted addressing the requirements outlined in the relevant Standards.

Note 1 – Clause 4.6 Variation relating to FSR Standard

The applicant seeks to vary the Floor Space Ratio development standard of 0.5:1 under the BBLEP2013. Refer to the below gross floor area and proposed FSR calculations (Council calculations) for each dwelling below:

Dwelling 1 (Lot 11):

- Site Area:	218.1m ²
- Maximum Permitted GFA:	109.05m ²
- Proposed GFA:	127.7m ²
- Proposed FSR:	0.59:1 (17.1% exceedance)

Dwelling 2 (Lot 12):

- Site Area:	203.8m ²
- Maximum Permitted GFA:	101.9m ²
- Proposed GFA:	121.52m ²
- Proposed FSR:	0.60:1 (19.25% Exceedance)

The site is located within 'Area 3' on the FSR map and therefore is subject to Clause 4.4A of the BBLEP2013. The objectives of this Clause are as follows:

- a) *To ensure that the bulk and scale of development is compatible with the character of the locality; and*
- b) *To promote good residential amenity.*

Pursuant to Clause 4.4A(3)(d), the proposal is defined as '*semi-detached dwelling*' and not defined as '*dwelling houses*' or '*multi-dwelling*' housing. As such the building type would fall under the category of '*all other development for the purpose of residential accommodation*'. Given the above, the maximum permitted FSR for the subject site is 0.5:1. The permissible FSR for a dwelling house on a lot of the same size is 0.8:1.

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

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

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

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

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

(a) *the consent authority is satisfied that:*

- (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
- (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*

(b) *the concurrence of the Secretary has been obtained.*

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

4.6(3)(a) Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case

Applicant's Comment:

The applicant puts forth the argument that compliance with the Floor Space Ratio Development Standard would be 'unreasonable' or 'unnecessary'. The written request invokes a number of common ways in which a development standard can be found unreasonable or unnecessary as established by the Land and Environment Court in *Wehbe v Pittwater Council*.

The written request states that:

- The objectives of the development standard have been met through skilful design and that compliance with the numerical requirements would prevent the objectives of the standard from being met.
- Additionally, on lots of the same size, detached dwellings have a higher permitted FSR than what is permitted for semi-detached dwellings and would inherently undermine the objectives of the standard that relate to bulk and scale.

Planner's Comment:

Council does not support the argument put forward in the applicant's written request that compliance with the development standard is unreasonable or unnecessary. The following comments are made in this respect:

- The development has not satisfied the objectives relating to bulk and scale through skilful design because bulk and scale impacts are occurring. Specifically, the overshadowing impacts to the southern neighbour.

4.6(3)(b) There are environmental planning grounds to justify the contravention of the standard

Applicant's comment:

In order to justify contravening the development standard, sufficient environmental planning grounds must be advanced in the applicant's written request. Furthermore, the justification must specifically relate to aspect of the proposal that contravenes the development standard, in this case the floor space ratio, and not the development as a whole as established in *Initial*

Action Pty Ltd v Woollahra Municipal Council 2018. Additionally, the environmental planning grounds advanced must justify the contravention of the development standard, and not simply promote the benefits of carrying out the development as a whole.

The planning grounds advanced in the applicant's written request are as follows:

- The public will benefit from increasing the supply and diversity as well as renewing the existing housing stock.
- That a reduction in floor space will limit the internal amenities of the dwelling such as amount of bedrooms and size of living areas.
- That the development enhances the amenity of the streetscape.
- That the larger floor area affords greater residential amenity such as off-street car parking and reasonably sized living areas.

Planner's comment:

Council does not support the argument put forward in the applicant's written request that there are sufficient planning grounds to justify the contravention. The following comments are made in this respect:

- A complying development will also satisfy point 1 and 3 and therefore cannot be considered environmental planning grounds for justifying the contravention.
- Increasing internal amenities afforded by large floor areas, such as larger living areas and increased number of bedrooms is not considered environmental planning grounds for justifying the contravention.

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

Planner's Comment: It is considered that the argument put forward by the applicant demonstrating the requirements of subclause (3) is not supported by Council.

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

Applicant's Comment:

The objectives of the development standard are:

- To ensure that the bulk and scale of development is compatible with the character of the locality,
- To promote good residential amenity.

The objectives of the zone are:

- To provide for the housing needs of the community within a low density residential environment.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents
- To encourage development that promotes walking and cycling.

The proposed development satisfies the above objectives as follows:

- The proposed scale of development (i.e., semi-detached dwellings to replace the existing aging dwelling house) will meet the housing needs of the community and add to the range of housing within the low density residential zone.
- Consideration has been given to the existing amenity and character of the area and it is considered that the proposed development is sympathetic and harmonious with nearby development in the Botany locality and will complement the existing character.
- The proposed development will enhance the amenity of the residential area by the provision of new housing stock and landscaping.
- Public transport is available within walking distance.

Planners Comments:

As established in *Initial Action Pty Ltd v Woollahra Municipal Council 2018*, if a development will be in the public interest if it is consistent with the objectives of the development standard and the objectives of the zone in which the development is proposed to be carried out. Council is not satisfied that the proposed development is in the public interest as it is inconsistent with the following objectives:

- Floor Space Ratio Objectives:
 - The proposed bulk and scale is not compatible with the character of the area given it creates significant overshadowing impacts to the southern neighbour; and
 - Consequentially of the above, the proposed development does not promote good residential amenity.
- R2 – Low Density Residential Zone Objectives:
 - The proposed development does not provide for the needs of the community within a low density area given it creates adverse residential amenity impacts from overshadowing and reduces on-street car parking.

With consideration given to the above, the proposal is not consistent with the objectives of the FSR development standard, nor the objectives of the R2 – Low Density zone. Therefore it cannot be concluded that the proposed development is in the public interest. In this regard, Council is not satisfied that the applicant's written request provides adequate justification to vary the FSR development standard.

S.4.15(1)(a)(ii) - Provisions of any Draft EPI's

There are no current Draft EPIs applicable to this development:

S.4.15(1)(a)(iii) - Provisions of any Development Control Plan

Botany Bay Development Control Plan 2013

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

Part 3A – Parking & Access

Control	Proposed	Complies
3A.2 Parking Provisions of Specific Uses		

C2 Car parking provision shall be provided in accordance with Table 1. Attached Dwellings: 1 space/dwelling	Each dwelling provides one (1) off street car parking space within an attached garage.	Y
3A.3 Car Park Design		
C10 Off-street parking facilities are not permitted within the front setbacks.	The garage for each dwelling is located 2m behind the building line and is setback 6m from the front boundary.	Y
C12 Off-street parking facilities must not dominate the streetscape and are to be located away from the primary frontages of the site.	The proposal provides an attached garage for each dwelling which are located 2m behind the building line. The garages are not considered to dominate the streetscape.	Y
C14 A maximum of one vehicle access point is permitted per property. Council may consider additional vehicle access points for large scale developments.	Following subdivision, each property will have only one (1) vehicle access point off Albert Street.	Y
C16 The following general design principles shall be considered when planning access driveways for developments: (i) Separate ingress and egress vehicle access points shall be arranged for large scale developments to enable vehicular flow in a clockwise direction wherever possible; (ii) Reversing movements into and out of public roads shall be prohibited at all times (except for dwelling houses); (iii) The location of an access driveway shall be sited to minimise the loss of on-street parking; (iv) An access driveway at the property line shall be clear of obstructions, such as fences, walls, poles and trees which may prevent drivers from viewing pedestrians; and (v) The vehicle access point of the property shall be signposted with appropriate signs. (vi) No vehicles shall be allowed to queue in the public road reserve.	The proposed layout of the driveways will result in the loss of one on-street car parking space. Alternative approaches are available that prevent this reduction.	No - Refer to Note 3 – Car Parking
C28 The minimum width of the access driveway at the property boundary shall be:- (i) For dwelling houses: 3 metres	The proposed driveway widths comply.	Y

Part 3E – Subdivision and Amalgamation

Control	Proposed	Complies
3E.2.1 Residential Torrens Title Subdivision		
C1 Development Applications shall demonstrate that the proposed subdivision or	The proposed subdivision into two lots are both rectangular and	Y

<p>amalgamation is consistent with the Desired Future Character of the area (refer to relevant sections in Part 8 - Character Precincts, Part 9 - Key Sites, Part 5 - Business Centres and Part 6 - Employment Zones).</p> <p>C2 Proposed subdivision or amalgamation must have characteristics similar to the prevailing subdivision pattern of lots fronting the same street, in terms of area; dimensions, shape and orientation (refer to Figure 1).</p> <p>Note: Council generally considers the 'prevailing subdivision pattern' to be the typical characteristic of up to ten allotments on either side of the subject site and corresponding number of allotments directly opposite the subject site. Properties located in the surrounding streets do not usually form part of the streetscape character and are therefore not taken into consideration when determining the prevailing subdivision pattern.</p> <p>C3 Development application which proposes the creation of new allotments must be accompanied by a conceptual building plan that demonstrates compliance with relevant building controls.</p> <p>C5 Proposed lots must be of a size and have dimensions to enable the siting and construction of a dwelling and ancillary structures that:</p> <ol style="list-style-type: none"> Acknowledge site constraints Address the street Minimize impacts on adjoining properties including access to sunlight, daylight, privacy and views Provide usable private open space Protect existing vegetation Mitigate potential flood affectation and stormwater management requirements Acknowledge contamination of the land Protect heritage items <p>C7 All lots created shall have at least one (1) frontage to the street.</p>	<p>therefore maintains the existing rectilinear grid pattern within the Precinct.</p> <p>The proposed subdivision will result in the lots maintaining the site depth, shape and orientation found with the prevailing subdivision pattern. However, the proposed site areas and site widths of Lot 11 (218.1m²) and Lot 12 (203.8m²) are smaller than the average found in the street.</p> <p>The development application seeks approval for Torrens title subdivision and construction of a semi-detached dwelling on each of the two subdivided lots. Architectural plans for the dwellings have been submitted, however do not comply with FSR, car parking, stormwater management, setbacks and solar access.</p> <p>The proposed lots are of a size and have dimensions that may effectively accommodate the construction of a dwelling and any ancillary structures.</p> <p>Both allotments have frontages to Albert Street.</p>	<p>Yes - Refer to Note 2 – Prevailing Subdivision Pattern</p> <p>N</p> <p>Y</p> <p>Y</p>
---	--	--

Note 2 – Prevailing Subdivision Pattern

Address	Lot Size (approx. in sqm)	Lot size variation in sqm from the	Lot widths (approx. in m)	Lot width variation in m from the
---------	---------------------------	------------------------------------	---------------------------	-----------------------------------

		smallest lot proposed (m ²)		smallest lot proposed (m)
24 Albert Street (Subject site)	Lot 11: 218.1m ² Lot 12: 203.8m ²	(Lot 12: 203.8m ²)	Lot 11: 6.655m Lot 12: 6.145m	(Lot 12: 6.145m)
1 Morgan Street	555.69	-351.86	15.51	-9.37
1 Albert Street	506.00	-302.20	15.20	-9.06
2 Albert Street	504.73	-300.93	15.00	-8.86
3 Albert Street	408.71	-204.91	12.40	-6.26
4 Albert Street	407.48	-203.68	12.10	-5.96
5 Albert Street	408.71	-204.91	12.00	-5.86
6 Albert Street	411.54	-207.74	12.30	-6.16
7 Albert Street	408.71	-204.91	12.20	-6.06
8 Albert Street	407.51	-203.91	12.10	-5.96
9 Albert Street	408.71	-204.91	12.30	-6.16
10 Albert Street	411.83	-208.03	12.20	-6.06
11 Albert Street	397.62	-193.82	11.80	-5.66
12 Albert Street	411.47	-207.61	12.20	-6.06
13 Albert Street	385.70	-181.90	11.60	-5.46
14 Albert Street	409.14	-205.34	12.10	-5.96
15 Albert Street	423.70	-219.90	12.80	-6.66
16 Albert Street	409.93	-206.13	12.30	-6.16
17 Albert Street	430.13	-226.33	12.80	-6.66
18 Albert Street	415.46	-211.66	12.30	-6.16
19 Albert Street	415.79	-211.99	12.30	-6.16
20 Albert Street	407.34	-203.54	12.10	-5.96
22 Albert Street	407.50	-203.70	12.20	-6.06
23 Albert Street	206.26	-2.46	6.10	+0.05
25 Albert Street	197.09	+6.71	5.90	+0.25
26 Albert Street	365.76	-161.96	12.40	-6.26
27 Albert Street	419.38	-215.58	12.40	-6.26
28 Albert Street	369.44	-165.64	12.10	-5.96
29 Albert Street	408.77	-204.97	12.50	-6.36
30 Albert Street	356.04	-161.24	11.90	-5.76
31 Albert Street	630.00	-426.20	15.40	-9.26
32 Albert Street	424.05	-220.25	12.70	-6.56

34 Albert Street	408.00	-204.20	12.50	-6.36
36 Albert Street	408.73	-204.93	12.10	-5.96
38 Albert Street	339.21	-135.41	10.30	-4.16
40 Albert Street	313.34	-109.54	13.70	-7.56
9 Swinbourne Street	669.43	-465.63	18.50	-12.36
13A Swinbourne Street	332.69	-128.89	9.20	-3.06
Average	410.85	-207.30	12.31	6.17

Table 1: Assessment of adjoining lots

Council generally considers the prevailing subdivision pattern to be the typical characteristic of up to ten allotments on either side of the subject site and corresponding number of allotments directly opposite the subject site. It is noted that the DCP does not provide any exclusions to how this subdivision pattern should be calculated in terms of zoning or subdivided developments approved prior to the gazettal of the BBLEP 2013. There is a mixture of various allotment sizes within the area which range from 197.09m² to 669.43m² in area, and 5.90m to 18.50m widths.

The site is located in the Botany Character Precinct which encourages the preservation of the rectilinear subdivision grid pattern within the precinct. The site has a total site area of 421.90m² with a primary street frontage width of 12.80m to Albert Street. The application proposes to create two rectilinear lots with the following measurements:

	Lot 11	Lot 12
Proposed lot size	218.1m ²	203.8m ²
Eastern frontage	6.66m	6.15m
Northern boundary	33.42m	33.42m
Southern boundary	33.45m	33.42m
Western rear	6.33m	6.10m

An assessment of the lot sizes and street frontage widths of the properties on either side of the subject site as well as the properties opposite the site has been considered, as shown in Table 1 above.

On its merits, the proposed subdivision is considered to be acceptable due to the following:

1. The proposed lots are capable of supporting dwelling houses which can achieve compliance with relevant controls such as floor space ratio, building height, landscaping, setbacks, private open space, privacy, car parking, overshadowing and solar access. This can be achieved through careful and considerate design of the dwellings; and
2. The proposed layout of the lots do not contravene the desired future character of the Botany precinct. The lots retain and preserve the rectilinear pattern with appropriate orientation.

In this regard, the assessment within this report demonstrates the proposal complies with the relevant provisions of the BBLEP 2013 and BBDCP 2013. Given that the proposed subdivision is consistent with the existing and future subdivision pattern in the immediate vicinity of the subject site, the proposed subdivision is supported, however, the design of the dwellings needs to be amended to comply.



Figure 2 – Existing subdivision Pattern

Part 3G – Stormwater Management

The Development Application was accompanied by stormwater plans and absorption rates which were prepared by ANAcivil Pty Ltd. The plans demonstrate that an absorption system is to be provided. A geotechnical report was not provided to justify the infiltration rate used in the design and as such was requested by Council. Upon receipt, the scheme was referred to Council's Development Engineer who does not support the proposed stormwater management system for the following reasons:

- The recommended absorption rate in the geotechnical report is much lower than the absorption rate adopted in the onsite absorption volume calculations;
- The spreadsheet absorption calculation shown on the stormwater plan does not appear to be accurate, the Jumbo trench volumes appear to be overestimated and a maximum 50% Rainwater tank offset can be used as an offset; and
- An additional 20% volume shall be provide to absorption systems that do not have a safe overflow to the street frontage in accordance with Botany bay Development Control Plan.

Part 3J – Aircraft Noise and OLS

The provisions of Australian Standard AS2021-2000 have been considered in the assessment of the development application as the subject site is located within the 20-25 ANEF contour. Residential development in these areas is considered 'conditional' under Table 2.1 of Australian Standard AS2021-2000. The development will result in an increase in the number of dwellings and people affected by aircraft noise. An acoustic report was submitted addressing the requirements outlined in the relevant Standards.

Part 3K – Contamination

The relevant requirements and objectives have been considered in the assessment of the development application. The subject site has long been utilised for residential purposes and it is unlikely that the land is contaminated. Furthermore, the application has been assessed against SEPP 55 and is found to be satisfactory. Further site investigation is not required necessary in this instance.

Part 3L – Landscaping and Tree Management

The proposal was referred to Council's Landscape Officer who supports the application subject to Tree Protection Zone's being established around the existing trees on site.

Part 3N – Waste Minimisation and Management

A Waste Management Plan prepared by DPLAN Urban Planning Consultants was submitted with the application listing methods for minimising and managing construction and ongoing waste on site.

Part 4A – Dwelling Houses

Control	Proposed	Complies
4A.2.2 Site Analysis		
C1 A Site Analysis Plan shall be submitted with all Development Applications to Council. For information regarding what should be identified on a Site Analysis Plan, refer to Council's Development Application Guide which is available at the Customer Services Centre or online via Council's website.	A site analysis plan has been provided.	Y
C2 An effective site analysis will: a. Identify key opportunities and affectations of the site; b. Demonstrate reasoning behind key design decisions; c. Influence design decisions to minimise negative impacts on amenity; and d. Demonstrate and uncover neighbourhood characteristics which the design will respond to.	The site analysis plan has not influenced design decisions to minimise impacts on amenity given there are significant overshadowing impacts as discussed in <i>Note 5 - Solar Access</i> . Additionally, the design has not responded to neighbourhood characteristics, specifically the availability of on-street car parking. The driveway layout removes one on-street car parking space despite there been alternative options as discussed in <i>Note 3 – Car Parking</i> .	No – Refer to Note 5 – Solar Access No – Refer to Note 3 – Car Parking
4A.2.3 Local Character		
C1 Development must be designed to respond to the opportunities and constraints identified in the Site Analysis.	The development has not been designed to respond to the constraints of the site as no attempt was made to mitigate overshadowing impacts to the southern property.	No – Refer to Note 5 – Solar Access
C2 Development must comply with the relevant Desired Future Character	The development does comply with the desired future of the area. Refer to <i>Part 8 – Botany Character Precinct</i> .	No – Refer to Part 8 – Botany

Statements in Part 8 - Character Precincts.		Character Precinct
4A.2.4 Streetscape Presentation		
<p>C1 New dwellings must be designed to reflect the relevant Desired Future Character Statement in Part 8 - Character Precincts and are to reinforce the architectural features and identity which contributes to its character. Applicants must address the design principles outlined in the statement.</p> <p>C2 Development must be designed to reinforce and maintain the existing character of the streetscape.</p> <p>C3 Development must reflect dominant roof lines and patterns of the existing streetscape (refer to Figure 3).</p> <p>C4 Buildings must appropriately address the street. Buildings that are intrusive or inconsistent with the established development pattern will not be permitted.</p> <p>C6 The entrance to a dwelling must be readily apparent from the street.</p> <p>C7 Dwelling houses are to have windows to the street from a habitable room to encourage passive surveillance.</p> <p>C10 Development must retain characteristic design features prevalent in houses in the street including: verandas, front gables, window awnings, bay windows, face brickwork or stone details.</p>	<p>The proposal is located in a R2 Low Density Residential Zone. The immediate context is relatively low scale, consisting of single and double storey detached residential dwellings.</p> <p>The existing character of the streetscape is relatively consistent in relation to dwelling typology and subdivision pattern. These include approximately 12m wide frontages, 0.9m side setbacks, gabled or hipped roof forms and detached single dwelling forms. Notwithstanding, newer developments have introduced more contemporary architectural styles to the streetscape, most notably at 12, 12a and 12b Hambly Street.</p> <p>The proposed dwellings will present to Albert Street and maintain a consistent building line. The entrances to both dwellings are apparent from the street. Notwithstanding, Dwelling No. 2 does not have any habitable rooms presenting to the street.</p> <p>The existing streetscape consists of a mix of gable and hipped roof forms. There are also a variety of materials used, most notably, brickwork and weatherboards. The proposal incorporates a hipped roof form as well as face and rendered brick for the façade.</p>	<p>Y</p> <p>No</p> <p>Y</p>
4A.2.5 Height		
<p>C1 The maximum height of buildings must be in accordance with the Height of Buildings Map and Clause 4.3 of the Botany Bay Local Environmental Plan 2013.</p>	<p>Maximum Height: 8.5m</p> <p>Proposed Height: 7.47m</p>	Y
4A.2.6 Floor Space Ratio		
<p>C1 The maximum FSR of development must comply with the Floor Space Ratio Map and Clause 4.4 and 4.4A of the Botany Bay Local Environmental Plan 2013 (refer to Figure 12).</p>	<p>Maximum FSR: 0.5:1</p> <p>Proposed FSR:</p> <p>Dwelling 1: 0.59:1 (17.1% exceedance)</p> <p>Dwelling 2: 0.60:1 (19.25% Exceedance)</p>	No – Refer to Note 1 – FSR Variation
4A.2.7 Site Coverage		

<p>C2 For sites over 200m² the maximum site coverage is:</p> <p>200 – <250m² 65% of the lot</p>	<p>Site coverage areas for each lot listed below:</p> <p><i>Lot 11: 91.6 sqm / 42%</i></p> <p><i>Lot 12: 95.1 sqm / 47%</i></p>	Y
4A.2.8 Building Setbacks		
<p>C.1 Dwelling houses must comply with the following minimum setbacks as set out in Table 1.</p> <p><i>Lot Width of less than 12.5m:</i> <i>Minimum front setback</i> – comply with the prevailing street setback or 6 metres (min) <i>Minimum side setback</i> – Up to 2 floors 900mm (Council may require an increased setback due to streetscape and bulk considerations) <i>Minimum rear setbacks</i> – 6 metres (min) <i>Zero lot lines (with Council Discretion)</i> – On merit based on building type and open space provisions <i>Eaves</i> – 450mm minimum setback</p>	<p>Proposed Front Setback:</p> <p><i>Dwelling 01: 4m (Prevailing street setback)</i></p> <p><i>Dwelling 02: 4m (Prevailing street setback)</i></p> <p>Proposed Side Setbacks:</p> <p><i>Dwelling 01: Northern – Nil (common wall), Southern – 965mm</i></p> <p><i>Dwelling 02: Northern – Nil , Southern – Nil (common wall)</i></p> <p>A merit assessment of the side setbacks has been carried out and is discussed in detail in <i>Note 4 – Boundary Setbacks</i></p> <p>Proposed Rear Setbacks:</p> <p><i>Dwelling 01: 9.17m</i></p> <p><i>Dwelling 02: 9.17m</i></p>	<p>No – Refer to Note 4 – Boundary Setbacks</p>
<p>C5 To avoid the appearance of bulky or long walls side and rear setbacks should be stepped or walls articulated by projecting or recessing window elements, or a variation in materials.</p> <p>C9 In certain circumstances where terrace house dwelling forms are proposed, Council may grant consent to a development with a 0 metre setback to a side boundary. However, Council must not grant consent, unless the applicant has satisfactorily addressed the questions identified in the Land and Environment Court Planning Principle “Building to the side boundary in residential areas” established in <i>Galea v Marrickville Council</i> [2003] NSWLEC 113 (or as updated) and consideration has been given to that statement. The Planning Principle is available to view on the Land and Environment Court's website (www.lawlink.nsw.gov.au/lec).</p>	<p>The proposal incorporates indents to both dwellings to ensure that large expanses of blank walls along the side boundaries between neighbouring properties are avoided and internal amenity of indoor living spaces is achieved.</p> <p>Refer to <i>Note 4 – Boundary Setbacks</i> for a detailed merit assessment.</p>	<p>Y</p> <p>No – Refer to Note 4 – Building Setbacks</p>
4A.2.9 Landscape Area		

<p>C1 Landscaped areas are to be designed accordance with Part 3L - Landscaping.</p> <p>C2 Development shall comply with the following minimum landscaped area requirements, based on the area of the site in Table 2.</p> <p>Table 2 requires the following minimum landscaped area:</p> <p>Less than 250 m² - 15%</p> <p>Landscaped Area is to be fully permeable deep soil zones which are areas of natural ground or soil, not planter boxes (refer to definition in Part 3L – Landscaping).</p> <p>C3 Landscaped Area is to be fully permeable deep soil zones which are areas of natural ground or soil, not planter boxes (refer to definition in Part 3L – Landscaping).</p> <p>C7 Where a building, driveway or pool is sited at the location of an existing tree, Council may require plans to be modified.</p> <p>C8 The front setback is to be fully landscaped with trees and shrubs and is not to contain paved areas other than driveways and entry paths. Paving is restricted to a maximum of 50% of the front setback area.</p>	<p>Landscaped areas for each lot listed below:</p> <p>Lot 11: 65.74 sqm / 30.14%</p> <p>Lot 12: 54.44 sqm / 25.71%</p> <p>The proposed landscaped area is predominantly deep soil area.</p> <p>The proposed driveways will result in the removal of one street tree. Additionally, it will limit the available space for a replacement tree. An amended driveway layout will provide a larger space and therefore accommodate a mature canopy tree.</p> <table><tr><td>Lot 11:</td><td>Front Setback area = 27m²</td></tr><tr><td></td><td>% Paved = 43.7%</td></tr><tr><td>Lot 12:</td><td>Front Setback area = 24.3m²</td></tr><tr><td></td><td>% Paved = 52.3%</td></tr></table>	Lot 11:	Front Setback area = 27m ²		% Paved = 43.7%	Lot 12:	Front Setback area = 24.3m ²		% Paved = 52.3%	<p>Y</p> <p>No</p> <p>Y</p> <p>No</p>						
Lot 11:	Front Setback area = 27m ²															
	% Paved = 43.7%															
Lot 12:	Front Setback area = 24.3m ²															
	% Paved = 52.3%															
4A.3.1 Materials and Finishes																
<p>C3 Materials, colours, architectural details and finishes must be sympathetic to the surrounding locality.</p> <p>C4 The use of materials with different textures such as brickwork, glass, timber weatherboards and iron awnings are to be used to break up uniform buildings.</p>	<p>A schedule of colours and finishes was provided with the application.</p> <p>The proposal is to incorporate a range of materials including:</p> <table><tr><td>Face Brick</td><td>PGH 'Highlands' bricks – Blackheath</td></tr><tr><td>Roof Tiles</td><td>Borwal Macquarie profile – twilight</td></tr><tr><td>Windows</td><td>Monument</td></tr><tr><td>Fascia</td><td>Colourbond monument</td></tr><tr><td>Cladding</td><td>Taubmans colourbond monument CB 66</td></tr><tr><td>Acrylic render</td><td>Taubmans apache stone</td></tr><tr><td>Garage doors</td><td>Colourbond monument</td></tr></table>	Face Brick	PGH 'Highlands' bricks – Blackheath	Roof Tiles	Borwal Macquarie profile – twilight	Windows	Monument	Fascia	Colourbond monument	Cladding	Taubmans colourbond monument CB 66	Acrylic render	Taubmans apache stone	Garage doors	Colourbond monument	<p>Y</p>
Face Brick	PGH 'Highlands' bricks – Blackheath															
Roof Tiles	Borwal Macquarie profile – twilight															
Windows	Monument															
Fascia	Colourbond monument															
Cladding	Taubmans colourbond monument CB 66															
Acrylic render	Taubmans apache stone															
Garage doors	Colourbond monument															

	Driveway	French grey	
	Gutters	Colourbond monument	
	Downpipes	Colourbond monument	
C10 The exterior walls of new dwellings must incorporate different materials, colours and textures to add interest and articulate the facade.	A mix of different coloured roof tiles can be found in the streetscape. The subject property proposes dark coloured roof tiles and is considered to be appropriate for the streetscape.		Y
C11 New development must incorporate colour schemes that are consistent with the predominant colour schemes in the street. No expansive use of white, light or primary colours which dominate the streetscape are permitted.	The proposed colour scheme is considered to complement the existing streetscape, consisting of dark grey, beige and brown coloured materials.		Y
4A.3.2 Roofs and Attics/Dormer			
C1 Where roof forms in a street are predominantly pitched, then any proposed roof should provide a similar roof form and pitch. Roof pitches are to be between 22.5 degrees and 40 degrees.	A mix of gable and hipped roof forms are found in the streetscape. The development proposes a hipped roof form which is compatible with the surrounding dwellings.		Y
C3 A variety of roof forms will be considered, provided that they relate appropriately to the architectural style of the proposed house and respect the scale and character of adjoining dwellings.			
4A.3.3 Fences			
C1 Front fences are to compliment the period or architectural style of the existing dwelling house.	No front fences have been proposed.		Y
4A.4.1 Visual Privacy			
C1 The privacy needs of residents should be considered in designing a new dwelling or alterations and additions to a dwelling. Windows are to be located so they do not provide direct or close views into the windows of other dwellings, particularly those of living areas.	The proposal minimises visual privacy impacts to neighbouring properties by preventing direct sightlines to adjoining windows and private open space areas.		No – Can be conditioned if approval is granted
C2 Visual privacy for adjoining properties must be minimised by: ▪ Using windows which are narrow or glazing which is translucent or obscured	Notwithstanding, Bedroom 2 and 3 of Dwelling 1 have windows that have direct sightlines to the southern neighbour's private open space and living area windows. In order to reduce this impact, raising the sill heights to 1.5m above the finished floor level will need to be incorporated into the design.		

<ul style="list-style-type: none"> Ensuring that windows do not face directly on to windows, balconies or courtyards of adjoining dwellings Screening opposing windows, balconies and courtyards; and Increasing sill heights to 1.5 metres above floor level. 		
4A.4.2 Acoustic Privacy		
C4 New dwellings on land within the Australian Noise Exposure Forecast (ANEF) Contour 20 or higher shall be designed and constructed in accordance with Australian Standard AS 2021 (Acoustic Aircraft Noise Intrusion-Building siting and Construction).	The proposed dwelling is within the 20-25 ANEF contour. An acoustic report has been submitted and addresses the requirements of the relevant Standards.	Y
4A.4.3 Solar Access		
<p>C1 Buildings (including alterations/additions/extensions) are to be designed and sited to maintain approximately 2 hours of solar access between 9am and 3pm on 21 June to windows in living areas (family rooms, rumpus, lounge and kitchens) and to 50% of the primary private open space areas of both the subject site and adjoining properties.</p> <p>C2 Solar panels on adjoining houses that are used for domestic needs within that dwelling must not be overshadowed for more than two hours between 9am to 3pm in mid-winter.</p> <p>C3 Where the primary private open space of an adjoining development currently receives less than the required amount of sunlight on 21 June (50% coverage for a minimum of 2 hours), the proposed development must not further reduce the amount of solar access to the private open space of the adjoining development.</p> <p>C4 Council may grant consent to a development that does not comply with the 2 hours of solar access requirement. However, Council must not grant consent, unless the applicant has satisfactorily addressed the questions identified in the Land and Environment Court Sunlight Planning Principle. The Planning Principle is updated by Court decisions and is available to view on the Land and</p>	<p>Shadow diagrams were provided with the subject application. The lots are east-west orientated. There are no solar panels on the adjoining dwellings. The proposal will impact upon the amount of solar access received directly south of each proposed property.</p> <p>See <i>Note 5 – Solar Access</i> for a detailed discussion.</p>	No – Refer to Note 5 – Solar Access

Environment Court's website (www.lawlink.nsw.gov.au/lec).		
C5 Where a neighbouring development currently receives less than the required amount of sunlight (on 21 June) the amount of sunlight available on the 21 March or the 21 September will be assessed and form a merit based assessment of the Development Application.		
4A.4.4 Private Open Space		
<p>C1 Each dwelling is to have a private open space that:</p> <ul style="list-style-type: none"> (i) Has at least one area with a minimum area of 36m²; (ii) Is located at ground level with direct access to the internal living areas of the dwelling; (iii) Maximises solar access; (iv) Is visible from a living room door or window of the subject development; (v) Minimises overlooking from adjacent properties; (vi) Is generally level; (vii) Is oriented to provide for optimal year round use; (viii) Is appropriately landscaped; and (ix) Is located or screened to ensure privacy; <p>Note: Private open space is not to include:</p> <ul style="list-style-type: none"> (i) Non-recreational structures (including garages, tool sheds and such like structures); (ii) Swimming pools; and (iii) Driveways, turning areas and car spaces, drying areas and pathways. <p>C2 Sites less than 250m² may have a minimum area of 25m².</p> <p>C5 The primary private open space area is to be located at the rear of the property.</p>	<p>Private open space areas for each lot are listed below:</p> <p>Lot 11: 73.98 sqm</p> <p>Lot 12: 69.82 sqm</p> <p>The private open spaces are located at ground level with direct access from the living areas. They receive adequate solar access and are appropriately landscaped and screened to ensure privacy.</p>	Y
	The primary private open space areas of the proposal are located at the rear of the property.	Y
4A.4.6 Excavation		
C1 Buildings must not dominate or detract from the natural landform. The siting of buildings should relate to the	The proposed development is located on a site that is relatively flat and will therefore not involve extensive excavation.	Y

site's natural context and topographical features.		
4A.4.7 Vehicle Access		
<p>C1 Driveways within a property shall have a minimum width of 3 metres. Note: An additional clearance of 300mm is required (for each side) if the driveway is located adjacent to a solid structure (i.e. masonry wall).</p> <p>C2 The width of the vehicular crossing over the Council's road reserve shall be a minimum of 3 metres for a single garage and a maximum of 5.5 metres for a double garage at the property boundary and at 90° to the kerb.</p> <p>C3 Driveways must be designed to comply with AS2890.1 (also refer to Part 3A - Car Parking).</p> <p>C4 Vehicular crossings shall be sited so that existing street trees, bus stops, bus zones, power lines and other services are not affected.</p> <p>C6 The number of vehicle crossings is to be limited to one (1) per allotment.</p> <p>C7 Vehicular crossings shall be sited so as minimise any reduction in on-street kerb side parking.</p>	<p>The development proposes two driveways each 3m wide. The layout of the driveways has not provided any room for on-street car parking resulting in a reduction of one on-street car parking space. Additionally, the driveway layout has resulted in the removal of one street tree.</p> <p>The application was referred to Council's Development Engineer who does not support the proposed layout. The proposed car parking situation has been discussed in detail in Part 3A of the report.</p>	<p>No – Refer to Note 3 – Car Parking</p>
4A.4.8 Car Parking		
<p>C1 Development must comply with Part 3A - Car Parking.</p> <p>C4 Car parking structures must be located and designed to:</p> <p>(i) Comply with AS2890.1 and</p> <p>(ii) Conveniently and safely serve all users;</p> <p>(iii) Enable efficient use of car spaces, including adequate manoeuvrability for vehicles between the site and the street;</p> <p>(iv) Not dominate or detract from the appearance of the existing dwelling or new development and the streetscape;</p> <p>(v) Be compatible in scale, form,</p>	<p>Refer to <i>Note 3 Car Parking</i>.</p> <p>Refer to <i>Note 3 – Car Parking</i> as the proposed car parking scheme will result in the reduction on one on-street car parking space.</p>	<p>No – Refer to Note 3 – Car Parking</p> <p>No – Refer to Part 3A & Note 3 – Car Parking</p>

<p>materials and finishes with the associated dwelling;</p> <p>(vi) Not reduce availability of kerbside parking;</p> <p>(vii) Retain any significant trees; and</p> <p>(viii) Have minimal impact on existing fences and garden areas that contribute to the setting of the associated dwelling and the character of the streetscape.</p> <p>C8 In new development the garage/carport is to be setback 5.5 metres from the front boundary. This may be difficult for small allotments with a frontage of 12.5 metres or less. In these cases Council will consider whether or not to require a setback of 5.5 metres on merit – this merit based assessment will include whether or not the proposed garage will have a dominant impact on the streetscape.</p> <p>C9 Garages, parking structures (i.e. carports & car spaces) and driveways are not to dominate the street.</p>	<p>The garage is setback 6m from front boundary and is therefore compliant with this control.</p> <p>The proposed garages are not considered to dominate the street. Notwithstanding, the proposed driveways have a total width of 6m. In the case of Lot 12, the driveway accounts for more than 50% of the paved area in the front setback. Additionally, the layout of the driveway, being only 3m apart from each other limits the amount of landscaping that would otherwise minimise the bulk and scale of the development.</p>	<p>Y</p> <p>No – Refer to Part 3A and Note 3 – Car Parking</p>
--	---	---

Note 3 – Car Parking

The development proposes two driveways each 3m wide. The proposal has not provided any room for on-street car parking resulting in a reduction of one on-street car parking space. Additionally, the driveway layout dominates the streetscape given the amount of paving required and has resulted in the removal of one street tree with reduced space for more landscaping. The application was referred to Council's Development Engineer who does not support the proposed layout.

There are two options for driveway layouts that is more appropriate than what is currently proposed. The first being, having the two driveways located on opposite ends of the frontages so as to accommodate a 5.6m space between them. The second option is to amalgamate the driveways into one 5.5m wide driveway. Both options retain the same amount of on-street parking currently available.

Notwithstanding, amalgamating the driveways in this instance is considered the more appropriate option as it does not require the relocation of services that are located in the south-east corner of the site and provides sufficient space for mature street trees and landscaping within the front setback. Additionally, consideration should be given to the development trend

of the street where it can be expected that similar subdivisions may be proposed. In this regard, amalgamating the driveways will result in fewer driveways intersecting the street as it continues to develop. This will allow for more space for street tree planting, will maximise on-street parking and will improve pedestrian and streetscape amenity.

Council requested the driveways to be amalgamated as part of the additional information letter in order to address the concerns raised above; the amended plans in response to the letter disregarded this request. In this regard, Council does not support the proposed driveway layout given the reduction in supply of on-street parking whilst simultaneously increasing density and therefore demand.

Note 4 – Building Setbacks

Zero lot lines on sites with a lot width less than 12.5m are to be assessed on merit depending on building type and open space provisions. The objectives for Part 4A.2.8 Building Setbacks area as follows:

O1. To ensure that the relationship between side and rear setbacks and building heights maintain the amenity of neighbouring residential sites.

As discussed in the Land and Environment Court (*Galea v Marrickville Council* [2005] NSWLEC 113) planning principle, to determine whether building on the boundary is appropriate, the following questions should be asked:

1. Is the street characterised by terrace housing?

The street is not characterised by terrace housing; the most prominent building typology is detached dwellings. One semi-detached dwelling is located at 23-25 Albert Street with a number of other examples present in the immediate locality.

2. What is the height and length of the wall on the boundary?

The northern boundary wall has a length of 6m and a height of 4.03m which includes a 1m high parapet.

3. Has the applicant control over the adjoining site(s) or the agreement of their owners?

The applicant has not provided Council with any evidence to show that they have control over the adjoining site(s) or the agreement of their owners.

4. What are the impacts on the amenity and/or development potential of adjoining sites?

The impacts on the amenity relate to the reduction in daylight able to be received as the boundary wall will impact the southern elevation of the neighbour to the north. The unnecessary height of the parapet further impacts on the amenity and adds to the bulk and scale of the development.

5. Are there arrangements in place for the maintenance of the wall or gutters?

Currently there are no arrangements in place for the maintenance of walls, gutters and downpipes to the adjoining properties.

Note 5 – Solar Access

Botany Bay Development Control Plan (DCP) 2013 states building are to be designed and sited to maintain approximately 2 hours of solar access between 9am and 3pm on the 21 June to windows in living areas and to 50% of the primary private open space areas of both the subject site and adjoining properties as per Control 1.

Council may grant consent to a development that does not comply with the 2 hours of solar access requirement. However, Council must not grant consent, unless the applicant has satisfactorily addressed the questions identified in the Land and Environment Court Sunlight Planning Principle as stated in Control 4 of the BBDCP 2013.

The subject allotment is east-west oriented with east being the rear of the property and west being the front of the property. The proposal will result in significant overshadowing impacts to the property to the south resulting in a non-compliance with Control 1. Therefore an assessment against the below planning principle established by the LEC has been carried out.

With respect to the Land and Environment Court planning principles on the impact on solar access of neighbours (*Parsonage v Ku-ring-gai* (2004) NSWLEC 347) and as amended by *The Benevolent Society v Waverly Council* is addressed as follows:

- *The ease with which sunlight access can be protected is inversely proportional to the density of development. At low densities, there is a reasonable expectation that a dwelling and some of its open space will retain its existing sunlight. (However, even at low densities there are sites and buildings that are highly vulnerable to being overshadowed). At higher densities sunlight is harder to protect and the claim to retain it is not as strong.*

Comment: The subdivision pattern along the western side return of Albert Street is oriented east-west, with west being the rear boundary and east being the front boundary. The locality is in a low density area consisting predominantly of detached dwelling houses. Given the low density context, it can be expected that some of the existing sunlight will be retained. The proposed development complies with height and rear setback controls, however exceeds the maximum FSR allowed for the site. The neighbour directly to the south will be the most effected by the proposal and the impacts have been discussed in detail below.

Solar Access to southern neighbour (12b Hambly Street)

Living area windows (Ground floor rear window):

The neighbouring site to the south is oriented east-west with east being the front. The proposed living areas, consisting of a kitchen, dining and living room are located to the rear of the dwelling on the ground floor. The ground floor rear window servicing the living areas will be self-shadowed from 9am to approximately midday. However the shadow cast by the proposal will prevent any direct solar access to the ground floor rear window servicing the living areas on June 21. Whilst it is understood that there are some challenges in maintaining solar access to southern properties in east-west subdivision patterns, the proposal makes no attempt at addressing this.

Rear private open space:

In order to comply with the solar access requirements of the BBDCP 2013, the proposal must maintain a minimum of 2 hours of solar access to at least 50% of the private open space area. The shadow diagrams indicate that for June 21, substantially more than 50% of the private

open space will be overshadowed throughout the entire day. This outcome is not inevitable as a more appropriate and considerate design will enable compliance with this control. The exceedance in FSR is reflective of the unnecessary bulk and scale present in this proposal.

- *The amount of sunlight lost should be taken into account, as well as the amount of sunlight retained.*

Comment: The proposal extends the rear building line approximately 3m further into site to what is currently existing. The length of the dwelling is considered to have the biggest impact on the southern neighbour as it prevents afternoon sun from adequately reaching the property.

- *Overshadowing arising out of poor design is not acceptable, even if it satisfies numerical guidelines. The poor quality of a proposal's design may be demonstrated by a more sensitive design that achieves the same amenity without substantial additional cost, while reducing the impact on neighbours.*

Comment: As discussed above, the proposal is considered to have unnecessary bulk and scale which understandably has created overshadowing impacts. A more efficient use of internal space will seek to resolve this issue. This concern was raised with the applicant in an additional information letter requesting a reduction in FSR to minimise overshadowing impacts; the amended plans disregarded this request.

- *For a window, door or glass wall to be assessed as being in sunlight, regard should be had not only to the proportion of the glazed area in sunlight but also to the size of the glazed area itself. Strict mathematical formulae are not always an appropriate measure of solar amenity. For larger glazed areas, adequate solar amenity in the built space behind may be achieved by the sun falling on comparatively modest proportions of the glazed area.*

Comment: The proposed development prevents the ground floor living area window at 12b Hambly Street from receiving the minimum direct solar access requirement of 2 hours for 21 June. The floor to ceiling living area window has a height of 2700mm and a width of 5900mm.

- *Overshadowing by fences, roof overhangs and changes in level should be taken into consideration. Overshadowing by vegetation should be ignored, except that vegetation may be taken into account in a qualitative way, in particular dense hedges that appear like a solid fence.*

Comment: Overshadowing by fences, roof overhangs and changes in level have been taken into consideration and in this case, has minimal impact.

- *In areas undergoing change, the impact on what is likely to be built on adjoining sites should be considered as well as existing development.*

Comment: Indications of incremental change can be found in the street, mostly in the form of knock-down rebuilds. The property to the south, which is most effected by the proposal, has recently developed. Therefore, consideration to future development on that site is not applicable.

Part 8- Botany Character Precinct

The site is located within the R2 Low Density Residential Zone of the Botany Precinct on the western side of Albert Street between Morgan Street to the north and Hambly Street to the

south. Refer to the table below which addresses each point regarding the 'Desired Future Character' for Botany.

Control	Proposed	Complies
Function and Diversity <ul style="list-style-type: none"> Enhance the public domain and streetscapes within the Precinct. Development should: <ul style="list-style-type: none"> promote neighbourhood amenity and enhance pedestrian comfort; encourage site layout and building styles and designs that promote commonality and a visual relationship with the surrounding built form and dwelling styles; encourage dwelling styles that maintain and complement existing development patterns; encourage a strong landscape and vegetation theme within both the public and private domain; 	<p>The proposed driveway layout adversely impacts on the public domain and streetscape due to the excess amount of space used for driveways intersecting the street. Additionally, the driveway layout limits the amount of street tree planting and therefore reducing pedestrian comfort.</p>	No – Refer to Note 3 – Car Parking
Form, Massing, Scale and Streetscape <ul style="list-style-type: none"> Encourage development to follow the topography of the land. Maintain and enhance low density residential accommodation in the form of detached/attached dwellings with a maximum height of 2 storeys in the remainder of the Precinct. Promote site access and parking facilities that do not dominate the streetscape. Encourage new development or alterations and additions to existing development to complement the height and architectural style found in the immediate vicinity, particularly where there is an established character. Maintain roof forms to reflect the characteristics of the prevailing designs within the street. 	<p>The proposed hipped roof form is consistent with other roof forms found in the street which is predominantly made up of gable and hipped roof forms. In this regard, the proposed roof form and dwelling style is acceptable.</p> <p>Notwithstanding, the driveways are considered a dominate element within the streetscape and are not supported.</p>	No – Refer to Note 3 – Car Parking
Setbacks <ul style="list-style-type: none"> Retain front setbacks which are consistent within a street and promote landscaping to soften the built form. Retain side setbacks, where they are consistent within a street 	<p>The front setbacks are consistent within the street.</p> <p>The proposed side setbacks will not be consistent with the existing side setbacks of buildings along the street (0.9m).</p>	No – Refer to Note 4 Building Setbacks

Landscaping <ul style="list-style-type: none"> Encourage landscaping within the front and side setback to soften the built form particularly in high density terrace, unit and residential flat buildings. Promote landscaping in rear private open space areas to provide privacy to adjoining properties. Maintain street trees. 	Landscaping has been proposed within the front and rear setbacks. The existing mature tree in the rear yard is to be retained.	Y
Subdivision <ul style="list-style-type: none"> Retain and preserve the rectilinear grid pattern within the Precinct 	The proposed subdivision is considered to preserve the rectilinear grid within the Precinct by maintain site depth and shape.	Y
Solar Access <ul style="list-style-type: none"> Encourage buildings to maximise solar access to surrounding residential properties and to public and private open spaces. Preserve solar access to adjoining properties. 	The proposed development will not maximise solar access to surrounding residential properties. Solar access will be reduced significantly to the adjoining southern property at 12b Hambly Street.	No – Refer to Note 5 – Solar Access
Traffic and Access <ul style="list-style-type: none"> Encourage new development to have a minimal impact on traffic flow and demand for on street parking spaces. Encourage development to provide adequate on-site parking to assist in reducing traffic congestion on local road networks. 	The proposed driveway layout will result in a decrease in on street parking spaces and is therefore not supported.	No – Refer to Note 3 – Car Parking

As such the proposal is unsuitable for the site and inconsistent with the desired future character of the Botany Precinct pursuant to Botany Bay Development Control Plan, Part 8 – Character Precincts.

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

The relevant provisions of the *Environmental Planning and Assessment Regulation 2000* have been considered in the assessment of the application. No concerns have been identified.

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

The likely impacts of the development have been outlined throughout the report. As such, the proposal is not supported.

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

The site is located within a 20-25 ANEF contour and is affected by aircraft noise. An acoustic report has been providing addressing the requirement in the relevant Standards. There are no other site constraints affecting the suitability of the site for the development. In this regard, the

site is suitable for the type of development being proposed, however in its current form, the proposal cannot be supported.

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

In accordance with Part 2 of the Botany Bay Development Control Plan 2013 – Notification and Advertising the development application was notified to surrounding property owners for a 14 day period from 10 May to 24 May 2019. One (1) submission was received and the specific concerns that were raised have been addressed below:

- ***Subdivision***

Submitter's Comments: The proposed subdivision does not retain the subdivision pattern characteristics of the surrounding locality, these being the size and width of the lots are below the average when compared to the 10 properties on either side of the subject site.

Planner's Comment: An assessment of the proposed subdivision can be found in *Note 2 – Subdivision Pattern* of this report. The assessment concludes that the proposed subdivision pattern is appropriate for the site as it maintains the rectilinear grid as well as site depth found in the surrounding properties.

- ***Solar Access***

Submitter's Comments: The proposed development will result in overshadowing impacts to 12b Hambly Street that will result in a non-compliance with Council's controls. Additionally, the non-compliance has not been addressed in the Statement of Environmental Effects.

Planner's Comment: An assessment of the overshadowing impacts can be found in *Note 5 – Solar Access* of this report. The assessment concludes that the proposed development does not afford appropriate levels of solar access to the southern property and is not supported.

- ***Floor Space Ratio***

Submitter's Comments: The proposed variation to the Floor Space Ratio development standard is considered excessive and will result in unnecessary bulk and scale impacts.

Planner's Comment: The proposed variation to the FSR development standard has been assessed in *Note 1 - Clause 4.6 variation to development standard* which does not consider the written request put forth by the applicant to adequately justify the variation.

The proposed issues raised within the submissions have been assessed in more detail within the relevant sections in the report above. Council agrees with the concerns relating to solar access and FSR.

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

Granting approval to the proposed development is considered to have adverse impacts on the public interest by detracting from the streetscape and the functionality and safety of the public domain specifically in relation to removing one public on-street parking space.

Section 7.11 Contributions

The following Section 7.11 Contributions would need to be paid at the following rates should approval be granted.

Community Facilities:	\$ 1,637.16
Recreation and Open Space:	\$ 16,890.83
Transport Facilities:	\$ 1,326.38
Administration:	\$ 145.62
 Total in 2018/19:	 \$ 20,000.00

Conclusion

Development Application No. 2019/143 was lodged on 1 May 2019 seeking consent for the demolition of existing structures, Torrens Title subdivision into two (2) lots and the construction of two (2) semi-detached dwellings at 24 Albert Street, Botany.

The proposal has been assessed in accordance with Section 4.15 of the *Environmental Planning and Assessment Act*. The non-compliances as listed above relating to the BBLEP 2013 and the BBDCP 2013 have not been adequately addressed and it is considered that the proposed development is not suitable for this site. The applicant seeks to vary the FSR development standard which has resulted in excessive bulk and scale imposing significant overshadowing impacts to the property to the south. Furthermore, the proposed driveway layout is not suitable and unnecessarily removes one on-street car parking space. Further non-compliances are present in the proposed stormwater system, side setback and streetscape presentation. As such, the proposed development is not consistent with the Desired Future Character of the Botany Precinct.

The development application has received one (1) submission which raised concerns relating to subdivision pattern, overshadowing and FSR. The issues raised as part of this application have been addressed throughout the report. Therefore the proposed development is recommended for refusal subject to the reasons of refusal in the attached schedule.
