



INDEPENDENT HEARING AND ASSESSMENT PANEL

AGENDA

*Council Chambers
Canada Bay Civic Centre
1a Marlborough Street
Drummoyne*

28 June 2018



Dear Independent Hearing and Assessment Panel Member,

A meeting of the Independent Hearing and Assessment Panel will be held in the Council Chambers, Canada Bay Civic Centre, Drummoyne, on 28 June 2018.

AGENDA

1. Apologies
2. Disclosures of Pecuniary and Non-Pecuniary Interest
3. Reports

Peter Gainsford
General Manager

28 June 2018

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**ITEM -1 53-69 VICTORIA RD, 45 DAY ST, 46 THORNLEY ST,
DRUMMOYNE (PP2016/0002); BRIEFING REPORT**

Department Planning and Environment

Author Initials: KL

EXECUTIVE SUMMARY

Date of Referral	28 June 2018
Planning Proposal Number	PP2016/0002
Applicant/owner	Day St No.1 Pty Ltd (Tony Merhi – Contact)
Owner	Day St No.1 Pty Ltd
Street Address	53 – 69 Victoria Road, 45 Day Street, 46 Thornley Street, Drummoyne
Proposal	Rezone a portion of the site from R2 Low Density Residential to B4 Mixed Use; Increase the maximum building height from 8.5m to between 14m and 20m; Increase the floor space ratio (FSR) across the entire site to 2:1. A bonus would apply to the eastern half of the site providing a maximum FSR of 2.5:1

REPORT

1. BACKGROUND

1.1. Introduction

Council has received a Planning Proposal for 53-69 Victoria Road, 45 Day Street and 46 Thornley Street, Drummoyne. The Planning Proposal seeks to rezone a portion of the site from R2 Low Density Residential to B4 Mixed Use, increase the maximum building height from 8.5m to between 14m and 20m, and increase the floor space ratio (FSR) across the entire site to 2:1. A bonus would apply to the eastern half of the site providing a maximum FSR of 2.5:1

The Planning Proposal is intended to facilitate redevelopment of the site through the demolition of existing commercial and residential dwellings to provide for the construction of a mixed-use development.

It should be noted that the subject Planning Proposal was reported to Council in September 2016 and hence a resolution has been made in relation to the application. A copy Council's Resolution is provided as Attachment 8.

Given that all Planning Proposals made after 1 June 2018 are required to be reviewed by Council's Independent Planning Panel for advice, the subject Planning Proposal is presented for the panel's review.

1.2. Subject Site

The subject site comprises eight allotments that are bound by Day Street to the north west (frontage 39.47m), Formosa Street to the south west (frontage 60.96m), Thornley Street to the south east (frontage 41.92m) as well as Victoria Road to the north east (frontage 58.52m). The allotments which make up the subject site are described below:

- 53 Victoria Road (Lots 6, 7 & 8 of DP 136422 and Lot 9, Section 6 of DP 862)
- 63-69 Victoria Road (Lot 10 DP 625084)
- 45 Day Street (Lots 1 and 2, Section 6 of DP 862); and
- 46 Thornley Street (Lot 10, Section 6 of DP 862)

The subject site is a rectangular parcel of land with a total site area of 2,552m².

The site is sloped to the south, with a fall on the Victoria Road frontage of approximately 1.97 metres (AHD 25.61 – AHD 23.64) and a fall on the Formosa Street frontage of approximately 5.41 metres (AHD 25.52 – AHD 20.11).



Figure 1: Subject Site (specifying Eastern and Western components)

The subject site currently accommodates various uses:

- 53 Victoria Road is currently occupied by Ambulance NSW, comprising a brick commercial building with a flat metal roof. A concrete driveway with an 8m crossing on Thornley Street leads to a garage area for ambulance vehicles. The building is constructed to the boundary on the southwest, northwest and northeast boundaries and houses the ambulance vehicles as well as associated administrative facilities. A number of trees are located abutting the frontage of the building to Victoria Road and within the Thornley Street setback however the site is predominately covered by structures or paving.
- 63-69 Victoria Road – former Limousine and car Hire Company, built form comprises a small rendered brick office building with metal roof and various shade structures with associated paved parking area. Vehicular access is available from Day Street via a 4.5m crossing.
- 45 Day Street comprises a two storey brick and weatherboard dwelling. Vehicular access is available from Formosa Street. The site has a swimming pool located near the corner of Formosa and Day Streets and includes lawn area and landscaping around the curtilage of the pool.
- 46 Thornley Street comprises a single storey brick house with tiled roof and detached brick garage with vehicular access on the corner of Thornley and Formosa Streets.

Adjacent development to the north and south of the site on Victoria Road also comprises a mix of commercial and residential uses. Development on the opposing side of Formosa Street is zoned for low density residential development and is made up of single storey and two storey detached dwellings.

1.3. **Summary of the Proposed Development**

The Planning Proposal seeks to amend the Canada Bay LEP 2013 by:

- rezoning the subject site from R2 Low Density Residential and B4 Mixed Use, to B4 Mixed Use across the entire site;
- increase the maximum building height from 8.5m to heights of 14m to the eastern half of the subject site, and 20m to the western half of the site; and
- increase the floor space ratio (FSR) from 0.5:1 and 1:1 to 2:1 with an 'Area 3' bonus that would apply to the eastern component of the subject site, which would permit a total FSR bonus on this portion of the site to 2.5:1 where the land area is a minimum of 2,500m².

2. **MATTERS FOR CONSIDERATION**

2.1. **Location and fragmented land ownership**

The subject site is located on the southern end of the commercial precinct in Drummoyne and has a primary frontage to Victoria Road. The location of this site and its visibility from the Iron Cove Bridge is important, as it will be the first 'higher rise' development leading up the hill, providing a 'gateway' building to the entry of Drummoyne.

The Planning Proposal identifies 63-69 Victoria Road and 45 Day Street as being the 'western' side of the development. The Planning Proposal is seeking six (6) stories in height (20m) over the 'western' half of the block. The 'western' side of the development is under single ownership and it is possible that this site could be developed in isolation of the remainder of the block.

The Planning Proposal identifies 53 Victoria Road and 46 Formosa Street as the 'eastern' side of the block. This block is on the lower and southern part of the site. The Planning Proposal seeks 14m over these two properties.

Should the western portion of the site develop independently, the development controls sought by the Planning Proposal would result in a 20m building interfacing with the existing single storey Ambulance NSW building and a single storey dwelling on the neighbouring site.

2.2. **Maximum Height of Building**

Concerns are raised in relation to the interface created through the possible fragmented development of the site. In this regard, it was recommended to Council that the maximum height of 20 metres (6 storeys) only be permitted where 63-69

Victoria Road and 45 Day Street are amalgamated with the adjoining properties. This approach seeks to encourage amalgamation, facilitate a coordinated development outcome and reduce the likelihood of a poor bulk/scale interface being created from future development.

The following table provides a summary of the maximum building heights proposed for the subject site:

Site Address	Height of Building Proposed
63-69 Victoria Road	14m *Plus a site specific clause that would permit the height to increase to 20 metres where a minimum site area of 2,500m ² is achieved.
45 Day Street	14m
53 Victoria Road	14m
46 Formosa Street	14m

2.3. Floor Space Ratio

A similar approach was considered and recommended in relation to floor space ratio. Land at 63-69 Victoria Road and 45 Day Street was recommended to obtain additional FSR where amalgamation with the adjoining properties occurs. This approach will ensure that the proposed Height of Building standards are consistent with the permitted FSR standards.

In this regard, it was recommended to Council that the following floor space ratios apply to the site:

Site Address	Floor Space Ratio	
	Proposed (With no site amalgamation)	Proposed (With site amalgamation)
63-69 Victoria Road	2.1:1	2.25:1 *Where the site is amalgamated and achieves a minimum site area of 2,500m ²
45 Day Street	1.7:1	2.25:1 *Where the site is amalgamated and achieves a minimum site area of 2,500m ²
53 Victoria Road (Excluding Lot 9 Sec 6 DP 862)	2.1:1	2.25:1 *Where the site is amalgamated and achieves a minimum site area of 2,500m ²
46 Formosa Street & 53 Victoria Road (Lot 9 Sec 6 DP 862)	1.7:1	2.25:1 *Where the site is amalgamated and achieves a minimum site area of 2,500m ²

2.4. Development Control Plan

The Canada Bay Development Control Plan 2013 (DCP) provides site specific planning controls for development situated on Victoria Road, Drummoyne.

The subject site is currently included within the DCP as Area “E” on Figure 2.1 on the Victoria Road Drummoyne – Location Plan, which provides for a maximum height of two (2) storeys.

New controls are proposed for 53 Victoria Road and 46 Formosa Street to facilitate a three (3) storey development to the edge of Victoria Road, including ground floor commercial with a cantilevered awning, and a three (3) storey development to the rear (similar to Area “D”), providing an upper level setback of five (5) metres from the Formosa Street boundary to the third storey. For 63-69 Victoria Road and 45 Day Street Drummoyne, a maximum 6 storey development would be permitted facing Victoria Road stepping down to 2-3 storeys fronting Formosa Street.

A draft DCP has been prepared with relevant extracts provided below:

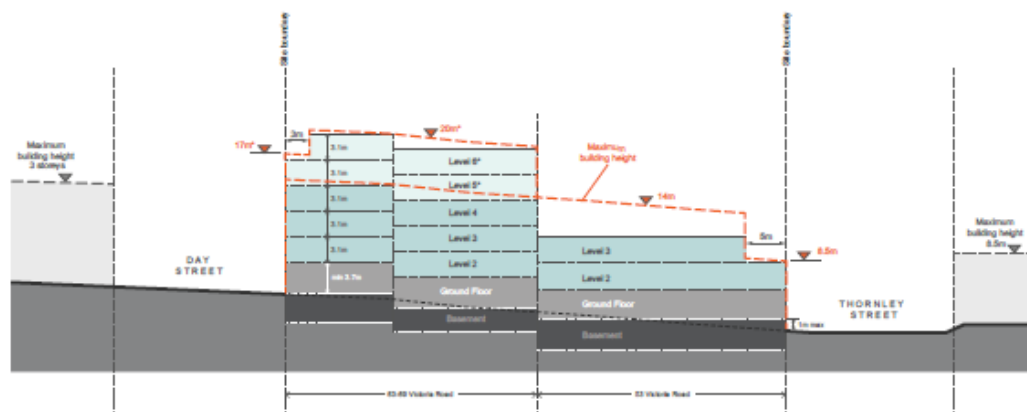
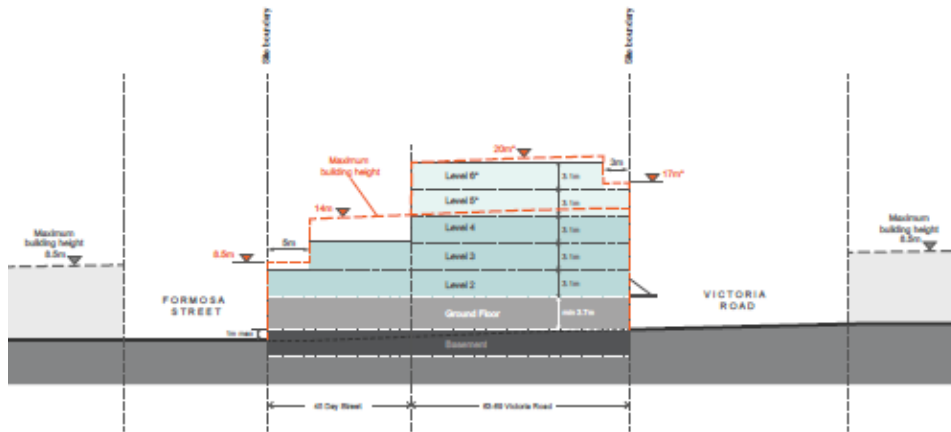
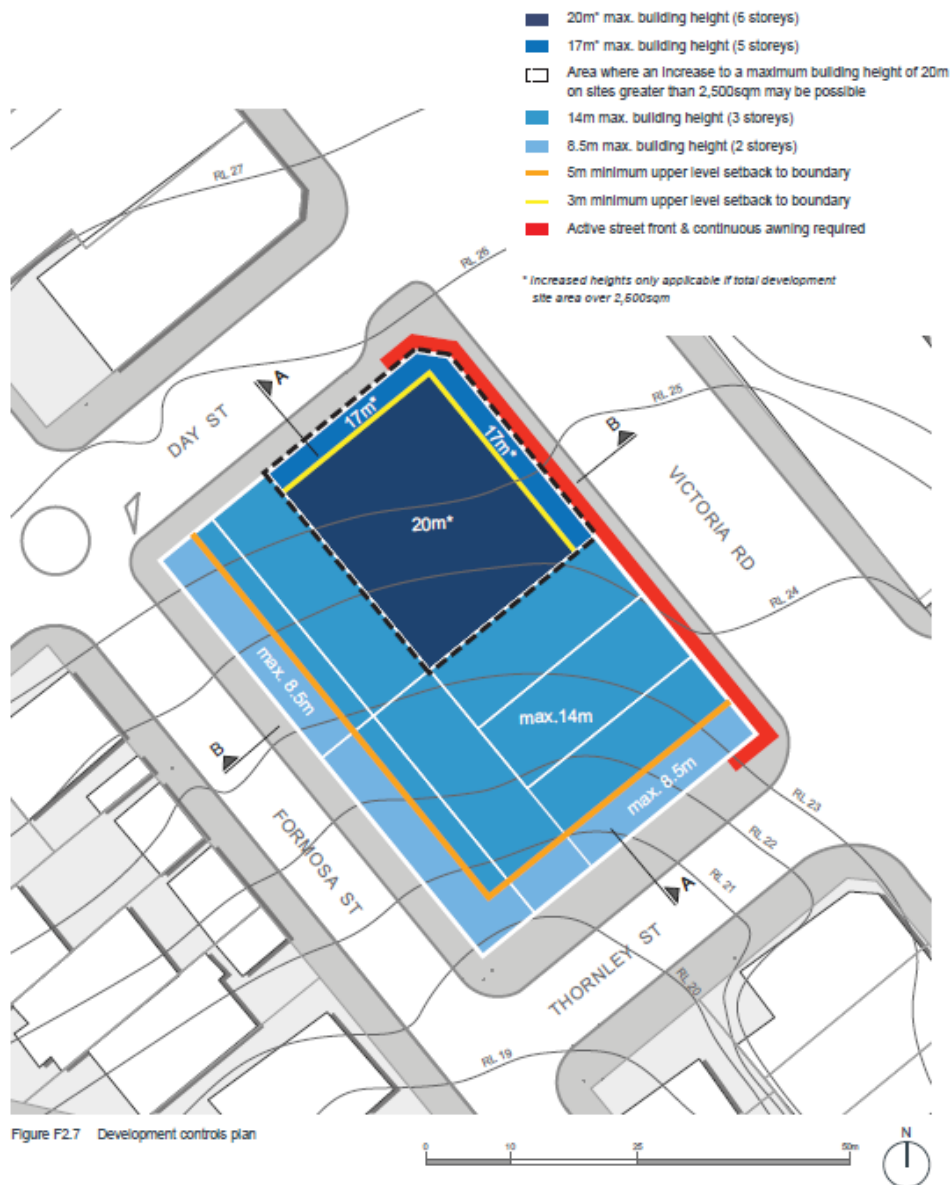


Figure F2.8 Section A

* Increased heights only applicable if total development site area over 2,500sqm



* Increased heights only applicable if total development site area over 2,500sqm



The draft DCP is provided as Attachment 7. The draft DCP will be exhibited concurrently with the Planning Proposal should the application receive a Gateway Determination.

3. INFORMATION ASSESSMENT

3.1. Does the proposal seek to amend a zone or planning control that is less than 5 years old?

The proposal seeks to amend the current LEP 2013.

3.2. Strategic Merit Test

3.2.1. *Consistency with the relevant district plan within the Greater Sydney Region, or corridor/precinct plans applying to the site, including any draft regional, district or corridor/precinct plans released for public comment.*

A Metropolis of Three Cities

A Metropolis of Three Cities sets out a vision for the city's future. The Plan identifies Canada Bay within the Eastern Harbour City whereby the priorities include accelerating housing supply, choice and affordability and building great places to live.

The Planning Proposal is consistent with the goals, directions and actions of the Plan for Growing Sydney.

Eastern City District Plan

The Greater Sydney Commission's District Plan establishes the vision, priorities and actions for the planning and development of the Eastern City District of greater Sydney. The plan establishes a 40 year vision for the district to be a global sustainability leader, managing growth while maintaining and enhancing the district's livability, productivity and attractiveness for residents and visitors.

The Planning Proposal is generally consistent with the District Plan.

3.2.2. *Consistency with a relevant local strategy that has been endorsed by the Department*

The Canada Bay Local Planning Strategy

This Proposal relates to the following objectives of the Canada Bay Local Planning Strategy 2010 – 2031 (LPS):

Objective H1: Provide for a mixture of housing types over the short to medium term.

The proposal will enable the supply of apartments to meet demand for additional housing, in addition to the existing detached dwelling housing options available within the vicinity.

- 3.2.3. *Responding to a change in circumstances, such as the investment in new infrastructure or changing demographic trends that have not been recognized by existing planning controls.*

The Planning Proposal seeks to increase the density permitted on existing mixed-use and residential sites, located at the outer edge of the local centre of Drummoyne.

3.3. **Site Specific Merit Test**

- 3.3.1. *The Natural Environment (including known significant environmental values, resources or hazards).*

Natural Environment

The site is not located within an area identified as having terrestrial biodiversity. There is not considered to be any significant vegetation existing on the site.

Contamination and Geotechnical issues

Council is required to be satisfied that the site can be made suitable under the requirements of SEPP 55. The site contains underground tanks and therefore a contamination assessment is required to ensure the site can be made suitable for the proposed use.

A review of the preliminary contamination assessment submitted with the application recommended further sampling and testing to be undertaken. Based on this requirement, a detailed environmental investigation including a RAP was prepared and provided to Council in May 2018.

A review of the additional environmental site investigation and RAP has been undertaken by Council in the context of SEPP 55 requirements for rezoning and a number of outstanding matters are required to be addressed. These are provided as Attachment 9.

In this regard, where the Planning Proposal is submitted to the Department of Planning & Environment for a Gateway Determination, Council would require additional documentation to be provided prior to public exhibition that adequately addresses the matters raised in relation to contamination to ensure the consistency with SEPP 55 guidelines for the rezoning of land.

Acid sulfate soils

The site is not identified as being affected by acid sulfate soils.

- 3.3.2. *The existing uses, approved uses and likely future uses of land in the vicinity of the proposal*

The site currently accommodates a mix of commercial and residential land uses.

The proposed B4 Mixed Use zone is consistent with existing and future intended uses of the site. Specific planning controls are proposed to address the development as it fronts Formosa Street, being low density residentially zoned land.

3.3.3. The services and infrastructure that are or will be available to meet the demands arising from the proposal and any proposed financial arrangements for infrastructure provision

Services

Sufficient utility services are available in the locality to service future development on the site.

Parking

Parking rates will be guided by the Canada Bay Development Control Plan.

Traffic

Drummoyne is considered a local centre and is well serviced by buses on Victoria Road, providing convenient access to the city. Given direct access to Victoria Road, impact on the local street network is considered to be minor.

Voluntary Planning Agreement

An offer to enter into a Voluntary Planning Agreement has been received by the Council which seeks to provide:

- Reconstruction of toilet block, including demolition of existing structure and new access pathways;
- Improvements to BBQ area, including new covered facility and furniture;
- Improvements to training equipment, including basketball/netball rings, goals posts or similar for training and play;
- Multi-level playground, including accessible play equipment, lighting and access pathways;
- Retention of Ambulance Facility where supported by Ambulance NSW.

The draft Voluntary Planning Agreement (VPA) has been prepared in consultation with the owner, separately to the assessment of the planning merits of the application. The draft VPA is provided as Attachment 8.

4. CONSULTATION / PUBLIC SUBMISSIONS

The results of the community consultation are yet to be determined.

Should the Planning Proposal be submitted to the Department of Planning & Environment and given Gateway Determination, public exhibition will be consistent with the requirements of the Gateway Determination.

Attachments:

1. Site Photos
2. Planning Proposal – October 2016

3. Existing and Recommended – draft LEP Land Use Zone Map
4. Existing and Recommended – draft LEP Height of Building Map
5. Existing and Recommended – draft LEP Floor Space Ratio Map
6. Canada Bay LEP 2013 – Draft Clause 4.3 Height of Building and Draft Clause 4.4 Floor Space Ratio
7. Draft Development Control Plan – Part F2
8. Draft Voluntary Planning Agreement
9. Council Resolution – Meeting (20 September 2016)
10. SEPP 55 Contamination Requirements – Matters to be addressed

Site Photos - Planning Proposal for 53-69 Victoria Road, 45 Day Street and 46 Thornley Street Drummoyne.



Figure 1 –63-69 Victoria Road from the corner of Day Street and Victoria Road



Figure 2 –53 Victoria Road from the corner of Thornley Street and Victoria Road, showing the fall down Thornley Street



Figure 3 –Formosa Street to the rear of the subject site and Day Street interface.



Figure 4 – Existing building adjacent to the subject site on Day Street, which has maximum height of 20m (no current DA)



Figure 5 – The corner of Formosa and Thornley Street to the rear of the subject site.



Figure 6 – From the corner of Day Street, demonstrating the significant fall down Formosa Street



PLANNING PROPOSAL

AS AMENDED FOLLOWING COUNCIL RESOLUTION

For rezoning a portion of the site from R2 Low Density to B4 Mixed Use, increase in height and increase in floor space ratio at

**Nos.53-69 Victoria Rd, No.45 Day St
and No.46 Thornley St, Drummoyne**



Prepared for:
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JOB NO. 15396
October 2016

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ANNEXURES

Annexure A: List of SEPPs/SREPs

Annexure B: Consideration of Section 117 Directions

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1.0 INTRODUCTION

This Planning Proposal has been prepared for Day St No.1 Pty Ltd by Gary Shields and Associates Pty Ltd (hereafter referred to as GSA Planning). GSA Planning has expertise in Urban Design, Environmental and Traffic Planning. Day St No.1 Pty Ltd have contracted to purchase Nos.63-69 Victoria Road and No.45 Day St. This Planning Proposal relates to these sites and also includes the adjacent sites constituting the remainder of the street block, being No.53 Victoria Road and No.46 Thornley Street.

The Planning Proposal was originally submitted to Canada Bay Council in January 2016. Council's Strategic Planning Officers have now reviewed the proposal and a report on the matter was presented to the Council Meeting on 20 September 2016. That report recommended the Planning Proposal be supported, subject to amendments to the proposed height and FSR controls. This Planning Proposal document has been amended to incorporate the recommendations of Council Staff.

In order to facilitate the redevelopment of the site, this Planning Proposal seeks amendments to the Canada Bay Local Environmental Plan (LEP) 2013 which are summarised as follows:

- Zoning:** B4 Mixed Use Zone for the entire site
Height: Base height of 14m with enabling clause to increase height on Nos.63-69 Victoria Road to 20m where a site area of 2,500m² is achieved.
FSR: Base FSR of 1.7:1 to 2:1 with an enabling clause to increase the FSR to 2.25:1 across the entire site where a site area of 2,500m² is achieved.

In order to demonstrate the suitability of the proposed LEP amendments, detailed architectural modelling has been undertaken by Bonus and Associates architects. Submitted with this Planning Proposal is a Design Report which includes 3D modelling of potential building forms. A Stage 2 Contamination Report has also been prepared (as requested by Council) and is separately submitted.

The modelling is based on a mixed use commercial/residential development which is designed to comply with the amended development standards and is in accordance with the requirements of State Environmental Planning Policy (SEPP) No.65 – Design Quality of Residential Apartment Development (SEPP No.65) and the NSW Department of Planning (DoP) Apartment Design Guide (ADG). Importantly, the envelopes demonstrate compliance with the key amenity considerations including solar access, natural ventilation and privacy.

The Planning Proposal is intended to facilitate the mixed use redevelopment of the subject site. This would contribute to the renewal of Victoria Road, provide new accommodation in a highly sought after location and contribute a high quality, architecturally designed development to the existing built form of Canada Bay. Visually, the planning proposal would result a development which is similar in scale to that which is permissible on the opposite side of Day Street but that transitions down towards Thornley Street to relate favourably to the lower density development adjacent to this end of the site. Currently, the height and density changes abruptly at Day Street and the proposal results in an improved urban design outcome.

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This Planning Proposal has been prepared in accordance with Section 55 of the Environmental Planning and Assessment Act 1979 (EP&A Act) and the relevant Department of Planning Guidelines including 'A Guide to Preparing Local Environmental Plans' and 'A Guide to Preparing Planning Proposals'. Following this introduction are five sections. Section 2.0 provides the background to the Planning Proposal, Section 3.0 identifies the site, Section 4.0 contains the Planning Proposal and Section 5.0 concludes the report.

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2.0 SITE IDENTIFICATION

2.1 The Site

The subject site is located in Drummoyne approximately 5km west of the Sydney CBD, 3km from Five Dock town centre and is located within the Local Government Area (LGA) of City of Canada Bay.

For the purpose of this report, the frontage to Victoria Road will be referred to as the northern frontage. The subject site comprises eight allotments bounded by Day Street to the north, Victoria Road to the east, Thornley Street to the south and Formosa Street to the west (see Figure 1). These sites are described as:

- No. 53 Victoria Road (Lots 6, 7 & 8 of DP 136422 and Lot 9, Section 6 of DP 862);
- Nos. 63-69 Victoria Road (Lot 10 of DP 625084);
- No. 45 Day Street (Lots 1 and 2, Section 6 of DP 862); and
- No. 46 Thornley Street (Lot 10, Section 6 of DP 862)



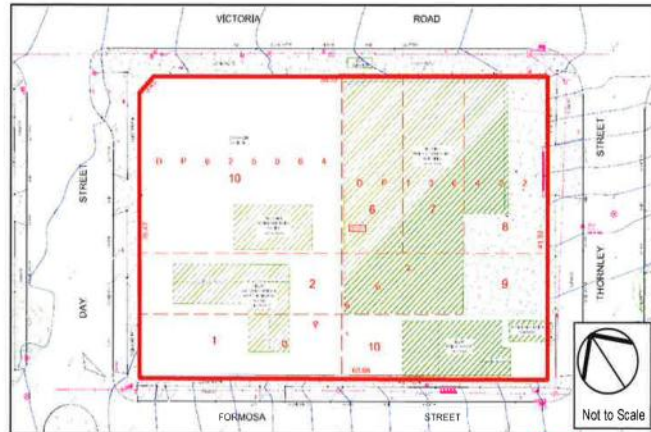
Figure 1: The Subject Site

Day St No.1 Pty Ltd has contracted to purchase Nos. 63-69 Victoria Road and No. 45 Day St and this will be referred to as the western portion of the site. No. 53 Victoria Road and No. 46 Thornley Street are not owned by our client and will be referred to as the eastern portion of the site.

For the purpose of this Planning Proposal, the entirety of the site will be referred to as the subject site. The subject site is a rectangular parcel of land, with a northern frontage to Victoria Road of 58.52 metres, an eastern frontage to Thornley Street of 41.92 metres, a southern frontage to Formosa Street of 60.96 metres and a western frontage to Day Street of 39.47 metres. This provides a total site area of 2,552m² (see Survey Plan and Figure 2 on the following page).

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The site is sloped to the south, with a fall of 5.41 metres (AHD 25.52 – AHD 20.11) along Formosa Street to the south-east and a fall 3.53 metres (AHD 23.64 – AHD 20.11) along Thornley Street to the south-west. The subject site has a cross fall of 5.72 metres from the intersection of Day Street and Victoria Road to the intersection of Thornley Street and Formosa Street (AHD 25.83 – AHD 20.11).



(Source: Daw & Walton, August 2015)

Figure 2: Survey Plan

2.2 Existing Built Form

Nos. 63-69 Victoria Road is currently used as limousine and hire car company, with built form on the site comprising a small rendered brick office building with a metal roof, as well as various shade clothes and paved areas for parking of vehicles (see Photograph 1). A 'pop up' takeaway food premises inside a shipping container is also currently on site. Vehicular access is available from Day Street via a 4.5m crossing. There is no vegetation currently on site, however a number of trees are located within the setback to Day Street.



Photograph 1: Nos. 63-69 Victoria Road, as viewed from Victoria Road

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No. 53 Victoria Road is currently occupied by Ambulance NSW, comprising a brick commercial building with a flat metal roof (see Photograph 2). A concrete driveway with an 8m crossing on Thornley Street leads to a garage area for ambulance vehicles. The building is built to the boundary on the northern, eastern and western sides and houses the ambulance vehicles as well as associated administrative facilities. A number of trees are planted within the setback to Thornley Street, however the site is predominately occupied by paving and the building footprint.



Photograph 2: No. 53 Victoria Road, as viewed from Thornley Street

No. 46 Thornley Street comprises a single storey brick house with a tiled roof on the corner of Thornley Street and Formosa Street (see Photograph 3). A detached brick garage provides parking for one vehicle and is accessible from Thornley Street. The dwelling appears to be built to the boundary on the Formosa Street frontage, with a small grass area within the front setback and a paved rear yard.



Photograph 3: No. 46 Thornley Street, as viewed from Thornley Street

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No. 45 Day Street comprises a two storey brick and weatherboard house with a tile roof set behind a brick fence. Vehicular access is available from Formosa Street. The site has a swimming pool located near the corner of Formosa and Day Streets, as well as sections of lawn area and a number of small trees (see Photograph 4).



Photograph 4: No. 45 Day Street, as viewed from Formosa Street

2.3 The Surrounds

2.3.1 Locality

The subject site is located in close proximity to a number of shops and services as well as recreational areas. Birkenhead Point Outlet Centre is approximately 400m east of the subject site, comprising 120 retail stores and Coles and Aldi supermarkets. An IGA supermarket is also located 650m north-west of the subject site.

Brett Park is in close proximity to the subject site and leads down to Iron Cove which forms part of Sydney Harbour. The Bay Run which is continuous footpath that encircles much of Iron Cove is accessible near the subject site. Dunlop Reserve and Drummoyne Oval are both within 800m of the subject site. Nearby schools include Drummoyne Public School and St Mark's Catholic Primary School (see Figures 3 and 4 on the following page).

2.3.1 Immediate Context

Development in the surrounding area is generally commercially focused along the Victoria Road corridor ranging from one to four storeys, with residential development in the surrounding streets. Some shop top housing is evident on Victoria Road to the north of the subject site as well as at Birkenhead Point to the east of the subject site. Residential development in the locality is predominately free standing dwelling houses of one to two storeys, with some residential flat buildings to the north and west of the subject site. The area is expected to undergo some form of urban renewal along the Victoria Road corridor. A Development Application is currently being assessed for a six storey mixed use building in close proximity to the subject site at Nos. 77-105 Victoria Road and is detailed further below.

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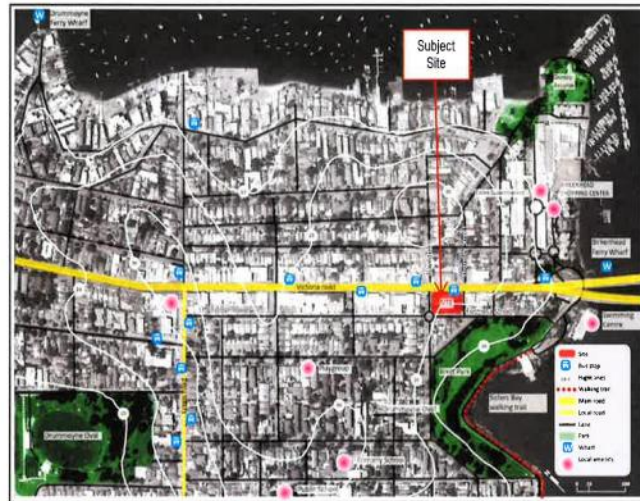


Figure 3: Context Map
(Source: Bonus + Associates 2015)



Figure 4: Aerial Perspective Map
(Source: Bing Maps, 2015)

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Development to the North

To the north, on the opposite side of Day Street is No. 71 Victoria Road, comprising a single storey commercial building currently occupied by a 24 hour gymnasium. Also to the north is Nos. 73-75 Victoria Road, comprising a two storey commercial building with two tenancies (see Photographs 5 and 6). Further to the north is Nos. 77-105 Victoria Road, comprising a number of existing retail and commercial buildings, a vehicle repair station and a service station ranging from one to three storeys.



Photograph 5: Development to the north on the opposite side of Day Street being the rear of Nos. 71-75 Victoria Road, as viewed from the intersection of Day Street and Formosa Street



Photograph 6: Development to the north along Victoria Road, as viewed from Victoria Road looking north

A development application (DA 2015/0105) has recently been approved for Nos. 77-105 Victoria Road for a six storey mixed use building comprising 164 apartments, 11 commercial tenancies and 3 retail tenancies with car parking for 314 vehicles. The proposal has a maximum height of 21.9m and an FSR of 2.99:1 (see Figure 5). Currently, based on the planning controls and approval that apply to Nos.77-105 and the subject site, there would be an abrupt change in height at Day Street and no effective transition down to built form with lower height and scale.



Figure 5: Photomontage of Approved Development at Nos. 77-105 Victoria Road
(Source: Fender Katsalidis Mirams Architects)

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Development to the East

To the east on the opposite side of Victoria Road are a number of two storey commercial properties. Nos. 48-60 Victoria Road comprises 12 commercial suites with vehicular access from access from Thornley Street (see Photograph 7). No. 64 Victoria Road comprises two commercial tenancies with vehicular access from Day Street. Also to the east on the opposite side of Victoria Road is a service station at Nos. 36-46 Victoria Road (see Photograph 8). Development further to the east comprises predominately single storey residential development reflective of the R2 zoning.



Photograph 7: Development to the east at No. 64 and Nos. 48-60 Victoria Road, as viewed from Victoria Road, looking east



Photograph 8: Development to the east at Nos. 48-60 Victoria Road, as viewed from Victoria Road, looking north

Development to the South

To the south on the opposite side of Thornley Street is No. 39-45 Victoria Road, comprising a service station and vehicle repair station (see Photographs 9 and 10). Also to the south on the opposite side of Thornley Street is No. 42 Formosa Street, comprising a single storey semi-detached dwelling with vehicular access from Thornley Street (see Photograph 11 on the following page). Further to the south is residential development along Formosa Street and an outdoor recreation area known as Brett Park (see Photograph 12 on the following page).



Photograph 9: Development to the south at Nos. 39-45 Victoria Road, as viewed from Thornley Street



Photograph 10: Development to the south at Nos. 39-45 Victoria Road, as viewed from Victoria Road

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Photograph 11: Development to the south at No. 42 Formosa Street, as viewed from Formosa Street



Photograph 12: Brett Park further to the south, as viewed from intersection of Formosa

Development to the West

To the west on the opposite side of Formosa Street are Nos. 2-10 Sisters Crescent and No. 47 Day Street which comprise a number of single and two storey detached residential dwellings (see Photographs 13 and 14). The dwellings fronting Sisters Crescent have vehicular access from Formosa Street at the rear. Further to the west on the opposite side of Sisters Crescent is Brett Park and residential development along Day Street.



Photograph 13: Development to the west at Nos. 2-10 Sisters Crescent, as viewed from Formosa Street



Photograph 14: Development to the west at No. 47 Day Street, as viewed from Day Street

2.4 Surrounding Road and Public Transport Network

According to the Roads and Maritime Services (RMS) established road hierarchy, Victoria Road is classified as a state road. Day Street, Formosa Street and Thornley Street are classified as local roads respectively. Further details regarding the surrounding road network are outlined in the Traffic and Parking Assessment Report prepared by Gennaoui Consulting (separately submitted).

The subject site is accessible via the bus network from Victoria Road with nineteen routes servicing the corridor (see Figure 6 on the following page).

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These services include:

- 500 – Ryde to Sydney CBD
- X00 – Ryde to Sydney CBD (express)
- 501 – West Ryde Station to Central Station
- 502 – Bayview Park to Sydney CBD
- 504 – Chiswick to Sydney CBD
- X04 – Chiswick to Sydney CBD (express)
- 505 – Woolwich to Sydney CBD
- 506 – Macquarie University to Sydney CBD
- X06 – Macquarie University to Sydney CBD (express)
- 507 – Macquarie University to Sydney CBD
- 508 – Drummoyne to Sydney CBD
- 510 – Ryde to Sydney CBD
- 515 – Eastwood to Sydney CBD
- X15 – Eastwood to Sydney CBD (express)
- 518 – Macquarie University to Sydney CBD
- X18 – Macquarie University to Sydney CBD
- 520 – Parramatta to Sydney CBD
- M50 – Drummoyne to Coogee via Sydney CBD
- M52 – Parramatta to Sydney CBD

The site is also within 1.4km of Drummoyne Ferry Wharf.

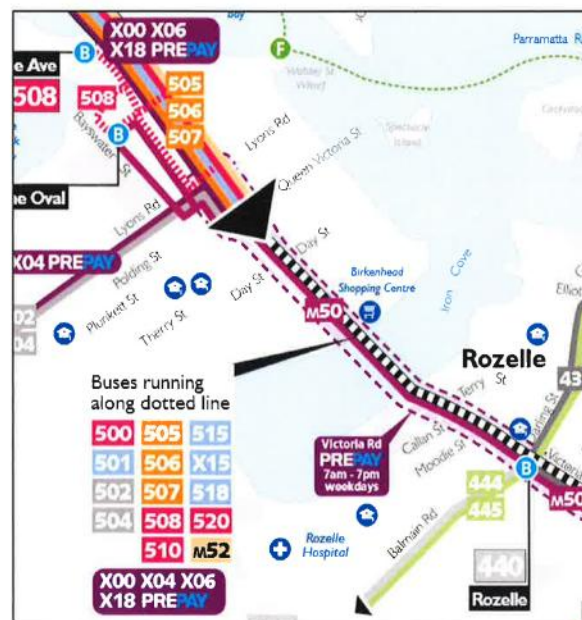


Figure 6: Surrounding Bus Network

3.0 THE PLANNING PROPOSAL

This section will present the planning proposal and set out the proposed amendments to the Canada Bay LEP 2013. The Planning Proposal section is structured in accordance with the NSW DoP Guideline and responds to each of the matters identified in that document. It will outline the objectives and intended outcome of the amendments; explain the proposed provisions; justify the Planning Proposal in accordance with the questions posed by the guidelines; indicate what mapping amendments are to be made and provide details of community consultation that will be undertaken at later stages.

The Guideline indicates that Planning Proposals generally should not consider specific detailed matters that would be dealt with at DA. Conversely, it states that Council and the community needs to be confident that the controls are an acceptable outcome. To this end, preliminary 3D modelling has been undertaken by Bonus and Associates which indicates the built form that could be achieved on the site based on the requested controls and that considers key planning considerations, such as compliance with SEPP No.65. These matters will be dealt with briefly in this Section however, a more detailed analysis of the key planning issues is contained in Section 4.0.

It is our opinion that the rezoning of portions of the subject site, and the proposed amendments to the height and FSR development standards, are a good planning outcome for the subject site. Currently, the subject site incorporates two dwellings and a number of commercial uses. The subject site is very well connected to public transport, located in an area with a large range of residential support services and has the ability to make a significant contribution to the urban renewal of the Victoria Road corridor.

Council's recently gazetted planning controls apply heights up to 20m and FSRs up to 3:1 to sites in the vicinity along Victoria Road while the subject site has controls of 8.5m and 0.5:1 to 1:1. The change in planning controls occurs abruptly at Day St and there is no effective transition from the 20m height, down to 8.5m. The Planning Proposal would allow for built form that is consistent with the adjoining development scale however, steps down on the eastern portion of the site providing the abovementioned transition. To the rear, along the entire site, the interface with residential properties on the opposite side of the street will also be lower scale.

3.1 Objectives And Intended Outcomes

This section will state the objective of the Planning Proposal and provide a brief overview of the intended outcome.

3.1.1 Objective of the Planning Proposal

The objective of the Planning Proposal is to facilitate a development that comprises a continuation of the permissible built form on the western side of Day Street while transitioning down in height and density on the eastern half of the site.

3.1.2 Intended Outcome of the Planning Proposal

The intended outcome of the Planning Proposal is to apply a B4 Mixed Use zone to the entire site and apply development standards that will facilitate a redevelopment with the abovementioned consistent and transitional built form.

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3.2 Explanations of Provisions

This section will explain the key existing planning controls that apply to the subject site, and will compare them to the controls that will be applied to the subject site as a result of this Planning Proposal. The proposed changes would be implemented via amendments to the mapping accompanying Canada Bay LEP 2013 and there is no proposed amendment to the written instrument.

It is proposed to amend the zoning, height and FSRs that applies to the site. Importantly, the changes to the height and FSR will facilitate a built form that is a consistent development outcome and will reduce the likelihood of a poor bulk/scale interface. On the western portion, the height and FSR will continue the form of Nos.77-105 Victoria Road. On the eastern portion of the site, the height and FSR will step down to provide a transition down to lower densities on surrounding streets.

In our opinion, the proposed amendments to the LEP are the most appropriate manner to satisfy the objective and intended outcome of the Planning Proposal. The proposed controls sought for the subject site (which are consistent with the Council recommendation) are as follows:

Site Address	Land Use Zone	Height of Building (m)
63-69 Victoria Road	B4 Mixed Use	14*
45 Day Street	B4 Mixed Use	14
53 Victoria Road	B4 Mixed Use	14
46 Formosa Street	B4 Mixed Use	14

**Includes recommendation of additional site specific provision to provide for a bonus maximum building height to 20m where a total site area of 2,500m² is achieved*

Site Address	Proposed Floor Space Ratio	
	No site amalgamation	Site amalgamation
63-69 Victoria Road	2.1:1	2.25:1*
45 Day Street	2.1:1	2.25:1*
53 Victoria Road	1.7:1	2.25:1*
46 Formosa Street	1.7:1	2.25:1*

**Where the site is amalgamated and achieves a minimum site area of 2,500m²*

In order to demonstrate the suitability of the proposed LEP amendments, detailed architectural modelling has been undertaken by Bonus and Associates architects. Submitted with this Planning Proposal is a Design Report which includes 3D modelling of potential building forms.

The existing and proposed controls that apply to the site will now be considered in detail.

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3.2.1 Existing and Proposed Zoning

Existing Zoning

Two zonings currently apply to the subject site. Nos.53-69 Victoria Road are zoned B4 Mixed Use while No.45 Day Street and No.46 Thornley Street are zoned R2 Low Density Residential (see Figure 7).



Figure 7: Surrounding Zoning

The permissible uses of each zone are contained in the Land Use Table of the LEP and are stated, inter alia:

Zone B4 Mixed Use

1 Objectives of zone

- To provide a mixture of compatible land uses.
- To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.

2 Permitted without consent

Environmental protection works

3 Permitted with consent

Boarding houses; Building identification signs; Business identification signs; Child care centres; Commercial premises; Community facilities; Educational establishments; Entertainment facilities; Function centres; Hotel or motel accommodation; Information and education facilities; Light industries; Medical centres; Passenger transport facilities; Recreation facilities (indoor); Registered clubs; Residential flat buildings; Respite day care centres; Restricted premises; Roads; Seniors housing; Shop top housing; Any other development not specified in item 2 or 4

4 Prohibited

Agriculture; Air transport facilities; Airstrips; Animal boarding or training establishments; Biosolids treatment facilities; Boat building and repair facilities; Boat launching ramps; Boat sheds; Camping grounds; Caravan parks; Cemeteries; Correctional centres; Crematoria; Depots; Electricity generating works; Exhibition homes; Exhibition villages; Extractive industries; Farm buildings; Farm stay accommodation; Forestry;

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Freight transport facilities; Heavy industrial storage establishments; Helipads; Highway service centres; Home occupations (sex services); Industrial training facilities; Industries; Jetties; Moorings; Open cut mining; Recreation facilities (major); Recreation facilities (outdoor); Residential accommodation; Resource recovery facilities; Rural industries; Sewage treatment plants; Signage; Storage premises; Transport depots; Truck depots; Vehicle body repair workshops; Warehouse or distribution centres; Waste disposal facilities; Water recreation structures; Water supply systems

Zone R2 Low Density Residential

1 Objectives of zone

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

2 Permitted without consent

Environmental protection works; Home occupations

3 Permitted with consent

Bed and breakfast accommodation; Boarding houses; Boat sheds; Building identification signs; Business identification signs; Child care centres; Community facilities; Dual occupancies; Dwelling houses; Environmental facilities; Group homes; Health consulting rooms; Jetties; Places of public worship; Recreation areas; Respite day care centres; Roads; Schools; Semi-detached dwellings; Water recycling facilities

4 Prohibited

Any development not specified in item 2 or 3

It is noted that the R2 Low Density zone does not permit commercial uses, residential flat buildings or shop top housing. The proposal to zone the entire site B4 Mixed Use is an appropriate way to achieve the objective of a mixed use redevelopment of the subject site.

The use of a B4 zone is also consistent with the existing zoning applied to the Victoria Road frontages of the subject site and adjoining sites along Victoria Road. The existing and proposed zoning of the subject site is shown in Figures 8 and 9 on the following page.

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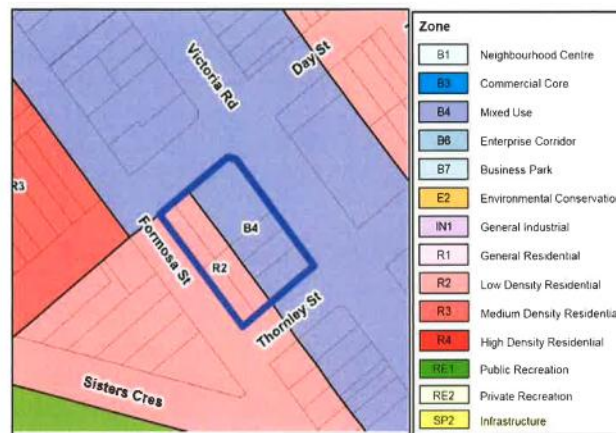


Figure 8: Existing Zoning



Figure 9: Proposed Zoning

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3.2.2 Existing FSR, Proposed FSR and Bonus Provisions

Existing FSR

Clause 4.4, in conjunction with the LEP maps, establishes the FSR for the subject site. In a similar fashion to the land zoning, the FSR development standard varies across the site. At the Victoria Road frontage, the subject site has an FSR of 1:1. At the rear, an FSR of 0.5:1 applies (see Figure 10). It is noted that bonus provisions also apply to the site pursuant to Clause 4.4(2A)-(2E). This will be discussed below.



Figure 10: Existing FSR

Proposed FSR

It is proposed to apply a 'base' FSR of 2.1:1 to the western portion of the site (Nos. 63-69 Victoria Road and No. 45 Day Street) and 1.7:1 to the eastern portion of the site (No. 53 Victoria Road and No. 46 Formosa Street) (see Figure 11).



Figure 11: Proposed FSR

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It is also proposed to include the site in a specific 'area' on the FSR map to facilitate additional density if the sites are amalgamated. Where the site is amalgamated and achieves a minimum site area of 2,500m² it is proposed to apply a FSR of 2.25:1. This will ensure coordinated development outcomes that will aim to improve the visual impact of future development through providing a reduced FSR on the western component of the site, and a consistent FSR should the site be developed as a whole.

Within Clause 4.4, there are additional provisions which alter the FSR for certain development types, based on site area. Currently, the portion of the site zoned R2 Low Density is within "Area 1". The proposed bonus provision for the new "Area 6" is stated, inter alia:

(2G) Despite subclause (2), the maximum floor space ratio on the land identified as "Area 6" on the Floor Space Ratio Map is 2.25:1, where a site area greater than 2,500m² is achieved.

Where the site does not develop as a single holding, providing varying FSR provisions to the western and eastern portion of the subject site will result in a built form that steps down in density from 2.1:1 to 1.7:1 on the eastern site.

3.2.3 Existing and Proposed Height of Buildings

Existing Height of Buildings

Clause 4.3 of the LEP relates to building height and, in conjunction with the LEP, applies a building height of 8.5m to the entire site (see Figure 12).



Figure 12: Existing Height

Proposed Height of Buildings

It is proposed the entire site will have a 'base' height limit of 14m. A site specific enabling clause is proposed for Nos. 63-69 Victoria Road on the western portion of the subject site to facilitate a height limit of 20m if a minimum site area of 2,500m² is achieved (see Figure 13 on the following page).

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The site specific provision states, inter alia:

(2G) Despite subclause (2), the maximum the maximum height of a building on the land identified as Lot 10 DP 625084 (63-69 Victoria Road, Drummoyne) is 20m, where a site area greater than 2,500m² is achieved.



Figure 13: Proposed Height

The intention of applying a 'base' height limit of 14m is to limit fragmented development of the site and reduce the likelihood of a poor bulk/scale interface. This will assist in providing an appropriate interface between the site and the lower density residential on nearby streets, and facilitate a coordinated development outcome.

The nuance of the proposed 14m height limit is that the built form would only comprise three storeys however, given the topography of the site slopes away, 14m is required to fit a three storey form beneath the height limit.

It is intended that DCP controls would be developed, in a similar fashion to the adjacent sites on the opposite side of Day Street, to control the built form on the site. Fronting Victoria road, these controls would facilitate a six storey form on the western portion of the site and a three storey form on the eastern portion of the site.

Preliminary modelling of the built form that could result from the application of the proposed development standards is shown in Figures 14 to 16 on the following page)

At the rear, to Formosa Street, the entire development would comprise three storeys. The development would step down the site, however providing a 14m statutory height limit would allow for three storeys beneath the statutory 14m height limit. DCP controls for the subject site are discussed in Section 5.0 of this report.

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Figure 14: Proposed Built Form Showing Transitional Height

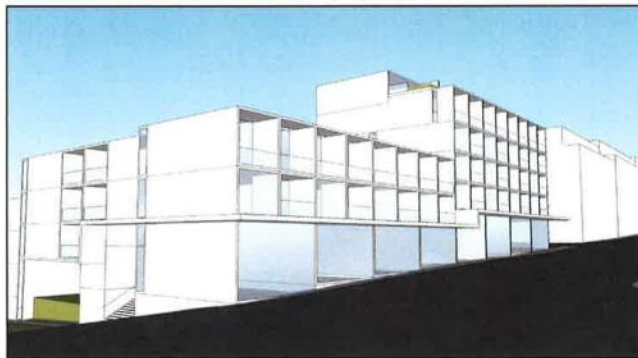


Figure 15: Proposed Built Form From Victoria Road



Figure 16: Proposed Built Form From Victoria Road

3.3 Justification for Planning Proposal

This Section of the Planning Proposal sets out the case for amending the Canada Bay LEP 2013. The DoP Guide to Preparing Planning proposals outlines the overarching principles relating to the Justification section.

The Guide outlines that firstly, the level of justification should be proportionate to the impact of the Planning Proposal. Secondly it provides that not all questions in the guide may be relevant and those not relevant need not be addressed.

Lastly, it outlines that the level of justification in the Planning Proposal should be sufficient to allow a Gateway determination to be made with confidence that the LEP can be completed within a reasonable time frame.

As indicated, an assessment of the proposal against a number of key town planning considerations has been undertaken. This assessment is presented in Section 4.0 of this report. In addition to the justification provided as part of this report, the Planning Proposal is supported by a number of additional consultant reports, which have been separately submitted. These reports provide expert input on a range of issues and, where appropriate, there conclusions are cross referenced in this document.

This section will respond to the various questions that are posed in the guidelines and, in doing so, present the justification for the planning proposal. The relevant questions contained in the DoP guidelines will now be individually addressed.

3.3.1 Questions to consider when demonstrating the justification

Is the Planning Proposal a result of any strategic study or report?

While the proposal is not specifically the result of a strategic study or report, it is not inconsistent with any relevant state or local planning policy. In the preparation of this Planning Proposal, we have considered the NSW Government *Plan for Growing Sydney* as well as Canada Bay's key strategic documents. The proposal will satisfy the relevant aims and objectives in these documents that apply to the subject site.

Is the Planning Proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

Yes. A site specific Planning Proposal is the most appropriate way of achieving the objective and intended outcome. Alternative approaches, which have been discounted, may include amending the controls as part of a comprehensive LEP, seeking variations to height and FSR under Clause 4.6 or negotiating a Voluntary Planning Agreement (VPA) with Council.

Canada Bay Council have recently completed a comprehensive LEP and are unlikely to prepare another for several years. Accordingly, it is not considered reasonable to delay the amendments indefinitely until such time as a comprehensive LEP is prepared.

While a Clause 4.6 Exception to Development Standards could be considered for the sites fronting Victoria Road, the proposed mixed use development is not currently permissible on the rear portion of the site.

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Utilising this approach would not allow for a 'master planned' development of the site (either as a whole or in several large development lots) and would result in an awkward interface between larger scale development to Victoria Road and low density residential at the rear. In any case, Council may determine the extent of variation sought under Clause 4.6 to be too great and recommend a Planning Proposal to be prepared. In our experience, this is a standard approach where more significant variations are sought to controls.

Similarly, approaching the amendments via VPA has been considered. Once again, the issue of permissibility is a key factor in the preparation of the Planning Proposal. In addition, given the extent of variation to existing development standards that is proposed, Council would likely seek for the proposal to be dealt with via Planning Proposal. For these reasons, the Planning Proposal is the most appropriate method of responding to the proposed objectives and intended outcome.

3.3.2 Relationship to Strategic Planning Framework

This section considers how the proposal sits within the local and strategic planning framework. That applies to the subject site. It will consider the applicable State Government documents, including the *Plan for Growing Sydney* and the *NSW Long Term Transport Master Plan*. It will also consider the relevant local strategies including the *Futures Plan 20 (Canada Bay)* and the *Canada Bay Local Planning Strategy 2010-2031*

Is the Planning Proposal consistent with the objectives and actions of the applicable regional or sub-regional strategy (including the Metropolitan Strategy and exhibited draft strategies)?

A Plan for Growing Sydney

In December 2014, the NSW Government released *A Plan for Growing Sydney* which is the latest metropolitan strategic plan to guide Sydney's long term growth.

The plan identifies six subregions by grouping adjoining Local Government Areas (LGA). As the subject site is within the Canada Bay LGA, the site is identified as being within the Central Subregion. The location and context of the central subregion was published in this metropolitan plan and is shown diagrammatically in Figure 17 on the following page. The document contains a vision of a global city and the relevant goals to achieve that vision include the following:

- *A competitive economy with world-class services and transport*
- *A city of housing choice with homes that meet our needs and lifestyles;*
- *A great place to live with communities that are strong, healthy and well connected; and*
- *A sustainable and resilient city that protects the natural environment and has a balanced approach to the use of land and resources.*

In this case, the relevant matter is goal two relating to housing choice. The Plan includes a number of directions and actions for meeting goals. These are considered in Table 1 on page 23.

The plan indicates that the central subregion is expected to grow by 266,850 people from 2011-2031, with an additional 119,950 households needed to accommodate this growth. Urban renewal is expected to be the basis for the majority of these additional households.

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Land along Victoria Road, which includes the subject site, is identified as being within an Urban Renewal investigation area. The Plan defines these areas as:

"Large areas of land to be examined for suitability for urban development."

A priority for the Central Subregion relating to housing supply states, inter alia:

"Work with Councils to identify suitable locations for revitalised suburbs, new services, homes and jobs close to transport"

These investigation areas will further inform and help shape district plans, with these plans likely to be released at some point in 2016 after the implementation of the Greater Sydney Commission.

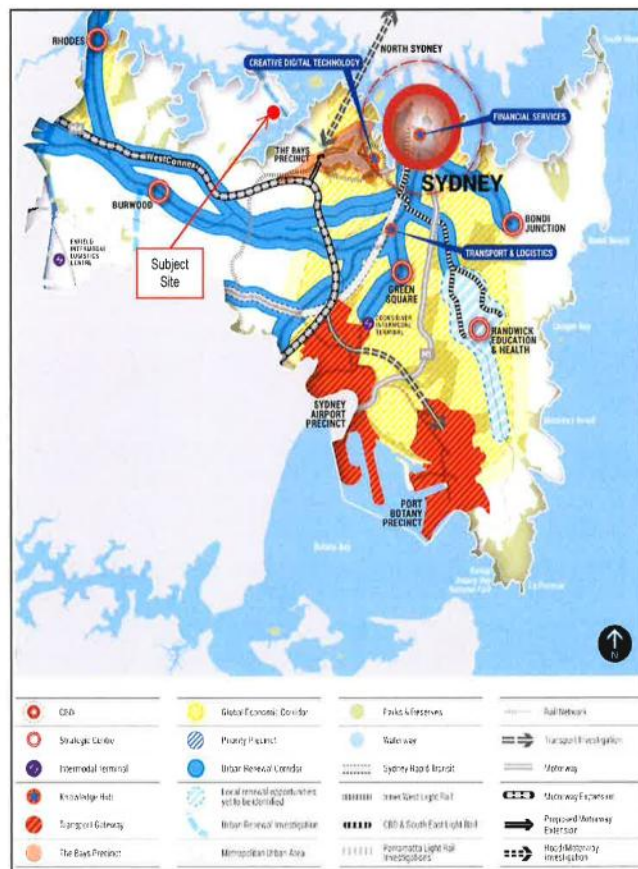


Figure 17: Central Subregion
(Source: NSW Department of Planning and Environment 2014)

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The subject site is a comparatively large holding an subject to the amendments to the LEP, has the potential to deliver approximately 50 new dwellings in a location close to public transport and near to residential support services. It is our opinion that the proposal is generally consistent with the aims and goals of the Plan is an appropriate response to the goals (see Table 1).

TABLE 1: A Plan For Growing Sydney – Goals, Directions and Actions			
Goal	Direction	Action	Comment
Goal 2: A city of housing choice, with homes that meet our needs and lifestyles	2.1: Accelerate housing supply across Sydney	2.1.1: Accelerate Housing supply and local housing choices	Proposal accelerates housing supply in Sydney by facilitating the redevelopment of the site to provide approximately 50 new dwellings in a sought after location. The provide a range of apartment sizes close to public transport
	2.2: Accelerate urban renewal across Sydney – providing homes closer to jobs	2.2.2: Undertake urban renewal in transport corridors which are being transformed by investment, and around strategic centres	Parramatta to Sydney CBD via Ryde is an identified corridor, with Victoria Road forming a key sector. High levels of existing public transport, with longer term investigations for possible light rail or bus rapid transport.

NSW Transport Masterplan

The NSW Transport Masterplan states that Parramatta to Sydney CBD via Victoria Road will be investigated for potential Bus Rapid Transport (BRT) or light rail in the future. Buses along the corridor carry on average 40,000 people across the Anzac Bridge each day. Urban Renewal in line with A Plan for Growing Sydney may be a catalyst for increased public transport capacity along the Victoria Road corridor which would further enhance the connectivity of the subject site and reduce reliance on private vehicles.

Is the Planning Proposal consistent with a Council's local strategy or other local strategic plan?

Futures Plan 20 (Canada Bay)

Futures Plan 20 is a community plan for the City of Canada Bay which outlines the 20 year vision for the LGA. The plan was first released in 2008, with further updates occurring in 2010 and 2013. Four overarching themes lead into a number of specific directions for the Council and the community. The planning proposal is consistent with the following direction:

"We will encourage and support the provision of a diverse range of housing stock which responds to changing needs."

Currently the subject site incorporates two dwellings, a car yard and an ambulance station. The modelling undertaken for the proposal indicates that it has the capability of providing approximately 50 dwellings in various configurations.

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These dwellings would be architecturally designed and have high quality internal amenity. Importantly, the site is located in close proximity to public transport, near to residential support services and in the vicinity of various recreational areas.

The increase to FSR and height for the site would allow the redevelopment. Importantly, the provision of a variety of unit sizes on the site would contribute housing stock in an area in very high demand. Incorporating various unit sizes contributes to affordability and also allows for housing choice for new or existing residents in the LGA. Older members of the community for example might consider downsizing to an apartment and the development may also present opportunities for those purchasing residential property in a very accessible location.

In our opinion, the proposal is consistent with this direction of Futures Plan 20.

Canada Bay Local Planning Strategy 2010-2031

The Canada Bay Local Planning Strategy 2010-2031 was adopted in June 2010 and was written to inform the new LEP and DCP (subsequently released in 2013). The strategy responds to a number of themes identified in the Future Plans 20 and responses to them through land use planning. The relevant objectives and actions identified by the Local Planning Strategy are responded to in Table 2.

It is noted that a number of the issues are more specific to DA stage rather than to the site specific amendments that are proposed. In any case, it is our opinion that the redevelopment of the site can satisfy the Canada Bay Local Planning Strategy.

Table 2: Local Planning Strategy Objectives and Actions

Objectives	Actions	Comments
OT1 Integrated land use and transport	AT2 New development in areas within walking distance of centres and public transport	The subject site located on the Victoria Road and has access to 19 existing bus services along the corridor. Various residential support services are located in very close proximity.
OE3 Ensure environmental impacts are minimized	AE7 Address potential local noise impacts	Development will create a noise buffer between the heavy traffic on Victoria Road and residential development to the west. Any redevelopment would be subject of a separate DA and this would require assessment of any potential acoustic impacts. Given the location of the site, acoustic mitigation measures may be required as part of the design however, this is standard practice in such a location.
OT3 Promote walking and cycling trips	AT9 Promote pedestrian safety and personal security	A B4 Mixed Use zone will be applied to the entire site. Any future development would activate the ground floor with retail/commercial premises to Victoria Road providing additional surveillance to the street. Passive surveillance from the units above would also be achieved.

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OE2 Enhance the landscape character of the area	AE4 Tree planting strategy	Based on preliminary modelling, green walls would be proposed for a redevelopment as well as planting within the central courtyard.
	AT9 reinforce pedestrian scale through urban design	The potential built form of a development on the site can be seen in the preliminary modelling undertaken by Bonus and Associates Pty. Any future built form would of course be required to address the street and may improve pedestrian environment.
OH1 Provide for a mixture of housing types over the short to medium term	AH1 Planning controls that promote a mix of housing types	The ADG requires the provision of a mix of dwelling sizes. As indicated, the preliminary modelling is based on a development which provides a number of apartment sizes at varying scales.
OT2 Promote the use of Public Transport	AT5 Promote and advocate for Public Transport	The subject site located on the Victoria Road and has access to 19 existing bus services along the corridor.
OE1 Continue to strengthen employment and retailing in local centres	AE1 Promote a complementary business mix in centres to support successful neighbourhood hubs	The proposal will facilitate shop top housing to integrate residential, retail and commercial properties, with each use complementing one another

The Canada Bay Local Planning Strategy also specifically addresses the Victoria Road corridor and states inter alia:

"Enterprise corridor zones identified along sections of Victoria and Parramatta Road - aim for no loss of employment and encouragement of mixed use (commercial/retail/residential) developments on strategic sites."

Whilst this extract makes reference to enterprise corridor zones, the Victoria Road corridor does not use the B6 Enterprise Corridor zone and instead adopts the B4 Mixed Use zone. Nonetheless, it is evident the the zoning along Victoria Road is intended to facilitate mixed use development including commercial, retail and residential premises (see Figure 18 on the following page). Victoria Road is also identified as accommodating 342 additional dwellings through mixed use development. The outcomes of this planning proposal would assist Council in reaching this target and is considered to be appropriate in this instance.

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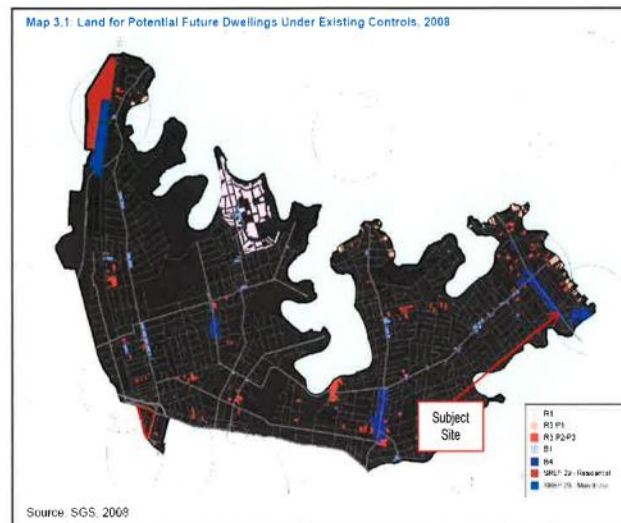


Figure 18: Land for Potential Future Dwellings Under Existing Controls

Is the Planning Proposal consistent with the applicable State Environmental Planning Policies?

The proposal has been considered against the relevant SEPPs which apply to the subject site. In order to determine which SEPPs are applicable, we have reviewed the Section 149 Certificates issued by Council.

A matrix is attached as Annexure A which identifies the SEPPs that apply to the site and that are relevant to the development. Where the SEPPs are specifically relevant to the proposal, they are dealt with throughout this report. It is noted that a number of SEPPs apply to the site, however are either not relevant for a planning proposal or would not be relevant to the redevelopment of the site.

It is our opinion that the proposal is consistent with the relevant SEPPs and is appropriate in this instance.

Is the Planning Proposal consistent with applicable Ministerial Directions (s.117 Directions)?

Periodically, the NSW Minister for Planning releases a direction pursuant to Section 117 of the EP & A Act. These directions apply to planning proposals lodged with the NSW Department of Planning and the relevant matters are to be considered.

A matrix of the applicable and relevant Section 117 directions accompanies this proposal and is contained in Annexure B. Where the matrix indicates that a particular direction applies to the proposal, a separate response is provided within the Annexure. In summary, the proposal is consistent with the relevant Section 117 directions that apply in this instance.

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3.3.3 Environmental, Social and Economic Impact

In addition to our responses to the questions below, Section 4.0 of this report undertakes an assessment of the likely planning issues associated with the proposal.

Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal?

The subject site is located within an established commercial and residential area and has been utilised for these purposes for many years. The site is also not identified by Council as having any particular environmental significance. For these reasons, it is unlikely that the planning proposal will result in adverse impacts on critical habitat, threatened species, populations, ecological communities or habitats.

A detailed issues of the impacts of a development on the natural environment would be undertaken at the DA stages. For the purpose of a high level Planning Proposal, the proposal is considered to be appropriate in this regard.

Are there any other likely environmental effects as a result of the Planning Proposal and how are they proposed to be managed?

As indicated above, the potential planning considerations will be dealt with in Section 4.0 of this report. It will briefly consider any environmental impacts that are likely to occur as a result of the proposal.

It should be noted that the assessment of the environmental impacts of the proposal would form a key part of any DA that was submitted for the subject site. For the purposes of this planning proposal, a broad assessment will be undertaken.

3.3.4 State and Commonwealth Interests

Is there adequate public infrastructure for the Planning Proposal?

A Site Investigation Report has been prepared by Woolacotts Consulting Engineers and is separately submitted. The report details the availability of existing public infrastructure and the potential options for connections to existing public infrastructure. The site is well located in an established area, with services readily available, as detailed in Table 3 on the following page. Upgrading connections to the site itself would be addressed in detail during the development application phase.

TABLE 3: PUBLIC INFRASTRUCTURE

Infrastructure	Availability	Comment
Public Transport	Available	<p>The subject site located on the Victoria Road and well serviced by public transport, with access to 19 existing bus services along the corridor. These services travel to major centres such as Ryde, Macquarie Park, Parramatta and the Sydney CBD.</p> <p>This assists in reducing dependence on private car travel and pressures on the local road network.</p>

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Utilities	Available	<p>Water: Water main on Victoria Road</p> <p>Electricity: High voltage underground cabling along Day Street, low voltage along Victoria Road, Overhead aerials on Formosa Street and Thornley Street, connection to existing cabling with onside kiosk or access from direct distributor</p> <p>Gas: Gas main located along Victoria Road, Day Street and Formosa Street</p> <p>Sewer: Currently runs through the site, may require relocation to accommodate basement level</p>
Roads	Available	The subject site is located on Victoria Road, however vehicular entry to the site is proposed from Formosa Street. A detailed traffic report has been prepared in support of the proposal and will be exhibited as part of the Planning Proposal
Waste Management and Recycling Services	Available	<p>Waste generated by the site is expected to be accommodated by existing waste services in the LGA.</p> <p>A Waste Management Plan will be prepared for any future development application.</p>
Essential Services	Available	<p>The NSW ambulance service is currently located on the eastern portion of the subject site. Negotiations are ongoing about the retention or potential relocation of the ambulance service.</p> <p>The Planning Proposal has the capacity to retain the Drummoyne Ambulance Station within the zoning, FSR and height limits proposed.</p> <p>The Planning Proposal is unlikely to increase demand on essential services.</p>

What are the views of state and Commonwealth public authorities consulted in accordance with the Gateway determination?

Formal consultation with State or Commonwealth Public Authorities/service providers has not been carried out at this stage. Preliminary discussions have been undertaken with NSW Ambulance however this consultation would be formalised as part of the planning proposal exhibition.

A Gateway Determination issued for the planning proposal would outline the parameters for exhibition and this would be dealt with at a later stage. Council have previously adopted this approach with other planning proposals and it is considered acceptable in this instance.

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3.4 Mapping

In order to give effect to the planning proposal, a number of mapping amendments would be required. These are set out in Table 4.

TABLE 4: PROPOSED MAPPING AMENDMENTS TO CANADA BAY LEP 2013	
Canada Bay LEP Map Sheet Number	Proposed Amendments
Land Zoning Map Sheet LZN_006	Rezone No 45 Day St and No.46 Thornley Street from R2 Low Density Residential to B4 Mixed Use.
Height of Buildings Map Sheet HOB_006	Apply a building height of 14m to the subject site. Identify No.63-69 Victoria Road as being within 'Area 3'
Floor Space Ratio Map Sheet FSR_006	Apply a Floor Space Ratio of 1.7:1 to No.53 Victoria Road and No.46 Formosa St. Apply a Floor Space Ratio of 2:1 to Nos.63-69 Victoria Road and No.45 Day St. Include the subject site in 'Area 6'.

The preparation of the mapping amendments would likely be undertaken by Council and this would be subject to discussion prior to the submission of the planning proposal to the NSW Department of Planning.

3.5 Likely Community Consultation

The requirements for community consultation will be detailed by the Gateway Determination issued by the NSW DoP. It is anticipated the Planning Proposal will be exhibited by Council in accordance with the requirements of section 57 of the Environmental Planning and Assessment Act 1979 and as required by the recommendations of the Gateway Determination.

Notification of the community consultation will be provided in a local newspaper and on Council's website. In addition to this, adjoining landowners will be notified in writing. The community will be given the opportunity to make written submissions during the public exhibition period.

During the public exhibition period the following documents will be placed on public exhibition:

- Planning Proposal
- Gateway Determination
- Relevant Council reports
- Maps

The duration of the community consultation is typically determined by Council, in accordance with the requirements of the DoP.

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4.0 CONSIDERATION OF KEY PLANNING ISSUES

This section will undertake a preliminary assessment of the key planning issues that would relate to the redevelopment of the subject site following the finalisation of the Planning Proposal. In the formulation of the development standards sought by the planning proposal, preliminary architectural modelling has been undertaken by Bonus and Associates. This modelling indicates how the proposed height and FSR might be achieved on the site and allows an assessment of potential amenity issues to be undertaken.

The preliminary building envelopes have been designed in accordance with the proposed development standards and, importantly, the requirements of SEPP No.65 and the ADG. The key amenity provisions in the ADG relating to solar access, privacy, building separation and privacy have been incorporated in the preliminary scheme.

4.1 Character, Context and Potential Built Form

Existing development along Victoria Road comprises an eclectic mix of commercial, retail and shop top housing uses. Much of the building stock is ageing and there are a number of development sites in the vicinity. In the immediate context, a DA for a large mixed use development is proposed on the opposite side of Day Street and there are multi storey commercial developments on the opposite side of Victoria Road. To the south and west, there are a number of lower scale residential dwellings.

As indicated, preliminary 3D modelling has been undertaken by Bonus and Associates to visualise how the proposed LEP amendments may translate into a development outcome. This modelling is predicated on a higher frontage to Victoria Road with the rear of the development being lower scale to present a compatible interface with the residential area. The design of the development is predicated on presenting an improved urban design outcome not only for the subject site, but for the surrounding area (see Figure 19).



Figure 19: Photomontage of Potential Building Form Viewed from Day Street and Formosa Lane

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As indicated, the planning controls currently result in a change of height from 20m on the sites to the west, down to 8.5m on the subject site. This abrupt change results in an awkward and, in our opinion, inappropriate urban design outcome. The proposed controls would sit consistently at 14m with the potential (subject to amalgamation) of a 20m corner element. This is consistent with surrounding development height limits and will provide a more appropriate scale of development that is consistent with urban design best practice (see Figure 20).

The preliminary building envelopes comprise commercial/retail uses at the ground floor and residential units above. A commercial space on the northern boundary could potentially be used as a café and would have vistas through the open courtyard in the centre of the site. Provision of a central courtyard would also allow the development to achieve compliant internal separations required by the ADG (see Figure 21).

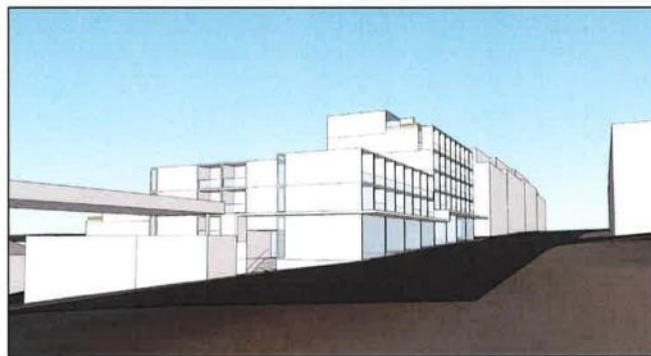


Figure 20: Victoria Road Frontage, looking west



Figure 21: Proposal Looking Towards the North-East

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The future of the NSW Ambulance station is uncertain at this stage however, modelling has been undertaken considering scenarios where it is retained in its current form, retained as part of the development, or relocated. The situation may arise where the western and eastern portions of the site are developed as different stages. The modelling proposed for the western site incorporates a 'green wall' which would soften the appearance of a staged development, rather than presenting a blank wall to the street. Green wall treatment would also be proposed to the eastern portion of the site (see Figures 22 and 23).

It is noted that the modelling below was predicated on a 20m height limit however, this would not be achieved unless the site was amalgamated.

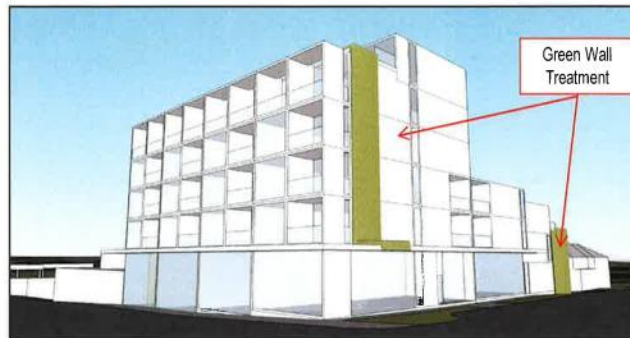


Figure 22: Victoria Road Frontage, looking east

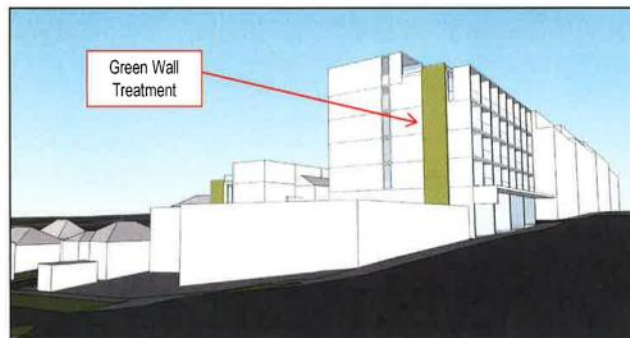


Figure 23: Victoria Road Frontage, looking west
(Eastern Portion of the site shown undeveloped)

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4.2 State Environmental Planning Policy No. 65 - Design Quality of Residential Apartment Development

State Environmental Planning Policy (SEPP) No. 65 was gazetted on 26 July 2002 and applies to the subject site. The SEPP contains nine design quality principles including consideration of context, scale, built form, density, resource, energy and water efficiency, landscape, amenity, safety and security, social dimensions and aesthetics.

The Apartment Design Guide, which accompanies SEPP No.65, sets out key assessment criteria for residential apartment development. The preliminary building modelling prepared by Bonus and Associates takes into account the requirements of the ADG.

A detailed SEPP No.65 Design Statement has also been prepared by Bonus and Associates which addresses the nine design principles of the SEPP and indicates how the proposal satisfies each of the principles. This document is separately submitted. A brief summary of the key responses to the SEPP No.65 Principles is as follows:

"Extensive testing has been carried out to determine the most suitable built form and scale for the site.

Existing and proposed-future maximum height limits were considered, and priority was given to the existing site topography and immediate neighbouring buildings.

The orientation and depth of the building elements have been carefully considered to minimise shadow casting and prevent any overlooking or privacy issues. A 12m wide courtyard in the centre of the development provides separation between the proposed perimeter buildings.

The proposed design incorporates an internal courtyard with a series of green walls to create a 'green ribbon' over the perimeter site. This would provide opportunities for recreation and social interaction as well as ground water retention and ecological diversity.

The design proposes the following measures to ensure good amenity for all residents and other users of the site:

- *Majority of the apartments will be cross ventilated*
- *Careful consideration of solar access has informed the design*

Perimeter development means appropriate depth to apartments with internal communal space.

A robust infrastructure already exists to support this scale and type of development, including excellent transport network, a number of shops and services, and a variety of open spaces. Victoria road will be enhanced by our proposed porous street level commercial space with through-site links."

In addition to the consideration of the principles and the architectural design statement, this section will briefly consider key amenity issues.

4.3 Solar Access

In order to assess the likely impact upon solar access as a result of the proposal, shadow diagrams have been prepared for 9am, 12pm and 3pm on 21 June. These diagrams indicate shadow cast by the existing built form and also the likely proposed built form on the site.

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Firstly, it is noted that given the orientation of the site, some additional overshadowing is likely. Notwithstanding this, the transitional built form that is proposed will minimise potential impacts.

At 9am, some overshadowing occurs to Formosa Street and the north eastern facades of the development on the opposite side of the street. As indicated, given the orientation of the site and the slope of the land, some additional overshadowing is inevitable at 9am. It is noted however that the transitional scale of the development at the rear of the site assists in minimising potential impacts (see Figures 24 and 25).



Figure 24: Existing Shadow Diagram – 9am 21st June



Figure 25: Proposed Shadow Diagram – 9am 21st June

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At 12pm, the shadowing cast by the preliminary building model is constrained to the road reserves of Formosa and Thornley Streets. Residential properties on the opposite side of Formosa Street obtain solar access and the north western elevation of the dwelling to the south is not likely to be impacted (see Figures 26 and 27).



Figure 26: Existing Shadow Diagram – 12pm 21st June



Figure 27: Proposed Shadow Diagram – 12pm 21st June

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At 3pm, once again the properties on the opposite side of Formosa Street are unaffected. Some shadow will fall on No. 39-45 Victoria Road in the afternoon, however this is considered appropriate due to its existing usage as a service station. This is inevitable given the orientation of the sites however, the transitional form reduces the potential impact. Once again, at 3pm No. 42 Formosa Street is largely unaffected by the proposal (see Figures 28 and 29).



Figure 28: Existing Shadow Diagram – 3pm 21st June



Figure 29: Proposed Shadow Diagram – 3pm 21st June

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4.4 Visual and Acoustic Privacy

The proposal will maintain visual and acoustic privacy within the development by providing separation between built form on the Victoria Road frontage and the Formosa Street frontage. The width of the internal courtyard provided within the development is consistent with the requirements of SEPP No.65 and this is considered further in the SEPP No.65 report prepared by Bonus and Associates.

Privacy for neighbouring properties is also provided by the development. By stepping down the development along Formosa Street, any potential overlooking of dwellings on the opposite side of the street is minimised. Notwithstanding this, the majority of the dwellings that front Formosa Street opposite the subject site have garages presenting to the street rather than habitable rooms.

These matters are also addressed in the submitted SEPP No.65 Design Statement and would be considered in greater detail as part of a Development Application.

4.5 Traffic and Parking

In order to assess the likely traffic and parking impacts of the proposal, a report has been prepared by TDG in association with Gennaoui Consulting Pty Ltd and separately submitted. This report includes a detailed analysis of the surrounding road network, consideration of the likely traffic generation and assessment of the potential car parking implications.

The parking demands and traffic generation of the proposed development would be finalised as part of a detailed design for DA. Notwithstanding, the preliminary modelling allows an initial assessment of parking requirements to be undertaken.

Importantly in relation to parking, it is noted that Council, at its meeting of 3 November, considered a report in relation to the Five Dock Town Centre, and concurrently resolved to amend the car parking requirements of Council's DCP to align with the car parking requirements of the Guide to Traffic Generating Developments. Maximum car parking controls were also implemented as follows:

Residential Apartments:

- 0.6 space per small dwelling (eg1 bedroom units)
- 0.9 spaces per medium dwelling (2 bedrooms units)
- 1.4 spaces per large dwelling (3 bedrooms units)
- 1 visitor spaces per 5 units

Commercial Component:

- 1 space per 40 m2 GFA for office
- 1 space per 40 m2 GLFA for retail

The report considers the car parking compliance of the preliminary scheme and states the following, inter alia:

"Applying the latest adopted rates, 57 parking spaces including visitor parking would be needed for the apartments and 18 spaces for the commercial component to comply with Council's requirements, as noted in Table 1. The proposal will have 75 parking spaces."

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The report also considers traffic generation and states the following, inter alia:

"The following peak hourly trip generations stipulated in the RTA Guide to Traffic Generating Developments Issue 2.2, October 2002 were adopted to estimate the likely trip generation of the residential component of the proposed development:

- 0.40 trips/unit for 1 bedroom unit
- 0.45 – 0.50 trips/unit for two bedroom units
- 0.65 trips/unit for 3 bedroom units

The commercial (retail) component of the development is expected to generate about 0.8 trips per parking space. The proposed development is therefore likely to generate about 40 trips during the morning and afternoon peak hours..."

Based on the conclusions contained in the Traffic and Parking Report, the proposal is likely to be appropriate from a traffic and parking point of view. It is expected that a significant number of residents would use public transport to access services and employment due to the high level of service along the Victoria Road corridor.

4.6 Requirements of State Environmental Planning Policy (Infrastructure) 2007

Clause 101 and 102 of SEPP (Infrastructure) 2007 requires the consideration of appropriate acoustic and pollution measures for development along classified road corridors. As the subject site fronts Victoria Road which is a state classified road, this is a relevant consideration. The proposed development will adopt appropriate noise abatement measures at the recommendation of an acoustic report conducted at the development application stage. Additionally, the proposed building will assist in creating a noise barrier between the Victoria Road and residential development to the south-west.

It is our opinion that the proposed development is capable of complying with the requirements of the Infrastructure SEPP.

4.7 SEPP No. 55 – Contamination of Land

A Preliminary Contamination Assessment was prepared in support of the proposal by Geotechnique Pty Ltd. The objectives of the assessment were to identify any areas of potential contamination and assess if the site is likely to present a risk of harm. The report considers that the site is appropriate for on the subject site and concludes the following, inter alia:

"Based on this assessment, it is considered that the site would be suitable for the proposed mixed commercial for the proposed mixed commercial and residential uses subject to sampling (preferably after removal of the site features) testing to address the potential contamination listed in Section 70 of the report. If any contaminants are identified the site can be made suitable for the proposed uses following successful remediation and validation.

It is considered reasonable for conditional development consent to be issued to require the sampling and testing. Based on the results of the testing to determine the need or otherwise for remediation. It is considered that based on this approach Council can be satisfied that the site can be made suitable for the proposed uses subject to the imposition of appropriate conditions of consent."

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As part of their recommendations, Council requested the preparation of a Detailed Environmental Site Investigation. Accordingly, the amended planning proposal is accompanied by a Stage 2 Contamination Assessment prepared by Geotechnique Pty Ltd. The conclusion states the following, inter alia:

"Based on this assessment and the previous PCA, it is considered that the site can be made suitable for the proposed commercial and residential development with minimal opportunities for soil access subject to implementation of the following:

- *A further assessment to delineate the extents of zinc (Zn), Benzo(a)Pyrene (BaP) contamination at identified locations of concern as indicated on Drawing No 13585/3-AA2. Appropriate remediation of locations of concern followed by validation will be required.*
- *As this Stage 2CA was carried out with limited sampling and testing of soil samples from (4) locations in accessible areas, assessment of footprints of the existing site features with additional sampling and testing should be carried out after demolition and/or removal, to comply with the NSW EPA Sampling Guidelines, in order to characterise the entire site. In the event of contamination, detailed assessment, remediation and validation will be required.*
- *Development of a remedial action plan (RAP) for the remediation of Zn and BaP impacted soil at identified locations of concern, plus any other contamination identified through the additional sampling and testing beneath the site features, followed by appropriate validation."*

On the basis of the recommendations of the State 2 Contamination Assessment, the proposal is considered appropriate in this instance.

4.8 Site Suitability

It is proposed to rezone a portion of the site from R2 Low Density Residential to B4 Mixed Use. It is also proposed to amend the height of building and floor space ratio (FSR) development standards that apply to the site. The rezoning of a portion of the site is in-keeping with the existing B4 Mixed Use zoning on the site and logical extension of B4 zone along the Victoria Road corridor which has been identified as an area of investigation for urban renewal.

The proposed FSR is consistent with neighbouring allotments to the north, applying an FSR of 2:1 across the entire site and extending the boundaries of 'Area 3' of the FSR bonus provisions to the western half of the site, allowing an FSR of 2.5:1. Similarly, a height of 20m is proposed for the western portion of the subject site, stepping down to 14m on the eastern portion. This is a suitable response to the context of the subject site as the development creates a transition from larger scale development in the B4 Mixed Use zone to residential development nearby.

A Site Investigation Report has been prepared by Woolacotts Consulting Engineers which outlines the site has readily available services. Connections to these existing services would be assessed at a development application stage. This is considered elsewhere in our report.

The Planning Proposal is consistent with State Environmental Planning Policies (SEPPs) and will be addressed in further detail when necessary at the Development Application stage. A preliminary assessment is contained at Annexure A. The proposal has been assessed against SEPP 65 and the Apartment Design Guide criteria and demonstrates the site has the ability to comply with the relevant provisions. The proposal is also consistent with the Section 117 ministerial directions, which have been addressed in further detail in Annexure B.

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The Planning Proposal is also consistent with Local and State strategic planning documents including A Plan for Growing Sydney. On this basis, the site is suitable for the proposed amendments.

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5.0 EXISTING DCP CONTROLS AND POTENTIAL AMENDMENTS

5.1 Existing DCP Controls

The Canada Bay DCP applies to the site and includes specific provisions for allotments fronting Victoria Road in Drummoyne. These relate to the subject site and nearby allotments on the opposite side of Day Street (see Figure 30). The allotments within the subject site that front Victoria Road are located in Area E and currently have an envelope control which limits development to two storeys. It is noted that the DCP provisions do not relate to the allotments at the rear of the site.

To the north west, the block bounded by Victoria Road, Day Street, Formosa Street and Church Street is located within Area D. The majority of this street block (Nos. 77-105 Victoria Road) is proposed for redevelopment as part of DA0105/2015. Area D provides for a maximum of six storeys fronting Victoria Road, with the top level setback 3m from the lower five levels. Along the Formosa Street frontage, the control provides for two storeys, with a third storey setback 5m from the lower two levels. The two-three storey component of the site is to extend a minimum of one third of the site width (see Figure 31 on the following page).

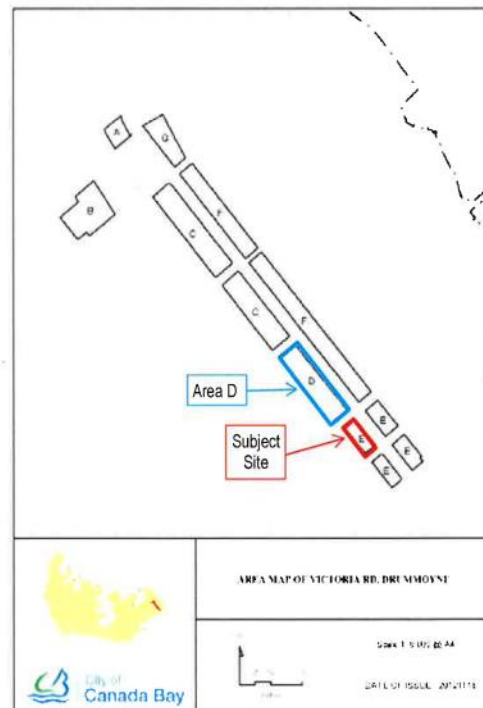


Figure 30: Building Envelope Area Map

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The DCP includes indicative envelope diagrams which demonstrate how built form may be distributed on sites within Area D (see Figure 31).

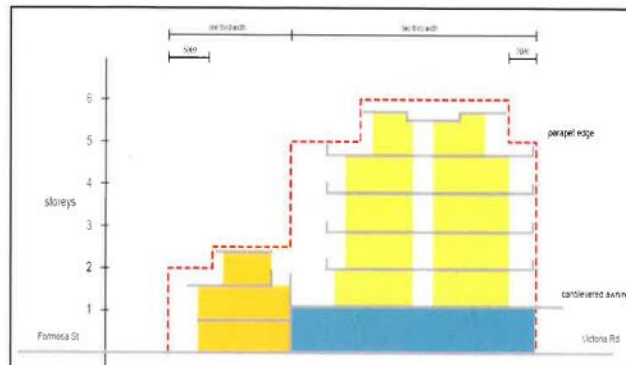


Figure 31: Area D Envelope Controls

5.2 Potential Amendments to DCP Controls

The preliminary modelling has been based on similar design principles to those exhibited by the controls for Area D. The majority of building form is massed toward the street and the rear (southern) extent of the development has a reduced overall height.

It is noted that while a three storey Development along Formosa Street is proposed, a 14m height development standard has been sought. This will facilitate a three storey form where the topography falls away in the southern corner of the site.

The Council Officers report considered potential amendments to the DCP, stating the following, inter alia:

"Development Controls proposed for 63-69 Victoria Road and 45 Formosa Street will allow the achievement of the 5th and 6th floors only where amalgamation occurs and a total site area of 2500m² is achieved. Buildings fronting Formosa Street will be required to have a height of two to three storeys. An illustration of this building envelope is shown in the image below.

New controls within the DCP are proposed for 53 Victoria Road and 46 Thornley Street to facilitate a three (3) storey development to the edge of Victoria Road, including ground floor commercial with a cantilevered awning, and a three (3) storey development to the rear (similar to Area "D"), providing an upper level setback of five (5) metres from the Formosa Street boundary to the third storey. These controls will be reflected in a new image created for the draft DCP.

It is recommended that the draft planning controls be prepared for the Canada Bay DCP and be exhibited concurrently with the Planning Proposal should the application receive a Gateway Determination."

In our opinion, the proposed amendments to the DCP would result in an appropriate built form for the subject site.

6.0 CONCLUSION

This Planning Proposal seeks to amend the Canada Bay LEP 2013 to facilitate a mixed use development that continues the emerging development pattern and provides an effective transition down to nearby lower density residential development. As outlined, this report incorporates recommendations of

The proposal has been prepared in accordance with the NSW DoP's *Guide to Preparing Planning Proposals* and responds to each of the relevant matters contained therein. Based on our consideration of the DoP Guidelines, the following amendments are considered appropriate:

- **Zoning** - Rezoning the rear of the subject site from R2 Low Density Residential to B4 Mixed Use to be consistent with the Victoria Road frontage.
- **Floor Space Ratio** - Apply a floor space ratio (FSR) of 2.1:1 Nos.63-69 Victoria Road and No.45 Day St), and a FSR of 1.7:1 to No. 53 Victoria Road and No.46 Formosa Street. Extend the boundaries of 'Area 3' of the FSR bonus provisions to provide a FSR of 2.25:1 to the entire site where a minimum site area of 2,500m² is achieved,
- **Height** - Apply a height limit of 14m to the entire site, and where a minimum site area of 2,500m² is achieved, apply a site specific height limit of 20m to Nos. 63-69 Victoria Road.

Currently, the sites to the north enjoy a 20m height limit and an FSR of up to 3:1. This steps down abruptly on the subject site to a height of 8.5m and an FSR of 0.5:1 – 1:1. The proposed amendments to the LEP will facilitate a development that provides an effective transition and in doing so, results in a superior urban design outcome.

In determining the appropriate amendments, preliminary 3D modelling has been prepared by Bonus and Associates architects. The modelling, based on compliance with SEPP 65 and the ADG, demonstrates how the proposed controls could be translated to built form and how this built form would interface with the existing context of the locality. In our opinion, the outcome is favourable and the amendments worthy of support.

This Planning Proposal is also accompanied by a number of expert reports which support various aspects of the proposal. This document should be read in conjunction with those reports.

There are also two annexures to this Planning Proposal which include the consideration of relevant SEPPs/SREPs and an assessment of the relevant Section 117 Directions.

On the basis of the information contained herein, it is our opinion that the proposed zoning, height and FSR controls are appropriate for the subject site and will result in a more compatible built form. In our opinion, Council should support the Planning Proposal.

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ANNEXURE A: LIST OF SEPPS

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SEPP	APPLIES/COMMENTS
SEPP No 1—Development Standards	Not Applicable LEP is a Standard Instrument Format and includes Clause 4.6 Exception to Development Standards
SEPP No 14—Coastal Wetlands	Not Applicable
SEPP No 15—Rural Landsharing Communities	Not Applicable
SEPP No 19—Bushland in Urban Areas	Applies, however not relevant in this instance as subject site does not have bushland nor is it zoned for public open space
SEPP No 21—Caravan Parks	Applies, however not relevant in this instance as a Caravan Park is not proposed
SEPP No 26—Littoral Rainforests	Not Applicable
SEPP No 29—Western Sydney Recreation Area	Not Applicable
SEPP No 30—Intensive Agriculture	Applies, however not relevant in this instance as intensive agriculture is not proposed
SEPP No 32—Urban Consolidation (Redevelopment of Urban Land)	Applies, however not likely to be relevant to proposal.
SEPP No 33—Hazardous and Offensive Development	Applies –proposed development is unlikely to be considered hazardous or offensive, therefore not relevant
SEPP No 36—Manufactured Home Estates	Not Applicable
SEPP No 39—Spit Island Bird Habitat	Not Applicable
SEPP No 44—Koala Habitat Protection	Not Applicable
SEPP No 47—Moore Park Showground	Not Applicable
SEPP No 50—Canal Estate Development	Applies however not relevant in this instance as Canal development is not proposed
SEPP No 52—Farm Dams and Other Works in Land and Water Management Plan Areas	Not Applicable
SEPP No 55—Remediation of Land	Applies – Preliminary Contamination Assessment Report states "If any contaminants are identified, the site can be made suitable for the proposed uses following successful remediation and validation", will be addressed further at DA Stage
SEPP No 59—Central Western Sydney Regional Open Space and Residential	Not Applicable
SEPP No 62—Sustainable Aquaculture	Not Applicable
SEPP No 64—Advertising and Signage	Applies - Matter for consideration at the time of any Signage DA
SEPP No 65—Design Quality of Residential Flat Development	Applies – Addressed in Section 4.1 of this report and would be addressed in more detail at the DA Stage
SEPP No 70—Affordable Housing (Revised Schemes)	Applies, however not relevant as the site does not fall within one of the sites identified in the aims of the SEPP.
SEPP No 71—Coastal Protection	Not Applicable
SEPP (Affordable Rental Housing) 2009	Applies – would be addressed at DA Stage
SEPP (Building Sustainability Index: BASIX) 2004	Applies - would be addressed at DA Stage
SEPP (Exempt and Complying Development Codes) 2008	Applies however not relevant in this instance

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SEPP (Housing for Seniors or People with a Disability) 2004	Applies, however seniors housing is not proposed
SEPP (Infrastructure) 2007	Applies, frontage to Victoria Road may need to be addressed in terms of site access (s101) and road noise and vibration (s102) at DA Stage. Notwithstanding this, site access is proposed from Formosa Street, with no direct access from Victoria Road. Division 6 may become relevant on eastern portion of the site due to existing Ambulance Service facility.
SEPP (Kosciuszko National Park—Alpine Resorts) 2007	Not Applicable
SEPP (Kurnell Peninsula) 1989	Not Applicable
SEPP (Major Development) 2005	Applies, however not relevant as site is not identified as State Significant
SEPP (Mining, Petroleum Production and Extractive Industries) 2007	Applies, however not relevant as mining, petroleum production or extractive industries are not proposed uses of the site
SEPP (Miscellaneous Consent Provisions) 2007	Applies, may be relevant for temporary structures
SEPP (Penrith Lakes Scheme) 1989	Not Applicable
SEPP (Three Ports) 2013	Not Applicable
SEPP (Rural Lands) 2008	Not Applicable
SEPP (SEPP 53 Transitional Provisions) 2011	Not Applicable
SEPP (State and Regional Development) 2011	Not Applicable
SEPP (Sydney Drinking Water Catchment) 2011	Not Applicable
SEPP (Sydney Region Growth Centres) 2006	Not Applicable
SEPP (Urban Renewal) 2010	Applies, however not relevant as subject is not within an identified precinct
SEPP (Western Sydney Employment Area) 2009	Not Applicable
SEPP (Western Sydney Parklands) 2009	Not Applicable
Regional Environmental Plans – Deemed SEPPs	
SREP (Sydney Harbour Catchment) 2005	Applies to entire Canada Bay LGA, will be dealt with further at DA Stage, not within Foreshore or Waterways Area Boundary
SREP No 8 - Central Coast Plateau Areas	Not Applicable
SREP No 9 - Extractive Industry (No 2 – 1995)	Not Applicable
SREP No 16 - Walsh Bay	Not Applicable
SREP No 18 - Public Transport Corridors	Not Applicable
SREP No 19 - Rouse Hill Development Area	Not Applicable
SREP No 24 - Homebush Bay Area	Not Applicable
SREP No 26 - City West	Not Applicable
SREP No 30 - St Marys	Not Applicable
SREP No 33 - Cooks Cove	Not Applicable

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ANNEXURE B: CONSIDERATION OF SECTION 117 DIRECTIONS

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SECTION 117 DIRECTIONS	APPLICABLE/NOT APPLICABLE
1. Employment Resources	
1.1 Business and Industrial Zones	Applicable
1.2 Rural Zones	Not Applicable
1.3 Mining, Petroleum Production and Extractive Industries	Not Applicable
1.4 Oyster Aquaculture	Not Applicable
1.5 Rural Lands	Not Applicable
2. Environment and Heritage	
2.1 Environment Protection Zones	Not Applicable
2.2 Coastal Protection	Not Applicable
2.3 Heritage Conservation	Not Applicable
2.4 Recreation Vehicle Areas	Not Applicable
3. Housing, Infrastructure and Urban Development	
3.1 Residential Zones	Applicable
3.2 Caravan Parks and Manufactured homes Estates	Not Applicable
3.3 Home Occupations	Not Applicable
3.4 Integrating Land Use and transport	Applicable
3.5 Development Near Licensed Aerodromes	Not Applicable
3.6 Shooting Ranges	Not Applicable
4. Hazard and Risk	
4.1 Acid Sulfate Soils	Not Applicable
4.2 Mine Subsidence and Unstable Land	Not Applicable
4.3 Flood Prone Land	Not Applicable
4.4 Planning for Bushfire Protection	Not Applicable
5. Regional Planning	
5.1 Implementation of Regional Strategies	Not Applicable
5.2 Sydney Drinking Water Catchments	Not Applicable
5.3 Farmland of State and Regional Significance of the NSW Far North Coast	Not Applicable
5.4 Commercial and Retail Development along the Pacific Highway, North Coast	Not Applicable
5.5 Development in the vicinity of Ellalong, Paxton and Millfield (Cessnock LGA) (Revoked 18 June 2010)	Not Applicable
5.6 Sydney to Canberra Corridor (Revoked 10 July 2008. See amended Direction 5.1)	Not Applicable
5.7 Central Coast (Revoked 10 July 2008. See amended Direction 5.1)	Not Applicable
5.8 Second Sydney Airport: Badgerys Creek	Not Applicable
5.9 North West Rail Link Corridor Strategy	Not Applicable
6. Local Plan Making	
6.1 Approval and Referral Requirements	Applicable
6.2 Reserving Land for Public Purposes	Not Applicable
6.3 Site Specific Provisions	Not Applicable
7. Metropolitan Planning	
7.1 Implementation of A Plan for Growing Sydney	Applicable

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CONSIDERATION OF RELEVANT SECTION 117 MINISTERIAL DIRECTIONS

Direction 1.1 – Business and Industrial Zones

This direction applies to all planning proposals that will affect land within an existing or proposed business or industrial zone (including the alteration of any existing business or industrial protection zone boundary). The objectives of this direction are stated, inter alia:

- (a) Encourage employment growth in suitable locations,
- (b) Protect employment land in business and industrial zones, and
- (c) Support the viability of identified strategic centres.

The proposal is consistent with the objectives of Direction 1.1 – Business and Industrial Zones as it will provide the potential for additional employment opportunities, with an increase in the availability of business lands through the provision of additional B4 Mixed Use zoned land.

In this particular instance, the relevant planning authority must be consistent with the direction, and therefore, a planning proposal must:

- (a) Give effect to the objectives of this direction,
- (b) Retain the areas and locations of existing business and industrial zones,
- (c) Not reduce the total potential floor space area for employment uses and related public services in business zones,
- (d) Not reduce the total potential floor space area for industrial uses in industrial zones, and
- (e) Ensure that proposed new employment areas are in accordance with a strategy that is approved by the Director-General of the Department of Planning.

The proposed change in land use for the subject site from R2 Low Density/B4 Mixed Use to all B4 Mixed Use will allow for the provision of new business land and will give effect to the objectives of this direction. The proposal demonstrates there will be no reductions in business land; instead the potential floor space for employment uses will be increased. The planning proposal will not impact the provision of industrial land throughout the LGA. The proposal ensures that new employment areas are in accordance with a strategy that is approved by the Director-General of the Department of Planning. The planning proposal has considered the amended planning controls against relevant state and local planning strategies and has determined it to be consistent with the relevant aims and objectives. In summary, the proposal is consistent with this Direction.

Direction 3.1 – Residential Zones

The direction applies when a relevant planning authority prepares a planning proposal that will affect land within an existing or proposed residential zone (including the alteration of any existing residential boundary) and any other zone in which significant residential development is permitted or proposed to be permitted.

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The objectives of this direction are stated, inter alia:

- (a) To encourage a variety and choice of housing types to provide for existing and future housing needs,*
- (b) To make efficient use of existing infrastructure and services and ensure that new housing has appropriate access to infrastructure and services, and*
- (c) To minimise the impact of residential development on the environment and resource lands*

The proposed change in land use is consistent with the objectives of Direction 3.1 due to the efficient use of existing infrastructure and services and an increase in variety and housing choice in the local area..

In this particular instance, the relevant planning authority must be consistent with the direction, and therefore, a planning proposal must:

A planning proposal must include provisions that encourage the provision of housing that will:

- (a) Broaden the choice of building types and locations available in the housing market, and*
- (b) Make more efficient use of existing infrastructure and services, and*
- (c) Reduce the consumption of land for housing and associated urban development on the urban fringe, and*
- (d) Be of good design.*

A planning proposal must, in relation to land to which this direction applies:

- (a) Contain a requirement that residential development is not permitted until land is adequately serviced (or arrangements satisfactory to the council, or other appropriate authority, have been made to service it), and*
- (b) Not contain provisions which will reduce the permissible residential density of land.*

The proposed change in land use from R2 Low Density Residential/B4 Mixed Use to B4 Mixed Use will allow for the provision of business lands and additional residential development. The proposal is consistent with the surrounding zoning and will allow for additional residential development on the site beyond what is currently permissible. This is consistent with the abovementioned provisions as the proposal offers a broad range of dwellings that make more efficient use of existing infrastructure and services, provides additional housing for Greater Sydney through urban renewal thus reducing the consumption of land on the urban fringe and is, in our opinion, of good design.

Direction 3.4 – Integrating Land Use and Transport

The direction applies when a relevant planning authority prepares a planning proposal that will create, alter or remove a zone or a provision relating to urban land, including land zoned for residential, business, industrial, village or tourist purposes. The objectives of this direction are stated, inter alia:

- (a) Improving access to housing, jobs and services by walking, cycling and public transport, and*
- (b) Increasing the choice of available transport and reducing dependence on cars, and*
- (c) Reducing travel demand including the number of trips generated by development and the distances travelled, especially by car, and*
- (d) Supporting the efficient and viable operation of public transport services, and*
- (e) Providing for the efficient movement of freight.*

The proposal is consistent with the objectives of Direction 3.4 due to the site's close proximity to public transport.

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Victoria Road is a major bus route corridor, with 19 different bus routes providing access to a number of major centres including Parramatta, Macquarie Park, Ryde, Coogee and the Sydney CBD. A bus stop is currently located on Victoria Road adjoining the subject site. The Victoria Road corridor has also been identified as accommodating Bus Rapid Transport (BRT) or light rail in the long term future. The sites accessibility to public transport satisfies the objectives of the direction as it reduces the dependence on cars. In addition, the provision of business lands will improve access to jobs and services through the maximisation of public transport use. The proposal is consistent with this direction.

Direction 6.1 – Approval and Referral Requirements

The direction applies when a relevant planning authority prepares a planning proposal. The objective of the direction is stated, inter alia:

- (a) To ensure that LEP provisions encourage the efficient and appropriate assessment of development.

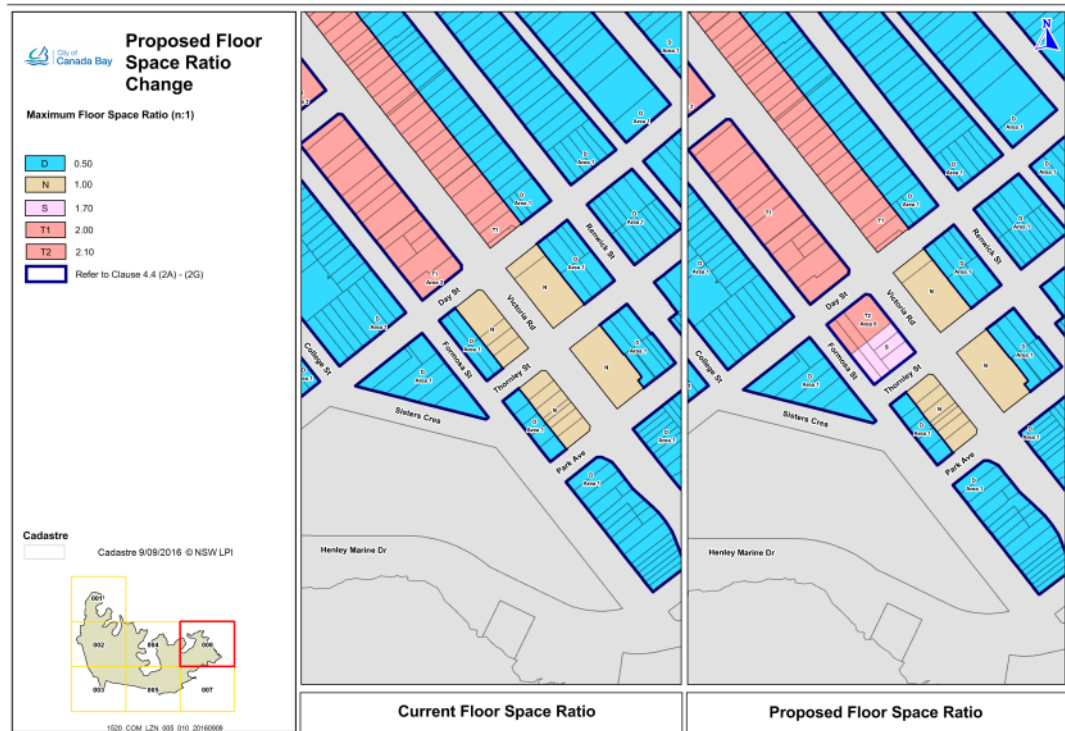
The Planning Proposal does not propose any controls that amend concurrence or referral procedures in the LEP. The proposal is consistent with this direction.

Direction 7.1 – Implementation of A Plan for Growing Sydney

The direction applies to the City of Canada Bay Local Government Area and aims to give legal effect to the planning principles; directions; and priorities for subregions, strategic centres and transport gateways contained within A Plan for Growing Sydney. The proposal is consistent with the strategic document as it provides additional housing that is needed in the Greater Sydney area, highlighted in Goal 2. The Planning Proposal also enhances opportunity for urban renewal along the Victoria Road corridor, which is identified as being an area for 'urban renewal investigation'. The proposal may be a catalyst for further urban renewal along the corridor and is consistent with the proposed development to the north at Nos. 77-105 Victoria Road. A Plan for Growing Sydney has been further addressed in Section 3.3.2 of this document.







Draft Clause – City of Canada Bay Local Environmental Plan 2013 (Canada Bay LEP 2013)

The following additional clauses are proposed within the Canada Bay LEP 2013 (*Draft clause shown in Red*):

Draft 4.3 Height of buildings

(2) The height of a building on any land is not to exceed the maximum building height shown for the land on the [Height of Buildings Map](#)

(2A) Despite subclause (2), the maximum height of a building on the land identified as Lot 10 DP 625084 (63-69 Victoria Road, Drummoyne) is 20m, where a site area greater than 2,500m² is achieved.

Draft 4.4 Floor Space Ratio

(2) The floor space ratio on any land is not to exceed the maximum floor space ratio shown for the land on the [Floor Space Ratio Map](#)

(2G) Despite subclause (2), the maximum floor space ratio on the land identified as “Area 6” on the Floor Space Ratio Map is 2.25:1, where a site area greater than 2,500m² is achieved.

F2 Building Envelope controls and site specific design controls

F2.1 Victoria Road, Drummoyne

Victoria Road is the transport artery of Drummoyne that moves people and goods in and throughout the area. Its character reflects the bustling and aggressive transport function combined with a mix of commercial and retail uses.

The Victoria Road commercial area is defined by the strip of commercial and retail buildings which line both sides of Victoria Road. A mix of 1-3 storey buildings address Victoria Road with varying setbacks. Collectively these buildings display a pattern of vertical elements, detailed awnings, parapets and silhouettes.

The intersection of Victoria and Lyons Road is located on a ridgetop and is an important urban and landscape feature containing a mix of civic scaled and articulated buildings. It is a landmark location due to these architectural and topographic qualities. This intersection and the buildings located here form the gateway to Drummoyne and establish the key character.

Parts of the Victoria Road strip are located within conservation areas. Individual heritage items are also found in this area. Conservation areas and heritage items are important for their contribution to the streetscape character and history of the area.

The intersection of the eastern side of Victoria Road and Lyons Road is part of a conservation area. The buildings on the south east side of this intersection are identified as having heritage significance and represent an example of Edwardian shopping centre development that forms an almost intact streetscape at the crown of the hill.

The zoning of this area allows for mixed use activities including shop top housing with ground floor retail. Encouraging mixed use development is considered appropriate in some areas provided resident amenity is satisfactory. Providing mixed use development can enhance street activity and surveillance while revitalising the area with new shops, services and residents.

The future character of Victoria Road:

- emphasise the distinctive "busy" urban quality
- encourage mixed use development to create a thriving urban area with retail, residential and commercial uses;
- improve the streetscape character by coordinated advertising policies;
- encourage street edge development to activate the street;
- ensure that any alterations and additions respect the conservation and heritage values of the area; and
- emphasise the western corner of the Victoria and Lyons Road intersection as a strong corner site to signify the gateway to Drummoyne.

Controls have been developed for seven key precincts within the commercial area (labeled A-H in Figure F2.1). These have been developed in response to the streetscape, type and form of buildings and relationship with adjoining areas.

Controls

C1.	Infill development in the Drummoyne Commercial Area should include parapet skylines and use non-reflective materials.
C2.	Buildings should be built to the street alignment.
C3.	Transitional building heights should be provided between the commercial and residential areas to protect the amenity of surrounding neighbours.

CITY OF CANADA BAY

Development Control Plan

Part F

Mixed use areas and neighbourhood centres

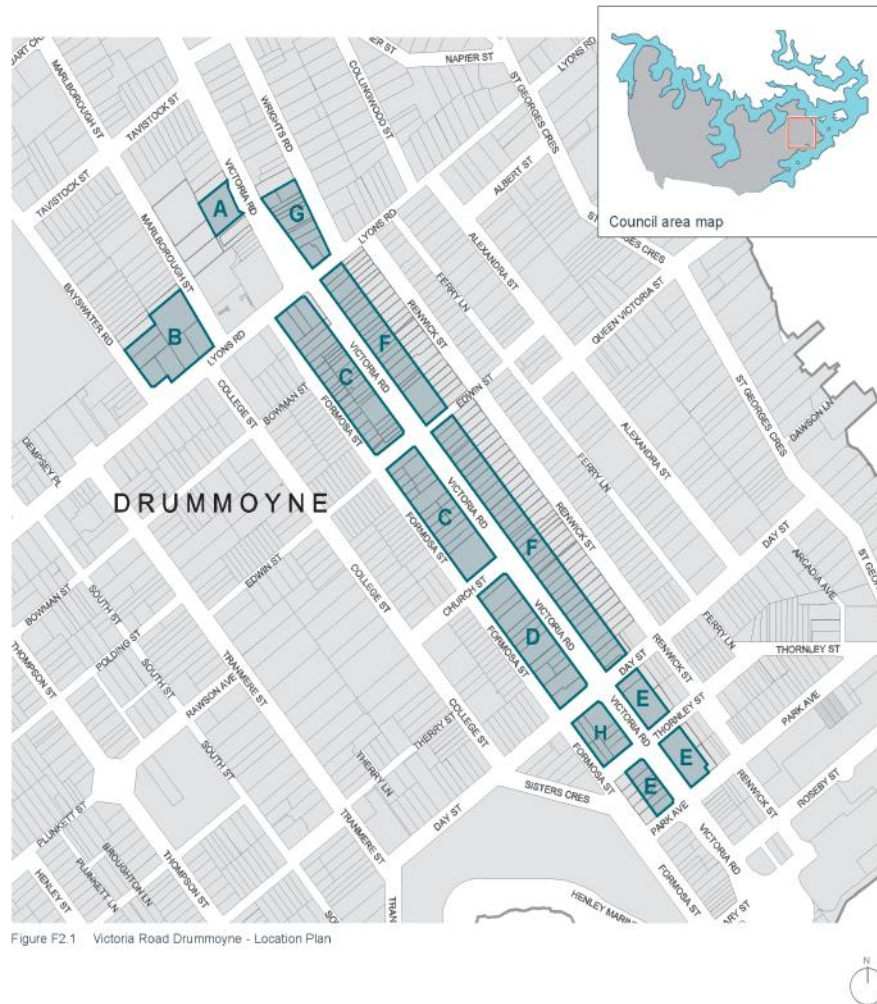


Figure F2.1 Victoria Road Drummoyne - Location Plan

CITY OF CANADA BAY

Development Control Plan

Part F

Mixed use areas and neighbourhood centres

Area A

Controls	
C4.	Development is to be built to the street edge.
C5.	Maximum building height is two (2) storeys.

Area B

Controls	
C6.	Development is to be built to the street edge.
C7.	The maximum building height is six (6) storeys.
C8.	For mixed use development, special consideration must be given to: <ul style="list-style-type: none"> • noise attenuation measures; • privacy issues; • the provision of landscaping and private open space as roof gardens; • residential amenity; • ESD objectives, including cross ventilation and floor to ceiling heights; • fenestration treatment and adequate solar shading; • articulation and massing of the façade; and • limited reflective surfaces with a more solid wall to window void opening ratio.

Area C

Controls	
C9.	Maximum building height is four (4) storeys at Victoria Road reducing to two (2) storeys along Formosa Street. The two (2) storey development should extend for a minimum depth of 1/3 of the site east of Formosa Street. Refer to building envelope in Figure F2.2.
C10.	Street edge development is required along Victoria Road and Formosa Street.
C11.	Roof form at Formosa Street is a parapet edge.
C12.	Development of a heritage item should be in accordance with the controls in Part D - Heritage. For heritage items, a statement of heritage impact is required to accompany development applications.

Area D

Controls	
C13.	Street edge development is required along Victoria Road and Formosa Street.
C14.	Maximum building height at the Victoria Road alignment is five (5) storeys, stepping up to six (6) storeys. The six (6) storey component is to be set back a minimum of 3 metres from the five (5) storey component on Victoria Road. The maximum building height at the Formosa Street alignment is two (2) storeys, stepping up to three (3) storeys. The three (3) storey component is to be set back a minimum of 5.0 metres from the two (2) storey component on Formosa Street. The two (2) and three (3) storey component is to extend for a minimum of 1/3 of the site east of Formosa Street. Refer to building envelope in Figure F2.3.
C15.	Roof form at both Victoria Road and Formosa Street is a parapet edge.
C16.	A continuous cantilevered awning is to be provided on the Victoria Road frontage.

CITY OF CANADA BAY

Development Control Plan

Part F

Mixed use areas and neighbourhood centres

Area E

Controls

C17.	Maximum building height is two (2) storeys.
------	---

Area F

Controls

C18.	Maximum building height of three (3) storeys to Victoria Road tapering to one (1) storey at the rear boundary. Refer to building envelope in Figure F2.4
C19.	Development is to be built to the street edge.
C20.	Any development of a heritage item should be in accordance with the controls in Part D - Heritage. For heritage items, a statement of heritage impact is required to accompany development applications.

Area G

Controls

C21.	Maximum building height is two (2) storeys on Victoria Road, Lyons Road and Wrights Road, with four (4) storeys within the centre of the site.
C22.	Development is to be built to the street edge.
C23.	Any development of a heritage item should be in accordance with the heritage controls contained within this DCP. For heritage items, a statement of heritage impact is also required to accompany development applications. Refer to building envelope in Figure F2.5

Area H: see pages F-144 to F-149

CITY OF CANADA BAY

Development Control Plan

Part F

Mixed use areas and neighbourhood centres

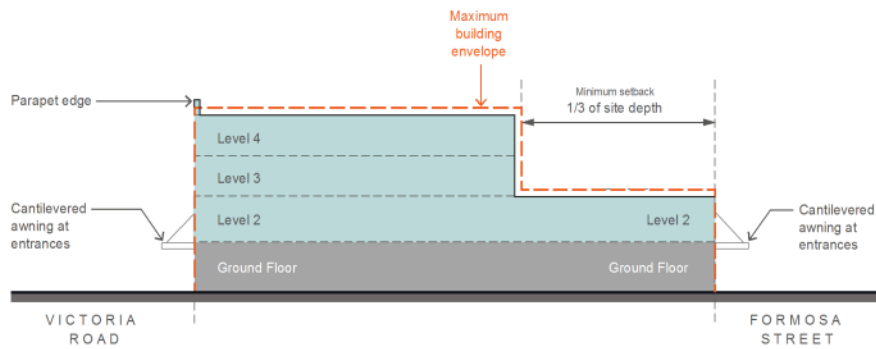


Figure F2.2 Victoria Road Drummoyne Area C - Maximum Building Envelope Section

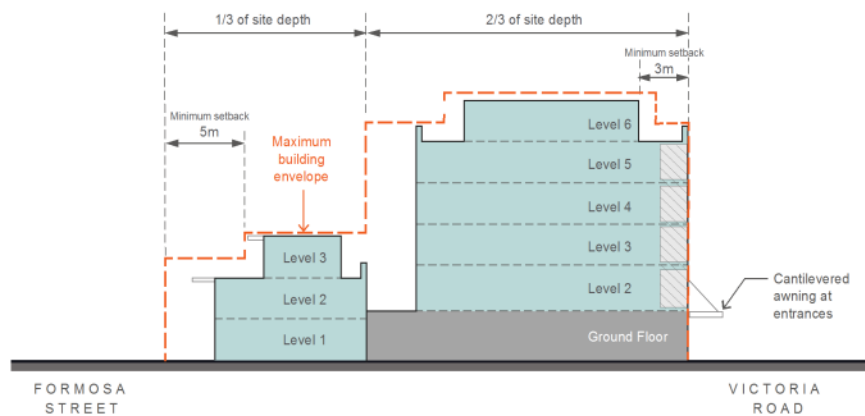


Figure F2.3 Victoria Road Drummoyne Area D - Maximum Building Envelope Section

CITY OF CANADA BAY

Development Control Plan

Part F

Mixed use areas and neighbourhood centres

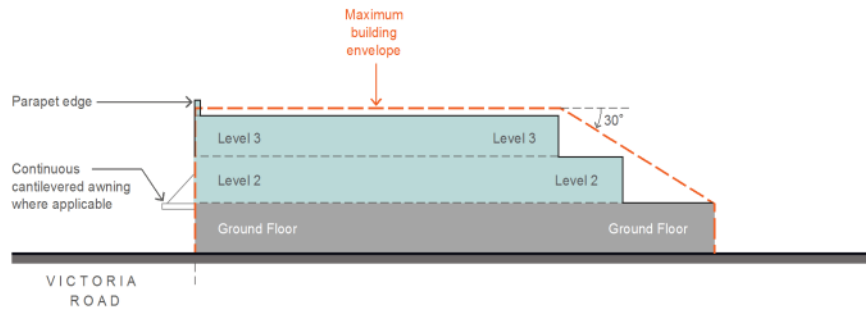


Figure F2.4 Victoria Road Drummoyne Area F - Maximum Building Envelope Section

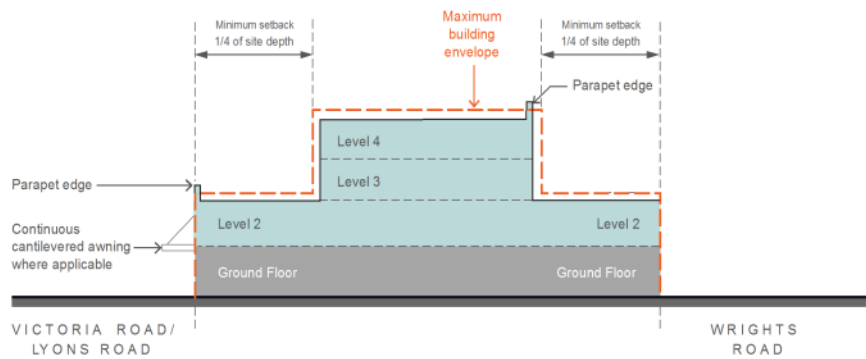


Figure F2.5 Victoria Road Drummoyne Area G - Maximum Building Envelope Section

CITY OF CANADA BAY

Development Control Plan

Part F

Mixed use areas and neighbourhood centres

Area H - 53-69 Victoria Road, 45 Day Street & 46 Thornley Street, Drummoyne



Figure F2.6 Victoria Road Drummoyne Area H - Location Plan

General objectives

- O1 To allow redevelopment with higher densities along Victoria Road while at the same time minimising the solar, visual and privacy impacts on surrounding properties
- O2 To allow development that effectively transitions from taller heights at the northern corner of the site (corner of Day Street and Victoria Road) down to lower scale development to the south, east and west of the site (along Formosa Street and Thornley Street).

Height of Building

New buildings are to have a scale that is visually compatible with surrounding development. The height of new development is to reduce towards the south and west and to achieve a successful transition it may need to be lower than the maximum height permitted in the LEP along Formosa Street and Thornley Street.

- O3 To concentrate higher development in the northern corner of the block, at Victoria Road and Day Street.
- O4 To provide an effective transition to the surrounding two storey development to the west and south by locating two to three storey built form along the street wall of the block.
- O5 To maximise the solar access and minimise the visual and privacy impacts on surrounding properties.
- O6 To create attractive streets along all boundaries of the block.

Controls

C24.	Maximum building height along the Victoria Road alignment is 5 storeys with a minimum 3 metre set back from Victoria Road and Day Street to any 6 storey component of the development.
C25.	Maximum building height at the Formosa Street and Thornley Street alignment is 2 storeys with a minimum 5 metre set back to any 3 storey component of the development.
C26.	2 and 3 storey development within the 14m height limit is to be in accordance with the building envelope in Figures F2.7 - F2.13.
C27.	The roof form at both Victoria Road and Formosa Street is to be a parapet edge.
C28.	Basement garaging is to be designed to minimise the bulk and scale of the development, minimising blank walls to the street. Garage structures are not to extend more than 1m above the natural ground line at any point.
C29.	All plant must be contained within the building envelope.

CITY OF CANADA BAY

Development Control Plan

Part F

Mixed use areas and neighbourhood centres

Bulk and Scale

The bulk and scale of a development plays an important role in helping the development fit into its surrounding context and minimise the impacts of development.

- O7 To accommodate a two to three storey built form along the southern and eastern boundaries of the block.
- O8 To provide height controls that accommodate the steep topography in the southern corner of the block.

Controls

C30.	Basement parking is not to extrude more than 1m above the natural ground line.
C31.	Development along Formosa Street and Thornley Street is to have a two storey appearance.
C32.	It may be possible to provide some four storey development along Victoria Road where this can occur entirely within the maximum building envelope, is set back a minimum of 3 metres from the 3 storey street wall along Victoria Road and where it does not increase overshadowing or reduce privacy of adjoining properties.
C33.	The design of balconies and roof terraces is to minimise the visual bulk of the building particularly along Formosa Street and Thornley Street.

Active frontages

Active frontages contribute to visual and physical activity along the street particularly along Victoria Road and may include community and civic facilities, recreation and leisure facilities and shops, restaurants and cafes.

- O9 To promote activity and interest along Victoria Road and at the highly visible corners.
- O10 To enhance the commercial viability and compliment existing retail, commercial, entertainment and community uses.
- O11 To enhance safety and security in the area.

Controls

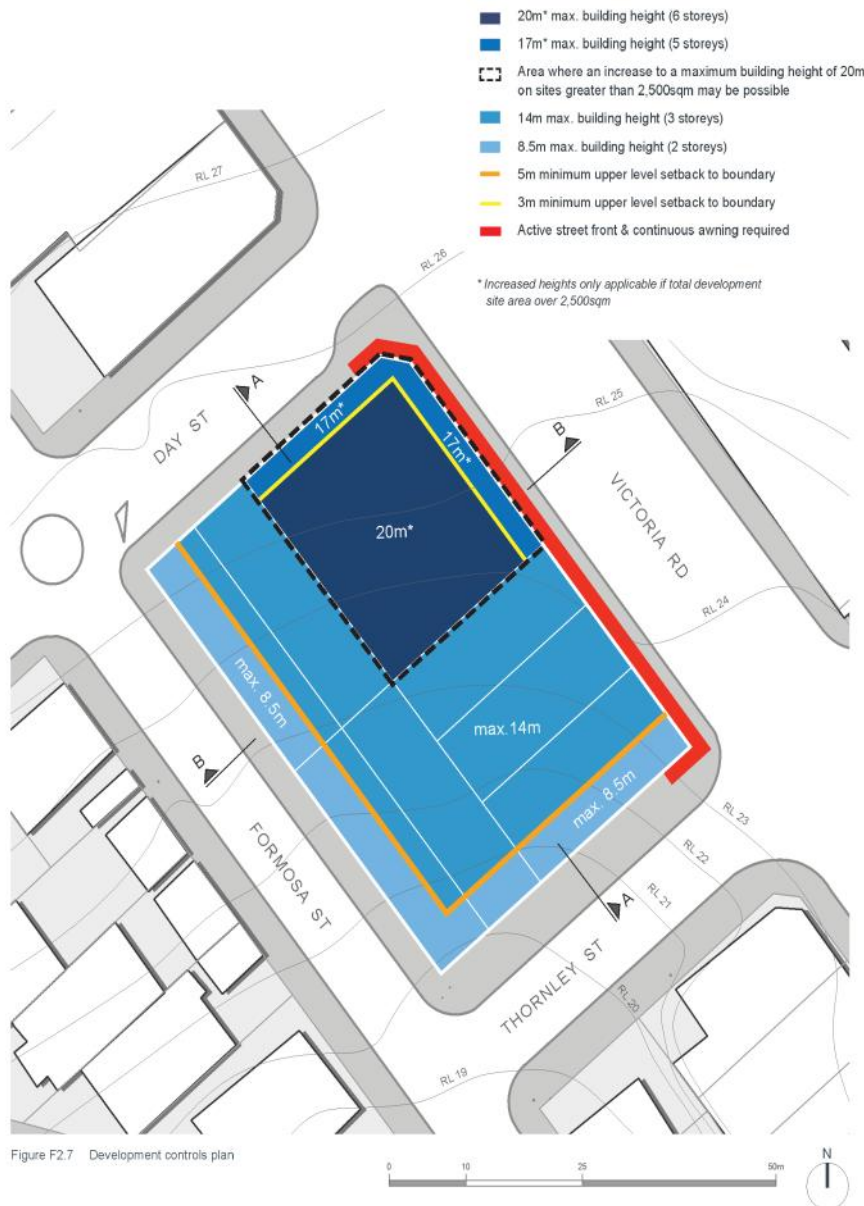
C34.	Provide ground level active uses and a continuous cantilevered awning where indicated on Figure F2.7.
C35.	Ground level active uses are to be a minimum of 10m deep and have a finished floor level no greater than 0.35m above the footpath level.
C36.	Residential entries and foyers are permitted along ground level active street frontages but are not to compromise the commercial activity along the street.
C37.	Vehicle access points are not permitted in areas indicated as active street frontage.

CITY OF CANADA BAY

Development Control Plan

Part F

Mixed use areas and neighbourhood centres



CITY OF CANADA BAY

Development Control Plan

Part F

Mixed use areas and neighbourhood centres

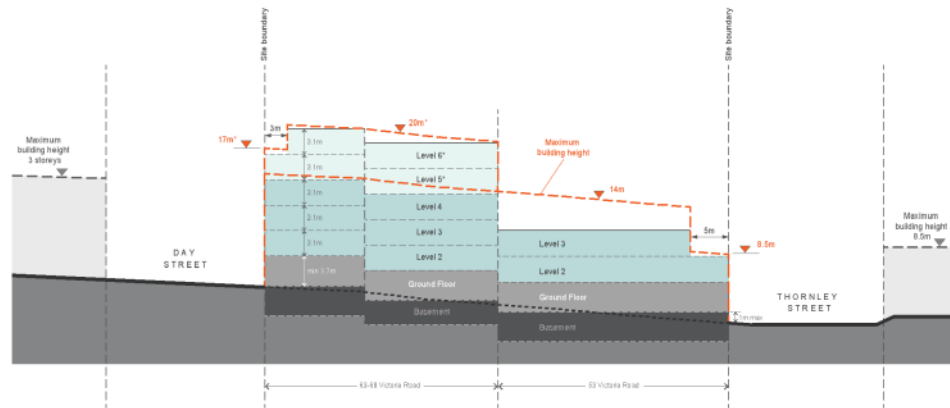


Figure F2.8 Section A

* Increased heights only applicable if total development site area over 2,500sqm

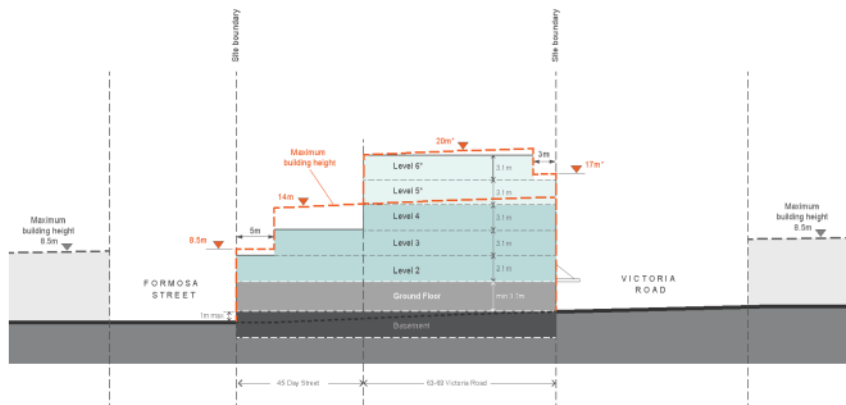


Figure F2.9 Section B

* Increased heights only applicable if total development site area over 2,500sqm

CITY OF CANADA BAY

Development Control Plan

Part F

Mixed use areas and neighbourhood centres

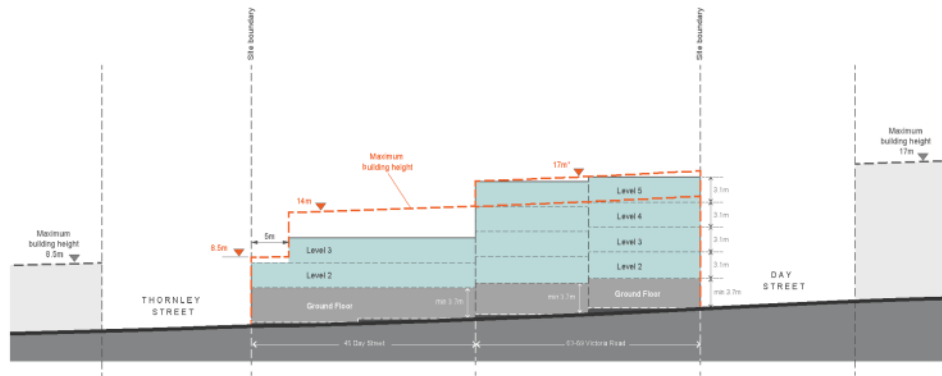


Figure F2.10 Elevation 1 Victoria Road

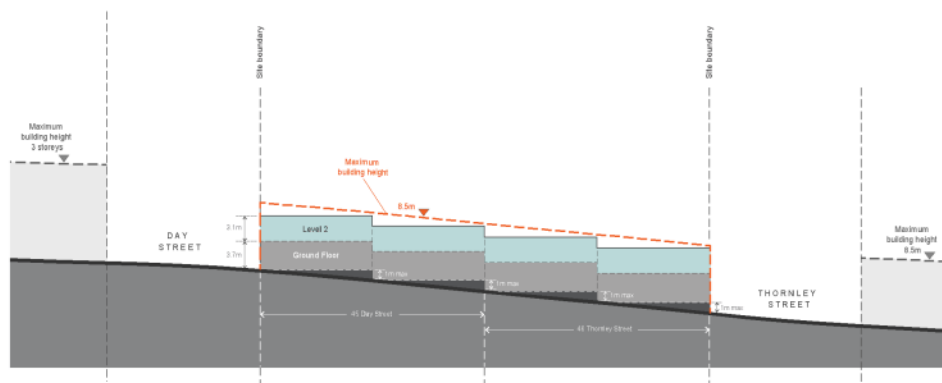


Figure F2.11 Elevation 2 Formosa Street

CITY OF CANADA BAY

Development Control Plan

Part F

Mixed use areas and neighbourhood centres

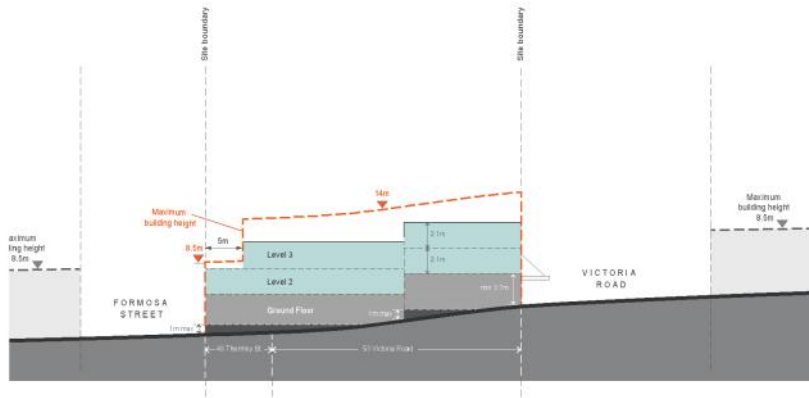


Figure F2.12 Elevation 3 Thornley Street

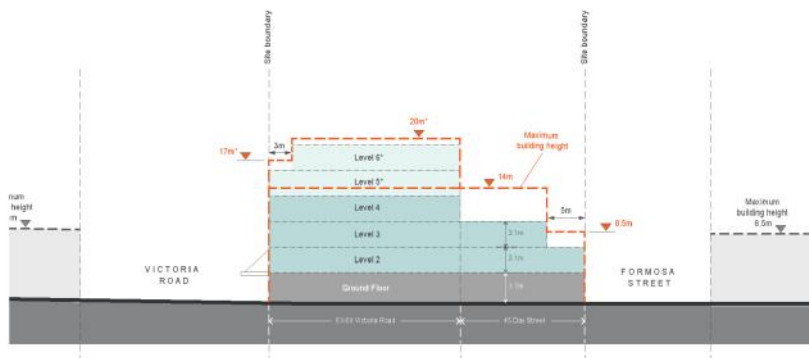


Figure F2.13 Elevation 4 Day Street

* Increased heights only applicable if total development site area over 2,500sqm

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Maddocks

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Date / /

**Planning Agreement under Section 7.4
of the *Environmental Planning & Assessment Act*
1979**

**Subject Land: 63-69 Victoria Road & 45 Day
Street, Drummoyne**

City of Canada Bay Council
ABN: 79 130 029 350
(Council)

and

Day Street No 1 Pty Ltd
ACN: 607 713 959
(Land Owner)

Interstate offices
Carberra Melbourne
Affiliated offices around the world through the
Advoc network - www.advoc.com

111 100 44 8 011111 3 301 1
Maddocks

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Planning Agreement under Section 7.4 of the *Environmental Planning & Assessment Act 1979*

Dated / /

Parties

Name	City of Canada Bay Council, ABN 79 130 029 350
Address	Civic Centre, Marlborough Street, Drummoyne, NSW, 2047
Facsimile	02 9911 6550
Email	tony.mcnamara@canadabay.nsw.gov.au
Contact	Tony McNamara - Director of Planning & Environment
Short name	Council

AND

Name	Day Street No 1 Pty Ltd, ACN 607 713 959
Address	Level 10, 1 Market Street, Sydney NSW 2000
Facsimile	8022 1221
Email	ramy@madisonmarcus.co
Contact	Ramy Qutami
Short name	Land Owner

Background

- A. The Land Owner is the registered proprietor of the Land.
- B. The Land Owner intends to undertake Development on the Land.
- C. On or around 17 February 2016, the Land Owner submitted the Planning Proposal application to Council for the Instrument Change to Canada Bay LEP in relation to the Land.
- D. If the Instrument Change comes into force, the Land Owner proposes to lodge a Development Application for Development Consent to undertake Development on the Land.
- E. In connection with the Instrument Change, and in respect of any such Development Application, the Land Owner has offered to enter into this Agreement to make Development Contributions for public benefit on the terms of this Agreement, if Development Consent is granted.
- F. For the avoidance of doubt, the obligation to provide the Development Contributions only arises if Development Consent is granted for Development on the Land.

This Deed Witnesses

1. Definitions

In this agreement unless expressed or implied to the contrary:

Act means the *Environmental Planning & Assessment Act 1979*, as amended.

Authorisation means:

- (a) an authorisation, consent, declaration, exemption, notarisation or waiver, however it is described; and
- (b) in relation to anything that could be prohibited or restricted by law if a government agency acts in any way within a specified period, the expiry of that period without that action being taken,

including any renewal or amendment.

Business Day means Monday to Friday excluding public holidays in New South Wales.

Canada Bay LEP means the *Canada Bay Local Environmental Plan 2013*.

Claims means all or any claims, proceedings, actions, rights of action, liabilities, damages, losses, remedies, expenses, fines and penalties (including associated expenses and legal costs on a full indemnity basis).

Construction Certificate has the same meaning as in the Act.

Consumer Price Index means the All Groups Consumer Price Index applicable to Sydney published by the Australian Bureau of Statistics.

Development means the development of the Land described at Item 2 of Schedule 1.

Development Application means any development application described in Item 3 of Schedule 1.

Development Consent means any development consent within the meaning of the Act granted to a Development Application, and includes:

- (a) any conditions of consent to which the Development Consent is subject; and
- (b) any modifications of the Development Consent made under s.4.55 of the Act.

Development Contribution means the provision of benefits to the community by the Land Owner in the form and at the times specified in Schedule 2 of this agreement.

Gross Floor Area has the same meaning given to the term "gross floor area" in the Canada Bay LEP in effect at the date of this agreement.

GST means the same as the GST Act.

GST Act means *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Guarantee means an irrevocable unconditional bank guarantee, without time limit, acceptable to Council, for the Guarantee Amount, issued by an Australian bank as security

for the due, prompt and proper observance and performance by the Land Owner of the obligations set out in this Agreement.

Guarantee Amount means the amount of the Guarantee to be provided, as set out in Item 4 of Schedule 1 of this agreement.

Guarantee Due Date means the date or milestone by which the Land Owner must provide the Guarantee Amount to the Council, as set out in Item 5 of Schedule 1.

Instrument Change means an amendment to the Canada Bay LEP generally in accordance with the Planning Proposal, pursuant to the process set out in Part 3, Division 3.4, of the Act.

Land means the land described in Item 1 of Schedule 1 of this Agreement.

Land Owner's Representative means the person specified in clause 12.2.2 who is duly authorised to give approval under this Agreement or such other person as notified to Council by the Land Owner.

Monetary Contribution means that part of the Development Contribution described as "Monetary Contribution" in clause 1 of Schedule 2 of this agreement to be paid by the Land Owner to the Council in accordance with this agreement.

NSW Ambulance Paramedic Response Point means small, stand-by Ambulance stations from which paramedics with ambulance vehicles can be parked over the course of a shift to enable fast response to emergency calls. The facility may provide a small office facility and sleeping accommodation for staff.

Occupation Certificate has the same meaning as the Act.

Parties mean the parties to this agreement.

Planning Proposal means a planning proposal (within the meaning of the Act) which seeks to:

- (a) rezone the Land from R2 Low Density Residential to B4 Mixed Use;
- (b) increase the maximum building height on the Land from 8.5m to 14m, with a bonus of an additional height of 6m for a maximum building height of 20m for 63-69 Victoria Road if a site area of 2,500m² for the Development is achieved; and
- (c) increase the floor space ratio (FSR) for the Land to 2.1:1, with a bonus of an additional FSR of 0.15:1 for a maximum site FSR of 2.25:1 if a site area of 2,500m² for the Development is achieved.

Prescribed Rate means the rate prescribed from time to time under the Uniform Civil Procedure Rules 2005 as the rate of interest on judgment debts plus 2%, calculated daily and compounded on the last day of each month.

Precinct Improvement Works mean the precinct improvement works set out in Schedule 3 of this agreement.

Unamended Canada Bay LEP means the Canada Bay LEP as in force as at the date of this Agreement and prior to any amendments consistent with the Planning Proposal.

2. Operation and Application of this Agreement

2.1 Operation

- 2.1.1 This Agreement operates on and from the date it is executed by the Parties.
- 2.1.2 Until this Agreement operates, this Agreement constitutes an irrevocable offer by the Land Owner to enter into this Agreement in connection with the Instrument Change.

2.2 Application of this Agreement

- 2.2.1 This document is a Planning Agreement within the meaning of s.7.4 of the Act and applies to:
 - (a) the Land;
 - (b) the Development; and
 - (c) the Canada Bay LEP.
- 2.2.2 It is acknowledged and agreed that this Agreement is in the terms of an offer made by the Land Owner in connection with an Instrument Change and Development Application.

2.3 Application of sections 7.11, 7.12 and 7.24 of the Act

- 2.3.1 This Agreement does not exclude the application of section 7.11, section 7.12 and section 7.24 of the Act from the Development. The Parties acknowledge that either section 7.11 or section 7.12 will apply.
- 2.3.2 Development Contributions obtained by Council under this Agreement are not to be taken into consideration in determining a development contribution under section 7.11 of the Act with respect to the Development.

2.4 No Fettering of Council's Powers

It is acknowledged and agreed that this Agreement does not fetter or restrict the power or discretion of Council to make any decision or impose any requirements or conditions in connection with the granting of any development consent or certification of any development consent or certification of any plans of subdivision applicable to the Land relating to any use or development of the Land.

3. Development Contributions

3.1 Land Owner to provide Development Contribution

- 3.1.1 The Land Owner must provide Council with the Development Contributions in accordance with the provisions of Schedule 2 of this Agreement.
- 3.1.2 The Land Owner is not liable for the Development Contributions until the Instrument Change comes into force and Development Consent is granted.

3.2 Application of Development Contributions

- 3.2.1 The purpose of the Development Contributions is to contribute towards the cost of the Precinct Improvement Works.
- 3.2.2 The Land Owner acknowledges and agrees that Council:
- (a) retains sole discretion as to the priority and timing of the delivery of the Precinct Improvement Works; and
 - (b) has no obligation to repay a Development Contribution to the Land Owner.

4. Security

4.1 Provision of Guarantee

The Land Owner must provide to Council, before the Guarantee Due Date, a Guarantee for the Guarantee Amount as security for the due, prompt and proper observance and performance by the Land Owner of the obligations in clause 3 of this Agreement.

4.2 Adjustment of Guarantee Amount

On each anniversary of the date of this Agreement the Guarantee Amount payable immediately prior to that anniversary will be increased by the same percentage as the percentage increase, if any, in the Consumer Price Index in the 12 months prior to the relevant anniversary. The increased Guarantee Amount will be the Guarantee Amount for the 12 months immediately following the relevant anniversary.

4.3 Replacement Guarantee

Within 28 days after each anniversary of the date the Guarantee was provided under clause 4.1, the Land Owner must provide a replacement Guarantee to Council for the revised Guarantee Amount adjusted in accordance with clause 4.2.

4.4 Rights of Council to claim on Guarantee

- 4.4.1 The Land Owner expressly acknowledges and agrees that Council may make an appropriation from the Guarantee in such amount as Council, acting reasonably, thinks appropriate if:
- (a) the Land Owner fails to comply with the requirements in clause 3.1 and Schedule 2 (payment of Development Contributions);
 - (b) if Council incurs any other expense or liability in exercising its rights and powers under this Agreement.
- 4.4.2 Prior to making an appropriation from the Guarantee under clause 4.4.1, Council must give the Land Owner not less than 10 Business Days written notice.

4.5 Release of Bank Guarantee

If the monies secured by the Guarantee have not been expended under clause 4.4, then Council will return the Guarantee (less any costs, charges, duties and taxes payable) to the Land Owner within 15 Business Days after the Development Contribution is transferred to Council in accordance with clause 3.1 and Schedule 2.

5. Registration

5.1 Acknowledgement

The Land Owner acknowledges that Council intends to register this Agreement under section 7.6 of the Act on the Land and on registration by the Registrar-General the Agreement will be binding on and enforceable against the owner of the Land from time to time as if each owner for the time being had entered into this Agreement and were the Land Owner.

5.2 Consents to Registration

5.2.1 The Council will not register this Agreement before the Instrument Change has been publicly exhibited, adopted by resolution of Council and returned to the Department of Planning and Environment for Ministerial approval and/or otherwise to be approved under section 3.36 of the Act.

5.2.2 The Land Owner warrants that they have obtained all consents and approvals that are required and will do all things necessary to enable the registration of this Agreement on the title to the Land.

5.3 Land Owner's Obligations

The Land Owner must within 10 Business Days of a written request by Council, sign any Real Property Act dealing, acknowledgement or document, provide all relevant consents (including the consent of any mortgagee or caveator) arrange for the production of the Certificates of Title for the Land and do all other things reasonably necessary to enable this Agreement to be registered pursuant to section 7.6 of the Act.

5.4 Release from Registration

Council will at the request of the Land Owner execute the relevant forms to remove the registration of this Agreement from the Certificates of Title for the Land on completion of the Land Owner's obligations under this Agreement.

5.5 Sale of land

The Land Owner must not sell the Land or part of it without the prior written consent of Council. This consent will not be withheld where the purchaser enters into a Deed with Council confirming that the purchaser will comply with the obligations of the Land Owner under this Agreement, including the payment of any outstanding Development Contribution, in accordance with clause 11.1.4 of this Agreement.

5.6 Registration Expenses

The Land Owner must pay Council's expenses including registration fees, legal costs and disbursements on an indemnity basis, for the registration of this Agreement and the subsequent removal of registration.

6. Caveatable Interest

6.1 Lodgement of Caveat

6.1.1 The Land Owner acknowledges that the rights under this Agreement give Council a caveatable interest in the Land. Until such time as this Agreement is registered on the relevant folios of the Register held by the Land Registry Services (LRS)

pertaining to the Land, the Land Owner agrees that Council may lodge a caveat on the relevant folios of the Register held by the LRS pertaining to the Land.

- 6.1.2 A caveat lodged by Council in accordance with this clause 6 must not prevent or prohibit the lodgement of any instrument dealing or matter required for the registration of any mortgage, subdivision plan, easement, covenant, right of way, deposited plan or strata plan relating to the Development. The Land Owner must not lodge a lapsing notice or take any action to obtain or seek a withdrawal or removal of the caveat, unless:

- (a) the Land Owner's obligations under this Agreement have been satisfied;
- (b) this Agreement has otherwise come to an end.

6.2 Withdrawal of Caveat

- 6.2.1 If Council lodges a caveat in accordance with clause 6, Council must do all things reasonably required to:

- (a) consent to the registration of this Agreement; and
- (b) remove the registration of any caveat lodged by Council in respect of the Land once this Agreement has been registered on the Land in accordance with clause 5.

7. Warranties

7.1 Land Owner's Warranties

The Land Owner warrants and undertakes to Council that:

- 7.1.1 they have full legal capacity to enter into this Agreement and carry out the obligations contemplated by this Agreement;
- 7.1.2 they have taken all corporate action that is necessary or desirable to authorise their entry into this Agreement and to carry out the obligations it contemplates;
- 7.1.3 it is the intention of the Land Owner to expeditiously commence and complete the Development, if Development Consent is granted; and
- 7.1.4 the Land Owner holds each Authorisation that is necessary or desirable to:
 - (a) enable the Land Owner to properly execute this Agreement and to carry out the obligations contemplated by this Agreement;
 - (b) ensure that this Agreement is legal, valid, binding and admissible in evidence,

and is complying with any conditions to which these Authorisations are subject.

- 7.1.5 The Land Owner warrants that the person referred to in clause 12.2.2 has the necessary authorisation to accept service of notices under this Agreement, and to act as the Land Owner's Representative.

8. Default

8.1 Costs on Default

The Land Owner must pay Council's expenses including internal management costs and legal fees and disbursements on an indemnity basis in connection with any breach of a provision of this Agreement by the Land Owner.

8.2 Interest on Overdue Payments

The Land Owner must pay interest on any money due to Council but not paid on the due date from the date payment was due at the Prescribed Rate.

9. Dispute Resolution

9.1 Disputes

Any dispute between the Parties which arises out of or in connection with this Agreement (**Dispute**) must be resolved under this clause 9.

9.2 Notice of Dispute

If any Dispute arises, a Party to the Dispute may deliver by hand or send by certified mail to the other Party a notice of dispute (**Notice of Dispute**) which must:

- 9.2.1 identify and provide adequate details of the dispute so as to enable the other Party to fully understand the nature of the dispute; and
- 9.2.2 designate as a Party's representative in negotiations a person with authority to settle the dispute.

9.3 Reply to Notice

Within 5 Business Days after a Party receives a Notice of Dispute under this clause (**Recipient Party**) it must give a notice to the other Party designating the Recipient Party's representative who will have authority to settle the dispute.

9.4 Designated Representative

- 9.4.1 The designated representatives under clauses 9.2.2 and 9.3 will have 20 Business Days from the date of the Notice of Dispute within which to negotiate a resolution of the dispute.
- 9.4.2 The Parties will ensure that the designated representatives use their best endeavours to settle the dispute by negotiation within that period.

9.5 Submission to mediation

In the event that the persons negotiating pursuant to clause 9.4 cannot resolve the dispute within the 20 Business Days from the date of the Notice of Dispute, either Party may give a written notice to the other Party to refer the Dispute for mediation (**Mediation Notice**).

9.6 Mediation

- 9.6.1 The Parties must, within 5 Business Days after service of the Mediation Notice, use their best endeavours to agree on a mediator for the purposes of this clause.

- 9.6.2 If the Parties cannot agree on a mediator within 5 Business Days after service of the Mediation Notice, the mediator must be nominated by the President of the Institute of Arbitrators and Mediators Australia, or any other person authorised by the President to make the appointment, on the application of either Party.
- 9.6.3 Within 15 Business Days (or such other period agreed in writing between the Parties) after the agreement or nomination of the mediator under clause 9.6.1 or 9.6.2 the Parties must:
- (a) arrange for the appointment of the mediator (on terms satisfactory to the mediator) for the purposes of this clause; and
 - (b) attend in person a preliminary conference before the mediator.
- 9.6.4 The Parties acknowledge and agree that:
- (a) the mediator must conduct a mediation in relation to the Dispute in accordance with The Institute of Arbitrators & Mediators Australia Mediation Rules (**Rules**);
 - (b) they must abide by the Rules;
 - (c) they may be represented by legal counsel at the mediation; and
 - (d) they must use their reasonable endeavours to achieve the resolution of the Dispute at the mediation.
- 9.6.5 Each Party must:
- (a) bear its own costs in respect of the mediation; and
 - (b) share equally the costs of the mediator (including the cost of any expert assistance retained by the mediator).
- 9.6.6 Any mediation under this clause 9.6 will be conducted on a without prejudice basis.

9.7 Termination of Mediation

A Party may terminate a mediation under clause 9.6, by giving written notice to the other Party and to the Mediator, if the Dispute has not been resolved within 30 Business Days after the date that the Mediation Notice was given.

9.8 Subsequent proceedings

Each Party must not appoint the Mediator as its arbitrator, advocate or adviser in any arbitral or judicial proceedings relating to the Dispute or any part of it, except with the other Party's written consent.

9.9 Continuing obligations

Despite the existence of a Dispute under this clause 9 each Party must continue to perform its obligations under this Agreement.

9.10 Urgent relief

Nothing in clause 9 prejudices the right of a Party to seek urgent injunctive or declaratory relief for any matter in connection with this Agreement.

10. General

10.1 Amendment

This document may only be varied or replaced by a document duly executed by the Parties.

10.2 Entire Understanding

This document contains the entire understanding between the Parties as to the subject matter contained in it. All previous agreements, representations, warranties, explanations and commitments, expressed or implied, affecting this subject matter are superseded by this document and have no effect.

10.3 Further Assurance

Each Party must promptly execute and deliver all documents and take all other action necessary or desirable to effect, perfect or complete the transactions contemplated by this document.

10.4 Legal Costs and Expenses

10.4.1 The Land Owner must pay their own legal costs and expenses in relation to the negotiation, preparation and execution of this document and other documents referred to in it, unless expressly stated otherwise.

10.4.2 Within 20 Business Days of a written request of Council, the Land Owner must pay the Council's legal costs and expenses in relation to the negotiation, preparation and execution of this document, any other documents referred to in it, and the unexecuted VPA prepared in relation to 46 Thornley Street, Drummoyne, unless expressly stated otherwise.

10.5 Waiver and Exercise of Rights

10.5.1 A single or partial exercise or waiver of a right relating to this document does not prevent any other exercise of that right or the exercise of any other right.

10.5.2 No Party will be liable for any loss or expenses incurred by another Party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.

10.6 Rule of Construction

In the interpretation of this document, no rule of construction applies to the disadvantage of the Party preparing the document on the basis that it put forward this document or any part of it.

11. Assignment, Novation and Dealings

11.1 Assignment, Novation and Dealings

11.1.1 A Party must not assign, novate or deal with any right or obligation under this document without the prior written consent of the other Party.

11.1.2 A Party must not unreasonably withhold consent under this clause provided that the granting of consent is subject to the other Party complying with its statutory obligations and obligations under clause 5.5 and clauses 11.1.3 and 11.1.4.

11.1.3 The Land Owner must not:

- (a) sell, transfer, delegate, assign, licence; or
- (b) mortgage, charge or otherwise encumber

any right or obligation under this document to any person (**Proposed Transferee**), or permit a Proposed Transferee to assume any obligation under this document without the prior written consent of Council. The Land Owner must pay all reasonable fees and expenses (including legal fees) incurred by Council in connection with the proposed assignment, novation or dealing and the investigation of the Proposed Transferee, whether or not consent is granted.

11.1.4 The Land Owner must deliver to Council:

- (a) the name, address and occupation of the Proposed Transferee; and
- (b) if required by Council, acting reasonably, a Deed in a form approved by Council executed by persons approved by Council, guaranteeing the performance of the Proposed Transferee's obligations.

11.1.5 Any purported assignment, novation or dealing in breach of this clause is of no effect.

12. Notices

12.1 Service of Notice

A notice or other communication required or permitted, under this document, to be served on a person must be in writing and may be served:

- 12.1.1 personally on the person;
- 12.1.2 by leaving it at the person's current address for service;
- 12.1.3 by posting it by prepaid post addressed to that person at the person's current address for service; or
- 12.1.4 by facsimile to the person's current number for service.

12.2 Particulars for Service

12.2.1 The particulars for service of Council are:

Contact Tony McNamara, Director – Planning and Environment
Address: Civic Centre, Marlborough Street, Drummoyne, NSW, 2047
Facsimile number: 9911 6555
Email: tony.mcnamara@canadabay.nsw.gov.au

12.2.2 The particulars for service of the Land Owner are:

Contact Ramy Qutami,
Address: Level 10, 1 Market Street

Sydney NSW 2000

Facsimile number: 8022 1221

12.2.3 Any Party may change the address or facsimile number for service by giving notice to the other Party.

12.2.4 If the person to be served is a company, the notice or other communication may be served on it at the company's registered office.

12.3 Time of Service

A notice or other communication is deemed served:

12.3.1 if served personally or left at the person's address, upon service;

12.3.2 if posted within Australia to an Australian address, two Business Days after posting and in any other case, seven Business Days after posting;

12.3.3 if served by facsimile, subject to clause 12.3.4, at the time indicated on the transmission report produced by the sender's facsimile machine indicating that the facsimile was sent in its entirety to the addressee's facsimile;

12.3.4 if received after 6.00pm in the place of receipt or on a day which is not a Business Day, at 9.00am on the next Business Day.

13. Interpretation

13.1 Governing Law and Jurisdiction

This document is governed by and is to be construed in accordance with the laws of New South Wales. Each Party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of New South Wales and waives any right to object to proceedings being brought in those courts.

13.2 Persons

In this document, a reference to:

13.2.1 a person includes a firm, partnership, joint venture, association, corporation or other corporate body;

13.2.2 a person includes the legal personal representatives, successors and permitted assigns of that person; and

13.2.3 any body which no longer exists or has been reconstituted, renamed, replaced or whose powers or functions have been removed or transferred to another body or agency, is a reference to the body which most closely serves the purposes or objects of the first-mentioned body.

13.3 Joint and Several

If a Party consists of more than one person, this document binds them jointly and each of them severally.

13.4 Legislation

In this document, a reference to a statute includes regulations under it and consolidations, amendments, re-enactments or replacements of any of them.

13.5 This Document, Clauses and Headings

In this document:

- 13.5.1 a reference to this or other document includes the document as varied or replaced regardless of any change in the identity of the Parties;
- 13.5.2 a reference to a clause, schedule, appendix or annexure is a reference to a clause, schedule, appendix or annexure in or to this document all of which are deemed part of this document;
- 13.5.3 a reference to writing includes all modes of representing or reproducing words in a legible, permanent and visible form;
- 13.5.4 headings and sub-headings are inserted for ease of reference only and do not affect the interpretation of this document;
- 13.5.5 where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning; and
- 13.5.6 where the expression including or includes is used it means 'including but not limited to' or 'including without limitation'.

13.6 Severance

- 13.6.1 If a provision in this document is held to be illegal, invalid, void, voidable or unenforceable, that provision must be read down to the extent necessary to ensure that it is not illegal, invalid, void, voidable or unenforceable.
- 13.6.2 If it is not possible to read down a provision as required in this clause, that provision is severable without affecting the validity or enforceability of the remaining part of that provision or the other provisions in this document.

13.7 Counterparts

This document may be executed in any number of counterparts all of which taken together constitute one instrument.

13.8 Business Day

If a payment or other act is required by this document to be made or done on a day which is not a Business Day, the payment or act must be made or done on the next following Business Day.

13.9 Number and Gender

In this document, a reference to:

- 13.9.1 the singular includes the plural and vice versa; and
- 13.9.2 a gender includes the other genders.

14. Release

- 14.1 The Council agrees to provide the Land Owner with a release and discharge of its obligations under this Agreement in the following circumstances:
- 14.1.1 The Land Owner has provided Council with the Development Contributions in accordance with Schedule 2 of this Agreement; or
 - 14.1.2 The Council or the Minister has decided not to proceed with the Instrument Change and the Instrument Change does not come into force.

15. GST

15.1 Definitions

In this clause:

- 15.1.1 words and expressions that are not defined in this Agreement but which have a defined meaning in the GST Law have the same meaning as in the GST Law;
- 15.1.2 **GST Law** has the meaning given to that term in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

15.2 GST exclusive

Except as otherwise provided in this Agreement, all consideration payable under this Agreement in relation to any supply is exclusive of GST.

15.3 Division 81 and 82 of GST Law

To the extent that Divisions 81 and 82 of the GST Law apply to a supply made under this document:

- 15.3.1 no additional amount will be payable by a Party on account of GST; and
- 15.3.2 no tax invoices will be exchanged between the Parties.

15.4 Increase in consideration

Subject to clause 15.3, if GST is payable in respect of any supply made by a supplier under this Agreement (**GST Amount**), the recipient must pay to the supplier an amount equal to the GST payable on the supply. Subject to clause 15.5, the recipient must pay the GST Amount at the same time and in the same manner as the consideration for the supply is to be provided under this Agreement.

15.5 Tax invoice

The supplier must provide a tax invoice to the recipient before the supplier will be entitled to payment of the GST Amount under clause 15.3.

15.6 Reimbursements

If this Agreement requires a Party to pay, reimburse or contribute to any expense, loss or outgoing suffered or incurred by another Party, the amount which the first Party must pay, reimburse or contribute is the sum of:

- 15.6.1 the amount of the payment, reimbursement or contribution, less any input tax credit in respect of the payment, reimbursement or contribution to which the other Party is entitled; and
- 15.6.2 if the payment, reimbursement or contribution is subject to GST, an amount equal to that GST.

15.7 Adjustment events

If an adjustment event occurs in relation to a taxable supply under this Agreement:

- 15.7.1 the supplier must issue an adjustment note to the recipient within 7 days after becoming aware of the adjustment; and
- 15.7.2 any payment necessary to give effect to that adjustment must be made within 7 days after the date of receipt of the adjustment note.

Signing Page

Executed by the Parties as a Deed

SIGNED SEALED AND DELIVERED for and on behalf of CITY OF CANADA BAY COUNCIL ABN 79 130 029 350 by..... but not so as to incur any personal liability in the presence of:))
---	--------

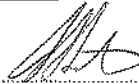
.....
Witness Name

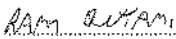
.....
Witness Signature

Executed by Day Street No. 1 Pty Ltd ACN 607 713 959 in accordance with section 127(1) of the Corporations Act 2001 by being signed by authorised persons for the company;))))
--	------------------

.....
Signature of Director

.....
Print full name


.....
Signature of Director/Company Secretary


.....
Print full name

Schedule 1 Agreement Details

Item	Term	Description	Land Owner
1.	Land	63-69 Victoria Road, Drummoyne (Lot 10, DP 625084)	Day Street No 1 Pty Ltd
		45 Day Street, Drummoyne (Lots 1 & 2, Sec 6 DP 862)	
Item	Term	Description	
2.	Development	Any development, within the meaning of the Act, of or on the Land, which would breach the zoning, height or floor space ratio controls in the Unamended Canada Bay LEP.	
3.	Development Application	Any development application, within the meaning of the Act, in respect of the Development of the Land, and includes all plans, reports, models, photomontages, material boards (as amended or supplemented), submitted to the consent authority before the determination of the Development Application.	
4.	Guarantee Amount	\$829,380.00 (subject to indexation in accordance with clause 4.2 of this Agreement).	
5.	Bank Guarantee Due Date	Prior to the issue of the first Construction Certificate for the Development.	

Schedule 2 Development Contributions

1. Monetary Contribution

1.1 Calculation of Monetary Contribution

The Monetary Contribution payable by the Land Owner is to be calculated in accordance with the following formula:

$$\text{\$MCT} = \text{\$MC1} + (\text{\$GFA} \times \text{GFA(excess)})$$

where:

- \\$MCT** is the total Monetary Contribution (subject to indexation in accordance with clause 1.2 of Schedule 2 of this Agreement)
- \\$MC1** is \$829,380.00 (for any Development which has a Gross Floor Area of up to and including 2,866m²) (subject to indexation in accordance with clause 1.2 of Schedule 2 of this Agreement).
- \\$GFA** is \$325 per square metre, being the amount of money payable per square metre of Gross Floor Area above 2,866m² (subject to indexation in accordance with clause 1.2 of Schedule 2 of this Agreement)
- GFA(excess)** is the greater of:
- (a) the difference between the total Gross Floor Area approved by the Development Consent (excluding any Gross Floor Area solely for the purpose of a NSW Ambulance Paramedic Response Point approved as part of the Development) and 2,866m²; or
 - (b) \$0.

1.2 Indexation of Monetary Contribution

Every quarter (3 months) from the date of this Agreement, the Monetary Contribution payable immediately prior to that quarter will be increased by the same percentage as the percentage increase, if any, in the Consumer Price Index in the previous quarter. The increased Monetary Contribution will be the Monetary Contribution for the 3 months immediately following the relevant quarter.

1.3 Time for payment of the Monetary Contribution

The Monetary Contribution must be paid by the Land Owner to Council before the issue of the first Occupation Certificate for that part of the Development carried out on the Land.

1.4 Method of payment of the Monetary Contribution

Payment of the Monetary Contribution must be made by electronic bank transfer to Council's nominated bank account.

Schedule 3 Precinct Improvement Works

- 1.** The following upgrades in Brett Park, Lot 7056, DP 93678:
 - (a) Re-building toilet block;
 - (b) Improvements to BBQ area;
 - (c) Improvements to training equipment;
 - (d) Multi-level playground.
- 2.** Improvements to Drummoyne Swimming Pool, 1P Henley Marine Drive, Drummoyne.

**ITEM PLANNING PROPOSAL - 63-69 VICTORIA ROAD, 45
DAY STREET, 53 VICTORIA ROAD & 46 THORNLEY
STREET, DRUMMOYNE**

RESOLVED

(Crs Kenzler/Cestar)

1. THAT the Planning Proposal for 63-69 Victoria Road, 45 Day Street, 53 Victoria Road and 46 Thornley Street, Drummoyne be amended prior to submission to the Department of Planning and Environment for a Gateway Determination to include the following changes:
 - (a) Floor Space Ratio (FSR) of 2.1:1 and Height of Building (HOB) of 14 metres be applied to 63-69 Victoria Road and 45 Day Street, Drummoyne. Where a site area of 2,500m² is achieved, the FSR of 2.25:1 apply to the abovementioned sites and a HOB increase to 20m be permitted to 63-69 Victoria Road only.
 - (b) Floor Space Ratio (FSR) of 1.7:1 and Height of Building (HOB) of 14 metres be applied to 53 Victoria Road and 46 Thornley Street. Where a site area of 2,500m² is achieved, the FSR of 2.25:1 apply to the abovementioned sites.
 2. THAT the Voluntary Planning Agreement be drafted and exhibited concurrently with the Planning Proposal.
 3. THAT an amendment to the Canada Bay Development Control Plan be prepared for the subject site and exhibited concurrently with the Planning Proposal to include the following outcomes:
 - (a) "Area D" envelope controls be applied to 63-69 Victoria Road and 45 Day Street, Drummoyne, with the 5th and 6th floor being possible where future development comprises a site area of 2,500m².
 - (b) New envelope controls be prepared for 53 Victoria Road and 46 Thornley Street that facilitate a 3 storey street edge to Victoria Road and a 2 storey street edge to Formosa Street. An upper level setback of 5 metres be required above the second floor on the Formosa Street frontage.
 4. THAT the Planning Proposal for 63-69 Victoria Road, 45 Day Street, 53 Victoria Road and 46 Thornley Street, Drummoyne be submitted to the Department of Planning and Environment for Gateway Determination with an addendum including a detailed site investigation.
 5. THAT Council request delegation from the Department of Planning and Environment to manage the plan making process.
-

6. THAT authority be delegated to the General Manager to make any minor modifications to the Planning Proposal following receipt of a Gateway Determination.
7. THAT Council note that should the Planning Proposal proceed to exhibition, that following consideration of any submissions, the Planning Proposal will be reported back to Council.

(FOR: Crs Cestar, Fasanella, Kenzler, McCaffrey, Megna, and Tyrrell)
(AGAINST: Nil)



Planning Proposal 2016/0002: 53-69 Victoria Road, 46 Thornley Street & 45 Day Street Drummoyne

Report Detail: Additional Contamination Assessment and Remedial Action Plan (REPORT NO 13585/4-AA, dated 30 April 2018)

Referral: Environmental Health Team – Angela Rose (Coordinator, Environmental Health)

Referral response received: 31 May 2018

Comments received are as follows:

A high level review of the RAP in the context of SEPP55 requirements for rezoning and provide the following comments regarding additional information which is required to make a determination regarding the rezoning:

1. Please provide a copy of the Dangerous Goods Licence 35/009550 relating to two USTs previously present on the site within Lots 6, 7, 8 in DP136422 and Lot 9 Section 6 in DP862 (Ambulance Station)
2. Given the known (i.e. cannot be an unexpected find) presence of USTs at the site and the limited access for investigation on these lots, the RAP should be amended to include a detailed process for works to be conducted following demolition. This should include consideration of the following:
 - a. Ground Probing Radar following removal of the existing slab
 - b. Intrusive investigation, including consideration of groundwater quality and soil vapour, as appropriate
 - c. A procedure to remediate any USTs, associated infrastructure or secondary impacts that may be encountered
 - d. Validation works to demonstrate that residual soil, groundwater and / or soil vapour does not pose a risk to human health or the environment, as appropriate
3. The RAP should also provide further detail on the specific method, sample handling and frequency of validation sampling for asbestos in soil and air
4. The RAP must be updated following completion of the recommended additional building footprint, delineation (within the current RAP) and UST investigation (outlined above) and provided to Council for written approval prior to implementation.
5. Further detail should also be provided for the unexpected finds protocol which includes a process flow chart that can be clearly understood by contractors and gives consideration to protection of human health and the environment in the short term while decisions are being made.
6. The works outlined above must comply with relevant legislation including, but not limited to, SEPP 55, Council's Contaminated Land Policy, UPSS Regulations (noting the site lies in a Sensitive Zone) and guidelines made or approved by NSW EPA under the CLM Act 1997.

**ITEM -2 15 HERBERT STREET, MORTLAKE; DA2017/0363;
DEMOLITION OF EXISTING STRUCTURES AND
CONSTRUCTION OF A NEW RESIDENTIAL FLAT
BUILDING WITH 24 UNITS AND 2 LEVELS OF
BASEMENT CAR PARKING**

Department Planning and Environment

Author Initials: PLANNING CONSULTANT

EXECUTIVE SUMMARY

Owner

Omayya Investments Pty Ltd

Applicant

Mr Antoine Bechara

Zoning

This property is zoned R1 which permits residential flat buildings subject to development consent.

Proposal

Demolition of existing structures on site, excavation, other preparatory site works, erection of a new residential flat building comprising 24 Units and 44 car parking spaces, and the carrying out of associated works including landscaping.

Issues, including those matters raised by objectors

Non-compliance with Canada Bay 2013 LEP controls in relation to height and FSR, non-compliance with DCP Controls relating to setback.

Value of development


\$13,769,865

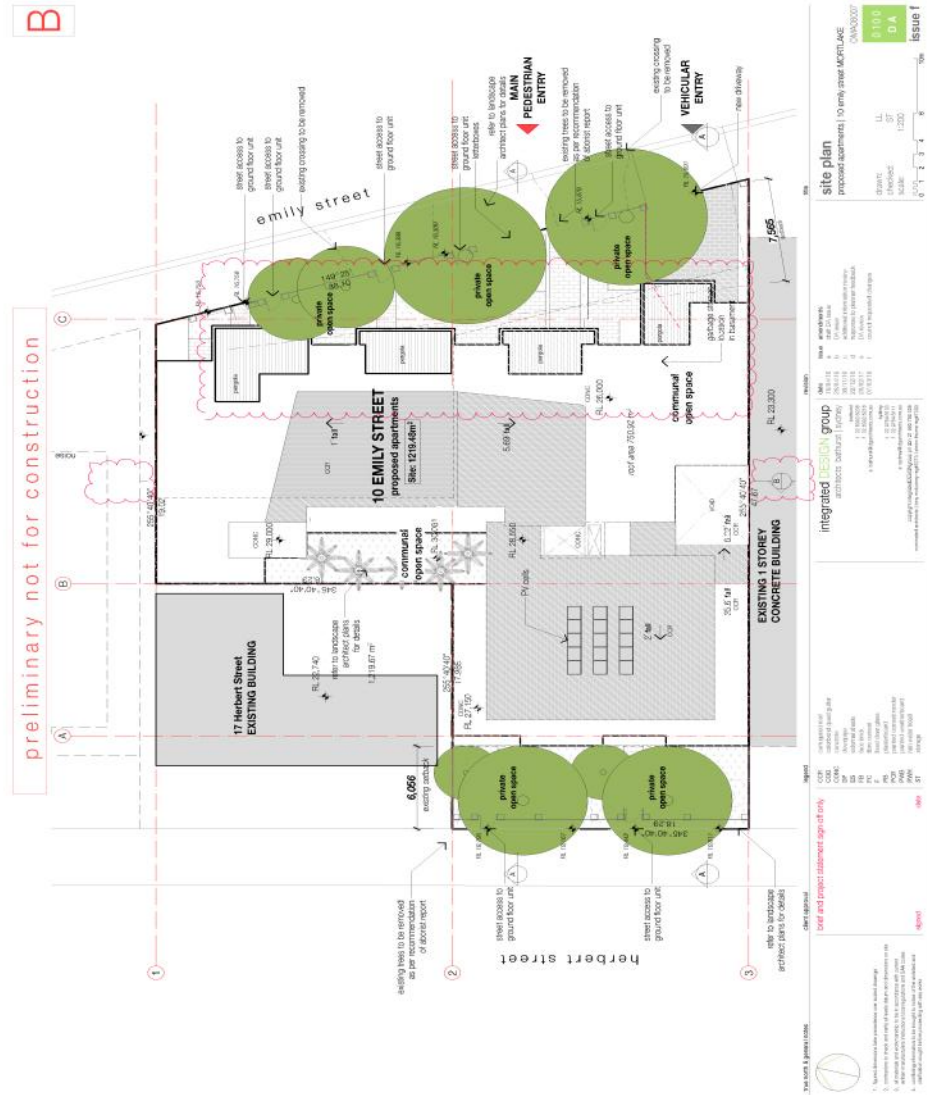
Reason for referral to Panel

Proposal is affected by the provisions of SEPP 65 and the Apartment Design Guide. Proposal is subject to a Voluntary Planning Agreement under Section 93F of the Environmental Planning and Assessment Act 1979. Clause 4.6 submission seeking greater than 10% variation to Floor Space Ratio development standard.

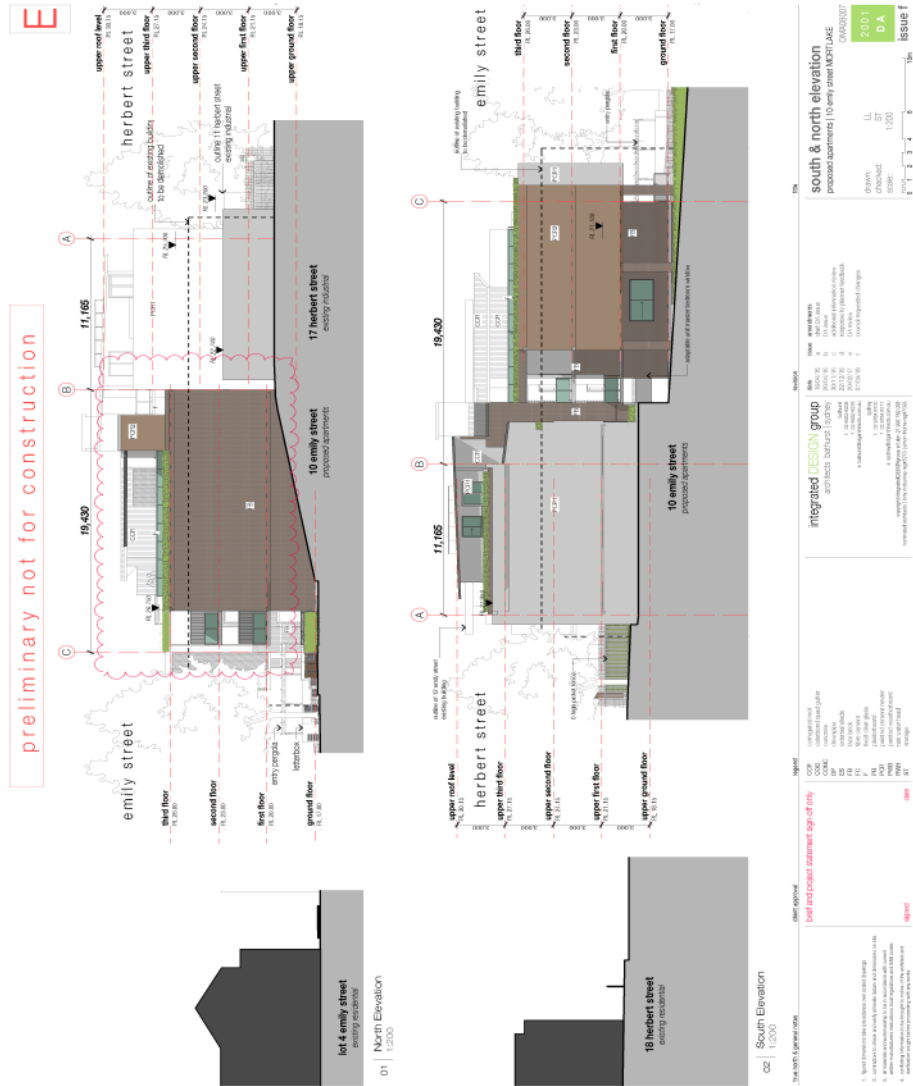
Location



<i>Subject Site</i>		<i>Properties Notified</i>		<i>Submitters</i>		 North
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REPORT

1. BACKGROUND

Development Application 2017/0363 was lodged with Canada Bay Council (Council) on 13 September 2017. Accompanying the application was a Voluntary Planning Agreement (VPA) submitted under Section 7.4 of the Environmental Planning and Assessment Act 1979 (EP&A Act) whereby an approval from Council in regards to this proposal would require Council to enter into a legal contract with the developer to construct public facilities and infrastructure or in the case of this development, as part of the conditions of development consent, in addition to the contributions payable by the development under 7.12 of the EP&A Act. The VPA requires Council to seek independent assessment of the proposal. David Lock Associates Pty Ltd (DLA) was commissioned by Council to undertake the independent assessment, and have prepared this report.

Extensive consultation was undertaken with the proponent and their architects. The initial plans submitted to Council were considered unsatisfactory for the following reasons:

- Unsatisfactory solar and daylight access to apartments, particularly on the ground floor;
- Lack of privacy provisions to the north of Unit 24's balcony with respect to neighbouring development;
- Poor amenity to units 3, 10 and 18 (removal of bedrooms overlooking the lightwell);
- Not clear if the required floor to ceiling heights could be achieved;
- Shadow diagrams did not show impact of privacy screens;
- Shortfall in the requirement for communal open space;
- Excessive amount of car parking spaces;
- Lack of communal open space provisions;
- Specific detailing missing from the site analysis plans, including location and size of existing trees and the outline of No. 17 Herbert Street;
- No consideration of sustainable design;
- Non-compliant balcony areas;

Additional information was also requested from Council Departments in relation to:

- Acid Sulphate;
- Stormwater Management;
- Vehicle Access; and
- Waste Management

The applicant subsequently provided revised plans and additional information to address the above. The proposal is now recommended for approval with conditions.

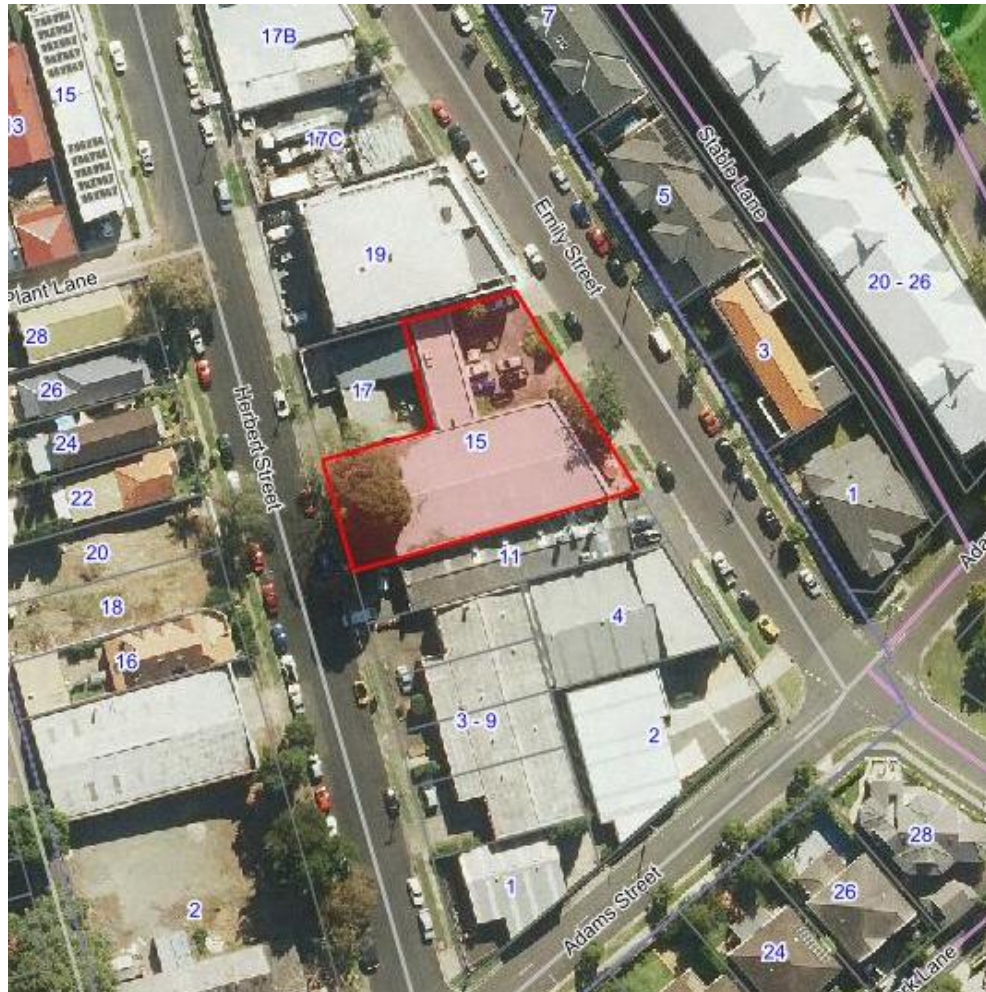
2. THE SITE AND ITS CONTEXT

The site is legally defined as Lot 10 in DP 553938, 15 Herbert Street, Mortlake, and is located within the Mortlake Point precinct with dual frontages to both Herbert Street and Emily Street. The site is located within a triangular shaped block between the intersections of Tennyson Road to the north and Adams Street to the south. The site has a total site area of 1,220m².

The site itself is irregular forming an “L” shape due to existing buildings abutting the subject site at No. 17 Herbert Street. This results in the subject site having a frontage of 18.29m to Herbert Street and 38.1m to Emily Street. The northern portion of the site has a depth of 19.02m (north boundary) and width of 18.29 (west boundary). The southern portion of the site extends through to both frontages and as such has a depth of 47.67m (south boundary). The site has a fall along the southern boundary of approximately 3.8m from Herbert Street down to Emily Street and a 1m cross fall along Emily Street from north to south.

There are two existing adjoined buildings on site which comprises of, a two storey brick building with a metal roof at the northern portion of the site, and a two storey brick and concreted warehouse with metal roof at the southern portion of the site. The existing buildings abut the north, south and west boundary and are setback behind some vegetated areas which comprise mainly of grassed areas with some shrubbery and two mature trees.

The existing buildings have varied setbacks to the primary Emily Street frontage of between 6m – 17m. Similarly, to the rear (western elevation), the southern building is setback approximately 5m from the Herbert Street frontage. The dwellings along both the southern and northern boundaries are built to the boundary edge with nil setbacks.



Aerial Photo of Subject Site and Surrounds (Source: Council)

Development to the south

The neighbouring building to the south at No. 11 Herbert Street is a warehouse which is currently used as an NRMA Smash Repairs mechanic. It is double storey and has nil setbacks to the northern and southern boundaries. It's setbacks to both Herbert Street and Emily Street are consistent with the current building located within the central southern part of the subject site.

Development to the north

The neighbouring building to the north at No. 19 Herbert Street is a 3 storey mixed use building which includes an industrial use (car mechanic) on the ground floor with residential use on the first and second floor. It has a nil setback to Emily Street as well as the northern and southern boundaries. It is setback to the rear frontage at Herbert Street by approximately 4m behind uncovered car parking spaces and vehicular access driveway.

Development to the west

Development to the immediate west of the subject site at No. 17 Herbert Street abuts the subject site to the north west. The site is a rectangular in shape and contains two single storey buildings. One building is a residential dwelling and the other is a red brick disused industrial building. It has a nil setback to the northern boundary, approximately a 1m setback to the southern

and north eastern boundary and an approximate 6m setback to the south-eastern boundary with the subject site. Further to the west on the opposite side of Herbert Street, development comprises of single and double storey detached residential dwellings on small to medium size lots.

Development to the east

Directly opposite the site on the eastern side of Emily Street are two storey detached dwellings which are part of the wider Breakfast Point master planned community estate. The wider estate comprises several multi-storey residential flat buildings, medium density apartments and attached dwelling houses.

A bus stop is located on Tennyson Road to the north-west of the site which provides frequent services to Ashfield Station, Mortlake and the CBD (Martin Place). The Cabarita Ferry wharf is approximately 1.3km in distance, or 17 minutes walking time, from the site through Breakfast Point and Cabarita Park. This wharf provides frequent services to Circular Quay, Parramatta and Sydney Olympic Park.

3. PROPOSED DEVELOPMENT IN DETAIL

The application seeks to demolish all existing structures and construct a part 3/part 4 storey residential flat building with two levels of basement parking accessed off Emily Street at the south eastern corner of the site. The main pedestrian access is provided off Emily Street.

A total of 24 units are proposed comprising 11 x 1 bedroom apartments, 11 x 2 bedroom apartments and 2 x 3 bedroom apartments. The ground floor apartments have direct access to Emily Street and Herbert Street respectively.

The proposed development has a central communal open space on the ground floor which is located over the two-level basement car park. The space includes common outdoor grassed areas with a variety of hard and soft landscaped areas. The development also includes a communal open space on the roof which provides a hard surface area with BBQ and seating areas. The proposal also includes landscaping on the roof area.

The development consists of one building that has interfaces to both Herbert Street and Emily Street as well as the communal open space on ground floor and third floor. There are two wings within the development located off the main central entrance at Emily Street, the western wing, which addresses Herbert Street and the southern wing, which addresses Emily Street, as the built form responds to the irregular shape and topography of the site.

The living areas of the apartments include private open space areas and balconies orientated to the west and east to face Herbert Street and Emily Street. All units on the ground floor have direct access onto the street as well as a secondary access to the communal open space areas.

There is 1 lift that services the development located in a central southern location adjacent to the main pedestrian entrance foyer from Emily Street. There are two stair wells located in the north and south of the building.

The following information details each level's assets and apartment specifications.

Lower Basement Level

- Accessed via the upper basement level and provides 24 car parking spaces, of which 1 is a dedicated disabled car parking space;
- 10 bicycle storage spaces;
- 16 storage spaces;
- Switch room; and
- Access to 1 lift and 2 fire exit stairwells leading to the ground floor foyer area of the building and Emily Street.

Basement Level

- Accessed via the driveway off Emily Street, this level provides 20 car parking spaces, which include 2 dedicated disabled car parking spaces;
- 17 storage spaces;
- Garbage room, OSD tank, rainwater tank, electrical board; and
- Access to 1 lift and 2 fire exit stairwells leading to the ground floor foyer

Ground Floor

There is direct pedestrian access into the building via Emily Street which leads directly into the communal areas that lead to the open space. The common foyer is located between units 3 and 4 and leads pedestrians directly to the lift. Residential apartments located on the ground floor have direct street access to both Emily Street and Herbert Street via a private stepped pathway and gate. Similarly, residential apartments No.'s 4, 5, 6 and 7 located on the Emily Street boundary have direct access from their apartments to the communal open space. The ground floor level contains 4 x 1 bedroom apartments and 3 x 2 bedroom apartments, one of which (Unit 3) is an accessible apartment. The western wing of the building has a finished floor level (FFL) of RL17, with the eastern wing at RL18.15. The site entrance is RL16.523 with a 1:14 ramp to RL17 internally.

As mentioned above, the ground floor also contains a communal open space area of 54.66m². This space contains lawn and planter beds. Each ground floor unit has a landscaped area at the street frontages which vary in size.

Level 1

The first level of the building contains 5 x 1 bedroom apartments, 3 x 2 bedroom apartments, one of which (unit 10) is an accessible apartment. Each apartment has either a west or east facing balcony to either Herbert Street or Emily Street. Internally there are common balconies (corridors that are partly open to the elements) providing access from the lift and stairs to the units. This open corridor has a privacy screen on the western elevation. The eastern

wing has a FFL at RL20 and the western wing RL 21.15. There are stairs connecting the western and eastern wings.

Level 2

The second level of the building contains 2 x 1 bedroom apartments, 5 x 2 bedroom apartments, one of which (unit 18) is an accessible apartment. Each apartment has either a west or east facing balcony to either Herbert Street or Emily Street. Unit No. 22 has a small balcony overlooking the communal open space. As with Level 1, internally there are common balconies (corridors that are partly open to the elements) providing access from the lift and stairs to the units. The eastern wing has a FFL at RL23 and the western wing RL 24.15. There are stairs connecting the western and eastern wings.

Level 3

The third level of the building contains 2 x 3 bedroom apartments. Two apartments face Emily Street and one faces Herbert Street. This floor also accommodates a communal open space area which equates to 79.48m² and includes a hard surface area with a soft landscaping planter surrounding the space along its edges. The space also includes a built in BBQ and seating area. There is landscaping proposed around the majority of the edges of the upper level. The eastern wing has a FFL at RL26 and the western wing RL 27.15. There are stairs connecting the western and eastern wings.

All levels are accessed via the lift located at the central southern end of the common foyer as well as the fire stairs located adjacent to the lift and also at the north of the building.

4. PUBLIC SUBMISSIONS

In accordance with Council's Notification Development Control Plan, adjoining and nearby property owners and occupiers were advised of the proposal and invited to comment. The notification generated 0 submissions objecting to the proposal.

5. ASSESSMENT UNDER SECTION 4.15 OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979

Section 79C of the EP&A Act provides a comprehensive assessment frameworks for all development applications lodged under the Act arranged under five main heads of consideration.

5.1. Environmental Planning Instruments [Section 4.15 (1) (a) (i & ii)]

5.1.1. State Environmental Planning Policies

The proposed development is subject to the following State Environmental Planning Policies.

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

To encourage sustainable residential development, all new dwellings must comply with the provisions of State Environmental Planning Policy –

Building Sustainability Index (BASIX).

The proposed development has achieved full compliance with the BASIX commitments as they have reached targets of 40 for water and 30 for energy. The schedule of BASIX Commitments is specified within the BASIX Certificate No. 715966M_02 and is included in the recommended conditions of consent.

State Environmental Planning Policy 55 – Remediation of Land (SEPP 55).

According to Clause 7 of SEPP No. 55 Council may not consent to the carrying out of any development on land unless it has considered whether the land is contaminated. If the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable after remediation) for the purpose of which the development is proposed to be carried out.

The required investigations have previously been carried out as part of a previous application (DA 502/2013/1) and, as a result, the site was deemed to be suitable for residential use. The circumstances regarding soil contamination are unlikely to have changed since the determination of the previous application in 2014.

5.1.2. *State Environmental Planning Policy 65 – Design Quality of Residential Flat Development (SEPP 65).*

The provisions of State Environmental Planning Policy No. 65 (SEPP No. 65) affect the proposed development being a residential flat building of 3 or more storeys and 4 or more units. The proposal was submitted before the Canada Bay Design Review Panel was constituted for Council under the provisions of SEPP 65. However, the proposed development has been assessed against the principles set out in SEPP 65, and the associated Apartment Design Guide to that SEPP.

Clause 30(2) of SEPP 65 requires residential flat development to be designed in accordance with the design quality principles and the objectives specified in the Apartment Design Guide for the relevant design criteria of SEPP 65. In this regard, a Design Verification Statement (DVS) prepared by Integrated Design Group and a Statement of Environmental Effects (SEE) provided by BBC Consulting Planners states that the proposed development has addressed the design quality principles set out in Part 2 of SEPP 65. A detailed assessment under each heading is provided in the following sections:

Principle 1: Context and neighbourhood character – *Good design responds and contributes to its context. Context is the key natural and built features of an area, their relationship and the character they create when combined. It also includes social, economic, health and environmental conditions. Responding to context involves identifying the desirable elements of an area's existing or future character. Well designed buildings respond to and enhance the qualities and identity of the area including the adjacent sites, streetscape and neighbourhood. Consideration of local context is important for all sites, including sites in established areas, those undergoing change or identified for change.*

The DVS and SEE submit that the building design is responsive to the bulk and scale of adjoining development with neighbouring buildings in the area being 2-5 storeys in height. The DVS and SEE state that the choice of materials, break up in elevations, and characters of the proposed building reflects the existing industrial character along the western side of Emily Street and the eastern side of Herbert Street.

Comment: The subject site is located within an area undergoing transition. This mixed-use precinct is made up of various uses from industrial and commercial to low, medium and higher density residential. The General Residential R1 zone provides for a mix of residential and industrial developments and the objectives of this zone encourages residential development with supporting land uses to service the day to day needs of future occupants.

Development within the block bounded by Herbert Street, Tennyson Road, Emily Street and Adams Street is characterised mainly as industrial with an exception being No. 12 Emily Street to the north which is a mixed use residential flat building development with an affordable housing component. It is expected that over time, this block will continue to be redeveloped with residential development and other uses in keeping with Council's applicable controls.

The proposed development is therefore consistent with the existing and emerging character of the area.

Principle 2: Built Form and Scale – *Good design achieves a scale, bulk and height appropriate to the existing or desired future character of the street and surrounding buildings. Good design also achieves an appropriate built form for a site and the building's purpose in terms of building alignments, proportions, building type, articulation and the manipulation of building elements. Appropriate built form defines the public domain, contributes to the character of streetscapes and parks, including their views and vistas, and provides internal amenity and outlook.*

The DVS and SEE submit that the development complies with the street setback requirements of the DCP and that the 4 storey element is well setback and covers a relatively small area of the building. The DVS and SEE state that there is a small area above the height plane near Herbert Street that is unlikely to be visible from the street and will have minimal impact on neighbouring properties. The DVS and SEE state that the setbacks to the rear of No. 17 Herbert Street represent an improvement from the existing nil setback of the existing development on site.

Comment: The proposal has a maximum height of 12.9m and an FSR of 1.48:1. It is worth noting that a previous DA was approved on the site in 2013 for a residential flat building with a building height of 12m and FSR of 1.249:1 (this DA benefitted from a bonus FSR under the Affordable Housing SEPP). In the assessment of that DA Council noted that despite the additional

GFA, the development has achieved a scale that addresses the future character of the area by achieving compliance with the height and relevant building setback controls.

In terms of this proposal the building is built to the side boundaries (north and south) on the ground, first and second floors. This nil setback reflects the nil setback on the adjoining properties which is deemed to be acceptable. The proposal is set back to the side and front boundaries on the third level which alleviates the additional height and bulk and will minimise impacts to adjacent neighbours.

The proposal's setback to Emily Street varies from approximately 2.6m to 6m. The development fronting Herbert Street is setback approximately 7m. These setbacks result in good amenity for units fronting both street frontages and provide visual articulation as presented to both streets. It provides good opportunity for landscaping and direct connection to the street which improves the passive surveillance and interaction.

The rear setback of 6.3m to the west boundary with 17 Herbert Street is considered to provide adequate relief between the proposal and the building located on this adjoining site. The western elevation of the building has been designed with privacy louvres to further minimise any potential overlooking of No.17 Herbert Street if it is to be redeveloped in full for residential.

Therefore, the proposal is considered acceptable in terms of bulk and scale and provides a development type that is consistent with the desired future character of the area.

Principle 3: Density – Good design achieves a high level of amenity for residents and each apartment, resulting in a density appropriate to the site and its context. Appropriate densities are consistent with the area's existing or projected population. Appropriate densities can be sustained by existing or proposed infrastructure, public transport, access to jobs, community facilities and the environment.

The Clause 4.6 submission acknowledges the departure from the 0.75:1 FSR control. It states that the proposed development at 1.49:1 is of a density that is compatible with the bulk and scale of the desired future character of the locality including that which has occurred, or which is likely to occur, on neighbouring sites.

Comment: The proposed development will have an FSR that results in a higher density than that envisaged under Council's LEP 2013. The site however, is in an area undergoing transition with the proposal presenting a suitable development in the context of surrounding development and densities. To the north of the site lies a mixed use development including industrial, residential and affordable housing components. That development's height, bulk, scale and FSR yield is comparable to that of the subject proposal. It is noted that the majority of the proposed development is

compliant with the height limit of 12m with a marginal encroachment of 900mm by part of the roof form on the upper level.

The proposal presents a higher density than that prescribed under the LEP. However, given the consistency with neighbouring development within the Mortlake Peninsular Precinct with similar scale development along Emily Street, Tennyson Road, Hilly Street, Breakfast Point and Major Bay, the proposed density in this instance is supported. The site is located within an emerging area that is undergoing transition from a light industrial area to a residential area and thus, the variation to FSR standards is considered acceptable. The site is located within walking distance of a number of bus stops that service the surrounding community and within close proximity to ferry services. Community facilities are also within walking distance within the Breakfast Point development and further surrounds. Refer Section 5.1.4 for further discussion.

Principle 4: Sustainability – *Good design combines positive environmental, social and economic outcomes.*

The DVS states that the development has been designed with passive solar principles but will also incorporate energy saving measures such as hot water systems and light timers and sensors.

Comment: A BASIX certificate has been submitted with the proposal which achieves compliance with the water, thermal comfort and energy targets. Furthermore, the design includes solar PV panels on the south western part of the roof. The panels are north facing.

Principle 5: Landscape - *Good design recognises that together landscape and buildings operate as an integrated and sustainable system, resulting in attractive developments with good amenity. A positive image and contextual fit of well designed developments is achieved by contributing to the landscape character of the streetscape and neighbourhood.*

The DVS and SEE submit that a landscape plan has been submitted with the DA and has been designed to satisfy the objectives and controls prescribed by Council by providing shade, screening, and improved energy efficiency and solar access.

Comment: The development application provides a landscape plan which exhibits landscaped areas to both street frontages, including deep soil landscaping, as well as the central communal open space on ground level which abuts the rear boundary of No. 17 Herbert Street, and landscaped roof garden on third level. New planting is to be provided in accordance with the approved Landscape Plan. Proposed landscaping area equates to approximately 30% of the site area, 20% of which is soft landscaping. The proposed street setbacks and associated landscaping soften the visual bulk of the built form as presented to street frontages.

The internal landscaped area abutting No. 17 Herbert Street's rear boundary provides for an area of communal open space for residents in addition to providing setback relief between the subject proposal and No. 17 Herbert Street. Planter boxes of various sizes are provided on Level 3 of the development surrounding the communal rooftop spaces as well as Units 23 and 24. The landscaping softens the edges of the development, creating a well designed aesthetic.

Principle 6: Amenity – Good design positively influences internal and external amenity for residents and neighbours. Achieving good amenity contributes to positive living environments and resident wellbeing.

The SEE and DVS state that the proposal is generally compliant with the amenity standards set out in the ADG.

Comment: The proposal's balconies and living areas are orientated predominantly towards the street frontages which are east and west. Given the lack of northern street frontage solar access was discussed in detail with the architect. In lieu of the required amount of direct solar access the applicant has provided a daylight study to demonstrate the access to daylight as per 4A-2 of the ADG.

Despite the lack of a direct northern frontage, and the configuration of the development on an irregular parcel of land, the development has achieved adequate levels with respect to the availability of solar and daylight access, given the site's constraints and orientation.

The developments built form, being L shaped, is such that all apartments will receive direct access to fresh air and 19 of the 24 apartments achieve daylight. This equates to 79% of units benefiting from natural cross ventilation which surpasses the required 60% set down by the ADG standards.

Visual and acoustic privacy to units is considered to be adequately maintained with only 4 apartments directly looking at one another across the lightwell. Given the use of the rooms are a study and kitchen, this relationship with a 5m separation is deemed to be acceptable.

Ground floor units have private areas available on ground floor balconies in addition to ground floor courtyards. The ground floor balconies of Units 04 and 05 are adjacent and separated by a dividing wall. On first floor level, the balconies of Units 15 and 14 as well as Units 13 and 12 are adjacent. Boundary treatments are proposed with a walled edge separating Unit 15 and Unit 14's balconies and a privacy screen is proposed for adjacent Units 13 and 12.

Storage is provided in the basement levels as well as within the units.

All units have been designed to provide adequate living and private space for occupants with layouts achieving a good transition between living rooms,

bedrooms and utility rooms. Balconies to upper level units and courtyards to ground floor units provide sufficient outdoor space with a good level of amenity and an outlook over the streetscape and surrounds. In addition, the rear landscaped area and communal roof top area provides an external landscaped open space for occupants to use.

Principle 7: Safety – *Good design optimises safety and security, both internal to the development and for the public domain. It provides for quality public and private spaces that are clearly defined and fit for the intended purpose. Opportunities to maximise passive surveillance of public and communal areas promote safety.*

The DVS submits that the development provides a clear distinction between public and private areas by using landscaping, terraces and variations in levels with defined entry points. Further, the statement claims that the proposal has provided well lit access between the car park and apartments and that all common pathways will be illuminated.

Comment: It is evident that the proposal will provide opportunities for passive surveillance of both Emily Street and Herbert Street as well as of the communal space on the ground floor of the building. Adequate passive surveillance of the surrounding street network is provided by the elevated ground floor apartments and through the utilisation of extensive glazing and balconies to all elevations. Glazed windows in the west facing study rooms in Units 06, 05 and 04 also provide passive surveillance of the central communal open space area.

The delineation between public and private spaces is considered satisfactory as residential access into the apartment complex is achieved through the Emily Street foyer area. Although no specific details have been provided in relation to security maintenance, it is expected that the building will be secured by an intercom system. The design has a potential safety issue with the design of the foyer from Emily Street as the lift is not visible from the entry door, however, the proposed development demonstrates acceptable measure of safety and security.

Principle 8: Housing diversity and social interaction – *Good design achieves a mix of apartment sizes, providing housing choice for different demographics, living needs and household budgets. Well designed apartment developments respond to social context by providing housing and facilities to suit the existing and future social mix.*

The DVS claims that the proposal contains a wide range of apartment types to offer different options for the community.

Comment: The proposed development provides for 1, 2 and 3 bedroom units including a provision of accessible units. The development provides two areas of communal open space which should encourage residents the opportunity for social interaction.

Principle 9: Aesthetics – Good design achieves a built form that has good proportions and a balanced composition of elements, reflecting the internal layout and structure. Good design uses a variety of materials, colours and textures.

The DVS suggests that the siting of the proposed development responds to the orientation of the site and the uses of the proposed rooms encourage residents to utilise the threshold between private and the public domain. The Statement claims that the façade articulation is achieved with balcony and sunshade details which give the building a “human” scale and allow residents to identify their unit when viewed from street level. The Statement additionally states that the roof form is in keeping with the traditional and new warehouse forms of the Emily Street block and those also “book ending” Herbert Street.

Comment: The proposed aesthetic presentation of the development is considered adequate with regards to materials and finishes. The colours and materials collaborate harmoniously towards a development which provides a positive presentation to the streetscape and is consistent with the desired future character of the streetscape.

Further to these design quality principles, Clause 30(2) of SEPP 65 also requires residential flat development to be designed in accordance with the Department of Planning’s publication entitled, the ‘Apartment Design Guide’. A detailed analysis of the proposed development against the criteria in the Guide is within the compliance table below.

5.1.3. *Apartment Design Guide (Compliance Table)*

Part 1 of the ADG discusses the need to identify the context which has been discussed above. Part 2 provides tools to support the strategic planning process when preparing planning controls. The table on the following pages outlines the relevant objectives, design criteria and design control set out in Part 3 and 4 of the ADG.

PART 3 – SITING THE DEVELOPMENT		
Siting the Development		
3 B Orientation	<p>Design Guidance: Buildings along the street frontage define the street, by facing it and incorporating direct access from the street</p> <p>Where the street frontage is to the east or west, rear buildings should be orientated to the north where the street frontage is to the north or south, overshadowing to the south should be minimised and buildings behind the street frontage should be orientated to the east and west</p>	<p>The building will front Emily Street and Herbert Street with direct access from the street to ground floor units.</p> <p>The site has a dual frontage. There are technically no buildings to the rear.</p> <p>Direct solar access will be afforded to 70.8% of the units</p>

	<p>Living areas, private open space and communal open space should receive solar access in accordance with sections 3D and 4A.</p> <p>Solar access to living rooms, balconies and private open spaces of neighbours should be considered.</p> <p>Where an adjoining property does not currently receive the required hours of solar access, the proposed building ensures solar access to neighbouring properties is not reduced by more than 20%.</p> <p>If the proposal will significantly reduce the solar access of neighbours, building separation should be increased beyond the minimums required under Visual Privacy.</p> <p>Overshadowing should be minimized to the south or downhill by increased upper level setbacks.</p> <p>It is optimal to orientate buildings at 90 degrees to the boundary with neighbouring properties to minimise overshadowing and privacy impacts, particularly where minimum setbacks are used and where buildings are higher than adjoining development.</p> <p>A minimum of 4 hours of solar access should be retained to solar collectors on neighbouring buildings.</p>	<p>between 8am – 3pm (see further discussion below).</p> <p>The higher density development on the site will increase overshadowing in comparison to the existing situation on site. Given the orientation of the site the majority of the overshadowing will be to the south to No.11 Herbert Street and to the west to no.17 Herbert Street. No.17 will have some additional overshadowing between 9am-12pm but no impact the rest of the day. No.11 has additional shadow throughout the day. This overshadowing impact is deemed to be acceptable due to the nil setback of the buildings and that the existing use of No.11 is industrial. If No.11 was to redevelop in the future, it is likely that they would also develop with a zero setback and no habitable room windows or balconies in this elevation which would be affected by the additional overshadowing.</p> <p>No solar collectors are located on adjacent developments.</p>
3C Public Domain Interface	<p>Design Guidance: Terraces, balconies and courtyard apartments should have direct street entry where appropriate.</p> <p>Changes in level between private terraces, front gardens and dwelling entries above the street level should provide surveillance and improve visual</p>	<p>Direct access is proposed to the units facing Emily Street and Herbert Street on the ground floor.</p> <p>There are level changes from the street to the balconies of the units on the ground floor fronting Emily Street.</p> <p>The units facing Herbert Street are</p>

	<p>privacy for ground level dwellings.</p> <p>Upper level balconies and windows should overlook the public domain.</p> <p>Front fences and walls along street frontages should use visually permeable materials and treatments. The height of solid fences or walls should be limited to 1.0m.</p> <p>Length of solid walls should be limited along street frontages.</p> <p>Opportunities should be provided for casual interaction between residents and the public domain. Design solutions may include seating at building entries, near letter boxes and in private courtyards adjacent to streets.</p> <p>Developments with multiple buildings or entries, pedestrian entries and spaces associated with such entries should be differentiated to improve legibility for residents using architectural detailing, changes in materials, plant species, colours etc.</p> <p>Opportunities for people to be concealed should be minimised.</p> <p>Planting should be used to soften the edges of any raised terraces to the street, e.g. - above sub-basement car parking.</p> <p>Mail boxes should be located in lobbies, perpendicular to the street alignment or integrated into front fences where individual street entries are provided.</p>	<p>located lower than street level, with the upper level apartments providing the surveillance to the street.</p> <p>Upper level balconies have sight lines across either Emily Street or Herbert Street. Internally, the internal circulation areas on first and second floor level overlook the COS located on ground floor level.</p> <p>The predominant wall height along the Emily Street frontage is 1m and the Herbert Street frontage has a 1.6m picket fence.</p> <p>The separate entries to individual units on ground floor level and the main communal atrium entrance with access via the Emily Street frontage ensures that there is no solid continuous wall along the street frontage.</p> <p>Colocation of letter boxes provides opportunities for casual interaction.</p> <p>The main communal entrance to the building is designed as an entry pergola to clearly demarcate from the private street entrances and letterboxes for each unit are incorporated in this area at the street frontage.</p> <p>There is a secure access gate located behind the main entrance atrium. The location of the secure access gate is well located and visible from the street frontage.</p> <p>Landscaping is used throughout to soften the edges of the building.</p> <p>All individual mailboxes are provided for each unit in the communal entrance area on the ground floor fronting Emily Street.</p>
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	<p>The visual prominence of underground carpark vents should be minimised and located at a low level where possible.</p> <p>Substations, pump rooms, garbage storage areas and other service requirements should be located in basement carparks or out of view.</p> <p>Ramping for accessibility should be minimised by building entry location and setting ground floor levels in relation to footpath levels.</p> <p>Durable, graffiti resistant and easily cleanable materials should be used.</p> <p>Where development adjoins public parks, open space or bushland the design should positively address this interface through street access, pedestrian paths and building entries being clearly defined; paths, low fences and planting that clearly delineates between communal/private open space and the adjoining public open space; and minimal use of blank walls, fences and ground level parking.</p> <p>On sloping sites protrusion of car parking above ground level should be minimised by using split levels to step underground car parking.</p>	<p>N/A</p> <p>Bulky waste storage, OSD tank, electrical services and common switch room is provided in the basement over both levels. No services or garbage storage areas are seen from the street frontage.</p> <p>A 1:14 ramp is proposed from Emily Street to the main pedestrian access due to the change in levels between the street and the building. The ramping proposed is deemed adequate for the proposed development.</p> <p>Standard materials proposed.</p> <p>N/A</p> <p>Basement car parking will not be visible from the street.</p>
3D-1 Communal and Public Open Space	<p>Design Criteria: Communal open space has a minimum area equal to 25% of the site.</p> <p>Developments achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a</p>	<p>11.3% of the site area is provided for communal open space. 4.8% is provided on the ground floor and 6.5% on the roof. This is non-compliance. However, in the instance of this case being located on an irregular lot, the provision is deemed to be acceptable given that all units have sufficient size POS, a high % have generous balconies and terraces and the site is located within 150m of a large public open space (oval on Village Drive). The ground floor COS does not achieve this but the addition of a 'rooftop' landscaped area</p>

	<p>minimum of 2 hours between 9am and 3pm on 21 June (mid winter).</p> <p>Design Guidance: Communal open space should be consolidated into a well designed, easily identified and usable area.</p> <p>Communal open space should have a minimum dimension of 3m and larger developments should consider greater dimensions.</p> <p>Communal open space should be co-located with deep soil areas.</p> <p>Direct, equitable access should be provided to communal open space areas from common circulation areas, entries and lobbies.</p> <p>Where communal open space cannot be provided at ground level, it should be provided on a podium or roof.</p> <p>Where developments are unable to achieve the design criteria, such as on small lots, sites within business zones or in dense urban areas, communal spaces should be provided elsewhere such as landscaped rooftop terraces or a common room, and larger balconies or increased private open space for apartments should be considered. Developments should demonstrate that good proximity to public open space and facilities is available and/or provide contributions to public open space.</p> <p>Facilities are provided within communal open spaces and common spaces for a range of age groups, incorporating elements such as seating for individuals or groups, BBQ</p>	<p>(79.48m²) on third level provides additional COS with adequate solar access.</p> <p>The COS is centrally located on the ground floor and is accessed from the main communal entrance as well as individual entrances to apartments on the ground floor overlooking this area. The COS located on the third level is accessed from the lift and stairs. COS areas on both the ground level and third floor level are greater than 3m wide.</p> <p>There are a variety of areas provided including, hard and soft landscaping.</p> <p>As above.</p> <p>Provided on the roof and ground floor level.</p> <p>As above, the non-compliance with the COS in the instance of this case being located on an irregular lot, the provision is deemed to be acceptable given that all units have sufficient size POS, a high % have generous balconies and terraces and the site is located within 150m of a large public open space (oval on Village Drive).</p> <p>BBQ and seating area provided on the roof top COS.</p>
3D-2		
3D-3		
3D-4		

	<p>areas, play equipment or play areas, swimming pools, gyms, tennis courts or common rooms.</p> <p>The location of facilities responds to microclimate and site conditions with access to sun in winter, shade in summer and shelter from strong winds and down drafts.</p> <p>Visual impacts of services should be minimised, including location of ventilation duct outlets from basement car parks, electrical substations and detention tanks.</p> <p>Communal open space and the public domain should be readily visible from habitable rooms and private open space areas while maintaining visual privacy via elements such as bay windows, corner windows and balconies.</p> <p>Communal open space should be well lit.</p> <p>Where communal open space/facilities are provided for children and young people, they are safe and contained.</p> <p>Public Open Space</p>	<p>COS on the roof has the access to sunlight in winter and the COS on the ground has access to shade.</p> <p>Services including OSD tank, garbage room, switch room and storage areas are located in the basement. No evidence of services are visible from either Emily or Herbert Street frontages, including ventilation ducts.</p> <p>Balconies and windows on all levels, where possible, have been included to overlook the ground floor COS area.</p> <p>No lighting plan submitted.</p> <p>No facilities provided for children and young people propose in communal open space areas.</p> <p>N/A</p>
3E -1 Deep Soil Zones	<p>Design Criteria: Deep soil zones are to meet the following minimum requirements:-</p> <p>Sites less than 650sqm – 7% of site area and no minimum dimensions</p> <p>Sites between 650sqm and 1500sqm – 7% of site area and minimum dimensions of 3m</p> <p>Sites greater than 1500sqm with significant existing tree cover – 7% of site area and minimum dimensions of 6m</p> <p>Deep soil zones should be located to retain existing significant trees and to allow for the development of healthy root systems, providing anchorage and stability for mature trees. Design solutions may include:</p> <ul style="list-style-type: none"> • basement and sub-basement car park 	<p>Site area = 1219.48m² 10% of the total site area is allocated to deep soil zones in both private and communal open space with varying dimensions of 0.5m to 7m.</p> <p>No existing significant trees on the site. The Arborist Report states that 4/5 trees on site or on the property boundary are considered to be of low significance, with 1/5 trees on site having a medium significance value. All 5/5 trees are considered to be in 'fair' health</p>

	<p>design that is consolidated beneath building footprints</p> <ul style="list-style-type: none"> • use of increased front and side setbacks • adequate clearance around trees to ensure long term health • co-location with other deep soil areas on adjacent sites to create larger contiguous areas of deep soil 	<p>with T1, T2, T3 and T4 proposed for removal due to declining health. All 5 trees are located within the site in positions where proposed building envelopes and excavation make removal necessary.</p> <p>The removal of these trees is considered acceptable as they are not of high significance to the site or surrounding areas and mitigating planting is proposed.</p>
3F - Visual Privacy	<p>Design Criteria:</p> <p>Separation between windows and balconies is provided to ensure visual privacy is achieved. Minimum required separation distances from buildings to the side and rear boundaries are as follows:</p> <ul style="list-style-type: none"> • up to 12m (4 storeys) – 6m to habitable rooms and balconies and 3m to non-habitable rooms • up to 25m (5-8 storeys) – 9m to habitable rooms and balconies • over 25m (9+ storeys) – 12m to habitable rooms and balconies and 4.5m to non-habitable rooms <p>Note: Separation distances between buildings on the same site should combine required building separations depending on the type of room.</p>	<p>Southern boundary:</p> <p>To the south, the proposed development is setback predominantly 0m from No. 11 Herbert Street. No windows are located in this elevation. Increase setback of 4.5m is provided to accommodate the driveway on the ground floor only. A living room and study window overlooks the driveway. The setback increases on the upper level to 3.1m on the south west and 10m on the south east. Both the upper level northern elevation have privacy screens. The screens on unit are the full length of the window to prevent cross viewing from No. 12 Emily Street. The 6-9m setback and this privacy screen ensures that the privacy impact is being managed by this development as the setback from No.12 Emily is minimal. The louvres for unit 24 are also angled to the north east, preventing cross viewing in both directions, but letting morning light into the bedrooms of 24.</p> <p>The living areas of unit 24 are positioned away from 12 Emily Street and facing east.</p> <p>For Unit 23, the units at 12 Emily Street are over 20m. No.17 Herbert Street is in between. Both the setback and louvres which are 1.7m tall minimise the overlooking from unit 23 but can still get access to northern light above the screen.</p> <p>Internally the only units that face one another with windows/</p>

		<p>balconies are the units either side of the light void on the first and second level. The separation between these units is 5m. This is deemed to be acceptable in this instance as the window relates to a study and a kitchen and there is a difference of levels of 1.15m from east and west building which will help obscure direct overlooking.</p> <p>Western boundary (boundary with No. 17 Herbert Street: There are no windows proposed on the north western boundary adjoining No. 17 Herbert Street at ground floor, Level 1 and Level 2. At level 3 a 3m setback is proposed. Privacy screens of suitable design have been proposed on the northern elevation to minimise overlooking whilst ensuring adequate solar access.</p> <p>A 5m setback is proposed between the common balcony and No.17 Herbert Street. To ensure adequate privacy a screen is to be erected along this elevation as shown on the elevation plans.</p> <p>In terms of the ground floor POS the boundary treatments are 1.8m high paling fence.</p> <p>Northern boundary: The proposed development is built to the northern boundary with a nil setback. There is approximately a 1m setback to the building of No.12 as it has stairs running along the boundary. The use of the building is light industrial at the ground floor and has no habitable rooms, balconies or spaces are located on this level. The proposed development does not comprise windows on the northern elevation at ground floor level.</p> <p>Levels 1 and 2 of the adjoining property at No. 12 Emily Street are residential. At level 1 there are 2 bedroom windows adjacent to No.17 Herbert street only. On Level 2 there is a corner living room window, two bedroom windows and a bathroom window in the elevation closest to the site. The neighbouring site has only</p>
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3F-2	<p>Gallery access circulation should be treated as habitable space when measuring privacy separation distances between neighbouring properties.</p> <p>Generally, one step in the built form as the height increases due to building separations is desirable. Additional steps should be careful not to cause a 'ziggurat' appearance for residential buildings next to commercial buildings, separation distances should be measured as follows:</p> <ul style="list-style-type: none"> • for retail, office spaces and commercial balconies use the habitable room distances • for service and plant areas use the non-habitable room 	<p>been designed with a 3m setback. No windows are proposed in this elevation which is deemed to be acceptable. Furthermore, the balcony for Unit 22 (closest to this boundary) is located 3m away from the boundary.</p> <p>At Level 3 unit 24 is setback 9m and the balcony area 6m which is deemed to be acceptable.</p> <p>Internal: As previously discussed in relation to the units overlooking the lift void.</p> <p>Eastern boundary: At ground floor level, balconies are adequately separated by walls and boundary treatment. Walls designed to separate entrance balconies to Unit 07, Unit 06 and Unit 05, Unit 04 are also supported by proposed vegetation screening along the boundary.</p> <p>At first floor level, balconies are adequately separated by walls and privacy screens. The proposed privacy screen separating Unit 12 and Unit 13 is compliant.</p> <p>Balconies on the eastern elevation fronting Emily Street on the second floor are adequately separated by either a wall or privacy screen with adequate distance between each balcony. Balconies between Unit 22 and Unit 21 are separated by a wall.</p> <p>At proposed Level 3, there are adequate visual privacy separation distances.</p> <p>N/A</p> <p>One step in the building at Level 3 is proposed.</p>
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	<p>distances</p> <p>New development should be located and oriented to maximise visual privacy between buildings on site and for neighbouring buildings. Design solutions include:</p> <ul style="list-style-type: none"> • site layout and building orientation to minimise privacy impacts (see also section 3B Orientation) • on sloping sites, apartments on different levels have appropriate visual separation distances (see figure 3F.4) <p>Apartment buildings should have an increased separation distance of 3m (in addition to the requirements set out in design criteria 1) when adjacent to a different zone that permits lower density residential development to provide for a transition in scale and increased landscaping (figure 3F.5)</p> <p>Direct lines of sight should be avoided for windows and balconies across corners. No separation is required between blank walls.</p> <p>Communal open space, common areas and access paths should be separated from private open space and windows to apartments, particularly habitable room windows. Design solutions may include:</p> <ul style="list-style-type: none"> • setbacks • solid or partially solid balustrades to balconies at lower levels • fencing and/or trees and vegetation to separate spaces • screening devices • bay windows or pop out windows to provide privacy in one direction and outlook in another • raising apartments/private open space above the public domain or 	<p>Typically access paths internally only pass studies on the ground floor.</p> <p>On upper levels the common circulation spaces go passed doors only.</p> <p>At the street frontages the POS areas are separated by changes in levels and boundary treatments.</p> <p>Complies</p>
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	<p>communal open space</p> <ul style="list-style-type: none"> • planter boxes incorporated into walls and balustrades to increase visual separation • pergolas or shading devices to limit overlooking of lower apartments or private open space • on constrained sites where it can be demonstrated that building layout opportunities are limited, fixed louvres or screen panels to windows and/or balconies <p>Bedrooms, living spaces and other habitable rooms should be separated from gallery access and other open circulation space by the apartment's service areas.</p> <p>Balconies and private terraces should be located in front of living rooms to increase internal privacy.</p> <p>Windows should be offset from the windows of adjacent buildings.</p> <p>Recessed balconies and/or vertical fins should be used between adjacent balconies.</p>	
3G – 1 Pedestrian Access and entries	<p>Multiple entries (including communal building entries and individual ground floor entries) should be provided to activate the street edge</p> <p>Entry locations relate to the street and subdivision pattern and the existing pedestrian network</p> <p>Building entries should be clearly identifiable and communal entries should be clearly distinguishable from private entries</p> <p>Where street frontage is limited and multiple buildings are located on the site, a primary street address should be provided with clear sight lines and pathways to secondary building entries</p> <p>Building access areas including lift lobbies, stairwells and hallways should be clearly</p>	<p>Provided for all ground floor units facing Emily Street and Herbert Street.</p> <p>Boundary treatments and the use of a formal atrium clearly define the communal entry point from the private.</p> <p>The common central foyer area for each side of the building has been designed to be clearly legible from the main atrium entrance.</p> <p>An entrance ramp with a gradient of 1:14 is proposed from the street into the central foyer area, providing an elevation from street level on the ground floor to</p>

	<p>visible from the public domain and communal spaces</p> <p>The design of ground floors and underground car parks minimise level changes along pathways and entries</p> <p>Steps and ramps should be integrated into the overall building and landscape design</p> <p>For large developments 'way finding' maps should be provided to assist visitors and residents (see figure 4T.3)</p> <p>For large developments electronic access and audio/video intercom should be provided to manage access</p> <p>Pedestrian links through sites facilitate direct connections to open space, main streets, centres and public transport</p> <p>Pedestrian links should be direct, have clear sight lines, be overlooked by habitable rooms or private open spaces of dwellings, be well lit and contain active uses, where appropriate</p>	<p>improve privacy as discussed above.</p> <p>N/A</p> <p>N/A</p>
3H - Vehicle access	<p>Car park access should be integrated with the building's overall facade. Design solutions may include:</p> <ul style="list-style-type: none"> the materials and colour palette to minimise visibility from the street security doors or gates at entries that minimise voids in the facade where doors are not provided, the visible interior reflects the facade design and the building services, pipes and ducts are concealed <p>Car park entries should be located behind the building line</p> <p>Vehicle entries should be located at the lowest point of the site minimising ramp lengths, excavation and impacts on the building form and layout.</p> <p>Car park entry and access should be located on secondary streets or lanes where available.</p>	<p>The access driveway to the basement car park is located on the eastern elevation of the building, adjacent to the northern boundary of No. 11 Herbert Street. It is setback behind the building line with a roller shutter door.</p> <p>Complies.</p> <p>The location of the vehicle access ramp maximises the topography of the land as it is located at the lowest point on Emily Street.</p> <p>Located on Emily Street one of two street frontages. The use of Emily Street maximizes the</p>

	<p>Vehicle standing areas that increase driveway width and encroach into setbacks should be avoided.</p> <p>Access point locations should avoid headlight glare to habitable rooms</p> <p>Adequate separation distances should be provided between vehicle entries and street intersections</p> <p>The width and number of vehicle access points should be limited to the minimum</p> <p>Visual impact of long driveways should be minimised through changing alignments and screen planting</p> <p>The need for large vehicles to enter or turn around within the site should be avoided</p> <p>Garbage collection, loading and servicing areas are screened</p> <p>Clear sight lines should be provided at pedestrian and vehicle crossings</p> <p>Traffic calming devices such as changes in paving material or textures should be used where appropriate</p> <p>Pedestrian and vehicle access should be separated and distinguishable. Design solutions may include:</p> <ul style="list-style-type: none"> • changes in surface materials • level changes • the use of landscaping for separation 	<p>topography of the site to minimize excavation.</p> <p>N/A</p> <p>Headlight glare should be minimal given the slope of access ramp into the basement and units located at a higher level.</p> <p>The distance from the site's proposed vehicular entrance point to the nearest intersection (Emily Street and Adams Street) is approximately 43m.</p> <p>N/A. The proposed driveway is not considered to be long.</p> <p>N/A.</p> <p>The garbage room and services are located within the basement levels, not visible from the streetscape.</p> <p>Council's traffic engineer is satisfied with the arrangement subject to standard conditions of consent.</p>
3J-1 Bicycle and Carparking	<p>Design Criteria</p> <p>For development in the following locations:</p> <ul style="list-style-type: none"> • on sites that are within 800 metres of a railway station or light rail stop in the Sydney Metropolitan Area; or • on land zoned, and sites within 400 	<p>Council's DCP- Multi Unit housing requires the provision of 1 carspace per 1 bedroom dwelling/studio dwelling, 1.5 spaces per 2 bedroom dwelling and 2 per dwelling with 3 or more bedrooms. In addition, multi unit development with 5 or less dwellings shall provide 1 visitors space and developments with more</p>

	<p>metres of land zoned, B3 Commercial Core, B4 Mixed Use or equivalent in a nominated regional centre</p> <p>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.</p> <p>Design Guidance</p> <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>Conveniently located charging stations are provided for electric vehicles, where desirable.</p> <p>Supporting facilities within car parks, including garbage, plant and switch rooms, storage areas and car wash bays can be accessed without crossing car parking spaces.</p> <p>Direct, clearly visible and well lit access should be provided into common circulation areas.</p> <p>A clearly defined and visible lobby or waiting area should be provided to lifts and stairs.</p> <p>For larger car parks, safe pedestrian access should be clearly defined and circulation areas have good lighting, colour, line marking and/or bollards.</p> <p>Excavation should be minimised</p>	<p>than 5 dwellings shall provide 0.5 spaces per dwelling for visitors.</p> <p>The required provision is therefore 43.5 spaces.</p> <p>The proposed parking provision is compliant with Council's minimum parking requirements with a provision of 44 car parking spaces. Council's traffic engineer has provided commentary stating that the treatment of Units with 'studies' should be treated as an additional bedroom, given the size of these areas, we disagree and believe the car parking requirements is adequate as proposed.</p> <p>No dedicated spaces provided for motorbikes or scooters. It is anticipated that these can be accommodated in the car spaces provided. No objection from Council's highway engineer.</p> <p>Council requires 1 bicycle parking space for every 12 units or 1 bicycle storage space for every unit. 4 bicycle parking spaces would be required and are provided in the basement. 10 bike storage spaces are also provided with additional storage space provided for every unit at the back of the car parking spaces.</p> <p>Charging stations not proposed.</p> <p>These areas are provided in locations without the need to cross car parking spaces.</p> <p>The lift is centrally located with the fire stairs located in the most suitable location to provide access to the street. There are 2 proposed fire stairs from both basement levels.</p> <p>Complies.</p> <p>Complies.</p>
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	<p>through efficient car park layouts and ramp design.</p> <p>Car parking layout should be well organised, using a logical, efficient structural grid and double loaded aisles.</p> <p>Protrusion of car parks should not exceed 1m above ground level. Design solutions may include stepping car park levels or using split levels on sloping sites.</p> <p>Natural ventilation should be provided to basement and sub-basement car parking areas.</p> <p>Ventilation grills or screening devices for car parking openings should be integrated into the facade and landscape design.</p>	<p>Access into the basement is proposed from the lowest level of the site to minimise the need for excavation.</p> <p>The car parking layout appears organised.</p> <p>Basement car park arrangement is satisfactory to Council highway engineers.</p> <p>Natural ventilation may be possible from the driveway.</p> <p>N/A</p>
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PART 4 – DESIGNING THE BUILDING

Amenity, Configuration and Performance

4A-1 Solar and Daylight Access – Design Criteria	<p>Design Criteria</p> <p>Living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid-winter in the Sydney Metropolitan Area and in the Newcastle and Wollongong local government areas</p>	<p>The proposal's balconies and living areas are orientated predominantly towards the street frontages which are east and west. Due to the sites orientation and location of buildings built close to the northern boundary solar access was discussed in detail with the architect. Numerous design changes were made to maximise solar and daylight access.</p> <p>As the shadow diagrams show, 7 units out of the 14 fronting Emily St meet this standard and 2 out of the 7 on Herbert Street. This equates to 41%.</p> <p>The architect has provided a study that extends the morning hours to 8am. Through this extension of an hour an additional 8 units receive 2 hours of solar access (70.8%).</p> <p>As well as the above the applicant has provided a daylight study to demonstrate the access to daylight as per 4A-2 of the ADG.</p> <p>Despite the lack of a direct northern frontage, and the configuration of the development on an irregular parcel of land, the</p>
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		<p>development has achieved adequate levels with respect to the availability of solar and daylight access, given the site's constraints and orientation.</p> <p>4 apartments will receive no direct sunlight between 9 am and 3 pm at mid-winter. This equates to 16.6% which is a minor non-compliance.</p>
4B-1 Natural Ventilation	<p>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</p> <p>Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line</p>	<p>19 of the 24 apartments achieve natural ventilation. This equates to 79% of units.</p> <p>Max. depth: 12.5m</p>
4C-1 Ceiling Heights	<p>Measured from finished floor level to finished ceiling level, minimum ceiling heights are:</p> <ul style="list-style-type: none"> Habitable Rooms – 2.7 metres Non-habitable Rooms – 2.4 metres For 2 Storey Apartments – 2.7m for main living area floor and 2.4m for second floor where its area does not exceed 50% of the apartment area Attic spaces – 1.8m at edge of room with a 30 degree minimum ceiling slope If building located in mixed use areas – 3.3m for ground and first floor to promote future flexibility of use. 	<p>Complies (refer Drawing No.3002).</p>
Apartment Size and Layout	<p>Apartments are required to have the following minimum internal areas:</p> <ul style="list-style-type: none"> Studio – 35sqm 	<p>Complies</p>

	<ul style="list-style-type: none"> • 1 bedroom – 50sqm • 2 bedroom – 70sqm • 3 bedroom – 90sqm <p>The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5sqm each.</p> <p>A fourth bedroom and further additional bedrooms increase the minimum internal area by 12sqm each.</p> <p>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.</p> <p>Habitable room depths are limited to a maximum of 2.5 x ceiling height.</p> <p>In open layouts (where the living, dining and kitchen are combined), the maximum habitable room depth is 8.0 metres from a window.</p> <p>Master bedrooms have a minimum area of 10sqm and other bedrooms 9sqm (excluding wardrobe space)</p> <p>Bedrooms have a minimum dimension of 3.0 metres (excluding wardrobe space)</p> <p>Living rooms or combined living/dining rooms have a minimum width of:</p> <ul style="list-style-type: none"> • 3.6m for studio and 1 bedroom apartments • 4.0m for 2 and 3 bedroom apartments 	
Private Open Space and Balconies	<p>All apartments are required to have primary balconies with the following minimum areas:-</p> <ul style="list-style-type: none"> • studio apartments – 4sqm • 1 bedroom apartments – 8sqm • 2 bedroom apartments 	Complies

	<p>– 10sqm</p> <ul style="list-style-type: none"> • 3 plus bedroom apartments – 12sqm <p>All apartments are required to have primary balconies with the following minimum depths:-</p> <ul style="list-style-type: none"> • studio apartments – nil min. depth • 1 bedroom apartments – 2.0m • 2 bedroom apartments – 2.0m • 3 plus bedroom apartments - 2.4m 	
Common Circulation and Spaces	<p>The maximum number of apartments off a circulation core on a single level is eight (8).</p> <p>For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40.</p>	Complies.
Storage	<p>In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided:</p> <ul style="list-style-type: none"> • studio apartments – 4m³ • 1 bedroom apartments – 6m³ • 2 bedroom apartments – 8m³ • 3 plus bedroom apartments – 10m³ <p>At least 50% of the required storage is to be located within the apartment.</p>	Plans provide storage in the units and basement.

5.1.4. Local Environmental Planning Instruments

The proposed development is defined as ‘multi-unit housing’ and ‘residential flat building’ and both uses are permissible with the consent of Council within the R1 General Residential zone according to the Canada Bay Local Environmental Plan 2013 (Canada Bay LEP). The objectives of the zone include:

- To provide for the housing needs of the community;
- To provide for a variety of housing types and densities; and
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.

Comment - The proposal is considered to be consistent with above objectives.

Following is a summary table indicating the performance of the proposal against relevant statutory standards of the CBLEP.

Requirement	Proposed	Compliance
CI 4.3 - Building Height		
Maximum height applicable to the site – 12m.	Maximum height – 12.9m	No
CI 4.4 - Floor Space Ratio (FSR)		
Maximum height applicable to the site – 0.75:1	Proposed FSR – 1.48:1	No
CI 5.9 - Preservation of trees and Vegetation		
A person must not ring bark, cut down, top, lop, remove, injure or wilfully destroy any tree or other vegetation to which any such development control plan applies	<p>No existing significant trees on the site. The Arborist Report states that 4/5 trees on site or on the property boundary are considered to be of low significance, with 1/5 trees on site having a medium significance value. All 5/5 trees are considered to be in 'fair' health with T1, T2, T3 and T4 proposed for removal due to declining health. All 5 trees are located within the site in positions where proposed building envelopes and excavation make removal necessary.</p> <p>The removal of these trees is considered acceptable as they are not of high significance to the site or surrounding areas and mitigating planting is proposed.</p> <p>Council's Landscape section reviewed the report and raised no objections.</p>	✓
CI 5.10 - Heritage Conservation		
Development consent is required for any of the following: (a) demolishing or moving a heritage item or a building, work, relic or tree within a heritage conservation area, (b) altering a heritage item that is a building by making structural changes to its interior (c) disturb or excavate an archaeological site while knowing, or having reasonable cause to suspect, that	Site is not listed as a heritage item or located in a conservation area, and is not within the immediate proximity to either.	✓

<p>the disturbance or excavation will or is likely to result in a relic being discovered, exposed, moved, damaged or destroyed,</p> <p>(d) disturbing or excavating an Aboriginal place of heritage significance,</p> <p>(e) erecting a building on land which is a heritage item or that is within a heritage conservation area,</p> <p>(f) subdividing land which is listed as a heritage item or that is in a heritage conservation area.</p>		
CI 6.1 - Acid Sulfate Soils		
<p>The subject site is mapped as containing class 5 Acid Sulfate Soils.</p> <p>Class 5 is defined as works within 500m of adjacent Class 1, 2, 3 or 4 land that is below 5m Australian Height Datum and by which the watertable is likely to be lowered below 1m Australian Height Datum on adjacent Class 1, 2, 3 or 4 land.</p>	<p>It is requested that a statement provided by a suitably qualified geotechnical engineer and submitted to Council to ensure that above statement is correct.</p> <p>As associated excavation remains above 5 AHD the proposed development is considered acceptable and testing is not warranted.</p>	✓

The applicant seeks to vary the development standards applying to height and FSR. Clause 4.6 of Canada Bay LEP provides for variation to development standards.

Clause 4.6 - Exemptions to Development Standards

- 1) *The objectives of this clause are:*
 - a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development, and*
 - b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*
- 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. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*
- 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) *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) *Consent must not be granted under this clause for a subdivision of land in Zone RU1, RU2, RU3, RU4, RU6, R5, E2, E3 or E4 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) *After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).*
- 8) *This clause does not allow consent to be granted for development that would contravene any of the following:*
 - a) *a development standard for complying development,*
 - b) *a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,*
 - c) *clause 5.4.*

Clause 4.6 allows Council to vary a control where a written request is made by an applicant demonstrating that two criteria are met. The criteria to be satisfied are that compliance with the standard is unreasonable or unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify contravening the standard.

The objectives of the provision would also need to be satisfied and are:

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

The consent authority should only exercise this power when it is satisfied that the proposed development will result in a better planning outcome than a complying development. The consent authority cannot vary the development standard unless it is satisfied that the written request by the applicant adequately addresses the two criteria, namely that compliance with the standard is unreasonable or unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify contravening the standard. The consent authority must also be satisfied that the development will be in the public interest because it is consistent with the objectives of the particular standard and those for the zone and the concurrence of the Director-General has been obtained. It is noted that Council has been advised by the Department of Planning and Environment that it can assume the concurrence of the Director-General when making a determination of the application.

In consideration of the applicant's written request to vary the maximum building height and the maximum floor space ratio development standards, the following assessment is provided:-

1. What Clause is sought to be varied:

Clause 4.3 (2) of the Canada Bay Environmental Plan 2013 (CBLEP 2013) states that 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. This map shows the maximum height permitted on the subject land is 12m. The applicant seeks to vary this development standard by 900mm or 7.5% resulting in a height of 12.9m.

Clause 4.4(2) of the CBLEP 2013 states that the maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map. The Floor Space Ratio (FSR) Map shows that the maximum FSR permitted on the subject land is 0.75:1. The applicant is seeking to vary this development standard by 884.45sqm or 72.5% resulting in an FSR of 1.48:1.

2. Clause 4.6 Objectives:

The following objectives are contained in Clause 4.6 of the Canada Bay Local Environmental Plan 2013:-

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

In consideration of the applicant's written submission, Council is satisfied that it is appropriate to invoke the provisions of Clause 4.6 to vary the FSR development standard in order to achieve a better planning outcome for the development of the subject site by allowing flexibility in the application of the maximum height and FSR given the circumstances of the development proposal as follows:-

- The subject site is an unusual configuration, resulting in an L shaped lot with a lesser frontage to Emily Street than to Herbert Street.
- The site is located on a block that is undergoing transition from light industrial to higher density residential.
- Potential amenity impacts have been addressed through appropriate redesign and substantial consultation has been undertaken with the independent assessors.

3. Clause 4.6(3) Provisions:

Sub-clause (3) of Clause 4.6 of the CBLEP 2013 states that 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 the following:

- (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.*

In consideration of the applicant's written submission, Council is satisfied that it is unreasonable and unnecessary to require strict compliance with the maximum height FSR development standard under Clause 4.3 (2) and 4.4 (2) of the CBLEP 2013, and that there are sufficient environmental planning grounds to justify contravening the height and FSR standard for the reasons set out below.

Council is also satisfied that the proposed development is in the public interest because it is consistent with the following objectives of the height development standard as contained in Clause 4.3(1) of the CBLEP 2013 which state as follows, for the reasons set out below:-

- (a) to ensure that buildings are compatible with the desired future character in terms of building height and roof forms,*
- (b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development.*

Council is also satisfied that the proposed development is in the public interest because it is consistent with the following objectives of the height and FSR development standard as contained in Clause

4.4(1) of the CBLEP 2013 which state as follows, for the reasons set out below:-

- (a) to ensure that buildings are compatible with the bulk and scale of the desired future character of the locality,*
- (b) to provide a suitable balance between landscaping and built form,*
- (c) to minimise the effects of bulk and scale of buildings.*

- The proposal will provide a residential flat building in an area undergoing transition from light industrial to higher density residential;
- The proposal is in keeping with the higher density development to the north and east, the development will enhance both Herbert and Emily Street, providing a residential development with good connection and interaction with the streets;
- The development will provide additional housing opportunities in the area, the design overcomes the site constraints to offer units with high quality amenity within a well serviced locality;
- The higher density development does not give rise to any unreasonable adverse amenity impacts in relation to neighbouring properties;
- The bulk and scale of the proposal is consistent with the adjoining buildings to the north, the wider Mortlake and Breakfast point area which is in keeping with the desired future character of this area;
- The proposal will introduce tree planting on both streets which will enhance the appearance of the proposal and its contribution to the streetscapes; and
- The additional landscaping will minimise the effect of the bulk and scale of the proposed additions when viewed from the street;
- The proposal is also generally consistent with the existing character for the area; and
- The proposal incorporates sustainable design measures, including solar PV.

Council is also satisfied that in accordance with sub-clause (4) (ii) of Clause 4.6, the proposal will be in the public interest because it is consistent with the following objectives of the R1 General Residential Zone in which the site is located, for the reasons stated below:-

- To provide for the housing needs of the community.
- To provide for a variety of housing types and densities.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.

To provide a range of small-scale retail, business and community uses that serve the needs of people who live or work in the surrounding neighbourhood.

- The proposal will provide a variety of 1, 2 and 3 bedroom units with quality amenity;
- The proposal will add to the diversity of housing types in the locality; and
- The site is well located in terms of access to the facilities within the wider Mortlake and Breakfast Point area;

In accordance with sub-clause (4) of Clause 4.6 of the CBLEP 2013, and in view of the above assessment, Council is satisfied that the applicant's written request to vary the height and FSR development standard adequately addresses the matters required to be demonstrated under sub-clause (3) and that the written submission is well-founded.

Sub-clause (4) (b) states that development consent must not be granted unless the concurrence of the Secretary of the Department of Planning and Environment (DPE) has been obtained. Council has been advised that it can assume the concurrence of the Secretary of the DPE. Under Sub-clause (5) the Secretary is required to consider the following when deciding to grant concurrence:-

- (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.*

Council is satisfied that the proposed contravention of the height and FSR development standard in this case will not raise any matter of significance for state or regional environmental planner and that the public benefit of the height and FSR development standard will be maintained.

The above additional assessment of the applicant's written submission under Clause 4.6 of the CBLEP 2013 is provided for the consideration of the Panel.

The applicant has submitted a written request to vary the two Development Standards being the Height of Buildings Standard and the FSR Standard. The Height of Buildings Standard is as follows:

The objectives of the Height of Buildings Standard are:

- a) to ensure that buildings are compatible with the desired future character in terms of building height and roof forms,*

- b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development.

Comment by Applicant:

Pursuant to Canada Bay LEP 2013 ("the LEP"), the maximum building height limit is 12 metres.

*The maximum building height of the proposal is 12.9m. (The predominant height, however, is less than 12.0m). Provided in **Attachment 1** are 12m height plane diagrams illustrating the very limited extent of the building that is above 12.0m in height. No adverse impacts arise from the small part of the proposed building which is above the 12.0m height limit.*

The proposal is consistent with these objectives (Height of Building Standard) for the following reasons:

- the height of the proposal, notwithstanding the requested variation to the height standard is appropriate for the conditions of the site and its context;*
- the extent of the requested variation is very limited in its extent, being confined to the uppermost part and roof of Unit 23 which has a "footprint" equating to less than 7.5% of the site area;*
- the height of the proposal is compatible with the bulk and scale of nearby buildings; and*
- the proposal will not result in any unreasonable visual impact, view loss, privacy or overshadowing impact.*

In relation to the FSR non-compliance the proponent submits that:

The relevant objectives in relation to FSR are:

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

- a) To ensure that buildings are compatible with the bulk and scale of the desired future character of the locality,*
- b) to provide a suitable balance between landscaping and built form,*
- c) to minimise the effects of bulk and scale of buildings.*

Comment by Applicant:

A maximum FSR of 0.75:1 is permitted on the site.

The site has an area of approximately 1,219.48m². Therefore, the LEP permits a maximum residential GFA of 914.61m² on the site. (Although with an affordable housing component, as approved in DA 502/2013/1 the maximum permissible GFA and FSR are 1,524m² and 1.25:1, respectively). The proposed residential GFA of 1,819.39m² equates to an FSR of 1.49:1,

which exceeds the maximum permissible residential (i.e. non-affordable housing) GFA by 904.78m².

The proposal is consistent with the objectives of the FSR standard for the following reasons:-

- the built form associated with the proposal, notwithstanding the requested variation to the FSR standard is appropriate for the site;*
- the bulk and scale of the proposal are compatible with the bulk and scale of the desired future character of the locality including that which has occurred, or which is likely to occur, on neighbouring sites;*
- as detailed in the traffic report submitted with the DA the proposal will not result in any significant generation of traffic;*
- indeed, the Traffic Report submitted with the DA states that the projected traffic generation will be very similar to or less than that of the industrial uses on the site;*
- the FSR which is proposed does not result in an unacceptable or unreasonable intensity of development; and*
- the proposal is well-designed, will make a positive contribution to the streetscape, will not result in any adverse impact and will provide additional housing opportunities in an area of high amenity.*

The applicant submits that the standard is unreasonable and unnecessary in this instance for the reasons set out above.

Comment: The proposed building exceeds both the height and floor space ratio Development Standards that apply to the subject site.

Height of Buildings Standard

The Mortlake Point area is undergoing transition with redevelopment of existing industrial sites for medium and high density residential development within the immediate locality. The proposal is a high quality design which will offer a variety of apartment types (1 -3 bedrooms) including accessible housing units.

Given the context of the site, it is considered that the height variation will not adversely impact the amenity of adjoining properties on Emily Street or Herbert Street and the building will assist in improving the streetscape contributing to future character of the area. It is considered that the proposal will not result in any unreasonable visual impact, view loss or privacy impact subject to the measures discussed previously.

Additional overshadowing to the south and west will occur, but this is not deemed to be unacceptable.

In consideration of the applicant's written submission, Council is satisfied that it is unreasonable and unnecessary to require strict compliance with the maximum height development standard under Clause 4.3 (2) of the CBLEP 2013, and that there are sufficient environmental planning grounds to justify contravening the height standard.

Council is also satisfied that the proposed development is in the public interest because it is consistent with the objectives for the height of buildings control.

The variation to the Height of Buildings Standard is therefore considered well founded.

FSR Standard

The proposed FSR is 1.48:1 compared to the maximum permissible FSR of 0.75:1. The objectives of the FSR refer to bulk, scale and desired future character. Neighbouring residential development within the area exceed the permissible FSR and this has established the future character for the area which is out of step with the LEP.

The permissible FSR equates to 914.61m² of GFA. The proposal seeks approval for 1803.64m² an additional 889.03m². The Clause 4.6 Variation Request prepared by BBC Consulting Planners notes the previous DA reference 502/2013/1 which had a maximum permissible GFA of 1,524m² and FSR of 1.25:1 due to an affordable housing bonus which was approved by Council. The proposed development under the current DA does not include affordable housing units but includes a VPA.

Objectives (a) and (c) of the FSR Standard refer to the bulk and scale of the development as well as the desired future character of the area. The proposal is considered to be consistent with the bulk and scale of existing and approved development and consistent with the developing character of the area. Objective (b) requires a suitable balance between landscaping and built form. Landscaping is proposed to ground floor and third floor levels by way of grassed and paved communal open space areas, private open space areas and planters located on ground floor, second floor and third floor levels. The tree planting at ground floor on both street frontages will substantially improve the character of the area and more closely relate to the character of the adjacent Breakfast Point area.

Therefore, in consideration of the Applicant's written request to vary both the Height of Buildings Standard and the FSR Standard, it is noted that both variation requests are well founded and address the required criteria. For the proposed development, compliance with the Development Standards is considered unnecessary and unreasonable in the circumstances of the case as the objectives of the LEP and DCP are satisfied by the proposal and because there are sufficient environmental planning grounds to justify contravening the Standards. As such, the proposed variation to the Development Standards are considered acceptable.

5.2. Draft Environmental Planning Instruments [Section 4.15 (1) (a) (i & ii)]

The proposed development is affected by the provisions of the Special Precincts Development Control Plan (SPDCP) which incorporates the former Mortlake DCP. This new adapted DCP came into effect in March 2017.

Part 2.10 entitled ‘Mortlake Point’ of the Special Precincts DCP sets out the requirements for Mortlake Point. The relevant objectives that apply to the proposed development are as follows:

- Ensure that all potential amenity impacts of proposed development are mitigated through appropriate design responses, and
- Ensure that new residential development provides an acceptable level of amenity where located adjacent to non-residential land uses, through design responses that mitigate any impact from existing non-residential land uses.

A summary table indicating the performance of the proposed development against relevant numerical standards is as follows:

Non Statutory Standards (DCP, Codes, Policies)

Control	Location	Standard	Proposed	Compliance
Height		12m (LEP Standard)	As above	No (refer LEP section)
Setbacks	Emily Street (Eastern Boundary)	7.5	2.6 – 6m	No
	Herbert Street (Western Boundary)	7.5m	6.8m	No
	Northern Boundary	3m	0m	No
	Southern Boundary Where Non-Residential development is directly adjacent to residential development	4m	0m - 4.5m (in part)	No
Parking	Residential Spaces	31.5	44	Yes
	Visitor Parking	12	12/44	Yes
Total Parking		43.5	44	Yes

The non-compliances detailed in the table above are discussed in detail below:

Setback/Street building line

The SPDCP states that the required front setback is 7.5m.

The objectives of the building setback Control are to ensure that new development:

- a) Provides appropriate relationship to the existing streetscape, by ensuring uniform built form patterns in new development,
- b) Ensures that new development contributes to the public domain in Mortlake Point by providing front setbacks that ensure a comfortable street environment for pedestrians in terms of providing solar access, appropriate human scale and a healthy environment for street vegetation;
- c) Strengthens the relationship of new development in Mortlake Point to significant landmarks in the immediate and broader context; and
- d) Provide side and rear setbacks that provide adequate opportunity for ventilation, solar access,
- e) View sharing and privacy in residential buildings.

The streetscape setback is not uniform within the area and most recent developments within the locality have not adopted a reduced setback. The chosen setbacks seeks to respond to the existing setbacks of the residential apartments to the north whilst creating a high quality environment for the area. The reduced setback of approximately 2.6m-6m to the outside walls of the ground level balconies of the building on Emily Street and 7m to Herbert Street is acceptable in this case, as the design of the building meets the objectives of the ADG in relation to public domain interface. The ADG promotes a street frontage that defines the street, by facing and incorporating direct access. For the interface with Emily and Herbert Street to be meaningful, the reduced setback is appropriate. All ground floor units have direct primary access from their respective streets to promote activity and contribute to the safety of the public domain. This will also substantially improve the existing interface along the streets. The reduced setback proposed will not result in detrimental impacts to the overshadowing of the streetscapes along Emily Street and Herbert Street.

Objective 08 of 'Streetscape and Public Domain' of section 2.10.2 of SPDCP requires "*that new development within Mortlake Point makes a positive contribution to the streetscape and public domain in the area by ensuring a safe, attractive and comfortable environment*". As detailed above, this objective is met through the proposed design and its strong interface with the street.

This part of the DCP also contains general compatibility standards for all development to assist in meeting the objectives of this DCP, these are as follows:

C1) All development is to utilise a continuous buffer treatment along the interface with adjacent non-compatible land uses. In particular, this should apply to the side and rear boundaries of proposed developments.

Comment: There are no non-compatible land uses adjacent to the subject site. There are no boundary treatments between the side setbacks of the site, as the building has a nil setback proposed to the northern and southern boundaries. It is considered that this setback will not impact adversely upon neighbouring properties.

C3) Development is to use appropriate site layouts that use buildings, walls and other physical aspects to minimise environmental impact on adjacent land uses.

Comment: The proposed development has been assessed as detailed in this report and will have acceptable impact on adjacent land uses. The proposal is designed with adequate boundary treatments and reasonable setbacks, given the constraints of the site, and the pattern of development in the area to ensure that residents are protected noise and other associated issues from nearby non-residential uses.

C4) Adequate provision shall be made for off-street parking on all developments to ensure that no conflicts arise between residential and non-residential developments in the utilisation of on-street parking generally

Comment: All car parking is located in the basement to the satisfaction of Council's highway engineers.

Compatibility Requirements for Residential Development

C15) External walls facing non-residential properties are to be constructed of materials with good sound insulating quality and no large openings (including windows) that would transmit noise.

Comment: The proposed materials and glazing will be constructed to the relevant BCA standard. Adjacent uses are typically light industrial and are contained to the internal ground floor areas of both No. 12 Emily Street to the north and No. 11 Herbert Street to the south. Appropriate boundary treatments, building positioning and apartment layout and design shows evidence that the proposal will not be affected by these neighbouring uses.

C16) The building plan; walls, windows, doors and roof are to be designed to reduce intrusive noise levels from potential sources of noise emanating from adjacent non- residential uses. Attention should be paid to re-orientating noise sensitive rooms (living, dining, bedrooms) away from potential sources of noise.

Comment: The proposed materials and glazing will be constructed to the relevant BCA standard.

Council's Environmental Health Officers have not raised any concerns in relation to noise.

C17) Balconies and other external building elements are to be located, designed and treated to minimise noise infiltration.

Comment: The proposed materials and glazing will be constructed to the relevant BCA standard. Council's Environmental Health Officers have not raised any concerns in relation to noise.

C18) Where windows are to face non-residential development, they are to be fitted with noise-attenuating glass to minimise the impact of background noise from non-residential development.

Comment: Unit 03 on ground floor has 1 window that face No. 11 Herbert Street boundary. There is a 4.5m setback between Unit 03 and No. 11 Herbert Street which comprises the vehicular access driveway into the basement car park on the subject site. This setback along with the fact that the adjacent industrial use is wholly contained within the building should ensure acoustic privacy.

C19) Landscaping with appropriate setbacks is to be provided on communal and private open space to create a visual buffer between adjacent non-residential development and filter any air-borne particles generated by industry.

Comment: A landscaped buffer is provided around the periphery of the site and on the ground floor and roof level.

C20) Maximum height of new development is not to exceed 12 metres from natural ground level to the uppermost point of the roof structures.

Comment: Refer discussion in section 5.1.4 'Local Environmental Planning Instruments' above.

C21) Building heights are to respond to the topography of Mortlake Point through building heights that ensure the sharing of views to significant land marks and encourage appropriate response to the natural topography.

Comment: The building height adapts to the topography of the site. Whilst the height exceeds that permissible under the LEP Height of Buildings Standard, it has been assessed as appropriate given the context of the site and the surrounding development in the area. No significant views are currently available across the site. Water views to Kendall Bay are severely restricted by the Breakfast Point development. As such, it is considered that there are no significant views or vistas available to the subject site.

C22) Where appropriate, new development is to adopt the predominant height and shape of adjoining development and have similar bulk and mass, taking into account the size and shape of the lot, with taller buildings or elements of one building placed on the higher parts of the site.

Comment: As detailed throughout the report, the development reflects the medium to higher density development within the area and is appropriate in bulk and scale to development within the precinct despite the size and shape of the lot. The setback of the fourth level from the frontages makes it less visible from the street. It is considered that the proposed height, bulk and scale is consistent with the character of the immediate locality and with the Mortlake Precinct, an area under transition.

5.3. **Development Control Plans, Council Policies or Codes [Section 4.15(1)(a)(iii)]**

The proposal is permissible within the current zoning and is compatible with the medium and higher density character of development within the Mortlake Precinct.

Overshadowing

Council's City of Canada Bay Development Control Plan 2017 states the following Controls in relation to overshadowing and solar access. These Controls have been considered against the proposal. The objective of the Controls is to maximise solar access to living areas and private open space in order to improve residential amenity and to minimise the amount of overshadowing of neighbouring developments and outdoor spaces to maintain their amenity.

E2.3 (C1) New buildings and additions are sited and designed to maximise direct sunlight to north-facing living areas and outdoor recreation areas.

Comment: The majority of the building faces east along Emily Street and partly west facing Herbert Street. Units to the rear face west, and no units have a sole southerly or northerly aspect. Direct solar access will be afforded to 70.8% of the units based on an 8am-3pm daylight access study.

E2.3 (C2) Direct sunlight to north facing windows of living areas and private open space of adjacent dwellings should not be reduced to less than 3 hours between 9.00am and 3.00pm on 21 June.

Comment: The higher density development on the site will create additional overshadowing to that of the existing development for adjoining properties. The overshadowing impact to No. 17 Herbert Street will be slightly intensified. Part of the public domain along Herbert Street will also have additional overshadowing impacts.

The communal open space (to the north west) will receive adequate solar access between 9am – 12pm, this area will not be overshadowed from 9am up to 3pm. There will also be shadow cast along the north- eastern facing balconies after 10am.

Additionally, Units 5, 7, 1, 2, 8 and 9 do not meet the requirement for a minimum of 2 hours direct sunlight access.

The upper levels (3-4) are setback an additional 2-4m to the lower levels to minimise the overshadowing impacts to the streetscapes.

As detailed above the proposal will overshadow some public domain areas along the streetscape of both Emily Street and Herbert Street, as well as the roof of the neighbouring building to the south. It is considered that the land use to the south does not include residential components, therefore the overshadowing impact is considered acceptable.

Privacy

Visual and acoustic privacy has been adequately considered in the revised design.

On proposed ground floor level, the proposed communal open space adjoins the rear entrances of Units 04, 05, 06 and 07 that have a frontage to Emily Street. On first floor and second floor levels, the rear elevation of units with a frontage to Emily Street that overlook the communal open space on ground floor level, are generally consistent.

Privacy is to be maintained with street boundary fencing and proposed landscaped areas to support the boundary fences at street level. The third floor level has an increased setback to provide adequate privacy and solar access. Each balcony is segregated from each other with the exception of Units 12 and 13 which are adjacent and are separated only by a proposed privacy screen which appears to be of floor to ceiling height. Additional privacy screens are also proposed to further enhance privacy and minimise overlooking from neighbouring balconies. Vegetation is also proposed as boundary treatment between private open space areas and balconies for units on ground floor level.

The development is designed to minimise potential adverse visual and acoustic privacy impacts to occupants through the provision of adequate separation distances between habitable spaces consistent with SEPP 65 relevant DCP requirements.

For a further discussion with regard to amenity impacts refer to section 5.3.1 entitled ‘Apartment Design Guide (Compliance Table)’ within this report.

View Corridors/View Sharing

It is considered that there are no significant views, view corridors or vistas across the site from adjacent properties. The proposed development will not result in unreasonable view impacts suffered from adjoining properties in terms of private views. There will be no unreasonable view loss from the public domain.

Traffic generation, parking and loading

Part E3.9 of the CBDP prescribes the objectives and Council’s Controls for parking provisions as they relate to residential development.

The objectives under this section are as follows:

- O1. To provide off street parking for residents.
- O2. Provide vehicular and pedestrian safety.
- O3. To encourage the location of carports and garages behind the building line where possible.
- O4. To ensure that car parking structures respect the character of the street.

- O5. To ensure carports and garages etc are designed to be in sympathy with existing dwellings without becoming the dominant feature on the site.
- O6. To limit the width of driveways depending on site frontage.
- O7. To limit the number of garage doors to the street.
- O8. To provide vehicle parking at the rear of properties and off laneways instead of along the street where feasible.

Comment: As detailed in the table entitled ‘Non Statutory Standards (DCP, Codes, Policies) in Section 5.2 above, the amended design of the proposal provides adequate car parking in accordance with Council’s DCP and with a design to the satisfaction of Council’s Highway Engineer.

Setbacks

There are non-compliances in relation to the setbacks of the proposed development as stated in the DCP, previously detailed in the table in Section 5.2 above. As detailed in the assessment above, the site is constrained in terms of size, shape and building positioning. Despite these non-compliances, it is considered that the proposal will create a good public domain interface and is acceptable for the desired future character for the area.

The Height of Buildings Standard and FSR Standard non-compliances under the CBLEP 2013, are adequately justified by the Applicant within the Clause 4.6 Variation Requests and the variations are supported in the instance of this specific site. Refer to section 5.3.1 entitled ‘Local Environmental Planning Instruments’ for discussion.

Streetscape and urban character/Bulk and Scale/Building height/envelope

Having consideration for the requirements of SEPP 65 and the ADG as well as the merits of the proposal discussed throughout the body of this report, it is considered that the proposed development is satisfactory with regard to its street presentations, its urban character, height, bulk and scale as well as the extent of building envelope, despite setback non-compliances.

Social/Economic

The proposal is not expected to result in adverse social and economic implications.

Landscaping/Tree Removal

There are mature trees located on site as specified by the Arborist Report submitted with the DA. Four trees are identified with a priority for removal. The trees for removal are:

- T1: *Callistemon sp.* – Bottlebrush, positioned within the Emily Street frontage of the proposed development
- T2: *Grevillea robusta* – Silky Oak, positioned within the Emily Street frontage of the propose development
- T3: *Eucalyptus sp.* – Eucalypt, positioned within the Herbert Street frontage of the proposed development

- T4: *Angophora sp.* – Angophora, positioned within the Herbert Street frontage of the proposed development

An additional tree is recommended for removal:

- T5: *Eucalyptus microcorys* – Tallowood, positioned within the Herbert Street frontage of the proposed development

The Arborist Report states that the trees for removal are either declining, in poor form and/or located within the site in a position where they cannot be retained due to the proposed building envelopes and infrastructure.

It is clear that the proposal is limited as to the amount of landscape features it can provide due to the constraints of the site, however it does seek to improve on the current situation by providing communal landscaped areas, landscaping within the front setbacks of the units to the ground floor, and a green roof on part of the third floor.

Given the limited capacity of the site, the proposal is considered satisfactory with regard to the provision of quality private open space and landscape features and is located within close proximity to public parks and foreshore areas.

5.4. Likely Impacts of the Development [Section 4.15 (b)]

The proposed development has been assessed in relation to compliance with State and local planning controls. The site is considered suitable for the proposed residential development.

5.5. The Public Interest [Section 4.15 (e)]

A Planning Agreement between the developer and Canada Bay Council has been prepared. The agreement requires the developer to provide a monetary contribution of \$600,000.00 to be transferred to Council. The agreement is entered into at no cost to Council. In addition, Council may require Section 94 contributions in accordance with Council's Section 94 plans. Where practical, the contribution should be spent on services and facilities that would benefit the immediate locality.

Council's Section 94 plan for Mortlake requires payment of contributions towards community facilities and roads for non-residential development. In addition, Council may levy contributions for open space and drainage.

It is considered appropriate to levy for roads and community facilities as the development would generate increased demand for these facilities.

Council has required an independent assessment of the development application due to the conflict of interest.

The receipt of contributions as a result of the agreement will be in the interest of the community, however Council must also be satisfied that the development proposal is acceptable.

The proposed development is consistent with the objectives of the Environmental Planning and Assessment Act in so far as it promotes the co-ordinated and orderly, and economic use and development of the land. As a result, Council may be satisfied that the development subject to conditions is consistent with the public interest.

6. INTERNAL REFERRALS

6.1. Engineering – Stormwater Drainage

Amended stormwater plans have been submitted to address concerns originally raised by Council's engineering staff with the proposal. These plans are now considered satisfactory and relevant conditions have been included in the Recommendation above.

6.2. Environmental Health

The additional information is satisfactory in relation to Acid Sulphate Soils and Contamination and the relevant conditions have been included in the recommendation above.

6.3. Landscaping/Tree Removal

The proposal was deemed to be acceptable by Council's landscape architect subject to the recommended conditions above.

6.4. Traffic Engineering

The application was reviewed by Council's Traffic Engineer. Amended plans were prepared which addressed a number of the concerns raised initially. The officer raised no objection to approval subject to "deferred commencement" conditions of consent related to the driveway levels incorporating the standard layback and a footway crossing as well as changing the grade at the crest of the driveways to achieve compliance with AS/NZS 2890.1:2004.

6.5. Waste Management

Amended plans provide adequate waste storage facilities for the development, in a suitable location to the satisfaction of Council's internal department.

7. CONCLUSION

The proposed development is appropriately located within a R1 General Residential Zone under the provisions of the Canada Bay Local Environmental Plan 2013 however significant variations are sought from Council's normal controls as discussed in the report above.

The proposal is non-compliant with the Height of Buildings Standard and FSR Standard under CBLEP 2013 which has been considered under the provisions of two Clause 4.6 Variation Requests. The variations in this instance are supported with consideration of the Applicant's written request to vary the relevant standard.

The proposed development will exceed the permissible height and FSR, and setback Controls contained in the DCP. The height and density of the

proposed development is considered to be acceptable due to the nature and context of surrounding development in the immediate locality. Accordingly, the proposed scale of development is compliant with the character of the area and the proposed density is similar to the surrounding residential development context. The density of the development is supported as the site is within reasonable proximity and has access to public transport and public amenities.

The proposed design will achieve a beneficial interface with the public domain on the Emily Street and Herbert Street elevations. The proposed development will improve the character of Emily Street, providing a revitalisation of the subject site and a contemporary design consistent with the future development on Mortlake Point.

Having regard to the merit assessment of the proposal, Council may be satisfied that, despite the departures to the Controls, the development has been designed in an acceptable manner, which responds to the site constraints to present a high quality design outcome.

It is therefore considered that the variation to the Development Standards should be supported and the application approved.

RECOMMENDATION

Pursuant to Section 4.16 of the Environmental Planning and Assessment Act 1979 (as amended)

- A. THAT Canada Bay Independent Hearing and Assessment Panel, assume the concurrence of the Secretary: Department of Planning and Environment and invoke the provisions of clause 4.6 of the Canada Bay Local Environmental Plan 2013 and resolve that in the circumstance of the case strict application of statutory standards contained in clause 4.3 'building height' and clause 4.4 'floor space ratio' of Canada Bay Local Environmental Plan 2013 is unnecessary and unreasonable.
- B. THAT Canada Bay Independent Hearing and Assessment Panel grant consent to Development Application No. (DA2017/0363) for the demolition of existing structures on site, excavation, other preparatory site works, erection of a new residential flat building comprising 24 Units and 44 car parking spaces, and the carrying out of associated works including landscaping subject to the following site specific conditions. In granting consent, the Panel has regard to the merit considerations carried out in the assessment report and pursuant to s.4.15 of the Environmental Planning and Assessment Act. On consideration of the merits of the case, the Panel acknowledges the areas of non-compliance arising from the application but notes that it supports the application based on the particular circumstances of the case and does not consider that the consent gives rise to a precedent.

General Conditions:

1. **DAGCA01 - Approved Plans and Supporting Documents**

The development shall be carried out substantially in accordance with the approved stamped and signed plans and/or documentation listed below **except where modified by any following condition**. Where the plans relate to alteration or additions only those works shown in colour or highlighted are approved.

Reference / Dwg No	Prepared By	Date/s
OMA08007, Sheets 0000(F), 0100(F) 0101(E) 1001(E) 1000(E), 1100(F) 1101(F) 1102(F) 1103(F) 2000(F) 2001(F) 3000(F) 3001(F) 3002(F) and 9000(F)	Integrated Design Group	20/02/17(E) 07/03/18(F)
BASIX Certificate (715966M_03)	ESD Synergy	12/03/18
Landscape Plan (LP02) Issue C	Selena Hannan Landscape Design	26/03/18
Access Report (Issue DA02)	Funktion	27/03/18
Arboricultural Impact Assessment (3828)	Redgum Horticultural	26/03/18

Note 1: *Modifications to the approved plans will require the lodgement and consideration by Council of a modification pursuant to Section 4.55 of the Environmental Planning and Assessment Act.*

Note 2: *A warning to all Accredited Certifiers. You should always insist on sighting the original Council stamped approved plans/documentation and not rely solely upon the plan reference numbers in this condition. Should the applicant not be able to provide you with original copies, Council will provide you with access to its files so you that may review our original copies of approved documentation.*

Note 3: *The approved plans and supporting documentation may be subject to conditions imposed under section 4.17 of the Act modifying or amending the development (refer to conditions of consent which must be satisfied prior to the issue of any Construction Certificate).*

(Reason: To confirm and clarify the terms of consent)

2. **DAGCA03 - Construction within Boundary**

All approved construction including but not limited to footings, walls, roof barges and guttering are to be constructed wholly within the boundaries of the premises.

(Reason: To ensure compliance with approved plans)

3. **DAGCB02 - Compliance with Disability Discrimination Act**

This approval does not necessarily protect or guarantee against a possible claim of discrimination (intentional or unintentional) under the *Disability Discrimination Act 1992*, and the applicant/owner is therefore advised to

investigate their liability under this Act. **Note: Disability (Access to Premises - Buildings) Standards 2010** - As of 1 May 2011, if access is provided to the extent covered by this Standard, then such access cannot be viewed as unlawful under the Disability Discrimination Act 1992.

(Reason: To inform of relevant access requirements for persons with a disability)

4. **DAGCD01 - Approved Stormwater Drainage Design**

The stormwater drainage system for the proposed development shall be constructed in accordance with the following approved plans and documentation, endorsed with Council's Stamp, and Council's "Appendix 2 - Engineering Specifications of the Canada Bay Development Control Plan", except where amended by other conditions of consent:

Drawing No.	Prepared by:	Dated:
1322-S1/7 to S7/7 (Revision D)	John Romanous and Associates	01/04/18

Important Note:

- The approved Stormwater Drainage Plan as identified above is for Concept Only. The designer is responsible for providing sufficient information and/or updates to the Stormwater Drainage Plan suitable for Construction Certificate approval.
- Should any changes be required to the approved stormwater drainage plan as referred to above, the amended design shall achieve equivalent performance standards in accordance with Council's "Appendix 2 - Engineering Specifications of the Canada Bay Development Control Plan".
- Construction Certificate Approval does not include approval for works external to the property. Where the proposed design extends beyond the property boundary, separate approval under Section 138 of the Roads Act 1993, must be obtained from Council prior to the commencement of works. The applicant is advised to contact Council for clarification of proposed works for which approval under Section 138 applies.

(Reason: Stormwater management)

Conditions which must be satisfied prior to the commencement of demolition of any building or structure

5. **DAPDB01 - Construction Certificate - Prior to the Commencement of any Demolition Works**

Where demolition is associated with the erection of a new structure, or an altered portion of or an extension to an existing building, the demolition of any part of a building is "commencement of building work" pursuant of section 6.6 of the Act. In such circumstance all conditions of this consent must be satisfied prior to any demolition work. This includes, but is not

limited to, the **issue of a Construction Certificate, appointment of a PCA and Notice of Commencement under the Act.**

(Reason; Statutory Requirement)

6. **DAPDB02 - Demolition**

Demolition - General

- a. That two (2) working days (i.e. Monday to Friday exclusive of public holidays) prior to the commencement of any demolition work, notice in writing is to be given to the Council. Such written notice is to include:
 - The date when demolition will commence,
 - Details of the name, address and business hours contact telephone number of the demolisher, contractor or developer.
 - The licence number of the demolisher, and relevant WorkCover licenses, (see minimum licensing requirements in (d) below, and
 - Copies of the demolisher's current public liability/risk insurance policy indicating a minimum cover of \$10,000,000.00.
- b. Demolition of buildings and structures must comply with all current and relevant Australian Standards.
- c. Demolition works are restricted as follows:
 - Monday to Saturday inclusive - 7:00am - 5:00pm
 - Sundays and Public Holidays - No work
- d. At least two (2) working days (i.e. Monday to Friday exclusive of public holidays), the developer or demolition contractor must notify adjoining residents prior to demolition commencing advising the following:
 - The date when demolition will commence;
 - Details of the name, address and business hours contact telephone number of the demolisher, contractor or developer;
 - The telephone number of WorkCover's Hotline 13 10 50.

Demolition Involving the Removal of Asbestos

General Information

Homes built or renovated prior to 1987 are likely to contain asbestos. Asbestos is most commonly found within eaves, internal and external wall cladding, ceilings and walls (particularly within wet areas such as bathrooms and laundries), and fences. Unless properly handled, asbestos disturbed or removed during renovations can cause the development of asbestos related diseases, such as asbestosis, lung cancer and mesothelioma.

To ensure work does not cause undue risk please see the following site for further information: www.asbestosawareness.com.au

Asbestos to be removed by licensed asbestos removalist

All works removing asbestos containing materials must be carried out by a suitably licensed asbestos removalist duly licensed with Workcover NSW, holding either a Friable (Class A) or a Non- Friable (Class B) Asbestos

Removal License which ever applies AND a current WorkCover Demolition License where works involve demolition.

NOTE:

- Removal of asbestos by a person who does not hold a Class A or Class B asbestos removal license is permitted if the asbestos being removed is 10m² or less of non-friable asbestos (approximately the size of a small bathroom).
Friable asbestos materials must only be removed by a person who holds a current Class A asbestos license.
- To find a licensed asbestos removalist please see www.workcover.nsw.gov.au

Compliance with applicable Legislation, Policies and Codes of Practice

Asbestos removal works are to be undertaken in accordance with the following:

- NSW Work Health and Safety Act and Regulation 2011;
- Safe Work Australia Code of Practice for the Management and Control of Asbestos in the Workplace [NOHSC:2018(2005)]
- NSW Government WorkCover Code of Practice - How to Safely Remove Asbestos;
- NSW Government WorkCover Code of Practice - How to Manage and Control Asbestos in the Workplace; and

Clearance certificate

Following completion of asbestos removal works undertaken by a licensed asbestos removalist re-occupation of a workplace must not occur until an independent and suitably licensed asbestos removalist undertakes a clearance inspection and issues a clearance certificate.

Notification of asbestos removal works

At least two (2) working days (i.e. Monday to Friday exclusive of public holidays), the developer or demolition contractor must notify adjoining residents prior to the commencement of asbestos removal works. Notification is to include, at a minimum:

- The date and time when asbestos removal works will commence;
- The name, address and business hours contact telephone number of the demolisher, contractor and/or developer;
- The full name and license number of the asbestos removalist/s; and
- The telephone number of WorkCover's Hotline 13 10 50

Warning signs must be placed so they inform all people nearby that asbestos removal work is taking place in the area. Signs should be placed at all of the main entry points to the asbestos removal work area where asbestos is present. These signs should be weatherproof, constructed of light-weight material and adequately secured so they remain in prominent locations. The signs should be in accordance with AS 1319-1994 Safety signs for the occupational environment for size, illumination, location and maintenance.

Barricades

Appropriate barricades must be installed as appropriate to prevent public access and prevent the escape of asbestos fibres. Barricades must be installed prior to the commencement of asbestos removal works and remain in place until works are completed.

(Reason: To ensure compliance with the relevant legislation and to ensure public and work safety)

7. DAPDB03 - Site Safety Fencing - Demolition only

Erect site fencing to a minimum height of 1.8m complying with WorkCover Guidelines, to exclude public access to the site throughout the demolition. The fencing **must be erected before the commencement of any demolition work** and maintained.

The site shall be maintained in a clean and orderly condition during demolition works.

Hoardings

If applicable, a separate Hoarding Application for the erection of an A class (fence type) or B class (overhead type) hoarding along the street frontage(s) complying with WorkCover requirements must be obtained including:

- payment to Council of a footpath occupancy fee based on the area of footpath to be occupied and Council's Schedule of Fees and Charges before the commencement of work; and
- provision of a Public Risk Insurance Policy with a minimum cover of \$10 million in relation to the occupation of and works within Council's road reserve, for the full duration of the proposed works, must be obtained with a copy provided to Council.

(Reasons: Statutory Requirement and health and safety)

8. DAPDB05 - Erosion and Sediment Control During Demolition

Erosion and sedimentation controls shall be in place **prior to the commencement of demolition works** and shall be maintained throughout the demolition of the building and any regrading of the ground levels, approved removal of vegetation etc. The controls shall be installed in accordance with the details approved by Council and/or as directed by Council officers. These requirements shall be in accordance with Managing Urban Stormwater - soils and Construction produced by Landcom (Blue Book). A copy of the Erosion and Sediment Control Plan must be kept on site during the demolition works and made available to Council officers on request.

(Reason: Environmental protection)

Conditions which must be satisfied prior to the issue of a Construction Certificate

9. DACCB02 - Damage Deposit for Council Infrastructure

A Damage Deposit (calculated in accordance with Council's adopted Fees and Charges) of **\$75,000** shall be paid to Council **prior to the issue of the Construction Certificate**.

This Damage Deposit shall be refunded upon completion of all works, at the Occupation or Final Certificate stage.

Any costs associated with works necessary to be carried out to rectify any damages caused by the development, shall be deducted from the Damage Deposit.

Note: Full panel concrete footpath replacement in areas where connection to all services are required. This includes driveways and road concrete panels. This will stop differential settlement and maintain the integrity of council infrastructure and asset.

(Reason: Protection of Council infrastructure)

10. DACCB03 - Long Service Levy Payments

The payment of a long service levy as required under part 5 of the *Building and Construction Industry Long Service Payments Act 1986*, in respect to this building work, and in this regard, proof that the levy has been paid, is to be submitted to Council **prior to the issue of a Construction Certificate**. Council acts as an agent for the Long Services Payment Corporation and the levy may be paid at Council's Office.

(Reason: Statutory requirement)

11. DACCB04 - Section 7.11 Contributions

The following Section 7.11 Development Contributions are required towards the provision of public amenities and services in accordance with the City of Canada Bay s7.11 Development Contributions Plan.

Based on the following rates, as at March 2018 (CPI 113.6)

Infrastructure Type	Studio / One bedroom dwelling	Two bedroom dwelling	Three + bedroom dwelling
Community Facilities	\$1,143.17	\$1,627.41	\$2,179.39
Civil Infrastructure	\$1,109.89	\$1,580.03	\$2115.94
Plan Preparation and Administration	\$125.55	\$178.73	\$239.35
Open Space and Recreation	\$8,112.24	\$11,548.47	\$15465.32
TOTAL	\$10,490.85	\$14,934.64	\$20,000

Based on the following number of Dwellings and Bedrooms:

No. of Dwellings	No. of One beds	No. of Two beds	No. of Three beds
	11	11	2
TOTAL	\$115,399.35	\$164,281.04	\$40,000

TOTAL	\$319,680.39
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Any change in the Consumer Price Index between March 2018 (CPI 113.6) and the date that the Section 7.11 Development Contribution is paid, will be added/subtracted from the amount cited above.

Contributions must be receipted by Council and submitted to the Accredited Certifier **prior to the issue of any Construction Certificate**.

Please present a copy of this condition when paying the contribution at the Customer Service Centre so that it can be recalculated.

A copy of the City of Canada Bay Section 7.11 Development Contributions Plan may be obtained from Council's website.

(Reason: To retain a level of service for the existing population and to provide the same level of service to the population resulting from new developments)

12. **DACCE01 - Amendments to Approved Plans**

The following amendments shall be made to the approved plans prior to the issue of a Construction Certificate:-

Stormwater Management

- A site catchment plans is to be provided to show which areas are to be captured by the OSD system and which areas will bypass the OSD system.
- The Catchment Based Method requires that the OSD configuration to be a "high early discharge" arrangement. Therefore the OSD tank will need to be amended to include a control pit with all the pipes being routed into this control pit before flowing back into the main tank chamber. If no HED is provided, basic storage volume shall be increased by 20%.
- For all sub-floor or basement levels, consideration must be given to the collection and safe disposal of sub-surface water. Guidelines for the safe disposal of sub-surface water is given in section "Subsurface water" in the DCP Appendix 2, page 332. Generally seepage water must be discharged into an underground (public) drainage pipe system. Council does not permit subsurface water being discharged either directly or indirectly (via OSD) to the kerb & gutter without appropriate control measures outlined as follows.
 - Sub-surface water shall be directed to nearest Council's underground drainage OR
 - Basement is to be fully tanked so that no seepage can escape. In this case, a full structural detail of the basement to show that the structure can withstand to the effect of pore pressure and buoyancy OR
 - A holding tank is to be provided to store seepage water for a period of 24 hours. The discharge to the kerb is to be restricted between 11.00pm to 3.00am with a maximum discharge rate of 5.0 L/s. A minimum of seepage rate of 0.001 L/s/sqm shall be adopted to

- calculate the capacity of holding tank unless a geotechnical report by a qualified geotechnical consultant is submitted to suggest otherwise
- Only roof water can be collected by the rainwater harvesting system in accordance with Sydney Water Guidelines. All balcony sumps and on-ground pits must not be drained into the rainwater harvesting system.
- The Stormwater Drainage Drawings will need to be amended to address all of the above and must include all the appropriate stormwater drainage controls in accordance with Council's DCP, the Australian Rainfall and Runoff Volume 2, and the AS3500.3 Plumbing and Drainage Code, including full supporting documentation and calculations.
- The minimum supporting calculations, information and details required to be provided on the drawings is as per Council's DCP Appendix 2, "Document Submission" on page 336.

Driveway/Access

- Longitudinal section along the extreme wheel path of the proposed driveways demonstrating compliance with the scraping provisions of AS/NZS 2890.1:2004 shall be provided. It shall include all levels, grades, transitions and headroom clearances. It shall extend from the centre-line of the roadway through to the parking area. Footpath cross-fall shall be maintained between a maximum of 2.5% and a minimum of 0.5% and graded towards the street.
- The driveway profile shall also include a standard layback crossing with a maximum of 100mm level difference from the invert of gutter to top of layback.
- The maximum allowable width at the kerb line for the new driveway for this development can be up to 6.0m, provided that safe pedestrian movement across the footway can be provided. Layout plan to be submitted to the Council.
- Proposed driveway shall have a crest to prevent the runoff from the street entering the garage in case of street flooding. Proposed driveway shall be designed to achieve at least 250mm protections (from invert of gutter to crest) against runoff from the street.
- The proposed driveway must not have a cross-fall greater than 2.5% where it meets the existing footpath and this must be graded towards the kerb.

Note: This involves a change to the Development Application plans as submitted to and approved by Council. Any changes in this regard shall be reflected as amended plans to be submitted to the Accredited Certifier **prior to the issue of a Construction Certificate** for the proposed development.

(Reason: To confirm and clarify the terms of Council's approval)

13. DACCE02 - Construction Management Plan

Prior to the issue of a Construction Certificate, submit to the Accredited Certifier a Construction Management Plan that clearly sets out the following:

- (a) What actions and works that are proposed to ensure safe access to and from the site, and what protection will be provided to the road and footpath area from building activities, crossings by heavy equipment, plant and materials delivery, or static loads from cranes, concrete pumps and the like.
- (b) The proposed method of loading and unloading excavation machines, building materials, formwork, and the erection of any part of the structure within the site.
- (c) The proposed areas within the site to be used for a builder's site office and amenities, the storage of excavated material, construction materials and waste containers during the construction period.
- (d) How it is proposed to ensure that soil/excavated material is not transported on wheels or tracks of vehicles or plant and deposited on surrounding roadways.
- (e) 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 by a Chartered Civil Engineer.
- (f) A Soil and Water Management Plan detailing all sedimentation controls.

(Reason: Safety, amenity and protection of public infrastructure and the environment)

14. DACCE04 - Obtaining a Construction Certificate for Building Work

This Development Consent does not constitute approval to carry out construction work. Construction work may only commence **upon the issue of a Construction Certificate, appointment of a Principal Certifying Authority (PCA), and lodgement of Notice of Commencement.**

Please note that if demolition works forms part of the extent of works approved in the same application, then demolition must not commence **prior to the issue of a Construction Certificate.**

(Reason: Information)

15. DACCF02 - Landscape Maintenance Strategy

To ensure the survival of landscaping following works, a landscape maintenance strategy for the owner/occupier to administer over a 12 month establishment period following the issue of the Occupation Certificate shall be prepared and provided to the satisfaction of the Accredited Certifier **with the Construction Certificate application.** The strategy is to address maintenance issues such as, but not limited to plant survival, irrigation, soil testing, weeding, staking, fertilizing, remedial pruning and plant replacement.

(Reason: Ensure landscape survival)

16. DACCF04 - On Slab Landscaping

To ensure the site landscaping thrives the on slab landscaping shown on the approved landscaping plan is to be designed to include a minimum soil depth of 650mm for shrubs and trees and 300mm for grass and ground covers,

adequate drainage and a permanent, automatic irrigation system conforming to Sydney Water's current *Waterwise* Policy. Details shall be submitted **with the Construction Certificate application**.

(Reason: Ensure landscape survival)

17. DACCG02 - Bicycle Storage Provision

Provision for bicycles shall be in accordance with the City of Canada Bay Development Control Plan for Bicycle Parking and Storage Facilities. Details shall be submitted **prior to the issue of the Construction Certificate**.

(Reason: Convenience)

18. DACCG06 - Maintaining Sight Lines (multi- unit development)

All new walls adjacent to vehicular crossings must be lowered to a height of 600mm above the internal driveway level for a distance of 1.50m within the site or splayed 2.5m by 2.0m to provide satisfactory sight lines. Details are to be submitted to the Accredited Certifier **prior to the issue of a Construction Certificate** showing compliance with this condition.

(Reason: Safety)

19. DACCG08 - Off Street Car Parking Space Provision

Car parking spaces shall be provided in accordance with the approved plans for the parking of resident and visitor vehicles on the site. In this regard, forty four (44) spaces are provided, twelve (12) of which are to be for visitor parking.

- All car spaces shall be allocated and marked accordingly. If the development is to be strata subdivided, the car park layout must respect the above allocation and thereafter regarded as part of the entitlement of that unit.
- Each space shall have minimum dimensions in accordance with the relevant Australian Standard.
- Under no circumstances shall parking spaces be sold, let or otherwise disposed of for use other than in accordance with this condition.
- Visitor spaces shall only to be used by persons visiting residents of the property or persons with legitimate legal reason to be upon the land.
- Access to visitor parking shall not be restricted without development approval.
- A sign shall be erected at the vehicular entrance indicating the availability of visitor parking. Such spaces shall be clearly marked.

Details are to be submitted to the Accredited Certifier **prior to the issue of a Construction Certificate** showing compliance with this condition.

(Reason: Parking and access)

20. DACCG09 - Ramp Width Requirements (multi-unit development)

The internal driveway must be a minimum 5.50m wide (clear width) for the

first 6 metres inside the property so as to allow entering & exiting vehicles to pass within the site. Should the driveway narrow after this point it is then to be designed with a minimum 1.5m x 1.5m splay to allow the passing to work. The building plans shall indicate compliance with this requirement **prior to the issue of a construction certificate**.

(Reason: Safety and traffic management)

21. DACCG10 - Speed Hump and Stop Sign on Exit

The applicant shall install a stop sign and a speed hump at the exit from the site. The stop sign must be accompanied by the associated line marking and the speed hump shall be set back by 1.5 metres from the boundary alignment. The devices shall be designed and constructed in accordance with the provision of all relevant Australian Standards. The building plans shall indicate compliance with this requirement **prior to the issue of a construction certificate**.

(Reason: Traffic safety and management)

22. DACCI01 - Damage Report

Prior to the issue of the Construction Certificate, a Damage Report Form shall be completed and submitted to Council. This Damage Report Form is for the evaluation of the existing condition of the road reserve, and shall be filled out and signed by the Applicant and submitted to Council. This form is generally for “minor works” (as defined in the Driveways and Ancillary Works Application Form). For “major works”, a Dilapidation Report will be required.

This Form is used to assist Council in determining the refund of any damage deposits and any likely repairs necessary upon the completion of the development.

When lodging the Damage Report Form, fees are payable in accordance with Council’s fees and charges schedule, which will go towards administration and inspection costs.

The cost of repairing any damage to Council property (including the footpath, verge, street trees, kerb, gutter, road pavement or the like) during and/or immediately after construction must be paid to Council or shall be deducted from the damage deposit bond. Repair of damaged Council property by the Applicant or his agent is not permitted unless approved by Council.

For roadways requiring asphaltic concrete works or adjustment works, these shall be done to a minimum width as specified by Council. Minimum dimensions are given in Council’s Specification for Driveway Construction or Specification for Restoration Works.

(Reason: Maintain public assets)

23. DACCI03 - Protection of Public Places

The adjoining or adjacent public area is not to be obstructed by any materials, vehicles, refuse skips and the like, under any circumstances unless approved in writing by Council.

If the work involved in the demolition or construction of a building is likely to cause pedestrian or vehicular traffic in a public place to be obstructed or rendered inconvenient, or building involves the closure of a public place, a barrier, fence or hoarding shall be erected **prior to the commencement of any work** subject to approval of a Traffic Management Plan.

An application to occupy public space is to be submitted to Council for approval prior to commencement of works.

Where a hoarding is required, an application for hoarding is also to be submitted to and approved by Council prior to commencement of any work. Hoardings shall be erected to comply with the requirements of WorkCover, the Principal Certifying Authority and with relevant Australian Standards.

(Reason: Safety)

24. DACCI05 - Vehicular Crossings

Full-width, heavy-duty concrete vehicular crossing(s) shall be installed across the footpath at the entrance(s) and/or exit(s) to the site, subject to separate Council approval. In this regard the Applicant must obtain a copy of Council's "Appendix 2 - Engineering Specifications of the Canada Bay Development Control Plan" and lodge an application for vehicular crossing(s) (available from Council's Customer Services Centre or can be downloaded from Council's website), and pay the appropriate fees and charges **prior to the lodgement of the Construction Certificate**.

(Reason: To ensure appropriate access to the site can be achieved)

25. DACCJ02 - Redundant Vehicular Crossings and Ancillary Works

Where new pavement, repair or reinstatement of footpath or other ancillary works such as kerb and gutter and stormwater pit construction is proposed, the Applicant shall complete a Section 138 Civil Works in the Public Domain Area Application for major works, or for minor works (as defined in the Driveways & Ancillary Works Application) adjacent to the site, an application for "Driveway & Ancillary Works" and submit the application to Council for approval **prior to the issue of a Construction Certificate**. Both forms are available from Council's Customer Services Centre or can be downloaded from Council's website.

All disused or redundant vehicle crossings and laybacks shall be removed and reinstated with concrete kerb and gutter or to the existing edging profile as specified by Council and the footpath area is to be restored to the satisfaction of Council's Utilities & Development Engineer, **prior to the issue of the Occupation Certificate**.

(Reason: Public infrastructure maintenance)

26. DACCJ03 - Separate Approval for Works in the Public Road (External Works) - Section 138 Roads Act

Pursuant to Section 138 of the Roads Act 1993 and **prior to the issue of a Construction Certificate**, the applicant must submit detailed plans to and obtain a written approval from the Appropriate Road Authority (usually Council for Local and Regional Roads and both Council and Roads & Maritime Services (RMS) for Arterial Roads), for any works in the road reserve.

Additionally, where the work involves closure of a carriageway on a State Road, Regional Road, or it is such that it may impact the traffic flow on a State Road or Regional Road, or is within close proximity of a Traffic Facility (eg Traffic Lights) then a Road Occupancy License (ROL) must be obtained from the Planned Incidents Unit of the Traffic Management Centre of the RMS. The application should be lodged at least 10 days prior to the planned commencement date.

(Reason: Protection of Public Assets and information)

27. DACCCK01 - Application for a Construction Certificate

The applicant must apply to Council or an Accredited Certifier for a Construction Certificate to carry out the relevant building works that are approved by this consent. The details to be included in the application for a Construction Certificate are:

- (a) Architectural plans and specifications complying with the Building Code of Australia (BCA), relevant Australian Standards, and the development consent and conditions.
- (b) If Council issues the Construction Certificate, engineering details must be submitted for approval for all structural elements, including but not limited to, piers, footings, reinforced concrete slab, first floor joist layout, roof trusses, steel beams and the like. The details must be prepared by a practising consulting structural engineer. Also a certificate from the engineer must be included certifying that the design fully complies with appropriate SAA Codes and Standards and the Building Code of Australia requirements.

Note: The engineer/s undertaking certification must be listed on the National Professional Engineers Register under the appropriate category.

- (c) Geotechnical report for the site, prepared by a qualified geotechnical engineer detailing the foundation conditions of the site and solutions for consideration by a structural Engineer.
- (d) Essential services plan outlining the existing and proposed fire safety measures.
- (e) Disabled access provisions to common and public areas in accordance with AS1428.
- (f) If an alternative solution to the “deemed to satisfy” provisions of BCA is proposed, the following details must be lodged:
 - Performance requirements that the alternative solution intends to meet.

- Assessment methods used to determine compliance with the performance requirements, including if and how each performance objective impacts on other requirements of the BCA; and
 - A statement about the person who prepared the alternate solution, indicating qualifications, experience, insurance details, and membership of an approved accreditation body
- Note:** The performance-based application may be required to be reviewed by a suitably qualified independent body at the applicant's expense. Any fees relating to any review are required to be paid **prior to the issue of the Construction Certificate**.

(Reason: Statutory requirement)

28. **DACCK02 - BASIX Commitments**

The approved BASIX Certificate shall be submitted to the Accredited Certifier with the application for a Construction Certificate.

Where a change or changes are proposed in the BASIX commitments, the applicant must submit a new BASIX Certificate to the Accredited Certifier and Council. If any proposed change in the BASIX commitments is inconsistent with the development consent the applicant will be required to submit a modification to the development consent to Council under Section 4.55 of the Environmental Planning and Assessment Act 1979.

All commitments in the BASIX Certificate must be shown on the plans accompanying the Construction Certificate **prior to the issue of any Construction Certificate**.

(Reason: Statutory Compliance)

29. **DACCK03 - Energy Australia Requirements**

The approved development must comply with the requirements of Energy Australia. **Prior to the issue of a Construction Certificate**, the applicant shall demonstrate to the Accredited Certifier that any such requirements have been complied with.

(Reason: Statutory requirement)

30. **DACCK04 - S7.4 Planning Agreement**

In accordance with Section 93I(3) of the Environmental Planning and Assessment Act 1979, the Voluntary Planning Agreement offered by the developer in respect of the Development Application, the subject of this consent, and dated 16 August 2017 must be entered into **prior to issuing of a Construction Certificate**. The terms of the Voluntary Planning Agreement must, thereafter, be adhered to.

(Reason: To ensure compliance with the terms of the S93F Agreement)

31. **DACCK07 - Fire Hydrant Booster Assembly**

In order to ensure an overall high quality finish and streetscape presentation, details of the location, enclosure and landscaping treatment to the fire hydrant booster assembly are to be submitted to, and approved by Council, prior to the issue of a Construction Certificate.

(Reason: Streetscape amenity)

32. DACCL04 - Erosion and sedimentation controls

Erosion and sedimentation controls must be provided to ensure:

- (a) Compliance with the approved Soil and Water Management Plan
- (b) Removal or disturbance of vegetation and top soil is confined to within 3m of the approved building area (no trees to be removed without approval)
- (c) All uncontaminated run-off is diverted around cleared or disturbed areas
- (d) Silt fences or other devices are installed to prevent sediment and other debris escaping from the cleared or disturbed areas into drainage systems or waterways
- (e) All erosion and sediment controls are fully maintained for the duration of demolition/ development works
- (f) Controls are put into place to prevent tracking of sediment by vehicles onto adjoining roadways
- (g) All disturbed areas are rendered erosion-resistant by turfing, mulching, paving or similar
- (h) All water pumped or otherwise removed from excavations or basement areas is filtered to achieve suspended solids/non filterable residue levels complying with the *Australian Water Quality guidelines for Fresh and Marine Waters*
- (i) Pumped or overland flows of water are discharged so as not to cause, permit or allow erosion before the commencement of work (and until issue of the occupation certificate).

Details of the proposed soil erosion and sedimentation controls to be implemented on site must be submitted **with the Construction Certificate Application**. Under no circumstances may any works commence prior to these details being approved by the Accredited Certifier and the controls being in place on the site

(Reason: Environmental protection)

33. DACCL05 - Grated Drain to Garage

A grated trench drain shall be provided across the driveway at the garage entrance. Unless otherwise designed by a Qualified Civil Engineer, the dimensions of the trench grate shall not be less than 200mm wide by 150mm deep at the shallow end, and have a “bottom” slope of 2 %. This trench drain shall be connected to an approved drainage system. The grated drain calculation shall be in accordance with AS/NZS3500.

The above information must be indicated on all relevant drawings **to be submitted with the Construction Certificate**.

(Reason: Environmental protection)

34. **DACCL06 - Rainwater Harvesting**

A rainwater harvesting system shall be provided in accordance with either the BASIX minimum requirements, any relevant Council Rainwater Re-use Policy and/or “Appendix 2 - Engineering Specifications of the Canada Bay Development Control Plan”, whichever is applicable. A detailed stormwater plan showing the proposed re-use system shall be submitted and approved by Council or an Accredited Certifier **prior to the issue of the Construction Certificate.**

(Reason: Compliance and Amenity)

35. **DACCL07 - Silt Arrestors and Gross Pollutant Traps**

Silt and gross pollutant traps shall be fitted in all stormwater pits, designed in accordance with Council’s “Appendix 2 - Engineering Specifications of the Canada Bay Development Control Plan” and to the satisfaction of Council or an Accredited Certifier. Details are to be submitted with the design **prior to the issue of the Construction Certificate.**

(Reason: Environmental Protection)

36. **DACCM01 - Dilapidation Report**

A Dilapidation Report is to be undertaken on all properties, which in the opinion of a suitably qualified engineer, could be potentially affected by the construction of the project. The Dilapidation Report shall be carried out **prior to the issue of the Construction Certificate.**

The Dilapidation Report is to be prepared by a suitably Qualified Chartered Professional Civil or Structural Engineer with current Institution of Engineers, Australia Corporate Membership and registered on the National Engineers Register (NER) or Geotechnical Practitioner.

The Report shall cover structural and geotechnical factors likely to arise from the development.

A copy of this Report shall be submitted to the owners of all properties inspected and Council as a record.

The person having the benefit of the development consent must, at their own cost, rectify any damage caused to other properties during the construction of the project.

(Reason: Safety)

37. **DACCM04 - Support and Protection for Neighbouring Buildings**

If an excavation associated with the approved development extends below the level of the base of the footings of a building on an adjoining allotment of land, the person having the benefit of the development consent must, at the person’s own expense, comply with the requirements of clause 98E of the

Environmental Planning and Assessment Regulation 2000, including:

- (1) (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.
- (2) The condition referred to in subclause (1) does not apply if the person having the benefit of the development consent owns the adjoining land or the owner of the adjoining land has given consent in writing to that condition not applying.

Details shall be submitted to the Accredited Certifier **prior to the issue of a Construction Certificate.**

(Reason: Structural safety)

38. DACCN02 - Electricity Substation

Any required electricity substation must be located within the boundaries of the site.

Documentary evidence of compliance, including correspondence from the energy authority is to be provided to the Accredited Certifier **prior to the issue of a Construction Certificate** detailing the energy authority's requirements.

Note: Where an electricity substation is required but no provision has been made to place it within the approved building or its site and no details are provided on the approved development consent plans, a section 96 application is required to be submitted to Council for approval of an appropriate location for the required electricity substation.

(Reason: Access to utility)

Conditions which must be satisfied prior to the commencement of any development work

39. DAPCB01 - Appointment of Principal Certifying Authority

No work shall commence in connection with this Development Consent until:

- (a) A construction certificate for the building work has been issued by:
 - (i) the consent authority; or
 - (ii) an accredited certifier; and
- (b) the person having the benefit of the development consent has:
 - (i) appointed a principal certifying authority for the building work, and
 - (ii) notified the principal certifying authority that the person will carry out the building work as an owner-builder, if that is the case, and
- (b1) the principal certifying authority has, no later than 2 days before the building work commences:
 - (i) notified the Council of his or her appointment, and

- (ii) notified the person having the benefit of the development consent of any critical stage inspections and other inspections that are to be carried out in respect of the building work, and
- (b2) the person having the benefit of the development consent, if not carrying out the work as an owner-builder, has:
 - (i) appointed a principal contractor for the building work who must be the holder of a contractor licence if any residential building work is involved, and
 - (ii) notified the principal certifying authority of such appointment, and
 - (iii) unless that person is the principal contractor, notified the principal contractor of any critical stage inspections and other inspections that are to be carried out in respect of the building work, and
- (c) the person having 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.

Note: If the principal certifying authority is the Council, the nomination will be subject to the payment of a fee for the service to cover the cost of undertaking all necessary inspections and the issue of the appropriate certificates.

Under the Environment Planning and Assessment (Quality of Construction) Act, 2003, a sign must be erected in a prominent position on the work site showing the name, address and telephone number of the principal certifying authority; the name of the principal contractor (if any) for the building work and a telephone number at which that person may be contacted outside working hours. That sign must also state that unauthorised entry is prohibited. The sign must not be removed until all work has been completed.

(Reason: Statutory requirements)

40. DAPCB02 - Construction Certificate

No work shall commence until you:

- (a) Obtain a Construction Certificate from either the City of Canada Bay Council or an Accredited Certifier - a fee applies for this service; and
- (b) Lodge with the City of Canada Bay Council any Construction Certificate obtained from an Accredited Certifier (together with associated plans and documents) - a fee applies for this service

(Reason: Statutory Requirement)

41. DAPCB04 - Home Building Compensation Fund

No residential building work within the meaning of the *Home Building Act 1989* may commence until:

- (a) A contract of insurance in accordance with Part 6 of the Home Building Act 1989 is entered into and in force, where such a contract is required under that Act (this is a prescribed condition of consent pursuant to clause 98 1(b) *Environmental Planning and Assessment Regulation 2000*;

- (b) The PCA is satisfied that the principal contractor for the work is the holder of the appropriate licence and is covered by the appropriate insurance, in each case if required by the Home Building Act 1989 (unless the work is to be carried out by an owner-builder);
- (c) If the work is to be carried out by an owner builder, that the owner builder is the holder of any owner-builder permit required under the *Home Building Act 1989*;
- (d) Written notice of the following information has been provided to Council (this is a prescribed condition of consent pursuant to clause 98B of the *Environmental Planning and Assessment Regulation 2000*):
 - (i) In the case of work for which a principal contractor is required to be appointed:
 - The name and licence number of the principal contractor, and
 - The name of the insurer by which the work is insured under Part 6 of the *Home Building Act 1989*,
 - (ii) In the case of work to be done by an owner-builder:
 - The name of the owner-builder, and
 - If the owner-builder is required to hold an owner-builder permit under the *Home Building Act 1989*, the number of the owner-builder permits.

Where Council is not the PCA, the PCA is responsible for notifying Council of the above matters.

Where arrangements for doing residential building work change **while the work is in progress** so that the above information becomes out of date, the PCA (where not the Council) must provide Council with written notice of the updated information.

(Reason: Statutory requirement)

42. DAPCB05 - Notice of commencement

No work shall commence until you submit a notice of commencement (form will be attached with issue of a Construction Certificate or available from our website) giving Council:

- (a) Not less than two (2) days' notice of the date on which it is proposed to commence work associated with this Development Consent;
- (b) Details of the appointment of a Principal Certifying Authority (either Canada Bay Council or another Accredited Certifier)
- (c) Details of the name, address and licence details of the Builder.

(Reason: Statutory Requirement)

43. DAPCB06 - Site Safety Fencing

Erect site fencing to a minimum height of 1.8m complying with WorkCover Guidelines, to exclude public access to the site throughout the construction works. The fencing **must be erected before the commencement of any work and maintained.**

The site shall be secured in accordance with Clause 146 of the Environmental Planning and Assessment Regulation 2000. The site shall be maintained in a clean and orderly condition during demolition and construction works.

Hoardings

If applicable, a separate Hoarding Application for the erection of an A class (fence type) or B class (overhead type) hoarding along the street frontage(s) complying with WorkCover requirements must be obtained including:

- payment to Council of a footpath occupancy fee based on the area of footpath to be occupied and Council's Schedule of Fees and Charges before the commencement of work; and
- provision of a Public Risk Insurance Policy with a minimum cover of \$10 million in relation to the occupation of and works within Council's road reserve, for the full duration of the proposed works, must be obtained with a copy provided to Council.

(Reasons: Statutory Requirement and health and safety)

44. DAPCB07 - Principal Certifying Authority (PCA) Sign

Prior to commencement of any work, signage must be erected in a prominent position on the work site identifying:

- The Principal Certifying Authority (PCA) by showing the name, address and telephone number of the PCA;
- The Principal Contractor by showing the Principal Contractor's name, address and telephone number (outside of work hours) for that person.
- The sign must state that unauthorised entry to the work site is prohibited.

Any such sign is to be maintained while the work is being carried out, but must be removed when the work has been completed.

This clause does not apply to building work, subdivision work or demolition work that is carried out inside an existing building that does not affect the external walls of the building.

(Reason: Statutory Requirement)

45. DAPCB10 - Notice of Requirements from Sydney Water

A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained. Application must be made through Sydney Water or an authorised Water Servicing Coordinator (WSC). An assessment will be made to determine the availability of water and sewer services, which may require extension, adjustment or connection to Sydney Water mains. Please refer to Sydney Water's website at [www.sydneywater.com.au/section 73](http://www.sydneywater.com.au/section_73) or call 1300 082 746 to learn more about applying through an authorised WSC or Sydney Water.

Following application, Sydney Water will assess the development and if required will issue a "Notice of Requirements" letter detailing all requirements that must be met. Please apply early as building of water and services can be time consuming and may impact on other parts of your development such as building, driveway or landscape design.

The Notice of Requirements must be submitted to the Accredited Certifier **before the commencement of works**. A Section 73 Compliance Certificate must be obtained before the issue of an Occupation Certificate.

(Reason: To comply with statutory requirements)

46. **DAPCC01 - Erosion & Sediment Control: Minor works - Prior to construction**

Erosion and sedimentation controls shall be in place **prior to the commencement of site works**; and maintained throughout construction activities until the site is landscaped and/or suitably revegetated. The controls shall be in accordance with the details approved by Council and/or as directed by Council Officers. These requirements shall be in accordance with Managing Urban Stormwater - Soils and Construction produced by Landcom (Blue Book).

A copy of the Erosion and Sediment Control Plan must be kept on site at all times during construction and made available to Council officers on request.

Erosion and sediment control measures as detailed in the submitted Erosion and Sediment Control Plan must be installed and operating **prior to and during all construction works**.

(Reason: Environmental protection)

47. **DAPCC02 - Soil & Water Management during Construction**

Landcom's "Managing Urban Stormwater - Soil and Conservation" August 1998 outlines the general requirements for the preparation of a soil and water management plan. All works shall be conducted in accordance with a soil and water management plan that has been submitted and approved by the Accredited Certifier **prior to the commencement of works**. A copy of the plan shall be kept on-site and made available to Council's Officers on request. All erosion and sediment control measures must be maintained in a functional condition throughout the duration of the works.

(Reason: Environmental protection)

Conditions which must be satisfied during any development work

48. **DADWA01 - Burning and Burying of Waste**

No materials or rubbish resulting from the land clearing, demolition and building works must be burnt or buried on the site.

(Reason: Health and amenity)

49. **DADWA02 - Construction Hours**

No construction or any other work related activities shall be carried out on the site outside the hours of 7.00 am to 5.00 pm Mondays to Saturdays. No work to occur on Sundays and public holidays.

Where the development involves the use of jackhammers/ rock breakers and the like or other heavy machinery, such equipment may only be used between the hours of 7.00 am - 5.00 pm Monday to Friday only.

(Reason: Safety and amenity)

50. DADWA03 - Disruption of Traffic

During any construction works on the public road that is associated with this approval, the Applicant must provide appropriate signage and traffic control facilities as per the requirements of AS 1742.3 and the RTA “Traffic Control at Works Sites” manual.

(Reason: Safety and information)

51. DADWA04 - Dust Control

Small Works

Where a dust nuisance is likely to occur, suitable screens and/or barricades shall be erected during the demolition, excavation and building works. If necessary, water sprays shall be used on the site to reduce the emission of dust. Screening shall consist of minimum 2 metres height of shade cloth or similar material secured to a chain wire fence of the like and shall be modified as directed by the City of Canada Bay Council should it fail to adequately control any dust nuisance.

Major Works

The following measures must be implemented (in part or in total) as directed by the City of Canada Bay Council to control the emission of dust:

- (a) Dust screens must be erected around the perimeter of the site and be kept in good repair for the duration of the work.
- (b) All dusty surfaces must be wet down and any dust created must be suppressed by means of a fine water spray. Water used for dust suppression must not be contaminated or allowed to enter the stormwater system.
- (c) All stockpiles of materials that are likely to generate dust must be kept damp or covered.
- (d) All stockpiles of soil or other materials shall be placed away from drainage lines, gutters or stormwater pits or inlets.
- (e) All stockpiles of soil or other materials likely to generate dust or odours shall be covered.
- (f) All stockpiles of contaminated soil shall be stored in a secure area and be covered if remaining more than 24 hours or as directed by the City of Canada Bay Council.

(Reason: Environmental amenity)

52. DADWA05 - Excavation - Water

All excavations must be kept free from the accumulation of water.

(Reason: Health and safety)

53. DADWB02 - Acid Sulphate Soils

Any excavation works carried out on site should be closely monitored to ensure no signs of Potential Acid Sulphate Soil (PASS) or Actual Acid Sulphate Soil (AASS) are observed. Indicators may include grey to greenish blue clays, unusual gold-yellow mottling or 'rotten egg' odours. If any of these indicators are observed, excavation of the site is to be stopped immediately, Council is to be notified and a suitably qualified environmental scientist should be contracted to further assess the site.

(Reason: Environmental protection)

54. DADWB03 - Construction Management Plan

All development activities and traffic movements must be carried out in accordance with the approved Construction Management Plan.

All controls in the Plan must be maintained at all times. A copy of the Plan must be kept on site at all times and made available to the Accredited Certifier and Council on request.

(Reason: Compliance with condition of consent)

55. DADWB04 - Damage to Adjoining Properties

All precautions must be taken to prevent any damage likely to be sustained to adjoining properties. Adjoining owner property rights must be observed at all times. Where damage occurs to adjoining property all necessary repair or suitable agreement for necessary repairs are to be undertaken by the applicant in consultation with, and with the consent of, the affected property owner.

(Reason: Structural safety)

56. DADWB05 - Stamped Plans

Stamped plans, specifications, documentation and the consent shall be available on site at all times during construction.

(Reason: To ensure compliance with approved plans)

57. DADWC08 - Excavation Pump-out

Water that has accumulated in any excavation is not to be pumped into any stormwater disposal system unless the approval of the City of Canada Bay Council is obtained prior. The analytical results of any discharge must comply with relevant EPA and ANZECC standards for water quality and be made available to Council upon request. Any water to be discharged to Council's stormwater system shall not contain a concentration of suspended sediment exceeding 50mg/L, shall have a pH of between 6.5-8.0 and shall comply with the ANZECC Guidelines for Marine and Freshwater Quality for Protection of Aquatic Ecosystems (95% protection level for freshwater ecosystems); NSW Department of Housing, Managing Urban Stormwater - Soils and Construction).

Water testing shall be carried out by a suitably qualified environmental

scientist. Water that does not comply with the above standards shall not be discharged to the stormwater system, and shall be disposed of using alternative approved means.

Results of water testing (if required) shall be provided to Council or in the Validation Report for remediation projects as required by the conditions of this consent. Documentation for the off-site disposal of water shall be included in the Validation Report.

NOTE: Other options for the disposal of excavation pump-out water include disposal to sewer with prior approval from Sydney Water, or off-site disposal by a liquid waste transporter for treatment/disposal to an appropriate waste treatment/processing facility.

(Reason: Environmental Amenity)

58. DADWF01 - Noise - Construction

All works carried out on site during construction/ demolition/ excavation/ earthworks shall comply with the NSW Protection of the Environment Operations Act 1997, the Department of Environment and Climate Changes' Interim construction noise guideline' and AS 2436-2010 - 'Guide to noise and vibration control on construction, demolition and maintenance sites' for the control of construction noise which specifies that:

- Construction period of 4 weeks and under - The L90 level measured over a period of not less than 15 minutes when the construction site is operating must not exceed the background level by more than 20 dB(A) at the boundary.
- Construction period greater than 4 weeks but not exceeding 26 weeks - The L90 level measured over a period of not less than 15 minutes when the construction site is operating must not exceed the background level by more than 10 dB(A) at the boundary.
- Construction period exceeding 26 weeks - The L90 level measured over a period of not less than 15 minutes when the construction site is operating must not exceed the background level by more than 5 dB(A) at the boundary.

Should complaints of a noise nuisance be substantiated, Council may require the acoustic treatment of the premises to ensure compliance with the NSW Department of Environment and Climate Changes 'Interim construction noise guideline' and AS 2436-2010 - 'Guide to noise and vibration control on construction, demolition and maintenance sites' for the control of construction noise. A further acoustic assessment & report will be required to be provided to Council assessing the premises in working order.

(Reason: Noise Attenuation)

59. DADWF02 - Noise - Plant

All works carried out on site during construction/demolition/excavation or earthworks shall comply with the NSW Protection of the Environment Operations Act 1997. Approved and effective silencing measures shall be

provided and maintained on all power-operated plant used on site if required.

(Reason: Safety and Amenity)

60. DADWF03 - Noise & Vibration

The construction of the development and preparation of the site, including operation of vehicles, must be conducted so as to avoid unreasonable noise or vibration and cause no interference to adjoining or nearby occupations. Special precautions must be taken to avoid nuisance in neighbouring residential areas, particularly from machinery, vehicles, warning sirens, public address systems and the like.

In the event of a noise or vibration problem arising, the person in charge of the premises must, when instructed by City of Canada Bay Council or the Accredited Certifier, cease work and carry out an acoustical survey and/or investigation by an appropriate acoustical engineer or consultant and submit the results to Council. The person in charge of the site must implement any or all of the recommendations of the consultant and any additional requirements of Council. Any requirements of Council in this regard must be complied with immediately.

(Reason: Noise attenuation)

61. DADWG01 - Obstruction of Road or Footpath

The use of the road or footpath for the storage of any building materials, waste materials, temporary toilets, waste bins or any other matter is not permitted unless approved in accordance with Council's Waste Skip Bin Policy. A Penalty Infringement Notice may be issued for any offence.

(Reason: Protection of infrastructure, safety & information)

62. DADWH01 - Compliance with Building Code of Australia

All building work must be carried out in accordance with the provisions of the Building Code of Australia. Note: Applicants who have lodged an objection and who have been granted exemption under clause 187(6) & 188(4) of the *Environmental Planning and Assessment Regulation 2000*, must comply with the Building Code of Australia in all other respects.

(Reason: Prescribed statutory control)

63. DADWH02 - Critical Stage Inspections - General

Critical stage inspections must be called for by the Principal Contractor or Owner Builder as required by the Principal Certifying Authority (PCA), any PCA Service Agreement, the Act and the Regulation.

Work must not proceed beyond each critical stage until the PCA is satisfied that work is proceeding in accordance with this consent, the Construction Certificate(s) and the Act. 'Critical Stage Inspections' means the inspections prescribed by the Regulations for the purposes of section 6.5 of the Act or as required by the PCA and any PCA Service Agreement.

Note 1: The PCA may require additional inspections beyond mandatory critical stage inspections in order that the PCA be satisfied that work is proceeding in accordance with this consent.

Note 2: The PCA may, in addition to inspections, require the submission of Compliance Certificates, survey reports or evidence of suitability in accordance with Part A2.2 of the BCA in relation to any matter relevant to the development.

(Reason: Statutory requirement)

64. DADWH06 - Inspection Records & Compliance Certificates

The PCA or accredited certifier undertaking each of the inspections must make a **record of each inspection** in accordance with Clause 162B of the Environmental Planning and Assessment Regulations 2000 and, if the person is not the PCA, forward a copy to the PCA.

A copy of any **compliance certificates** issued in respect of the building work and any documents referred to in the certificate must be provided to Council within two (2) days of the certificate being issued.

A compliance certificate must be issued where:

- (a) Either:
 - (i) Council is appointed the PCA; or
 - (ii) Council is the PCA but agrees to an accredited certifier undertaking certain inspection/s, and
- (b) The PCA or accredited certifier is of the opinion that the stage of work he or she has inspected is satisfactory.

(Reason: Statutory Requirement)

65. DADWI01 - Progress Survey - Major Development (greater than two stories)

In order to ensure compliance with approved plans, a Survey Certificate, prepared to Australian Height Datum, shall be prepared by a Registered Surveyor showing the following:

- (a) At the completion of excavation, prior to the placement of any footings, showing the completed level of the excavation and its relationship to the boundaries;
- (b) Prior to placement of concrete, the ground floor level, showing the level of the form work and its relationship to boundaries including relevant footpath and roadway levels;
- (c) Prior to placement of concrete at each second floor level showing the principal level of the formwork and the intended relationship of the completed works to the boundary;
- (d) Prior to roofing, or completion of the highest point of the building, showing the anticipated level of the completed work and the relationship to the boundary; and
- (e) At completion, works showing the relationship of the building to the boundary.

Progress certificates in response to points (a) through to (e) shall be produced to the Council or the Principal Certifying Authority at the time of carrying out relevant progress inspections. Under no circumstances will work be allowed to proceed should such survey information be unavailable or reveals discrepancies between the approved plans and the proposed works.

(Reason: To ensure compliance with approved plans)

Conditions which must be satisfied prior to the issue of any Occupation Certificate relating to the use of the building or part

66. DAOCB01 - Certification of Engineering Works

Prior to occupation, the following documents must be submitted to the Principal Certifying Authority.

- a) A Certificate from a Chartered Professional Engineer with Institution of Engineers, Australia Corporate Membership and registered on the National Engineers Register (NER) under the appropriate professional category, and
- b) “Work - As - Executed” drawings of the engineering works prepared by a Registered Surveyor or equivalent.

The abovementioned Certificate is to certify that:

- (i) the stormwater drainage system, and/or
- (ii) the car parking arrangement and area including circulating ramps, and/or
- (iii) any related footpath works, and/or
- (iv) the basement mechanical pump and well system, and/or
- (v) the proposed driveway and layback, and/or
- (vi) other civil works have been constructed in accordance with the Council approved plans and details and satisfies the design intent and complies with the appropriate SAA Codes relevant Standards and Council’s Policies and Specifications.

Where Council is not the Principal Certifying Authority, two (2) copies of the above documents are to be provided to Council **prior to the issue of any Occupation Certificate**. These documents are to be retained on Council’s Construction Certificate file.

(Reason: Asset management)

67. DAOCC01 - Civil Works on the Footway

The Applicant is required to carry out the following works:

- Reconstruct sections of cracked or defective footpath along the full frontage of the site, and/or
- Reconstruct existing public drainage pit/pipe system, and/or
- Construct a new vehicular crossing, and/or
- Remove any redundant vehicular crossings and replace with kerb and gutter to match the adjoining.

The above works must be completed to the written satisfaction of Council **prior to issue of any Occupation Certificate.**

Note: The above works will require the submission of the relevant application for the works to be undertaken.

Where the Applicant nominates Council to undertake the civil and stormwater works, they must contact Council's Manager Construction, City Services in order to obtain an estimated cost for construction and contract to undertake the works.

(Reason: To preserve Council's assets and amenity)

68. DAOCC03 - Construction of Concrete Kerb and Gutter

Standard 150mm high concrete kerb with gutter shall be constructed (to replace/across the) (damaged sections/full length) adjacent to the (front/front and side) of the property.

The above works must be programmed and constructed **prior to the issuing of any Occupation Certificate.**

Note: The above works will require the submission of the relevant application for the works to be undertaken.

Where the Applicant would prefer Council to undertake the civil and stormwater works, they should contact Council's Manager Construction, City Services to obtain an estimated cost of construction and contract to undertake the works.

(Reason: To preserve Council's assets and amenity)

69. DAOCD01 - Occupation Certificate (section 6.9 of the Act)

A person must not commence occupation or use (*or change of use where an existing building*) of the whole or any part of a new building (within the meaning of section 6.10 of the Act) unless an Interim Occupation Certificate or Final Occupation Certificate has been issued in relation to the building or part.

The Principal Certifying Authority is required to be satisfied, amongst other things, that:

- All required inspections (including each applicable mandatory critical stage inspection) have been carried out; and
- Any preconditions to the issue of the certificate required by a development consent have been met.

Note: New building includes an altered portion of, or an extension to, an existing building.

(Reason: Statutory requirement)

70. DAOCE01 - Drainage System - Maintenance of Existing

Where elements of the existing drainage system is to be utilised, the existing drainage system shall be overhauled and maintained clear of silt and accumulated debris. Silt and the like shall be *removed*, not flushed from the system.

A certificate shall be provided by a suitably qualified person to the satisfaction of the Principal Certifying Authority, (a registered plumber or a person of equivalent or greater experience or qualification) **prior to the issue of an Occupation Certificate** to confirm that the system is in good working order and adequate to accept additional flows.

(Reason: Maintenance and environment)

Conditions which must be satisfied prior to the issue of any Subdivision Certificate

71. DASCA03 - Prior to Issue of Subdivision Certificate

Prior to the issuing of any Subdivision Certificate under section 37A of the *Strata Schemes (Freehold Development) Act 1973*, and section 66A of the *Strata Schemes (Leasehold Development) Act 1986*, and in accordance with section 29A of the *Strata Schemes (Freehold Development) Regulation 2007* and section 30A of the *Strata Schemes (Leasehold Development) Regulation 2007*, the PCA is required to be satisfied that:

- (a) the floors, external walls and ceilings depicted in the proposed strata plan for the building correspond to those of the building as constructed, and
- (b) 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, and
- (c) any facilities required by the relevant development consent (such as parking spaces, terraces and courtyards) have been provided in accordance with those requirements.

As construction of the building nears completion, or after it has been completed, a Council or accredited certifier must inspect the building, and the common property areas around the building, so as to be satisfied, as required by section 66AA of the Act, that the above requirements have been met.

The Council or accredited certifier should also be satisfied that:

- (d) All required inspections (including each applicable mandatory critical stage inspection) have been carried out; and
- (e) Any preconditions to the issue of the certificate required by a development consent or complying development certificate have been met.

(Reason: Statutory Requirements)

72. DASCA04 - Application for Subdivision Certificate

An application for a Subdivision Certificate shall be lodged with Council or an Accredited Certifier for approval to enable the subdivision plans to be submitted to and registered with Land and Property Information (formerly Land Titles Office). Should the Subdivision Certificate application be lodged with Council, a final plan of subdivision and six (6) copies shall be included with the application.

(Reason: To comply with statutory requirements)

73. DASCA05 - Section 73 Certificate from Sydney Water

A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained before the issue of the Subdivision Certificate. Application must be made through Sydney Water or an authorised Water Servicing Coordinator (WSC). Please refer to Sydney Water's website at www.sydneywater.com.au/section_73 or call 1300 082 746 to learn more about applying through an authorised WSC or Sydney Water.

The original of the Section 73 Certificate must be presented to the Accredited Certifier **prior to the issue of Subdivision Certificate**.

Please note: Council will require a copy of the Section 73 Certificate in addition to sighting the original before issuing the Subdivision Certificate.

(Reason: To comply with statutory requirements)

Conditions which must be satisfied prior to the issue of a Final Occupation Certificate

74. DAFOA01 - Fire Safety Certificate

A final Fire Safety Certificate shall be obtained in accordance with Part 9, Division 4 of the Environmental Planning and Assessment (Amendment) Regulation 2000, **prior to the issue of the Final Occupation Certificate** for the building.

A copy of the Fire Safety Certificate and fire safety schedule shall be:-

1. Forwarded to City of Canada Bay Council;
2. Forwarded to the Commissioner of the New South Wales Fire Brigade; and
3. Prominently displayed in the building.

(Reason: Fire safety)

75. DAFOE02 - Covenant & Restriction as to User for Stormwater Controlled Systems

Prior to occupation and the issuing of an Occupation Certificate, the Applicant shall register a Positive Covenant and a Restriction as to User, under section 88E and or section 88B of the Conveyancing Act as appropriate in favour of Council ensuring the ongoing retention, maintenance and operation of the stormwater facility (in regards to the on-site stormwater detention system (OSD), mechanical pump-out system, charged lines (which

are related to the OSD system), etc.).

Easement Registration

Where any drainage line or service conduit is to traverse any property other than that which it serves, an appropriate easement will be required. In this case, the applicant shall register an easement of width as specified in Council's "Engineering requirements for Developments, Technical Specification", over the proposed stormwater drainage line or service concurrently with any subdivision registration.

The wording on the 88B Instrument is to make reference to the Council file where the Construction plans and the "Work-as-Executed", (as built), plans are held. Typical wording can be obtained from Council's "Engineering requirements for Developments, Technical Specification" document.

(Reason: Compliance and adequate maintenance of drainage system)

76. DAFOE03 - OSD Identification Plate

Prior to issue of Final Occupation Certificate, the applicant shall install an identification plate near or onto the control structure of the On-site Stormwater Detention system (OSD). This is to advise the registered proprietor of their responsibility to maintain the OSD facility and not to tamper with it in any manner without the written consent of Council.

The applicant can obtain the OSD identification plate from the Council at a cost.

(Reason: To ensure that the OSD system is installed and identified in accordance with this approval)

Advisory Notes

a) **DAANN01 - 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 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.



Telecommunications Act 1997 (Commonwealth)

Telstra (and its authorised contractors) are the only companies that are permitted to conduct works on Telstra's mobile network and assets. Any person interfering with a facility or installation owned by Telstra is committing an offence under the Criminal Code Act 1995 (Cth) 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 1800 810 443.

b) **DAANN02 - Dividing Fences**

The erection of dividing fences under this consent does not affect the provisions of the *Dividing Fences Act* 1991. Under this Act, all relevant parties must be in agreement prior to the erection of any approved dividing fence/s under this consent.

Council has no regulatory authority in this area and does not adjudicate civil disputes relating to the provision of or payment for the erection of dividing fences.

If there is a neighbour dispute about the boundary fence and you are seeking mediation, you may contact the Community Justice Centre or if legal advice or action is required, you may contact the Chamber Magistrate.

c) **DAANN04 - Lapsing of Consent**

In accordance with Section 4.53 of the Environmental Planning and Assessment Act 1979 (as amended), this Development Consent lapses five (5) years after the date from which it operates unless building, engineering or construction work has physically commenced. **A Construction Certificate must be obtained and the works commenced in accordance with the approved plans and specifications within five (5) years from the date of this Development Consent.**

d) **DAANN06 - Process for Modification**

The plans and/or conditions of this Consent are binding and may only be modified upon written request to Council under Section 4.55 of the Environmental Planning and Assessment Act, 1979 (as amended). The request shall be accompanied by the appropriate fee and application form. You are not to commence any action, works, contractual negotiations, or the like, on the requested modification unless and until the written authorisation of Council is received by way of an amended consent.

e) **DAANN07 - Review of Determination**

In accordance with the provisions of Section 8.2 of the Environmental Planning and Assessment Act 1979 (as amended) the applicant can request Council to review this determination. The request must be made within a period of 6 months from the date shown on this determination. A fee, as prescribed under Council's current Management Plan - Fees and Charges, is payable for such a review.

f) **DAANN08 - Right of Appeal**

Section 8.7 and 8.10 of the Environmental Planning and Assessment Act 1979 (as amended), gives the applicant the right to appeal to the Land and Environment Court within six (6) months after the date on which you receive this notice. Section 97 does not apply to the determination of a development application for State significant development or local designated development that has been the subject of a Commission of Inquiry.

g) **DAANN10 - Skips on Council Footpath**

The applicant must apply to Council's Customer Services Centre and pay the respective minimum ten (10) day application fees and deposit, should a mini-skip type or larger builder's waste container be required to be left on Council's footpath, nature strip or roadway for the removal of any builder's waste etc. These fees must be paid prior to the container's placement. In the event of the container being removed within the ten day period, and the Council being notified, a pro-rata refund will be made. If the container is to remain at the site for longer than ten days, a further fee must be paid before the ten day period expires. No consultation is necessary if placing the container within the property to which this application is related. However, caution should be exercised in placing the bin to ensure no damage occurs to Council property.

h) **DAANN11 - WorkCover Requirements**

The Work Health and Safety Act 2011 and subordinate regulations, codes of practice and guidelines control and regulate the development industry. Further information can be obtained from WorkCover NSW's website at <http://www.workcover.nsw.gov.au/newlegislation2012/your-industry/construction/Pages/default.aspx> or through their head office: WorkCover NSW, 92-100 Donnison Street, GOSFORD 2250 Postal address: WorkCover NSW, Locked Bag 2906, LISAROW 2252, Phone (02) 4321 5000, Fax (02) 4325 4145.

Attachments:

1. Clause 4.6 Submission – BBC Consulting Planners



CLAUSE 4.6 VARIATION REQUEST

No 10 EMILY STREET, MORTLAKE

Prepared for
Omayya Holdings Pty Ltd

By
BBC Consulting Planners

Job No: 15-301A
Clause 4.6 Variation Request - Final.docx
September 2017



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ATTACHMENTS

Attachment 1: CAD models illustrating 12.0m height plane on the model.



1. INTRODUCTION

The Applicant seeks approval for a new residential flat building containing 24 apartments ("the proposal") on No. 10 Emily Street, Mortlake.

The site is subject to a maximum building height limit of 12.0m and a maximum floor space ratio limit of 0.75:1.

The maximum height of the proposal is 12.9m. The exceedance of the 12.0m height limit is very limited in its extent (and confined to the roof and uppermost parts of unit 23 which occupies less than 7.5% of the site area). The proposal is predominantly compliant with the height limit in the LEP.

The proposal has an FSR of 1.49:1. This exceeds the maximum FSR limit applying to a residential development on the site of 0.75:1. (The maximum FSR for non-residential development is 1:1).

This Clause 4.6 variation request has been prepared in relation these two development standards (i.e. height limit of 12.0m; and residential FSR limit of 0.75:1).

The site is in the R1 General Residential zone, the objectives of which are as follows:-

- *"To provide for the housing needs of the community.*
- *To provide for a variety of housing types and densities.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents"*

The proposal is relevantly consistent with these objectives.



2. RELEVANT DEVELOPMENT STANDARDS

2.1 Height of buildings (Clause 4.3)

Pursuant to Canada Bay LEP 2013 ("the LEP"), the maximum building height limit is 12 metres.

"Building Height" is relevantly defined to mean:-

"the vertical distance between ground level (existing) and the highest point of the building, including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like."

The maximum building height of the proposal is 12.9m. (The predominant height, however, is less than 12.0m). Provided in **Attachment 1** are 12m height plane diagrams illustrating the very limited extent of the building that is above 12.0m in height. No adverse impacts arise from the small part of the proposed building which is above the 12.0m height limit.

2.2 Floor space ratio (Clause 4.4)

A maximum FSR of 0.75:1 is permitted on the site.

"Gross Floor Area" is relevantly defined in SLEP 2012 to mean:-

"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 site has an area of approximately 1,219.48m². Therefore, the LEP permits a maximum residential GFA of 914.61m² on the site. (Although with an affordable housing component, as approved in DA 502/2013/1 the maximum permissible GFA and FSR are 1,524m² and 1.25:1,



respectively). The proposed residential GFA of 1,819.39m² equates to an FSR of 1.49:1, which exceeds the maximum permissible residential (i.e. non-affordable housing) GFA by 904.78m².



3. EXCEPTIONS TO DEVELOPMENT STANDARDS (CLAUSE 4.6)

Clause 4.6 of the LEP permits consent to be granted for development even though the development would contravene a development standard imposed by the LEP. Clause 4.6 of the LEP states (as relevant):-

- “(2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*
- (3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
 - (b) that there are sufficient environmental planning grounds to justify contravening the development standard.*
- (4) Development consent must not be granted for development that contravenes a development standard unless:*
- (a) the consent authority is satisfied that:*
 - (i) the applicant’s written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
 - (b) the concurrence of the Secretary has been obtained.*
- (5) In deciding whether to grant concurrence, the Secretary must consider:*
- (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
 - (b) the public benefit of maintaining the development standard, and*
 - (c) any other matters required to be taken into consideration by the Secretary before granting concurrence.*

Accordingly, Clause 4.6 can be used to vary (to the extent required) the building height and floor space ratio development standards which apply to the site.



4. IS COMPLIANCE WITH THE TWO DEVELOPMENT STANDARDS UNREASONABLE OR UNNECESSARY IN THE CIRCUMSTANCES OF THE CASE AND ARE THERE SUFFICIENT PLANNING GROUNDS TO JUSTIFY CONTRAVENING THESE TWO STANDARDS?

4.1 What is the purpose/object of the two standards?

4.1.1 Height standard

The objectives of the height controls in the LEP are set out as follows in Clause 4.3(1) of the LEP.

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

- a) To ensure that buildings are compatible with the desired future character in terms of building height and roof forms,*
- b) To minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development."*

The proposal is consistent with these objectives (see Section 4.2.1 below).

4.1.2 FSR standard

The objectives of the FSR controls in the LEP are set out as follows in Clause 4.4(1) of the LEP.

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

- a) to ensure that buildings are compatible with the bulk and scale of the desired future character of the locality,*
- b) to provide a suitable balance between landscaping and built form,*
- c) to minimise the effects of bulk and scale of buildings."*

The proposal is consistent with these objectives (see Section 4.2.2 below).

4.2 Consistency with the objectives of the two standards

4.2.1 Height standard

The proposal is consistent with the objectives of the height standard for the following reasons:-

- the height of the proposal, notwithstanding the requested variation to the height standard is appropriate for the conditions of the site and its context;
- the extent of the requested variation is very limited in its extent, being confined to the uppermost part and roof of Unit 23 which has a "footprint" equating to less than 7.5% of the site area;
- the height of the proposal is compatible with the bulk and scale of nearby buildings; and



- the proposal will not result in any unreasonable visual impact, view loss, privacy or overshadowing impact.

4.2.2 FSR standard

The proposal is consistent with the objectives of the FSR standard for the following reasons:-

- the built form associated with the proposal, notwithstanding the requested variation to the FSR standard is appropriate for the site;
- the bulk and scale of the proposal are compatible with the bulk and scale of the desired future character of the locality including that which has occurred, or which is likely to occur, on neighbouring sites;
- as detailed in the traffic report submitted with the DA the proposal will not result in any significant generation of traffic;
- indeed, the Traffic Report submitted with the DA states that the projected traffic generation will be very similar to or less than that of the industrial uses on the site;
- the FSR which is proposed does not result in an unacceptable or unreasonable intensity of development; and
- the proposal is well-designed, will make a positive contribution to the streetage, will not result in any adverse impact and will provide additional housing opportunities in an area of high amenity.

4.3 Is compliance with the development standards unreasonable or unnecessary in the circumstances of the case?

4.3.1 Height

Yes, for the reasons set out above. There is an absence of impacts associated with the non-compliance and the objectives of the standard can be achieved notwithstanding the non-compliance.

4.3.2 FSR

Yes, for the reasons set out above. There is an absence of impacts associated with the non-compliance and the objectives of the standard can be achieved notwithstanding the non-compliance.

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

4.4.1 Height

Yes. For the reasons set out in 4.2 and 4.3 above.



4.4.2 FSR

Yes. For the reasons set out in 4.2 and 4.3 above.



**5. HAS THIS WRITTEN REQUEST ADEQUATELY
ADDRESSED THE MATTERS REQUIRED TO BE
DEMONSTRATED BY SUB-CLAUSE 4.6(3)?**

Yes.



**6. IS THE DEVELOPMENT IN THE PUBLIC INTEREST
BECAUSE IT IS CONSISTENT WITH THE OBJECTIVES
OF THE HEIGHT AND FSR STANDARDS AND THE
OBJECTIVES FOR DEVELOPMENT WITHIN THE ZONE
IN WHICH THE DEVELOPMENT IS PROPOSED TO BE
CARRIED OUT?**

Yes.

The proposal is consistent with the objectives of the height and FSR standards for the reasons set out in Section 4.2 above and is consistent with the objectives for development in the "R1 General Residential" zone.



7. CONCLUSION

Having regard to the above, it can be concluded that strict compliance with the height and FSR standards is unreasonable and unnecessary in the circumstances of the case, that there are sufficient environmental planning grounds to justify the requested variations and that the proposal is in the public interest because it is consistent with the objectives of both the height and FSR standards and with the objectives of the R1 General Residential zone.

**ITEM -3 223 GREAT NORTH ROAD, FIVE DOCK (DA2017/0136)
DEMOLITION OF EXISTING AND CONSTRUCTION OF A
MIXED USE BUILDING WITH GROUND FLOOR
COMMERCIAL, 34 APARTMENTS, GROUND FLOOR
PARKING, BASEMENT PARKING AND PEDESTRIAN
THROUGH SITE LINK**

Department Planning and Environment

Author Initials: SRA

EXECUTIVE SUMMARY

Owner

Royal Metway Pty Ltd

Applicant

Mr Victor Metlege

Zoning

The proposed development, defined as a commercial premises, shop top housing and residential flat building, are permissible with the consent of Council, within a Mixed Use B4 zone under the Canada Bay Local Environmental Plan 2013 (CBLEP).

Proposal

Demolition of existing structures on site and construction of a mixed use development comprising 34 residential units (7 x 1 bed, 21 x 2 bed and 6 x 3 bed), ground floor commercial, ground floor parking, two levels of basement parking and pedestrian through site link.

Issues, including those matters raised by objectors

Floor Space Ratio, Building Height, Privacy

Value of development


\$10,381,581

Reason for Referral to the Panel

Proposal is affected by the provisions of SEPP 65 and the Apartment Design Guide.

Location



<i>Subject Site</i>		<i>Properties Notified</i>		<i>Submitters</i>		 North
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REPORT

1. BACKGROUND

This application was lodged on the 19 April 2017 and publically notified for a period of fourteen (14) days with two (2) submissions received.

On the 21 June 2017 the applicant was advised by letter that additional information and amendments would be required to resolve the following matters:

- Site frontage – Floor space ratio
- Built form and massing
- Through site link
- Retail floor plate
- Excess car parking
- Internal residential amenity – Unit 001B, Cross ventilation, storage, apartment layout and design
- Interface with surrounding development
- Communal open space
- Engineering matters
- Neighbour notification

The applicant submitted a number of amended draft schemes which were reviewed with preliminary advice provided. The final bundle of amended plans and supporting information was submitted on the 13 April 2018.

2. THE SITE AND ITS CONTEXT

The subject site is legally known as Lot 14, 15, 16 & 17 in DP 11313, No. 223 Great North Road, Five Dock, and is located on the western side of Great North Road between Lyons Road West and Henry Street. The site has a frontage to Great North Road of 18.84 metres and a frontage to East Street to the rear of the site of 21.115m with side boundaries of between 60.105 metres and 62.065 metres. The site has a total area of 1262.2sqm.

The site has a cross fall from the south down to the north of 0.5 – 1.3m and a fall from the southwest corner down to the northeast corner of approximately 1m.

The site contains an on old cinema building which is known as Simian House and is currently used as a community facility and place of public worship occupied by the ‘Awesome’ Church. The building appears as a two storey building with substantive floor to ceiling heights and an awning along Great North Road. The building is constructed along the northern boundary with a variable setback to the southern boundary of 2-3m. The building steps down to single storey and narrows towards the rear of the site, with services and parking to East Street.

The area is currently in transition due to amendments to the Canada Bay LEP 2013, which incorporated the findings of the Five Dock Town Centre

Strategy. This provided a general uplift to building heights and floor space ratios and a bonus to encourage the consolidation of larger sites.

The development to the north at No. 225 Great North Road consists of a three storey commercial building. The development at No. 40 East Street contains a two storey commercial building. The site at No. 227 Great North Road consists of a part 3, part 4 storey mixed use building to Great North Road and five storey residential flat building to East Street.

Development on the eastern side of Great North Road opposite the site is generally characterised as two storey commercial buildings. To the southeast No. 134 Great North Road extends up to five storeys with an attic level. Development to the southeast consists of two and three storey buildings with a mix of commercial and residential uses.

The sites to the south at No.'s 213 -221 Great North Road consist of two storey shop top style developments. The site at 36 – 38 East Street contains a two storey commercial building.

Development on the western side of East Street consists of detached single and two storey dwellings of varying architectural character.

3. PROPOSED DEVELOPMENT IN DETAIL

The key features of the proposal include:

- Demolition of existing structures
- 43 car parking space within ground floor and two levels of basement including 31 x residential, 7 x visitor and 5 x retail
- Building A to Great North Road – 195.7sqm retail/commercial to ground floor with 6 storeys of residential above.
- Building B to East Street – ground floor parking with four storey residential and roof top communal open space
- Communal open space to central courtyard
- Pedestrian through site link along southern boundary.

4. PUBLIC SUBMISSIONS

In accordance with Council's Notification Development Control Plan, adjoining and nearby property owners and occupiers were advised of the proposal and invited to comment. The notification generated 2 submissions objecting to the proposal.

22 West Street, Five Dock

- Height and Bulk of proposed buildings is excessive

Comment: The height and bulk of the proposed buildings is generally consistent with the envelope controls which are contained within the Canada Bay Local Environmental Plan and the Canada Bay Development Control Plan.

- Proposal will result in overlooking of residential properties on the west side of East Street

Comment: There are 11 apartments over 4 levels facing East Street in Building B to the rear of the site. All 11 units have balconies extending across the East Street façade. As the majority of these units will be elevated substantially above existing levels in East Street, the line of sight of occupants of these units will be directed to more district views to the west with the down line of sight being limited.

Urbanesque Planning c/- 225 Great North Road, Five Dock

- The proposal does not satisfy the requirements of Clause 4.3A of the Canada Bay Local Environmental Plan 2013 as the site does not have a street frontage of at least 20m to Great North Road. The site is not entitled to an uplifted building height.

Comment: The site has a frontage to Great North Road of 18.84m and East Street of 21.115m. The frontage to East Street satisfies the requirements for a 20m frontage. The assessment contained within Part 5.1.2 of this report concludes that the proposal satisfies the requirements of Clause 4.3A.

- The proposal does not satisfy the requirements of Clause 4.4(2F) of the Canada Bay Local Environmental Plan 2013 as the site does not have a street frontage of at least 20m to Great North Road. The site is not entitled to the uplifted floor space ratio.

Comment: As above. The assessment contained within Part 5.1.2 of this report concludes that the proposal satisfies the requirements of Clause 4.4(2F).

5. ASSESSMENT UNDER SECTION 4.15 OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979

5.1. Environmental Planning Instruments [Section 4.15 (1) (a) (i & ii)]

5.1.1. State Environmental Planning Policies

The proposed development is subject to the following State Environmental Planning Policies.

State Environmental Planning Policy No. 55 (SEPP No. 55) Remediation of Land

According to clause 7 of SEPP No. 55 Council may not consent to the carrying out of any development on land unless it has considered whether the land is contaminated, and if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable after remediation) for the purpose for which the development is proposed to be carried out.

The site contains an old cinema building which is currently in use as a church. A search of Council files has not revealed any previous uses which

may result in the site being potentially contaminated. As such Council may be satisfied that the land is suitable for the purpose for which the development is proposed to be carried out.

State Environmental Planning Policy No 65 (SEPP No.65) - Design Quality of Residential Apartment Development

The provisions of SEPP 65 apply as the proposed development consists of the erection of a new residential flat building greater than 3 storeys and containing at least 4 or more dwellings. At the time the application was lodged, there was no Design Review Panel constituted for Council under the provisions of SEPP 65.

Clause 30(2) of SEPP 65 requires residential flat development to be designed in accordance with the design quality principles in Schedule 1 of SEPP 65 and the objectives specified in the Apartment Design Guide for the relevant design criteria. Following is an assessment of the proposal against the nine (9) design quality principles outlined in Schedule 1 of SEPP 65.

Principle 1: Context and Neighbourhood Character

Good design responds and contributes to its context. Context is the key natural and built features of an area, their relationship and the character they create when combined. It also includes social, economic, health and environmental conditions.

Responding to context involves identifying the desirable elements of an area's existing or future character. Well designed buildings respond to and enhance the qualities and identity of the area including the adjacent sites, streetscape and neighbourhood.

Consideration of local context is important for all sites, including sites in established areas, those undergoing change or identified for change.

Comment: The area is currently in transition as a result of recent amendments to the Canada Bay LEP 2013, to achieve the findings of the Five Dock Town Centre Strategy. This provided a general uplift to the building height and floor space, with a bonus for larger consolidated sites, and public domain improvements.

The sites within the town centre are located within the B4 Mixed Use zone which seeks to encourage mixed use development that generally include active ground floor uses with residential above. The future character of Great North Road is set by the objectives of the zone which include:

- To provide a mixture of compatible land uses.
- To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.

The proposal at the ground floor provides a 195.7sqm commercial/retail tenancy with a glazed shop front and full width awning. Residential floor

space is provided at the upper levels and rear. The proposal provides a 4m wide public pedestrian through site link between Great North Road and East Street.

The proposal provides a development which is consistent within the objectives for this zoning and is also consistent with the context of the surrounding Five Dock town centre

The proposal satisfies the context and neighbourhood character design quality principle.

Principle 2: Built Form and Scale

Good design achieves a scale, bulk and height appropriate to the existing or desired future character of the street and surrounding buildings.

Good design also achieves an appropriate built form for a site and the building's purpose in terms of building alignments, proportions, building type, articulation and the manipulation of building elements.

Appropriate built form defines the public domain, contributes to the character of streetscapes and parks, including their views and vistas, and provides internal amenity and outlook.

Comment: As this area is in transition, the external built form and scale of development is set by the height and floor space ratio provisions of the CBLEP and the building envelope controls contained within the CBDCEP. The proposal exceeds the floor space ratio due to the provision of the through site link and the overall building height limit due to the roof top communal open space area on Building B, however, the overall external built form is generally consistent with the building envelope controls stipulated by the CBDCEP.

The built form has been designed so that the apartments are primarily orientated towards the front and rear of the site with a central communal open space area. The two buildings are full width, constructed up to each side boundary consistent with the pattern of development for this area.

The built form along Great North Road will present as four storeys with a hard edge and an increasing setback to the fifth, sixth and seventh storey, consistent with the setback requirements of the DCP which seek to minimise the viability of the upper storeys. This elevation is broken up by the shop awning at the ground floor and then balconies and windows at the upper levels.

The built form to East Street is setback 2m behind a small landscape strip and then presents as four storeys with a setback to the fifth storey and then the pergola servicing the roof top communal open space area. The built form and setbacks are considered to provide a suitable transition down towards East Street.

The proposal satisfies the built form and scale design quality principle.

Principle 3: Density

Good design achieves a high level of amenity for residents and each apartment, resulting in a density appropriate to the site and its context.

Appropriate densities are consistent with the area's existing or projected population. Appropriate densities can be sustained by existing or proposed infrastructure, public transport, access to jobs, community facilities and the environment.

Comment: The density of development for this area is largely controlled by the floor space ratio provision of the CBLEP which permits a maximum of 2.7:1. The proposal has a floor space ratio of 2.83:1 including the public through site link and a compliant 2.65:1 excluding the link.

More generally, the proposal provides a density of development which is well supported existing infrastructure including public transport, community and recreational facilities, numerous parks, as well as the local commercial/retail/medical services provided within the Five Dock town centre.

The proposal satisfies the density design quality principle.

Principle 4: Sustainability

Good design combines positive environmental, social and economic outcomes.

Good sustainable design includes use of natural cross ventilation and sunlight for the amenity and liveability of residents and passive thermal design for ventilation, heating and cooling reducing reliance on technology and operation costs. Other elements include recycling and reuse of materials and waste, use of sustainable materials and deep soil zones for groundwater recharge and vegetation.

Comment: The proposal is accompanied by a BASIX certificate (NATHERS Certificate) which assures an appropriate level of sustainable design for residential development.

The development has been designed so that 25 (73.5%) of apartments receive 2 hours of direct solar access during the winter solstice and 21 (61.8%) of the apartments are naturally cross ventilated.

The proposal was accompanied by a waste management plan which makes suitable provision for waste and recycling facilities for the future residents within Basement level 1.

The proposal satisfies the sustainability design quality principle.

Principle 5: Landscape

Good design recognises that together landscape and buildings operate as an integrated and sustainable system, resulting in attractive developments with good amenity. A positive image and contextual fit of well designed developments is achieved by contributing to the landscape character of the streetscape and neighbourhood.

Good landscape design enhances the development's environmental performance by retaining positive natural features which contribute to the local context, co-ordinating water and soil management, solar access, micro-climate, tree canopy, habitat values and preserving green networks.

Good landscape design optimises useability, privacy and opportunities for social interaction, equitable access, respect for neighbours' amenity and provides for practical establishment and long term management.

Comment: The design provides a deep soil landscape strip along the East Street frontage, achieving compliance with the landscaping controls contained within the CBD CP. The communal open space areas each contain landscaping planters, with a condition included within the recommendation of this report to ensure adequate soil depths. Given the location of the site within the Five Dock town centre, the proposal is considered to provide a suitable level of landscaping.

The proposal satisfies the landscape design quality principle.

Principle 6: Amenity

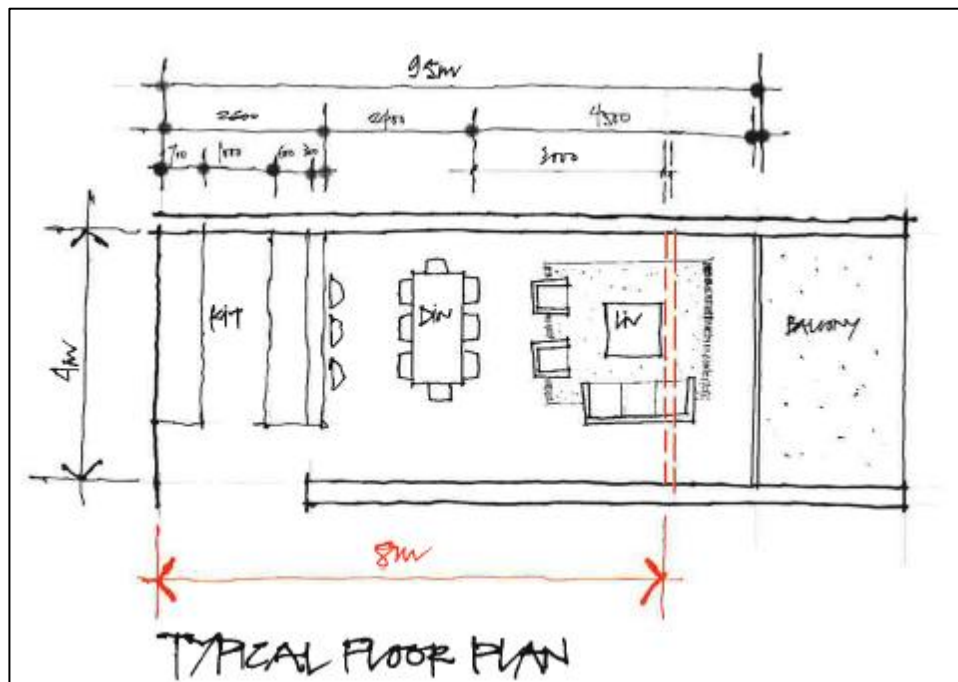
Good design positively influences internal and external amenity for residents and neighbours. Achieving good amenity contributes to positive living environments and resident well being.

Good amenity combines appropriate room dimensions and shapes, access to sunlight, natural ventilation, outlook, visual and acoustic privacy, storage, indoor and outdoor space, efficient layouts and service areas and ease of access for all age groups and degrees of mobility.

Comment: The apartments satisfy the minimum internal dimensions specified within the Apartment Design Guide and as configured are expected to meet the needs of the future occupants. Each unit is provided within an outdoor balcony/or terrace which is sufficiently sized to accommodate a table setting that is proportionate to the size of the units. The proximity of the subject site to open space, recreational parks and facilities in the area will provide additional amenity to future occupants.

The ADG states that “in open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from the window”. The ADG also states that “where minimum areas or room dimensions are not met apartments need to demonstrate that they are well designed and demonstrate the usability and functionality of the space with realistic scaled furniture and circulation areas. These circumstances would be assessed on their merits”

The proposal incorporates a number of apartments which have a depth extending up to 9.5m. The applicant has provided the following schematic open play layout which shows that the 8m distance would not allow the functionality of providing adequate circulation around furniture. The increased depth in this instance provides a logical furniture layout and spacious open plan living areas, noting that each apartment would be provided within full height glazing.



Schematic open play layout (Source: applicant)

The apartments provide compliance with 73.5% of the apartments achieving solar access requirements and 61.8% being naturally cross ventilated. The proposal has also been designed to minimise any overshadowing or privacy impacts between this site and the adjoining sites, including likely future development.

The proposal satisfies the amenity design quality principle.

Principle 7: Safety

Good design optimises safety and security within the development and the public domain. It provides for quality public and private spaces that are clearly defined and fit for the intended purpose. Opportunities to maximise passive surveillance of public and communal areas promote safety.

A positive relationship between public and private spaces is achieved through clearly defined secure access points and well lit and visible areas that are easily maintained and appropriate to the location and purpose.

Comment: The proposal has been designed with glazing and balconies which have an outlook towards Great North Road, East Street and the central

communal open space area. As designed the proposal will provide a good level of passive surveillance of the surrounding area.

The foyers and lift cores for each building are accessed from the pedestrian through site link, which is available for use between 6:00am and 9:00pm daily. Outside of these hours this area is secured by full height glazing with access via an intercom system. The pedestrian link and areas around the lift are suitably sized to provide good sightlines and prevent the concealment of people. The applicant has clarified that adequate lighting will be provided within the lobby, car park and communal open space area.

The residential basement car parking area is secured by a garage door with an intercom system, with the ground floor commercial/retail parking area accessible during business hours and then secured by a garage door outside of business hours.

The proposal satisfies the safety design quality principle.

Principal 8: Housing Diversity and social interaction

Good design achieves a mix of apartment sizes, providing housing choice for different demographics, living needs and household budgets.

Well designed apartment developments respond to social context by providing housing and facilities to suit the existing and future social mix.

Good design involves practical and flexible features, including different types of communal spaces for a broad range of people and providing opportunities for social interaction among residents.

Comment: The proposal will provide a suitable mix of residential housing stock to the local area comprising 7 x 1 bedroom, 21 x 2 bedroom and 6 x 3 bedroom apartments. A number of the apartments also incorporate small study nook areas. The proposed design incorporates a variety of apartment sizes and configurations, which promotes diversity, affordability and access to housing choice.

Additional economic benefit and a general activation of Great North Road will be provided by the ground floor commercial tenancy. This tenancy will support the economic viability of the Five Dock Town Centre.

Principal 9: Aesthetics

Good design achieves a built form that has good proportions and a balanced composition of elements, reflecting the internal layout and structure. Good design uses a variety of materials, colours and textures.

The visual appearance of a well designed apartment development responds to the existing or future local context, particularly desirable elements and repetitions of the streetscape.

Comment: The facade on the Great North Road frontage consists of a vertically proportioned glazed shop front with the external upper floors being a white painted finish inset with grey finishes to each floor.

The proportions of the ground floor and awning and the four storey hard edge to Great North Road provide the desired scale of development along this frontage, complemented by the simple material pallet.

The materials on the East Street elevation are similar with some smaller areas of bright contrasting colours proposed. The balconies are each finished with glass balustrades. These materials and their application within the design provide a suitable presentation that is consistent with existing development along the eastern side of East Street.

The colours and materials will complement surrounding development within the commercial strip and overall the design is considered appropriate for the future character of the area.

The proposal satisfies the aesthetics design quality principle.

Apartment Design Guide

In accordance with Clause 28 (2)(c) of SEPP No. 65, a consent authority is to take into consideration (in addition to any other matters that are required to be, or may be, taken into consideration) the Apartment Design Guide (ADG). A detailed assessment is provided as follows:

<i>Part 3 – Siting the Development</i>	<i>Consideration</i>
<i>3A Site Analysis</i>	A site analysis plan was submitted with the application.
<i>3B Orientation</i>	The site has a suitable orientation.
<i>3C Public Domain Interface</i>	The proposal provides a hard street edge and shop front to Great North Road and a 2m setback and landscaping to East Street. This satisfies the requirements of the CBDCA 2017.
<i>3D Communal and Public Open Space – Min. 25%</i>	The development provides 357.3sqm of communal open space which equates to 28.3%.
<i>3E Deep Soil Zones – Min. 7% and 3m width</i>	<7% - A small deep soil zone is located along East Street. As the site is located within the commercial core the ability to provide landscaping conflicts with the need for parking at the basement level. Landscaping is provided within each of the communal open space areas.
<i>3F Visual Privacy – up to 12m (4 storeys) Habitable – min. 6m Non-habitable – min. 3m</i>	12m habitable to habitable 18m habitable to edge of roof top communal open space

up to 25m (5-8 Storeys)

Habitable – min. 9m

Non-habitable – min. 4.5m

3G Pedestrian Access and Entries Clearly defined public through site link and pedestrian entries are provided from Great North Road and East Street.

3H Vehicle Access Vehicular access is provided from East Street. The proposal was referred to Council's Traffic Engineer who is satisfied with the proposed vehicular access.

3J Bicycle and Parking Access A compliant car parking and bicycle rate is proposed.

Part 4 – Designing the Building

Amenity

4A Solar Access and Daylight – Min. 70% direct sunlight to living room and private open space between 9am and 3pm at mid winter 25 apartments > 2hours = 73.5%

Max. 15% receive no direct sunlight

4B Natural Ventilation – Min. 60% cross ventilated 21 apartments = 61.8%

Overall depth – glass to glass, Max 18m Max 18m

4C Ceiling Heights – Mixed use Min. 3.3m Residential Min. 2.7m Ground – 4m
2.8m

4D Apartment Size and Layout Compliant apartment sizes provided. Each unit has functional layout and design.

Studio – 35m²

1 Bed – 50m²

2 Bed – 70m²

3 Bed – 90m²

>10sqm and 9sqm

Min. area main bedroom 10m²

Other bedrooms 9m² (excluding wardrobe)

>3m

Bedroom Min. width 3m

Living room min width >3.6m

Studio and 1 bed – 3.6m >4m

2 and 3 bed – 4m

	4m
<i>Cross-through min width</i>	
<i>4m</i>	
<i>Max habitable depth 8m</i>	>8m, depth provides for a kitchen island design with logical furniture layout for adjoining dining and living area. Each unit provided with full height glazing and proposal provides compliant solar access and cross ventilation.
<i>4E Private Open Space and Balconies</i>	Compliant
<i>Studio – 4m²</i>	
<i>1 bed – 8m², 2m</i>	
<i>2 bed – 10m², 2m</i>	
<i>3+ bed – 12m², 2.4m</i>	
<i>4F Common Circulation and Spaces – Max unit off single core is 8</i>	4
<i>4G Storage</i>	Compliant, condition included within recommendation of this report.
<i>Studio – 4m²</i>	
<i>1 bed – 6m²</i>	
<i>2 bed – 8m²</i>	
<i>3+ bed – 10m²</i>	
<i>Min 50% in apartment</i>	
<i>4H Acoustic Privacy</i>	Where practicable layouts group similar uses adjoining common walls which minimises noise transmission between the apartments.
<i>4J Noise and Pollution</i>	The siting of the building is generally in accordance with the Canada Bay DCP. The proposal will be conditioned to comply with the BCA. The proposal is not located in close proximity to any noise generating activities.
Configuration	
<i>4K Apartment Mix</i>	7 x 1 bedroom 21 x 2 bedroom 6 x 3 bedroom units A satisfactory mix of one, two and three bedroom apartments has been provided within the proposal.
<i>4L Ground Floor Apartments</i>	n/a
<i>4M Facades</i>	The facade has a design which incorporates materials and finishes which will provide visual interest within Great North Road and East Street.
<i>4N Roof Design</i>	A flat roof form is proposed which is in keeping with the dominant roof form in this

	area.
<i>4O Landscape Design</i>	A landscape plan has been provided which provides for a variety of suitable planting. The landscaping within the communal open space areas will contribute to the amenity of these areas.
<i>4P Planting on Structures</i>	A condition requiring suitable soil depths has been included within the recommendation of this report.
<i>4Q Universal Design</i>	7 apartments (20.5%) Silver Level
<i>Min. 20% Living Housing Guideline's silver level universal design features</i>	6 apartments (17.6%)
<i>Min. 15% adaptable housing</i>	
<i>4R Adaptive Reuse</i>	n/a
<i>4S Mixed Use</i>	Active street frontage to Great North Road.
<i>4T Awnings and Signage</i>	Full width awning to Great North Road which complements and integrates with the building design.
<i>Performance</i>	
<i>4U Energy Efficiency</i>	A BASIX certificate was submitted with the application providing compliance with targets.
<i>4V Water Management and Conservation</i>	The BASIX Certificate provided for the proposal provides a target pass for water conservation.
<i>4W Waste Management</i>	Garbage and recycling chute proposed for each building. Suitably sized garage rooms provided in basement with separate bulky goods store and retail waste room. Waste holding room provided on ground floor.
<i>4X Building Maintenance</i>	Selected materials and finishes will require typical ongoing maintenance.

The proposed development has been designed to satisfy the objectives and design criteria of the ADG.

State Environmental Planning Policy - Building Sustainability Index (2004)

To encourage sustainable residential development, all new dwellings must comply with the provisions of State Environmental Planning Policy – Building Sustainability Index (BASIX).

The proposed development has achieved full compliance with the BASIX commitments as they have reached targets of 40 for water and 40 for energy. The schedule of BASIX Commitments is specified within the BASIX Certificate No. 810863M_02 and is included in the recommended conditions of consent.

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

The site falls within the map area shown edged heavy black and hence is affected by SREP (Sydney Harbour Catchment) 2005. Clause 20(a) states that consent authorities must take into consideration the matters in Division 2 prior to the granting of consent.

Although the site is located within the catchment for Sydney Harbour, it is not a foreshore site. The site is located centrally within the Five Dock town centre approximately 400m southeast of the Hen and Chicken Bay foreshore. In this location the site would not fall within the visual catchment of the harbour and where visible it would be at such a distance that it would not have any impact. The matters of stormwater management have been considered by Council's engineers and found to be suitable subject to conditions. It is considered that the development would not have any direct or indirect impact on the natural qualities, function or operation of Sydney Harbour.

State Environmental Planning Policy (Infrastructure) 2007

Clause 101 Development with frontage to classified road

Vehicular access has been provided from East Street which is not a classified road. Council's traffic engineer has raised no objection to potential traffic impacts as a result of this application, subject to conditions included within the recommendation of this report.

5.1.2. Local Environmental Planning Instruments

The proposed development, defined as commercial premises, shop top housing and residential flat building is permissible with consent, within a Mixed Use B4 zone under the Canada Bay Local Environmental Plan 2013.

Following is a summary table indicating the performance of the proposal against relevant statutory standards.

Statutory Standards

<i>Control</i>	<i>Standard</i>	<i>Proposed</i>	<i>Compliance</i>
Floor Space Ratio	Max. 2.7:1	2.65:1	Yes
		2.83:1 including public through site link	No
Building Height	Max. 24m	Building A – 23.3m Parapet 24m Lift overrun	Yes
	Max. 15m	Building B – 15.4m Parapet 18m Pergola	No
Acid Sulfate Soils	Class 5	Not required as works above 5m AHD	Yes

Active street frontage	Great North Road requires active street frontage	Commercial premises proposed	Yes
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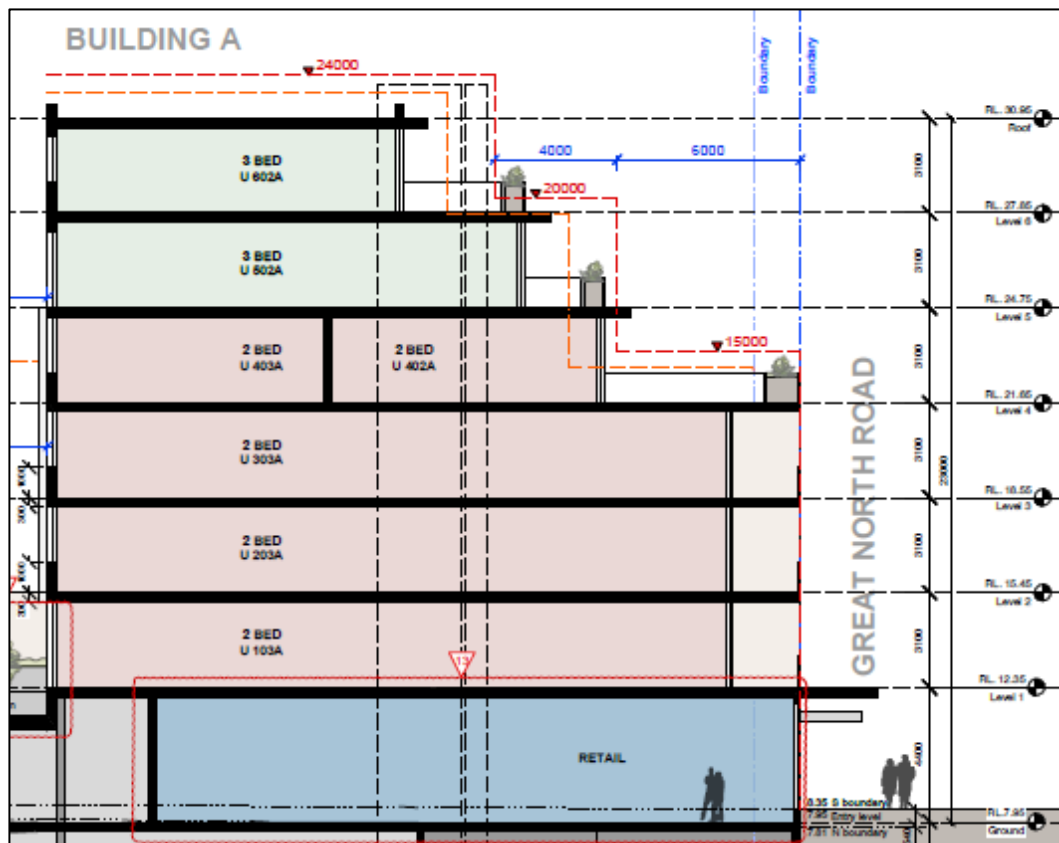
Floor Space Ratio

The site is identified as being located within Area 5 on the Floor Space Ratio Map. In accordance with Clause 4.4 (2F) the maximum floor space ratio for development (other than for the purpose of a dwelling house or a semi-detached dwelling) on land identified as “Area 5” on the Floor Space Ratio Map with a site area of 1,000 square metres and a street frontage of at least 20 metres is 2.7:1 if the consent authority is satisfied that the development:

- (a) *is designed to be compatible with the desired future character of the area and with the height, bulk, scale, massing and modulation of surrounding buildings, and*

Comment: The Council has acknowledged that by providing an FSR and height limit bonus to encourage the consolidation of larger sites that there will be inconsistency in the height, bulk, scale and massing of development within Five Dock. This will be particularly evident as Five Dock Town Centre has a lineal development pattern which necessitates construction up to the side boundaries. In real terms the uplift in FSR translates to an additional two storeys to Building A on Great North Road, which is consistent with the proposed built form.

The sectional extract below shows that the upper two floors on Building A are gradually setback from Great North Road which complies with the overall building envelope controls contained within the CBD CP and ensures that these storeys are obscured from the pedestrian perspective in Great North Road.



Section Building A (Source: applicant)

A dark grey paint finish is proposed to the side elevation of the upper two floors which reduces the visual bulk and scale of this element and improves the visual presentation and appearance of these floors.

The only breach to the building height limit occurs on Building B and is limited to the roof top communal open space area and the associated pergola structure. This does not have any impact on the desired future character for the area noting that Control C21 of the Landscape and Setback controls states that *"The common open space may be located on an elevated garden (i.e. above car parking) or on roof tops provided the area provides for recreational and amenity needs of residents."* The proposed communal open space area has been designed to provide for a good quality outdoor recreation area.

- (b) *has a form and external appearance that will improve the quality and amenity of the public domain, such as new pedestrian connections and open space, and*

Comment: The form and external appearance that results from the uplifted FSR has facilitated the provision of a new midblock public pedestrian through site link between Great North Road to East Street. This site is identified in Part F2.2, C9 of the CBDP as the preferred location for a pedestrian through site link.

- (c) *promotes the sharing of view corridors, and*

Comment: The proposal does not result in any unreasonable view loss, noting the compliant building envelope and location within a commercial centre.

(d) *relates appropriately to surrounding heritage items, and*

Comment: The site is not located within close proximity to any heritage items.

(e) *minimises environmental impacts such as overshadowing, wind and reflectivity, and*

Comment: The upper two floors on Building A are consistent with the setback and envelope controls of the CBDP. As such the built form will not result in any unexpected environmental impacts in terms of overshadowing. The development is not expected to result in any unexpected wind or reflectivity impacts.

(f) *incorporates the principles of ecologically sustainable development, and*

Comment: The proposal is accompanied by a BASIX certificate and NATHERS certificate which assures an appropriate level of sustainable design for the development.

The development satisfies the design criteria for solar access and ventilation contained in the ADG.

(g) *encourages the use of public transport, walking and cycling, and*

The proposed public pedestrian through site link will provide an important midblock link between Great North Road and East Street satisfying Part F2.2, C9 of the CBDP.

The proposal incorporates bicycle storage within the basement levels which satisfies the requirements of the CBDP.

Comment: The proposal does not exceed the maximum parking rate control of the CBDP.

(h) *achieves excellence in urban design, while relating to the local context.*

Comment: The SEPP 65 assessment provided in Part 5.1.1 concludes that the proposed development satisfies the design quality principles and the objectives and design criteria of the ADG.

The assessment provided above demonstrates that the proposed development satisfies the matters for consideration and is entitled to the uplifted FSR.

As indicated in the compliance table, the proposed development does not comply with the maximum floor space ratio development standard contained in Clause 4.4 of the Canada Bay Local Environmental Plan 2013 due to the provision of the midblock public pedestrian through site link. The applicant has provided a written submission seeking variation to this development standard under Clause 4.6 of the Canada Bay Local Environmental Plan 2013. The written submission has been assessed as follows:-

1. What Clause is sought to be varied:

In accordance with the assessment above and the requirements of Clause 4.4(2F) of the CBLEP 2013 the maximum FSR permitted on the subject land is 2.7:1. The applicant is seeking to vary this development standard by 167.86sqm or 8.96% resulting in an FSR of 2.83:1. The pedestrian through site link has an area of 233sqm which if excluded represents a compliant FSR of 2.65:1.

2. Clause 4.6 Objectives:

The following objectives are contained in Clause 4.6 of the Canada Bay Local Environmental Plan 2013:-

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

In consideration of the applicant's written submission, Council is satisfied that it is appropriate to invoke the provisions of Clause 4.6 to vary the FSR development standard in order to achieve a better planning outcome for the development of the subject site by allowing flexibility in the application of the maximum FSR given the circumstances of the development proposal as follows:-

- Part F2.2, C9 of the CBDP identifies this site as the preferred location for a pedestrian through site link providing a midblock connection between Great North Road and East Street. In accordance with Control C12 the proposal incorporates a 4m wide pedestrian link which runs along the southern boundary of the site. The link has been integrated into the design of the proposal with clearly identified entries to each frontage and quality internal finishes. The link is gross floor area which by definition is required to be included in the calculation of FSR.
- To offset the cost to construct the 233sqm link and the cost associated with the ongoing maintenance and cleaning of the link, the applicant has sort an additional 167.86sqm of gross floor area.
- The pedestrian link will improve the east-west access, making it easier to walk and cycle through the Five Dock town centre as well as supporting pedestrian activity along Great North Road. By providing

flexibility the link will be secured for public use and results in a better outcome than a compliant development with no public benefit.

3. Clause 4.6(3) Provisions:

Sub-clause (3) of Clause 4.6 of the CBLEP 2013 states that 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 the following:

- (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.*

In consideration of the applicant's written submission, Council is satisfied that it is unreasonable and unnecessary to require strict compliance with the maximum FSR development standard under Clause 4.4 (2) of the CBLEP 2013, and that there are sufficient environmental planning grounds to justify contravening the FSR standard for the reasons set out below.

Council is also satisfied that the proposed development is in the public interest because it is consistent with the following objectives of the FSR development standard as contained in Clause 4.4(1) of the CBLEP 2013 which state as follows, for the reasons set out below:-

- (a) to ensure that buildings are compatible with the bulk and scale of the desired future character of the locality,*
- (b) to provide a suitable balance between landscaping and built form,*
- (c) to minimise the effects of bulk and scale of buildings.*

- In real terms the uplift in FSR translates to an additional two storeys to Building A on Great North Road, which is consistent with the overall building envelope controls contained within the CBDP, and the communal open space area on Building B.
- The upper two floors on Building A are gradually setback from Great North Road which ensures that these storeys are obscured from the pedestrian perspective in Great North Road and will be directly consistent with the bulk and scale of the adjoining properties when they area redeveloped. It is considered that the proposal is consistent with the desired future character of the area. The roof top communal open space area is setback so that it is not visible from the pedestrian level in East Street.
- The proposed built form will not result in any unexpected environmental impacts in terms of overshadowing or view loss, noting the compliant building envelope and location within a commercial centre.
- The upper two floors on Building A are consistent with the setback and envelope controls of the CBDP. As such the built form will not

result in any unexpected environmental impacts in terms of overshadowing.

- The proposal will not result in the loss of any environmental heritage.
- The proposal incorporates sustainable design measures, including maximising opportunities for solar access and cross flow ventilation.

Council is also satisfied that in accordance with sub-clause (4) (ii) of Clause 4.6, the proposal will be in the public interest because it is consistent with the following objectives of the B4 Mixed Use zone in which the site is located, for the reasons stated below:-

- *To provide a mixture of compatible land uses.*
- *To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.*
- The proposal incorporates 195.7sqm of retail to the ground floor with a 12m wide glazed shopfront to Great North Road. The retail tenancy will have a depth of 10m with a further back of house area providing a total depth of 20m. The retail floor space will enhance the commercial viability and function of the centre and compliment current retail, commercial, entertainment and community uses.
- The upper levels will incorporate 34 residential apartments (7 x 1 bedroom, 21 x 2 bedroom and 6 x 3 bedroom units) which provides a satisfactory mix of one, two and three bedroom apartments supporting housing diversity.
- The provision of the pedestrian link directly encourages and supports walking and cycling within the centre and support access to public transport buses services which operate along Great North Road. This benefit extends beyond the site and supports a more walkable neighbourhood with good access to public transport.

In accordance with sub-clause (4) of Clause 4.6 of the CBLEP 2013, and in view of the above assessment, Council is satisfied that the applicant's written request to vary the FSR development standard adequately addresses the matters required to be demonstrated under sub-clause (3) and that the written submission is well-founded.

Sub-clause (4) (b) states that development consent must not be granted unless the concurrence of the Secretary of the Department of Planning and Environment (DPE) has been obtained. Council has been advised that it can assume the concurrence of the Secretary of the DPE. Under Sub-clause (5) the Secretary is required to consider the following when deciding to grant concurrence:-

- (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.*

Council is satisfied that the proposed contravention of the FSR development standard in this case will not raise any matter of significance for state or regional environmental planning and that the public benefit of the FSR development standard will be maintained.

Building Height

The eastern portion of the site is identified as being located within Area 1 on the Height of Buildings Map. Clause 4.3A(2) provides that the height of a building on land identified as “Area 1” on the Height of Buildings Map may exceed the maximum height shown for the land on that map if:

(a) the height of the building does not exceed 24 metres, and

Comment: Building A has a height at the parapet of 23.3m and 24m at the lift overrun.

(b) the building has a site area of at least 1,000 square metres, and

Comment: The site has an area of 1,262.2sqm.

(c) the building has a street frontage of at least 20 metres.

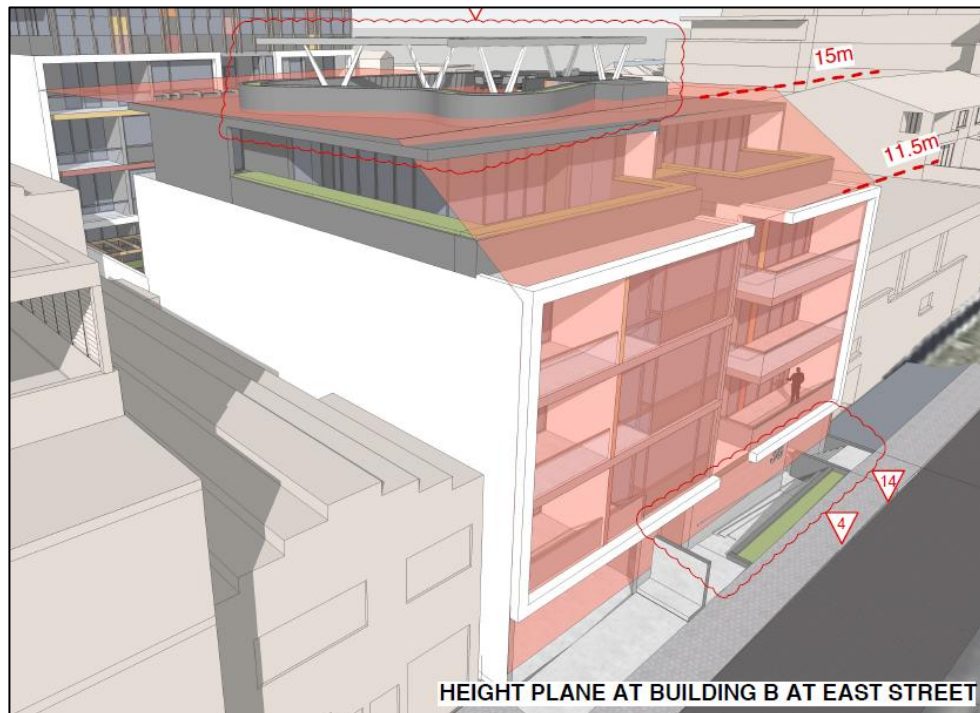
Comment: The site has a frontage to Great North Road of 18.84m and East Street of 21.115m.

The requirements of this Clause have been satisfied and accordingly the site is entitled to a maximum height of 24m.

As indicated in the compliance table, the proposed development does not comply with the maximum building height development standard contained in Clause 4.3 of the Canada Bay Local Environmental Plan 2013. The applicant has provided a written submission seeking variation to this development standard under Clause 4.6 of the Canada Bay Local Environmental Plan 2013. The written submission has been assessed as follows:-

1. What Clause is sought to be varied:

Clause 4.3(2) of the Canada Bay Local Environmental Plan 2013 (CBLEP 2013) states that *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*. The Height of Buildings Map shows that the maximum height permitted for a building on the western portion of the subject land is 15m. The applicant is seeking to vary this development standard by 0.4 – 3m. The extent of the breach is limited to the parapet along the northern edge and the roof top communal open space area.



Building height limit and building envelope (source: applicant)

2. Clause 4.6 Objectives:

The following objectives are contained in Clause 4.6 of the Canada Bay Local Environmental Plan 2013:-

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

In consideration of the applicant's written submission, Council is satisfied that it is appropriate to invoke the provisions of Clause 4.6 to vary the height of buildings development standard in order to achieve a better planning outcome for the development of the subject site by allowing flexibility in the application of the maximum building height given the circumstances of the development proposal as follows:-

- The subject site is located in a B4 Mixed Use zone within the Five Dock Town Centre which is a substantial commercial and retail precinct and the largest such precinct in the Canada Bay Local Government Area.
- The subject site is located within the context of a variety of built forms and building heights with several buildings within the immediate vicinity that substantially exceed the previous and current maximum building heights.
- The proposal was originally compliant with the maximum building height but in order to provide the public pedestrian through site link and in order to achieve a better design outcome, Council encouraged

the applicant to redesign the proposal which has resulted in the non-compliant heights.

3. Clause 4.6(3) Provisions:

Sub-clause (3) of Clause 4.6 of the CBLEP 2013 states that 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 the following:

- (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.*

In consideration of the applicant's written submission, Council is satisfied that it is unreasonable and unnecessary to require strict compliance with the maximum building height development standard under Clause 4.3 (2) of the CBLEP 2013, and that there are sufficient environmental planning grounds to justify contravening the building height standard for the reasons set out below.

Council is also satisfied that the proposed development is in the public interest because it is consistent with the following objectives of the building height development standard as contained in Clause 4.3(1) of the CBLEP 2013 which state as follows, for the reasons set out below:-

- (a) to ensure that buildings are compatible with the desired future character in terms of building height and roof forms,*
- (b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development.*

- The breach to the building height limit occurs on Building B and is limited to the northern roof slab, roof top communal open space area and the associated pergola structure. This does not have any impact on the desired future character for the area noting that Control C21 of the Landscape and Setback controls states that *"The common open space may be located on an elevated garden (i.e. above car parking) or on roof tops provided the area provides for recreational and amenity needs of residents."* The proposed communal open space area has been designed to provide for a good quality outdoor recreation area.
- The variation to the northern portion of the roof slab is primarily due to the fall in the land from south to north and the need to achieve the minimum floor to ceiling heights contained within the CBDCA and the ADG.
- The subject site is located within the context of a variety of built forms and building heights with several buildings within the immediate vicinity that exceed the previous and current maximum

building heights. The development will maintain a four storey hard edge to East Street with a greater setback to the fifth storey and then the roof top communal open space.

- The element that breaches the height limit consists of a communal open space area which provides for the amenity of the future occupants by providing a BBQ area with seating, roof and perimeter planting.
- The proposal presents a compliant built form and height to Great North Road.
- The proposal will provide a commercial/retail built form which complements the existing commercial streetscape along Great North Road and does not give rise to any unreasonable adverse amenity impacts in relation to neighbouring properties.
- The height, bulk and scale of the proposal is consistent with the adjoining buildings and the wider Five Dock shopping precinct including the desired future character of this area.
- The proposed height will not have any adverse impact on existing view corridors, result in loss of privacy impacts on adjoining developments or reduce solar access to existing development in the vicinity.
- The proposal incorporates a ground floor retail tenancy which will cater for a wider variety of retail and commercial facilities within the existing Five Dock Town Centre shopping precinct.
- The proposal incorporates sustainable design measures, including maximising opportunities for solar access and cross flow ventilation.
- The proposal will enhance public access to and within the Five Dock Town Centre in accordance with the Urban Design Study for this Centre and the CBDP and will result in a greater activation of the both frontages to the site.
- The proposal will add to the diversity of housing types in the locality

Council is also satisfied that in accordance with sub-clause (4) (ii) of Clause 4.6, the proposal will be in the public interest because it is consistent with the following objectives of the B4 Mixed Use zone in which the site is located, for the reasons stated below:-

- *To provide a mixture of compatible land uses*
- *To integrate suitable business, office, residential retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.*
 - The proposal will provide additional retail/commercial facilities which will increase the mixture of compatible land uses within the Five Dock Town Centre.
 - The proposal will further enhance community employment opportunities and the activation of Great North Road and East Street.
 - The provision of the pedestrian link directly encourages and supports walking and cycling within the centre and support access to public transport buses services which operate along Great

North Road. This benefit extends beyond the site and supports a more walkable neighbourhood with good access to public transport.

In accordance with sub-clause (4) of Clause 4.6 of the CBLEP 2013, and in view of the above assessment, Council is satisfied that the applicant's written request to vary the building height development standard adequately addresses the matters required to be demonstrated under sub-clause (3) and that the written submission is well-founded.

Sub-clause (4) (b) states that development consent must not be granted unless the concurrence of the Secretary of the Department of Planning and Environment (DPE) has been obtained. Council has been advised that it can assume the concurrence of the Secretary of the DPE. Under Sub-clause (5) the Secretary is required to consider the following when deciding to grant concurrence:-

- (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.*

Council is satisfied that the Clause 4.6 written submission is well founded, and the proposed contravention of the building height development standard in this case will not raise any matter of significance for state or regional environmental planner and that the public benefit of the maximum building height development standard will be maintained.

5.2. Draft Environmental Planning Instruments [Section 4.15 (1) (a) (i & ii)]

On the 22 September 2017, the Minister for Planning issued a Gateway Determination, permitting Council to place a Planning Proposal on public exhibition. This proposal sought to make a number of housekeeping amendments which included the removal of Residential Flat Buildings as a permissible land use within the B4 Mixed Use zone. This amendment, at minimum, requires the ground floor of all new development in B4 Mixed use zones to be protected for the purpose of commercial uses. This planning proposal is considered as a draft statutory instrument.

This proposal provides retail on the ground floor which is consistent with this amendment and will ensure the adequate provision of commercial development within the Five Dock Town Centre.

5.3. Development Control Plans, Council Policies or Codes [Section 4.15(1)(a)(iii)]

The proposed development is affected by the provisions of the proposed development is affected by the provisions of the Canada Bay Development Control Plan 2017 (CBDPCP) specifically Part 7 – Mixed Use Areas and Neighbourhood Centres.

The relevant provisions of this Part of the CBDCP are largely objective based with limited numerical controls. The proposal has been assessed against the relevant provisions as follows:-

Requirement	Proposal	Compliance
F1.2 Building Design and Appearance		
C1 Building mass should maintain the prevailing vertical character found in Canada Bay's business centres.	Mass maintained	Yes
C2 Disruption of the street wall massing is not permitted.	No disruption	Yes
C3 Where development has two (2) street frontages the streetscape should be addressed by both facades. Development should provide a definitive street address to both facades when fronting a main road and a smaller road.	Proposed development is dual frontage and effectively addresses each frontage.	Yes
C4 In commercial areas where parapet skylines predominate, infill development should also include parapet skylines.	Four storey hard edge consistent with control. Note: Increased setback of the upper level.	Yes
C5 Refurbishment or redevelopment of a building should include the provision of an awning of a similar height, width and general appearance to that of adjoining contributory awnings	Awning matches the height and fascia of adjoining awnings.	Yes
C6 Awnings should be reinstated where there is evidence that they were originally fitted or where there is a break in a continuous run.	As above.	Yes

C7 New awnings on corner buildings should wrap around into side streets.	N/A	Yes
C8 New awnings should be no higher or lower by 600mm than neighbouring awnings.	Height relates to adjoining site, noting minimum floor to ceiling heights and cross fall of site.	Yes
C9 Awnings are to be flat or near flat in shape.	Flat	Yes
C10 Eaves and fascias are to be flat or near flat.	Flat	Yes
C11 Awning fascias are to be a maximum 300mm high including any added on signage and in keeping with the scale and character.	500mm (no signage proposed).	Condition comply to
C12 Reinstatement of verandahs is encouraged where evidence of the original structure exists.	N/A	N/A
C13 Balcony balustrades should be light open material. Where possible, balustrades are to match predominant examples in streetscape.	Upper level balustrades provide both clear glass and solid finishes which are acceptable in respect to surrounding context.	Yes
C14 Existing verandahs and balconies should be retained and not infilled.	N/A	N/A
C15 On-site car parking should be located below ground level where possible or located within the building and well screened, or at the rear	All parking is provided at rear accessed from East Street.	Yes

off a laneway.		
F1.3 Retail Frontages		
C1 New shopfronts should be designed to make maximum use of vertical elements, i.e. windows should emphasise a vertical proportion (height greater than width).	Vertical glazed panels emphasise vertical proportions.	Yes
C2 Original early shop fronts in existing buildings should be retained and conserved.	N/A	N/A
C3 If security shutters are required they should be visually permeable (75% permeability).	Not proposed.	Yes
F1.4 Visual and Acoustic Privacy		
C1 Openable first floor windows and doors as well as balconies should be located so as to face the front or rear of the building.	Openable first floor windows and doors are primarily oriented to each of the street frontages and central courtyard.	Yes
C2 Where it is impractical to locate windows other than facing an adjoining building, the windows should be off set to avoid direct view of windows in adjacent buildings.	Planter boxes to upper levels.	Yes
F1.5 Safety and Security		
C1 Pedestrian ways and car parking, particularly those used at night to be direct, clearly defined, visible and provided with adequate lighting.	Considered acceptable.	Yes
C2 Landscaping and site features that might block sight lines are to be minimised.	Proposed development is built to Great North Road street edge. Low level landscaping provided along East Street.	Yes
C3 Concealment spaces		

minimised.	Concealment spaces limited.	Yes
C4 All entrances and exits are to be made clearly visible.	Entrances clearly identifiable.	Yes
C5 Windows etc. should be arranged to overlook public areas and streets to maximise surveillance.	Effective casual surveillance of each street frontage provided.	Yes
C6 Developments generating a significant amount of pedestrian movement throughout the car park (such as shopping centres or office car parks) are to establish clear and convenient pedestrian routes.	N/A (not considered significant)	Yes
C7 Pedestrian access to buildings should be separate to vehicular access to the site.	Entry points are separated.	Yes
F1.6 Daylight and Sunlight Access		
C1 Direct solar access (sun shine) to windows of principal living areas and the principal area of open space of dwellings adjacent to commercial zones should not be reduced to < 3 hours between 9am and 3pm on 21 June.	Low density residential development is located along the western side of East Street. The proposal will not reduce solar access to any north facing windows or private open space areas of these properties.	Yes
F2.2 Five Dock Town Centre		
Public Open Space C1 - C3	Site is not indicated on figure 8 as requiring public open space.	N/A
New Laneways C4 – C8	Site is not located within the area identified as providing additional laneway links.	N/A
Pedestrian Connections C9 Provide mid-block link between Great North Road and East Street within the hatched area identified in Figure F2.7 Access Network and Hierarchy	Pedestrian mid-block link proposed.	Yes

<p>C12 All pedestrian links are to be a minimum of four (4) metres wide.</p> <p>C13 All links are to be activated by retail, civic and/or commercial uses.</p> <p>C14 All links are to be naturally lit and ventilated, and well-lit after hours.</p> <p>C15 All links are to be publicly accessible between at least 6am and 8pm daily, however 24-hour public access is preferred.</p> <p>C16 All links are to follow Safer-by-Design principles (ie clear lines of sight).</p>	<p>4m wide.</p> <p>Link is activated towards Great North Road by a retail tenancy.</p> <p>Central area of link is open to the sky which provides light and natural ventilation.</p> <p>Applicant has agreed to these hours enforced through a condition.</p> <p>Pedestrian link has clear lines of sight.</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p>
<p>High Quality Residential Development</p> <p>C17 Recommendations within the SEPP 65 (State Environmental Planning Policy No 65 - Design Quality of Residential Apartment Development) and the accompanying Apartment Design Guide are adopted by this DCP for apartment developments.</p>	<p>A detailed assessment against applicable provisions has been provided within this report.</p>	<p>Yes</p>
<p>Landscaping and Setbacks</p> <p>C18 Landscape setbacks are to be in accordance with Figure F2.9 Primary Setbacks.</p> <p>C19 A landscape plan prepared by a qualified Landscape Architect is to be submitted with the</p>	<p>A 2m wide setback with landscaping strip provided along East Street.</p> <p>Landscape plans provided.</p>	<p>Yes</p> <p>Yes</p>

<p>development application that shows levels adjacent to the public domain; planting schedules; and type and detail of paving, fencing and other details of external areas.</p> <p>C20 The area within the minimum landscaped setback is to be deep soil zone i.e. where there are no structures below.</p> <p>C21 For residential apartment development that occupies a minimum of 25% of the site area and has a minimum dimension of 3.0m. The common open space may be located on an elevated garden (i.e. above car parking) or on roof tops provided the area provides for the recreational and amenity needs of residents.</p> <p>C22 Landscaping is to give preference to species with low water needs, including native plant species and select and position trees and shrubs to control sun and winds and provide privacy</p>	<p>Deep soil proposed, however, reduced by access ramp to pedestrian link.</p> <p>Communal open space located at ground floor level and roof of Building B.</p> <p>Variety of planting proposed and suitable species selected for the site.</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p>
<p>Building Setbacks C23 Building setbacks in accordance with:</p> <p>- Figure 2.9 Primary Setbacks, (Great North Road – Nil) (East Street – 2m)</p>	<p>Nil</p> <p>2m</p>	<p>Yes</p> <p>Yes</p>

<p>- Figure 2.10 Secondary Setbacks, (Great North Road – 6m) (East Street – 4m)</p>	6m	Yes
	6m	Yes
<p>- Figure 2.12 Maximum Street Wall Heights, (Great North Road - 15m Maximum – 4 levels) (East Street – 11.5m Maximum – 3 levels)</p>	Great North Road – 15m / 4 levels	Yes
<p>- Figure 2.13 Example Street Frontage Section;</p>	East Street – 12.5m / 4 levels	* See Below
<p>- Figure 2.15 Maximum Building Height Zones; and any additional controls set out below. (Great North Road – 15 / 24m) (East Street – 11.5 / 15m)</p>	Noted	Noted
<p>C24 Additional floors above four storeys have a setback of 6m unless otherwise shown in Figure 2.10 Secondary Setbacks</p>	Great North Road Parapet – 23.3m Lift – 24m	Yes Yes
	East Street Parapet – 15.4m Pergola – 18m	* See Part 5.1.2
<p>C25 Where possible along 6m wide laneways increase setbacks above 2 storeys and/or increase ground level setbacks to improve pedestrian amenity.</p>	Additional floors are setback minimum 6m.	Yes
<p>C26 Provide ground level active uses where indicated on Figure F2.9 Primary Setbacks.</p>	N/A	N/A
<p>C27 Residential entries and foyers are permitted along active street frontages but are not to dominate or compromise the</p>	Active Street Frontage provided along Great North Road frontage.	N/A
	Residential entry foyer located from pedestrian link which does not detract from the	Yes

commercial viability of the street.	proposed Retail tenancy.	
C28 where required, active uses must be at least 10.0m deep.		
C29 A continuous awning is to be provided where indicated on Figure F2.9 Primary setbacks, and meet the requirements of C5 – C11 of Section F1.2 Building Design and Appearance.	10 – 20m	Yes
	Continuous awning proposed along Great North Road.	Yes
C30 Vehicular access points are not permitted along active street frontages. Where rear or side access is not possible, development without parking will be considered.	Vehicular access provided from East Street.	Yes
Ground Floor Residential C31 - 34	No ground floor residential.	N/A
Site Amalgamation and Isolated Sites C35 Provide new or improved connections as identified in Figure F2.8 Public Domain.	Site provides pedestrian through site link.	Yes
C36 Where development may create an isolated site, the applicant is required to demonstrate negotiations with property owners to include the site commenced early, well prior to the lodgement of the development application. Written evidence of negotiations is to be provided, including	The applicant has provided rejection letters from the solicitor representing the owner of 225 Great North Road and 40 East Street.	Yes

<p>reasonable offers based on independent valuation and that take into account expenses likely to be incurred.</p> <p>C37 Where development may create an isolated site, the applicant is required to demonstrate negotiations with property owners to include the site commenced early, well prior to the lodgement of the development application. Written evidence of negotiations is to be provided, including reasonable offers based on independent valuation and that take into account expenses likely to be incurred.</p> <p>C38 Site amalgamation should seek to minimise the number of driveway crossings provided to the street.</p>	<p>The applicant provided draft plans demonstrating that these sites could be redeveloped in accordance with the current planning framework and would not become isolated as a result of this development.</p> <p>Single driveway crossing proposed.</p>	<p>Yes</p> <p>Yes</p>
<p>Fine Grain Frontages</p> <p>C39 On narrow sites less than 12m wide alternative methods to address car parking including car share, off site provision and/or exemptions are encouraged.</p> <p>C40 Developments are to create retail frontages of less than 8m in width or be designed so that larger frontages can be divided into smaller units in the future.</p> <p>C41 Reinforce the fine grain of the centre by creating smaller shop</p>	<p>N/A</p> <p>Proposed commercial premises capable of being divided into smaller retail tenancies in the future.</p> <p>As above.</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p>

fronts or by providing articulation so that the flexibility exists to create narrower shops (5-7m) in the future.		
<p>Build to Alignment</p> <p>C42 Building setbacks are to be in accordance with Figure 2.9 Primary Setbacks, Figure 2.12 Maximum Street Wall Heights and Figure 2.14 Example Street Frontage Section; and any additional controls set out below.</p> <p>C43 The nil setback applies only to the first four storeys of development, unless otherwise indicated in Figure 10 Secondary Setbacks.</p>	<p>Building setbacks and wall height have been addressed under 'setbacks' above.</p> <p>See setback section above.</p>	<p>Noted</p> <p>Noted</p>
<p>Building Heights</p> <p>C44 Building heights in accordance with:</p> <p>Primary Setbacks,</p> <p>Secondary Setbacks,</p> <p>Built form Sections,</p> <p>Maximum Street Wall Heights,</p> <p>Typical Street Frontage Section;</p> <p>Maximum Building Height Zones; and any additional controls set</p>	<p>Primary Setbacks for Five Dock are outlined by Figure 2.9 with which proposal complies.</p> <p>Secondary Setbacks for Five Dock are outlined by Figure 2.10, previously addressed.</p> <p>Proposal introduces additional storey to East Street building</p> <p>Street Wall Heights for Five Dock are outlined by Figure 2.12, previously addressed.</p> <p>Typical Street Frontage Sections for Five Dock are outlined by Figure 2.14 with which proposal complies</p> <p>Maximum Building Height Zones for Five Dock are outlined by Figure 2.15,</p>	<p>Yes</p> <p>Yes</p> <p>*See Below</p> <p>Yes</p> <p>Yes</p> <p>Noted</p>

out below.	previously addressed.	
C45 Development is to be consistent with the minimum floor to ceiling heights for the specified uses within the centre shown in Table F-A Minimum Floor Heights.	Retail premises – 4.4m Residential – 3.1m	Yes
C46 For development sites to the north of Fred Kelly Place and the new town square the maximum building height is to be in accordance with Fig. 5 and 10; and no incursions (including plant, balcony rails etc.) are to be permitted.	N/A	N/A
C47 The finished floor level of the ground floor above the footpath level is to be no greater than 1m for residential uses and 0.35m for retail and commercial uses.	Level entry area and max. 0.35m	Yes
C48 Where active uses are specified on the ground floor as identified in Fig. 2.9 Primary Setbacks, the minimum floor to ceiling height is to comply with the category of “Retail - restaurant/cafe” in Table 1.	Active Street Frontage is proposed with 4m floor to ceiling height.	Yes
C49 Where active uses are not specified on the ground floor, the minimum floor to ceiling height is to comply with the category of “Retail - general” in Table 1.	As detailed above.	Yes

<p>C50 Building heights are to conform with Table F-B Building Heights, which shows the relationship between the height of building in storeys and height of the building in metres.</p> <p>C51 New buildings are to have a scale that is visually compatible with adjacent buildings and heritage items. This may require the height of new development to be lower than the maximum height permitted.</p> <p>C52 The upper-most level is to be designed to reduce visual bulk and scale of the building. Options to achieve this include increased setbacks and/or the use of dark colours and roof elements</p>	<p>The proposal provides the desired 4 storeys with 5th, 6th and 7th storey setback to Great North Road and on East Street 4 storey with 5th storey setback. As previously discussed the non-compliance with the building height has been addressed by a variation under Clause 4.6 of the CBLEP which is well founded and therefore supported.</p> <p>As previously discussed the site is not located within close proximity to any heritage items.</p> <p>The upper level proposed is considered to be effectively setback from each street frontage with the façade design, materials and finishes providing for desired articulation.</p>	<p>Consistent</p> <p>Yes</p> <p>Yes</p>
<p>Façades</p> <p>C53 Balconies are to support a balance of solid and void treatment in the composition of the facade. A facade which is dominated by a repetitive balcony design is to be avoided.</p> <p>C54 External walls are to include variations in colour and the types of materials used in order to articulate different parts of a building facade and reduce the</p>	<p>Upper level balconies provide a balance of solid and void. The façade is not repetitive.</p> <p>External finishes are appropriate noting also the setback of the proposed upper levels which provides for the desired articulation.</p>	<p>Yes</p> <p>Yes</p>

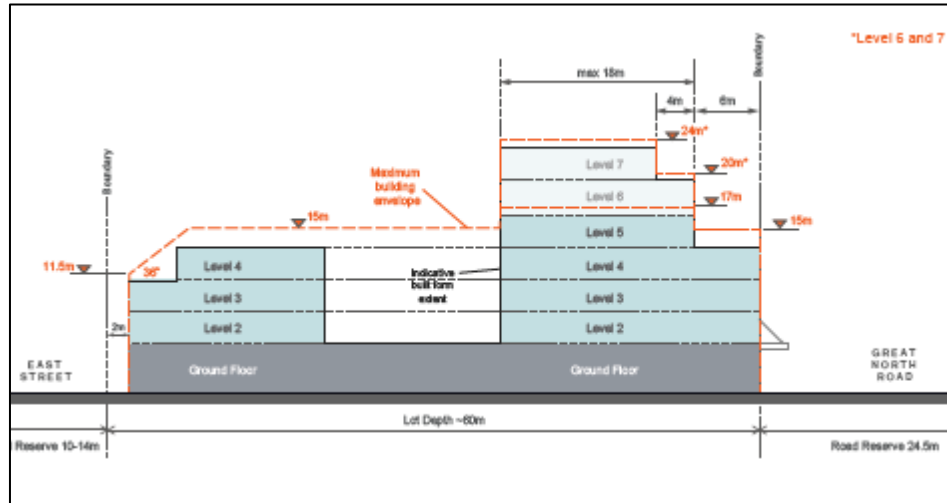
overall bulk and scale.		
<p>C55 External walls are to be constructed of high quality and durable materials and finishes with ‘self-cleaning’ attributes such as face brickwork, rendered brickwork, stone, concrete and glass. Materials and finishes with high maintenance costs, and those susceptible to degradation or corrosion are to be avoided.</p>	As detailed above external finishes are considered appropriate.	Yes
<p>C56 A 1m wide façade ‘articulation zone’ for architectural expression and elements (eg balconies) is permitted within the primary setback zone along Waterview Street and Barnstaple Road as identified in Figure F2.15 Maximum Building Height Zones. The maximum length of straight wall, without articulation such as a balcony or return, is 8m.</p>	N/A	N/A
<p>Heritage C57 - 58</p>	Site is not located within close proximity of any heritage items.	N/A
C3.1 Vehicle Parking		
<p>C1 Parking should not detract from the streetscape qualities, while meeting needs of visitors and employees in commercial areas.</p>	Parking access from rear and provided at ground floor and basement levels. The parking does not impact upon the street.	Yes
<p>C2 Parking spaces should be a minimum of 5.4m x 2.4m, which an additional 300mm either side where</p>	Capable of compliance	Yes

enclosed.		
C3 Car parking for people with disabilities should have a minimum dimension of 3.6m x 6m.	Capable of compliance	Yes
C4 Car parking is to be provided in accordance with Table C-B.	Max – 43 spaces Proposed - 43 spaces	Yes
Residential Max. 1 bed x 0.6 2 bed x 0.9 3 bed x 1.4 Visitor 1/5		
Commercial 1/40sqm GLFA		
C3.2 Bicycle Parking		
C1 Bicycle parking and storage facilities should be provided to allow parking or storage of a minimum number of bicycles, in accordance with Table C-F	Adequate provision for bicycle storage and parking contained within basement	Yes
Residential Storage - 1/dwelling Parking – 1/12 dwelling		
Commercial Café – Parking - 1/25sqm public area Restaurant – Storage- 1/100sqm public area, Parking-1/500sqm Shop – Storage- 1/300sqm, parking 1/500sqm		
C4 Waste Management		
C1 Onsite storage for waste and recycling facilities must be provided in designated areas for all new development.	A Demolition and Construction Waste Management Plan accompanies the DA. Dual garbage and recycling chute provided. Temporary waste collection area provided on ground floor adjoining East Street.	Yes Yes

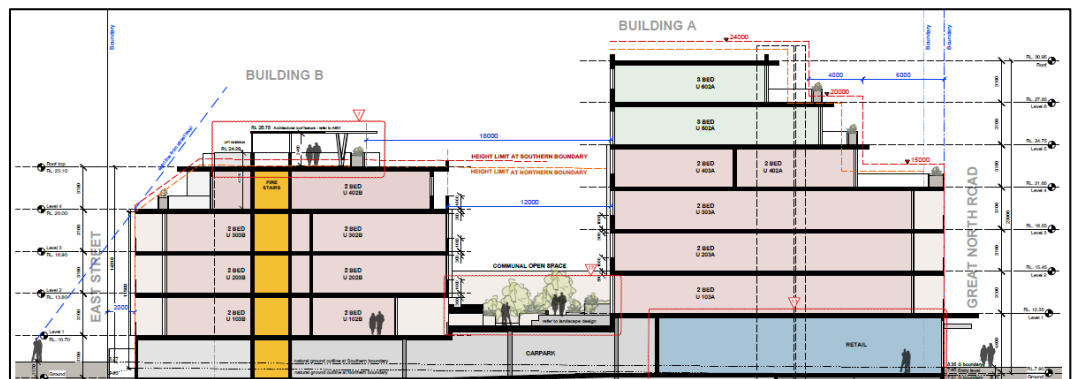
* As outlined in the compliance table above the proposed development does not comply with certain provisions of Section F2.2 which relates to Building Envelope and Height controls of the Five Dock Town Centre. This is addressed below:

Building Envelope and height

Figure F2.16 provides the following building envelope section for sites which extend from Great North Road through to East Street, with a section of the proposal provided below for comparison.



Building envelope sections (Source: CBDCP)



Longitudinal Section (Source: applicant)

The Great North Road building is compliant with the building envelope control including number of storeys and setback requirements of the CBDCP. The area of non-compliance relates to the provision of an additional storey and roof top communal open space area to Building B fronting East Street. As per the above section, the built form, although containing an additional storey, would be largely contained within the envelope control due to the cross fall of the footpath and the levels of the ground floor.

The intent of this control is to ensure the proposal will integrate into the existing development along the eastern side of East Street and that the top floors are suitably setback to ensure a transition down towards the properties on the western side of East Street.

The proposal, although non-compliant, will present an overall form that is consistent with the existing constructed buildings at No. 227 Great North Road and No.'s 189 – 193 Great North Road (see 3D view below) and the buildings currently under construction at No.'s 46 - 48 and No.'s 50 - 52 East Street and the approval at No.'s 195 – 199 Great North Road. The upper level has been appropriately setback with a greater setback to the roof top communal open space area which as shown below is recessive as viewed from East Street.



East Street 3D view (Source: applicant)



East Street 3D view (Source: applicant)

5.4. Likely Impacts of the Development [Section 4.15 (b)]

(i) Impact on the natural environment:

The proposed development will not have an adverse impact on the natural environment. The site has been previously developed for commercial purposes and is within an established urban environment.

(ii) Impact on the built environment:

The proposal has been assessed against the detailed design provisions prescribed by SEPP 65 'Design Quality of Residential Apartment Development', associated Apartment Design Guide and the Canada Bay Local Environmental Plan 2013 and Development Control Plan and is considered appropriate, noting the detailed discussion that has been previously provided within this report.

The bulk, scale and design of the proposal are considered to effectively respond to the context of the area and will be well integrated with the surrounding residential and commercial developments.

Furthermore the proposal is not considered to result in any unreasonable amenity impacts on the adjoining properties or the surrounding area in the form of overshadowing, privacy or view loss.

(iii) Social and Economic impacts in the locality:

The proposal is considered beneficial in respect to social and economic considerations. The retail space provides employment opportunities and services with the residential component providing additional accommodation.

5.5. Suitability of the Site for the Development Proposed [Section 4.15(c)]

The proposed development has been assessed in relation to its environmental consequences, and in terms of State Environmental Planning Policy No. 55. Having regard to this assessment it is considered that the land is suitable for the intended development.

5.6. The Public Interest [Section 4.15 (e)]

The proposed development is consistent with the objectives of the Environmental Planning and Assessment Act in so far as it promotes the co-ordinated and orderly, and economic use and development of the land. As a result Council may be satisfied that the development subject to conditions is consistent with the public interest.

6. INTERNAL REFERRALS

6.1. Stormwater Drainage

The proposal was considered by Council's engineers who raised no objection subject to conditions which have been included within the recommendation of this report.

6.2. Traffic Engineering

The proposal was considered by Council's engineers who raised no objection subject to conditions which have been included within the recommendation of this report.

6.3. Environmental Health

The submitted Acid Sulphate Soil Assessment has been reviewed by Council's Environment Health Team, who advised that the proposal was suitable subject to conditions, which have been included within the recommendation of this report.

6.4. Building Services

The proposal was reviewed by Council's Building Services Team, who advised that the proposal was satisfactory and any matters could be addressed by the accredited certifier at the construction certificate stage.

7. CONCLUSION

The proposed development is appropriately located in Zone B4 'Mixed Use' under provisions of the Canada Bay Local Environmental Plan 2013 and is consistent with statutory and non-statutory development standards and controls of relevance to the proposal, noting particularly support for the clause 4.6 variations in respect to building height and floor space ratio.

Further, the development performs adequately in terms of its relationship to surrounding built and natural environment, particularly in relation to likely impacts upon surrounding properties. Consequently, the proposal is supported from an environmental planning perspective.

RECOMMENDATION

Pursuant to Section 4.16 of the Environmental Planning and Assessment Act 1979 (as amended)

- A. THAT the Canada Bay Independent Hearing and Assessment Panel assume the concurrence of the Secretary: Department of Planning and Environment and invoke the provisions of Clause 4.6 of the *Canada Bay Local Environmental Plan 2013* and resolve that in the circumstance of the case a strict application of the statutory standards contained in Clauses 4.3 and 4.4 of the *Canada Bay Local Environmental Plan 2013* is unnecessary and unreasonable.
- B. THAT the Canada Bay Independent Hearing and Assessment Panel grant consent to Development Application No. DA2017/0136 to Demolition of existing structures on site and construction of a mixed use development comprising 34 residential units (7 x 1 bed, 21 x 2 bed and 6 x 3 bed), ground floor commercial, ground floor parking, two levels of basement parking and pedestrian through site link on land at 223 Great North Road FIVE DOCK NSW 2046 subject to the following site specific conditions. In granting consent the Panel has regard to the merit considerations carried out in the assessment report and pursuant to Section 4.15 of the Environmental Planning and Assessment Act. On consideration of the merits of the case the Panel acknowledges the areas of non-compliance arising from the application

but notes that it supports the application based on the particular circumstances of the case and does not consider that the consent gives rise to a precedent.

General Conditions

1. **DAGCA01 - Approved Plans and Supporting Documents**

The development shall be carried out substantially in accordance with the approved stamped and signed plans and/or documentation listed below **except where modified by any following condition**. Where the plans relate to alteration or additions only those works shown in colour or highlighted are approved.

Reference/Dwg No	Title/Description	Prepared By	Date/s
A090, Rev D	Basement 1 and 2 plans	BKA Architects	06.04.18
A100, Rev D	Ground Floor plan	BKA Architects	06.04.18
A101, Rev D	Level 1 plan	BKA Architects	06.04.18
A102, Rev D	Level 2 plan	BKA Architects	06.04.18
A103, Rev B	Level 3 plan	BKA Architects	06.04.18
A104, Rev D	Level 4 plan	BKA Architects	06.04.18
A105, Rev D	Level 5 plan	BKA Architects	06.04.18
A106, Rev D	Level 6 plan	BKA Architects	06.04.18
A107, Rev B	Roof plan / Site plan	BKA Architects	06.04.18
A200, Rev C	Elevation 1 - East	BKA Architects	06.04.18
A201, Rev C	Elevation 2 - West	BKA Architects	06.04.18
A202, Rev C	Elevation 3 - North	BKA Architects	06.04.18
A203, Rev C	Elevation 4 - South	BKA Architects	06.04.18
A204, Rev C	Internal Elevations	BKA Architects	06.04.18
A300, Rev D	Section	BKA Architects	06.04.18
A500, Rev B	Detail section	BKA Architects	06.04.18
A621, Rev A	Schedule of materials - Pedestrian Link	BKA Architects	06.04.18
810863M_02	BASIX Certificate	Greenworld Architectural Drafting	06.04.18
LPDA 17 - 273, Page 1, Rev D	Level 1 Landscape	Conzept Landscape Australia	05.04.18
LPDA 17 - 273, Page 2, Rev C	Level 4 & 5 Landscape Plans	Conzept Landscape Australia	05.04.18
LPDA 17 - 273, Page 3, Rev C	GL, Level 2, 3 & 6 Landscape Plans	Conzept Landscape Australia	05.04.18
LPDA 17 - 273, Page 4, Rev B	Specification & Detail	Conzept Landscape Australia	05.04.18
E23342 AA_Rev0	Acid Sulfate Soils Management Plan	eiaustralia	05.04.17

Note 1: Modifications to the approved plans will require the lodgement and consideration by Council of a modification pursuant to Section 4.55

of the Environmental Planning and Assessment Act.

Note 2: *A warning to all Accredited Certifiers. You should always insist on sighting the original Council stamped approved plans/documentation and not rely solely upon the plan reference numbers in this condition. Should the applicant not be able to provide you with original copies, Council will provide you with access to its files so you that may review our original copies of approved documentation.*

Note 3: *The approved plans and supporting documentation may be subject to conditions imposed under section 4.17 of the Act modifying or amending the development (refer to conditions of consent which must be satisfied prior to the issue of any Construction Certificate).*

(Reason: To confirm and clarify the terms of consent)

2. DAGCA03 - Construction within Boundary

All approved construction including but not limited to footings, walls, roof barges and guttering are to be constructed wholly within the boundaries of the premises.

(Reason: To ensure compliance with approved plans)

3. DAGCA08 - Roads and Maritime Services

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

2. The layout of the proposed basement car park area associated with the subject development should be in accordance with AS 2890.1 -2004 and A52890.6 2009;

3. Sight distances from the proposed vehicular crossings to vehicles on East Street are to be in accordance with Austroads 'Guide to Traffic Engineering Practice, Part 5 Intersections at Grade, Section 6.2 - Sight Distance and AS 2890. Vegetation and proposed landscaping must not hinder sight lines to and from the vehicular crossings to pedestrians, cyclists, and general traffic;

4. All vehicles are to enter and exit the site in a forward direction.

5. All vehicles are to wholly contained on site before being required to stop;

6. Bicycle parking associated with the subject development should be in accordance with AS 2890.3 (Bicycle Parking Facilities). Consideration should also be given to providing end-of-trip facilities within the commercial development to support and encourage active transport to the subject development;

7. Detailed design plans and hydraulic calculations are to be submitted to Roads and Maritime for approval, prior to the commencement of any works.

Details should be forwarded to:
The Sydney Asset Management
Roads and Maritime Services
PO Box 973 Parramatta CBD 2124.

A plan checking fee will be payable and a performance bond may be required before Roads and Maritime approval is issued. With regard to the Civil Works requirement please contact the Roads and Maritime Project Engineer, External Works Ph: 8849 2114 or Email Suppiah.Thillai@rms.nsw.gov.au <<mailto:Suppiah.Thillai@rms.nsw.gov.au>>;

8. The developer is to submit design drawings and documents relating to the excavation of the site and support structures to Roads and Maritime for assessment, in accordance with Technical Direction GTD2012/001.

The developer is to submit all documentation at least six (6) weeks prior to commencement of construction and is to meet the full cost of the assessment by Roads and Maritime.

The report and any enquiries should be forwarded to:
Project Engineer, External Works
Sydney Asset Management
Roads and Maritime Services
PO Box 973 Parramatta CBD 2124.
Telephone 8849 2114

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

9. A Construction Pedestrian Traffic Management Plan (CPTMP) detailing construction vehicle routes, number of trucks, hours of operation, access arrangements and traffic control should be submitted to Council for approval prior to the issue of a Construction Certificate;

10. Construction works zone will not be permitted on Great North Road;

11. A Road Occupancy Licence should be obtained from Transport Management Centre for any works that may impact on traffic flows on Great North Road during construction activities.

4. **DAGCB01 - Australia Post Guidelines**

Mail deliveries are to be in accordance with Australia Post Guidelines, as set out in the Australia Post publication "General Post Guide - September 2007". A copy of this Guide can be obtained from Australia Post's web page at

www.auspost.com.au. A copy of the brochure may be obtained from Australia Post. In general, a clearly marked mailbox (or group of mailboxes) shall be provided within 500mm of the footpath alignment.

(Reason: To ensure compliance with mail delivery regulations)

5. **DAGCB02 - Compliance with Disability Discrimination Act**

This approval does not necessarily protect or guarantee against a possible claim of discrimination (intentional or unintentional) under the *Disability Discrimination Act 1992*, and the applicant/owner is therefore advised to investigate their liability under this Act. **Note: Disability (Access to Premises - Buildings) Standards 2010** - As of 1 May 2011, if access is provided to the extent covered by this Standard, then such access cannot be viewed as unlawful under the Disability Discrimination Act 1992.

(Reason: To inform of relevant access requirements for persons with a disability)

6. **DAGCB06 - Height**

The maximum height of the proposed development shall be:

- RL30.95 metres measured at the top of the Great North Road Building roof.
- RL32.05 metres measured at the top of the Great North Road lift overrun.
- RL23.10 metres measured at the top of the East Street Building roof.
- RL 25.75 metres measured at the top of the communal open space roof form on the East Street building.

(Reason: Compliance)

7. **DAGCB07 - Lighting**

Any lighting on the site shall be designed so as not to cause a nuisance to other residences in the area or to motorists on nearby roads and to ensure no adverse impact on the amenity of the surrounding area by light overspill. All lighting shall comply with relevant standards in this regard.

(Reason: Protect amenity of surrounding area)

8. **DAGCB10 - Site Management**

The following procedures apply:

- (a) Implement the site management plan and measures, and provide for erosion and sediment control according to the SSROC "Do It Right On Site" publication;
- (b) Prevent sediment and/or building materials being carried or washed onto the footway, gutter, road, or into Council's stormwater drainage system;
- (c) Ensure soil/excavated material is not transported on wheels or tracks of vehicles or plant and deposited on surrounding roadways;
- (d) Ensure safe access to and from the site including the road reserve and footpath area, crossings by heavy equipment, plant and materials delivery, or static loads from cranes, concrete pumps and the like;

- (e) Ensure safe loading and unloading of excavation machines, building materials, formwork and the erection of the structures within the site;
- (f) Ensure storage on site of all excavated material, construction materials and waste containers during the construction period (except where otherwise approved); and
- (g) Ensure support of any excavation beside any adjoining property or the road reserve is designed by a Chartered Civil Engineer.

(Reason: Environmental protection)

9. DAGCB12 - Street Numbering of Lots and Units

The proposed units and/or new allotments shall be numbered as follows:-

- 101/38 East Street, Five Dock
- 102/38 East Street, Five Dock
- 103/38 East Street, Five Dock
- 104/38 East Street, Five Dock
- 201/38 East Street, Five Dock
- 202/38 East Street, Five Dock
- 203/38 East Street, Five Dock
- 204/38 East Street, Five Dock
- 301/38 East Street, Five Dock
- 302/38 East Street, Five Dock
- 303/38 East Street, Five Dock
- 304/38 East Street, Five Dock
- 401/38 East Street, Five Dock
- 402/38 East Street, Five Dock
- 403/38 East Street, Five Dock

- Retail premises - 223 Great North Road, Five Dock
- 101/223 Great North Road, Five Dock
- 102/223 Great North Road, Five Dock
- 103/223 Great North Road, Five Dock
- 104/223 Great North Road, Five Dock
- 201/223 Great North Road, Five Dock
- 202/223 Great North Road, Five Dock
- 203/223 Great North Road, Five Dock
- 204/223 Great North Road, Five Dock
- 301/223 Great North Road, Five Dock
- 302/223 Great North Road, Five Dock
- 303/223 Great North Road, Five Dock
- 304/223 Great North Road, Five Dock
- 401/223 Great North Road, Five Dock
- 402/223 Great North Road, Five Dock
- 403/223 Great North Road, Five Dock
- 501/223 Great North Road, Five Dock
- 502/223 Great North Road, Five Dock
- 601/223 Great North Road, Five Dock
- 602/223 Great North Road, Five Dock

Numbering of units/properties shall be conspicuously displayed at the front of the property and shall be maintained in accordance with Council's Street Numbering Policy.

Should the property be strata subdivided, the approved numbering system shall be included in the final plans of strata subdivision.

(Reason: Identification of Property for Emergency Services and Mail Deliveries)

10. DAGCC01 - Hoarding Requirements

Where any works associated with the approved development are located in close proximity to a public place such that occupation of part of the public place may be required to complete the development, then it will be necessary to erect either an "A" Class or "B" Class hoarding. Should a hoarding need to be constructed on or over Council land/property, then the following requirements will apply:-

The approved development includes/requires either an "A" Class or "B" Class or both type of hoarding to be erected. Should such a hoarding need to be constructed on or over Council land/property, then the following requirements will apply:-

- **"A" Class Requirements**

An engineer certified "A" Class hoarding is to be constructed on the footpath adjacent to the building site to protect pedestrians during demolition of the existing building and construction of the new building.

- **"B" Class Hoardings**

An engineer certified overhead "B" Class hoarding, complying with the requirements of the Department of Industrial Relations & Technology, shall be constructed over Council's footpath to protect pedestrians during demolition of the existing building and the erection of the new building.

A formal hoarding application shall be made to Council and demolition or construction work must not commence until the hoarding has been erected and then approved by Council and all applicable fees and charges paid.

(Reason: Public safety)

11. DAGCC04 - Ventilation

To ensure that adequate provision is made for ventilation of the premises, mechanical and/or natural ventilation systems shall be designed, constructed and installed in accordance with the provisions of:

- The Building Code of Australia; and
- Protection of the Environment Operations Act 1997; and
- Any proposed mechanical ventilation system shall comply with the Australian Standard AS 1668-1991 (parts 1 & 2). Prior to installation, the

design is to be certified by a person competent to do so. At completion of the installation of the system and prior to the issue of the occupation certificate, the work shall be certified by a person competent to do so. The certification shall include:-

- i. Date of inspection, Inspection, testing and commissioning details
- ii. The name and address of the individual who carried out the test and
- iii. A statement that the service has been designed, installed and is capable of operating to above the standard

(Reason: Compliance with relevant standards)

12. DAGCD01 - Approved Stormwater Drainage Design

The stormwater drainage system for the proposed development shall be constructed in accordance with the following approved plans and documentation, endorsed with Council's Stamp, and Council's "Appendix 2 - Engineering Specifications of the Canada Bay Development Control Plan", except where amended by other conditions of consent:

Project/Drawing No.	Prepared By	Revision	Dated
D1	LMW Design Group P/L	G	18.05.2018
D2	LMW Design Group P/L	A	05.04.2018
D3	LMW Design Group P/L	E	14.05.2018
D3a	LMW Design Group P/L	C	14.05.2018
D4	LMW Design Group P/L	G	18.05.2018
D4a	LMW Design Group P/L	E	18.05.2018
D5	LMW Design Group P/L	E	14.05.2018
D6	LMW Design Group P/L	D	27.03.2018
D7	LMW Design Group P/L	D	27.03.2018

Important Note:

- The approved Stormwater Drainage Plan as identified above is for Concept Only. The designer is responsible for providing sufficient information and/or updates to the Stormwater Drainage Plan suitable for Construction Certificate approval.
- Should any changes be required to the approved stormwater drainage plan as referred to above, the amended design shall achieve equivalent performance standards in accordance with Council's "Appendix 2 - Engineering Specifications of the Canada Bay Development Control Plan".
- Construction Certificate Approval does not include approval for works external to the property. Where the proposed design extends beyond the property boundary, separate approval under Section 138 of the Roads Act 1993, must be obtained from Council prior to the commencement of works. The applicant is advised to contact Council for clarification of proposed works for which approval under Section 138 applies.

Approved Driveway Design:

The driveway for the property shall be constructed in accordance with the following drawing:

Project/Drawing No.	Prepared By	Revision	Dated
A100	BKA architecture	E	21.05.2018
A501	BKA architecture	B	21.05.2018

(Reason: Stormwater management and vehicular access)

Conditions which must be satisfied prior to the commencement of demolition of any building or structure

13. DAPDB01 - Construction Certificate - Prior to the Commencement of any Demolition Works

Where demolition is associated with the erection of a new structure, or an altered portion of or an extension to an existing building, the demolition of any part of a building is "commencement of building work" pursuant of section 6.6 of the Act. In such circumstance all conditions of this consent must be satisfied prior to any demolition work. This includes, but is not limited to, the **issue of a Construction Certificate, appointment of a PCA and Notice of Commencement under the Act.**

(Reason; Statutory Requirement)

**14. DAPDB02 - Demolition
Demolition - General**

- a. That two (2) working days (i.e. Monday to Friday exclusive of public holidays) prior to the commencement of any demolition work, notice in writing is to be given to the Council. Such written notice is to include:
 - The date when demolition will commence,
 - Details of the name, address and business hours contact telephone number of the demolisher, contractor or developer.
 - The licence number of the demolisher, and relevant WorkCover licenses, (see minimum licensing requirements in (d) below, and
 - Copies of the demolisher's current public liability/risk insurance policy indicating a minimum cover of \$10,000,000.00.
- b. Demolition of buildings and structures must comply with all current and relevant Australian Standards.
- c. Demolition works are restricted as follows:
 - Monday to Saturday inclusive - 7:00am - 5:00pm
 - Sundays and Public Holidays - No work
- d. At least two (2) working days (i.e. Monday to Friday exclusive of public holidays), the developer or demolition contractor must notify adjoining residents prior to demolition commencing advising the following:
 - The date when demolition will commence;

- Details of the name, address and business hours contact telephone number of the demolisher, contractor or developer;
- The telephone number of WorkCover's Hotline 13 10 50.

Demolition Involving the Removal of Asbestos

General Information

Homes built or renovated prior to 1987 are likely to contain asbestos. Asbestos is most commonly found within eaves, internal and external wall cladding, ceilings and walls (particularly within wet areas such as bathrooms and laundries), and fences. Unless properly handled, asbestos disturbed or removed during renovations can cause the development of asbestos related diseases, such as asbestosis, lung cancer and mesothelioma.

To ensure work does not cause undue risk please see the following site for further information: www.asbestosawareness.com.au

Asbestos to be removed by licensed asbestos removalist

All works removing asbestos containing materials must be carried out by a suitably licensed asbestos removalist duly licensed with Workcover NSW, holding either a Friable (Class A) or a Non- Friable (Class B) Asbestos Removal License which ever applies AND a current WorkCover Demolition License where works involve demolition.

NOTE:

- Removal of asbestos by a person who does not hold a Class A or Class B asbestos removal license is permitted if the asbestos being removed is 10m² or less of non-friable asbestos (approximately the size of a small bathroom).
Friable asbestos materials must only be removed by a person who holds a current Class A asbestos license.
- To find a licensed asbestos removalist please see www.workcover.nsw.gov.au

Compliance with applicable Legislation, Policies and Codes of Practice

Asbestos removal works are to be undertaken in accordance with the following:

- NSW Work Health and Safety Act and Regulation 2011;
- Safe Work Australia Code of Practice for the Management and Control of Asbestos in the Workplace [NOHSC:2018(2005)]
- NSW Government WorkCover Code of Practice - How to Safely Remove Asbestos;
- NSW Government WorkCover Code of Practice - How to Manage and Control Asbestos in the Workplace; and

Clearance certificate

Following completion of asbestos removal works undertaken by a licensed asbestos removalist re-occupation of a workplace must not occur until an independent and suitably licensed asbestos removalist undertakes a clearance inspection and issues a clearance certificate.

Notification of asbestos removal works

At least two (2) working days (i.e. Monday to Friday exclusive of public holidays), the developer or demolition contractor must notify adjoining residents prior to the commencement of asbestos removal works. Notification is to include, at a minimum:

- The date and time when asbestos removal works will commence;
- The name, address and business hours contact telephone number of the demolisher, contractor and/or developer;
- The full name and license number of the asbestos removalist/s; and
- The telephone number of WorkCover's Hotline 13 10 50

Warning signs must be placed so they inform all people nearby that asbestos removal work is taking place in the area. Signs should be placed at all of the main entry points to the asbestos removal work area where asbestos is present. These signs should be weatherproof, constructed of light-weight material and adequately secured so they remain in prominent locations. The signs should be in accordance with AS 1319-1994 Safety signs for the occupational environment for size, illumination, location and maintenance.

Barricades

Appropriate barricades must be installed as appropriate to prevent public access and prevent the escape of asbestos fibres. Barricades must be installed prior to the commencement of asbestos removal works and remain in place until works are completed.

(Reason: To ensure compliance with the relevant legislation and to ensure public and work safety)

15. DAPDB03 - Site Safety Fencing - Demolition only

Erect site fencing to a minimum height of 1.8m complying with WorkCover Guidelines, to exclude public access to the site throughout the demolition. The fencing **must be erected before the commencement of any demolition work** and maintained.

The site shall be maintained in a clean and orderly condition during demolition works.

Hoardings

If applicable, a separate Hoarding Application for the erection of an A class (fence type) or B class (overhead type) hoarding along the street frontage(s) complying with WorkCover requirements must be obtained including:

- payment to Council of a footpath occupancy fee based on the area of footpath to be occupied and Council's Schedule of Fees and Charges before the commencement of work; and
- provision of a Public Risk Insurance Policy with a minimum cover of \$10 million in relation to the occupation of and works within Council's road reserve, for the full duration of the proposed works, must be obtained with a copy provided to Council.

(Reasons: Statutory Requirement and health and safety)

16. DAPDB05 - Erosion and Sediment Control During Demolition

Erosion and sedimentation controls shall be in place **prior to the commencement of demolition works** and shall be maintained throughout the demolition of the building and any regrading of the ground levels, approved removal of vegetation etc. The controls shall be installed in accordance with the details approved by Council and/or as directed by Council officers. These requirements shall be in accordance with Managing Urban Stormwater - soils and Construction produced by Landcom (Blue Book). A copy of the Erosion and Sediment Control Plan must be kept on site during the demolition works and made available to Council officers on request.

(Reason: Environmental protection)

Conditions which must be satisfied prior to the issue of a Construction Certificate

17. DACCA01 - Access for People with Disabilities

Access for people with disabilities must be provided in accordance with the requirements of the Building Code of Australia, relevant Australian Standards and with regard to the *Disability Discrimination Act 1992*. **Prior to the issue of a Construction Certificate**, the plans shall demonstrate compliance. **Note: Disability (Access to Premises - Buildings) Standards 2010** - As of 1 May 2011, if access is provided to the extent covered by this Standard, then such access cannot be viewed as unlawful under the Disability Discrimination Act 1992.

(Reason: To inform of relevant access requirements for persons with a disability)

18. DACCB02 - Damage Deposit for Council Infrastructure

A Damage Deposit (calculated in accordance with Council's adopted Fees and Charges) of **\$50,000** shall be paid to Council **prior to the issue of the Construction Certificate**.

This Damage Deposit shall be refunded upon completion of all works, at the Occupation or Final Certificate stage.

Any costs associated with works necessary to be carried out to rectify any damages caused by the development, shall be deducted from the Damage Deposit.

Note: Full panel concrete footpath replacement in areas where connection to all services are required. This includes driveways and road concrete panels. This will stop differential settlement and maintain the integrity of council infrastructure and asset.

(Reason: Protection of Council infrastructure)

19. DACCB03 - Long Service Levy Payments

The payment of a long service levy as required under part 5 of the *Building and Construction Industry Long Service Payments Act 1986*, in respect to this building work, and in this regard, proof that the levy has been paid, is to be submitted to Council **prior to the issue of a Construction Certificate**. Council acts as an agent for the Long Services Payment Corporation and the levy may be paid at Council's Office.

(Reason: Statutory requirement)

20. DACCB04 - Section 7.11 Contributions

The following Section 7.11 Development Contributions are required towards the provision of public amenities and services in accordance with the City of Canada Bay s7.11 Development Contributions Plan.

Based on the following rates, as at March 2018 (CPI 113.6)

Infrastructure Type	Studio/One bedroom dwelling	Two bedroom dwelling	Three bedroom dwelling +
Community Facilities	\$1,143.17	\$1,627.41	\$2,179.39
Civil Infrastructure	\$1,109.89	\$1,580.03	\$2,115.94
Plan Preparation and Administration	\$125.55	\$178.73	\$239.35
Open Space and Recreation	\$8,112.24	\$11,548.47	\$15,465.32
TOTAL	\$10,490.85	\$14,934.64	\$20,000

Based on the following number of Dwellings and Bedrooms:

No. of Dwellings	No. of Studio & One beds	No. of Two beds	No. of Three or more beds
	7	21	6
	\$73,435.95	\$313,627.44	\$120,000
TOTAL	\$507,063.39		

Any change in the Consumer Price Index between March 2018 (CPI 113.6) and the date that the Section 7.11 Development Contribution is paid, will be added/subtracted from the amount cited above.

Contributions must be receipted by Council and submitted to the Accredited Certifier **prior to the issue of any Construction Certificate**.

Please present a copy of this condition when paying the contribution at the Customer Service Centre so that it can be recalculated.

A copy of the City of Canada Bay Section 7.11 Development Contributions Plan may be obtained from Council's website.

(Reason: To retain a level of service for the existing population and to provide the same level of service to the population resulting from new developments)

21. DACCE02A - Construction Traffic Management Plan (CTMP)

Prior to the issue of a Construction Certificate, the applicant shall submit and have approved by Council's Engineers, a detailed Construction Traffic Management Plan (CTMP). The plan shall demonstrate how construction and delivery vehicles will access the development site during the demolition, excavation and construction phase of the development. The plan shall be certified by a suitably qualified and experienced traffic consultant and all traffic associated with the subject development shall comply with the terms of the approved Construction Traffic Management Plan.

The following matters (at a minimum) must be addressed in the CTMP:

- (a) A detailed description and route map of the proposed truck/construction vehicle access routes.
- (b) The locations of any proposed Construction Works Zones along the site frontage.
- (c) Provide a construction schedule.
- (d) Tradesperson parking (parking shall be provided on-site where possible).
- (e) Provide relevant Traffic Control Plans (must be certified by a suitably qualified RMS ticket holder).
- (f) Provide relevant Pedestrian Management Plans.
- (g) A site plan which indicates site entrances and exits, turning areas within the site for construction and spoil removal vehicles allowing a forward ingress and egress for all construction vehicles on the site (superimposed truck swept path diagrams). Site entrances and exits shall be controlled by a certified traffic controller.

(Reason: Traffic safety and amenity during construction phase)

22. DACCE03 - Continuous Awnings

The awning over the footpath, as indicated on the approved drawings, shall not encroach within 600mm from the face of the kerb. The height of the completed awning shall not vary from within the range of 3 metres to 4.5 metres above the completed footpath and shall have a maximum fascia height of 300mm. The awning shall be detachable from the building without causing any concealed structural failure. Provision for awning cut-outs shall be made for existing and/or new trees. Details in this regard must be indicated on the architectural plans **to be submitted with the Construction Certificate**.

(Reason: Pedestrian amenity)

23. DACCE04 - Obtaining a Construction Certificate for Building Work

This Development Consent does not constitute approval to carry out construction work. Construction work may only commence **upon the issue of a Construction Certificate, appointment of a Principal Certifying Authority (PCA), and lodgement of Notice of Commencement**.

Please note that if demolition works forms part of the extent of works approved in the same application, then demolition must not commence **prior to the issue of a Construction Certificate**.

(Reason: Information)

24. **DACCF02 - Landscape Maintenance Strategy**

To ensure the survival of landscaping following works, a landscape maintenance strategy for the owner/occupier to administer over a 12 month establishment period following the issue of the Occupation Certificate shall be prepared and provided to the satisfaction of the Accredited Certifier **with the Construction Certificate application**. The strategy is to address maintenance issues such as, but not limited to plant survival, irrigation, soil testing, weeding, staking, fertilizing, remedial pruning and plant replacement.

(Reason: Ensure landscape survival)

25. **DACCF04 - On Slab Landscaping**

To ensure the site landscaping thrives the on slab landscaping shown on the approved landscaping plan is to be designed to include a minimum soil depth of 650mm for shrubs and trees and 300mm for grass and ground covers, adequate drainage and a permanent, automatic irrigation system conforming to Sydney Water's current *Waterwise* Policy. Details shall be submitted **with the Construction Certificate application**.

(Reason: Ensure landscape survival)

26. **DACCG01 - Available Visitor Car Parking Signage**

A sign shall be erected in a suitable location on the property near the driveway entrance indicating where visitor parking is available on the site. Details shall be submitted **prior to the issue of the Construction Certificate**.

(Reason: Adequate access and egress)

27. **DACCG02 - Bicycle Storage Provision**

Provision for bicycles shall be in accordance with the City of Canada Bay Development Control Plan for Bicycle Parking and Storage Facilities. Details shall be submitted **prior to the issue of the Construction Certificate**.

(Reason: Convenience)

28. **DACCG03 - Car Parking Areas for Multiple Use Buildings**

The following car parking requirements apply:-

- (a) A maximum of 43 car spaces shall be provided on the development site.

This car parking shall comprise:-

- 31 Residential spaces;

- 7 Visitor spaces; and
 - 5 Commercial spaces.
- (b) All parking within Basement level 1 and 2 shall be allocated to the residential apartments with 1 car space for 31 residential apartments and no car spaces for 3 residential apartments. All car spaces shall be allocated and marked according to this requirement.
- (c) All ground floor car spaces shall be allocated as visitor spaces or commercial spaces in accordance with (a) above.
- (d) Each car parking space shall have minimum dimensions in accordance with the relevant Australian Standard and be provided on-site in accordance with the approved plans.
- (e) The parking bays shall be delineated by line marking.
- (f) Visitor spaces shall be clearly line marked and/or signposted and shall only be used by persons visiting residents of the property or commercial/business/retail premises located within the development. Visitor spaces shall not be allocated as permanent residential parking spaces. Access to visitor parking spaces shall not be restricted without development approval and a sign shall be erected at the vehicular entrance indicating the availability of visitor parking.

The following traffic control measures shall be implemented on site:-

- (a) Signage indicating "Entry Only" shall be prominently displayed at the entrance to the development.
- (b) Signage indicating "Exit Only" shall be prominently displayed at the exit to the development.
- (c) One-Way directional arrows shall be painted on the driveway pavement to indicate the required vehicular directional movement through the car parking area.

The above details shall be submitted to and approved by the Accredited Certifier **prior to the issue of the Construction Certificate.**

(Reason: Parking and access)

29. DACCG10 - Speed Hump and Stop Sign on Exit

The applicant shall install a stop sign and a speed hump at the exit from the site. The stop sign must be accompanied by the associated line marking and the speed hump shall be set back by 1.5 metres from the boundary alignment. The devices shall be designed and constructed in accordance with the provision of all relevant Australian Standards. The building plans shall indicate compliance with this requirement **prior to the issue of a construction certificate.**

(Reason: Traffic safety and management)

30. DACCH00 - Obscure Glazing for Privacy in Wet Areas

All bathroom, ensuite and toilet windows shall be installed with obscure glazing.

(Reason: Amenity)

31. DACCI01 - Damage Report

Prior to the issue of the Construction Certificate, a Damage Report Form shall be completed and submitted to Council. This Damage Report Form is for the evaluation of the existing condition of the road reserve, and shall be filled out and signed by the Applicant and submitted to Council. This form is generally for “minor works” (as defined in the Driveways and Ancillary Works Application Form). For “major works”, a Dilapidation Report will be required.

This Form is used to assist Council in determining the refund of any damage deposits and any likely repairs necessary upon the completion of the development.

When lodging the Damage Report Form, fees are payable in accordance with Council’s fees and charges schedule, which will go towards administration and inspection costs.

The cost of repairing any damage to Council property (including the footpath, verge, street trees, kerb, gutter, road pavement or the like) during and/or immediately after construction must be paid to Council or shall be deducted from the damage deposit bond. Repair of damaged Council property by the Applicant or his agent is not permitted unless approved by Council.

For roadways requiring asphaltic concrete works or adjustment works, these shall be done to a minimum width as specified by Council. Minimum dimensions are given in Council’s Specification for Driveway Construction or Specification for Restoration Works.

(Reason: Maintain public assets)

32. DACCI03 - Protection of Public Places

The adjoining or adjacent public area is not to be obstructed by any materials, vehicles, refuse skips and the like, under any circumstances unless approved in writing by Council.

If the work involved in the demolition or construction of a building is likely to cause pedestrian or vehicular traffic in a public place to be obstructed or rendered inconvenient, or building involves the closure of a public place, a barrier, fence or hoarding shall be erected **prior to the commencement of any work** subject to approval of a Traffic Management Plan.

An application to occupy public space is to be submitted to Council for approval prior to commencement of works.

Where a hoarding is required, an application for hoarding is also to be submitted to and approved by Council prior to commencement of any work.

Hoardings shall be erected to comply with the requirements of WorkCover, the Principal Certifying Authority and with relevant Australian Standards.

(Reason: Safety)

33. **DACCI05 - Vehicular Crossings**

Full-width, heavy-duty concrete vehicular crossing(s) shall be installed across the footpath at the entrance(s) and/or exit(s) to the site, subject to separate Council approval. In this regard the Applicant must obtain a copy of Council's "Appendix 2 - Engineering Specifications of the Canada Bay Development Control Plan" and lodge an application for vehicular crossing(s) (available from Council's Customer Services Centre or can be downloaded from Council's website), and pay the appropriate fees and charges **prior to the lodgement of the Construction Certificate**.

(Reason: To ensure appropriate access to the site can be achieved)

34. **DACCJ01 - Hoardings**

A Hoarding Application for the erection of a Class A (fence type) or Class B (overhead type) hoarding along the street frontage(s) complying with WorkCover requirements must be obtained.

The relevant application form shall be submitted to Council with a footpath occupancy fee based on the area of footpath to be occupied according to Council's Schedule of Fees and Charges, and the application shall be approved **before the commencement of work**.

A Public Risk Insurance Policy with a minimum cover of \$10 million in relation to the occupation of and works within Council's road reserve, for the full duration of the proposed works, must be obtained with a copy also provided to Council. The Policy is to note Council as an interested party. The copy is to be provided to Council **prior to the issue of a Construction Certificate**.

(Reason: Safety & information)

35. **DACCJ02 - Redundant Vehicular Crossings and Ancillary Works**

Where new pavement, repair or reinstatement of footpath or other ancillary works such as kerb and gutter and stormwater pit construction is proposed, the Applicant shall complete a Section 138 Civil Works in the Public Domain Area Application for major works, or for minor works (as defined in the Driveways & Ancillary Works Application) adjacent to the site, an application for "Driveway & Ancillary Works" and submit the application to Council for approval **prior to the issue of a Construction Certificate**. Both forms are available from Council's Customer Services Centre or can be downloaded from Council's website.

All disused or redundant vehicle crossings and laybacks shall be removed and reinstated with concrete kerb and gutter or to the existing edging profile as specified by Council and the footpath area is to be restored to the

satisfaction of Council's Utilities & Development Engineer, **prior to the issue of the Occupation Certificate.**

(Reason: Public infrastructure maintenance)

36. DACCJ03 - Separate Approval for Works in the Public Road (External Works) - Section 138 Roads Act

Pursuant to Section 138 of the Roads Act 1993 and **prior to the issue of a Construction Certificate**, the applicant must submit detailed plans to and obtain a written approval from the Appropriate Road Authority (usually Council for Local and Regional Roads and both Council and Roads & Maritime Services (RMS) for Arterial Roads), for any works in the road reserve.

Additionally, where the work involves closure of a carriageway on a State Road, Regional Road, or it is such that it may impact the traffic flow on a State Road or Regional Road, or is within close proximity of a Traffic Facility (eg Traffic Lights) then a Road Occupancy License (ROL) must be obtained from the Planned Incidents Unit of the Traffic Management Centre of the RMS. The application should be lodged at least 10 days prior to the planned commencement date.

(Reason: Protection of Public Assets and information)

37. DACCK01 - Application for a Construction Certificate

The applicant must apply to Council or an Accredited Certifier for a Construction Certificate to carry out the relevant building works that are approved by this consent. The details to be included in the application for a Construction Certificate are:

- (a) Architectural plans and specifications complying with the Building Code of Australia (BCA), relevant Australian Standards, and the development consent and conditions.
- (b) If Council issues the Construction Certificate, engineering details must be submitted for approval for all structural elements, including but not limited to, piers, footings, reinforced concrete slab, first floor joist layout, roof trusses, steel beams and the like. The details must be prepared by a practising consulting structural engineer. Also a certificate from the engineer must be included certifying that the design fully complies with appropriate SAA Codes and Standards and the Building Code of Australia requirements.

Note: The engineer/s undertaking certification must be listed on the National Professional Engineers Register under the appropriate category.

- (c) Geotechnical report for the site, prepared by a qualified geotechnical engineer detailing the foundation conditions of the site and solutions for consideration by a structural Engineer.
- (d) Essential services plan outlining the existing and proposed fire safety measures.

- (e) Disabled access provisions to common and public areas in accordance with AS1428.
- (f) If an alternative solution to the “deemed to satisfy” provisions of BCA is proposed, the following details must be lodged:
 - Performance requirements that the alternative solution intends to meet.
 - Assessment methods used to determine compliance with the performance requirements, including if and how each performance objective impacts on other requirements of the BCA; and
 - A statement about the person who prepared the alternate solution, indicating qualifications, experience, insurance details, and membership of an approved accreditation body

Note: The performance-based application may be required to be reviewed by a suitably qualified independent body at the applicant's expense. Any fees relating to any review are required to be paid **prior to the issue of the Construction Certificate**.

(Reason: Statutory requirement)

38. DACCK02 - BASIX Commitments

The approved BASIX Certificate shall be submitted to the Accredited Certifier with the application for a Construction Certificate.

Where a change or changes are proposed in the BASIX commitments, the applicant must submit a new BASIX Certificate to the Accredited Certifier and Council. If any proposed change in the BASIX commitments is inconsistent with the development consent the applicant will be required to submit a modification to the development consent to Council under Section 4.55 of the Environmental Planning and Assessment Act 1979.

All commitments in the BASIX Certificate must be shown on the plans accompanying the Construction Certificate **prior to the issue of any Construction Certificate**.

(Reason: Statutory Compliance)

39. DACCK03 - Energy Australia Requirements

The approved development must comply with the requirements of Energy Australia. **Prior to the issue of a Construction Certificate**, the applicant shall demonstrate to the Accredited Certifier that any such requirements have been complied with.

(Reason: Statutory requirement)

40. DACCK07 - Fire Hydrant Booster Assembly

In order to ensure an overall high quality finish and streetscape presentation, details of the location, enclosure and landscaping treatment to the fire hydrant booster assembly are to be submitted to, and approved by Council, prior to the issue of a Construction Certificate.

(Reason: Streetscape amenity)

41. DACCL02 - Certification of the Stormwater Drainage System Design

The proposed stormwater design shall be certified by a suitably qualified person, in accordance with Council's "Appendix 2 - Engineering Specifications of the Canada Bay Development Control Plan", and shall be submitted to the Principal Certifying Authority **prior to the issue of the Construction Certificate.**

Certification of the proposed stormwater design shall be obtained from a Chartered Professional Civil Engineer with Institution of Engineers, Australia Corporate Membership and registered on the National Engineers Register (NER) and shall be submitted to the Principal Certifying Authority **prior to the issue of the Construction Certificate.** *(Delete this paragraph if works are for minor residential structures or additions)*

(Reason: Adequate stormwater management)

42. DACCL03 - Construction or Re-direction of a Stormwater Drainage System

No line of natural drainage or any stormwater drainage channel, pipeline, pit or any other drainage infrastructure shall be filled in, relocated, diverted or otherwise interfered with, except by the construction of a pit, pipeline of a specific size, material and location approved by Council.

Where consent is granted for the changes to a drainage line or system, Engineering Plans in accordance with Council's "Appendix 2 - Engineering Specifications of the Canada Bay Development Control Plan" **shall be submitted prior to the issue of a Construction Certificate.**

(Reason: Protection of existing drainage infrastructure)

43. DACCL04 - Erosion and sedimentation controls

Erosion and sedimentation controls must be provided to ensure:

- (a) Compliance with the approved Soil and Water Management Plan
- (b) Removal or disturbance of vegetation and top soil is confined to within 3m of the approved building area (no trees to be removed without approval)
- (c) All uncontaminated run-off is diverted around cleared or disturbed areas
- (d) Silt fences or other devices are installed to prevent sediment and other debris escaping from the cleared or disturbed areas into drainage systems or waterways
- (e) All erosion and sediment controls are fully maintained for the duration of demolition/ development works
- (f) Controls are put into place to prevent tracking of sediment by vehicles onto adjoining roadways
- (g) All disturbed areas are rendered erosion-resistant by turfing, mulching, paving or similar

- (h) All water pumped or otherwise removed from excavations or basement areas is filtered to achieve suspended solids/non filterable residue levels complying with the *Australian Water Quality guidelines for Fresh and Marine Waters*
- (i) Pumped or overland flows of water are discharged so as not to cause, permit or allow erosion before the commencement of work (and until issue of the occupation certificate).

Details of the proposed soil erosion and sedimentation controls to be implemented on site must be submitted **with the Construction Certificate Application**. Under no circumstances may any works commence prior to these details being approved by the Accredited Certifier and the controls being in place on the site

(Reason: Environmental protection)

44. DACCL05 - Grated Drain to Garage

A grated trench drain shall be provided across the driveway at the street boundary. Unless otherwise designed by a Qualified Civil Engineer, the dimensions of the trench grate shall not be less than 200mm wide by 150mm deep at the shallow end, and have a “bottom” slope of 2 %. This trench drain shall be connected to an approved drainage system. The grated drain calculation shall be in accordance with AS/NZS3500.

The above information must be indicated on all relevant drawings **to be submitted with the Construction Certificate**.

(Reason: Environmental protection)

45. DACCL06 - Rainwater Harvesting

A rainwater harvesting system shall be provided in accordance with either the BASIX minimum requirements, any relevant Council Rainwater Re-use Policy and/or “Appendix 2 - Engineering Specifications of the Canada Bay Development Control Plan”, whichever is applicable. A detailed stormwater plan showing the proposed re-use system shall be submitted and approved by Council or an Accredited Certifier **prior to the issue of the Construction Certificate**.

(Reason: Compliance and Amenity)

46. DACCL07 - Silt Arrestors and Gross Pollutant Traps

Silt and gross pollutant traps shall be fitted in all stormwater pits, designed in accordance with Council’s “Appendix 2 - Engineering Specifications of the Canada Bay Development Control Plan” and to the satisfaction of Council or an Accredited Certifier. Details are to be submitted with the design **prior to the issue of the Construction Certificate**.

(Reason: Environmental Protection)

47. DACCL08 - Installation of Temporary Rock Anchor

Where rock anchors are proposed for the protection of Council's land or assets such as utility services, footpaths, kerb and gutter and other ancillary infrastructure, "An Application to Install Temporary Rock Anchors" shall be submitted with the relevant fees & charges paid **prior to the issue of a Construction Certificate**. An Application for the use of temporary rock anchors will only be considered if there is no other alternative method of stabilization. In this regard, a statement from a qualified Structural or Geotechnical Engineer is required to be submitted with the application.

The Applicant/Developer must provide full details of the proposed installation design details and certification from a Qualified Civil, Structural or Geotechnical Engineer, for Council's approval, **prior to the issue of a Construction Certificate**.

The Civil, Structural or Geotechnical Engineer must be a fully Qualified Chartered Professional Engineer with current Institution of Engineers, Australia Corporate Membership and registered on the National Engineers Register (NER).

(Reason: Protection of Council Assets)

48. DACCM01 - Dilapidation Report

A Dilapidation Report is to be undertaken on all properties, which in the opinion of a suitably qualified engineer, could be potentially affected by the construction of the project. The Dilapidation Report shall be carried out **prior to the issue of the Construction Certificate**.

The Dilapidation Report is to be prepared by a suitably Qualified Chartered Professional Civil or Structural Engineer with current Institution of Engineers, Australia Corporate Membership and registered on the National Engineers Register (NER) or Geotechnical Practitioner.

The Report shall cover structural and geotechnical factors likely to arise from the development.

A copy of this Report shall be submitted to the owners of all properties inspected and Council as a record.

The person having the benefit of the development consent must, at their own cost, rectify any damage caused to other properties during the construction of the project.

(Reason: Safety)

49. DACCM02 - Geo-technical Report

A comprehensive geo-technical engineering report assessing the impact and safety of the proposed works shall be prepared by a suitably experienced and qualified geo-practitioner and **submitted with any Construction Certificate**. The report must include the results of subsurface investigations involving either test pits to rock, or preferably the drilling of cored boreholes

(to 1m below the proposed final excavation level). The report shall describe inter alia:-

- (a) an indication of the nature and depth of any uncontrolled fill at the site;
- (b) an indication of the nature and condition of the material to be excavated;
- (c) indications of groundwater or seepages;
- (d) required temporary measures for support of any excavations deeper than 1m adjacent to property boundaries;
- (e) statement of required excavation methods in rock and measures required to restrict ground vibrations;
- (f) other geo-technical information or issues considered relevant to design and construction monitoring.

(Reason: Structural safety)

50. DACCM04 - Support and Protection for Neighbouring Buildings

If an excavation associated with the approved development extends below the level of the base of the footings of a building on an adjoining allotment of land, the person having the benefit of the development consent must, at the person's own expense, comply with the requirements of clause 98E of the Environmental Planning and Assessment Regulation 2000, including:

- (1)
 - (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.
- (2) The condition referred to in subclause (1) does not apply if the person having the benefit of the development consent owns the adjoining land or the owner of the adjoining land has given consent in writing to that condition not applying.

Details shall be submitted to the Accredited Certifier **prior to the issue of a Construction Certificate.**

(Reason: Structural safety)

51. DACCN01 - Electricity Connection

Provision must be made for connection to future underground distributions mains. This must be achieved by installing:

- An underground service line to a suitable existing street pole; or
- Sheathed underground consumers mains to a customer pole erected near the front property boundary (within 1 metre)

Note: A limit of one (1) pole per site will apply.

Details are to be submitted **with the application for a Construction Certificate.**

(Reason: Environmental Amenity)

52. DACCN02 - Electricity Substation

Any required electricity substation must be located within the boundaries of the site.

Documentary evidence of compliance, including correspondence from the energy authority is to be provided to the Accredited Certifier **prior to the issue of a Construction Certificate** detailing the energy authority's requirements.

Note: Where an electricity substation is required but no provision has been made to place it within the approved building or its site and no details are provided on the approved development consent plans, a section 96 application is required to be submitted to Council for approval of an appropriate location for the required electricity substation.

(Reason: Access to utility)

53. DACCN03 - Telecommunications

Provision must be made for relocation of telecommunications network assets including underground placement of any existing aerial cables and infrastructure. Any costs associated with the relocation of the above are at the requestor's expense.

Should you need to discuss access to or relocation of any Telstra assets please contact Telstra's Network Integrity team by email F1102490@team.telstra.com or by phone: 1800 810 443 (opt1).

Details are to be submitted **with the application for a Construction Certificate**.

(Reason: Environmental Amenity)

Conditions which must be satisfied prior to the commencement of any development work

54. DAPCB01 - Appointment of Principal Certifying Authority

No work shall commence in connection with this Development Consent until:

- (a) A construction certificate for the building work has been issued by:
 - (i) the consent authority; or
 - (ii) an accredited certifier; and
- (b) the person having the benefit of the development consent has:
 - (i) appointed a principal certifying authority for the building work, and
 - (ii) notified the principal certifying authority that the person will carry out the building work as an owner-builder, if that is the case, and
- (b1) the principal certifying authority has, no later than 2 days before the building work commences:
 - (i) notified the Council of his or her appointment, and

- (ii) notified the person having the benefit of the development consent of any critical stage inspections and other inspections that are to be carried out in respect of the building work, and
- (b2) the person having the benefit of the development consent, if not carrying out the work as an owner-builder, has:
 - (i) appointed a principal contractor for the building work who must be the holder of a contractor licence if any residential building work is involved, and
 - (ii) notified the principal certifying authority of such appointment, and
 - (iii) unless that person is the principal contractor, notified the principal contractor of any critical stage inspections and other inspections that are to be carried out in respect of the building work, and
- (c) the person having 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.

Note: If the principal certifying authority is the Council, the nomination will be subject to the payment of a fee for the service to cover the cost of undertaking all necessary inspections and the issue of the appropriate certificates.

Under the Environment Planning and Assessment (Quality of Construction) Act, 2003, a sign must be erected in a prominent position on the work site showing the name, address and telephone number of the principal certifying authority; the name of the principal contractor (if any) for the building work and a telephone number at which that person may be contacted outside working hours. That sign must also state that unauthorised entry is prohibited. The sign must not be removed until all work has been completed.

(Reason: Statutory requirements)

55. DAPCB02 - Construction Certificate

No work shall commence until you:

- (a) Obtain a Construction Certificate from either the City of Canada Bay Council or an Accredited Certifier - a fee applies for this service; and
- (b) Lodge with the City of Canada Bay Council any Construction Certificate obtained from an Accredited Certifier (together with associated plans and documents) - a fee applies for this service

(Reason: Statutory Requirement)

56. DAPCB04 - Home Building Compensation Fund

No residential building work within the meaning of the *Home Building Act 1989* may commence until:

- (a) A contract of insurance in accordance with Part 6 of the Home Building Act 1989 is entered into and in force, where such a contract is required under that Act (this is a prescribed condition of consent pursuant to clause 98 1(b) *Environmental Planning and Assessment*

Regulation 2000;

- (b) The PCA is satisfied that the principal contractor for the work is the holder of the appropriate licence and is covered by the appropriate insurance, in each case if required by the Home Building Act 1989 (unless the work is to be carried out by an owner-builder);
- (c) If the work is to be carried out by an owner builder, that the owner builder is the holder of any owner-builder permit required under the *Home Building Act 1989*;
- (d) Written notice of the following information has been provided to Council (this is a prescribed condition of consent pursuant to clause 98B of the *Environmental Planning and Assessment Regulation 2000*):
 - (i) In the case of work for which a principal contractor is required to be appointed:
 - The name and licence number of the principal contractor, and
 - The name of the insurer by which the work is insured under Part 6 of the *Home Building Act 1989*,
 - (ii) In the case of work to be done by an owner-builder:
 - The name of the owner-builder, and
 - If the owner-builder is required to hold an owner-builder permit under the *Home Building Act 1989*, the number of the owner-builder permits.

Where Council is not the PCA, the PCA is responsible for notifying Council of the above matters.

Where arrangements for doing residential building work change **while the work is in progress** so that the above information becomes out of date, the PCA (where not the Council) must provide Council with written notice of the updated information.

(Reason: Statutory requirement)

57. DAPCB05 - Notice of commencement

No work shall commence until you submit a notice of commencement (form will be attached with issue of a Construction Certificate or available from our website) giving Council:

- (a) Not less than two (2) days' notice of the date on which it is proposed to commence work associated with this Development Consent;
- (b) Details of the appointment of a Principal Certifying Authority (either Canada Bay Council or another Accredited Certifier)
- (c) Details of the name, address and licence details of the Builder.

(Reason: Statutory Requirement)

58. DAPCB06 - Site Safety Fencing

Erect site fencing to a minimum height of 1.8m complying with WorkCover Guidelines, to exclude public access to the site throughout the construction works. The fencing **must be erected before the commencement of any work and maintained.**

The site shall be secured in accordance with Clause 146 of the Environmental Planning and Assessment Regulation 2000. The site shall be maintained in a clean and orderly condition during demolition and construction works.

Hoardings

If applicable, a separate Hoarding Application for the erection of an A class (fence type) or B class (overhead type) hoarding along the street frontage(s) complying with WorkCover requirements must be obtained including:

- payment to Council of a footpath occupancy fee based on the area of footpath to be occupied and Council's Schedule of Fees and Charges before the commencement of work; and
- provision of a Public Risk Insurance Policy with a minimum cover of \$10 million in relation to the occupation of and works within Council's road reserve, for the full duration of the proposed works, must be obtained with a copy provided to Council.

(Reasons: Statutory Requirement and health and safety)

59. DAPCB07 - Principal Certifying Authority (PCA) Sign

Prior to commencement of any work, signage must be erected in a prominent position on the work site identifying:

- The Principal Certifying Authority (PCA) by showing the name, address and telephone number of the PCA;
 - The Principal Contractor by showing the Principal Contractor's name, address and telephone number (outside of work hours) for that person.
 - The sign must state that unauthorised entry to the work site is prohibited.
- Any such sign is to be maintained while the work is being carried out, but must be removed when the work has been completed.

This clause does not apply to building work, subdivision work or demolition work that is carried out inside an existing building that does not affect the external walls of the building.

(Reason: Statutory Requirement)

60. DAPCB10 - Notice of Requirements from Sydney Water

A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained. Application must be made through Sydney Water or an authorised Water Servicing Coordinator (WSC). An assessment will be made to determine the availability of water and sewer services, which may require extension, adjustment or connection to Sydney Water mains. Please refer to Sydney Water's website at [www.sydneywater.com.au/section 73](http://www.sydneywater.com.au/section%2073) or call 1300 082 746 to learn more about applying through an authorised WSC or Sydney Water.

Following application, Sydney Water will assess the development and if required will issue a "Notice of Requirements" letter detailing all requirements that must be met. Please apply early as building of water and services can be time consuming and may impact on other parts of your

development such as building, driveway or landscape design.

The Notice of Requirements must be submitted to the Accredited Certifier **before the commencement of works**. A Section 73 Compliance Certificate must be obtained before the issue of an Occupation Certificate.

(Reason: To comply with statutory requirements)

61. **DAPCC01 - Erosion & Sediment Control: Minor works - Prior to construction**

Erosion and sedimentation controls shall be in place **prior to the commencement of site works**; and maintained throughout construction activities until the site is landscaped and/or suitably revegetated. The controls shall be in accordance with the details approved by Council and/or as directed by Council Officers. These requirements shall be in accordance with Managing Urban Stormwater - Soils and Construction produced by Landcom (Blue Book).

A copy of the Erosion and Sediment Control Plan must be kept on site at all times during construction and made available to Council officers on request.

Erosion and sediment control measures as detailed in the submitted Erosion and Sediment Control Plan must be installed and operating **prior to and during all construction works**.

(Reason: Environmental protection)

62. **DAPCC02 - Soil & Water Management during Construction**

Landcom's "Managing Urban Stormwater - Soil and Conservation" August 1998 outlines the general requirements for the preparation of a soil and water management plan. All works shall be conducted in accordance with a soil and water management plan that has been submitted and approved by the Accredited Certifier **prior to the commencement of works**. A copy of the plan shall be kept on-site and made available to Council's Officers on request. All erosion and sediment control measures must be maintained in a functional condition throughout the duration of the works.

(Reason: Environmental protection)

Conditions which must be satisfied during any development work

63. **DADWA02 - Construction Hours**

No construction or any other work related activities shall be carried out on the site outside the hours of 7.00 am to 5.00 pm Mondays to Saturdays. No work to occur on Sundays and public holidays.

Where the development involves the use of jackhammers/ rock breakers and the like or other heavy machinery, such equipment may only be used between the hours of 7.00 am - 5.00 pm Monday to Friday only.

(Reason: Safety and amenity)

64. DADWA03 - Disruption of Traffic

During any construction works on the public road that is associated with this approval, the Applicant must provide appropriate signage and traffic control facilities as per the requirements of AS 1742.3 and the RTA “Traffic Control at Works Sites” manual.

(Reason: Safety and information)

65. DADWA04 - Dust Control

Small Works

Where a dust nuisance is likely to occur, suitable screens and/or barricades shall be erected during the demolition, excavation and building works. If necessary, water sprays shall be used on the site to reduce the emission of dust. Screening shall consist of minimum 2 metres height of shade cloth or similar material secured to a chain wire fence of the like and shall be modified as directed by the City of Canada Bay Council should it fail to adequately control any dust nuisance.

Major Works

The following measures must be implemented (in part or in total) as directed by the City of Canada Bay Council to control the emission of dust:

- (a) Dust screens must be erected around the perimeter of the site and be kept in good repair for the duration of the work.
- (b) All dusty surfaces must be wet down and any dust created must be suppressed by means of a fine water spray. Water used for dust suppression must not be contaminated or allowed to enter the stormwater system.
- (c) All stockpiles of materials that are likely to generate dust must be kept damp or covered.
- (d) All stockpiles of soil or other materials shall be placed away from drainage lines, gutters or stormwater pits or inlets.
- (e) All stockpiles of soil or other materials likely to generate dust or odours shall be covered.
- (f) All stockpiles of contaminated soil shall be stored in a secure area and be covered if remaining more than 24 hours or as directed by the City of Canada Bay Council.

(Reason: Environmental amenity)

66. DADWA05 - Excavation - Water

All excavations must be kept free from the accumulation of water.

(Reason: Health and safety)

67. DADWA06 - Prevention of Nuisance

All possible and practical steps shall be taken to prevent nuisance to the inhabitants of the surrounding neighbourhood from windblown dust, debris, noise and the like during the demolition, excavation and building works.

(Reason: Health and amenity)

68. DADWB02B - Acid Sulphate Soils Consultant's Report

All recommendations made in the Preliminary Site Investigation dated 05.04.17 prepared by eisaustralia must be implemented. Any change made to the site that will or is likely to impact the recommendations of the Preliminary Site Investigation will require a further assessment and is to be provided to Council prior to the commencement of works.

(Reason: Compliance and Environmental Protection)

69. DADWB03 - Construction Management Plan

All development activities and traffic movements must be carried out in accordance with the approved Construction Management Plan.

All controls in the Plan must be maintained at all times. A copy of the Plan must be kept on site at all times and made available to the Accredited Certifier and Council on request.

(Reason: Compliance with condition of consent)

70. DADWB04 - Damage to Adjoining Properties

All precautions must be taken to prevent any damage likely to be sustained to adjoining properties. Adjoining owner property rights must be observed at all times. Where damage occurs to adjoining property all necessary repair or suitable agreement for necessary repairs are to be undertaken by the applicant in consultation with, and with the consent of, the affected property owner.

(Reason: Structural safety)

71. DADWB05 - Stamped Plans

Stamped plans, specifications, documentation and the consent shall be available on site at all times during construction.

(Reason: To ensure compliance with approved plans)

72. DADWB06 - Site requirements during demolition and construction

All of the following are to be satisfied/complied with during demolition, construction and any other site works:

- (a) All demolition is to be carried out in accordance with Australian Standards AS 2601-2001.
- (b) Demolition must be carried out by a registered demolition contractor.
- (c) A single entrance is permitted to service the site for demolition and construction. The footway and nature strip at the service entrance must be planked out with close boarded, hardwood timber footpath protection pads. The pad shall cover the entire width of the footpath opening for the full width of the fence.
- (d) No blasting is to be carried out at any time during construction of the building.

- (e) Care must be taken during demolition/ excavation/ building/ construction to prevent any damage to adjoining buildings.
- (f) Adjoining owner property rights and the need for owner's permission must be observed at all times, including the entering onto land for the purpose of undertaking works.
- (g) Any demolition and excess construction materials are to be recycled wherever practicable.
- (h) The disposal of construction and demolition waste must be in accordance with the requirements of the Protection of the Environment Operations Act 1997.
- (i) All waste on the site is to be stored, handled and disposed of in such a manner as to not create air pollution (including odour), offensive noise or pollution of land and/or water as defined by the Protection of the Environment Operations Act 1997. All excavated material should be removed from the site in the approved manner and be disposed of lawfully to a tip or other authorised disposal area.
- (j) Section 143 of the Protection of the Environment Operations Act 1997 requires waste to be transported to a place which can lawfully accept it. All non-recyclable demolition materials are to be disposed of at an approved waste disposal depot in accordance with legislation.
- (k) All materials on site or being delivered to the site are to generally be contained within the site. The requirements of the Protection of the Environment Operations Act 1997 must be complied with when placing/stockpiling loose material, disposing of concrete waste, or other activities likely to pollute drains or water courses.
- (l) Details as to the method and location of disposal of demolition materials (weight dockets, receipts etc.) should be kept on site as evidence of approved methods of disposal and recycling.
- (m) Any materials stored on site must be stored out of view or in such a manner so as not to cause unsightliness when viewed from nearby lands or roadways.
- (n) Public footways and roadways adjacent to the site must be fully maintained and cleared of obstructions during construction unless prior separate approval from Council is obtained including payment of relevant fees.
- (o) Building operations such as brick cutting, washing tools or paint brushes, and mixing mortar 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.
- (p) All site waters during excavation and construction must be contained on site in an approved manner to avoid pollutants entering into waterways or Council's stormwater drainage system.

(Reason: To ensure that demolition, building and any other site works are undertaken in accordance with relevant legislation and policy and in a manner which will be non-disruptive to the local area.)

73. DADWC01 - Contaminated Land Unexpected Finds

In the instance works cause the generation of odours or uncovering of unexpected contaminants works are to immediately cease, Council is to be

notified and a suitably qualified environmental scientist appointed to further assess the site.

The exposed material/excavation situation is to be evaluated by the supervising environmental consultant and an appropriate response determined in consultation with the applicant, which is agreed to by City of Canada Bay, Manager Health, Building and Environment.

Note: Council may also request that a NSW EPA accredited site auditor is involved to assist with the assessment of the contaminated land situation and review any new contamination information. The applicant must also adhere to any additional conditions which may be imposed by the accredited site auditor.

(Reason: To ensure compliance with Statutory Requirements)

74. DADWF01 - Noise - Construction

All works carried out on site during construction/ demolition/ excavation/ earthworks shall comply with the NSW Protection of the Environment Operations Act 1997, the Department of Environment and Climate Changes' Interim construction noise guideline' and AS 2436-2010 - 'Guide to noise and vibration control on construction, demolition and maintenance sites' for the control of construction noise which specifies that:

- Construction period of 4 weeks and under - The L90 level measured over a period of not less than 15 minutes when the construction site is operating must not exceed the background level by more than 20 dB(A) at the boundary.
- Construction period greater than 4 weeks but not exceeding 26 weeks - The L90 level measured over a period of not less than 15 minutes when the construction site is operating must not exceed the background level by more than 10 dB(A) at the boundary.
- Construction period exceeding 26 weeks - The L90 level measured over a period of not less than 15 minutes when the construction site is operating must not exceed the background level by more than 5 dB(A) at the boundary.

Should complaints of a noise nuisance be substantiated, Council may require the acoustic treatment of the premises to ensure compliance with the NSW Department of Environment and Climate Changes 'Interim construction noise guideline' and AS 2436-2010 - 'Guide to noise and vibration control on construction, demolition and maintenance sites' for the control of construction noise. A further acoustic assessment & report will be required to be provided to Council assessing the premises in working order.

(Reason: Noise Attenuation)

75. DADWF02 - Noise - Plant

All works carried out on site during construction/demolition/excavation or earthworks shall comply with the NSW Protection of the Environment Operations Act 1997. Approved and effective silencing measures shall be

provided and maintained on all power-operated plant used on site if required.

(Reason: Safety and Amenity)

76. DADWF03 - Noise & Vibration

The construction of the development and preparation of the site, including operation of vehicles, must be conducted so as to avoid unreasonable noise or vibration and cause no interference to adjoining or nearby occupations. Special precautions must be taken to avoid nuisance in neighbouring residential areas, particularly from machinery, vehicles, warning sirens, public address systems and the like.

In the event of a noise or vibration problem arising, the person in charge of the premises must, when instructed by City of Canada Bay Council or the Accredited Certifier, cease work and carry out an acoustical survey and/or investigation by an appropriate acoustical engineer or consultant and submit the results to Council. The person in charge of the site must implement any or all of the recommendations of the consultant and any additional requirements of Council. Any requirements of Council in this regard must be complied with immediately.

(Reason: Noise attenuation)

77. DADWG01 - Obstruction of Road or Footpath

The use of the road or footpath for the storage of any building materials, waste materials, temporary toilets, waste bins or any other matter is not permitted unless approved in accordance with Council's Waste Skip Bin Policy. A Penalty Infringement Notice may be issued for any offence.

(Reason: Protection of infrastructure, safety & information)

78. DADWG02 - Protection of Public Places

If the work involved in the demolition or construction of a building is likely to cause pedestrian or vehicular traffic in a public place to be obstructed or rendered inconvenient, or building involves the closure of a public place, a hoarding or fence shall be erected. Hoardings shall be erected to comply with the requirements of WorkCover and the Principal Certifying Authority.

(Reason: Safety)

79. DADWH01 - Compliance with Building Code of Australia

All building work must be carried out in accordance with the provisions of the Building Code of Australia. Note: Applicants who have lodged an objection and who have been granted exemption under clause 187(6) & 188(4) of the *Environmental Planning and Assessment Regulation 2000*, must comply with the Building Code of Australia in all other respects.

(Reason: Prescribed statutory control)

80. DADWH02 - Critical Stage Inspections - General

Critical stage inspections must be called for by the Principal Contractor or Owner Builder as required by the Principal Certifying Authority (PCA), any PCA Service Agreement, the Act and the Regulation.

Work must not proceed beyond each critical stage until the PCA is satisfied that work is proceeding in accordance with this consent, the Construction Certificate(s) and the Act. 'Critical Stage Inspections' means the inspections prescribed by the Regulations for the purposes of section 6.5 of the Act or as required by the PCA and any PCA Service Agreement.

Note 1: The PCA may require additional inspections beyond mandatory critical stage inspections in order that the PCA be satisfied that work is proceeding in accordance with this consent.

Note 2: The PCA may, in addition to inspections, require the submission of Compliance Certificates, survey reports or evidence of suitability in accordance with Part A2.2 of the BCA in relation to any matter relevant to the development.

(Reason: Statutory requirement)

81. DADWH06 - Inspection Records & Compliance Certificates

The PCA or accredited certifier undertaking each of the inspections must make a **record of each inspection** in accordance with Clause 162B of the Environmental Planning and Assessment Regulations 2000 and, if the person is not the PCA, forward a copy to the PCA.

A copy of any **compliance certificates** issued in respect of the building work and any documents referred to in the certificate must be provided to Council within two (2) days of the certificate being issued.

A compliance certificate must be issued where:

- (a) Either:
 - (i) Council is appointed the PCA; or
 - (ii) Council is the PCA but agrees to an accredited certifier undertaking certain inspection/s, and
- (b) The PCA or accredited certifier is of the opinion that the stage of work he or she has inspected is satisfactory.

(Reason: Statutory Requirement)

82. DADWI01 - Progress Survey - Major Development (greater than two stories)

In order to ensure compliance with approved plans, a Survey Certificate, prepared to Australian Height Datum, shall be prepared by a Registered Surveyor showing the following:

- (a) At the completion of excavation, prior to the placement of any footings, showing the completed level of the excavation and its relationship to the boundaries;

- (b) Prior to placement of concrete, the ground floor level, showing the level of the form work and its relationship to boundaries including relevant footpath and roadway levels;
- (c) Prior to placement of concrete at each second floor level showing the principal level of the formwork and the intended relationship of the completed works to the boundary;
- (d) Prior to roofing, or completion of the highest point of the building, showing the anticipated level of the completed work and the relationship to the boundary; and
- (e) At completion, works showing the relationship of the building to the boundary.

Progress certificates in response to points (a) through to (e) shall be produced to the Council or the Principal Certifying Authority at the time of carrying out relevant progress inspections. Under no circumstances will work be allowed to proceed should such survey information be unavailable or reveals discrepancies between the approved plans and the proposed works.

(Reason: To ensure compliance with approved plans)

Conditions which must be satisfied prior to the issue of any Occupation Certificate relating to the use of the building or part

83. DAOCA03 - Public Pedestrian Through Site Link

- (a) The public access identified on the approved plans as the 'Pedestrian Link' must be provided by a means of an easement measuring a minimum of 4 metres in width along the southern boundary. An appropriate restriction and easement must be created under Section 88E of the Conveyancing Act.
- (b) The easement must reserve the land to allow unrestricted public access to this area including the right of the public to pass, repass and remain upon the land for access purposes.
- (C) The proprietors must make the public access accessible between at least 6:00am and 9:00pm daily, however, 24-hour public access is preferred.
- (D) The public access must be maintained to the satisfaction of Council by the Proprietors of the land including lighting, upkeep and repair, landscaping, furniture and the like. In addition the proprietors must hold appropriate public liability insurance and indemnify the City of Canada Bay Council.

The wording of the easement shall be submitted to Council for approval and then registered prior to the issue of the final Occupation Certificate.

- (E) A sign measuring a minimum of 1m x 0.5m shall be erected on Great North Road and East Street stating "Public Through Site Link" and the hours of access.

The signage content and location shall be submitted to Council for approval and then erected prior to the issue of the final Occupation Certificate.

Costs associated with the creation and registration of the easement and the erection of the signage are to be borne by the owner.
(Reason: Facilitate Public Access)

84. **DAOCB01 - Certification of Engineering Works**

Prior to occupation, the following documents must be submitted to the Principal Certifying Authority.

- a) A Certificate from a Chartered Professional Engineer with Institution of Engineers, Australia Corporate Membership and registered on the National Engineers Register (NER) under the appropriate professional category, and
- b) “Work - As - Executed” drawings of the engineering works prepared by a Registered Surveyor or equivalent.

The abovementioned Certificate is to certify that:

- (i) the stormwater drainage system, and/or
- (ii) the car parking arrangement and area including circulating ramps, and/or
- (iii) any related footpath works, and/or
- (iv) the basement mechanical pump and well system, and/or
- (v) the proposed driveway and layback, and/or
- (vi) other civil works have been constructed in accordance with the Council approved plans and details and satisfies the design intent and complies with the appropriate SAA Codes relevant Standards and Council’s Policies and Specifications.

Where Council is not the Principal Certifying Authority, two (2) copies of the above documents are to be provided to Council **prior to the issue of any Occupation Certificate**. These documents are to be retained on Council’s Construction Certificate file.

(Reason: Asset management)

85. **DAOCB02 - Strata Subdivision Approval**

This approval does not include approval to strata subdivide the subject property. Should strata subdivision of the property be sought, a **separate development application** must be submitted to Council for approval **prior to occupation and/or use of the building/s**.

(Reason: Information)

86. **DAOCB03 - Street Numbering Strategy**

The Principal Certifying Authority must be satisfied that the Council approved Street Numbering Strategy has been carried out on site **prior to the issue of any Occupation Certificate**.

The approved Street Numbering Strategy must not be altered in any way without prior consent of Council.

(Reason: Compliance)

87. DAOCC01 - Civil Works on the Footway

The Applicant is required to carry out the following works:

- Reconstruct sections of cracked or defective footpath along the full frontage of the site, and/or
- Reconstruct existing public drainage pit/pipe system, and/or
- Construct a new vehicular crossing, and/or
- Remove any redundant vehicular crossings and replace with kerb and gutter to match the adjoining.

The above works must be completed to the written satisfaction of Council **prior to issue of any Occupation Certificate.**

Note: The above works will require the submission of the relevant application for the works to be undertaken.

Where the Applicant nominates Council to undertake the civil and stormwater works, they must contact Council's Manager Construction, City Services in order to obtain an estimated cost for construction and contract to undertake the works.

(Reason: To preserve Council's assets and amenity)

88. DAOCD01 - Occupation Certificate (section 6.9 of the Act)

A person must not commence occupation or use (*or change of use where an existing building*) of the whole or any part of a new building (within the meaning of section 6.10 of the *Act*) unless an Interim Occupation Certificate or Final Occupation Certificate has been issued in relation to the building or part.

The Principal Certifying Authority is required to be satisfied, amongst other things, that:

- All required inspections (including each applicable mandatory critical stage inspection) have been carried out; and
- Any preconditions to the issue of the certificate required by a development consent have been met.

Note: New building includes an altered portion of, or an extension to, an existing building.

(Reason: Statutory requirement)

89. DAOCD02 - Evidence of Lawful Asbestos Disposal

An Occupation Certificate for a development involving the removal of asbestos must not be issued until such time the applicant provides the principal certifying authority with a copy of receipt/s confirming lawful disposal of asbestos waste.

NOTE: Asbestos waste must be disposed at a waste management facility licensed by the NSW Environment Protection Authority (EPA) to accept

such waste. Please see Appendix F of City of Canada Bay's Asbestos Policy, Contact NSW EPA on 131 555 or visit www.epa.nsw.gov.au for a list of waste management facilities licensed to accept asbestos waste.

(Reason: Health and Safety)

90. DAOCE01 - Drainage System - Maintenance of Existing

Where elements of the existing drainage system is to be utilised, the existing drainage system shall be overhauled and maintained clear of silt and accumulated debris. Silt and the like shall be *removed*, not flushed from the system.

A certificate shall be provided by a suitably qualified person to the satisfaction of the Principal Certifying Authority, (a registered plumber or a person of equivalent or greater experience or qualification) **prior to the issue of an Occupation Certificate** to confirm that the system is in good working order and adequate to accept additional flows.

(Reason: Maintenance and environment)

Conditions which must be satisfied prior to the issue of a Final Occupation Certificate

91. DAFOA01 - Fire Safety Certificate

A final Fire Safety Certificate shall be obtained in accordance with Part 9, Division 4 of the Environmental Planning and Assessment (Amendment) Regulation 2000, **prior to the issue of the Final Occupation Certificate** for the building.

A copy of the Fire Safety Certificate and fire safety schedule shall be:-

1. Forwarded to City of Canada Bay Council;
2. Forwarded to the Commissioner of the New South Wales Fire Brigade; and
3. Prominently displayed in the building.

(Reason: Fire safety)

92. DAFOA02 - Certificate of Test of Mechanical Ventilation

On the satisfactory completion of work and **prior to the issue of an Occupation Certificate**, a Certificate of Test of Mechanical Ventilation shall be supplied to the Principal Certifying Authority from an approved mechanical ventilation engineer.

(Reason: To ensure compliance with approved plans)

93. DAFOE01 - Certification of the Constructed Stormwater Drainage System

The constructed stormwater drainage system shall be certified by a Chartered Professional Civil Engineer with Institution of Engineers, Australia Corporate Membership and registered on the National Engineers Register

(NER), in accordance with Council's "Appendix 2 - Engineering Specifications of the Canada Bay Development Control Plan", **prior to issue of the Final Occupation Certificate.**

(Reason: Adequate stormwater management)

94. DAFOE02 - Covenant & Restriction as to User for Stormwater Controlled Systems

Prior to occupation and the issuing of an Occupation Certificate, the Applicant shall register a Positive Covenant and a Restriction as to User, under section 88E and or section 88B of the Conveyancing Act as appropriate in favour of Council ensuring the ongoing retention, maintenance and operation of the stormwater facility (in regards to the on-site stormwater detention system (OSD), mechanical pump-out system, charged lines (which are related to the OSD system), etc.).

Easement Registration

Where any drainage line or service conduit is to traverse any property other than that which it serves, an appropriate easement will be required. In this case, the applicant shall register an easement of width as specified in Council's "Engineering requirements for Developments, Technical Specification", over the proposed stormwater drainage line or service concurrently with any subdivision registration.

The wording on the 88B Instrument is to make reference to the Council file where the Construction plans and the "Work-as-Executed", (as built), plans are held. Typical wording can be obtained from Council's "Engineering requirements for Developments, Technical Specification" document.

(Reason: Compliance and adequate maintenance of drainage system)

95. DAFOE03 - OSD Identification Plate

Prior to issue of Final Occupation Certificate, the applicant shall install an identification plate near or onto the control structure of the On-site Stormwater Detention system (OSD). This is to advise the registered proprietor of their responsibility to maintain the OSD facility and not to tamper with it in any manner without the written consent of Council.

The applicant can obtain the OSD identification plate from the Council at a cost.

(Reason: To ensure that the OSD system is installed and identified in accordance with this approval)

96. DAFOF01 - Subdivision - Evidence of Consolidation

The existing allotments shall be consolidated into a single lot. Evidence that the plan of consolidation has been registered as a deposited plan by the Land and Property Information Office must be submitted to Council prior to occupation of the site.

(Reason: Information)

97. DAFOF03 - De-stressing the Installed Rock Anchors

Upon completion of works, the rock anchors are to be completely de-stressed or removed without damage to Council's assets or to existing utility services. Proof shall be provided in the form of certification from the Qualified Structural or Geotechnical Engineer **prior to the issue of an Occupation Certificate.**

Important Note: The Applicant/Developer will be liable for any current or future damage caused by the rock anchors during installation, whilst being installed, during de-stressing or during their removal including any damage to public land, and/or any impact on the public land that would prevent its future use or re-development or damage to existing services.

(Reason: Protection of Public Asset)

98. DAFOG01 - Prospective Owners/Tenants - Ineligible for Parking Permits

All owners, residents, tenants/occupiers of the development are not eligible to participate in any existing or proposed Council on-street Permit Parking Schemes. The owner of the property and/or any managing agent appointed by the owner to sell or lease the residential and commercial units on their behalf shall ensure that all prospective purchasers and/or tenants are advised in writing via any advertising material, lease documents, etc that no on-street parking permits will be issued by Council for the use of owners, tenants or their visitors. Any strata manager/management company appointed following the strata subdivision of the development shall also be responsible for ensuring that all owners and their tenants are informed of this restriction on an ongoing basis.

(Reason: To ensure that prospective residents and/or tenants are aware that on-site parking is available in the building and that no on-street parking permits will be issued by Council.)

Conditions which must be satisfied during the ongoing use of the development

99. DAOUB01 - Annual Fire Safety Statement

Pursuant to Part 9, Division 5 of the Environmental Planning and Assessment Regulation (as amended) the owner of the building shall furnish Council with an Annual Fire Safety Statement from a competent person so as to certify the essential fire safety measures in the building. The Annual Fire Safety Statement shall be within 12 months of the issue of the fire safety certificate, and then on an annual basis.

A copy of the Fire Safety Statement obtained and Fire Safety Schedule shall also be:-

1. Forwarded to the Commissioner of the New South Wales Fire Brigade; and
2. Prominently displayed in the building

(Reason: Fire safety)

100. **DAOUC19 - Compliance with Noise Control Legislation**

The applicant shall ensure that all activities within the premises comply with the relevant sections of the Protection of the Environment Operations Act 1997 and Regulations; the NSW Environment Protection Authority Industrial Noise Policy (2000) and relevant Australian Standards on Noise Control on Construction, Maintenance and Demolition Sites.

(Reason: Noise Control and Amenity)

101. **DAOUD03 - Visitor Parking Restriction**

All visitor parking spaces must not at any time be allocated sold or leased to an individual owner/occupier and must be strictly retained as common property by the Owners Corporation.

(Reason: Compliance)

102. **DAOUD04 - Australia Post Guidelines**

Mail deliveries are to be in accordance with Australia Post Guidelines, as set out in the Australia Post publication "General Post Guide - September 2007". A copy of this Guide can be obtained from Australia Post's web page at www.auspost.com.au. A copy of the brochure may be obtained from Australia Post. In general, a clearly marked mailbox (or group of mailboxes) shall be provided within 500mm of the footpath alignment.

(Reason: To ensure compliance with mail delivery regulations)

Advisory Notes

a) **DAANN01 - 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 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.



Telecommunications Act 1997 (Commonwealth)

Telstra (and its authorised contractors) are the only companies that are permitted to conduct works on Telstra's mobile network and assets. Any

person interfering with a facility or installation owned by Telstra is committing an offence under the Criminal Code Act 1995 (Cth) 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 1800 810 443.

b) **DAANN02 - Dividing Fences**

The erection of dividing fences under this consent does not affect the provisions of the *Dividing Fences Act* 1991. Under this Act, all relevant parties must be in agreement prior to the erection of any approved dividing fence/s under this consent.

Council has no regulatory authority in this area and does not adjudicate civil disputes relating to the provision of or payment for the erection of dividing fences.

If there is a neighbour dispute about the boundary fence and you are seeking mediation, you may contact the Community Justice Centre or if legal advice or action is required, you may contact the Chamber Magistrate.

c) **DAANN03 - Footway Lease - Business Use of Footpath**

The operator of an approved business must apply to Council to lease Council's property (i.e. footways, plazas, or portions of public ways) should it be required for use in conjunction with the approved business.

The use of any footpath area for the purposes of additional dining to the approved business requires separate Council approval by application under section 125-127 & 137-139 of the *Roads Act, 1993* prior to the commencement of any such use.

A leasing fee will apply to the use of Council's property. The lease must be executed upon commencement of the operation of the refreshment room and is required to be renewed annually.

d) **DAANN04 - Lapsing of Consent**

In accordance with Section 4.53 of the Environmental Planning and Assessment Act 1979 (as amended), this Development Consent lapses five (5) years after the date from which it operates unless building, engineering or construction work has physically commenced. **A Construction Certificate must be obtained and the works commenced in accordance with the approved plans and specifications within five (5) years from the date of this Development Consent.**

e) **DAANN06 - Process for Modification**

The plans and/or conditions of this Consent are binding and may only be modified upon written request to Council under Section 4.55 of the Environmental Planning and Assessment Act, 1979 (as amended). The request shall be accompanied by the appropriate fee and application form.

You are not to commence any action, works, contractual negotiations, or the like, on the requested modification unless and until the written authorisation of Council is received by way of an amended consent.

f) **DAANN07 - Review of Determination**

In accordance with the provisions of Section 8.2 of the Environmental Planning and Assessment Act 1979 (as amended) the applicant can request Council to review this determination. The request must be made within a period of 6 months from the date shown on this determination. A fee, as prescribed under Council's current Management Plan - Fees and Charges, is payable for such a review.

g) **DAANN08 - Right of Appeal**

Section 8.7 and 8.10 of the Environmental Planning and Assessment Act 1979 (as amended), gives the applicant the right to appeal to the Land and Environment Court within six (6) months after the date on which you receive this notice. Section 97 does not apply to the determination of a development application for State significant development or local designated development that has been the subject of a Commission of Inquiry.

h) **DAANN09 - Signage Approval**

A **separate development application** for any proposed signs which are either externally fitted or applied must be submitted for the approval of Council, prior to the erection or display of any such signs. This does not apply to signs which are classified as being 'Exempt Development'.

i) **DAANN10 - Skips on Council Footpath**

The applicant must apply to Council's Customer Services Centre and pay the respective minimum ten (10) day application fees and deposit, should a mini-skip type or larger builder's waste container be required to be left on Council's footpath, nature strip or roadway for the removal of any builder's waste etc. These fees must be paid prior to the container's placement. In the event of the container being removed within the ten day period, and the Council being notified, a pro-rata refund will be made. If the container is to remain at the site for longer than ten days, a further fee must be paid before the ten day period expires. No consultation is necessary if placing the container within the property to which this application is related. However, caution should be exercised in placing the bin to ensure no damage occurs to Council property.

j) **DAANN11 - WorkCover Requirements**

The Work Health and Safety Act 2011 and subordinate regulations, codes of practice and guidelines control and regulate the development industry. Further information can be obtained from WorkCover NSW's website at <http://www.workcover.nsw.gov.au/newlegislation2012/your-industry/construction/Pages/default.aspx> or through their head office: WorkCover NSW, 92-100 Donnison Street, GOSFORD 2250 Postal address: WorkCover NSW, Locked Bag 2906, LISAROW 2252, Phone (02) 4321 5000, Fax (02) 4325 4145.

Attachments:

1. Clause 4.6 Written Submission Floor Space Ratio – Plan Urban, 12.04.18
2. Clause 4.6 Written Submission Building Height – Plan Urban, 27.05.18
3. Submission – D & V Martin – 22 West Street, Five Dock
4. Submission – Urbanesque Planning C/- 225 Great North Road, Five Dock

