
JOINT REGIONAL PLANNING PANEL REPORT

15 MAY 2014



Development Application No.	➤ D/2013/406
Address	➤ 100-102 Elliott Street, BALMAIN NSW 2041
Description of Development	➤ Demolition of existing structures, construction of a mixed use development including 8 buildings with ground floor commercial (including 19 serviced apartments and gymnasium) / retail uses, 104 residential units above, basement parking for 251 vehicles and associated works including bulk earthworks, tree removal, landscaping, signage and remediation.
Date of Receipt	➤ 18 September 2013
Value of Works	➤ \$54,916,484
Applicant's Details	➤ Roche Group Pty Ltd C/- Wes Van Der Gardner PO BOX 325 DOUBLE BAY NSW 1360
Owner's Details	➤ Roche Group Pty Ltd PO BOX 325 DOUBLE BAY NSW 1360
Notification Dates	➤ First Round: 10/10/2013 to 8/11/2013 Second Round: 25/2/2014 to 26/3/2014
Number of Submissions	➤ 105
Building Classification	➤ Classes 2, 3, 5/6 & 7a
Integrated Development	➤ Yes

Main Issues	➤ Traffic and parking ➤ Height, bulk and scale ➤ Streetscape ➤ Views
Recommendation	➤ Deferred commencement consent

1. PROPOSAL

Development consent is sought for the following works at Nos. 100-102 Elliott Street, Balmain:

1. Demolition of existing commercial and warehouse buildings and associated structures;
2. Bulk earthworks / excavation;
3. Remediation of the site;
4. Mixed use development consisting of eight (8) new buildings ranging between 3-5 storeys comprising the following gross floor areas (as defined by Leichhardt Local Environmental Plan 2000):
 - 2,763sqm of non-residential floor space comprising (excluding service uses eg garbage store rooms) 749sqm of commercial floor space, 160sqm of retail space, a 65sqm gym for use of residents of the development and 1,789 sqm of serviced apartments.
 - Approximately 8,635sqm of residential floor space comprising 104 dwellings (54 x 1 bed, 22 x 2 bed, 28 x 3 bed).

The eight buildings are identified on the plans as buildings A1, A2, B1, B2, C1, C2, C3 and C4, the following figure depicts the general layout and numbering of the buildings across the site.



The nominated proposed uses of these buildings are as follows as per the submitted floor plans:

- Building A1 - 4 storeys – retail use at lowest level with residential dwellings above;
 - Building A2 - 3 storeys – commercial use at lowest level with residential dwellings above;
 - Building B1 - 4 storeys – serviced apartments at lowest level with residential dwellings above;
 - Building B2 - 4 storeys - commercial use at lowest level with residential dwellings above;
 - Building C1 - 5 storeys – serviced apartments at lowest level with residential dwellings above;
 - Building C2 – 5 storeys – serviced apartments at lowest level with residential dwellings above;
 - Building C3 – 4 storeys – serviced apartments at lowest level with residential dwellings above;
 - Building C4 – part 3, part 4 storeys – serviced apartments at lowest level with residential dwellings above.
5. Basement parking for 251 vehicles accessed via one entry from Elliott Street comprising:
- Basement level car park – 171 spaces comprised of 113 residential (including 9 accessible), 42 serviced apartment (including 2 accessible), 12 commercial (including 1 accessible), 1 service vehicle, 2 car share and 1 car wash bay.
 - Lower ground level car park – 50 spaces comprised of 18 visitor (including 1 accessible), 17 residential (including 1 accessible), 14 commercial and 1 service vehicle.
 - Mezzanine level car park – 30 parking spaces comprised of 17 residential (including 1 accessible) and 13 commercial.
6. On-site landscaping, open space and foreshore works, including:
- Open space provision: 1732sqm of communal open space across the site and an additional 2,160sqm dedicated foreshore public open space. There is also a communal pool for occupants of the development;
 - Removal of timber wharf and proposed private use of existing pontoon;
 - Removal of approximately 62 trees on and immediately adjacent to the site
 - Retention of approximately 39 trees on and immediately adjacent to the site
 - Planting of additional trees, shrubs and plants across the site;
 - Foreshore works – retain existing natural rock outcrops, remove existing masonry and timber log retaining walls and construct new sandstone retaining walls with associated level changes along the waterfront. Installation of seating, pathways and planting along the waterfront.

2. SITE AND LOCALITY DESCRIPTION



Note – pink shows boundary of site, blue line shows foreshore building line.

The site is located at 100-102 Elliott Street, Balmain within the Leichhardt local government area (LGA). The site comprises two lots, Lot 6 in DP 617944 and Lot 1 in DP 619996, and is essentially triangular in shape with frontages of 151m to Iron Cove (west), 199m to Elliott Street (north) and 62m to Broderick Street (south), with an extension of this boundary along an adjoining property down to the foreshore of a further 84m. The site is 12,375m² in area and has a moderate slope from 17m AHD in the eastern corner of the site to approximately 2m AHD at the sandstone retaining wall at the edge of the Parramatta River. The waterfront location and topography means the site benefits from views across Iron Cove to the Iron Cove Bridge, Birkenhead Point and Drummoyne. The site is addressed from Elliott Street, a local two way street which runs between Darling Street to the east and Parramatta River to the west. Broderick Street intersects with Elliott Street and heads west towards the river before turning at a right angle as it turns to the south as a dead end.

The site's current use is by Nutrimetics which is principally a cosmetics company. Existing on the site are a mix of commercial, warehouse and convention centre buildings which are gradually being vacated by Nutrimetics. Built structures on the site include:

- The main Nutrimetics office and warehouse building in the north western portion of the site, constructed over 2 levels and with a car park below, the building being setback between 1.1m and 2.8m from Elliott Street and with a

maximum height of RL19.4AHD to this frontage, and is also erected in part up to the Foreshore Building Line affecting the site; and

- A two storey commercial building (corner of Elliott and Broderick Streets) and attached single storey, double height convention centre at the eastern end of the site, erected hard against Broderick Street at maximum heights varying between RL21.86AHD and RL22.55AHD to this frontage.

The main vehicular and pedestrian entry to the site is via a concrete driveway and gates from Elliott Street. The driveway leads to the commercial/warehouse building, the convention centre, and a part single and part double storey car parking area towards the centre of the site. Two other vehicular crossovers are located at the eastern end of the site providing access to the two storey commercial building and rear access to the convention centre, and a further entry exists at the far western end of Elliott Street providing access to the car park below the main office and warehouse building.

The site is currently secured with a combination of chain wire fencing and the high solid walls of the existing buildings which, as previously noted, are built on and /or close to the street boundaries. The site is bounded by an extensive sandstone seawall to the Parramatta River.

Landscaping across the site includes shrubs, hedges, garden beds and small and large trees within and adjacent to the site. There are approximately 100 trees on / adjacent to the site. The foreshore area is moderately vegetated with small and large trees, garden beds, hedges and grass providing a green space along the waterfront which is not currently publicly accessible. Amongst this vegetation is a paved outdoor area and stairs to the west of the west of the commercial/warehouse building that extends below the foreshore building line that is connected to a walkway leading to a timber jetty and a floating pontoon accessed via the subject site. Timber log retaining walls and access stairs are located at the south western corner of the site. The western edge adjoining the foreshore is bounded by a natural sandstone retaining wall to Parramatta River.

The part of the site identified as Lot 6 DP617944 is identified as a Foreshore Flood Control Lot and a Flood Control Lot.

2.1 Adjoining Sites

Apart from a substation owned by Ausgrid on the northern side of site fronting Elliott Street, the only adjoining property that shares a boundary with the subject site is No.2 Broderick Street to the immediate south. No.2 slopes down gently from Broderick Street before stepping down sharply to the waterfront. Located on the site is a contemporary style metal clad dwelling that is setback substantially from the street and located on the steeply sloping portion of the site. No.2 Broderick Street presents as a three storey dwelling from the waterfront and is sited behind a high fence / gate to Broderick Street providing access to on-site car parking via a driveway in front of the dwelling.

Located directly opposite the site on Broderick Street at Nos. 3 to 13 Broderick Street are residential dwellings varying in form, scale, style, age and siting. The dwellings vary from one to three storeys in form and scale and setbacks from Broderick Street vary between less than 1m to greater than 6m. Nos 5, 7, 9, 11 and 13 all have access to on-site parking.

Located opposite the site on the corner of Elliott and Broderick Street is a large two storey residence known as Braeside at No.96 Elliott Street, a heritage item of local significance pursuant to the Leichhardt Local Environmental Plan 2000. The residence is an intact Victorian Filigree building c.1887 of rendered masonry construction with a slate roof, iron bullnose verandah and iron fence. The building is setback from the Elliott and Broderick Street boundaries and located within a landscape setting.

Located directly opposite the site on Elliott Street are Housing NSW residential flat buildings with three main buildings being opposite the site on the northern side of Elliott Street. These flat buildings range from three to five storeys in height and scale. The flat buildings have varying setbacks to Elliott Street.

2.2 Locality Description

The site is located in the Birchgrove / Elkington Park Distinctive Neighbourhood as prescribed under A10.6.6 of the Leichhardt Development Control Plan 2000.

The local area is characterised by its proximity to the Parramatta River, the topography of the land which falls from the Balmain and Rozelle town centres towards the water, streets characterised by trees both on private and public property, and a mix of 1, 2 and 3 storey residential dwellings, and residential flat buildings up to five storeys in height. Buildings are mixed in terms of their materials and architectural style but generally comprise masonry, timber, aluminium and metal finishes with hipped, pitched, gable and parapet / flat and skillion roof forms and openings that are rectangular in shape and vertical and horizontal in proportion. Fencing varying between low, open styles to high walls / gates are characteristic of the immediate vicinity. Where building setbacks permit, landscaping is generally characteristic of front setbacks. On-site parking is also characteristic of some front setbacks.

The Balmain West ferry wharf (also known as the Elliott Street ferry wharf) is located at the western end of Elliott Street and adjoins the site. The wharf services were discontinued in October 2013. Adjacent to the wharf and also fronting Parramatta River is a restaurant.

The site is located within the Iron Cove section of the Balmain Peninsular Heritage Conservation Area.

The site is not a heritage item, however, is located in the vicinity of various heritage items listed in the Leichhardt Local Environmental Plan 2000, including:

- 96 Elliott Street – Braeside (see above)
- 2 Broderick Street - House(see above)

- 4 Broderick Street: Nos. 2 and 4 Broderick Street were formerly one lot before the site was approved for subdivision. The subdivision certificate was approved in 2000, and hence, No.4 Broderick Street is identified in orange on Council's heritage maps as being a heritage item (dwelling now known as 2 Broderick Street is a new dwelling).
- 6 and 8 Broderick Street – Semi-detached houses
- Elliott Street, Balmain – Landscape – Street trees – Ficus macrophylla and two Moreton Bay Figs (near Glassop Street).

The subject site is zoned Business under Leichhardt Local Environmental Plan 2000 (LLEP2000) and is zoned B2 Local Centre under Leichhardt Local Environmental Plan 2013 (LLEP2013). Surrounding the site is principally Residential zoned land under LLEP 2000 (R1 General Residential LLEP 2013) and a small connection to land zoned Open Space under LLEP 2000 (RE1 Public Recreation LLEP2013) which adjoins the ferry wharf and the open space between Parramatta River and the Housing NSW flat buildings on the northern side of Elliott Street.

3. SITE AND IMMEDIATE ADJOINING PROPERTY HISTORY

The following is a history of the applications lodged with respect to the subject addresses.

100-102 Elliott Street, Balmain

Application Number	Proposal	Decision
DA/393/1954	Manufacture of blinds	Refused 9 June 1954
DA/678/1956	Commence boiler making	Refused 18 January 1956
DA/746/1956	Specialised marine boiler making and plumbing	Refused 18 January 1956
DA/1569/1960	Erect building for offices, showroom and warehouse facilities for distribution of woollen goods	Approved 24 May 1960
DA/759/1963	Subdivide	Refused 22 October 1963
DA/843/1965	Subdivision	Approved 21 September 1965
DA/810/1967	Storage of cosmetics	Approved 13 June 1967
DA/835/1969	Use of premises for bottling plant, winery and administration office	Approved 16 April 1969
DA/1454/1969	Distribution and permanent use for bottle plant, winery administration office	Approved 25 June 1969
DA/1033/1979	Use property for manufacturing, assembly and warehousing of kitchen and bathroom cabinets and fittings and offices	Withdrawn 1 January 1979

DA/1116/1979	Marine engineer repair and servicing of launches and boats	Approved 7 August 1979
DA/3705/1980	Demolish building and erect 5 townhouses	Refused 1 July 1980
DA/463/1982	Change of use from warehouse to export orientated warehouse for Con-Stam Pacific	Approved 19 April 1983
DA/147/1985	Alteration and additions to existing warehouse buildings	Approved 25 June 1985
DA/50/1987	Erected illuminated advertising sign	Approved 3 June 1987
DA/560/1987	Industrial alterations and additions	Surrender of Consent 22 July 1991
DA/567/1989	Industrial alterations and additions, enclose existing balcony for use as a additional office space	Approved 19 April 1990
DA/409/1990	Industrial (alterations to convert warehouse to staff training facility) and additional parking	Approved 4 June 1991
BA/1991/233	Building Application	Approved 11 July 1991
DA/361/1993	Extend first floor	Approved 23 December 1993
T/2000/429	Removal of 3 x Gum trees at the main entrance to the left of the site	Refused 6 December 2000
D/2004/292	Enclosure of existing elevated ground verandah to form new office space	Approved 10 November 2004
T/2008/197	Removal of 2 x Eucalyptus spp from front entrance	Withdrawn 20 January 2009
D/2011/529	Demolition of existing structures, construction of a mixed use development including 6 buildings with commercial / retail uses and gym, 112 residential units above, basement parking for 217 vehicles, and associated works, including landscaping and removal of trees, bulk earthworks and remediation. Amended plans received showing design changes. Summary of Amendments and Reports also provided.	Refused 21 March 2012
T/2012/208	Removal of one privet tree to the Broderick Street frontage	Approved 10 July 2012
PRED/2013/105	Demolition of existing structures and the construction of a mixed commercial/residential development including bulk earthworks, basement car parking landscaping and public open space.	Advice issued 13 September 2013
T/2013/369	Removal and pruning of trees. Complying works letter sent under T/2013/368	Completed 14 November 2013

D/2011/529

Development application D/2011/529 was lodged on 4 October 2011. The application was reported to the Joint Regional Planning Panel on 21 March 2012. A Class 1 appeal to the Land and Environment Court of NSW was filed on 4 May 2012, Case Number 10430 of 2012. The appeal was dismissed by the Land and Environment Court NSW on 19 December 2012.

D/2013/406 (current application)

The application was lodged on 18 September 2013. Council officers held a public information evening on 6 November 2013 to outline the proposal.

Council forwarded various correspondences to the applicant during the assessment of the application, including letters dated 30 October 2013 and 22 November 2013. The primary matters raised in these letters included:

- Permissibility with regard to Clause 23(1) of Leichhardt Local Environmental Plan 2000 regarding use of serviced apartments and residential uses at ground floor level
- Compliance with SEPP 65 and Residential Flat Design Code
- Building envelope concerns in relation to Elliott Street
- Appearance from foreshore and water of buildings C1, C2, C3 and C4.
- Front setback dimensions required
- View loss – further documentation required to determine extent of view loss
- Foreshore land dedication and public rights of way – further detail required
- Integration between public and private areas – further detail required
- Further detailed architectural plans required
- Serviced apartments operational details
- Insufficient shadow diagrams
- Floor space ratio calculations
- Facility provision and details throughout development
- Operational waste management details required
- Traffic, parking, vehicular access and civil works – various issues requiring redesign or further information
- Rainwater reuse tank requirements
- Seawall structural assessment required
- Accessibility – various issues throughout development to be further clarified
- Trees – additional information required
- Retail premises – redesign requested
- Heritage – materials and finishes, interpretive strategy and details of foreshore precinct required
- Sample board of external finishes and features
- Soil assessment and acid sulfate soils management plan
- Updated information regarding SEPP BASIX
- Address submissions received from external Government Agencies including Ausgrid and RMS.
- Address submissions received to date

The applicant responded by lodging legal advice to Council on 20 November 2013. Council subsequently had the legal advice reviewed and separate legal advice was provided on 10 December 2013. The conclusion was that the serviced apartments and ground floor uses are permissible in the zone.

The applicant lodged amended plans and documentation addressing the issues raised above since 31 January 2014. The amended plans and documentation were re-notified from 25 February 2014 to 26 March 2014 and form the basis of this assessment. The main amendments to the proposal since lodgement include the following:

General

- Reduction in number of residential units from 106 to 104;
- Reduction in number of vehicle spaces from 262 to 251;
- Reduction in gross floor area of the development by approximately 300m² (applicant's calculations);
- Changes to balustrades from glass to metal;
- Rainwater re-use tank with a volume of 150kl provided in the basement level car park;
- Details of area of land to be dedicated to Council and proposed through site links with Rights of Way for public usage;
- Additional tree planting within the site.

Broderick Street

- No significant changes to the development on the Broderick Street elevation.

Elliott Street

- Reduction in size of 5th floor of building C1;
- Driveway entrance widened to access basement carpark.

Foreshore

- Reduction in size of 5th floor of buildings C1 and C2
- The northern half of building C2 has been increased in height due to the previous split level design being replaced with a single floor level for each level of the building;
- Further plans of foreshore land to be dedicated to Council including details of proposed landscaping and pathways etc;

A detailed assessment of the amended scheme follows from Section 4 of this report.

Applications that have been lodged for surrounding sites in recent years are detailed below.

Nos. 2 and 4 Broderick Street, Balmain

Application Number	Proposal	Decision
D/1998/200 & PCA/2001/164 & PCA/2010/265 & OC/2010/305	Proposed new subdivision of lots 15 &16 and Lot 39 at no. 2 Broderick Street. Proposed new residence upon Lot 15 and proposed refurbishment of existing cottage upon Lot 16	Approved
M/1999/112	Add deck, amend boatshed and pool	Approved
M/1999/116	Staged construction certificate	Withdrawn
CC/1999/201	Erect new dwelling	Approved
CC/1999/202	New residence on 1 lot plus additions to existing cottage	Approved
SC/2000/1	Proposed new subdivision of lots 15 &16 and Lot 39 at no. 2 Broderick Street. Proposed new residence upon Lot 15 and proposed refurbishment of existing cottage upon Lot 16	Approved
D/2000/337 & PCA/2003/432	To relocate the boundary between the existing dwelling and the dwelling under construction, for an addition to the dwelling under construction, and for a 6 by 4 metre swimming pool.	Approved
CC/2001/95	To relocate the boundary between the existing dwelling and the dwelling under construction, for an addition to the dwelling under construction, and for a 6 by 4 metre swimming pool.	Approved
SC/2001/13	Boundary adjustment	Approved
D/2002/836 & PCA/2003/423	Construction of a single carport to the side of the existing dwelling with access via Broderick Street – 4 Broderick Street	Approved
D/2006/546 & CC/2007/142 & PCA/2007/145 & OC/2007/140	Alterations and additions to existing elevated deck – 4 Broderick Street	Approved
BC/125/2006	Unauthorised works that have been carried without the proper consent of Council for the construction of a covered verandah and deck – 4 Broderick Street	Approved
M/2007/84	Section 96 (1a) modification of development consent D/2006/546 which approved alterations and additions to existing elevated deck. Modification seeks to remove stairs from application – 4 Broderick Street	Approved

BC/27/2008	Construction of a landing area mid way up an existing staircase measuring approximately 6.7 metres squared in association with rectification works of an existing external staircase – 4 Broderick Street	Approved
D/2009/294	Alterations and additions to an existing dwelling – 4 Broderick Street	Withdrawn
M/2010/2	Section 96 application to modify D/1998/200 which approved new subdivision at No. 2 Broderick Street; Proposed new residence upon No.2 Broderick and proposed refurbishment of existing cottage upon No.4 Broderick Street. Modifications include internal and external alterations and additions to the existing dwelling at No.4 Broderick Street.	Approved
BC/3/2010	Unauthorised/illegal works to the basement area side pergola and internal stairs to basement – 4 Broderick Street	Approved
CC/2010/156	Alterations to the existing dwelling relating to the construction of an attic room and deck within the existing cottage.	Approved
BC/58/2011	Whole of property – 2 Broderick Street	Approved

No.5 Broderick Street, Balmain

Application Number	Proposal	Decision
D/2003/551 & CC/2005/131 & PCA/2005/248	Ground and first floor alterations and additions to the rear of an existing dwelling including rear first floor deck.	Approved

No.7 Broderick Street, Balmain

Application Number	Proposal	Decision
T/2010/278	Removal of 1 x Eucalyptus spp at the front yard of the property	Refused 8 October 2010
TAP/2010/16	Appeal of Council's determination T/2010/278	Refused 14 March 2011
T/2013/33	Removal of 1 Corymbia citriodora from the front of the site	Refused 2 April 2013
TAP/2013/8	Appeal of T/2013/33 which refused the removal of 1 Corymbia citriodora from the front of the site	Refused 10 September 2013

No.96 Elliott Street, Balmain

Application Number	Proposal	Decision
D/2006/291	New garage to Elliott Street to replace previous	Approved 13 November 2006

No. 101-103 Elliott Street, Balmain

Application Number	Proposal	Decision
D/2004/377	Addition of a gate house and garbage enclosures to existing residential flat buildings	Approved 31 August 2005
M/2005/233	Section 96(1) Modification of Development Consent D/2004/377 which approved construction of gatehouses and garbage enclosures to existing residential flat development. Modification to correct an error in condition 1.	Approved 6 December 2005
T/2007/351	Removal of 1 x Celtis tree	Approved 9 November 2007
PREDA/2013/185	Alterations to existing units – window replacement	Advice issued 30 January 2014
D/2014/87	Replacement of all external windows in 3 x existing residential flat buildings [G, H & J] at properties known as 101-103 Elliot Street & 2 Lockhart Avenue	To be determined

105 Elliott Street, Balmain

Application Number	Proposal	Decision
D/2004/377	Addition of a gate house and garbage enclosures to existing residential flat buildings	Approved 31 August 2005
M/2005/233	Section 96 (1) Modification of Development Consent D/2004/377 which approved construction of gatehouses and garbage enclosures to existing residential flat development. Modification to correct an error in condition 1.	Approved 6 December 2005

4. ASSESSMENT

The following is a summary of the assessment of the application in accordance with Section 79C of the Environmental Planning and Assessment Act 1979.

4.1 Environmental Planning Instruments

The application has been assessed against the relevant Environmental Planning Instruments listed below:

- State Environmental Planning Policy No.1 – Development Standards
- State Environmental Planning Policy No.55 – Remediation of Land
- State Environmental Planning Policy No.64 – Advertising and Signage
- State Environmental Planning Policy No.65 – Design Quality of Residential Flat Development
- State Environmental Planning Policy (Infrastructure) 2007
- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
- Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005
- Leichhardt Local Environmental Plan 2000
- Leichhardt Local Environmental Plan 2013

The assessment of the proposal against the above Environmental Planning Instruments is as follows:

State Environmental Planning Policy No. 55 – Remediation of Land

The applicant has submitted an Amended Report on Phase 2 Contamination Assessment, Project 72412.03 Rev 4 dated August 2013 prepared by Douglas Partners. The report concludes the following:

On the basis of the results of the assessment, and subject to the proposed bulk excavation and associated remediation works, it is considered that there is a low risk of widespread or significant soil, soil vapour, or groundwater contamination associated with the current site features and current and past site activities. Accordingly, and subject to implementation of the proposed RAP it is considered that both the proposed mixed use development site and the adjoining Foreshore Area (designated for public open space land use) can be made suitable for the proposed land use(s).

The applicant has submitted an Amended Remediation Action Plan (RAP), Project 72412.03 Rev 01 dated 28 August 2013 prepared by Douglas Partners. The RAP concludes the following:

The general sequence of site remediation will be the excavation and disposal of contaminated soils during the proposed bulk excavation works, followed by validation.

It is considered that conformance with this RAP will minimize the potential for environmental impacts during the remedial works at the site. Furthermore, pursuant to the implementation of this RAP it is considered that the site can be rendered suitable for the proposed land uses.

Council's Environmental Health Section raises no objections, subject to the preparation of a validation and/or monitoring report and a Site Audit Statement being issued on completion of remediation works. The requirements of Council's

Environmental Health Section and compliance with State Environmental Planning Policy No.55 can be addressed via conditions of consent.

State Environmental Planning Policy No.64 – Advertising and Signage (SEPP 64)

The relevant aims and objectives of SEPP 64 are to ensure signage is compatible with the desired amenity and visual character of an area, provides effective communication in suitable locations and is of high quality design and finish. The proposed signage has also been considered with regard to the Assessment Criteria within Schedule 1 of SEPP 64.

The applicant has submitted a signage plan detailing proposed commercial and retail business identification signage as well as building signage for each building and directional signage for buildings within the development. The location, size and type of signage will provide effective communication in appropriate locations and incorporated into the design of the buildings. It is recommended that standard conditions be imposed in relation to any lighting of the signs to ensure that they do not cause adverse light spill or amenity impacts for surrounding residents.

The proposed signage as recommended is therefore considered acceptable with regard to SEPP 64.

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

The proposed development is subject to SEPP No.65 as a new residential flat building is proposed. The following table outlines Council's assessment of the proposal against the design quality principles of SEPP 65.

Principle	Assessment	Comment
Principle 1: Context	The context of the site is an irregular triangular shaped site with a steep topography dropping from Elliott Street down to the waterfront. The site is zoned Business whilst surrounding sites are zoned Residential. Residential development in the immediate context of the site are residential flat buildings and single dwelling houses. The proposal has sought to reduce building heights where possible to minimise impacts to surrounding dwellings. The main frontage of the site is Elliott Street. The proposed buildings which have a frontage to Elliott Street step down towards the foreshore	Satisfactory subject to conditions.

	except building C1 which is recommended to have its 5th floor deleted accordingly. The main building to Broderick Street (A2) will generally have an appearance of 2 storeys to integrate with the single dwelling houses opposite. Buildings C1 and C2 which have a frontage to the foreshore are recommended to have their 5th floors deleted which will result in the foreshore buildings having a maximum of 4 storeys. The proposal incorporates some existing trees on site and proposes new landscaping including in the foreshore which will become publicly accessible.	
Principle 2: Scale	Subject to the deletion of the 5th floors of buildings C1 and C2 the scale of development is considered appropriate in the context of its surrounds. The bulk and height of the buildings to Elliott Street are in response to the existing flat buildings on the opposite side of Elliott Street. The buildings fronting Broderick Street have aimed to reduce height and bulk on their frontages to Broderick Street to provide a transition to the single dwellings on the southern side of Broderick Street. Building C4 is 3 storeys adjacent to the dwelling at 2 Broderick Street which is itself a 3 storey dwelling and then steps up to 4 storeys within the site.	Satisfactory subject to conditions.
Principle 3: Built Form	The proposal is considered to achieve an appropriate built form in a Business zone subject to the deletion of the 5th floors of buildings C1 and C2 as recommended. Given that there are nil or minimal setbacks currently on the site, the proposed setbacks to Broderick and Elliott Streets are considered	Satisfactory subject to conditions.

	acceptable. Appropriate material choices are proposed. The buildings will activate the public domain to Broderick and Elliott Streets and provide public access to the foreshore. Through site links will allow the public to move through the site to the foreshore and allow a vista from Elliott Street to the waterfront.	
Principle 4: Density	The proposal complies with the FSR controls for the site within LLEP 2000. The FSR controls for the site are greater than surrounding sites due to the subject site being zoned Business and the surrounding sites being zoned Residential. Subject to the deletion of the 5th floors of buildings C1 and C2, the proposal is considered to be satisfactory in the context of surrounding developments including flat buildings and dwelling houses. The proposal will incorporate retail and commercial uses within the development and is within walking distance to public transport.	Satisfactory subject to conditions.
Principle 5: Resource, energy and water efficiency	More than half of the units are naturally cross ventilated. 70% of apartments will receive 3 hours of sunlight between 9am and 3pm in mid-winter. A condition recommended to require OSR (on site retention/reuse) to supply water to all residential units, serviced apartments and commercial units for laundry purposes, flushing of all toilets, car wash bays and outdoor usage such as irrigation. BASIX Certificates provided which require compliance with energy efficient initiatives throughout the residential part of the development.	Satisfactory subject to conditions.

Principle 6: Landscape	The proposal includes landscape plans for both within the development and the proposed foreshore dedicated open space. The development has been designed to retain some existing significant trees including a Fig adjacent to Elliott Street and Plane trees within the site adjacent to the foreshore dedicated land. A number of trees proposed to be removed as a result of the development are not native whilst new planting including trees and smaller vegetation is proposed to be predominantly native species. Landscaped communal open space is proposed within the development with links through the development to the proposed foreshore public open space.	Satisfactory subject to conditions.
Principle 7: Amenity	Internal amenity for the majority of the residential apartments is of a good standard. The apartments are generally well designed with regard to room dimensions and shapes, access to sunlight, natural ventilation, visual and acoustic privacy, storage, indoor and outdoor space, efficient layouts and service areas, outlook and ease of access for all age groups and degrees of mobility. In order to protect privacy within the development, privacy screens are proposed in some locations. A pool and gym are proposed for use of the residents of the development. Communal open space within the development is also provided.	Satisfactory

Principle 8: Safety and security	The buildings have been designed to address the respective streets and to have a presentation to the foreshore (with entrances accessed internally to the site for the foreshore buildings). Balconies and living areas are orientated to provide casual surveillance of streets and internal communal open space and pathways as well as the foreshore. Entrance ways and internal paths are recommended to be conditioned to be lit appropriately. Security systems are recommended to be conditioned to pedestrian entries and to the basement carpark with security doors. A condition is also recommended requiring a formal crime risk assessment to be carried out. It is considered that subject to minor changes including repositioning pedestrian access to the lift in building A1 that the overall proposal can be made acceptable with regard to safety and security.	Satisfactory subject to conditions.
Principle 9: Social dimensions and housing affordability	The proposed development provides 1, 2 and 3 bedroom apartments of varying layouts and sizes including accessible apartments to provide a varied housing mix. The provision of 1 and 3 bedroom apartments complies with the LLEP 2000 requirements. The development includes a retail space and commercial tenancies which may provide services to the development in the future. Through site links and dedicated foreshore public open space are considered to be a positive contribution to both the development and the surrounding area.	Satisfactory.

Principle Aesthetics	10:	The proposed materials and finishes are varied and are considered acceptable materials and finishes in a conservation area. The applicant has already modified the balustrading from glazing to metal however it is considered that there is still a disproportionate amount of glazing to the public domain being Broderick and Elliott Streets and the façades facing the waterfront. It is therefore recommended that a condition be imposed requiring the proportion of solid walls to glazing be increased to be more in keeping with conservation area that the site is located within.	Satisfactory subject to conditions.
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The proposal has also been considered against the Residential Flat Design Code (RFDC), and subject to conditions, is deemed to be satisfactory with respect to the intent and provisions of the code. See Appendix 1 of this report for an assessment of the proposal in relation to the RFDC.

State Environmental Planning Policy (Infrastructure) 2007

Ausgrid

The application was referred Ausgrid for comment in accordance with the requirements of Clause 45 of State Environmental Planning Policy (Infrastructure) 2007.

Ausgrid advised as follows:

Ausgrid encourages the developer to assess their power supply requirements for the proposed development. Prior to any electrical work commencing, an Application for Connection form must be submitted to Ausgrid. Ausgrid does not have the capacity to provide a 3 phase electrical service to the proposed development. Additional network assets will need to be constructed, including an electrical distribution substation or substations within the site boundary.

Environmental considerations

Ausgrid require that due consideration be given to the compatibility of proposed developments with existing Ausgrid infrastructure, particularly in relation to risks of electrocution, fire risks, Electric and Magnetic Fields (EMFs), Noise, Visual Amenity and other matters that may impact on Ausgrid or the development.

Conditions of approval

Where Council considers that the site of the development is suitable and the development comprises or involves a type listed in Table 1, then Ausgrid require the following development consent conditions to be imposed to ensure the safety and compatibility of both the development and Ausgrid's assets.

Council in its request for information letter dated 22 November 2013 requested that the applicant address Ausgrid's referral response as well as separation distances between the substations (proposed and existing) and adjacent buildings. The applicant advised in their Response to Council's request for further information and/or amendments to proposal Rev A dated January 2014 that Power Solutions Pty Ltd have reviewed the proposal and advised that:

- The preliminary load estimate for the development is 630kVA which equates to around 900Amps.
- A new kiosk substation will be required in addition to the existing substation
- The DA plans have made provision on the development site for an Ausgrid substation to provide an electrical service with sufficient capacity for the development.
- Balconies, building walls and windows have been positioned to comply with Ausgrid Network Standards to ensure they are outside minimum fire segregation distances. The existing Ausgrid substation is within a fully fenced enclosure. The proposed kiosk substation is fully enclosed in a fibreglass housing. There are no safety issues with persons in close proximity or touching the kiosk substation enclosure.

As required by Ausgrid, Table 1 – Required Conditions of Approval and the associated Development Consent Conditions have been included in recommended conditions.

Transport – Roads and Maritime Services

The application was referred to Roads and Maritime Services (RMS) for comment in accordance with the requirements of Clause 104 of State Environmental Planning Policy (Infrastructure) 2007.

RMS advised as follows:

1. *The swept path of the longest vehicle (including garbage trucks) entering and exiting the subject site, as well as manoeuvrability through the site, shall be in accordance with AUSTROADS. In this regard, a plan shall be submitted to Council for approval, which shows that the proposed development complies with this requirement.*
2. *The layout of the proposed car parking areas associated with the subject development (including, driveways, grades, turn paths, sight distance requirements, aisle widths, aisle lengths, and parking bay dimensions) should be in accordance with AS 2890.1-2004, AS 2890.2- 2002 for heavy vehicle usage and AS2890.6:2009 for people with disabilities.*
3. *A Construction Traffic Management Plan detailing construction vehicle routes, number of trucks, hours of operation, access arrangements and traffic control should be submitted to Council prior to the issue of a Construction Certificate.*

4. *All works/regulatory signposting associated with the proposed development are to be at no cost to RMS.*

The above requirements have been considered by Council's engineers in the assessment of the application and included in the recommended conditions.

State Environmental Planning Policy (Building Sustainability Index: BASIX 2004

The amended proposal is accompanied by BASIX Certificates and a BASIX Assessment Report, prepared by ESD Synergy. The proposal is considered to meet the requirements of SEPP BASIX 2004.

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

The Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 contains visual, environmental and heritage provisions which are required to be addressed and satisfied.

The subject site is located within the Sydney Harbour Catchment, and is located within a Foreshores and Waterways Area, however, is not within a Wetlands Protection Area or identified as a Strategic Foreshore Site. The site is adjacent to Heritage Item No.7 - Elliott Street Wharf as listed under the SREP. The site is located adjacent to the W5 Water Recreation zone under the SREP.

The proposal is not considered to impact on the heritage significance of the Elliott Street Wharf structure.

Given the subject property's waterfront location and substantial size, the site has high visibility from the foreshores and waterways of the Parramatta River. The application was referred to and considered by the Foreshores and Waterways Planning and Development Advisory Committee on 8 November 2013. The Committee provided the following:

Committee Consideration:

The Committee recommends that the consent authority take into consideration the relevant matters as prescribed in the Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 (Deemed SEPP) and the Sydney Harbour Foreshores and Waterways Area Development Control Plan 2005 (DCP), in particular Part 5 (Design Guidelines for Land-Based Development) of the DCP.

Additional Comments

Where possible, the consent authority is encourage to secure the retention of existing established and mature trees in order to screen and minimize the proposed development's visual impact on the harbor.

Prior to the determination of the application, landowners consent should be obtained for any works taking place on Roads & Maritime Services land.

Given the development is located on the waterfront and will be highly visible from the water it is recommended that a number of conditions be imposed on any consent as follows. It is recommended that the 5th floors of buildings C1 and C2 be deleted and that building C2 have the northern half of the building stepped down as per the originally submitted plans. The side elevations (northern and southern) of the uppermost floors (4th floors) of buildings C1, C3 and C4 are proposed to be clad with a profiled metal cladding identified as MP1 on the materials legend so that the uppermost floor appears more recessive by breaking up the mass of the buildings with a differentiation of materials from the floors below. It is therefore recommended that a condition be imposed requiring the 4th floors of building C2 to be clad accordingly. The recommended conditions are to reduce the visibility of the development from the water and so that it provides a transition between the Housing NSW flat buildings to the north of the site and the residential dwellings to the south of the site.

The development as proposed and as recommended remains consistent with all other provisions and matters for consideration within the SREP. A further assessment has been undertaken against the Sydney Harbour Foreshores and Waterways Development Control Plan, which is detailed later within this report.

Leichhardt Local Environmental Plan 2000 (LLEP 2000)

Development Standards LLEP 2000

The following table addresses the relevant development standards contained within Leichhardt Local Environmental Plan 2000.

Development Standard	LEP 2000 Requirement	Proposed	% / Ratio	Compliance
Diverse Housing Clause 19(6)	Minimum 25% 1 bed (26 dwellings)	54 dwellings	51.9%	Yes
	Max 30% - 3 bed or more (31.2 dwellings)	28 dwellings	26.9%	Yes
Adaptable Housing Clause 19(7)	10% of total number of dwellings (Min 10.4 dwellings rounded down to 10)	10 dwellings	9.6%	Yes (complies with total number of dwellings required when rounded)
Floor Space Ratio Clause 23(1)	1.5:1* (18,562.5m ²)	15,209m ²	1.23:1	Yes

Foreshore Building Line Clause (33)	Erection of baths, swimming pools and enclosures, boatsheds, changing rooms, jetties and seawalls are permitted between the foreshore building line and mean high water mark only if the consent authority is satisfied that the building or work will not detract from the scenic qualities of the locality when viewed from the water.	Pathways, park benches, steps, retaining walls. Elevated open space within the development / viewing area including retaining wall.	N/A	No
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*Pursuant to Clause 23(1)(b) of the LLEP 2000, consent may be granted to the carrying out of mixed residential and other development on land within the Business Zone which results in a floor space ratio of a building on the land up to 1.5:1, but only if all Floor space at the ground floor or street level is used for non-residential purposes (except for any floor space used for service and access purposes required for the residential component of the building in the floors above). Legal advice has been received as detailed under Section 3 of this report that concludes that the proposal complies with Clause 23(1)(b) of the LLEP 2000.

Note: For reasons detailed later in this report, the total number of dwellings is recommended to be reduced to 102 units (recommended deletion of 2 x three-bedroom units on 5th floors of buildings C1 and C2). This does not result in any development standard non-compliances and would reduce the floor space ratio to 1.20:1.

SEPP 1 Objection to Clause 33 – Foreshore Building Line

State Environmental Planning Policy No.1 – Development Standards

State Environmental Planning Policy No. 1 – Development Standards makes development standards more flexible. It allows councils to approve a development proposal that does not comply with a set standard where this can be shown to be unreasonable or unnecessary. The proposal has been considered against the following assessment criteria:

1. *Is the control a development standard?*

Clause 33 identifies the location of the Foreshore Building Line and development permitted within this area. This control is a numerical development standard (a defined measurement from the 'mean high watermark') which is consistent with the definition of a *development standard* under Section 4 (1) of the Environmental Planning and Assessment Act 1979. The control is therefore capable of being varied under the provisions of State Environmental Planning Policy No.1 – Development Standards.

2. *What is the underlying object or purpose of the standard?*

Foreshore Building Line

The purpose of the development standard is to minimise development within the area between the foreshore building line and the mean high water mark as well as to ensure that any development within this area does not detract from the visual amenity of the development of the foreshore as viewed from the water.

3. *Is compliance with the standard consistent with the aims of the Policy? Does compliance with the standard hinder the object of the Act under s5a(i) and (ii)?*

The aims and objectives of State Environmental Planning Policy No.1 – Development Standards is:

“To provide flexibility in the application of planning controls operating by virtue of development standards in circumstances where strict compliance with those standards would, in any particular case, be unreasonable or necessary or tend to hinder the attainment of the objects specified in section 5 (a) (i) and (ii) of the Act.”

The objects set down in Section 5(a)(i) and (ii) are:

“(a) to encourage:

(i) the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment,

(ii) the promotion and co-ordination of the orderly and economic use and development of land,”

The proposed development is considered to be consistent with the aims of the Policy (discussed further under point 4 below) and does not hinder the objectives of the Environmental Planning and Assessment Act 1979, which amongst other matters aims to promote the orderly and economic development of land and a better environment.

It is considered that the proposed works will be consistent with the objectives and intent of the Act in that the useability of the foreshore land will be improved.

4. *Is compliance with the standards unreasonable or unnecessary in the circumstances of the case?*

Compliance with the development standards is considered in this instance to be unreasonable and unnecessary given:

- Under the provisions of Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 and Sydney Harbour Foreshores and Waterways Area Development Control Plan 2005, the provision of foreshore access is encouraged on waterfront re-development sites. In order to achieve this access and provide infrastructure suited to public needs, the proposed landscaping works including paths, retaining walls, viewing areas and park benches are critical to the successful functionality of the space.

The applicant has provided the following justification as to why compliance with the Floor Space Ratio development standard is unreasonable or unnecessary in this case:

- In this instance compliance with the development standard is unreasonable and unnecessary because the proposed non-compliance is purely technical in nature. The types of development which the LEP lists as development that the consent authority can consent to within the foreshore area is limited and does not include those types of development which are typically found within publically accessible foreshore areas i.e. pathways, park benches and steps. Additionally, the intent of the development standard is achieved through a development which is consistent with the relevant provisions of the LEP;
- The proposed works employ high quality design to integrate with the existing environment;
- The extent of the works within the foreshore area, especially those visible from the water at the southern end of the site, are minor and consistent with works and embellishments that you would typically find on public land around the foreshore and the harbour;
- Although these works are minor they will provide significant public benefit by introducing public access to the foreshore and through to Broderick Street.

5. *Is the objection well founded?*

For the reasons outlined above and as detailed in this report, it is considered that the objections to Clause 33 are well-founded in this instance and the granting of variations to the development standards is appropriate in the circumstances.

6. *The matters which shall be taken into consideration in deciding whether concurrence should be granted are:*

- (a) *whether non-compliance with the development standard raises any matter of significance for State or regional environmental planning:*

The granting of concurrence to the proposed variations of the development standards will not raise any issues of state or regional planning significance.

- (b) *the public benefit of maintaining the planning controls adopted by the environmental planning instrument.*

The granting of concurrence to the proposed variations of the development standards will not have a detrimental impact on public interest. In this regard, there is no material public benefit to the enforcing the development standards.

Clauses of LLEP 2000

Apart from the development standards prescribed above, the proposal has been considered against the following relevant clauses listed below:

- Clause 7 – General Provisions in Relation to the Development of Land;
- Clause 12 – Vision of the Plan;
- Clause 13 – General Objectives;
- Clause 15 – Heritage Conservation;
- Clause 16(7) – Development in the Vicinity of a Heritage Item;
- Clause 16(8) – Conservation Areas;
- Clause 17 – Housing Objectives;
- Clause 20 – Employment Objectives;
- Clause 21 – Development Control Table: Business Zone;
- Clause 23(4) – Development for the purpose of backpacker hostels and serviced apartments;
- Clause 24 – Open space, Recreation and Leisure
- Clause 34 – Foreshore Access.

The application is considered to meet the requirements of the above clauses, as clarified in the following assessment.

Clause 7 – General Provisions in Relation to the Development of Land

In accordance with Clause 7 the application has been assessed against the relevant objectives of the Plan in relation to the proposal as addressed further below. The overall development is considered to be consistent with the relevant objectives subject to recommended conditions.

Clause 12 – Vision of the Plan

The proposed development is considered to be acceptable with regard to conserving and enhancing the quality and diversity of the natural, living, working and leisure environments. Protection of the amenity of adjoining residents and proposed residents within the development are not considered to be unduly impact upon.

Clause 13 – General Objectives

The proposal is considered to consistent with the ecologically sustainable development objectives. The proposal as recommended and as discussed in further detail throughout this report is considered to be of a design that is acceptable with regard to the character, form and scale of the area. The proposal provides through-site links and improves access to public open space whilst maintaining an adequate level of amenity within the development and to surrounding properties. Overall the proposal is considered acceptable with regard to the built and natural environment and amenity objectives. The proposal is considered satisfactory with regard to the transport and access objectives in that it integrates residential and non-residential

land uses. The proposal maximises pedestrian linkages throughout the site and provides sufficient parking for all uses on the site. Public transport in the form of buses is available at walking distance from the site.

The overall proposal subject to recommended conditions as discussed elsewhere in this report is considered acceptable with regard to the requirements of Clause 13.

Clause 15 – Heritage Conservation

The site is located within the Balmain Heritage Conservation Area. The application is accompanied by a Statement of Heritage Impact prepared by NBRS + Partners which concludes that the proposal has a negligible or acceptable heritage impact on heritage items in the vicinity and an acceptable heritage impact on the conservation area generally.

The existing buildings on site are not considered to be contributory to the heritage conservation area. Conditions are recommended to reduce the height of Buildings C1 and C2 and increase the proportion of solid walls with an associated reduction in glazing to the public domain.

Overall, the proposal subject to recommended conditions is considered acceptable within the heritage conservation area as it will provide a publicly accessible foreshore and active street frontages to Broderick and Elliott Streets. The proposal as recommended is not considered to be contrary to the objectives of Clause 15.

Clause 16(7) – Development in the Vicinity of a Heritage Item

Pursuant to Clause 16(7) of LLEP 2000, consent must not be granted for development on land in the vicinity of a heritage item, unless the consent authority has made an assessment of the effect the carrying out of that development will have on the heritage significance of the heritage item and its setting as well as on any significant views to and from the heritage item.

The following local heritage items are within the vicinity of the subject development. Please refer to the SREP above with regard to the Elliott Street wharf which is also a heritage item.

Site Name & Address	Type of Item	Level of Significance
Braeside – 96 Elliott Street, Balmain	Built	Local
Street tree – Ficus macrophylla	Landscape	Local
Street tree – Two Moreton Bay Figs (corner Glassop Street)	Landscape	Local
2 Broderick Street, Balmain	Built	Local*
4 Broderick Street, Balmain	Built	Local
6-8 Broderick Street, Balmain	Built	Local

* Please note that although 2 Broderick Street is listed as a heritage item, Council's Strategic Planning section have advised that it is recommended that 2 Broderick Street be removed from the LEP Heritage Listing as a subsequent LEP amendment as it is a recent modern dwelling.

The development has the greatest to potential to impact on 2 and 4 Broderick Street which are adjacent to the development and 96 Elliott Street and the Ficus tree opposite the site on Elliott Street.

The closest buildings to 2 and 4 Broderick Street are C4 and A2. Both of which have a maximum of 3 storeys at their closest point to 2 and 4 Broderick Street. Given that 2 Broderick Street is a new dwelling and is itself 3 storeys to the foreshore there is not considered to be a heritage impact on the dwelling as Building C4 is separated approximately 7m from the dwelling. 4 Broderick Street is separated approximately 15m from building C4 and approximately 17m from building A2. Buildings A2 and C4 give the appearance of two storey buildings at their closest points to 4 Broderick Street and are not considered to impact on the heritage significance of 4 Broderick Street.

The proposal is not considered to impact on the heritage significance of 6-8 Broderick Street given their significant separation from the development site.

Braeside – 96 Elliott Street is located on higher ground than the subject site. The dwelling house on the site is setback approximately 26m from the development site including the 10m width of Broderick Street. The dwelling will still retain the majority of water views from its upper level as a result of the proposed development. Overall the proposed development is considered acceptable with regard to heritage impacts on 96 Elliott Street.

The proposed development is not considered to impact on the heritage significance of the Ficus opposite the site close to the corner of Elliott and Lockhart Avenue. The tree is significantly higher than the proposed buildings and will therefore be visible from surrounding view points including a vista from the Elliott Street Wharf up Elliott Street.

Overall the proposal is considered acceptable with regard to impacts on nearby heritage items.

Clause 16(8) – Conservation Areas

Pursuant to Clause 16(8) of the LLEP 2000 consent must not be granted for development within a conservation area unless an assessment has been made of the extent to which the carrying out of the development would affect the heritage significance of the conservation area.

An assessment of the proposal has been carried out with regard to its size, form, scale, orientation, siting, materials, landscaping and details within this report. Overall, it is considered that the development is an appropriate response to the site's controls and context and will have acceptable impacts on the public domain and conservation area subject to recommended conditions.

Recommended conditions include deleting the 5th floors of buildings C1 and C2 and increasing the proportion of solid walls with an associated reduction in glazing for the units fronting the foreshore, Broderick and Elliott Streets.

The existing buildings on the site are not considered to be overly contributory to the heritage conservation area. The site has had a varied history of non-residential uses therefore a condition is recommended to be imposed requiring an interpretive signage board detailing the history of the site to be placed within the proposed foreshore public dedicated land.

It is considered that the proposed materials and finishes to be used are acceptable including the inclusion of sandstone faced retaining walls to the public foreshore.

Please also refer to the heritage referral below within Part 6 of this report.

The proposal as recommended is considered acceptable with regard to Clause 16(8).

Clause 17 – Housing Objectives

The proposed development is considered to be acceptable with regard to density, provision of landscaped areas, allotment size, diversity in housing and opportunities to work from home.

Clause 20 – Employment Objectives

The proposed retail, commercial and serviced apartment uses are permissible in the Business Zone. The existing use on the site has been decreasing as the operations are gradually being relocated elsewhere. The proposed uses will allow for a range of new uses. The proposed retail and commercial uses are not considered to detract from the function of the business centres of Balmain and Rozelle yet will allow an appropriate scale of business uses surrounded by a predominantly residential area. The proposed serviced apartments are considered to integrate well into the predominantly residential nature of the surrounding area. The proposal allows for the integration of residential and business uses whilst allowing adequate separation including separate entrances for retail and commercial uses, separate waste storage and separated parking as required by recommended conditions. Although no specific uses are proposed at this stage there will be adequate facilities on site for loading and parking and hours of operation are to be recommended as a condition of consent for this application. Potential impacts on the amenity of surrounding residentially zoned properties is considered to be significantly reduced by the location of the entrances to the majority of the commercial tenancies and the retail tenancy being within the development rather than from the street. Overall the proposal is considered acceptable with regard to the requirements of Clause 20.

Clause 21 – Development Control Table: Business Zone

The proposed development is 'development allowed only with development consent' pursuant to clause 21(3), and such is permissible development under the LLEP 2000.

Clause 23(4) – Development for the purpose of backpacker hostels and serviced apartments

It is not considered that there is an oversupply of serviced apartments in the immediate area. The proposal is not considered to reduce the stock of low-cost, long-term rental accommodation within the area. The use as serviced apartments is not considered to reduce the residential amenity of the nearby residential area.

Clause 24 – Open Space, Recreation and Leisure

The proposed dedication of public open space on the foreshore is considered to meet the objectives of Clause 24.

Clause 34 – Foreshore Access

Pursuant to clause 34 of LLEP 2000 the proposed development has allowed for the provision of foreshore access for both the development site and general public. The development involves a foreshore land dedication and provides a pathway with a public right of way to Broderick Street from the foreshore dedicated land.

Leichhardt Local Environmental Plan 2013 (LLEP 2013)

The Leichhardt Local Environmental Plan 2013 commenced on 3 February 2014 and is therefore a matter for consideration under Section 79C of the Environmental Planning and Assessment Act 1979.

Pursuant to Clause 1.8A of the LLEP 2013, as the application was made prior to the commencement of the Plan, the application must be determined as if the Plan never commenced.

Nevertheless, given the relevance of the Plan under Section 79C of the Environmental Planning and Assessment Act, 1979, an assessment of the application against the Plan is provided below.

The site is zoned B2 Local Centre under Leichhardt Local Environmental Plan 2013.

Development Standards LLEP 2013

The following table addresses the relevant development standards contained within Leichhardt Local Environmental Plan 2013.

Development Standard	LEP 2013 Requirement	Proposed	% / Ratio	Compliance
Floor Space Ratio Clause 4.4(2)	1:1 (12,375m ²)	13,089m ²	1.05:1	No, however refer to CI 4.4A(3) below
Exception to maximum floor space ratio for active street frontages Clause 4.4A(3)	1.5:1 (18,562.5m ²)	13,089m ²	1.05:1	Yes

Limited development on foreshore area Clause 6.5	Boat sheds, sea retaining walls, wharves, slipways, jetties, waterway access stairs, swimming pools, fences, cycleways, walking trails, picnic facilities or other recreation facilities (outdoors)	Pathways, park benches, steps, retaining walls. Elevated open space within the development / viewing area including retaining wall.	N/A	No
Diverse housing Clause 6.13(3)	Minimum 25% 1 bed (26 dwellings)	54 dwellings	51.9%	Yes
	Max 30% 3 bed (31 dwellings)	28 dwellings	26.9%	Yes

Clause 4.6 – Exceptions to development standards

As outlined in the table above, the proposal results in a breach of the following development standard:

Clause 6.5 – Limited development on foreshore area

Clause 4.6(2) specifies that development consent may be granted for development even though the development would contravene a development standard.

The Leichhardt Local Environmental Plan 2013 is in force, however no formal request to vary the development standard has been submitted by the applicant, nor is required at this time.

However, as discussed above, a State Environmental Planning Policy No.1 objection to the equivalent development standard in the Leichhardt Local Environmental Plan 2000 was submitted.

The objection demonstrates that:

- There are sufficient environmental planning grounds to justify contravening the draft development standard;
- 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;
- The contravention of the development standard does not raise any matter of significance for State or regional environmental planning;

- There is no public benefit from maintain the development standard in this instance.

Apart from the development standards prescribed above, the proposal has been considered against the following relevant clauses listed below:

- Clause 1.2 – Aims of the Plan
- Clause 1.8A – Savings provision relating to development applications
- Clause 1.9A – Suspension of covenants, agreements and instruments
- Clause 2.3 – Zone objectives and land use table
- Clause 2.4 – Unzoned land
- Clause 2.7 – Development requires development consent
- Clause 4.5 – Calculation of floor space ratio and site area
- Clause 4.6 – Exceptions to development standards
- Clause 5.3 – Development near zone boundaries
- Clause 5.7 – Development below mean high water mark
- Clause 5.9 – Preservation of trees or vegetation
- Clause 5.9AA – Trees or vegetation not prescribed by development control plan
- Clause 5.10 – Heritage conservation
- Clause 6.1 – Acid sulphate soils
- Clause 6.2 – Earthworks
- Clause 6.3 – Flood planning
- Clause 6.4 – Stormwater management
- Clause 6.6 – Development on the foreshore must ensure access
- Clause 6.7 – Airspace operations
- Clause 6.8 – Development in areas subject to aircraft noise
- Clause 6.14 – Development control plans for certain development

The application is considered to meet the requirements of the above clauses, as clarified in the following assessment.

Clause 1.2 – Aims of the Plan

The proposal is considered satisfactory with regard to the aims of the plan in that it applies the principles of ecologically sustainable development; minimises negative impacts on the surrounding area; protects and enhances the surrounding area where possible; is considerate of the amenity of the surrounding environment; enhances the urban environment; provides appropriate uses in the B2 Local Centre Zone; provides an acceptable range of housing choices; allows use of public transport and encourages walking and cycling through provision of through site links and bicycle storage facilities; will allow employment opportunities and within reason aims to protect views and vistas of Sydney Harbour and Parramatta River.

The overall proposal subject to recommended conditions as discussed elsewhere in this report is considered acceptable with regard to the requirements of Clause 1.2.

Clause 1.8A – Savings provision relating to development applications

Clause 1.8A applies to the subject application which was lodged prior to the gazettal of Leichhardt Local Environmental Plan 2013 and accordingly the application must be determined as if LLEP 2013 had not commenced.

Clause 1.9A – Suspension of covenants, agreements and instruments

There are no known covenants, agreements or other similar instruments that restricts the carrying out of the proposed development.

Clause 2.3 – Zone objectives and land use table

In accordance with the definitions of LLEP 2013 the proposed uses are listed below and are permissible in the B2 Local Centre zone however they are not permissible in the configuration proposed ie residential units must be above retail or business premises.

- **commercial premises** means any of the following:
 - (a) business premises,
 - (b) office premises,
 - (c) retail premises.
- **shop top housing** means one or more dwellings located above ground floor retail premises or business premises.
- **tourist and visitor accommodation** means a building or place that provides temporary or short-term accommodation on a commercial basis, and includes any of the following:
 - (a) backpackers' accommodation,
 - (b) bed and breakfast accommodation,
 - (c) farm stay accommodation,
 - (d) hotel or motel accommodation,
 - (e) serviced apartments,

But does not include:

 - (f) camping grounds, or
 - (g) caravan parks, or
 - (h) eco-tourist facilities.

Although the proposed residential units above serviced apartments are not permissible under LLEP 2013, the proposed configuration of uses is considered acceptable in this instance. There have been several recent decisions at the NSW Land and Environment Court which have adopted the following approach for assessing a development application in the context of a draft LEP, or a draft LEP that is gazetted prior to determination of the application. The approach is

- (a) Consideration must be given to the draft or newly gazetted instrument;
- (b) The weight to be given to a draft environmental planning instrument depends upon the consideration as to whether the draft LEP is imminent and certain;
- (c) If the draft LEP is imminent and certain, it is relevant to consider whether the proposed development will preserve the character anticipated by the zone in the draft plan and whether the proposed development will undermine the objective of that zone.

The application was lodged prior to the gazettal of LLEP 2013. The proposed use of serviced apartments below residential units is not considered to adversely impact on the anticipated character of the B2 Local Centre zone and is considered consistent with the objectives of the zone.

Clause 2.4 – Unzoned land

The proposal does not include any unzoned land.

Clause 2.7 – Development requires development consent

Consent is sought for demolition works as part of the application.

Clause 4.5 – Calculation of floor space ratio and site area

Floor space ratio and site area have been in accordance with Clause 4.5.

Clause 4.6 - Exceptions to development standards

Addressed above.

Clause 5.3 - Development near zone boundaries

The application does not propose any uses that are not permissible in the B2 Local Centre zone.

Clause 5.7 – Development below mean high water mark

The proposal does not include any development on land below mean high water mark.

Clause 5.9 – Preservation of trees or vegetation

The development application includes removal of trees and vegetation which complies with the requirements of Clause 5.9. Please also refer to the landscaping referral under Section 6 of this report for further details in relation to tree removal and tree planting.

Clause 5.9AA – Trees or vegetation not prescribed by development control plan

Not applicable, development consent is being sought for all trees and vegetation to be removed from the site.

Clause 5.10 – Heritage conservation

Refer to discussion under Clauses 15, 16(7) and 16(8) of the Leichhardt Local Environmental Plan 2000.

Clause 6.1 – Acid sulphate soils

The site is identified as Acid Sulfate Soils Class 5. The applicant provided a document (Project 72412.03) prepared by Douglas Partners dated 19 February 2014 titled “Potential for Disturbance of Acid Sulphate Soils” for 100-102 Elliott Street, Balmain. The summary and conclusion state:

the proposed development works are not expected to disturb acid sulphate soil and/or impact upon water levels in the Iron Cove Bay (which is a Class 2 area adjoining the site). Accordingly, it is considered that no additional testing or future management is considered necessary in this regard as the proposed works fall into the category of “ASS not likely to be disturbed” and “No further action required in relation to managing ASS” as set out in Figure 2.1 of the ASSMAC guidelines.

The proposal is therefore considered acceptable with regard to Clause 6.1 of LLEP 2013.

Clause 6.2 – Earthworks

The applicant has provided an Updated Report on Preliminary Geotechnical Investigation Project 72412.01 dated 29 August 2013 prepared by Douglas Partners. Subject to recommended conditions the proposal is considered acceptable with regard to Clause 6.2.

Clause 6.3 – Flood planning

Considered acceptable, refer to discussion under Parts A3a.0, B1.4 and C2.1 of the Leichhardt Development Control Plan 2000 below.

Clause 6.4 – Stormwater management

Considered acceptable, refer to discussion under Parts A3a.0, B1.4 and C2.1 of the Leichhardt Development Control Plan 2000 below.

Clause 6.6 – Development on the foreshore must ensure access

Land adjacent to the foreshore is above mean high water mark and is to be dedicated as public land. The proposal is acceptable with regard to Clause 6.6.

Clause 6.7 – Airspace operations

The proposal will not penetrate the Limitation or Operations Surface for Sydney Kingsford Smith Airport.

Clause 6.8 – Development in areas subject to aircraft noise

This clause does not apply as the site is not located within an ANEF contour of 20 or greater.

Clause 6.14 – Development control plans for certain development

If the development application was lodged after the gazettal of LLEP 2013 Clause 6.14 would apply however in accordance with Clause 1.8A – Savings provision relating to development applications the requirement for a development control plan is not applicable.

4.2 Draft Environmental Planning Instruments

The application has been assessed against the relevant Draft Environmental Planning Instruments listed below:

- Draft State Environmental Planning Policy (Competition) 2010
- Draft Leichhardt Local Environmental Plan 2013 – Amendment No.2

The proposal does not raise any issues with regard to Draft SEPP (Competition) 2010.

Draft Leichhardt Local Environmental Plan 2013 – Amendment No.2

The Draft Leichhardt Local Environmental Plan 2013 – Amendment No.2 was exhibited from 24 June 2013 until 31 July 2013 and is therefore a matter for consideration under Section 79C of the Environmental Planning and Assessment Act 1979.

The relevant amended clauses are as follows:

- Clause 1.2 – Aims of the Plan
- Clause 2.3 – Zone objectives and Land Use Table

The application satisfies the relevant provisions of the Draft Leichhardt Local Environmental Plan 2013 – Amendment No.2.

4.3 Development Control Plans

The application has been assessed against the relevant Development Control Plans listed below:

- Leichhardt Development Control Plan 2000
- Leichhardt Development Control Plan No.32 – Equity of Access
- Leichhardt Development Control Plan No.36 – Notifications
- Leichhardt Development Control Plan No.38 – Waste: Avoid, Reuse, Recycle
- Leichhardt Development Control Plan No.42 – Contaminated Land Management
- Sydney Harbour Foreshores and Waterways Area Development Control Plan 2005

The assessment of the proposal against these Development Control Plans is as follows:

Leichhardt Development Control Plan 2000

The proposal has been assessed against the following relevant provisions of the Development Control Plan 2000:

- Part A1.0 – General Information
- Part A2.0 – Urban framework plans
- Part A3.0 – Principles of ecologically sustainable development
- Part A3a.0 – Sustainable water and risk management
- Part A4.0 – Urban form and design
- Part A4.1 – Development at the Business Zone / Residential Zone interface
- Part A5.0 – Amenity
- Part A6.0 – Site analysis
- Part A7.0 – Heritage conservation
- Part A8.0 – Parking standards & controls
- Part A9.0 – Advertising & signage
- Part A9a.0 – Colours & tones
- Part A10.6.6 – Birchgrove / Elkington Park distinctive neighbourhood

B1.0 Residential Development

- Part B1.1 – Demolition, site layout, subdivision and design
- Part B1.2 – Building Form, Envelope and Siting
- Part B1.3 – Car parking
- Part B1.4 – Site drainage and stormwater control
- Part B1.5 – Elevation and materials
- Part B1.6 - Front gardens and Dwelling Entries
- Part B1.7 – Fences

- Part B1.8 – Site facilities
- Part B1.9 – Corner site controls
- Part B2.8 – Landscaping
- Part B3.1 – Solar Access – Residential amenity and energy efficiency
- Part B3.2 – Private open space
- Part B3.3 – Visual privacy
- Part B3.4 – Access to views
- Part B3.5 – Acoustic privacy
- Part B4.4 – Foreshore development
- Part B4.6 – Residential development in business areas
- Part B4.7 – Diverse and affordable housing

C1.0 Non-Residential Development

- Part C1.1 – Site layout and building design
- Part C1.2 – Parking layout, servicing & manoeuvring
- Part C1.3 – Landscaping
- Part C1.4 – Elevation & materials
- Part C1.5 – Site facilities
- Part C1.6 – Shopfronts
- Part C1.7 – Protective structures in the public domain – Balconies, verandahs and awnings
- Part C2.0 – Ecologically sustainable non-residential development
- Part C2.1 – Site drainage and stormwater control
- Part C2.2 – Energy efficient siting & layout
- Part C2.3 – Building construction – Thermal mass & materials
- Part C2.4 – Solar control, External window shading and internal and external lighting
- Part C2.5 – Insulation
- Part C2.6 – Ventilation
- Part C2.7 – Space heating and cooling
- Part C2.8 – Using solar energy
- Part C2.9 – Appliances and equipment
- Part C3.0 – Interface Amenity
- Part C3.1 – Noise & vibration generation
- Part C3.2 – Air pollution
- Part C3.3 – Water pollution
- Part C3.4 – Working hours
- Part C4.1 – Home based employment
- Part C4.3 – Non-residential Foreshore Development
- Part C4.4 – Playgrounds
- Part C4.5 – Public Domain

The proposal as recommended is considered to meet the objectives of the above controls, as clarified in the following assessment.

Part A3.0 – Principles of Ecologically Sustainable Development

Council's development controls require energy efficient design for new buildings and renovation, encourage good-quality landscaping, aim to increase open space, reduced the negative social and environmental impetus of traffic and create pedestrian friendly and diverse urban environment.

The proposal is consistent with ESD objectives through a design which meets the relevant principles, objectives and requirements of SEPP No.65 and the associated RFDC (Appendix 1) and meets SEPP BASIX requirements.

The proposal is considered acceptable with regard to Part A3.0.

Parts A3a.0, B1.4 and C2.1 – Sustainable Water and Risk Management; Site Drainage and Stormwater Control – Residential; and Site Drainage and Stormwater Control - Commercial

The proposal has been assessed against the provisions above and referred to Council's drainage engineers. The amended plans provide a 150,000 litre rainwater reuse tank. Subject to compliance with recommended conditions in relation to stormwater management, flood risk management and foreshore risk management the proposal is considered acceptable.

Part A4.0 – Urban Form and Design

Part A4.0 sets out the design elements that are essential to good urban form and design. A further more detailed assessment of the development in terms of urban form and design is addressed further within the LDCP 2000 assessment.

Overall, the proposal subject to recommended conditions is considered acceptable with regard to Urban Form and Design.

Part A4.1 – Development at the Business Zone / Residential Zone interface

The proposed development is located on a site zoned business, however is located within a predominantly residential precinct with residential zoning. The only site that adjoins the boundary of the development is No.2 Broderick Street, the remaining development adjoins Parramatta River, Elliott and Broderick Streets providing separation from the residential zone. Minimising amenity impacts on surrounding residents has been part of the design considerations. A 6m setback from the boundary with No.2 Broderick Street has been provided with landscaping to be provided within this setback.

As is demonstrated elsewhere within this report, the proposed development as recommended has acceptable amenity impacts upon surrounding properties in the residential zone.

Part A5.0 – Amenity

Part A5.0 requires reasonable amenity be provided to future occupants of new development and maintained to residents in their existing homes.

As discussed elsewhere in this report and within the RFDC assessment within Appendix 1, the proposal, subject to appropriate conditions is considered to provide suitable amenity to future occupants and acceptable amenity impacts on neighbouring residents.

Part A7.0 – Heritage Conservation

This part requires development to protect, conserve and enhance Leichhardt's heritage and ensure that changes to this heritage take place in an appropriate manner.

The site is located within Balmain Heritage Conservation Area and is within close proximity to a number of heritage items. Subject to conditions deleting the 5th floors of buildings C1 and C2 and increasing the amount of glazing to the development on the facades facing Elliott Street, Broderick Street and the waterway, the proposal is considered to have acceptable impacts on the conservation area and nearby heritage items. Further assessment in this regard is detailed under LLEP 2000 in relation to heritage and the heritage referral under Part 6 of this report.

Parts A8.0, B1.3 and C1.2 – Car Parking Standards and Controls; Car Parking – Residential; and Parking Layout, Servicing and Manoeuvring - Commercial

These parts of the Development Control Plan provide standards and controls relating to parking provision including relating to parking layout and manoeuvring.

Parking compliance table

The following table details parking breakdowns for the proposed development.

Land Use	Resident/Staff		Visitors/Shoppers		Bike Storage (Min)	Accessible (Min)
	Min	Max	Min	Max		
Residential						
1 bed	27(54x0.5)	54 (54x1)	5.4	10.8	34 Resident 8 Visitor	10
2 bed	17.6(22x.8)	35.2(22x1.6)	2.2	4.4		
3+ bed	28(28x1)	56(28x2)	2.8	5.6		
Sub-total (rounded)	73	145	10	21	42	10
Motels*	3.2	4	32 (32x1)	32 (32x1)	1	4
Shops	2.4	3	2.4	4.8	5	1
Commercial	Min 1.5/100m2 11 spaces	Max 3/100m2 22 spaces	Shoppers/visitors included in staff rate		6	
Sub-total (rounded)	17	29	34	37	12	5
Total	90	174	44	58	55	15

*Please note applicant was advised as per PREDA/2013/105 to provide parking for the serviced apartments commensurate with that required for a 'motel' in the parking rates as it is considered a 'best-fit'.

Based on the parking requirements above, the minimum number of parking spaces that are required to be provided is 149 and the maximum is 247. The proposal is for 251 parking spaces comprised of 165 residential/visitor, 39 commercial/retail with associated visitor spaces and 42 serviced apartment spaces – a total of 246 parking spaces. It also includes an additional 2 car share bays, 1 car wash bay and 2 service vehicle bays.

Now that the ferry service from Balmain Wharf is no longer operating, it is considered appropriate to provide parking towards the maximum rate given that the only public transport available nearby is buses which require people to walk up a steep hill.

The proposed parking and servicing layout is not considered acceptable and requires significant redesign, refer to the Engineering referral in Part 6 for further details. Given that the proposed parking redesign is likely to result in the deletion of two serviced apartments and the 5th floors of buildings C1 and C2 are recommended to be deleted it is recommended that a maximum of 237 parking spaces be provided. The 237 are to be comprised of:

- 141 resident parking;
- 10 accessible resident parking spaces;
- 21 resident visitor parking spaces;
- 28 serviced apartment spaces;
- 4 accessible serviced apartment spaces;
- 4 serviced apartment staff spaces;
- 3 retail staff spaces;
- 2 retail visitor spaces;
- 1 accessible retail/commercial space;
- 18 commercial staff spaces;
- 2 car share bays;
- 1 car wash bay;
- 2 service vehicle spaces;
- 34 resident bike storage spaces; and
- 20 visitor and staff bike storage spaces

Subject to compliance with recommended conditions for redesign of the basement parking the proposal is considered acceptable in principle with regard to the requirements of Parts A8.0, B1.3 and C1.2 of LDCP 2000.

Part A9.0 – Advertising and Signage

Part A9.0 seeks to ensure that signage is in keeping with the size, scale, character and architectural treatment of the building to which it is attached or the development with which it is associated and conserves the heritage of significant places.

The proposal includes an integrated signage strategy for the proposed retail and commercial tenancies and building identification signage and directional signage to buildings within the development. It is recommended that conditions be imposed regarding directional signage for the public to advise of through site links and access to the foreshore. Overall the proposal is considered acceptable with regard to Part A9.0.

Part A9.0a – Colours and Tones

This part aims to provide guidance on the use of colour and tone for new buildings. The materials board submitted with the amended plans utilises colours and tones that are considered acceptable with regard to the guidelines of Part A9.0a.

Part A10.6.6 – Birchgrove / Elkington Park Distinctive Neighbourhood

The development site is located within the south western part of the Birchgrove/Elkington Park Distinctive Neighbourhood. The distinctive neighbourhood feature many waterfront residential developments which follow the slope of the land and present lower scales to the street with a number of storeys visible from the water. The development site is also within the visual catchment of the Iron Cove Distinctive Neighbourhood which includes the Balmain Shores and Balmain Cove developments. These sites contain a series of buildings with an appearance of up to eight storeys high with public open space established along the foreshore.

It is noted that the Desired Future Character and Neighbourhood Controls are not all relevant to the subject development site as they are principally aimed at dwellings on residential sites. The following comments are provided with respect to those areas relevant to the development proposal.

Desired Future Character

- *Preserve and where practicable, enhance public and private views over Snails Bay and Parramatta River. Buildings on the waterfront should follow the slope and help preserve view lines by stepping down with the contours.*
- *Promote a balance of landscape to built form when viewed from the water.*
- *Maintain the diverse character of the area by ensuring new development is complementary in terms of its architectural style, built form and materials.*
- *Conserve and complement the established streetscape with regard to setbacks, street trees and general lack of driveway crossings.*
- *Maintain sandstone outcrops and remnant stone wall footings.*
- *Retain and encourage street trees on the wider streets.*

Comment

The proposal, subject to conditions including deletion of the 5th floors of buildings C1 and C2 is considered to step down with the slope of the land. Some of the existing trees on site including a number of Plane trees in front of Building C3 are to be retained and appropriate new landscaping is proposed. The architectural style, built form and materials of the proposal are considered acceptable within the context of the immediately surrounding area and subject to conditions including increasing the proportion of solid walls to glazing to Broderick and Elliott Streets and to the foreshore. There are no set setbacks to the development site as addressed further below under B1.2 of LDCP 2000. The setbacks proposed are considered acceptable. Street tree planting to Elliott Street is recommended as a condition. Only one driveway location is proposed which is recommended to be widened to comply with relevant requirements as detailed in the engineering referral under Part 6 of this report. A condition is recommended to require any existing sandstone outcrops within the foreshore area to be retained.

Neighbourhood Controls

- *A maximum building wall height of 6m applies to the neighbourhood.*
- *New development shall maintain the use of hipped, pitched or gabled roof forms and designs shall be complementary to the existing unadorned built form. Flat roofs may be appropriate where the style of architecture is contemporary and view lines may be affected.*
- *Building materials used shall be consistent with the existing character of the streetscape, including rendered and painted surfaces and roof materials such as corrugated iron as well as timber windows.*
- *Development visible from the water is to be designed to preserve the conservation values of the area. When viewed from the water a balance between built form and landscape is to be achieved/maintained through side setbacks and landscaping. Where development is visible from the water details of that view are to be submitted with the development application.*

Comment

Building wall heights are discussed further below under B1.2 of the LDGP 2000 and are considered acceptable in this instance. Pitched roofs are proposed. Appropriate materials and finishes are proposed subject to conditions requiring a reduction in the proportion of glazing. The proposal as viewed from the water subject to recommended conditions to delete the 5th floors of buildings C1 and C2 and reduce the amount of glazing is considered acceptable. The utilisation of different materials on the side (north and south) elevations on the 4th floors of the foreshore buildings will assist in reducing the apparent bulk of the buildings when viewed from the water. The retention of some existing trees within the development and additional proposed planting is considered acceptable to provide a balance of built form to landscaping.

Parts B1.1 and C1.1 – Demolition, Site Layout, Subdivision and Design; and Site Layout and Building Design

Part B1.1 seeks to design new housing to integrate well with the locality and be consistent with and enhance existing street subdivision patterns, street character and maintain amenity to adjacent residents. Part C1.1 seeks to design new development to integrate well with the locality and respect the streetscape, general built form and character of the area.

The provisions of State Environmental Planning Policy No.65 / Residential Flat Design Code are aimed at achieving outcomes consistent with the above, refer above within this report and to Appendix 1 for further details. The site layout and building design is considered acceptable as evidenced by the following:

- The buildings and associated apartments will be orientated to Elliott and Broderick Streets which respects existing surrounding development on these streets.
- The proposal results in improvements to the street edges compared to the existing development on the site which has large expanses of blank building walls and fences along site boundaries with little relief in building design and minimal sight lines. The proposal provides activated frontages, landscaped setbacks and provides through site links including a sight line from Elliott Street to the waterfront which will be publicly accessible.
- Adequate provision for services and facilities can be achieved.

The proposal does not comply with the building envelope control in parts however this is considered to be acceptable as discussed further below under Part B1.2.

Overall the development is considered acceptable with regard to Parts B1.1 and C1.1.

Part B1.2 – Building Form, Envelope and Siting

This part aims to plan new housing to provide a balance between building and spaces which respects the character of the area. The controls are Siting, Building Location Zone (with respect to front setbacks in this instance), Building Envelope and with respect to the adjacent development at 2 Broderick Street – Side Setbacks.

Siting

- *Siting for new development in streets with an established siting pattern must be orientated in accordance with the Siting and Orientation Guidelines.*

Comment

There is not considered to be an established siting pattern for the site however the proposed location of the buildings fronting Broderick and Elliott Streets is considered an appropriate response.

Building Location Zone (with respect to front setbacks)

- *All new development is to be located within the boundaries set by the Building Location Zone. Any departure from this control must be clearly justified in accordance with the Building Location Zone (BLZ) Guidelines.*

Comment

The development site is independent from surrounding development with regard to front setbacks as detailed in the Building Location Zone. There is no established front setback as there are no neighbouring sites that front Broderick or Elliott Street within the same block of land (2 Broderick Street although adjoining the site has a different orientation and an atypical front setback). The existing buildings on the site have a nil setback to a large portion of Broderick Street and an approximately 2m setback for a large portion of Elliott Street. The proposed front setbacks at street level (not including basement parking) to Broderick and Elliott Streets are as follows:

Building	Setback range Broderick Street	Setback range Elliott Street
A1	3m	Nil to 3m
A2	2m to courtyard of commercial tenancy below 3m to building	-
B1	-	Varying front setbacks 3m to serviced apartment wall 6m to building entrance 3m to residential balconies on upper floor

B2	-	Varying front setbacks 4.4m to commercial tenancy wall 5.5m to building entrance 2.7m to residential balconies on upper floor
C1	-	Varying front setbacks 7m to serviced apartment wall 9.5m to building entrance 6.3m to upper level residential

The setbacks to the foreshore of Buildings C1, C2, C3 and C4 are outside the foreshore building line and are considered appropriate and allow for planting and landscaped public open space between the buildings and the Parramatta River.

The setbacks proposed to the public domain being Broderick and Elliott Streets are considered acceptable for a Business zoned property. The setbacks allow for some planting as either planter beds and/or street trees. Additionally, a footpath which will become a public right of way is now proposed to the northern side of Broderick Street in the front setback which does not currently exist.

Building Envelope

- *All new development must fit within the relevant Building Envelope, as set by the relevant Suburb Profile.*
 - *Building wall height must be measured from ground level and applied at the front building elevation*
 - *Any departure from this control must be in accordance with the Building Envelope Guidelines*
- *Ridge heights of a development shall not exceed ridge heights of adjoining development. The development needs to respect the adjoining and local roof form.*

Comment

In accordance with Part A10.6.6 – Birchgrove / Elkginton Park Distinctive Neighbourhood Controls, a 6m building envelope is applicable to the subject site and surrounding neighbourhood. The proposed development results in various breaches to the building envelope control as outlined below:

Building	Proposed front wall height	Extent of breach
Building A1	Broderick Street 6-7.7m 9.9-10.6m (uppermost level) Elliott Street 6.8-12m	Broderick Street 0-1.7m 3.9-4.6m for a portion of 4 th floor Elliott Street 0.8-6m
Building A2	7m - 8.8m	1-2.8m
Building B1	7.1- 9.6m 12.7 (western end of the building at uppermost level)	1.1-3.6m at 3 rd floor 6.7m for a portion of 4 th floor
Building B2	8.5-10.5m 13.3m (western end of the building at uppermost level)	2.5-4.5m at 3 rd floor 7.3m at 4 th floor

Building C1	8.8 -12m 15m (at uppermost level 5) m at foreshore	2.8-6m 9m at 5 th floor
Building C2	10-17m at foreshore elevation	N/A fronts foreshore
Building C3	12.3m at foreshore elevation	N/A fronts foreshore
Building C4	9.7-13.6m at foreshore elevation	N/A fronts foreshore

The ridge heights of the proposed buildings are as follows:

Building	Max ridge height	Max RL including services
A1	RL27.80	RL29.00
A2	RL23.67	-
B1	RL20.83	RL22.00
B2	RL24.33	RL25.50
C1	RL19.75	RL21.00
C2	RL20.80	RL22.00
C3	RL20.95	RL22.00
C4	RL20.71	RL22.00

As detailed in the building envelope control table the proposed buildings A1, A2, B1, B2 and C1 exceed the 6m building envelope with varying non-compliances. The building envelope control does not technically apply to buildings C2, C3 and C4 as they do not front a street.

As stated in the Guidelines for building envelope, “The Suburb Profiles give an indication of the general height and roof form of buildings in the area. This is a general guide and the prevailing circumstances should be paramount in assessing a building envelope”. It is considered that the existing Housing NSW flat buildings form part of the prevailing circumstances as do nearby dwellings. The non-compliances are partly due to the sloping topography of the site.

The non-compliances to Broderick Street are considered acceptable to building A2 as it generally presents as 2-2.5 storeys to the street which is similar to the dwelling houses opposite the site in Broderick Street. The non-compliance to building A1 to Broderick Street is considered acceptable as the main area of non-compliance is the uppermost floor which is setback approximately 5.5m from Broderick Street, additionally it is a corner site so it is appropriate for the building to have a greater height. The Housing NSW flat buildings opposite the site on the eastern side of Elliott Street have ridge heights of RL30.69 and RL26.39 therefore the proposed ridge height of building A1 at RL27.80 is considered acceptable.

The non-compliances to buildings B1 and B2 fronting Elliott Street, particularly at 4th floor level are considered acceptable given the height of the surrounding NSW Housing Residential flat buildings on the northern side of Elliott Street. The 4th floors of buildings B1 and B2 are setback so that the buildings have a three storey scale when viewed from the street whilst the NSW Housing buildings opposite appear principally as four storeys without a setback to the uppermost floor.

The NSW Housing building opposite building C1 (105 Elliott Street) on the northern side of Elliott Street is 4 storeys and has a height to the eaves on the western waterfront elevation of RL16.86 and a ridge height of RL18.87 and is very visible from the water and public domain. The proposed 5th floor to building C1 (ridge height RL19.75) does not relate to the NSW Housing building with regard to number of storeys and exceeds the ridge height of the NSW Housing building opposite. Given building C1 and its 5th floor will be visible from the water it is not considered an appropriate building form. It is recommended that the 5th floor of building C1 be deleted. It is also recommended that the 5th floor of building C2 be deleted due to the appearance from the waterway as discussed under the SREP assessment previously within this report.

Side setbacks

- *Side setbacks for new development are to be of sufficient width, and designed such that the following issues are properly addressed to the satisfaction of Council:*
 - *Ensure that the development is sympathetic to and respects the rhythm of the streetscape created by the lot width and side setbacks of adjoining development;*
 - *Amenity concerns of adjoining properties, in particular solar access, visual privacy, noise transmission and air circulation;*
 - *The retention and enhancement of views to significant and local landmarks and vistas from a public place through gaps created by existing side building setbacks.*
 - *Minimum setbacks from the side boundaries shall be determined according to the graph within the DCP.*

Comment

The side setback control only applies to 2 Broderick Street. The height of the southern elevation of building C4 above existing ground level varies from 5.6m at the eastern end of the building to 11.4m at the southern end of the building. Building C4 is 3 storeys for the southern half of the building and is setback 6m from the boundary with 2 Broderick Street.

In accordance with the graph in the DCP, the setback required varies from 3.2m (at 5.6m height) to 9m (at 11.4m height). The non-compliance would commence when the building reaches a height of 8.4m or greater. The non-compliance ranges from 0.6m to 3m over a length of 19.7m of the building. A length of 18.6m of the building does comply with the required setback and actually exceeds the required setback for the majority of this part of the building. It is noted that building C4 is partly 3 storeys and partly 4 storeys on the northern half of the building. The setback to the northern half of the building which is stepped forward on its western elevation complies with the required setback of 12m for a height of 14.4m (the setback provided is 13.5m).

Given that the setback from the side boundary of the adjoining dwelling at 2 Broderick Street is approximately 1.2m and the dwelling is 3 storeys, the proposed side setback to building C4, also 3 storeys of 6m is considered an adequate setback in this instance. The RL of 2 Broderick Street on its northern elevation ranges from approximately RL15.19 to approximately RL 17.995. The height of the southern elevation of building C4 is RL17.5 so it is considered that the setback and height of building C4 provides an appropriate transition from 2 Broderick Street.

In accordance with the DCP controls, it is considered that the side setback to building C4 is of sufficient width to ensure that the development is sympathetic to the rhythm of the streetscape created by the lot width and side setbacks of adjoining development. Amenity to 2 Broderick Street is considered acceptable with regard to noise transmission and air circulation, subject to the imposition of conditions the proposal will also be acceptable with regard to visual privacy. Although solar access will be reduced to 2 Broderick Street, it is considered acceptable as discussed below under Part B3.1 of the LDCP 2000. The side setback may allow some views to the waterfront from the through site link between buildings A2 and C4.

Overall, the development is considered acceptable subject to recommended conditions with regard to Part B1.2 – Building Form, Envelope and Siting.

Parts B1.5, C1.4 and C1.6 – Elevation and Materials and Shopfronts

These parts require the design of building elevations and shopfronts to respect the elevational character and appearance of the streetscape and locality and provide functional shopfronts that contribute to the vitality of the area.

The applicant was advised by Council to reduce the amount of glazing to the development, they have subsequently amended the plans to have metal balustrading however the amount of glazing to the public domain being Broderick Street, Elliott Street and the foreshore is still considered excessive and it is recommended that a condition be imposed to increase the solid elements to these facades accordingly. Otherwise the proposed materials are considered acceptable within the surrounding immediate locality which is comprised of many different building forms and materials.

The proposal will reactive the Broderick and Elliott streetscapes in this section with casual surveillance of these streets and residential entrances eliminating the existing blank walls. The retail and commercial shop fronts that are part of buildings A1 and A2 will activate the internal spine within the development rather than Broderick Street which is considered appropriate given that the southern side of Broderick Street is entirely residential dwellings and is zoned residential. The commercial units within Building B2 will partly provide an active street frontage to Elliott Street and will provide casual surveillance internally within the development. The proposed commercial and retail shop fronts are considered acceptable.

Overall the proposal is considered acceptable with regard to elevation and materials and shopfronts.

Part B1.6 – Front Gardens and Dwelling Entries

This part requires dwelling entries to improve security and provide a transitional space between the dwelling and the street. However, the dwelling entry controls contained in SEPP 65 / Residential Flat Design Code provide more appropriate controls relating to this particular development, assessment of the proposal against those controls is carried out accordingly.

Part B1.7 – Fences

Part 1.7 relates to dwelling houses and requires fencing to complement the architectural styles of the building and local area. The only fencing proposed is to building A2 to Broderick Street which is metal palisade fencing in front of the light wells to the lower level. Other fencing in the development is predominantly planter bed walls. A condition is recommended requiring timber fencing between the boundary with 2 Broderick Street to provide privacy.

Overall the fencing proposed is considered acceptable with regard to the controls of B1.7.

Part B1.8 and C1.5 – Site Facilities

These controls stipulate requirements relating to the provision and location of facilities for residential and non-residential uses the controls require that facilities are integrated into the overall development, do not detract from the streetscape, are convenient and adequate. Appropriately located separate commercial and residential waste facilities, residential storage cages and bicycle storage facilities are provided. Subject to relevant conditions on any consent the proposal is considered acceptable with regard to the requirements of B1.8 and C1.5.

Part B1.9 – Corner Site Controls

This part aims to control the scale of development affecting corner sites in residential and business areas. Building A1 is proposed on the corner of Elliott and Broderick Streets. The building is four storeys however will have the appearance of three storeys from the corner of Broderick and Elliott Street with the third storey setback. The building incorporates different materials to provide visual interest and make the uppermost level more recessive. Opposite the site is the raised garden of 96 Elliott Street and three storey residential flat buildings. Building A1 is considered acceptable in that it is not considered to result in any significant adverse amenity impacts on the streetscape or surrounding properties as discussed further elsewhere in this report and within the RFDC assessment in Appendix 1.

Overall the proposal is considered acceptable with regard to Part B1.9.

Part B2.8 and C1.3 – Landscaping

Part B2.8 – Landscaping principally relates to dwellings houses with associated controls as such. Part C1.3 is for non-residential development. The site is also subject to the requirements of SEPP 65 and the associated RFDC requirements for landscaping (refer to Appendix 1).

The proposal includes landscape plans for throughout the site including front setbacks and for the foreshore land to be dedicated to Council. The proposal is considered to provide an acceptable level of landscaping both over the basement level of parking and as deep soil landscaping. The landscape plans include removal of a number of existing trees, retention of some existing trees and planting of new trees and shrubs. The majority of the new planting are native species.

Please also refer to the landscape referral under Part 6 of this report for further details regarding landscaping.

Subject to the imposition of appropriate conditions recommended by Council's Landscape Officer and Council's Parks and Open Space Planner in conjunction with Council's Engineers with regard to the landscaping within the site and within the foreshore dedicated land the proposal is considered acceptable with regard to Landscaping.

Part B3.1 – Solar access, Residential Amenity and Energy Efficiency

Part B3.1 relates to overshadowing of neighbouring properties.

Numbers 3, 5, 7, 9, 11 and 13 Broderick Street have a north south orientation therefore the relevant controls are as follows:

- *Maintain solar access to existing housing*
- *Maintain solar access to the front and rear habitable rooms for a minimum period of 4 hours between 9.00am and 3.00pm at the winter solstice.*
- *Where solar access already exists to the private open space of adjacent dwellings, ensure it is maintained over a minimum of 50% of the private open space for a minimum period of 3 hours between 9.00am and 3.00pm at the winter solstice.*

Comment

There will be some overshadowing to the front yards of these dwellings mainly in the afternoon however all dwellings will maintain solar access to the front habitable rooms for a minimum of 4 hours between 9.00am and 3.00pm at the winter solstice.

96 Elliott Street and 2 Broderick Street have an east west orientation therefore the relevant controls are as follows:

- *Maintain solar access to existing housing*
- *Where an existing adjacent building has an east-west orientation*
 - *Maintain solar access to the habitable side rooms for a minimum period of 2 hours between 9.00am and 3.00pm at the winter solstice*
 - *Where less than 2 hours solar access is currently available to the habitable side rooms of existing dwellings, no additional overshadowing shall be permitted*
- *Where solar access already exists to the private open space of adjacent dwellings, ensure it is maintained over a minimum of 50% of the private open space for a minimum period of 3 hours between 9.00am and 3.00pm at the winter solstice.*

Comment

96 Elliott Street

The proposal will result in some overshadowing of the garden of 96 Elliott Street in the afternoon at 3pm however the garden will still receive solar access over a minimum of 50% of the private open space for a minimum of 3 hours between 9.00am and 3.00pm at the winter solstice.

2 Broderick Street

2 Broderick Street has glazing on its northern elevation. The northern glazing includes two windows to bedrooms on the eastern half of the dwelling, these bedrooms are separated from the western half of the dwelling by a stairwell which is extensively glazed including glazing overlooking a lightwell. The north facing

bedroom windows to the eastern half of the dwelling are considered to be secondary windows to bedrooms which face east and west and are therefore not side rooms. It is considered that a sufficient level of solar access will still be provided to these bedroom windows.

On the western half of the dwelling there are two north facing windows, one to a bedroom and one to a living area. The western bedroom is on the upper level and has a north facing window and glazing to the east which are secondary windows to the main windows which face west. The north facing window of this bedroom will still retain solar access for 2 hours. The living room on the middle level of the dwelling has secondary windows to the north and east and a wall of glazing on the western elevation. The living room is a habitable room however it is not a side room therefore the requirement for 2 hours solar access is not applicable. There will be overshadowing to the north facing living room window however it will receive some solar access at 3.00pm at the winter solstice.

There are two areas of private open space for 2 Broderick Street. An area to the south of the site next to the pool accessed from the upper living room level with an area of approximately 55m² and a main area to the west of the site adjacent to the waterfront with an area of approximately 155m².

The upper level of private open space will be overshadowed principally by 2 Broderick Street itself at 9.00am with a small area of 16m² (29% of upper level private open space) overshadowed by the proposal. In the afternoon from 12.00 noon to 3pm the upper area of private open space will be overshadowed by 2 Broderick Street itself. The rear main area of private open space will receive solar access over greater than 50% of the area for a minimum period of 3 hours between 12.00 noon and 3.00pm at the winter solstice. When combining the two areas of private open space they will receive solar access to greater than 50% of the private open space for a minimum of 3 hours between 12.00 noon and 3.00pm at the winter solstice.

The proposal is considered acceptable with regard to Part B3.1 – Solar access, Residential Amenity and Energy Efficiency of the LDCP 2000.

Part B3.2 – Private Open Space

This part provides specific controls relating to size, dimensions and amenity to open space provision for residential dwellings, however, the provisions of State Environmental Planning Policy No. 65 / Residential Flat Design Code prevail over these controls. Notwithstanding, the application is deemed to be satisfactory with regard to the size, dimension and area requirements for private outdoor space – see Appendix 1 for further details.

Part B3.3 – Visual Privacy

The visual privacy controls principally relate to dwelling houses. The SEPP 65 privacy controls take precedence over the LDCP2000 controls however both have the same aim of protecting the visual privacy of adjoining properties.

There is sufficient separation between the proposed buildings fronting Broderick Street and the existing dwellings on the southern side of Broderick Street. There is also sufficient separation between the proposed buildings fronting Elliott Street and the existing flat buildings on the northern side of Elliott Street.

The main area of concern with regard to privacy is the potential for overlooking of 2 Broderick Street from building C4 which faces the foreshore. Appropriate privacy measures have been utilised for the majority of building C4 which includes fixed louvers to prevent overlooking however there are some areas of concern in relation to privacy including windows and balconies on the southern elevation therefore a condition is recommended to be imposed which will require the LV1 adjustable louvers of the bedrooms of units C4.002; C4.102; C4.103; C4.202 and C4.203 being changed to LV2 fixed louvers. The balconies of C4.102 and C4.202 shall have LV2 fixed louvers installed on their southern elevation to protect the privacy of 2 and 4 Broderick Street. The fixed louvers on the eastern elevation of these balconies is to be removed and the glazing on A2.109 to the western elevation of the kitchen is to be replaced with fixed obscure glazing.

It is also recommended that a condition be imposed requiring a new timber fence to erected between the boundary of the development and 2 Broderick Street to replace the existing chainwire fence given that a lot of the existing vegetation which provides screening will be removed.

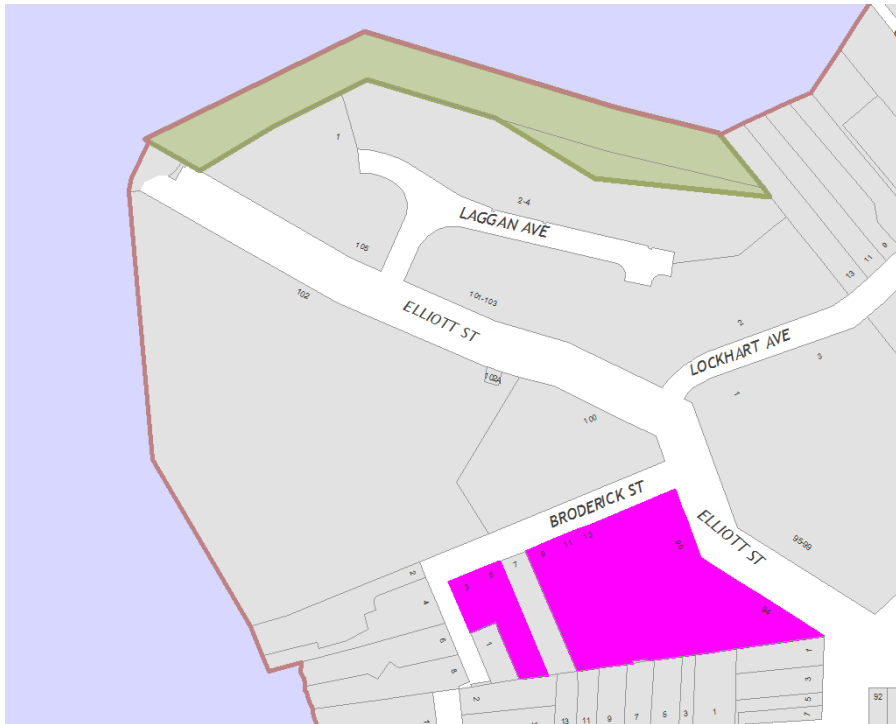
Subject to the above conditions being imposed the proposal is considered acceptable with regard to visual privacy.

Part B3.4 – Access to Views

Council relies on the Planning Principles relating to view sharing established by the New South Wales Land and Environment Court in *Tenacity Consulting v Warringah Council [2004] NSWLEC 140* for further assessment against view loss. A number of properties have lodged submissions relating to view loss. The following properties have listed view loss as part of their submissions to Council:

- No.3 Broderick Street, Balmain
- No.5 Broderick Street, Balmain
- No.9 Broderick Street, Balmain
- No.11A Broderick Street, Balmain
- No.13 Broderick Street, Balmain
- No. 94 Elliott Street, Balmain
- No.96 Elliott Street, Balmain

The following assessment has been undertaken in regards to the proposed view loss of the above listed sites. Their location within the context of the subject development site is shown on the image below:



Map detailing the location of the view loss affected properties

The Land and Environment Court accepts that the attribution to the values to views is subjective and has established a planning principle to help establish a more structured approach in assessing the impact of development in terms of view loss.

*The **first step** is the assessment of views to be affected. Water views are valued more highly than land views. Iconic views (eg of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons. Whole views are valued more highly than partial views, eg a water view in which the interface between land and water is visible is more valuable than one in which it is obscured.*

The subject properties, as viewed on the above map, all benefit from a variety of filtered views and outlook over the subject site and surrounding sites to the Parramatta River and Iron Cove. Potential features of views within the locality include:

- Parramatta River;
- Cockatoo Island;
- Spectacle Island;
- Snapper Island;
- Iron Cove;
- Iron Cove Bridge.

*The **second step** is to consider from what part of the property the views are obtained. For example the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic.*

The **third step** is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20% if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating.

The **fourth step** is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable.

View loss assessment for the affected properties

No.3 Broderick Street, Balmain

The site has an outlook across the development site principally of trees with very limited water glimpses of Parramatta River between tree foliage. The outlook is from two first floor bedrooms and an associated first floor balcony accessed from a bedroom.

Step 1

The property has very limited water glimpses across the development site through existing tree foliage from two first floor bedrooms and an associated front balcony.

Step 2

The views from the subject site are more an outlook of trees and other vegetation with limited glimpses of water, it is anticipated that some of the glimpses may be greater during winter due to some deciduous trees being on the site. The views/outlook are from bedrooms and an associated balcony, and are similar in a seated or standing positions as the outlook is principally trees and foliage. Given the views/outlook are obtained across the development site, this views/outlook are vulnerable.

Step 3

The views are from bedrooms and an associated balcony rather than from a living area which would receive greater benefit from these limited views. Given these very limited views are across the development site they are vulnerable. There are no full water views, land/water interface views or iconic views. There may be some opportunity for some limited views to the west across the side setback between building C4 and 2 Broderick Street. The loss of water glimpses is considered minor as although the views/outlook are limited they are anticipated to be lost.

Step 4

The proposed development complies with the development standards relevant to the site. Whilst there is a breach in building envelope over the proposed development, strict compliance with this control is unlikely to negate view loss to this site as the building envelope control only relates to heights at the street frontages. The building forms and heights of buildings proposed and as recommended will not be out of character with nearby development on Broderick and Elliott Streets.

Given the above, retaining the limited water glimpses from this site would severely restrict any development potential for the site and is not considered reasonable in the circumstances.



View from first floor balcony



View from first floor bedroom

No.5 Broderick Street, Balmain

The site has views across the development site and the Housing NSW site. The views from the first floor are limited and are views to the Parramatta River over buildings and through trees. More expansive views are available from the second floor “attic” level which includes more views of the Parramatta River and the Iron Cove Bridge.

Step 1

The property benefits from a filtered view which includes water and other built and natural landscape features seen obscurely over and through existing buildings.

Step 2

Views from the subject site are from a first floor bedroom and associated front balcony and an attic level and associated balcony. Views are obtained directly across the development site and the Housing NSW site to the north and also to the west across Iron Cove. The views, including water, are obtainable in both seated and standing positions however the best vantage points are obtained when standing on the balconies. Given the partial view is obtained across two sites, this view is vulnerable.

Step 3

The views are obtained from a bedroom and attic and their associated balconies. Existing views from the attic level will be largely retained due to the height of the balcony. There will be some view loss from the first floor towards the north however

there will be some views retained towards the west across the side setback between Building C4 and 2 Broderick Street and over the 3 storey portion of Building C4. The view loss is therefore considered to be minor/moderate given that other views are still achieved from the site.

Step 4

The proposed development complies with the development standards relevant to the site. Whilst there is a breach in building envelope over the proposed development, strict compliance with this control is unlikely to negate view loss to this site as the building envelope control only relates to heights at the street frontages. The building forms and heights of buildings proposed and as recommended will not be out of character with nearby development on Broderick and Elliott Streets.

Given the above, the impacts to this property are not considered unreasonable, and protecting views over two sites would unduly restrict the development potential of the site.



View from first floor front balcony



View from attic level front balcony

No.9 Broderick Street, Balmain

The site has water glimpses both across the development site and across the Housing NSW site. From the first floor front balcony and to a much lesser extent the adjoining front sitting room there are limited water glimpses viewed over buildings and through trees to Parramatta River.

Step 1

The property benefits from a filtered view which includes water and other built and natural landscape features seen obscurely over existing buildings and through trees.

Step 2

The views from the subject site are from a first floor front living space and associated balcony, directly across the development site and the NSW Housing site to the north. The best views are obtained from a standing position on the balcony. Given the partial view is obtained across two sites, it is considered vulnerable to any future development on nearby sites.

Step 3

The views, whilst from a living room and balcony, are restricted, filtered and distant. It is anticipated that there may still be some water glimpses when standing on the

balcony once the development is built due to the height of the balcony with potential for views to the water over buildings A2, B1 and C1 subject to recommended changes to reduce the heights of buildings A2 and C1. The loss of views is considered minor given the limited views currently available. The second floor of building A2 has been recommended to be slightly reduced in height with the middle of the floor having a maximum floor to ceiling height of 2.4m with the northern and western elevations having a maximum floor to ceiling height of 2.7m with an associated reduction in roof height.

Step 4

The proposed development complies with the development standards relevant to the site. Whilst there is a breach in building envelope over the proposed development, strict compliance with this control is unlikely to negate view loss to this site as the building envelope control only relates to heights at the street frontages. The building forms and heights of buildings proposed and as recommended will not be out of character with nearby development on Broderick and Elliott Streets.

Given the above, the impacts to this property are not considered unreasonable, and protecting the distant water glimpses over two sites would unduly restrict the development potential of the site.



Water glimpses from first floor front balcony,



Water glimpses from first floor front sitting room

No.11A Broderick Street, Balmain

The site has a view corridor across the development site. A second floor living room deck and bedroom have filtered water glimpses and outlook across the Parramatta River over the development site.

Step 1

The subject property benefits from a filtered view which includes water and other built and natural landscape features seen obscurely over and between existing buildings.

Step 2

The views from the subject site are from a first floor front balcony accessed from a living area and a front bedroom. The views are across the development site and the NSW Housing site to the north. The best vantage point to enjoy the views is in a standing position on the balcony. Given the partial view is obtained across two sites, it is considered vulnerable to any future development on nearby sites.

Step 3

The views from the balcony and bedroom are restricted, filtered and distant views. It is recommended that the uppermost floor of Building A2 opposite the site be slightly reduced in height which may still allow for some water glimpses across the site. The view loss is considered minor/moderate in this case, given the limited views currently available.

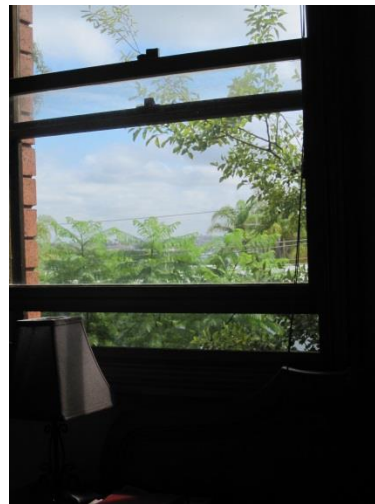
Step 4

The proposed development complies with the development standards relevant to the site. Whilst there is a breach in building envelope over the proposed development, strict compliance with this control is unlikely to negate view loss to this site as it only relates to heights at the street frontages. The building forms and heights of buildings proposed and as recommended will not be out of character with nearby development on Broderick and Elliott Streets.

Given the above, the impacts to this property are not considered unreasonable, and protecting these views would unduly restrict the development potential of the site.



View when standing from balcony facing north



View from bedroom facing north.

No.13 Broderick Street, Balmain

The subject site has a view corridor across the development site and the Housing NSW site. The views are from the second floor bedroom and associated sitting area which have views and outlook to Parramatta River to the north across the development site.

Step 1

The property benefits from views which include water and other built and natural landscape features. The dwelling's second floor is characterised by a large glass front façade extending over the first and second floors (ground floor is a garage). The outlook is greater over the development site than other Broderick Street properties however there are no distinguishable iconic views from the site.

Step 2

Given that the views which are partial as they include existing buildings on the development site and the Housing NSW site are across two sites, they are

considered vulnerable and their total retention is not considered viable. The best views are obtained from a standing position, with more partial views obtained from a sitting position. Given the partial view is obtained across two sites, it is considered vulnerable to any future development on nearby sites.

Step 3

Despite views from this site being affected by the proposal, the views that are impacted upon are not associated with a main living space as they are from a bedroom and a sitting area accessed through the bedroom. There will be some distant views retained between buildings A1 and A2. It is expected that there will be some retention of water views to the north west which will be slightly improved by the proposed reduction in height of buildings C1 and C2. However there will be some wider view loss due to the height of building B2. The extent of view loss as a result of the proposal is considered to be moderate to severe.

Step 4

The proposed development complies with the development standards relevant to the site. Whilst there is a breach in building envelope over the proposed development, strict compliance with this control is unlikely to negate view loss to this site as the building envelope control only relates to heights at the street frontages. The building forms and heights of buildings proposed and as recommended will not be out of character with nearby development on Broderick and Elliott Streets.

Given the above, the impacts to this property are not considered unreasonable, and protecting the views from a sitting room accessed through a bedroom would unduly restrict the development potential of the site.



View from first floor sitting room (accessed from bedroom) looking north west



Views from first floor sitting room (accessed from bedroom) looking north

No. 94 Elliott Street, Balmain

The subject site faces west and has expansive views and outlook across the development site and to the south across the dwellings along the southern side of Broderick Street. There are varying water glimpses / views from the rear ground floor, first floor and second floor. There is an outlook across Parramatta River and views of Spectacle Island and Iron Cove.

Step 1

At the rear ground floor balcony there are some water glimpses through trees and landscaping across the adjoining property (No.94) and the development site. At first

floor there are views from balconies accessed from bedrooms across the front and rear of the adjoining site (No.94). At second floor there is a large rear deck of sufficient size to entertain accessed from an attic/studio room. This level has expansive views across the adjoining site (No.94), the development site and part of the Housing NSW site including views of the land/water interface of Spectacle Island.

Step 2

The main views are obtained principally across side boundaries and to some extent the rear boundary. The main views obtained both in a sitting and standing position are from the second floor level deck.

Step 3

The water glimpses from the rear ground floor deck accessed from the kitchen are likely to be lost as a result of the development, these current views are only really visible from a standing position. The first floor views facing north west from the rear bedroom deck are likely to be lost or reduced however the views from the rear wrap around deck to the north looking forward of No.94 will be retained. At second floor the rear attic/studio level balcony, the views will be largely maintained or unaffected due to the height of the balcony. The view loss is considered minor given that views are across side boundaries and the most expansive views on the uppermost level will be substantially retained.

Step 4

The proposed development complies with the development standards relevant to the site. Whilst there is a breach in building envelope over the proposed development, strict compliance with this control is unlikely to negate view loss to this site as the building envelope control only relates to heights at the street frontages. The building forms and heights of buildings proposed and as recommended will not be out of character with nearby development on Broderick and Elliott Streets. The expansive views from the uppermost level of the dwelling will be retained.

Given the above, the impacts to this property are not considered unreasonable, and protecting the views from the lower levels of the dwelling would unduly restrict the development potential of the site.



Views of Spectacle Island from 2nd floor rear balcony.



Views from 1st floor to north across the front of 96 Elliott Street.

No.96 Elliott Street, Balmain

The site is located on the corner of Elliott and Broderick Streets and has views across the development site, the Housing NSW site and over Broderick Street properties to the south west. Views are from the first floor to Parramatta River and towards Iron Cove.

Step 1

The site benefits from expansive outlook/views over the development site to the north west, west and south west. The site also has water glimpses to the north. The views are from the first floor including the first floor front balcony and including outlook across the Parramatta River and views of Iron Cove including the Iron Cove Bridge.

Step 2

The outlook is from the side boundaries over the development site and to the rear of the property over a number of properties that front Broderick Street. The outlook is primarily from the first floor kitchen, bedroom, sitting room and front verandah. Views are from sitting and standing positions.

Step 3

The main outlook/views are obtained from the rear kitchen and bedroom, the side windows of the front sitting room and the front verandah, all located on the first floor level. The loss of views/outlook is considered minor/moderate as due to the existing first floor level of the dwelling and its location uphill from the development site it should still retain a large portion of its views across the development site to the Parramatta River subject to the imposition of conditions to reduce the height of buildings C1 and C2. Additionally, views of Iron Cove over the rear of the site will still be maintained. Water glimpses to the north from the front verandah will also still be retained.

Step 4

The proposed development complies with the development standards relevant to the site. Whilst there is a breach in building envelope over the proposed development, strict compliance with this control is unlikely to negate view loss to this site as the building envelope control only relates to heights at the street frontages. The building forms and heights of buildings proposed and as recommended will not be out of character with nearby development on Broderick and Elliott Streets. Water views will still be obtainable from the site.

Given the above, the impacts to this property are not considered unreasonable, and protecting the views from the lower levels of the dwelling would unduly restrict the development potential of the site.



View looking north west across site from first floor sitting room



View looking south west to Iron Cove bridge from rear first floor kitchen

Council acknowledges that some view loss will result from the proposed development, with the greatest impact to existing Broderick Street properties. The applicant has taken into account view loss and has where possible designed the buildings on site to minimise view loss by reducing heights from the previous application (D/2011/529). On balance, having regard for the planning controls and the topography of the development site and surrounding sites, view loss is considered to be acceptable in this instance. It is noted that any increase in height on the development site is likely to have a view loss impact on Broderick Street properties, it is not considered feasible to not increase the height for any development that may occur on the site. Overall, it is not considered that view loss concerns are such that the development should be refused.

Parts B3.5, C3.1 and C3.4 – Acoustic Privacy; Noise and Vibration Generation; and Working Hours

The proposal is considered acceptable with regard to the B3.5, C3.1 and C3.4 of LDCP 2000. It is recommended that appropriate conditions be imposed including compliance with the Building Code of Australia and Council's Environmental Health Officers have recommended appropriate conditions in relation to acoustic controls. Appropriate conditions are also recommended with regard to works hours for the site works and hours of operation for the commercial and retail premises once in operation.

Parts B4.4 and C4.3 – Foreshore Development; and Non-Residential Foreshore Development

These Parts seek to ensure that new development respects the function of the site, heritage significance and have a cohesive appearance of the foreshore as viewed from the water and land whilst ensuring that development does not detract from the amenity of neighbouring residents.

The proposed development will result in some view loss for surrounding dwellings as addressed above under Part B3.4 – Access to Views. Any form of reasonable development of the site would result in some view loss. The proposal will result in dedicated public foreshore land with associated pathways, landscaping and furniture which will provide a more cohesive appearance from the foreshore with the existing public foreshore land on the northern side of Elliott Street. It is recommended that the 5th floors of buildings C1 and C2 be deleted to be more in keeping with the

surrounding built form and reduce the overall visibility of the development from the water.

Overall the proposal as discussed further throughout this report is considered acceptable with regard to Foreshore Development.

Part B4.6 – Residential Development in Business Areas

The proposal is generally compliant with the residential development in business areas controls with the exception of providing no car parking. Given that there is no public transport directly adjacent to the development and the site is surrounded by residentially zoned land, providing parking in accordance with the Generic Parking Rates table of Part A8.0 of the DCP is considered appropriate.

The proposal provides separate entrances for the residential and commercial entrances however provides joint entrances for the serviced apartments and residential uses which is considered appropriate in this instance. The retail and commercial space would allow a range of uses. Noise insulation measures will be required at a minimum to comply with the Building Code of Australia.

Part B4.7 – Diverse and Affordable Housing

The proposal meets the diverse and affordable housing requirements of the Leichhardt Local Environmental Plan 2000. Additionally the proposal will be required to comply with relevant accessibility legislation.

Part C1.7 – Protective Structures in the Public Domain – Balconies, Verandahs and Awnings

No protective structures are proposed in the public domain, all entrances to buildings are proposed within the boundaries of the site.

Part C2.0, C2.2, C2.3, C2.4, C2.5, C2.6, C2.7, C2.8 and C2.9 – Ecologically Sustainable Non-Residential Development

Where possible the design of non-residential parts of the development has followed ecologically sustainable principles including providing glazing to utilise daylight; utilising building materials that have a high thermal mass; provision of appropriate solar control; appropriate insulation is provided given that there are residential uses above; appropriate natural ventilation is possible given the design of the buildings. No specific uses are proposed for the retail and commercial tenancies at this stage therefore heating and cooling systems have not been proposed and may not be necessary. Use of solar energy is not considered appropriate in this instance given the location of the retail and commercial tenancies below residential uses. Given that no specific uses are intended at this stage for the retail and commercial tenancies appliances and equipment are not proposed.

The proposed serviced apartments are considered to meet ecologically sustainable requirements in that they will be constructed similarly to the residential apartments above however a condition is recommended to be imposed requiring energy efficient fixtures and fittings to be installed.

Overall the proposal non-residential uses are considered acceptable with regard to C2.0 of the Leichhardt DCP 2000.

Part C3.0 – Interface Amenity

Given that the proposed uses of the retail and commercial tenancies are yet to be decided appropriate conditions are recommended to be imposed to protect the amenity of surrounding residential uses.

Parts 3.2 and C3.3 – Air and Water Pollution

The proposed uses of the retail and commercial tenancies are not considered to result in air or water pollution. If a food premises is proposed it would be required to meet relevant food premises conditions under a separate application.

Part C4.4 – Playgrounds

The principle of C4.4 is to encourage the integration of playgrounds into business areas. To ensure the playgrounds provided are safe, stimulating and educational. The proposal incorporates a play spine which utilises level difference to create engaging, informal play space which is located between buildings B2 and A2. The proposed outdoor space is considered acceptable with regard to C4.4 of the Leichhardt DCP 2000.

Part C4.5 – Public Domain

The proposal includes dedicating foreshore land as public open space. Refer to Part 6.0 – Internal Referrals of this report for comment from Council's Parks and Streetscapes and Open Space Planner.

Leichhardt Development Control Plan No.32 – Design for Equity of Access

The applicant has provided an Access Report dated 11 September 2013 prepared by Accessibility Solutions (NSW) Pty Ltd. The report has considered the Building Code of Australia, DDA (Disability Discrimination Act) Premises Standards / Access Code, SEPP 65 – Residential Flat Design Code, Leichhardt DCP 32 and relevant Australian Standards in the preparation of the access report.

As detailed in the Building Referral under Section 6 – Internal Referrals of this report, it is recommended that a condition be imposed requiring the Access Report by Accessibility Solutions Pty Ltd, dated 11.09.13 be incorporated into the Construction Certificate plans and specifications.

Subject to recommended conditions, the proposal is considered acceptable with regard to Leichhardt Development Control Plan No.32.

Leichhardt Development Control Plan 36 – Notifications

Addressed below under Section 4.7 of this report.

Leichhardt Development Control Plan No.38 – Waste – Avoid, Reuse, Recycle

The amended proposal was referred to Council's Waste Services section who reviewed the submitted plans in conjunction with an email dated 21 January 2014 from The Mack Group – Waste Management Consultants who also prepared the original Waste Management Plan submitted with the original application. Council's Waste Services section are satisfied with the amended plans subject to appropriate conditions being imposed including the following:

Residential Waste Condition

That the residential waste and recycling storage rooms are built in accordance with Lower Ground Floor plan and the calculations as per the email from the Mack Group dated 21 January 2014.

Commercial Waste Condition

That the commercial waste and recycling storage rooms are built in accordance with Lower Ground Floor plan and the calculations as per the email from the Mack Group dated 21 January 2014.

General household collection (i.e. bulky goods) condition

That the general household collection items are to be presented on Elliott and Broderick Streets.

The proposal, subject to appropriate conditions being imposed is considered acceptable with regard to the requirements of Leichhardt Development Control Plan No.38.

Leichhardt Development Control Plan No.42 – Contaminated Land Management

The proposal is considered acceptable with regards to the requirements of Development Control Plan No.42. Please also refer to the SEPP 55 assessment as well.

Sydney Harbour Foreshores and Waterways Area Development Control Plan 2005 (SHFWA DCP)

The relevant parts of the SHFWA DCP are discussed below:

2. Ecological Assessment

In accordance with Maps 7 and 8 of the Ecological Communities and Landscape Characters there are no identified Terrestrial Ecological Communities however the adjacent water is identified as Mixed Rock Intertidal and Mudflats Aquatic Ecological Community which has a high conservation status according to Table 1 of SHFWA DCP. In accordance with Table 5, the performance criteria for development adjoining high conservation communities references the following statements of intent:

- Controlling Shading – to minimise impacts from shading on communities of high conservation value.
Comment: There will be some overshadowing of the water at 9.00am during winter however before midday there is no overshadowing as a result of the buildings. It is noted that the existing sea retaining wall will also result in some overshadowing.
- Urban Run-Off – to minimise the effects from urban run-off.
Comment: Appropriate conditions to be imposed on any consent to minimise the effects of run off during construction works and for ongoing use of the development once completed. Additionally a rainwater on site retention tank is proposed for the site.

- Physical Damage – to minimise physical damage to communities of high conservation value.
Comment: No works are approved within the water as part of this application. Separate approval will be required for the demolition of the existing wharf.

The proposal is considered acceptable with regard to Part 2 of the SHFWA DCP.

3. Landscape Assessment

Landscape Character Types 15 and 16 applies to the site. Any development within these landscape areas are required to satisfy the following performance criteria:

- The industrial uses along the river are maintained and preserved. Pressure for these uses to relocate is minimised.
Comment: The site is zoned Business not industrial. The proposal will maintain a mixture of land uses including retail, commercial, serviced apartments and residential apartments.
- Design and mitigation measures are provided between incompatible/potentially conflicting land uses to minimise noise and amenity impacts.
Comment: Although the site is zoned business and surrounding sites are zoned residential there are not considered to be any conflicting land uses. Entrances to the commercial and retail tenancies adjacent to Broderick Street are accessed within the site to minimise impacts to the single dwellings opposite the site.
- Remaining natural elements along the foreshore are preserved to maintain the natural screen along the foreshore.
Comment: Some existing trees and vegetation is to be retained and new additional native trees and vegetation are proposed whilst allowing for public access and use of the foreshore.
- Vegetation is integrated within the development to minimise the contrast between natural and built elements.
Comment: A number of existing trees are to be retained within and around the development site including Plane trees in front of building C3 to provide screening, some additional planting is also proposed.
- Public wharves and jetties are retained to enable continued maritime activities.
Comment: There is currently an existing wharf and a pontoon adjacent to the site neither of which are currently accessible to the public. It is proposed to remove the wharf and retain the pontoon. The applicant has advised that the pontoon is intended for private use. It is recommended that a condition of consent be imposed regarding providing public access to the pontoon. Removal of the wharf will require a separate application.
- Visual continuity of elements such as beaches is maintained and generally not broken by development.
Comment: No existing beaches, existing sandstone sea wall to be retained.
- Landscaped areas should be provided and incorporated within open space linkages where possible to minimise the contrast between built elements.
Comment: Landscaping is integrated into the design of the development.

The proposal is considered acceptable with regard to Part 3 of the SHFWA DCP.

5. Design Guidelines for land-based developments

- 5.2 Foreshore Access – Foreshore access is to be encouraged and wherever possible, public access to an along the foreshore should be secured or improved.

Comment: The proposal will provide dedicated public foreshore land which complies with Part 5.2.

- 5.3 Siting of Buildings and Structures – In addition to foreshore building lines, the following criteria should be observed when siting buildings and structures:
 - Where there is existing native vegetation, buildings should be set back from this vegetation to avoid disturbing it;
 - Buildings should address the waterway;
 - Buildings should not obstruct views and vistas from public places to the waterway;
 - Buildings should not obstruct views of landmarks and features identified on the maps accompanying this DCP; and
 - Where there are cliffs or steep slopes, buildings should be sited on the top of the cliff or rise rather than on the flat land at the foreshore.

Comment: The proposal provides new native vegetation within the foreshore area. The proposed buildings that are adjacent to the foreshore provide an active frontage to the foreshore. The placement of the buildings provides a through site link and visual connection from Elliott Street to the foreshore. The buildings are setback behind the foreshore building line.

- 5.4 Built Form – Buildings and other structures should generally be of a sympathetic design to their surroundings; well designed contrasts will be considered where they enhance the scene. The following guidelines are designed to reinforce the local requirements:
 - Where buildings would be of a contrasting scale or design to existing buildings, care will be needed to ensure that this contrast would enhance the setting;
 - Where undeveloped ridgelines occur, buildings should not break these unless they have a backdrop of trees;
 - While no shapes are intrinsically unacceptable, rectangular boxy shapes with flat or skillion roofs usually do not harmonise with their surroundings. It is preferable to break up facades and roof lines into small elements and to use pitched roofs;
 - Walls and fences should be kept low enough to allow views of private gardens from the waterway;
 - Bright lighting and especially floodlight which reflects on the water, can cause problems with night navigation and should be avoided.
 - Use of reflective materials is minimised and the relevant provisions of the Building Code of Australia are satisfied;
 - Colours should be sympathetic with their surrounds and consistent with the colour criteria, where specified for particular landscape character types in Part 3 of this DCP. (no colours specified in this instance)
 - The cumulative visual impact of a number of built elements on a single lot should be mitigated through bands of vegetation and by articulating walls and using smaller elements;

- The cumulative impact of development along the foreshore is considered having regard to preserving views of special features, landmarks or heritage items.

Comment: The proposed built form is recommended to be modified including deleting the 5th floors of buildings C1 and C2 and stepping down the northern half of building C2. It is also recommended to increase the proportion of solid walls to glazing for the elevations facing the water. The upper levels of the buildings fronting the foreshore utilise different materials to minimise their apparent bulk and pitched roofs are proposed.

- 5.5 Signage – signage should be of minimal dimensions and consistent with the commercial or community identity of the premises; should not be brightly illuminated, should preferably be placed on the facades of buildings rather than on roofs or free standing.

Comment: The building identification and directional signage proposed is considered acceptable. Additional conditions are recommended to be imposed requiring directional signage stating that public access is available through the site to the foreshore. Appropriate conditions are recommended in relation to illumination.

- 5.6 Planting – Appropriate species should be planted and existing mature trees should be retained where possible. Appropriate landscape plans are to be submitted.

Comment: The proposed planting and landscaping of the site is considered acceptable allowing retention of some existing trees and planting of additional trees and shrubs. The landscaping plans have been reviewed by Council's landscape officer refer to landscape officer referral under Section 6 of this report and is considered acceptable subject to conditions.

- 5.10 Multi-Unit Residential Developments – should be sited and designed to:
 - Consider the site in the context of the river and the harbour; and
 - Provide public access along the foreshore where appropriate and feasible.
To meet these objectives the following criteria, in addition to controls contained in council environmental planning instruments, should be met:
 - In areas where public access is to be extended, buildings should be set back from the foreshore boundary a minimum of 12 metres to allow public foreshore access of 6 metres to allow public foreshore access of 6 metres and private open space of 6 metres. Open space should be of a suitable dimension and grade to enable efficient use of these areas with minimal disturbance to the foreshore;
 - Detailing and planting of the public access is to appear as the public domain and be distinct from the private areas of the development;
 - Floor levels of ground floor units should be 1 metre above the adjoining public access to minimise loss of privacy;
 - Car parking should be located away from the waterfront and setback a minimum of 3 metres from the public access to allow adequate screening
 - Car parking should not be visible from the waterway. No roof top parking is allowed and parking beneath buildings should be screened by vegetation or integrated into the building form as a base to the building; and

Comment: The proposal allows foreshore access with the provision of dedicated foreshore land which has a minimum setback from the foreshore of 9m with setbacks extending greater than 20m. Appropriate landscaping is to be provided to the public foreshore space in accordance with Council's requirements. Appropriate transition provided between ground floors and foreshore. Location of basement parking considered appropriate in relation to the foreshore.

- 5.14 Inclinator, stairs and driveways – where inclinator, stairs or driveways are required to provide access the following criteria should be met. Driveways should be sited as close as possible to natural ground level; stairs should be a maximum of 1.2 metres wide and should be constructed in timber, masonry or stone. Galvanised stairs will only be permitted where they are painted in colours that blend with their setting; inclinator, stairs and driveways should be sited to maintain privacy of adjacent dwellings and should not obscure or break a view line of a rock or cliff face; implementation of soil erosion measures and encourage shared use of access facilities in environmentally or visually sensitive locations.

Comment: Proposed stairs from the foreshore to the through site link through the development are considered appropriate.

The proposal is considered acceptable with regard to Part 5 of the SHFWA DCP.

4.4 Environmental Planning and Assessment Regulation 2000

The Development Application has been assessed against the relevant clauses of the Environmental Planning and Assessment Regulation 2000. The Development Application fully complies with the relevant provisions of the Environmental Planning and Assessment Regulation 2000.

Clause 92(1)(b) of the Regulation Council to consider the provisions of *Australian Standard AS 2601-1991: The demolition of structures*. The demolition of the existing structures is to be carried out in accordance with a construction/demolition management plan, which is to be submitted prior to the issue of a Construction Certificate. Conditions to this effect are included in the recommendation section of this report.

4.5 The likely environmental both natural and built environment, social and economic impacts in the locality

Environmental Impacts

The proposal is considered to have acceptable natural and built environment impacts subject to recommended conditions as discussed in detail throughout this report and within the RFDC – Appendix 1.

Social Impacts

The applicant submitted a Social Impact Statement dated 6 September 2013 prepared by Elton Consulting which was reviewed by Council's Community Development Section in association with the plans.

The proposal will contribute to providing additional housing stock with units of varying sizes and layouts and will maintain some commercial activities on the site through a mixed use development. The proposal includes adaptable housing in the residential units and accessible housing in the proposed serviced apartments.

Through site links are proposed from Broderick Street through to Elliott Street and from Elliott Street to the waterfront which includes dedicated foreshore land. It is also recommended that signage directing the public through the site to the foreshore is provided as well as interpretive signage detailing the history of the site.

Economic Impacts

The applicant submitted an Economic Report dated August 2013 prepared by SGS Economics & Planning. The report has carried out a market assessment for the proposed residential, retail, commercial and serviced apartment uses and provides justification of the viability of the development.

The existing use on site is not operating at full capacity and is therefore not utilising to their full extent all the buildings on site as the company is in the process of relocating elsewhere. It is unlikely that the existing buildings on site in their current layout including a conference centre which are very business specific to the current tenant are suitable for many other business uses.

The Economic Report anticipates that the proposed development will create 49 jobs for the retail and commercial space as well as additional job creation for maintenance and cleaning of the serviced apartments. Occupants of the serviced apartments are likely to benefit the existing commercial centres in Balmain and Rozelle.

Given that the site is not in proximity to the existing commercial centres on Darling Street in Balmain and Rozelle it is not expected to compete with these centres as likely businesses are not expected to rely on passing trade.

Given that the site is zoned Business and surrounded by sites zoned Residential the proposal is considered satisfactory with regard to economic impacts.

Overall, subject to recommended conditions, the proposal is considered acceptable with regard to the likely environmental both natural and built environment, social and economic impacts in the locality.

4.6 The suitability of the site for the development

The site is zoned Business and is the subject of specifically targeted objectives. As demonstrated within this report, the development is considered to meet the applicable objectives subject to compliance with recommended conditions which seek to minimise impacts on the surrounding area. Accordingly, the site is considered suitable for the proposed development.

4.7 Any submissions made in accordance with the Act or the regulations

The Development Application was initially advertised and notified for 30 days between 10 October 2013 and 8 November 2013. The amended plans that form the basis of this assessment were advertised and notified for 30 days between 25 February 2014 and 26 March 2014.

Both notification periods included:

- Approximately 4800 letters sent to owners and occupiers of properties in the surrounding area.
- A yellow site notice placed on the site.
- Listing under the notification section on Council's website.
- Advertisement in the local paper.

105 objections were received during the advertising periods.

The following concerns were raised in the submissions from or on behalf of residents:

Inadequate public consultation both by the developer and Council and inadequate time to send in submissions

Comment: There is no requirement for the applicant to carry out public consultation. Council conducted an extensive notification, including a public meeting to explain the proposal on 6 November 2013. The application has been notified and the amended plans and documentation re-notified in accordance with Council's Notifications DCP. Submissions have been received beyond the notifications periods. It is considered that adequate public consultation has been undertaken by Council and appropriate time has been given for submissions to be made.

The proposal is an overdevelopment of the site particularly in relation to excessive bulk, height, scale and density.

Comment: Subject to recommended conditions as detailed in Appendix 2, the proposal is considered acceptable in relation to bulk, height, scale and density as discussed in further detail in Part 4 Assessment section of this report.

Against high rise residential development that is not in keeping with Balmain and the surrounding area, the development will be visible from the water and is not appropriate in a residential street.

Comment: Subject to the deletion of the 5th floors of buildings C1 and C2, the modification to a stepped building C2 and the increased provision of solid walls to glazing fronting the public domain being the waterfront, Broderick and Elliott Streets, the proposal is considered acceptable. The opposite side of Elliott Street is entirely residential flat buildings. The site is zoned Business and will therefore not be characteristic of single residential dwellings in the surrounding area. Overall the proposal, given the site's zoning is considered an acceptable response to the site.

The development does not comply with the 6m building envelope wall height.

Comment: It is acknowledged that the development does not comply with the 6m building envelope wall height however the development is considered acceptable

subject to the deletion of the 5th floor of building C1. Refer to the building envelope assessment under LDCP 2000.

The relationship of the buildings to the foreshore are too close.

Comment: The proposed buildings C1, C2, C3 and C4 are all set behind the foreshore building line which is considered an acceptable setback in this instance.

The proposed buildings are of a design and form that is out of keeping with Balmain and the immediate locality being the Birchgrove/Elkington Park Distinctive Neighbourhood and will lead to the loss of the village and community feel.

Comment: The existing buildings on site are not considered to be of a design and form that is overly in keeping with the immediate locality with regard to creating a village and community feel. Given that the site is zoned business and can therefore not be developed as a solely residential development and is opposite a number of residential flat buildings the proposed development is considered acceptable subject to recommended conditions.

The Housing NSW flats are used to justify the scale and height of the development rather than the surrounding dwelling houses that are generally single, two storey and occasionally three storeys in height. The buildings are higher than the Housing NSW flats.

Comment: The applicant has aimed to reduce the heights of the buildings where possible. It is recommended that the 5th floors of buildings C1 and C2 be deleted. Buildings B1 and B2 have had their uppermost 4th floors set back to Elliott Street to give the appearance of three storey buildings when seen from the street. The number of storeys to the buildings fronting Broderick Street or adjacent to Broderick Street dwellings have been limited to a maximum of 3 storeys directly adjacent to Broderick Street (the uppermost 4th floor of building A1 is setback from Broderick Street further than the floors below).

The buildings do not have sufficient setbacks to Broderick and Elliott Streets. The Housing NSW blocks have much greater setbacks to Elliott Street.

Comment: Although the dwellings in Broderick Street and the flat buildings in Elliott Street do have greater setbacks, the development site is in isolation to these as the current site has nil to minimal setbacks for the buildings on site. There are no specific required setbacks in this instance and given that the site is business zoned the proposed setbacks are considered acceptable in this instance as further discussed under the LDCP 2000 assessment.

The architectural design is not in keeping with the architecture and character of the Balmain/Rozelle area. Any development should be done with consideration of the conservation of the historical importance of this area.

Comment: The proposed development is considered acceptable given that is located in a business zone and is therefore not designed like single dwelling houses that are located in the surrounding area. Subject to the imposition of a number of conditions including reducing the proportion of glazing and deleting the 5th floors of buildings C1 and C2 the proposal is considered acceptable.

Any excavation problems that may occur once excavation commences should not be resolved by permitting building RL's to be increased.

Comment: Appropriate conditions are recommended allowing maximum specific heights (RLs) for each building within the development. If any changes are proposed to these conditioned heights a Section 96 modification application would be required to be submitted which would then be assessed.

The current application does not address the issues raised in the Land and Environment Court decision for the previous application for the site

Comment: The current development application (D/2013/406) is a separate development application to the application that was determined by the Land and Environment Court (D/2011/529). The applicant is not required to specifically address the issues raised in the Land and Environment Court decision however they have taken the issues into consideration of this current proposal.

Townhouse style accommodation would be more appropriate and in keeping with Balmain. The site should be rezoned to residential.

Comment: Townhouses are not permissible in the Business zone (now B2 Local Centre under LLEP 2013). The owners of the site have not applied for a rezoning of the site.

Impacts on 2 Broderick Street – Overshadowing, request new boundary fencing to provide privacy, visual bulk of building C4 due to its setback from the southern boundary. The existing stone retaining wall which underpins the boundary with 2 Broderick Street will need to be re-built.

Comment: Refer to LDCP 2000 for an assessment of overshadowing and setbacks of building C4. It is recommended that a condition be imposed requiring a new boundary fence to be constructed to 2 Broderick Street. A dilapidation report is also recommended to be conditioned to enable the monitoring and rectification as necessary of the stone retaining wall.

Bulky appearance from the water and no real views of the water from most of the internal spaces within the development.

Comment: It is recommended that the 5th floors of buildings C1 and C2 be deleted. The side elevations of the uppermost floors of buildings C1, C2, C3 and C4 are either proposed or conditioned to be a different material to the floors below to break up the mass of the building and reduce the apparent bulk when viewed from the water. There will be water views from some apartments within the development as there are the floors are at different heights for different buildings and building setbacks within the development will allow some water glimpses. Apartments fronting the foreshore will significant water views.

The building on the corner of Elliott and Broderick Streets should be more setback and smaller as it destroys views from the street itself.

Comment: Given that building A1 is on a corner it is considered appropriate to not have large setbacks to the street so that it provides a defined edge on main corner of the development site. Although the proposed building may obstruct some views, adjacent to the building is a through site link which will enable public pedestrian use and views down to the water front.

Fewer units should be proposed and allowed.

Comment: It is recommended that the 5th floors of buildings C1 and C2 be deleted which will reduce the number of units to 102. Given that the proposal complies with the permissible floor space ratio for the site and the amenity to the proposed units is considered acceptable it is not considered warranted to require a further reduction of units. Conversely, the developer could reduce the number of units however still provide the same amount of gross floor area, number of storeys and bulk by providing larger units.

The orientation and placement of the buildings largely ignores the waterfront location of the site and its topography.

Comment: The orientation and placement of buildings is considered appropriate given the shape, topography and street layout. It is considered appropriate to have buildings facing Broderick Street, Elliott Street and the foreshore. Building separation within the site will allow water views and glimpses for many residents within the development and will allow water views and glimpses through the proposed right of way from Elliott Street to the foreshore.

The 5th floors should be deleted and the 4th floors set back on building C2. Building C2 is impacting on water views from a number of properties.

Comment: It is recommended that the 5th floors of buildings C1 and C2 be deleted. Additionally it is recommended that the northern half of building C2 be stepped down as per the originally submitted plans for this development application. Setting back the 4th floor of building C2 is not considered to have any significant impact on views.

Loss of views/vistas to and from the water and iconic heritage sites including Snapper, Cockatoo and Spectacle Islands and waterfront suburbs. The proposed development will obscure historical buildings and tree lined streets.

Comment: There will be some loss of views to the water as a result of the development however there will be a new vista created by the through sight link from Elliott Street down to the water. Views along a large part of Elliott Street will also be maintained. Given that views from Snapper, Cockatoo and Spectacle Islands as well as other waterfront suburbs are of varied existing developments including flat buildings, dwelling houses and other waterfront uses, the proposed development is considered acceptable subject to conditions including deletion of the 5th floors of buildings C1 and C2. It is anticipated that there will still be some views of historical buildings and trees. The views from the islands to trees and dwellings in the immediate area of the development site are not considered to be iconic.

The development does not consider the Heritage House (Braeside) including view loss and overshadowing.

Comment: Braeside has been considered within the assessment in relation to heritage, view loss and overshadowing, refer to relevant sections within LLEP 2000 and LDCP 2000. The proposed development is considered acceptable in relation to impacts on Braeside.

There are too many one bedroom units which suggests the target market is investors rather than families. There should be a greater mix and style of units.

Comment: The proposal complies with the LLEP 2000 requirements with regard to minimum number of one bedroom units and maximum numbers of three bedroom

units. There are no further controls whereby Council can restrict the number of one bedroom units that the developer is proposing. There is a mix in layouts of units proposed within the development.

Overshadowing of the front of dwellings to Broderick Street

Comment: Overshadowing to the front of dwellings to Broderick Street as a result of the proposal is considered to comply with the solar access controls as detailed further under the solar access assessment within LDCP 2000.

The massing of buildings along Elliott Street will create a visual wall when viewed from Elliott Street.

Comment: Buildings A1, B1, B2 and C1 which all have a frontage to Elliott Street all provide building separations as well as landscaping forward of the buildings. The buildings have different heights as they step down the street and are therefore not considered to create a visual wall.

The proposed development is incompatible to the general objectives of the built environment under Clause 13(2) of the Leichhardt LEP 2000 in terms of maintain amenity and being compatible with the desired future character, form and scale of the area.

Comment: The proposed development overall is considered to be acceptable with regard to Clause 13(2) of LLEP 2000 as addressed previously within this report. Given the site's Business zoning any proposed development on the site will be different to the surrounding residential single dwellings. Amenity impacts as a result of the proposal are considered acceptable.

The proposal is not consistent with the outcomes under Part A4.1 Business zone/residential zone interface in terms of height, proximity and lack of transition in scale between buildings C4, A2 and A1 and the dwellings on the southern side of Broderick Street.

Comment: Given the topography and the zoning of the subject site and surrounding sites, the proposal is considered acceptable with regard to A4.1 of LDCP 2000 as addressed further under the LDCP 2000 assessment within this report.

The presentation of the buildings to the waterfront will present as an unbroken mass of building when viewed from the waterway which is contrary to the built form outcomes envisaged under the Sydney Harbour Foreshores and Waterways DCP 2005

Comment: Buildings C1, C2, C3 and C4 are all separated. There is a through site link between buildings C3 and C4 which will allow a view up to Elliott Street. The setback from the water of building C3 is significantly more than the other foreshore buildings in order to retain existing Plane trees which will also aid in screening the building. Overall the proposal is considered to provide adequate separation so that it does not appear as a single mass when viewed from the water.

The extent of excavation required for the basement over a large portion of the site suggests an overdevelopment of the site.

Comment: The proposal complies with the maximum floor space ratio (FSR) controls for the site, the calculations for FSR exclude basement car parking. The applicant has elected to provide greater than the minimum number of parking spaces

due to the site being on a steep hill and not being in close proximity to existing public transport.

The scale of the development will result in further traffic congestion in the area with existing narrow streets and other large developments underway including the Union development. The development will overload the existing inadequate road system for ingress and egress to the Balmain peninsula.

Comment: The development only results in a minor increase in total traffic movements compared to the previous office/warehouse use on the site. The development is therefore not expected to have a significant impact on traffic on the Balmain Peninsula, including Terry Street and Wellington Street.

The intersection of Terry/Glassop and Elliott Streets is already dangerous and there will be further traffic congestion here. This intersection should be investigated further before approving the development.

Comment: The development only results in a minor increase in total traffic movements compared to the previous office/warehouse use on the site. The analysis of the intersection provided in the Traffic report suggests that the proposed development does not significantly change the service level of the intersection from existing as a result of the change in traffic volumes and movements.

The development may be providing resident parking but the roads are unable to accommodate the additional traffic.

Comment: The development only results in a minor increase in total traffic movements compared to the previous office/warehouse use on the site. The development is not expected to have a significant impact on traffic on the Balmain Peninsula.

Local public transport is already overwhelmed and will only become worse with these additional cars and people.

Comment: Provision of public transport is the responsibility of Transport for NSW.

How will traffic control be managed at the construction stage?

Comment: The applicant will be required to submit a Traffic Management Plan, including any required traffic controls at intersections, for approval by Council's Local Traffic Committee prior to construction commencing.

The high number of parking spaces will encourage car use. The number of parking spaces should be reduced and residents/workers encouraged to use public transport.

Comment: The number of parking spaces may encourage car use however there is no public transport in close proximity to the site now that the ferry no longer operates. The only public transport available is buses which are reasonable walk uphill from the site. The provision of parking will be conditioned to comply with the allowable rates in accordance with LDCP 2000.

What will be done to enforce onsite parking for new residents and not permit street parking. Permit parking should be started in the surrounding area whilst not providing the same privileges to all residents of the development to discourage car use.

Comment: The provision of on site dedicated parking within the development should discourage occupiers of the development to try to utilise minimal on-street parking. A condition is recommended that would not allow future occupiers of the development to participate in any future resident parking schemes if Council imposes such a scheme in the future.

There should be no entrances to residences from Broderick Street. Residents and businesses will park in Broderick and Elliott Streets, parking out existing residents.

Comment: Pedestrian entrances from Broderick Street will provide an active street frontage to the northern side of Broderick Street which is considered a positive outcome. There is limited parking in Broderick Street therefore this should encourage occupiers of the development to park in their dedicated parking spaces within the development.

The driveway to the basement is too small with inadequate site lines which will cause many vehicles to abandon the internal parking to the development or create queues at peak hours. The amount of traffic for a single driveway access is like a local street rather than a driveway and should be planned differently.

Comment: The proposed driveway and parking layout is not considered acceptable in its current form and is required to be redesigned. A deferred commencement condition is recommended accordingly.

Traffic estimates appear to be grossly underestimated. The two samples in the Assessment of traffic and Parking Impacts report do not match the seasonal reality. It is not clear whether the traffic analysis considered the combined impact of the Union development with the proposal. The traffic report needs to take into account the combined impact.

Comment: The traffic estimates are based on the RMS Guide to Traffic Generating Developments. The resulting traffic generation is not expected to have a significant impact on traffic on the Balmain Peninsula, including Terry Street and Wellington Street.

The revised traffic report does not take into account traffic on weekends or on any period outside the small sample period. The sampling is unrealistic.

Comment: Council's Traffic Engineer is satisfied that the additional traffic generated by the development is unlikely to adversely impact on the existing weekend traffic conditions.

The Assessment of Traffic and Parking Impacts report refers to the ferry service from Elliott Street which is no longer operating. Would like to see the enhancement of public transportation options such as reinstatement of the ferry service or additional buses along Victoria Road.

Comment: The ferry services were not included in the revised traffic assessment report. Provision of public transport (ferry and bus services) is a matter for Transport for NSW. Council has previously made a submission to Transport for NSW seek the retention of the ferry services at Elliott Street wharf.

An independent traffic assessment regarding the site must be done.

Comment: Council's Traffic Engineer has assessed the submitted traffic report and is satisfied that it adequately addresses the likely impacts of the development, subject to a number of detailed conditions.

The amount of traffic is already dangerous for local residents and is likely to get worse. Concern is raised with regard to pedestrian safety in the immediate area and along Broderick lane which is a continuation of the Bay Run.

Comment: A new footpath, conditioned to have a right of way over it for the public is proposed on the northern side of Broderick Street. Broderick Lane, accessed from Broderick Street is a dead end with no existing footpath or opportunity to provide a footpath. It is unlikely traffic will be trying to drive into Broderick Lane given that it obviously a dead end and there is signage at the top of Broderick Street advising that it is a no through road. There are only 5 driveway entrances along Broderick Lane so there is not considered to be a lot of traffic, additionally it is a narrow lane so any users of the lane would be driving slowly.

Broderick Street should be widened. The proposed turning bay at the end of Broderick Street does not appear adequate.

Comment: The applicant proposes to create a footpath on the subject property (within a right of way) adjacent to the edge of the road, noting that there is currently no footpath on this side of the road. This will allow the existing on street parking on the northern side of Broderick Street to be retained. Given that Broderick will be maintained as a dead end street, with no appreciable change to the existing on street parking arrangements, it is considered that there is no benefit in encouraging further traffic down the street by widening it further. The applicant will be dedicating a parcel of land at the end of Broderick Street to create a vehicle turning bay which will allow garbage trucks to turn around and to address any increase in traffic movements. The turning bay has been reviewed by Council's engineers and subject to detailed design conditions is considered adequate.

The lack of adequate turning circle at the end of Broderick and Elliott Streets is a poor response to the physical constraints provided in the existing street system. It would be appropriate to remedy the deficiencies within the existing street system.

Comment: A hammerhead turning bay is proposed for Broderick Street and a condition is recommended requiring a turning circle be provided at the end of Elliott Street.

The NSW Education & Communities Department are concerned that the DA documentation does not provide any consideration of potential traffic impacts on pedestrian and student safety around Sydney Secondary College, Balmain Campus at Terry Street, Balmain. Request that Council ensure a proper assessment is made of the implications of traffic generated by the proposed development for pedestrian and student safety around Sydney Secondary College, Balmain Campus, particularly in the AM peak period. Request that Council improve the visibility of the pedestrian crossing on Terry Street outside the Sydney Secondary College and consider the need for additional traffic calming measures and/or the provision of pedestrian crossing supervision in Terry Street adjacent to the Campus.

Comment: The development is not expected to cause a significant impact on traffic conditions in Terry Street. This street has already been treated with traffic calming

devices in the vicinity of the school. The approaches to the existing pedestrian crossing has been provided with No Stopping zones to address sight lines.

Loss of trees, tree canopy and vegetation which is home to wildlife and birds.

Comment: There will be some loss of existing trees and vegetation. However the site is zoned Business and could in theory be further developed for another use with a lesser provision of trees and vegetation than the current proposal. Although a number of trees are to be removed, many of them are not native and almost all the new trees and vegetation proposed are native species.

Loss of vegetation screening between the development and 2 Broderick Street

Comment: 2 Broderick Street currently benefits from vegetation not on their site. The proposal includes a 6m setback from the boundary with 2 Broderick Street to the nearest building (C4) which will allow for new landscaping. A condition is also recommended requiring a new timber fence between the properties to provide additional screening and privacy to 2 Broderick Street.

There should be provision for canopy trees in the internal areas of the site and more soft landscaping provided.

Comment: Given that there is a basement car park below a large part of the development there is not opportunity for canopy trees within the internal areas of the site. Some large canopy trees are to be retained around the edges of the development. Planter beds are provided throughout the development containing lower scale vegetation.

Further substantial vegetation should be planted between the harbour and the new buildings to screen the buildings.

Comment: Additional trees and vegetation are proposed in the foreshore however this area is to be a public park and therefore provides clear open space as well for people to utilise. Some of the existing Plane trees in front of building C3 are proposed to be retained which will provide some screening.

Excavation will take place within the canopy spread of many trees which means they may be damaged during construction so they may have to be removed.

Comment: Council's Landscape Officer has reviewed the documentation provided and is of the opinion that the trees can be retained. Conditions are recommended requiring an arborist to oversee the works to ensure protection of trees nominated for retention. If any trees nominated for retention are required to be removed due to construction issues, separate consent would be required from Council.

Possible remediation work at the site may result in work being required which may result in all or many of the trees that are to be retained being removed.

Comment: Council's Landscape Officer has reviewed the documentation provided and is of the opinion that the trees can be retained. Conditions are recommended requiring an arborist to oversee the works to ensure protection of trees nominated for retention. If any trees nominated for retention are required to be removed due to remediation issues, separate consent would be required from Council.

The developers should be building around the current trees instead of removing them.

Comment: Retaining all trees on site and building around them is not realistic. Many of the existing trees on site are not native and some are in poor health. The proposed retention of some existing trees and planting of new native trees and vegetation is considered acceptable.

View loss – loss of water views and loss of outlook. Views are not adequately or fairly shared with existing properties in the surrounding streets

Comment: View loss is considered acceptable given that most views are obtained at a significant distance across the development site and in some cases over the Housing NSW sites. View loss has been minimised where possible. Refer to the view assessment under LDCP 2000. The site also provides a through site link from Elliott Street through to the water which will allow views through the site. Additionally there are other vantage points including down Elliott Street for views of the water.

Loss of privacy and overlooking of existing dwellings in Broderick Street from proposed apartments.

Comment: The separation between the proposal and the front of dwellings in Broderick Street is considered acceptable. Privacy is considered acceptable to 2 Broderick Street subject to recommended conditions regarding privacy screening. Privacy is addressed further under LDCP 2000 in relation to dwellings on Broderick Street.

The proposed apartments do not comply with the design quality principles of SEPP 65 and does not comply with the Residential Flat Design Code (RFDC) which suggests an overdevelopment of the site, the apartments will provide minimal amenity to future residents

Comment: The application has been assessed with regard to the requirements of SEPP 65 refer to Part 4 Assessment of this report and the associated RFDC (refer to Appendix 1). Whilst it is acknowledged that there are some non-compliances the overall proposal subject to recommended conditions is considered acceptable.

Increase in noise from development once occupied

Comment: It is acknowledged that once occupied there will be increased noise on the site. However the site is zoned Business and is currently under occupied as the existing tenants have down sized their use of the site in preparation for relocating elsewhere. Any fully occupied use of the site whether utilising the existing buildings or redeveloping the site will result in increased noise.

Poor location of retail type shopfronts within the site which will result in increased pedestrian traffic at a dangerous point on Elliott Street.

Comment: There is one retail tenancy proposed, the size of the tenancy is unlikely to create significant additional pedestrian traffic. There is also visitor parking provided on site.

Question how serviced apartments can be classified as a commercial use. Serviced apartments should not be permitted in a substantially residential development. This part of Balmain is a residential area and serviced apartments are not in keeping.

Comment: Serviced apartments are a permitted use in the Business zone. Although the site is surrounded by residentially zoned properties the development site is Business zoned.

Whilst serviced apartments are likely to be commercially successful, scattering them through several buildings on this site will not be appreciated by the permanent residents of the development.

Comment: The serviced apartments will be looked after by a management company. Any future residents of the residential apartments will be aware of the serviced apartments when they purchase or rent an apartment.

The applicant has not responded to valid concerns raised by residents and the Council. The amended plans and changes they have proposed are very minor.

Comment: The applicant has responded to most issues raised in their written documentation however they have chosen not to substantially alter the plans.

Request that the development provide public access and use of the foreshore and that right of way to the foreshore is protected for the public.

Comment: The foreshore is to be dedicated to Council as public open space. The development will include rights of way to the foreshore and through the development to enable the public to access the foreshore.

The development will cause a degradation of the environmental amenity and quality of life for local residents and schools.

Comment: Whilst the development will cause some impacts on the surrounding area such as some increased traffic, any further development or full use of the site is likely to cause similar impacts. The proposal will also have what are considered positive impacts including activating the site and providing public rights of way through the site and provision of a dedicated foreshore area for the public.

Would like to see provision for lower income housing in the development to promote diversity in the neighbourhood.

Comment: Council does not currently have any means to require developments to provide affordable housing within a development. The opposite side of Elliott Street to the development currently contains low income housing.

Many locals are elderly and not fluent in English. Many of them are unaware of the proposal and there does not seem to be any effort made to address this group that will be directly impacted.

Comment: Council's notification letters include details for non-English speakers which would enable them to obtain information. Local residents unable to travel to Council's offices to view documentation and who required further explanation of the proposal could also phone Council as a number of residents did.

NSW Education & Communities Department have advised that the proposed development would generate additional students and contribute to a need for additional educational infrastructure in the locality, and this will be taken into account in strategic planning for schools in the area. The NSW Government has identified in its White Paper – A New Planning System for NSW an intention to introduce regional infrastructure contributions to seek contributions from development in all areas

towards state infrastructure including schools. If these contributions are implemented within the DA timeframe, the Department requests that provision be made to seek a proportionate contribution from the developer towards the additional demand on schools generated by the development.

Comment: To date the NSW Education & Communities Department have not advised that contributions are required for the development.

There should be no concession to the foreshore building line.

Comment: Although there is a non-compliance with the foreshore building line requirements this is not from the actual buildings. The non-compliance is considered acceptable in this instance. Refer to LLEP 2000 assessment for further details.

The business component of the development will not work compared to a residential development. There are already many vacant retail and commercial properties in Balmain, there are likely to be future commercial occupancy problems with the development. Concern regarding potential amenity conflicts from the proposed ground floor commercial uses on existing dwellings in Broderick Street.

Comment: The site is zoned business and therefore cannot be an entirely residential development. The applicant has undertaken an analysis of the economic viability of the site and has chosen to provide commercial floor space. It is not considered that there will be any significant amenity impacts on existing dwellings in Broderick Street given that the retail and commercial uses in buildings A1 and A2 are accessed through the development rather than from Broderick Street. The sizes of the tenancies are small so they are not considered to result in any significant impacts.

The proposal reduces the business floor space on the site well below the current provision.

Comment: The proposed development complies with the LLEP 2000 requirements for uses within a Business zone.

How will potentially toxic material be removed safely along surrounding streets near residences and schools?

Comment: Removal of contaminated waste is required to be strictly managed in accordance with the Remediation Action Plan (RAP) which includes requirements for Environmental Management. Additionally, conditions are recommended in relation to construction traffic movements.

Excavation may cause shaking and structural damage to the homes in Broderick Street.

Comment: A condition is recommended requiring a dilapidation report for 2 Broderick Street. Appropriate conditions are also recommended regarding site works including the requirement for a noise and vibration management plan.

Concern about noise, construction dust and other airborne waste during demolition and construction. What precautions and occupational health and safety practices will be in place.

Comment: It is acknowledged that the demolition, excavation and construction phases will have some impacts on the surrounding area however these are aimed to be minimised through appropriate management. Conditions are recommended in relation to hours of building work, construction traffic management, noise and

vibration management, dust management and management of contaminated materials. Refer to Appendix 2 for recommended conditions.

No mechanism has been proposed to address any issues that arise during construction. Request that a formal commitment to management planning and community engagement during the construction period be a condition of consent.

Comment: A condition is recommended that requires that signage be erected prior to the commencement of works which details the name of the principal contractor and a telephone number at which that person may be contacted at any time for business purposes and outside working hours.

What measures will be taken for the increase of sewerage and household waste?

Comment: A condition has been recommended requiring a Section 73 Compliance Certificate from Sydney Water Corporation to ensure appropriate services are provided.

The development will strain local infrastructure. What consideration has been given to the proposed population increase on local schools, public facilities eg library, transport (buses).

Comment: School places and public transport are provided by Transport for NSW. Council has recommended that Section 94 contributions be imposed on the development which contribute to public facilities provided by Council including library facilities.

4.8 The public interest

The public interest is best served by the consistent application of the requirements of the relevant Environmental Planning Instruments, and by Council ensuring that any adverse effects on the surrounding area and the environment are appropriately managed.

Subject to recommended conditions, the approval of the application will not be contrary to the public interest.

5. SECTION 94 CONTRIBUTIONS

The proposed development is subject to the following Section 94 Contribution Plans:

- Developer Contribution Plan No.1 – Open Space and Recreation;
- Developer Contribution Plan No.2 – Community Facilities and Services; and
- Developer Contributions Plan No.3 – Transport and Access.

The site is subject to a land dedication under Part D2.2.f – Works / Land dedication schedules under Development Contribution Plan No.1 – Open Space and Recreation. The subject site is listed within Table 16: Schedule 2 as a site on which Council will require the dedication of land for open space purposes.

The following developer contributions are payable for the subject site:

Developer Contribution Plan		Contribution	Total Contribution
Open Space	Monetary Contribution	\$2,025,508	\$967,980
	Land Dedication (2,160sqm)	\$1,057,528	
Transport & Access	-	\$81,698	\$81,698
Community Facilities	-	\$334,432	\$334,432
Total			\$1,384,110

Note: Calculations in the above table are based on the proposed amended plans (calculations include 19 serviced apartments & 104 residential units) and may need to be amended to reflect any approval.

Within the above calculations, Council has considered the provision of credits for the existing commercial development on the site. It is noted that there is a neutral outcome with respect to the existing and proposed commercial components, therefore the contributions calculated are based solely on the residential component of the development.

Under the NSW Government's 16 September 2010 direction limiting contribution for residential development to \$20,000 per dwelling, the maximum monetary contribution payable would be \$2,080,000. Given the above contribution does not exceed the limits of the cap, no adjustments to this contribution are required.

A condition of consent has been recommended requiring the above monetary contributions to be paid prior to the issue of the Construction Certificate. The timing of the dedication of land is recommended to be prior to the issue of any Occupation Certificate given the works to be undertaken by the proponent in this location.

6. INTERNAL REFERRALS

The Development Application was referred to the following Council Officers/ Departments:

- Building
- Community Development
- Drainage & Traffic Engineers
- Environmental Health Officer
- Heritage Advisor
- Landscape Assessment Officer
- Parks and Streetscapes and Open Space Planner
- Property Manager
- Strategic Planning
- Waste Services

Building

Site Description and Background

1. The site presently accommodates existing buildings which are to be demolished.
2. The issues derived from the submission of plan's are discussed below.

Building Code of Australia issues / compliance

1. Building Classification: 2, 3, 5/6, 7a
2. Rise in Storeys: Each building addressed independently
4. Type of Construction: Type A
5. Access report has been provided by Accessibility Solutions Pty Ltd, dated 11.09.13, and addresses access to all buildings in accordance with Part D3 of the Building Code of Australia, AS 1428.1, DCP 32 and DDA.
6. The Disability (Access to Premises – Buildings) Standards 2010 [commonly known as Access to Premises Code] is applicable to this development.
7. BCA compliance letter has been provided by Steve Watson & Partners, dated 29.08.13, Job No. 2013/0962, which indicates a review of the DA plans has been undertaken and the design is capable of achieving compliance with the BCA. It also references 5 main areas where alternative solutions are proposed to meet the relevant performance requirements.
8. The applicant has a number of ways to comply with the performance provisions of the BCA by compliance with either:
 - (a) the *deem-to-satisfy* provisions; or
 - (b) an *alternative solution*; or
 - (c) a combination of (a) & (b) above.

Recommendations/ Conditions

The following condition should be imposed prior to CC:

Recommendations from the Access Report by Accessibility Solutions Pty Ltd, dated 11.09.13 shall be incorporated into the Construction Certificate plans and specifications.

Comment:

Appropriate conditions regarding compliance with the BCA and access report condition to be imposed accordingly.

Community Development

To provide clarity and legibility of public pedestrian access through the site signage should be provided. This should be a condition of consent: That directional signage be provided at the intersection of each public access way (or through site link) and public street, the signage should be either “public access to x street” or “public access to foreshore”.

Comment:

Appropriate conditions regarding provision of signage are recommended to be imposed accordingly.

Drainage & Traffic Engineers & Parks & Open Space Planner

The following issues are raised with respect to the development application.

Basement Carpark

A number of significant concerns are raised in relation to the proposed basement carpark and associated vehicular access, which relies on a single access to service the residential and commercial carparks and the loading dock. In this regard, the design fails to comply with the relevant Australian Standards in a number of areas, which would result in an unsafe and dysfunctional carpark.

The concerns relate principally to the access driveway and circulation roadway, from the Elliott Street frontage, past the loading dock and through to the ramp between the Lower Ground Floor carpark and the Basement Level carpark. Further general concerns are raised in relation to vehicle circulation, security and the allocation of parking throughout the carpark.

Access Driveway (Elliott Street to Loading Dock)

The access driveway and circulation roadway between Elliott Street and the loading dock is inadequate in width and would result in unsafe vehicle movements and potential conflict with pedestrians in Elliott Street. In this regard, the following concerns are raised:

- The access driveway (between the property boundary and Elliott Street), is too narrow and has no provision for a pedestrian refuge on the footpath between entering and exiting traffic, leading to pedestrian safety concerns. This is a consequence of the driveway being designed as a Category 2 access (Table 3.1 Selection of Access Facility Category of AS/NZS 2890.1-2004) on the basis that it services a (principally) residential carpark. However, the carpark will accommodate parking for residential units, serviced apartments, commercial units and visitors to all of these, which should result in the driveway being designed as a Category 3 access. In addition, the driveway will service approximately 251 parking spaces, which is on the high end of the range of 101 to 300 parking spaces which differentiates whether the driveway should be designed to Category 2 or 3, even for a residential only carpark.
- The loading dock is designed to accommodate up to two medium rigid vehicles (MRVs) at any one time. However, the circulation roadway width (between the property boundary and the loading dock) is not sufficient for an MRV to pass any other vehicle when entering or exiting the site. In addition, due to the limited sight distance resulting from the tight curvature of the circulation roadway, there would be a high risk of vehicle conflict and at the very least, create traffic safety concerns when an MRV is entering or exiting the site.

To address the above issues, the following design amendments are required:

- The access driveway is to be increased to a total of 12 metres wide, including an entry lane width of 6 metres, an exit lane width of 4 metres and a separation median width of 2 metres for pedestrian refuge. Note that this amendment will require adjustment to Commercial Unit B2.001 for the additional width and B2.105 above to meet minimum headroom requirements which will be impacted by widening the driveway.

- The width of the circulation roadway between the property boundary and the loading dock is to be widened to a minimum 9 metres, to accommodate concurrent opposing movements of an entering and exiting MRV and Small Rigid Vehicle (SRV). In addition, the inside radius of the curve will need to be increased sufficient to accommodate the required vehicle manoeuvrability and sightlines for opposing vehicles. Note that this will require the partial reconfiguration of the loading dock and bin storage areas.

The amended design can be adequately addressed by deferred commencement conditions.

Internal Carpark Layout (Circulation Roadway beyond Loading Dock)

The access aisle between the loading dock and the ramp to the Basement Level carpark is designed as a parking aisle instead of a circulation roadway, as required under AS/NZS 2890.1-2004. Consequently this section of roadway, which includes two 90 degree bends and a ramp to the lower basement level, is not designed for the high volume of traffic associated with the 251 parking spaces that it will service. This would result in unsafe movements where vehicles cut across the bends in conflict with opposing vehicle movements and where sight distance at the bends and ramp is inadequate.

As above, the current design fails to comply with AS/NZS 2890.1-2004 because it is designed as a Parking Aisle instead of Circulation Roadway. In this regard, the Notes within Clauses 2.3.3 and 2.5.1 specify that Circulation Roadways should be provided in lieu of parking aisles where the aisle provides access to more than 100 parking spaces for Class 1 or 1A facilities. In this case, the aisle provides access to up to 190 Class 1 or 1A parking spaces, which significantly exceeds the specified maximum.

As the aisle does not meet the design requirements of a circulation roadway, it does not comply with AS/NZS 2890.1-2004 in at least the following areas:

- The two 90 degree bends are not designed as circular curves, and have inadequate width and radii as required by Clause 2.5.2(b).
- The intersection at the top of the ramp to the Basement Level carpark does not have adequate sight distance for the volume of traffic as required by Clause 2.5.2(c).

There is insufficient space available within this section of the carpark to allow the circulation roadway to be reconfigured to comply with the above requirements of the Standard due to the position of the loading dock and without a significant loss of proposed parking spaces.

The only apparent solution to this issue; other than constructing a second vehicle access driveway from Elliott Street, is to relocate the ramp to the Basement Level carpark to pass through the ground floor level of Building C4. In this regard, this option would involve the following amendments to the current proposal:

- A ramp would be provided from the south western corner of the Lower Ground Floor carpark to the south western corner of the Basement Level carpark, passing through Unit No's C4.003 and C4.004. The resulting T intersection at

the south western corner of the Lower Ground Floor carpark would be designed to give way to vehicles accessing the ramp.

- The ramp would be designed with a gentle gradient (1 in 20) for the first 6 metres to provide sufficient sight distance to all opposing traffic.
- The proposed ramp between the Lower Ground Level carpark and the Basement Level carpark would be deleted.
- The proposed Basement Level parking spaces below the ramp would be deleted, whilst an equivalent number of parking spaces would be provided in the location of the deleted ramp.

This option would be contained within the current building footprint and would result in no net loss of off street parking. The amended design can be adequately addressed by deferred commencement conditions.

General Carpark issues

The Lower Ground Floor and Mezzanine Level carparks are designed as a series of blind (dead end) aisles and therefore, do not provide for the circulation of vehicles, in particular relating to visitors searching for (unallocated) parking spaces. To address this issue, turning bays must be provided at the end of aisles where applicable in accordance with AS/NZS 2890.1-2004.

Due to the configuration and allocation of parking throughout the carpark, it would be impractical to provide secured parking for a number of the residential parking areas. All residential parking areas must be provided with full security to prevent the entry of unauthorised persons and vehicles, through the provision of security doors, etc. This must be addressed through reallocation of parking throughout the three levels of the carpark to accommodate a hierarchy of security access for the areas allocated to residential, serviced apartments, commercial and visitor parking.

The reconfiguration of the carpark can be adequately addressed by deferred commencement conditions.

Foreshore Access – North Western end of Elliott Street

In accordance with Clause 34 (Foreshore Access) of LEP 2000, *Consent must not be granted to development on land which could provide access to the foreshore and links to existing or proposed open spaces, unless the consent authority has taken into consideration the provision of that access.* Accordingly, the proposed foreshore open space dedication along the western end of the site must include adequate pedestrian linkage to Elliott Street and the existing open space to the north of Elliott Street. Currently there is no footpath at the north western end of Elliott Street, which requires pedestrians to walk across the road in a location where vehicles will be regularly undertaking multiple turning movements. The applicant is required to construct a footpath to ensure safe off-road access is provided to the new open space and to complete the linkage to the existing open space to the north of Elliott Street.

In addition, despite the provision of off street parking within the development, there will be a significant number of vehicle movements generated in Elliott Street by visitors to the residential, commercial and retail components, who will park or stop to drop off or pick up passengers on the street along the frontage of the site or on the

opposite side of Elliott Street. Therefore, it is essential that an adequate turn around area is provided at the north western end of Elliott Street which does not require vehicles to mount the footpath and/or undertake 3-point turns to turn around, which is currently the case.

To address this issue, a turning circle should be constructed at the north western end of Elliott Street. It is likely that the turning circle and associated footpath will need to encroach partly onto the subject property, which would require dedication of a small section as public road.

Conditions will be provided requiring construction of the following works at the north western end of Elliott Street:

- A footpath on the north western end of Elliott Street to link to the existing footpath on both sides of Elliott Street.
- A turning circle, including associated minor widening of the roadway.
- A vehicle crossing to provide maintenance access to the proposed open space.

Broderick Street turning area

The swept path diagrams included in Appendix G of the report prepared by TTPA Traffic do not include the location of existing and proposed on street parking arrangements, driveways and footpath in Broderick Street. However, the submitted plans are sufficient to demonstrate that the proposed land dedication at the end of Broderick Street will make sufficient provision for vehicles to turn around. Further detail will be required as part of the detailed road design for Broderick Street.

Stormwater Drainage

The submitted stormwater design includes provision of on site detention to limit the discharge rate from the site to the capacity of the existing stormwater outlet to Parramatta River. In addition, 150,000 Litres of rainwater storage is proposed for re-use throughout the development. This is consistent with the stormwater management requirements of DCP2000. The stormwater design is satisfactory subject to conditions.

Comment:

Appropriate deferred commencement conditions and standard conditions are recommended to be imposed accordingly.

Environmental Health Officer

Documents Reviewed

The following documents have been reviewed in providing these comments:

- Acoustic Logic – DA Noise Assessment – Document Reference 20110429.3/0509A/R0/YK – 5 September 2013
- Acid Sulphate Soils Assessment prepared by Douglas Partners dated 19 February 2014
- Amended Phase 2 Contamination Assessment prepared by Douglas Partners dated 4 August 2013
- Remediation Action Plan prepared by Douglas Partners dated 28 August 2013
- Site and Floor Plans

- Arboricultural comments in response to contamination prepared by Tree Wise Men Australia Pty Ltd dated 10 March 2014

Issues

The following issues are raised in response to the proposal:

- Acid Sulphate Soils – The letter prepared by Douglas Partners indicates that the site is located in an area of “no known occurrence of acid sulphate soils” and concludes the proposed works are not expected to disturb acid sulphate soils or impact on water levels in Iron Cove Bay. Douglas Partners also recommend that no additional testing or management is considered necessary.
- Land Contamination – the reports/plans prepared by Douglas Partners conclude that the site can be made suitable for the proposed use subject to implementation of the Remedial Action Plan. Remediation involves bulk excavation of the basement foot print, waste classification and disposal, and validation by a suitably qualified environmental consultant.
- In reliance of the conclusions presented in the Remedial Action Plan Report it is considered the site can be made suitable for the proposed use subject to implementation of the RAP and may proceed in relation to contamination.
- In reliance of the conclusions presented by the Acoustic Consultant it is considered the development can be compliant with the relevant noise criteria.

However, as detail of proposed mechanical plant has not been provided. Accordingly an additional acoustic report will be required prior to the issue of the construction certificate. The additional report to indicate size, type and location of all mechanical plant and method of compliance with established noise criteria for residential receivers. All plant to be considered including a/c units, refrigeration, mechanical extraction equipment any other plant which may cause the emission of nuisance noise.

The acoustic consultant to provide additional detail relating to noise generated from the individual, and combined tenancies and their likely impact on residential tenancies within the development and neighbouring premises.

The acoustic consultant to reference “offensive noise” as defined in the *Protection of the Environment Operations Act 1997* and “intrusive noise” as defined within the *NSW EPA Industrial Noise Policy* as additional criteria for compliance.

The acoustic consultant to provide a clear statement that the proposal, subject to implementation of all recommendations, will not cause the emission of “offensive noise” as defined in the *Protection of the Environment Operations Act 1997* or “intrusive noise” as defined within the *NSW EPA Industrial Noise Policy*.

Recommendation

The application is supported in regard to matters reviewed as part of these comments subject to conditions.

Comment:

Appropriate conditions are recommended to be imposed accordingly.

Heritage Advisor

Description, Potential Impact and Comments

Reference should be made to previous heritage advice (dated 7 November 2013) for this Development Application.

Amended plans/ additional information were subsequently submitted to Council in January/February and March 2014, for this Development Application, which has been reviewed in relation to the abovementioned heritage issues. Provided below is a summary of this heritage issues and comments on whether they have been satisfactorily addressed within the submitted amended plans/additional information.

Heritage Issue:	Satisfactorily addressed with amended plans/additional information?	Can this matter be addressed by condition? If response is - yes – refer to recommended conditions below.
Height and scale of development to Elliott Street to not exceed heights of neighbouring buildings.	No.	Yes. Recommended condition included below that would require the 5 th Floor of buildings C1 and C2 (located near the end of Elliott Street) to achieve a more acceptable fit (height and scale) within the locality.
Materials and finishes to be in keeping with historic materials in the locality i.e. metal and timber to be used in lieu of glass for any balustrades etc.	Yes in part, previously proposed glazed balustrades to Broderick and Elliott Street facades have been replaced with metal palisade balustrades which would achieve a better fit within the surrounding heritage conservation area.	Recommended condition included below which requires any balustrade within the development to be of the metal balustrade type shown on the submitted Broderick and Elliott Street montages.
Interpretative strategy to be devised and implemented detailing the industrial history of the site, including Nutrimetics. It is desirable that this occurs at multiple, strategic, publicly accessible locations and along the foreshore. This is to be addressed within the Development Application submission.	No.	Yes. The details of the Interpretive strategy should be prepared in accordance with guidelines prepared by NSW Heritage Office – Refer to recommended condition included below.

The retention of all existing sandstone sea walls; natural rock outcrops and significant vegetation within the foreshore precinct of the site.	No.	Yes. All existing sandstone sea walls and natural rock outcrops within the foreshore precinct are to be retained and marked by survey on all architectural and landscape plans relating to the foreshore precinct of the subject site prior to works commencing on the site. Note: Compliance with this requirement may require amendments to the current landscape plans for the foreshore precinct of the development site.
Retaining walls within the foreshore precinct to comprise of sandstone ashlar blocks or similar, in keeping with the form and appearance of the sandstone rock outcrops in this location of the site.	Yes. Foreshore Master plan includes the use of sandstone faced block work walls in conformity with this requirement.	Not applicable.
Signage should be discrete and aim to respect the residential character of the surrounding Heritage Conservation Area, and will not be seen from surrounding waterways.	No.	Yes. These objectives can be expressed within a condition which is provided below.
Level of glazing and glass balustrading to facades on all street frontages; and use of formed concrete balconies not considered to bear any relationship with historic built forms within the surrounding heritage conservation area Previous façade approach, on Elliott Street, included within former DA proposal was more successful in responding to built characteristics of the locality.	No.	Yes. Recommended condition included below which seeks to reduce the amount of glazing on the facades of the proposed buildings (visible from the public domain) to achieve a better fit within the historic/heritage conservation setting of the subject site.

Final Note: a condition is also included below addressing archaeological issues.

Recommendations

No further objections are raised to this development proposal provided the recommended conditions detailed below form part of any consent issued for the development proposal.

Comment:

Appropriate conditions are recommended to be imposed accordingly.

Landscape Assessment Officer

General comments

Tree numbers in this referral are consistent with the numbering used in the Updated Arboricultural Impact Assessment prepared by Tree Wise Men, Ref No 2124-2013AIAAddendum, dated January, 2014 and the Arboricultural Comment in Response to Council Request for Further Information, Ref 2142-2013AIAAdden02 and dated 10th March 2014.

The following sixty three (62) trees are nominated for removal:

3, 4, 21, 22, 23, 24, 25, 28, 29, 30, 31, 34, 36, 37, 38, 39, 40, 41, 42, 45, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 67, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 88, 89, 90, 91, 93, 94, 96, 97, 98, 100, 101 and 102.

Thirteen (13) trees are recommended for removal as they have been assessed as being hazardous and fifty (50) have been recommended for removal as a direct consequence of the proposed development as they are either located within the construction footprint or will be significantly impacted to the point where viable retention is unlikely.

The most significant impact of tree removal will be the loss of vegetative screening (Trees 28-31) from Iron Cove.

The following thirty nine (39) trees are nominated for retention:

1, 2, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 26, 27, 32, 33, 35, 43, 44, 46, 47, 48, 49, 50, 51, 64, 65, 66, 86, 87, 92, 95 and 99.

Seven (7) trees are assessed as having no encroachments into the Tree Protection Zone (TPZ as nominated in AS 4970 'Protection of trees on development sites') from the proposed works.

Thirty two (32) trees have been assessed by the applicant's Arborist as having acceptable levels of encroachment in their TPZs. The Arborist has determined that in some cases encroachments greater than 10% are acceptable. Any encroachment greater than 10% is considered a major encroachment (refer AS 4970 Section 3.3.3) and should be considered and justified in accordance with Section 3.3.4 of AS 4970. In some cases the substantial encroachments have been justified (mostly due to existing encroachments in the TPZ) however concerns are raised in relation to the cumulative impact of root encroachment (25.8%), canopy encroachment (required pruning of large diameter limbs) and the possibility of soil remediation within the TPZ on Tree 87. It has not been demonstrated against the considerations in Section 3.3.4 of AS 4970 'Protection of trees on development sites' that Tree 87 (*Ficus*

macrocarpa var *Hillii* – Hills Weeping Fig) is likely to remain viable in the long term and there are concerns in this regard.

Additional information has been submitted in relation to the required remediation of the site and the impact to trees to be retained. Whilst there is no certainty that contaminants do not extend beyond the bulk earthworks (and within the TPZ of trees to be retained) it seems likely the bulk earthworks required for the basement excavation will be sufficient in relation to soil remediation.

The Arborist has made recommendations in relation to the methodologies proposed for removing contaminated soil within the TPZs of trees if required. Concerns were raised by Council in relation to the possible soil removal and the impact to the tree roots - in particular the loss of large volumes of fine feeder roots that may be required. Whilst it is acknowledged that removing soil by hand or water jetting are methodologies in use it has not been established in this case that there will be no detrimental impact to the trees. This is particularly true if the soil volume to be removed is substantial. Conditions are provided to mitigate (as far as possible) the impact to existing trees to be retained if soil removal is required within the TPZ.

Trees

Additional information has been provided in relation to the proposed works and likely impacts to Trees 46-51 (*Platanus x hybrida* – London Plane Tree). The impact is considered acceptable and can be supported with conditions.

Additional information has been provided in relation to Tree 64 (*Eucalyptus camaldulensis* – River Red Gum). The Arborist has stated that no tree root impacts are likely as the existing retaining wall (boundary) is to be retained. The canopy will require the removal of 1 x 200mm diameter third order limb to clear the construction works. This pruning is considered to be acceptable in the context of the proposed site development.

The Arborist has also stated that a short drill rig will be used to mitigate the impact of the basement construction on the tree. Provided an Arborist approves of the construction methodology/plant and directly supervises the works within the canopy cover the proposal is acceptable in relation to this tree.

The impact of the proposed pruning on Tree 43 (*Schinus areira* – Peppercorn) is significant. The tree has recently been pruned to reduce potential hazards and further significant pruning is proposed. It should be noted that the required pruning will leave a significantly reduced canopy to the point of having little contribution to the aims of the Tree Management Controls. This tree will not provide screening for 2 Broderick Street after the proposed pruning. Landscaping is to include screen planting to 2 Broderick Street. This planting can develop so that when Tree 43 requires removal (likely in the short term) screening will be in situ. Conditions provided.

The impact to Trees 95 and 99 (*Populus nigra* 'Italica' – Lombardy Poplars) is acceptable provided the section of the existing footing and wall is retained as proposed. Conditions provided.

Landscaping

Concerns were previously raised in relation to the lack of substantial vegetation (small/medium canopy trees) proposed on the site. There has been some improvement in the scheme in this regard and it is noted that additional trees are nominated internally on the site.

It is noted that the planting beds internally are generally limited in soil volume and the potential for large scale planting that will provide scale and or screening to buildings is limited in the context of the proposed development. It is acknowledged that should the proposal be supported in the current form that the potential for substantial additional canopy trees is limited.

Landscape Plans

The concept plans prepared by Aspect Studios, DA01 – 14 and dated January 2014 are generally supported. Conditions provided.

Refer to comments and conditions from Council's Parks and Open Space Planner in relation to the Landscape Concept plan for foreshore area to be dedicated to Council.

Elliott Street tree planting

Council's Parks Technical Officer has requested that street trees are planted along the Elliott Street frontage. The species nominated are *Eleaocarpus reticulatus* (Blueberry Ash) in 75 litre bags at planting and to be spaced at approximately 5 metre centres (the location of services, pits and vehicular crossings etc. may impact the nominated spacings). Condition provided.

Impact of Remediation Action Plan

The extent of soil requiring removal is not clear at this time however it is likely that most of the contaminated soil will be removed with the bulk earthworks for the basement carpark. Refer to comments from Environmental Health Officer.

Comment:

Appropriate conditions are recommended to be imposed accordingly.

Property Manager

The land across the waterfront to be dedicated to Council is for public open space. Design and embellishment must make it obvious that it is public and there must not be any design cues that imply that any part is private. There cannot be a private path from the private development across the open space to the pontoon access area and the pontoon. Public access to and use of the pontoon is to be permitted on an on-going basis.

Council requires public accesses through the development, firstly from Broderick Street through to Elliott Street labelled as "Cross Site Link" on Aspect Studio's landscape plans and secondly from Elliott Street near the intersection with Lockhardt Avenue down to the foreshore, labelled as "Lockhardt Walk" on that plan. The paths are to be at least 2m wide at all points including when it gives access to Broderick Street. Rights of Way for public access are to be granted to Council and registered,

with the precise terms of the rights of way to be drafted or as required by Council's Manager Property and Commercial Services.

Comment:

Appropriate conditions are recommended to be imposed accordingly.

Strategic Planning

Previously Strategic Planning commented that "The proposed retail unit is at sub-basement level accessed by steps from the street. This would pose two significant planning policy problems as follows: 1) people with disabilities would have difficulty accessing the shop and 2) this location would not create an active street frontage. Irrespective of whether an active street frontage is an ideal planning outcome at this location it is an LEP objective for FSR incentive in LEP 2013 Clause 4.4A for Zone B2"

The re-designed ramp access to the proposed shop appears to be an improvement in terms of access for people with disabilities, but the shop still lacks an active street frontage. Council's legal advice in respect of serviced apartments advises that these are permissible irrespective of active street frontage objectives and consequently the shop becomes relatively more significant as the part of the development that should have an active street frontage, especially on this corner site.

Consequently a better planning solution would be to have the shop at street ground level and not at sub-basement level.

Comment:

Council has obtained legal advice that considers the proposed retail tenancy to be "ground floor or street level" for the purposes of additional floor space in accordance with Clause 23 of LLEP 2000 (similar to Clause 4.4A of LLEP 2013). The location and proposed level of the retail tenancy is considered appropriate as it allows retention of an existing tree and minimises impacts to the existing dwellings zoned Residential on Broderick Street. Any changes to the floor level of the retail tenancy to raise it to "street" level would further increase the height of building A2 with associated detrimental impacts. More direct disabled access has been provided. Overall the floor level of the retail tenancy is considered acceptable in this instance.

Waste Services

Refer to Part 4 of this report, Leichhardt Development Control Plan No.38 – Waste.

Comment: Appropriate conditions are recommended to be imposed accordingly.

7. EXTERNAL REFERRALS

The Development Application was referred to the Department of Primary Industries – Office of Water, Ausgrid, Transport – Roads & Maritime Services and the Foreshores and Waterways Planning and Development Advisory Committee.

Department of Primary Industries - Office of Water

The Office of Water advised as follows:

The construction dewatering proposed for the project is deemed to be an aquifer interference activity in accordance with the definition in the Water Management Act 2000. It is expected that the excavation and construction at the property will be conducted in accordance with the principles of the Aquifer Interference Policy (available on-line at <http://www.water.nsw.gov.au/Water-management/Law-and-policy/Key-policies/Aquifer-interference>).

An authorisation for the take of groundwater as part of the anticipated dewatering of the site is required. As such, General Terms of Approval appropriate to the proposed aquifer interference activity are provided as required by s.91A (2) of the Environmental Planning and Assessment Act 1979.

The GTAs have been incorporated within recommended conditions of consent.

Ausgrid

Refer to Section 4.1 – Environmental Planning Instruments, State Environmental Planning Policy (Infrastructure) 2007 of this report for comment.

Transport – Roads & Maritime Services

Refer to Section 4.1 – Environmental Planning Instruments, State Environmental Planning Policy (Infrastructure) 2007 of this report for comment.

Foreshores and Waterways Planning and Development Advisory Committee

Refer to Section 4.1 – Environmental Planning Instruments, Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 of this report for comment.

8. CONCLUSION

The Development Application has been assessed in accordance with Section 79C(1) of the Environmental Planning and Assessment Act 1979 and all relevant instruments and policies.

9. RECOMMENDATION

That the Joint Regional Planning Panel as the consent authority pursuant to s80 of the Environmental Planning & Assessment Act 1979, grant a Deferred Commencement Consent to Development Application No: D/2013/406 for demolition of existing structures, construction of a mixed use development including 8 buildings with ground floor commercial (including serviced apartments and gymnasium) / retail uses, 102 residential units above, basement parking and associated works including bulk earthworks, tree removal, landscaping, signage and remediation at 100-102 Elliott Street, Balmain subject to the conditions in Appendix 2.