

JOINT REGIONAL PLANNING PANEL
(East Region)

JRPP No	2011SYE027
DA Number	DA-11/018
Local Government Area	City of Botany Bay
Proposed Development	<p>Grant Development Application No. 11/018 a “Deferred Commencement Consent” for works in the following two (2) stages:</p> <ul style="list-style-type: none"> • <u>Stage 1</u> – Removal of the remaining concrete slab(s) that are in direct contact with the ground surface and clearing of the surface of the site at 8-32 Jasmine Street and 68-70 Bay Street, Botany, to allow the installation of groundwater monitoring bores to address the issued identified in the General Terms of Approval from the NSW Office of Water dated 1 April 2011; and, • <u>Stage 2</u> - The excavation at the site and construction of the mixed residential and retail development accommodating 95 apartments, 14 townhouses, 280m² of retail floor space, car parking for 216 vehicles located within a partial basement level and planting in accordance with the submitted landscape plan, at 8-32 Jasmine Street and 68-70 Bay Street, Botany.
Street Address	8-32 Jasmine Street and 68-70 Bay Street, Botany
Applicant/Owner	Krikis Tayler Architects / Great Tang Brothers Pty Ltd.
Number of Submissions	<ul style="list-style-type: none"> • 21 individual letters of objection • Petition containing 20 signatures (dated 4 April 2011) • Petition containing 262 signatures (received 6 February 2012)
Recommendation	Deferred Commencement
Report by	Rodger Dowsett, Director Planning and Development

ASSESSMENT REPORT AND RECOMMENDATION**8-32 Jasmine Street and 68-70 Bay Street, Botany – Integrated Development**

File No: 11/018
Responsible Officer: Mr Rodger Dowsett - Director Planning and Development
Date of Preparation: 15 February 2012

DA No: 11/018
Application Date: 14 February 2011
Property: 8-32 Jasmine Street and 68-70 Bay Street, Botany
Lot & DP No.'s: Lots A and B in DP 392025, Lots 1 and 2 in DP 201641, Lot 2 in DP 201614, Lot 1 in DP 508743, Lot 10 in DP 598160, Lot B in DP 345783, Lots 1, 2 and 3 in DP 312248, Lots 2 and 3 in Sec H in DP 1787, Lot 1 in DP 455885, Lot 5 in DP 19083 and Lot 11 in DP 598160.
Details: Grant Development Application No. 11/018 a “Deferred Commencement Consent” for works in the following two (2) stages:

- Stage 1 – Removal of the remaining concrete slab(s) that are in direct contact with the ground surface of the site at 8-32 Jasmine Street and 68-70 Bay Street, Botany, to allow the installation of groundwater monitoring bores to address the issued identified in the General Terms of Approval from the NSW Office of Water dated 1 April 2011; and,
- Stage 2 - The excavation at the site and construction of the mixed residential and retail development accommodating 95 apartments, 14 townhouses, 280m² of retail floor space, car parking for 216 vehicles located within a partial basement level and planting in accordance with the submitted landscape plan, at 8-32 Jasmine Street and 68-70 Bay Street, Botany.

Applicant: Krikis Tayler Architects
Applicant Address: Level 7, 97 Pacific Highway, North Sydney NSW 2060
Builder: To be advised
Principal Certifying Authority: City of Botany Bay Council
Property Location: South-eastern corner of Jasmine Street and Myrtle Street,

	and with frontage to Bay Street between Jasmine Street to the west and Ellis Street to the east.
Zoning:	Residential 2(b) Botany Local Environmental Plan, 1995
Present Use:	Vacant - previously industrial land.
Classification of Building:	Class 2 - residential flat building Class 6 - commercial building Class 7a - carpark
Value:	\$30,000,000.00
Drawing No:	Refer to Condition No. 1

SUMMARY OF REPORT

Recommendation:	“Deferred Commencement” Consent
Special Issues:	JRPP, Integrated Development, Residents’ Consultative Committee, SEPP 1 Objection to FSR.
Public Objection:	Yes – 21 Individual Letters of Objection, a Petition Containing 20 signatures and a Petition containing 262 signatures.
Permissible:	Yes

THE DIRECTOR OF PLANNING AND DEVELOPMENT REPORTS:-

Executive Summary

The application has been referred to the Joint Regional Planning Panel pursuant to Clause 3 of Schedule 4A of the Environmental Planning and Assessment Act 1979 (EP&A Act) as the Capital Investment Value of the proposal exceeds \$20 million.

The application originally requested consent for demolition of the existing buildings, excavation and construction of a mixed residential and commercial development accommodating 99 apartments, 14 townhouses, 280m² of retail floor space, car parking for 216 vehicles located within a partial basement level and planting in accordance with the submitted landscape plan.

A separate application was however approved on 23 June 2011 for demolition works (DA 11/031) and these works have now been completed to slab level, ie all surface elements of the previous construction remain in place. The Application has been amended to exclude demolition of the buildings.

The floor plates of Level 5 and Level 6 of the eastern two residential flat buildings (Buildings 2 and 3) have been reduced to conform with established precedent of locality to minimise bulk and scale and to reduce impacts on views from adjacent properties. These modifications result in the reduction of four (4) apartments as shown in sketch plans submitted by the Applicant. This modification also requires deletion of level 7. It is therefore proposed to the Panel that this application be modified by way of ‘Deferred Commencement Condition’ and that the application as modified becomes an application for the construction of a mixed residential and commercial development accommodating a total of 109 dwellings (comprising 95 apartments and 14 townhouses).

The site is zoned 2(b) Residential pursuant to Botany Local Environmental Plan 1995. The proposal falls within the definitions of “multi unit housing”, “residential flat buildings” and “local shops” and is permissible in this zone with development consent.

The floor space ratio (FSR) of the proposed development is 1.57:1, however the proposal as modified by deferred commencement consent condition will attain an FSR of 1.51:1 when calculated in accordance with the Botany Local Environmental Plan 1995 (BLEP 1995) and 1.44:1 when calculated in accordance with the definition adopted by the Standard LEP Template. This exceeds the maximum allowable FSR of 1:1 for sites that have an area of in excess of 2,500m² within the Residential 2(b) zone. Accordingly a State Environmental Planning Policy No. 1 Objection has been submitted to address the departure.

The application is also Integrated Development as the proposal requests approval for excavation works for the basement level that will transect the watertable. As such the application was referred to the NSW Office of Water who issued their General Terms of Approval on 1 April 2011. In their letter of concurrence the Office of Water advised Council that the basement must be constructed as a fully tanked structure to prevent the need for permanent or semi-permanent pumping of groundwater seepage from below-ground areas, and they also recommended that the consent be Staged to permit demolition of existing buildings and clearing of the surface of the site under Stage 1 to allow monitoring of groundwater, with Stage 2 permitting excavation and construction of the proposed development. The consent has been staged as suggested and a condition imposed in respect of the basement construction.

The proposed development is located adjacent to Booralee Park, a Heritage Item under Botany Local Environmental Plan 1995. The application was also referred to Council’s Design Review Panel on two occasions for pre-application consideration. A Heritage Impact Statement was submitted with the application and referred the Botany Historical Trust and it has been considered the proposal satisfactorily addressed the adjacent Heritage Item and the recommendations of the Design Review Panel and Botany Historical Trust.

The application was notified for a 30 day period from 1 March 2011 to 31 March 2011 in accordance with Council’s Notification Development Control Plan No.24 together with the Integrated Development Provisions under the *Environmental Planning and Assessment Act 1979*. Twenty-one (21) individual letters of objection and a petition containing 20 signatures objecting to the proposal were received. An additional petition containing 262 signatures was submitted to Council on 6 February 2012 objecting to the proposed variations to Council’s floor space ratio and height and controls. The key issues raised in the objections include the traffic, parking, contamination, building height and design/character, density (floor space ratio), loss of views, privacy impacts, loss of property value, loss of sunlight, site isolation, inadequacy of existing public services to cater for the proposed development and increased crime.

A Resident's Consultative Meeting was held on 7 June 2011, and based on the significant degree of concern raised with traffic, parking and site contamination it was agreed that Council would engage an independent Traffic Consultant and an independent Environmental Scientist to review of the broader traffic and parking impacts in the area and respond to the site contamination issues, respectively. A separate meeting with six community nominated representatives and the Council appointed Traffic Consultant was held on 3 October 2011 to ensure that the local traffic and parking issues were properly understood and investigated. A subsequent Resident's Consultative Committee Meeting was held on 6 February 2012 where the consultants were able to provide at first hand responses to resident concerns. At this meeting the modified plans for the upper levels of the eastern two residential flat buildings were also presented which as indicated, includes the removal of Level 7 together with modifications to Levels 5 and 6 of Buildings 2 and 3. These plans are numbered SK801 and SK800 Issue 1 dated November 2011.

The matters raised by members of the local community have been considered in the assessment and subject to amendments made together with imposition of conditions of consent as recommended, impacts on adjoining properties and the locality are considered to be minimised and satisfactory in terms of policy requirements and objectives.

The development application in its amended form has been assessed in accordance with the relevant requirements of the Environmental Planning and Assessment Act and is recommended for a "Deferred Commencement Consent" and subject to conditions of consent, with such consent being separated into the following two stages as recommended by the NSW Office of Water:

- Stage 1 – Removal of the remaining slab(s) that are in contact with the ground surface and clearing of the surface of the site at 8-32 Jasmine Street and 68-70 Bay street, Botany, to allow the installation of groundwater monitoring bores to address the issued identified in the General Terms of Approval from the NSW Office of Water dated 1 April 2011; and,
- Stage 2 - The excavation at the site and construction of the mixed residential and retail development accommodating 95 apartments, 14 townhouses, 280m² of retail floor space, car parking for 216 vehicles located within a partial basement level and planting in accordance with the submitted landscape plan, at 8-32 Jasmine Street and 68-70 Bay Street, Botany.

Site Description

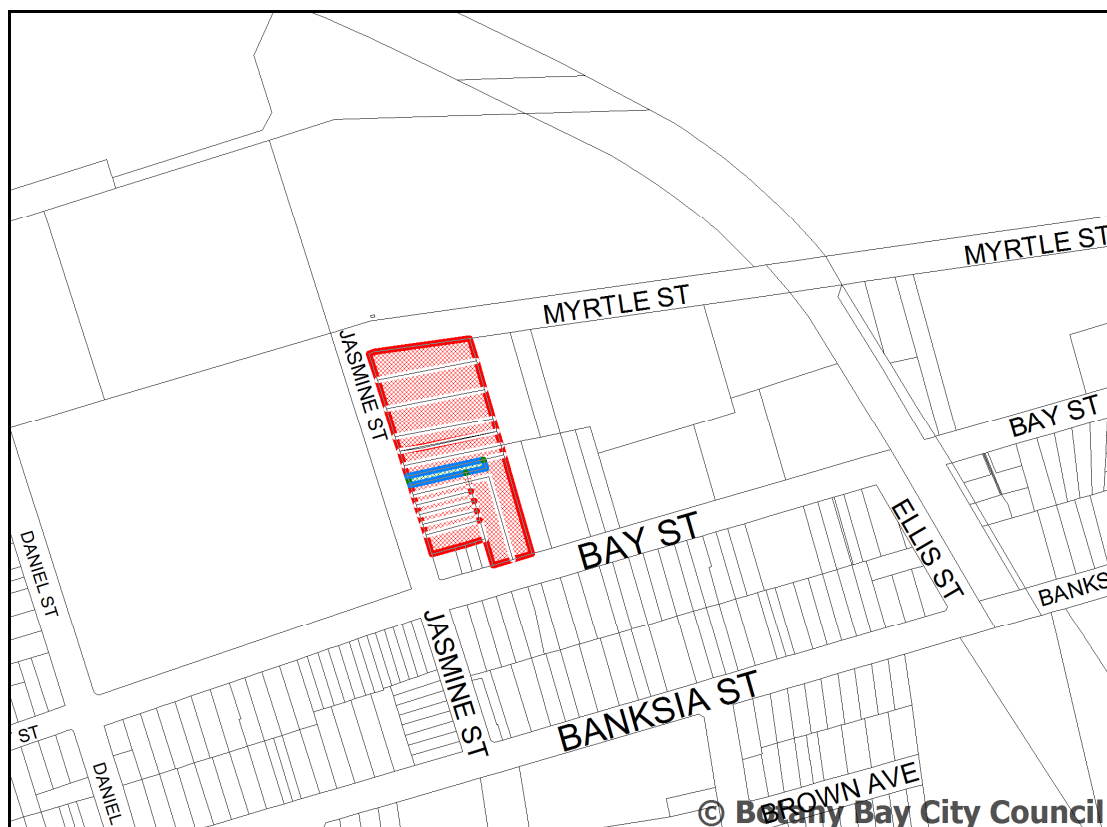
The subject site is commonly known as 8-32 Jasmine Street and 68-70 Bay Street, Botany. The site has a 63.5 metre frontage to Myrtle Street to the north, a 123.1 metre frontage to Jasmine Street to the west and a 26.8 metre frontage to Bay Street to the south. The site is formed by the following fifteen (15) allotments, which make up a total site area of 8,829m²:

- Lot A in DP 392025, being No.8 Jasmine Street;
- Lot B in DP 392025, being No.10 Jasmine Street;
- Lot 2 in DP 201614, being No. 12 Jasmine Street;
- Lot 1 in DP 201614, being No. 14 Jasmine Street;
- Lot 1 in DP 508743, being 20-32 Jasmine Street;

- Lot 10 in DP 598160, being 20-32 Jasmine Street;
- Lot B in DP 345783, being 20-32 Jasmine Street;
- Lots 1 – 3 in DP 312248, being 20-32 Jasmine Street;
- Lots 2-3, Sec H in DP 1787, being 20-32 Jasmine Street;
- Lot 1 in DP 455885, being 20-32 Jasmine Street;
- Lot 5 in DP 19083, being No.68 Bay Street; and,
- Lot 11 in DP 598160, being No.70 Bay Street.

The site is located within the Residential 2(b) zone and is currently vacant. It was recently occupied by a number of light industrial and warehouse buildings and two pairs of semi-detached dwellings with frontage to Jasmine Street. These buildings were demolished in accordance with Development Consent No. 11/031.

The site is relatively level and contains some mature trees located along the Jasmine Street frontage and at the corner of Jasmine and Myrtle Streets. The existing site trees include a group of conifers along the Jasmine Street frontage and a second group of conifers are located within the site at the corner of Jasmine and Myrtle Streets. A Eucalypt tree and one other conifer tree located at the corner of Jasmine and Myrtle Streets are within the road reserve.



Location Plan

Current Site Photos



Photo 1 - view of the site looking north (taken from rooftop terrace at No. 2 Jasmine St)



Photo 2 - View of site looking north (taken from 1st floor of No. 2 Jasmine Street)



Photo 3 - Front Façade No. 2 Jasmine Street (one of the four townhouses located at the corner of Jasmine & Bay Streets)



Photo 4 - rear elevations No. 66C, 66B & 66A Bay Street & part No. 2 Jasmine Street

Historic Site Photos – i.e. before demolition works.

Below are photos of the site prior to the demolition works approved by Development Application No.11/031.



Photo 5 – View north along Jasmine Street (taken from intersection Bay St & Jasmine St). (Buildings now demolished)



Photo 6 – View south along Jasmine Street (Buildings now demolished)



Photo 7 – Corner of Myrtle Street & Jasmine Street (buildings now demolished)



Photo 8 – 68-70 Bay Street, Botany (building now demolished)

Description of Surrounding Development

Immediately to the east of the subject site are located industrial premises sited on land zoned Residential 2(b). Further to the east are existing and approved medium density residential developments comprised of townhouses and residential flat buildings. It should be noted that Development Applications for residential developments are currently under assessment on the sites located immediately adjacent to, and to the east of and to the south of the subject site being No.72 Bay Street (DA 11/086) and No.1 Myrtle Street (DA 11/153). The proposal at No.72 Bay Street comprises eight (8) townhouses and the proposal at No.1 Myrtle Street is comprised of 12 townhouses with basement car parking for 25 vehicles. Both are still under assessment; however it is noted that the Application for No.1 Myrtle Street is before Council's Development Committee for determination on 15 February 2012.

To the west of the site on the opposite side of Jasmine Street is Booralee Park, a Heritage Item. Booralee Park accommodates playing fields, amenities and a children's play area.

Botany Aquatic Centre is located immediately opposite the site on the northern side of Myrtle Street and Booralee Park (Heritage Item) is located approximately 100 metres to the west of the subject site. These open space areas are well landscaped and provide significant benefit to the subject site and the area.

To the south of the site at No. 4 Jasmine Street is a vacant site. Most recently the site was improved by a single storey detached cottage, however this dwelling has now been demolished. There are currently no applications for the development of this parcel of land.

Immediately to the south of No.4 Jasmine Street is a row of four (4) townhouses which are located on the corner of Jasmine and Bay Streets. These townhouses have limited rear private open space which is generally elevated above ground level.

To the south, on the opposite side of Bay Street, are generally located single storey detached dwelling houses.

The Botany Goods Railway Line is located to the east at the termination or cul-de-sac of Myrtle Street.

Site and Development History

The site was most recently occupied by a spirituous bottling factory with warehousing, car park and vacant area, and two pairs of semi-detached residential buildings.

Development Application No.07/225 being a Masterplan application requesting demolition of the existing structures and construction of 79 residential dwellings was withdrawn on 13 April 2007.

Development Application No. 11/031 was granted deferred commencement consent by Council on the 27 July 2011 for demolition of the existing structures located on site (subject to retention of the ground floor slab and paved surfaces) at 8-32 Jasmine Street and 68-70 Bay Street, Botany. The deferred commencement conditions were satisfied and the consent became operational on 27 July 2011.

A Section 96(1A) application No. 11/031/02 to amend Condition 38(d) relating to the number of truck movements and amend Condition 39 relating to the provision of off-street parking spaces was approved on 29 August 2011.

A further Section 96(1A) Application No.11/031/03 was lodged with Council on 22 August 2011 to modify DA 11/031 to allow the removal of the ground floor slab and paved structures. This application is still under assessment, however the works requested under this Section 96 Application form part of this Development Application 11/018. This application now before the Panel for determination.

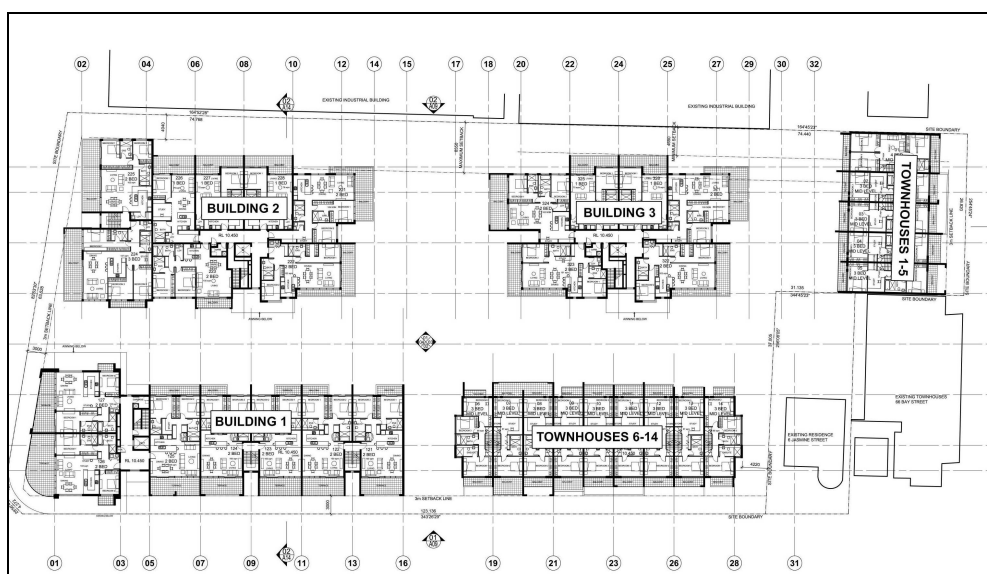
Description of Development

The application requests consent for the demolition of the remaining concrete slabs, clearing of the site, excavation and construction of a mixed residential and retail development accommodating 99 apartments, 14 townhouses, 280m² of retail floor space, car parking for 216 vehicles located within a partial basement level and planting and tree removal in accordance with the submitted landscape plan. The unit mix of the application was as follows:

	Townhouse	Unit	TOTAL	Dwelling Mix
1 bedroom	-	23	23	20%
2 bedroom	-	66	66	59%
3 bedroom	13	10	23	20%
4 bedroom	1	-	1	1%
TOTAL			113	100%

The Applicant has submitted sketch plans showing a reduced floor plate of Levels 5 and 6 of Buildings 2 and 3 (i.e. the six storey residential flat buildings). The amended proposal reduces the number of dwellings proposed by four, resulting in 95 apartments and 14 townhouses (a total of 109 dwellings). Compliance with the submitted sketch plans is proposed by way of 'Deferred Commencement Condition'.

The development comprises of 5 Buildings as follows (as identified by clockwise):



- Building 1

Building 1 is located at the intersection of Jasmine and Myrtle Street. It contains 18 x 2 bedroom units, 5 x 3 bedroom units and 280m² of non-residential floor space, resulting in a total of 23 units.

- Building 2

Building 2 is located immediately to the east of Building 1. It has frontage to Myrtle Street and is adjacent to No. 1 Myrtle Street to the east. The proposed building contains as amended by the “deferred commencement” condition, 12 x 1 bedroom units, 24 x 2 bedroom units and 3 x 3 bedroom units, resulting in a total of 39 units.

- Building 3

Building 3 is located to the south of Building No. 2 and between Building 2 and the townhouses that have a frontage to Bay Street at the sites southern boundary. This building is proposed to contain as amended by the “deferred commencement” condition 9 x 1 bedroom units and 24 x 2 bedroom units, resulting in a total of 33 units.

- Townhouses

The application proposes five (5) townhouses with frontage to Bay Street and nine (9) townhouses with frontage to Jasmine Street. The townhouses are all two storeys with a loft level, except for Townhouses No. 7 & 14, resulting in a total of 14 townhouses.

The dwelling numbers and mix for this amended proposal is follows:

	Townhouse	Unit	TOTAL	Dwelling Mix
1 bedroom	-	21	21	19%
2 bedroom	-	66	66	61%
3 bedroom	13	8	21	19%
4 bedroom	1	-	1	1%
TOTAL			109	100%

The proposed development is comprised of two (2) blocks of townhouses and three (3) residential flat buildings. The following table contains a brief assessment of the proposal against the key planning controls:

Summary table:

This table contains a summary of the proposed development based a total of 109 dwellings as required by the proposed Deferred Commencement Condition of Consent (Amended Proposal).

Control	Required	Proposal	Complies
FSR	1:1 (8,829m ²)	<u>Botany LEP 1995</u> <i>Amended Proposal:</i> 1.51:1 (13,340m ² - for plans amended by Deferred Commencement Condition) <i>Original Proposal:</i> 1.57:1 (13,820m ²)	No – Refer to SEPP 1 Objection submitted.
Height	2 storeys plus attic and 4 storeys in the centre of the development	<u>DCP 35</u> 2 storey plus attic to Jasmine Street and Bays Street, 3 to 5 storeys along Myrtle Street and 6 storeys in the centre	No – Refer to DCP 35
Site Coverage	40% (3,532m ²)	83.4% (7,441m ² including basement) (48% or 4,214m ² for the buildings only, excluding the basement)	No – Refer to DCP 35
Car Parking	216 spaces allocated as follows for the amended proposal: <ul style="list-style-type: none">• 197 residential• 12 visitors• 7 retail Note: 2 visitors spaces to be shared with car wash bays	216 spaces allocated in accordance with DCP 35 and the Off-Street Parking DCP (for the amended proposal): <ul style="list-style-type: none">• 197 residential• 12 visitors• 7 retail Note: condition proposed requiring 2 visitors spaces to be shared with car wash bays	Yes
Deep Soil	No minimum percentage, but merit based	1,191m ² (13.5% of site area)	Merit Based.

The proposed development is described in detail in the five (5) sections detailed below:

Basement Car Parking and Parking Allocation

The basement carpark contains 216 spaces that will comprise 197 residential car spaces, 7 retail car spaces and 12 visitor's spaces (2 visitor's spaces to be shared as car wash bays). It should be noted as a result of the 'deferred commencement' condition the car parking will have 6 additional spaces due to the loss of four residential units. These spaces will be the subject of a condition to provide for additional visitor and retail spaces. Therefore the development will provide for 18 visitor parking spaces. The car park is provided over a single level which is excavated approximately 3 metres and raised between 1.0 and 1.5 metres above the existing ground level. The residential car spaces are separated from the visitors and commercial spaces by a boom gate, however a condition is proposed requiring that the residential car parking area be securely separated from the non-residential component.

The townhouse and residential flat buildings are located above the basement car park and direct access is provided from each of the townhouses to the private garages within the basement area. Lift or stair access is provided from the basement car parking area to access all

residential flat units. Natural ventilation and skylights are proposed to improve the amenity and reduce energy consumption within the car park area.

Retail Component

The proposed development includes the provision of 280m² of retail floorspace at ground floor level. The retail floor area is located opposite the Botany Aquatic Centre and Booralee Park at the intersection of Jasmine and Myrtle Streets. This tenancy has been designed to be flexible such that capable of being subdivided into three or more separate tenancies depending on local business demand. A condition is also proposed requiring that the tenancy be split into three tenancies with a maximum 100m² for each tenancy to ensure that the proposal is permissible in accordance with the definition of “Local Shop” in Council’s LEP 1995. The retail floor space has been recessed behind the property boundaries to allow outdoor seating areas if required.

Internal access has not been provided to the retail tenancies and a condition is proposed requiring direct access from the basement to within each of the future retail tenancies.

The specific details of the non-residential use(s) have not been submitted with this application and a condition is therefore proposed requiring the submission of a separate application prior to use of the non-residential tenancy.

Level	Unit No.	Gross Floor Area	Car Parking
Ground	Unit 1	280m ²	7 car spaces - conditional

Townhouse Component

The application proposes five (5) townhouses with frontage to Bay Street and nine (9) townhouses with frontage to Jasmine Street. The townhouses are all two storeys with a loft level, except for Townhouses No. 7 & 14. Townhouse No. 14 was designed as a two storey dwelling to respect the scale and amenity of the adjacent dwelling at No. 6 Jasmine Street (which has now been demolished), and No.6 has been restricted to two storey in height to maintain symmetry in design.

To the ground floor level of each townhouse is an open plan kitchen, dining and living room, and each townhouse has a generous front porch (part or fully covered) and rear courtyard. To the first floor level of each townhouse are generally located two bedrooms, a bathroom, study area and storage area. Townhouse No. 1 is located adjacent to No. 72 Bay Street and has a larger floor plate. It contains three bedrooms, bathroom and a family area at first floor level, while Townhouses 7 & 14 contain three bedrooms, bathroom and ensuite at first floor level. Each of the proposed loft levels contains a bedroom, ensuite bathroom, tv / lounge area and front and rear balcony.

Each townhouse is provided with a secure garage for two vehicles, waste bins and ancillary storage. The garages are located within the basement car park and are access via the same single entrance from Myrtle Street.

The primary area of ‘private open space’ located behind each dwelling does not satisfy the minimum size requirements contained in Council’s DCP 35

The following table provides a summary of the proposed townhouses for this development:

Townhouse No.	No. of Bedrooms	Dwelling Size (m²)	Primary Private Open Space in m² per dwelling	Total External Open Space in m² per dwelling (at ground level)	Car parking provision
Townhouse 1	4 bedrooms	199.6m ²	26.4m ²	62.4m ²	2
Townhouse 2	3 bedrooms	159.8m ²	25.8m ²	54m ²	2
Townhouse 3	3 bedrooms	159.8m ²	25.8m ²	54m ²	2
Townhouse 4	3 bedrooms	159.8m ²	25.8m ²	54m ²	2
Townhouse 5	3 bedrooms	159.8m ²	25.8m ²	54m ²	2
Townhouse 6	3 bedrooms	137.8m ²	30.8m ²	118m ²	2
Townhouse 7	3 bedrooms	159.8m ²	21m ²	49.2m ²	2
Townhouse 8	3 bedrooms	159.8m ²	21m ²	49.2m ²	2
Townhouse 9	3 bedrooms	159.8m ²	21m ²	49.2m ²	2
Townhouse 10	3 bedrooms	159.8m ²	21m ²	49.2m ²	2
Townhouse 11	3 bedrooms	159.8m ²	21m ²	49.2m ²	2
Townhouse 12	3 bedrooms	159.8m ²	21m ²	49.2m ²	2
Townhouse 13	3 bedrooms	159.8m ²	21m ²	49.2m ²	2
Townhouse 14	3 bedrooms	137.8m ²	21m ²	49.2m ²	2

Table 1**Residential Flat Component**

The proposed development is comprised of three residential flat buildings, with details of each building provided below.

- Building 1 –

Building 1 is located at the intersection of Jasmine and Myrtle Street. It contains 18 x 2 bedroom units, 5 x 3 bedroom units (a total of 23 residential units) and 280m² of non-residential floorspace. The building steps up in height from three storeys plus loft level at its southern end (adjacent to the townhouses) to five stories at its northern end adjacent to the intersection of Jasmine and Myrtle Street. The top floor level of the building has been stepped back to minimise the bulk and scale of the development, and a lift overrun, access stairs and plant room are provided at roof top (sixth floor) level.

Access to the units located within the three storey (plus loft) level building is via stairs only, with access from Jasmine Street. A lift has been provided for the five storey portion toward the street corner.

The following table provides a summary of the Building 1:

Unit No.	No. of Bedrooms	Dwelling Size (m²)	Private Open Space (m² / dwelling)	Total External Area (m² / dwelling)	Car parking provision	Cross Ventilation
Unit 111	2 bedrooms	100m ²	32.8m ²	74.8m ²	2	Y
Unit 112	2 bedrooms	100m ²	32.8m ²	74.8m ²	2	Y
Unit 113	2 bedrooms	100m ²	32.8m ²	74.8m ²	2	Y
Unit 114	2 bedrooms	100m ²	32.8m ²	74.8m ²	2	Y
Unit 115	2 bedrooms	108m ²	32.8m ²	80.8m ²	2	Y

Unit No.	No. of Bedrooms	Dwelling Size (m ²)	Private Open Space (m ² / dwelling)	Total External Area (m ² / dwelling)	Car parking provision	Cross Ventilation
Unit 121	2 bedrooms	100m ²	20.4m ²	28m ²	2	Y
Unit 122	2 bedrooms	100m ²	20.4m ²	28m ²	2	Y
Unit 123	2 bedrooms	100m ²	20.4m ²	28m ²	2	Y
Unit 124	2 bedrooms	100m ²	20.4m ²	28m ²	2	Y
Unit 125	2 bedrooms	108m ²	24.6m ²	38m ²	2	Y
Unit 126	2 bedrooms	103m ²	43m ²	43m ²	2	Y
Unit 127	2 bedrooms	103m ²	30m ²	30m ²	2	Y
Unit 131	3 bedrooms	140m ²	20.4m ²	28m ²	2	Y
Unit 132	3 bedrooms	141m ²	20.4m ²	28m ²	2	Y
Unit 133	3 bedrooms	141m ²	20.4m ²	28m ²	2	Y
Unit 134	3 bedrooms	141m ²	20.4m ²	28m ²	2	Y
Unit 135	2 bedrooms	108m ²	24.6m ²	38m ²	2	Y
Unit 136	2 bedrooms	103m ²	43m ²	43m ²	2	Y
Unit 137	2 bedrooms	103m ²	30m ²	30m ²	2	Y
Unit 141	2 bedrooms	108m ²	24.6m ²	38m ²	2	Y
Unit 142	2 bedrooms	103m ²	42m ²	42m ²	2	Y
Unit 143	2 bedrooms	103m ²	30m ²	30m ²	2	Y
Unit 151	3 bedroom	186m ²	174m ²	256m ²	2	Y

Table 2

- Building 2 –

Building 2 is located immediately to the east of Building 1. It has frontage to Myrtle Street and is adjacent to No. 1 Myrtle Street to the east. The proposed building contains 13 x 1 bedroom units, 24 x 2 bedroom units and 4 x 3 bedroom units, resulting in a total of 41 units.

The modified proposal as recommended by way of Deferred Commencement Condition contains 12 x 1 bedroom units, 24 x 2 bedroom units and 3 x 3 bedroom units, resulting in a total of 39 units. This amended proposal reduces the floor plate of the building at Levels 5 and 6 only. Level 7 of the Building is to be removed.

The building is three storeys in height at the Myrtle Street frontage, however it increases to six storeys plus roof-top recreation space further into the site. The roof-top level of the building contains private open space areas for exclusive use of residents of the units at Level 6. The roof space is accessed by stair only, however the roof level contains the lift overrun and central hot water plant room.

The following table provides a summary of Building 2 as proposed:

Unit No.	No. of Bedrooms	Dwelling Size (m ²)	Private Open Space (m ² / dwelling)	Total External Area (m ² / dwelling)	Car parking provision	Cross Flow
Unit 211	2 bedrooms	109m ²	90m ²	90m ²	2	Y
Unit 212	2 bedrooms	103m ²	38m ²	38m ²	2	Y

Unit No.	No. of Bedrooms	Dwelling Size (m ²)	Private Open Space (m ² / dwelling)	Total External Area (m ² / dwelling)	Car parking provision	Cross Flow
Unit 213	2 bedrooms	105m ²	40m ²	40m ²	2	N
Unit 214	3 bedrooms	137m ²	36m ²	36m ²	2	Y
Unit 215	2 bedrooms	102m ²	36m ²	36m ²	2	Y
Unit 216	1 bedroom	79m ²	65m ²	65m ²	1	N
Unit 217	1 bedroom	75m ²	68m ²	68m ²	1	N
Unit 218	1 bedroom	75m ²	68m ²	68m ²	1	N
Unit 221	2 bedrooms	109m ²	32m ²	32m ²	2	Y
Unit 222	2 bedrooms	103m ²	30m ² (Conditional)	30m ²	2	Y
Unit 223	2 bedrooms	100m ²	18m ² (Conditional)	18m ²	2	N
Unit 224	3 bedrooms	137m ²	36m ²	42m ²	2	Y
Unit 225	2 bedrooms	102m ²	36m ²	36m ²	2	Y
Unit 226	1 bedroom	79m ²	20m ²	20m ²	1	N
Unit 227	1 bedroom	75m ²	19m ²	19m ²	1	N
Unit 228	1 bedroom	75m ²	19m ²	19m ²	1	N
Unit 231	2 bedrooms	109m ²	32m ²	32m ²	2	Y
Unit 232	2 bedrooms	103m ²	30m ² (Conditional)	30m ²	2	Y
Unit 233	2 bedrooms	100m ²	18m ² (Conditional)	18m ²	2	N
Unit 234	3 bedrooms	137m ²	36m ²	42m ²	2	Y
Unit 235	2 bedrooms	102m ²	36m ²	36m ²	2	Y
Unit 236	1 bedroom	79m ²	20m ²	20m ²	1	N
Unit 237	1 bedroom	75m ²	19m ²	19m ²	1	N
Unit 238	1 bedroom	75m ²	19m ²	19m ²	1	N
Unit 241	2 bedrooms	109m ²	32m ²	32m ²	2	Y
Unit 242	2 bedrooms	103m ²	30m ² (Conditional)	30m ²	2	Y
Unit 243	2 bedrooms	101m ²	65m ² (Conditional)	65m ²	2	Y
Unit 244	2 bedrooms	102m ²	97m ²	97m ²	2	Y
Unit 245	1 bedroom	75m ²	19m ²	19m ²	1	N
Unit 246	1 bedroom	75m ²	19m ²	19m ²	1	N
Unit 251	2 bedrooms	109m ²	32m ²	32m ²	2	Y
Unit 252	2 bedrooms	103m ²	30m ² (Conditional)	30m ²	2	Y
Unit 253	2 bedrooms	101m ²	30m ² (Conditional)	30m ²	2	Y
Unit 254	2 bedrooms	102m ²	27m ²	27m ²	2	Y
Unit 255	1 bedroom	75m ²	19m ²	19m ²	1	N
Unit 256	1 bedroom	75m ²	19m ²	19m ²	1	N
Unit 261	2 bedrooms	111m ²	36m ²	36m ²	2	Y
Unit 262	2 bedrooms	103m ²	35m ²	35m ²	2	Y

Unit No.	No. of Bedrooms	Dwelling Size (m ²)	Private Open Space (m ² / dwelling)	Total External Area (m ² / dwelling)	Car parking provision	Cross Flow
Unit 263	2 bedrooms	103m ²	33m ²	33m ²	2	Y
Unit 264	2 bedrooms	114m ²	27.6m ²	39.6m ²	2	Y
Unit 265	2 bedrooms	105m ²	36m ²	36m ²	2	N

Table 3

The modified unit and balcony sizes for Levels 5 and 6 of Building 2 (as recommended by way of Deferred Commencement Condition) are as follows:

Unit 251	2 bedrooms	109m ²	32m ²	32m ²	2	Y
Unit 252	2 bedrooms	103m ²	30m ² (Conditional)	30m ²	2	Y
Unit 253	2 bedrooms	100m ²	33m ²	33m ²	2	Y
Unit 254	2 bedrooms	104m ²	27m ²	47m ²	2	Y
Unit 255	1 bedroom	75m ²	19m ²	19m ²	1	N
Unit 261	2 bedrooms	109m ²	52m ²	52m ²	2	Y
Unit 262	2 bedrooms	103m ²	35m ²	35m ²	2	Y
Unit 263	2 bedrooms	101m ²	33m ²	33m ²	2	Y
Unit 264	2 bedrooms	102m ²	47m ²	47m ²	2	Y

Table 3A

- Building 3

Building 3 is located to the south of Building No. 2 and between Building 2 and the townhouses with frontage to Bay Street at the sites southern boundary. This building is proposed to contain 10 x 1 bedroom units, 24 x 2 bedroom units, 1 x 3 bedroom units, resulting in a total of 35 units.

The modified proposal as recommended by way of Deferred Commencement Condition contains 9 x 1 bedroom units, and 24 x 2 bedroom units resulting in a total of 33 units. The amendments to Building 3 relate to Levels 5 and 6 of the building only.

The building is six storeys in height plus roof top recreation level which has been provided for the benefit of the five units at Level 6.

The following table provides a summary of the Building 3:

Unit No.	No. of Bedrooms	Dwelling Size (m ²)	Private Open Space (m ² / dwelling)	Total External Area (m ² / dwelling)	Car parking provision	Cross Flow
Unit 311	2 bedrooms	109m ²	46.9m ²	46.9m ²	2	Y
Unit 312	2 bedrooms	103m ²	40.5m ²	40.5m ²	2	Y
Unit 313	2 bedrooms	101m ²	40.5m ²	40.5m ²	2	Y
Unit 314	2 bedrooms	102m ²	58.2m ²	58.2m ²	2	Y
Unit 315	1 bedroom	75m ²	56.8m ²	56.8m ²	1	N

Unit No.	No. of Bedrooms	Dwelling Size (m ²)	Private Open Space (m ² / dwelling)	Total External Area (m ² / dwelling)	Car parking provision	Cross Flow
Unit 316	1 bedroom	75m ²	56.8m ²	56.8m ²	1	N
Unit 321	2 bedrooms	109m ²	32m ²	32m ²	2	Y
Unit 322	2 bedrooms	103m ²	30m ² (Conditional)	30m ²	2	Y
Unit 323	2 bedrooms	101m ²	30m ² (Conditional)	30m ²	2	Y
Unit 324	2 bedrooms	102m ²	28m ²	28m ²	2	Y
Unit 325	1 bedroom	75m ²	19m ²	19m ²	1	N
Unit 326	1 bedroom	75m ²	19m ²	19m ²	1	N
Unit 331	2 bedrooms	109m ²	32m ²	32m ²	2	Y
Unit 332	2 bedrooms	103m ²	30m ² (Conditional)	30m ²	2	Y
Unit 333	2 bedrooms	101m ²	30m ² (Conditional)	30m ²	2	Y
Unit 334	2 bedrooms	102m ²	28m ²	28m ²	2	Y
Unit 335	1 bedroom	75m ²	19m ²	19m ²	1	N
Unit 336	1 bedroom	75m ²	19m ²	19m ²	1	N
Unit 341	2 bedrooms	109m ²	32m ²	32m ²	2	Y
Unit 342	2 bedrooms	103m ²	30m ² (Conditional)	30m ²	2	Y
Unit 343	2 bedrooms	101m ²	30m ² (Conditional)	30m ²	2	Y
Unit 344	2 bedrooms	102m ²	28m ²	28m ²	2	Y
Unit 345	1 bedroom	75m ²	19m ²	19m ²	1	N
Unit 346	1 bedroom	75m ²	19m ²	19m ²	1	N
Unit 351	2 bedrooms	104m ²	32m ²	32m ²	2	Y
Unit 352	2 bedrooms	100m ²	30m ² (Conditional)	30m ²	2	Y
Unit 353	2 bedrooms	101m ²	30m ² (Conditional)	30m ²	2	Y
Unit 354	2 bedrooms	102m ²	28m ²	28m ²	2	Y
Unit 355	1 bedroom	75m ²	19m ²	19m ²	1	N
Unit 356	1 bedroom	75m ²	19m ²	19m ²	1	N
Unit 361	2 bedrooms	111m ²	20.7m ²	28.2m ²	2	Y
Unit 362	2 bedrooms	103m ²	20.7m ²	28.2m ²	2	Y
Unit 363	2 bedrooms	103m ²	27m ²	39m ²	2	Y
Unit 364	3 bedrooms	114m ²	36m ²	36m ²	2	Y
Unit 365	2 bedroom	105 m ²	27m ²	31m ²	2	N

Table 4

The modified unit and balcony sizes for Levels 5 and 6 of Building 3 (as recommended by way of Deferred Commencement Condition) are as follows:

Unit No.	No. of Bedrooms	Dwelling Size (m ²)	Private Open Space (m ² / dwelling)	Total External Area (m ² / dwelling)	Car parking provision	Cross Flow
Unit 351	2 bedrooms	104m ²	52m ²	52m ²	2	Y
Unit 352	2 bedrooms	100m ²	35m ²	35m ²	2	Y
Unit 353	2 bedrooms	101m ²	30m ² (Conditional)	30m ²	2	Y
Unit 354	2 bedrooms	102m ²	28m ²	28m ²	2	Y
Unit 355	1 bedroom	75m ²	19m ²	19m ²	1	N
Unit 361	2 bedrooms	103m ²	52m ²	52m ²	2	Y
Unit 362	2 bedrooms	103m ²	35m ²	35m ²	2	Y
Unit 363	2 bedrooms	103 m ²	33m ²	33m ²	2	Y
Unit 364	2 bedrooms	103 m ²	47m ²	47m ²	2	Y

Table 4A

SECTION 79C CONSIDERATIONS

In considering the Development Application, the matters listed in Section 79C of the Environmental Planning and Assessment Act 1979 have been taken into consideration in the preparation of this report and are as follows:

(a) The provisions of any EPI and DCP and any other matters prescribed by the Regulations.

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

Groundwater was encountered across the site at depths varying from between 5.37 metres to Australian Height Datum (AHD) within the eastern part of the site, falling to 4.76 metres to AHD within the western part of the site. This is approximately 1-2 metres below the existing ground surface level and the proposal therefore penetrates the watertable and the application is classified as Integrated Development in accordance with the *Water Act 1912* as the development involves temporary construction dewatering activities.

In accordance with the *EP&A Regulations 2000*, before granting development consent to carry out the development, the consent authority must obtain from each relevant approval body the general terms of any approval proposed to be granted by the approval body in relation to the development.

In this regard, the application was referred to the NSW Office of Water and the application was notified to the public for a 30 day period from 1 March 2011 to 31 March 2011. The NSW Office of Water determined that a Licence under Part 5 of the *Water Act 1912* is required in relation to the subject development application and they issued their General Terms of Approval (GTAs) by letter dated 1 April 2011.

In addition to the temporary dewatering, the NSW Office of Water advised Council that the basement must be constructed as a fully tanked structure to prevent the need for permanent or semi-permanent pumping of groundwater seepage from below-ground areas. Furthermore, The Office of Water recommended that the consent be

Staged to permit demolition of existing buildings and clearing of the surface of the site under Stage 1 to allow monitoring of groundwater and to allow groundwater quality testing before any dewatering is to occur, with Stage 2 permitting excavation and construction of the proposed development. A separate application (DA 11/031) for the demolition and excavation works has been submitted to Council, and consent has been granted to the demolition of the buildings. As such, the consent is proposed to be staged as follows:

- **Stage 1** – Removal of the remaining slab(s) and clearing of the surface of the site at 8-32 Jasmine Street and 68-70 Bay street, Botany, to allow the installation of groundwater monitoring bores to address the issued identified in the General Terms of Approval from the NSW Office of Water dated 1 April 2011; and,
- **Stage 2** - The excavation at the site and construction of the mixed residential and retail development accommodating 95 apartments, 14 townhouses, 280m² of retail floor space, car parking for 216 vehicles located within a partial basement level and planting in accordance with the submitted landscape plan, at 8-32 Jasmine Street and 68-70 Bay Street, Botany.

State Environmental Planning Policy (SEPP) No. 1 – Development Standards

Clause 12(1)(a) of Botany Local Environmental Plan 1995 specifies a maximum floor space ratio of 0.5:1 for sites located within the Residential 2(b) zone.

Notwithstanding the provisions of Clause 12(1)(a), the Council may consent to the carrying out of residential development on land within Zone 2(b) to a maximum FSR of 1:1 where the site has an area in excess of 2,500m² and it is in the opinion that the proposed development will satisfy objectives under Clause 12(2).

The proposal seeks an FSR as indicated under Column 2 of the table below:

Requirement under Clause 12(2) of Botany LEP 1995	Proposed FSR	Deferred Commencement Plans
1:1 (8,829sqm)	1.57:1 (13, 820sqm)	1.51:1 (13, 243.5m ²)

Accordingly, the applicant has submitted an objection to Clause 12(2) of the Botany LEP 1995 pursuant to State Environmental Planning Policy No 1 – Development Standards. The objection to the FSR control has been assessed in accordance with relevant case law and the rationale of the applicant as outlined below is generally agreed with:

1. Is the requirement a development standard?

The planning control in question is a development standard in the Botany Local Environmental Plan 1995, Clause 12(2), which specifies the FSR for the subject site as 1:1.

2. What is the underlying object or purpose of the standard? (If there is no stated objective of the standard)

The Botany LEP 1995 does not specify objectives for FSR controls and the SEPP 1 Objection submitted by the application states the following:

“The objectives are:

- *To ensure that development is in keeping with the optimum capacity of the site and the local area;*
- *To define allowable development density for generic building types;*
- *To provide opportunities for modulation and depth of external walls within the allowable FSR;*
- *To promote thin cross section buildings, which maximise daylight access and natural ventilation; and,*
- *To allow generous habitable balconies”.*

Even though there are no specific objectives for FSR, Council’s Multi Unit Housing and Residential Flat Building DCP No. 35 apply to the site and it contains objectives for redevelopment of these areas which are of relevance. The comments made above by the applicant in the SEPP 1 Submission are consistent with objectives of the DCP, which amongst others includes:

- The creation of high quality new housing in the City of Botany Bay,
- Development which is of a style, scale and design which responds to the streetscape and public domain within the neighbourhood; and,
- To protect the amenity of existing residents.

3. Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?

This may be found if:

- (a) The proposal meets the objectives of the development standard notwithstanding its non-compliance with the standard. In this instance one must determine the objectives of the standard and if not expressly stated in the LEP what are the inferred objectives?**
- (b) The underlying objective or purpose is not relevant to the development;**
- (c) The underlying objective or purpose would be defeated or thwarted if compliance was required with the standard; and**
- (d) The development standard has been virtually abandoned or destroyed by Council's own actions.**

The Applicant claims that compliance with the maximum FSR development standard is unreasonable and unnecessary in the circumstances of the case on the following grounds:

“In Wehbe v Pittwater Council [2007] NSWLEC 827, Preston CJ expressed the view that there are five (5) different ways in which an objection may be well founded and that approval of the objection may be consistent with the aims of the Policy:

- (a) *The proposal meets the objectives of the development standard notwithstanding its non-compliance with the standard. In this instance one must determine the objectives of the standard and if not expressly stated in the LEP what are the inferred objectives?*

The inferred objective of the FSR control is to ensure that new development results in a FSR that is compatible with the existing zoning and future character of the area.

The site is zoned 2(b) - Residential pursuant to the Clause 9 of the Botany LEP 1995, and multi unit housing, residential flat buildings and local shops are permissible in the zone with the consent of Council.

The objectives of the zone include “to provide scope for high-quality residential development in innovative forms on identified sites” and “to improve the quality of residential amenity by encouraging landscaping and good design in both new developments and renovations”.

The proposed development facilitates the removal of the existing light industrial/warehouse buildings and contributes to the ongoing redevelopment of the locality in the form of contemporary residential complexes.

The proposed development represents a high-quality design on an appropriately located site, providing a very good level of internal amenity and extensive new landscaping.

Further, the proposed development complies with the FSR control incorporated in the Draft Botany LEP 2011, representing a more contemporary expression of the desired future character of the locality.

Finally, the proposed development will contribute to achieving the target of 6,500 new dwellings within the Botany Bay Local Government Area (LGA) identified in the East Subregion of the Sydney Metropolitan Strategy as being required by 2031.

- (b) *The underlying objective or purpose of the standard is not relevant to the development;*

The underlying objectives and purposes of the FSR control remain relevant to the proposed development, and the proposed development is consistent with the inferred objective of the FSR control as set out above.

- (c) *The underlying object or purpose would be defeated or thwarted if compliance was required with the standard;*

The proposed development is consistent with the aims and objectives of SEPP No. 1 to the extent that compliance with the FSR control would hinder the attainment of the objects of the Environmental Planning and Assessment Act 1979.

The proposed development is consistent with the underlying objective of the FSR control and the relevant objectives of the zone, and represents a high-quality design on an appropriately located site, providing a very good level of internal amenity and extensive new landscaping.

Further, the proposed development facilitates the removal of the existing light industrial/warehouse buildings and contributes to the ongoing redevelopment of the locality in the form of contemporary residential complexes.

In the circumstances, the underlying objectives and purpose of the FSR control would be thwarted if the proposed development were not to proceed.

- (d) *The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;*

The FSR control has not specifically been abandoned or destroyed, however there are multiple examples of similar circumstances in which a variation to the FSR control has been approved.

In particular, the existing development at No's 9 - 19 Myrtle Street provides an FSR of approximately 1.03:1, and the approved development at No's 21 - 23 Myrtle Street provides an FSR of approximately 1.32:1.

The subject site is of comparable size to the site at No's 9 - 19 Myrtle Street, and approximately 50% larger than the site at No's 21 - 23 Myrtle Street.

The larger site area provides greater flexibility in the distribution of floor area on the site, and the three (3) street frontages provide a greater capacity to accommodate additional floor area.

Further, the subject site occupies a corner location where additional building form can best be accommodated."

The proposed development is not dissimilar to other nearby townhouse developments and residential flat buildings, where these developments have maintained the two storey plus attic townhouses to street edge and a six storey residential flat building towards the centre of the site. The proposed development from a solar access and

privacy issues are considered satisfactory as discussed further in the report. The proposed development is considered to provide a high level of amenity within the site.

The development in its amended form, is consistent with the surrounding form of development which is shown as follows:

Site	Site Area	Number of Units	Height	FSR	Approved
9-19 Myrtle St	9173m ²	28 Units and 35 Townhouse	2 storey to street and 6 storey residential flat building	1.03:1	20 November 2002
21-23 Myrtle Street	3,900m ²	34 Units and 9 Town houses	2 storey to street and 6 storey residential flat building	1.32:1	14 April 2009

Table 5

The SEPP 1 objection contends that compliance with the 1:1 FSR development standard is unreasonable and unnecessary in the circumstances of the case with reference to the objectives of SEPP 1, and floor space controls. It should be noted the even though the SEPP 1 makes reference to Council's Draft LEP, as this Draft LEP has not been exhibited, therefore has no weight in the determination, and should be considered by JRPP as information to Council's future intent of the redevelopment of the area. However based on the rationale and argument presented in the SEPP 1 submission is generally agreed with and it is recommended that the SEPP 1 objection be supported in this instance.

Regardless of the fact that the proposed FSR exceeds the maximum permissible of 1:1, any proposed development on this site should be consistent and in keeping with the established adjoining developments. It would be considered inappropriate for development on this particular site to be in strict compliance with this FSR standard, given the multi-unit housing developments surrounding the site. The proposal should complement and be in keeping with the scale of the surrounding development in the area, both developed and that yet to be developed in Myrtle Street.

4. Is the objection well founded?

The Applicant claims that the SEPP 1 Objection is well founded for the following:

- *“the proposed development will make efficient use of well serviced land in close proximity to existing infrastructure and services;*
- *the proposed development will facilitate the removal of the existing light industrial/warehouse buildings and contribute to the ongoing*

redevelopment of the locality in the form of contemporary residential complexes;

- *the proposed development provides a contemporary form of architecture consistent with the emerging character of the locality;*
- *the proposed development is consistent with the underlying objective of the FSR control and the relevant objectives of the zone, and represents a high-quality design on an appropriately located site, providing a very good level of internal amenity and extensive new landscaping;*
- *the surrounding developments at No's 9 - 19 Myrtle Street and No's 21 - 23 Myrtle Street exceed the FSR control, and relative to those sites, the subject site is approximately 50% larger than the site at No's 21 - 23 Myrtle Street (and therefore provides greater flexibility in the distribution of floor area), and the three (3) street frontages provide a greater capacity to accommodate additional floor area;*
- *the subject site occupies a corner location where additional building form can best be accommodated;*
- *the proposed development reflects the lower scale of development to the south of the site by providing townhouses along the Bay Street frontage;*
- *the proposed development reflects the lower scale of development towards the south-western corner of the site by providing townhouses along the southern portion of the Jasmine Street frontage;*
- *a progressive increase in building height will be established along the Jasmine Street frontage, with a suitable emphasis to the corner of Myrtle and Jasmine Streets;*
- *the taller buildings on the site are generally located along the eastern boundary to control the height transition between the southern and northern boundaries of the site when viewed from the public open space to the west;*
- *the proposed development will achieve a quality landscaping setting by providing a combination of private and communal landscaped areas;*
- *the hierarchy of canopy trees and shrubs will reinforce the internal movement patterns through the site, delineate between private and communal areas, and filter internal and external views of the built form;*
- *the new street trees along the frontages of the site will integrate the pedestrian network with the public domain and contribute to the general beautification of the streetscape;*
- *the proposed development achieves a very good level of internal amenity in terms of room sizes/dimensions/shapes, sunlight access, natural ventilation, visual and acoustic privacy, storage, indoor/outdoor space, efficient layouts/service areas, outlook and access;*
- *the proposed development will not impose any significant or adverse impacts on the amenity of surrounding land in terms of overshadowing, loss of privacy or loss of views;*

- *the proposed development complies with the FSR control incorporated in the Draft Botany LEP 2011, representing a more contemporary expression of the desired future character of the locality; and*
- *the proposed development will contribute to achieving the target of 6,500 new dwellings within the Botany Bay Local Government Area (LGA) identified in the East Subregion of the Sydney Metropolitan Strategy as being required by 2031.”*

Clause 12 of the Botany LEP states that Council may consent to the erection of a building in excess of the FSR requirement up to 1:1 for the 2(b) zone on sites where the allotment exceeds, 2,500m² if Council is of the opinion that the proposed development satisfies the zone objectives, and if the scale of the proposed development is compatible with the scale of existing residential development in the locality and the desired future character of the locality.

Clause 12(2) only allows a maximum FSR of 1:1, however the subject application seeks to exceed this FSR standard. For the above stated reasons, it is considered that this submission has established that the objection to the development standard is well founded as the proposed development will promote the orderly and economic use and development of land within the locality for its use as intended by the zoning controls. The SEPP 1 is supported in this instance.

5. Is the granting of consent consistent with the aims of the SEPP 1 policy, namely:

- (a) **To provide flexibility in the application of planning controls operating by virtue of development standards in circumstances where strict compliance in any particular case would be unreasonable or unnecessary, (Answered via Question 3)**
- (b) **Will strict compliance with the development standard tend to hinder the objects of the Act, namely?**
 - (i) **the proper management development and conservation of natural and artificial resources, including agricultural land, natural forest, forest, minerals, water, cities, town and villages for the purposes of promoting the social and economic welfare of the community and a better environment; and**
 - (ii) **the promotion and coordination of the orderly and economic use and development of land.**

This Policy provides 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 unnecessary or tend to hinder the attainment of the objects specified in section 5 (a) (i) and (ii) of the Act.

The Applicant has provided the following response:

- “(a) To provide flexibility in the application of planning controls operating by virtue of development standards in circumstances*

where strict compliance in any particular case would be unreasonable or unnecessary;

The proposed development is consistent with providing flexibility in the application of the FSR control, and strict compliance with the FSR control would be unreasonable and unnecessary for the reasons set out in Section 4 above.

- (b) *Will strict compliance with the development standard tend to hinder the objects of the Act, namely:*
 - (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 purposes of promoting the social and economic welfare of the community and a better environment; and*
 - (ii) *the promotion and co-ordination of the orderly and economic use and development of land.*

The proposed development is consistent with the aims and objectives of SEPP No. 1, the inferred objective of the FSR control, and the relevant objectives of the zone.

In the circumstances, strict compliance with the development standard would hinder the attainment of the objects of the Environmental Planning and Assessment Act 1979.”

The proposal is considered to represent an orderly and economic use and development of the subject land that will achieve an appropriate development of the site in accordance with the current and envisaged redevelopment of the area. The proposed landscape treatment will improve the environment from its existing industrial nature. In this regard, variation of the development standard is necessary in order to attain the objectives specified in S.5(a)(i) and (ii) of the EPA Act.

6.

- (a) **Whether or not non-compliance with the development standard raises any matter of significance for State or Regional environmental planning;**

Where Council is to support a departure in FSR, Council is to ensure that the departure from the standard will raise no matters that will have State or Regional significance. The SEPP 1 addresses questions as follows:

“The variation to the development standard does not raise any matter of significance with State or Regional environmental planning for the reasons set out in Sections 6 and 7 above.

Irrespective, the proposed development will contribute to achieving the target of 6,500 new dwellings within the Botany Bay Local Government Area (LGA) identified in the East Subregion of the Sydney Metropolitan Strategy as being required by 2031.

The proposed departure in FSR is not considered to be inconsistent with State and Regional Planning Policies. In addition, the draft Botany LEP 2011 which has been submitted to the Department of Planning for a Section 65 Certificate (and has been made publicly available on Council's website) allows an FSR of 1.51:1 for the subject site. However as the Draft LEP has not been exhibited, the JRPP can only consider this as information, as to Council future intent to the redevelopment of the area.

It is also considered proposed development is consistent with the surrounding development, it has allowed for a satisfactory level of amenity for adjacent properties if these are redeveloped for residential purposes in the future. The controls encourage the redevelopment of older industrial used land that exists within the medium density residential area to improve the level of amenity for existing residents. The subject development is considered satisfactory in this regard.

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

The Applicant claims, that the development provides a public benefit in exceeding the floor space ratio for following:

“The proposed development is consistent with the objectives of the FSR control as set out in Section 8 above, and does not affect the public benefit of maintaining the planning controls adopted by the relevant environmental planning instruments.

In the circumstances, the proposed development does not affect the public benefit of maintaining the planning controls adopted by the relevant environmental planning instruments.”

The applicants' justification is generally agreed with as the proposal will remove an existing industrial development which is not compatible with the changing nature of the precinct, nor the nature of the residential locality. In addition the development when complete is to provide a well designed and landscaped residential development of satisfactory scale and bulk to a site within a 2(b) Residential zone.

As discussed above and further in this report it recommended that the top two residential floors of the proposed development in Buildings 2 and 3 be tapered further to create a wedding cake style building, which will further reduce to the FSR to 1.51:1. Accordingly, it is considered that the development standard relating to the maximum FSR development for the site as contained within Clause 12(2) of the Botany LEP, should be varied in the circumstances to allow the development to attain a floor space ratio of 1.51:1.

State Environmental Planning Policy (SEPP) No. 55 – Remediation of Land

Four (4) individual reports relating to site contamination and remediation have been provided for the subject sites, including:

1. Phase 1 Environmental Site Assessment (Dated 30 July 2004), prepared by URS;
2. Phase 2 Environmental Site Assessment – Final Report (Dated 12 October 2007), prepared by URS;
3. Groundwater Monitoring Report (Report No.E1326.1AA, dated 15 February 2011), prepared by Environmental Investigations; and,
4. Additional Phase II Environmental Site Assessment (Dated August 2011), prepared by Aargus Pty Ltd.

The Phase 1 and Phase 2 reports prepared by URS (dated 12th October 2007) identified concentrations of TPH C₁₀-C₃₆ in two (2) site wells and concentrations of arsenic, copper and zinc in the groundwater which exceeded the adopted investigation levels. The report concluded that *“the site is suitable for future use as a residential with minimal opportunities for soil access”*, however recommended that further monitoring be undertaken. It was also noted that testing was not possible in all areas and would only be possible following decommissioning and / or demolition of the site buildings.

The subsequent report titled “Groundwater Monitoring at Former Foster’s Australia Site” and prepared by Environmental Investigations (Report No. E1326.1AA, dated 15 February 2011) was prepared by the current Applicant and submitted with this application. The investigations found the site to be in a similar condition to that described by URS in 2007 and the groundwater samples contained metals which were consistent with those of URS, however it was concluded that the absence of hydrocarbon contamination (TPH C₁₀-C₃₆) identified by URS indicated that the site had self-remediated. As with the URS report, it was concluded that *“additional investigations be conducted within the inaccessible areas of the site (i.e. following site demolition) to ensure all areas of potential concern identified by URS are assessed before site redevelopment”*.

Demolition of the existing buildings was subsequently permitted in accordance with DA 11/031 subject to retention of the ground floor slab and paved surfaces to allow further testing of the site for contamination. Council’s Environmental Scientist assessed the submitted information and did not raise any objection to the proposed demolition requested by DA 11/031 *“provided that no excavation is undertaken”*.

The buildings have now been demolished and the additional Phase II report prepared by Aargus (dated August 2011) was submitted to Council on 19 August 2011. This report found that the contamination is primarily restricted to arsenic, copper and zinc in the groundwater and that *“the site is therefore considered to be suitable for the proposed use”*.

The reports have been assessed by an external Environmental Scientist, a process that has arisen through community consultation and it is considered that adequate information has been submitted to demonstrate that the site can be made suitable for the proposed residential use. As such, subject to the recommended conditions of consent, staging and this development is considered to satisfactorily address the requirements of SEPP 55.

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

The provisions of SEPP No. 65 have been considered in the assessment of the development application. The policy aims to improve the design quality of residential flat development in NSW namely to maximise amenity, safety and security and achieve a better built form of buildings and streetscapes. An Architectural Design Statement, a SEPP 65 Assessment and an assessment against the Residential Flat Design Code accompany the application. A design verification statement prepared by Krikis Tayler Architects, dated 8 February 2011, was also submitted to verify that the plans submitted were drawn by a registered Architect.

The Council's Design Review Panel (DRP) has also considered the proposal on two occasions at pre-DA stage. The Panel acknowledged that the proposed development is generally in accordance with recent approved residential development in the area and with the vision for the Precinct which is "*undergoing a transition in urban form*". They agreed that the proposed six storey residential flat buildings are an acceptable maximum height according to the desired future character of the Precinct and the draft LEP, however it is their opinion the five storey building on the corner of Myrtle and Jasmine Streets should be reduced by one storey '*considering its relationship to Booralee Park to the west and the openness to the north*'. In addition, the main concerns identified by the Panel at the second pre-DA meeting included the setback distances along the eastern side boundary (to ensure equity of redevelopment opportunity for adjoining sites and visual and acoustic privacy) and the street presentation at ground level of the development facing Jasmine Street at the northern end of the site.

The Panels' recommendations are discussed below.

- "*The 5 storey building on the Myrtle and Jasmine Streets corner should be reduced by one storey considering its relationship to Booralee Park to the west and the openness to the north*".

The Applicant has provided the following response:

"The proposed development has been designed to reflect the lower scale of development to the south of the site by providing townhouses along the Bay Street frontage. Similarly, the lower scale of development towards the south-western corner of the site is maintained by providing townhouses along the southern portion of the Jasmine Street frontage.

The proposed development is intended to establish a progressive increase in building height along the Jasmine Street frontage, with a suitable emphasis to the corner of Myrtle and Jasmine Streets. Further, the taller buildings are located along the eastern boundary to control the height transition between the southern and northern boundaries of the site when viewed from the public open space to the west.

While the Development Application retains a 5th storey to the building on the corner of Myrtle and Jasmine Streets, the extent of the 5th storey has been reduced to a single penthouse style apartment. As can be seen by reference to the perspectives, by pulling back from the dominant façade lines below, the visual impact of the proposed 5th storey in this location is significantly reduced and the building form reads as 4 storeys high. The inclusion of a

penthouse style apartment in this location is considered to be appropriate and highly desirable and far outweigh the minimal visual impact of its inclusion”.

The area is generally characterized by open space to the north and to the west, single storey dwellings and townhouse development to the street frontages. As development site is unique in that it has three street frontages and is a corner site opposite a park, the development has provided for a five storey building on the corner of Jasmine Street and Myrtle Street to emphasis the corner and the entry to the residential areas of Jasmine Street and Myrtle Street. The height does not impact on solar amenity or privacy to the adjoining site and has defined the corner. The corner element does reflect the revolving character of the from industrial to residential, and given that the development comprises almost the entire block between Bay and Myrtle Streets, the proposal can to some extent create its own architectural conditions which renders the corner position suitable to a taller built form and in the manner propose.

- *“The Applicant has not reduced the eastern side setbacks of the proposed development and they have provided the following justification”.*

The Applicant has provided the following response:

“Compliance with DCP 35 has been demonstrated with drawing SK 311.

Good design entails adjoining developments integrating with each other to produce a complimentary composition that is to the benefit of both. This includes a degree of give and take. The RFDC recommends building separations of between 6m and 12m for the first 4 floors of depending on the orientation, privacy and view aspects etc. On this basis, equity in adjacent developments is achieved with setbacks that vary fr0m 3m to 6m. Excluding the townhouses that face Bay Street, the proposal has a minimum setback of 4m at the north and 4.65m at grid 25. However, the setbacks to over 75% of the boundary length north of the townhouses facing Bay Street exceeds 6m.

A hypothetical masterplan for the development at the properties to the east was developed in response to the comments made by the DRP. This is described on drawing SK104 and indicated how compliance with the RFDC recommendations could be achieved. Refer to drawing SK 201B. This masterplan was based on the most likely scenario at the time that the adjoining properties would be consolidated to form a single development of compatible scale with the surrounds.

As it has transpired, it is now understood that the adjacent sites are unlikely to be consolidated and will be individually developed into low scale townhouses. We understand that Development Applications for 3 of the properties to the east along these lines have been submitted to Council and are awaiting assessment and determination. The Development Application submitted to Council in relation to the property at 1-3 Myrtle Street demonstrates how good design allows adjoining developments to compliment each other by acknowledging the opportunities and constraints that each imposes on the other. These can be reflected by good consideration of complimentary setbacks and positioning of windows etc. We also understand that an application has been submitted to Council for the development of 72 Bay Street, however, we do not have any details of this. It is expected that a well considered design could be developed for this property that does not

compromise its development potential while working in with the opportunities and constraints presented by the proposal.

As noted above, the proposed development is generally compliant with the setback controls contained in DCP 35. In addition, the proposed developments at No. 1 Myrtle Street and No. 72 Bay Street are for townhouse developments which present either a side or front elevation toward the subject site. The proposed setbacks from these adjacent properties comply with the setback requirements contained with DCP 35. The Residential Flat Design Code(RFDC) which require a minimum of 12 metres for developments of between 1 and 4 storeys in height as separation distance. The Building 3 of the proposed development has staggering setback to 72 Bay Street, between 6m to 8.1m, as 72 Bay Street is a small site under DCP 35 and it is required by reason site narrowness in width to be amalgamated with an adjoining site to accommodate a residential redevelopment. As it currently stands any redevelopment of 72 Bay Street could not comply with the RFDC separation distances. The proposed development has provided sufficient separation between the subject site and this site to ensure the future redevelopment of 72 Bay Street and has maintain the privacy to this site by further increasing landscaping and screening to Building 3. It is considered that the proposed development has satisfied the objectives of the RFDC.

- *“The Panel would still prefer to see a rectilinear frontage treatment to the corner building rather than a curve, to be more in keeping with the overall geometry of the design. If the curved façade is to remain it is suggested that the balconies should not be continuous, to reduce horizontality”.*

The Applicant has provided the following response:

“While the role of the DRP is acknowledged, the comments regarding the curvilinear form of the building on the corner of Myrtle and Jasmine Streets are not considered appropriate. As designers of the development, we strongly argued that the curvilinear form is an appropriate response to the location, particularly given the acute angle between Myrtle and Jasmine Streets and the boundary splay at their intersection. We consider that the curvilinear form compliments the more orthogonal elements elsewhere in the development and bring appropriate focus and interest to this important corner position.

The DRP’s comments regarding the balconies was acknowledged and the design was modified to break the horizontal emphasis by the introduction of more dominant vertical elements as can be seen on the perspective submitted with the Development Application”.

The Applicant has provided a modern design on the corner which does not replicate the existing architectural treatment found in area. As discussed above the site is unique in that it has three street frontages, is the entry to the Myrtle, Bay and Jasmines Streets Precinct and is located opposite the Park. It is considered that the subject site can support curve element creating a softer building that integrates with the park as opposed a rectilinear building that does not address the aspects of the park.

- *“The length of balconies and secondary return balconies especially of the two buildings fronting Myrtle Street still need to be reduced / varied to minimise impact and horizontality of the envelopes”.*

This matter has been satisfactorily addressed as demonstrated by the submitted plans and in accordance with the Applicant's response below:

"This comment was addressed in the Development Application by revision of the design to reduce the extent and continuity of the balconies of the apartments to the east of the basement car park entry – eg apartment 234".

- *"The flats facing Jasmine Street would present better if the ground level private open spaces extended to the front boundary".*

This matter has been satisfactorily addressed as demonstrated by the submitted plans and in accordance with the Applicant's response below:

"The ground floor private open spaces of the apartments facing Jasmine Street have been extended to the front boundary in response to the DRP's comments".

- *"...the design of the retail frontage to be further resolved at the DA stage to provide increased modulation and a legible entry".*

The Applicant has provided the following response:

"The design of the retail frontage at the corner of Myrtle and Jasmine Streets will be developed in conjunction with the tenant/operator. The level of resolution indicated on the drawings submitted in support of the Development Application is considered appropriate. Further detail can be controlled by Council by condition that a Development Application for the use and fitout of the tenancy is to be submitted for Council's consideration prior to occupancy of the retail tenancy".

Subject to the proposed condition requiring that a further application be submitted to Council for the fit out and use of the retail tenancies the proposal is considered to be satisfactory.

- *"Provide window openings to end walls to the town houses and low rise flats as appropriate".*

This matter has been satisfactorily addressed as demonstrated by the submitted plans and in accordance with the Applicant's response below:

"This has been incorporated into the design. Refer to drawing A 10 – Elevations 3 and 4".

- *"Ramped access in the central pedestrian path from Jasmine Street would be strongly preferable. It is appreciated that the level change is necessary because of ground water conditions, but a combination of a curving pathway, and perhaps a steeper slope than that required where disabled access is mandatory should be explored".*

This matter has been satisfactorily addressed as demonstrated by the submitted plans and in accordance with the Applicant's response below:

"This has been incorporated into the design. Refer to drawing A02. Ramp is compliant with disabled access requirements".

- *“The Panel would still recommend the inclusion of a modest indoor common meeting space”.*

The Applicant has provided the following response:

“We are not in agreement with the DRP as to the functional benefits of common rooms and have expressed this position strongly in our meetings with them on this and other projects. We consider that these spaces are of limited value to the residents and often are abused therefore becoming more of a liability than an asset. Our experience is that in most cases the rooms are kept locked for a great majority of the time so as to avoid damage and the cost of repairs to the Body Corporate.

DCP 35 and the RFDC do not have requirements or recommendations in relation to the provision of such facilities.

We would request that Council not require the incorporation of a common room into this development. However, should Council consider it necessary, it could be handled by a condition in the consent that requires the provision of a small room (perhaps 20 sqm to 30 sqm) which could be located on ground floor (level 1) in the area of the building 1 entry and rear of the retail tenancy.

The Council’s policies do not require the provision of a meeting room, however the provisions contained in Section 3.3.8 of Council’s DCP 35 require the provision of recreational facilities like BBQ areas, seating, children’s play areas and landscape features. These details have not been provided and Council’s Landscape Architect has recommended that the details be submitted to Council by way of a deferred commencement condition. In addition, it is anticipated that a café or similar facility may be provided within the proposed retail tenancies and this will also provide a meeting point for some residents. As such, the proposal is considered satisfactory in this regard.

It is considered that the proposed development is generally consistent with the aims and objectives of SEPP 65, and that it adequately responds to the urban context and site planning framework in terms of scale, bulk, materials, setbacks, security and amenity. The is further supported by the Applicants assessment of the ten design principles in SEPP 65, which is addressed as follows:

“Design Quality Principal 1: Context

The proposed development accords with the desired future character of the precinct as outlined in City of Botany Bay DCP No.35 – Multi Unit Housing and Residential Flat Buildings and the draft LEP.

Design Quality Principle 2: Scale

The proposed development accords with the desired future character of the precinct with the bulk and scale responding appropriately to the adjacent more recent residential developments to the south and east in height and massing.

Design Quality Principal 3: Built Form

The built form defines the public domain, acknowledges the prominent street corner and contributes positively to the character of the streetscapes including views and vistas into an out of the site, as well as providing internal amenity, privacy and outlook.

Design Quality Principal 4: Density

The proposed development accords with the draft LEP and responds to the desired future character of the precinct as outlined in the Botany Bay LEP 1995 and DCP No.35, allowing for larger sites which provide generous park like settings to unlock vistas and view corridors to the adjacent park land, Botany Bay and city skylines.

The proposal results in an FSR of 1.57:1 as measured under LEP 1995 and 1.49:1 as measured under the draft LEP.

The proposal exceeds the LEP 1995 FSR of 1:1 for sites greater than 2,500sq.m. However, as permitted, the site is 8,829sq.m size and considered to be a significant site within the precinct. The proposed FSR increase is considered appropriate in this context, as the proposal not only complies with all the objectives outlined in the LEP for sites over 2,500sq.m, but is seen as a unique opportunity to create what will be the premier development in Botany.

The proposal complies with the draft LEP maximum FSR of 1.5:1.

Design Quality Principal 5: Resource Energy and Water Efficiency

The proposal will include the use of appropriate sustainable materials, passive solar design principles, deep soil zones for vegetation, utilizing harvested rainwater for irrigation purposes where appropriate and specifically efficient appliances, fixtures and fittings. Cross flow ventilation of dwellings has been optimised.

Design Quality Principle 6: Landscape

Refer to the separate landscape consultant report, prepared by Site Image.

Design Quality Principle 7: Amenities

The proposal includes efficient internal layouts, generous outdoor private and communal open spaces and privacy in compliance with the DCP and the residential flat design code.

Unit sizes are in accordance with the minimum area requirements outlined in the DCP No.35.

The proposed unit mix is:

- 23 x one bedroom apartments (20%)*
- 66 x two bedroom apartments (58%)*
- 10 x three bedroom apartments (9%)*
- 13 x three bedroom townhouses (12%)*
- 1 x four bedroom townhouse (1%)*

Totaling 113 dwellings.

The proposal achieves the following performance criteria:

- 0% single aspect SE/SW apartments*
- 75% naturally cross ventilated apartments*
- 71% apartments achieving two hours of sun between 9.00am and 3.00 pm mid winter to living and private open spaces.*

The proposal also exceeds the requirements outlined in the DCP No.35 for private and communal open space.

The proposal complies with the requirements for individual apartment storage as outlined in the DCP No.35 by means of storage within apartments supplemented by stores within the basement.

The proposal complies with the DCP No.35 in relation to car parking provision for residential and visitors.

Design Quality Principal 8: Safety and Security

The proposal optimizes passive surveillance of public and communal open spaces, provides clear, safe entrance points and a clear distinction between public, semi private and private space.

Design Quality Principle 9: Social Dimensions

The proposal promotes the desired future community character of the precinct.

Design Quality Principal 10: Aesthetics

The proposal contributes to the desired future character of the precinct as outlined above and exhibits a modern contemporary aesthetic in terms of built form, materials, finishes and colours as well as a generous, contemporary landscaped environment.

Overall, the development proposes quality internal and external design, having regard to built form, landscaping, setbacks, internal layouts and provision of underground parking. Particular emphasis has been placed on external appearance to enhance the streetscape and create visual interest in the architecture of the building for all elevations, along with a selection of appropriate finishes. The contemporary design of the building is compatible with the design and scale of the urban form found Myrtle Streets. It is considered that the proposed brickwork, glazed finishes, and articulation contribute to the overall contemporary style. Therefore the proposed development is considered to be consistent with this design quality principles.

The proposal is thus considered satisfactory in addressing the matters for consideration and is consistent with the aims and objectives of the SEPP. The proposed development satisfies with the ten design principles that provide a basis for evaluation of residential buildings within the SEPP.

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

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies to the proposed development. The development application was accompanied by two (2) BASIX Certificate's with No. 358092M and 358105M committing to environmental sustainable measures.

Botany Local Environmental Plan (BLEP) 1995

Clause 5 (2) – Objectives of the BLEP 1995 in relation to residential development

The objectives of BLEP 1995 Clause 5(2) have been taken into consideration as the proposal is for new residential development. The proposal will increase the LGA's permanent residential population, redevelop the residential zoned site with permissible development and not impact on any historic buildings or other heritage items. The proposal has generally met the recommendations provided by the Council's Design Review Panel and it satisfies the setback and solar access requirements contained in Council's DCP 35. The proposal provides non-residential floor space of a scale in

context with existing and recently approved residential development in the vicinity. Overall, the proposal is considered to meet the objectives of the clause.

Clause 10 – Zoning

The subject site is zoned Residential 2(b) in accordance with Botany LEP 1995 and multi-unit housing is permissible in the zone. ‘Multi-unit housing’ is defined as:

“a building or buildings, on one allotment of land, containing 2 or more dwellings where each dwelling has an individual entrance and direct access to private open space at ground level for the exclusive use of the occupants of the dwelling, and includes townhouses, villas, and terraces, but does not include residential flat buildings or any other form of dwellings specifically defined in this Schedule.

The proposed development is considered to meet the definition of multi-unit housing and satisfy the primary and secondary objectives of the Zone. The proposal is therefore permissible in the Residential 2(b) zone with the appropriate consent of Council.

Clause 12 – Floor Space Ratio

Clause 12(2) permits a maximum 1:1 FSR within the 2(b) zone for sites with an area in excess of 2,500m². The proposed development as submitted to Council has an FSR of 1.57:1 which exceeds the FSR of 1:1 imposed by the LEP. Under the Deferred Commencement Condition the FSR will be reduced to 1.51:1. A SEPP 1 Objection has been lodged in support of the departure, which has been assessed earlier in the report. The SEPP 1 submission demonstrates that the proposed FSR will result in a development that achieves the capacity of the site and suitably responds to the surrounding local character. The SEPP 1 objection is considered to be well founded and the variation to FSR is therefore considered acceptable in this case.

Clause 13 & 13A – Aircraft Noise / Noise and Vibration

The site is located within an area with an Aircraft Noise Exposure Forecast (ANEF) of between 20 and 25. As such, Clause 13 and 13A of the LEP have been considered in the assessment of the Development Application.

A full Aircraft Noise Intrusion Assessment Report prepared by Acoustic Logic (dated 24 February 2011) was submitted with the application and it addresses potential impacts of aircraft noise and vibration.

Council’s Environmental Health Officer has assessed the submitted report and confirmed that compliance with the aircraft noise requirements contained in AS2021-2000 can be achieved with the installation of acoustic treatment devices as detailed in the report. Compliance with the measures contained in the Acoustic Report will be required as conditions of the development consent. Clauses 13 and 13A are therefore satisfactorily addressed.

Clause 22 – Energy Efficiency and Energy Efficiency Development Control Plan

Clause 22 of the LEP and the requirements of Council’s Development Control Plan for Energy Efficiency have been considered in the assessment of the Development Application.

BASIX Certification has been provided with the application demonstrating that the proposal meets the water and energy savings requirements of the SEPP (BASIX) 2004.

Therefore, the development is considered acceptable in regards to Clause 22 and the Energy Efficiency DCP.

Clause 28 – Excavation and filling of land

The application requests approval for a finished floor level of the basement level of 4.45 metres to AHD. This is approximately 1.8 metres to 2.2 metres below the existing ground surface level and about 1 metre below the observed groundwater level.

A Preliminary Geotechnical Assessment prepared by Asset Geotechnical (dated 8 January 2011) has been submitted with the application and identifies a suggested construction sequence and the options available for shoring given the sites subsurface conditions.

As noted previously in the report, as the proposal will transect the water table and was referred to the NSW Office of Water as an integrated development in accordance with the *Water Act 1912*. The NSW Office of Water issued their General Terms of Approval on 1 April 2011.

Appropriate conditions, including the General Terms of Approval, are proposed on the consent to ensure that the excavation involved in the development will minimise detrimental impacts upon drainage patterns, soil stability or the development of adjoining sites in the locality. The proposal is therefore considered to comply with Clause 28.

Clause 30A – Development on land identified on Acid Sulfate Soil Planning Map

The subject site is located within a Class 4 Acid Sulfate Soils area and requests approval for excavation works to a depth of approximately 1 metre below the observed groundwater level. The Preliminary Geotechnical Report prepared by Asset Geotechnical (dated 8 January 2011) identifies the need to obtain a Preliminary and potentially full Acid Sulfate Soils (ASS) Management Plan. As such, further investigation with respect to Acid Sulfate Soils is considered necessary and the proposal is considered to be satisfactory with regards to Clause 30A subject to a condition requiring submission of an ASS Management Plan prior to commencement of any excavation works.

Clause 38 – Waste, wastewater and stormwater systems

The requirements of Clause 38 have been considered in the assessment of the development application. The Application was referred to Sydney Water and the requested conditions requiring works to be undertaken to ensure adequate water and wastewater provision to the development are imposed as conditions of consent. In addition, Sydney Water has requested that the application be subject to a condition requiring that a Section 73 Certificate be obtained. The proposal is therefore considered to be satisfactorily addressed.

Development Control Plan No. 35 – Multi Unit Housing and Residential Flat Buildings (DCP 35)

The proposed development is subject to the requirements of Council's *Development Control Plan No. 35 – Multi Unit Housing and Residential Flat buildings*. The overall aims and objectives of this plan are: -

- *To ensure high quality new multi unit housing and residential flat buildings in the City of Botany Bay;*

- *To guide the implementation of the design quality principals in State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development;*
- *To provide a method to analyse and describe current and future local character and principles for multi-unit housing and residential flat buildings;*
- *To ensure the style, scale and design of residential developments effectively responds to the streetscape and public domain within the neighbourhood;*
- *To encourage a development process that considers the physical, heritage and cultural context of the site and surrounding area in development the site layout and design of the development;*
- *To promote the principals of ecological sustainable development through energy efficient methods, stormwater management, waste reduction techniques, landscaping and crime prevention techniques;*
- *To ensure that the use of landscaping and open space are integral to the design and function of the residential development;*
- *To provide for a range of housing types and forms to accommodate a diverse and changing population;*
- *To provide the community with comprehensive controls to ensure appropriate residential development within the City of Botany Bay;*
- *To protect the amenity of existing residents.*

The development application has been assessed against the controls contained in DCP 35 and the compliance table below compares the proposed development with the relevant provisions of this policy and demonstrates how the proposal meets the above objectives.

Control	Proposal	Compliance
Section 2 – Suburb and Precinct Guide		
Precinct: Botany Precinct 4		
Minimum site area: 2,500m ²	Site Area = 8,829m ²	Yes
Minimum frontage: 20m	26.8m to Bay Street 63.5m to Myrtle Street 123.1m to Jasmine Street	Yes
Up to 2 storeys plus attic at street frontage & increasing to four stories at rear	3 – 5 storeys to Myrtle Street 6 storeys at the rear	No – Note 1
Preferred Design Type: Multi-Unit Housing at front & Residential Flat Buildings at rear	Multi-Unit Housing to Bay Street and southern part of Jasmine Street, however units proposed to Myrtle Street and the northern part of Jasmine Street.	No – Note 2
Section 3.1 Sustainable Development Design		
3.1.1 Energy Efficiency		

Control	Proposal	Compliance
<p>C1: A site analysis plan is to be lodged in accordance with Council's DA Guide.</p> <p>C2: Compliance with Energy Efficiency DCP.</p> <p>C3: Compliance with DCP No. 32 – Landscape</p>	<p>A site analysis plan forms part of development application, and BASIX Certification has been submitted with application. A landscape plan has been submitted and Council's Landscape Architect has issued conditions of consent (including a Deferred Commencement Condition).</p>	Yes – subject to conditions
3.1.2 – Stormwater Management & Water Conservation		
<p>C1: Development meets provisions of Council's Guidelines for the Design of Stormwater Drainage Systems.</p> <p>C2: Development to incorporate water saving devices with AAA (or higher rating)</p> <p>C3: A Soil and Water Management plan is to be lodged.</p>	<p>Council's Development Engineer has provided conditions of consent which require the submission of amended Stormwater Plans which will form part of the "Deferred Commencement" conditions.</p> <p>The proposed development must comply with BASIX in terms of water saving devices, and a condition requires the submission of an erosion and sediment control plan.</p>	Yes
3.1.3 Site Contamination		
<p>C1: Site contamination and site remediation is undertaken in accordance with DCP No. 34.</p>	<p>This matter has been discussed in detail in response to SEPP 55 earlier in the report. The Applicant has submitted adequate information to demonstrate that the site can be made suitable for the proposed development in accordance with SEPP 55.</p>	Yes
3.1.4 Waste Management		
<p>C1: Appropriate space in each unit for temporary storage of waste, recyclables and compost</p>	<p>Adequate space is provided within each unit to provide storage of waste within each unit</p>	Yes
<p>C2: Waste storage areas of sufficient size to store Council's standard bin size and easily accessible from unit and collection point. Waste storage areas are to be within basements.</p>	<p>A detailed plan has been submitted for the ongoing waste management at the site. The development will be provided with three (3) garbage storage areas within the basement level (being one for each RFB), garbage rooms at each floor of the RFB's that will contain recycling bins, and the townhouses will contain garbage storage areas within each of their sites.</p>	Yes

Control	Proposal	Compliance
C5-C8: Recycle and reuse waste during all stages of design and works.	The existing buildings have been demolished under DA 11/18 and this application requests permission for removal of the existing slabs, excavation and construction of the buildings. A Waste Management Plan has been submitted which addresses waste minimisation throughout all stages of the development.	Yes
C9: More than 20 units require carousel/compactus for waste removal	Waste carousels/compactors have been provided for all units within the proposed development, with exception of the walk-up flats which have provision of bins in the basement car park. In addition, the townhouses will manage their waste separately and this is considered to be satisfactory.	Yes
C10: Caretaker or manager is to bring bins in and out on collection day	This will be addressed by way of condition requiring the matter to be included in any future subdivision of the site.	Condition to comply
Section 3.2 – Building Form and Character		
3.2.1 Floor Space Ratios		
C1: Compliance with Botany LEP 1995 FSR provisions: 1:1 for sites greater than 2,500m ² in site area	Proposed FSR = 1.57:1 (13,820m ²), however this is reduced to 1.51:1 (13,340m ²) by way of Deferred Commencement condition. This exceeds the maximum GFA by 4,511 m ² . The GFA is the equivalent FSR of 1.44:1 when considered against the definition of GFA contained within the standard instrument.	No - SEPP 1 Objection lodged and proposal considered satisfactory. Refer to discussion above in response to SEPP 1.
3.2.2 Site Coverage		
C1: Max. site coverage Residential Flat Building up to 5 storeys is 40% = 3,532m ²	83.4% (7,441m ² including basement) (Note: 41% or 3, 619.9m ² for the buildings only, excluding the basement)	No – Note 3
3.2.3 Building Height		
C1: Compliance with number of storeys in precinct guide: 2 storeys plus attic to street frontages and maximum 4 storey behind.	The proposed development exceeds the maximum height requirements as discussed in response to Section 2 of the DCP.	No – see Note 1 and Note 2.

Control	Proposal	Compliance
C2-C5: Height and bulk to be distributed on site, buildings to respond to height of buildings in neighbourhood, proposal to consider topography and streetscape impacts, and development to ensure no significant loss of amenity to surrounding development.	Parts of the development do not comply with the maximum 4 storey limit for the precinct, however the height of the development is distributed on the site, with townhouses proposed to Bay Street and the southern end of Jasmine Street, a five storey RFB to the corner of Myrtle and Jasmine Streets and six storey RFB's to the eastern side / rear of the site. The proposed six storey buildings are similar in height to the existing RFB at 9-19 Myrtle Street and the approved development at 21-23 Myrtle Street (currently under construction). The development is not considered to result in significant impacts upon the locality and the amenity of surrounding residents. The proposed height is therefore considered satisfactory in context of the locality and it considered acceptable with regard to these controls.	Yes
C6: Max. building height to uppermost ceiling: 14.4m Overall height for pitched roofs: 17.0m	The maximum height of the proposed residential flat buildings above the existing ground level are: <ul style="list-style-type: none"> • Building 1 at the corner of Myrtle and Jasmine Street:- <ul style="list-style-type: none"> ○ Underside ceiling = 15.9m ○ Overall height (to top of roof top structures) = 18.6m • Buildings 2 & 3 (six storey residential flat buildings):- <ul style="list-style-type: none"> ○ Underside ceiling = 19m ○ Overall height (to top of roof top structures) = 21.6m 	No – see Note 1 & Note 2
C7: Habitable rooms are encouraged within the roof space where the Applicant can demonstrate that the resulting development will not detrimentally affect the amenity of the area.	Habitable rooms are proposed at loft level of the townhouses. The proposed rooms are considered to have minimal amenity impacts on the amenity of the area.	Yes
C8: All rooftop/exposed structures and any plant on site are to be suitably screened and integrated with building.	All rooftop/exposed structures have been suitably screened and integrated within the building.	Yes

Control	Proposal	Compliance
C9: Compliance with Civil Aviation Safety Authority requirements.	The proposed development exceeds the height restriction of 15.24m above existing ground height. SACL by letter dated 20 April 2011 approved the height of the development to a maximum of 28.15m to AHD.	Yes – Condition to comply with SACL requirements.
3.2.4 Building Depth		
C1: Building depth to be used in combination with other controls to ensure adequate amenity for occupants.	The proposed depth of the building is such that it will allow for adequate amenity for future occupants when considered in conjunction with other controls.	Yes
C2: Slim buildings facilitate dual aspect apartments, daylight access and natural ventilation.	The building enables 75% of units to have dual aspect to allow improved daylight access and high levels of natural ventilation.	Yes
C3 – Maximum building depths for townhouses 11m-14m maximum. Including articulation zone maximum depth of 15.2m.	Townhouses have a maximum depth of 13.5m. Townhouse depth including articulation zone = 16.4m – 17m.	Yes No – Note 4
C4 – Maximum building depth for flat buildings is 18m excluding articulation zone and 21m including articulation zone.	The proposed residential flat buildings have a depth of between 19m-21.5m excluding articulation zone and 20.5m-25m including articulation zone. The proposed internal depths of the units is a maximum of 9 metres, while the State Governments' Residential Flat Design Code recommends a maximum depth of 8 metres. Overall, given the generous size and design of the proposed units they are considered to provide adequate amenity.	No – Note 5
3.2.5 Building Separation		
C1: Building Separation <ul style="list-style-type: none"> Up to 4 storeys is 12m habitable/balcony, 9m habitable/balcony and non-habitable rooms, 6m non-habitable rooms. 5 storeys [and above] is 18m between habitable rooms/balconies, 13m habitable room/balconies and non-habitable rooms, 9m between non-habitable rooms. 	Building separation for building elements up to 4 storeys is between 12m and 19m between all rooms and balconies. There is a minor variation to the separation distance to Building 3 and 72 Bay Street. Level 5 has a minimum internal separation distance of 19.4m, and Level 6 has a minimum separation distance of 30 metres between habitable rooms (Note: these figures are for the scheme proposed by under the deferred commencement condition).	No – Note 6 Yes

Control	Proposal	Compliance
3.2.6 Corner Buildings		
<p>C1: Buildings are to reflect the corner conditions of respective streets, to accentuate the topography, street hierarchy and reinforce the spatial relationships</p> <p>C2: Corner buildings are to reflect the architectural, hierarchy and characteristics of the streets</p>	The proposed development has been designed to accentuate the corner of Myrtle and Jasmine Streets.	No – Note 7
3.2.7. Heritage		
C1: Where development located in the vicinity of a Heritage Item or Conservation Area compliance is required with Council's Heritage Conservation DCP 37.	The proposed development is located adjacent to Booralee Park, a Local Heritage Item. The proposal is considered to be satisfactory with regard to DCP 37.	Yes
3.2.8 Through Site Links and View Corridors		
<p>C1: Existing significant views are to be retained</p> <p>C2: View corridors are to be integrated into design of new development.</p> <p>C3: Building footprints are to account for consolidated open space and views</p>	<p>The development has been designed to retain views where possible to Booralee Park, the public land to the north and wider views beyond.</p> <p>Pedestrian links and paths are provided within and through the development which provide good (and safe) connection to and from the public domain.</p> <p>Note: This Section of the DCP deals with view corridors within the development. View loss issues from adjoining buildings is discussed separately under Section 79C(b) and (d) later in the report.</p>	Yes
3.2.9 Building Setbacks		
<p>C1, C3 – C7: No part of a building or above ground structure (including basement car park) is to encroach into the building setback zone.</p> <p>Front Setback = 3m (min.)</p> <p>Side / Rear Setback = 7.4m for six storey building</p>	The proposed development (including basement) has a minimum front setback of 3 metres in accordance with the DCP. The proposed townhouses along Bay Street have a nil side setback to both side boundaries. While these setbacks do not meet the minimum requirements they are considered appropriate in this context. The side	No – Note 8

Control	Proposal	Compliance
Side setback can be reduced by max. 1m for 30% length of the boundary when increased by an equal amount elsewhere.	setbacks to the six storey residential flat buildings generally complies with the 7.4m requirement, however some balconies and a portion of Building 1 protrude into this setback by up to 3 metres. In addition, the basement protrudes into the setback area. The variation is considered acceptable.	
C2: All setbacks are to provide deep soil zones for unencumbered planting	Subject to compliance with the proposed conditions requiring relocation of the proposed stormwater detention tanks, the proposed development provides adequate deep soil zones to all boundaries.	Yes
3.2.10 Streetscape		
C1: Garages/parking to compliment development and not dominate street frontage	Parking is proposed in the basement area not visible from the street. Therefore the parking for the development will not dominate the street frontage.	Yes
C3: Design and materials of front fencing/walls is to be compatible with attractive fences/walls in locality	The design of the front fencing and walls are considered to be compatible with the contemporary development in the locality.	Yes
3.2.11 Facades		
C1: The desired future precinct characters are addressed and reflected within the development.	The proposal provides ample landscaping in the front setback areas and open form front fences are proposed. The proposal addresses the existing development patterns. As previously discussed, the proposal is considered to be consistent with the desired future character of Botany Precinct 4. In addition, the proposal provides a façade that is complimentary to the streetscape.	Yes
C2: Reflectivity from building materials used on facades does not exceed an increment level of 20%.	This matter can be addressed by the imposition of a suitable condition of consent.	Condition to comply
3.2.12 Roof Design		
C1 & C3: All rooftop or exposed structures including lift motor rooms, plant rooms, etc, together with air conditioning, ventilation and exhaust systems, are to be suitably screened and integrated into the building	All rooftop/exposed structures which includes lift towers have been suitably screened and integrated within the building. A deferred commencement condition has been included in the recommendation to delete level 7, which contained rooftop gardens	Yes

Control	Proposal	Compliance
and the visual impacts of any fixtures minimised.	and pergolas.	
C2: Roofs are to fulfil their primary function of protecting the building from water and sun	The roof will adequately protect the building from water and sun penetration.	Yes
3.2.13 Parking and Vehicle Access		
C1: Minimum Car Parking: 1 bed require 1 space 2/3/4 bed require 2 spaces Total Required (based on plans listed in deferred commencement condition) = 197 based on: Total 1 bed dwellings = 21 Total 2/3/4 dwellings = 88	197 off-street parking spaces provided for the residential component. It should be noted that the development will have an excess of 6 spaces due to the reduction of 4 units under the 'deferred commencement conditions, these spaces will be condition to be allocated to additional visitor and retail car parking.	Yes
C2: Visitor parking: 1 space per 10 dwellings Total 109 dwellings require 11 visitor spaces	11 visitor spaces provided	Yes
C3: 1 Car wash bay/10 dwellings = 11 spaces required.	11 car wash bays is considered excessive. Condition to require 2 car wash bays.	No – Note 9
C4: All car parking shall be provided behind the building setback.	All car spaces are located within the basement which is located behind the front building setback.	Yes
C5: Visitors car parking spaces shall be labelled clearly and resident car parking numbered to relevant dwelling.	The visitors car spaces are labelled on the plans, however the parking for units has not yet been allocated. A condition is proposed requiring appropriate allocation of parking spaces which must also be shown in any subsequent proposal for subdivision. In addition, a condition requires that numbering and labelling of car parking spaces must be undertaken prior to occupation.	Condition to comply
C6: The arrangement of parking spaces shall allow vehicles to enter and exit the site in a forward direction	Sufficient space has been provided within the basement area for manoeuvring cars in and out of their allocated bays to be able to exit the site in a forward direction.	Yes
C8: Underground parking is mandatory for all sites except in exceptional circumstances.	Underground parking is provided to the development.	Yes
C9: Compliance with AS2890.1 – 1993.	Proposal generally complies with AS2890.1, and a condition is	Yes

Control	Proposal	Compliance
	proposed requiring that the construction plans comply with this standard.	
C10: Large developments are to accommodate furniture removal trucks parking on site.	No provision is made, however this has not been provided for other nearby developments and given the three street frontages it is anticipated that space will be available for loading / unloading.	Yes
3.2.14 Site Facilities		
C1: Sydney Water requirements met	Sydney Water has by letter dated 30 March 2011 confirmed that additional capacity is required to service the proposed development with water and waste water. In addition, they have requested that the applicant be required to obtain a Section 73 Certificate. These matters are proposed be dealt with by way of condition.	Condition to comply
C2: Utility services associated with the development of the site, such as fire hydrant booster valves, substations, water storage tanks and so on are not to be within landscaped areas and to be behind building line.	The consent will be conditioned to required all utility services, such as fire hydrant booster valves, substation, waste storage tanks etc, are not located within the landscaped areas and behind the building line.	Condition to comply
C3: Mailboxes shall be provided to Australia Post requirements.	The consent will be conditioned to require mailboxes to Australia Post standards.	Condition to comply
C4: Adequate and appropriate unit numbering to be provided.	The consent will be conditioned to require appropriate labelling of unit numbers in a visible location.	Condition to comply
C5: The name and address of the premises shall be displayed in a visible position.	The consent will be conditioned to require appropriate and visible labelling to the building including the address.	Condition to comply
C6: The development incorporates adequate garbage and recycling collection areas that are integrated physically and visually with other built elements.	The application provides adequate space for garbage and recycling collection. This is discussed in further detail later in the report in response to Council's Waste Management DCP No. 29.	Yes
C7: Garbage storage and collection points shall comply with Waste DCP No. 29.	The garbage storage and collections points generally comply with DCP No. 29. Waste is to be collected from the street.	Yes
C8: Waste areas are not to be located within the front setbacks.	Waste and recycling facilities are to be located within the basement level behind the front building	Yes

Control	Proposal	Compliance
	setback, which is not visible from the street.	
C9: Satellite dishes where they are situated in rear courtyards, etc are to be less than 1.8m above ground or not visible above any fence surrounding the site.	The proposal does not request approval for any satellite dishes, and these shall be subject to further approval unless they may be erected as Exempt Development.	Yes
C10: Only 1 telecommunications/TV antenna for each building.	The consent will be conditioned to require only 1 telecommunications / TV antenna per building.	Condition to comply
C11-12: Sunlight available to clothes drying facilities for at least 4 hours on June 21 to a plane 1 metre above finished ground level under the drying lines.	The proposal does not provide communal clothes drying areas and this is not considered appropriate for a development of this type or scale.	N/A
C13: Garden maintenance storage is to be provided in all developments that have communal open space.	A suitable condition of consent can be imposed to satisfactorily address this matter.	Condition to comply
C14: Existing above ground electricity and communication cables within the road reserve and site shall be replaced at Applicant's expense by underground cabling and appropriate street lighting in accordance with Energy Providers guidelines	A suitable condition of consent can be imposed to satisfactorily address this matter.	Condition to comply
C15 – C20: A/C units not to be visible from street, located on front facades, within window frames or obscuring architectural features, and operating with minimal noise impacts. .	The consent will be conditioned to require that any A/C units are installed in appropriate locations and operate in accordance with any noise guidelines.	Condition to comply
C21: Roller shutters to windows and doors are not permitted if visible from street	The consent will be conditioned so to not allow roller shutters to windows and doors where visible from street.	Condition to comply
C22: Security devices shall be of a design consistent with design of development and not detract from appearance.	The consent will be conditioned for any security devices to be consistent with design of development that does not detract from architectural features.	Condition to comply
3.2.15 Construction and Materials		
C1: Materials of high thermal mass are to be used for living areas.	Proposal complies with BASIX.	Yes
C2: Timbers used are plantation, recycled or regrowth timbers of timbers grown on Australian farms or	The consent will be conditioned to require that all timbers used in construction are plantation, recycled or regrowth timbers.	Condition to comply

Control	Proposal	Compliance
State forest plantations		
C3: No rainforest timbers or old-growth forest timbers are to be used.	The consent will be conditioned to require no old growth or rainforest timbers be used in construction.	Condition to comply
C4: Materials and elements are to be of high quality.	The consent will be conditioned to require submission of a maintenance schedule prior to CC to ensure ongoing upkeep.	Condition to comply
C5: Common and party walls are constructed from masonry materials.	Consent will be conditioned to require common party walls to be constructed from solid masonry materials and not lightweight construction.	Condition to comply
C6: Schedule of external and internal finishes to be lodged with the application.	A detailed schedule of colours and finishes has been submitted with the application.	Yes
C7: Face brickwork only to be used where this is common in immediate vicinity of the development. Bricks shall be uniform colour with no mottle or wire cut. White, pale, cream and manganese bricks are not permitted.	A mix of face brickwork, rendered and painted masonry, prefinished metal cladding, operable shade panels, glass and solid balustrades and fenestration will be provided to the building façade. Facebrick is used within other buildings in the area and is a low maintenance material that is considered appropriate for the proposed development.	Yes
C8: New development is to avoid large expanses of glass and reflective wall cladding, is to use roof cladding which conforms with contributing neighbouring development and use colour schemes that reflect the locality.	The facades of the buildings will not have glass walls or large expanses of glazing. The materials and colours of the external finishes to the buildings will satisfactorily complimentary to those utilised within the adjoining developments.	Yes
C9: Highly contrasting coloured bricks are to be restricted to use on building elements such as sills, window heads, string courses and to assist in the division of the building into bays.	Design and contrast is provided through-out the development.	Yes
3.2.16 Maintenance		
G1 to G8: Ensure that the building and site can be cleaned and maintained easily and to ensure that the building has a long life.	The consent will be conditioned to require a maintenance schedule be submitted prior to CC and that this indicate that walls be repainted once every 10 years and externally visible windows cleaned at least once annually.	Condition to comply
3.2.17 Wind Mitigation		
C1: Wind mitigation report	A Pedestrian Wind Environment Statement (Dated 7 February 2011, prepared by Windtech Consultants	Yes

Control	Proposal	Compliance
	Pty Ltd) has been submitted with the application. The report concludes that the proposed development will not create any wind issues.	
Section 3.3 Environmental Amenity		
3.3.1 Building Entry		
C1: Entrances are to provide sheltered, well lit and safe spaces to enter building, meet and collect mail	The main pedestrian entrance from Myrtle Street is sheltered, and a condition is proposed requiring that pedestrian entries to the site be well lit. Pedestrian entries are considered to be well sited and of adequate dimensions to allow passive surveillance. Private access is available from the basement car park to each townhouse and to the lobby and upper levels of each unit.	Yes – Conditioned by NSW Police to comply with lighting.
C2: Main pedestrian entry to be separate from car parks or car entry	Pedestrian and vehicular access to and from the site is separated and clearly defined.	Yes
C3: Mailboxes to be designed and provided to be convenient for residents and not add to street clutter	Letterboxes are proposed adjacent to the entrances for the residential flat buildings, and each townhouse will be provided with its own letterbox.	Yes
3.3.2 Apartment Layout and Sizes		
C1 – C5 – unit layouts to consider appropriate separation of uses and provision of tiling in bathrooms and kitchens.	The unit layouts are considered to be satisfactory, and a condition will require that laundries and toilets be provided with floor to ceiling tiles.	Condition to comply.
C6: Minimum unit size Studio = 60m ² 1 bedroom = 75m ² 2 bedroom = 100m ² 3 bedroom = 130m ²	The proposed dwellings satisfy the minimum size requirements as demonstrated in the tables provided previously in the report (refer to 'Description of the Development' section).	Yes
C7: The combined total of studio/one-bed units shall not exceed 25% of the total no. of apartments	The proposed development (as modified by deferred commencement condition) provides 19% one bedroom units.	Yes
C8: Minimum internal widths: Cross over units = 4m Single level unit = 6m Townhouses (single room in width) = 4.7m	All units, including cross-over units, exceed 6m in width All townhouses are, or exceed, 4.7m width.	Yes
3.3.3 Internal Circulation		
C1: Common area corridors to be minimum 2m width	Common area corridors have widths of 2 metres.	Yes

Control	Proposal	Compliance
C2: High level of amenity and safety required to circulation spaces.	The development is designed to incorporate high level of amenity and safety for residents wherever possible.	Yes
C3: Design buildings to have multiple cores to increase no. of entries & circulation points	The proposal is considered to provide adequate entry and circulation points.	Yes
C5: Robust materials to be used in common circulation areas	The consent will be conditioned to comprise robust materials.	Condition to comply
3.3.4 Balconies in Residential Flat Development		
C1: Large developments – containing 20 or more units – different styles and designs for balconies are required	The development has been provided with a mixture of protruding and recessed balconies, and a combination of glazing and solid balustrades using a variety of external finishes.	Yes
C2: At least one balcony per apartment is to be provided off the living areas	All dwellings have been provided with a balcony or courtyard off their respective living areas.	Yes
C3: Minimum area of balcony off living area is 12m ² and minimum width is 3m	Minimum area of balcony provided is 17.4sq.m for above ground units, however some units have a balcony with a depth of 2.5m instead of the required 3 metres. This variation is supported as these balconies provide a high level of amenity, with a length of 7.5 metres and overall area of 30m ² .	No – Note 10
3.3.5 – Ceiling Heights		
C6-C1: Min ceiling height: Ground floor = 2.7m First floor = 2.7m Dwelling entry = 2.4m Attic = 2.4m (over 2/3 floor area)	3m provided between floors will allow a minimum ceiling height of 2.7 metres to be achieved at all levels (including loft levels).	Yes.
3.3.6 – Ground floor apartments in RFB		
C1 to C5: Respond to level & type of street uses, security increased, public & private space clearly defined, individual entries and/or front and rear garden spaces, increase privacy.	The Buildings 1 and 2 have provided ground floor apartments that address both the Jasmine Street and Myrtle Street, as well as the common open space area within the development. The townhouses all have street frontage to Jasmine Street and Bay Street. The public and private open spaces are to be delineated in the development by a combination of design features such as planter boxes, landscaped areas, palisade fencing and kerbs.	Yes
3.3.7 Storage		

Control	Proposal	Compliance
C1: 50% of storage area to be provided in unit off hall or living area. Remainder in store room/basement.	Storage facilities for each of the dwellings are to be provided internally and within the basement car parking area.	Condition to comply
C2: Minimum storage area: 1 bedroom = 8m ³ 2 bedroom = 10m ³ 3+ bedroom = 12m ³	Storage can be provided as required, and a condition will be imposed to ensure that the minimum size storage area is achieved.	Yes
C3: Storage areas separate from units to be secured.	A suitable condition of consent can be imposed to satisfactorily address this matter.	Condition to comply
C4: Storage areas to have minimum height of 1.5m	Basement and internal storage areas will approx. 2.7m in height.	Yes
3.3.8 Private and Communal Open Space		
C1: Private open space is to be clearly defined for private use.	Each of the dwellings has clearly defined private open space areas in the form of a balcony or ground floor private courtyard.	Yes
C4: Private open space: Townhouses and Ground Floor Units: 2 bedrooms = 35 m ² 3 bedrooms = 45.5 m ² 4 bedrooms = 56 m ² (with at least one area of 6 x 4m - 24m ² - unimpeded open space) RFB: 1 bed = 12m ² 2 bed = 15 m ² 3 bed = 19m ²	<p><u>Townhouses</u> Townhouse 1-5 provide an area of private open space in excess of 24m² to the rear of the dwelling and they have a combined external area in excess of the DCP requirements of 45.5 m² and 56 m².</p> <p>Townhouses 6-14 provide rear private open space areas of 21m² each, with dimensions 4.4 x 4.7m. These areas do not satisfy the DCP requirements and a condition is proposed requiring these areas to be increased to a minimum of 24m². Combined with the external space located within the front setback areas, these townhouses are otherwise compliant with the minimum 45.5m² required for 3 bedroom units.</p> <p><u>Ground Floor Units</u> An area of at least 35m² is provided to the ground floor 2 bedroom units (with a single area of dimensions 6 x 4m = 24m²).</p> <p><u>First floor and above Units</u> A minimum balcony area of 17.4m² is provided for 1 bedroom units and a minimum balcony area of 20.4m² is provided for all 2 and 3 bedroom units located in the RFB's.</p>	<p>Yes</p> <p>No – Note 11</p> <p>Yes</p> <p>Yes</p>
C5: Communal open space to provide visual focus,	The development is to be provided with a centrally located communal	Yes

Control	Proposal	Compliance
allow retention of existing trees, maximise views and solar access, minimise wind turbulence.	open space area.	
C6: Communal open space to be clearly defined and free from encroachments	The proposed communal open space will be devoid of any such encroachments.	Yes
C7-C8: Min. communal open space area for combination of multi-unit housing and RFB = 20% of site area, and communal open space to be deep soil zones	A total area of 2747m ² is available for communal open space (approx. 29.5% of the site area), however these areas are located above basement car parking and are therefore not all deep soil areas. The communal areas provided are considered to be of adequate dimensions, and subject to a proposed condition requiring the provision facilities such as BBQ's the areas are considered to be usable. In addition, the site is located adjacent to Booralee Park which provides adequate open space areas to ensure a good level of amenity for the future residents.	No – Note 12
C9-C12: Communal Open Space to be within easy walking access of units, appropriately landscaped, provided with recreational facilities, provide good amenity and be functional.	The communal open space areas are centrally located and accessible from proposed dwellings. The open space areas benefit from adequate solar access and planting. The application does not propose recreational facilities, however this is required by way of condition.	Condition to comply
3.3.9 Landscaping		
C1-C6: Major existing trees on site to be retained, landscaping to be considered in planning process, landscaping of adequate scale and using energy efficiency principles, and public domain landscaping to reinforce streetscape themes.	Council's Landscape Officer has considered these matters and provided recommended conditions of consent.	Yes
C7: Deep soil zones to be in front setback, side and rear boundaries and communal open spaces as minimum.	Deep soil zones are available around the perimeter of the site, however to a limited extent in parts (minimum width 1.5metres).	Yes
C8: Minimum 3m front soft landscaped setback Trees to attain height of at least 8-10 metres in this area. Not more than 1/3 of area to be paved.	A 3m front landscaped setback is generally proposed, with the exception of the corner element for the retail tenancy. This element is considered suitable for the proposed design and overall paving within the	Yes

Control	Proposal	Compliance
	front setback does not constitute more than 1/3 of the front setback area.	
C9: Continuous landscaped buffer min. 1m b/n driveways and site boundary – must contain tall screen planting with foliage to ground level.	Driveway located centrally to the site.	N/A
C10: Planter beds min. 1m metre wide	All planter beds are a minimum of 1 metre in width.	Yes
C11: Landscaping on slab to contain medium sized planting- planter beds to be adequate dimensions	Details are required by way of condition of consent to ensure adequate depth is provided on site.	Condition to comply.
C12: Underground detention tanks not located under areas for trees and shrubs. No pits/pipes within tree drip lines.	Underground detention tanks are proposed within the setback areas, however will be required to be relocated by way of condition of consent.	Condition to comply.
C13: 3 Tiers of planting in all mass planted areas	Council's Landscape Officer has provided appropriate conditions to require tiered landscaping.	Condition to comply
C14: Automatic irrigation system required in communal space, semi private space, landscape setback and landscaping on slab or planter boxes	The consent will be conditioned to comply.	Condition to comply
C15: Fencing details provided in landscape drawings. Retaining walls over 500mm to be engineer designed and be masonry or finished concrete.	Fencing is proposed to Jasmine Street and will comprise palisade style fencing with a maximum height of 1 metre have been indicated in site plan and elevation plans. It is recommended that the front setback areas be amended to match 9-19 Myrtle Street and other similar townhouse developments in William, Bay and Daphne Streets, which have tiers of landscaping to provide a differentiation between private and public space.	Condition to comply.
C17: Underground parking structure protruding above ground shall be sympathetically treated.	The protruding aspect of the basement car park will be screened by the building and landscaping.	Yes
C18: Fire hydrants, escape paths, booster valves, water tanks, electrical substations and waste collection/handling storage areas not to be located in landscape areas or in the street setback.	Suitable conditions can be imposed to satisfactorily address this matter with facilities to be provided in accordance with the requirements of the relevant authority.	Condition to comply

Control	Proposal	Compliance
3.3.10 Acoustic and Visual Privacy		
C1: Direct overlooking within development and to adjoining development to be minimised by building layout, window/balcony location, screening devices, landscaping.	The proposed development is designed to meet the minimum separation distances required by Council's DCP and the State Government's Residential Flat Design Code. Where balconies / rooms are oriented toward each other operable privacy screens have been provided to reduce any direct overlooking between dwellings. In addition, a condition is proposed requiring that the glazed balustrading to the units within the residential flat buildings be opaque so that views within and toward adjacent sites are minimised. This will also minimise views toward the existing townhouse development located on the corner of Bay and Jasmine Street.	Yes
C3: Where visual privacy of adjacent properties is affected need to use fixed screens (min 75% block out), fixed translucent glazing, screen planting.	As noted above, privacy screens are proposed in appropriate positions.	Yes
C4: Habitable rooms with direct outlook within 9 metres to be offset and have sill heights 1.7 metres above the floor level.	No habitable rooms are located directly opposite and within 9 metres of each other. Where rooms are located opposite each other solid balustrading and/or operable privacy screens are provided.	Yes
C5: Developments on main roads to submit Acoustical Engineer's Report detailing compliance with Australian Standards AS 3671 Traffic Noise Intrusion, Building Sitings and AS 2107 - Acoustics.	The development is not sited along a main road.	N/A
C7: Areas affected by ANEF contours shall comply with AS2021.	Site affected by 20-25 ANEF and an acoustic report has been submitted to demonstrate that the proposed development can comply with AS 2021.	Yes
C8: Bedrooms not to share walls with living rooms or garages of other dwellings.	Wherever possible, this has been achieved in the design of the development.	Yes
C9: Plumbing to each dwelling to be separated and contained to prevent noise transmission.	A suitable condition of consent can be imposed to satisfactorily address this matter.	Condition to comply
C10: Bedroom windows min. 3m from shared	This has been achieved in the design of the development with the	No – Note 13

Control	Proposal	Compliance
streets and driveways and parking areas of other dwellings	exception of the bedroom windows to the three units located adjacent to the driveway entrance. A condition is proposed requiring that a landscape strip of minimum 1 metre be provided adjacent to these units. This is considered to provide an adequate level of amenity for the future occupants.	
3.3.11 Safety and Security		
C1: Building and open space designed to allow casual surveillance, minimise access b/n roofs, balconies, windows, ensure adequate lighting, discourage crime.	The design and orientation of the development is such that the main pedestrian entrances and common areas of the development will be able to be casually surveyed from the dwellings. The consent will be conditioned to require adequate lighting to ensure safety of residents.	Yes – Condition to comply
C2: Lighting to pedestrian ways, dwelling entries, driveways, communal areas, car parks.	The common areas of the development, including the basement car parking area, are to be provided with suitable lighting. Details to be submitted with the CC. The consent will be conditioned accordingly.	Yes – Condition to comply
C3: Access to car parks from common areas to be lockable	A suitable condition of consent can be imposed to satisfactorily address this matter.	Condition to comply
C4: Audio/video intercom system to be provided at entry for visitor access.	The visitors parking area will be accessible via an intercom system.	Condition to comply
C6: Buildings adjoining street/open space to contain habitable room window overlooking area.	All dwellings within the development achieve this requirement.	Yes
3.3.12 Pedestrian Access and External Circulation		
C1: Paths to and within buildings to provide uninterrupted access to all facilities incl. Parking, mail boxes, external clotheslines, common areas.	The proposed has provided an acceptable pathway to and within building to all facilities on site, however the townhouses do not have direct access to the communal open space areas and it is recommended that this be required by way of condition of consent.	Condition to comply.
C2: Doors and doorways adequate width to enable access to all public areas.	This is a requirement of the BCA.	Yes
C3: All accessories to be easy to manipulate and at appropriate height to enable equitable access.	A suitable condition of consent can be imposed to satisfactorily address this matter.	Condition to comply
C4: Finish on ground surfaces not to restrict access.	The proposed finishes to the ground surfaces appear satisfactory and an access report has been submitted with	Yes

Control	Proposal	Compliance
	the application.	
C5: Length of corridors to be minimised.	The length of corridors are minimised where possible.	Yes
C6: Pedestrian access and car access to be distinguished and separated.	Separate and designated pedestrian and car access points are provided to the site that are distinguished and separated.	Yes
C7: Public through site pedestrian access required in large development sites.	Public through site pedestrian access provided.	Yes
C8: Comply with Access DCP.	A Disability Access Report prepared by Lindsay Perry Access and Architecture has been submitted with the application to demonstrate that appropriate access is provided to and within the development.	Yes
3.3.13 Adaptable Housing		
C1: Min. adaptable housing 51+ units = 2 + 1 unit/per additional 30 units	A condition is proposed requiring the provision of 4 adaptable units as required by the DCP.	Condition to comply
3.3.14 Fence and Walls		
C1: Masonry/brick fences over 600mm and other fences over 1m high require approval along residential frontages. Solid metal panel fences (any height) not permitted along street frontages.	Open form palisade fencing to a height of 1.0m is proposed at the front boundaries. However a condition is proposed that the front setback areas be amended to match 9-19 Myrtle Street and other similar townhouse developments in William, Bay and Daphne Streets, which have tiers of landscaping to provide a differentiation between private and public space.	Yes
C2: Design of fencing over 1m in height must consider sightline issues.	Sightlines have been appropriately considered by Council's Development Engineer.	Yes
C3: Max. height of side or rear fencing = 1.8m.	Maximum height of side / rear fence shall be restricted to 1.8m above any boundary retaining walls proposed.	Condition to comply
C5: Council may require that any existing fencing be replaced in a development if dilapidated condition.	New fencing will be required as appropriate to the site boundaries.	Yes
C6: Access gates shall be hung to swing inward.	The consent will be conditioned to require gates to swing inward.	Condition to comply
C7: Where the fence/side returns are to be erected on or adjacent the common allotment boundary written consent of the adjacent owner(s) required.	The consent will be conditioned to require consent of adjoining owners with respect of any boundary fencing.	Condition to comply

Control	Proposal	Compliance
3.3.15 Solar Access and Overshadowing		
C1: Shade diagrams showing overshadowing of apartments within the development, of adjoining development and of shared open space required	Shadow diagrams have been submitted to accompany the development application indicating shading impact both within and beyond the site.	Yes –
C2: Living rooms and private open spaces of at least 90% of dwellings receive a minimum of 3 hours direct sunlight between 9am and 3pm in midwinter.	Neighbouring properties will continue to receive in excess of 3 hours solar access at mid-winter. The applicant has confirmed that 66% of the proposed dwellings within the development will achieve at least 3 hours solar access and 71% of the proposed dwellings within the development will achieve at least 2 hours solar access in accordance with SEPP 65 and the Residential Flat Design Code. As such this is considered satisfactory in this case.	No – Note 14
C3: Appropriately designed double glazed or energy efficient elements	This matter is adequately addressed by BASIX.	Yes
C4: Use of coloured glass as a shading device is not acceptable.	None proposed.	Yes
C4: Roof terraces are to be protected with shade cloths, planting, and/or pergolas.	Under the deferred commencement condition the proposed roof terraces on Buildings 2 and 3 are to be deleted as they add additional height to the buildings which is consistent with the surrounding development.	Yes
4. Residential in Association with Shops / Local Refreshment Rooms.		
C1: Compliance with the Botany LEP 1995	The proposed retail floor space is permissible with consent and satisfies the relevant objectives of the zone.	Yes
C2: Compliance with other Council DCP's and Codes	The proposed retail floor space is considered to comply with the other relevant codes and DCP's, specifically with regards to off-street parking provision.	Yes
C3: non-residential located at natural ground level	The proposed shop is located at natural ground level.	Yes
C4: The multi-unit and RFB component of the development complies with Section 3 of this DCP.	Refer to comments in response to Section 3.	Refer to comments in response to Section 3 above.
C5: Adequate storage is provided for the non-residential floor space.	A condition is proposed requiring the provision of at least 30m ³ for the retail tenancies. This will allow at least 10m ³ to be provided per tenancy if the retail space is divided at a later stage.	Condition to comply
C6: Residential must be	The proposed commercial space is	Yes

Control	Proposal	Compliance
integrated with the non-residential	integrated within the design.	
C7: Noise insulation to be incorporated into ceilings / floors / walls that are shared with residential units	Details have not yet been provided.	Condition to comply.
C8: Building to provide active street frontages	The proposal provides active street frontages	Yes
C9: Layout and design ensures privacy to residential dwellings	The proposed layout does not create any privacy impacts to residential units within or outside of the development.	Yes.
C10 – C11: Parking and loading to minimise conflict with residential use, and visitors parking conveniently located.	The proposed parking for the commercial tenancy is separated from the residential car parking, and the spaces are located immediately inside the carpark for convenience.	Yes
C12 – site facilities conveniently located	This has been discussed in Section 3 above.	Yes

The proposal is considered to be generally consistent with the objectives contained in DCP 35 and the design principles and future desired character for Precinct No. 4. Despite the non-compliances, as discussed below in further detail, it is recommended that Council, subject to conditions of consent, support the development application.

Note 1: Building Height Control

Section 2.6.5 of DCP 35 contains precinct controls for Botany Precinct No. 4 and includes a control restricting the height of new development to a maximum of two storeys plus attic at street frontage increasing in the centre of the site to four storeys subject to design criteria.

The proposed development exceeds the required height limits with a maximum of five storeys to the corner of Myrtle and Jasmine Streets and three storeys to Myrtle Street. Buildings 2 and 3 are six levels in height, which are located towards the centre of the site. The proposal will be comparable in height to that of the adjoining multi residential development located to the west (9-19 Myrtle St and 23-23 Myrtle Street). These developments both have two storey plus attic to the street and 6 levels building to the rear of the site. As development site is unique in that it has three street frontages and is a corner site opposite a park, the development has provided for a five storey building on the corner of Jasmine Street and Myrtle Street to emphasis the corner and the entry to the residential areas of Jasmine Street and Myrtle Street. The height does not impact on solar amenity or privacy to the adjoining site and has defined the corner.

Based above that the development is consistent with the height of similar development in Myrtle the proposal has satisfied the Controls C1 and C2, Section 3.2.6 of DCP 35.

Note 2: Preferred Design Type

The preferred design type for the subject site is for multi-unit housing (i.e. townhouses) at the street frontage and residential flat buildings within the site. The proposed development comprises townhouses to Bay Street and the southern end of the site to Jasmine Street, while a residential flat building is proposed to the corner of

Jasmine and Myrtle Streets and to the Myrtle Street frontage (i.e. Residential Flat Buildings 1 and 2).

This matter is closely related to the issue of height, which has been addressed in detail above in *Note 1*. In summary, the proposed development is considered to provide a suitable response to the site subject to the proposed deferred commencement condition for the heights of Buildings 2 and 3. Therefore the proposed deviation from the 'Preferred Design Type in the Botany Precinct 4' is supported in this case.

Note 3 - Townhouse Depth

The townhouses satisfy the maximum internal building depth requirement, however they exceed the total building depth of 15.2 metres (including the 'articulation zone') permitted by Control C3, Section 3.2.4 of DCP 35. The townhouse depth including articulation zone is between 16.4m – 17m. The objective of this control is 'to provide adequate amenity for building occupants in terms of sun access and natural ventilation'. The proposed townhouses to Jasmine Street have dual frontage and are generally of east-west orientation. The rear yards and rear elevation will therefore gain solar access in the morning and the front elevation (opposite Booralee Park) will gain direct solar access in the afternoons at mid-winter. The position of the townhouses opposite Booralee Park will ensure that these dwellings continue to gain adequate solar access and natural ventilation. The townhouses with frontage to Bay Street have their rear yards orientated to the north and, while overshadowing will result from the proposed residential flat buildings within the site, the dwellings have frontage to Bay Street and their overall design is considered to allow ample solar access and natural ventilation. As such, the proposed variation is supported in this case.

Note 4 - Apartment Depth

The proposed residential flat buildings have a depth of between 19m-21.5m excluding articulation zone and 20.5m-25m including articulation zone. The proposed internal depths of the units is a maximum of 9 metres, while the State Governments' Residential Flat Design Code recommends a maximum depth of 8 metres. The proposed development is comprised of 75% dual aspect units which benefit from good solar amenity and cross-ventilation. The remaining 25% (or 27 units) are of a generous size (being minimum 75m² for one-bedroom units and 100m² for 2 bedroom units) and each is provided with a balcony with a minimum area of 12m². While solar amenity to the rear of the units is not optimum, given the unit sizes combined with the minimum 7m unit width, the overall amenity of the units is considered acceptable.

Note 5 – Site Coverage

The proposed development has a site coverage of 84.3% including the basement level (7,441m²), however the site coverage is 41% or 3, 619.9m² for the buildings and associated open space areas only (i.e excluding the basement). The Applicant has provided the following response in relation to site coverage:

"[The site] cannot accommodate multiple levels due to the high watertable in the area. The site coverage and unbuilt-upon open space are primarily a function of the size of the basement car park, and extensive landscaping is proposed around the perimeter of the site, throughout the communal open space and courtyards, and new street trees are proposed at regular intervals along the frontages of the site".

The Applicant's justification is generally agreed with. Deep soil planting has been provided to the sites perimeter to allow adequate planting to enhance the streetscape and provide screening between adjacent sites. The proposed development is similar to other developments in the area and the variation is supported in this case.

Note 6 - Building Separation

Building separation for building elements up to 4 storeys is between 12m and 25 metres between all rooms and balconies, except for a minor departure in Building 3.

The Building 3 of the proposed development has staggering setback to 72 Bay Street, between 6m to 8m , as 72 Bay Street is a small site under DCP 35 by reason the site narrowness in width and it is required to be amalgamated with an adjoining site to accommodate a residential redevelopment. As it currently stands any redevelopment of 72 Bay Street could not comply with the RFDC separation distances. The proposed development has provided sufficient separation between the subject site and this site to ensure the future redevelopment of 72 Bay Street and has maintain the privacy to this site by further increasing landscaping and screening to Building 3. It is considered that the proposed development has satisfied the objectives of the RFDC.

As such, the minor variation for this part of the building is considered acceptable in this case.

Note 7 – Corner Buildings

Control C1 and C2, Section 3.2.6 of DCP 35 require that buildings reflect the corner conditions of respective streets to accentuate the topography, street hierarchy and reinforce the spatial relationships, and that corner buildings reflect the architectural, hierarchy and characteristics of the streets.

The proposed development has been designed to accentuate the corner of Myrtle and Jasmine Streets. The Design Review Panel originally recommended that the buildings to the street should be two storey plus loft level at their meeting of 8 September 2010, however following receipt of amended plans and additional information at the second pre-application meeting in January 2011 they recommended that the building at the corner should be reduced from 4 storey plus loft level to 3 storey plus loft level to respect the openness to the north. The applicant contends that the proposed building height and the design element is appropriate in these circumstances for the following reasons:

- *The proposed buildings align with the corners of the site and integrated with the building form extending along the street frontages; and,*
- *The corner building reflects the architectural form of the buildings extending along the street frontages.*

The area is generally characterized by open space to the north and to the west, single storey dwellings and townhouse development to the street frontages. As development site is unique in that it has three street frontages and is a corner site opposite a park, the development has provided for a five storey building on the corner of Jasmine Street and Myrtle Street to emphasis the corner and the entry to the residential areas of Jasmine Street and Myrtle Street. The height does not impact on solar amenity or privacy to the adjoining site and has defined the corner. The corner element does reflect the revolving character of the from industrial to residential, and given that the

development comprises almost the entire block between Bay and Myrtle Streets, the proposal can to some extent create its own architectural conditions which renders the corner position suitable to a taller built form.

Note 8 - Building Setbacks

The proposed townhouses along Bay Street have a nil side setback to both side boundaries, while a setback of approximately 3 metres would be required in accordance with Control C4, Section 3.2.9 of DCP 35. In this case, the adjacent townhouse development at 66 Bay Street has a nil setback to its eastern boundary and the proposed development will abut this existing development. The Applicant originally proposed a 1.5m setback to the western side of this townhouse development, however a nil setback has been provided to allow a continuation of the pattern of townhouse development in the street. While these setbacks do not meet the minimum DCP requirements they are considered satisfactory in this case.

The eastern side setbacks of the six storey residential flat buildings (as modified) generally comply with the 7.4m setback required by Control C4, Section 3.2.9 of DCP 35, however some balconies and a minor portion of Building 1 protrude into this setback by up to 3 metres. In addition, the basement protrudes into the setback area. The Design Review Panel had concern of the eastern setbacks of the flat buildings recommending that this setback be increased to ensure equity of redevelopment opportunity and visual and acoustic privacy for adjoining sites. This matter has been discussed in detail previously in the report in response to SEPP 65 and the proposal is considered to provide a satisfactory separation from the adjacent properties.

Note 9 - Car Wash Bays

Control DCP 35 requires the provision of 11 car wash bays. This is considered excessive and it is recommended that a condition be imposed requiring the provision of 2 car wash bays.

Note 10 - Minimum Balcony Depth

Control C3 of Section 3.3.4 requires balconies to have a minimum depth of 3m. The proposed balconies for Units 323, 333, 343, 353, 222, 322, 232, 332, 242, 342 and 252 were found to have a depth of 2.3 metres however have since been amended to provide a minimum depth of 2.5 metres in accordance sketch plans SK 804 revision 01 submitted by the Applicant (and proposed for approval as part of Deferred Commencement Condition No. 1). While this depth does not strictly comply with the 3m requirement, the modified balconies all have a minimum length of 7.5 metres and an area of 30m². The balconies can be modified to comply with the 3 metre depth requirement, however they are considered to provide a highly usable area of external open space that provides a good level of amenity while a deeper balcony is unnecessary. In addition, the Applicant provides the following justification which is generally agreed with:

“In the circumstances, the nature and extent of the numerical variation is extremely minor and of no material consequence to the amenity of the overall development. Further, the eleven (11) apartments (representing approximately 10% of the total number of apartments) provide balconies with a total area of 30m², representing twice the total area requirement of 15m².

Finally, the minimum dimension of 2.5 metres exceeds the Rule of Thumb incorporated in the Residential Flat Design Code (RFDC) of 2.0 – 2.4 metres, and the proposed balconies are of sufficient size to accommodate a table and four chairs...”

In addition to the above, the balconies to apartments 223 and 233 were undersize and the applicant has demonstrated that the balconies can be made to comply with the DCP controls as indicated in sketch plan SK 805 revision 01. The Applicant has agreed that they would be willing to accept a condition of consent that required the design to be modified in accordance with this drawing. They have also confirmed that the variation does not compromise the required separation distances between these balconies and those to Building 1 to the west as the bulk of the increase in depth of these balconies has been achieved by partially recessing them into the building form. The internal unit sizes for apartments 223 and 233 have been maintained at the required minimum of 100m² for a two bedroom apartment as these apartments were previously slightly oversized. Furthermore, louvres have been added to these balconies on the revised elevations to improve the amenity of these units.

Therefore, subject to the recommended conditions to modify the plans in accordance with the sketch plans submitted, the proposed development is considered to provide balconies that have a high level of amenity to future occupants of the development.

Note 11 – Private Open Space for Townhouses 6 – 14

Control C4, Section 3.3.8 of DCP 35 requires that townhouses and ground floor units be provided with a minimum private open space area as follows:

- 2 bedrooms = 35 m²
- 3 bedrooms = 45.5 m²
- 4 bedrooms = 56 m²

Furthermore, the control requires that at least an unimpeded area of open space be provided with dimensions 6m x 4m (i.e. 24m²) for each of these dwelling types.

Townhouses 1 and 14 have rear yards that fully comply with the DCP controls, and the rear yards of townhouses 2 to 5 inclusive have been increased to have an area of greater than 24m² but are not quite the proportions (approx 4.7m x 5.5m) nominated in the DCP.

The proposed courtyards to the townhouse 6 to 14 have an area of 21m² and they have not been increased to meet Council's DCP requirements. The Applicant has provided the following response in relation to this matter:

“We are not able to increase the size of the rear yards to townhouses 6 to 14 inclusive as these are constrained by the location of the apartment building car parking spaces in the basement below. It is intended that the townhouses will ultimately be subdivided from the remainder of the development as freehold lots. This necessitates that the rear yards do not overlap the apartment (strata plan) car parking spaces in the basement below. These townhouses are provided with more than the minimum overall area of POS nominated by the DCP. The rear yards are proposed to be approximately 4.7m x 4.5m with an area of 21m². It is requested that Council give favourable consideration to this arrangement as the space required remains very functional and this minor non-conformance will not unduly reduce the habitability of the subject townhouses”.

An increased rear ‘private’ open space area is considered to provide an improved level amenity for any future occupants of the proposed townhouses. There is concern about the suitability of the Applicant’s proposal to torrens title subdivide the townhouses, where these townhouse will have no access to the communal open space, at this stage it recommended that the development be strata subdivided to allow the townhouses to use the communal open space. As such, a condition has been imposed on the consent requiring that the rear courtyards be amended to satisfy the DCP requirements. In addition, it is considered that direct access from the rear courtyards of the townhouses into the communal open space areas would benefit the amenity of future residents and this requirement forms part of the recommended condition.

Note 12 – Communal Open Space

Control 7, Section 3.3.8 of DCP 35 requires that 20% of the site be provided as communal open space. The DCP further requires that this area should be usable, not be ‘dissected’ by main access paths and that this area not be provided over slabs or basement car parking areas. The Applicant has submitted diagrams which show 2,747m² of the site being for communal open space purposes. This represents 29.5% of the site area and the proposal therefore complies with DCP 35. However some the proposed communal areas contains the main access way to the units. This access way is provided in an area in excess of 10m, which are very well landscaped and seating can be incorporated to increase the useability of this area. A deferred commencement condition is also proposed requiring that the area be modified to include facilities such as seating and a BBQ area. In addition, the subject site is located opposite Booralee Park and Council’s Aquatic Centre. As such, the proposal is considered provide adequate communal open space in this case.

Note 13 – Proximity of Bedroom Windows to Driveway Entrances

Control C10, Section 3.3.10 of DCP 35 requires that bedroom windows be located a minimum of 3m from shared streets and driveways and parking areas of other dwellings. This has been achieved in the design of the development with the exception of the bedroom windows to the three units located with a nil setback to the driveway entrance from Myrtle Street (i.e. apartments 214, 224 and 234). A condition is proposed requiring that a landscape strip of minimum 1 metre be provided adjacent to these units. This is considered to provide an adequate level of amenity for the future occupants.

Note 14 – Solar Access

Control C2, Section 3.3.15 of DCP 35 requires that living rooms and private open spaces of at least 90% of dwellings receive a minimum of 3 hours direct sunlight between 9am and 3pm in midwinter. The Residential Flat Design Code (RFDC) requires that at least 70% of dwellings will receive in excess of 3 hours solar access at mid-winter, however in dense urban areas a minimum of two hours may be acceptable. The Applicant has confirmed that the proposal provides solar access as follows:

- *66% of dwellings receive 3 hours of sunlight to their living areas between 9am and 3pm (winter solstice).*
- *71% of dwellings receive more than two hours of sunlight to living areas between 9am and 3pm (winter solstice).*

The Applicant contends that the variances to the RFDC are reasonable as “no single aspect apartments have an orientation between the south-west and south-east”.

The proposed variation to the control is minor, and many of the dwellings are dual aspect as identified by the Applicant. The proposal is therefore considered to provide an adequate level of amenity in this regard and the variation to the control is considered satisfactory in this case.

Aircraft Noise Development Control Plan (DCP)

The subject site is located within the 20-25 ANEF zone and therefore is subject to the requirements of the Aircraft Noise DCP. The proposed building works are permissible on a conditional basis with the submission of an acoustic report demonstrating full compliance with the requirements contained within *Australian Standards (AS2021-2000)* with the submission of the Construction Certificate application.

As previously discussed in response to Clause 13 of the Botany LEP 1995, the application is accompanied by an acoustic assessment report prepared by a suitably qualified consultant. The report concludes that the development is suitable for the site and that measures can be implemented within the overall design of the building to ensure compliance with *Australian Standards (AS2021:2000)*.

Energy Efficiency Development Control Plan (DCP)

The Development Application has been designed to maximise direct sunlight into the apartments in mid-winter with 75% of the units benefiting from dual aspect. BASIX Certification has been provided with the application demonstrating that the proposal meets the water and energy savings targets of 40% and the thermal comfort requirements of the SEPP (BASIX) 2004. The applicant also confirms that the proposal makes use of rainwater harvesting, storage and reuse. Therefore, the development is considered acceptable with regards to Council's Energy Efficiency DCP.

Development Control Plan (DCP) No. 29 – Waste Management and Minimisation Guidelines

The submitted Waste Management Plan addresses waste management and minimisation throughout the demolition and construction phases, and for the ongoing use of the building.

The WMP proposes the following waste management strategy:

- Townhouses:

Townhouses are to take care of their own waste and recycling. The WMP intended for these dwellings to present their waste for collection at the kerbside in front of their property. Condition is proposed that rear access be given to the townhouses to allow for bins to be stored in the rear yards of the townhouses. Residents will be required to move the bins to and from the street as required for waste collection.

- Residential Units

Three garbage rooms are proposed within the basement carpark catering for a total of 51 x 240L waste bins and 34 x 240L recycling bins. An additional 51 x 240L recycling bins will be stored during filling nearby to the garbage chute access on each floor.

- Retail Tenancy

The retail tenancy will be required to manage their own waste, with space for the separate storage of their waste and recycling bins in the basement area. The architectural plans do not provide a separate waste storage locker for the commercial tenancies and a condition is proposed that this be provided prior to issue of the Construction Certificate.

The requirements of DCP No. 29 have been considered in the assessment of the development application. A condition has been imposed requiring the submission of a Waste Management Plan prior to the commencement of demolition. As such, the proposal is considered to be satisfactory with regards to DCP 29.

Development Control Plan No. 32 – Landscape

The proposed development provides areas of deep landscaping to the property boundaries, however at present requests approval for the location of on-site stormwater tanks to be located within parts of the deep soil area.

The Application has been assessed by Council's Landscape Architect and additional landscape documentation and information, including relocation of the stormwater system, is requested by way of condition to ensure that the proposed landscaping is appropriate for the subject site.

The proposal is therefore considered capable of achieving the relevant design standards and/or objectives contained in Council's Landscape DCP No. 32.

Access Development Control Plan Premises Code

A Disability Access Report prepared by Lindsay Perry, dated 9 February 2011, has been submitted with the application which provides an assessment against the Access Legislation including the Commonwealth Disability Discrimination Act 1992, the Building Code of Australia 2010, Australian Standards AS1428.1, AS1428.2, AS1428.4, AS1735.12 and AS4299, and Council's Access Development Control Plan.

The report concludes:

“We consider that the drawings presented for assessment are capable of compliance with The Building Code of Australia 2010 and the intent of the Disability Discrimination Act 1992 in relation to access for persons with a disability, subject to the recommendations made in this report being implemented during the construction process”.

A condition is proposed requiring that the development incorporate four (4) adaptable units as required by the DCP. In addition, compliance with the recommendations outlined in the report will be required as a condition of consent, with details to be included in the plans submitted with the Construction Certificate and required compliance with the provisions of the BCA and Council's Access DCP.

Contaminated Land Development Control Plan (DCP) No. 34

The provisions of DCP 34 have been considered above as part of the assessment against the requirements of SEPP 55. The proposed development is considered satisfactory with respect of the provisions of the Contaminated Land DCP in that sufficient information has been provided to demonstrate that the site can be made suitable for the proposed residential and retail development.

(b) The likely impacts of the development including environmental impacts on both the natural and built environments, social and economic impacts in the locality.

These matters have been considered in the assessment of the application. It is considered that the proposal will have no significant adverse environmental, social or economic impacts on the locality.

Consideration of traffic and parking impacts, privacy impacts, solar access and other matters raised by members of the community have been addressed below in response to the submissions received from the community (Refer to Section 79C(d)).

Detailed consideration is provided below for view loss as a separate and detailed analysis has been provided by the Applicant in response to resident concerns:

As the proposed development exceeds the height limits in parts of the development the Applicant has conducted a view analysis for several of the units located in Bay East – 9-19 Myrtle Street, which located to the east of the subject site. The view seen from these units, in particular to the units located on levels 5 and 6.



The View Analysis Report prepared by the Applicant dated 7 December 2011, assesses the reasonableness of views loss to these properties as a result of the proposed development. The report has had regard to the case law established by *Tenacity Consulting v Warringah [2004] NSWLEC 140* (pars 23-33) which has established a four-step assessment of view sharing. The Report carried out view analysis from Units 403, 404 and Townhouse 28 of the Bay East development at No 9-19 Myrtle Street. The Report has found the following:

“Both the Bay East development and the development proposed for 8-32 Jasmine and 68-70 Bay Streets incorporate six storey residential flat buildings. The topmost storey in the Bay East development is known as level 5, however, this is due to the lowest residential level being called ground floor. The roof of the Bay East development is at RL 27.30 which is almost 2 metres higher than that proposed for the six storey residential flat buildings at 8-32 Jasmine and 68-70 Bay Streets.

Natural ground level around the sites varies from approximately RL 6 to RL 7. The views to the west are dominated by the Arncliffe – Bexley Ridge which lies at approximately RL 50.

The distance between the apartments and townhouse within the Bay East development reviewed and the proposed six storey residential flat buildings proposed for the

development of 8-32 Jasmine and 68-70 Bay Streets varies from approximately 50 metres to the townhouse and 70 to the apartments.

Presented below are detailed comments on the views from the individual locations identified.

Apartment 403

This is a three bedroom apartment that is located on both level 4 and level 5. The main living area is located on level 4 facing west onto a good sized private balcony. The main bedroom is located on level 5 with balcony areas to the north, west and south. Secondary bedrooms are located on level 4 and face south.

Location 1 – Level 4 Balcony

This balcony currently enjoys extensive views over an area of approximately 160° running from north west to south east. The extent of view impacted by the proposed development is approximately 40° which represents some 25% of the total view available from this location.

The views from this balcony were previously affected by the industrial buildings on the 8–32 Jasmine and 68–70 Bay Streets site. The proposed residential flat buildings do result in the loss of some view aspect to the west, however, views to the south and between the two proposed buildings has been enhanced.

Location 2 – Level 4 Living Room

The living room to this apartment has windows that face both west and south. The main aspect is to the west through large sliding windows onto the private balcony. The view to the west and south-west extends over an angle of approximately 60°, however, part of this is always obstructed by a set of visually quite heavy sliding louvred panels. The proposed southern residential flat building will impact on slightly more than 20° of the view which represents approximately 35% of the total view available from this location. When the extent of view that was previously obstructed by the now demolished industrial buildings on the 8- 32 Jasmine and 68-70 Bay Streets site is taken into consideration, the view obstructed by the proposal is to an extent balanced by additional view aspects to the south and between the two proposed residential flat buildings.

It is also noted that on both occasions that this apartment was attended, the sliding louvred panels referred to above were in an extended position. It is presumed that this is to control the western sun, however, a significant portion of the westerly view available was blocked by the louvred panels. The louvred panels were retracted prior to the photograph included in this report being taken.

Location 3 – Level 4 Kitchen

The view aspect from this location will be almost entirely affected by the proposal. The southern of the two proposed residential flat buildings will be almost centred in this view aspect. A kitchen window is considered a secondary view in comparison to the primary living spaces. While all views are considered to be important, the most significant characteristic of secondary windows is the provision of natural light and ventilation. The proposed south residential flat building will impact on the view from this location, however, it is noted that only the top two storeys extend above the profile of the industrial buildings that have now been demolished. Views of the horizon will be lost but considerable sky aspect will be retained. As noted for location 2, this window

has had quite visually heavy timber louvres installed presumably to control the western sun. This is considered acceptable for a kitchen window.

Location 4 – Level 5 Balcony

This balcony is located off the main bedroom, however, it is by far the largest outdoor living area of this apartment and is therefore considered significant. This balcony currently enjoys extensive views over an arc of approximately 225° running from north east to south. The extent of the view impacted by the proposed development is approximately 35° which represents slightly more than 15% of the total view available from this location. The views affected by the proposed development are approximately due west. The primary aspect from this balcony is considered to be the northern quadrant which will not be affected.

Furthermore, due to the Bay East development being approximately two metres higher than that proposed for 8–32 Jasmine and 68–70 Bay Streets, it is noted that long distance views of the horizon to the west (Arncliffe–Bexley ridge) will be retained. With the relatively small intrusion that the proposed residential flat buildings will have to a secondary aspect of the extensive views available from this balcony, the proposal is considered satisfactory.

Apartment 404

This is a three bedroom apartment that is located on level 4. The main living area is located on the north west corner and opens onto an extensive private balcony that flows from the north to the west. All of the bedrooms face north onto good sized balconies.

Location 5 – Level 4 West Balcony

This balcony currently enjoys extensive views over an arc of approximately 160° running from north to south west. The extent of view impacted by the proposed development is approximately 40° which represents some 25% of the total view available from this location.

Given the extensive views that are available, the extent of obstruction proposed is considered reasonable.

Location 6 – Level 4 North Balcony

This balcony also enjoys extensive views over an arc of approximately 190° running from north east to south west. The extent of view impacted by the proposed development is less than 40° which represents less than 20% of the total view available from this location. Most importantly, the primary views from this balcony are considered to be the northern quadrant and the impact that the proposed development will have on the secondary views to the west is not considered to be of great significance.

Location 7 – Level 4 Living Room

The living room of this apartment has extensive views with windows on both the north and west façade. The existing views extend over an arc of approximately 180° from north east to south west. The proposed development will obscure views over an angle of approximately 40° which represents less than 25% of the total available.

The portion of the view that the proposed development will obscure is approximately centred either side of due west. A northerly aspect is generally considered to be

superior and of more importance than that to the west. While the west view is noted to provide glimpses to the airport, the extent of views that will remain unaffected by the proposed development, including some to the airport, is significant. It is furthermore noted that the westward facing windows to the living room have been fitted with screening that was retracted to allow for the photographs to be taken. It is expected that these screens would be extended at most times, as they were when the apartment was attended, due to the impact of the western sun.

Location 8 – Level 4 Kitchen

Given that this window is only a few metres to the north and of similar configuration of that described in location 3, as expected, the results are very similar. Accordingly, the same commentary applies.

Townhouse 28

This is a two bedroom townhouse that extends over three levels and incorporates an attic space on level 2 that can be used as a third bedroom. The main living space is located on ground floor with a private courtyard to the west. The two bedrooms are located on level 1 and each has a private balcony. The attic space has a dormer window facing west but no balcony is provided. It is noted that only the view from the attic dormer window will be affected by the proposed development at 8-32 Jasmine and 68-70 Bay Streets as views from the lower levels to the west are effectively blocked by the existing adjacent industrial developments at 1-3 and 5 Myrtle Street.

Location 9 – Level 2 Attic

The attic room in townhouse 28 is currently being used as a bedroom. The dormer window to the west has glazing that returns to both the north and south sides. This results in a viewing arc of approximately 160° extending from north east to south. Views from this window were previously affected by the industrial buildings on the 8-32 Jasmine Street and 68-70 Bay Street site with the horizon not being visible for the quadrant approximately south of west. The total extent of view obscured by the proposed development in approximately 50°, however, half of this was affected by the previous industrial buildings. Views to the west will be reduced by the proposed northern residential flat building, however, other views between the two residential flat buildings and to the south will be enhanced.

As an attic window, the views are considered secondary and the extent of view impacted by the proposal is approximately 30% of the total available, of this approximately half (15%) overlaps with the obstruction previously generated by the industrial buildings that have now been demolished.”

Based on the above assessment, which there is no reason to dispute, the view loss impacts attributable to the amended development are considered both within reason and satisfactory with regard to the Planning Principles contained within *Tenacity Consulting v Warringah Council* [2004] NSWLEC 140 in the case of the level 5 and 6 of the Bay East development and found to be acceptable, retaining a good percentage of the skyline view to the north, it noted that this view is not iconic, but a district view.

It should be noted that the deferred commencement condition would see in the first instance the removal of level 7 and the modifications to levels 5 and 6 of building 2 and 3 of the development reducing their size to create a wedding cake style development, there for opening the gap between the top two floor from 19m to 25m to 25 to 26m , which will result in a loss of four units, however it will further improve the

view of the district. The proposed development is considered reasonable and has been designed to provide a fair share of view retention and should be supported in this instance.

(c) The suitability of the site for the development.

These matters have been considered in the assessment of the development application. The subject site is currently vacant however contains the remaining slab(s) and other hard surfaces required to be retained under the demolition application (DA 11/031). Pockets of contamination have been identified in the site and groundwater and however adequate information has been submitted to confirm that the site can be made suitable for the proposed residential and retail development. In addition, an acoustic report has been submitted to demonstrate that the development can meet the acoustic requirements of sites affected by ANEF 20-25. It is essential that all works forming part of this application be undertaken in an appropriate manner to ensure the ongoing health and safety of adjoining residents and future occupants of the site.

Accordingly, it is considered that the site is suitable for the proposed development. The proposed development being for demolition of the remaining slab and hard surfaces, excavation and construction of the mixed residential and retail development accommodating 95 apartments, 14 townhouses, 280m² of retail floor space, car parking for 216 vehicles located within a partial basement level and planting in accordance with the submitted landscape plan, at 8-32 Jasmine Street and 68-70 Bay Street, Botany located within the 2(b) Residential zone, is considered to be a suitable development in the context of the site and the locality.

(d) Any submission made in accordance with the Act or Regulations.

The application was notified to surrounding property owners / occupiers, advertised in the local newspaper, and a sign placed on site for a thirty (30) day period from 1 March 2011 to 31 March 2011 in accordance with *Development Control Plan No. 24 – Notification of Development Applications* and the Integrated Development Provisions under the *Environmental Planning and Assessment Act 1979*.

Twenty-one (21) individual letters of objection and a petition containing 20 signatures were received in response to the notification of the development application. An additional petition containing 262 signatures was also submitted to Council on 6 February 2012 at the second Resident's Consultative Committee Meeting.

The key concerns raised with the proposal included parking, traffic impacts, site contamination / remediation, height and FSR.

As noted previously in the report, a Resident's Consultative Meeting was held on 7 June 2011. Based on the significant degree of concern raised in respect of traffic, parking and site contamination issues it was agreed that Council would engage an independent Traffic Consultant and independent Environmental Scientist to review of the broader traffic and parking impacts in the area respond to the site contamination issues associated with the proposed development at the subject site. A separate meeting with six community nominated representatives and the Council appointed Traffic Consultant was held on 3 October 2011 to ensure that the traffic and parking issues were properly understood and investigated. A subsequent Resident's Consultative Committee Meeting was held on 6 February 2012 where the consultants were able to

provide responses to resident concerns. At this meeting the modified plans for the upper levels (L5 and L6) of the eastern two residential flat buildings were also presented.

The matters raised by members of the local community have been considered in the assessment and subject to amendments made together with imposition of conditions of consent as recommended, impacts on adjoining properties and the locality are considered to be minimised and satisfactory in terms of policy requirements. The issues raised are discussed below:

- *Parking – significant concern was raised with the impact that the proposal will have on the availability of on-street parking. Residents noted that there is currently lack of on-street parking available, especially during sporting events at Booralee Park and during use of the adjacent swimming pool. It was noted that some properties rely solely on on-street parking as they do not have parking within their sites. Additionally it was noted that the visitors parking did not comply with the parking requirements in Council’s Off Street Parking DCP. An example quote from an objection is provided below:*

“Parking in the area is impossible. The proposal will exacerbate existing parking problems as there is already inadequate car parking existing in the streets for the number of people that use swimming pool and sports facilities at Booralee Park. Also many properties in the area including 1-15 Jasmine Street and many in Bay Street, do not have off-street parking”.

Comment: It is understood that sporting events at Booralee Park and the use of the Botany Aquatic Centre place demand on the existing on-street parking in the area. The development as proposed to be amended by way of deferred commencement condition (comprising 109 dwellings) now complies fully with Council’s Off-Street Parking DCP, and all visitors and commercial parking spaces shall be freely accessible during day time hours (and by intercom after hours). The Council’s parking requirements being two spaces per two or more bedroom dwelling is generous and will reduce demand for on-street parking. In addition, the Local Traffic Committee has endorsed the provision of angled street parking in Myrtle and Jasmine Streets and these works form part of the VPA. This will increase the amount of on-street parking available and its provision is required by way of condition on this consent. It is therefore considered that the proposed development will have acceptable impacts on the parking availability in the area. It is also pointed out to the Panel that the maximum use of Booralee Park for organised sporting activities is 30 hours a week.

- *Traffic – Significant concerns were raised with traffic congestion and other traffic impacts that will result from the proposed development. Residents’ principal concern was that there are only two main ways to exit the Botany area, being via Banksia Street at the signalised intersection with Botany Road and via Page Street using the signalised intersection with Wentworth Avenue, and that these intersections are severely congested in the peak times. Other traffic related issues include the high speed with which vehicles can (and do) travel along Jasmine and Bay Streets, that the submitted Traffic Impact Assessment was inadequate.*

Comment: The Council has engaged an independent Traffic Consultant to undertake a detailed assessment of the overall traffic situation in the Botany area, and the resulting impacts from re-development of the remaining development sites within the Botany Area (including the sites zoned 2(b) and adjacent to the subject site and the proposed redevelopment at Wilson & Pemberton Streets). The report assessed the traffic generation and impacts for redevelopment at the current maximum FSR under the Botany LEP 1995 and a comparison against the development potential under the draft LEP 2012 with a maximum FSR of 1.5:1 for sites zoned 2(b). The report made the following key conclusions with regards to traffic impacts:

- *“...it has now been demonstrated that the overall peak traffic generation with future residential development (even with a FSR of 1.5:1) will be no greater than the generation with industrial uses.*
- *Whilst the overall peak traffic generation will be no greater there are some consequential circumstance in that:*
 - *the traffic direction is contra (ie egress in AM and ingress in PM)*
 - *the residential development will generate traffic movements at weekends whereas industrial largely does not.*

Potentially however the greatest impact is likely to result from the significantly higher levels of pedestrian movements.

- *It is apparent that the level of traffic generation will not cause the need for traffic management on the local or collector road system.*
- *The urban renewal process can offer significant benefits when the opportunity is presented to:*
 - *achieve a better streetscape*
 - *increase on-street parking supply*
 - *provide better traffic control*
 - *achieve a lower vehicle speed environment*
 - *significantly reduce truck movements”*

The report made some key recommendations including the provision of angled parking in Myrtle and Jasmine Streets, the provision of a roundabout at the intersection of Bay and Banksia Street, and provision of a signalised intersection at Bay Street and Botany Road. These recommendations have been supported “in principle” by the Local Traffic Advisory Committee subject to the following:

- Suitable pedestrian crossing facility should be considered at Jasmine Street and Myrtle Street and submitted to the Local Traffic Committee for consideration;
- The proposed angle parking must be in accordance with AS 2890.5–1993 (Figures 2.2–2.5);
- Affected residents and business must be consulted about the proposed angle parking; and

- The proposed traffic signal controls at the Botany Road and Bay Street intersection will require the pedestrian crossing facilities to be investigated on all of the four approaches, subject to RTA concurrence and agreement.”

The provision of the above will form conditions of consent and be part of a separate VPA.

- *Overdevelopment / Density – the proposal is a ‘gross over development’, which is out of character with the existing and emerging development in the area, as ‘also shown by the proposed 1.57:1 FSR which exceeds the 1:1 FSR permitted for the site’. The opinion of some is that the proposal should be townhouses only to “reduce strain on the congested streets” and to minimise impacts on the existing residents in the area.*

Comment: The Applicant has submitted a SEPP 1 objection with regards to the maximum FSR at the site. The proposed density of the development has been found to be satisfactory with regards to the existing and future context of the area. This matter has been addressed in detail previously in the report during consideration of the Applicant’s SEPP 1 objection. The matter of height is addressed separately below.

- *Height – “The height is excessive and not in keeping with existing developments in the area” and “The height exceeds the 4 storey maximum” are two quotes which articulate the primary concern with regards to the height of the building.*

Comment: This matter has previously been considered in the detailed assessment of SEPP 65 and Council’s DCP 35. The height of the proposed development is considered to be satisfactory in the context of the site and the area and in keeping with other development in the close locality as outlined in Table 5 of this report.

- *Design / Character / Appearance – Some objectors believe that the proposal will be an “eyesore” that will “totally destroy the ‘botanical landscape’ of Botany”, “overpower the area” and “close in the aspect of open space provided by the park and swimming complex”. They contend that it is not in keeping with the “community / family type atmosphere”, will turn the area “into a third world ghetto...to the detriment of many” and that it is “not consistent with the emerging character of the area”. It is also noted that the existing area has changed from an industrial area to a garden village and suggested “that the residents in the nominated area do not want their lifestyle to be altered by a huge development like that in DA 11/018”.*

Comment: This issue has been considered in the assessment of the application, and specifically addressed in relation to SEPP 65 and Council’s DCP 35. The site is zoned 2(b) Residential and allows townhouse and residential flat development. There are other recent examples of mixed townhouse and residential flat developments that have been approved and/or construction in the area. As noted previously under SEPP 65, the Council’s Design Review Panel (DRP) has considered the proposal on two occasions at pre-DA stage and they acknowledged that the proposed development is generally in accordance with recent approved residential development in the area and with the vision for the Precinct which is “undergoing a transition in urban form”. The matters raised by DRP have been

addressed by the Applicant, and relevant conditions are proposed requiring that the landscape planting in the front setback of dwellings to Jasmine Street be improved. It is considered that the design of the development combined with the use of materials (subject to the proposed Deferred Commencement Conditions) and amended landscape treatment to the front setback areas will result in a development that is suitable in the existing and future context of the site, its' zoning and the longer term objectives of the precinct.

The Panel is also advised that the development satisfies Council's DCP in respect of unit (dwelling) sizes which in terms of size are far in excess of that permitted by SEPP 65. The unit sizes required by the DCP are found under Section 3.3.2 –C6 to the DCP Compliance Table of this report and as such is a factor that must be considered in respect of FSR and equivalent units number if unit sizes were SEPP compliant.

- *View Loss – Three objections were received raising concern with the loss of views that would result from the proposed development.*

Comment: This matter has been addressed previously in the assessment of Section 79C(b) of the EP&A Act. In summary, while some views will be impacted, it was found that the proposal was not inconsistent with the 'planning principles' established by the Land and Environment Court of NSW and that the application did not warrant refusal based on this issue.

- *Privacy – Concern was raised with the privacy impacts that would result from the proposed development including the loss of privacy to units within the complex at 9-19 Myrtle Road and loss of privacy to other nearby residences. One objection stated - "my privacy in my own backyard would be non-existent as I would be on display like a caged zoo animal".*

Comment: The subject site abuts industrial developments along its entire eastern boundary. A development comprising four townhouses is located at the north-eastern intersection of Jasmine and Bay Street (known as No. 2 Jasmine Street and No.'s 66A – 66C Bay Street). This site shares its eastern boundary with the proposed development, however is separated to the north by No. 4 Jasmine Street which is now a vacant site. Further to the east is No. 9-19 Myrtle Street, and to the south are residential dwellings located on the opposite side of Bay Street

The building separation distance between the proposed development and the dwellings at No. 9-19 Myrtle Street is in excess of 45 metres. In addition, there are two parcels of land located between the proposal and No. 9-19 Myrtle Street. While some units are orientated toward the east, the separation distance combined with the proposed landscape treatment is considered to be satisfactory in the 2(b) zone and context.

With regards to the existing townhouse development at 2 Jasmine Street and 66A-66C Bay Street, the proposed development has been set back at least 18 metres from the rear yard of these dwellings which exceeds the separation distance required under DCP 35 and the Residential Flat Design Code (RFCD). A condition is proposed requiring that the balcony balustrading be modified from clear to opaque glazing to minimise overlooking opportunities. In addition, the proposed

building is off-set from these townhouse development and will generally provide views on an oblique angle. As such privacy impacts to these townhouses is considered to be satisfactory.

- *Overshadowing*
 - *Overshadowing impacts to rear yards of nearby residences which will not gain any sunlight at mid-winter to dry clothes and impact on plants.*
 - *Proposal will create overshadowing impacts to 9-19 Myrtle Road in the afternoon which “is significant as it warms my entire living space as all windows face this proposed development”.*

Comment: Overshadowing diagrams have been submitted which demonstrate that adjacent properties will receive in excess of 2 hours solar access at mid winter. The proposal will not create any overshadowing to dwellings at 9-19 Myrtle Street between the hours of 9am to 3pm at midwinter.

- *Pedestrian Safety – The following quotes provide an example of the key issues raised in relation to pedestrian safety:*
 - *Installation of pedestrian crossing on this “blind bend where some drivers far exceed the speed limit. It seems to be harder to cross Myrtle St and enter the Botany Aquatic Centre with traffic flying from every angle”.*
 - *Lots of children around the site for sports days and the increased traffic will decrease pedestrian safety.*

Comment: A pedestrian crossing has been proposed by the Local Traffic Advisory Committee at the intersection of Jasmine and Myrtle Streets, and its provision forms a condition of consent. A round-about is also recommended at the intersection of Bay and Jasmine Streets and this will also be required by way of condition. The angle parking proposed to Jasmine Street will narrow the roadway and is anticipated to result in an associated slowing of vehicular movements. Council’s Development Engineer has considered the sight lines available for vehicles existing the basement of the development and these are considered to be satisfactory. As such, the matters of pedestrian safety are considered to have been adequately addressed.

- *Site Isolation – One of the objections raises issues with various parts contained in Council’s DCP 35 and claims that the proposal does not included a genuine / bona fide offer for purchase of adjacent remnant lots as required by Zhang v Canterbury City Council [2001] NSWCA 167. Other court cases and policy are also listed. Some clauses from DCP 35 listed include Clause 2.6.3(i) of DCP 35 which requires Council to ensure that development of does not “...adversely impact, disadvantage or restrict sites that are yet to be developed...”. And “Consolidation of the smaller allotments (less than 1,500m2) will be required to ensure appropriate development outcomes”*

Comment: Both parcels of land immediately adjacent to the site are the subject of current Development Applications. These proposals demonstrate that the adjacent

parcels of land can be developed independently. The proposal is therefore considered to be satisfactory in this regard.

- *Zoning - Proposal is not permissible in the current 2(b) zoning.*

Comment: Residential flat buildings and townhouses are permissible development in the 2(b) Residential Zone. The proposed development is permissible in the zone subject to a condition requiring the provision of three (3) retail tenancies at the corner in lieu of the one (1) tenancy proposed. This is to ensure that the development satisfies the definition of “Local Shop” contained within Council’s current LEP – the Botany Local Environmental Plan 1995. It should be noted that the area has appropriately been rezoned under LEP 1995 from the industrial land uses to medium density residential to remove the industrial traffic and industrial land uses from residential streets and to provide for more compatible land use within the area.

- *Inadequate public services / facilities – Some submissions made note that public transport in the area is poor and consists of buses only, and that the application can not rely on the level of public facilities as a reason to allow the increased site density as argued in their Statement of Environmental Effects and SEPP 1 Objection. It was also noted that existing bus services are overcrowded, that the area has a poor level of public services and facilities that can not cater for an increase in the population, and it has been recommended that the application should include a public tennis court or a Community Market Garden.*

Comment: Bus services to the area include the 309, M20 and 310. The 309 and M20 bus services have a bus stop located on Botany Road at the intersection of Bay Street (approximately 700m to the west of the site) and the 310 bus service has a bus stop on Banksia Street (located approximately 150m to the south of the site). Botany shops are located approximately 700m to the west of the site and this local centre contains a post office, IGA supermarket, pharmacy, medical centre, several take-away food outlets and some restaurants. The proposed development contains retail space to provide opportunity for a local shops to cater for any additional demand for local services. The site is also located opposite a public park containing sporting fields and the local aquatic centre is located immediately to the north.

The public facilities are therefore considered satisfactory for the proposed development.

- *Internal Amenity of Proposal - The proposal does not appear to satisfy the private open space requirements of SEPP 65.*

Comment: The proposed private open space requirements are considered to be generous and generally satisfy the requirements of Council’s DCP 35 (which exceeds those requirements contained in SEPP 65). In addition, the proposal generally satisfies the requirement of Council’s DCP 35 and the criteria of SEPP

65, including generous size units, compliant balconies, with 75% benefiting from a dual aspect.

- *Noise Impacts from additional residential property, from use of underground car parking (specifically at night time given that the basement is provided with natural ventilation, from air-conditioning systems and from penthouses / roof terraces. In addition, one objection confirmed that “The underground bore pump opposite my home causes me some sleepless nights...”*

Comment: The proposed development is primarily a residential development and some residential noises will be generated as a result. Guidelines are available for managing residential noise, and Council and the Police can be contacted in cases where excessive noise is emanating from a residential premises. A condition has been imposed to delete the roof terraces (L7 of Buildings 2 and 3), which will reduce noise emanated from these units. The noise from the basement is considered to be minimal, with natural ventilation to the boundaries. A condition is proposed requiring that any future plant and equipment (including air-conditioning units) comply with the Council’s noise standards. As such, unreasonable noise impacts are not expected to result.

- *Loss of Property Value – It is asserted that there will be a loss of property values in the area resulting from the loss of privacy, overshadowing impacts, loss of aspect, overall size of proposed development, etc.*

Comment: The proposed development is a permitted use in the zone. The proposal has undergone rigorous assessment, including consideration by the Design Review Panel on two occasions. The extent of the development is considered satisfactory in the planning framework, and the proposal is considered to result in a well designed building that meets the developing context of the immediate area. Further it is stressed to the Panel that dwelling sizes are compliant with Council’s DCP and that all dwellings have a high level of amenity. It is also made known to the Panel that unit sizes of the DCP have been consistently applied to all multi-unit developments in Council’s local government area.

- *Redevelopment – while redevelopment is supported by several of the objectors, it is not supported at the scale, density or style of the proposed development.*

Comment: Noted. The proposal is considered to be of a satisfactory scale and density as discussed previously in the report and in response to previous submissions.

- *Precedence – the proposal will set a negative precedence for future development in the area;*

Comment: Subject to recommended conditions, the proposal is considered to provide a development which is consistent with the emerging character of development in the area and the site context.

- *Damage – the proposal requires pile driving and demolition works that will cause damage to adjacent premises and properties due to vibrations.*

Comment: Dilapidation surveys have been undertaken prior to demolition works and a condition is proposed requiring that dilapidation surveys be undertaken within one (1) month after the completion of works to ascertain whether damage has occurred and that any damage must be rectified at the owners expense. The proposed conditions this matter is considered to be satisfactorily addressed.

- *Odour - Exhaust fumes from basement garage should be directed away from neighbouring properties*

Comment: The Applicant submitted on 14 February 2012 an Air Quality Assessment Report prepared by SLR Consulting Australia. The Report concluded the following:

“it may therefore be concluded that the change in air quality associated with the change in land use will be minimal, and that the change in the road traffic emissions will not lead to a significant increase in pollutant loads within the Botany area. Examining specific sections of road, it can be seen that in some instances (Jasmine St, Bay St East of Jasmine St and Banksia St West of Jasmine St in particular), emissions of air pollutants are predicted to be lower when compared to the pre-existing situation (i.e. with Fosters operational) on these roads.”

- Impacts from Dewatering & construction of basement
 - Where will water be pumped during dewatering? Will this process continue after 7pm at night. Will the toxins in the contaminated ground water be released into the “night air”? *“I have been barred from using my own bore because of the contamination will I be subject to mists of toxic water drifting into my backyard and onto my clothes hanging on the clothes line? Will breathing in these toxins affect my short and long term health and what about my neighbours health? I hope that an independent health analysis report is carried out for all concerned”.*
 - Will the Dewatering result in compaction of the soil under adjacent houses and result in cracking etc. of adjacent buildings.
 - *“I would like to know how the underground water flows will be impeded when the water backs up against the concrete wall of the underground car park. Will it go under the deep car park? Or around it? Or both? Will it raise the water table higher or lower under my house?”*

Comment: Site contamination issues have been considered in detail by the Applicant’s Environmental Consultants and an independent Environmental Consultant engaged by Council. The issues of contamination are considered to have been adequately addressed, including dewatering which must be undertaken in accordance with appropriate legislative requirements and is subject to further approval from Council. The proposed basement will be constructed only 1 – 2 metres into the groundwater and groundwater levels fluctuate naturally. No

resulting impacts are expected from the insertion of the basement into the groundwater table.

- *Trees - will established trees on adjacent properties be protected?*

Comment: Conditions are proposed requiring the retention of any mature trees on adjacent sites.

- *Crime – the proposal will result in an increase in crime and theft from adjacent residences.*

Comment: The Application has been considered by the NSW Police, which have classified the development as “medium crime risk” and their recommended conditions have been imposed as conditions of consent. This includes the requirement for lighting within and adjacent to the development, the installation of CCTV cameras where required, the use of appropriate locking systems and other similar recommendations. The proposed development will provide additional passive surveillance of the surrounding area, with all street edge dwellings providing direct overlooking of the public domain areas. According to a recent submission, the NSW Police have been linked increases in break and enter to the increased density of residential flat buildings in the area. In this case the proposal is considered to be suitably designed to minimise crime and opportunities for crime.

- *Stormwater Run-off - Impacts to adjacent residences from proposed development*

Comment: Appropriate conditions are proposed requiring the provision of adequate on site stormwater retention/detention to ensure that there is no net increase in the flow of stormwater from the site. As such, no additional stormwater run-off impacts are anticipated.

- *Sydney Airport Height Restriction - has the height been approved by Sydney Airports?*

Comment: The height of the proposed development has been approved by SACL.

(e) The public interest.

These matters have been considered in the assessment of the development application. It is considered that approval of the proposed development, subject to conditions of consent, will have no significant adverse impact upon the public interest. In addition, the provision of housing within established areas is supported by the Metropolitan Plan for Sydney 2036.

Other Matters

External Referrals

- *Ausgrid (Formerly Energy Australia)*

Ausgrid have by letter dated 15 March 2011 requested that a condition be imposed on any consent requiring an electricity substation to be provided within the premises.

- *Sydney Water*

Sydney Water has by letter dated 30 March 2011 confirmed that the existing drinking water system and the existing wastewater system do not have the capacity to service the proposed development. As such, the developer will need to upsize the existing water main on the western side of Jasmine Street and the existing wastewater main as shown in Figure 1 and Figure 2 of their letter.

Sydney Water have further advised that they will further assess the impacts of the development when the proponent applies for a Section 73 Certificate

- *Botany Historical Trust*

Botany Historical Trust provided the following response:

“Botany Historical Trust believes that the effect and impact on the Heritage Park should be minimised by setting buildings fronting Jasmine Street further back and lowered. Further information regarding removal of trees is required”.

The Trust’s comments have been considered in the assessment of the proposal. The application is considered to adequately address the concerns raised by the Design Review Panel, and improved landscape planting to the front setback areas of the dwellings fronting the park is required by way of condition. The proposal is therefore considered to provide a satisfactory relationship to Booralee Park.

- *Sydney Airports Corporation Limited (SACL)*

SACL by letter dated 20 April 2011 confirmed that they raise no objections to the development to a maximum height of 28.15 metres above Australian Height Datum (AHD) as shown on the new plans. This does not include the height required for construction cranes, etc.

Internal Referrals

Environmental Health Officer

Council’s Environmental Health Officer has reviewed the proposed development and provided recommended conditions that have been proposed on the consent.

Development Engineer

Council’s Development Engineer has based their response on the reduced number of units provided in the amended plans the subject of the Deferred Commencement Condition No. DC1. They have advised that amendments and additional information are required in relation to engineering matters and that some key matters must be addressed by way of Deferred Commencement Condition. These requirements are detailed in Deferred Commencement Conditions No. DC2 and DC3.

Landscape Architect

Council’s Landscape Architect has advised that the landscape areas and proportions are generally satisfactory however that the proposal cannot be adequately assessed at this stage for appropriateness, site responsiveness and suitable plant selection as the required details have

not been provided. They have therefore requested that the application be the subject to deferred commencement conditions to ensure that an appropriate landscape treatment is provided for the site. These recommended conditions are provided as Deferred Commencement Condition No.'s DC4 and DC5.

In addition, the Landscape Architect is of the opinion that deep soil zones should be provided within the communal open space area(s) and that the OSD system should be relocated outside of the deep soil zones at the permitter of the site, as outlined in an extract from their response below:

“It is also unfortunate in this suburban location that the communal open space areas are not provided with deep soil to allow large scale tree planting and allow tree canopies to reach develop to potential.

The proposed OSD system within part of the eastern boundary setback is to be relocated to within the basement carpark, being a requirement of DCP 33 that no stormwater OSD is located in deep soil setback areas. Any detention basins within other setbacks are to be designed accordingly so as not to detract from the streetscape, allow soil levels at street level to ensure setback planting is visible from the public domain and ensure appropriate plant selection”.

Voluntary Planning Agreement (VPA)

As the development has benefited from additional a floor space and height, the applicant confirmed by letter dated 13 February 2012, that they are willing to enter into a Voluntary Planning Agreement (VPA) pursuant to Section 93F of the Act, the details of this have not been finalised at this stage.

As the VPA process is outside the jurisdiction of the JRPP, this aspect of the development is to be dealt with at a subsequent meeting of the Council.

Section 94 Contributions

At Council Development Committee on 6 May 2009, Council was advised of the changes made to the Section 94 Contributions imposed by the State Government. The Minister for Planning issued a Section 94E Direction on 23 January 2009, which capped levies for residential development and residential subdivision to \$20,000.00. Council responded to the Direction by passing a resolution on the 18 March 2009 to comply with the cap. Therefore based on the cap the Section 94 Contributions may be applied to the 127 residential units.

As such, the calculations are as follows:

- 109 units @ \$20,000.00 each = \$2,180,000.00

The Section 94 Contributions for the commercial component (280m²) of the proposed development is not included in the above Directive and as such is subject to Council's Section 94 Contributions Plan 2005-2010.

As such, the calculations are as follows:

Section 94 Contributions Plan 2005-2010:

- Community Facilities \$3,367.00

- Administration \$546.00
- Shopping Centre Improvements \$2,444.00
- Open Space & Recreation \$22,685.00

Total \$29,042.00

The total Section 94 Levy for the proposed development is therefore \$2,209,042.00.

Conclusion

The Joint Regional Planning Panel, Sydney East Region (JRPP) is the consent authority for the development application. The development application as amended has been assessed in accordance with Section 79C of the *Environmental Planning and Assessment Act 1979* and the *Botany Local Environmental Plan 1995* and it is recommended to the Panel that the application for demolition of the remaining slab and hard surfaces, excavation and construction of the mixed residential and retail development accommodating 95 apartments, 14 townhouses, 280m² of retail floor space, car parking for 216 vehicles located within a partial basement level and planting in accordance with the submitted landscape plan, at 8-32 Jasmine Street and 68-70 Bay Street, Botany, be granted consent subject to the conditions in the attached schedule.

RECOMMENDATION

In view of the preceding comments, it is RECOMMENDED that the Joint Regional Planning Panel (JRPP) for the Sydney East Region, as the Consent Authority, resolve to:

- (1) Grant consent to the objection submitted under the provisions of State Environmental Planning Policy No. 1 – Development Standards to vary the provisions of Clause 12(2) of Botany Local Environmental Plan 1995 relating to maximum floor space ratio of 1.51:1 applied under this clause on the basis that:
 - i. Clause 12(2) of Botany Local Environmental Plan 1995 is a development standard; and
 - ii. The objection lodged by the applicant is well founded; and
- (2) Grant Development Application No. 11/018 a “Deferred Commencement Consent” for works in the following two (2) stages and subject to the Conditions imposed in the attached schedule:
 - i. Stage 1 – Removal of the remaining slab(s) and clearing of the surface of the site at 8-32 Jasmine Street and 68-70 Bay street, Botany, to allow the installation of groundwater monitoring bores to address the issued identified in the General Terms of Approval from the NSW Office of Water dated 1 April 2011; and,
 - ii. Stage 2 - The excavation at the site and construction of the mixed residential and retail development accommodating 95 apartments, 14 townhouses, 280m² of retail floor space, car parking for 216 vehicles located within a partial basement level and planting in accordance with the submitted landscape plan, at 8-32 Jasmine Street and 68-70 Bay Street, Botany.

Under Section 80(3) of the Environmental Planning and Assessment Act 1979 with such consent not to operate until the following conditions are satisfied:

DEFERRED COMMENCEMENT CONDITIONS

DC1 Prior to the operation of the development consent, the architectural plans shall be revised and submitted to Council to reflect the following sketch plans submitted relating to the reduced building height and modified balcony sizes:

- (i) SK800(01) – Level 5 Floor Plan Alternative for Buildings 2 and 3.
- (ii) SK801(01) – Level 6 Floor Plan Alternative for Buildings 2 and 3.
- (iii) SK802(01) – East Elevation Alternative for Buildings 2 and 3.
- (iv) SK803(01) – Western Internal Elevation Alternative for Building 2 and 3.
- (v) SK810(01) – Perspective – Myrtle Street South-West Looking.
- (vi) SK811(01) – Perspective – Courtyard Looking South.
- (vii) SK812(01) – Perspective – Corner of Bay and Jasmine Street Looking North-East.
- (viii) SK813(01) – Perspective – Bay Street Looking North-West.
- (ix) SK804(01) – Balconies for Apartments 323, 333, 343, 353, 222, 322, 232, 332, 242, 342 and 252.
- (x) SK805(01) – Balconies for Apartments 223 and 233.

DC2 Prior to the operation of the development consent, the architectural plans shall be revised and submitted to Council. The revised plans shall address the following issues: -

- (i) Delete the roof terraces on Buildings 2 and 3, and this area is to be made non-trafficable.
- (ii) The 216 parking bays shall be allocated in accordance with the following requirements: -
 - a) For residents: -
 - o 197 parking bays, distributed based on the following rate:
 - 1 parking bay for each one-bedroom unit; and,
 - 2 parking bays for each townhouse, two-bedroom or three-bedroom unit.
 - o For visitors: -
 - 12 parking bays (including two (2) shared as car wash bays);

- b) For retail shop: -
 - 7 off-street parking bays;
 - (iii) The queuing area between the vehicular control point and property boundary shall be designed in accordance with AS2890.1 to accommodate seven (7) vehicles during daytime hours.
 - (iv) The ramp to basement car parking area shall be minimum 5.5m wide, with additional minimum 300mm clearance on each side of the ramp.
 - (v) The physical and secure separation of the residential and retail/visitor parking spaces shall be provided for security purposes, including the provision of security roller doors that separate the residential and retail/visitor parking areas shall be shown on the plans. An intercom system interlocked with all Lots within the development shall also be provided accordingly.
 - (vi) The following issues shall be addressed in the design of the basement car parking area: -
 - a) Disabled parking bays shall be relocated to the area adjacent to lift entrances;
 - b) Shared area of the disabled parking bays shall not obstruct the aisle;
 - c) The gradients of first 6m of the driveway ramp from the property boundary to the basement car parking area shall not exceed 1 in 20 (5%);
 - d) Parking bay no. 60 shall be relocated to reduce number of reversing movements required.
 - e) The width of parking bay no. 105 shall be minimum 2.7m.
 - (vii) The proposed retail tenancy shall be separated into a minimum of three tenancies each with a maximum floor area of 100m² to ensure compliance with the definition of “Local Shop” contained in the Botany Local Environmental Plan 1995.
 - (viii) Amended Plans for the front setback area of the site shall be submitted to, and approved by, Council. The amended plans shall provide landscaping and fencing treatment to match the tiered / stepped landscaping provided within the front setback areas of No. 9-19 Myrtle Street.
- DC3 Prior to the operation of the development consent, plans showing the stormwater management and disposal system for the development shall be submitted to Council for approval. The detailed stormwater management plans (together with the design certification) shall address the following: -
- (i) The On-Site Detention (OSD) systems shall be designed to comply with the following:

- a) Stormwater runoff generated from the development shall be detained on-site for all storm events up to and including 1 in 100 year ARI design storms and the permissible site discharge (PSD) shall be based on 1 in 5 year ARI peak flow generated from the site under the “State of Nature” condition (i.e. the site is totally grassed/turfed).
 - b) Computer modeling, such as DRAINS can be used to design the OSD system. Copy of the input data and results from the modeling shall be submitted to Council for review in order to verify the input parameters and layout of the model.
 - c) Submerged outlet conditions shall be considered for the invert level of the orifice below the top of the kerb at the discharge point.
 - d) Emergency overflow path of the OSD systems shall be shown on the plans to ensure any overflow from the OSD system will be conveyed to the public streets via surface overland flow, not pipe drainage system. The extent of the overland flow path shall be shown on the stormwater management plans. Consideration shall be given to ensure there is adequate freeboards for the habitable floor level and stormwater in the emergency overland flow path will not be diverted into the buildings
 - e) Area bypassing the OSD system shall not exceed 25% of the site area.
 - f) All underground OSD systems shall be relocated to the common area and area outside the “deep soil” zone.
 - g) All underground OSD tanks shall be water-tight and the relief drains shall not be provided if the bottom of the tank is below the groundwater level. Considerations shall be given to any fluctuations of groundwater level.
- (ii) The size of the rainwater tank for each townhouse shall be minimum 1,000 litres.
 - (iii) The size of the orifice shall be shown on the plans.
 - (iv) All stormwater runoff from the roof area of retail shop and townhouses fronting Bay Street shall be collected and drained to the OSD systems.
 - (v) Grated boundary pit (minimum 900mm x 900mm) shall be provided to the stormwater drainage system prior to discharging stormwater into Council’s kerb inlet gully pit.
 - (vi) All stormwater runoff (including surface runoff and runoff bypassing the OSD system) generated from the site shall pass through a pollution control device capable of removing litter and sediment (e.g. Gross Pollutant Trap, (GPT)) prior to entering Council’s drainage system. Details of the pollution control device shall be shown on stormwater management plan.
 - (vii) All underground parking structures shall be tanked with water proofing to ensure no intrusion of groundwater into the basement car parking area.

(viii) Pump-out system shall be provided to the basement car parking area in order to collect stormwater runoff from the driveway ramp. Subsoil drainage lines shall not be provided to the basement area. The pump-out system shall be designed to comply with the following: -

- a) The volume of the pump-out storage tank shall be designed with a minimum storage capacity equivalent to the runoff volume generated from the area draining into the tank for the 1 in 100 year ARI 2-hours duration storm event. Calculation of the storage volume shall be submitted to Council.
- b) Information of the selected pumps (eg brand, model numbers, performance curve and specifications) shall be submitted to Council to ensure the pump has adequate capacity. Each pump shall have a minimum capacity of 10L/s or shall be based on the flow rate generated from the 1 in 100 year ARI 5-minutes duration storm event of the area draining into the system, whichever is greater.
- c) An alarm warning device (including signage and flashing strobe light) shall be provided for the pump-out system to advise the occupant of pump failure. The location of the signage and flashing strobe light shall be shown on the stormwater management plans

All drawings and specifications shall be prepared by a suitably qualified civil engineer experienced in stormwater drainage design and in accordance with Council's 'Guidelines for the Design of Stormwater Drainage Systems within City of Botany Bay', AS/NSZ 3500 and BCA requirements.

DC4 The landscape areas shown on the plans 101B and 501 B by Site Image shall be the subject of amended, detailed landscape construction documentation (plans and details) to be submitted to and approved by Council's Landscape Architect. The documentation is to be developed and prepared by a suitably qualified Landscape Architect. The amended, detailed documentation must address the following landscape design issues and planting design requirements:

- (i) Label all plants on the landscape plan to enable an interpretation of the planting scheme. There is to be a dense, layered planting scheme in most areas. Include full plant schedule with plant numbers.
- (ii) Amend north point.
- (iii) Based on availability and hardiness reconsider some proposed species eg. E crebra, E moluccana, E ficifolia, Rose Myrtle, Philotheca, Reed Grass.
- (iv) All trees to be 100 litre in size, exceptions can be made for Eucalypts or Banksias provided they are a min. 1.6 metres in height.
- (v) Incorporate existing trees into the design where appropriate.
- (vi) Provide additional trees in all setback area, taking advantage of deep soil zones and additional trees in communal open spaces and adjoining pathways (by increasing planter box depths if required). Use a variety of tree heights for functionality – screening, shading, feature

(flowering/deciduous species), solar access, privacy and shelter. Provide statement, focal point or avenue trees within the design.

- (vii) Indicate all internal finished levels – paths, paved areas, planter bed/terrace heights over podium, top of planter box wall heights, planter bed depths, boundary walls to street frontages.
- (viii) Construction methods and finishes for all for planter bed types walls over podium, property boundary walls/fences, seating walls, retaining walls, internal fences and other structures such as above ground light wells, pergolas etc. Indicate locations of different fence and wall treatments throughout the site.
- (ix) Specifications for paving materials (and construction details), mulches, root barriers for selected trees near pavements, irrigation etc.
- (x) Podium planter box sectional details - depths and construction details. Refer to operation consent condition below for details.
- (xi) Re-design communal open spaces to ensure functionality, usability and amenity as well as being green spaces/landscape screening. The central communal area/axis should be relocated westward within the site to enhance usage, alleviate the north-south linear nature of the development and enhance solar access. Incorporate communal facilities in communal open spaces, eg. BBQ areas, outdoor tables, outdoor recreation facilities.
- (xii) Indicate the location and screening treatment (landscaping/built enclosures) for any electrical kiosk or fire booster assembly required. Both utilities are required to be located in unobtrusive locations away from pedestrian and vehicular entrances into the site and not within the main street frontages.
- (xiii) OSD tanks are shall not be located within deep soil setback areas. Detention basins within setbacks are to be designed accordingly so as not to detract from the streetscape, allow soil level to be at street level to ensure setback planting is visible from the public domain and to ensure appropriate plant selection.

DC5 The following public domain amendments are required, to be included in the amended landscape plan:

- (i) Landscape details to nature strips road verges on all frontages, ensuring consistency with the adjoining and surrounding streetscapes.
- (ii) Street tree locations on all frontages. Nominated street trees are : Jasmine Street - Illawarra Flame, Myrtle Street - Corymbia gummifera, Bay Street – Banksia serrata. NOTE : The existing large Agonis street tree is to be retained. New street trees are required to be 100 litre and planted in accordance with Council street tree planting specifications. Trees are to be spaced no more than 8-10 metres apart.
- (iii) Reduce footpath width to 1.2m wide, all frontages.

- (iv) Incorporate a decorative segmental paving treatment for the corner area fronting the retail tenancy, include finished levels. Design treatment around existing street tree.
- (v) Indicate pram ramps from the corner area across both Jasmine and Myrtle Streets.
- (vi) Planter box and pavement treatments to the undercroft area of the retail tenancy.
- (vii) Locate street furniture (to Council specification) proximate to the retail tenancy – seats and bins.
- (viii) A landscape strip with a minimum 1 metre width shall be provided adjacent and to the western side of Unit 214 to provide a landscape buffer between the driveway entrance and the unit windows.

(3) That the deferred commencement consent be limited to a period of 12 months;

Premises: 8-32 Jasmine Street and 68-70 Bay Street, Botany

DA No: 11/018

STAGE 1 – DRAFT SCHEDULE OF CONSENT CONDITIONS

Stage 1 provides consent for the clearing of the surface of the site only to allow further testing of the site.

GENERAL CONDITIONS

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

Drawing N°	Author	Dated Received by Council
Registered Survey Plan with Drawing No. 32625A01.DWG (Revision C), Sheets 1 and 2.	Degotardi, Smith & Partners	14 February 2011
Cover, Site & Location Plan 0210 – A00 (Issue 03)	Krikis Tayler Architects	14 February 2011
Floor Plan Level 0 0210 – A01 (Issue 07)	Krikis Tayler Architects	14 February 2011
Floor Plan Level 1 0210 – A02 (Issue 12)	Krikis Tayler Architects	3 February 2012
Floor Plan Level 2 0210 – A03 (Issue 07)	Krikis Tayler Architects	14 February 2011
Floor Plan Level 3 0210 – A04 (Issue 07)	Krikis Tayler Architects	14 February 2011
Floor Plan Level 4	Krikis Tayler Architects	14 February 2011

Drawing N°	Author	Dated Received by Council
0210 – A05 (Issue 07)		
Floor Plan Level 5 0210 – A06 (Issue 07)	Krikis Tayler Architects	14 February 2011
Floor Plan Level 6 0210 – A07 (Issue 07)	Krikis Tayler Architects	14 February 2011
Roof Plan 0210 – A08 (Issue 07)	Krikis Tayler Architects	14 February 2011
Elevations 0210 – A09 (Issue 05)	Krikis Tayler Architects	14 February 2011
Internal Elevations 0210 – A10 (Issue 08)	Krikis Tayler Architects	3 February 2012
Site Analysis 0210 – A13 (Issue 02)	Krikis Tayler Architects	14 February 2011
Sections 0210 – A14 (Issue 04)	Krikis Tayler Architects	14 February 2011

Documents	Author	Date Received
Materials & Sample Board	Krikis Tayler Architects	14 February 2011
Amended Statement of Environmental Effects (Dated February 2012)	James Lovell & Associates PtyLtd	8 February 2012
SEPP 1 Objection (Amended, dated February 2012)	James Lovell & Associates PtyLtd	8 February 2012
Design Verification Statement	Krikis Tayler Architects	14 February 2011
Architectural Design Statement (Dated 8 February 2010)	Krikis Tayler Architects	14 February 2011
SEPP 65 Assessment (Dated 8 February 2010)	Krikis Tayler Architects	14 February 2011
Residential Flat Design Code Analysis (Dated 11 February 2010)	Krikis Tayler Architects	14 February 2011
Building Code of Australia Assessment Report	Barry Johnson & Associates Pty Ltd	14 February 2011
BASIX Certificate with No. 358092M (Issued 10 February 2011)	AGA Consultants (ABN: 37 003 906 626)	14 February 2011
BASIX Certificate with No. 358105M (Issued 10 February 2011)	AGA Consultants (ABN: 37 003 906 626)	14 February 2011
Disability Access Report (Dated 9 February 2011 & Ref: 10101)	Lindsay Perry Access & Architecture	14 February 2011

Preliminary Geotechnical Assessment (Dated 8 January 2011)	Asset Geotechnical – Geotechnical Engineering Consultants	14 February 2011
Landscape Design Report	Site Image – Landscape Architects	14 February 2011
Waste Management Plan (dated February 2011)	McGregor Environmental Services	14 February 2011
Pedestrian Wind Environment Statement (Dated 7 February 2011, Report No. WA972-01F02(rev 0) – WS Report).	WindTech	14 February 2011
Aircraft Noise Assessment Report (Revision 2, dated 24/02/2011)	Acoustic Logic	24 February 2011
Traffic and Parking Assessment Report (Ref: 11063, Dated 30 March 2011)	Varga Traffic Planning Pty Ltd	31 March 2011
Phase 1 Environmental Site Assessment (Dated 30 July 2004)	URS Australia Pty Ltd	19 July 2011
Phase 2 Environmental Site Assessment – Final Report (Dated 12 October 2007)	URS Australia Pty Ltd	19 July 2011
Groundwater Monitoring Report (Report No.E1326.1AA, dated 15 February 2011)	Environmental Investigations	24 February 2011
Additional Phase II Environmental Site Assessment (Dated August 2011)	Aargus Pty Ltd	19 August 2011
Heritage Impact Statement - Dated May 2011	Helen Wilson,	31 May 2011
Response to Impacts from Dewatering and Basement Construction dated 6 May 2011.	Asset Geotechnical,	31 May 2011
View Loss Analysis dated 7 December 2011	Krikis Tayler Architect	7 December 2011
Air Quality Assessment dated 13 February 2012	SLR	14 February 2012
VPA Letter – dated 13 February 2012	Krikis Tayler Architect	14 February 2012

No construction works (including excavation) shall be undertaken prior to the issue to the Construction Certificate.

2. The applicant must prior to the commencement of any works associated with Stage 1 of the consent pay the following fees:
 - (a) Builders Security Deposit \$25,000.00
 - (b) Development Control \$2,310.00
 - (c) Consultant Fees \$6,000.00

- | | | |
|-----|---|------------|
| (d) | Tree Preservation Bond | \$4,500.00 |
| (e) | Tree Preservation Bond Preparation Fee | \$550.00 |
| (f) | Plan Checking Fee for Civil and Public Domain Work
(as required) | \$500.00 |
- 3.
- (a) This Consent relates to land in Lots A and B in DP 392025, Lots 1 and 2 in DP 201641, Lot 2 in DP 201614, Lot 1 in DP 508743, Lot 10 in DP 598160, Lot B in DP 345783, Lots 1, 2 and 3 in DP 312248, Lots 2 and 3 in Sec H in DP 1787, Lot 1 in DP 455885, Lot 5 in DP 19083 and Lot 11 in DP 598160, and as such, building works must not encroach on to adjoining lands or the adjoining public place, other than public domain works required by this consent or a Voluntary Planning Agreement.
 - (b) This component, Stage 1 of the Consent, only permits the removal of any remaining slab(s) and clearing of the surface of the site to allow the installation of groundwater monitoring bores (if required) to address the technical documentation required by the General Terms of Approval issued by the NSW Office of Water on 1 April 2011.
4. All materials excavated from the site (fill or natural) shall be classified in accordance with the NSW Department of Environment and Climate Change (DECC) Waste Classification Guidelines (2008) prior to being disposed of to a NSW approved landfill or to a recipient site.
5. All works shall be carried out in accordance with the recommendations contained in the Additional Phase II Environmental Site Assessment prepared by Aargus and dated August 2011 and the letter report prepared by Aargus and submitted to Council on 25 January 2012.

CONDITIONS IMPOSED BY AN EXTERNAL AUTHORITY

6. The following conditions form the General Terms of Approval dated 30 September 2011 by the NSW Office of Water and must be complied with:
- General and Administrative Issues
- (a) Groundwater shall not be pumped or extracted for any purpose other than temporary construction dewatering.
 - (b) Pumped water (tailwater) shall not be allowed to discharge off-site (eg adjoining roads, stormwater system, sewerage system, etc) without the controlling authorities approval and/or owners consent.
 - (c) The licensee shall allow (subject to Occupational Health and Safety Provisions) the NSW Office of Water or any person authorised by it, full and free access to the works (excavation or bore/borefield), either during or after construction, for the purpose of carrying out inspection or test of the works and its fittings and shall carry out any work or alterations deemed necessary

by the NSW Office of Water for the protection and proper maintenance of the works, or the control of the water extracted to prevent wastage and for the protection of the quality and prevention from pollution or contamination of the groundwater.

- (d) If a work is abandoned at any time the licensee shall notify the NSW Office of Water that the work has been abandoned and seal off the aquifer by such methods as agreed to or directed by the NSW Office of Water.
- (e) Suitable documents are to be supplied to the NSW Office of Water of the following:
 - (i) A report of prediction of the impacts of pumping on any licensed groundwater users or groundwater dependent ecosystems in the vicinity of the site. Any adverse impacts will not be allowed and the project will need to be modified.
 - (ii) A report of assessment of the potential for salt water intrusion to occur as a result of the dewatering. This report is only required for sites within 250m of any marine or estuarine foreshore area. The generation of conditions leading to salt water intrusion will not be allowed, and the proposal will need to be modified.
 - (iii) Descriptions of the methods used and actual volume of groundwater to be pumped (kilolitres/megalitres) from the dewatering works, the works locations, the discharge rate (litres per second), duration of pumping (number of days/weeks), the amount of lowering of the water table and the anticipated quality of the pumped water.
 - (iv) Descriptions of the actual volume of pumped water (tailwater) to be reinjected (kilolitres/megalitres), the reinjection locations, the disposal rate (litres per second), duration of operation (number of days/weeks) and anticipated quality of treated water to be reinjected.
 - (v) Monitoring of groundwater levels (minimum of 3 weekly measurements of depth to water at a minimum of 3 locations broadly distributed across the site) beneath the proposed development site prior to construction. This requirement is only for sites where the proposed structure shall extend greater than one floor level into the existing ground level.

Specific Conditions

- (a) The design and construction of the structure must preclude the need for permanent dewatering.
- (b) The design and construction of the structure that may be impacted by any watertable must include a water proof retention system (i.e. a fully tanked structure) with adequate provision for future fluctuations of water table levels. (It is recommended that a minimum allowance for a water table variation of at least +/-1.0 metre beyond any expected fluctuation be provided). The actual

water table fluctuation and fluctuation safety margin must be determined by a suitably qualified professional.

- (c) Construction methods and material used in and for construction are not to cause pollution of the groundwater.
- (d) Monitoring of groundwater levels is to be continued at least weekly during the construction stage and at least weekly over a period of at least 2 months following cessation of dewatering, with all records being provided to the NSW Office of Water on expiration of the licence. This requirement is only for sites where the proposed structure shall extend greater than one floor level into the existing ground level.
- (e) Groundwater quality testing must be conducted (and report supplied to the NSW Office of Water). Samples must be taken prior to the commencement of dewatering, (and ongoing to the satisfaction of the NSW Office of Water for any extraction and reinjection activities). Collection and testing and interpretation of results must be done by suitably qualified persons and NATA certified laboratory identifying the presence of any contaminants and comparison of the data against accepted water quality objectives or criteria.
- (f) Discharge of any contaminated pumped water (tailwater) that is not to be reinjected, must comply with the provisions of the Protection of the Environment Operations Act 1997 and any requirements of the relevant controlling authority. The method of disposal of pumped water (i.e. street drainage to the stormwater system or discharge to sewer) and written permission from the relevant controlling authority must be presented to the NSW Office of Water in support of the licence application.
- (g) Discharge of any contaminated pumped water (tailwater) that is to be reinjected, must comply with the provisions of the Protection of the Environment Operations Act 1997. The quality of any pumped water (tailwater) that is to be reinjected must be compatible with, or improve the intrinsic or ambient groundwater in the vicinity of the reinjection site. Contaminated groundwater is not to be reinjected into any aquifer. The following must be demonstrated in writing:
 - (i) The treatment to be applied to the pumped water (tailwater) to remove any contamination.
 - (ii) The measures to be adopted to prevent redistribution of any contamination in the groundwater system. Any reinjection proposal that is likely to further spread contamination within the groundwater system will not be allowed and the project will need to be modified.
 - (iii) The means to avoid degrading impacts on the identified beneficial use of the groundwater. Any reinjection proposal that is likely to lower the identified beneficial use of a groundwater system will not be allowed and the project will need to be modified.

- (h) Written advice be provided from the Certifying Authority to the NSW Office of Water to certify that the following ground settlement issues have been addressed in reports submitted by the proponent:
 - (i) Assessment by a suitably qualified geotechnical professional that the proposed dewatering activity does not pose an unacceptable risk of off-site impacts such as damage to surrounding buildings or infrastructure as a result of differential sediment compaction and surface settlement during and following pumping of groundwater.
 - (ii) Settlement monitoring activities to be undertaken prior to, during and for the required period of time following the dewatering pumping to confirm the impact predictions.
 - (iii) Locations of settlement monitoring points, and schedules of measurement.

Formal Application Issues

- (a) An application must be completed on the prescribed form for the specific purpose of temporary construction dewatering and a licence obtained from the NSW Office of Water prior to the installation of the groundwater extraction works. A plan drawn to scale will be required with the application clearly identifying the location of the dewatering installations.
- (b) Upon receipt of a Development Consent from Council of the City of Botany Bay, a fully completed licence application form, unambiguous documentation of the means by which the below-ground areas of the development will be designed and constructed to prevent any groundwater seepage inflows (and therefore preclude any need for permanent or semi-permanent pumping), together with all other required supporting information, the NSW Office of Water will issue a Water Licence under Part 5 of the Water Act, 1912.
- (c) A licence application under Part 5 of the Water Act 1912 must be accompanied by a \$151.00 fee and must specify the proposed volume of groundwater to be pumped in total (megalitres). The licence is also subject to administrative charges as determined from time to time by the Independent Pricing and Regulatory Tribunal (IPART).

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

7. A Remedial Action Plan shall be prepared and remediation of the site shall be carried out. Approvals from appropriate government departments where required shall be obtained and full details of the investigation and site remediation are to be submitted to and approved by Botany Bay City Council, in accordance with Section 80(A)2 of the Environmental Planning and Assessment Act 1979 prior to a commencement of any work being issued for the proposed development.

8. Prior to the commencement of any work, the applicant shall contact “Dial Before You Dig on 1100” to obtain a Service Diagram for, and adjacent to, the property. The sequence number obtained from “Dial Before You Dig” shall be forwarded to Principal Certifying Authority. Any damage to utilities/services will be repaired at the applicant’s expense.
9. The demolisher shall comply with Australian Standard 2601 - 2001 "Demolition of Structures" and the requirements of the NSW WorkCover Authority.
10. The Applicant must indemnify Council against all loss of or damage to the property of others and injury or death to any persons which may arise out of or in consequence of the carrying out of the work associated with both Stage 1 and Stage 2 of this consent and against all claims, demands, proceedings, costs, charges and expenses whatsoever in respect thereof or in relation thereto. In this regard, the Applicant shall take out a public liability policy during the currency of the works in the sum of not less than \$20,000,000 and to be endorsed with City of Botany Bay Council as principal, and keep such policy in force at the Applicant’s own expense. A certificate from the Applicant’s insurers to this effect is to be **LODGED WITH COUNCIL BEFORE ANY WORK IS COMMENCED**. The amount of Common Law liability shall be unlimited.
11. The demolisher shall:
 - (a) Lodge with Council, and at least forty-eight (48) hours prior to the commencement of work (due to the potential impact on Council’s infrastructure):-
 - (i) Written notice, indicating the date when demolition of the building is to commence.
 - (ii) This persons full name and address.
 - (iii) Details of Public Liability Insurance.
12. The following shall be compiled with:
 - (a) A sign must be erected in a prominent position on any work site on which work involved in the erection or demolition of a building is being carried out:-
 - (i) stating that unauthorised entry to the work site is prohibited;
 - (ii) showing the name of the person in charge of the work site and a telephone number at which that person may be contacted outside working hours;
 - (iii) the Development Approval number; and
 - (b) any such sign is to be removed when the work has been completed
- 13.

- (a) Prior to the commencement of any site clearing or demolition work, a dilapidation report of the immediate adjoining properties and public infrastructure (including Council and public utility infrastructure) shall be prepared by a suitably qualified and submitted to Council. The report shall include records and photographs of the following area that will be impacted by the development
 - (i) Jasmine Street
 - (ii) Myrtle Street
 - (iii) Bay Street
 - (iv) All properties immediately adjoining the site
- (b) The applicant shall bear the cost of all restoration works to buildings/ structures and public infrastructure that been damaged during the course the construction. Any damage to buildings/structures, infrastructures, roads, lawns, trees, gardens and the like shall be fully rectified by the applicant/developer, at the applicant/developer's expense.
- (c) In addition, the following issues shall also be complied with: -
 - (i) A copy of the dilapidation report together with the accompanying photographs shall also be given to all immediately adjoining properties owners and public utility authorities, and a copy lodged with Principal Certifying Authority and the Council. The report shall be agreed by all affected parties as a fair record of existing conditions prior to commencement of any works;
 - (ii) It is a condition of consent that should construction works cause rise to public safety and/or workplace safety; works shall halt until absolute safety is restored.

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

- 14. A Soil and Water Management Plan (also known as an Erosion and Sediment Control Plan) shall be prepared for the demolition and site clearing works in according to 'Do It Right On-Site' Soil and Water Management for the Construction Industry (available from Council), NSW EPA's Managing Urban Stormwater: Construction Activities and Landcom Managing Urban Stormwater – Soils and Construction 4th Edition (2004) and submitted to the Principal Certifying Authority prior to commencement of any works. This Plan shall be implemented prior to commencement of any site works or activities. All controls in the plan shall be maintained at all times during the construction works and for a minimum three (3) month period after the completion of the project (where necessary). A copy of the Soil and Water Management Plan shall be kept on-site at all times and made available to Council Officers on request.
- 15. Prior to commencement of any works, application(s) shall be made to Council's Customer Services Counter for the following approvals and permits on Council's

property/road reserve under Road Act 1993 and Local Government Act 1993 as appropriate:

- (a) Permit to erect hoarding on or over a public place, including Council's property/road reserve
- (b) Permit to place and/or store materials on footpaths, nature strips;
- (c) Permit for roads and footways occupancy (long term/ short term)
- (d) Permit to open road reserve area, including roads, footpaths, nature strip, vehicular crossing or for any purpose whatsoever
- (e) Permit to place skip/waste bin on footpath and/or nature strip
- (f) Permit to use any part of Council's road reserve or other Council lands
- (g) Permit to stand mobile cranes and/or other major plant on public roads and all road reserve area

(It should be noted that the issue of such permits may involve approval from RTA and NSW Police. In some cases, the above Permits may be refused and temporary road closures required instead which may lead to longer delays due to statutory advertisement requirements.)

- (h) Permit to establish "Works Zone" on public roads adjacent to the development site, including use of footpath area.

(Application(s) shall be submitted minimum one (1) month prior to the planned commencement of works on the development site. The application will be referred to the Council's Engineers for approval, which may impose special conditions that shall be strictly adhered to by the applicant(s))

16.

- (a) Prior to the commencement of demolition work a licensed demolisher who is registered with WorkCover NSW must prepared a Work Method Statement to the satisfaction of the Principal Certifying Authority (Council or an accredited certifier) and a copy shall be sent to Council (if it is not the PCA). A copy of the Statement shall also be submitted to WorkCover NSW.
- (b) The statement must be in compliance with AS2601:1991 – 'Demolition of Structures', the requirements of WorkCover NSW and conditions of the Development Approval, and shall include provisions which shall be implemented at relevant stages of demolition and construction and shall include:
 - (i) Enclosing and making the site safe, any temporary protective structures must comply with the "Guidelines for Temporary Protective Structures (April 2001)";
 - (ii) Induction training for on-site personnel;
 - (iii) Inspection and removal of asbestos, contamination and other hazardous materials (by appropriately licensed contractors);
 - (iv) Dust control – Dust emission must be minimised for the full height of the building. A minimum requirement is that perimeter scaffolding, combined with chain wire and shade cloth must be used, together with

- continuous water spray during the demolition process. Compressed air must not be used to blow dust from the building site;
- (v) Disconnection of Gas and Electrical Supply;
 - (vi) Fire Fighting – Fire fighting services on site are to be maintained at all times during demolition work. Access to fire services in the street must not be obstructed;
 - (vii) Access and Egress – No demolition activity shall cause damage to or adversely affect the safe access and egress of this building;
 - (viii) Waterproofing of any exposed surfaces of adjoining buildings;
 - (ix) Control of water pollution and leachate and cleaning of vehicles tyres – Proposals shall be in accordance with the “Protection of the Environmental Operations Act 1997”;
 - (x) Working hours, in accordance with this Development Consent;
 - (xi) Confinement of demolished materials in transit;
 - (xii) Proposed truck routes, in accordance with this Development Consent;
 - (xiii) Location and method of waste disposal and recycling in accordance with the “Waste Minimisation and Management Act 1995”.
 - (xiv) Sewer – If the property is affected by a common sewer this shall be appropriately managed to ensure no loss of service to other users.
17. A detailed Traffic Management Plan for the pedestrian and traffic management of the site during demolition and site clearing works shall be prepared and submitted to the relevant road authority (Council or Roads and Traffic Authority) for approval prior to commencement of any works. The plan shall: -
- (a) be prepared by a RTA accredited consultant.
 - (b) nominate a contact person who is to have authority without reference to other persons to comply with instructions issued by Council’s Traffic Engineer or the Police.
 - (c) ensure pedestrian and vehicular access from Myrtle, Jasmine and Bay Streets is maintained at all times. No closure of any road reserve will be permitted without NSW Roads and Maritime Services (former Roads and Traffic Authority) and Council’s approval.
 - (d) if required, implement a public information campaign to inform any road changes well in advance of each change.
18. Detailed Demolition Management Plan (CMP) shall be submitted to Council and the Principal Certifying Authority for approval prior to commencement of any works. The DMP shall address the following: -
- (a) All traffic (including worker’s vehicles) generated from demolition and site clearing activities shall enter and leave the site in a forward direction ONLY.

- (b) The overall length of the vehicle (including worker's vehicles) accessing the site shall be restricted to 12.5 metres (defined as Heavy Rigid Vehicle in AS2890.2). Trucks with trailers are not allowed to access the site.
 - (c) All vehicles (including worker's vehicles) associated with the demolition and site clearing activities shall only park within the site. No parking of these vehicles to be allowed on street.
 - (d) Frequency of truck movements associated with the demolition and construction activities shall be stated in the DMP.
 - (e) Under no circumstance shall any trucks be permitted to queue and wait on public places, public streets or any road related area (eg. footpath, nature strip, road shoulder, road reserve etc) prior to entering the site.
 - (f) All truck movements associated with the demolition and site clearing activities shall be restricted to the following designated traffic route to access the site:
 - (i) Jasmine Street – Banksia Street – Botany Road
 - (g) Demolition and other materials shall be stored wholly within the site;
 - (h) Locations of site office, accommodation and the storage of major materials related to the project shall be within the site;
 - (i) Protection of adjoining properties, pedestrians, vehicles and public assets shall be implemented at all times;
 - (j) Location and extent of proposed builder's hoarding and Work Zones, if there is any, shall be shown on the plan;
 - (k) Tree protection management measures for all protected and retained trees shall be implemented at all times
19. Building plans must be lodged at Sydney Water Quick Agent for approval prior to commencement of works.
20. Toilet facilities are to be provided at or in the vicinity of the work site on which work involves:
- (a) Erection of a building is being carried out, at the rate of one toilet for every 20 persons or part of 20 persons employed at the site;
 - (b) Each toilet provided:
 - (i) must be standard flushing toilet; and,
 - (ii) must be connected:
 - (1) to a public sewer; or
 - (2) if connection to a public sewer is not practicable to an accredited sewerage management facility approved by the Council; or,
 - (3) if connection to a public sewer or an accredited sewerage management facility is not practicable to some other sewerage management facility approved by the Council.

- (c) The provisions of toilet facilities in accordance with this clause must be completed before any other work is commenced.
21. In order to ensure that the Agonis street tree located at the corner of Myrtle & Jasmine Streets, and any other existing tree to be protected as stipulated by Council and indicated on the Council approved landscape plan, is protected during construction, and its health and structural stability ensured, the following is required :
- (a) Prior to commencing any construction work the tree/s shall be physically protected by fencing underneath the canopy dripline using 1.8 metre high chainwire fence to form the Tree Protection Zone (TPZ). The fence shall be erected to ensure the public footway is unobstructed and remain in place until construction is complete.
 - (b) Prior to the commencement of work on the site, the Applicant is required to contact Council for an inspection of trees to be retained and the TPZ.
 - (c) All detailed Construction Certificate plans shall show trees to be protected and the TPZ.
 - (d) The TPZ is a No-Go zone. There shall be no construction work, no access, no concrete mixing, no washing down of concrete mixers or tools, no chemicals mixed/disposed of, no excavation or filling, no change in levels and no stockpiling, storage or sorting of waste or building materials.
 - (e) Excavation in an area extending 3 metres from the canopy dripline shall be carried out manually using hand tools to minimise root damage or disturbance. Tree roots 40mm in diameter or greater that require pruning shall be done only under the direction of Council's Tree Officer after a site inspection.
 - (f) Ensure no damage to the tree trunk or canopy. There shall be no canopy pruning or tree removals unless approval has been granted by Council's Tree Officer under separate application.
 - (g) Paving shall be minimized around the tree base and a suitable porous paving treatment or planter bed incorporated into the landscape design. There shall be no new underground or overhead services within the canopy or primary root zone of the tree.
 - (h) All excess/waste concrete and debris shall be removed from areas to be landscaped to minimise soil contamination.
 - (i) The Applicant shall undertake any tree maintenance/remedial pruning as required by Council at the completion of construction.
 - (j) If there is any contravention of these tree preservation conditions, or a tree was found to be damaged (including roots), in decline, dead or pruned without permission, then Council may claim all or part of the lodged security bond prior to its release as well as require remedial pruning work. Epicormic growth is evidence of root damage.
22. Prior to the Commencement of Demolition, the applicant is to submit payment for a Tree Preservation Bond of \$4,500.00 to ensure protection of the Agonis street tree from damage during construction. The duration of the Bond shall be limited to a

period of 9 months after issue of the Occupation Certificate. At the completion of the 9 month period the Tree Preservation Bond shall be refunded pending a satisfactory inspection by Council. If the tree was found to be in decline, damaged (including roots), dead or pruned without Council permission or, if tree protection measures were not satisfied at any time, then Council will forfeit all, or part thereof, of the bond. The Tree Preservation Bond was calculated using the Thyer Tree Evaluation method.

DURING WORKS

23. This Consent does not permit onsite groundwater treatment or remediation. If this is required a separate development application is to be lodged with Council for consideration.
24. The approved Waste Management Plan shall be complied with at all times during demolition and site clearing works.
25. Throughout the demolition and site clearing period, Council's warning sign for soil and water management shall be displayed on the most prominent point of the building site, visible to both the street and site workers. A copy of the sign is available from Council's Customer Service Counter.
26. Any material containing asbestos found on site during the demolition process shall be removed and disposed of in accordance with:
 - (a) WorkCover NSW requirements. An appropriately licensed asbestos removalist must complete all asbestos works if they consist of the removal of more than 10m² of bonded asbestos and/or any friable asbestos.
 - (b) Protection of the Environment Operations Act 1997;
 - (c) Protection of the Environment Operation (Waste) Regulation
 - (d) DECC Waste Classification Guidelines 2008.
27. If any material containing asbestos is found on site during the demolition process the material is to be removed and disposed of in accordance with WorkCover requirements. An appropriately licensed asbestos removalist must complete all asbestos works if they consist of the removal of more than 10m² of bonded asbestos and/or any friable asbestos.
28. In order to ensure safe handling of asbestos materials, the re-use or sale of asbestos building materials is strictly prohibited.
29. No demolition materials shall be burnt or buried on the site.
30. Demolition and site clearing work shall be restricted to between the following hours:
 - (a) Monday to Friday 07:00 am to 05:00 pm

(b) Saturday 07:00 am to 01:00 pm

31.

- (a) During demolition and site clearing works, the applicant / builder is required to ensure the protection and preservation of all boundary fencing or boundary walls between the subject site and adjoining properties. Any damage caused as a result of such works will be at the full cost of the applicant/builder.
- (b) Existing structures and or services on this and adjoining properties shall not be endangered during any demolition and site clearing works associated with the project. The Applicant is to provide details of any stabilisation works required to adjacent developments to Council.

32.

- (a) All vehicles transporting soil, sand or similar materials to or from the site shall cover their loads at all times.
- (b) The demolition and site clearing operations of the site shall be conducted in such a manner as not to interfere with or materially affect the amenity of the neighbourhood by reason of noise, vibration, odour, fumes, vapour, steam, soot, ash, dust, particulate matter, waste water, waste products or other impurities which are a nuisance or injurious to health.
- (c) In order to prevent vehicles tracking soil or other materials onto public roads and washing of materials into the street drainage system or watercourse, during Demolition and Site Clearing Works, access to the site shall be available in all weather conditions. The area shall be stabilised and protected from erosion;
- (d) Pavement surfaces adjacent to the ingress and egress points are to be swept and kept clear of earth, mud and other materials at all times and in particular at the end of each working day or as directed by Council's Engineer
- (e) Shaker pads shall to be installed at the entry/exit points to the site to prevent soil material leaving the site on the wheels of vehicles and other plant and equipment.
- (f) Council nature strip shall be maintained in a clean and tidy state at all times during construction works.

33. During demolition and site clearing works, care must be taken to protect Council's infrastructure, including street signs, footpath, kerb, gutter and drainage pits etc. Protecting measures shall be maintained in a state of good and safe condition throughout the course of construction. The area fronting the site and in the vicinity of the development shall also be safe for pedestrian and vehicular traffic at all times. Any damage to Council's infrastructure (including damage caused by, but not limited to, delivery vehicles, waste collection, contractors, sub-contractors, concrete delivery vehicles) shall be fully repaired in accordance with Council's specification and AUS-SPEC at no cost to Council.

34. Any soil disposed of offsite shall be classified in accordance with the procedures in the Department of Environment and Climate Change Waste Classification Guidelines (2008).
35. Noise from demolition and site clearing activities associated with Stage 1 of the Consent shall comply with the NSW Environment Protection Authority's Environmental Noise Manual – Chapter 171 and the Protection of the Environment Operations Act 1997.
- (a) Demolition period of 4 weeks and under:
 - (i) The L10 sound pressure level measured over a period of not less than 15 minutes when the demolition site is in operating must not exceed the background level by more than 20dB(A).
 - (b) Demolition period greater than 4 weeks and not exceeding 26 weeks:
 - (i) The L10 sound pressure level measured over a period of not less than 15 minutes when the demolition site is in operating must not exceed the background level by more than 10dB(A).
 - (c) All possible steps should be taken to silence demolition site equipment.
- 36.
- (a) Vibration levels induced by the demolition activities shall not exceed 1mm/sec peak particle velocity (ppv) when measured at the footing of any occupied building.
 - (b) Vibration levels induced by the demolition activities shall not exceed 3mmsec peak particle velocity (ppv) when measured at the footing of any unoccupied building.
 - (c) The upper noise level from the demolition operations measured over a period of 10 minutes must not exceed the background noise level by more than 10dB(A).
37. The applicant being informed that this approval shall be regarded as being otherwise in accordance with the information and particulars set out and described in the Development Application registered in Council's records as Development Application No. 11/018 dated 14 February 2011 and that any alteration, variation, or extension to the use, for which approval has been given, would require further Approval from Council.

THIS IS THE END OF STAGE 1.

The Conditions pertaining to Stage 1 of this Consent must be satisfied prior to commencement of Stage 2 of the Consent.

Premises: 8-32 Jasmine Street and 68-70 Bay Street, Botany**DA No: 11/018****STAGE 2 – DRAFT SCHEDULE OF CONSENT CONDITIONS**

This Stage relates to excavation works and construction of the mixed residential and retail development with associated basement carparking and landscaping.

GENERAL CONDITIONS

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

Drawing N°	Author	Dated Received by Council
Registered Survey Plan with Drawing No. 32625A01.DWG (Revision C), Sheets 1 and 2.	Degotardi, Smith & Partners	14 February 2011
Cover, Site & Location Plan 0210 – A00 (Issue 03)	Krikis Tayler Architects	14 February 2011
Floor Plan Level 0 0210 – A01 (Issue 07)	Krikis Tayler Architects	14 February 2011
Floor Plan Level 1 0210 – A02 (Issue 12)	Krikis Tayler Architects	3 February 2012
Floor Plan Level 2 0210 – A03 (Issue 07)	Krikis Tayler Architects	14 February 2011
Floor Plan Level 3 0210 – A04 (Issue 07)	Krikis Tayler Architects	14 February 2011
Floor Plan Level 4 0210 – A05 (Issue 07)	Krikis Tayler Architects	14 February 2011
Floor Plan Level 5 0210 – A06 (Issue 07)	Krikis Tayler Architects	14 February 2011
Floor Plan Level 6 0210 – A07 (Issue 07)	Krikis Tayler Architects	14 February 2011
Roof Plan 0210 – A08 (Issue 07)	Krikis Tayler Architects	14 February 2011
Elevations 0210 – A09 (Issue 05)	Krikis Tayler Architects	14 February 2011
Internal Elevations 0210 – A10 (Issue 08)	Krikis Tayler Architects	3 February 2012
Site Analysis 0210 – A13 (Issue 02)	Krikis Tayler Architects	14 February 2011

Drawing N°	Author	Dated Received by Council
Sections 0210 – A14 (Issue 04)	Krikis Tayler Architects	14 February 2011
Material Board 0210 – A19 (Issue 01)	Krikis Tayler Architects	14 February 2011
Perspectives	Krikis Tayler Architects	14 February 2011

Documents	Author	Date Received
Materials & Sample Board	Krikis Tayler Architects	14 February 2011
Amended Statement of Environmental Effects (Dated February 2012)	James Lovell & Associates Pty Ltd	8 February 2012
SEPP 1 Objection (Amended, dated February 2012)	James Lovell & Associates Pty Ltd	8 February 2012
Design Verification Statement	Krikis Tayler Architects	14 February 2011
Architectural Design Statement (Dated 8 February 2010)	Krikis Tayler Architects	14 February 2011
SEPP 65 Assessment (Dated 8 February 2010)	Krikis Tayler Architects	14 February 2011
Residential Flat Design Code Analysis (Dated 11 February 2010)	Krikis Tayler Architects	14 February 2011
Building Code of Australia Assessment Report	Barry Johnson & Associates Pty Ltd	14 February 2011
BASIX Certificate with No. 358092M (Issued 10 February 2011)	AGA Consultants (ABN: 37 003 906 626)	14 February 2011
BASIX Certificate with No. 358105M (Issued 10 February 2011)	AGA Consultants (ABN: 37 003 906 626)	14 February 2011
Disability Access Report (Dated 9 February 2011 & Ref: 10101)	Lindsay Perry Access & Architecture	14 February 2011
Preliminary Geotechnical Assessment (Dated 8 January 2011)	Asset Geotechnical – Geotechnical Engineering Consultants	14 February 2011
Landscape Design Report	Site Image – Landscape Architects	14 February 2011
Waste Management Plan (dated February 2011)	McGregor Environmental Services	14 February 2011
Pedestrian Wind Environment Statement (Dated 7 February 2011, Report No. WA972-01F02(rev 0) – WS Report).	WindTech	14 February 2011
Aircraft Noise Assessment Report (Revision 2, dated	Acoustic Logic	24 February 2011

24/02/2011)		
Traffic and Parking Assessment Report (Ref: 11063, Dated 30 March 2011)	Varga Traffic Planning Pty Ltd	31 March 2011
Phase 1 Environmental Site Assessment (Dated 30 July 2004)	URS Australia Pty Ltd	19 July 2011
Phase 2 Environmental Site Assessment – Final Report (Dated 12 October 2007)	URS Australia Pty Ltd	19 July 2011
Groundwater Monitoring Report (Report No.E1326.1AA, dated 15 February 2011)	Environmental Investigations	24 February 2011
Additional Phase II Environmental Site Assessment (Dated August 2011)	Aargus Pty Ltd	19 August 2011
Heritage Impact Statement - Dated May 2011	Helen Wilson,	31 May 2011
Response to Impacts from Dewatering and Basement Construction dated 6 May 2011.	Asset Geotechnical,	31 May 2011
Letter report (dated 25 January 2012)	Aargus Pty Ltd	25 January 2012
Air Quality Assessment dated 13 February 2012	SLR	14 February 2012
VPA Letter – dated 13 February 2012	Krikis Tayler Architect	14 February 2012

No construction works (including excavation) shall be undertaken prior to the issue to the Construction Certificate.

2.

- (a) The Builders Damage Deposit and Tree Preservation Bond paid prior to commencement of works for Stage 1 shall be retained until after issue of the Final Occupation Certificate for Stage 2.
- (b) The applicant must prior to the issue of the approved plans pay the following fees:
 - (i) Development Control \$11,055.00
 - (ii) Section 94 Contributions \$2,209,042.00
 - (iii) Performance Bond for Civil Works \$100,000.00
 - (iv) Plan Checking Fee for Civil and Public Domain Work (as required) \$3,000.00

3.

- (a) This Consent relates to land in Lots A and B in DP 392025, Lots 1 and 2 in DP 201641, Lot 2 in DP 201614, Lot 1 in DP 508743, Lot 10 in DP 598160, Lot B in DP 345783, Lots 1, 2 and 3 in DP 312248, Lots 2 and 3 in Sec H in DP 1787, Lot 1 in DP 455885, Lot 5 in DP 19083 and Lot 11 in DP 598160, and as such, building works must not encroach on to adjoining lands or the adjoining public place, other than public domain works required by this consent or a Voluntary Planning Agreement.
 - (b) This component, Stage 2 of the Consent grants consent for excavation and construction works as recommended in the General Terms of Approval issued by the NSW Office of Water on 1 April 2011.
- 4.
- (a) All building work must be carried out in accordance with the provisions of the Building Code of Australia; and
 - (b) The construction of below-ground (basement) areas must incorporate a water proofing system (i.e. any basement void is to be designed and constructed as a “fully tanked” structure) with adequate provision for future fluctuations of the water table level so that groundwater inflows do not occur.
- Note: It has been identified by the NSW Office of Water that the proposed development may result in prolonged adverse impacts on groundwater resources if the required dewatering occurs on anything other than a temporary basis. Therefore, the proposal must not incorporate provision for the permanent or semi-permanent pumping of groundwater seepage from below-ground areas.
- (c) The future use of the retail tenancies (local shops) located on the ground floor of the development shall form the subject of a further development application to Council.
5. Pursuant to clause 97A(3) of the Environmental Planning & Assessment Regulation 2000, it is a condition of this development consent that all the commitments listed in each relevant BASIX Certificate (No.’s 358092M and 358105M) for the each dwelling in the development are fulfilled.
- Note: Relevant BASIX Certificate means:
- (a) A BASIX Certificate that was applicable to the development when this development consent was granted (or, if the development consent is modified under Section 96 of the Act, a BASIX Certificate that is applicable to the development when this development consent is modified); or
 - (b) If a replacement BASIX Certificate accompanies any subsequent application for a construction certificate, the replacement BASIX Certificate.
 - (c) BASIX Certificate has the meaning given to that term in the Environmental Planning and Assessment Regulation 2000.
6. The finishes of the building are to be in accordance with the details shown on the approved plans and the Materials Board with Project No. 0210, Drawing No. A19 (Issue 1) prepared by Krikis Tayler Architects dated February 2011 and approved

under this Development Consent. All finishes of the building shall be adequately maintained at all times.

7. Any future application for subdivision shall be in the form of a Strata Development Application to ensure that the development is managed and maintained in its entirety. In addition, such application shall be accompanied by the following documentation that indicates:
- (a) The requirement for the employment of a person to manage the collection of waste material by Council, including, but not limited to bin placement at the road edge and retrieval of bins soon after collection of contents, cleansing of bins, storage of bins in the compound and the like.
 - (b) Responsibilities with regard to the ongoing maintenance of the building and landscaped areas at the property in accordance with the plans and details approved under this Development Consent.
 - (c) Responsibilities with regard to the operation maintenance of artificial features at the property in accordance with the plans and details approved under this Development Consent.
 - (d) Responsibilities for ensuring owners and/or tenants have adequate and hygienic waste disposal and collection arrangements and for ensuring the waste storage area is appropriately maintained and kept in a clean and safe state at all times.
 - (e) Responsibilities to ensure that receptacles for the removal of waste, recycling etc. are put out for collection between 4.00pm and 7.00pm the day prior to collection, and, on the day of collection, being the day following, returned to the premises by 12.00 noon.
 - (f) The Owners Corporation obligations under clauses 177, 182, 183, 184, 185 and 186 of the Environmental Planning and Assessment Regulation 2000.
 - (g) The prohibition on the sub-leasing of car parking spaces.
 - (h) Maintenance of the buildings vital mechanical plant and equipments including but not limited to pumps, ventilation systems, passenger lifts.
 - (i) The Owners Corporation/Executive Committee obligations to ensure all wastewater and stormwater treatment devices (including drainage systems, sumps and traps) are regularly maintained in order to remain effective. All solid and liquid wastes collected from the devices shall be disposed of in a manner that does not pollute waters and in accordance with the Protection of the Environment Operations Act 1997.
 - (j) The provision of waste bins for the townhouses to be stored within their respective basement garage area.
 - (k) Prior to the issue of a Construction Certificate a maintenance schedule shall be submitted to the Principal Certifying Authority for approval as to the ongoing maintenance and upkeep of the finishes and materials to the building. This shall include, but not be limited to the following:
 - (i) The exterior of the buildings being painted at least once in every ten year period;

- (ii) The externally visible windows of the buildings being washed once every year; and
 - (iii) The metal screens and any fencing to the building and site being protected against fading/discolouration and warping.
 - (l) Such Maintenance Plan shall be updated as required and shall be submitted with any future application for Subdivision.
8. All internal pedestrian walkways and paved areas shall be unit paved. Large areas of asphalt or concrete are not permitted. The driveway crossover shall be constructed of plain broom finished concrete.

CONDITIONS IMPOSED BY AN EXTERNAL AUTHORITY

9. The following conditions form the General Terms of Approval dated 1 April 2011 by the NSW Office of Water and must be complied with:

General and Administrative Issues

- (a) Groundwater shall not be pumped or extracted for any purpose other than temporary construction dewatering.
- (b) Pumped water (tailwater) shall not be allowed to discharge off-site (eg adjoining roads, stormwater system, sewerage system, etc) without the controlling authorities approval and/or owners consent.
- (c) The licensee shall allow (subject to Occupational Health and Safety Provisions) the NSW Office of Water or any person authorised by it, full and free access to the works (excavation or bore/borefield), either during or after construction, for the purpose of carrying out inspection or test of the works and its fittings and shall carry out any work or alterations deemed necessary by the NSW Office of Water for the protection and proper maintenance of the works, or the control of the water extracted to prevent wastage and for the protection of the quality and prevention from pollution or contamination of the groundwater.
- (d) If a work is abandoned at any time the licensee shall notify the NSW Office of Water that the work has been abandoned and seal off the aquifer by such methods as agreed to or directed by the NSW Office of Water.
- (e) Suitable documents are to be supplied to the NSW Office of Water of the following:
 - (i) A report of prediction of the impacts of pumping on any licensed groundwater users or groundwater dependent ecosystems in the vicinity of the site. Any adverse impacts will not be allowed and the project will need to be modified.
 - (ii) A report of assessment of the potential for salt water intrusion to occur as a result of the dewatering. This report is only required for sites within 250m of any marine or estuarine foreshore area. The

generation of conditions leading to salt water intrusion will not be allowed, and the proposal will need to be modified.

- (iii) Descriptions of the methods used and actual volume of groundwater to be pumped (kilolitres/megalitres) from the dewatering works, the works locations, the discharge rate (litres per second), duration of pumping (number of days/weeks), the amount of lowering of the water table and the anticipated quality of the pumped water.
- (iv) Descriptions of the actual volume of pumped water (tailwater) to be reinjected (kilolitres/megalitres), the reinjection locations, the disposal rate (litres per second), duration of operation (number of days/weeks) and anticipated quality of treated water to be reinjected.
- (v) Monitoring of groundwater levels (minimum of 3 weekly measurements of depth to water at a minimum of 3 locations broadly distributed across the site) beneath the proposed development site prior to construction. This requirement is only for sites where the proposed structure shall extend greater than one floor level into the existing ground level.

Specific Conditions

- (i) The design and construction of the structure must preclude the need for permanent dewatering.
- (j) The design and construction of the structure that may be impacted by any watertable must include a water proof retention system (i.e. a fully tanked structure) with adequate provision for future fluctuations of water table levels. (It is recommended that a minimum allowance for a water table variation of at least +/-1.0 metre beyond any expected fluctuation be provided). The actual water table fluctuation and fluctuation safety margin must be determined by a suitably qualified professional.
- (k) Construction methods and material used in and for construction are not to cause pollution of the groundwater.
- (l) Monitoring of groundwater levels is to be continued at least weekly during the construction stage and at least weekly over a period of at least 2 months following cessation of dewatering, with all records being provided to the NSW Office of Water on expiration of the licence. This requirement is only for sites where the proposed structure shall extend greater than one floor level into the existing ground level.
- (m) Groundwater quality testing must be conducted (and report supplied to the NSW Office of Water). Samples must be taken prior to the commencement of dewatering, (and ongoing to the satisfaction of the NSW Office of Water for any extraction and reinjection activities). Collection and testing and interpretation of results must be done by suitably qualified persons and NATA certified laboratory identifying the presence of any contaminants and comparison of the data against accepted water quality objectives or criteria.

- (n) Discharge of any contaminated pumped water (tailwater) that is not to be reinjected, must comply with the provisions of the Protection of the Environment Operations Act 1997 and any requirements of the relevant controlling authority. The method of disposal of pumped water (i.e. street drainage to the stormwater system or discharge to sewer) and written permission from the relevant controlling authority must be presented to the NSW Office of Water in support of the licence application.
- (o) Discharge of any contaminated pumped water (tailwater) that is to be reinjected, must comply with the provisions of the Protection of the Environment Operations Act 1997. The quality of any pumped water (tailwater) that is to be reinjected must be compatible with, or improve the intrinsic or ambient groundwater in the vicinity of the reinjection site. Contaminated groundwater is not to be reinjected into any aquifer. The following must be demonstrated in writing:
 - (i) The treatment to be applied to the pumped water (tailwater) to remove any contamination.
 - (ii) The measures to be adopted to prevent redistribution of any contamination in the groundwater system. Any reinjection proposal that is likely to further spread contamination within the groundwater system will not be allowed and the project will need to be modified.
 - (iii) The means to avoid degrading impacts on the identified beneficial use of the groundwater. Any reinjection proposal that is likely to lower the identified beneficial use of a groundwater system will not be allowed and the project will need to be modified.
- (p) Written advice be provided from the Certifying Authority to the NSW Office of Water to certify that the following ground settlement issues have been addressed in reports submitted by the proponent:
 - (i) Assessment by a suitably qualified geotechnical professional that the proposed dewatering activity does not pose an unacceptable risk of off-site impacts such as damage to surrounding buildings or infrastructure as a result of differential sediment compaction and surface settlement during and following pumping of groundwater.
 - (ii) Settlement monitoring activities to be undertaken prior to, during and for the required period of time following the dewatering pumping to confirm the impact predictions.
 - (iii) Locations of settlement monitoring points, and schedules of measurement.

Formal Application Issues

- (d) An application must be completed on the prescribed form for the specific purpose of temporary construction dewatering and a licence obtained from the NSW Office of Water prior to the installation of the groundwater extraction

works. A plan drawn to scale will be required with the application clearly identifying the location of the dewatering installations.

- (e) Upon receipt of a Development Consent from Council of the City of Botany Bay, a fully completed licence application form, unambiguous documentation of the means by which the below-ground areas of the development will be designed and constructed to prevent any groundwater seepage inflows (and therefore preclude any need for permanent or semi-permanent pumping), together with all other required supporting information, the NSW Office of Water will issue a Water Licence under Part 5 of the Water Act, 1912.
 - (f) A licence application under Part 5 of the Water Act 1912 must be accompanied by a \$151.00 fee and must specify the proposed volume of groundwater to be pumped in total (megalitres). The licence is also subject to administrative charges as determined from time to time by the Independent Pricing and Regulatory Tribunal (IPART).
10. The proposed development is to comply with the General Terms of Approval dated 20 April 2011 issued by Sydney Airport Corporation Limited (SACL). The conditions are outlined as follows:

Height Restrictions

- (a) The PROPERTY DEVELOPMENT at 8-32 JASMINE STREET, BOTANY lies within an area defined in schedules of the Civil Aviation (Buildings Control) Regulations, which limit the height of structures to 50 feet (15.24 metres) above existing ground height (AEGH) without prior approval of the Civil Aviation Safety Authority.
- (b) In this instance, Kevin Dyer of the Civil Aviation Safety Authority (CASA) has advised that “CASA has no objections to this development as it will not penetrate the OLS or impact on PANS-OPS.”.
- (c) The approved height is inclusive of all lift over-runs, vents, chimneys, aerials, TV antennae, construction cranes etc.
- (d) Should you wish to exceed 28.15 metres above Australian Height Datum (AHD), a new application must be submitted.
- (e) Should the height of any temporary structure and/or equipment be greater than 50 feet (15.24 metres) above existing ground height (AEGH), a new approval must be sought in accordance with the Civil Aviation (Buildings Control) Regulations Statutory Rules 1988 No. 161.
- (f) Construction cranes may be required to operate at a height significantly higher than that of the proposed controlled activity and consequently, may not be approved under the Airports (Protection of Airspace) Regulations.
- (g) SACL advises that approval to operate construction equipment (i.e. cranes) should be obtained prior to any commitment to construct.
- (h) Information required by SACL prior to any approval is to include:
 - (i) the location of any temporary structure or equipment, i.e. construction cranes, planned to be used during construction relative to Mapping Grid of Australia 1994 (MGA94);

- (ii) the swing circle of any temporary structure/equipment used during construction;
 - (iii) the maximum height, relative to Australian Height Datum (AHD), of any temporary structure or equipment i.e. construction cranes, intended to be used in the erection of the proposed structure/activity;
 - (iv) the period of the proposed operation (i.e. construction cranes) and desired operating hours for any temporary structures.
- (i) Any application for approval containing the above information, should be submitted to this Corporation at least 35 days prior to commencement of works in accordance with the Airports (Protection of Airspace) Regulations Statutory Rules 1996 No. 293, which now apply to this Airport.
 - (j) For further information on Height Restrictions please call Peter Bleasdale on (02) 9667 9246.
 - (k) Under Section 186 of the Airports Act 1996, it is an offence not to give information to the Airport Operator that is relevant to a proposed “controlled activity” and is punishable by up to 50 penalty units.
 - (l) The height of the prescribed airspace at the site is approximately 51.0 metres above Australian Height Datum (AHD). In accordance with Regulation 9 of the Airports (Protection of Airspace) Regulations Statutory Rules 1996 No. 293, “a thing to be used in erecting the building, structure or thing would, during the erection of the building, structure or thing, intrude into PANS OPS airspace for the Airport, cannot be approved”.
11. The proposed development is to comply with the recommendations provided by NSW Police Botany Bay Local Area Command, dated 23 March 2011. The conditions are outlined as follows, and relevant details shall be included in the plans and documentation submitted with the Construction Certificate:

Passive Surveillance

- (a) As the proposed development may be exposed to Break Enter and Steals, Stealing, Steal from persons, Malicious Damage and Steal from Motor Vehicle offences, a closed circuit television system (CCTV) which complies with the Australian Standard — Closed Circuit Television System (CCTV) AS:4806:2006 needs to be implemented to receive, hold or process data for the identification of people involved in anti-social or criminal behaviour. The system is obliged to conform with Federal, State or Territory Privacy and Surveillance Legislation.
- (b) This CCTV system should consist of surveillance cameras strategically located in and around the development to provide maximum surveillance coverage of the area, particularly in areas which are difficult to supervise.
 - (i) Cameras should be strategically mounted outside the development buildings and within the car parking areas to monitor activity within these areas.
 - (ii) One or more cameras should be positioned at the entry and exit points to monitor these areas (underground car park, foyer entrance)

- (c) Digital technology should be used to receive, store and process data recording equipment should be secured away from public access areas to restrict tampering with the equipment and data. This equipment needs to be checked and maintained on a regular basis.
- (d) It is crucial even in the development stage that these cameras are installed as soon as power is available to the site.
- (e) For the retail tenancies, a monitored intruder alarm system which complies with the Australian Standard — Systems Installed within Clients Premises, AS:2201:1998 should be installed within the premises to enhance the physical security and assist in the detection of unauthorised entry to the premises. This standard specifies the minimum requirements for intruder alarm equipment and installed systems. It shall apply to intruder alarm systems in private premises, commercial premises and special installations. The system should be checked and tested on a regular (at least monthly) basis to ensure that it is operating effectively. Staff should be trained in the correct use of the system.
- (f) For the retail tenancies, the light emitting diodes (LED red light) within the detectors should be deactivated, to avoid offenders being able to test the range of the system.
- (g) For the retail tenancies, as a number of business premises have had telephone lines cut to prevent alarms being reported to the security monitoring company, a supplementary system such as Global Satellite Mobile (GSM) or Radio Frequency (RF) systems should be used to transmit alarm signal by either mobile telephone or radio frequency.
- (h) For the retail tenancies, where views from the counter are restricted, the installation of convex mirrors to improve visibility from the console. Ensure the location of avertising does not impede the view from the console operator or surveillance cameras. Consideration should be given to the width, height and location of the counter areas. The counter should be designed to reduce the opportunity for assaults upon staff and unauthorised public access behind counters. It is advised that the minimum console width should be 900mm and height minimum 1000mm. Anti-jump barriers – Perspex, wire or glass barriers are acceptable, provided they are securely fastened to the counter of the console, capable of withstanding being pushed and if glass or Perspex be shatter proof. Partitions fitted with doors should be installed to restrict access behind the counter areas.
- (i) For the retail tenancies, consideration should also be given to incorporating duress facility into the system to enable staff to activate the system manually in the event of an emergency, such as a robbery NB Duress devices should only be used when it is safe to do so
- (j) Any proposed landscaping and vegetation should adhere to the following principles:
 - (i) Shrubs, bushes, plants should remain under 900mm in height.
 - (ii) Branches of large trees should start at a height of two (2) metres and higher. This will assist with natural surveillance and reduce hiding spots and dark areas for potential offenders.
 - (iii) By angling fire egress inlet walls 45 degrees or more, opportunities for entrapment, loitering and vandalism can be reduced.

- (k) Any proposed seating area, playground or grass area should be positioned somewhere which can be viewed easily by the community. Consider whether the area will be used enough to warrant its development. Areas which are isolated, unused and maintained poorly become a breeding ground for anti social behaviour.
- (l) Care should be taken when using glazing in entry foyers. At night the vision of departing occupants can be affected by reflections on the interior of the glass (can't see outside). Mirroring can be reduced by using appropriate external lighting.
- (m) The configuration of car parking spaces can impact the risk to car thieves. Grid rows increase natural surveillance. Avoid dark spots, corners and isolated car spaces.
- (n) Public laundries, garbage disposal areas and other communal spaces should not be located in a buildings 'leftover space'. Poor supervision of communal facilities can greatly increase the risk of predatory crime, theft and vandalism. Areas that are unused or sporadically used after hours and unsupervised should not be accessible to the public.
- (o) Uneven building alignments, insert doorways and hidden entrances should be avoided. They can facilitate predatory crimes, thefts, malicious damage and other offences.
- (p) Bicycle parking areas should be located within view of capable guardians. The provision of covered lockable racks to secure bicycles increases the effort required to commit crime.

Lighting

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

Territorial Reinforcement

- (a) Clear street number signs should be displayed and appropriately positioned at the front of the business to comply with Local Government Act, 1993 Section

124 (8). Failure to comply with any such order is an offence under Section 628 of the Act. Offences committed under Section 628 of the Act attract a maximum penalty of 50 penalty units (currently \$5500) for an individual and 100 penalty units (currently \$11000) for the corporation. The numbers should be in contrasting colours to the building materials and be larger than 120mm.

- (b) Warning signs should be strategically posted around the buildings to warn intruders of what security treatments have been implemented to reduce opportunities for crime.
 - (i) Warning, trespasser will be prosecuted
 - (ii) Warning, these premises are under electronic surveillance
- (c) Directional signage should be posted at decision making points (eg. Entry/egress points) to provide guidance to the uses of the development. This can also assist in access control and reduce excuse making opportunities by intruders.
- (d) A Fire Safety Statement must be prominently displayed within the development to comply with the Environmental Planning & Assessment Regulations (1994) Clause 80GB. The annual fire safety statement is a statement issued by the owner of a building.
- (e) Signage needs to be provided at fire exits to assist occupants to identify exits in emergency situations.
- (f) Signage needs to be provided to assist occupants to identify fire suppression equipment, eg extinguishers, fire hoses etc.
- (g) A graffiti management plan needs to be incorporated into the maintenance plan for the development. Research has shown that the most effective strategy for reducing graffiti attacks is the quick removal of such material generally within 24 hours.
- (h) Graffiti resistant materials and anti-graffiti coating should be utilised throughout the development.

Space Management

- (a) An Emergency control and evacuation plan which complies with the Australian Standard, Emergency Control Organisation and Procedures for Buildings, Structures and Workplace, AS:3745:2002 should be prepared and maintained by your development to assist management and staff in the event of an emergency. This standard sets out the requirements for the development of procedures for the controlled evacuation of the building, structures and workplaces during emergencies. Further information in relation to planning for emergencies can be obtained from Emergency NSW <http://www.emerency.nsw.clov.au> or Emergency Management Australia <http://www.emasiov.au>.
- (b) The proposed isolated storage areas shall be constructed using solid frame construction (e.g. sheet metal, not mesh) and each storage area shall be provided with a proper key lock that complies with Australian Standard AS:4145:1993. In addition, these isolated storage areas shall be monitored by CCTV cameras at all times.

Access Control

- (a) The door and door frames to these premises should be of solid construction.
- (b) Doors should be fitted with locks that comply with the Australian Standard – Mechanical Locksets for doors in buildings, AS:4145:1993, to restrict unauthorised access and the Building Code of Australia (fire regulations). This standard specifies the general design criteria, performance requirements and procedures for testing mechanical lock sets and latch sets for their resistance to forced entry and efficiency under conditions of light to heavy usage. The standard covers lock sets for typical doorways, such as wooden, glass or metal hinged swinging doors or sliding doors in residential premises. Requirements for both the lock and associated furniture are included. Certain areas may require higher level of locking devices not referred to in this standard (eg. Locking bars, electronic locking devices and detection devices) Dead locks are recommended for residential units.
- (c) There are some doors within the premises which are designated as fire exits and must comply with the Building Code of Australia. This means that they provide egress to a road or open space, an internal or external stairway, a ramp, a fire isolated passageway, a doorway opening to a road or open space. The doors in the required exits must be readily open-able without a key from inside that face the person seeking egress, by a single hand downward action or pushing action on a single device which is located between 900mm and 1.2m from the floor.
- (d) Any sliding doors should be fitted with lockable bolts in the bottom and top of the door frame.
- (e) The windows and window-frames to these premises should be of solid construction. These windows should be fitted with locks with comply with the Australian Standard — Mechanical Locksets for windows in buildings, AS:4145 <http://www.standards.org.au> to restrict unauthorised access. This standard specifies the general design criteria, performance requirements, and procedures for testing mechanical lock sets and latch sets for their resistance to forced entry and efficiency under conditions of light to heavy usage. The standard covers lock sets for typical windows, such a wooden, glass or metal hinged swinging windows or sliding windows in residential and business premises, including public buildings, warehouses and factories. Requirements for both the lock and associated furniture are included. Certain areas may require higher level of locking devices not referred to in this standard. (e.g. locking bars, electronic locking devices, detection devices, alarms).
- (f) The main access to the underground car park should have restricted access with a security pass. The opening/closing mechanism should be protected from vandalism and tampering. All exit doors from the car park should have striker plates installed to minimise chance of tampering.
- (g) A boom gate should be installed within the underground car park located immediately after the roller door entrance. This will hold residents in the vicinity of the roller door to ensure no unauthorised persons enter after them. The boom gate will rise when the roller door is completely closed and allow the residents vehicle to move on.
- (h) The main entry/egress doors to the development should have an electronically operated lock which require security swipe pass for entry. The lifts operating in the building should have the same security swipe pass technology. When an

occupant buzzes in a visitor the lift should recognise the floor the occupant resides and only allow the visitor access to that floor in the lift.

- (i) Entrance doors to commercial premises should include an electronically operated lock, which can be locked after hours to control access to the development. Staff could release this lock electronically from the safety of the counter area once the customer has been identified. This locking mechanism should be activated during idle hours of darkness.
- (j) As your business deals in cash a robbery prevention program needs to be established to ensure that management and staff are aware of their responsibilities in the event of such an event taking place. Establish clear cash-handling procedures within your business to reduce opportunities for crime. Staff should be trained in cash handling procedures to reduce opportunities for crime. Limit the amount of money carried in the cash drawer at any time (\$200.00 float). Lock cash drawers when not in use and clear money from the cash drawer on a regular basis, e.g. to a safe. Avoid counting cash in view of public. Use a minimum of two staff, or security services, when transferring money to financial institutions, or consider using a reputable security company especially when transferring large amounts of money. Avoid wearing uniform or identification when transferring money. Don't use conspicuous bank-bags when transferring money, as this can be a clear indication to the thief.

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

16.

- (a) Prior to the issue of the Construction Certificate, the owner of the site shall enter into and execute Voluntary Planning Agreement prepared by Council's Solicitor's at the owner's expense. The Voluntary Planning Agreement is in addition to the Section 94 Contributions required in condition 3(b) below.
- (b) The payment of \$2,209,042.00 in accordance with Council's Section 94 Contributions Plan 2005-2010, such contribution to be paid to Council prior to the issue of the Construction Certificate as follows:
 - (i) Community Facilities \$256,247.00
 - (ii) Administration \$41,966.00
 - (iii) Shopping Centre Improvements \$185,564.00
 - (iv) Open Space & Recreation \$1,725,265.00

The Section 94 Contribution fees are subject to annual review and the current rates are applicable for the financial year in which your consent is granted. If you pay the contribution in a later financial year you will be required to pay the fee applicable at the time.

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

- (a) All residential unit size excluding balconies as minimum must be as followings:

- (i) 1 bedroom = 75m²
- (ii) 2 bedroom = 100m²
- (iii) 3 bedroom = 130m²
- (b) Service diagrams shall be provided clearly demonstrating that no services will be provided within the deep soil zones located along all boundaries of the site. All infrastructure and service provision shall take place wholly within the confines of the area below or within building envelope and basement. This is to ensure that adequate soil is available for the proposed planting to maintain an adequate level of amenity and privacy to and within the development;
- (c) Two (2) additional light wells shall be installed to ensure natural daylight is provided to the western most aisle in the basement car park. Where possible, natural daylight shall also be provided to the basement garages for the individual townhouse dwellings;
- (d) Shoring details for the proposed basement construction shall be provided showing that access to adjacent properties is not required during excavation and construction works unless written agreement has been reached with the adjacent land owner allowing access and use of their land;
- (e) Any timber products shall be plantation, recycled or regrowth timbers grown on Australian Farms or State Forest plantations (and not rainforest or old-growth forest timbers);
- (f) The floor to ceiling area in the laundry, kitchen and bathroom areas shall be tiled to minimise surface and subsurface damage from water overflow and penetration;
- (g) The plumbing for each dwelling within a building is separated and contained so as to prevent noise transmission to other dwellings;
- (h) Four (4) of the dwellings shall be 'adaptable units' as required by Council's Multi Unit Housing and Residential Flat Building Development Control Plan No. 35. Such units shall be designed in accordance with AS 4299 and Council's DCP 35 (Section 3.3.13);
- (i)
 - (i) A minimum of 50% of the storage requirements contained in Council's DCP No. 35 for Multi Unit Housing and Residential Flat Buildings shall be provided within the unit as required by DCP 35, and the remainder shall be provided in the basement.

Note: The storage requirements are:

- 1 bedroom apartment = 8m³
 - 2 bedroom apartment = 10m³
 - 3 bedroom apartment = 12m³
- (ii) The storage areas located in the basement shall be constructed using solid frame construction (e.g. sheet metal, not mesh) and each storage area shall be provided with a proper key lock that complies with Australian Standard AS:4145:1993. In addition, these isolated storage areas shall be monitored by CCTV cameras at all times.

- (j) Storage lockers required for the waste and recycling bins for the retail / non-residential tenancies as recommended in the submitted Waste Management Plan;
 - (k) A storage area of adequate dimensions shall be provided for the garden maintenance equipment;
 - (l) Common walls separating one townhouse from another shall be constructed from solid masonry materials and not lightweight construction as required by Council's DCP 35, with such details shown on the plans submitted with Construction Certificate.
 - (m) Maximum height of side / rear fence shall be restricted to 1.8 metres, and where such fencing is to be erected on or adjacent the common allotment boundary written consent of the adjacent owner(s) required;
 - (n) Access gates shall be hung to swing inward;
 - (o) At least 10m³ of storage area is to be provided for each retail tenancy in accordance with DCP 35.
 - (p) Any palisade fencing located internally to the site shall have a maximum height of 1.5m height
18. Prior to the issue of the Construction Certificate the required Long Service Levy payable under Section 34 of the Building and Construction Industry Long Service Payments Act 1986 has to be paid. The Long Service Levy is payable at 0.35% of the total cost of the development, however this is a State Government Fee and can change without notice.
19. Prior to the issue of the Construction Certificate design verification is required to be submitted from a qualified designer to confirm the development is in accordance with the approved plans and details and continues to satisfy the design quality principles in State Environmental Planning Policy No. 65 Design Quality of Residential Flat Development.
20. All plumbing stacks, vent pipes, stormwater downpipes, balcony drainage and the like shall be kept within the building and suitably concealed from view. This condition does not apply to the venting to atmosphere of the stack above roof level. Details shall be submitted to the Principal Certifying Authority prior to issue of the Construction Certificate.
21. Planter boxes constructed on a podium shall be designed and built in accordance with the following details (as a minimum), with details provided on the plans submitted with the Construction Certificate:
- (a) Ensure soil depths in accordance with Council's Landscape DCP. The base of the planter must be screeded to ensure drainage to a piped internal drainage outlet of minimum diameter 90mm, with no low points elsewhere in the planter. There are to be no external weep holes. Turfed areas require a min. 5% cross fall.

- (b) A concrete hob or haunch shall be constructed at the internal join between the sides and base of the planter to contain drainage to within the planter.
 - (c) Planters are to be fully waterproofed and sealed internally with a proprietary sealing agent and applied by a qualified and experienced tradesman to eliminate water seepage and staining of the external face of the planter. All internal sealed finishes are to be sound and installed to manufacturer's directions prior to backfilling with soil. An inspection of the waterproofing and sealing of edges is required by the Certifier prior to backfilling with soil.
 - (d) Drainage cell must be supplied to the base and sides of the planter to minimize damage to the waterproof seal during backfilling and facilitate drainage. Apply a proprietary brand filter fabric and backfill with an imported lightweight soil suitable for planter boxes compliant with AS 4419 and AS 3743. Install drip irrigation including to lawns.
 - (e) Planter boxes shall be finished externally with a suitable paint, render or tile to co-ordinate with the colour schemes and finished of the building.
- 22.
- (a) To ensure that the site is suitable for the proposed use, a Site Audit Statement (SAS) completed by an accredited site auditor under the Contaminated Land Management Act 1997 shall be submitted to Council clearly demonstrating that the site is suitable for the proposed development. This shall be provided prior to the release of the Construction Certificate.
 - (b) Any conditions imposed on the SAS shall form part of this consent. In circumstances where the SAS conditions (if applicable) are not consistent with the consent, a s96 application pursuant to the Environmental Planning & Assessment Act 1979 shall be submitted to ensure that they form part of the *consent conditions*.
23. Landscaped areas within private courtyards of townhouse development and ground floor units must be remediated to a Soil Investigation Level for 'Residential with gardens and accessible soil' (NEHF A) Guidelines for the NSW Site Auditor Scheme as specified in NSW Department of Environment and Conservation. Prior to the issuing of a Construction Certificate Council shall be provided with a Site Audit Statement (SAS) completed by an DECCW accredited site auditor confirming that the site is suitable for the proposed residential development with accessible soil.
24. Prior to the issue of the Construction Certificate, the measures required in the Noise Impact Assessment Report prepared by Acoustic Logic Consultancy dated 24 February 2011 shall be undertaken in accordance with the provisions of AS2021-2000: Acoustics – Aircraft Noise Intrusion – Building Siting and Construction to establish components of construction to achieve indoor design sound levels in accordance with Table 3.3 of AS2021-2000 shall be incorporated into the construction of the building;
- Note: in many cases the applicant chooses to install air conditioning to meet mechanical ventilation requirements above. If they do it will require consideration of the noise from the air conditioner.

25. Prior to issue of any Construction Certificate, the following documentation shall be submitted to Council as a road authority, for assessment. Documentary evidence of the lodgement of engineering plans shall be submitted to the Principal Certifying Authority attesting to this condition has been appropriately satisfied: -

(a) Detailed engineering plans in relation to the civil works in public domain on Myrtle Street frontage of the site and the section of Jasmine Street between Myrtle Street and Bay Street shall be submitted to Council. The engineering plans shall include the following: -

(i) The design of the civil works (including provision of on-street angle parking bays, refuge islands and/or other traffic calming device on Myrtle Street frontage of the site and the section of Jasmine Street between Myrtle Street and Bay Street. The works shall include: -

(1) extension of existing treatment in Myrtle Street having regard for the vehicle access needs at Botany Aquatic Centre and;

(2) introduce new street treatment along Jasmine Street (between Myrtle Street and Bay Street) with angle parking along the western side.

All design shall be in accordance with AS2890.5 and NSW Road Rules;

(ii) Road cross-section details

(The road cross-section details shall be at every 5m interval over the entire width of the road reserve)

(iii) Longitudinal section profiles of kerb and gutter, including kerb return

(iv) Construction details of kerb and gutter

(Refer to Council's standard drawing numbered E-02, Rev 4, dated Nov 2008)

(v) Construction details of the footpath and landscaping in road reserve

(Refer to Council's landscape architect for details)

(vi) Construction details of proposed vehicular crossing

(Refer to Council's standard drawing numbered E-06, Rev 2, dated Nov 2008)

(vii) Road pavement details of new angle parking bays (including road sealing)

(The pavement design shall be carried out by geotechnical engineer upon soil tests performed by a registered N.A.T.A Soils Laboratory and to the design traffic loading of 3 x 105 ESA. All cost associated with the pavement design shall be borne by the applicant)

(viii) Construction details of kerb ramp

(Refer to Council's standard drawing numbered E-08, Rev 4, dated Nov 2008)

(ix) Construction details of stormwater kerb inlet pits on Myrtle Street and Jasmine Street

(Refer to Council's standard drawing numbered E-09, Rev 2, dated Nov 2008. Minimum 3.6m lintel is required)

- (x) Design and details of all traffic control signage and line marking

(All traffic signage and line marking must conform to the Australian Road Rules and the NSW Road Transport (Safety and Traffic Management) Regulation 1999.)

- (xi) Any relocation of any public utility services.

All the above works shall be designed and prepared by suitably qualified civil engineers and landscape architects with relevant qualification in civil engineering and landscape respectively.

- (b) Detailed Construction Plans of kerb and gutter and footpath along Bay Street, Jasmine Street, and Myrtle Street frontages of the site.

- (c)

- (i) Detailed Engineering Plans of the roundabout at the Bay Street/Jasmine Street intersection; and

- (ii) Detailed engineering plans in relation to the construction of the roundabout at the Bay Street/Jasmine Street intersection shall be designed and prepared by suitably qualified civil engineers and landscape architects with relevant qualification in civil engineering and landscape respectively. The roundabout shall accommodate turning of 8.8m long medium rigid vehicles and be mountable for 12.5m long heavy rigid vehicles. All design shall be in accordance with Austroads requirements.

- (d) Plan checking fee of \$3,000 shall be paid to Council.

26. Prior to the issue of Construction Certificate, the applicant shall lodge with the Council a performance bond of \$100,000.00 against defective public civil works undertaken by the main contractor for a period of twelve (12) months from the date of the completion agreed by RMS and Council. The bond shall be lodged in the form of a cash deposit, cheque or unconditional bank guarantee, which will be refundable (with no interest) subject to the approval of Council at the end of the maintenance period. In this period, the Applicant is liable for any part of the work, which fails to achieve the design specifications. Council shall be given full authority to make use of the bond for such restoration works within the maintenance period as deemed necessary.

27. Prior to commencement of any works in the public domain area, written approval shall be obtained from Council's engineer to ensure the engineering drawings of the civil works in public domain area (including road reserve) are satisfactory.

28. Prior to the issue of the Construction Certificate, design certification, prepared by a suitably qualified engineer shall be submitted to Principal Certifying Authority certifying the car parking area shown on the construction plans has been designed in accordance with AS 2890.1.

29. The applicant shall submit to the Principal Certifying Authority prior to the issuing of the Construction Certificate details of plans showing that the car wash bay meets the following requirements. The car wash bay(s) must:
- (a) Have adequate parking and washing floor space, turning area, and water supply;
 - (b) Minimise water use with appropriate devices (such as a gun-type nozzle which closes when released and a timer operative valve; collection and use of rainwater).
 - (c) Have a water supply cut out/fail-safe mechanisms provided to ensure that mechanical failure; drainage blockage or lack of maintenance cannot result in wastewater surcharge into the stormwater system.
 - (d) Be designed to ensure that over spray, drift of water or detergent does not cause a nuisance to persons, vehicles, residences, other buildings, neighbouring properties or the environment,
 - (e) Be designed to ensure that spillages and wastewater is not discharged to the stormwater system or surrounding environment.
 - (f) Be located so that washing can occur with minimal disturbance to other residents.
 - (g) Ensure that noise emissions from the car wash down bay does not exceed 5dB(A) above the background noise levels at any time, as measured at the nearest residential property boundary and install noise effective barriers.
 - (h) Be suitably identified.
 - (i) Have good ventilation and good lighting.
 - (j) Discharge to the sewer via appropriate pre-treatment
 - (k) All car wash bays that discharge to sewer must meet the following requirements:
 - (i) The floor must be sealed and graded to an internal drainage point, so that all wastewater and surface spillage is directed and drains to the approved treatment and disposal point.
 - (ii) The wash bay is to be roofed and bunded so that all uncontaminated stormwater from the roof areas and uncovered areas, are directed away from the bay
 - (iii) The roof to the wash bay roof must be a minimum height of 2.5 m.
 - (iv) A bund must be constructed and maintained around the perimeter of the bay. The bund is to be protected from the entry of external surface waters, by either; a minimum 2% change in grade; or combination of a minimum 2% grade change and a grated drainage system.
 - (v) All uncontaminated stormwater/rainwater must be directed to the dedicated stormwater drainage systems.
 - (vi) The collection pit shall be a minimum of 1000 litres.

- (vii) A Permission to Discharge Trade Wastewater certificate issued by Sydney Water must be obtained prior to the approval of the development.
- 30.
- (a) A suitable intercom system linked to all units within the development shall be provided at the vehicle entrance to the basement car parking area to ensure any visitors to the site can gain access to the visitor parking located within the basement car park. The details of the intercom system shall be submitted to Principal Certifying Authority prior to the issue of a Construction Certificate and its location and specifications endorsed on the construction drawings.
- (b) A single master TV antenna is to be installed to service the development and provision made for connection to each dwelling unit within the development. Details shall be submitted to the Principal Certifying Authority prior to the release of a Construction Certificate.
31. The visible light reflectivity from building materials used on the facade of the building should not exceed 20% and must be otherwise designed so as not to result in glare that causes discomfort or threatens safety of pedestrians or drivers. Details to be submitted to the Private Certifying Authority prior to the release of the Construction Certificate.
32. Prior to the issue of any Construction Certificate, detailed construction plans in relation to the stormwater management and disposal system for the development shall be prepared by a suitably qualified civil engineer experienced in stormwater drainage design and submitted to Principal Certifying Authority for approval. The construction plans shall be generally in accordance with the approved stormwater management plans and Council's 'Guidelines for the Design of Stormwater Drainage Systems within City of Botany Bay', AS/NSZ 3500 and BCA requirements.
33. Prior to the issue of the Construction Certificate, design certification, prepared by a suitably qualified engineer shall be submitted to Principal Certifying Authority certifying the stormwater drainage (including OSD system) and basement pump-out system shown on the construction plans have been designed to comply with current Australian Standards and Council's requirements.
34. Prior to the issue of any Construction Certificate, the applicant shall obtain a compliance certificate (under Part 4A of Environmental Planning and Assessment Act) for the design of stormwater management system of the development from an Accredited Certifier (stormwater management facilities design compliance).
35. Council's property shall be supported at all times. Where any shoring is to be supporting (or located on) Council's property, certified engineering drawings showing all details including the extent of encroachment, the type of shoring and the method of removal, shall be submitted prior to the issue of the Construction Certificate. If the

shoring cannot be removed, it shall be cut to 150mm below footpath level and the gap between the shoring and any buildings shall be filled with a 5Mpa lean concrete mix.

36. Prior to the issue of Construction Certificate, detailed Construction Traffic Management Plan for the pedestrian and traffic management of the site during site excavation and construction works shall be prepared and submitted to Principal Certifying Authority and Council for approval. The plan shall: -
- (a) be prepared by an accredited qualified person.
 - (b) nominate a contact person who is to have authority without reference to other persons to comply with instructions issued by Council's Traffic Engineer or the Police.
 - (c) indicate the construction vehicle access points of the site.
 - (d) indicate the frequency of truck movements.
 - (e) ensure any vehicles accessing the site or associated with construction activities be restricted to 12.5 metres (defined as Heavy Rigid Vehicle in AS2890.2). Trucks with trailers are not allowed to access the site
 - (f) ensure vehicles associated with construction activities not allow to travel on local streets other than the following designated traffic route: -
 - (i) Jasmine Street – Banksia Street – Botany Road
 - (g) ensure all traffic (including worker's vehicles) generated from the construction activities shall enter and leave the site in a forward direction via Jasmine Street ONLY. No vehicles shall be allowed to enter and exit the site via other public roads.
37. Prior to the issue of Construction Certificate, detailed Construction Management Plan (CMP) shall be submitted to Principal Certifying Authority and Council for approval of the site works involved with Stage 2 of the consent (being for excavation and construction works). The CMP shall address the following: -
- (a) All vehicles (including worker's vehicles) associated with construction activities shall enter and leave the site in a forward direction ONLY.
 - (b) All vehicles (including worker's vehicles) associated with the construction activities shall only be allowed to park within the site. No parking of these vehicles to be allowed on Myrtle Street, Jasmine Street and Bay Street.
 - (c) Construction building materials shall be stored wholly within the site
 - (d) Access to adjacent buildings and pedestrian and vehicular access fronting Myrtle Street, Jasmine Street and Bay Street shall be maintained at all times. No closure of any road reserve will be permitted without Council approval.
 - (e) Under no circumstance (except emergency) shall any trucks be permitted to queue and wait on public places, public streets or any road related area (eg. footpath, nature strip, road shoulder, road reserve etc) prior to entering the site.
 - (f) Locations of site office, accommodation and the storage of major materials related to the project shall be within the site

- (g) Protection of adjoining properties, pedestrians, vehicles and public assets shall be implemented at all times
 - (h) Location and extent of proposed builder's hoarding and Work Zones, if there is any, shall be shown on the plan
 - (i) Tree protection management measures for all protected and retained trees shall be implemented at all times
38. Prior to the issue any Construction Certificate, geotechnical investigation report shall be submitted to Council for review. The report shall prepared by a qualified geotechnical engineer and shall address the following:
- (a) The assessment of the temporary (during construction) and permanent impacts by the development on: -
 - (i) the existing water table, with the inclusion of flow net calculations and diagrams
 - (ii) the footings and buildings of the neighbouring properties and
 - (iii) the impact of excavation/ shoring on the stability of Myrtle Street
 - (iv) the structural stability of road pavement on Myrtle Street
 - (b) Written certification, issued by the qualified geotechnical engineer, shall be submitted to Principal Certifying Authority certify that the development will not have major impact to the adjacent buildings and infrastructure, or the future redevelopment of adjacent sites which may comprise basement car parking structures.
39. The required electrical kiosk and any fire booster assemblies or other similar services required must be located in an unobtrusive location away from vehicle and pedestrian and vehicle entrances to the property and the main street setback, and shall be softened by screening treatments and/or landscaping so as not to reduce visual amenity of the development or the streetscape. The location of, and screening treatment surrounding the utility shall be shown on the plans submitted with the Construction Certificate and is required to be approved by Council's Landscape Architect prior to its installation.
- 40.
- (a) A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained. Application must be made through an authorised Water Servicing Coordinator. Please refer to "Your Business" section of Sydney Water's web site at www.sydneywater.com.au then the "e-developer" icon or telephone 13 20 92.
 - (b) Following application a "Notice of Requirements" will detail water and sewer extensions to be built and charges to be paid. Please make early contact with the Co-ordinator, since building of water/sewer extensions can be timed consuming and may impact on other services and building, driveway or landscape design. The Section 73 Certificate must be submitted to the Principle Certifying Authority prior to the Construction Certificate being issued.

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

41. To ensure that utility authorities and Council are advised of any effects to their infrastructure by the development, the applicant shall: -
- (a) Carry out a survey of all utility and Council services within the site including relevant information from utility authorities and excavation if necessary to determine the position and level of services.
 - (b) Negotiate with the utility authorities (eg Energy Australia, Sydney Water and Telecommunications Carriers) and Council in connection with: -
 - (i) The additional load on the system; and
 - (ii) The relocation and/or adjustment of the services affected by the construction.
 - (c) Any costs in the relocation, adjustment, and provision of land or support of services as requested by the service authorities and Council are to be the responsibility of the developer.
42. In accordance with the Contaminated Land Management Act 1997, notification of all category 2 remediation work to Council is required at least 30 days prior to commencement of works.
- 43.
- (a) As this development involves an excavation below the water table these works are subject to a Council Drainage Charge for discharge of site dewatering to storm water. As such a formal application is to be submitted to Council prior to the commencement of any excavation works.

Note: Council will not give permission for contaminated ground water to be discharged into its stormwater system.
 - (b) To discharge groundwater into the Council's stormwater system the applicant must supply the following:
 - (i) An Application to Council for permission to discharge water from site dewatering to Council's stormwater drainage system. The application must be made in writing to Council estimating volume and number of days involved and must be accompanied by a current dewatering license from the NSW Office of Water.
 - (ii) A copy of a current bore license from the NSW Office of Water for dewatering.
 - (iii) For water to be permitted to go to stormwater the water must meet ANZECC 2000 Water Quality Guidelines for Fresh and Marine Water for the 95% protection trigger values for Freshwater. As such, a report prepared by a suitably qualified person is to be provided together with results from a NATA approved laboratory confirming that the quality of the water meets the 95% freshwater trigger values applying to

typically slightly-moderately disturbed systems as detailed in the Australian and New Zealand Guidelines for Fresh and Marine Water Quality, Australian and New Zealand Environment and Conservation Council and Agriculture and Resource Management Council of Australia and New Zealand, Paper No 4, October 2000.

- (iv) If the groundwater is not suitable for direct disposal to the stormwater, any proposed treatment methods must be noted and accompanied by relevant documentation demonstrating the processes involved as well as engineering evidence of its applicability. (Note that Council reserves the right to refuse any proposed treatment methods. In the advent Council does not have the technical expertise to review a treatment method an independent third party review may be requested. The proponent will be required to pay for these works.).
44. This Consent shall not preclude the demolisher from giving notice to other statutory authorities, such as Sydney Water Corporation, WorkCover, etc.
45. Prior to commencement of any excavation or construction works, application(s) shall be made to Council's Customer Services Counter for the following approvals and permits on Council's property/road reserve under Road Act 1993 and Local Government Act 1993 as appropriate: -
- (It should be noted that any works shown within Council's road reserve or other Council Lands on the development approval plans are indicative only and no approval for these works is given until this condition is satisfied.)
- (a) Permit to erect hoarding on or over a public place, including Council's property/road reserve
 - (b) Permit to construction works, place and/or storage building materials on footpaths, nature strips
 - (c) Permit for roads and footways occupancy (long term/ short term)
 - (d) Permit to construct vehicular crossings, footpath, kerb and gutter over road reserve
 - (e) Permit to open road reserve area, including roads, footpaths, nature strip, vehicular crossing or for any purpose whatsoever
 - (f) Permit to place skip/waste bin on footpath and/or nature strip
 - (g) Permit to use any part of Council's road reserve or other Council lands
 - (h) Permit to stand mobile cranes and/or other major plant on public roads and all road reserve area
- (It should be noted that the issue of such permits may involve approval from RTA and NSW Police. In some cases, the above Permits may be refused and temporary road closures required instead which may lead to longer delays due to statutory advertisement requirements.)
- (i) Permit to establish "Works Zone" on public roads adjacent to the development site, including use of footpath area.

(Application(s) shall be submitted minimum one (1) month prior to the planned commencement of works on the development site. The application will be referred to the Council's Engineering Services for approval, which may impose special conditions that shall be strictly adhered to by the applicant(s))

46. A Soil and Water Management Plan (also known as an Erosion and Sediment Control Plan) shall be prepared for the excavation and construction works according to 'Do It Right On-Site' Soil and Water Management for the Construction Industry (available from Council) and NSW EPA's Managing Urban Stormwater: Construction Activities and submitted to the Principal Certifying Authority prior to issue of the Construction Certificate. This Plan shall be implemented prior to the commencement of any site works or activities. All controls in the plan shall be maintained at all times during the construction works. A copy of the Soil and Water Management Plan shall be kept on-site at all times and made available to Council Officers on request.
47. Prior to commencement of any works in the road reserve area, the applicant shall obtain written approval, together with a copy of approved engineering plans, construction management plan and construction traffic plans, under Section 138 of Roads Act 1993 for the civil works to be carried out in public domain. Documentary evidence shall be submitted to the Principal Certifying Authority attesting to this condition has been appropriately satisfied.

DURING WORKS

48. The proposed development shall comply with the following:
- (a) A sign must be erected in a prominent position on any work site on which work involved in the erection or demolition of a building is being carried out:
 - (i) Stating that unauthorised entry to the work site is prohibited;
 - (ii) Showing the name of the person in charge of the work site and a telephone number at which that person may be contacted outside working hours;
 - (iii) The Development Approval number; and
 - (iv) The name of the Principal Certifying Authority including an after hours contact telephone number.
 - (b) Any such sign is to be removed when the work has been completed.
49. All materials excavated from the site (fill or natural) shall be classified in accordance with the NSW Department of Environment and Climate Change (DECC) Waste Classification Guidelines (2008) prior to being disposed of to a NSW approved landfill or to a recipient site.
50. To prevent contaminated soil being used onsite, all imported fill shall be certified VENM material and shall be validated in accordance with the Department of

Environment, Climate Change and Water (DECCW) approved guidelines to ensure that it is suitable for the proposed development. Imported fill shall be accompanied by documentation from the supplier which certifies that the material has been analysed and is suitable for the proposed land use.

51. During excavation and construction, the applicant shall ensure that all works and measures are being implemented in accordance with the following plan Approved for Stage 2 works:
 - (a) Waste Management Plan;
 - (b) Erosion and Sediment Control Plan;
 - (c) Traffic Management Plan; and,
 - (d) Construction Management Plan.
52. Throughout the construction period, Council's warning sign for soil and water management shall be displayed on the most prominent point of the building site, visible to both the street and site workers. A copy of the sign is available from Council's Customer Service Counter.
53. All possible and practicable steps shall be taken to prevent nuisance to the inhabitants of the surrounding neighbourhood from wind-blown dust, debris, noise and the like.
54.
 - (a) All excavations and backfilling shall be executed safely and in accordance with appropriate professional standards, and all excavations shall be properly guarded and protected to prevent them from being dangerous to life or property;
 - (b) Existing structures and or services on this and adjoining properties are not endangered during any demolition excavation or construction work associated with the above project. The applicant is to provide details of any shoring, piling, or underpinning prior to the commencement of any work. The construction shall not undermine, endanger or destabilise any adjacent structures.
 - (c) As the development involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
 - (i) Protect and support the adjoining premises from possible damage from the excavation, and
 - (ii) Where necessary, underpin the adjoining premises to prevent any such damage.
55. The following shall be complied with during construction and demolition:
 - (a) Construction Noise

- (i) Noise from construction activities associated with the development shall comply with the NSW Environment Protection Authority's Environmental Noise Manual – Chapter 171 and the Protection of the Environment Operations Act 1997.
 - (b) Level Restrictions
 - (i) Construction period of 4 weeks and under:
 - (1) The L10 sound pressure level measured over a period of not less than 15 minutes when the construction site is in operating must not exceed the background level by more than 20dB(A).
 - (ii) Construction period greater than 4 weeks and not exceeding 26 weeks:
 - (1) The L10 sound pressure level measured over a period of not less than 15 minutes when the construction site is in operating must not exceed the background level by more than 10 dB(A).
 - (c) Time Restrictions
 - (i) Monday to Friday 07:00am to 06:00pm
 - (ii) Saturday 07:00am to 01:00pm
 - (iii) No Construction to take place on Sundays or Public Holidays.
 - (d) Silencing
 - (i) All possible steps should be taken to silence construction site equipment.
56. The construction of the premises shall not give rise to transmission of vibration at any affected premises that exceeds the vibration in buildings criteria outlined in the NSW EPA Environmental Noise Control Manual.
57. Excavation and construction works shall comply with the following:
- (a) The applicant shall conduct all construction and related deliveries wholly on site. If any use of Council's or RTA's road reserve is required then separate applications are to be made at Council's Customer Services Department.
 - (b) Construction operations such as brick cutting, washing tools or brushes and mixing mortar shall not be carried out on public roadways or footways or in any other locations, which could lead to the discharge of materials into the stormwater drainage system or onto Council's lands.
 - (c) Hosing down or hosing/washing out of any truck (concrete truck), plant (eg concrete pumps) or equipment (eg wheelbarrows) on Council's road reserve or other property is strictly prohibited. Fines and cleaning costs will apply to any breach of this condition.
 - (d) Pavement surfaces adjacent to the ingress and egress points are to be swept and kept clear of earth, mud and other materials at all times and in particular at the end of each working day or as directed by Council's Engineer

- (e) Shaker pads shall to be installed at the entry/exit points to the site to prevent soil material leaving the site on the wheels of vehicles and other plant and equipment.
 - (f) Council nature strip shall be maintained in a clean and tidy state at all times during construction works.
58. During Construction, care must be taken to protect Council's infrastructure, including street signs, footpath, kerb, gutter and drainage pits etc. Protecting measures shall be maintained in a state of good and safe condition throughout the course of construction. The area fronting the site and in the vicinity of the development shall also be safe for pedestrian and vehicular traffic at all times. Any damage to Council's infrastructure (including damage caused by, but not limited to, delivery vehicles, waste collection, contractors, sub-contractors, concrete delivery vehicles) shall be fully repaired in accordance with Council's specification and AUS-SPEC at no cost to Council.
59. During Excavation, Construction and Deliveries, access to the site shall be available in all weather conditions. The area shall be stabilised and protected from erosion to prevent any construction-related vehicles (including deliveries) tracking soil materials onto street drainage system/watercourse, Council's lands, public roads and road-related areas. Hosing down of vehicle tyres shall only be conducted in a suitable off-street area where wash waters do not enter the stormwater system or enter Council's land.
60. All works carried out on the road reserve shall be inspected and approved by Council's engineers. Documentary evidence of compliance shall be obtained prior to proceeding to the subsequent stages of construction, encompassing not less than the following key stages: -
- (a) Initial pre-construction on-site meeting with Council's engineers to discuss concept and confirm construction details, traffic controls and site conditions/constraints prior to commencement of the construction of the civil works associated with the road widening
 - (b) Prior to placement of concrete (vehicular crossing, refuge island, kerb and gutter and footpath)
 - (c) Prior to backfilling of proposed stormwater drainage system in the road reserve
 - (d) Final inspection
- Council's inspection fee will apply to each of the above set inspection key stages. Additional inspection fees may apply for any additional inspections undertaken by Council.
- 61.
- (a) Toilet facilities are to be provided at or in the vicinity of the work site on which work involves:

- (i) Erection of public infrastructure being carried out, at the rate of one toilet for every 20 persons or part of 20 persons employed at the site;
- (b) Each toilet provided:
 - (i) Must be standard flushing toilet; and,
 - (ii) Must be connected:-
 - (1) To a public sewer; or
 - (2) If connection to a public sewer is not practicable to an accredited sewerage management facility approved by the Council; or,
 - (3) If connection to a public sewer or an accredited sewerage management facility is not practicable to some other sewerage management facility approved by the Council.
- (c) The provisions of toilet facilities in accordance with this clause must be completed before any other work is commenced.

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

62.

- (a) All existing aboveground service cables, including power lines, telecommunications cables and other similar services (“overhead service cables”) in the streets adjacent to and within the confines of the development site shall be placed underground at no cost to the Council in the following manner:
 - (i) Overhead service cables on the Myrtle Street frontage to be undergrounded, starting from the existing pole “A” to the existing pole “C” as shown on Plan No. 1.
 - (ii) Overhead service cables on the Jasmine Street park side (Booralee Park) to be undergrounded, starting from the existing pole “C” to the existing pole “G” as shown on Plan No. 1 and Plan No.2.
 - (iii) Overhead service cables on the Bay Street frontage to be undergrounded, starting from existing pole “H” to the existing pole “I” as shown on Plan No. 1 and Plan No.2.
 - (iv) Existing street lights located within the footpath reserve along the entire Myrtle Street, Bay Street and Jasmine Street frontages of the development site, being street lights identified as being located on poles “A” and “E” as shown on Plan No. 1 and “F” to “I” on Plan No. 2 shall be replaced with new street lights in accordance with the requirements of Australian/New Zealand Standard AS/NZS 1158-1997 “Public Lighting Code” and the requirements of the Roads and Traffic Authority.

All of the works required by this condition must be completed prior to the issue of any Occupation Certificate.

- (b) Prior to issue of any Occupation Certificate, approval shall be obtained from Council and the responsible utility authority for street lighting. Detailed street

lighting design and construction plans, prepared by a suitably qualified person, shall be submitted to Council for approval. The design shall be in accordance with AS 1158 and to Energy Australia's requirements. Alterations/additions to street lighting shall be carried out by the responsible utility authority for lighting, or to the satisfaction of that authority, and all capital contributions associated with the installation of the lighting shall be borne by the applicant. The proposal shall include details of all fixtures being proposed and underground power reticulation shall be allowed for in the design. P2 lighting design category shall be provided to all street frontages of the site.

63. To ensure satisfactory growth and maintenance of all landscaped areas, a fully automatic drip irrigation system is required and is to be installed by a qualified landscape contractor. The irrigation system shall provide full coverage of all planted areas with no more than 300mm between drippers, automatic controller and backflow prevention device and shall be connected to a recycled water source, where provided. Irrigation shall comply with both Sydney Water and Council requirements as well as Australian Standards, and be maintained in effective working order at all times.
64. Landscaping shall be installed in accordance with the Council approved amended, construction level landscape plan only, stamped by Council's Landscape Architect. This amended plan supercedes the original landscape plans 101B and 501B. The landscaped areas on the property shall be maintained in accordance with the approved landscape documentation, the conditions of consent and Council's Landscape DCP at all times.
65. An experienced Landscape Contractor is required to undertake the landscaping work and shall be provided with a copy of both the approved landscape plans and the conditions of approval to satisfactorily construct the landscape to Council requirements. The contractor shall be engaged weekly for a minimum period of 26 weeks from final completion of landscaping for maintenance and defects liability, replacing plants in the event of death, damage, theft or poor performance. After that time regular and ongoing maintenance is required.
66. Any damage not shown in the dilapidation report submitted to Council before site works have commenced, will be assumed to have been caused as a result of the site works undertaken and must be rectified at the applicant's expense, prior to the issue of Final Occupation Certificate.
67. Prior to the issue of any Occupation Certificate, documentation from a practising civil engineer shall be submitted to the Principal Certifying Authority certifying that the car parking areas (including queuing area, resident, visitor and retail parking area), driveways and vehicular access paths have been constructed generally in accordance with the approved construction plan(s) and comply with AS2890.1 and AS 2890.6 requirements. The internal parking facilities shall be clearly designated, sign posted

and line marked. Signage and line marking shall comply with the current Australian Standards.

68. Prior to the issue of any Occupation Certificate:

- (a) A minimum of 216 off-street car parking bays shall be provided to the development and allocated as follows:
 - (i) 197 car spaces to be allocated to residential dwellings at the following rate:
 - (1) 1 per 1 bedroom dwelling = 22 spaces
 - (2) 1 per 2 or more bedroom dwelling = 175 spaces
 - (ii) 12 car spaces to be dedicated as visitor parking bays (Note: two (2) visitors spaces shall be shared as car wash bays); and,
 - (iii) 7 car spaces for the retail shop.
- (b) All parking bays shall be clearly numbered and line marked..

69. Prior to the issue of any Occupation Certificate, construction of the stormwater drainage system (including OSD systems and pump-out system) of the proposed development shall be completed generally in accordance with the approved stormwater management construction plan(s), Council's 'Guidelines for the Design of Stormwater Drainage Systems within City of Botany Bay', AS/NZS 3500 and BCA requirements.

70. Documentation from a qualified civil engineer shall be submitted to the Principal Certifying Authority certifying that the stormwater drainage system (including OSD systems and pump-out system) has been constructed generally in accordance with the approved stormwater drainage construction plan(s) and accepted practice.

71. Prior to the issue of any Occupation Certificate, the applicant shall obtain compliance certificates (under Part 4A of Environmental Planning and Assessment Act) for the construction and compliance of the stormwater management system. The certificate shall be obtained from the following categories of Accredited Certifier: -

- (a) Accredited Certifier (stormwater management facilities construction compliance)
- (b) Accredited Certifier (stormwater compliance)

72. Prior to the issue of Final Occupation Certificate, maintenance schedule of the on-site detention system shall be prepared by a qualified engineer and submitted to Principal Certifying Authority and a copy to Council for record purpose.

73. In order to ensure that the constructed OSD and pump-out systems will be adequately maintained, Positive Covenant and Restriction on the Use of Land on the Title under Section 88B/88E(3) of the Conveyancing Act 1919 shall be created in favour of

Council as the benefiting authority for the as-built system. The standard wording of the terms of the Positive Covenant and Restriction on the Use of Land are available in Council. The relative location of the systems, in relation to the building footprint, shall be shown on a scale sketch, attached as an annexure to the plans/ forms. Proof of registration shall be submitted to the Principal Certifying Authority prior to the issue of Final Occupation Certificate.

74. Prior to the issue of any Occupation Certificate, all applications associated with works on Council's land must be made at least 7-10 days prior to the programmed completion of works and all construction must be completed and approved by Council.
75. Prior to the issue of Final Occupation Certificate, the redundant vehicular crossing, together with any necessary works shall be removed and the footpath, nature strip and kerb and gutter shall be reinstated in accordance with Council's specification.
76. Prior to the issue of any Occupation Certificate, new vehicular crossing including layback and/or gutter and any associated road restoration shall be constructed in accordance with Council's requirements. The applicant shall make a separate application to Council's Customer Service Counter for the construction/ reconstruction of vehicular crossing (either by Council or own forces) to the vehicular entry point of the site as shown on the submitted approved plan.
77. The crossing shall be minimum 6 metres wide at the property boundary and at 90° to the kerb and gutter in plain concrete. All adjustments to the nature strip, footpath and/or public utilities' mains and services as a consequence of the development and any associated construction works shall be carried out at the full cost to the Applicant prior to issue of the Final Occupation Certificate.
78.
 - (a) Prior to issue of Final Occupation Certificate, the following civil works in public domain and road reserve area shall be completed to Council's satisfaction: -
 - (i) Extend the existing street treatment in Myrtle Street having regard for the vehicle access needs at the Botany Aquatic Centre.
 - (ii) Introduce and construct new street treatment along Jasmine Street between Myrtle Street and Bat Street with angle parking along the western side
 - (iii) Construct a new roundabout at the Bay Street/Jasmine Street intersection to accommodate turning of 8.8m long medium rigid vehicles and be mountable for 12.5m long heavy rigid vehicles to Austroads requirements
 - (iv) Construct new footpath and reconstruct the existing kerb and gutter along the Bay Street frontage of the site in accordance with Council's standard drawing,

- (v) Replace the existing above ground electricity and telecommunication cables on Myrtle Street, Jasmine Street and Bay Street frontage of the site with underground cables to relevant authorities guidelines and requirements.
 - (vi) Design and provide appropriate street lighting to the all frontages of the site in accordance with the relevant authorities requirements.
 - (b) All the works shall include but not limited to the following: -
 - (i) Construction of on-street angle parking bays, refuge islands and/or other traffic calming devices and other associated works;
 - (ii) Reconstruction of road pavement, including road sealing with AC10 hotmix;
 - (iii) Construction/reconstruction of kerb and gutter (including kerb return), kerb ramp, footpath and street landscaping;
 - (iv) Construction of vehicular crossing;
 - (v) Reconstruction of the existing stormwater kerb inlet pits on Myrtle Street and Jasmine Street;
 - (vi) Construction of the roundabout and other associated works;
 - (vii) Installation and provision of all traffic control signage and line marking associated with the works; and,
 - (viii) Any relocation and adjustment of public utility services within the road reserve.
79. Prior to the issue of Final Occupation Certificate, the following documentation shall be submitted to Council and Principal Certifying Authority attesting this condition has been appropriately satisfied.
- (a) Written confirmation / completion certificate obtained from Council's engineers
 - (b) Inspection reports (formwork and final) for the works on public domain and road reserve area obtained from Council's engineer
 - (c) A copy of the approved engineering construction plans showing Work-as-Executed details (together with an electronic copy (DWG format)) for all the civil works on public domain and road reserve area. The plan shall be prepared by a registered surveyor
80. The applicant is responsible for the installation and protection of all regulatory / parking / street signs fronting the site during construction. Any damaged or missing street signs as a consequence of the construction works associated with the development shall be replaced at full cost to the applicant.
81. Prior to issue of a Final Occupation Certificate:
- (a) A second Dilapidation Report, including a photographic survey shall be submitted at least one month after the completion of construction works. A

copy of the second dilapidation report together with the accompanying photographs shall be given to Council, public utilities authorities and all immediate adjoining properties owners, and a copy lodged with Principal Certifying Authority.

- (b) Any damage to buildings, structures, public infrastructure, lawns, trees, gardens and the like shall be fully rectified by the applicant or owner of the development, at no cost to Council and the affected property owner. The applicant or owner of the development shall bear the cost of all restoration works to any damage during the course of this development.
82. In order to maximise visibility in the basement car park, the ceiling shall be painted white prior to issue of the Occupation Certificate.
83. Prior to the issue of the Occupation Certificate the applicant must submit to the Principal Certifying Authority an acoustic report to verify that the measures stated in Condition 24 have been carried out and certify that the construction meets the above requirements and the indoor sound levels of AS2021-2000. The report must be prepared by a qualified practicing acoustic engineer (who is a member of either the Australian Acoustical Society or the Association of Australia Acoustical Consultants).
84. The storage areas required in accordance with Condition 11 shall be secure and provided with a proper key lock that complies with Australian Standard AS:4145:1993 as required by the NSW Police prior to issue of the Occupation Certificate.
- 85.
- (a) All soil used to construct garden beds shall be meet the provisional photoxicity based investigation levels specified in the NSW DEC Guidelines for the NSW Site Auditor Scheme (2nd edition).
 - (b) This can be achieved by importing soil suitable for garden bed construction or validating soil remaining on site to demonstrate it is suitable for garden beds construction.
86. In accordance with Sydney Water requirements provided by letter dated 30 March 2011, the following matters shall be satisfied prior to issue of an Occupation Certificate:
- (a) Water
 - (i) The existing drinking water system does not have capacity to service the proposed development. The developer will need to upsize the existing 100 mm water main on the western side of Jasmine Street to a 150 mm main from point A to point B as shown in Figure 1 (diagram attached to Sydney Water letter).
 - (ii) The amplification will need to be designed and configured according to the Water Supply Code of Australia (Sydney Water Edition WSA

03-2002). Evidence of Code compliance should be attached with the design

(b) Wastewater

- (i) The existing wastewater system does not have capacity to service the proposed development. The developer will need to upsize the existing 225 mm wastewater main to a 300 mm main from point A to point B as shown in Figure 2 (diagram attached to Sydney Water letter).
- (ii) A wastewater extension is also required to service the proposed development. The developer will need to design and construct an extension to the 225 mm main in Bay Street. This will provide a point of connection at least 1 metre inside the property's boundary.
- (iii) The amplification and extension will need to be sized & configured according to the Sewerage Code of Australia (Sydney Water Edition WSA 02-2002). Evidence of Code compliance should be attached with the design.

87. Prior to issue of the Occupation Certificate, as required by Council's DCP 35:

- (a) Mailboxes shall be provided to all units in accordance with Australia Post standards;
- (b) The name and address of the premises shall be displayed in a visible position;

88. Prior to the issue of Occupation Certificate, a Certificate of Survey from a Registered Surveyor shall be submitted to the Principal Certifying Authority to the effect that the Floor Space Ratio (FSR) of 1.51:1 (calculated in accordance with the provisions of Botany LEP 1995) as approved under this Development Application, has been strictly adhered to and any departures are to be rectified in order to issue the Occupation Certificate.

89.

- (a) Prior to use and occupation of the building an Occupation Certificate must be obtained under Section 109C(1)(c) and 109N of the Environmental Planning and Assessment Act, 1979.
- (b) Condition No.'s 62-89 are pre-conditions prior to the issue of the Occupation Certificate.

CONDITIONS WHICH MUST BE SATISFIED DURING ONGOING USE OF THE DEVELOPMENT

90. New street trees shall be maintained by the Applicant/Owner/Strata Corporation for 9 months after planting. Maintenance includes twice weekly watering in the first 4 months, then weekly thereafter to sustain adequate growth, weed removal round the base and replenishment of 100mm depth organic mulch base. Maintenance does not

include trimming, pruning or shaping of the trees under any circumstances at any time during the maintenance period or outside this period.

91. The ongoing maintenance of the Council nature strips surrounding the site shall be undertaken by the occupiers/ owners or body corporate. Maintenance includes mowing, watering, removal of weeds and rubbish and maintaining an even coverage of grass at all times. Maintenance does not include pruning, trimming, shaping or any work to street trees located on the road verge/ nature strip at any time. Pruning work etc is undertaken by Council only.
92. The stormwater drainage system (including all pits, pipes, absorption, detention structures, treatment devices, infiltration systems and rainwater tanks) shall be regularly cleaned, maintained and repaired in accordance with the maintenance schedule submitted to Council to ensure the efficient operation of the system from time to time and at all times. The system shall be inspected after every rainfall event to remove any blockage, silt, debris, sludge and the like in the system. All solid and liquid waste that is collected during maintenance shall be disposed of in a manner that complies with the appropriate Environmental Guidelines.
93. All vehicles shall enter and exit the site in a forward direction.
94. Vehicles making deliveries (including goods, merchandise and the like) to the site shall comply with the following requirements: -
 - (a) Vehicles making deliveries to the site shall be limited to B99 vehicles (as defined by AS2890.1).
 - (b) All loading and unloading activities associated with the development shall take place wholly within the basement car parking area.
 - (c) No deliveries to the premises shall be made direct from a public places, public streets or any road related areas (eg. footpath, nature strip, road shoulder, road reserve, public carpark etc)
95. All parking bays (except garages) shown on the approved architectural plans shall be set aside for parking and loading/unloading purpose only and shall not be used for other purposes, e.g. storage of goods.
96. The occupier(s) of the retail shop shall ensure that any person employed on the premises shall park their vehicles, if any, in the employee parking area provided. No employee shall be permitted to park on a common driveway, public streets or any road related areas (eg. footpath, nature strip, road shoulder, road reserve, public carpark etc)
97. Vehicle turning areas shall be kept clear at all times. No vehicles shall be permitted to park in these areas.

98. Parking shall be allocated as follows:
- (a) 197 parking bays shall be allocated to residents parking only. The allocation of parking bays shall be based on the following rate: -
 - (i) 1-bedroom unit 1 space / unit
 - (ii) Townhouses/ 2-bedroom unit / 3-bedroom unit 2 spaces / unit
 - (b) 12 off-street parking bays shall be made available at all times for visitors parking, with two (2) to be shared as car wash bays
 - (c) 7 parking bays shall be dedicated to retail shop.
99. The waste bins for the townhouses shall be stored within their respective basement garages at all time, and not in their front street setback areas unless approved by a separate application.
100. The drip irrigation system required to be installed prior to issue of the Occupation Certificate shall be maintained in effective working order at all times.
101. Each residential dwelling (townhouse) is approved as a single dwelling for use and occupation by a single family. They shall not be used for separate residential occupation or as separate residential flats. No plumbing fixtures, fittings, walls shall be deleted or added, doorways enclosed or any other changes made from the approved plans in Condition No. 1 of this Consent without the prior Consent of the Council.
102. Any air conditioning units shall comply with the following requirements:
- (a) Air conditioning units are not to be visible from the street or public place and are not to obscure windows/window frames or architectural features of the dwelling.
 - (b) A person must not cause or permit an air conditioner to be used on residential premises in such a manner that it emits noise that can be heard within a habitable room in any other residential premises (regardless of whether any door or window to that room is open):
 - (i) Before 8 am or after 10 pm on any Saturday, Sunday or public holiday, or
 - (ii) Before 7 am or after 10 pm on any other day.
 - (c) The transmission of vibration to any place of different occupancy above the requirements of AS2670, Australian Standard AS2021- 2000: Acoustics, Aircraft Noise Intrusion, Building Siting and Construction. Australian Standard AS2107 2000: Recommended Design Sound levels and Reverberation levels for Building Interiors.
 - (d) Any air-conditioning unit shall comply with the City of Botany Bay's General Noise Criteria detailed in Condition 105 below.
103. The proposal shall comply with the City of Botany Bay's General Noise Criteria is as follows:

- (a) The operation of all equipment shall not give rise to an equivalent continuous (LAeq) sound pressure level at any point on any residential property greater than 5dB(A) above the existing background LA90 level (in the absence of the noise under consideration).
- (b) The operation of all equipment when assessed on any residential property shall not give rise to a sound pressure level that exceeds LAeq 50dB(A) day time and LAeq 40dB(A) night time.
- (c) The operation of all equipment when assessed on any neighbouring commercial/industrial premises shall not give rise to a sound pressure level that exceeds LAeq 65dB(A) day time/night time.

For assessment purposes, the above LAeq sound levels shall be assessed over a period of 10-15 minutes and adjusted in accordance with EPA guidelines for tonality, frequency weighting, impulsive characteristics, fluctuations and temporal content where necessary.

‘Offensive noise’ as defined in the Protection of the Environment Operations Act 1997 and the Protection of the Environment Operations (Noise Control) Regulation 2000, (See advisory notes).

- 104. The approved Waste Management Plan shall be complied with at all times during the on-going use of the site / premises.
- 105. Should the external fabric of the building(s), walls to landscaped areas and like constructions be subject to graffiti or like vandalism, then within seven (7) days of this occurrence, the graffiti must be removed and the affected surface(s) returned to a condition it was in before defilement.
- 106. A development application shall be lodged with Council for the provision of satellite dishes that are not exempt at the premises.
- 107. The storage areas located within the basement shall be allocated to the relevant residential dwelling in any future subdivision of the site. In addition, any isolated storage areas and other spaces identified by the NSW Police in Condition 11, shall be monitored by CCTV cameras at all times.
- 108. Roller shutters to windows and doors are not permitted if visible from street.
- 109. The name of the development, street numbers and unit numbers shall be clearly displayed with such numbers being in contrasting colour and adequate size and location for viewing from the footway and roadway. Details of street numbering shall be submitted to Council for approval prior to the release of the Construction Certificate.
- 110. The applicant being informed that this approval shall be regarded as being otherwise in accordance with the information and particulars set out and described in the Development Application registered in Council’s records as Development Application

No. 11/018 dated as 14 February 2011 and that any alteration, variation, or extension to the use, for which approval has been given, would require further Approval from Council.

Certified Mr Rodger Dowsett.....
Director - Planning and Development