

Joint Regional Planning Panel

(Sydney East Region)

JRPP Number:	2013SYE115
DA Number:	12(206)
Local Government Area:	City of Botany Bay
Proposed Development:	<p>The development proposes the construction of 164 residential units within Buildings D, E and F comprising the following;</p> <ul style="list-style-type: none">• To construct Building D being a 6 storey building containing 41 units;• To construct Building E being a 7 storey building containing 63 units;• To construct Building F being a 6 storey building containing 60; and,• To construct 346 underground car parking spaces. (285 spaces are to be dedicated to Buildings D, E and F).
Street Address:	42-44 Pemberton Street, Botany
Applicant:	Krikis Tayler Architects
Number of Submissions:	1 – petition signed by 44 neighbouring/surrounding residents.
Recommendation:	Refusal
Report by:	Rodger Dowsett, Director Planning and Development, City of Botany Bay

Précis

Council received DA12/206 on 7 November 2012. The development application proposes the construction of the residential Buildings D, E and F of the approved staged Masterplan (as amended) being for a mixed residential development of the site and for the demolition of all existing structures, approved under DA10/313.

DA10/313 was originally approved by Council in May 2011 under the provisions of the Botany LEP 1995 and relevant DCP's at that time. On 21 June 2013 the Botany Bay LEP 2013 was gazetted which significantly amended the maximum permissible floor space ratio and heights of buildings on the subject site. The current DA12/206 provides for a form of development which is not consistent with the approved Masterplan DA10/313 and non-compliant with the Botany LEP 1995. The proposal does however comply with Council's recently gazetted BBLEP 2013 controls and the currently exhibited Draft Comprehensive DCP.

Notwithstanding the provisions of Botany LEP 1995, which permitted development on the subject site to a maximum of 1:1, the Masterplan approval to DA10/313 permits a total FSR of 1.38:1 (as calculated under Botany LEP 1995). The Masterplan DA was submitted with a SEPP1 Objection that was considered and supported by Council at its meeting on 18 May 2011. Hence a condition of consent exists on the approved Masterplan DA which restricts the maximum floor space ratio over the entire site not to exceed 1.38:1.

The proposed FSR for Buildings D, E and F the subject of DA12/206 proposes a maximum FSR of 1.08:1 (under BBLEP 2013). The overall floor space for the entire site (including Buildings A, B and C approved under the Masterplan DA) will be 1.38:1 as calculated under BBLEP 2013.

The map below identifies the location of the subject site. The site has a total area of 13,162m² and is irregular in shape with street frontage of 117m to Pemberton Street and 3.7m to Wilson Street. A 3.5m wide easement to drain water is located along part of the site in the southern boundary.

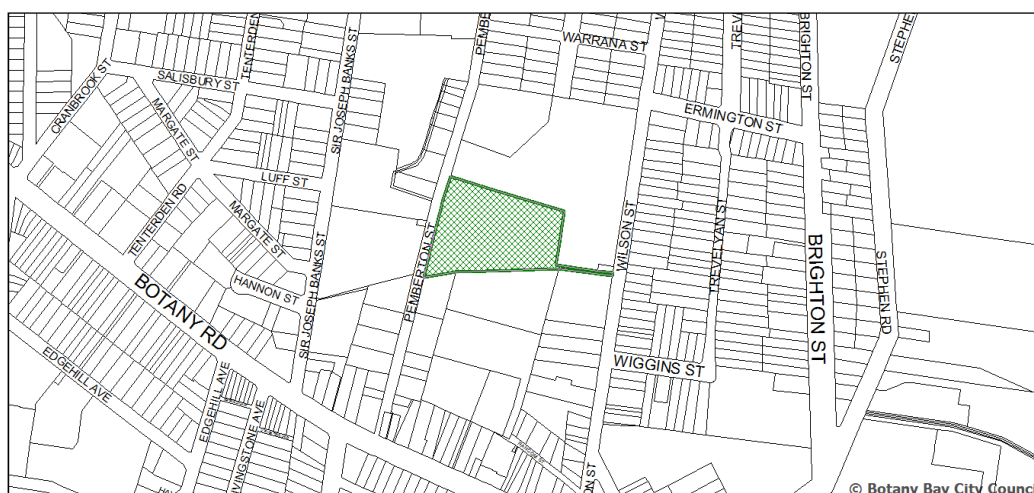


Figure 1 Roof Plan of Buildings A to F approved under DA10/313 and New Street 1 (to the south) – source Marchese + Partners Architects.

Below is a site plan showing the location of Buildings A to F within 42-44 Pemberton Street as approved under DA10/313.

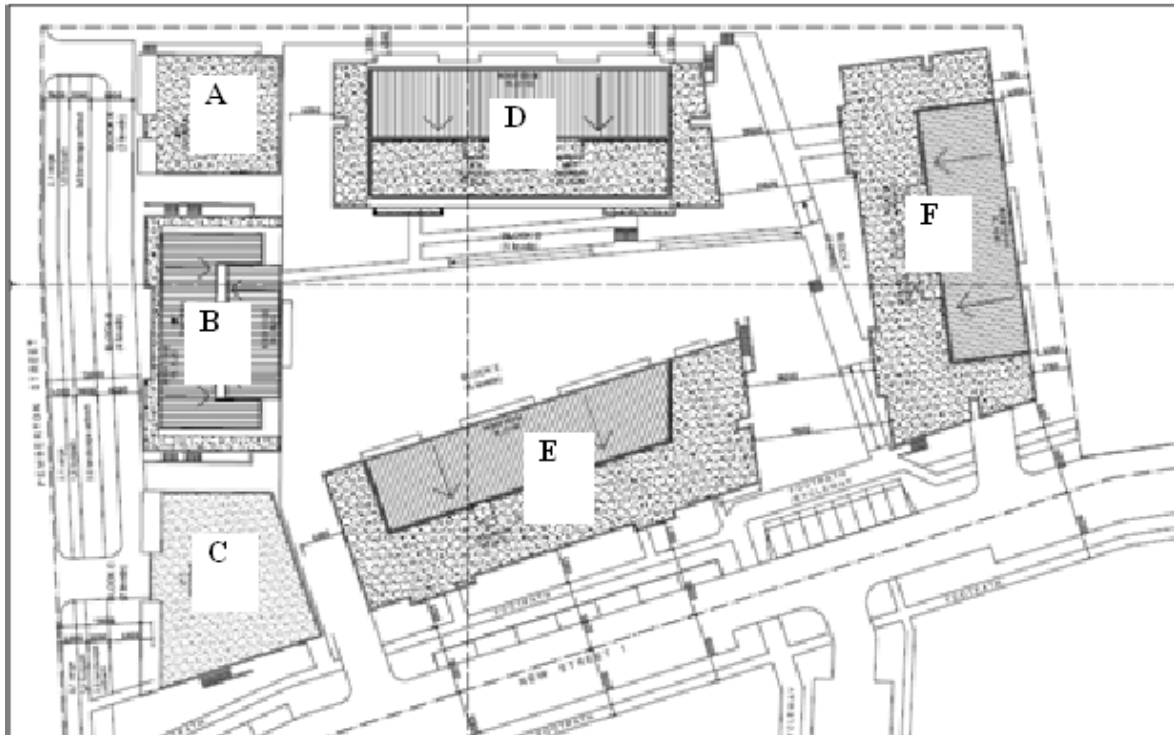


Figure 2 Roof Plan of Buildings A to F approved under DA10/313 and New Street 1 (to the south) – source Marchese + Partners Architects.

The subject development application (DA12/206) proposes the following:

- Construction of 164 residential units within Buildings D, E and F;
- To construct 346 underground car parking spaces. (285 spaces are to be dedicated to Buildings D, E and F);
- To construct Building D being a 6 storey building and having a maximum building height of 19.42m (to the roof) and containing 41 units;
- To construct Building E being a 7 storey building and having a maximum building height of 21.8m (to the roof) containing 63 units; and,
- To construct Building F being a 6 storey building and having a maximum building height of 20m (to the roof) containing 60 units.

The gross floor area for Buildings D, E and F alone, will result in a FSR of 1.21:1 calculated under Botany LEP 1995, or, a maximum of 1.08:1 under BBLEP 2013.

The total FSR for the entire site will increase from 1.38:1 to 1.52:1 (under Botany LEP 1995), consequently a SEPP1 Objection has been submitted with the DA due to it having been submitted under the provisions of the Botany LEP 1995. It should however be noted that under BBLEP 2013, the calculated FSR over the entire site will be 1.38:1.

Below is the basement plan and roof plan showing the location of Buildings D, E and F as proposed under this DA (12/206).

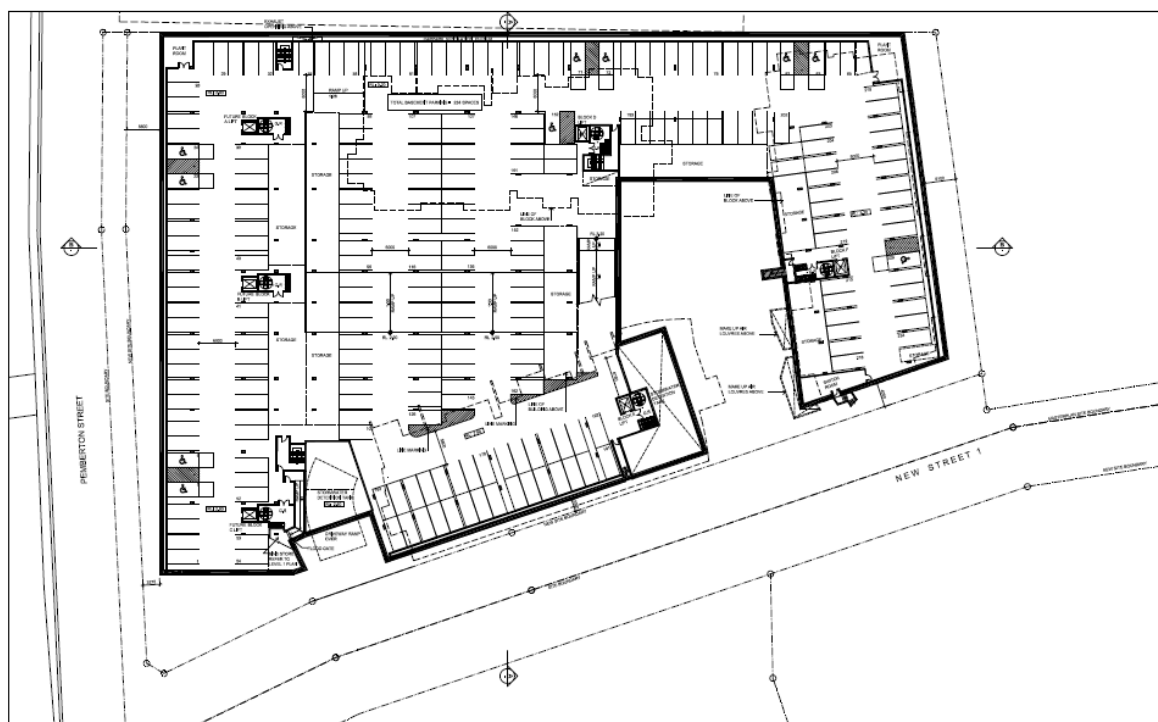


Figure 3 Basement Plan of 42-44 Pemberton St – source Krikis, Tayler Architects.

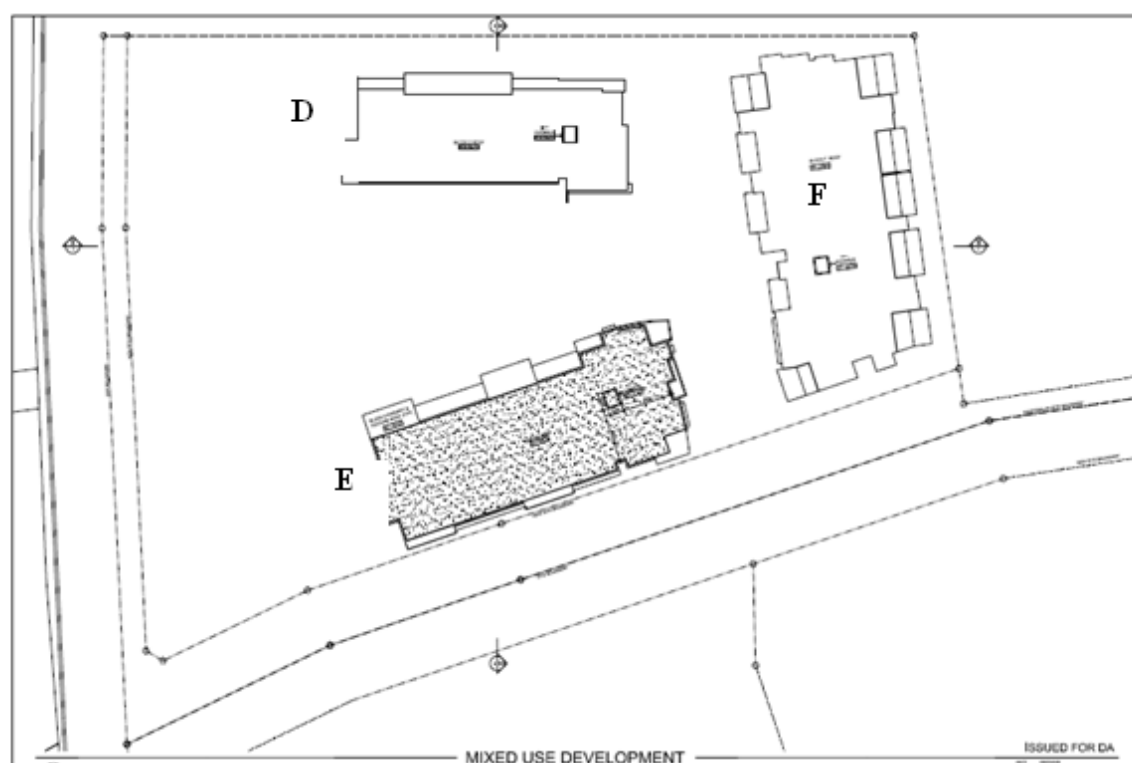


Figure 4 Roof Plan of Buildings D, E and F – source Krikis, Tayler Architects.

This development application does not seek development consent for Buildings A, B and C fronting Pemberton Street. This will be subject to the submission of a separate DA.

The table below provides a detailed comparison of the total height variations of each of the proposed buildings (D, E and F) as calculated under the existing Botany Bay LEP 2013, and as approved under the Masterplan consent DA10/313.

Building	Approved Masterplan (DA10/313)	PROPOSED (DA12/206)	Botany LEP 1995 & DCP 31	BBLEP 2013 (22m incl. lift overrun)
D	5 storeys (17.05m)	6 storeys 20.72m (lift overrun) 19.42m (to roof)	No +2.37m	Yes -1.28m
E	5 storeys (17.05m)	7 storeys to New Street 1 6 storeys to courtyard 22.9m (lift overrun) 21.8m (to roof)	No +4.75m	Yes -0.2m (Note1)
F	4 storeys (13.3m)	6 storeys 21.32 (lift overrun) 20.02m (to roof)	No +2.97m	Yes -0.68m
Total FSR	1.38:1 (under BLEP 1995)	1.52:1 (under BLEP 1995)		1.37:1 (under BBLEP 2013)

Note 1: Building E will have a building height 0.9m beyond the 22m height limit to accommodate the lift overrun.

As can be seen from the table above, except for a minor variation to Council's building height requirement of 22m (under BBLEP 2013), where the lift overrun of Building 'E' exceeds that requirement by 900mm, the proposal would otherwise comply with the maximum building height as provided under Clause 4.3(2A) of BBLEP 2013, which permits on land zoned R3 or R4 and in excess of 2,000m² a maximum permissible height of 22m.

The DA otherwise generally complies with the DCP's applicable to the site and complies with the Draft Botany Bay Comprehensive DCP 2013.

The subject application was advertised and publicly exhibited for a period of 30 days from 4 December 2012 until 8 January 2013. Surrounding and adjoining property owners were also notified by mail.

One submission was received (comprising a petition signed by 44 residents).

Council Officers held a Resident Consultative Committee Meeting on 29 July 2013 to address the development proposal.

The Panel is advised that the applicant had submitted an application under Section 96(2) of the EP&A Act 1979, to amend the original Masterplan consent to align it with the Development Application that is now before the Panel.

The recommendation before the Council was that the Section 96 (2) modification application be received and noted to DA10/313. This recommendation was the result of legal advice prepared by the applicant and reviewed by Council's solicitor that the original approval DA10/313 did not constitute a Master Plan approval and as such the Section 96(2) application was not required.

The Council in its determination of the S96(2) modification application on 7 August 2013 did not accept the recommendation and resolved not to approve the modification application to amend Development Application No.10/313/04 on the basis that the modification sought does not constitute development that will be substantially the same as that originally approved. The Council also determined that the impact of the additional height and bulk of the proposed amendment would adversely impact on the amenity of other areas within the Master plan approved site and the vicinity of the other areas.

Accordingly, the Council in its determination of the Section 96(2) application formed a position that:

- 1. The development proposed in DA12/206 is inconsistent with the original staged development master plan consent DA10/313 and accordingly determination of DA12/206 as applied for would be contrary to the provisions of Section 83D(2) of the Act.*
- 2. Whilst the Applicant has lodged with Council an application under Section 96(2) to modify consent DA10/313 to remove any inconsistency with the development proposal in DA12/206, Council at its meeting (on 7 August 2013) resolved to not approve that modification application on the grounds that:*
 - a. The modification which is sought to the development consent granted does not constitute a development that will be substantially the same, pursuant to Section 96(2) of the Act.*
 - b. The impact by the height and bulk of the proposed amendment to the subject buildings within the confines of the master plan approved site and to the vicinity of the subject site will adversely impact on the amenity of the other areas within the master plan approved site and the vicinity of the other areas.*
- 3. As a consequence of the foregoing it is Council's view that DA12/206 is inconsistent with staged development master plan consent DA10/313 and therefore cannot be determined by approval as to do so would be contrary to the provisions of Section 83D(2) of the Act.*

The Council was made aware that the subject development application DA12/206 had also been lodged with Council for the construction of Buildings D, E and F which was consistent with the Section 96(2) modification application to the approved Master Plan. Council was informed that the subject development application was a JRPP matter for determination. Council made the following comments regarding DA12/206 which is before JRPP for determination:

- 1. This matter is for JRPP in terms of merit assessment if permitted by law.*
- 2. The development proposed [in DA12/206] is not consistent with the Master plan*

approval for the subject site granted on 10 August 2006 and pursuant to Section 83D(2) of the Environmental Planning and Assessment Act 1979 must be refused.

3. *Notwithstanding the provisions and application of Section 83D(2) the application for consent may be refused pursuant to Section 79C of the Environmental Planning and Assessment Act 1979.*
4. *The purported deletion of Condition 3 from DA10/313, linking the consent to DA06/311 and DA10/313, pursuant to Section 96(1A) was of no lawful effect as such application to delete such a condition is not of minimal environment impact, within the built environment.*
5. *The purported extension of time to the consent pursuant to Section 96(1A) was of no lawful effect as Section 95A is the express provision in the Act for such allowance. (Kinder Investment Pty Ltd v Sydney City Council [2005] NSWLEC 737 and Reid's Farms Pty Ltd v Murray Shire Council (2010) 182 LGERA).*
6. *As a consequence, time was not extended, as purported and the consent lapsed at a time before [it] could become operational.*

Officer Recommendation

DA No.12/206 has been assessed in accordance with the relevant requirements of the Environmental Planning Assessment Act, 1979 (EP&A Act), and is recommended that the Joint Regional Planning Panel (JRPP) for the Sydney East Region as the Consent Authority resolve to refuse Development Application No. 12/206 which seeks consent for the construction of Buildings D, E and F and associated works within the Parkgrove Two Masterplan site at 42-44 Pemberton Street, Botany, for the following reasons:

1. The application made under Section 96(2) of the EP & A Act 1979 to modify the Masterplan consent under DA10/313 has been refused by Council as the consent authority;
2. The development application as proposed under DA12/206 for buildings D, E & F at 42-44 Pemberton Street, Botany does not constitute a development that will be substantially the same as the Masterplan development approved under DA10/313.

SITE DESCRIPTION

The subject site is located within the Wilson-Pemberton Street Precinct, which is bounded by Pemberton Street (to the west), Warrana Street (to the north), Wilson Street (to the east) and the Banksmeadow local shops (to the south). The precinct is surrounded by industrial/commercial and residential development. The subject site, which is within this precinct, has its primary frontage to Pemberton Street and New Street 1 (being a connection to the 'Parkgrove One' site from Pemberton Street). New Street 1 was recently approved for construction by the JRPP under DA12/195 on 9 July 2013.

The subject site is identified as Lot 100 in DP 875508 (being Nos.42-44 Pemberton Street, Botany). The site known as 'Parkgrove Two' has a total area of 13,162m² and is irregular in shape with street frontage of 117m to Pemberton Street and 3.5m to Wilson Street. A 3.5m wide easement to drain water is located along part of the site in the southern

boundary. The development site is relatively flat with a gentle slope towards the south-western side. It has a crossfall of approximately 1.5m from the north-eastern side to the south-western side of the site.

The site was previously occupied by Price and Speed – Containers and was the sole remaining container terminal in the Botany South Precinct. The properties immediately adjoining the proposed development and across on the western side of Pemberton Street are industrial/commercial, whilst existing residential areas predominate to the eastern side of Wilson Street and include one and two-storey detached dwellings. The area on the eastern side of Wilson Street is currently under construction with 2-3 storey townhouses along the frontage to Wilson Street. To the north, there is a large factory/warehouse building occupied by a textile company and to the south is the former “Austcorp” site once containing a number of industrial/ warehouse buildings and container storage. The former Austcorp site has an approved Masterplan development for the redevelopment of the site to residential (known as ‘Parkgrove One’), together with approved development applications for Stage 1A and 1B on Wilson Street which are in the form of townhouses and terrace style residential developments (currently under construction).

For purposes of consistency in terms of property description and because the owner/developer of the subject site is the same as the Parkgrove One site, the subject site is to be herein known as “Parkgrove Two”.

EXISTING AND SURROUNDING DEVELOPMENT

Existing Development

On 10 October 2007, Council granted development consent to DA06/311 for Masterplan development for a mixed residential and studio workshop development (including industrial, commercial and retail), on the subject site.

On 27 May 2011, Council granted a 12-month Deferred Commencement consent to DA10/313 for a revised staged Masterplan comprising a mixed residential development and for demolition of all existing structures. The terms of the deferred commencement conditions DC1 and DC2 stated the following:

The Consent given does not operate until the Council is of the view the following conditions have been satisfied.

DC 1 A flood study shall be submitted to Council for the entire site to determine the potential flooding extent and impact of the flooding to the proposed development and surrounding area.

The flood study shall be prepared by a qualified and experienced civil engineer with NPER3 accreditation and shall be in accordance with Australian Rainfall and Runoff and the NSW Floodplain Development Manual. The following details and information shall be included in the flood study: -

(a)

- (i) Catchment plan highlighting the full upstream catchment area that generates the overland flow across the site and surrounding properties*

- (ii) *A pre construction (existing conditions) & post construction (proposed development) detailed hydraulic analysis for: -*
 - (1) *All design storm events ranging from 1 in 5 year ARI up to and including 1 in 100 year ARI;*
 - (2) *Climate Change Impact; and*
 - (3) *Probable Maximum Flood (PMF).*
 - (iii) *Detailed hydraulic analysis using combined one-dimensional (e.g DRAINS) and two-dimensional (e.g TUFLOW) hydraulic modelling.*
- (b) *A scaled plan view showing roughness coefficients and the existing and future flood characteristics for all design storms described above (including climate change impact and PMF). The flood characteristics shall include but not limited to flood extent, flood storage, flood velocity, flood depths and flood levels.*
- (c) *A longitudinal section along the drainage system showing existing and proposed surface levels, flood levels, hydraulic data and all changes in grade.*
- (d) *Cross-section details taken at the right angle to the overland flow path with a maximum spacing of every 20m, which shall at least include the following locations:*
 - (i) *Immediately at the upstream property boundary;*
 - (ii) *Where the existing and proposed development /structure is closest to the flow path;*
 - (iii) *Immediately at the downstream property boundary; and*
 - (iv) *Other cross-sections as required where the flow path and/or drainage system being affected.*

Note: Cross-sections must show the existing and proposed ground levels, pre- and post development top water levels, hydraulic data and flood extents.
- (e) *All levels shown to be in Australian Height Datum (AHD).*
- (f) *The establishment of 500mm and 300mm freeboard above the 1 in 100 year flood level for the finished floor levels of all the buildings and the top of entry ramps from New Street 1 to the underground car park respectively.*
- (g) *Final surface levels of the site to be compatible with the levels of adjacent lots and roads.*
- (h) *The velocity-depth product of the overland flow path to comply with the requirements of Australian Rainfall and Runoff.*
- (i) *In addition, the flood study shall demonstrate the following: -*
 - (i) *The proposed development will not impede the passage of floodwater to cause a rise (afflux) in the flood level or increase the downstream velocities of the flow to all surrounding properties.*

- (ii) *No structures and/or filling shall be placed over the 1 in 100 year ARI overland flow path unless satisfactory migration measures have been proposed.*
- (iii) *Flood storage of the site will be maintained before and after the development. This may include establishment of compensatory flood storage within the site.*
- (iv) *There is no significant impact by the development to the existing drainage regime.*
- (v) *Any safety issues associated with flooding shall be addressed in accordance with NSW Floodplain Development Manual.*
- (vi) *Evacuation plan in the PMF event shall be provided.*
- (vii) *The likely impact on other land and buildings.*
- (viii) *The integration of stormwater drainage of the site with the public stormwater drainage of Pemberton Street and New Street 1.*

DC 2 The applicant is to engage the services of a qualified Geotechnical Engineer and Commission this person to model the consequences of the basement construction of this development will have on groundwater flow, flooding of the locality, building stability including buildings nearby to the development site and groundwater levels.

If this modelling and investigation of the appointed Geotechnical Engineer give rise to adverse consequences to any or all the nominated issues, the onus is upon the applicant to respond to and address the consequences in a manner that negates adverse impact on the neighbourhood;

On 13 March 2012, Council received a Section 96(2) Application (DA10/313/02) to undertake certain amendments to the approved development and a 12-month extension to the previously granted Deferred Commencement consent. This Application was eventually modified on 12 March 2013 into a Section 96(1A) Application which requested that an extension of time of the existing consent be granted for an additional 12 months only. Compliance with the conditions of the Deferred Commencement was provided to Council prior to the lapse of consent (as extended), and an Operational Consent was granted on 2 April 2013.

On 3 April 2013, Council considered a Section 96(2) Application (DA10/313/03) to amend the approved staged Masterplan of the site by increasing the heights, density and underground carparking of the 3 residential flat buildings of the site (being Buildings D, E and F), and to increase the overall FSR of the entire site to 1.53:1. This application was subsequently refused for the following reasons:

- 1. Council is not satisfied that the development to which the consent, as proposed to be modified relates, is substantially the same development as the development for which consent was originally granted. Therefore the proposed development is not considered to fulfill the requirements of Section 96(2) of the Environmental Planning and Assessment Act, 1979.*
- 2. The proposed development is considered to be an excessive form of development and is inconsistent with the maximum floor space ratio controls as*

specified under clause 12A of the Botany Local Environmental Plan 1995 (Environmental Planning and Assessment Act 1979 s79C(1)(a)(i)).

3. *The proposed development is considered to be an excessive form of development and is inconsistent with the maximum building height controls as specified under the Draft Botany Bay Local Environmental Plan 2012 which is imminent in its making (Environmental Planning and Assessment Act 1979 s79C(1)(a)(ii)).*

The current DA (12/206) was recently amended by the applicant (on 10 July 2013) to address the above reasons for refusal, but upon review, it has been established that because the development is not a Staged Development, as such a S96 (2) modification application was not required and that this application (DA12/206) can be determined on its merits. This recommendation was not supported by the Council at its meeting on the 7 August 2013. Council, as stated previously resolved to refuse the Section 96(2) modification application. This has result in DA12/206 being inconsistent with the approved Master Plan.

The revised proposal however provides for a development proposal which has been reduced in terms of density and its overall height which now complies with the requirements of the recently gazetted Botany Bay LEP 2013. The total number of dwellings remain the same, however the overall density has reduced due to the revised manner in which Council now calculates its permissible FSR in accordance with the revised definitions of the recently gazetted BBLEP 2013.

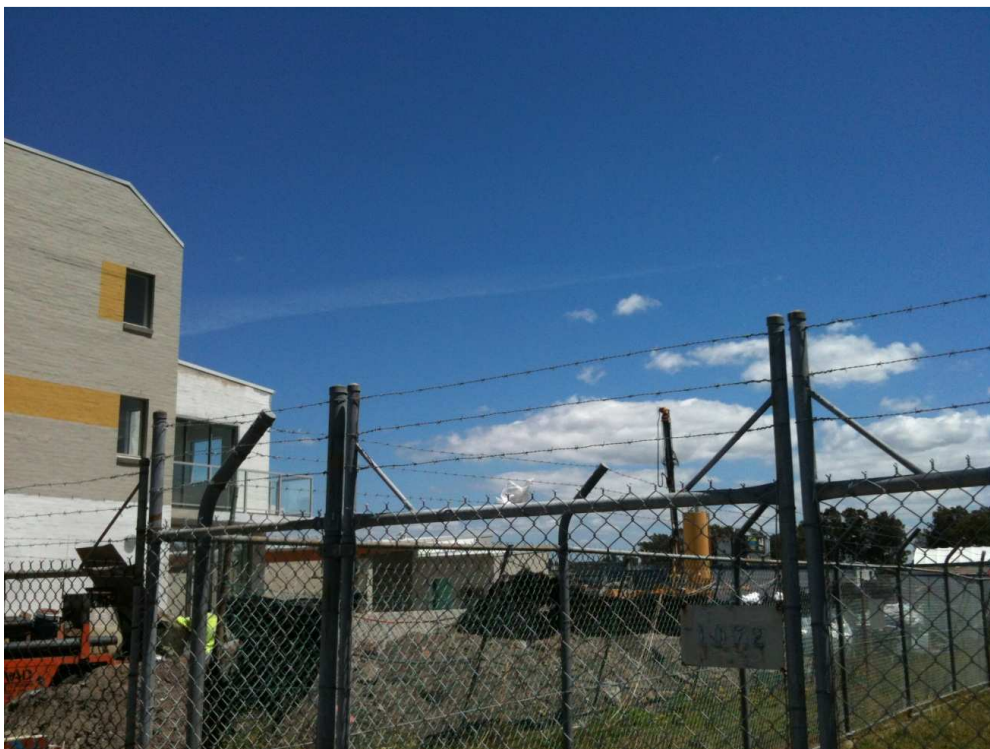
Adjoining Development

The properties immediately adjoining the site to the north (as well as those located on the western side of Pemberton Street) are industrial/commercial in nature. To the east on Wilson Street, development consists of predominately low-density residential dwellings.

Further to the west beyond the two approved Parkgrove Masterplan sites, lies the far side of Pemberton Street, with the sites in this street predominately used for light industrial/commercial purposes (see following pictures).



Picture 1 – View of the north-eastern side of the development site



Picture 2 – View of the north-eastern side of the development site and proximity to adjacent townhouses (left corner) located on Wilson Street



Picture 3 – View of the south-eastern corner of the development site and adjacent property at No. 23 Wilson Street and the townhouses (part of Parkgrove Masterplan site) located on Wilson Street.

THE PROPOSAL

The subject development application (DA12/206) proposes the following:

- Construction of 164 residential units within Buildings D, E and F;
- The total number of residential car parking spaces for Buildings D, E and F being 285 spaces within a basement level car park;
- To construct Building D being a 6 storey building containing 41 units;
- To construct Building E being a 7 storey building containing 63 units;
- To construct Building F being a 6 storey building containing 60; and,
- To have a FSR for the 3 Buildings of 1.21:1 (as calculated under BLEP 1995), and 1.08:1 (as calculated under the Botany Bay LEP 2013)

The 7 storey built form of Building E is a result of the “loft style” units which have been built on the southern side of this building at Level 6. Due to the fall of the land, the 7th level will only be visible from New Street 1, while the dominant elevation of the building visible from Pemberton Street and from within the main courtyard will only be 6 levels. Hence Building E is almost compliant with the maximum height provision under the BBLEP 2013.

This development application does not seek development consent for Buildings A, B and C fronting Pemberton Street.

PLANNING CONSIDERATIONS

The proposed development has been assessed under the provisions of the Environmental Planning and Assessment Act, 1979. The matters below are those requiring the consideration of the Joint Regional Planning Panel.

Environmental Planning and Assessment Act, 1979 – Division 5 – Special Procedures for Integrated Development

The relevant requirements under Division 5 of the Act have been appropriately considered in the assessment of the DA. The subject application is not defined as ‘Integrated Development’.

Part of the proposal will penetrate groundwater and this matter was referred to the Controlled Activity Assessment Team at the NSW Office of Water.

Sections 89, 90 and 91 of the Water Management Act 2000 determine water use, water management and activity approvals under the Act. Activity approvals include “controlled activity approvals” and “aquifer interference approvals”.

On 19 July 2013, the Office of Water provided their comments and General Terms of Approval.

In addition to the above, the DA was also referred to the Roads and Maritime Services who provided the following advice:

“RMS has reviewed the development application and raises no objection to the proposed modification.”

In addition, RMS provides the following advisory comments to Council for its consideration in the determination of development application:

- 1. The proposed new street should be designed and constructed in accordance with the relevant AUSTROADS and Council's requirements.*
- 2. The swept path of the longest vehicle entering and exiting the subject site, as well as manoeuvrability through the site, shall be in accordance with AUSTROADS.*
- 3. The layout of the proposed car parking areas associated with the subject development (including, driveways, grades, turn paths, sight distance requirements, aisle widths, aisle lengths, and parking bay dimensions) should be in accordance with AS 2890.1- 2004, AS 2890.2 — 2002 for heavy vehicle usage and AS2890.6:2009 for the disable.*
- 4. The number of car parking spaces is provided to Council's satisfaction.*
- 5. Pedestrian and bicycle facilities should be provided to Council's satisfaction.”*

Section 79C (1) Matters for Consideration - General

Provisions of Environmental Planning Instruments (S.79C(1)(a)(i))

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

The provisions of SEPP No. 55 have been considered in the assessment of the development application. Clause 7 of SEPP No. 55 requires Council to be certain that the site is or can be made suitable for its intended use at the time of determination of an application.

The provisions of SEPP No. 55 have been considered in the assessment of the application. DA10/313 was also assessed under SEPP 55 and no objection was raised subject to the imposition of appropriate conditions of development consent to ensure the recommendations in those relevant reports are carried out and that a separate DA lodged with Council for the demolition and, if applicable, remediation of the site. This has since occurred with the lodgement of DA13/70

It should be noted that the existing conditions of consent require further reports to be conducted once the demolition has been carried out.

The applicant has submitted a Remediation Action Plan (prepared by Aargus) and which has regard to the previously submitted Environmental Site Assessment and various contamination assessment reports submitted with the original DA (10/313).

State Environmental Planning Policy No. 65 – Residential Flat Building

In accordance with the provisions of the State Environmental Planning Policy No.65 – future development applications relating to residential flat buildings within the Masterplan site are subject to the requirements of this Policy.

Council's Design Review Panel originally considered this matter on 29 August 2012. Significant amendments were made to the submitted development plans and on 3 May 2013, the revised development proposal was considered by Council's Design Review Panel who provided the following comments in response to the design principles established by SEPP 65 in the following terms:

1. PREAMBLE

The Panel previously reviewed the design for this site at pre-DA stage in August 2012 and provided detailed comments. The applicant has given consideration to the issues raised and the large majority have been satisfactorily addressed in the present DA submission. The earlier comments are not reiterated in this report.

2. DESIGN REVIEW

2.1 Context

It is critical for the application to be considered in relation to the potential future development of the immediately adjoining sites to the north and east, which it has been advised are now in consolidated ownership and are proposed to be developed in accordance with a masterplan prepared by Turner Architects previously viewed by the Panel. The earlier masterplan for this now consolidated site has been varied in three respects:

- The east-west public pathway adjoining the subject site to the north has been deleted*
- The public park on the site immediately to the east has been deleted*
- The north-south 'New Street 2' in the centre of the site has been broadened to become a park area instead of a vehicular street.*

These changes have been taken into account in the design and in response to the Panel's earlier comments. In particular this is relevant to the previous comments relating to setbacks on both eastern and western boundaries:

East boundary

The proposed setback is 4 metres to the front of balconies. This would be unreasonably small if the building were to face a public park, or a parallel new building on the neighbouring property. In the latter case at least 9 metres would be required. However the masterplan for the building on this site indicates an L-shaped plan, with an end wall well set back and an open space on the northern part of the site. This would result in an acceptable outcome for the interface between the two sites, but this configuration would clearly need some form of legal confirmation, always given the possibilities for change in site ownership or building layout before any development proceeds.

North boundary

The proposed setback is 6 metres to the front of balconies. In this case the masterplan indicates a 9 metre setback on the adjoining property, giving a total building separation of 15 metres, three metres less than the RFDC recommendation of 18 metres for buildings of more than 12 metres in height. To achieve an equitable outcome the setback on the subject site should also be 9 metres, but in view of the fact that the width of the central courtyard space is already 'tight' and should not be reduced, an acceptable compromise would be to set back only the top residential floor (Level 6).

2.2 Scale

Satisfactory

2.3 Built Form

Satisfactory, subject only to the minor change recommended above under 'Context'.

2.4 Density

Satisfactory

2.5 Resource, Energy and Water Efficiency

Subject to compliance with BASIX.

In a development of this large scale it is recommended that initiatives such as solar energy collection, and/or greening of roofs should be explored.

2.6 Landscape

Satisfactory

2.7 Amenity

As proposed amenity should be of good standard. The following detailed additional steps are recommended:

- *Include natural light and ventilation to internal service rooms on the top levels of all blocks by way of roof-lights/vents*
- *Introduce some natural light & ventilation to the upper parking level by way of shafts integrated with the landscaping, as well as taking advantage of its partly above-ground location*
- *Introduce a second elevator into each service core to deal with the many occasions when lifts will be out-of-service due to breakdown and servicing. This is particularly desirable in the taller blocks.*

2.8 Safety and Security

Satisfactory

2.9 Social Dimensions

Satisfactory. The introduction of rooftop communal amenities in two of the residential blocks is commended. Such an amenity would also be desirable for Block D.

Detailed attention to the design of lobby spaces adjacent to elevators on each level, desirably to include comfortable daylighting, outlook and seating, has the potential to enhance the social environment.

2.10 Aesthetics

Satisfactory. Some further detailed refinement of modulation/articulation and finishes to the external western end walls of Blocks D & E was discussed and agreed by the applicants to be desirable.

3. CONCLUSION AND RECOMMENDATIONS

The application is supported subject only to the relatively minor comments above being addressed to the satisfaction of Council.

A revised response was provided by the applicant in the following terms to address the above comments:

Context

These changes have been taken into account in the design and in response to the Panel's earlier comments. In particular this is relevant to the previous comments relating to setbacks on both eastern and western boundaries:

East boundary

The proposed setback is 4 metres to the front of balconies. This would be unreasonably small if the building were to face a public park, or a parallel new building on the neighbouring property. In the latter case at least 9 metres would be required. However the masterplan for the building on this site indicates an 'L-shaped' plan, with an end wall well set back and an open space on the northern part of the site. This would result in an acceptable outcome for the interface between the two sites, but this configuration would clearly need some form of legal confirmation, always given the possibilities for change in site ownership or building layout before any development proceeds.

As noted in the panel comments, the Standard Knitting Mills Masterplan incorporates an increased setback in lieu of the public park as denoted in the DCP. These aspects have been considered collectively across the precinct to ensure compliance with the recommendations of the RFDC.

North boundary

The proposed setback is 6 metres to the front of balconies. In this case the masterplan indicates a 9 metre setback on the adjoining property, giving a total building separation of 15 metres, three metres less than the RFDC recommendation of 18 metres for buildings of more than 12 metres in height. To achieve an equitable outcome the setback on the subject site should also be 9 metres, but in view of the fact that the width of the central courtyard space is already 'tight' and should not be reduced, an acceptable compromise would be to set back only the top residential floor (Level 6).

The RFDC recommends a separation distance of 12 metres for up to 4 storeys. The design accommodates the required setback. At the upper level the RFDC permits the terrace to comply with the setback of the level below. Therefore the RFDC requires the roof terraces to be setback 6 metres to achieve half the required separation distance.

The upper level achieves a setback of 6 metres to the balconies and 9 metres to the living areas compliant with the RFDC. In addition, the upper level has been further setback from the northern side to maintain solar access to the communal open space.

Scale

Noted.

Built Form

Noted.

Density

Noted.

Resource, Energy and Water Efficiency

Noted. The scheme meets the energy and water saving targets of BASIX. The provision of solar energy collectors or green roofs is not proposed as it would place an additional unreasonable burden on the cost and ongoing maintenance of the buildings. In addition, the site provides significant landscape areas resulting in 23% of the site as landscaped area, of which 52% of deep soil.

Landscape

Noted

Amenity

In response to the above, skylights have been added to the study rooms on the upper levels to increase the opportunity for natural light. An additional roof light has been added to provide natural light to the carpark at level 1. As amended, the scheme provides 4 roof lights at the podium level to provide natural light to basement level 1.

In regards to the comments regarding a second elevator, it is our position that the ratio of lifts to apartments is appropriate. Due to the number of units in each building, the lift provision results in a efficient building that considers the ongoing economic costs associated with lifts. Lifts within a building are a major contributor towards strata levies for owners, maintaining an appropriate ratio of lifts to units as proposed in this development assists in minimising the ongoing costs to the owners.

Safety and Security

Noted

Social Dimensions

Block D is already provided with a communal room and terrace at ground level. This space provides a convenient space for use by the residents. Given the presence of this space, an additional communal room is not considered necessary.

The lobby spaces at each level of each building have been extended to allow for seating space to encourage social interaction between the residents. These spaces include natural daylight and outlook which enhances the amenity of the space.

Aesthetics

Further articulation has been provided to the to the end walls of Blocks D & E as follows:

- *Windows to the landing level to the fire stairs on the western facades of Block E have been provided.*
- *Windows provided to the study area at the top level and over the fire stair to Block E.*
- *The corridors and corresponding living areas at lower levels of Block D have been extended and windows included to further articulate the façade.*

Conclusion and recommendation

The comments raised by the panel have been appropriately addressed as outlined in this submission.

The applicant has undertaken the necessary design amendments as suggested by the DRP. In addition to the above, detailed design certification has been provided by the applicant demonstrating compliance with SEPP 65 and in particular separation distances within the site and prospective development.

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

A BASIX Certificate (dated 21 May 2013) has been submitted with the DA pursuant to the provisions of the *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004*.

Botany Local Environmental Plan 1995***Clause 5 – The objectives of the plan***

The provisions of Clause 5 of Botany LEP 1995 have been considered during the development assessment for the use of the site. Clause 5(1) states that the objectives of this plan in relation to form and function of the local government area are:

- (a) *to recognise the importance of the local government area of Botany Bay City as a gateway to Sydney, given its proximity to Sydney (Kingsford-Smith) Airport and Port Botany,*
- (b) *to ensure, as far as practicable, that land uses are compatible with each other in terms of environmental and aesthetic amenity,*
- (c) *to make the local government area of Botany Bay City a more attractive and pleasant place in which to live, work and visit,*
- (d) *to improve the image of the local government area of Botany Bay City by ensuring that developments are of a good standard of design, form and function,*
- (e) *to protect areas from inappropriate development and to ensure that, in particular, residential amenity, health and safety is maintained or improved, where necessary, and*
- (f) *to provide for an appropriate balance and distribution of land for residential, commercial, retail, industrial, advanced technology enterprises, tourism, port-related and airport-related development and recreation, entertainment and community facilities.*

The application only involves building works to the residential 2(b) Residential 'B' portion of the site. Clause 5(2) states the objectives of this plan in relation to residential development as:

- (a) *to maintain, protect and increase the local government area's permanent residential population,*
- (b) *to encourage, where appropriate, the renovation and upgrading of existing dwellings, while ensuring that dwelling forms, including alterations and additions, are in sympathy with the amenity of surrounding residences,*
- (c) *to ensure the conservation of buildings and structures of architectural or historic significance and that any additions or alterations are in sympathy with the existing building or structure,*
- (d) *to ensure the protection and improvement of the amenity of residential areas,*
- (e) *to provide for a range of housing types to cater for all socio-economic groups without adverse effects on the character and amenity of the local government area of Botany Bay City,*
- (e1) *to provide for affordable housing without adverse effects on the character and amenity of the local government area of Botany Bay City,*
- (f) *to maintain and increase the availability of land for residential use and to prevent the further alienation of residential areas in the local government area of Botany Bay City, and*

- (g) *to permit the use or re-use of existing non-residential buildings in residential areas where such uses improve the amenity of adjoining residents.*

Clause 5(5) states that the objectives of this plan in relation to traffic and transport and includes the following:

- (a) *to provide an efficient and safe system of transport movement for motor vehicles and trucks, cyclists and pedestrians within and through the local government area of Botany Bay City, while also providing residential amenity,*
- (b) *to provide a hierarchy of roads throughout the local government area of Botany Bay City which provides for the clear delineation of light and heavy traffic and includes local area traffic management plans in residential areas,*
- (c) *to designate a truck route network, including routes for the road transport of dangerous goods,*
- (d) *to encourage the use of public transport and, in particular, railways as a means of transport for passengers and goods, and*
- (e) *to minimise the impact on adjoining residential areas of traffic and parking generated by commercial areas.*

The development application has been accompanied with a revised Traffic Report that takes into consideration the development proposal for the subject site, in addition to the proposed development proposals as they exist for the Parkgrove One site and the adjoining site of No.19-21 Wilson Street, Botany.

The traffic report concluded in the following terms:

In summary, the main points relating to the supplementary traffic information requested by Council are as follows:

- i) *the Pemberton-Wilson precinct is currently the subject of a number of applications for redevelopment, comprising some 643 apartments, 25 townhouses plus 1,800m² non-residential;*
- ii) *the intersections of Botany Road with Banksia Street and Bay Street, and the intersection of Wentworth Avenue with Page Street will be able to cater for the additional traffic from redevelopment of the precinct;*
- iii) *traffic increases on Wentworth Avenue and Page Street would be relatively small due to the distance of this intersection from the precinct and the alternative routes available;*
- iv) *traffic from development of the precinct would be of a similar order to the previous uses on the site, and would be largely non-commercial vehicles, compared to the previous industrial uses with a significant proportion of heavy vehicles;*
- v) *the intersections of Botany Road/Bay Street and Wentworth Avenue/Baker Street would not require traffic signals as a result of development in the precinct;*

- vi) *Council could consider pursuing signalization of these intersections as a separate matter with RMS, if appropriate;*
- vii) *RMS may be concerned about approving traffic signals at Bay Street, given the proximity of the existing signals at Banksia Street; and*
- viii) *signalizing the intersections would result in higher traffic flows in Bay Street, Ocean Street and Holloway Street.*

Having regard the additional information sought and provided by the applicants traffic consultant, the proposal is considered to adequately fulfil the objectives of the LEP in relation to traffic and transport.

Clause 5(6) states that the objectives of this plan in relation to environment, the landscape and the heritage include the following:

- (a) *to restrict and control development which could adversely affect the ecosystem, habitat, landscape or scenic quality of environmentally sensitive lands, such as the Botany Wetlands,*
- (b) *to protect and enhance the natural and cultural landscapes, including bushland, wetlands, creeks and foreshores, in the local government area of Botany Bay City through appropriate management and conservation measures,*
- (c) *to improve the environmental amenity of the local government area of Botany Bay City through tree planting, landscaping works and other appropriate measures,*
- (d) *to maintain and increase the programs of tree planting and landscaping works throughout the local government area of Botany Bay City,*
- (e) *to ensure that the individual and cumulative effects of development upon the local water table are assessed and any adverse effects reduced to an acceptable level,*
- (f) *to conserve the environmental heritage of the local government area of Botany Bay City,*
- (g) *to integrate heritage conservation into the planning and development control processes,*
- (h) *to provide for public involvement in the conservation of environmental heritage,*
- (i) *to ensure that any development does not adversely affect the heritage significance of heritage items and heritage conservation areas and their settings,*
- (j) *to identify and conserve wetlands and their associated riparian vegetation, threatened species and endangered ecological communities within the City of Botany Bay, and*
- (k) *to promote the restoration of degraded habitats, the protection of aquatic, riparian and terrestrial habitats and the retention of natural hydrological and geomorphological regimes.*

Clause 10 – Zone Objectives

The subject property is zoned part 2(b) Residential “B” and part 4(b1) Mixed Industrial – Restricted. The majority of the site is zoned Residential 2(b) whilst there exists a 30–40m wide area of land on the eastern side of Pemberton Street (up to Warrana Street) that is zoned 4(b1) Mixed Industrial – Restricted.

The current DA does not propose any modification to buildings within the land that is zoned 4(b1). All changes sought under the DA are located within the Residential 2(b) zone and are permissible with the consent of Council.

The primary objective within the Residential 2(b) zone is to:

provide for the development and use of housing, other than detached housing, in appropriate locations, together with community and service uses of a type and scale appropriate to the enjoyment of such housing.

It is considered that the proposed development is consistent with this primary objective.

The secondary objectives are:

- (a) *to provide scope for high-quality residential development in innovative forms on identified sites,*
- (b) *to improve the quality of the residential amenity by encouraging landscaping and good design in both new developments and renovations,*
- (c) *to encourage the revitalisation and improvement of older established residential areas by rehabilitation and suitable development,*
- (d) *to allow non-residential development which provides services or employment for residents and which is of a type and scale which does not interfere with the amenity of surrounding residential areas,*
- (e) *to encourage the preservation of buildings which are of heritage significance and within a heritage conservation area, and*
- (f) *to encourage energy efficiency and energy conservation in all forms of development permissible within the zone.*

The proposed development incorporates a residential development together with significant areas of communal and privately available areas of open space, which will generally improve the residential amenity of the area and revitalise one of the more established mixed industrial and residential areas in Botany.

Clause 11 – Subdivision of Land

A separate development application and subsequent consent would be required to satisfy this clause.

Clause 12 – Floor Space Ratio

The proposal has been considered against Clause 12 of Botany LEP 1995. Clause 12(1) states that a gross floor ratio on land within zone 2(b) shall not exceed 0.5:1. However Clause 12(2) also applies to the site.

Clause 12(2) outlines the following:

Notwithstanding the provisions of subclause (1), the Council may consent to the carrying out of residential development on land within Zone No 2(b) to a maximum floor space ratio of 1:1 where the allotment exceeds 2,500 sqm, and where it is of the opinion that:

- (a) the proposed development will satisfy the primary objective of the zone,*
- (b) the scale of the proposed development, if above 2 storeys in height, is compatible with the scale of existing residential development in the locality,*
- (c) the architectural character and design of the proposed development does not adversely affect existing residential development in the locality,*
- (d) the provision of off-street parking for residents and visitors adequately meets the needs of the development,*
- (d1) the provision of on-site car parking does not dominate or detract from the appearance of the proposed development or the streetscape,*
- (e) the provision of private and communal open space on the site is adequate for the proposed development,*
- (e1) the proposed development includes landscaping that screens and softens the visual effect of the buildings on the site, and creates useable and comfortable open space areas,*
- (f) the environmental amenity of the proposed development and of the immediate locality includes measures to confine or reduce noise and to maintain privacy,*
- (g) the proposed development ensures adequate sunlight, ventilation and privacy to its residents, to residents of adjoining development and to users of nearby public and private open space,*
- (h) the proposed development makes provision for the adequate absorption of stormwater, and includes deep root zones for tree planting,*
- (i) the proposed development incorporates pedestrian links at points where they are most prominently and safely connected to the existing street and pedestrian network, and*
- (j) the proposed development provides a safe and secure environment for its residents.*

DA2010/313 approved the FSR of the Masterplan site at a maximum of 1.38:1 for the entire site.

Currently, the proposed development will result in a total FSR of 1.52:1 over the entire site (assuming no resultant increase in gross floor area within the 4(b1) Mixed Industrial – Restricted Industrial zone).

The proposed FSR results in an increase from the currently approved DA by approximately 0.14:1 (or 1,840m²).

State Environmental Planning Policy No.1

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 it is in the opinion that the proposed development will satisfy objectives under Clause 12(2).

The subject site has an area of 13,162m² and the applicant has previously been granted approval to develop the subject site to a maximum FSR of 1.38:1 (or some 5,000m² in excess of Council's controls under cl.12(2)).

The DA proposes to increase the overall FSR on the site to 1.52:1 under the Botany LEP 1995.

The applicant has lodged an objection under State Environmental Planning Policy No.1 to vary the permissible floor space applicable to the development proposal.

To assist in the assessment of the SEPP 1 Objection, the following planning principles in the Winten Property v North Sydney Council case are also used as a guide below:

1. Is the requirement a development standard?

The planning control is a development standard under Botany LEP 1995. This SEPP 1 Objection relates to cl.12(1)(a) and cl.12(2). Clause 12(2) allows a maximum floor space ratio of 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. The SEPP 1 submission addresses this issue by stating the following:

There is no stated objective in relation to the floor space ratio control (Clause 12(1)) in the LEP. For the purpose of this assessment, the objectives for Floor Space Ratio controls under the Residential Flat Design Code will be considered.

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*
- *To allow generous habitable balconies.*

It is requested that City of Botany Bay vary clause 12(2) of Botany Bay LEP 1995 to allow floor space ratio of 1.21:1 for the subject Development Application.

In response to the above development standard, the applicant has provided the following justification:

The objectives of the standard are achieved notwithstanding noncompliance with the standard;

The LEP does not include objectives for the FSR control, however the proposed development is consistent with the objectives for FSR controls established by the Residential Flat Code as follows:

- *The density of apartments is within the capacity for the area as identified by the Metropolitan Plan for Sydney 2036. The site is a transitional site between the industrial areas along Pemberton St to the west and low density residential towards the east. The site is in excess of 65 metres from the closest residential dwelling in Wilson Street.*
- *The proposed building typology is reflective of the trend towards apartment buildings in this locality and the proximity of the site to public open space. The development maintains a mix of studio, one and two bedroom units that will enable a range of housing options. The reduction in three bedroom units is reflective of the market demands in this area and due to the scale of this development will not affect housing supply.*
- *The building forms are highly articulated to create a building modulation that respects the adjacent properties and creates substantial visual interest to all facades.*
- *The Masterplan demonstrates that the building floor plates will achieve high levels of residential amenity through the design of the floorplates 61% are naturally cross ventilated.*
- *The configuration allows for a generous communal open space in the centre of the site with deep soil landscaping at the south eastern section of the site. 52% of the ground level open space is retained as deep soil landscaping. All units are provided with generous balconies that create useable external spaces associated with the internal living area.*

It is therefore considered that the development and increased floor space maintains compliance with the objectives under the Residential Flat Design Code.

Furthermore, the development achieves compliance with the bonus floor space provisions under the LEP. The site area exceeds the minimum required to seek the bonus and complies with the further requirements. This was demonstrated and accepted by Council with the original Masterplan DA approval. This assessment remains the same.

In addition, the recently gazetted Botany Bay LEP 2012 would permit a FSR of 1.5:1 on the subject site. The proposed development application is fully compliant with this proposed standard at 1.08:1 when measured under the revised definition.

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

The underlying objectives and purposes of the FSR control remain relevant to the proposed development. The proposed development is consistent with the objectives of the FSR control in the Residential Flat Design Code as detailed above.

The proposed development is consistent with the aims and objectives of SEPP 1 to the extent that compliance with the FSR control would hinder compliance with the objects of the Act.

The objects of the Act are:

- (a) *to encourage:*
 - (i) *the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment,*
 - (ii) *the promotion and co-ordination of the orderly and economic use and development of land,*
 - (iii) *the protection, provision and co-ordination of communication and utility services,*
 - (iv) *the provision of land for public purposes,*
 - (v) *the provision and co-ordination of community services and facilities, and*
 - (vi) *the protection of the environment, including the protection and conservation of native animals and plants, including threatened species, populations and ecological communities, and their habitats, and*
 - (vii) *ecologically sustainable development, and*
 - (viii) *the provision and maintenance of affordable housing, and*
- (b) *to promote the sharing of the responsibility for environmental planning between the different levels of government in the State, and*
- (c) *to provide increased opportunity for public involvement and participation in environmental planning and assessment.*

As stated above, the objects of the act provide for the proper management and development of land to promote the social and economic welfare of the community. It promotes the orderly and economic use and development of land.

The subject development provides a high quality residential development that enables the orderly and economic development of land in a manner that is appropriate in the 2(b) zone. The form of housing offers large spacious units compliant with Council's high minimum unit areas which are well in excess of what is considered reasonable in the Residential Flat Design Code. Council's high minimum unit areas have a significant impact on the economic use of land.

The additional floor space results in no additional significant adverse impact to adjoining properties in regards to residential amenity, overshadowing or visual outlook. To strictly apply the standard, in the absence of any tangible impact, would be unreasonable and without basis.

In the circumstances of this development, the underlying objectives would be thwarted if compliance was required.

The standard has been abandoned following the gazettal of Botany Bay LEP 2012. As the DA was submitted prior to the gazettal of the LEP it is to be considered as advertised but not made. The provisions of the draft are now in force and therefore should be given determining weight.

The Draft LEP increases the FSR on the subject site to 1.5:1. The proposed development application is below the maximum permitted by the Draft LEP.

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 it is in the opinion that the proposed development will satisfy objectives under Clause 12(2) as stated earlier in this report.

The subject site has an area of 13,162m² and the applicant has previously been granted approval to develop the subject site to a maximum FSR of 1.38:1 (or some 5,000m² in excess of Council's controls under cl.12(2)).

The rationale behind the applicant's argument is considered consistent with the objectives of DCP 31. However, the Council at its Development Committee meeting held on 7 August 2013 resolved to refuse the S96(2) Application to amend the Masterplan approved under DA10/313 for the following reasons:

1. *The modification which is sought to the development consent granted does not constitute a development that will be substantially the same, pursuant to section 96(2) of the Act; and,*
2. *The impact by the height and bulk of the proposed amendment to the subject buildings within the confines of the Masterplan approved site and to the vicinity of the subject site will adversely impact on the amenity of the other areas within the Masterplan approved site and the vicinity of the other areas.*

4. Is the objection well founded?

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 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.

It should be noted that of paramount importance is that the development has been amended in accordance with the revised planning controls under the BBLEP 2013, which in short permits an additional 50% in terms of floor space and a building height 4.95m higher than the current LEP.

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,**
- (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.**

In response to the above the applicant has provided the following justification:

The aims and objectives of SEPP 1 are:

"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 objects of the act provide for the proper management and development of land to promote the social and economic welfare of the community. It promotes the orderly and economic use and development of land.

The subject application represents a high quality orderly and economic use and development of the site, achieving an appropriate building form across the site consistent with the context of the site and proximity to low density residential which is well removed from this site at Wilson Street.

As discussed in detail above, compliance with the development standard would be unreasonable and unnecessary in the circumstances.

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 SEPP 1 objection contends that compliance with the FSR development standards is unreasonable and unnecessary in the circumstances of the case with reference to SEPP 65 controls that establish controls to encourage good quality urban design and a high level of residential amenity and environmental sustainability.

The issue here is that Council refused the S96(2) Application to amend the Masterplan approval at the site and its meeting held on 7 August 2013. Therefore as the development under DA12/206 is not consistent with the Masterplan approval to the subject site, the DA must be refused pursuant to S83D(2) of the EP&A Act 1979.

6. (a) **Whether or not non-compliance with the development standard raises any matter of significance for State or Regional environmental planning;**
- (b) **The public benefit of maintaining the planning controls adopted by the environmental planning instrument.**

The proposed departure in FSR is consistent with State and Regional Planning Policies, in that the Metro-Strategy has identified the Banksmeadow area as being able to support additional housing and employment, and this is further supported in Councils LEP Standards and Design Study dated October 2010 and prepared for Council by Neustein Urban, which recommends for sites zoned R3/R4 in excess of 2,000m², to have a maximum floor space ratio of 1:5:1 and a height control of 6 storeys or 22m.

The objective behind this approach is to encourage the development of older industrial used land that exists within the medium density residential area. The subject development satisfies the Metro Strategy and Council's Study.

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

- *The amended Masterplan maintains compliance with the provisions of the Draft LEP that would permit a FSR of 1.5:1 on this site.*
- *The amended Masterplan makes better use of existing infrastructure, and provides appropriate incentives to stimulate the redevelopment of surrounding land;*
- *The locality surrounding the site is in a state of transition, and the amended Masterplan promotes the desired future character of the immediate surrounds as a residential area.*
- *The proposed floorplates will achieve buildings with high levels 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.*

It is considered that whilst there is justification provided for the increased FSR over the site area within the SEPP 1 Objection and supporting documentation, the DA12/206 cannot be approved pursuant to S83D(2) of the EP&A Act 1979.

Clause 12B – Floor space ratios – Pemberton – Wilson Street Precinct

The development has been considered against Clause 12B of Botany Local Environmental Plan 1995, as the site is located within the Wilson – Pemberton Street Precinct.

- (1) *This clause applies to land shown coloured light scarlet and edged red on the map marked “Botany Local Environmental Plan 1995 (Amendment No 3)” (the **Pemberton-Wilson Street Precinct**)*
- (2) *For the purpose of calculating the floor space ratio of a building proposed to be erected on land in the Pemberton-Wilson Street Precinct:*
 - (a) *the Council is to include as part of the site area such part of the land (if any) as is required, by a condition of the relevant development consent, to be dedicated free of cost for the provision, extension or augmentation of public amenities or public services (as referred to in section 94 of the Act), and*
 - (b) *the gross floor area is taken to exclude (in addition to the matters excluded from the definition of that term in the Environmental Planning and Assessment Model Provisions 1980 adopted by this plan) designated storage spaces (if any) designated for personal items associated with residential apartments.*

It is noted that gross floor area is taken to exclude personal storage spaces (if any) for items associated with residential apartments.

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

The development has been considered against Clause 13 and 13A of Botany Local Environmental Plan 1995.

The provisions of Clause 13 and 13A and Council’s Aircraft Noise DCP have been considered in the assessment of the DA, as the site is located within the 20–25 ANEF contour.

Council’s Aircraft Noise DCP classifies the site as “conditional”. In accordance with clause 9.2 of the DCP, “where a building is classified as “conditional”.... *development may take place, subject to Council consent and compliance with the requirements of AS2021-2000.*

A Noise Impact Assessment Report prepared by Acoustic Logic was submitted with the DA and which concluded in the following terms:

Potential noise impacts from a proposed residential development at 42-44 Pemberton Street, Botany have been assessed.

Noise impacts on the site (traffic and aircraft) have been assessed with reference to relevant Australian Standards and Council codes. Indicative treatments for control of external noise have been recommended in section 3.3

Noise emissions objectives for the site have been determined based on on-site noise logging and noise emission guidelines typically adopted by Council, and have been presented in section 4.

Compliance with relevant noise assessment can be achieved with the installation of appropriate acoustic treatment devices within the development. Compliance with the measures contained in an acoustic report have been addressed.

Clause 13B – Development and Obstacle Limitation Surfaces (OLS)

The development has been considered against Clause 13B of Botany Local Environmental Plan 1995

The provisions of clause 13B states that Council may grant consent to development that would penetrate the nominated airspace in relation to Sydney Airport only if it has referred the DA to the Sydney Airport Corporation Limited and that any necessary approvals under the *Civil Aviation (Buildings Control) Regulations 1988* and the *Airports (Protection of Airspace) Regulations 1996* in relation to the development have been obtained.

The DA was referred to the Sydney Airport Corporation Limited (SACL). In correspondence dated 11 June 2013, no objection was raised to the increase in building heights of Buildings D, E and F within the site.

Clause 18C - Development near zone boundaries – Pemberton-Wilson Street Precinct

The development has been considered against Clause 18C of Botany Local Environmental Plan 1995 as the development site is located within the Pemberton –Wilson Street Precinct. Clause 18C states:

- (1) *This clause applies to any land that is within Zone No. 2(b) and that is within 15 metres of a boundary between that Zone and Zone No. 4(b1)*
- (2) *The Council may consent to the carrying out of development on land to which this clause applies if that development would be able to be carried out with consent if the land concerned were within Zone No. 4(b1)*
- (3) *Before granting consent for development pursuant to this clause, the Council must be satisfied that carrying out the development is generally consistent with the objectives of Zone No. 4(b1)*

Part of the development proposes works within 15m of the existing Mixed Industrial Restricted 4(b1) Zone. The development proposal does not amend the approved Masterplan consent to development within that part of the site zoned 4(b1) and is consistent with the zoning objectives of the 4(b1) zone. That part of the site which is zoned 4(b1) – Mixed Industrial Restricted will still be able to be developed for mixed industrial/commercial and retail development and which will enhance the redevelopment of the area and will not detract from the amenity of the area by reason of the design and function of the proposed development.

Clause 22 – Greenhouse effect, global warming, air and water pollution and energy efficiency

The Masterplan proposal has been designed (predominantly) to maximise direct sunlight into the apartments in mid-winter. Of the main residential flat buildings, most have been designed to be orientated north-south, whilst the remaining are orientated east-west.

Existing legislation requires that a BASIX Certificate must be submitted as part of the DA. A BASIX Certificate (dated 21 May 2013) has been submitted with the DA pursuant to the provisions of the *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004* and is compliant with cl.22 of the BLEP 1995.

Clause 25 – Advertising and notification of certain development applications

The development has been considered against Clause 25 of Botany LEP 1995, as DA was notified and advertised in accordance with these requirements. One written submission was received and is addressed later within this report.

Clause 28 – Excavation and filling of land

The provisions of Clause 28 have been considered in the assessment of the development application. The application involves excavation works to accommodate the footings and basement parking. Clause 28 states:

- (1) *The consent of the Council is required for the following:*
 - (a) *excavation exceeding 0.5m in depth of any land, except for landscaping works or similar works of a minor nature,*
 - (b) *the placing of fill material onto any land.*
- (2) *When considering an application for consent required by subclause (1), the Council shall have particular regard to:*
 - (a) *the likely disruption of, or detrimental effect on, existing drainage patterns and soil stability in their locality, and*
 - (b) *the effect of the proposed works on the likely future use or redevelopment of the land, and*
 - (c) *the Contaminated Land Management Act 1997.*

The proposal has been considered against the likely disruption or effect on the soil conditions with regard to excavation and placing of fill material into the land, and in relation to possible site contamination. The DA satisfies the objectives of this clause and also satisfies the objectives and controls under SEPP 55 and DCP 34.

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

The development has been considered against Cl.30A as the subject site is identified as Class 4 land on the Acid Sulfate Soils Planning Map.

In this class of land any works below 2m, or works by which the water table is likely to be lowered beyond 2m, requires the submission of a preliminary assessment of the proposed works to be prepared in accordance with the *Acid Sulfate Soils Assessment Guidelines*.

An Acid Sulfate Soils Management Plan has been prepared by Consulting Earth Scientists and submitted with the original Masterplan approval.

A condition of consent has previously been imposed as part of the Masterplan approval (DA10/313) requiring the removal of all acid sulfate soils in accordance with the Management Plan and the ASS Assessment Guidelines. The DA is consistent with these provisions and appropriate conditions of consent have been imposed.

Clause 36 – Development in the vicinity of heritage items, heritage conservation areas, archaeological sites or potential archaeological sites

The subject site is not within the vicinity of a heritage item, nor is it identified as a heritage item or within a heritage conservation area.

Clause 38 – Water, wastewater and stormwater systems

The provisions of cl.38 have been considered in the assessment of the development application. Council must not grant consent to the carrying out of the development as follows:

- (i) *on land or subdivision of land to which this plan applies for the purpose of a habitable building unless it is satisfied that adequate water and sewerage services will be available to the land it is proposed to develop.*
- (ii) *on land or subdivision of land to which this plan applies for the purpose of a habitable building unless it is satisfied that adequate provision has made for the disposal of stormwater from the land it is proposed to develop.*

The DA was originally referred to Sydney Water for their consideration. Correspondence received from Sydney Water dated 19 December 2012 provided the following advice:

Water

The drinking water main available for connection is the 150mm main on the western side of Pemberton Street.

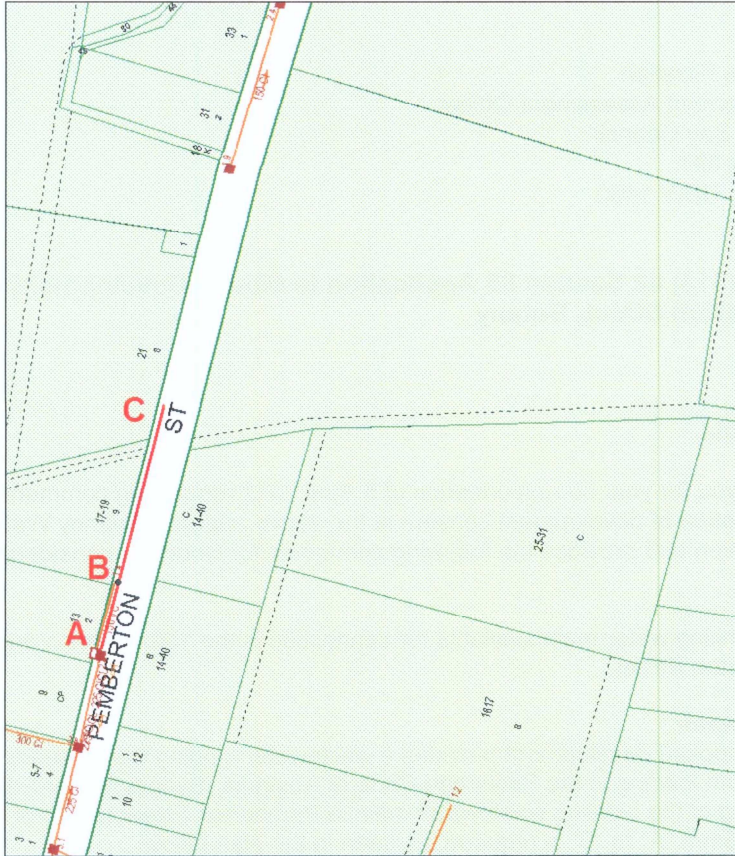
Wastewater

The proposed development provides a wastewater loading that exceeds the recommended maximum loading in the Sewerage Code of Australia (Sydney Water Edition WSA 02-2002).

The wastewater main along Pemberton Street will need to be upsized and extended. The developer will be required to:

- *Upsize the wastewater main from 150mm to 225mm from 'A' to 'B', see Figure 1*
- *Extend the upsized 225mm wastewater main from 'B' to 'C', see Figure 1.*
- *Provide a point of connection of the new main, at least one metre past the property's boundary.*

The proposed wastewater infrastructure for this development will be sized and configured according to the Sewerage Code of Australia (Sydney Water Edition WSA 02-2002).



Sydney Water Servicing

Sydney Water will further assess the impact of any subsequent development when the developer applies for a Section 73 Certificate. This assessment will enable Sydney Water to specify any works required as a result of future development and to assess if amplification and/or changes to the system are applicable. The developer must fund any adjustments needed to Sydney Water infrastructure as a result of the development.

The developer should engage a Water Servicing Coordinator to get a Section 73 Certificate and manage the servicing aspects of the development. The Water Servicing Coordinator will ensure submitted infrastructure designs are sized and configured according to the Water Supply Code of Australia (Sydney Water Edition WSA 03-2002) and the Sewerage Code of Australia (Sydney Water Edition WSA 02-2002).

Sydney Water requests the Council to continue to instruct proponents to obtain a Section 73 Certificate from Sydney Water. Details are available from any Sydney Water Customer Centre on 13 20 92 or Sydney Waters website at www.sdnewater.com.au

Sydney Water e-planning

Sydney Water has an email address for planning authorities to use to planning documents for review. This email address is urbangrowth@sydneywater.com.au. The use of this email will help Sydney Water provide advice on planning projects faster, in line with current planning reforms.

Relevant conditions have been identified by Sydney Water as part of their submission however given the Council's resolution regarding the Section 96(2) modification application, the development proposal DA12/206 is considered to be inconsistent with the

Master Plan approval and pursuant to Section 83D(2) of the EP & A Act 1979 must be refused.

Provisions of any Draft Environmental Planning Instruments (S.79C(1)(a)(ii))

Botany Bay Local Environmental Plan 2013

Botany Bay Local Environmental Plan 2013 (BBLEP 2013) was gazetted on 21 June 2013 and commenced on 26 June 2013.

Clause 1.8A of the BBLEP 2013 states: If a development application has been made before the commencement of this Plan in relation to land to which this Plan applies and the application has not been finally determined before that commencement, the application must be determined as if this Plan had not commenced.

The application the subject of this report was lodged prior to the gazettal of the BBLEP 2013, as such the provisions of the BBLEP 2013 have been considered with respect to the future intent of the planning scheme in the assessment of this Development Application. The following assessment is provided:

Principal Provisions of BBLEP 2013	Compliance	Comment
Landuse Zone	YES	Under the BBLEP 2013 – the land is zoned: <ul style="list-style-type: none"> • R3 – Medium density residential; and • B4 – Mixed Use The proposal is to develop only that portion of the site zoned R3.
Is the proposed use/works permitted with development consent?	YES	The proposed development is permissible with Council's consent under the BBLEP 2013.
Does the proposed use/works meet the objectives of the zone?	YES	The proposed development is consistent with the Clause 2.3 – zone objectives within BBLEP 2013.
Does Schedule 1 – Additional Permitted Uses apply to the site?	N/A	N/A
What is the height of the building? <ul style="list-style-type: none"> - Clause 4.3(2A) – maximum 22m. 	YES	Buildings D, E and F are less than 22m (to the roof) – see cl.5.6 of the BBLEP 2013.
What is the proposed FSR? <ul style="list-style-type: none"> - Clause 4.4(2A) max. FSR 1.5:1 (on land zoned R3 and where land exceeds 2,000m²). 	YES	The total overall FSR for the site will be 1.37:1 and is consistent with the provisions of BBLEP2013.
Is the proposed development in a R3/R4 zone? If so does it comply with	YES	The development complies.

Principal Provisions of BBLEP 2013	Compliance	Comment
site of 2,000m ² min & max. height of 22m & maximum FSR of 1.5:1?		
Is the site within land marked “Area 1” on the FSR Map?	N/A	The site does not fall within “Area 1” on the map.
Is the land affected by road widening?	N/A	Yes – Development does not affect that part of site affected by future road widening.
Is the site listed in Schedule 5 as a heritage item or within a Heritage Conservation Area?	N/A	N/A
<p>The following provisions in Part 6 of the draft LEP apply to the development</p> <ul style="list-style-type: none"> • Cl.6.1 Acid Sulfate Soils; • Cl.6.2 Earthworks • Cl.6.3 Stormwater • Cl.6.8 Airspace operations • Cl.6.9 Development subject to aircraft noise • Cl. 6.15 Active street frontage 	<p>YES (subject to conditions)</p>	<p>An ASS Management Plan has been prepared & submitted with the original Masterplan and the current DA. Appropriate conditions have been imposed.</p> <p>Earthworks provisions have been considered the DA.</p> <p>Proposal meets stormwater objectives & subject to conditions of consent.</p> <p>The proposal has been deemed appropriate by SACL.</p> <p>Site is classified within an ANEF contour of 20-25. An acoustic report accompanies the DA. Residential buildings are classified as conditional within this contour. DA has been conditioned to comply</p> <p>N/A – site is not affected by active street frontages map.</p>

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

Provisions of Development Control Plans (S.79C(1)(a)(iii))

Development Control Plan No. 31- Pemberton and Wilson Street Precinct

The DA has been assessed against the controls and objectives contained in DCP 31 – which applies to all development within the Pemberton–Wilson Street Precinct.

Standard	Control	Proposal	Complies
1.5.2 Specific DA Requirements for the Pemberton-Wilson Street Precinct			
Site Suitability Study (Pre- Stage 1 DA)	To be submitted prior to Masterplan.	Submitted with original Masterplan.	YES
Masterplan	Information to be submitted – Masterplan must address specific matters.	Submitted with original Masterplan.	YES
Detailed Development	This DA requires details of the approved Masterplan.	Details of the Masterplan provided.	YES
1.6 DESIGN REVIEW PANEL			
Design Review Panel (DRP)	Stage 1 DA is to be reviewed by Council's DRP.	DRP reviewed proposal on 3 May who supported the proposal subject to minor comments.	YES
1.7 MEDIATION			
May refer DA to an independent mediation process	May be referred.	N/A	N/A
3.3 PLANNING FRAMEWORK PRINCIPLES			
To provide adequate and legible vehicular, pedestrian and cycle circulation	<ul style="list-style-type: none"> ▪ Provide pedestrian/cycle links. ▪ Create east-west street from Wilson to Pemberton Street, extend Rancom and create a north-south through street. ▪ Create pedestrian links in both the south and north of precinct. ▪ Progressive implementation of road system. 	No change from the approved Masterplan	YES
To provide high quality publicly accessible open space	<ul style="list-style-type: none"> ▪ Min 3,000m² ▪ Public road frontage. ▪ Good solar access. ▪ Neighbouring developments are to have 	The public open space for the Wilson/ Pemberton Street Precinct as required by DCP 31 is located outside of this site.	N/A

Standard	Control	Proposal	Complies
	strong through site connections and provide natural surveillance.		
To achieve an integrated development and good quality design	<ul style="list-style-type: none"> Design to be complementary to existing scale and character of surrounding streets. Commercial/industry along Pemberton Street will buffer residential development. Non-residential development to integrate seamlessly with residential landuses in Precinct. Solar access, overshadowing, visual privacy, ventilation and acoustic privacy to be considered. On site car parking is not to dominate or detract from the appearance of the development/ streetscape. Shared driveways for commercial/industry along Pemberton St. All vehicular access and driveways associated with uses along Pemberton St should be from Pemberton St. Landscaping to screen and soften buildings. 	<ul style="list-style-type: none"> The original Masterplan provides for a form of development which is consistent with the scale and character of surrounding streets. Commercial/industrial/ residential will face Pemberton St & buffer the high density residential behind. Design and location of commercial/ industry integrates well with the residential landuses & remains unchanged. The additional levels on Building D, E & F have been setback to reduce adverse solar impacts, solar access & overshadowing over the central courtyard etc. have been considered and addressed in application. Majority of on-site parking is underground, with areas protruding to provide natural ventilation. New Street 1 off Pemberton Street remains unchanged & will provide internal access to Parkgroves One & Two. Proposed commercial/ industry access from Pemberton St only via an internal access road remains unchanged. The concept landscape plan provided shows an extensive use of trees and subject to a DA for construction and detailed landscaping plan is 	<p>YES</p> <p>YES</p>

Standard	Control	Proposal	Complies
	<ul style="list-style-type: none"> Provision of adequate absorption area for stormwater and deep root zones. 	<p>to be provided.</p> <ul style="list-style-type: none"> Stormwater concept plans have been provided & will be assessed during subsequent DA's. 	
To encourage a live and work environment in the west of the Precinct	<ul style="list-style-type: none"> Studio workshops encourage and mixed residential and employment environment. 	<ul style="list-style-type: none"> Western portion of Precinct provides for mixture of uses and therefore fulfils this requirement. 	YES
4.1 ROAD, PEDESTRIAN AND CYCLE NETWORK			
Road, Pedestrian and Cycle Network	<ul style="list-style-type: none"> To develop a road, pedestrian and cycle system that facilitates internal circulation and integration/ connection with surrounding networks. To provide a movement system which facilitates access to public open spaces, shops, transport and schools. Encourage location of new roads along existing property boundaries. 	<ul style="list-style-type: none"> Pedestrian pathway from Wilson-Pemberton Street and a footpath/cycleway running north to southern of the site, has not been altered under this DA. Vehicular and pedestrian through traffic facilitates access to all facilities. New roads provided along existing property boundaries. 	YES
4.1.2 General Guidelines			
Road Construction, Footpaths, Street Furniture, Street Signage, Street Lighting, Undergrounding of overhead wires	<ul style="list-style-type: none"> Road widening, extension and new public streets are to be constructed and dedicated to Council free of any cost. All footpaths to be constructed with kerbs and ramps to facilitate disabled access. Street furniture to be coordinated and to fulfil Council's City identity specifications and located in a one-metre zone along kerb line. Street lighting to be coordinated and 	<p>This was conditioned under the original Masterplan DA. To be provided as part of Buildings A, B & C. Infrastructure to be conditioned accordingly</p> <p>This was conditioned under the original Masterplan DA. To be provided as part of</p>	<p>YES</p> <p>YES</p>

Standard	Control	Proposal	Complies
	<p>standardised throughout the precinct and in accordance with AS/NZS1158-Public Lighting Code.</p> <ul style="list-style-type: none"> All existing and new aboveground lines and cables to be located below ground. 	Buildings A, B & C. Infrastructure to be conditioned accordingly	
4.1.3 Specific Guidelines			
A. New Street 1 – Public Street			
Role	Main east-west street and dedicated to Council	Provided as part of separate DA12/195	YES
Location	Along existing drainage reserve	No change from original Masterplan	YES
Road Reservation	20m	No change from original Masterplan	YES
Carriageway	12.8m	No change from original Masterplan	YES
Footpath	On both sides 1.5m wide and 2.1 wide verges	The verge has been widened from the original Masterplan to 4.3m (south) & 2.1m (north).	YES
Street Trees	2.4 metre high Pyrus calleryana	The verge of New Street 1 will become wider and will provide for more open space and trees.	Approved under DA13/195
Traffic Capacity	Two-way traffic	Only between Pemberton St and developments to the north and south. New Street 1 will be closed off to Wilson Street.	YES
Parking	Both sides	Southern site boundary runs through road	YES
Traffic Management	Devices to be incorporated to discourage heavy vehicles	Details not provided	YES (Previously conditioned in Masterplan DA)

Standard	Control	Proposal	Complies
B. New Street 2 – Private Street			
<p>Proposed DA does not alter the approved arrangement in that the location of New Street 2 will be relocated outside the subject site to the eastern side running north to south connecting the adjoining sites as per the DCP. However, the intent will be retained with pedestrian/ cycleway running to the north.</p> <p>The deletion of New Street 2 within the subject site will be replaced with a north-south pedestrian/ cycle access only and an additional 800m² of communal open space. The pedestrian/ cycle access provides a ramp connecting the communal open space to the east and west to address the change in ground level.</p>			
D. Pemberton Street (Widening)			
<p>Proposed DA does not alter the approved and appropriately conditioned arrangements under the original Masterplan. The development of Buildings D, E, F do not affect the widening of Pemberton Street which will be addressed when the DA for Buildings A, B and C is received and determined.</p>			
4.2 PUBLIC OPEN SPACE			
Provision of public open space	Private landowners to provide public open space in accordance with Precinct Planning Framework in Section 3	Masterplan was not required to provide any public open space in accordance with Precinct Planning Framework in Section 3	N/A
5 DEVELOPMENT AND DESIGN CONTROLS			
A Environmental Sustainable Development			
A1 Energy Efficiency			
C1 – C2 Compliance with Energy Efficiency DCP and BASIX Certificate	Development meets provisions of Energy Efficiency DCP and BASIX Certificate to be submitted	Details to be provided with subsequent DA for construction	Noted – can be conditioned
A2 Water Supply and Conservation			
C1–C3 Water saving fittings	Provide AAA (or higher) showerheads, tap fittings, dual flush toilets, washing machines and dishwashers	Details to be provided for DA for construction	Noted – can be conditioned
C4 – C6 Rainwater tanks, recycled water and BASIX Certificate	Install rainwater tanks/use recycled water for toilet flushing and garden water and submit BASIX Certificate	One rainwater tank provided for each RFB BASIX Certificate to be submitted	Noted – can be conditioned
A3 Stormwater Management			
C1 Council's Guidelines for	In accordance with Council's 'Guidelines for	Stormwater Drainage Concept Plan submitted – details to be	Noted – can be conditioned

Standard	Control	Proposal	Complies
drainage	the Design of Stormwater Drainage Systems'	confirmed at DA for construction	
C2 Soil and water management plan	Soil and water management plan submitted	To be provided with DA for construction	Noted – can be conditioned
C3 Location of on-site detention	Underground OSD tanks should not be located under landscaped areas	OSD storage is provided on concrete roofs of each building. Infiltration zones are provided on road and landscape areas. Traditional drainage provided to deck areas above basement car park.	Noted – can be conditioned
A4 Site Contamination			
C1 Contamination assessment and remediation	Assessment and remediation to be in accordance with DCP 34 (prior to Stage 1 DA)	This was assessed under the original Masterplan DA & has been addressed under separate DAs for site remediation (DA13/70).	YES
C2–C5 Basements below groundwater level	Basements below ground water are discouraged Human Health Risk Assessment to be submitted Ongoing pumping of groundwater not permitted Sydney Water requirements	This was assessed under the original Masterplan DA	Noted – can be conditioned
A5 Acid Sulfate Soils			
C1 Acid Sulfate Soils Assessment	ASS assessment is required if development 2m below natural ground level is likely to lower the water table below 2m	This was assessed under the original Masterplan DA – DA 13/70 submitted for remediation and ASS.	YES
C2 Acid Sulfate Soils Management Plan	ASS Management Plan is required to be submitted	This was assessed under the original Masterplan DA – DA 13/70 submitted for remediation and ASS.	YES
A6 Waste Management			
C1- C10 Compliance with DCP 29 – Waste Minimisation and Management Guidelines	Development must comply with DCP 29	Waste Management Plan provided	YES

Standard	Control	Proposal	Complies
A7 Environmental Protection Management			
C1 Control of air pollutants	Shall demonstrate ability to control pollutants from non-residential development	This was assessed under the original Masterplan DA - Non-residential development is not proposed as part of this application.	YES
C2 – C9 Liquid and solid discharges, trade waste agreements, demolition materials, on-site air tight containers, spray booths	Discharges to conform with Protection of the Environment Operations Act 1997 Trade Waste Agreement to be obtained from Sydney Water Demolition material not to be burnt on site Loading docks to be equipped with an airtight container for containment of contaminants that may be transported Spray booths to comply with Guidelines for Spray Booths	This was assessed under the original Masterplan DA – Non-residential development is not proposed as part of this application.	YES
B Site Development			
B1 Site Analysis			
C1 Site Analysis Plan	Site Analysis Plan to be lodged with the DA	Provided with Plans	YES
B3 Lot Depth			
C1 Pemberton Street	3 storey development along Pemberton Street in 4(b1) zone must be a min of 35m (in addition to road widening of 4m) and can varied by 15m (into the 2b zone)	Generally 35m adjacent to residential.	N/A
C Parking and Vehicular Access			
C1 Car parking design	To be convenient, safe for all users, address the road, fit in with adjoining street network and not detract from local street network	Resident parking all underground with safe access points from New Street 1. Street parking along all existing and proposed roads	YES
C2 Numeric compliance	Compliance with Council's Off Street Car Parking DCP	The development provides sufficient parking per unit size in accordance with the DCP.	YES

Standard	Control	Proposal	Complies
C3 – C6 Australian Standards, design of accessways, landscaping of aboveground spaces	Compliance with AS2890.1-2004. Parking and accessways to be designed to facilitate stormwater infiltration. Suitable landscaping. Impact of above ground spaces to be minimised	The proposed parking arrangement generally complies.	Noted
C7 Storage of bicycles	Provision of on site parking and storage of bicycles	Storage for bikes has not been included in the design of the basement parking areas.	YES (subject to conditions)
C8 – C9 Traffic Report and SEPP 11	Some proposal required to submit a traffic report and be referred to RTA	N/A	N/A
C10 Forward direction	Vehicles entering and leaving must do so in a forward direction	The proposal facilitates vehicles to enter and leave in a forward direction.	YES
C11 Location of car parking 4(b1) zone	All vehicles behind building setback except development in 4(b1) zone	Behind setback for residential building/s.	YES
C12 Location of basement car park	Under footprint of building to allow deep soil landscaping along frontages abutting residential land	Extends beyond building footprint, majority of landscaping abutting residential allotments is on natural ground.	YES
C13 Above ground parking	Large expanses of bland concrete paving and asphalt not permitted	No large expanses of bland concrete paving is proposed for parking.	YES
C14 Visitor car spaces to be clearly labelled	Visitor spaces shall be clearly labelled and numbered to the relevant dwelling	Visitor parking not labelled on plans.	Noted
C15 Numeric Requirements (residential)	Min spaces required: 1 per 1 bedroom/studios = 78 2 per 2, 3 and 4 bedroom dwg/unit = 234 Total for residential = 312	Total: 346 spaces Residential - 285 basement For this DA only	Noted
C16 Visitor Spaces (residential)	1 visitor space per 10 dwgs (20 required for residential and 9 spaces for business)	Not labelled on plans.	Noted
C17 Wash Bays (residential)	1 wash bay per 10 dwgs (19 required)	2 wash bays labelled.	Noted

Standard	Control	Proposal	Complies
C18 Non-residential component	Car parking and loading facilities not to be provided within front setback	Non-residential development is not provided	N/A
C19 – C20 Manoeuvring, line marking and use of loading areas/ driveways	Provision must be made for internal loading docks for sole use by delivery vehicles. Car parking areas, driveways, docks etc. to be maintained clear of obstruction	Loading bays will be provided to commercial/industrial component as part of separate DA.	N/A
D Building Form			
D1 Site Coverage			
C1 Site coverage	Combination of multi-unit housing and RFB's Max site coverage 40% (including underground parking)	Total: 52.4% (6,913m ²) (as approved under Masterplan)	N/A (approved under original Masterplan)
C2 Local shops	Development including local shops in 2(b) zone must comply with 'combination multi unit housing and residential flat building' development type	N/A	N/A
C3 Unbuilt upon areas	Up to 10% of unbuilt upon open space may be used for single storey structures (e.g. BBQ's, pergolas, gate houses)	N/A	N/A
C4 Variations to site coverage	Variations to site coverage may be permitted in exceptional circumstances	N/A	N/A
D2 Building Height			
C1 – C2 (storeys)	Development within different sections of the precinct must comply with the following max number of storeys Pemberton Street – 3 storeys Inner north section – 3 to 4 storeys	(Pemberton Street) Blocks A, B & C 3 - 4 storeys (Inner north section) Block D - 6 storeys (Inner South Section) Block E – Partial 7 storeys (Inner East Section) Block F - 6 storeys	NO (no. of storeys does not comply, however, proposal complies with max. 22m

Standard	Control	Proposal	Complies
(max height in metres)	<p>Inner south section – 3 to 4 storeys</p> <p>Inner east section – 4 storeys</p> <p>Residential development within the 2(b) zone are to comply with the max overall ridge heights</p> <p>Development in 2(b) zone RFB's (4 storey) – max ridge height 17.05m & building height 16.05m</p>	<p>Max ridge height</p> <p>'D' – 5 storeys (19.42m)</p> <p>'E' – 6-7 storeys (21.8m)</p> <p>'F' – 6 storey (20.02m)</p>	<p>height requirements of BBLEP 2013</p> <p>NO</p> <p>NO</p> <p>NO</p> <p>Building height complies with BBLEP 2013</p> <p>(see note below)</p>
C4-C12	Basement heights, roof pitches, ceiling heights, building height and bulk, lift overruns, air conditioning screening, CASA requirements, max depth of building along Wilson Street	<p>Proposal complies with relevant requirements.</p> <p>Overall height however is non-compliant with DCP.</p>	<p>YES</p> <p>Building height complies with BBLEP 2013</p>
C13 Four storey buildings	Permitted behind the 4(b1) zone (fronting Pemberton Street, but may only have a maximum depth of 60m)	Building depth remains same as originally approved Masterplan (<60m)	YES
D3 Building Depth			
C1 Maximum depth of multi-unit housing style	Multi-unit buildings have a maximum internal plan depth of 14m	Multi-unit building not proposed	N/A
C2 Maximum depth of RFB's	RFB's have a maximum internal plan depth of 18m	<p>Block D, E & F: 18 – 21.5m</p> <p>Variation due to articulation of facades & to minimise continuous balconies.</p> <p>Max. building depth occurs where there are 2 flat plate units facing opposite aspects of a corridor. Depth of habitable space in these units is 8m or less from windows. Units designed with wide</p>	Considered appropriate.

Standard	Control	Proposal	Complies
		frontages to promote daylight access & ventilation.	
D4 Building Separation			
C1 Building separation	12m between habitable rooms 9m between habitable and non-habitable rooms 6m between non-habitable rooms	Building separation complies with SEPP 65 requirements.	Considered appropriate.
C2 Zero building separation	Permitted in appropriate contexts	N/A	N/A
C3 Building step backs	Where a building step back creates a terrace, building separation for the floor below applies	N/A	N/A
C4 In 4(b1) zone	Not required	The development is not located within 4(b1) zone	N/A
D5 Building and Landscape Setbacks			
C1 Deep soil zones	No part of a building, car park or above ground structure is to encroach upon the (landscaped) setback zone	Yes, no building, carport or above ground structure are located within the landscape setback zone area	YES
C2 Corner blocks	Setbacks must enable sufficient sightlines for traffic	N/A (RFB's do not block sightlines)	YES
C3 Substation and waste facilities	Not to be located within front landscaped setback	Details conditioned under the approved Masterplan.	N/A
C4 Setbacks to public open space	Minimum 4m setback for buildings from proposed public open spaces	No change from approved Masterplan	YES
C5 Landscaped setbacks proportional to height of buildings	Landscaped setbacks may need to be increased to enable landscaping in proportion to height of building	N/A	N/A
C6 Building and front landscaping setbacks	New Street 1 (building) northern side 5m New Street 1 (landscaping) northern side 3m Pemberton Street (rear of 4(b1) zone) (Landscape and Building) western side 3m	5m 3m landscape setback Landscaping – 3.6m Building – 12.6m	YES
C7 Rear and side	1 – 2 storeys min. 3m		

Standard	Control	Proposal	Complies
setbacks no vehicular access way	3 – 4 storeys min. 4m	5m to building (lower levels) Levels 3 to 6: 4m to balcony, 7m to building Buildings D, E & F – Separation distances also comply with SEPP 65.	YES
C8 – C9 Increased setbacks under certain circumstances	Setbacks increased by 3m for vehicle access Reduction in side setback by 1.5m for 30% of length where setback increased elsewhere	N/A	N/A
C10 Non-residential building and landscape setbacks	Pemberton Street (building) 9m (landscaping) 3m Side (building & landscaping) (adjoins non-residential) 2m (adjoins residential) 3m	9m 3m 4m	No change from original Masterplan DA
E Building Exterior – Building Design and Appearance			
C1 Maximum reflectivity	Maximum reflectivity of the glazing shall not exceed 20%	The proposed glazed balustrades are conditioned to be non-reflective at the rear. The material selection is considered satisfactory.	Noted
C2 Robust finishes	The finishes are to be robust and graffiti resistant	The materials and finishes are considered to be robust and graffiti resistant	YES
C3 – C6 Roof Fixtures	The visual impact of roof structures are to be minimised	Visual impact of plant rooms is minimised and integrated with the design of the buildings. The buildings each contain a central lift core that is positioned to minimise its visibility.	YES
E2 Residential and Non-Residential Interface			
C1 – C2 Lighting & Building Security	Site lighting for building security is not to cause annoyance or glare to neighbours	Appropriate conditions may be imposed.	Noted
C7 Non-reflective colours and materials	Walls of buildings adjacent to residential areas are to be made from non-reflective colours and materials	The proposed glazed balustrades are conditioned to be non-reflective at the rear. Other material choice is considered satisfactory.	YES

Standard	Control	Proposal	Complies
E3 Building Entrances			
C2 Entrance Shelters	Entrances are to be sheltered	The entrances are proposed to be sheltered	YES
C3 Main Entry	The main entry is to be separate from car entries	The dwellings are provided with a separate front door	YES
E4 Site Facilities			
C1 Provision of Water and Sewerage Service	Section 73 Compliance Certificate	May be conditioned.	Noted
C2 – 21 Site Facilities	Site facilities and accessibility to facilities such as clotheslines, utility services, telecommunications/TV antennas, solar water heaters and air conditioning, and compliance with Council's requirements.	<p>All units have access to a balcony for private open space which may be used for drying purposes and potted gardens.</p> <p>Appropriate conditions of development consent have been included to ensure that the applicant is aware of Council's requirements regarding site services</p> <p>Any air-conditioning unit is not to be visible from the streetscape.</p>	Noted
E5 Solar Access and Overshadowing			
C1 Solar access to proposed dwellings	Living rooms and private open spaces or at least 90% of dwellings receive a minimum of 3 hours direct sunlight between 9am and 3pm in mid winter.	<p>Shadow diagrams were submitted with the development application.</p> <p>The shadow diagrams conclude that approximately 63% of the units will receive in excess of 2 hours of direct sunlight between 9am and 3pm in mid winter. 75% achieve 2hrs between 7:30am to 4:15pm. Due to the orientation of the site, it would not be possible to obtain 90% of units receiving more than 3 hours of solar access.</p>	Noted
C2 Solar access to open spaces	Locate communal open spaces on site so that solar access to them in winter is maximised	As indicated on the shadow diagrams submitted, the communal open space located on level 2 will receive partial solar access during mid winter.	Satisfactory
E6 Visual Privacy			
C1 Visual Privacy	Direct overlooking of habitable rooms and private open space of dwellings is to	The proposal includes a number of units located on the south & along the eastern boundaries of	Satisfactory

Standard	Control	Proposal	Complies
	be minimised	the site. The units have living rooms, habitable rooms and balconies facing the adjoining site. Given the proximity & separation distances it is probable that indirect overlooking will occur within the site. As the proposal complies with minimum separation distances under SEPP65 and DCP31, the level of privacy achieved is considered acceptable.	
E7 Pedestrian Access and Circulation			
C1 Accessibility	Development is to comply with Development Control Plan – Access	The development is required to comply with Access to Premises Standards. Conditions of development consent are included.	Noted
E8 Safety and Security			
C1 Safety and Security general	The dwelling must be designed to ensure casual surveillance of the immediate area around the dwelling	The proposed dwellings are designed in a way that facilitates casual surveillance.	YES
C2 Lighting	To pedestrian ways, front doors, car parking etc	May be conditioned.	Noted
C3 Sydney Airport	Lighting is to comply with Section 9.21: Lighting in the Vicinity of Aerodromes Manual of Standards, Part 139 – Aerodromes Version 1.1	May be conditioned.	Noted
C7	Buildings opening onto public streets shall have at least one habitable room window with an outlook to that area	The proposal includes windows and doors that provide surveillance onto the public & dedicated roads.	YES
E10 Fences and Walls			
C1 Fences at street frontages	Solid metal fences are not permitted along street frontages & all gates shall open inwards	The proposal does not propose solid metal fences along the streetscape	YES
C2 Fencing over 1m high	Must take into consideration sight line issues	Sightlines over the fence are achievable.	YES
C3 Retaining Walls	Where required over 500mm shall be masonry or finished concrete	Complies	YES

Standard	Control	Proposal	Complies
C6 Residential – front fence	Fences over 600mm (masonry) and 1 metre (picket) may be a maximum of 1.7 metres high if not less than 50% is transparent	No front fencing forms part of this proposal.	N/A
C7 Residential Side Fence	Maximum height of side or rear fence is 1.8 metres	N/A	N/A
E14 Wind Mitigation			
C1 Wind mitigation report	Required when more than 4 storeys are proposed	Submitted, and is satisfactory	YES
E15 Demolition			
C2 – C10	Demolition measures and requirements must comply with AS2601 – The demolition of structures – and Council general requirements	Demolition approved under Masterplan DA10/313	N/A
F Building Interior – Dwelling Layout, Sizes and Mix			
C1 Minimum dwelling sizes	Studio: 60m ² 1 Bedroom: 75m ² 2 Bedroom: 100m ² 3 Bedroom: 130m ²	All units achieve the minimum unit sizes.	YES
C2 No's studio and one-bed units	The combined number of studio units and one bedroom units shall not exceed 25% of the total	The proposal includes 36% units (combined studio and one-bed units). This is non compliant.	NO
C3 Internal widths	Cross over units = 4metres	The minimum internal width provided in 4 metres	YES
C4 Single aspect dwellings	Single aspect dwellings should be limited in depth to 8m from a window	Single access units provide a max. depth of 12m	Satisfactory
C5 Distance of window from kitchen	The back of the kitchen should be no more than 8 metres from a window	Generally kitchens are within 8 metres from a window – minor variation sought.	YES – considered satisfactory.
C6 The crossover width	The width of cross through dwellings more than 15m deep should be 4m or wider.	Cross-over units are 4m wide	YES
C7 – C11 General interior	Dwelling rooms can be closed off, laundry/kitchen in a convenient location, floor to ceiling heights appropriate for kitchen and bathroom, bathrooms are separate from living areas	The units are designed with the ability to close off rooms and separate rooms are provided for bathrooms.	YES
F4 Adaptable Housing			

Standard	Control	Proposal	Complies
C1 Adaptable housing rates	Rates as per Table 5.10 For developments.	A total of seven (7) adaptable units are required. Conditions of development consent have been included to provide adaptable housing.	YES (subject to conditions)
F5 Ceiling Heights			
C1 Ceiling heights	Ground floor = 2.7 metres First floor = 2.7 metres Above first floor (habitable) = 2.7 metres Dwelling entry = 2.4 metres	The proposal complies with the required ceiling heights	YES
F7 Internal Circulation			
The controls in this section include: <ul style="list-style-type: none"> Common area corridors being a minimum width of 2 metres; Amenity and safety in circulation being improved by: appropriate lighting; minimising corridor lengths; directional signage and adequate ventilation; Encouraging better building layouts by designing buildings with multiple cores; Limiting the number of units accessible from a single/core corridor to 8; and Provision of articulated corridors. 	<p>The corridor widths vary from 1.5m to 2.3 metres. The varying width avoids the gun barrel approach and provides indentations and definition in the corridor spaces. Adjacent to the lifts, the corridors have a minimum width of 2 metres. Corridor widths comply with disabled access requirements</p> <p>All corridors have been designed with natural light and ventilation which enhances the internal amenity</p>	Generally complies with these requirements	YES
F8 Balconies			
C1 Min number of balconies	At least one balcony or terrace is to be provided off the living area	The proposed development provides balconies off living areas	YES
C2 Minimum area of balconies off living areas	12m ²	Generally complies. Most units are provided with more than 12m ² .	YES
C4 Façade	Balconies should not be continuous across the entire façade of the apartment	The balconies do not continue across the entire façade of the dwelling.	YES

Standard	Control	Proposal	Complies
C5 Privacy	Privacy is to be increased by providing transition areas	The proposed dwellings provide an acceptable level of privacy between the balconies as many have blade walls between each unit.	YES
F9 Acoustic Privacy and Noise Management			
C1 Offset of Habitable Windows	Habitable room windows with a direct outlook to habitable room windows in and adjacent dwelling within 9m	The proposed development has complied with this requirement. Where there is conflict privacy screens have been provided.	YES
C2 Shared walls	Bedroom walls do not share walls with living rooms of adjacent dwellings	Compliant	YES
C3-C4	Plumbing and internal noise levels no greater than 50dBA / and Australian Noise Exposure Forecast	May be conditioned.	Noted
C5 Bedrooms from shared streets and driveways	3m from shared streets/driveways	2m from New Street 1. Considered appropriate due to landscape buffer.	Satisfactory
F10 Storage			
C1 Storage within the apartment	At least 50% of the storage is to be accessible from either a hall or living room.	Majority of apartments have accessible storage.	YES
C2 Storage rates	Studio = 6m 1 Bed = 8m 2 Bed = 10m 3 Bed = 12m	May be conditioned.	Noted
G Open Space – G1 Private and Communal Open Space			
C1 Private use	Private open space is to be clearly defined for private use	The proposed private open spaces are provided on the balconies or terraces attached	YES
C2 Gradient and area	Private open space shall be no steeper than 1:10 and be 6m by 4m and be directly accessible from the living areas	The private open space provided is accessible from the living rooms	YES
C4 Private Open Space Requirement	Development type – residential flat building <ul style="list-style-type: none"> - Studio and 1 Bed = 12m² - 2 Bed = 15m² - 3 Bed = 19m² 	The development complies generally with the size requirements for balconies which provides private open space	YES

Standard	Control	Proposal	Complies
C5-C11 Communal Open Space Minimum communal open space	Residential Flat Building = 20% of the site area Provided over deep soil zones and not suspended slabs, car parks or stormwater detention tanks To be easy walking distance from units Shall be appropriately landscaped with facilities for recreation and relaxation Shall be designed in conjunction with pedestrian links through the site.	The communal open space proposed equates to 23% of the site area. Consistent with approved Masterplan Central location accessible to all residents. Passive recreation provided within. Pedestrian links to be provided with DA for mixed-use development.	YES
G2 Landscape Treatment			
C1	Landscaping shall be in accordance with Development Control Plan No. 32	May be conditioned.	Noted
C2 Existing trees	Major trees through the site are to be retained	N/A	N/A
C3 – C8 Landscape Provisions	Landscaping is integral to the site planning process The landscaping is to complement the development Landscaping shall take into consider optimum conditions for plant growth Deep soil areas shall be located at a minimum along the front and sides of the development	Council's landscape officer has considered the application. Areas of planting are to be increased to 900mm to support large trees.	Noted
C9 Landscaped buffer	A continuous landscape buffer shall be provided between driveways and the site	The driveway is located off the New Street 1 frontage. Landscaping along the verge is provided.	YES
C10	Planter beds shall be a minimum of 1 metre wide	May be conditioned.	Noted
C11-14	Appropriate mix of small and large sized trees Irrigation system	May be conditioned.	Noted

DISCUSSION

This section of the report addresses the areas of non-compliance with Council's DCP 31 for the Pemberton-Wilson Street Precinct and appear as headings in order of the above compliance table

D2. Building Form – Building Height

The subject Development Application seeks additional storeys to be placed on Buildings D, E and F and has been brought about following the gazettal of the Botany Bay LEP 2013 which permits a maximum building height of 22m, and which is considerably greater than the current DCP controls.

The consolidating Draft DCP which is currently on exhibition until 23 August 2013 contains controls in relation to 'building height' which require compliance with clause 4.3 of the Botany Bay LEP 2013.

Building 'E' is the only building that does not comply with the maximum building height requirements of cl.4.3. The lift overrun of this building will result in a maximum building height of 22.9m, which breaches cl.4.3 of the BBLEP 2013 by 0.9m.

Clause 5.6 however permits a variation to cl.4.3 which permits roof features that exceed the height limit of cl.4.3 may be carried out with development consent if certain design criteria is fulfilled. Significantly, the objective of cl.5.6 are *"to ensure that architectural roof features to which this clause applies are decorative elements only and that the majority of the roof is contained within the maximum building height standard."*

The entire roof form of all three buildings will be below the maximum 22m height limit and fulfil the requirements of cl.5.6 of the recently gazetted Botany Bay LEP 2013.

Matters of privacy and solar amenity have been taken into consideration and will not impact on the internal amenity of the development or the internal and external amenity of the adjoining development ('Parkgrove One').

F1 Building Layout, Sizes and Mix

DCP 31 requires dwellings, dependent upon the apartment typology, to have minimum internal areas and widths, whilst the total number of studios and one-bedroom apartments shall not exceed 25% of the total number of apartments.

The proposed development provides the following unit mix:

- 1 bedroom/studio 37%
- 2 bedroom 63%
- 3 Bedroom <1%

The applicant submitted with the original Masterplan a Marketability Report prepared by Colliers International dated November 2010, which made the following conclusions:

"MIX: There are three major factors driving the appropriate (for both market acceptance and project funding target requirements) mix of apartments:

- *A general trend towards individual occupation of dwellings, and on-average decreasing number of dwelling occupants*
- *The upward pressure on rents, and relatively high level of apartment rental take-up in Botany, and the necessity to continue to provide rental stock*

- *The over-arching affordability issue.*

On that basis, an appropriate mix of apartment types is as follows:

- *Studio and 1 bedroom: 50%*
- *2 bedroom: 40%*
- *3 bedrooms: 10%*

In a letter dated 3 March 2011, the applicant amended the unit mix for studio/one bedrooms to 45% and provided the following:

“The subject DA seeks approval for a maximum 45% of studio and one bedroom apartments across the entire development site. The 45% maximum was supported by a residential apartment marketability report, prepared by Colliers International and submitted to Council in 25 November 2010. The report provides justification and supports a higher percentage of ‘affordable’ units within the Sydney metropolitan area. As a side effect of Botany Council’s desire for larger units and the requirement for developers to comply with minimum dwelling sizes from 60 square metres, no more than 45% studio and one bedroom apartments are targeted. Condition 8(c) of the existing consent sets the requirement of minimum unit sizes”

SEPP 65 states that new developments are to provide “a variety of apartment types between studio, one, two and three plus bedroom apartments, particularly in large apartment buildings. It also states that a development should “refine the appropriate apartment mix for a location by:

- *considering population trends in the future as well as present market demands*
- *noting the apartment’s location in relation to public transport, public facilities, employment areas, schools and universities”*

Based on the above and the evidence previously provided by the applicant, it is considered that the variation to allow 37% of the development to be studio and one bedroom units is feasible in that the site is located near public transport and within an employment generating area due to its proximity to Port Botany and surrounding industrial areas. Also, the site is one of three major redevelopment sites which can accommodate significant unit numbers in the Pemberton/Wilson Street Precinct where, should market demand change, the remaining sites will be able to accommodate the demand for alternate unit types.

(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 DA.

(c) The suitability of the site for the development

These matters have been considered in the assessment of the Development Application.

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

These matters have been considered in the assessment of the DA.

During the notification and advertising of the revised application, 1 submission was received (comprising a petition signed by 44 residents).

The main issues raised within the submissions are discussed below.

The covering submission refers to the proximity of Buildings E and F to the existing townhouses being Buildings G & H on the 'Parkgrove One' site and facing Wilson Street. When looking at the maps below, it seems that some of the objection/s raised may be erroneously referring to Buildings E and F on the Parkgrove One site (which have been approved up to 6 storeys under DA05/459/05), and not Buildings E and F at the subject site (being Parkgrove Two), which will have no impact upon either the townhouses in Buildings G and H in Parkgrove One site, or, the existing residences in Wilson Street (see map below).



Parkgrove One site to the south, subject site (Parkgrove Two) to the north.

Notwithstanding the above, a meeting was held between the objector who generated the petition and Council officers (including the Director, Planning & Development) where it was pointed out that the terms of the objection may be referring to the adjoining site (Parkgrove One).

The response from the objector was that the objection still stands.

The issues raised in the petition were as follows:

- *Under Council's current Draft LEP Map 5 has within boundaries an area designated 'K'. According to the LEP, area K have a maximum building height of 10metres. This equates to a building approximately 3-4 levels in height. Presently under construction are buildings that are currently 5-6 levels in height and the Section 96 Application above seeks to add further levels still.*

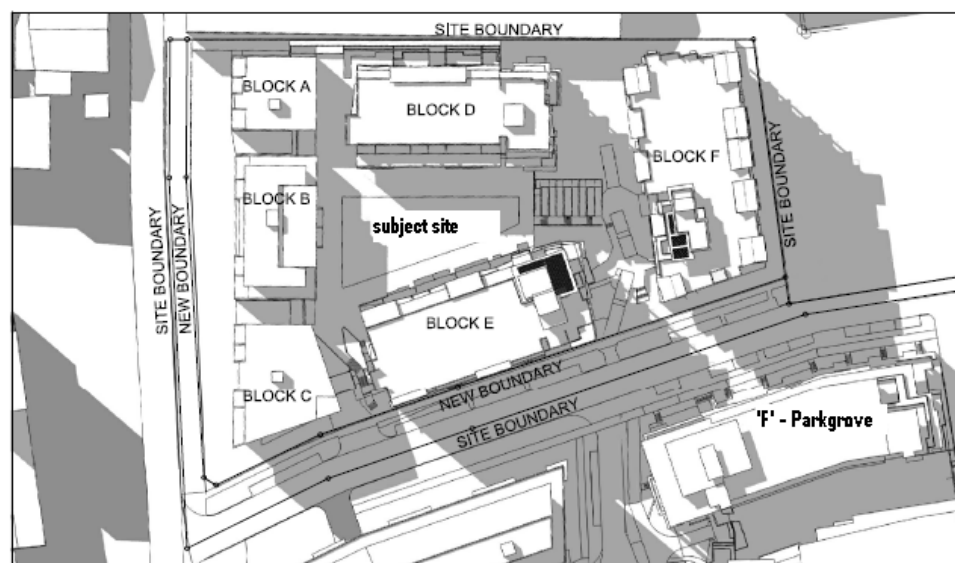
Officer's Comments: Clause 4.3(2A) of the Botany Bay LEP 2013 permits within areas of land zoned R3 Medium Density or R4 High Density Residential where those sites exceed 2,000m² that the height of a building on that land may exceed the maximum height shown for the land on the Height of Buildings Map but must not exceed 22m.

Clause 5.6 permits a variation to cl.4.3 so long as the majority of the roof is within the maximum building height standard. As demonstrated in this report, the entire roof form of all three buildings complies with the 22m height requirement.

It should be noted that the buildings the subject of this report are not presently under construction.

- *The distance between existing buildings G & H (townhouses) and buildings E & F is too minimal to further increase the height of buildings E & F. This would impose a greater shadow over G & H at all times of the year, as well as decrease the privacy of G & H townhouse residents and residents on the eastern side of Wilson Street.*

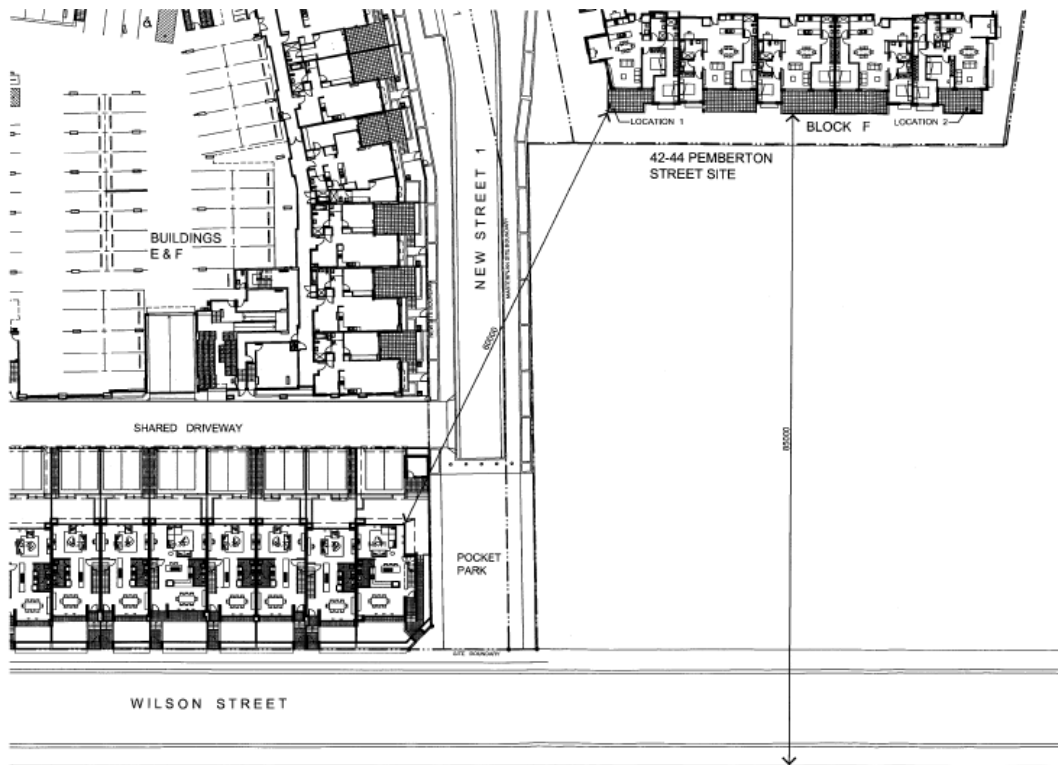
Officer's Comments: Below is a shadow diagram of the proposal, which clearly indicates that the buildings the subject of this report will not adversely affect the amenity of the recently completed townhouses on Wilson Street. It seems apparent that the objector/s are referring to Buildings E and F on the Parkgrove One site and not the subject site.



01 21 JUNE - 2PM

Overshadowing plans at 2pm during Winter solstice

In addition to the above, the applicant has submitted a plan and perspectives demonstrating the significant distance between the subject proposal (Parkgrove Two) and the minimal impact upon the previously approved townhouses within the Parkgrove One site.



The plan above shows 60m between the rear of Building F and the approved townhouses, and 85m to the residences on the eastern side of Wilson Street.



View from Level 4 of Building F at closest point towards rear of existing townhouses (Buildings G and H of Parkgrove One).



View from Level 6 of Building F at closest point towards rear of existing townhouses (Buildings G and H of Parkgrove One).

- *Construction on buildings E & F has already reached a height (contrary to Council's own current draft LEP) whereby apartments will be able to look into the rear yards of Wilson St properties.....*

Officer's Comments: An increase in the height of Buildings E and F on the Parkgrove One site was considered and approved by Council at its meeting on 1 August 2012 (under DA05/459/05). The subject application proposes an increase in the number of storeys to Buildings D, E and F on the adjoining site (42-44 Pemberton Street, Botany – being Parkgrove Two).

- *The application to increase the number of apartments and car spaces does not coincide with any infrastructure enhancements by either the developer or Council in the greater area.....*

Officer's Comments: The increase in density and resultant increase in traffic has been suitably addressed by the applicant with the submission of a traffic report. The proposed increase in gross unit numbers from 165 to 195 is only considered to be marginal for such an expansive site with the net increase in traffic to and from the site being negligible.

Residents Consultative Committee

In addition to the above, the Residents Consultative Committee met on Monday evening 29th July at which time the four (4) items of the petition were responded to, the essence of which included:-

- Confirmation of Council's current controls under the recent Botany Bay LEP 2013;
- Building Height;
- Privacy of adjoining R2 Zoned land on Wilson Street; and
- Traffic Issues.

The residents were keen to see a traffic sharing strategy be developed, and closed intersections such as Bay Street and Wentworth Ave for example, should be opened to permit a general use of Bay Street as an alternative to Page Street.

A detailed Comprehensive Traffic Study would be required to be undertaken by Council to examine the cumulative effect of the increased traffic within the precinct and its broader effect upon the surrounding area.

In respect of height, concern was raised at the proposed height of Building E (calculated at 7 storeys) notwithstanding that the height is within the LEP control of 22m. The concern is predicated on privacy and precedence in that it exceeds 6 storeys.

Whilst Building E may not set a precedent in so far as height is concerned, undertakings were however given to the residents to respond to the privacy issues.

Other Matters

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. On 15 March 2011, NSW Planning issued further S94E Directions, which continued to cap the on residential dwellings to \$20, 000.

A condition of consent exists in the approved Masterplan that requires s.94 Contributions to be paid in accordance with Council's Contributions Plan 2005-2010 as indexed on a yearly basis and which will be calculated and imposed as appropriate conditions of consent during the determination of each subsequent DA.

The development application seeks approval for 158 new apartments, comprising:

- 20 x studio apartment
- 40 x 1 bed apartment
- 103 x 2 bed apartments; and
- 1 x 3 bedroom

The Department of Planning and Infrastructure's direction under Section 94E of the *Environmental Planning and Assessment Act 1979* states that residential development contributions have a maximum threshold of \$20,000 per dwelling. In accordance with Council's policy, the following Section 94 Contribution applies:

$$164 \text{ dwellings} \times \$20,000 = \$3,280,000$$

Therefore, the **total Section 94 Contributions** required is \$3,280,000

External Referrals

Energy Australia

In correspondence dated 30 November 2012, Ausgrid provided the following advice and proposed condition of development consent:

"I wish to advise that Ausgrid will require the provision for an electricity substation within the premises a condition of any development consent."

Sydney Airport Corporation

In correspondence dated 11 June 2013, Sydney Airport Corporation (SACL) has raised no objection to the increased height of the buildings subject to conditions of consent.

NSW Police

In correspondence dated 30 January 2013 the Mascot Police Local Area Command advised that a medium crime risk rating has been identified for the proposed development. The advice includes a range of recommendations regarding security, lighting and access control.

Internal Referrals

The development application was referred to Council's Engineering Services Department, Parks and Landscape Department; Traffic Department; Environmental Health and Council's Environmental Scientist for comment. Appropriate conditions have been imposed on the development consent to address the relevant issues raised.

RECOMMENDATION

In view of the preceding assessment, it is RECOMMENDED that the Joint Regional Planning Panel for the Sydney East Region, as the Consent Authority, resolve to refuse Development Application No. 12/206 for the following works:

- Construction of 164 residential units within Buildings D, E and F;
- Construction of 346 underground car parking spaces. (285 spaces being dedicated to Buildings D, E and F). within a basement level car park;
- To construct Building D being a 6 storey building containing 41 units;
- To construct Building E being a 7 storey building containing 63 units; and,
- To construct Building F being a 6 storey building containing 60 units.

REASONS FOR REFUSAL:

1. The application made under Section 96(2) of the EP & A Act 1979 to modify the Masterplan consent under DA10/313 has been refused by Council as the consent authority;
2. The development application as proposed under DA12/206 for buildings D, E & F at 42-44 Pemberton Street, Botany does not constitute a development that will be substantially the same as the Masterplan development approved under DA10/313.