

**JOINT REGIONAL PLANNING PANEL  
(East Region)**

<b>JRPP No</b>	<b>2013SYE050</b>
<b>DA Number</b>	<b>DA 11/018/05</b>
<b>Local Government Area</b>	<b>City of Botany Bay</b>
<b>Proposed Development</b>	<p><b>Section 96(2) Application to modify Development Consent No. 11/018, as follows:</b></p> <ul style="list-style-type: none"> <li>▪ <b>Construct an additional nine apartments;</b></li> <li>▪ <b>Construct an additional two townhouses;</b></li> <li>▪ <b>Include an additional seventeen (17) car parking spaces;</b></li> <li>▪ <b>Amend the external building facades from select face brickwork to painted finish;</b></li> <li>▪ <b>Modify previously approved unit layouts;</b></li> <li>▪ <b>Modify associated conditions of consent;</b></li> <li>▪ <b>Add No. 4 Jasmine Street, Botany to the development.</b></li> </ul>
<b>Street Address</b>	<b>4-32 Jasmine Street and 68-70 Bay Street, Botany</b>
<b>Applicant</b>	<b>Great Tang Brothers Pty Ltd</b>
<b>Number of Submissions</b>	<b>Four (4) submissions</b>
<b>Recommendation</b>	<b>Approval</b>
<b>Report by</b>	<b>Rodger Dowsett, Director Planning and Development</b>

## **THE DIRECTOR OF PLANNING AND DEVELOPMENT REPORTS:**

### **PRECIS**

#### **Background**

This Section 96(2) Application has been received by Council on the 17 April 2013 to modify Development Consent No. 11/018, in the following manner:

- Construct an additional nine apartments through Buildings 1, 2 and 3. This will increase the number of apartments from 95 to 104;
- Construct an additional two townhouses. The additional 2 x 4 bedroom townhouses are proposed to be located in part, on the newly acquired Lot 3 in DP 19083 (4 Jasmine Street), which are to be two storey plus attic to match the existing approved townhouses facing Jasmine Street, together with a new deep soil planting area adjacent to existing dwellings on Bay Street;
- Include an additional seventeen (17) car parking spaces. The Applicant seeks to reconfigure the approved basement dimensions, by reducing the width of the narrow deep soil planting area along the eastern boundary adjoining No. 1-3 Myrtle Street and by extending the basement area to the north-western part of the building (under the approved retail area) and south to accommodate an additional 17 car parking spaces. Therefore, the proposed amendment seeks to increase the total car parking spaces on site from 216 spaces to 233 spaces.
- Amend the external building facades from select face brickwork to painted finish;
- Modify previously approved unit layouts;
- Modify associated conditions of consent;
- Add No. 4 Jasmine Street, Botany to the development.

Council sought legal advice in relation to the validity of the proposed Section 96(2) Application to ensure that the proposed changes are substantially the same development or whether a new development application is required for the amendments proposed. As a result of the advice received, the subject Section 96(2) Application is considered to be substantially the same development and can be considered by the JRPP as such.

The Section 96(2) application is required to be referred to the Joint Regional Planning Panel pursuant to Clause 3 of Schedule 4A of the Environmental Planning and Assessment Act 1979 (EP&A Act) as the Capital Investment Value of the initial proposal exceeds \$20 million.

The Section 96(2) application is also Integrated Development, pursuant to Section 91 of the EP&A Act 1979 as the development involves temporary construction dewatering and therefore requires approval from the NSW Office of Water. In a letter dated 19 June 2013, the NSW Office of Water, has granted General Terms of Approval to the proposed amendments.

The Section 96(2) application was also referred to Sydney Airport Corporation Limited (SACL) given the additional height proposed to Building 1 on the corner of Jasmine and Myrtle Streets. In a letter dated 3 July 2013, SACL did not raise any objection to the additional height.

It should be noted that lot consolidation of the approved site has occurred with No. 4 Jasmine Street and as such, this Section 96(2) Application seeks to formalise the inclusion of No.4 Jasmine Street and subsequently the site area has increased to 9,316m<sup>2</sup>.

### **BBLEP 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 BBLEP 2013 provides savings provisions relating to development applications but does not provide savings provisions relating to a Section 96 modification to a development consent. As such, the Section 96(2) application was considered under the provisions of *Botany Bay Local Environmental Plan 2013* due to the absence of savings provisions for applications to modify a consent under Clause 1.8A of the Plan.

### **Floor Space Ratio**

The maximum FSR permitted for the subject site under BBLEP 2013 is 1.5:1.

The Section 96(2) application seeks an FSR of 1.47:1 (13,681m<sup>2</sup>, based on a site area of 9,316m<sup>2</sup>) under BBLEP 2013, which is less than that permitted under Clause 4.4(2A) of BBLEP 2013.

### **Height**

The maximum height permitted under BBLEP 2013 is 22 metres.

The Section 96(2) application seeks to increase the height of Building 1 and to reduce the overall height across the site to 20.20 metres, which is less than that permitted under Clause 4.3(2A) of BBLEP 2013.

### **Public Exhibition**

Prior to the public exhibition of the Section 96(2) application, a Residents Consultative Committee meeting was held on the 13 May 2013.

The Section 96(2) application was publicly exhibited for a period of thirty (37) days between 3 July 2013 to 8 August 2013 in accordance with Council's Notification DCP, including an advertisement in the newspaper and site notices. Four (4) submissions were received in response to the proposed Section 96(2) application. The issues raised in the submissions relate to the proposed height and built form of the development, solar access impacts and traffic generation.

### **Officer Recommendation**

The Section 96(2) application is referred to the Joint Regional Planning Panel (JRPP) for determination pursuant to Clause 3 of Schedule 4A of the Environmental Planning and Assessment Act as the Capital Investment Value of the original development exceeds \$20 million.

The recommendation is for approval, as stated below:

*It is recommended that the Joint Regional Planning Panel (JRPP), as the determining Authority in this instance, resolve:*

- (a) *That pursuant to Section 96(2)(a) of the Environmental Planning and Assessment Act, 1979, Council is satisfied that the development of which Development Consent No. 11/018 is proposed to be modified is substantially the same development as was originally approved; and*
- (b) *That the Section 96(2) Application was referred to the relevant minister, public authority or approval body (within the meaning of Division 5), being NSW Roads and Maritime Service and NSW Office of Water in respect of conditions imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval granted by the approval body, as conditions are proposed to be amended as imposed by concurrence to the consent or in accordance with the general terms of the approval granted; and*
- (c) *That the Section 96(2) Application was notified in accordance with the Environmental Planning and Assessment Regulations 2000 and the Council's Development Control Plan (DCP) No. 24; and*
- (d) *Pursuant to Section 96(2) of the Environmental Planning and Assessment Act, 1979, amend Development Consent No. 11/018, as follows:*

- (i) *Amend the description of the development to read as follows:*

**Stage 1 – Removal of the remaining slab(s) and clearing of the surface of the site at 4-32 Jasmine Street and 68-70 Bay Street, Botany, to allow the installation of groundwater monitoring bores to address the issued identified in the General Terms of Approval granted by the NSW Office of Water; and**

**Stage 2 - The excavation at the site and construction of the mixed residential and retail development accommodating 104 apartments, 16 townhouses, 280m<sup>2</sup> of retail floor space, car parking for 233 vehicles located within a partial basement level and planting in accordance with the submitted landscape plan, at 4-32 Jasmine Street and 68-70 Bay Street, Botany. (DA11/018/05)**

- (ii) Amend the following Conditions under Stage 1 of the consent:
  - a. Conditions No. 1, 3(a), 3(b), 6 and 37;
- (iii) Amend the following Conditions under Stage 2 of the consent:
  - a. Nos 1, 3(a), 3(b), 6, 9, 10, 68, 88, 98, and 110;
- (iv) Add Condition No. 2(v) requiring additional Section 94 contributions and Condition No. 111, requiring a Building Certificate.

## **SUMMARY OF REPORT**

<b>Recommendation:</b>	Approval
<b>Special Issues:</b>	Cumulative Traffic Impact, Privacy and Height
<b>Public Objection:</b>	Four (4) submissions
<b>Permissible:</b>	Yes

## **THE DIRECTOR OF PLANNING AND DEVELOPMENT REPORTS:**

### **Executive Summary**

A Deferred Commencement Consent was granted by the Joint Regional Planning Panel on the 20 July 2012, for the following:

*Stage 1 – Removal of the remaining slab(s) and clearing of the surface of the site at 8-32 Jasmine Street and 68-70 Bay Street, Botany, to allow the installation of groundwater monitoring bores to address the issued identified in the General Terms of Approval from the NSW Office of Water dated 1 April 2011; and,*

*Stage 2 - The excavation at the site and construction of the mixed residential and retail development accommodating 95 apartments, 14 townhouses, 280m<sup>2</sup> of retail floor space, car parking for 216 vehicles located within a partial basement level and planting in accordance with the submitted landscape plan, at 8-32 Jasmine Street and 68-70 Bay Street, Botany.*

An operational consent was granted by Council on the 20 July 2012.

Section 96(1A) Application (11/018/02) to modify Development Consent No. 11/018 was approved by Council on the 12 September 2012 for modifications to allow the shoring works to be undertaken as part of Stage 1. According to the Applicant, the works permitted under Stage 1 required the issue of two (2) Construction Certificates (CC1 and CC2).

Section 96(1A) Application (11/018/03) to modify Development Consent No. 11/018 was approved by Council on the 25 October 2012 to delete the term “any” from in front of the Construction Certificate Conditions section (and relevant conditions) to allow the issue of multiple Construction Certificates, and for corrections to the plan numbers listed in Condition 1 of Stage 1 and Stage 2.

Council has issued numerous Construction Certificates for DA11/018 for bulk excavation, shoring and the basement, which is presently under construction on site.

A Section 96(2) Application has now been received seeking to modify Development Consent No. 11/018 to:

- Construct an additional nine apartments;
- Construct an additional two townhouses;
- Include an additional seventeen (17) car parking spaces;
- Amend the external building facades from select face brickwork to painted finish;
- Modify previously approved unit layouts;
- Modify associated conditions of consent;

- Add No. 4 Jasmine Street, Botany to the development.

The provisions of State Environmental Planning Policy (State and Regional Development 2011) have been considered in the assessment of the Section 96(2) Application. The SEPP was amended in 2011 to increase the capital investment value (CIV) threshold for development listed within Schedule 4A of the EP& A Act 1979. As the CIV for the intinial development application was in excess of \$20 million, the Section 96(2) Application is required to be determined by the Joint Regional Planning Panel (JRPP).

It should be noted that Botany Bay LEP 2013 was gazetted on 21 June 2013 and came into force on 26 June 2013 and is applicable to the subject Section 96(2) application as Clause 1.8A of BBLEP 2013 (transitional provisions) does not apply.

The Section 96(2) Application has been assessed in accordance with the relevant requirements of the Environmental Planning and Assessment Act 1979 and recommended for approval, subject to the schedule of modified conditions.

### **Site Description**

The subject site is identified as 4-32 Jasmine Street and 68-70 Bay Street, Botany. The land was formerly held under multiple titles and was recently consolidated into one allotment, now identified as Lot 1 in DP 1176175. The site has a 63.5 metre frontage to Myrtle Street to the north, a 123.1 metre frontage to Jasmine Street to the west and a 26.8 metre frontage to Bay Street to the south. The total site area of Lot 1 is 9,316m<sup>2</sup>.

The site is located within the R3 – Medium Density Residential zone and the approved Development Consent No. 11/018 is currently under construction. The site was formerly occupied by a number of light industrial and warehouse buildings and two pairs of semi-detached and stand alone dwellings with respective frontages to Jasmine Street, Myrtle and Bay Streets. These buildings were demolished in accordance with Development Consent No. 11/031.

### **Site Photos**





## Locality Plan



## Site and Development History

### DA11/031

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

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

A further Section 96(1A) Application No.11/031/03 to allow the removal of the ground floor slab and paved structures was withdrawn by the Applicant on the 27 April 2012, as the main DA11/018 included the proposed works and was by then to be determined by the Panel.

### DA11/018

A Deferred Commencement Consent was granted by The Joint Regional Planning Panel on the 20 July 2012 for the following:

*Stage 1 – Removal of the remaining slab(s) and clearing of the surface of the site at 8-32 Jasmine Street and 68-70 Bay Street, Botany, to allow the installation of groundwater*

*monitoring bores to address the issues identified in the General Terms of Approval from the NSW Office of Water dated 1 April 2011; and,*

*Stage 2 - The excavation at the site and construction of the mixed residential and retail development accommodating 95 apartments, 14 townhouses, 280m<sup>2</sup> of retail floor space, car parking for 216 vehicles located within a partial basement level and planting in accordance with the submitted landscape plan, at 8-32 Jasmine Street and 68-70 Bay Street, Botany.*

An operational consent was granted by Council on the 20 July 2012.

Section 96(1A) Application (11/018/02) to modify Development Consent No. 11/018 was approved by Council on the 12 September 2012 for modifications to allow the shoring works to be undertaken as part of Stage 1. According to the Applicant, the works permitted under Stage 1 required the issue of two (2) Construction Certificates (CC1 and CC2).

Section 96(1A) Application (11/018/03) to modify Development Consent No. 11/018 was approved by Council on the 25 October 2012 to delete the term “any” from in front of the Construction Certificate Conditions section (and relevant conditions) to allow the issue of multiple Construction Certificates, and for corrections to the plan numbers listed in Condition 1 of Stage 1 and Stage 2.

Council has issued Construction Certificates as the replacement PCA for DA11/018 for bulk excavation, shoring, the basement and building structure, which is presently under construction on site.

#### **DA12/171**

Development Application No. 12/171 was received by Council on the 21 September 2012 for the alterations and additions to the approved Development Application No. 11/018 including:

- Modification of approved Townhouse No. 06 by provision of an additional bedroom;
- Construction of three (3) additional townhouses;
- Modification of approved basement to allow provision of additional 13 parking bays.

#### **DA12/175**

Development Application No. 12/175 was received by Council on the 28 September 2012 for the alterations and additions to the approved residential flat buildings (identified by Council as Buildings 1, 2 and 3) as approved by DA11/018 which will result in an additional twenty (20) units; and reconfiguration and expansion of the basement car park as approved by DA11/018 to include an additional 44 parking spaces.

In a letter dated 13 February 2013, the Applicant has requested that both DA12/171 and DA12/175 be held in abeyance, subject to the assessment and determination of the current Section 96(2) Application, (11/018/05).

The current Section 96(2) application and that now before the Panel presents a reduced built form to that proposed under DA12/171 and DA12/175.



The following tables provides a comparison of each of the development applications against the proposed Section 96(2) Application.

***DA12/171 – Three additional townhouses***

<b>Total Townhouses</b>	<b>Total Apartments</b>	<b>Car Parking</b>	<b>FSR under BBLEP 2013</b>	<b>Overall Height</b>
17	95	222	1.42:1	No change to approved height at RL27.45m <b>(21.75m) above ground level</b>

***DA12/175 – 20 additional apartments and three additional townhouses under DA12/171***

<b>Total Townhouses</b>	<b>Total Apartments</b>	<b>Car Parking</b>	<b>FSR under BBLEP 2013</b>	<b>Overall Height</b>
17 (includes the 3 additional proposed under DA12/171)	115	260	1.64:1 (includes the 3 additional townhouses under DA12/171)	Increased to RL30.20m <b>(23.80m) above ground level</b>

***Section 96(2) Application for 11 new dwellings being: two additional townhouses and nine additional apartments***

<b>Total Townhouses</b>	<b>Total Apartments</b>	<b>Car Parking</b>	<b>FSR under BBLEP 2013</b>	<b>Overall Height</b>
16	104	233	1.47:1	Decrease to RL26.65m <b>(20.25m) above ground level</b>

**Description of Proposed Development**

The Section 96(2) Application seeks to modify Development Consent No. 11/018 to:

- Construct an additional nine apartments;
- Construct an additional two townhouses;
- Include an additional seventeen (17) car parking spaces;
- Amend the external building facades from select face brickwork to painted finish;
- Modify previously approved unit layouts;
- Modify associated conditions of consent;
- Add No. 4 Jasmine Street, Botany to the development.

**Development Standards**

**Built Form**

**Floor Space Ratio** - The approved FSR for the subject development is 1.51:1 as calculated under BLEP 1995 and 1.45:1 when calculated under the BBLEP 2013.

The proposed modifications would result in an increase to the approved FSR of the development from 1.45:1 to 1.47:1, which is less than the 1.5:1 permitted under BBLEP 2013.

The following table compares the proposed FSR and height with that permitted under BBLEP 2013.

<b>FSR permitted under BBLEP 2013</b>	<b>Proposed FSR under BBLEP 2013</b>	<b>Height Permitted under BBLEP 2013</b>	<b>Proposed Height</b>
<b>1.5:1</b> (13,975m <sup>2</sup> , based on a site area of 9,316m <sup>2</sup> ).	<b>1.47:1</b> (13,681m <sup>2</sup> , based on a site area of 9,316m <sup>2</sup> ).	22 metres	20.20 metres

**Height** – The approved height of the development on site is 2 storey’s plus attic to Jasmine Street (townhouses), 3-5 storey’s along Myrtle Street and 6 storey’s in the centre, to an overall height of RL27.45 metres (lift overrun/plant room).

DCP 35 permits a maximum height of 4 storeys at the rear and two storey plus attic at the street edge. The approved development already exceeds the permitted maximum height under DCP 35, which is consistent with the height of buildings at 9-19 Myrtle Street.

Pursuant to the BBLEP 2013 – Height of Buildings Map (and the Draft Consolidated DCP), the subject site is permitted to accommodate buildings to a maximum height of 10 metres. Clause 4.3(2A) states that where a site is located in the R3 Medium Density Residential zone and exceeds 2000sqm in area, the height of a building on that land may exceed the height shown for the land on the Height of Buildings Map, but must not exceed 22 metres.

The proposed Section 96(2) modification seeks to add additional apartments to existing floor levels and add a new Level 6 to Building 1, which is currently approved to be a lift overrun/plant room only. Level 5 has been modified to incorporate 3 x 2 bedroom apartments and Level 6 is proposed to accommodate 3 x 1 bedroom apartments. The proposed changes will result in a building form which adds to the bulk and reduces the previously approved “tiers” to the upper levels of each building.

The overall height of the development actually decreases as the height of the lift overruns/plant room has been reduced by 820mm from RL27.45 metres (21.02 metres) down to RL 26.65 metres (20.20 metres) across the site. Existing ground level is RL6.6m therefore, the overall height of buildings on site is 20.20 metres above existing ground level, which is consistent with the BBLEP 2013 and the Draft Consolidated DCP.

<b>Townhouse No.</b>	<b>No. of Bedrooms</b>	<b>Dwelling Size (m<sup>2</sup>)</b>	<b>Private Open Space in m<sup>2</sup> per dwelling</b>	<b>Car parking provision</b>	<b>Complies</b>
Townhouse 1	4 bedrooms	185m <sup>2</sup>	68m <sup>2</sup>	2	Yes
Townhouse 2	3 bedrooms	147m <sup>2</sup>	46m <sup>2</sup>	2	Yes
Townhouse 3	3 bedrooms	147m <sup>2</sup>	47m <sup>2</sup>	2	Yes
Townhouse 4	3 bedrooms	147m <sup>2</sup>	50m <sup>2</sup>	2	Yes
Townhouse 5	3 bedrooms	147m <sup>2</sup>	48m <sup>2</sup>	2	Yes
Townhouse 6	4 bedrooms	164m <sup>2</sup>	52m <sup>2</sup>	2	Yes
Townhouse 7	3 bedrooms	147m <sup>2</sup>	56m <sup>2</sup>	2	Yes
Townhouse 8	3 bedrooms	147m <sup>2</sup>	56m <sup>2</sup>	2	Yes

<b>Townhouse No.</b>	<b>No. of Bedrooms</b>	<b>Dwelling Size (m<sup>2</sup>)</b>	<b>Private Open Space in m<sup>2</sup> per dwelling</b>	<b>Car parking provision</b>	<b>Complies</b>
Townhouse 9	3 bedrooms	147m <sup>2</sup>	55m <sup>2</sup>	2	Yes
Townhouse 10	3 bedrooms	147m <sup>2</sup>	55m <sup>2</sup>	2	Yes
Townhouse 11	3 bedrooms	147m <sup>2</sup>	55m <sup>2</sup>	2	Yes
Townhouse 12	3 bedrooms	147m <sup>2</sup>	55m <sup>2</sup>	2	Yes
Townhouse 13	3 bedrooms	147m <sup>2</sup>	55m <sup>2</sup>	2	Yes
Townhouse 14	3 bedrooms	147m <sup>2</sup>	56m <sup>2</sup>	2	Yes
Townhouse 15	3 bedrooms	147m <sup>2</sup>	56m <sup>2</sup>	2	Yes
Townhouse 16	3 bedrooms	164m <sup>2</sup>	72m <sup>2</sup>	2	Yes

<b>Unit No.</b>	<b>No. of Bedrooms</b>	<b>Dwelling Size (m<sup>2</sup>)</b>	<b>Private Open Space (m<sup>2</sup> / dwelling)</b>	<b>Car parking provision</b>	<b>Complies</b>
Unit 111	2 bedrooms	100m <sup>2</sup>	107m <sup>2</sup>	2	Yes
Unit 112	2 bedrooms	100m <sup>2</sup>	107m <sup>2</sup>	2	Yes
Unit 113	2 bedrooms	100m <sup>2</sup>	107m <sup>2</sup>	2	Yes
Unit 114	2 bedrooms	100m <sup>2</sup>	107m <sup>2</sup>	2	Yes
Unit 115	2 bedrooms	108m <sup>2</sup>	107m <sup>2</sup>	2	Yes
Unit 121	2 bedrooms	100m <sup>2</sup>	48.4m <sup>2</sup>	2	Yes
Unit 122	2 bedrooms	100m <sup>2</sup>	48.4m <sup>2</sup>	2	Yes
Unit 123	2 bedrooms	100m <sup>2</sup>	48.4m <sup>2</sup>	2	Yes
Unit 124	2 bedrooms	100m <sup>2</sup>	48.4m <sup>2</sup>	2	Yes
Unit 125	2 bedrooms	108m <sup>2</sup>	63.6m <sup>2</sup>	2	Yes
Unit 126	2 bedrooms	100m <sup>2</sup>	86m <sup>2</sup>	2	Yes
Unit 127	2 bedrooms	100m <sup>2</sup>	60m <sup>2</sup>	2	Yes
Unit 131	3 bedrooms	140m <sup>2</sup>	48.4m <sup>2</sup>	2	Yes
Unit 132	3 bedrooms	141m <sup>2</sup>	48.4m <sup>2</sup>	2	Yes
Unit 133	3 bedrooms	141m <sup>2</sup>	48.4m <sup>2</sup>	2	Yes
Unit 134	3 bedrooms	141m <sup>2</sup>	48.4m <sup>2</sup>	2	Yes
Unit 135	2 bedrooms	108m <sup>2</sup>	62.6m <sup>2</sup>	2	Yes
Unit 136	2 bedrooms	103m <sup>2</sup>	86m <sup>2</sup>	2	Yes
Unit 137	2 bedrooms	103m <sup>2</sup>	60m <sup>2</sup>	2	Yes
Unit 141	2 bedrooms	108m <sup>2</sup>	62.6m <sup>2</sup>	2	Yes
Unit 142	2 bedrooms	100m <sup>2</sup>	84m <sup>2</sup>	2	Yes
Unit 143	2 bedrooms	100m <sup>2</sup>	60m <sup>2</sup>	2	Yes
Unit 151	2 bedroom	108m <sup>2</sup>	35.11m <sup>2</sup>	2	Yes
Unit 152	2 bedrooms	100m <sup>2</sup>	24.53m <sup>2</sup>	2	Yes
Unit 153	2 bedrooms	100m <sup>2</sup>	33.36m <sup>2</sup>	2	Yes
Unit 161	1 bedroom	75m <sup>2</sup>	18.96m <sup>2</sup>	1	Yes
Unit 162	1 bedroom	75m <sup>2</sup>	60m <sup>2</sup>	1	Yes
Unit 163	1 bedroom	75m <sup>2</sup>	60m <sup>2</sup>	1	Yes
Unit 211	2 bedrooms	106m <sup>2</sup>	1m <sup>2</sup>	2	Yes
Unit 212	2 bedrooms	100m <sup>2</sup>	60m <sup>2</sup>	2	Yes
Unit 213	2 bedrooms	100m <sup>2</sup>	80m <sup>2</sup>	2	Yes

Unit No.	No. of Bedrooms	Dwelling Size (m <sup>2</sup> )	Private Open Space (m <sup>2</sup> / dwelling)	Car parking provision	Complies
Unit 214	3 bedrooms	132m2	72m2	2	Yes
Unit 215	2 bedrooms	102m2	72m2	2	Yes
Unit 216	1 bedroom	78m2	130m2	1	Yes
Unit 217	1 bedroom	75m2	136m2	1	Yes
Unit 218	1 bedroom	75m2	136m2	1	Yes
Unit 221	2 bedrooms	106m2	64m2	2	Yes
Unit 222	2 bedrooms	100m2	60m2	2	Yes
Unit 223	2 bedrooms	100m2	36m2	2	Yes
Unit 224	3 bedrooms	132m2	78m2	2	Yes
Unit 225	2 bedrooms	100m2	72m2	2	Yes
Unit 226	1 bedroom	78m2	40m2	1	Yes
Unit 227	1 bedroom	75m2	38m2	1	Yes
Unit 228	1 bedroom	75m2	38m2	1	Yes
Unit 231	2 bedrooms	106m2	64m2	2	Yes
Unit 232	2 bedrooms	100m2	60m2	2	Yes
Unit 233	2 bedrooms	100m2	36m2	2	Yes
Unit 234	3 bedrooms	132m2	78m2	2	Yes
Unit 235	2 bedrooms	101m2	72m2	2	Yes
Unit 236	1 bedroom	78m2	40m2	1	Yes
Unit 237	1 bedroom	75m2	38m2	1	Yes
Unit 238	1 bedroom	75m2	38m2	1	Yes
Unit 241	2 bedrooms	106m2	64m2	2	Yes
Unit 242	2 bedrooms	100m2	60m2	2	Yes
Unit 243	2 bedrooms	100m2	63m2	2	Yes
Unit 244	2 bedrooms	100m2	93.46m2	2	Yes
Unit 245	1 bedroom	75m2	18m2	1	Yes
Unit 246	1 bedroom	75m2	18m2	1	Yes
Unit 251	2 bedrooms	106m2	36m2	2	Yes
Unit 252	2 bedrooms	100m2	30m2	2	Yes
Unit 253	2 bedrooms	100m2	33m2	2	Yes
Unit 254	2 bedrooms	102m2	47m2	2	Yes
Unit 255	1 bedroom	75m2	19m2	1	Yes
Unit 256	1 bedroom	75m2	19m2	1	Yes
Unit 261	2 bedrooms	106m2	36m2	2	Yes
Unit 262	2 bedrooms	100m2	35m2	2	Yes
Unit 263	2 bedrooms	100m2	33m2	2	Yes
Unit 264	2 bedrooms	104m2	47m2	2	Yes
Unit 265	1 bedroom	75m2	19m2	1	Yes
Unit 311	2 bedrooms	106m2	46.9m2	2	Yes
Unit 312	2 bedrooms	100m2	40.5m2	2	Yes
Unit 313	2 bedrooms	100m2	40.5m2	2	Yes
Unit 314	2 bedrooms	102m2	58.2m2	2	Yes
Unit 315	1 bedroom	75m2	56.8m2	1	Yes

Unit No.	No. of Bedrooms	Dwelling Size (m <sup>2</sup> )	Private Open Space (m <sup>2</sup> / dwelling)	Car parking provision	Complies
Unit 316	1 bedroom	75m2	56.8m2	1	Yes
Unit 321	2 bedrooms	106m2	32m2	2	Yes
Unit 322	2 bedrooms	100m2	30m2	2	Yes
Unit 323	2 bedrooms	100m2	30m2	2	Yes
Unit 324	2 bedrooms	102m2	28m2	2	Yes
Unit 325	1 bedroom	75m2	19m2	1	Yes
Unit 326	1 bedroom	75m2	19m2	1	Yes
Unit 331	2 bedrooms	106m2	32m2	2	Yes
Unit 332	2 bedrooms	100m2	30m2	2	Yes
Unit 333	2 bedrooms	100m2	30m2	2	Yes
Unit 334	2 bedrooms	102m2	28m2	2	Yes
Unit 335	1 bedroom	75m2	19m2	1	Yes
Unit 336	1 bedroom	75m2	19m2	1	Yes
Unit 341	2 bedrooms	106m2	32m2	2	Yes
Unit 342	2 bedrooms	100m2	30m2	2	Yes
Unit 343	2 bedrooms	100m2	30m2	2	Yes
Unit 344	2 bedrooms	102m2	28m2	2	Yes
Unit 345	1 bedroom	75m2	19m2	1	Yes
Unit 346	1 bedroom	75m2	19m2	1	Yes
Unit 351	2 bedrooms	106m2	52m2	2	Yes
Unit 352	2 bedrooms	100m2	35m2	2	Yes
Unit 353	2 bedrooms	100m2	30m2	2	Yes
Unit 354	2 bedrooms	102m2	28m2	2	Yes
Unit 355	1 bedroom	75m2	19m2	1	Yes
Unit 356	1 bedroom	75m2	19m2	1	Yes
Unit 361	2 bedrooms	104m2	52m2	2	Yes
Unit 362	2 bedrooms	100m2	35m2	2	Yes
Unit 363	2 bedrooms	100 m2	33m2	2	Yes
Unit 364	2 bedrooms	103m2	47m2	2	Yes
Unit 365	1 bedroom	75m2	19m2	1	Yes
Unit 364	2 bedrooms	103m2	47m2	2	Yes

In seeking the above amendments to the approved design, the Applicant also seeks to modify the conditions of consent.

The proposed modifications to the existing consent conditions are detailed below:

- (i) Amend the description of the consent, which currently reads as follows:

*Stage 1 – Removal of the remaining slab(s) and clearing of the surface of the site at 8-32 Jasmine Street and 68-70 Bay Street, Botany, to allow the installation of groundwater monitoring bores to address the issued identified in the General Terms of Approval from the NSW Office of Water dated 1 April 2011; and,*

*Stage 2 - The excavation at the site and construction of the mixed residential and retail development accommodating 95 apartments, 14 townhouses, 280m<sup>2</sup> of retail floor space, car parking for 216 vehicles located within a partial basement level and planting in accordance with the submitted landscape plan, at 8-32 Jasmine Street and 68-70 Bay Street, Botany.*

**Comment:** The Applicant seeks to increase the number of apartments from 95 to 104 and increase the number of townhouses from 14 to 16. The subject site now includes No. 4 Jasmine Street, which has been acquired by the owner to accommodate the additional two townhouses at the southern end of the site fronting Jasmine Street and to accommodate an deep soil planting area adjoining the existing residential townhouses at the corner of Bay Street and Jasmine Street.

The inclusion of No. 4 Jasmine Street and the additional deep soil planting area will not create any significant adverse amenity impacts on the existing residential dwelling adjoining to the south. Previously, this area was proposed to be a further additional townhouse (Townhouse 17) under DA12/171, which has now been deleted under this Section 96(2) application. The resulting proposed additional townhouses will not result in any adverse overshadowing impact on the dwellings to the south and are considered acceptable in this instance.

As discussed elsewhere in this report, the additional nine (9) apartments are located at the upper levels of Buildings 1, 2 and 3. There are no new levels proposed to Building 2 and 3, however an additional level is proposed to Building 1. Despite the additional apartment being accommodated in an additional level, the overall height of the development (across the entire site) is reduced by the reduction in the plant area/lift overruns.

Additional car parking spaces are proposed within the basement level and the overall car parking provision is compliant with the requirements of Councils Off Street Car Parking DCP and DCP 35.

Therefore there is no objection to proposed Section 96(2) application and it is recommended that the description of the consent be amended to read as follows:

***Stage 1 – Removal of the remaining slab(s) and clearing of the surface of the site at 4-32 Jasmine Street and 68-70 Bay Street, Botany, to allow the installation of groundwater monitoring bores to address the issued identified in the General Terms of Approval granted by the NSW Office of Water; and***

***Stage 2 - The excavation at the site and construction of the mixed residential and retail development accommodating 104 apartments, 16 townhouses, 280m<sup>2</sup> of retail floor space, car parking for 233 vehicles located within a partial basement level and planting in accordance with the submitted landscape plan, at 4-32 Jasmine Street and 68-70 Bay Street, Botany. (DA11/018/05)***

(ii) Amend Condition No. 1 of the Stage 1 consent, relating to the approved plans and reference documentation.

**Comment:** Condition No. 1 which details the approved plans and reference documentation is required to be amended to reflect the amended plans and reference documentation submitted with this Section 96(2) application. Whilst the proposed amended design is different in form

to that approved in terms of height and scale, the amended design will have minimal adverse impact on surrounding development and will result in a reduced overall height and density to that proposed under DA12/171 and DA12/175. The amended design results in a more appropriate built form, façade treatment to Jasmine and Myrtle Streets and as such, it is recommended that Condition No. 1 be amended to incorporate the amended plans and reference documentation.

- (iii) Amend Condition No. 3(a) and 3(b) of both Stage 1 and Stage 2, which currently reads as follows:

3

- (a) This Consent relates to land in Lots A and B in DP 392025, Lots 1 and 2 in DP 201641, Lot 2 in DP 201614, Lot 1 in DP 508743, Lot 10 in DP 598160, Lot B in DP 345783, Lots 1, 2 and 3 in DP 312248, Lots 2 and 3 in Sec H in DP 1787, Lot 1 in DP 455885, Lot 5 in DP 19083 and Lot 11 in DP 598160, and as such, building works must not encroach on to adjoining lands or the adjoining public place, other than public domain works required by the letter dated 13 February 2012 prepared by Krikis Tayler Architects.
- (b) This component, Stage 1 of the Consent, only permits the removal of any remaining slab(s), clearing of the surface of the site and shoring works to allow the installation of groundwater monitoring bores (if required) to address the technical documentation required by the General Terms of Approval issued by the NSW Office of Water on 1 April 2011. (DA 11/018/02).

**Comment:** Condition 3(a) is required to be amended to acknowledge the consolidation of the former allotments forming the subject site into one new allotment which has now been registered. Condition 3(b) is required to be amended to acknowledge the most recent General Terms of Approval granted by the NSW Office of Water on the 3 July 2013. It is recommended that Condition No. 3(a) and 3(b) accordingly.

- (iv) Amend Condition No. 6 of the Stage 1 consent to replace the existing NSW Office of Water General Terms of Approval with the most recent General Terms of Approval, received 19 June 2013.
- (v) Amend Condition No. 37, to acknowledge the modification of the consent.
- (vi) Amend Condition No. 1 of the Stage 2 consent relating the approved plans and reference documentation accompanying the Section 96(2) Application.

**Comment:** It is recommended that Condition No. 1 be amended to incorporate the amended plans and reference documents submitted with the Section 96(2) Application.

- (v) Amend Condition No. 6 which acknowledges the revised schedule of materials and finished submitted with the Section 96(2) Application.
- (vi) Amend Condition No. 10 of the Stage 2 consent to update the conditions granted by SACL dated 3 July 2013 which acknowledge the reduction in height of the building.

- (vii) Amend Condition No. 68 and 98 of the Stage 2 consent to update the increase in car parking on site, which is compliant with the requirements of Council policies.
- (viii) Amend Condition No. 88 of the Stage 2 consent to amend the maximum FSR permitted for the subject site, which is 1.47:1 (as calculated under BBLEP 2013).
- (ix) Amend Condition No. 110 to reference the Section 96(2) Application.
- (x) Add Condition No. 2(v) to include additional Section 94 contributions as a result of the additional dwellings proposed under the Section 96(2) Application; and
- (xi) Add Condition No. 111, which requires the Applicant to submit a Building Certificate Application prior to the issue of the Occupation Certificate, either Interim or Final.

The rationale of the applicant is generally agreed with and the Section 96(2) Application is recommended for approval, subject to the schedule of modified conditions. The Section 96(2) Application has been notified to adjoining affected property owners and to those persons who originally made submissions. Three (3) submissions were received by Council as a result of the notification of the modification application. Pursuant to s96(2) of the Environmental Planning and Assessment Act, the proposed modification is considered to be of minimal environmental impact and will constitute a development substantially the same as that previously approved.

## **SECTION 79C and 96(2) CONSIDERATIONS**

In considering the Section 96(2) Application, the matters listed in Section 79C of the Environmental Planning and Assessment Act 1979 have been taken into consideration in the preparation of this report and are as follows:

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

### Environmental Planning and Assessment Act – Schedule 4A

The application is required to be determined by the Joint Regional Planning Panel pursuant to Clause 3 of Schedule 4A of the Environmental Planning and Assessment Act as the Capital Investment Value of the initial development application exceeded \$20 million.

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

The relevant requirements under Division 5 of the EP&A Act and Part 6, Division 3 of the EP&A Regulations have been considered in the assessment of the development applications.

The development application is Integrated Development in accordance with the *Water Management Act 2000* as the development involves a temporary construction dewatering activity.



Before granting development consent to an application, the consent authority must, in accordance with the regulations, obtain from each relevant approval body the general terms of any approval proposed to be granted by the approval body in relation to the development.

The Applicant has submitted with the Section 96(2) Application legal advice which states that the proposed amendments to the approved development result in a development which is substantially the same as that previously approved by the Panel and further states that Council is the consent authority for the Section 96(2) Application. Council concurs with this advice.

### Section 96(2) Provisions

Pursuant to Section 96(2) of the Environmental Planning and Assessment Act, 1979, Council has to be satisfied that:

- (a) the development of Development Application No 11/018/05 to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and
- (b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and
- (c) it has notified the application in accordance with:
  - a. the regulations, if the regulations so require, or
  - b. a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and
- (d) it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be.

The changes to the consent relate to the Section 96 Application to modify Development Consent No 11/018 to:

- Construct an additional nine apartments;
- Construct an additional two townhouses;
- Include an additional seventeen (17) car parking spaces;
- Amend the external building facades from select face brickwork to painted finish;
- Modify previously approved unit layouts;
- Modify associated conditions of consent;
- Add No. 4 Jasmine Street, Botany to the development.

The development as modified is substantially the same development as approved. The application was referred to the NSW Office of Water and has granted General

Terms of Approval to the proposed amendments, which have been imposed upon the development in the schedule of modified conditions section of this report.

The application was notified for a period of 37 days and four (4) submissions were received.

#### State Environmental Planning Policy (SEPP) State & Regional Development 2011

The original development application was determined by the Joint Regional Planning Panel (JRPP) Sydney Region East on the 20 July 2012 by granting a “Deferred Commencement” consent. This was due to the Capital Investment Value (CIV) being in excess of \$20 million, pursuant to Clause 13B of the Major Development SEPP 2005.

In October 2011, the SEPP Major Development 2005 was repealed and the SEPP State and Regional Development 2011 was gazetted, which increased the threshold for general development to be determined by the JRPP to development with a CIV in excess of \$20 million (pursuant to Part 4 of the EP& A Act 1979). Therefore, as the initial development application was determined by the JRPP and its CIV was in excess of the threshold, the SEPP State and Regional Development 2011 applies to the Section 96(2) application and the application is to be determined by the JRPP.

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

Clause 7 of State Environmental Planning Policy 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. In this regard, a condition has been imposed on the consent granted to ensure that on site contamination is addressed and it is recommended that these conditions remain unaltered on the consent.

#### State Environmental Planning Policy (Infrastructure) 2007

The original development application was assessed under the provisions of Schedule 3 of the SEPP – Traffic Generating Development and was required to be referred to the NSW RMS. In a letter dated 31 July 2013, NSW RMS has advised that it has no objection to the proposed Section 96(2) application.

#### 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 BBLEP 2013 provides savings provisions relating to development applications but does not provide savings provisions relating to a Section 96 modification to a development consent. As such, the Section 96(2) application was considered under the provisions of *Botany Bay Local Environmental Plan 2013* due to the absence of savings provisions for applications to modify a consent under Clause 1.8A of the Plan.

In this regard, the following provides an assessment against the relevant provisions of BBLEP 2013:

Principal Provisions of BBLEP 2013	Compliance Yes/No	Comment
Landuse Zone	N/A	The site is zoned R3 – Medium Density

Principal Provisions of BBLEP 2013	Compliance Yes/No	Comment
		Residential under the BBLEP 2013.
Is the proposed use/works permitted with development consent?	Yes	The mixed residential/retail 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 following objectives in the BBLEP 2013: <ul style="list-style-type: none"> <li>To provide for the housing needs of the community within a medium density residential environment;</li> <li>To provide a variety of housing types within a medium density residential environment;</li> <li>To enable other land uses that provide facilities or services to meet the day to day needs of the residents;</li> <li>To encourage development that promotes walking and cycling.</li> </ul>
Does Clause 2.5 and Schedule 1 – Additional Permitted Uses apply to the site?	N/A	Clause 2.5 does not apply to the subject site.
What is the height of the building?  Is the height of the building below the maximum building height?	Yes	The proposed height is 20.20m, which is consistent with the maximum height of 22m permitted by Clause 4.3(2A) of BBLEP 2013
What is the proposed FSR? Does the FSR of the building exceed the maximum FSR?	Yes	The proposed FSR is 1.47:1, which is consistent with the maximum FSR of 1.5:1 permitted under Clause 4.4 of BBLEP 2013.
Is the proposed development in a R3/R4 zone? If so does it comply with site of 2000m <sup>2</sup> min and maximum height of 22 metres and maximum FSR of 1.5:1?	Yes	The subject site is located within the R3 Medium Density Residential zone. The proposed FSR is 1.47:1, which is consistent with the maximum FSR of 1.5:1 permitted under Clause 4.4 of BBLEP 2013.  The proposed height is 20.20m, which is consistent with the maximum height of 22m permitted by Clause 4.3(2A) of BBLEP 2013
Is the site within land marked "Area 3" on the FSR Map	No	The subject site is not identified as being within "Area 3" on the FSR map.
Is the land affected by road widening?	No	The subject site is not affected by road widening.
Is the site listed in Schedule 5 as a heritage item or within a Heritage Conservation Area?	N/A	The subject site is not identified as a Heritage Item or within a Heritage Conservation Area.
The following provisions in Part 6 of the LEP apply to the development:  6.1 – Acid sulfate soils	Yes	Clause 6.1 – Acid Sulfate Soils. The subject site is located within a Class 4 Acid Sulfate Soils area. This matter was addressed under the assessment of the original development application and appropriate conditions were imposed on the consent in regards to Acid Sulfate Soils. Therefore, the

Principal Provisions of BBLEP 2013	Compliance Yes/No	Comment
6.2 – Earthworks		<p>Section 96(2) application is considered to be consistent with Clause 6.1 of BBLEP 2013.</p> <p>Clause 6.2 – Earthworks. The proposed modification involves additional bulk excavation to accommodate additional basement area. As such, the Section 96(2) application is <i>Integrated Development</i>. The NSW Office of Water has provided General Terms of Approval for the proposed additional basement area. These conditions are included in the schedule of modified conditions. Therefore, the Section 96(2) application is considered to be consistent with Clause 6.2 of BBLEP 2013.</p>
6.8 - Airspace operations		<p>Clause 6.8 – Airspace Operations. The subject site lies within an area defined in the schedules of the Civil Aviation (Buildings Control) Regulations that limit the height of structures to 50 feet (15.24 metres) above existing ground height without prior approval of the Civil Aviation Safety Authority. The Section 96(2) application proposes to increase the height of Building 1 and was therefore referred to Sydney Airports Corporation Limited (SACL) for consideration. SACL raised no objections to the proposed maximum height of 26.65 metres AHD, subject to conditions to be imposed on any modified consent. Therefore, the Section 96(2) application is considered to be consistent with Clause 6.8 of BBLEP 2013.</p>
6.9 – Development in areas subject to aircraft noise		<p>Clause 6.16 – Aircraft Noise. The subject site is affected by the 20-25 ANEF contour. An acoustic report was submitted with the original development application which indicates that the building has been designed to comply with the requirements of AS2021-2000. It is recommended that these conditions remain unaltered on the consent. Therefore, the Section 96(2) application is considered to be consistent with Clause 6.9 of BBLEP 2013.</p>
6.16 – Design excellence		<p>Clause 6.16 Design Excellence.</p> <p>The bulk, scale and height of the proposed development is appropriate as the development will not create any unreasonable impacts on the residential amenity of adjoining sites. The built form as proposed is contemporary in</p>

Principal Provisions of BBLEP 2013	Compliance Yes/No	Comment
		<p>nature and presents an articulated façade providing enhanced interest to the streetscape and the precinct generally. The resulting design is consistent with the built form envisaged within the precinct and is considered acceptable.</p> <p>On this basis, it is considered that the proposed modification is considered to be consistent with Clause 6.16 of BBLEP 2013.</p>

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

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

The original development application was considered and determined by the Joint Regional Planning Panel on the 20 July 2012, a copy of this decision is annexed to this report. The assessment of the original development application identified areas of compliance and non-compliance with DCP35. The amendments proposed under this Section 96(2) application does not significantly alter existing approved non-compliances. Therefore, the compliance table below only refers to the proposed amendments and the non-compliance of the proposed amendments with the DCP controls. It is noted that the unit sizes comply with the requirements of the DCP and that the total number of 1 bedroom units does not exceed 25% of the total number of dwellings proposed.

Control	Proposal	Compliance
<b>Section 3.2 – Building Form and Character</b>		
<b>3.2.1 Floor Space Ratios</b>		
C1: Compliance with Botany LEP 1995 FSR provisions: 1:1 for sites greater than 2,500m <sup>2</sup> in site area	The Section 96(2) application seeks an FSR of 1.47:1 (13,681m <sup>2</sup> , based on a site area of 9,316m <sup>2</sup> ) under BBLEP 2013, which is less than the maximum FSR of 1.5:1 permitted under Clause 4.4(2A) of BBLEP 2013.	<b>Refer to FSR discussion under BBLEP 2013 assessment.</b>
<b>3.2.3 Building Height</b>		
C1. The development shall comply with the 4 storey height required within Botany Precinct 4.	<p>No changes are proposed to the height of Buildings 2 and 3, which exceed 4 storey.</p> <p>The two additional townhouse match the height of the approved townhouses.</p> <p>Building 1 is proposed to be</p>	<b>No – Refer to Note 1 below</b>

Control	Proposal	Compliance
C2. Building height and bulk is to be distributed across the site to ensure no significant loss of amenity to adjacent sites, open space and public streets	increased by 1 storey to an overall height of 20.20metres.  The building bulk and height are distributed across the site to ensure no significant loss of amenity to adjoining sites, public streets and open space areas.	Yes
C3. Consider and respond to predominant heights of buildings in the area.	The proposed amended design responds to the predominant heights in the precinct, is consistent with the height of buildings at 9-19 Myrtle Street, with the 18m height limit identified in this DCP (Control C6 below) and with the new height limit of 22m under BBLEP 2013.	Yes
C4. Ensure upper levels minimize impacts on neighbouring properties and the streetscape	The upper levels are recessed to minimize impacts on the neighbouring properties and the streetscape.	Yes
C6. Maximum building height of 18m for residential flat buildings measured from ground level to the ceiling of the top most floor.	All residential flat buildings on site are 18.10 metres above ground level, which is considered acceptable.	Yes
C9: Compliance with Civil Aviation Safety Authority requirements.	The proposed development exceeds the height restriction of 15.24m above existing ground height. SACL by letter dated 3 July 2013 have no objection to the proposed maximum height of 26.65 metres AHD.	Yes – Condition to comply with SACL requirements.
<b>3.2.13 Parking and Vehicle Access</b>		
C1: Minimum Car Parking: 1 bed require 1 space 2/3/4 bed require 2 spaces  Total required = 212 based on: Total 1 bed dwellings = 28 Total 2/3/4 dwellings = 92	212 off-street parking spaces provided for the residential component.	Yes
C2: Visitor parking: 1 space per 10 dwellings Total 116 dwellings require 12 visitor spaces	14 visitor spaces provided	Yes
<b>3.3.4 Balconies in Residential Flat Development</b>		
C1: Large developments –	The development has been	Yes

Control	Proposal	Compliance
containing 20 or more units – different styles and designs for balconies are required	provided with a mixture of protruding and recessed balconies, and a combination of glazing and solid balustrades using a variety of external finishes.	
C2: At least one balcony per apartment is to be provided off the living areas	All dwellings have been provided with a balcony or courtyard off their respective living areas.	Yes
C3: Minimum area of balcony off living area is 12m <sup>2</sup> and minimum width is 3m	All additional apartments have been designed to exceed the minimum total area requirement for balconies, however the balconies of ten additional apartments	<b>No – Refer to Note 2 below</b>
<b>3.3.15 Solar Access and Overshadowing</b>		
C1: Shade diagrams showing overshadowing of apartments within the development, of adjoining development and of shared open space required	Shadow diagrams have been submitted to accompany the development application indicating shading impact both within and beyond the site is acceptable.	Yes

Despite the non-compliances, as discussed below in further detail, it is recommended that the Panel, subject to schedule of modified conditions, support the proposed modifications.

*Note 1: Building Height Control*

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

In approving the original development application, the rear residential flat buildings (Buildings 2 and 3) have been approved to 6 storeys. There is no increase in height to these buildings, only a reconfiguration of Levels 5 and 6 to accommodate the proposed additional apartments. Overall the height of these buildings is reduced, as discussed previously in this report, by the lowering of the lift overruns/plant room to an overall height of 20.20m (as measured under BBLEP 2013).

Building 1 is proposed to be increase in height by construction one additional level to accommodate the proposed additional apartments. Its overall height will be 20.20m (as measured under BBLEP 2013).

Control C6 of Section 3.2.3 – Building Height, permits residential flat buildings to a height of 18 metres (when measured from ground level to the top most ceiling) or 21m (overall height to the pitched roof ridge).

The proposed amendments will not alter the form of the roof which remains a flat roof. Therefore, when measured under the DCP, the overall ceiling height for each of the residential flat buildings is 18.10 metres, being a variation of 100mm. This is considered acceptable to Council, as the proposed amendments will not result in any adverse impacts on the adjoining properties, the adjacent streets of the nearby public open space.

Based above that the proposed modifications are consistent with the height of similar development in Myrtle and the proposal has satisfied the height controls of DCP 35.

#### *Note 2 – Balcony Depth*

Control C3 of Section 3.3.4 – Balconies in Residential Flat Buildings states that the minimum area of the balcony off the living area is 12sqm and the minimum width is 3 metres.

The proposed modification will result in all apartments having balconies off the living areas which significantly exceed the minimum area, however each of the apartments have balconies with varied widths ranging from 1.4m up to 2.9m.

Given the excessive sizes proposed, the variation to the minimum width of 3m is considered acceptable in this instance as each apartment is provided with ample private open space where adequate solar access is achieved and amenity is not compromised.

On this basis, the proposed modifications are considered acceptable in regards to the requirements of Section 3.3.4 of DCP 35.

#### Aircraft Noise Development Control Plan

The requirements of the Aircraft Noise DCP have been considered in the assessment of the Development Applications as the site is located within the 20-25 contour on the Aircraft Noise Exposure Forecast (ANEF) chart.

The original development was accompanied by an Aircraft Noise Assessment Report and appropriate conditions were imposed on the consent granted to require compliance with the recommendations of this report and with AS2021-2000. It is recommended that these conditions remain unaltered on the consent.

The proposal is therefore considered satisfactory with regards to Council's Aircraft Noise DCP subject to a condition requiring compliance with the submitted acoustic report and AS2021-2000.

#### Off Street Parking Development Control Plan

The Section 96(2) Application seeks to increase the area of basement to create an additional seventeen (17) car parking spaces. Therefore, the proposed amendment seeks to increase the total car parking spaces on site from 216 spaces to 233 spaces.

The modification application has been accompanied by an amended Traffic Impact Assessment Report prepared by Varga Traffic Planning Pty Ltd, dated 28 May 2013 that addresses Council's car parking requirements for the proposed additional dwellings together with the existing approved dwellings. The proposed car parking sought under this Section 96(2) application is compliant with the requirements of Council's Off Street Car Parking DCP and DCP 35.

Notwithstanding this, Council through its Residents Consultative Committee process has engaged an Independent Traffic Consultant to undertake a review of cumulative traffic impacts in the precinct. This has involved a review of site specific traffic reports for existing, approved and proposed developments taking into consideration



the Botany Aquatic Park and Booralee Park which contribute to traffic congestion and parking problems throughout the year.

At present, Council has not received a final report from its consultant, however it is not considered that the proposed additional eleven (11) dwellings under this Section 96(2) application would contribute significantly to the cumulative traffic impact within the precinct. It is anticipated that the recommendations of the independent traffic consultant will include appropriate local traffic measures to and parking measures to assist in easing traffic congestion and parking demand in the area, which will be required to be put back to the Residents Consultative Committee at a later date. As such, it is Council's opinion that the proposed Section 96(2) application is considered to satisfactorily address the requirements of Council's Off-Street Parking DCP.

**Council Codes, Policies etc.**

It is considered that the proposed amendment raises no significant concerns with regard to compliance with the objectives and requirements of other Council codes and policies applicable to the site. In this regard, a condition is already imposed on the consent requiring submission of an Energy Efficiency Report in accordance with Council's *Energy Efficiency Development Control Plan*, adequate landscaping is considered to be provided for the amenity of staff and the area, and a Waste Management Plan is required to be submitted prior to issue of a Construction Certificate.

**(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 Section 96(2) Application. It is considered that the proposed amendment will have no significant adverse environmental, social or economic impacts on the locality.

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

These matters have been considered in the assessment of the Section 96(2) Application. It is considered that the proposed amendment is suitable in the context of the site and the locality.

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

These matters have been considered in the assessment of the Section 96(2) application. In accordance with Council's Notification Development Control Plan No.24 the proposed development was notified to surrounding property owners and advertised in the local newspaper for a thirty (30) day period from 3 July 2013 and 8 August 2013. Four (4) submissions were received in response to the proposed development, which raises the following issues:

- *Privacy – The third storey of our townhouse at 9-19 Myrtle Street faces west towards the subject site. The proposed development will allow visibility into this bedroom from several residential units and also visibility into the master bedroom impacting on our privacy.*

#### Comment

The townhouses located at 9-19 Myrtle Street are approximately 45 metres from the boundary of this subject site. This is far in excess of the requirements of Sep 65 and DCP 35 in relation to separation distances. A recently constructed townhouse development is near complete between the two properties at No. 1-3 Myrtle Street. The upper level of Building 1 and 2 are not being increased in height or are any additional levels being constructed. These buildings have already been approved by the Panel in 2012 and it not considered by Council that any adverse privacy impacts would result from the already approved development or the proposed modification sought under this Section 96(2) Application.

- ***The area including Booralee park and Botany Aquatic Centres is already subject to heavy vehicle and pedestrian traffic, particularly on weekends. Illegal parking, double parking and illegal u-turns are common occurrences and will be exacerbated by the additional traffic that will enter the area with this development.***

#### Comment

Council acknowledges the current situation in Jasmine, Bay and Myrtle Streets, which is presently exacerbated by construction traffic and construction employee parking. It is worthwhile noting firstly that such traffic will decrease following the redevelopment of the area as envisaged by the precinct controls under BBLEP 2013. Further, the redevelopment of the precinct eliminates heavy vehicle industrial traffic together with employee parking and traffic, which has significant public benefits.

The Section 96(2) application has been accompanied by an amended Traffic Impact Assessment Report prepared by Varga Traffic Planning Pty Ltd, dated 28 May 2013 that addresses Council's car parking requirements for the proposed additional dwellings together with the existing approved dwellings. The proposed car parking sought under this Section 96(2) application is compliant with the requirements of Council's Off Street Car Parking DCP and DCP 35.

Notwithstanding this, Council through its Residents Consultative Committee process has engaged an Independent Traffic Consultant to undertake a review of cumulative traffic impacts in the precinct. This has involved a review of site specific traffic reports for existing, approved and proposed developments taking into consideration the Botany Aquatic Park and Booralee Park which contribute to traffic congestion and parking problems throughout the year.

At present, Council has not received a final report from its consultant, however it is not considered that the proposed additional eleven (11) dwellings under this Section 96(2) application would contribute significantly to the cumulative traffic impact within the precinct. It is anticipated that the recommendations of the independent traffic consultant will include appropriate local traffic measures to and parking measures to assist in easing traffic congestion and parking demand in the area, which will be required to be put back to the Residents Consultative Committee at a later date.

- (e) **The public interest.**

These matters have been considered in the assessment of the Section 96(2) Application. It is considered that approval of the proposed amendment will have no significant adverse impact upon the public interest.

## **2.2 Other Matters**

### **2.2.1 External Referrals**

- *NSW Office of Water*

The proposed Section 96(2) application is Integrated Development and requires a Controlled Activity Approval for construction dewatering pursuant to the provisions of Section 91 of the Environmental Planning and Assessment Act 1979 (EP&A Act).

In a letter dated 19 June 2013, NSW Office of Water has provided General Terms of Approval for the proposed additional basement area, which have been imposed upon the development in the schedule of modified conditions.

- *Sydney Airports Corporation Limited (SACL)*

The subject site lies within an area defined in the schedules of the Civil Aviation (Buildings Control) Regulations that limit the height of structures to 50 feet (15.24 metres) above existing ground height without prior approval of the Civil Aviation Safety Authority.

The development application (in its original form, which has not changed in height) was therefore referred to SACL for consideration. Under letter dated 3 July 2013 SACL provided concurrence for the development, subject to conditions, and on the following basis:

- Building height permitted to a maximum of 26.65m AHD; and,

The conditions provided by SACL have been imposed upon the development in the schedule of modified conditions.

- *Roads and Maritime Services (RMS) / Sydney Regional Development Advisory Service (SRDAC)*

The Section 96(2) application is “Traffic Generating Development” and was referred to RMS. In a letter dated 26 July 2013, the RMS has advised that they have no objection to the proposed Section 96(2) Application. Therefore, it is recommended that existing conditions imposed by RMS remain unaltered on the consent.

### Internal Referrals

The proposed modification application was not required to be referred to other Council Officers in this instance and existing conditions of consent are considered acceptable and are recommended to remain unaltered on the consent.

### Residents Consultative Committee

As previously stated the Section 96(2) application was publicly exhibited for a period of thirty (37) days between 3 July 2013 to 8 August 2013 in accordance with Council’s Notification DCP, including an advertisement in the newspaper and site notices. Four (4)

submissions were received in response to the proposed development. The issues raised in the submissions relate to the proposed height and built form of the development, solar access impacts and traffic.

Prior to the public exhibition of the Section 96(2) application, a Residents Consultative Committee meeting was held on the 13 May 2013. It should be noted that this consultation process is ongoing within this precinct and it is considered that despite having received submissions in relation to the proposed modification application, the changes sought by the Applicant are considered by Council to have a reduced impact on the nearby and adjacent residents.

### Traffic

The Section 96(2) application has been accompanied by an amended Traffic Impact Assessment Report prepared by Varga Traffic Planning Pty Ltd, dated 28 May 2013 that addresses Council's car parking requirements for the proposed additional dwellings together with the existing approved dwellings. The proposed car parking sought under this Section 96(2) application is compliant with the requirements of Council's Off Street Car Parking DCP and DCP 35.

Notwithstanding this, Council through its Residents Consultative Committee process has engaged an Independent Traffic Consultant to undertake a review of cumulative traffic impacts in the precinct. This has involved a review of site specific traffic reports for existing, approved and proposed developments taking into consideration the Botany Aquatic Park and Booralee Park which contribute to traffic congestion and parking problems throughout the year.

At present, Council has not received a final report from its consultant, however it is not considered that the proposed additional eleven (11) dwellings under this Section 96(2) application would contribute significantly to the cumulative traffic impact within the precinct. It is anticipated that the recommendations of the independent traffic consultant will include appropriate local traffic measures to and parking measures to assist in easing traffic congestion and parking demand in the area, which will be required to be put back to the Residents Consultative Committee at a later date.

### Section 94 Contributions

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

- 11 additional dwellings @ \$20,000.00 = \$220, 000.00

Therefore an additional Section 94 Contribution of **\$220,000.00** is required to be paid to Council prior to the issue of the Final Occupation Certificate and is included as an amended condition in the schedule of modified conditions.

### Building Certificate

The Panel is advised that the initial Construction Certificate issued following the consent becoming an operational consent was done so by an Accredited Certifier. The Construction Certificate was subsequently found to be inconsistent with the consent in that the Construction Certificate:

- Included No. 4 Jasmine Street; and
- Provided for the erection of basement perimeter walls beyond the configuration of the consent.

As such, a Building Certificate Application is required for those works undertaken outside of Construction Certificates then subsequently issued by Council. It is recommended in this report, that an additional condition be imposed on the consent to require a Building Certificate Application.

## **Conclusion**

In accordance with Clause 3 of Schedule 4A of the Environmental Planning and Assessment Act, the Application is referred to the The Joint Regional Planning Panel Sydney East Region (JRPP) for determination.

The Section 96(2) Application before the Panel seeks to modify Development Consent No. 11/018 to:

- Construct an additional nine apartments;
- Construct an additional two townhouses;
- Include an additional seventeen (17) car parking spaces;
- Amend the external building facades from select face brickwork to painted finish;
- Modify previously approved unit layouts;
- Modify associated conditions of consent;
- Add No. 4 Jasmine Street, Botany to the development.

The changes sought by the Section 96(2) application reduce the overall height of the development and result in an improved built form, which does not contribute to any adverse impacts on nearby and adjoining residential development. The requested changes are therefore considered acceptable in this instance and are supported by Council.

The proposed development has an FSR of 1.47:1 which is consistent with the 1.5:1 permitted under BBLEP 2013 and has an overall height of 20.20m which is consistent with the maximum height of 22m permitted for the subject site under BBLEP 2013.

The application was the subject of four (4) objections and the matters have been addressed in the body of the report.

The proposal has been assessed in accordance with Section 79C of the *Environmental Planning and Assessment Act 1979*, and the *Botany Bay Local Environmental Plan 2013*. The proposal is permissible in the R3 – Medium Density Residential zone, is considered to satisfy all requirements and the relevant objectives of BBLEP 2013 and is considered to result in a development which is suitable in the context. It is therefore recommended that the Panel grant approval to the Section 96(2) application, subject to the schedule of modified conditions in the attached.

## RECOMMENDATION

In view of the preceding comments, it is RECOMMENDED that Council, as the Consent Authority, resolve:

- (a) That pursuant to Section 96(2)(a) of the Environmental Planning and Assessment Act, 1979, Council is satisfied that the development of which Development Consent No. 11/018 is proposed to be modified is substantially the same development as was originally approved; and
- (b) That the Section 96(2) Application was referred to the relevant minister, public authority or approval body (within the meaning of Division 5), being NSW Roads and Maritime Service, NSW Office of Water in respect of conditions imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval granted by the approval body, as conditions are proposed to be amended as imposed by concurrence to the consent or in accordance with the general terms of the approval granted; and
- (c) That the Section 96(2) Application was notified in accordance with the Environmental Planning and Assessment Regulations 2000 and the Council's Development Control Plan (DCP) No. 24; and
- (d) Pursuant to Section 96(2) of the Environmental Planning and Assessment Act, 1979, amend Development Consent No. 11/018, as follows:
  - (v) Amend the description of the development to read as follows:

***Stage 1 – Removal of the remaining slab(s) and clearing of the surface of the site at 4-32 Jasmine Street and 68-70 Bay Street, Botany, to allow the installation of groundwater monitoring bores to address the issued identified in the General Terms of Approval granted by the NSW Office of Water; and***

***Stage 2 - The excavation at the site and construction of the mixed residential and retail development accommodating 104 apartments, 16 townhouses, 280m<sup>2</sup> of retail floor space, car parking for 233 vehicles located within a partial basement level and planting in accordance with the submitted landscape plan, at 4-32 Jasmine Street and 68-70 Bay Street, Botany. (DA11/018/05)***

- (vi) Amend the following Conditions under Stage 1 of the consent:
  - a. Condition Nos. 1, 3(a), 3(b), 6 and 37;
- (vii) Amend the following Condition under Stage 2 of the consent:
  - a. Condition Nos. 1, 3(a), 3(b), 6, 9, 10, 68, 88, 98, and 110;
- (viii) Add Condition No. 2(v) requiring additional Section 94 contributions and Condition No. 111, requiring a Building Certificate.

**STAGE 1 – SCHEDULE OF MODIFIED CONSENT CONDITIONS**

**Stage 1 provides consent for the clearing of the surface of the site, removal of any remaining slabs and shoring works only to allow further testing of the site.**

**GENERAL CONDITIONS**

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

<b>Drawing N°</b>	<b>Author</b>	<b>Date Received by Council</b>
Registered Survey Plan with Drawing No. 32625A01.DWG (Revision C), Sheets 1 and 2.	Degotardi, Smith & Partners	14 February 2011
<i>Cover Page &amp; Location Plan 8005 DA A00 (Issue A),</i>	<i>Zhinar Architects</i>	<i>30 May 2013</i>
<i>Floor Plan Level 0 8005 DA A01 (Issue A)</i>	Zhinar Architects	<i>30 May 2013</i>
<i>Floor Plan Level 1 8005 DA A02 (Issue B) (DA 11/018/05)</i>	Zhinar Architects	<i>20 June 2013</i>
<i>Floor Plan Level 2 8005 DA A03 (Issue B) (DA 11/018/05)</i>	Zhinar Architects	<i>20 June 2013</i>
<i>Floor Plan Level 3 8005 DA A04 (Issue B) (DA 11/018/05)</i>	Zhinar Architects	<i>20 June 2013</i>
<i>Floor Plan Level 4 8005 DA A05 (Issue B) (DA 11/018/05)</i>	Zhinar Architects	<i>20 June 2013</i>
<i>Floor Plan Level 5 8005 DA A06 (Issue B) (DA 11/018/05)</i>	Zhinar Architects	<i>20 June 2013</i>
<i>Floor Plan Level 6 8005 DA A07 (Issue B) (DA 11/018/05)</i>	Zhinar Architects	<i>20 June 2013</i>
<i>Roof Plan 8005 DA A08 (Issue A)</i>	Zhinar Architects	<i>30 May 2013</i>

<b>Drawing N°</b>	<b>Author</b>	<b>Date Received by Council</b>
<i>(DA 11/018/05)</i>		
<i>Elevations 8005 DA A10 (Issue A). (DA 11/018/05)</i>	Zhinar Architects	<i>30 May 2013</i>
<i>Elevations 8005 DA A11 (Issue A) (DA 11/018/05)</i>	Zhinar Architects	<i>30 May 2013</i>
<i>Sections 8005 DA A12 (Issue A) (DA 11/018/05)</i>	Zhinar Architects	<i>30 May 2013</i>
Basement Stormwater Drainage Layout with Drawing No. 1019-C DA01 (Issue A)	Hkma Engineers	21 June 2012
Basement Stormwater Drainage Layout with Drawing No. 1019-C DA02 (Issue A)	Hkma Engineers	21 June 2012
Basement Pumpout Sections and Details with Drawing No. 1019-C DA03 (Issue A)	Hkma Engineers	21 June 2012
Level 1 Stormwater Drainage Layout with Drawing No. 1019-C DA04 (Issue A)	Hkma Engineers	21 June 2012
Level 1 Stormwater Drainage Layout with Drawing No. 1019-C DA05 (Issue A)	Hkma Engineers	21 June 2012
Typical OSD Sections, Notes & Details with Drawing No. 1019-C DA06 (Issue A)	Hkma Engineers	21 June 2012

<b>Documents</b>	<b>Author</b>	<b>Date Received</b>
Letter regarding Deferred Commencement Conditions	Zhinar Architects	21 June 2012
Stormwater Design Calculations	No Details Provided	21 June 2012
Materials & Sample Board	Krikis Tayler Architects	14 February 2011
Amended Statement of Environmental Effects (Dated February 2012)	James Lovell & Associates PtyLtd	8 February 2012
SEPP 1 Objection (Amended, dated February 2012)	James Lovell & Associates PtyLtd	8 February 2012
Design Verification Statement	Krikis Tayler Architects	14 February 2011
Architectural Design Statement	Krikis Tayler Architects	14 February 2011



<b>Documents</b>	<b>Author</b>	<b>Date Received</b>
(Dated 8 February 2010)		
SEPP 65 Assessment (Dated 8 February 2010)	Krikis Tayler Architects	14 February 2011
Residential Flat Design Code Analysis (Dated 11 February 2010)	Krikis Tayler Architects	14 February 2011
Building Code of Australia Assessment Report	Barry Johnson & Associates Pty Ltd	14 February 2011
BASIX Certificate with No. 358092M (Issued 10 February 2011)	AGA Consultants (ABN: 37 003 906 626)	14 February 2011
BASIX Certificate with No. 358105M (Issued 10 February 2011)	AGA Consultants (ABN: 37 003 906 626)	14 February 2011
Disability Access Report (Dated 9 February 2011 & Ref: 10101)	Lindsay Perry Access & Architecture	14 February 2011
Preliminary Geotechnical Assessment (Dated 8 January 2011)	Asset Geotechnical – Geotechnical Engineering Consultants	14 February 2011
Landscape Design Report	Site Image – Landscape Architects	14 February 2011
Waste Management Plan (dated February 2011)	McGregor Environmental Services	14 February 2011
Pedestrian Wind Environment Statement (Dated 7 February 2011, Report No. WA972-01F02(rev 0) – WS Report).	WindTech	14 February 2011
Aircraft Noise Assessment Report (Revision 2, dated 24/02/2011)	Acoustic Logic	24 February 2011
Traffic and Parking Assessment Report (Ref: 11063, Dated 30 March 2011)	Varga Traffic Planning Pty Ltd	31 March 2011
Phase 1 Environmental Site Assessment (Dated 30 July 2004)	URS Australia Pty Ltd	19 July 2011
Phase 2 Environmental Site Assessment – Final Report (Dated 12 October 2007)	URS Australia Pty Ltd	19 July 2011
Groundwater Monitoring Report (Report No.E1326.1AA, dated 15 February 2011)	Environmental Investigations	24 February 2011
Additional Phase II Environmental Site Assessment (Dated August 2011)	Aargus Pty Ltd	19 August 2011
Heritage Impact Statement - Dated May 2011	Helen Wilson,	31 May 2011

<b>Documents</b>	<b>Author</b>	<b>Date Received</b>
Response to Impacts from Dewatering and Basement Construction dated 6 May 2011.	Asset Geotechnical,	31 May 2011
View Loss Analysis dated 7 December 2011	Krikis Tayler Architect	7 December 2011
Air Quality Assessment dated 13 February 2012	SLR	14 February 2012
Letter – dated 13 February 2012	Krikis Tayler Architect	14 February 2012
<i>Statement of Environmental Effects accompanying Section 96(2) Application</i>	<i>James Lovell &amp; Associates</i>	<i>20 June 2013</i>
<i>Traffic &amp; Parking Assessment Report, Ref 13264</i>	<i>Varga Traffic Planning Pty Ltd</i>	<i>30 May 2013</i>

No construction works (including excavation) shall be undertaken prior to the issue to the Construction Certificate. (**DA11/018/05**)

- 2 The applicant must prior to the commencement of any works associated with Stage 1 of the consent pay the following fees:

(a)	Builders Security Deposit	\$25,000.00
(b)	Development Control	\$2,310.00
(c)	Consultant Fees	\$6,000.00
(d)	Tree Preservation Bond	\$4,500.00
(e)	Tree Preservation Bond Preparation Fee	\$550.00
(f)	Plan Checking Fee for Civil and Public Domain Work	\$500.00

3

- (a) This Consent relates to land in **Lot 1 in DP 1176175** and as such, building works must not encroach on to adjoining lands or the adjoining public place, other than public domain works required by the letter dated 13 February 2012 prepared by Krikis Tayler Architects. (**DA11/018/05**)
- (b) This component, Stage 1 of the Consent, only permits the removal of any remaining slab(s), clearing of the surface of the site and shoring works to allow the installation of groundwater monitoring bores (if required) to address the technical documentation required by the General Terms of Approval issued by the NSW Office of Water on **19 June 2013**. (**DA 11/018/05**).
- (c) The consent given does not imply that works can commence until such time that: -
- (i) Detailed plans and specifications of the building have been endorsed with a Construction Certificate by: -
- (1) The consent authority; or,

- (2) An accredited certifier; and,
  - (ii) The person having the benefit of the development consent: -
    - (1) Has appointed a principal certifying authority; and,
    - (2) Has notified the consent authority and the Council (if the Council is not the consent authority) of the appointment; and,
    - (3) The person having the benefit of the development consent has given at least 2 days notice to the Council of the person's intention to commence the erection of the building. (DA 11/018/02)
  - (d) All building (including shoring) work must be carried out in accordance with the provisions of the Building Code of Australia; and (DA 11/018/02)
  - (e) The construction of below-ground (basement) areas must incorporate a water proofing system (i.e. any basement void is to be designed and constructed as a "fully tanked" structure) with adequate provision for future fluctuations of the water table level so that groundwater inflows do not occur.  
  
Note: It has been identified by the NSW Office of Water that the proposed development may result in prolonged adverse impacts on groundwater resources if the required dewatering occurs on anything other than a temporary basis. Therefore, the proposal must not incorporate provision for the permanent or semi-permanent pumping of groundwater seepage from below-ground areas. (DA 11/018/02)
  - (f) The development consent does not grant approval to the building works as carried out (i.e. Piling / Shoring construction). Certification of these works is dependent upon separately obtaining a Building Certificate from Council, pursuant to Sections 149A – 149G of the Environmental Planning and Assessment Act 1979. (DA 11/018/02)
- 4 All materials excavated from the site (fill or natural) shall be classified in accordance with the NSW Department of Environment and Climate Change (DECC) Waste Classification Guidelines (2008) prior to being disposed of to a NSW approved landfill or to a recipient site.
- 5 All works shall be carried out in accordance with the recommendations contained in the Additional Phase II Environmental Site Assessment prepared by Aargus and dated August 2011 and the letter report prepared by Aargus and submitted to Council on 25 January 2012.

#### **CONDITIONS IMPOSED BY AN EXTERNAL AUTHORITY**

- 6 The following conditions form the General Terms of Approval dated **19 June 2013** by the NSW Office of Water and must be complied with:

##### **General**

- (a) *An authorisation shall be obtained for the take of groundwater as part of the activity. Groundwater shall not be pumped or extracted for any purpose other than temporary construction dewatering at the site identified in the development application. The authorisation shall be subject to a currency period of 12 months from the date of issue and will be limited to the volume of groundwater take identified.*
- (b) *The design and construction of the structure shall preclude the need for permanent dewatering by waterproofing those areas that may be impacted by any water table (i.e. a fully tanked structure) with adequate provision for unforeseen fluctuations of water table levels to prevent potential future inundation.*
- (c) *Construction methods and material used in and for construction shall not cause pollution of the groundwater.*

**Prior to excavation**

- (d) *Measurements of groundwater levels beneath the site from a minimum of three monitoring bores shall be taken and a report provided to the NSW Office of Water. A schedule and indicative plans of the proposed ongoing water level monitoring from the date of consent until at least two months after the cessation of pumping shall be included in the report.*
- (e) *A reasonable estimate of the total volume of groundwater to be extracted shall be calculated and a report provided to the NSW Office of Water. Details of the calculation method shall be included in the report.*
- (f) *A copy of a valid development consent for the project shall be provided to the NSW Office of Water.*
- (g) *Groundwater quality testing shall be conducted and a report supplied to the NSW Office of Water. Samples must be taken prior to the commencement of pumping, and a schedule of the ongoing testing throughout the dewatering activity shall be included in the report. Collection and testing and interpretation of results must be done by suitably qualified persons and NATA certified laboratory identifying the presence of any contaminants and comparison of the data against accepted water quality objectives or criteria.*
- (h) *The method of disposal of pumped water shall be nominated (i.e. street drainage to the stormwater system or discharge to sewer) and a copy of the written permission from the relevant controlling authority shall be provided to the NSW Office of Water. The disposal of any contaminated pumped groundwater (tailwater) must comply with the provisions of the Protection of the Environment Operations Act 1997 and any requirements of the relevant controlling authority.*
- (i) *Contaminated groundwater shall not be reinjected into any aquifer. The reinjection system design and treatment methods to remove contaminants shall be nominated and a report provided to the NSW Office of Water. The quality of any pumped water (tailwater) that is to be reinjected must be compatible with, or improve the intrinsic or ambient groundwater in the vicinity of the reinjection site.*

**During excavation**

- (j) *Piping or other structures used in the management of pumped groundwater (tailwater) shall not create a flooding hazard. Control of pumped groundwater (tailwater) is to be maintained at all times during dewatering to prevent unregulated off-site discharge.*
- (k) *Measurement and monitoring arrangements to the satisfaction of the NSW Office of Water are to be implemented. Monthly records of the volumes of all groundwater pumped and the quality of any water discharged are to be kept and a report provided to the NSW Office of Water after dewatering has ceased. Daily records of groundwater levels are to be kept and a report provided to the NSW Office of Water after dewatering has ceased.*
- (l) *Pumped groundwater (tailwater) shall not be allowed to discharge off-site (e.g. adjoining roads, stormwater system, sewerage system, etc) without the controlling authorities approval and/or owners consent. The pH of discharge water shall be managed to be between 6.5 and 8.5. The requirements of any other approval for the discharge of pumped groundwater (tailwater) shall be complied with.*
- (m) *Dewatering shall be undertaken in accordance with groundwater-related management plans applicable to the excavation site. The requirements of any management plan (such as acid sulphate soils management plan or remediation action plan) shall not be compromised by the dewatering activity.*
- (n) *The location and construction of groundwater extraction works that are abandoned are to be recorded and a report provided to the NSW Office of Water after dewatering has ceased. The method of abandonment is to be identified in the documentation.*
- (o) *Access to groundwater management works used in the activity is to be provided to permit inspection when required by the NSW Office of Water under appropriate safety precautions.*

**Following excavation**

- (p) *All monitoring records must be provided to the NSW Office of Water after the required monitoring period has ended together with a detailed interpreted hydrogeological report identifying all actual resource and third party impacts. (DA11/018/05)*

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

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

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

- (a) Prior to the commencement of any site clearing, demolition or shoring (DA 11/018/02) work, a dilapidation report of the immediate adjoining properties and public infrastructure (including Council and public utility infrastructure) shall be prepared by a suitably qualified and submitted to Council. The report shall include records and photographs of the following area that will be impacted by the development
  - (i) Jasmine Street
  - (ii) Myrtle Street
  - (iii) Bay Street
  - (iv) All properties immediately adjoining the site
- (b) The applicant shall bear the cost of all restoration works to buildings/ structures and public infrastructure that been damaged during the course the construction. Any damage to buildings/structures, infrastructures, roads, lawns, trees, gardens and the like shall be fully rectified by the applicant/developer, at the applicant/developer's expense.
- (c) In addition, the following issues shall also be complied with: -
  - (i) A copy of the dilapidation report together with the accompanying photographs shall also be given to all immediately adjoining properties owners and public utility authorities, and a copy lodged with Principal Certifying Authority and the Council. The report shall be agreed by all affected parties as a fair record of existing conditions prior to commencement of any works;
  - (ii) It is a condition of consent that should construction works cause rise to public safety and/or workplace safety; works shall halt until absolute safety is restored.

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

- 14 A Soil and Water Management Plan (also known as an Erosion and Sediment Control Plan) shall be prepared for the demolition, shoring (DA 11/018/02) and site clearing works in according to 'Do It Right On-Site' Soil and Water Management for the Construction Industry (available from Council), NSW EPA's Managing Urban Stormwater: Construction Activities and Landcom Managing Urban Stormwater – Soils and Construction 4th Edition (2004) and submitted to the Principal Certifying Authority prior to commencement of any works. This Plan shall be implemented prior to commencement of any site works or activities. All controls in the plan shall be maintained at all times during the construction works and for a minimum three (3) month period after the completion of the project (where necessary). A copy of the Soil and Water Management Plan shall be kept on-site at all times and made available to Council Officers on request.

15 Prior to commencement of any works, application(s) shall be made to Council's Customer Services Counter for the following approvals and permits on Council's property/road reserve under Road Act 1993 and Local Government Act 1993 as appropriate:

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

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

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

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

16

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



- (iv) Dust control – Dust emission must be minimised for the full height of the building. A minimum requirement is that perimeter scaffolding, combined with chain wire and shade cloth must be used, together with continuous water spray during the demolition process. Compressed air must not be used to blow dust from the building site;
- (v) Disconnection of Gas and Electrical Supply;
- (vi) Fire Fighting – Fire fighting services on site are to be maintained at all times during demolition work. Access to fire services in the street must not be obstructed;
- (vii) Access and Egress – No demolition activity shall cause damage to or adversely affect the safe access and egress of this building;
- (viii) Waterproofing of any exposed surfaces of adjoining buildings;
- (ix) Control of water pollution and leachate and cleaning of vehicles tyres – Proposals shall be in accordance with the “Protection of the Environmental Operations Act 1997”;
- (x) Working hours, in accordance with this Development Consent;
- (xi) Confinement of demolished materials in transit;
- (xii) Proposed truck routes, in accordance with this Development Consent;
- (xiii) Location and method of waste disposal and recycling in accordance with the “Waste Minimisation and Management Act 1995”.
- (xiv) Sewer – If the property is affected by a common sewer this shall be appropriately managed to ensure no loss of service to other users.

17 A detailed Traffic Management Plan for the pedestrian and traffic management of the site during demolition and site clearing works shall be prepared and submitted to the relevant road authority (Council or Roads and Traffic Authority) for approval prior to commencement of any works. The plan shall: -

- (a) be prepared by a RTA accredited consultant.
- (b) nominate a contact person who is to have authority without reference to other persons to comply with instructions issued by Council’s Traffic Engineer or the Police.
- (c) ensure pedestrian and vehicular access from Myrtle, Jasmine and Bay Streets is maintained at all times. No closure of any road reserve will be permitted without NSW Roads and Maritime Services (former Roads and Traffic Authority) and Council’s approval.
- (d) if required, implement a public information campaign to inform any road changes well in advance of each change.

18 Detailed Demolition Management Plan (CMP) shall be submitted to Council and the Principal Certifying Authority for approval prior to commencement of any works. The DMP shall address the following: -

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

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

- (c) The provisions of toilet facilities in accordance with this clause must be completed before any other work is commenced.

21 In order to ensure that the Agonis street tree located at the corner of Myrtle & Jasmine Streets, and any other existing tree to be protected as stipulated by Council and indicated on the Council approved landscape plan, is protected during construction, and its health and structural stability ensured, the following is required :

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

- 22      Prior to the Commencement of Demolition, the applicant is to submit payment for a Tree Preservation Bond of \$4,500.00 to ensure protection of the Agonis street tree from damage during construction. The duration of the Bond shall be limited to a period of 9 months after issue of the Occupation Certificate. At the completion of the 9 month period the Tree Preservation Bond shall be refunded pending a satisfactory inspection by Council. If the tree was found to be in decline, damaged (including roots), dead or pruned without Council permission or, if tree protection measures were not satisfied at any time, then Council will forfeit all, or part thereof, of the bond. The Tree Preservation Bond was calculated using the Thyer Tree Evaluation method.

### **DURING WORKS**

- 23      This Consent does not permit onsite groundwater treatment or remediation. If this is required a separate development application is to be lodged with Council for consideration.
- 24      The approved Waste Management Plan shall be complied with at all times during demolition and site clearing works.
- 25      Throughout the demolition, shoring (DA 11/018/02) and site clearing period, Council's warning sign for soil and water management shall be displayed on the most prominent point of the building site, visible to both the street and site workers. A copy of the sign is available from Council's Customer Service Counter.
- 26      Any material containing asbestos found on site during the demolition process shall be removed and disposed of in accordance with:
- (a)      WorkCover NSW requirements. An appropriately licensed asbestos removalist must complete all asbestos works if they consist of the removal of more than 10m<sup>2</sup> of bonded asbestos and/or any friable asbestos.
  - (b)      Protection of the Environment Operations Act 1997;
  - (c)      Protection of the Environment Operation (Waste) Regulation
  - (d)      DECC Waste Classification Guidelines 2008.
- 27      If any material containing asbestos is found on site during the demolition process the material is to be removed and disposed of in accordance with WorkCover requirements. An appropriately licensed asbestos removalist must complete all asbestos works if they consist of the removal of more than 10m<sup>2</sup> of bonded asbestos and/or any friable asbestos.
- 28      In order to ensure safe handling of asbestos materials, the re-use or sale of asbestos building materials is strictly prohibited.

- 29 No demolition materials shall be burnt or buried on the site.
- 30 Demolition and site clearing work shall be restricted to between the following hours:
- (a) Monday to Friday 07:00 am to 05:00 pm
  - (b) Saturday 07:00 am to 01:00 pm
- 31
- (a) During demolition and site clearing works, the applicant / builder is required to ensure the protection and preservation of all boundary fencing or boundary walls between the subject site and adjoining properties. Any damage caused as a result of such works will be at the full cost of the applicant/builder.
  - (b) Existing structures and or services on this and adjoining properties shall not be endangered during any demolition and site clearing works associated with the project. The Applicant is to provide details of any stabilisation works required to adjacent developments to Council.
- 32
- (a) All vehicles transporting soil, sand or similar materials to or from the site shall cover their loads at all times.
  - (b) The demolition and site clearing operations of the site shall be conducted in such a manner as not to interfere with or materially affect the amenity of the neighbourhood by reason of noise, vibration, odour, fumes, vapour, steam, soot, ash, dust, particulate matter, waste water, waste products or other impurities which are a nuisance or injurious to health.
  - (c) In order to prevent vehicles tracking soil or other materials onto public roads and washing of materials into the street drainage system or watercourse, during Demolition and Site Clearing Works, access to the site shall be available in all weather conditions. The area shall be stabilised and protected from erosion;
  - (d) Pavement surfaces adjacent to the ingress and egress points are to be swept and kept clear of earth, mud and other materials at all times and in particular at the end of each working day or as directed by Council's Engineer
  - (e) Shaker pads shall to be installed at the entry/exit points to the site to prevent soil material leaving the site on the wheels of vehicles and other plant and equipment.
  - (f) Council nature strip shall be maintained in a clean and tidy state at all times during construction works.
- 33 During demolition, shoring (DA 11/018/02) and site clearing works, care must be taken to protect Council's infrastructure, including street signs, footpath, kerb, gutter and drainage pits etc. Protecting measures shall be maintained in a state of good and safe condition throughout the course of construction. The area fronting the site and in

the vicinity of the development shall also be safe for pedestrian and vehicular traffic at all times. Any damage to Council's infrastructure (including damage caused by, but not limited to, delivery vehicles, waste collection, contractors, sub-contractors, concrete delivery vehicles) shall be fully repaired in accordance with Council's specification and AUS-SPEC at no cost to Council.

- 34 Any soil disposed of offsite shall be classified in accordance with the procedures in the Department of Environment and Climate Change Waste Classification Guidelines (2008).
- 35 Noise from demolition, shoring (DA 11/018/02) and site clearing activities associated with Stage 1 of the Consent shall comply with the NSW Environment Protection Authority's Environmental Noise Manual – Chapter 171 and the Protection of the Environment Operations Act 1997.
- (a) Demolition period of 4 weeks and under:
    - (i) The L10 sound pressure level measured over a period of not less than 15 minutes when the demolition site is in operating must not exceed the background level by more than 20dB(A).
  - (b) Demolition period greater than 4 weeks and not exceeding 26 weeks:
    - (i) The L10 sound pressure level measured over a period of not less than 15 minutes when the demolition site is in operating must not exceed the background level by more than 10dB(A).
  - (c) All possible steps should be taken to silence demolition site equipment.
- 36
- (a) Vibrations from shoring activities on the site must not be felt, detected or occur beyond the boundaries of the site to which this consent relates.  
(DA 11/018/02) (DA 11/018/03)
  - (b) Vibration levels induced by the demolition activities shall not exceed 1mm/sec peak particle velocity (ppv) when measured at the footing of any occupied building.
  - (c) Vibration levels induced by the demolition activities shall not exceed 3mmsec peak particle velocity (ppv) when measured at the footing of any unoccupied building.
  - (d) The upper noise level from the demolition operations measured over a period of 10 minutes must not exceed the background noise level by more than 10dB(A).
- 37 The applicant being informed that this approval shall be regarded as being otherwise in accordance with the information and particulars set out and described in the Development Application registered in Council's records as Development Application No. 11/018 dated 14 February 2011, as amended by Section 96(1A)

Application No. 11/018/02 dated 3 August 2012, and as amended by Section 96(1A) Application No. 11/018/03 dated 17 August 2012, *and as amended by Section 96(2) Application No. 11/018/05 dated 17 April 2013* and that any alteration, variation, or extension to the use, for which approval has been given, would require further Approval from Council. (DA11/018/05)

**THIS IS THE END OF STAGE 1.**

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

**STAGE 2 –SCHEDULE OF MODIFIED CONSENT CONDITIONS**

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

**GENERAL CONDITIONS**

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

<b>Drawing N°</b>	<b>Author</b>	<b>Dated Received by Council</b>
Registered Survey Plan with Drawing No. 32625A01.DWG (Revision C), Sheets 1 and 2.	Degotardi, Smith & Partners	14 February 2011
Cover, Site & Location Plan 0210 – A00 (Issue 3)	<b><i>Zhinar Architects</i></b>	<b><i>30 May 2013</i></b>
Floor Plan Level 0 8005 DA A01 (Issue A)	Zhinar Architects	<b><i>30 May 2013</i></b>
Floor Plan Level 1 8005 DA A02 ( <i>Issue B</i> ) (DA 11/018/05)	Zhinar Architects	<b><i>20 June 2013</i></b>
Floor Plan Level 2 8005 DA A03 ( <i>Issue B</i> ) (DA 11/018/05)	Zhinar Architects	<b><i>20 June 2013</i></b>
Floor Plan Level 3 8005 DA A04 ( <i>Issue B</i> ) (DA 11/018/05)	Zhinar Architects	<b><i>20 June 2013</i></b>
Floor Plan Level 4 8005 DA A05 ( <i>Issue B</i> ) (DA 11/018/05)	Zhinar Architects	<b><i>20 June 2013</i></b>
Floor Plan Level 5 8005 DA A06 ( <i>Issue B</i> ) (DA 11/018/05)	Zhinar Architects	<b><i>20 June 2013</i></b>
Floor Plan Level 6 8005 DA A07 ( <i>Issue B</i> ) (DA 11/018/05)	Zhinar Architects	<b><i>20 June 2013</i></b>
Roof Plan 8005 DA A08 (Issue A) (DA 11/018/05)	Zhinar Architects	<b><i>30 May 2013</i></b>



<b>Drawing N°</b>	<b>Author</b>	<b>Dated Received by Council</b>
Elevations 8005 DA <i>A10</i> (Issue A) (DA 11/018/05)	Zhinar Architects	<i>30 May 2013</i>
Elevations 8005 DA <i>A11</i> (Issue A) (DA 11/018/05)	Zhinar Architects	<i>30 May 2013</i>
<i>Sections</i> 8005 DA <i>A12</i> (Issue A) (DA 11/018/05)	Zhinar Architects	<i>30 May 2013</i>
Basement Stormwater Drainage Layout with Drawing No. 1019-C DA01 (Issue A)	Hkma Engineers	21 June 2012
Basement Stormwater Drainage Layout with Drawing No. 1019-C DA02 (Issue A)	Hkma Engineers	21 June 2012
Basement Pumpout Sections and Details with Drawing No. 1019-C DA03 (Issue A)	Hkma Engineers	21 June 2012
Level 1 Stormwater Drainage Layout with Drawing No. 1019-C DA04 (Issue A)	Hkma Engineers	21 June 2012
Level 1 Stormwater Drainage Layout with Drawing No. 1019-C DA05 (Issue A)	Hkma Engineers	21 June 2012
Typical OSD Sections, Notes & Details with Drawing No. 1019-C DA06 (Issue A)	Hkma Engineers	21 June 2012

<b>Documents</b>	<b>Author</b>	<b>Date Received</b>
Letter regarding Deferred Commencement Conditions	Zhinar Architects	21 June 2012
Stormwater Design Calculations	No Details Provided	21 June 2012
Materials & Sample Board	Krikis Tayler Architects	14 February 2011
Amended Statement of Environmental Effects (Dated February 2012)	James Lovell & Associates PtyLtd	8 February 2012
SEPP 1 Objection (Amended, dated February 2012)	James Lovell & Associates PtyLtd	8 February 2012
Design Verification Statement	Krikis Tayler Architects	14 February 2011
Architectural Design Statement (Dated 8 February 2010)	Krikis Tayler Architects	14 February 2011
SEPP 65 Assessment (Dated 8 February 2010)	Krikis Tayler Architects	14 February 2011
Residential Flat Design Code Analysis (Dated 11 February 2010)	Krikis Tayler Architects	14 February 2011
Building Code of Australia Assessment Report	Barry Johnson & Associates Pty Ltd	14 February 2011
BASIX Certificate with No. 358092M (Issued 10 February 2011)	AGA Consultants (ABN: 37 003 906 626)	14 February 2011

<b>Documents</b>	<b>Author</b>	<b>Date Received</b>
BASIX Certificate with No. 358105M (Issued 10 February 2011)	AGA Consultants (ABN: 37 003 906 626)	14 February 2011
Disability Access Report (Dated 9 February 2011 & Ref: 10101)	Lindsay Perry Access & Architecture	14 February 2011
Preliminary Geotechnical Assessment (Dated 8 January 2011)	Asset Geotechnical – Geotechnical Engineering Consultants	14 February 2011
Landscape Design Report	Site Image – Landscape Architects	14 February 2011
Waste Management Plan (dated February 2011)	McGregor Environmental Services	14 February 2011
Pedestrian Wind Environment Statement (Dated 7 February 2011, Report No. WA972-01F02(rev 0) – WS Report).	WindTech	14 February 2011
Aircraft Noise Assessment Report (Revision 2, dated 24/02/2011)	Acoustic Logic	24 February 2011
Traffic and Parking Assessment Report (Ref: 11063, Dated 30 March 2011)	Varga Traffic Planning Pty Ltd	31 March 2011
Phase 1 Environmental Site Assessment (Dated 30 July 2004)	URS Australia Pty Ltd	19 July 2011
Phase 2 Environmental Site Assessment – Final Report (Dated 12 October 2007)	URS Australia Pty Ltd	19 July 2011
Groundwater Monitoring Report (Report No.E1326.1AA, dated 15 February 2011)	Environmental Investigations	24 February 2011
Additional Phase II Environmental Site Assessment (Dated August 2011)	Aargus Pty Ltd	19 August 2011
Heritage Impact Statement - Dated May 2011	Helen Wilson,	31 May 2011
Response to Impacts from Dewatering and Basement Construction dated 6 May 2011.	Asset Geotechnical,	31 May 2011
View Loss Analysis dated 7 December 2011	Krikis Tayler Architect	7 December 2011
Air Quality Assessment dated 13 February 2012	SLR	14 February 2012
Letter – dated 13 February 2012	Krikis Tayler Architect	14 February 2012
<b><i>Statement of Environmental Effects accompanying Section 96(2) Application</i></b>	<b><i>James Lovell &amp; Associates</i></b>	<b><i>20 June 2013</i></b>
<b><i>Traffic &amp; Parking Assessment Report, Ref 13264</i></b>	<b><i>Varga Traffic Planning Pty Ltd</i></b>	<b><i>30 May 2013</i></b>

No construction works (including excavation) shall be undertaken prior to the issue to the Construction Certificate. ***(DA11/018/05)***

- (a) The Builders Damage Deposit and Tree Preservation Bond paid prior to commencement of works for Stage 1 shall be retained until after issue of the Final Occupation Certificate for Stage 2.
- (b) The applicant must prior to the issue of the approved plans pay the following fees:
 

(i) Development Control	\$11,055.00
(ii) Section 94 Contributions	\$2,209,042.00
(iii) Performance Bond for Civil Works	\$100,000.00
(iv) Plan Checking Fee for Civil and Public	\$3,000.00
(v) <b><i>Additional Section 94 Contributions</i></b>	<b><i>\$220,000.00</i></b>

Domain Work (as required)

***(DA11/018/05)***

3.

- (a) This Consent relates to land in ***Lot 1 in DP 1176175***, and as such, building works must not encroach on to adjoining lands or the adjoining public place, other than public domain works required by the letter dated 13 February 2012 prepared by Krikis Tayler Architects. ***(DA11/018/05)***
- (b) This component, Stage 2 of the Consent grants consent for excavation and construction works as recommended in the General Terms of Approval issued by the ***NSW Office of Water on 19 June 2013. (DA11/018/05)***

4.

- (a) All building work must be carried out in accordance with the provisions of the Building Code of Australia; and
- (b) The construction of below-ground (basement) areas must incorporate a water proofing system (i.e. any basement void is to be designed and constructed as a “fully tanked” structure) with adequate provision for future fluctuations of the water table level so that groundwater inflows do not occur.  
  
Note: It has been identified by the NSW Office of Water that the proposed development may result in prolonged adverse impacts on groundwater resources if the required dewatering occurs on anything other than a temporary basis. Therefore, the proposal must not incorporate provision for the permanent or semi-permanent pumping of groundwater seepage from below-ground areas.
- (c) The future use of the retail tenancies (local shops) located on the ground floor of the development shall form the subject of a further development application to Council.

5. Pursuant to clause 97A(3) of the Environmental Planning & Assessment Regulation 2000, it is a condition of this development consent that all the commitments listed in

each relevant BASIX Certificate (No.'s 358092M and 358105M) for the each dwelling in the development are fulfilled.

Note: Relevant BASIX Certificate means:

- (a) A BASIX Certificate that was applicable to the development when this development consent was granted (or, if the development consent is modified under Section 96 of the Act, a BASIX Certificate that is applicable to the development when this development consent is modified); or
  - (b) If a replacement BASIX Certificate accompanies any subsequent application for a construction certificate, the replacement BASIX Certificate.
  - (c) BASIX Certificate has the meaning given to that term in the Environmental Planning and Assessment Regulation 2000.
6. The finishes of the building are to be in accordance with the details shown on the ***Section 96(2) approved plans*** and the Materials Board with Project No. 0210, Drawing No. A19 (Issue 1) prepared by Krikis Tayler Architects dated February 2011 and approved under this Development Consent. All finishes of the building shall be adequately maintained at all times. ***(DA11/018/05)***
7. Any future application for subdivision shall be in the form of a Strata Development Application to ensure that the development is managed and maintained in its entirety. In addition, such application shall be accompanied by the following documentation that indicates:
- (a) The requirement for the employment of a person to manage the collection of waste material by Council, including, but not limited to bin placement at the road edge and retrieval of bins soon after collection of contents, cleansing of bins, storage of bins in the compound and the like.
  - (b) Responsibilities with regard to the ongoing maintenance of the building and landscaped areas at the property in accordance with the plans and details approved under this Development Consent.
  - (c) Responsibilities with regard to the operation maintenance of artificial features at the property in accordance with the plans and details approved under this Development Consent.
  - (d) Responsibilities for ensuring owners and/or tenants have adequate and hygienic waste disposal and collection arrangements and for ensuring the waste storage area is appropriately maintained and kept in a clean and safe state at all times.
  - (e) Responsibilities to ensure that receptacles for the removal of waste, recycling etc. are put out for collection between 4.00pm and 7.00pm the day prior to collection, and, on the day of collection, being the day following, returned to the premises by 12.00 noon.
  - (f) The Owners Corporation obligations under clauses 177, 182, 183, 184, 185 and 186 of the Environmental Planning and Assessment Regulation 2000.
  - (g) The prohibition on the sub-leasing of car parking spaces.

- (h) Maintenance of the buildings vital mechanical plant and equipments including but not limited to pumps, ventilation systems, passenger lifts.
  - (i) The Owners Corporation/Executive Committee obligations to ensure all wastewater and stormwater treatment devices (including drainage systems, sumps and traps) are regularly maintained in order to remain effective. All solid and liquid wastes collected from the devices shall be disposed of in a manner that does not pollute waters and in accordance with the Protection of the Environment Operations Act 1997.
  - (j) The provision of waste bins for the townhouses to be stored within their respective basement garage area.
  - (k) Prior to the issue of a Construction Certificate a maintenance schedule shall be submitted to the Principal Certifying Authority for approval as to the ongoing maintenance and upkeep of the finishes and materials to the building. This shall include, but not be limited to the following:
    - (i) The exterior of the buildings being painted at least once in every ten year period;
    - (ii) The externally visible windows of the buildings being washed once every year; and
    - (iii) The metal screens and any fencing to the building and site being protected against fading/discolouration and warping.
  - (l) Such Maintenance Plan shall be updated as required and shall be submitted with any future application for Subdivision.
8. All internal pedestrian walkways and paved areas shall be unit paved. Large areas of asphalt or concrete are not permitted. The driveway crossover shall be constructed of plain broom finished concrete.

### **CONDITIONS IMPOSED BY AN EXTERNAL AUTHORITY**

9. The following conditions form the General Terms of Approval dated **19 June 2013** by the NSW Office of Water and must be complied with:

#### **General and Administrative Issues**

- (a) *An authorisation shall be obtained for the take of groundwater as part of the activity. Groundwater shall not be pumped or extracted for any purpose other than temporary construction dewatering at the site identified in the development application. The authorisation shall be subject to a currency period of 12 months from the date of issue and will be limited to the volume of groundwater take identified.*
- (b) *The design and construction of the structure shall preclude the need for permanent dewatering by waterproofing those areas that may be impacted by any water table (i.e. a fully tanked structure) with adequate provision for unforeseen fluctuations of water table levels to prevent potential future inundation.*

- (c) *Construction methods and material used in and for construction shall not cause pollution of the groundwater.*

**Prior to excavation**

- (d) *Measurements of groundwater levels beneath the site from a minimum of three monitoring bores shall be taken and a report provided to the NSW Office of Water. A schedule and indicative plans of the proposed ongoing water level monitoring from the date of consent until at least two months after the cessation of pumping shall be included in the report.*
- (e) *A reasonable estimate of the total volume of groundwater to be extracted shall be calculated and a report provided to the NSW Office of Water. Details of the calculation method shall be included in the report.*
- (f) *A copy of a valid development consent for the project shall be provided to the NSW Office of Water.*
- (g) *Groundwater quality testing shall be conducted and a report supplied to the NSW Office of Water. Samples must be taken prior to the commencement of pumping, and a schedule of the ongoing testing throughout the dewatering activity shall be included in the report. Collection and testing and interpretation of results must be done by suitably qualified persons and NATA certified laboratory identifying the presence of any contaminants and comparison of the data against accepted water quality objectives or criteria.*
- (h) *The method of disposal of pumped water shall be nominated (i.e. street drainage to the stormwater system or discharge to sewer) and a copy of the written permission from the relevant controlling authority shall be provided to the NSW Office of Water. The disposal of any contaminated pumped groundwater (tailwater) must comply with the provisions of the Protection of the Environment Operations Act 1997 and any requirements of the relevant controlling authority.*
- (i) *Contaminated groundwater shall not be reinjected into any aquifer. The reinjection system design and treatment methods to remove contaminants shall be nominated and a report provided to the NSW Office of Water. The quality of any pumped water (tailwater) that is to be reinjected must be compatible with, or improve the intrinsic or ambient groundwater in the vicinity of the reinjection site.*

**During excavation**

- (j) *Piping or other structures used in the management of pumped groundwater (tailwater) shall not create a flooding hazard. Control of pumped groundwater (tailwater) is to be maintained at all times during dewatering to prevent unregulated off-site discharge.*
- (k) *Measurement and monitoring arrangements to the satisfaction of the NSW Office of Water are to be implemented. Monthly records of the volumes of all groundwater pumped and the quality of any water discharged are to be kept and a report provided to the NSW Office of Water after dewatering has ceased. Daily records of groundwater levels are to be kept and a report provided to the NSW Office of Water after dewatering has ceased.*

- (l) *Pumped groundwater (tailwater) shall not be allowed to discharge off-site (e.g. adjoining roads, stormwater system, sewerage system, etc) without the controlling authorities approval and/or owners consent. The pH of discharge water shall be managed to be between 6.5 and 8.5. The requirements of any other approval for the discharge of pumped groundwater (tailwater) shall be complied with.*
- (m) *Dewatering shall be undertaken in accordance with groundwater-related management plans applicable to the excavation site. The requirements of any management plan (such as acid sulphate soils management plan or remediation action plan) shall not be compromised by the dewatering activity.*
- (n) *The location and construction of groundwater extraction works that are abandoned are to be recorded and a report provided to the NSW Office of Water after dewatering has ceased. The method of abandonment is to be identified in the documentation.*
- (o) *Access to groundwater management works used in the activity is to be provided to permit inspection when required by the NSW Office of Water under appropriate safety precautions.*

**Following excavation**

- (p) *All monitoring records must be provided to the NSW Office of Water after the required monitoring period has ended together with a detailed interpreted hydrogeological report identifying all actual resource and third party impacts. (DA11/018/05)*

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

**Height Restrictions**

- (a) The PROPERTY DEVELOPMENT at **4-32 JASMINE STREET, and 68-70 BAY SREET**, BOTANY lies within an area defined in schedules of the Civil Aviation (Buildings Control) Regulations, which limit the height of structures to 50 feet (15.24 metres) above existing ground height (AEGH) without prior approval of the Civil Aviation Safety Authority.
- (b) In this instance, Kevin Dyer of the Civil Aviation Safety Authority (CASA) has advised that “CASA has no objections to this development as it will not penetrate the OLS or impact on PANS-OPS”.
- (c) The approved height is inclusive of all lift over-runs, vents, chimneys, aerials, TV antennae, construction cranes etc.
- (d) Should you wish to exceed **26.65** metres above Australian Height Datum (AHD), a new application must be submitted.
- (e) Should the height of any temporary structure and/or equipment be greater than 50 feet (15.24 metres) above existing ground height (AEGH), a new approval must be sought in accordance with the Civil Aviation (Buildings Control) Regulations Statutory Rules 1988 No. 161.

- (f) Construction cranes may be required to operate at a height significantly higher than that of the proposed controlled activity and consequently, may not be approved under the Airports (Protection of Airspace) Regulations.
- (g) SACL advises that approval to operate construction equipment (i.e. cranes) should be obtained prior to any commitment to construct.
- (h) Information required by SACL prior to any approval is to include:
  - (i) the location of any temporary structure or equipment, i.e. construction cranes, planned to be used during construction relative to Mapping Grid of Australia 1994 (MGA94);
  - (ii) the swing circle of any temporary structure/equipment used during construction;
  - (iii) the maximum height, relative to Australian Height Datum (AHD), of any temporary structure or equipment i.e. construction cranes, intended to be used in the erection of the proposed structure/activity;
  - (iv) the period of the proposed operation (i.e. construction cranes) and desired operating hours for any temporary structures.
- (i) Any application for approval containing the above information, should be submitted to this Corporation at least 35 days prior to commencement of works in accordance with the Airports (Protection of Airspace) Regulations Statutory Rules 1996 No. 293, which now apply to this Airport.
- (j) For further information on Height Restrictions please call Peter Bleasdale on (02) 9667 9246.
- (k) Under Section 186 of the Airports Act 1996, it is an offence not to give information to the Airport Operator that is relevant to a proposed “controlled activity” and is punishable by up to 50 penalty units.
- (l) The height of the prescribed airspace at the site is approximately 51.0 metres above Australian Height Datum (AHD). In accordance with Regulation 9 of the Airports (Protection of Airspace) Regulations Statutory Rules 1996 No. 293, “a thing to be used in erecting the building, structure or thing would, during the erection of the building, structure or thing, intrude into PANS OPS airspace for the Airport, cannot be approved”. *(DA11/018/05)*

11. The proposed development is to comply with the recommendations provided by NSW Police Botany Bay Local Area Command, dated 23 March 2011. The conditions are outlined as follows, and relevant details shall be included in the plans and documentation submitted with the Construction Certificate:

Passive Surveillance

- (a) As the proposed development may be exposed to Break Enter and Steals, Stealing, Steal from persons, Malicious Damage and Steal from Motor Vehicle offences, a closed circuit television system (CCTV) which complies with the Australian Standard — Closed Circuit Television System (CCTV) AS:4806:2006 needs to be implemented to receive, hold or process data for the identification of people involved in anti-social or criminal behaviour. The system is obliged to conform with Federal, State or Territory Privacy and Surveillance Legislation.



- (b) This CCTV system should consist of surveillance cameras strategically located in and around the development to provide maximum surveillance coverage of the area, particularly in areas which are difficult to supervise.
  - (i) Cameras should be strategically mounted outside the development buildings and within the car parking areas to monitor activity within these areas.
  - (ii) One or more cameras should be positioned at the entry and exit points to monitor these areas (underground car park, foyer entrance)
- (c) Digital technology should be used to receive, store and process data recording equipment should be secured away from public access areas to restrict tampering with the equipment and data. This equipment needs to be checked and maintained on a regular basis.
- (d) It is crucial even in the development stage that these cameras are installed as soon as power is available to the site.
- (e) For the retail tenancies, a monitored intruder alarm system which complies with the Australian Standard — Systems Installed within Clients Premises, AS:2201:1998 should be installed within the premises to enhance the physical security and assist in the detection of unauthorised entry to the premises. This standard specifies the minimum requirements for intruder alarm equipment and installed systems. It shall apply to intruder alarm systems in private premises, commercial premises and special installations. The system should be checked and tested on a regular (at least monthly) basis to ensure that it is operating effectively. Staff should be trained in the correct use of the system.
- (f) For the retail tenancies, the light emitting diodes (LED red light) within the detectors should be deactivated, to avoid offenders being able to test the range of the system.
- (g) For the retail tenancies, as a number of business premises have had telephone lines cut to prevent alarms being reported to the security monitoring company, a supplementary system such as Global Satellite Mobile (GSM) or Radio Frequency (RF) systems should be used to transmit alarm signal by either mobile telephone or radio frequency.
- (h) For the retail tenancies, where views from the counter are restricted, the installation of convex mirrors to improve visibility from the console. Ensure the location of advertising does not impede the view from the console operator or surveillance cameras. Consideration should be given to the width, height and location of the counter areas. The counter should be designed to reduce the opportunity for assaults upon staff and unauthorised public access behind counters. It is advised that the minimum console width should be 900mm and height minimum 1000mm. Anti-jump barriers – Perspex, wire or glass barriers are acceptable, provided they are securely fastened to the counter of the console, capable of withstanding being pushed and if glass or Perspex be shatter proof. Partitions fitted with doors should be installed to restrict access behind the counter areas.
- (i) For the retail tenancies, consideration should also be given to incorporating duress facility into the system to enable staff to activate the system manually

in the event of an emergency, such as a robbery NB Duress devices should only be used when it is safe to do so

- (j) Any proposed landscaping and vegetation should adhere to the following principles:
  - (i) Shrubs, bushes, plants should remain under 900mm in height.
  - (ii) Branches of large trees should start at a height of two (2) metres and higher. This will assist with natural surveillance and reduce hiding spots and dark areas for potential offenders.
  - (iii) By angling fire egress inlet walls 45 degrees or more, opportunities for entrapment, loitering and vandalism can be reduced.
- (k) Any proposed seating area, playground or grass area should be positioned somewhere which can be viewed easily by the community. Consider whether the area will be used enough to warrant its development. Areas which are isolated, unused and maintained poorly become a breeding ground for anti social behaviour.
- (l) Care should be taken when using glazing in entry foyers. At night the vision of departing occupants can be affected by reflections on the interior of the glass (can't see outside). Mirroring can be reduced by using appropriate external lighting.
- (m) The configuration of car parking spaces can impact the risk to car thieves. Grid rows increase natural surveillance. Avoid dark spots, corners and isolated car spaces.
- (n) Public laundries, garbage disposal areas and other communal spaces should not be located in a buildings 'leftover space'. Poor supervision of communal facilities can greatly increase the risk of predatory crime, theft and vandalism. Areas that are unused or sporadically used after hours and unsupervised should not be accessible to the public.
- (o) Uneven building alignments, inset doorways and hidden entrances should be avoided. They can facilitate predatory crimes, thefts, malicious damage and other offences.
- (p) Bicycle parking areas should be located within view of capable guardians. The provision of covered lockable racks to secure bicycles increases the effort required to commit crime.

## 12. Lighting

- (a) Lighting (lux) levels for this development must be commensurate with a medium crime risk identified in this evaluation. The emphasis should be on installing low glare/high uniformity lighting levels in line with Australian Standard AS:1158.
- (b) Lighting sources should be compatible with requirements of any surveillance system installed within the development. (Poor positioning choices in relation to light can cause glare on the surveillance screens).

- (c) The luminaries (light covers) should be designed to reduce opportunities for malicious damage. Lighting within the development needs to be checked and maintained on a regular basis.
- (d) A limited amount of internal lighting should be left on at night to enable patrolling police, security guards and passing people to monitor activities within the business.
- (e) Improved lighting needs to extend from the development towards adjacent streets. Consideration must be given to pedestrians walking from the development to surrounding streets for the purpose of catching public transport etc. Areas adjoining pathways should be illuminated to avoid opportunities for concealment and entrapment.

### 13. Territorial Reinforcement

- (a) Clear street number signs should be displayed and appropriately positioned at the front of the business to comply with Local Government Act, 1993 Section 124 (8). Failure to comply with any such order is an offence under Section 628 of the Act. Offences committed under Section 628 of the Act attract a maximum penalty of 50 penalty units (currently \$5500) for an individual and 100 penalty units (currently \$11000) for the corporation. The numbers should be in contrasting colours to the building materials and be larger than 120mm.
- (b) Warning signs should be strategically posted around the buildings to warn intruders of what security treatments have been implemented to reduce opportunities for crime.
  - (i) Warning, trespasser will be prosecuted
  - (ii) Warning, these premises are under electronic surveillance
- (c) Directional signage should be posted at decision making points (eg. Entry/egress points) to provide guidance to the uses of the development. This can also assist in access control and reduce excuse making opportunities by intruders.
- (d) A Fire Safety Statement must be prominently displayed within the development to comply with the Environmental Planning & Assessment Regulations (1994) Clause 80GB. The annual fire safety statement is a statement issued by the owner of a building.
- (e) Signage needs to be provided at fire exits to assist occupants to identify exits in emergency situations.
- (f) Signage needs to be provided to assist occupants to identify fire suppression equipment, eg extinguishers, fire hoses etc.
- (g) A graffiti management plan needs to be incorporated into the maintenance plan for the development. Research has shown that the most effective strategy for reducing graffiti attacks is the quick removal of such material generally within 24 hours.
- (h) Graffiti resistant materials and anti-graffiti coating should be utilised throughout the development.

14. Space Management

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

15. Access Control

- (a) The door and door frames to these premises should be of solid construction.
- (b) Doors shall be fitted with locks that comply with the Australian Standard – Mechanical Locksets for doors in buildings, AS:4145:1993, to restrict unauthorised access and the Building Code of Australia (fire regulations). This standard specifies the general design criteria, performance requirements and procedures for testing mechanical lock sets and latch sets for their resistance to forced entry and efficiency under conditions of light to heavy usage. The standard covers lock sets for typical doorways, such as wooden, glass or metal hinged swinging doors or sliding doors in residential premises. Requirements for both the lock and associated furniture are included. Certain areas may require higher level of locking devices not referred to in this standard (eg. Locking bars, electronic locking devices and detection devices) Dead locks are recommended for residential units.
- (c) There are some doors within the premises which are designated as fire exits and must comply with the Building Code of Australia. This means that they provide egress to a road or open space, an internal or external stairway, a ramp, a fire isolated passageway, a doorway opening to a road or open space. The doors in the required exits must be readily open-able without a key from inside that face the person seeking egress, by a single hand downward action or pushing action on a single device which is located between 900mm and 1.2m from the floor.
- (d) Any sliding doors should be fitted with lockable bolts in the bottom and top of the door frame.
- (e) The windows and window-frames to these premises should be of solid construction. These windows should be fitted with locks with comply with the Australian Standard — Mechanical Locksets for windows in buildings, AS:4145 <http://www.standards.org.au> to restrict unauthorised access. This standard specifies the general design criteria, performance requirements, and

procedures for testing mechanical lock sets and latch sets for their resistance to forced entry and efficiency under conditions of light to heavy usage. The standard covers lock sets for typical windows, such as wooden, glass or metal hinged swinging windows or sliding windows in residential and business premises, including public buildings, warehouses and factories. Requirements for both the lock and associated furniture are included. Certain areas may require higher level of locking devices not referred to in this standard. (e.g. locking bars, electronic locking devices, detection devices, alarms).

- (f) The main access to the underground car park should have restricted access with a security pass. The opening/closing mechanism should be protected from vandalism and tampering. All exit doors from the car park should have striker plates installed to minimise chance of tampering.
- (g) A boom gate should be installed within the underground car park located immediately after the roller door entrance. This will hold residents in the vicinity of the roller door to ensure no unauthorised persons enter after them. The boom gate will rise when the roller door is completely closed and allow the residents vehicle to move on.
- (h) The main entry/egress doors to the development shall have an electronically operated lock which require security swipe pass for entry. The lifts operating in the building should have the same security swipe pass technology. When an occupant buzzes in a visitor the lift should recognise the floor the occupant resides and only allow the visitor access to that floor in the lift.
- (i) Entrance doors to commercial premises should include an electronically operated lock, which can be locked after hours to control access to the development. Staff could release this lock electronically from the safety of the counter area once the customer has been identified. This locking mechanism should be activated during idle hours of darkness.
- (j) As your business deals in cash a robbery prevention program needs to be established to ensure that management and staff are aware of their responsibilities in the event of such an event taking place. Establish clear cash-handling procedures within your business to reduce opportunities for crime. Staff should be trained in cash handling procedures to reduce opportunities for crime. Limit the amount of money carried in the cash drawer at any time (\$200.00 float). Lock cash drawers when not in use and clear money from the cash drawer on a regular basis, e.g. to a safe. Avoid counting cash in view of public. Use a minimum of two staff, or security services, when transferring money to financial institutions, or consider using a reputable security company especially when transferring large amounts of money. Avoid wearing uniform or identification when transferring money. Don't use conspicuous bank-bags when transferring money, as this can be a clear indication to the thief.

**CONDITIONS WHICH MUST BE SATISFIED PRIOR TO THE ISSUE OF THE RELEVANT CONSTRUCTION CERTIFICATE (DA 11/018/03)**

16.

- (a) Prior to the issue of any Construction Certificate for Stage 2, the owner of the site in accordance with the letter dated 13 February 2012 prepared by Krikis

Tayler Architects shall enter into and execute an agreement to undertake those works prepared by Council's Solicitor's at the owner's expense. The agreement is in addition to the Section 94 Contributions required in condition 16(b) below. (DA 11/018/03),

- (b) The payment of \$2,209,042.00 in accordance with Council's Section 94 Contributions Plan 2005-2010, such contribution to be paid to Council prior to the issue of any Construction Certificate for Stage 2 (DA 11/018/03) as follows:

(i)	Community Facilities	\$256,247.00
(ii)	Administration	\$41,966.00
(iii)	Shopping Centre Improvements	\$185,564.00
(iv)	Open Space & Recreation	\$1,725,265.00

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

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

- (a) All residential units (excluding balconies) shall have a minimum size as follows (DA 11/018/03):
- (i) 1 bedroom = 75m<sup>2</sup>
  - (ii) 2 bedroom = 100m<sup>2</sup>
  - (iii) 3 bedroom = 130m<sup>2</sup>
- (b) Service diagrams shall be provided clearly demonstrating that no services will be provided within the deep soil zones located along all boundaries of the site. All infrastructure and service provision shall take place wholly within the confines of the area below or within building envelope and basement. This is to ensure that adequate soil is available for the proposed planting to maintain an adequate level of amenity and privacy to and within the development;
- (c) Two (2) additional light wells shall be installed to ensure natural daylight is provided to the western most aisle in the basement car park. Where possible, natural daylight shall also be provided to the basement garages for the individual townhouse dwellings;
- (d) Shoring details for the proposed basement construction shall be provided showing that access to adjacent properties is not required during excavation and construction works unless written agreement has been reached with the adjacent land owner allowing access and use of their land;
- (e) Any timber products shall be plantation, recycled or regrowth timbers grown on Australian Farms or State Forest plantations (and not rainforest or old-growth forest timbers);

- (f) The floor to ceiling area in the laundry, kitchen and bathroom areas shall be tiled to minimise surface and subsurface damage from water overflow and penetration;
- (g) The plumbing for each dwelling within a building is separated and contained so as to prevent noise transmission to other dwellings;
- (h) Four (4) of the dwellings shall be 'adaptable units' as required by Council's Multi Unit Housing and Residential Flat Building Development Control Plan No. 35. Such units shall be designed in accordance with AS 4299 and Council's DCP 35 (Section 3.3.13);
- (i)
  - (i) A minimum of 50% of the storage requirements contained in Council's DCP No. 35 for Multi Unit Housing and Residential Flat Buildings shall be provided within the unit as required by DCP 35, and the remainder shall be provided in the basement.  
 Note: The storage requirements are:
    - 1 bedroom apartment = 8m<sup>3</sup>
    - 2 bedroom apartment = 10m<sup>3</sup>
    - 3 bedroom apartment = 12m<sup>3</sup>
  - (ii) The storage areas located in the basement shall be constructed using solid frame construction (e.g. sheet metal, not mesh) and each storage area shall be provided with a proper key lock that complies with Australian Standard AS:4145:1993. In addition, these isolated storage areas shall be monitored by CCTV cameras at all times.
- (j) Storage lockers required for the waste and recycling bins for the retail / non-residential tenancies as recommended in the submitted Waste Management Plan;
- (k) A storage area of adequate dimensions shall be provided for the garden maintenance equipment;
- (l) Common walls separating one townhouse from another shall be constructed from solid masonry materials and not lightweight construction as required by Council's DCP 35, with such details shown on the plans submitted with Construction Certificate.
- (m) Maximum height of side / rear fence shall be restricted to 1.8 metres, and where such fencing is to be erected on or adjacent the common allotment boundary written consent of the adjacent owner(s) required;
- (n) Access gates shall be hung to swing inward;
- (o) At least 10m<sup>3</sup> of storage area is to be provided for each retail tenancy in accordance with DCP 35.
- (p) Any palisade fencing located internally to the site shall have a maximum height of 1.5m height.
- (q) The total physical and secure separation of the residential and retail/visitor parking spaces (for both vehicles and pedestrians) shall be provided for security purposes, including the provision of security roller doors that

separate the residential and retail/visitor parking areas shall be shown on the plans. An intercom system interlocked with all Lots within the development shall also be provided accordingly. Such detail shall be provided to Council satisfaction prior to issue of the Construction Certificate.

- (r) Detailed Plans for the front setback areas of the site shall be submitted to, and approved by, Council. The amended plans shall provide landscaping and fencing treatment to match the tiered / stepped landscaping provided within the front setback areas of No. 9-19 Myrtle Street. Such detail shall be provided to Council satisfaction prior to issue of the Construction Certificate.
- (s) Landscape drawings 1-7 Rev. A by Vision Dynamics shall be the subject of revised landscape documentation to be submitted to and approved by Council's Landscape Architect. The revised documentation must address the following landscape design issues and planting design requirements :
  - (i) All trees are required to be 100 litres in size. Half of the tree species are still indicated at 45 litre.
  - (ii) Additional trees and larger trees are required in all three setbacks of the development to take advantage of deep soil zones. Consider use of taller and broader canopy species to soften the development. Smaller canopy trees to be more closely spaced or grouped. As the development comprises mostly small trees, the plant palette is to be enhanced with additional medium to large canopy trees where space and deep soil permits. For example, part of the eastern boundary has a wider deep soil area which should be utilised for larger canopy trees, also the southern boundary of townhouse 14.
  - (iii) 1 tree/townhouse to be provided in the setbacks of townhouses fronting Bay and Jasmine Streets. However townhouses 111-115 have wide setbacks and either 1 large canopy or 2 small canopy trees are required here to enhance streetscape amenity.
  - (iv) Extra tree at rear of townhouses 211, 217, 218 to screen adjoining buildings. Space should permit. The landscape strip on the western side townhouses 214 is not provided for the length of this façade.
  - (v) Communal areas and internal walkways – increase tree densities in areas, fewer deciduous trees in favour of evergreens for year round colour, privacy and screening.
  - (vi) Provide taller hedge type screening to building walls where they adjoin communal open spaces ie. southern walls of townhouse 211 and 311 and northern wall townhouse 314. Eg Cyathea, Lillypilly, Murraya. Reduce numbers of Westringia throughout and Blueberry Ash eastern boundary. Increase spacing of Viburnum & Camellia. Replace Correa with an alternative.
  - (vii) Any electrical kiosk to be shown on the landscape drawings and means of screening.
  - (viii) Planter box detail 3 is to return drainage cell to sides of planter as well as base.
  - (ix) Two (2) additional street trees required in Myrtle Street – 1 west side of entry between townhouses 214 and 215 and 1 west side of



vehicular entry. The Banksia street trees in Bay Street are to be centred within the nature strip.

- (x) Re-design the pedestrian space outside the retain tenancies with respect to its interface with the public domain. This area requires more enhanced resolution as to how the space will be utilised and accessed by the public. The following, as a minimum, is to be considered : how the retail tenancies will be accessed and pedestrian desirelines, additional/larger planter boxes/beds and ample street furniture, a decorative unit paving treatment linking the tenancies with the public domain and footpaths, deletion of grass areas (between property boundary and public footpath) in favour of defined planter beds and paved entries to the tenancies, use small canopy/flowering trees. Provide a soft and hard landscape design that ensures a functional and pleasant space for both outdoor dining as well as pedestrians in the public domain.

18. Prior to the issue of any Construction Certificate for Stage 2 (DA 11/018/03) the required Long Service Levy payable under Section 34 of the Building and Construction Industry Long Service Payments Act 1986 has to be paid. The Long Service Levy is payable at 0.35% of the total cost of the development, however this is a State Government Fee and can change without notice.
19. Prior to the issue of the Construction Certificate design verification is required to be submitted from a qualified designer to confirm the development is in accordance with the approved plans and details and continues to satisfy the design quality principles in State Environmental Planning Policy No. 65 Design Quality of Residential Flat Development.
20. All plumbing stacks, vent pipes, stormwater downpipes, balcony drainage and the like shall be kept within the building and suitably concealed from view. This condition does not apply to the venting to atmosphere of the stack above roof level. Details shall be submitted to the Principal Certifying Authority prior to issue of the Construction Certificate.
21. Planter boxes constructed on a podium shall be designed and built in accordance with the following details (as a minimum), with details provided on the plans submitted with the Construction Certificate:
  - (a) Ensure soil depths in accordance with Council's Landscape DCP. The base of the planter must be screeded to ensure drainage to a piped internal drainage outlet of minimum diameter 90mm, with no low points elsewhere in the planter. There are to be no external weep holes. Turfed areas require a min. 5% cross fall.
  - (b) A concrete hob or haunch shall be constructed at the internal join between the sides and base of the planter to contain drainage to within the planter.

- (c) Planters are to be fully waterproofed and sealed internally with a proprietary sealing agent and applied by a qualified and experienced tradesman to eliminate water seepage and staining of the external face of the planter. All internal sealed finishes are to be sound and installed to manufacturer's directions prior to backfilling with soil. An inspection of the waterproofing and sealing of edges is required by the Certifier prior to backfilling with soil.
- (d) Drainage cell must be supplied to the base and sides of the planter to minimize damage to the waterproof seal during backfilling and facilitate drainage. Apply a proprietary brand filter fabric and backfill with an imported lightweight soil suitable for planter boxes compliant with AS 4419 and AS 3743. Install drip irrigation including to lawns.
- (e) Planter boxes shall be finished externally with a suitable paint, render or tile to co-ordinate with the colour schemes and finished of the building.

22.

- (a) To ensure that the site is suitable for the proposed use, a Site Audit Statement (SAS) completed by an accredited site auditor under the Contaminated Land Management Act 1997 shall be submitted to Council clearly demonstrating that the site is suitable for the proposed development. This shall be provided prior to the issue of Construction Certificate No. 4.

Note: The works to be approved by Construction Certificate No. 4 are referenced in the letter from the Applicant dated 29 August 2012 and the follow up email from the Applicant dated 16 October 2012. The works include the Section 73 Requirements and the remainder of the works after the concrete floor to the basement.

(DA 11/018/03)

- (b) Any conditions imposed on the SAS shall form part of this consent. In circumstances where the SAS conditions (if applicable) are not consistent with the consent, a s96 application pursuant to the Environmental Planning & Assessment Act 1979 shall be submitted to ensure that they form part of the *consent conditions*.

23. Landscaped areas within private courtyards of townhouse development and ground floor units must be remediated to a Soil Investigation Level for 'Residential with gardens and accessible soil' (NEHF A) Guidelines for the NSW Site Auditor Scheme as specified in NSW Department of Environment and Conservation. Prior to the issuing of a Construction Certificate Council shall be provided with a Site Audit Statement (SAS) completed by an DECCW accredited site auditor confirming that the site is suitable for the proposed residential development with accessible soil.

24. Prior to the issue of the Construction Certificate, the measures required in the Noise Impact Assessment Report prepared by Acoustic Logic Consultancy dated 24 February 2011 shall be undertaken in accordance with the provisions of AS2021-2000: Acoustics – Aircraft Noise Intrusion – Building Siting and Construction to

establish components of construction to achieve indoor design sound levels in accordance with Table 3.3 of AS2021-2000 shall be incorporated into the construction of the building;

Note: in many cases the applicant chooses to install air conditioning to meet mechanical ventilation requirements above. If they do it will require consideration of the noise from the air conditioner.

25. Prior to issue of Construction Certificate No. 4 (in accordance with the staging identified in Condition 22(a) of Stage 2 above) (DA 11/018/03), the following documentation shall be submitted to Council as a road authority, for assessment. Documentary evidence of the lodgement of engineering plans shall be submitted to the Principal Certifying Authority attesting to this condition has been appropriately satisfied: -

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

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

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

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

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

(ii) Road cross-section details

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

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

(iv) Construction details of kerb and gutter

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

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

(Refer to Council's landscape architect for details)

(vi) Construction details of proposed vehicular crossing

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

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

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

(viii) Construction details of kerb ramp

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

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

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

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

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

(xi) Any relocation of any public utility services.

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

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

(c)

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

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

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

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

27. Prior to commencement of any works in the public domain area, written approval shall be obtained from Council's engineer to ensure the engineering drawings of the civil works in public domain area (including road reserve) are satisfactory.
28. Prior to the issue of the Construction Certificate, design certification, prepared by a suitably qualified engineer shall be submitted to Principal Certifying Authority certifying the car parking area shown on the construction plans has been designed in accordance with AS 2890.1.
29. The applicant shall submit to the Principal Certifying Authority prior to the issuing of the Construction Certificate details of plans showing that the car wash bay meets the following requirements. The car wash bay(s) must:
- (a) Have adequate parking and washing floor space, turning area, and water supply;
  - (b) Minimise water use with appropriate devices (such as a gun-type nozzle which closes when released and a timer operative valve; collection and use of rainwater).
  - (c) Have a water supply cut out/fail-safe mechanisms provided to ensure that mechanical failure; drainage blockage or lack of maintenance cannot result in wastewater surcharge into the stormwater system.
  - (d) Be designed to ensure that over spray, drift of water or detergent does not cause a nuisance to persons, vehicles, residences, other buildings, neighbouring properties or the environment,
  - (e) Be designed to ensure that spillages and wastewater is not discharged to the stormwater system or surrounding environment.
  - (f) Be located so that washing can occur with minimal disturbance to other residents.
  - (g) Ensure that noise emissions from the car wash down bay does not exceed 5dB(A) above the background noise levels at any time, as measured at the nearest residential property boundary and install noise effective barriers.
  - (h) Be suitably identified.
  - (i) Have good ventilation and good lighting.
  - (j) Discharge to the sewer via appropriate pre-treatment
  - (k) All car wash bays that discharge to sewer must meet the following requirements:
    - (i) The floor must be sealed and graded to an internal drainage point, so that all wastewater and surface spillage is directed and drains to the approved treatment and disposal point.
    - (ii) The wash bay is to be roofed and bunded so that all uncontaminated stormwater from the roof areas and uncovered areas, are directed away from the bay
    - (iii) The roof to the wash bay roof must be a minimum height of 2.5 m.

- (iv) A bund must be constructed and maintained around the perimeter of the bay. The bund is to be protected from the entry of external surface waters, by either; a minimum 2% change in grade; or combination of a minimum 2% grade change and a grated drainage system.
- (v) All uncontaminated stormwater/rainwater must be directed to the dedicated stormwater drainage systems.
- (vi) The collection pit shall be a minimum of 1000 litres.
- (vii) A Permission to Discharge Trade Wastewater certificate issued by Sydney Water must be obtained prior to the approval of the development.

30.

- (a) A suitable intercom system linked to all units within the development shall be provided at the vehicle entrance to the basement car parking area to ensure any visitors to the site can gain access to the visitor parking located within the basement car park. The details of the intercom system shall be submitted to Principal Certifying Authority prior to the issue of the Construction Certificate and its location and specifications endorsed on the construction drawings.
- (b) A single master TV antenna is to be installed to service the development and provision made for connection to each dwelling unit within the development. Details shall be submitted to the Principal Certifying Authority prior to the release of the Construction Certificate.

31. The visible light reflectivity from building materials used on the facade of the building should not exceed 20% and must be otherwise designed so as not to result in glare that causes discomfort or threatens safety of pedestrians or drivers. Details to be submitted to the Private Certifying Authority prior to the release of the Construction Certificate.

32. Prior to the issue of any Construction Certificate, detailed construction plans in relation to the stormwater management and disposal system for the development shall be prepared by a suitably qualified civil engineer experienced in stormwater drainage design and submitted to Principal Certifying Authority for approval. The construction plans shall be generally in accordance with the approved stormwater management plans and Council's 'Guidelines for the Design of Stormwater Drainage Systems within City of Botany Bay', AS/NSZ 3500 and BCA requirements.

33. Prior to the issue of the Construction Certificate, design certification, prepared by a suitably qualified engineer shall be submitted to Principal Certifying Authority certifying the stormwater drainage (including OSD system) and basement pump-out system shown on the construction plans have been designed to comply with current Australian Standards and Council's requirements.

34. Prior to the issue of any Construction Certificate, the applicant shall obtain a compliance certificate (under Part 4A of Environmental Planning and Assessment Act) for the design of stormwater management system of the development from an Accredited Certifier (stormwater management facilities design compliance).
35. Council's property shall be supported at all times. Where any shoring is to be supporting (or located on) Council's property, certified engineering drawings showing all details including the extent of encroachment, the type of shoring and the method of removal, shall be submitted prior to the issue of the Construction Certificate. If the shoring cannot be removed, it shall be cut to 150mm below footpath level and the gap between the shoring and any buildings shall be filled with a 5Mpa lean concrete mix.
36. Prior to the issue of any Construction Certificate for Stage 2 (DA 11/018/03), detailed Construction Traffic Management Plan for the pedestrian and traffic management of the site during site excavation and construction works shall be prepared and submitted to Principal Certifying Authority and Council for approval. The plan shall: -
- (a) be prepared by an accredited qualified person.
  - (b) nominate a contact person who is to have authority without reference to other persons to comply with instructions issued by Council's Traffic Engineer or the Police.
  - (c) indicate the construction vehicle access points of the site.
  - (d) indicate the frequency of truck movements.
  - (e) ensure any vehicles accessing the site or associated with construction activities be restricted to 12.5 metres (defined as Heavy Rigid Vehicle in AS2890.2). Trucks with trailers are not allowed to access the site
  - (f) ensure vehicles associated with construction activities not allow to travel on local streets other than the following designated traffic route: -
    - (i) Jasmine Street – Banksia Street – Botany Road
  - (g) ensure all traffic (including worker's vehicles) generated from the construction activities shall enter and leave the site in a forward direction via Jasmine Street ONLY. No vehicles shall be allowed to enter and exit the site via other public roads.
37. Prior to the issue of any Construction Certificate for Stage 2 (DA 11/018/03), detailed Construction Management Plan (CMP) shall be submitted to Principal Certifying Authority and Council for approval of the site works involved with Stage 2 of the consent (being for excavation and construction works). The CMP shall address the following: -
- (a) All vehicles (including worker's vehicles) associated with construction activities shall enter and leave the site in a forward direction ONLY.

- (b) All vehicles (including worker's vehicles) associated with the construction activities shall only be allowed to park within the site. No parking of these vehicles to be allowed on Myrtle Street, Jasmine Street and Bay Street.
  - (c) Construction building materials shall be stored wholly within the site
  - (d) Access to adjacent buildings and pedestrian and vehicular access fronting Myrtle Street, Jasmine Street and Bay Street shall be maintained at all times. No closure of any road reserve will be permitted without Council approval.
  - (e) Under no circumstance (except emergency) shall any trucks be permitted to queue and wait on public places, public streets or any road related area (eg. footpath, nature strip, road shoulder, road reserve etc) prior to entering the site.
  - (f) Locations of site office, accommodation and the storage of major materials related to the project shall be within the site
  - (g) Protection of adjoining properties, pedestrians, vehicles and public assets shall be implemented at all times
  - (h) Location and extent of proposed builder's hoarding and Work Zones, if there is any, shall be shown on the plan
  - (i) Tree protection management measures for all protected and retained trees shall be implemented at all times
38. Prior to the issue any Construction Certificate, geotechnical investigation report shall be submitted to Council for review. The report shall be (DA 11/018/03) prepared by a qualified geotechnical engineer and shall address the following:
- (a) The assessment of the temporary (during construction) and permanent impacts by the development on: -
    - (i) the existing water table, with the inclusion of flow net calculations and diagrams
    - (ii) the footings and buildings of the neighbouring properties and
    - (iii) the impact of excavation/ shoring on the stability of Myrtle Street
    - (iv) the structural stability of road pavement on Myrtle Street
  - (b) Written certification, issued by the qualified geotechnical engineer, shall be submitted to Principal Certifying Authority certify that the development will not have major impact to the adjacent buildings and infrastructure, or the future redevelopment of adjacent sites which may comprise basement car parking structures.
39. The required electrical kiosk and any fire booster assemblies or other similar services required must be located in an unobtrusive location away from vehicle and pedestrian and vehicle entrances to the property and the main street setback, and shall be softened by screening treatments and/or landscaping so as not to reduce visual amenity of the development or the streetscape. The location of, and screening treatment surrounding the utility shall be shown on the plans submitted with the Construction Certificate and is required to be approved by Council's Landscape Architect prior to its installation.



40.

- (a) A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained. Application must be made through an authorised Water Servicing Coordinator. Please refer to “Your Business” section of Sydney Water’s web site at [www.sydneywater.com.au](http://www.sydneywater.com.au) then the “e-developer” icon or telephone 13 20 92.
- (b) Following application a “Notice of Requirements” will detail water and sewer extensions to be built and charges to be paid. Please make early contact with the Co-ordinator, since building of water/sewer extensions can be timed consuming and may impact on other services and building, driveway or landscape design. The Section 73 Certificate must be submitted to the Principle Certifying Authority prior to the Construction Certificate being issued.

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

41. To ensure that utility authorities and Council are advised of any effects to their infrastructure by the development, the applicant shall: -

- (a) Carry out a survey of all utility and Council services within the site including relevant information from utility authorities and excavation if necessary to determine the position and level of services.
- (b) Negotiate with the utility authorities (eg Energy Australia, Sydney Water and Telecommunications Carriers) and Council in connection with: -
  - (i) The additional load on the system; and
  - (ii) The relocation and/or adjustment of the services affected by the construction.
- (c) Any costs in the relocation, adjustment, and provision of land or support of services as requested by the service authorities and Council are to be the responsibility of the developer.

42. In accordance with the Contaminated Land Management Act 1997, notification of all category 2 remediation work to Council is required at least 30 days prior to commencement of works.

43.

- (a) As this development involves an excavation below the water table these works are subject to a Council Drainage Charge for discharge of site dewatering to storm water. As such a formal application is to be submitted to Council prior to the commencement of any excavation works.

Note: Council will not give permission for contaminated ground water to be discharged into its stormwater system.

- (b) To discharge groundwater into the Council's stormwater system the applicant must supply the following:
  - (i) An Application to Council for permission to discharge water from site dewatering to Council's stormwater drainage system. The application must be made in writing to Council estimating volume and number of days involved and must be accompanied by a current dewatering license from the NSW Office of Water.
  - (ii) A copy of a current bore license from the NSW Office of Water for dewatering.
  - (iii) For water to be permitted to go to stormwater the water must meet ANZECC 2000 Water Quality Guidelines for Fresh and Marine Water for the 95% protection trigger values for Freshwater. As such, a report prepared by a suitably qualified person is to be provided together with results from a NATA approved laboratory confirming that the quality of the water meets the 95% freshwater trigger values applying to typically slightly-moderately disturbed systems as detailed in the Australian and New Zealand Guidelines for Fresh and Marine Water Quality, Australian and New Zealand Environment and Conservation Council and Agriculture and Resource Management Council of Australia and New Zealand, Paper No 4, October 2000.
  - (iv) If the groundwater is not suitable for direct disposal to the stormwater, any proposed treatment methods must be noted and accompanied by relevant documentation demonstrating the processes involved as well as engineering evidence of its applicability. (Note that Council reserves the right to refuse any proposed treatment methods. In the advent Council does not have the technical expertise to review a treatment method an independent third party review may be requested. The proponent will be required to pay for these works.).
- 44. This Consent shall not preclude the demolisher from giving notice to other statutory authorities, such as Sydney Water Corporation, WorkCover, etc.
- 45. Prior to commencement of any excavation or construction works, application(s) shall be made to Council's Customer Services Counter for the following approvals and permits on Council's property/road reserve under Road Act 1993 and Local Government Act 1993 as appropriate: -

(It should be noted that any works shown within Council's road reserve or other Council Lands on the development approval plans are indicative only and no approval for these works is given until this condition is satisfied.)

  - (a) Permit to erect hoarding on or over a public place, including Council's property/road reserve
  - (b) Permit to construction works, place and/or storage building materials on footpaths, nature strips

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

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

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

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

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

## **DURING WORKS**

48. The proposed development shall comply with the following:
  - (a) A sign must be erected in a prominent position on any work site on which work involved in the erection or demolition of a building is being carried out:

- (i) Stating that unauthorised entry to the work site is prohibited;
    - (ii) Showing the name of the person in charge of the work site and a telephone number at which that person may be contacted outside working hours;
    - (iii) The Development Approval number; and
    - (iv) The name of the Principal Certifying Authority including an after hours contact telephone number.
  - (b) Any such sign is to be removed when the work has been completed.
49. All materials excavated from the site (fill or natural) shall be classified in accordance with the NSW Department of Environment and Climate Change (DECC) Waste Classification Guidelines (2008) prior to being disposed of to a NSW approved landfill or to a recipient site.
50. To prevent contaminated soil being used onsite, all imported fill shall be certified VENM material and shall be validated in accordance with the Department of Environment, Climate Change and Water (DECCW) approved guidelines to ensure that it is suitable for the proposed development. Imported fill shall be accompanied by documentation from the supplier which certifies that the material has been analysed and is suitable for the proposed land use.
51. During excavation and construction, the applicant shall ensure that all works and measures are being implemented in accordance with the following plan Approved for Stage 2 works:
- (a) Waste Management Plan;
  - (b) Erosion and Sediment Control Plan;
  - (c) Traffic Management Plan; and,
  - (d) Construction Management Plan.
52. Throughout the construction period, Council's warning sign for soil and water management shall be displayed on the most prominent point of the building site, visible to both the street and site workers. A copy of the sign is available from Council's Customer Service Counter.
53. All possible and practicable steps shall be taken to prevent nuisance to the inhabitants of the surrounding neighbourhood from wind-blown dust, debris, noise and the like.
- 54.
- (a) All excavations and backfilling shall be executed safely and in accordance with appropriate professional standards, and all excavations shall be properly

guarded and protected to prevent them from being dangerous to life or property;

- (b) Existing structures and or services on this and adjoining properties are not endangered during any demolition excavation or construction work associated with the above project. The applicant is to provide details of any shoring, piling, or underpinning prior to the commencement of any work. The construction shall not undermine, endanger or destabilise any adjacent structures.
- (c) As the development involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
  - (i) Protect and support the adjoining premises from possible damage from the excavation, and
  - (ii) Where necessary, underpin the adjoining premises to prevent any such damage.

55. The following shall be complied with during construction and demolition:

- (a) Construction Noise
  - (i) Noise from construction activities associated with the development shall comply with the NSW Environment Protection Authority's Environmental Noise Manual – Chapter 171 and the Protection of the Environment Operations Act 1997.
- (b) Level Restrictions
  - (i) Construction period of 4 weeks and under:
    - (1) The L10 sound pressure level measured over a period of not less than 15 minutes when the construction site is in operating must not exceed the background level by more than 20dB(A).
  - (ii) Construction period greater than 4 weeks and not exceeding 26 weeks:
    - (1) The L10 sound pressure level measured over a period of not less than 15 minutes when the construction site is in operating must not exceed the background level by more than 10 dB(A).
- (c) Time Restrictions
  - (i) Monday to Friday 07:00am to 06:00pm
  - (ii) Saturday 07:00am to 01:00pm
  - (iii) No Construction to take place on Sundays or Public Holidays.
- (d) Silencing
  - (i) All possible steps should be taken to silence construction site equipment.

56. The construction of the premises shall not give rise to transmission of vibration at any affected premises that exceeds the vibration in buildings criteria outlined in the NSW EPA Environmental Noise Control Manual.
57. Excavation and construction works shall comply with the following:
- (a) The applicant shall conduct all construction and related deliveries wholly on site. If any use of Council's or RTA's road reserve is required then separate applications are to be made at Council's Customer Services Department.
  - (b) Construction operations such as brick cutting, washing tools or brushes and mixing mortar shall not be carried out on public roadways or footways or in any other locations, which could lead to the discharge of materials into the stormwater drainage system or onto Council's lands.
  - (c) Hosing down or hosing/washing out of any truck (concrete truck), plant (eg concrete pumps) or equipment (eg wheelbarrows) on Council's road reserve or other property is strictly prohibited. Fines and cleaning costs will apply to any breach of this condition.
  - (d) Pavement surfaces adjacent to the ingress and egress points are to be swept and kept clear of earth, mud and other materials at all times and in particular at the end of each working day or as directed by Council's Engineer
  - (e) Shaker pads shall to be installed at the entry/exit points to the site to prevent soil material leaving the site on the wheels of vehicles and other plant and equipment.
  - (f) Council nature strip shall be maintained in a clean and tidy state at all times during construction works.
58. During Construction, care must be taken to protect Council's infrastructure, including street signs, footpath, kerb, gutter and drainage pits etc. Protecting measures shall be maintained in a state of good and safe condition throughout the course of construction. The area fronting the site and in the vicinity of the development shall also be safe for pedestrian and vehicular traffic at all times. Any damage to Council's infrastructure (including damage caused by, but not limited to, delivery vehicles, waste collection, contractors, sub-contractors, concrete delivery vehicles) shall be fully repaired in accordance with Council's specification and AUS-SPEC at no cost to Council.
59. During Excavation, Construction and Deliveries, access to the site shall be available in all weather conditions. The area shall be stabilised and protected from erosion to prevent any construction-related vehicles (including deliveries) tracking soil materials onto street drainage system/watercourse, Council's lands, public roads and road-related areas. Hosing down of vehicle tyres shall only be conducted in a suitable off-street area where wash waters do not enter the stormwater system or enter Council's land.

60. All works carried out on the road reserve shall be inspected and approved by Council's engineers. Documentary evidence of compliance shall be obtained prior to proceeding to the subsequent stages of construction, encompassing not less than the following key stages: -

- (a) Initial pre-construction on-site meeting with Council's engineers to discuss concept and confirm construction details, traffic controls and site conditions/constraints prior to commencement of the construction of the civil works associated with the road widening
- (b) Prior to placement of concrete (vehicular crossing, refuge island, kerb and gutter and footpath)
- (c) Prior to backfilling of proposed stormwater drainage system in the road reserve
- (d) Final inspection

Council's inspection fee will apply to each of the above set inspection key stages. Additional inspection fees may apply for any additional inspections undertaken by Council.

61.

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

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

62.

- (a) All existing aboveground service cables, including power lines, telecommunications cables and other similar services ("overhead service cables") in the streets adjacent to and within the confines of the development site shall be placed underground at no cost to the Council in the following manner:

- (i) Overhead service cables on the Myrtle Street frontage to be undergrounded, starting from the existing pole “A” to the existing pole “C” as shown on Plan No. 1.
- (ii) Overhead service cables on the Jasmine Street park side (Booralee Park) to be undergrounded, starting from the existing pole “C” to the existing pole “G” as shown on Plan No. 1 and Plan No.2.
- (iii) Overhead service cables on the Bay Street frontage to be undergrounded, starting from existing pole “H” to the existing pole “I” as shown on Plan No. 1 and Plan No.2.
- (iv) Existing street lights located within the footpath reserve along the entire Myrtle Street, Bay Street and Jasmine Street frontages of the development site, being street lights identified as being located on poles “A” and “E” as shown on Plan No. 1 and “F” to “I” on Plan No. 2 shall be replaced with new street lights in accordance with the requirements of Australian/New Zealand Standard AS/NZS 1158-1997 “Public Lighting Code” and the requirements of the Roads and Traffic Authority.

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

- (b) Prior to issue of any Occupation Certificate, approval shall be obtained from Council and the responsible utility authority for street lighting. Detailed street lighting design and construction plans, prepared by a suitably qualified person, shall be submitted to Council for approval. The design shall be in accordance with AS 1158 and to Energy Australia’s requirements. Alterations/additions to street lighting shall be carried out by the responsible utility authority for lighting, or to the satisfaction of that authority, and all capital contributions associated with the installation of the lighting shall be borne by the applicant. The proposal shall include details of all fixtures being proposed and underground power reticulation shall be allowed for in the design. P2 lighting design category shall be provided to all street frontages of the site.
63. To ensure satisfactory growth and maintenance of all landscaped areas, a fully automatic drip irrigation system is required and is to be installed by a qualified landscape contractor. The irrigation system shall provide full coverage of all planted areas with no more than 300mm between drippers, automatic controller and backflow prevention device and shall be connected to a recycled water source, where provided. Irrigation shall comply with both Sydney Water and Council requirements as well as Australian Standards, and be maintained in effective working order at all times.
64. Landscaping shall be installed in accordance with the Council approved amended, construction level landscape plan only, stamped by Council’s Landscape Architect. This amended plan supercedes the original landscape plans 101B and 501B. The landscaped areas on the property shall be maintained in accordance with the approved landscape documentation, the conditions of consent and Council’s Landscape DCP at all times.



65. An experienced Landscape Contractor is required to undertake the landscaping work and shall be provided with a copy of both the approved landscape plans and the conditions of approval to satisfactorily construct the landscape to Council requirements. The contractor shall be engaged weekly for a minimum period of 26 weeks from final completion of landscaping for maintenance and defects liability, replacing plants in the event of death, damage, theft or poor performance. After that time regular and ongoing maintenance is required.
66. Any damage not shown in the dilapidation report submitted to Council before site works have commenced, will be assumed to have been caused as a result of the site works undertaken and must be rectified at the applicant's expense, prior to the issue of Final Occupation Certificate.
67. Prior to the issue of any Occupation Certificate, documentation from a practising civil engineer shall be submitted to the Principal Certifying Authority certifying that the car parking areas (including queuing area, resident, visitor and retail parking area), driveways and vehicular access paths have been constructed generally in accordance with the approved construction plan(s) and comply with AS2890.1 and AS 2890.6 requirements. The internal parking facilities shall be clearly designated, sign posted and line marked. Signage and line marking shall comply with the current Australian Standards.
68. Prior to the issue of any Occupation Certificate:
- (a) A minimum of **233** off-street car parking bays shall be provided to the development and allocated as follows:
    - (i) 212 car spaces to be allocated to residential dwellings at the following rate:
      - (1) 1 per 1 bedroom dwelling = **28 spaces**
      - (2) 1 per 2 or more bedroom dwelling = **184 spaces**
    - (ii) **14** car spaces to be dedicated as visitor parking bays (Note: two (2) visitors spaces shall be shared as car wash bays); and,
    - (iii) 7 car spaces for the retail shop.
  - (b) All parking bays shall be clearly numbered and line marked. **(DA11/018/05)**
69. Prior to the issue of any Occupation Certificate, construction of the stormwater drainage system (including OSD systems and pump-out system) of the proposed development shall be completed generally in accordance with the approved stormwater management construction plan(s), Council's 'Guidelines for the Design of Stormwater Drainage Systems within City of Botany Bay', AS/NZS 3500 and BCA requirements.

70. Documentation from a qualified civil engineer shall be submitted to the Principal Certifying Authority certifying that the stormwater drainage system (including OSD systems and pump-out system) has been constructed generally in accordance with the approved stormwater drainage construction plan(s) and accepted practice.
71. Prior to the issue of any Occupation Certificate, the applicant shall obtain compliance certificates (under Part 4A of Environmental Planning and Assessment Act) for the construction and compliance of the stormwater management system. The certificate shall be obtained from the following categories of Accredited Certifier: -
- (a) Accredited Certifier (stormwater management facilities construction compliance)
  - (b) Accredited Certifier (stormwater compliance)
72. Prior to the issue of Final Occupation Certificate, maintenance schedule of the on-site detention system shall be prepared by a qualified engineer and submitted to Principal Certifying Authority and a copy to Council for record purpose.
73. In order to ensure that the constructed OSD and pump-out systems will be adequately maintained, Positive Covenant and Restriction on the Use of Land on the Title under Section 88B/88E(3) of the Conveyancing Act 1919 shall be created in favour of Council as the benefiting authority for the as-built system. The standard wording of the terms of the Positive Covenant and Restriction on the Use of Land are available in Council. The relative location of the systems, in relation to the building footprint, shall be shown on a scale sketch, attached as an annexure to the plans/ forms. Proof of registration shall be submitted to the Principal Certifying Authority prior to the issue of Final Occupation Certificate.
74. Prior to the issue of any Occupation Certificate, all applications associated with works on Council's land must be made at least 7-10 days prior to the programmed completion of works and all construction must be completed and approved by Council.
75. Prior to the issue of Final Occupation Certificate, the redundant vehicular crossing, together with any necessary works shall be removed and the footpath, nature strip and kerb and gutter shall be reinstated in accordance with Council's specification.
76. Prior to the issue of any Occupation Certificate, new vehicular crossing including layback and/or gutter and any associated road restoration shall be constructed in accordance with Council's requirements. The applicant shall make a separate application to Council's Customer Service Counter for the construction/ reconstruction of vehicular crossing (either by Council or own forces) to the vehicular entry point of the site as shown on the submitted approved plan.

77. The crossing shall be minimum 6 metres wide at the property boundary and at 90° to the kerb and gutter in plain concrete. All adjustments to the nature strip, footpath and/or public utilities' mains and services as a consequence of the development and any associated construction works shall be carried out at the full cost to the Applicant prior to issue of the Final Occupation Certificate.

78.

- (a) Prior to issue of Final Occupation Certificate, the following civil works in public domain and road reserve area shall be completed to Council's satisfaction: -
- (i) Extend the existing street treatment in Myrtle Street having regard for the vehicle access needs at the Botany Aquatic Centre.
  - (ii) Introduce and construct new street treatment along Jasmine Street between Myrtle Street and Bat Street with angle parking along the western side
  - (iii) Construct a new roundabout at the Bay Street/Jasmine Street intersection to accommodate turning of 8.8m long medium rigid vehicles and be mountable for 12.5m long heavy rigid vehicles to Austroads requirements
  - (iv) Construct new footpath and reconstruct the existing kerb and gutter along the Bay Street frontage of the site in accordance with Council's standard drawing,
  - (v) Replace the existing above ground electricity and telecommunication cables on Myrtle Street, Jasmine Street and Bay Street frontage of the site with underground cables to relevant authorities guidelines and requirements.
  - (vi) Design and provide appropriate street lighting to the all frontages of the site in accordance with the relevant authorities requirements.
- (b) All the works shall include but not limited to the following: -
- (i) Construction of on-street angle parking bays, refuge islands and/or other traffic calming devices and other associated works;
  - (ii) Reconstruction of road pavement, including road sealing with AC10 hotmix;
  - (iii) Construction/reconstruction of kerb and gutter (including kerb return), kerb ramp, footpath and street landscaping;
  - (iv) Construction of vehicular crossing;
  - (v) Reconstruction of the existing stormwater kerb inlet pits on Myrtle Street and Jasmine Street;
  - (vi) Construction of the roundabout and other associated works;
  - (vii) Installation and provision of all traffic control signage and line marking associated with the works; and,

- (viii) Any relocation and adjustment of public utility services within the road reserve.

79. Prior to the issue of Final Occupation Certificate, the following documentation shall be submitted to Council and Principal Certifying Authority attesting this condition has been appropriately satisfied.
- (a) Written confirmation / completion certificate obtained from Council's engineers
  - (b) Inspection reports (formwork and final) for the works on public domain and road reserve area obtained from Council's engineer
  - (c) A copy of the approved engineering construction plans showing Work-as-Executed details (together with an electronic copy (DWG format)) for all the civil works on public domain and road reserve area. The plan shall be prepared by a registered surveyor
80. The applicant is responsible for the installation and protection of all regulatory / parking / street signs fronting the site during construction. Any damaged or missing street signs as a consequence of the construction works associated with the development shall be replaced at full cost to the applicant.
81. Prior to issue of a Final Occupation Certificate:
- (a) A second Dilapidation Report, including a photographic survey shall be submitted at least one month after the completion of construction works. A copy of the second dilapidation report together with the accompanying photographs shall be given to Council, public utilities authorities and all immediate adjoining properties owners, and a copy lodged with Principal Certifying Authority.
  - (b) Any damage to buildings, structures, public infrastructure, lawns, trees, gardens and the like shall be fully rectified by the applicant or owner of the development, at no cost to Council and the affected property owner. The applicant or owner of the development shall bear the cost of all restoration works to any damage during the course of this development.
82. In order to maximise visibility in the basement car park, the ceiling shall be painted white prior to issue of the Occupation Certificate.
83. Prior to the issue of the Occupation Certificate the applicant must submit to the Principal Certifying Authority an acoustic report to verify that the measures stated in Condition 24 have been carried out and certify that the construction meets the above requirements and the indoor sound levels of AS2021-2000. The report must be prepared by a qualified practicing acoustic engineer (who is a member of either the Australian Acoustical Society or the Association of Australia Acoustical Consultants).

84. The storage areas required in accordance with Condition 17(i) and Condition 17(o) (DA 11/018/03) shall be secure and provided with a proper key lock that complies with Australian Standard AS:4145:1993 as required by the NSW Police prior to issue of the Occupation Certificate.
- 85.
- (a) All soil used to construct garden beds shall be meet the provisional phototoxicity based investigation levels specified in the NSW DEC Guidelines for the NSW Site Auditor Scheme (2<sup>nd</sup> edition).
  - (b) This can be achieved by importing soil suitable for garden bed construction or validating soil remaining on site to demonstrate it is suitable for garden beds construction.
86. In accordance with Sydney Water requirements provided by letter dated 30 March 2011, the following matters shall be satisfied prior to issue of an Occupation Certificate:
- (a) Water
    - (i) The existing drinking water system does not have capacity to service the proposed development. The developer will need to upsize the existing 100 mm water main on the western side of Jasmine Street to a 150 mm main from point A to point B as shown in Figure 1 (diagram attached to Sydney Water letter).
    - (ii) The amplification will need to be designed and configured according to the Water Supply Code of Australia (Sydney Water Edition WSA 03-2002). Evidence of Code compliance should be attached with the design
  - (b) Wastewater
    - (i) The existing wastewater system does not have capacity to service the proposed development. The developer will need to upsize the existing 225 mm wastewater main to a 300 mm main from point A to point B as shown in Figure 2 (diagram attached to Sydney Water letter).
    - (ii) A wastewater extension is also required to service the proposed development. The developer will need to design and construct an extension to the 225 mm main in Bay Street. This will provide a point of connection at least 1 metre inside the property's boundary.
    - (iii) The amplification and extension will need to be sized & configured according to the Sewerage Code of Australia (Sydney Water Edition WSA 02-2002). Evidence of Code compliance should be attached with the design.
87. Prior to issue of the Occupation Certificate, as required by Council's DCP 35:

- (a) Mailboxes shall be provided to all units in accordance with Australia Post standards;
  - (b) The name and address of the premises shall be displayed in a visible position;
88. Prior to the issue of Occupation Certificate, a Certificate of Survey from a Registered Surveyor shall be submitted to the Principal Certifying Authority to the effect that the Floor Space Ratio (FSR) of **1.47:1** (calculated in accordance with the provisions of ***Botany Bay LEP 2013***) as approved under this **Section 96(2) Application**, has been strictly adhered to and any departures are to be rectified in order to issue the Occupation Certificate. (**DA11/018/05**)
- 89.
- (a) Prior to use and occupation of the building an Occupation Certificate must be obtained under Section 109C(1)(c) and 109N of the Environmental Planning and Assessment Act, 1979.
  - (b) Condition No.'s 62-89 are pre-conditions prior to the issue of the Occupation Certificate.

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

90. New street trees shall be maintained by the Applicant/Owner/Strata Corporation for 9 months after planting. Maintenance includes twice weekly watering in the first 4 months, then weekly thereafter to sustain adequate growth, weed removal round the base and replenishment of 100mm depth organic mulch base. Maintenance does not include trimming, pruning or shaping of the trees under any circumstances at any time during the maintenance period or outside this period.
91. The ongoing maintenance of the Council nature strips surrounding the site shall be undertaken by the occupiers/ owners or body corporate. Maintenance includes mowing, watering, removal of weeds and rubbish and maintaining an even coverage of grass at all times. Maintenance does not include pruning, trimming, shaping or any work to street trees located on the road verge/ nature strip at any time. Pruning work etc is undertaken by Council only.
92. The stormwater drainage system (including all pits, pipes, absorption, detention structures, treatment devices, infiltration systems and rainwater tanks) shall be regularly cleaned, maintained and repaired in accordance with the maintenance schedule submitted to Council to ensure the efficient operation of the system from time to time and at all times. The system shall be inspected after every rainfall event to remove any blockage, silt, debris, sludge and the like in the system. All solid and liquid waste that is collected during maintenance shall be disposed of in a manner that complies with the appropriate Environmental Guidelines.

93. All vehicles shall enter and exit the site in a forward direction.
94. Vehicles making deliveries (including goods, merchandise and the like) to the site shall comply with the following requirements: -
- (a) Vehicles making deliveries to the site shall be limited to B99 vehicles (as defined by AS2890.1).
  - (b) All loading and unloading activities associated with the development shall take place wholly within the basement car parking area.
  - (c) No deliveries to the premises shall be made direct from a public places, public streets or any road related areas (eg. footpath, nature strip, road shoulder, road reserve, public carpark etc)
95. All parking bays (except garages) shown on the approved architectural plans shall be set aside for parking and loading/unloading purpose only and shall not be used for other purposes, e.g. storage of goods.
96. The occupier(s) of the retail shop shall ensure that any person employed on the premises shall park their vehicles, if any, in the employee parking area provided. No employee shall be permitted to park on a common driveway, public streets or any road related areas (eg. footpath, nature strip, road shoulder, road reserve, public carpark etc)
97. Vehicle turning areas shall be kept clear at all times. No vehicles shall be permitted to park in these areas.
98. Parking shall be allocated as follows:
- (a) **212** parking bays shall be allocated to residents parking only. The allocation of parking bays shall be based on the following rate: -
    - (i) 1-bedroom unit 1 space / unit
    - (ii) Townhouses/ 2-bedroom unit / 3-bedroom unit 2 spaces / unit
  - (b) **14** off-street parking bays shall be made available at all times for visitors parking, with two (2) to be shared as car wash bays
  - (c) 7 parking bays shall be dedicated to retail shop. (**DA11/018/05**)
99. The waste bins for the townhouses shall be stored within their respective basement garages at all time, and not in their front street setback areas unless approved by a separate application.
100. The drip irrigation system required to be installed prior to issue of the Occupation Certificate shall be maintained in effective working order at all times.

101. Each residential dwelling (townhouse) is approved as a single dwelling for use and occupation by a single family. They shall not be used for separate residential occupation or as separate residential flats. No plumbing fixtures, fittings, walls shall be deleted or added, doorways enclosed or any other changes made from the approved plans in Condition No. 1 of this Consent without the prior Consent of the Council.
102. Any air conditioning units shall comply with the following requirements:
- (a) Air conditioning units are not to be visible from the street or public place and are not to obscure windows/window frames or architectural features of the dwelling.
  - (b) A person must not cause or permit an air conditioner to be used on residential premises in such a manner that it emits noise that can be heard within a habitable room in any other residential premises (regardless of whether any door or window to that room is open):
    - (i) Before 8 am or after 10 pm on any Saturday, Sunday or public holiday, or
    - (ii) Before 7 am or after 10 pm on any other day.
  - (c) The transmission of vibration to any place of different occupancy above the requirements of AS2670, Australian Standard AS2021- 2000: Acoustics, Aircraft Noise Intrusion, Building Siting and Construction. Australian Standard AS2107 2000: Recommended Design Sound levels and Reverberation levels for Building Interiors.
  - (d) Any air-conditioning unit shall comply with the City of Botany Bay's General Noise Criteria detailed in Condition 105 below.
103. The proposal shall comply with the City of Botany Bay's General Noise Criteria is as follows:
- (a) The operation of all equipment shall not give rise to an equivalent continuous (LAeq) sound pressure level at any point on any residential property greater than 5dB(A) above the existing background LA90 level (in the absence of the noise under consideration).
  - (b) The operation of all equipment when assessed on any residential property shall not give rise to a sound pressure level that exceeds LAeq 50dB(A) day time and LAeq 40dB(A) night time.
  - (c) The operation of all equipment when assessed on any neighbouring commercial/industrial premises shall not give rise to a sound pressure level that exceeds LAeq 65dB(A) day time/night time.
- For assessment purposes, the above LAeq sound levels shall be assessed over a period of 10-15 minutes and adjusted in accordance with EPA guidelines for tonality, frequency weighting, impulsive characteristics, fluctuations and temporal content where necessary.



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

104. The approved Waste Management Plan shall be complied with at all times during the on-going use of the site / premises.
105. Should the external fabric of the building(s), walls to landscaped areas and like constructions be subject to graffiti or like vandalism, then within seven (7) days of this occurrence, the graffiti must be removed and the affected surface(s) returned to a condition it was in before defilement.
106. A development application shall be lodged with Council for the provision of satellite dishes that are not exempt at the premises.
107. The storage areas located within the basement shall be allocated to the relevant residential dwelling in any future subdivision of the site. In addition, any isolated storage areas and other spaces identified by the NSW Police in Condition 11, shall be monitored by CCTV cameras at all times.
108. Roller shutters to windows and doors are not permitted if visible from street.
109. The name of the development, street numbers and unit numbers shall be clearly displayed with such numbers being in contrasting colour and adequate size and location for viewing from the footway and roadway. Details of street numbering shall be submitted to Council for approval prior to the release of the Construction Certificate.
110. The applicant being informed that this approval shall be regarded as being otherwise in accordance with the information and particulars set out and described in the Development Application registered in Council’s records as Development Application No. 11/018 dated as 14 February 2011, and as modified by Section 96 Application No. 11/018/02 dated 3 August 2012, and as modified by Section 96(1A) Application No. 11/018/03 dated 17 August 2012, **and as modified by Section 96(2) Application No. 11/018/05 dated 17 April 2013** and that any alteration, variation, or extension to the use, for which approval has been given, would require further Approval from Council. (DA11/018/05)
111. ***This modified consent does not grant approval to the building works undertaken outside of those Construction Certificates already issued by Council. Certification of these works is dependent upon separately obtaining a Building Certificate from Council, pursuant to Sections 149A – 149G of the Environmental Planning and Assessment Act 1979, prior to the issue of the Occupation Certificate, either Interim or Final. (DA11/018/05)***

