

Joint Regional Planning Panel

(Sydney East Region)

Meeting Date: 18 June 2014

JRPP Number:	2013SYE094
DA Number:	13(208)
Local Government Area:	City of Botany Bay
Proposed Development:	<p>Integrated Stage 1 Masterplan Application seeking Joint Regional Planning Panel (JRPP) approval for redevelopment of the site for residential purposes; comprising:</p> <p>Five (5) buildings containing a maximum Gross Floor Area (GFA) of 45,662 sqm and Floor Space Ratio (FSR) of 1.469:1; building heights between two (2) storeys to eight (8) storeys; basement and ground level parking; 4,500sqm of publicly accessible open space; pedestrian and cycle through-site links; and new vehicular access from Pemberton Street. The proposal also includes site preparation works, remediation and dedication of land.</p>
Street Address:	52-54 Pemberton Street, Botany
Applicant:	Newtown Dyers and Bleachers Pty Ltd
Number of Submissions:	Nine (9), including two (2) form letters
Recommendation:	Refusal
Report by:	Rodger Dowsett, Director Planning and Development, City of Botany Bay

Précis

On 11 October, 2013 Council received the subject application, which proposes a Stage 1 Masterplan for 449 dwellings at 52-54 Pemberton Street, Botany. The development site specifically relates to Lots 1-5 DP 979152, Lot 51 DP 15704, Lot 100 DP 867427 and Lot 101 DP 867427. The combined area of the development site is 31,079.5 square metres (sqm) and is defined by Pemberton Street to the west (190 metres), Wilson Street to the east (195 metres), the New Street 1 (68 metres) and the 42-44 Pemberton Street site (also known as Parkgrove 1 and 2) to the south.

The subject application seeks consent for the overall built form of the proposal, including the location of parking, site entries, open space and pedestrian / cycle linkages (through-site links).

The proposed concept comprises of five (5) buildings (Buildings A to E) containing a maximum gross floor area (GFA) of 45,662 sqm and floor space ratio (FSR) of 1.469:1; building heights between two (2) storeys to eight (8) storeys; basement and ground level parking; 4,500sqm of publicly accessible open space; pedestrian and cycle through-site links; and new vehicular access from Pemberton Street. The proposal also includes site preparation works, remediation and dedication of land.

The proposal does not comply with the floor space ratio and height of building development standards as listed under the Botany Bay LEP 2013. The applicant's Clause 4.6 Exception for the height departure does not address the principles of *Wehbe v Pittwater Council [2007] NSW LEC 827* and fails to establish why it is unreasonable or unnecessary for the proposal to comply with the relevant standards. This report establishes that the Clause 4.6 exception is not well founded and cannot be supported. Further, the applicant has not submitted a Clause 4.6 exception in relation to the Floor Space Ratio.

Further, the proposed built form and open space is inconsistent with the vision and objectives of the Botany Bay DCP – Part 9C Wilson Pemberton Street Precinct. Specifically, the issues relate to the development interface, transitional built form, location of open space, and general building envelopes.

The applicant has failed to amend the application to address the matters raised by Council officers and has failed to provide adequate justification for the proposed departures. Since the commencement of discussions with the applicant during the Pre-DA process, Council has provided clear direction to the applicant as to its preferred outcome for the built form, design and open space requirements. The preferred outcome is detailed in this report.

Whilst it is acknowledged that the proposal is a Stage 1 Master Plan application, and that further detailed design development will occur as part of future Stage 2 Development Application, Council officers are of the opinion that the primary aspects of the preferred outcome should be accommodated in this application. Should the applicant have accommodated these amendments, then consideration could be given to granting conditional approval.

However, the applicant is reluctant to adopt these amendments. Accordingly, the application cannot be supported in its current form and is recommended for refusal.

An indicative Master Plan for the site is detailed in Figure 1 and is summarised in Table 1.



Figure 1: Stage 1 Proposed Masterplan showing indicative building heights, built form and through site links.

The built form of the development and its relationship to existing development is summarised as follows:

Building	Location	Footprint	Height (storeys)	Adjoining Development
A	North west portion of Site with frontage to Pemberton and Warrana Streets.	“L” shaped	3-4	Two storey industrial warehouses in Pemberton Street
B	Western portion of the site with frontage to Pemberton Street and the proposed park.	“U” shaped	3-8	Two storey industrial warehouses in Pemberton Street
C	North eastern portion of the site with frontage to Wilson Street	Rectangular	2-3	1-2 storey residential dwellings in Kurnell Street and Wilson Street
D	Eastern portion of the site with frontage to Wilson Street	“U” shaped	2- 7	1-2 storey residential dwellings in Wilson Street
E	South east portion of the site with frontage to Wilson Street and New Street 1.	“L” shaped	2- 7	1-2 storey residential dwellings in Wilson Street

Table 1: 52-54 Pemberton Street – proposed built form summary table.

The subject DA was referred to the Joint Regional Planning Panel (JRPP) pursuant to Clause 3 of Schedule 4A of the Environmental Planning and Assessment Act 1979 (EP&A Act) as the Capital Investment Value of the proposal exceeds \$20 million. The proposal is also Integrated Development, pursuant to Section 91 of the EP&A Act as the development involves temporary construction dewatering and therefore requires approval from the NSW Office of Water. On 29 October, 2013 the following external referrals were sent to relevant Authorities for consideration, with comments received as outlined below:

Authority	Comment	Date Received
Roads & Maritime Services	Additional information requested (SIDRA modelling and traffic survey data).	29 November 2013
Sydney Water	No objection, subject to conditions and lodgement of a Section 73 Application at Stage 2 of Development Application.	22 November 2013
Ausgrid	No objection, subject to conditions relating to the installation of substations.	4 November 2013
NSW Police Service	No objection, subject to conditions relating to CPTED principles	19 November 2013
SACL	No objection subject to limitation of height to a maximum 34m AHD.	20 December 2013
NSW Office of Water	No objection, subject to General Terms of Approval.	19 December 2013

Table 2: External Referrals Summary Table

Exhibition of the proposal was undertaken for a period of thirty (30) days and adjoining property owners were notified by mail. The exhibition commenced on 23 October, 2013 and concluded on 29 November, 2013 with nine (9) submissions received in response to the notification, including two (2) form letters (a standard letter signed and submitted by multiple objectors). One of the form letters had thirty-seven (37) signatories, the other had five (5). A hard copy of the submissions was submitted to the Panel on 22 April 2014. Objections received raised issue with the following:

- Height
- Privacy
- Overshadowing
- Traffic and Parking
- Parking Access
- Deep Soil Planting
- Unit Mix
- Wind
- Visual Amenity
- Building Lengths
- Noise
- Setbacks
- Future Desired Character

On 22 October 2013, the subject application was registered with the Joint Regional Planning Panel – Sydney East (the JRPP), reference number 2013SYE094.

On 14 November 2013 the subject application was presented to the JRPP. At that meeting, non-compliances with Council's controls, including the DCP in force at that time (DCP No.31 – Site Specific DCP for the Wilson Pemberton Precinct), were highlighted.

Note the following matters have been listed to outline the level of non-compliance with Council's controls at the time of the JRPP briefing, including DCP No. 31 (now

superseded by Botany Bay Development Control Plan, 2013). Some of the matters raised, included:

- Height
- Floor Space Ratio
- Setbacks
- Landscaping
- Solar Access
- Unit Mix and Land Use
- Vehicular Access and Traffic

On 29 April 2014 the applicant submitted additional information demonstrating that the overall floor space of the development would not exceed 1.469:1. On 5 May 2014 a separate peer review (Neustein Urban) and urban design report (Russel Olsson) was submitted by the Applicant in support of the Application.

On Tuesday 29 April, 2014, Council officers met with the applicant to discuss the proposal. At that meeting, Council staff reiterated to the applicant that the proposal should be amended to address Council officer concerns, otherwise the proposal cannot be supported in its current form.

The Wilson Pemberton Precinct

The subject site is located in the Wilson Pemberton precinct, an area planned for revitalisation after the demand for heavy industry began to diminish in the 1970s. Since this time, large/noxious industry has predominately given way to warehousing and manufacturing.

The precinct is 8.5 hectares in area and is located to the south-east of the Botany Bay local government area. It is 12 kilometres (km) south of the Sydney Central Business District, 2km from Sydney Airport and 2 km from Port Botany. It forms the eastern edge of an industrial area which is bounded by part of Warrana Street to the north, Wilson Street to the east, part of Rancom Street to the south and Pemberton street to the west. The precinct is characterised by industrial warehouses that interface with single dwellings to the north (Warrana and Kurnell Street) and the east (Wilson Street). To the south, the precinct interfaces with a mix of uses (residential, commercial and industrial) in Rancom Street. Warehouses are located adjacent to the precinct to the west.

Industrial development within the precinct is generally sub-standard in condition and appearance. Warehouses have aged visibly and minimal improvements have been made to the existing building stock. Industrial uses appear to have outgrown local road infrastructure with Pemberton Street too narrow to accommodate on street parking and two-way truck movements and remain outside of policy considerations of the Council in relation to the industrial interface with residential zones.

Planning Background

In 2001, Council initiated an Urban Improvement Program for the Wilson Pemberton precinct, with the aim of preparing a draft development control plan (DCP) and a draft Local Environmental Plan (LEP) to provide a framework for the revitalisation of the area.

On 17 December 2004 land within the Wilson Pemberton Precinct was rezoned (Amendment no. 3) from part Zone No 2 (b) Residential “B” and part Zone No 4(b) to part Zone No 2 (b) and part No 4 (b1) Mixed Industrial - Restricted. At that time, the primary objective of the 4 (b1) Mixed Industrial – Restricted zone was *to improve the environmental amenity of the locality by encouraging industrial, retail and commercial development that would assist in enhancing the redevelopment of the area and would not detract from the amenity of the area by reason of the design and function of the development proposed.*

On 23 June 2004 Council resolved to adopt a site specific Development Control Plan (DCP No. 31) for the Wilson Pemberton precinct. The Plan came into force on 4 January 2005.

On 11 October 2013 the subject application was lodged. It is noted that prior to the lodgement of the application, the proposal was presented to Council’s Design Review Panel on 13 March 2013; and various informal pre-lodgement meetings were held with Council on November 2012, 18 June 2013, 4 July 2013 and 30 July 2013. Consideration for the Design Review Panel comments is included in the body of this report.

On 28 November 2012 Council adopted the Draft Botany Bay Local Environmental Plan, 2013. The Plan was gazetted on 21 June 2013 and came into force on 26 June 2013. Under the provisions of the BBLEP 2013 the precinct was rezoned to part B4 Mixed Use, part R3 – Medium Density Residential.

On 11 December 2013 Council resolved to adopt the Botany Bay Comprehensive Development Control Plan 2013, which includes a Site Specific Section (Section 9C) to guide the redevelopment of the Wilson/Pemberton precinct. The following Figures provide additional context of the site:

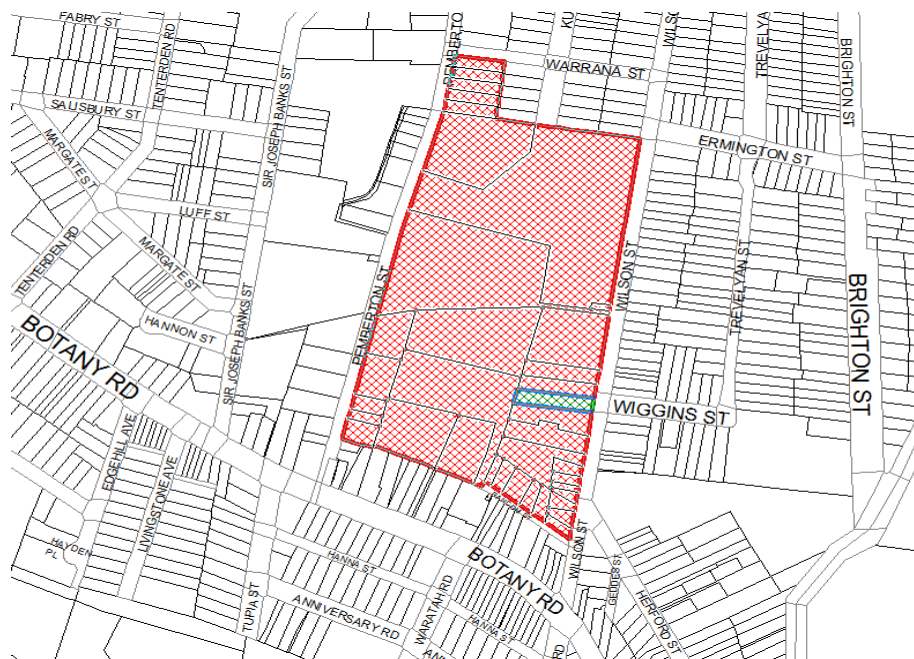


Figure 2 – The Wilson Pemberton Precinct in relation to the local road network of Botany. Note the site opposite Wiggins Street (highlighted green) No. 23 Wilson Street; Botany is the only remaining site that does not form part of a Stage 1 Master Plan DA or a Stage 2 DA in the precinct.

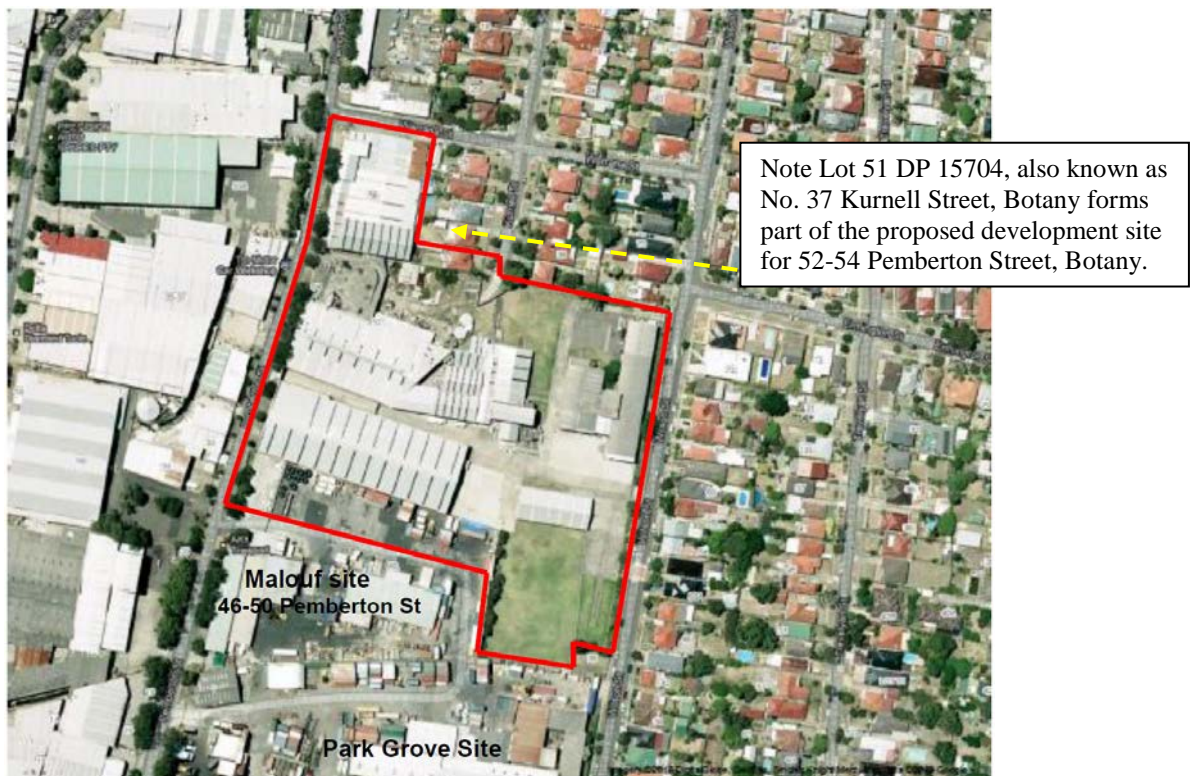


Figure 3 – The subject development site. Note the subject development application includes a residential allotment that is located outside the Precinct boundaries, as shown above.

Preferred Outcome for the site

Council officers recognise that the site is suitable for medium density residential and mixed use development. However, the application cannot be supported in its current form. It is recommended that the application be amended as follows:

1. Reduction in floor space ratio to comply with the maximum permissible FSR under the Botany Bay LEP 2013, as outlined in this report.
2. Reduction in height to comply with the maximum permissible Height under the Botany Bay LEP 2013.
3. Public park to be relocated to the Wilson Street frontage, in the location of Building C or Building E.
4. No car park/basement structure is to be located under public park.
5. Buildings breaks required to all buildings – Building A along Pemberton Street, Building B along Pemberton Street and along internal park, Building C between Kurnell Street and Wilson Street and Building D along Wilson Street and along internal park. Building breaks will reduce mass and bulk and improve streetscape presentation.
6. Provide an appropriate transition to adjoining single dwellings, by locating three storey townhouse development adjacent to any single dwelling.
7. Residential flat buildings/mixed use located along Pemberton Street should be a maximum 4 storeys. Building A at the end of Pemberton Street to be a maximum three storeys.
8. A maximum of 2.5 storey development along Wilson Street.

9. Development along Pemberton Street must be a minimum 50% mixed use (ground floor commercial), with the balance to be Residential Flat Building.
10. Road widening required on Pemberton Street, to be minimum 4m.
11. Road widening along New Street 1.
12. Car parking, including visitor parking must comply with Council requirements.
13. Increase in floor to ceiling heights for all ground floor non-residential uses to be a minimum 4 metres.
14. Building setbacks to comply with the requirements of the DCP.

The above amendments would result in a development that would be consistent with the desired future character of the area. Should the application be amended to comply with the above, then Council officers could consider supporting the application. However, given the applicant has not been willing to amend the application and given the amendments will require a significant re-design, the application cannot be supported.

Officer Recommendation

The Development Application No. 13/208 has been assessed in accordance with the relevant requirements of the Environmental Planning Assessment Act, 1979 and is recommended that the Joint Regional Planning Panel (JRPP) for the Sydney East Region, as the Consent Authority, resolve to refuse Development Application No. 13/208 for the following reasons:

1. The proposed development is inconsistent with the objectives and requirements of State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Buildings, in that it does not fulfil the requirements of Part 2 - Design Quality Principles in respect of scale, built form, density, amenity and social dimensions. (Environmental Planning & Assessment Act 1979 Section 79C(1)(a)(i)).
2. The proposed development is inconsistent with the objectives of Clause 2.3 of Botany Bay Local Environmental Plan 2013, as the proposed ground floor residential use is inconsistent with the objectives of the B4 Mixed use zone. (Environmental Planning & Assessment Act 1979 Section 79C(1)(a)(i)).
3. The proposed development is inconsistent with the objectives and development standards of Clause 4.3 of Botany Bay Local Environmental Plan 2013 as it exceeds the Maximum Height of Buildings for the subject site, which results in adverse impacts on the streetscape amenity. (Environmental Planning & Assessment Act 1979 Section 79C(1)(a)(i)).
4. The proposed development is inconsistent with the objectives and standards of Clause 4.4 of Botany Bay Local Environmental Plan 2013 as it exceeds the Maximum floor space ratio of Buildings for the subject site, which results in adverse impacts on the streetscape amenity. (Environmental Planning & Assessment Act 1979 Section 79C(1)(a)(i)).
5. The proposed development fails to adequately justify the variation to the maximum height and floor space ratio of buildings under Clause 4.3 and 4.4 through the submitted Clause 4.6 Variation. (Environmental Planning & Assessment Act 1979 Section 79C(1)(a)(i)).

6. The proposed development fails to satisfy the following requirements of Part 4C of Botany Bay Development Control Plan 2013 (Environmental Planning & Assessment Act 1979 Section 79C(1)(a)(iii)):
 - (i) Minimum deep soil landscaping requirement (25% of the site area)
 - (ii) Maximum basement size requirement (65% of the site area)
 - (iii) Maximum site cover (45% of the site area)
 - (iv) Maximum building length of 24m; and
 - (iv) Minimum visitor parking provision, proposing a shortfall of 45 spaces.
7. The proposed development is likely to result in adverse traffic and parking impacts by virtue of the additional floor space and quantum of dwellings that can be achieved by the proposed Master Plan (Environmental Planning & Assessment Act 1979 Section 79C(1)(b)):
8. The proposed development is likely to result in solar access impacts to the open space area to the north of Building E and to the adjoining landholding to the south (Parkgrove 2) (Environmental Planning & Assessment Act 1979 Section 79C(1)(b)):
9. The proposed development is not in the public interest as the proposed design in its current form is inconsistent with the future desired character of the subject site. (Environmental Planning & Assessment Act 1979 Section 79C(1)(e)).
10. The applicant has failed to provide sufficient information to determine the impacts of the development in relation to cumulative flooding impacts on downstream sites. (Environmental Planning & Assessment Act 1979 Section 79C(1)(b)).

SITE DESCRIPTION

The legal description of the allotments to which this development application (“the development site”) is described below. The site is zoned part B4 – Mixed Use (8,058.5m²), Part R2 – Low Density Residential (456m²) and Part R3 (22,565m²) – Medium Density Residential.

Each of the following landholdings is owned by Newtown Dyers and Bleachers Pty Ltd, with the exception of Lot 51 DP 15704 as detailed below:

- Lots 1-5 DP 979152 (Zoned B4 – Mixed Use);
- Lot 51 DP 15704 (known as No. 37 Kurnell Street, Botany). The registered proprietor of this landholding is Tallen Pty Ltd. (Zoned R2 – Low Density Residential);
- Lot 100 DP 867427 (Zoned part B4 – Mixed Use, part R3 Medium Density Residential); and
- Lot 101 DP 867427 (Zoned part B4 – Mixed Use, part R3 – Medium Density Residential)

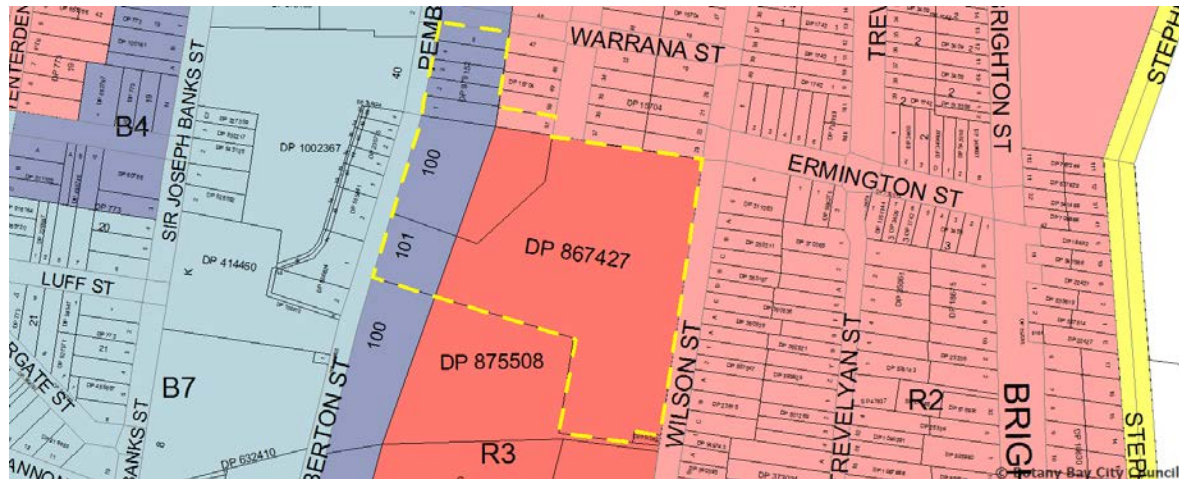


Figure 4 – Zoning Map of the development site.

The site is relatively flat, with a gentle fall from the northeast to southwest. The combined area of the development site is 31,079.5 sqm and is defined by Pemberton Street to the west (190 metres), Wilson Street to the east (195 metres), the New Street 1 (68 metres) and the 42-44 Pemberton Street (the Malouf site) to the south. To the north of the site is a short section of Warrana Street (40 metres) including a series of residential properties in Kurnell Street.

Existing Development within the Precinct

With the exception of No. 23 Wilson Street, Botany (Lot A DP 158685), currently operating as an automotive repairer, there are five (5) development sites in the Wilson Pemberton Precinct.

The key development sites are known as:

- Parkgrove 1A;
- Parkgrove 1B;
- Parkgrove 2,
- Parkgrove 3; and
- 19-21 Wilson Street Botany.

An aerial view of the indicative development sites is provided in Figure 7 below:



Figure 5: Development Sites within the Wilson Pemberton Precinct.

Over the last 8-10 years there has been a series of significant development applications determined for the sites within the Wilson Pemberton Precinct, with development currently underway at Nos. 19-21 Wilson Street, Parkgrove Site 1A and Parkgrove Site 1B. The table below summarises the current approvals for each of the abovementioned sites located within the precinct:

Wilson Pemberton Precinct – Development History

The tables and figures below provide a summary of the development history of existing sites within the precinct and what the status of development is for those sites. It also provides an indication of the building forms that have been approved in the precinct in the last few years.

Stage 1 Masterplan Applications in the Wilson Pemberton Precinct	
Development Site	Development Status
Parkgrove Site 1 Approved	DA05/459 approved for a Stage 1 Master Plan for nine (9) multi-storey residential flat buildings, 4 x 2.5 storey townhouses comprising 268 dwellings, 3 x 4 storey commercial buildings comprising 8 industrial units and 8 commercial units, internal roads, 537 parking spaces, extension of Rancom Street, public park and landscaping.
05/459/06	Section 96(2) to Increase the height of Building D from 4 storeys to 6 storeys (additional 6m) and increase its building footprint to become an L-shaped building extending to the east, and increase the number of units from 24 to 100 units and contain a total of 173 car parking spaces; Relocation of south-eastern area of communal open space from between Buildings J & D to be dispersed throughout the entire site and to increase the overall site area of the central main area of public open space to be not less than 4,000m ² ;
Parkgrove Site 2 Approved	DA10/313 approved on 1 July 2010 for Stage 1 Masterplan for mixed use development and stage 2 for demolition of existing structures. On 18 May 2011 Operational Consent was issued.
Parkgrove Site 3 Under assessment	Five (5) buildings (Buildings A-E) containing a maximum Gross Floor Area (GFA) of 45,662 sqm and Floor Space Ratio (FSR) of 1.469:1; building heights between two (2) storeys to eight (8) storeys; basement and ground level parking; 4,500sqm of publicly accessible open space; pedestrian and cycle through-site links; and new vehicular access from Pemberton Street. The proposal also includes site preparation works, remediation and dedication of land.

Table 3: Stage 1 Master Plan applications lodged in the Wilson-Pemberton precinct.

Stage 2 Development Applications in the Wilson Pemberton Precinct

Development Site	Lot and DP	Development Status
19-21 Wilson Street, Botany	<ul style="list-style-type: none"> Lot 1 DP 455892; Lot B DP 158685; and Lot 3 in DP 602503 	DA12/227 approved (operational consent issued on 28 November 2013) for demolition and construction of seven (7) townhouses and a five (5) storey residential flat building containing 31 units and parking for 63 vehicles.
Parkgrove Site 1A		DA08/261 approved on 15 October 2008 for Stage 1B development for demolition and construction of nine (9) townhouses and part of the New Street 1.
		DA12/34 approved on 18 July 2012 for the construction of 8 x 2 storeys plus attic townhouses, including detached garage parking at the rear. Project complete.
		DA12/71 approved on 14 December 2012 for the construction of two (2) residential flat buildings containing 158 apartments and basement parking for 271 cars accessed from New Street 1. The residential flat buildings are known as Building E and F.
		DA12/195 approved on 24 October 2012 for demolition of existing structures and construction of new street 1, its connection to Pemberton Street, associated footpath, verge and landscaping works including pocket park located at the Wilson Street end.
		Land and Environment Court Proceedings 10820 of 2013 – Class 1 Application filed by the Applicant against Council's refusal of Development Application No. 12/210 for the construction of a six (6) storey residential flat building (Building D) containing 100 units and 173 car parking spaces. Appeal upheld and Consent orders issued by the Court following Section 34 Conference.
Parkgrove Site 2		DA12/206 approved on 21 October 2013 for the construction of 164 residential units within Buildings D (6 storey building containing 41 units), E (7 storey containing 63 units) and F (6 storey containing 60 units); and 346 underground car parking spaces.

	DA13/278 Construction of two (2) x six (6) storey Residential Flat Buildings (Buildings A and C as shown in the Stage 1 Master Plan). Currently under assessment.
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Table 4: Stage 2 Development Applications lodged in the Wilson-Pemberton precinct.



Figure 6: Development Sites within the Wilson Pemberton Precinct showing proposed and approved heights.

Surrounding Development

The subject landholding is the largest development site in the Pemberton-Wilson Street Precinct and is located at the northern end of Pemberton Street. Adjoining the development site to the north in Warrana and Kurnell Streets is low-density residential. To the west is industrial development, with high density residential development located to the south, comprising the northern portion of Parkgrove.

The residential development to the north and east is predominantly one and two storey single dwellings dating from the 1950's, interspersed with larger, two storey, more contemporary dwellings. The first stage of development on the Park Grove site, immediately to the south of the site on Wilson Street comprises a row of nine (9) contemporary terrace houses with parking at the rear (accessed via New Street 1).

To the west, on the opposite side of Pemberton Street is an established industrial area, which is characterised by a range of low-rise, large and small scale industrial warehouses. Vehicle repair stations are a common land use in this area.

The site is located some 400 metres to the north of the Banksmeadow shops on Botany Road. This neighbourhood centre forms a physical barrier between the Precinct and Botany Road. Located further to the south of Botany Road is Sir Joseph Banks Park, a 28 hectare regional park which runs parallel to Foreshore Drive. Beyond the Park further to the south is Port Botany and the northern shores of Botany Bay.

The Domestic Terminal at Sydney (Kingsford-Smith) Airport is located approximately 3.2km to the northwest of the site. Regular bus services are available along Botany Road, including:

- Metrobus M20 operates between Botany, Mascot, Victoria Park, Redfern and the city;
- Route 310 is a daily full time service between Eastgardens, East Botany, Botany, Mascot, Green Square, Redfern and the City (Circular Quay);
- Route 309 (daily full time service) between Port Botany, Matraville, Banksmeadow, Botany, Mascot, Green Square, Redfern and the City (Circular Quay) via Botany Road; and
- Routes X09 and X10 are weekday peak hour express services between Banksmeadow / Eastgardens, Botany, Mascot and the City.

The closest bus stops to the subject site are located in Botany Road, approximately 400m to the south and in Swinbourne Street, approximately 250m to the north.

Included below are photographs which show the types of development that adjoin the site. The photos start from the north eastern section of the precinct, in Wilson Street and continue in a clockwise direction travelling south, west, north then eastward.



Photo 1: Northern portion of Wilson Street, Botany showing townhouse development at the northern part of Parkgrove 1A, No. 25 Wilson Street.



Photo 2: Six (6) storey residential flat building at Parkgrove 1A, adjacent to the proposed New Street 1. The fenced site, owned by Ausgrid is earmarked for a future public park.



Photo 3: Development Site at Nos. 19-21 Wilson Street, Botany.

The Site (52-54 Pemberton Street, Botany)

The development site (with the exception of No. 37 Kurnell Street) is owned by Newtown Dyers and Bleachers and was previously used for the dyeing, bleaching and manufacturing of textiles and fabric. Prior to this, Bayer Australia Ltd operated an Agricultural Chemicals Formulation Plant at the site.

The site is currently used for storage and employs a small number of staff. The site is irregular in shape and accommodates seven (7) industrial buildings ranging in height from one (1) to three (3) storeys. The site also accommodates several hardstand parking areas. The landholding is relatively flat and has a gentle slope from the north-east to the south-west. At the south east corner of the site, adjacent to Wilson Street is a large open space area that is bounded by a number of mature sized trees.

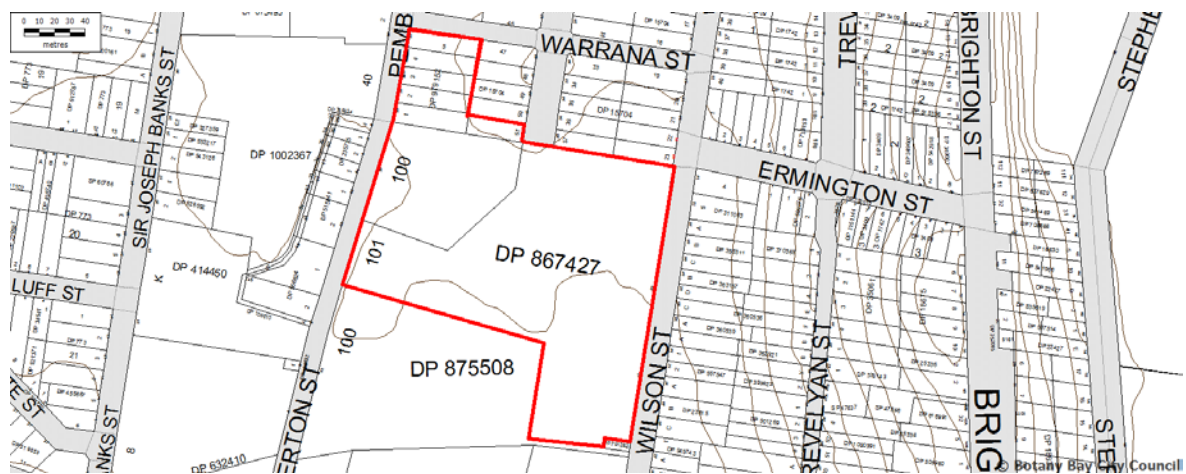


Figure 7: Site topography showing gentle slope across the site from the north-east to the south-west.

The combined area of the development site is 31,079.5 sqm and is defined by Pemberton Street to the west (190 metres), Wilson Street to the east (195 metres), the New Street 1 (68 metres) and the 42-44 Pemberton Street (the Parkgrove 1) to the south. Refer to the photos and aerial below for details.



Photo 4: Open space area at the south east corner of the development site.



Photo 5: Existing warehouse buildings as viewed from the central part of the development site looking west.

THE PROPOSAL

The development application seeks approval from the Joint Regional Planning Panel (JRPP) for an Integrated Stage 1 Masterplan comprising:

- Five (5) buildings (Buildings A, B, C, D and E) comprising a maximum Gross Floor Area (GFA) of 45,662 sqm and Floor Space Ratio (FSR) of 1.469:1;
- Building heights between two (2) storeys to eight (8) storeys;
- basement and ground level parking;
- 4,500sqm of open space;
- pedestrian and cycle through-site links;
- new vehicular access from Pemberton Street.
- site preparation works, remediation and dedication of land.

The subject application seeks consent for the overall built form of the proposal, including building envelopes and the location of parking, site entries, open space and pedestrian / cycle linkages (through-site links).

The purpose of the Masterplan is considered to address the following elements:

- Indicative built form and land use
- Traffic and transport management
- Landscape and open space provision
- Flooding and stormwater management
- Contamination and remediation
- Ecologically sustainable development
- The staging of development
- Permeability / connections with the existing urban fabric

The Master Plan for the site and its relationship to existing development is summarised in the following table below:

Building	Location	Footprint	Height (storeys)	Adjoining Development
A	North west portion of Site with frontage to Pemberton and Warrana Streets.	“L” shaped	3-4	Two storey industrial warehouses in Pemberton Street
B	Western portion of the site with frontage to Pemberton Street	“U” shaped	3-8	Two storey industrial warehouses in Pemberton Street
C	North eastern portion of the site with frontage to Wilson Street	Rectangular	2-3	1-2 storey residential dwellings in Kurnell Street and Wilson Street
D	Eastern portion of the site with frontage to Wilson Street	“U” shaped	2- 7	1-2 storey residential dwellings in Wilson Street
E	South east portion of the site with frontage to Wilson Street and New Street 1.	“L” shaped	2- 7	1-2 storey residential dwellings in Wilson Street

Table 5: 52-54 Pemberton Street – proposed built form summary table

Numeric Overview

The numeric overview of the proposed Master Plan is as follows:

Site Area	31,079.5m ²
GFA	45,662m ²
FSR	1.469:1
Dwelling Yield	449 (indicative only)
Landscaped Area	17,000m ²
Publicly Accessible Open Space	4,500m ² (Central Park 3,650m ² / 850m ² thru-site link)
Deep Soil	4,700m ² (15% of site area / 26% of total landscaped area)

Table 6: Numeric overview of the proposal, according to the Applicant

Whilst the consent is not sought for dwelling numbers / yield, an indicative future dwelling or unit mix could comprise:

- 135 x Studio apartments (30%)
- 67 x 1 bedroom apartments (15%)
- 229 x 2 bedroom apartments (51%)
- 18 x 3 bedroom apartments (4%)
- Total = 449 dwellings (100%)

B4 Mixed Use Zone

A substantial portion of the site fronting Pemberton Street is zoned B4 Mixed Use, and the proposal seeks consent for use of the ground floor for both residential and non-residential purposes. The requirements of the B4 Mixed Use zone and the Part 9 of the DCP require that all ground floor areas within B4 Mixed Use zoned land must be utilised for non-residential uses. Therefore, the use of the ground floor as residential is inconsistent with the zone objectives.

Further, it is considered that a minimum 4m floor to ceiling height is required on the ground floor to allow for commercial and non-residential uses. This shall provide flexibility for future uses of the ground floor area.

Publicly Accessible Open Space

The Master Plan includes the provision of a publicly accessible pocket park at the south east corner of the site, as shown in the Figure 1. It is noted that the land where the park is proposed does not form part of the development site and is currently owned by Ausgrid. As such, the public park does not form part of the application and no consent can be granted for its use.

Development Staging

The Master Plan identifies four (4) indicative stages for the delivery of the residential development of the site. The detail of each subsequent stage will be determined by a Stage 2 Development Application relating to buildings works.

The purpose of the proposed staging is to ensure that any infrastructure upgrades are implemented to meet the program requirements of each of the respective development stages, and secondly, to ensure that the infrastructure capacity requirements of the total development precinct and that of adjacent developments are met and delivered in a co-ordinated manner.

PLANNING CONSIDERATIONS

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

SECTION 79C CONSIDERATIONS

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

- (a) **The provisions of any EPI and DCP and any other matters prescribed by the Regulations. (S.79C(1)(a)(i)and(iii))**

Environmental Planning and Assessment Act 1979 – Integrated Development

The proposal constitutes Integrated Development as it involves the construction of a basement that will transect the water table. The application was referred to the NSW Office of Water for its approval under the *Water Management Act 2000*.

The NSW Office of Water provided the following comment in correspondence dated 19 December 2013:

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

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

The Applicant is to meet all the General Terms of Approval prior to obtaining a Water Licence with the NSW Office of Water. Consequently, the GTAs made by NSW Office of Water would be included as conditions of consent in the event of approval.

State Environmental Planning Policy (Infrastructure) 2007

The proposed development was referred to the Roads and Maritime Services in accordance with the provisions of State Environmental Planning Policy (Infrastructure) 2007 Schedule 3 – Traffic Generating Development.

The RMS responded on 29 November 2013, requesting the following additional information for review:

- An electronic copy of SIDRA modelling; and
- The original traffic survey data collected by the survey company.

The above request for information was forwarded to the applicant for response. No response has been provided.

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

A BASIX Certificate was not submitted with the subject application. It is anticipated that Council would receive a BASIX Certificate/s during Stage 2 of the development proposal for detailed building works.

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

The provisions of SEPP No. 55 have been considered in the assessment of the development application. Clause 7 of SEPP No. 55 requires Council to be certain that the site is or can be made suitable for its intended use at the time of determination of an application. Environmental investigations undertaken by the Applicant indicated that the site had been occupied by the following uses dating back to the 1930s:

- In 1930 the majority of the site was utilised for agricultural land uses with some residential dwellings present. Pemberton Street, Warrana Street and Wilson Street bounded the site to the west, north and east respectively. Residential and agricultural properties surrounded the site.
- In 1943, site remained unchanged. Additional residential properties were developed surrounding the site.
- In 1951, residential dwellings and hardstand areas occupied the northern portion of the site, near the intersection of Pemberton and Warrana Streets. The remainder of the site remained relatively unchanged. Some commercial properties were present beyond Pemberton Street to the west.
- In 1965, several residential dwellings and a building occupied the northern portion of the site and two large warehouse structures occupied the south western portion of the site. One warehouse structure was present in the central portion of the site. Two buildings occupied the northeast portion of the site and the southern portion was an open grassed area. The surrounding area remained largely unchanged.'
- In 1978, two buildings occupied the northern portion of the site, near the intersection of Pemberton and Warrana Streets. A warehouse structure was present in the central portion of the site south of the driveway. The surrounding area remained largely unchanged.
- From 1986-1991, the site and surrounding areas remained relatively unchanged.
- In 1994, the current site configuration existed.

- In 2005, the two large warehouses in the southwest portion of the site appeared to have a different roof.
- The remainder of the site remained relatively unchanged. Commercial premises existed beyond Pemberton St to the west and residential properties dominated surrounding areas to the north and east.
- In 2012, the site and surrounding areas remained relatively unchanged.

Council's Environmental Scientist is required to be satisfied that the health and safety of the future residents is ensured as per the requirements of the Environmental Planning and Assessment Regulations 2000. Therefore it is reasonable that Council's Environmental Scientist requires contamination and remediation works to be carried out in each stage of the development.

The Applicant submitted a Phase 1 and 2 Environmental Site Investigation prepared by WSP Environmental. The investigation makes the following recommendations, which would be included as part of the consent in the event of approval:

- *Prior to re-development for residential land-use, a remediation action plan (RAP) is required to facilitate the removal of the UST's in accordance with the Protection of the Environment UPSS Regulation 2008.*
- *Removal and appropriate validation sampling and analysis should also be undertaken for the underground waste water storage tank located in the northwest portion of the site.*
- *Following UST remediation, WSP recommends a groundwater monitoring event be conducted confirm the groundwater status at the site.*
- *The RAP should also include appropriate remediation (removal and validation) of identified lead and asbestos impacted soil "hotspots". WSP recommends soil analysis should be conducted in accordance with DECCW*
- *(2009) Waste Classification Guidelines, Part 1: Classifying Waste for suitable off-site waste disposal.*
- *Based on WSPs understanding of the proposed redevelopment existing buildings will be removed from the site. Observations during the site inspection indicate that potentially ACM is contained within the building fabric.*
- *WSP recommends that a hazardous material survey be conducted prior to demolition.*
- *WSP understands that the proposed re-development includes the removal of fill material across the entire site. If not, elevated PIL results should be considered when designing the landscaping for any proposed development to ensure that appropriate plant species are selected or that a suitable soil planting layer is placed in areas where concentrations are deemed to pose a risk to proposed landscaping.*

The development application was referred to Council's Environmental Scientist who was generally in support of the findings of the investigation, subject to conditions. This included the requirement for a detailed site investigation report and Remedial Action Plan to be lodged with any Stage 2 application/s.

Accordingly, subject to the implementation of a Remedial Action Plan, Council can be satisfied that the land can be made suitable for the intended residential use. Remediation will need to occur prior to any use of the site for residential.

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

SEPP 65 aims to improve the design quality of residential flat development in New South Wales. The policy recognises the significance of residential flat development and aims to improve the built form and sustainability of development and to satisfy the demand for appropriate development in the social and built form context.

Prior to lodgement, a set of pre-lodgement plans were referred to Council's Design Review Panel (DRP) for comment. On 13 March 2013 The DRP provided comments in the context of the ten design quality principles for residential flat development, and supported the proposal in principle, subject to the resolution of minor design issues that could be resolved in Stage 2.

Design Quality Principles

The ten design principles identified in the Residential Flat Design Code (RFDC) are addressed below and where relevant, include the specific comments raised by Council's Design Review Panel (from their report dated 13 March 2013) together with a commentary provided by the Applicant.

Principle 1: Context

DRP comments:

The site is located in an industrial area, which is undergoing major redevelopment and is part the Pemberton Wilson precinct.

The Masterplan concept is generally in accordance with the desired future character for the precinct. The proposal also accords with the building development currently taking place within the precinct.

The proposed design of 3 storey blocks stepping down to 2 storeys fronting Wilson Street is an appropriate response to the small scale single dwellings across the street to the east. Similarly the 3 and 4 storey blocks proposed on the northern end provide an acceptable interface with the adjacent single dwelling sites located at the north-east corner of the development site.

Applicant's comments:

The immediate context is characterised by houses of one-to-two-storeys to the north and northeast, and industrial uses to the west and north-west. To the south are new proposed residential apartment buildings of up to 7-storeys.

The proposal responds to the surrounding urban area whilst developing a new and appropriate residential character and public amenity. The scale and heights of the buildings relate to the adjacent existing and proposed context.

It is expected that the architecture of the new buildings will contribute to the quality and identity of the existing area whilst at the same time addressing the wider objectives of the DCP.

Officer's Comment: The proposed Master Plan is for the largest land holding within the Wilson-Pemberton Precinct. It forms part of an area strategically planned for revitalisation and is zoned part R2 low density residential, part R3 medium density residential and part B4 mixed use.

The site interfaces with residential development to the north (Warrana and Kurnell Streets) and to the east (Wilson Street) and is adjacent to an established industrial area to the west. The context of the site is also influenced by new development being constructed in the area, such as residential flat buildings and multi-dwelling development to the south east. Having regard to the variations sought to Council's controls, the proposed development is considered to be out of character with the context, setting and desired future character of the area. The scale, built form and density of the proposed Master Plan is considered excessive and results in the overdevelopment of the site; see Principles 2, 3 and 4 below.

Principle 2: Scale

DRP comments:

The proposed height and bulk of the building envelopes are acceptable for the locality and fit in with the scale of adjacent development taking place within the precinct.

Applicant's comments:

This development consists of approximately 449 apartments (dependent upon the mix – approval is sought in this Stage 1 DA for GFA only, not apartment numbers) divided between 5 building forms with multiple cores on a podium of parking that is semi-submerged in the ground and surrounded by active uses when above ground. The average 1m level change to the podium provides privacy and security to the ground level apartments, while still providing street activation.

A new network of pedestrian through site links and public open spaces between Kurnell Street, Wilson Street, and the new street by way of the new development to the south gives a grain to the development as well as providing frontage.

The buildings are typically two-to-eight-storeys in height. They are arranged so as to give a varied skyline and to prevent overshadowing of existing and proposed residences. The lower buildings tend to be at the eastern and northern perimeter of the site as a transition to the existing residential context.

The overall Master Plan and specific building envelope design has been considered to ensure that the buildings are proportional to the spaces around them.

Officer's Comment:

The Botany Bay Local Environmental Plan 2013 allows a maximum height of 22m for R3 zoned land and 10m for B4 Mixed Use zoned land. The B4 zone is a 45-50m wide strip which applies to the western portion of the development site.

The proposed Master Plan exceeds the maximum height of building requirements for the B4 Mixed Use zone, proposing four (4) storey built forms along Pemberton Street. Therefore, the proposal does not comply with Council's height of building controls and results in a departure of up to 6.5m.

Figure 11 below is an aerial of the site which shows the footprint of existing industrial buildings compared with the proposed Master Plan.

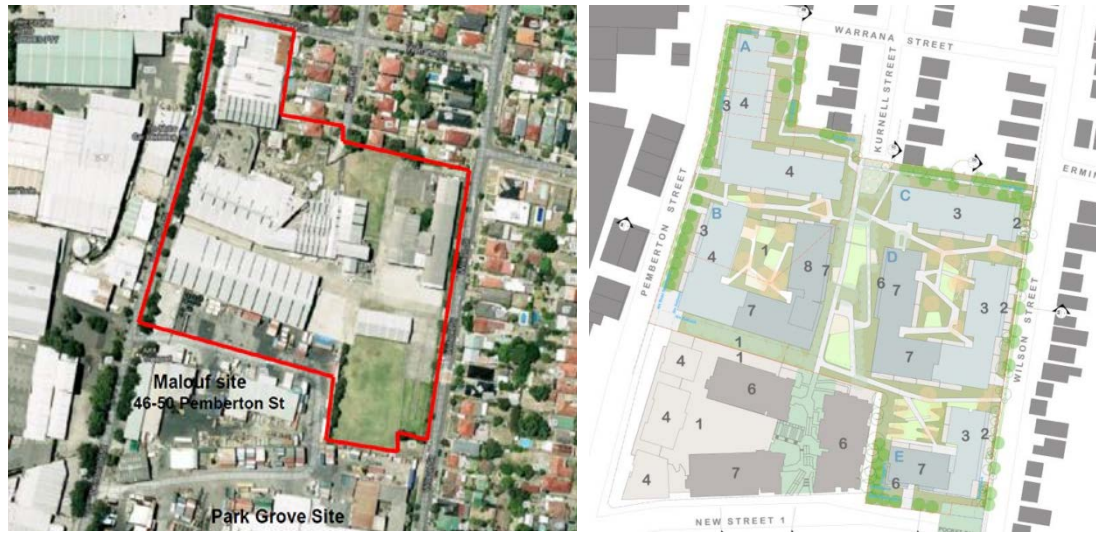


Figure 10: existing buildings compared to proposed building footprints and heights.

Figure 11 shows that the existing built form is concentrated to the west of the site and is adjacent to industrial development located in Pemberton Street. With the exception of dwellings located on the western side of Kurnell Street, existing buildings are generally sympathetic to nearby residential dwellings in terms of height, scale, siting and separation distances.

The Master Plan introduces flat buildings along Wilson Street (2-3 storeys) and New Street 1 (seven (7) storeys). Larger buildings will also interface with single dwellings in Kurnell Street (4 storeys).

Development along Wilson Street would be considered acceptable if it were consistent townhouse development that has been approved at 19-21 Wilson Street. The proposed three (3) storey building which adjoins existing dwellings at the north eastern portion of the development site (Building C) is considered reasonable with respect to height. However, its relationship to existing dwellings could be improved through appropriate articulation, substantial physical breaks or smaller footprints to reduce the visual impact of the facade lengths.

A multi-dwelling building type, such as townhouses would also provide a more appropriate interface with adjoining dwellings to the north and adjacent dwellings to the east. Setbacks at the upper three (3) storey level would also improve the built form. Other aspects of the design which could lead to an improved development interface could be considered and addressed at Stage 2. The same applies to the four (4) storey eastern and northern wing of Building A which adjoins single dwellings in Kurnell Street. The northern wing of Building A and the proposed four (4) storey component would also be non-compliant with Council's height of building control of 10m.

In addition to exceeding the height controls, the four (4) storey component to Building A and Building B is inconsistent with the current and future height and scale of buildings in Pemberton Street. The applicant has submitted a Clause 4.6 exception, however this report establishes that the Clause 4.6 Exception is not well founded and therefore the JRPP in its consideration of this report should not support the proposed variation.

Principle 3: Built Form

DRP Comments:

It is proposed that the layout plan be amended to relocate the 6 storey block southward to create an east-west through site link as shown in the landscape plan. This should be an improvement to the two L shapes configuration.

It is understood that the set back of the northern block of No. 42 – 44 Pemberton Street would be increased in order to ensure an acceptable separation between the two neighbouring building blocks.

The Panel strongly suggests that private individual entry for Ground level units be provided on Pemberton Street, Wilson Street and the park frontages, which would activate these facades.

Whilst the 8 storey block is appropriately located centrally on the site, the top 1 or 2 levels should be stepped back on the eastern side to permit more direct sunlight to penetrate onto the planned Public Park and the lower levels of the building blocks opposite.

It is suggested that the 7 storey L shaped block facing Pemberton Street and the adjoining redevelopment to the south would need at least one substantial physical break (or preferably two) to reduce visual impact of the facade lengths. These breaks could occur at the midpoint of the wings.

The proposed site planning and massing of building blocks is acceptable in principle, as it would provide an outcome comparable with the adjoining development in the precinct.

Applicants Comments:

The alignment, scale, articulation and separation of building forms work together to reinforce streetscape, create perceptible urban spaces and bestow a variety of urban experiences.

The new public open space network provides for a range of lot sizes that can be developed in stages. The lots are generally configured on the basis of a perimeter block form to reinforce the street edge and to provide large communal courtyards to the centre of the lots. All streets are provided with landscaped setbacks. The new public park provides open space for use by the wider community, as well as giving a sense of openness at the end of Kurnell Street.

Appropriate building separations and setbacks have been applied throughout the Stage 1 DA and all building envelopes are aligned and scaled to reinforce streetscapes and the public domain.

Officers Comments

The DRP comments with respect to built form are noted and would most likely be addressed in a Stage 2 application. In this regard, comments in relation to entries, activation and articulation of facades, and the setting back of the upper storeys to taller buildings are all supported.

The suggestion to address the east-west through site link appears to have been included in the subject Master Plan and is a positive outcome for the site. Elements of built form are covered in the section above, however it is noted that Building D appears to contribute significantly to the overshadowing of the open space area in front of Building E during the winter solstice. It is also not entirely clear at this stage, how this shadowing would impact on dwellings within Building E. Accordingly, consideration should be given to amending relevant built forms to ensure that an improved level of solar access may be achieved at the south eastern corner of the site.

Assessment also finds that the building depths in the Master Plan appear to exceed the maximum 18m standard, however there is considered to be scope to comply with this requirement in Stage 2.

The proposed building separation distances in between Building A and B is 10m and is non-compliant with the minimum 12m requirement. It is also noted that Building E (proposed seven (7) storey building) does not meet the minimum 12-25m building separation requirement, proposing a setback of 7m from Building F (approved six (6) storey building in Parkgrove 2). In addition, the proposed building lengths and footprint sizes are of particular concern, with none of the buildings achieving compliance with the maximum building length of 24m.

Principle 4: Density

DRP Comments:

The proposed configuration of the building blocks and the allocation of Public Park and courtyards would indicate the permissible Floor Space Ratio should be achievable.

Applicant's Comments:

The overall site area is 31,079.5sqm. The proposal has an overall GFA of 45,662sqm, generating an FSR of 1.469:1 (based on 1:1 in the B4 and R2 zone and 1.65:1 in the R3 zone). This reflects the FSR requirements of the Botany Bay LEP 2013.

There are around 449 units anticipated (shown within the illustrative plans) with a range of studio, 1-bed, 2-bed, and 3-bed apartments to allow for typologies and living patterns that will respond to the needs of the local market.

The density of the proposed development is appropriate for its location given its access to public transport, community facilities and employment opportunities.

Officers Comment:

The floor space ratios for each land use zone that applies to the development site are summarised overleaf:

	B4 zone	R3 zone	R2 zone	Total
Site Area	8,058.5m ²	22,565m ²	456m ²	31,079.5m ²
Permitted FSR	1:1	1.5:1	0.55:1	1.3564
Permitted GFA/FSR (sqm)	8,058.5m ²	33,847.5m ²	250.8m ²	42,156.8m ²
Proposed FSR	1.27:1	1.57:1	0	1.46:1
Proposed GFA/FSR (sqm)	10,260m ²	35,340m ²	0 (open space)	45,340m ²
Additional FSR sought	2,201.5 m²	1,493m²	0	3,694.5m²

Table 7: Floor space ratio summary.

* Note, the FSR of 1.65:1 within the R3 zone under Clause 4.4B of the Botany Bay LEP 2012 is not applicable. This is discussed in the body of this report.

An assessment in relation to the floor space ratio is provided under the Botany Bay LEP 2013 section within this report.

The proposal exceeds the permissible FSR. The applicant has not submitted a Clause 4.6 Exception for the departure. The application does not demonstrate why the proposed departure is unreasonable or unnecessary in the circumstances of the case. The density of the development is not considered appropriate for the site and does not deliver a development that is compatible with the desired future character of the area in terms of building bulk and scale. Accordingly, the proposed FSR is considered excessive, unsubstantiated and the application fails to satisfy Principle 4 of SEPP 65.

Principle 5: Resources, energy and water efficiency

DRP's comments:

It would be expected that the ultimate scheme for this site would incorporate best practice environmental design principles. The design development of the proposal should incorporate full environmentally sustainable principles including: capture and re-use of storm water, natural cross ventilation, natural sun light, solar hot water and passive solar control.

Applicant's comments:

The development is designed to embrace ESD principles. The use of appropriate built form will generate a minimum 60% cross-ventilated apartments when designed for a detailed Stage 2 DA. This results in slender buildings with a range of single-storey, crossover and terrace typologies.

The massing, and orientation have been organised so as to provide good natural day lighting and solar access into the primary living spaces, external living areas and courtyards.

Energy efficient appliances and water efficient devices will be specified to minimise water consumption of resources. The development will include tanks for the retention of stormwater to be re-used for irrigation and car wash bays. The proposal manages the local stormwater issues associated with the site.

Officer's comments:

It is anticipated that Resources, Energy and Water Efficiency will be dealt with in greater detail in Stage 2. Notwithstanding, the Applicants comments with respect to the shape of buildings is noted. In this respect, it is considered that the Master Plan should enable most dwellings to achieve good access to sunlight as well as opportunities for cross ventilation.

The proposed development could be improved however by providing for additional open space, landscaping and common areas on the rooftops where there would be ample exposure to sunlight. These areas would also act as valuable spaces for social interaction.

Principle 6: LandscapeDRP comments:

The Landscape Outline Masterplan appears satisfactory in principle subject to the following suggestions:

- *increase of deep soil planting area preferably closer to centre of the site, say south of the planned Public Park;*
- *retention of mature trees adjacent to the north-eastern corner of the site near Wilson Street;*
- *substantial depth of soil over car parking slab for the planned feature trees in the courtyard gardens.*
- *It would be desirable to reduce the excavated carpark footprint to the minimum possible in order to maximize deep soil area at the perimeters and within the site (outside the building footprints); and*
- *It would also be desirable to provide pockets of genuine deep soil area within the carpark footprint to allow for individual large canopy trees in strategic locations.*

A detailed landscape design should be submitted for review at the next stage of design development.

Applicant's comments:

There are many layers of open space providing a hierarchy that responds to the need for a variety of different activities to occur within the site. The new Publically Accessible Park and through-site links will provide amenity for the greater public and ties the site into the existing local street network. This is larger than the 3,000sqm required by the current DCP for the site (greater than 10% of the site area). The site will provide pedestrian permeability / linkages to the north, east and south.

All perimeter streets include tree planting, verges and landscaped setbacks. The frontage to Pemberton Street includes a dedicated strip of land for road widening in addition to a landscaped setback.

The generous communal courtyards of the residential buildings will offer amenity for residents, as well as providing a good outlook space for those living above. All of the common courtyards have open sides, allowing views through and out of the courtyards. In

turn, people in the public areas will enjoy views into the common courtyards and their landscaping.

Officer's comments:

The footprint of the basement occupies approximately 80% of the site and extends outside the footprint of the proposed buildings. Therefore, the site contains minimal deep soil planting areas. Deep soil pockets as suggested by the DRP do not appear to have been added to the proposed Master Plan. While the Master Plan provides 40% landscaping on site, the under provision of deep soil areas is considered unreasonable, given that it has been limited to accommodate an oversized basement garage.

Council officers do not support the proposed car park being located beneath the park. This is a medium density area in need of deep soil open recreation space to support a growing community. This position has been adopted throughout this Precinct, and the applicant has failed to amend the application to address this. The subject precinct is different to other high density mixed use precincts, such as Mascot, where such a scenario has previously been accepted. Within the Pemberton Precinct, it is not accepted that any basement be located beneath a park.

Further, Council does not support the proposed location of the public park. The park should be located where Building C or Building E is proposed, facing towards and directly accessible to Wilson Street to provide for more public access to the open space, not just to service the development, as required by the DCP. On this basis, the proposed landscaping treatments are not consistent with the requirements SEPP 65 and Council's DCP, and therefore the application fails to satisfy principle 6.

Principle 7: Amenity

DRP comments:

Due to the U shape configuration of the building blocks, the re-entrant corners inevitably present problems with visual and aural privacy; this should be effectively resolved during the design of the development. No shadow diagrams were submitted to the Panel. A detailed analysis will be required to ensure that the proposal complies with minimum solar access requirements.

Provision for natural light and ventilation to the carpark vertically from the landscape areas, perhaps by way of small landscaped courtyards at carpark level. Create some sense of individual 'identity' to each of the parking areas serving each of the blocks, by way of colour, entry arrangements etc. Provision of the following:

- *garbage and recycling pick-up and furniture delivery and removal;*
- *Provision for a children's play area.*
- *Provision for 2 lifts in each taller residential block for the needs of elderly and disabled in case of breakdown or at a time of lift maintenance.*
- *Provision for natural light into lift lobbies.*
- *Provide direct access and small entry courtyards to all ground floor units fronting the two streets. Consider this possibility also for other units, particularly those addressing the central park.receive solar access for 2 hours in mid winter.*

Applicant's comments:

The master plan employs a public space framework, coupled with good building separation to maximise the relationship of built form to the public realm.

The spatial relationship throughout the development delivers generous quality landscaped spaces, with clear edge definition created by the building forms. Apartments will be a mix of unit typologies, providing a high degree of cross-ventilation with dual aspect orientation. A minimum of 60% of apartments are targeted to be cross ventilated in each apartment building.

Layouts have been developed to allow the maximum of units to face north and enjoy the distant and local views. A minimum of 70% of the apartments are targeted to receive greater than 2-hours of sunlight to the living room glazing during the winter solstice. Privacy is maintained between apartments through orientation and internal layouts.

Adaptable apartments will be provided throughout the building in different typologies to offer variety to potential purchasers.

Officer's comments:

The above comments by the DRP and the Applicant are noted. While it is acknowledged that a greater level of detail would be provided at Stage 2, it is considered that a number of design features could improve the current Master Plan with respect to overall amenity. This includes the establishment of common areas/open space on rooftops (green roofs) and greater provision of deep soil planting for the site. The introduction of green roofs to the development has the potential to improve the aesthetic and provide for interesting roof forms, improve insulation/natural heating, assist in stormwater detention and improve energy efficiency.

Overshadowing is also likely to impact on Building E and the land in front of that building. This may be improved by reducing the height and built form of Building D and should be addressed in further detail. Finally, the Master Plan should avoid south facing dwellings and ensure privacy between dwellings situated in 'U' shaped and 'L' shaped buildings.

Principle 8: Safety and Security*DRP comments:*

Subject to detailed design of vehicular and pedestrian access and landscaping, safety and security and passive surveillance should be satisfactory.

Applicant's comments:

Safe access is achieved by clear pedestrian routes within the site, utilising the new and existing street network. There will be legible, well-lit, secure street entries to each of the buildings.

Active street frontages will be provided by multiple residential building entry points and direct access to apartments, where possible. There will be a clear delineation between public spaces and communal/private spaces. Passive surveillance is afforded by balconies and windows at the higher levels, taking in all aspects. There will be appropriate lighting to all exterior areas, both public and communal.

Officer's comments:

Building entries are appropriately located around the perimeter of the development and also at the centre of the Master Plan.

Comments received from the NSW Police Force during the external referral process reveal that the site has a medium crime risk rating. This means that surveillance is an important design consideration and that hidden and enclosed/dark areas should be avoided. The ability to climb onto balconies should also be mitigated through detailed design. Other design aspects such as clear, legible and well lit linkages and building are essential at design stage. The NSW Police Force also recommends CCTV, security access, improved lighting in the basement car park and landscaping that promotes natural surveillance of common areas.

Principle 9: Social DimensionsDRP comments:

To encourage social interaction among the residents:

- *the entries to the buildings at the street frontage should accommodate a small meeting place, preferably at the mail collection point;*
- *a small space with a seat should be provided at the lift lobbies on each level.*
- *a small enclosed communal room (with kitchenette) and direct access from the lift on the roof should be considered to be provided in each block.*

Applicant's comments:

The development will provide a range of unit typologies and sizes that shall appeal to different price points. The outdoor public and communal spaces are designed to engender community spirit for residents within the development by offering areas for congregation and activity.

Housing diversity and affordability will be enhanced in the locality through the provision of a range of unit sizes, including adaptable housing, to cater for the full life cycle of tenants and enabling people to age in place without the need for specialised aged accommodation. One and two bedroom units will cater for young professional single persons or couples as well as older "empty nesters".

Officer's comments:

Opportunities for social interaction should be incorporated in accordance with DRP comments, including common landscaped areas on rooftops.

Principle 10: AestheticsDRP comments:

No comment at this stage.

Applicant's comments:

The aesthetics of the proposal do not form part of the Stage 1 DA. These will be addressed in detail in a subsequent Stage 2 DA submission. This submission, however, includes illustrative plans and perspectives to give an indication of the overall scale of the buildings relative to their context. The design, materials and colours shown are purely indicative at this stage.

Officer's comments:

The detailed design and aesthetic of the development is to be addressed as part of any Stage 2 DA.

Botany Bay Local Environmental Plan 2013

The provisions of the Botany Bay Local Environmental Plan 2013 (BBLEP 2013) have been considered in the assessment of this Development Application and the following information is provided:

Principal Provisions of BBLEP 2013	Compliance Yes/No	Comment
Landuse Zone	N/A	The site is zoned part B4 – Mixed Use, part R3 – Medium Density Housing and part R2 – Low Density Housing under BBLEP 2013.
Is the proposed use/works permitted with development consent?	Yes	The proposed Master Plan for residential flat buildings and townhouses is permitted with Council's consent under BBLEP 2013.
Does the proposed use/works meet the objectives of the zone?	Yes within R2 and R3 zone. No within B4 zone. Refer to Note 1.	The following objectives are relevant to the proposed Master Plan: R2 Zone Objectives <ul style="list-style-type: none"> • To enable other land uses that provide facilities or services to meet the day to day needs of residents. • To encourage development that promotes walking and cycling. R3 Zone Objectives <ul style="list-style-type: none"> • To provide for the housing needs of the community within a medium density residential environment. • To provide a variety of housing types within a medium density residential environment. • To enable other land uses that provide facilities or services to meet the day to day needs of residents. • To encourage development that promotes walking and cycling. B4 Zone Objectives:

Principal Provisions of BBLEP 2013	Compliance Yes/No	Comment
		<ul style="list-style-type: none"> • To provide a mixture of compatible land uses. • To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling. <p>The proposal does not provide for any retail/commercial floor space in the B4 zone. The vision for Pemberton Street is that the ground floor areas provide for non-residential uses.</p>
Does Clause 2.6 apply to the site?	Yes	<p>Clause 2.6 states that land to which this Plan applies may be subdivided, but only with development consent.</p> <p>The proposed development is for a Master Plan and involves several individual land parcels. While the proposal does not propose consolidation, in the event of approval it would be recommended that the site be consolidated as part of the consent. Alternatively, it would form part of the application for stage 2.</p>
<p>What is the height of the building?</p> <p>Is the height of the building below the maximum building height?</p>	No – refer to Note 2.	<p>The permitted height of buildings is 10m for the B4 zone, 22m for the R3 zone and 10m for the R2 zone. The proposed Master Plan exceeds these heights as outlined in this report.</p> <p>Consideration has been given to the Applicant's Clause 4.6 variation to the height standard and is not supported.</p> <p>An assessment in relation to Clause 4.3 and Clause 4.6 is provided at Note 1.</p>
<p>What is the proposed FSR?</p> <p>Does the FSR of the building exceed the maximum FSR?</p>	No – refer to Note 3.	<p>The permitted FSR is as follows:</p> <p>R2 zone: $0.55:1 \times 456\text{m}^2 = 250.8\text{m}^2$</p> <p>R3 Zone: $1.5:1 \times 22,565\text{m}^2 = 33,847.5\text{m}^2$</p> <p>B4 Zone: $1:1 \times 8,058.5\text{m}^2 = 8,058.5\text{m}^2$</p> <p>Total permitted FSR = 42,156.8m²</p>

Principal Provisions of BBLEP 2013	Compliance Yes/No	Comment
		<p>Total permitted FSR = $42,156.8\text{m}^2 / 31,079.5\text{m}^2 = \mathbf{1.3564:1}$</p> <p>The proposed FSR is as follows:</p> <p>R2 zone: $1:1 \times 0\text{m}^2 = 0\text{m}^2$</p> <p>R3 Zone: $1.57:1 \times 22,565\text{m}^2 = 35,340\text{m}^2$</p> <p>B4 Zone: $1.27:1 \times 8,058.5\text{m}^2 = \underline{10,260\text{m}^2}$</p> <p>Total proposed FSR = $\mathbf{45,600\text{m}^2}$</p> <p>$63,315\text{m}^2 / 31,079.5\text{m}^2 = \mathbf{1.469:1}$</p> <p>Extent of non-compliance in sqm = $45,600\text{m}^2 - 41,906\text{m}^2 = \mathbf{3,694\text{m}^2}$</p>
Clause 4.4 (2A) Is the proposed development in a R3/R4 zone? If so does it comply with site of 2000m^2 min and maximum height of 22 metres and maximum FSR of 1.5:1?	No – refer to Note 3.	Part of the subject site is located in the R3 zone and does not comply with the 1.5:1 FSR provision or the 22m height limit.
Clause 4.4B Does this clause apply to the site.	No Refer to Note 4.	The proposed development is not considered to be consistent with the desired future character of the area. Therefore, the site does not benefit from the 1.65:1 FSR.
Is the site within land marked “Area 3” on the FSR Map	N/A	The subject site is not identified as being within “Area 3” on the FSR map.
Is the land affected by road widening?	Yes	The subject site is affected by road widening on the Land Acquisition Map.
Is the site identified on the Key Sites Map?	N/A	No, however is identified as a key site within the Development Control Plan.
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.
Development near zone boundaries	Refer to Note 5.	<p>The Applicant has provided no justification in relation to the use of the R2 zoned land for the purposes of landscaped area and car parking to service the residential flat buildings.</p> <p>This is discussed at note 2 below.</p>
The following provisions in Part 6	Yes	Clause 6.1 – Acid Sulfate Soils. The subject

Principal Provisions of BBLEP 2013	Compliance Yes/No	Comment
<p>of the LEP apply to the development:</p> <p>6.1 – Acid sulfate soils</p> <p>6.2 – Earthworks</p> <p>6.3 – Stormwater management</p> <p>6.8 - Airspace operations</p>	<p>Yes</p> <p>No</p> <p>Yes</p>	<p>site is affected by Class 4 Acid Sulfate Soils. The Acid Sulfate Soils (ASS) assessment submitted with the application indicates that actual and potential ASS are unlikely to occur at the site. A detailed ASS assessment however would be required for submission during Stage 2.</p> <p>Clause 6.2 – Earthworks. The proposed development seeks to demolish the existing buildings and excavate the subject site for basement car parking. The development application is Integrated Development and as such, the NSW Office of Water has provided its General Terms of Approval for the proposed development. These conditions are included in the draft Schedule of Conditions. The development is considered to be consistent with Clause 6.2 of BBLEP 2013.</p> <p>Clause 6.3 – Stormwater. Council’s Investigations Engineer recommends that flood risk assessment report, detailed engineering drawings and calculation of the proposed Stormwater Drainage system be provided. A cumulative assessment of the impacts of flooding on downstream sites has not been considered and therefore cannot be supported.</p> <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 application proposed buildings which exceed the maximum height and was therefore referred to Sydney Airports Corporation Limited (SACL) for consideration. SACL raised no objections to the proposed maximum height of 34 metres AHD, subject to conditions to be imposed on any consent. The development is considered to be consistent with Clause 6.8 of BBLEP 2013.</p>

Principal Provisions of BBLEP 2013	Compliance Yes/No	Comment
6.9 – Development in areas subject to aircraft noise	Yes	Clause 6.9 – Aircraft Noise. Only the B4 zoned section of the subject site is affected by the 20-25 ANEF contour. An acoustic report would be required at Stage 2. The development is considered to be consistent with Clause 6.9 of BBLEP 2013.

Table 8: BBLEP 2013 Compliance Table.

Note 1 – Zone objectives and land use table

The applicant proposes to utilise the ground floor area within the B4 Mixed use zone as both residential and non-residential. The applicant proposes a floor to ceiling height of 3 metres to provide this flexibility. The objectives of the B4 Mixed Use zone are:

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

The proposed use of the ground floor as residential is inconsistent with the zone objectives for the B4 Mixed use zone and inconsistent with the requirements of the Botany Bay DCP 2009 – Part 9, which envisages non-residential ground floor uses that shall activate the precinct. The proposed ground floor residential use shall not facilitate an active ground floor frontage and this outcome is inconsistent with the zone objectives. Further, all ground floor uses within the B4 Mixed use zone must have a minimum floor to ceiling height of 4 metres to provide flexibility for future uses. Accordingly, the proposed development within the B4 Mixed Use zone is non-compliant with the zone objectives.

Note 2 – Clause 4.3 Height of buildings

The following is a summary of the Applicant's justification for the proposed variation to the 10m height limit in the B4 zone and 22m height limit in the R3 zone:

- *the proposed non-compliances do not result in any inconsistencies with the objectives of either the R3 or B4 Zones in which the development is located or the objectives of the building height standard;*
- *the extent of the non-compliance is relatively minor and do not result in any substantive adverse environmental impacts in terms of amenity of the surrounding public domain or neighbouring properties;*

- *the extent of overshadowing impact associated with the additional height will not compromise the achievement of solar access requirements for built up urban areas set out in the RFDC;*
- *the proposed development reflects the vision enshrined in Council's DCP 31, to revitalize and renew the Pemberton-Wilson Street Precinct;*
- *the building envelopes set out in the Stage 1 (Master Plan) DA are the result of detailed investigations and site analysis and allow for height and density of development which whilst it is greater than the existing development within the established suburbs of Botany and Banksmeadow, it is comparable to that being achieved on the adjacent Park Grove and Malouf sites;*
- *the proposal will provide a high quality contemporary design that is sympathetic to the desired future character of the area and which provides for the immediate needs of the existing and future residents of the locality.*

As a consequence, it is considered that the variation to the building height standard is well founded and that compliance with the standards is unreasonable and unnecessary given the circumstances of the case.

Comment

The Master Plan proposes several height variations ranging from 3.95m to 6.65m as outlined in the table below:

Proposed Building Heights – 52-54 Pemberton Street Master Plan						
Stage	Building	Zone	Permitted Height (m)	Proposed Height (m)	Storeys	Non-compliance
1	B (west wing)	B4	10	16.5	4	6.5m
	B (south wing)	B4/R3	10/22	16.5/25.5	4/7	6.5m/3.5m
	B (east wing)	R3	22	28.65	8	6.65m
2	A (west wing)	B4	10	16.15	4	6.15m
	A (south wing)	B4/R3	10/22	16.15/16.45	4	6.15m
3	C	R3	22	13.10	3	Complies
	D (south/east wing)	R3	22	13.65	3	Complies
	D (south/west wing)	R3	22	26.40	7	4.4m
4	E (east wing)	R3	22	13	3	Complies
	E (south wing)	R3	22	25.95	7	3.95m

Table 9: Master Plan proposed heights

The variations therefore directly contribute to the overall size, bulk and scale of buildings in the Master Plan. This results in 16.5m high buildings (four (4) storey built forms) in the B4 zone (10m height limit). It also results in 25.95m to 28.65 high buildings (seven (7) to eight (8) storey built forms) where the height limit is 22m for the R3 zone.

The additional size of the development therefore has the potential to impact on the visual amenity of adjoining landowners and by virtue of the variations sought, is of a height, bulk and scale that is inconsistent with the future desired character of the area.

While the Master Plan vision is to revitalise part of the precinct, the proposal is not considered to maximise the level of amenity that could otherwise be achieved for the site. In this regard, the additional height could have been improved through the provision of

landscaped roof top/common areas. The provision of additional communal spaces would have contributed to the social dimension and improved the overall amenity for the residents.

In support of the height departure, the applicant has submitted a Clause 4.6 Exception. The applicant's Clause 4.6 Justification does not establish why it is unreasonable or unnecessary for the proposal to comply with the height in the circumstances of this case. The Clause 4.6 Exception to the height control has been assessed in accordance with relevant case law. The Clause 4.6 Exception does not address the principles of *Wehbe v Pittwater Council* [2007] NSW LEC 827. This assessment establishes that the Clause 4.6 Exception is not well founded and cannot be supported for the reasons outlined below.

The objectives of Clause 4.6 are addressed as follows:

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

(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,

(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

Comment:

The proposal seeks consent to vary Clause 4.3 Height of Buildings of the Botany bay LEP 2012. The proposed variations to the height standard ranges between 3.95m to 6.5m.

It is considered that an appropriate degree of flexibility is not appropriate in this instance, as the proposal does not attain compliance with the objectives of the standard, the objectives of the zone, and does not satisfy the five part test established in *Wehbe v Pittwater Council* (2007) NSW LEC 827. It is considered that the proposal does not achieve a better outcome for the site for the reasons listed in this assessment.

Accordingly, the application fails to achieve a better outcome for the site and therefore no flexibility can be applied to the height standard.

(2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.

Comment:

The site has a height control that ranges between 10m to 22m. The proposed seeks consent for a minimum height between 13m and up to 28.65m. This results in a departure between 3.95m up to 6.5m.

This clause allows the JRPP to grant consent to a numerical departure, if the development complies with the provisions contained in Clause 4.6. This assessment establishes that the development does not comply with Clause 4.6 and therefore cannot be supported.

(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and

(b) that there are sufficient environmental planning grounds to justify contravening the development standard.

Comment:

In order to establish that compliance is unreasonable or unnecessary in the circumstances of this case, consideration must be given to the principles of the Court.

His Honour Preston CJ set out five alternative ways of establishing that compliance is unreasonable or unnecessary in the preparation of a SEPP 1 objection in *Wehbe v Pittwater Council* (2007) NSW LEC 827. The same approach has been adopted by the Land and Environment Court to be appropriate in assessing a Clause 4.6 request (see for example *Geeves V Marrickville Council* (2013) NSW LEC 1117 per Commissioner O'Neill).

His Honour Preston CJ sets out the following 5 alternative criteria:

a. Establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.

b. Establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary.

c. Establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable.

d. Establish that the development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unreasonable or unnecessary.

e. Establish that "the zoning of particular land" was "unreasonable or inappropriate" so that "a development standard appropriate for that zoning was also unreasonable or unnecessary as it applied to that land" and that "compliance with the standard in that case would also be unreasonable or unnecessary..."

The applicant's Clause 4.6 Exception does not address the principles of *Wehbe v Pittwater Council* (2007) NSW LEC 827.

Notwithstanding, an assessment is provided below.

a. Establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.

The objectives of Clause 4.3 are as follows:

(a) to ensure that the built form of Botany Bay develops in a coordinated and cohesive manner,

The proposal is a Stage 1 Master plan which provides a coordinated approach to redeveloping a large site. However, the proposed built form, and in particular the height departure and resulting mass are considered to be inconsistent with the desired built form for the locality. The proposal does not provide an appropriate transition and interface with adjoining development and the built form is considerably larger than what is envisaged by the Botany Bay DCP. Accordingly, the proposal shall not sit in a cohesive manner with adjoining sites.

(b) to ensure that taller buildings are appropriately located

In principle, the taller built forms are appropriately located toward the centre of the site, adjacent to Parkgrove 2. Building A however, introduces a four (4) storey residential flat building adjacent to the rear of single dwellings in Warrana Street which exceeds the height limit of 10m. Similarly, the four (4) storey elements of Building A and B exceed the 10m height limit. Where taller built forms are proposed, they should be located within the R3 zone where a 22m height limit applies. Where a suitable location for the taller buildings cannot be located within the R3 zone, the 10m height limit applies and should not be exceeded as part of this application.

(c) to ensure that building height is consistent with the desired future character of an area

The proposed building height is inconsistent with the desired future character of the area as it proposes several height variations which also results in a departure to the FSR, equivalent to an additional 3,694m² of gross floor area. The additional height results in a building form and mass that is inconsistent with the desired future character of the area and is considered an overdevelopment of the site.

(d) to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development

The increased height, bulk and scale have the potential to result in visual impacts. It also has the potential to impact on views, particularly, eastward views from the Parkgrove 2 development to Botany Bay.

(e) to ensure that buildings do not adversely affect the streetscape, skyline or landscape when viewed from adjoining roads and other public places such as parks, and community facilities

The proposal seeks variations to height within the B4 and R3 zone, which also results in a departure to the FSR, equivalent to an additional 3,694m² of gross floor area. A significant portion of the height variation is sought in the B4 zone, where the maximum height limit is 10m and buildings proposed are four (4) storeys or 16.5m in height. This resulting bulk and mass is considered to adversely affect the streetscape.

b. Establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary.

The objectives of the standard are relevant to the proposed development and therefore compliance, in this instance, is necessary. This assessment demonstrates that the proposal does not achieve compliance with the objectives of the height of building standard.

c. Establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable.

Compliance with the objective of the standard is required, as the consequence of compliance is not unreasonable. Therefore, the underlying objective of the standard would not be defeated.

d. Establish that the development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unreasonable or unnecessary.

The development standard has not been abandoned by Council's previous actions. Within the Pemberton Precinct, Council has required compliance with the height of building standard. Furthermore, the granting of such a variation to the control will result in an undesirable precedent within the precinct. Accordingly, the standard has not been abandoned.

e. Establish that "the zoning of particular land" was "unreasonable or inappropriate" so that "a development standard appropriate for that zoning was also unreasonable or unnecessary as it applied to that land" and that "compliance with the standard in that case would also be unreasonable or unnecessary.

This zoning of the site is considered appropriate and the corresponding development standards are also considered appropriate. Accordingly, compliance with the standard is not considered unreasonable.

(4) Development consent must not be granted for development that contravenes a development standard unless:

(a) the consent authority is satisfied that:

(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and

(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and

(b) the concurrence of the Director-General has been obtained.

Comment:

The applicant has not satisfied this request and has not adequately addressed the matters required to be demonstrated in sub-clause (3). As stated, the applicant has failed to address the principles of *Wehbe v Pittwater Council* (2007) NSW LEC 827 and has failed to demonstrate that compliance with the standard is unreasonable or unnecessary.

Further, for the reasons outlined in this report, the proposed development is not considered to be in the public interest as the development is not consistent with the objectives of the height of building standard.

Therefore, consent cannot be granted to the development.

(5) In deciding whether to grant concurrence, the Director-General must consider:

(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and

(b) the public benefit of maintaining the development standard, and

(c) any other matters required to be taken into consideration by the Director-General before granting concurrence.

Comment:

Concurrence from the Director-General is not required for this application. The proposed variation to the height of building development standard does not raise any matters of significance for state or regional planning.

However, it is considered that there is public benefit in maintaining the development standard, given the proposed variation to the height will generate a building mass, bulk and scale that is inconsistent with the objectives of the Botany Bay Council's DCP for the Pemberton Precinct.

Note 3 – Clause 4.4 Floor space ratio

The floor space ratios for each land use zone that applies to the development site are summarised below:

	B4 zone	R3 zone	R2 zone	Total
Site Area	8,058.5m ²	22,565m ²	456m ²	31,079.5m ²
Permitted FSR	1:1	1.5:1	0.55:1	1.3564
Permitted GFA (sqm)	8,058.5m ²	33,847.5m ²	250.8m ²	42,156.8m ²
Proposed FSR	1.27:1	1.57:1	0 (open space)	1.46:1
Proposed GFA (sqm)	10,260m ²	35,340m ²	0 (open space)	45,340m ²
Additional GFA sought	2,201.5 m²	1,493m²	0	3,694.5m²

Table 10: Floor space ratio summary.

* Note, the FSR of 1.65:1 within the R3 zone under Clause 4.4B of the Botany Bay LEP 2012 is not applicable. This is discussed at Note 3.

The applicable FSR standards are 1:1 in the B4 zone, 1.5:1 in the R3 zone, and 0.55:1 in the R2 zone.

The combined permissible floor space ratio for the site is 1.3564:1 or a total gross floor area of 42,156.8m². As discussed at Note 3, the site does not benefit from Clause 4.4B which allows an FSR of 1.65:1 within the R3 zone.

The proposal results in an FSR of 1.46:1 or a gross floor area of 45,340 m². The quantum of additional floor space equates to 3,694.5m² or an additional 11% of gross floor area. The

application proposes floor space variations to two (2) of the land use zones, comprising an additional 1,493m² in the R3 zone and 2,201.5 m² in the B4 zone.

Accordingly, the proposal exceeds the permissible FSR.

Furthermore, the applicant has not submitted a Clause 4.6 Exception to address the departure. Therefore, the application cannot be approved.

An assessment in accordance with the provisions of Clause 4.6 and the relevant case law is provided below.

The objectives of Clause 4.6 are addressed as follows:

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

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

Comment:

The proposal seeks to vary the Clause 4.4 Floor Space Ratio of the Botany Bay LEP 2013. The proposal standard is 1.35:1. The proposal seeks consent for an FSR of 1.46:1. This equates to a departure that is equivalent to 3,694.5sqm or an 11% above the permissible FSR. For the reasons outlined in this assessment, it is considered that not flexibility should be applied to this development, as it does not achieve a better outcome for the site. In addition, the applicant has not provide a Clause 4.6 Exception in relation to the FSR.

(2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.

Comment:

This clause allows Council to grant consent to a numerical departure, if the development complies with the provisions contained in Clause 4.6. This assessment establishes that the development does not comply with Clause 4.6 and therefore cannot be supported.

(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and***
- (b) that there are sufficient environmental planning grounds to justify contravening the development standard.***

Comment:

The applicant has not submitted a written request to justify the departure of the development standard. Therefore, in the first instance, the application cannot be supported as not Clause 4.6 Exception has been submitted.

Furthermore, in order to establish that compliance is unreasonable or unnecessary in the circumstances of this case, consideration must be given to the principles of the Court.

His Honour Preston CJ set out five alternative ways of establishing that compliance is unreasonable or unnecessary in the preparation of a SEPP 1 objection in *Wehbe v Pittwater Council* (2007) NSW LEC 827. The same approach has been adopted by the Land and Environment Court to be appropriate in assessing a Clause 4.6 request (see for example *Geeves V Marrickville Council* (2013) NSW LEC 1117 per Commissioner O'Neill).

His Honour Preston CJ sets out the following 5 alternative criteria:

- a. Establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.*
- b. Establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary.*
- c. Establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable.*
- d. Establish that the development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unreasonable or unnecessary.*
- e. Establish that "the zoning of particular land" was "unreasonable or inappropriate" so that "a development standard appropriate for that zoning was also unreasonable or unnecessary as it applied to that land" and that "compliance with the standard in that case would also be unreasonable or unnecessary..."*

The objectives of Clause 4.4 Floor Space Ratio, of the Botany Bay LEP 2013, stipulates:

- (a) to establish standards for the maximum development density and intensity of land use,*
- (b) to ensure that buildings are compatible with the bulk and scale of the existing and desired future character of the locality,*
- (c) to maintain an appropriate visual relationship between new development and the existing character of areas or locations that are not undergoing, and are not likely to undergo, a substantial transformation,*
- (d) to ensure that buildings do not adversely affect the streetscape, skyline or landscape when viewed from adjoining roads and other public places such as parks, and community facilities,*
- (e) to minimise adverse environmental effects on the use or enjoyment of adjoining properties and the public domain,*
- (f) to provide an appropriate correlation between the size of a site and the extent of any development on that site,*
- (g) to facilitate development that contributes to the economic growth of Botany Bay.*

Specifically, the proposal fails to satisfy objective (a), (b), (c), (d), and (e). The proposal does not provide a development that is of a compatible bulk to adjoining development. The proposed transition between the four storey residential flat building and adjoining single dwellings is unacceptable.

The impacts of the non-compliant FSR, is that the proposal results in a density and intensity of development that generate adverse impacts in terms of the streetscape, visual mass and bulk, inappropriate building transitions and impacts upon the use of adjoining lands. The proposal results in an overdevelopment of the site, that is inconsistent with the desired future character of the area.

As discussed in this report, the proposal seeks consent for long, unbroken built forms that generate an obtrusive streetscape presentation. The proposed large, bulky structures are attributed to the non-compliant FSR, which shall have an unacceptable visual impact upon the streetscape and from adjoining properties. .

The application does not satisfy any of the objectives of the standard. There is no planning merit in supporting a variation to the floor space ratio and therefore, the applicant fails the test in *Wehbe v Pittwater Council*. Compliance with the standard is reasonable and should be enforced, unless circumstances exist to the contrary.

(4) Development consent must not be granted for development that contravenes a development standard unless:

(a) the consent authority is satisfied that:

(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and

(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and

(b) the concurrence of the Director-General has been obtained.

Comment:

The application is not considered to be in the public interest. The proposal is inconsistent with the desired future character of the area, and will result in an over-development of the site. Further, the applicant does not provide any written request to vary the departure.

(5) In deciding whether to grant concurrence, the Director-General must consider:

(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and

(b) the public benefit of maintaining the development standard, and

(c) any other matters required to be taken into consideration by the Director-General before granting concurrence.

Comment:

There is public benefit in maintaining the development standard, as a non-compliance, without sound justification, will result in adverse planning implications for the site and wider precinct.

There are no matters of State or Regional significance that are applicable to this application.

Note 4 – Clause 4.4B Exemptions to floor space ratio in zone R3 and zone R4

The applicant is of the opinion that a floor space ratio of 1.65:1 may be applied to the R3 portion of the site on the grounds that it satisfies the requirements outlined in Clause 4.4B of the Botany Bay Local Environmental Plan 2013, which states:

(1) The objective of this clause is to encourage the development of larger sites (former industrial sites) to facilitate better built form and urban design.

(2) This clause applies to land in Zone R3 Medium Density Residential and Zone R4 High Density Residential.

(3) Despite clause 4.4, development consent may be granted to development for the purposes of multi dwelling housing and residential flat buildings on land to which this clause applies that results in a floor space ratio that does not exceed 1.65:1 if:

*(a) the site area is equal to or greater than 2,000 square metres, and
(b) the site area is land identified on the Acid Sulfate Soils Map, and
(c) the consent authority considers that the development is, or is likely to be, adversely affected by any of the following:*

*(i) contamination,
(ii) noise (including aircraft, rail or road noise), and*

*(d) the consent authority is satisfied that:
(i) the development will be compatible with the desired future character in terms of building bulk and scale, and
(ii) the development will contribute to the amenity of the surrounding locality, and
(iii) any consolidation of lots for the purposes of this clause is not likely to result in adjoining lots that cannot be developed in accordance with this Plan.*

An assessment against Clause 4.4B is provided below:

Trigger	Comment	Trigger satisfied?
Clause 4.4B (1) The objective of this clause is to encourage the development of larger sites (former industrial sites) to facilitate better built form and urban design.	Noted.	Noted.
(2) This clause applies to land in Zone R3	Note the additional floor	Yes

Medium Density Residential and Zone R4 High Density Residential.	space only applies to the part of the site zoned R3.	
(3) Despite clause 4.4, development consent may be granted to development for the purposes of multi dwelling housing and residential flat buildings on land to which this clause applies that results in a floor space ratio that does not exceed 1.65:1 if: (a) the site area is equal to or greater than 2,000 square metres, and (b) the site area is land identified on the Acid Sulfate Soils Map, and (c) the consent authority considers that the development is, or is likely to be, adversely affected by any of the following: (i) contamination, (ii) noise (including aircraft, rail or road noise), and (d) the consent authority is satisfied that: (i) the development will be compatible with the desired future character in terms of building bulk and scale, and (ii) the development will contribute to the amenity of the surrounding locality, and (iii) any consolidation of lots for the purposes of this clause is not likely to result in adjoining lots that cannot be developed in accordance with this Plan.	(a) The site area is in excess of 30,000m ² . (b) The site area is land identified on the Acid Sulfate Soils Map (c) see below (i) The site is likely to be adversely affected by contamination. (ii) The R3 portion of the site is outside the 20 ANEF contour and is not located on a main road or near a railway. It is therefore unlikely to be adversely affected by noise. (d)(i) The development is not considered to be compatible with the desired future character in terms of building bulk and scale. (ii) The size of the proposal has the potential to impact on the visual amenity of single dwellings in Kurnell Street and Warrana Street. (iii) N/A Discussed further below.	Yes Yes Yes No No No N/A

Table 11: Clause 4.4B FSR.

Based on Clause 4.4B it allows a maximum FSR 1.65:1 within the R3 zone, where a site is affected by two or more site constraints such as aircraft noise, acid sulphates and contamination.

However the consent authority must be satisfied that:

- i. the development is compatible with the desired future character in terms of bulk and scale,
- ii. the development will contribute to the amenity of the surrounding locality, and

- iii. any consolidation of lots for the purpose of this clause is not likely to result in adjoining lots that cannot be developed in accordance with this Plan.

Council officer's form the view that the proposed development does not satisfy all these clauses in that the proposed development is not compatible with surrounding development in terms of bulk and scale, and the development does not exhibit design excellence in that it does not provide for innovative design or a sustainable development, and therefore the increase in floor space to 1.65:1 is not applicable and the maximum floor space ratio that applies to the R3 zone in this instance is 1.5:1.

In addition, Council's Strategic Section states the following:

- *Pedestrian links are to be provided through public open space to improve circulation;*
- *Create pedestrian linkage in both the south and north of the Precinct from Pemberton Street to Wilson Street to improve permeability across the Precinct;*
- *Ensure the public open have good solar access and therefore adjoining development especially to the north must be designed to minimize overshadowing;*
- *Developments within the vicinity of or adjoining the proposed public open spaces should have strong through site connections to the public open space and provide natural surveillance to the open space;*
- *Developments in the vicinity of Kurnell Street are to be designed (with regard to height, setback, footprint, spacing and landscaping) to ensure a complementary and clear relationship to the existing scale and character of the streets. Housing should be of villa and terrace/townhouse style;*
- *Commercial/industrial development within ground and first floor levels and live/work above along Pemberton Street will buffer the residential development from the industry to the west of Pemberton Street. In addition, the commercial/industrial development must integrate seamlessly with the residential landuses in the Precinct;*
- *Issues of solar access, overshadowing, visual privacy, ventilation and acoustic privacy need to be considered generally and in transition in land uses and heights;*
- *The provisions of on-site car parking is not to dominate or detract from appearance of the development and the streetscape;*
- *The number of driveways crossing at Pemberton Street should be minimized (i.e. shared driveways);*
- *Landscaping in developments is to be provided to screen, to assist in softening buildings and creating comfortable and useable open space areas;*
- *Developments are to provide an adequate absorption area for stormwater and for deep root zones for tree planting; and*
- *Studio workshops are encouraged to provide a mixed residential and employment environment.*

Notwithstanding these comments, Council officers remain of the view that the proposal is not compatible with the surrounding development and therefore does not benefit from the 1.65:1 FSR.

Note 5 – Clause 5.3 Development near zone boundaries

The development site comprises of three (3) separate land use zones. These include the R2 Low-Density Residential zone, R3 Medium Density Residential zone and the B4 Mixed Use zone.

The relevance of Clause 5.3 is that it allows a permissible land use proposed in one zone to extend into an adjoining zone for up to 25m. However, to allow this, the proposal needs to demonstrate that it achieves a more appropriate and logical development that is compatible with the planning objectives and land uses of the adjoining zone. This Clause is relevant to the subject application as it proposes open space and basement car parking to service the residential flat buildings that are located on R3 Medium Density Residential zone, on land zoned R2 Low Density Residential.

However the applicant has not provided an assessment to demonstrate that the application satisfies the provisions of Clause 5.3, and therefore the provision of car parking and landscaped areas within the portion of the site zoned R2 Low Density Residential is not considered acceptable.

Botany Bay Development Control Plan 2013

Council resolved on 11 December 2013 to adopt the BBDCP 2013 in accordance with the provisions of the *Environmental Planning & Assessment Act 1979* and the *Environmental Planning and Assessment Regulation 2000*. The BBDCP 2013 is a translation of DCP 31 and does not contain any savings provisions. It is therefore the only applicable DCP.

The applicable clauses of the DCP are considered in the assessment of the proposal and are addressed below:

Part	Control	Proposed	Complies
3A.2 Parking Provisions	202 x studio/1bed x 1space = 202 spaces 247 x 2/3 bed = 494 spaces Visitor 1 per 5dwgs = 90 spaces Total = 786 spaces	741 spaces	No – the proposal results in a shortfall of 45 visitor spaces – refer to Note 1.
3J.2 Aircraft Noise Exposure Forecast	C3 In certain circumstances, and subject to Council discretion, Council may grant consent to development where the building site has been classified as "unacceptable" under Table 2.1 of AS2021-2000. For Council to be able to consider such applications for development, the following factors must be complied with: (i) Submission of specialist acoustic advice by an accredited acoustical	The portion of the site zoned B4 is located within the 20-25 ANEF. It is anticipated that an acoustic report would be submitted with the Stage 2 development application indicating that the building can comply with the requirements of AS2021-2000.	Yes

Part	Control	Proposed	Complies
	<p>consultant certifying full compliance with the requirements of Table 3.3 of AS2021-2000;</p> <p>(ii) Submission of plans and documentation indicating the subject premises will be fully air-conditioned or mechanically ventilated in accordance with Council guidelines; and</p> <p>(iii) Any additional information considered necessary by Council to enable it to make a decision.</p>		
4C.6.1 Adaptable Housing	<p>C3 - Disabled access to all common areas shall be provided even if the development has less than five (5) dwellings and does not contain an adaptable dwelling.</p> <p>C 4 - Where a development includes five (5) or more dwellings at least one (1) dwelling must be constructed to meet either Class A or B adaptable housing standards under AS 4299-1995 Adaptable Housing.</p>	The Applicant has indicated that up to 15 adaptable units could be included in the Stage 2 DA as part of any consent issued for the Master Plan.	No – however this may be addressed by way of condition in the event of approval.
3A.3.1 Car Park Design	C1 – C41 Comply with AS2890.1 and AS2890.6; entry/exit forwards; residential parking separated in mixed-uses; Stormwater to comply with Council's Guidelines; Pedestrian routes delineated; Location; Access; Landscaping; Basement Parking; Residential; Non-Residential; Pavement; Lighting; Accessible Parking; Waste Collection Points	Compliance with Australian Standards to be demonstrated in Stage 2.	N/A
3A.3.2 Bicycle Parking	C1-C5 To comply with AS2890.3 & AUSTRROADS.	Compliance with Australian Standards to be demonstrated in Stage 2.	N/A
3A.3.4 On-site Loading & Unloading	C1-C11 1 courier van for 999m ² offices + 1 service bay/50dwgs	No commercial/retail component proposed. However, the BB LEP 2013 and BB DCP 2013 require ground floor non-residential uses. Therefore, loading facilities are necessary.	No
3B Heritage	Development in vicinity of heritage item or HCA	N/A	N/A

Part	Control	Proposed	Complies
3C Access, Mobility & Adaptability	C1-C4 Compliance with DDA, AS4299.	Compliance with Australian Standards to be demonstrated in Stage 2.	N/A
3G.2 Stormwater Management	C1-C6 Comply with Stormwater Management Technical Guidelines; Part 3G.5 Stormwater Quality.	Stormwater plans submitted and reviewed by Council's Development Engineer. Insufficient information has been provided to undertake an assessment of the cumulative impacts of the flooding on downstream sites.	No
3H Sustainable Design	C1-C6 BASIX; Solar hot water encouraged.	BASIX Certificate to be provided at Stage 2.	Yes
3I Crime Prevention Safety & Security	Site layout, design & uses; Building design; Landscaping & lighting; Public domain, open space & pathways; Car parking areas; Public Facilities.	Comments received from NSW Police & may be included as conditions of consent.	Yes
3J OLS	Aircraft height limits in prescribed zones.	SACL comments received – no objection.	Yes
3K Contamination	Consider SEPP 55 & Contaminated Land Management Act 1997.	The site requires the preparation of a Remediation Action Plan (RAP) which would be conditioned to form part of any Stage 2 Application.	Yes
3L Landscaping	General Requirements; Planting design & species; Landscaping in car parks; Green roofs.	Deemed unsatisfactory – see comments provided by Council's Landscape Architect under the Internal Referrals section.	No – refer to Note 2.
3N Waste Minimisation & Management	General Requirements; Residential Development; Mixed Use Development.	A Waste Management Plan would be required as part of the Stage 2 submission and could be conditioned as part of this consent.	Yes
4C Residential Flat Buildings	Only applicable to development in R3 & R4 zones. However Part 9C of DCP requires compliance.	See below	
4C.2.1 Site Analysis	Site Analysis Plan required.	Site Analysis Plan submitted & SEPP 65 assessment undertaken.	Yes
4C.2.2 Local Character – Botany	Desired Future Character Statement; Part 8-Character	8.4.2 The proposed built form is inconsistent with the	No – refer to note 3.

Part	Control	Proposed	Complies
	Precincts	floor space ratio and maximum heights in the Botany area. The proposal also provides insufficient deep soil landscaping and appears to overshadow Building D in Parkgrove 2 during the winter solstice.	
4C.2.3 Streetscape Presentation	Compatible with bulk & scale of adjoining residential developments; Max building length 24m; Walls >12m must be articulated; Street presentation.	Building lengths range from 22m to 85m and are inconsistent with future height of buildings along Pemberton St.	No – refer to Note 6.
4C.2.4 Height	Comply with cl.4.3 of BBLEP 2013; Buildings to respond to character of neighbourhood; Height & bulk must be distributed to ensure no significant loss of amenity to adjacent sites.	Building height non-compliant by up to 6.5m & results in an undesirable precedent.	No Discussion provided within BBLEP 2012.
4C.2.5 Floor Space Ratio	Compliance with cl.4.4, 4.4A & 4.4B of BBLEP 2013. 0.55:1 for R2 zone 1:1 for B4 zone 1.5:1 for R3 zone	No bonus FSR given in 4B zone and bonus FSR for R3 zone is not applicable to the subject site.	No Discussion provided within BBLEP 2012.
4C.2.6 Site Coverage	Max site cover 45%	Site Cover = 39.5% plus approximately 15% for basement non-compliance (see 4C.2.7 below). Site Cover = 54.5%.	No
4C.2.7 Landscaped Area and Deep Soil Planting	Landscaped area = 35% (min) Unbuilt upon area = 20% (max) Deep soil = 25% (50% at rear; 30% within front setback; 2m wide landscaping along one side boundary). Basement car parks, where permitted, must not extend to the full width of a site and excavation for any associated garages, car parking, plant rooms or ancillary storage must not exceed 65% of the site area (which equates to maximum site cover + unbuilt upon area).	Landscaped Area = 55% Unbuilt = 5.5% Deep soil = 15% Basement appears to occupy 80% of site area.	Yes Yes No – Refer to Note 2. No – Refer to Note 2.

Part	Control	Proposed	Complies
4C.2.8 Private & Communal Open Space	Studio & 1bed = 12m ² 2 bed = 15m ² 3 bed = 19m ² 4 bed = 24m ² Min depth of balconies = 3m (or adequate useable space). Min. communal open space = 30% >3hrs sunlight on 21 June	Detail to be provided as part of the Stage 2 DA. The proposal incorporates 12,500m ² of communal open space (40% site area)	N/A Yes
4C.2.9 Setbacks	Comply with SEPP 65; Front & side setbacks to provide deep soil; Minimise bulk & scale; Provide adequate exposure to sunlight; Front setback consistent with existing; 3m side setback (min); Basement car parking min 1.5m from side boundaries.	Front building setbacks to match setback of adjoining properties Wilson Street - 5 metres Pemberton Street – 9 metres (southern end), 3metres (northern end) Warrana Street – 3 metres New Street 1 – 5 metres Side setback – min 3m for buildings greater than 7m; basement parking to also observe 3m setback Rear setback to match adjoining properties but must be a minimum of 6m.	Yes – setbacks considered acceptable as proposed in the Master Plan. Further assessment to be undertaken at Stage 2. However, Landscaping within setbacks is considered unsatisfactory – refer to Note 4.
4C.2.10 Through Site Links & View Corridors	Existing view retained; View corridors integrated.	Seven (7) storey portion of Building E has the potential to impact views.	No – as discussed in the body of this report.
4C.3.1 Design Excellence	Excellence in urban design; Design principles; Daylight & ventilation to dwellings.	Building footprints are large and the built form is bulky. Buildings are not well articulated.	No Refer to Note 5
4C.3.2 Corner Buildings	To align & reflect corner conditions; Reflect architecture & street characteristics.	Corner Buildings appropriately address streetscape.	Yes
4C.3.3 Building Entries	Compliance with SEPP 65 for entry & pedestrian access; shelter & well-lit; pedestrian access separated from car parks.	RFDC assessment provided. Building entry easily identifiable. Lift lobbies can accommodate seating.	Yes
4C.3.6 Materials & Finishes	Schedule of finishes; Consistent with Part 8; long-wearing materials.	Sample board to be provided in Stage 2 submission.	N/A
4C.5.1 Dwelling Mix, room size & layout	Studio – 60m ² 1 bed – 75m ²	Typical unit layouts not provided with this	N/A

Part	Control	Proposed	Complies
	2 bed – 100m ² 3 bed – 130m ² 4 bed – 160m ² 25% max no. of 1bed units.	application, however further details are to be provided in Stage 2 submission. There is an error in the DCP, and this is being rectified by Amendment No1 to the DCP, which requires a maximum of 25% of studios and 1 bedroom apartments.	
4C.5.2 Internal Circulation	2m min. corridors; Articulate long corridors.	Details to be provided in Stage 2 submission.	N/A
4C.5.3 Building Depth	Max depth = 18m Max habitable room = 10m Single aspect units = 8m Min apartment width = 4m	The following maximum building depths are proposed: Building A = 22m Building B = 22-25m Building C = 22m Building D = 19m-22m Building E = 22m Other details to be provided in Stage 2 submission.	No – Refer to Note 6
4C.5.4 Balconies in RFBs	Differing styles; Min. 12m ² ; Provides for privacy & visual surveillance; Not continuous across facade.	Details to be provided in Stage 2 submission.	N/A
4C.5.5 Ground Floor Apartment in Residential Flat Developments	Active street edge; Individual entries; Privacy to be increased by providing gardens & terraces as a transition zone.	The Master Plan would enable individual entries at ground level. Details to be provided in Stage 2 submission.	N/A
4C.5.6 Natural Ventilation	Comply with SEPP 65 & RFDC.	Details to be provided in Stage 2 submission.	N/A
4C.5.7 Ceiling heights	3m for shops; 2.7m for habitable units.	Details to be provided in Stage 2 submission.	N/A
4C.5.8 Solar Access	SEPP 65 & RFDC compliance; 70% of units receive 3 hrs direct sunlight on June 21; Minimal impact upon adjoining properties.	Details to be provided in Stage 2 submission. However, the proposal appears to impact on the solar access of Building D in Parkgrove 2. Insufficient information provided to demonstrate compliance. This is attributed to the non-compliant height of the development.	No – Refer to Note 7.

Part	Control	Proposed	Complies
4C.5.9 Visual Privacy	SEPP 65 & RFDC; No direct views into windows of other dwellings; Attic windows shall not overlook.	Details to be provided in Stage 2 submission.	N/A
4C.5.10 Building Separation	SEPP 65 & RFDC; and Table 5 of DCP.	Separation distances between Building A (4 storey element) and B (4 storey element) is 10m and requires 12m.	No
4C.5.12 Acoustic Privacy	Table 6 of DCP; Multiple dwellings to be designed & constructed to comply with BCA.	Details to be provided in Stage 2 submission.	N/A
4C.5.14 Storage	Studio – 6m ² 1 bed – 8m ² 2 bed – 10m ² 3+ bed – 12m ²	Details to be provided in Stage 2 submission.	N/A
4C.5.15 Site Facilities	1 lift per 40 units; Garbage storage; Sunlight available to clothes drying area; Undergrounding of major infrastructure.	Details to be provided in Stage 2 submission.	N/A
4C.5.16 Safety & Security	Comply with Part 3I Crime Prevention, Safety & Security; SEPP 65 & RFDC in terms of site amenity & safety.	DA considered by NSW Police in terms of CPTED design principles & appropriately conditioned.	Yes
4C.5.17 Car Parking & Vehicle Access	Pat 3A compliance; Basement car parking <1.2m out of ground.	Details to be provided in Stage 2 submission.	N/A
4C.6.1 Adaptable Housing	Part 3C; Provide all access to common areas in accordance with DDA & BCA; Compliance with adaptable housing standards AS4299-1995.	Compliance with Australian Standards to be demonstrated in Stage 2.	N/A
8.4 Botany Character Precinct	Existing Local Character; Desired Future Character.	Development inconsistent with character objectives relating to form, massing, scale & streetscape; solar access and views.	No – discussed at Note 3
9.C Wilson/ Pemberton Street Precinct 9C.5 B4 Mixed Use zone along Pemberton St	Ground & first floor complementary non-residential uses; Height & FSR to comply with BBLEP 2013; Residential not to be adversely impacted by non-residential uses; Setbacks to comply with Table 2; Flooding. Mixed Use Development – active street frontage; Plan of Management; Traffic movements to be managed; Site lighting for	No Ground floor commercial or retail uses proposed. Further, ground floor uses must be a minimum 4 metres in floor to ceiling height. Traffic impacts discussed at Note 8.	No – previously discussed in this report. No - refer to Note 8.

Part	Control	Proposed	Complies
	building security; Adjoining dwellings access to sunlight; Commercial parking to be conveniently located.		
9.C Pemberton Precinct	Wilson/ Street Table 1 – New Street 1 (Public Street) 20m wide road reservation traversing the precinct from east to west for cars only and closed at Wilson Street.	The proposal accommodates a 20m wide road reserve which would allow for two-way traffic.	Yes
	Table 2 – New Street 2 & Table 6 Pedestrian Link 18.2m wide road reservation traversing the site north south, joining Kurnell Street to the north, with Rancom Street to the south. Plus pedestrian link.	Pedestrian through link provided measuring 30-35m in width. The paths are interspersed with no vehicular access proposed. While no street is provided, the DCP allows the flexibility for this road to be fully pedestrianized.	Yes – however the Master Plan must demonstrate that the proposed paths appropriately link to the rest of the precinct.
	Table 3 – Rancom Street		
	Table 4 – Pemberton Street Widening Pemberton Street will be widened by a 4m strip of land along the eastern side of the street to achieve a 20m wide road reserve.	N/A 4m strip of land to be dedicated to Council as shown on plans.	N/A
	Table 9 – Public Open Space north of New Street 1 The size of the public open space will be a minimum of 3,000m ² and is to be dedicated to Council.	Proposal includes a 4,500m ² open space area. However, as previously stated, the open space is not located in Council's desired position and therefore is not supported. Further, Council will not accept the dedication of a park that includes a basement car park beneath.	No

Part	Control	Proposed	Complies
9C.4 R3 Medium Density Residential Zone	<p>Council at its Meeting held 11 December 2013 resolved to prepare a Planning Proposal in accordance with the Environmental Planning & Assessment Act 1979 and its Regulation to amend the Botany Bay Local Environmental Plan 2013 as follows:</p> <p>- Delete Sub-clause (2A) in Clause 4.3 – Height of Buildings relating to a 22 metre height for sites zoned R3 and R4 (which have a site area of 2000m² and over); and</p> <p>- Delete Clause 4.4B – Exceptions to FSR in Zone R3 and Zone R4 (which permits a FSR of 1.65:1 for sites with an area of 2000m² subject to a list of criteria).</p> <p>As a result of the Council's resolution the provisions of the DCP relating to 2000m² sites which are zoned R3 and R4 are subject to change.</p>	Noted – see section under BBLEP 2013 compliance table.	Noted
9C.5 B4 Mixed Use Zone along Pemberton Street	The ground and first floors of development must contain complementary non-residential uses permissible in the B4 zone. Residential uses are only permitted at the 2 nd floor and above.	<p>The ground floor spaces of the building envelopes along Pemberton Street will incorporate 3.0m floor to ceiling heights to enable these areas to be adapted for use as either residential or non-residential purposes. It is considered that a minimum 4 m ceiling height is required for any form of non-residential use.</p> <p>Accordingly, the ground floor levels must be increased to a minimum 4 metres.</p>	No – as discussed in the body of this report.
	Height and FSR are to comply with the provisions of the Botany Bay LEP 2013.	<p><u>B4 zone</u></p> <p>Permitted FSR: 1:1 Permitted Height: 10m</p> <p>Proposed FSR: 1.27:1 Proposed Height: 16.5m</p>	<p>No</p> <p>No</p>

Part	Control	Proposed	Complies
	<p>The following setbacks apply to the site:</p> <p><u>Building Setback</u></p> <p>Front - 7m Side – adjoining a residential zone – 3m</p>	<p><u>Building Setback</u></p> <p>Front - 7m (Pemberton St north – note 4m of front setback will be excised for road widening).</p> <p>Front - 3m to Warrana St</p> <p>Front - 5m to Wilson St</p> <p>Front – 9m to New Street 1 (note 4m of front setback will be excised for road widening).</p> <p>Front – 13m to Pemberton St south (note 4m of front setback will be excised for road widening).</p> <p>Side – Ranges from 7m to 17.5m adjoining residential zones.</p> <p>Note - all setbacks appear to be landscaped in accordance with the DCP requirements.</p>	<p>Yes</p> <p>No</p> <p>No</p> <p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p>

Table 12: DCP 2013 Compliance Table

Note 1 - Visitor Parking

The Development Control Plan applies a visitor parking rate of 1 space per 5 dwellings. As the Master Plan is for 449 dwellings, a total of 90 visitor parking spaces are required. Instead, the Master Plan provides for half the required visitor spaces. The non-compliance is considered unreasonable as the site permits a range of uses in the R3 and B4 zones that may generate future additional parking demand.

Note 2 - Landscaping

The two primary issues with the proposed landscaping are the location of the public park and the proposed basement car park being located beneath the public park. Council will not accept the dedication of a public park with a basement car park beneath it. This is a position that is applicable to the entire Pemberton Precinct.

The subject precinct is different to the Mascot precinct, which is a high density mixed use area. Within the Pemberton Precinct, it has been consistently stated that there should be no structures located beneath a public park.

Secondly, the proposed location of the public park is not considered an appropriate position. The proposed public park is located at the centre of a private development and has in effect been located to provide a dual role of open space and separation distances between buildings. It is in effect, a linear park which provides passive open space and facilitates pedestrian links to the north south east and west, and acts as a pedestrian thoroughfare and not a local park as intended by the DCP.

The DCP requires a minimum 25% deep soil planting for the site, which equates to 7,769m². The development provides for 15% deep soil landscaping, which appears to be located mostly around the perimeter of the site. The purpose of these spaces is to accommodate screen planting. These areas are therefore not considered useable in a recreational context.

The design and location of the park is not supported. It fails to provide direct passage or visual links from Wilson Street or Pemberton Street and limits surveillance from public spaces. It is also concealed behind large, unbroken buildings.

The park appears to cater for passive use only and is not embellished. The provision of deep soil landscaping within the park is also limited. The area therefore gives the impression that it is a private landscaped thoroughfare rather than a robust community space or a meaningful public park. The quality and versatility of the park for a range of recreational uses is therefore limited.

Given the size of the site, there is scope to achieve a reasonable public park design. While there were discussions with the Applicant in relation to potential works in kind arrangements and planning agreements, no alternative public benefit scheme has been formalised as part of this application.

Compliance with the deep soil provision is essential as it enables greater scope for public recreation in a passive and active context. Therefore, the design, location and quality of the proposed public park in its current form is unreasonable. It does not provide an acceptable level of public benefit.

Note 3 – Local Character

The precinct is guided by Council's LEP and DCP controls, which together provide a framework and overall vision for the precinct. This assessment determines that the proposal is inconsistent with the future desired character of the area, by virtue of the nature and extent of the proposed variations.

Height and Floor Space Ratio

The proposal does not comply with the height and floor space ratio standards and the non-compliance is not supported for the reasons outlined in this report. The non-compliance results in a development that is inconsistent with the desired future character and results in a built form that is not contemplated by the planning controls.

Development Interface

The additional height and FSR results in an increase in height, size, bulk and density. This results in an acceptable interface with single dwellings located in Warrana Street, Kurnell Street and Wilson Street. In particular, these are the only areas in the precinct where flats are proposed to share an interface with single dwellings. However, to date, development in the Wilson Pemberton precinct has consistently provided three (3) storey townhouses where adjoining single dwellings. This establishes the consistent character of the area, and the proposal is considered to be incompatible with this character.

At a minimum the plans should be amended to a two (2) storey height limit to Building A, which immediately adjoins four (4) single dwellings to the east. By way of comparison, Building C (3 storeys) immediately adjoins two (2) dwellings to the north.

In terms of the current height controls, a limit of 10m applies to the B4 zone. It therefore does not permit four (4) storey development. On the opposite side of Pemberton Street (B7 zone), a limit of 12m applies. The proposed height of 16m for Building A is excessive given the current and future context of the site. It is also inconsistent with the interface established with single dwellings across the entire precinct. A more appropriate interface is required with the development along the R2 Low Density Residential lands.

Residential Flat Buildings

The construction of flat buildings across the site and adjacent to single dwellings raises a number of concerns. A more acceptable urban design outcome would be to provide a transition from single dwellings to the taller built forms located at the centre of the site.

This would comprise of two (2) to three (3) storey townhouses, ideally provided with off-street parking where the site adjoins single dwellings. This applies to Wilson Street where townhouses are consistent in terms of height and built form. Recent examples which support this principle include DA2008/261 approved for nine (9) townhouses at Parkgrove 1 and DA12/227 approved for seven (7) townhouses at 19-21 Wilson Street.

While flat buildings are permissible in the B4 zone, the objectives require that the context of the site is equally considered. In this instance, the intent of the B4 zone, particularly in the Wilson Pemberton Precinct, is to encourage mixed use development and not stand alone residential flat buildings. Where this is not possible, residential flat buildings are not considered to be the most appropriate development form.

In this instance, the most appropriate development form would be for low scale, multi-dwelling development. This would be consistent with the majority of the precinct where townhouses commonly adjoin single dwellings.

The introduction of townhouses would improve the diversity of housing types and is consistent with the R3 zone objective *to provide a variety of housing types within a medium density residential environment*. The added benefit is that the reduced density would minimise parking demand and traffic generation. In this respect, the Master Plan currently provides for only half of the required visitor parking spaces.

In summary, given the departures from the Height and Floor Space Ratio controls, as well as the proposed interface and transitional issues associated with the building mass and additional height, it is considered that the proposed is inconsistent with the character of the area.

Note 4 – Setbacks

The setbacks achieve general compliance with DCP 2013 with the exception of the setback on Pemberton Street, where the northern section does not meet the required building setback. Part of the Pemberton and Wilson Street setbacks and part of the northern boundary setbacks are intruded upon by the basement carpark, limiting the ability to plant canopy trees required for boundary screening and streetscape. The basement is not within the building footprint in these areas.

The 5 metre Wilson Street building setback which is required to have a 3 metre landscape setback is impacted by patio/terrace spaces which intrude into this space and significantly affects the provision of landscaping in this area, which is considered necessary given its interface with the existing established residential development opposite the site. This will result in a discontinuous and sporadic landscape buffer/setback presentation.

Note 5 – Design Excellence

The proposal is not considered to achieve design excellence. The current proposal will result in a development that is inconsistent with the desired future character in terms of building mass, building height, density, separation between buildings and general streetscape presentation. Further, the proposal public park is not located in the most appropriate location and is not a deep soil park, given the basement is located beneath it. On this basis, Council is of the opinion that the development does not exhibit design excellence.

Note 6 – Streetscape, Building Depth and Lengths

The Master Plan proposes the following building lengths:

Proposed Building Lengths – 52-54 Pemberton Street Master Plan				
Stage	Building	Required Building Length (m)	Proposed Building Length (m)	Non-compliance (m)
1	B (west wing)	24	68	44
	B (south wing)	24	80	56
	B (east wing)	24	68	44
2	A (west wing)	24	86	62
	A (south wing)	24	71	47
3	C	24	75	51
	D (south/east wing)	24	72	48
	D (south/west wing)	24	72	48
4	E (east wing)	24	50	26
	E (south wing)	24	50	26

Table 13: Master Plan proposed building lengths

None of the buildings achieve compliance with the above control, and further seek significant variations. When considered in combination with the floor space and height non-compliances, the proposed building lengths are considered unreasonable. The entire western wing of Building A for example measures 86m in building length. The L shape of the building would appear grossly excessive from the single dwellings in Kurnell Street. Accordingly, the ‘breaking-up’ and articulation of built forms in the Master Plan are not achieved, and the proposal would result in long and un-broken building lengths.

The impacts of this large building lengths are considered unacceptable from a streetscape presentation and when viewed from adjoining properties. The buildings must have breaks at regular intervals to minimise the bulk and scale of the development and provide an improved streetscape presentation.

Building Envelopes

The building envelopes proposed provide for heights and floor space ratios that are inconsistent with Council’s controls. Specifically, the proposal seeks to vary most of Council’s existing building envelope controls that apply to the site. The building envelopes according to Council’s controls are shown below:

Council’s Building Envelope Controls		
Development Standard	B4	R3
Height	10	22
Floor Space	1:1	1.5:1
Building Length	24m	24m
Building Depth	18m	18m
Setbacks	Front – 7m Side – 3m	Front – 7m Side – 3m

Table 18: Council’s Building Envelopes

The above table outlines Council’s controls and establish the building envelopes for the site. The overall floor space ratio that results is 1.36:1. The envelopes proposed by the Applicant are intended to establish a floor space ratio of 1.469:1 as outlined below:

Proposed Building Envelope Controls		
Development Standard	B4	R3
Height	16	28.65
Floor Space	1.27:1	1.57:1
Building Length	Up to 86m	Up to 75m
Building Depth	22m	25m
Setbacks	Front – 3m (where 4m of land is dedicated to road widening in Pemberton Street) Side – 7 to 17.5m	Front – 5m (to Wilson Street) Side – 3m Side – 7 to 17.5m

Table 19: Proposed Building Envelopes

The above table shows that the height, building length, building depth and setbacks are considered to provide significantly larger building envelopes.

On Tuesday 29 April, 2014, Council officer's met with the applicant to discuss the proposal. At that meeting, Council staff reiterated to the applicant that the proposal would not be supported in its current form for the reasons as outlined in this report.

Council officer's also questioned the gross floor area that could be achieved by the proposed development. The original plans submitted with the application did not provide any detailed drawings of the development floor plates. Supplementary to the meeting, the Applicant tabled additional information confirming the floor space ratio of the proposal would equate to approximately 1.469:1. It is noted that the applicant submitted additional documentation in support of the proposed gross floor area.

Despite this information, Council officer's do not support the proposed variations.

It is worth noting that, as a result of the proposed variations, the Applicant could accommodate an additional 43 dwellings. This is generally based on the unit mix submitted by the Applicant i.e. 30% studios, 15% 1 bedroom, 51%, 2 bedroom and 4% 3 bedroom. The calculations are summarised in the table below:

Additional units and floor space				
Unit Type	Units	Unit Size (m ²)	Floor Space (m ²)	Unit Mix
Studio	17	60	1020	30%
1 Bedroom	7	75	525	15%
2 Bedroom	18	100	1800	51%
3 Bedroom	1	130	130	4%
Total	43	-	3475	100%

Table 20: Quantum of additional units resulting from non-compliances

The table demonstrates that the Master Plan will result in an additional 43 units which is directly attributable to the non-compliances associated with the building envelope controls. While it is acknowledged that the Master Plan should provide some flexibility, it is not an acceptable outcome when it encourages non-compliant built forms, substandard interfaces with single dwellings and limited public benefit. Overall, the ability to consider variations would be more appropriate during Stage 2 when the finer detail of buildings is clearly understood.

Note 7 - Solar Access

The seven (7) storey portion of Building B is likely to result in the overshadowing of the approved Building D on the Parkgrove 2 site, which is located to the south of the subject site. The potential shadow impacts are attributed to the non-compliant height. Insufficient information or justification has been provided to demonstrate that the proposal shall have no adverse shadow impacts.

Note 8 - Traffic Impacts

The submitted traffic report does not take into consideration the cumulative impacts of existing and approved development within the precinct. Further, the applicant has not submitted the additional information requested by RMS, including SIDRA modelling and traffic survey data. Therefore, the submitted traffic report is not considered to address the full impact of the proposal with respect to traffic and parking.

(b) Impacts of the development S79(c)(1)(b).

These matters have been considered in the assessment of the application. The application results in departures from the Botany Bay LEP 2012 and is inconsistent with the desired future character and objectives of the Botany Bay DCP 2012. Accordingly, it is considered that the proposal will have adverse environmental, social and economic impacts on the locality as a result of the departures and non-compliances listed within this report.

(c) The suitability of the site for the development S79C(1)(c)

While the proposal is not supported in its current form, the site is considered suitable for medium to high density residential and mixed use development. It is located in close proximity to the commercial centres of Banksmeadow and Botany, and is located in an area that is strategically earmarked for revitalisation.

Should the application be amended to address the Council's preferred outcome for the site, then the application could satisfy the provisions of S79C(1)(c).

In the absence of this, it is considered that the proposal exceeds the controls of the Botany Bay LEP 2013 and Botany Bay DCP and results in an overdevelopment of the site. Accordingly, the application in its current form is not considered suitable for the site.

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

These matters have been considered in the assessment of the development application. In accordance with Council's Notification Policy (Development Control Plan No. 24), the development application was notified to surrounding property owners and occupants and advertised in the local newspaper from 23 October, 2013 to the 29 November, 2013 and nine (9) submissions were received raising the following issues:

- | | |
|-----------------------|----------------------------|
| • Height | • Deep Soil Planting |
| • Visual amenity | • Unit Mix |
| • View Loss | • Future Desired Character |
| • Privacy | • Wind |
| • Overshadowing | • Noise |
| • Traffic and Parking | • Setbacks |
| • Parking Access | |

Height, Bulk and Scale and Future Desired Character

Objection: The proposal does not comply with Council's height controls and results in a development that is significantly larger than intended for the site. This will ultimately lead to loss of views and impact on the amenity, including the visual amenity of nearby landowners.

Comment: Objection to the proposal on the grounds of height, bulk and scale is warranted. The proposed development achieves a floor space ratio that is some 68% larger than permitted. This is facilitated via a number of height non-compliances across the development which range from 3.9m to 6.65m, excessive building lengths and non-complying building depths.

While it is not clear whether the proposal would result in any real view impacts (potential for building E to obstruct eastward views), it is reasonable to accept that the visual amenity of nearby landowners would be impacted by the taller buildings, particularly where the development interfaces with single dwellings in Warrana Street and Kurnell Street. The development also has the potential to impact on the solar amenity of the site (north of building E) as well as the solar amenity of Building D in Parkgrove site 2, to the south. The overall assessment suggests that the proposal would result in the overdevelopment of the site and that the application is inconsistent with the future desired character of the area.

Overshadowing and Privacy

Objection: The proposed development results in unacceptable privacy and overshadowing impacts to adjoining landowners.

Comment: Despite the heights, it is unlikely that the proposed development would result in overshadowing impacts to adjoining landowners to the north, east or west. The site is oriented north south ensuring that shadows traverse the site from west to east throughout the course of the day. It allows these adjoining sites to achieve a minimum 3 hours of solar access during the winter solstice. It should be noted however, that the proposed development has the potential to impact on the solar access of Building D at the Parkgrove 2 site.

With respect to privacy, it is considered that the proposed development has the potential to result in overlooking of adjoining landholdings, particularly in Warrana Street and Kurnell Streets. However, it is noted that the proposed separation distances of Buildings A and C range from at least 12m from dwellings in Kurnell Street to in excess of 15m from dwellings in Warrana Street. This distance is considered to be reasonable with respect to overlooking, considering that privacy could be improved further through the installation of privacy screens in Stage 2.

Traffic and Parking

Objection: The proposed development will result in traffic impacts to the local road network, particularly the local roads located to the north of the precinct.

Comment: Noted. It is considered that the submitted traffic report does not consider the full development potential of the proposal and therefore has underestimated the traffic, parking and overall cumulative impacts to the local street network.

The provision of additional vehicle entry points should also be shown on the Master Plan, as the single point of entry off the New Street 1 is considered unreasonable.

Deep Soil Landscaping

Objection: The proposed development does not provide for sufficient deep soil landscaping.

Comment: Noted. The under-provision of deep soil landscaping is exacerbated by the size of the proposed buildings, the increased density of the development and the non-compliant basement size.

Of concern is the fact that the public open space is not a deep soil area which will significantly inhibit the planting of larger trees and trees with large canopies. When trees are planted in raised soil areas/planters over podium are proposed their long term success and the ability of the trees to thrive and produce full, healthy canopies is compromised. The overall amenity of the site is also reduced.

Unit Mix

Objection: Too many studio and 1 bedroom sized units are proposed (45%).

Comment: The DCP requires a maximum 25% of 1 bedroom size units in any unit mix. The number of 1 bedroom apartments proposed is less than 25% of the total number of apartments. Note the comments discussed within the DCP assessment table.

Wind

Objection: The proposed development will result in unacceptable wind tunnels.

Comment: A Pedestrian Wind Environment Statement prepared by Windtech (dated 2 October 2013) was submitted with the application. The Statements reveals that:

The results of the assessment indicate that the wind conditions for the majority of the various communal landscaped areas and private balcony areas within and around the site will be acceptable for its intended uses due to the shielding provided by the surrounding buildings and effective use of wind mitigating devices incorporated into the design of the development such as building articulations, blade walls and privacy screens. However, there are several areas within the site, such as the private corner balconies and corner intersections that may potentially be exposed to adverse wind conditions. To ensure adequate wind conditions are achieved for all trafficable outdoor areas with and around the site, a following set of treatments have been recommended.

- The treatments include the provision of densely foliating trees along Wilson and Pemberton Street frontages and within the site;
- Balustrades along the perimeter of the various private balconies; and

- The inclusion of blade walls to corner balconies above level 4 of buildings, particularly those facing Pemberton Street.

It is considered that such design elements would be incorporated into any future development application for the site. The submitted wind report would also be included as part of any consent in the event of approval to ensure that wind impacts are minimised.

Noise

Objection: The proposed development would increase noise in the area and impact on the amenity of adjoining landowners.

Comment: The proposed development is for a residential use and the noise impacts are unlikely to impact on adjoining landowners.

Setbacks

Objection: The proposed development does not comply with the required building setbacks.

Comment: Discussed in the body of this report.

(e) **The public interest**

This report establishes that the proposal would be contrary to the strategic vision of the site and the desired future character of the area. The proposal results in a departure to the Height of Building and Floor space ratio standards contained within the Botany Bay LEP 2012. Further, the applicant has failed to adequately justify the proposed departures in relation to Clause 4.6.

For the reasons listed within this report, the proposal is not considered to be in the public interest.

Other Matters

Internal Referrals

The development application was referred to Council's Engineering Services Department, Parks and Landscape Department; Traffic Department; Environmental Health and Council's Environmental Scientist for comment. Where relevant, these comments have been incorporated into the body of this report.

External Referrals

External Referrals are summarised in the Table below:

Authority	Comment	Date Received
Roads & Maritime Services	Additional information requested including SIDRA modelling and traffic survey data.	29 November 2013
Sydney Water	No objection, subject to conditions and lodgement of a Section 73 Application at	22 November 2013

	Stage 2 of Development Application.	
Ausgrid	No objection, subject to conditions relating to the installation of substations.	4 November 2013
NSW Police Service	No objection, subject to conditions relating to CPTED principles	19 November 2013
SACL	No objection subject to limitation of height to a maximum 34m AHD.	20 December 2013
NSW Office of Water	No objection, subject to General Terms of Approval.	19 December 2013

Table 14: External Referrals Summary Table

Section 94 Contributions

Section 94 Contributions will be determined in the Stage 2 Development Application for Building Works.

Conclusion

The assessment of the application reveals that the proposed development, in its current form cannot be supported.

The proposal does not comply with the maximum Floor Space Ratio standard under the Botany Bay LEP 2012, and the applicant has not provided a Clause 4.6 Exception to justify the departure. Furthermore, this report establishes that the 1.65:1 FSR under Clause 4.4B is not applicable.

The proposed height variations range from 15% to approximately 35%. The applicant's Clause 4.6 Exception is not well founded and does not correctly address the relevant provisions required under a Clause 4.6. Furthermore, the departure is considered excessive and results in an overdevelopment of the site.

The proposed build form, building separation, mass and bulk is considered unacceptable. This is attributed to the excessive height and non-compliant floor space. Building breaks should be provided to reduce the bulk and improve the streetscape presentation.

The applicant has failed to address the application of Clause 5.3 Development near zone boundaries, in relation to the use of the R2 Low Density Residential zone for the purposes of open space and basement car park to service the residential flat buildings located on the R3 Medium density Residential zone.

The proposed location of the public park is not supported. The park should be located towards Wilson Street as outlined in this report. Furthermore, Council officers do not support a basement car park being located beneath the public park.

The proposal does not provide an adequate transition to adjoining development along Wilson Street. The development interface with adjoining single dwellings must be in the form of three storey townhouses.

The proposal results in a development that is not consistent with the desired future character, as the proposed buildings are much larger than the DCP controls allow or envisaged for the site.

The applicant has been provided with ample opportunity to address the issues raised by Council officers. Discussions have been held since the Pre-DA process commenced. The applicant has failed to adopt the recommendations of Council officers, and further has failed to appropriately justify the proposed departures.

It is to be recommended that the applicant submit a new application that adopts the amendments listed in the preferred outcomes section in the preface of this report.

However Council officers cannot support the application in its current form and it is recommended that the application be refused.

RECOMMENDATION

In view of the preceding comments, it is RECOMMENDED that the Joint Regional Planning Panel (JRPP) for the Sydney East Region, as the Consent Authority, resolve to refuse Development Application No. 13/208 for the reasons outlined below.

1. The proposed development is inconsistent with the objectives and requirements of State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Buildings, in that it does not fulfil the requirements of Part 2 - Design Quality Principles in respect of scale, built form, density, amenity and social dimensions. (Environmental Planning & Assessment Act 1979 Section 79C(1)(a)(i)).
2. The proposed development is inconsistent with the objectives of Clause 2.3 of Botany Bay Local Environmental Plan 2013, as the proposed ground floor residential use is inconsistent with the objectives of the B4 Mixed use zone. (Environmental Planning & Assessment Act 1979 Section 79C(1)(a)(i)).
3. The proposed development is inconsistent with the objectives and development standards of Clause 4.3 of Botany Bay Local Environmental Plan 2013 as it exceeds the Maximum Height of Buildings for the subject site, which results in adverse impacts on the streetscape amenity. (Environmental Planning & Assessment Act 1979 Section 79C(1)(a)(i)).
4. The proposed development is inconsistent with the objectives and standards of Clause 4.4 of Botany Bay Local Environmental Plan 2013 as it exceeds the Maximum floor space ratio of Buildings for the subject site, which results in adverse impacts on the streetscape amenity. (Environmental Planning & Assessment Act 1979 Section 79C(1)(a)(i)).
5. The proposed development fails to adequately justify the variation to the maximum height and floor space ratio of buildings under Clause 4.3 and 4.4 through the submitted Clause 4.6 Variation. (Environmental Planning & Assessment Act 1979 Section 79C(1)(a)(i)).
6. The proposed development fails to satisfy the following requirements of Part 4 of Botany Bay Development Control Plan 2013 (Environmental Planning & Assessment Act 1979 Section 79C(1)(a)(iii)):

- (i) Minimum deep soil landscaping requirement (25% of the site area)

- (ii) Maximum basement size requirement (65% of the site area)
 - (iii) Maximum site cover (45% of the site area)
 - (iii) Maximum building length of 24m; and
 - (iv) Minimum visitor parking provision.
7. The proposed development is likely to result in adverse traffic and parking impacts by virtue of the additional floor space and quantum of dwellings that can be achieved by the proposed Master Plan (Environmental Planning & Assessment Act 1979 Section 79C(1)(b)):
8. The proposed development is likely to result in solar access impacts to the open space area to the north of Building E and to the adjoining landholding to the south (Parkgrove 2) (Environmental Planning & Assessment Act 1979 Section 79C(1)(b)):
9. The proposed development is not in the public interest as the proposed design in its current form inconsistent with the future desired character of the subject site. (Environmental Planning & Assessment Act 1979 Section 79C(1)(e)).
10. The applicant has failed to provide sufficient information to determine the impacts of the development in relation to cumulative flooding impacts on downstream sites. (Environmental Planning & Assessment Act 1979 Section 79C(1)(b)).

Certified Mr Rodger Dowsett.....

Director - Planning and Development