

JOINT REGIONAL PLANNING PANEL (Sydney East Region)

JRPP No	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>A Stage 1 Master Plan for four (4) buildings containing a maximum Gross Floor Area (GFA) of 45,722 sqm; building heights between two (2) storeys to eight (8) storeys; basement and ground level parking; 3,000sqm of publicly accessible open space; pedestrian and cycle through-site links; and new vehicular access from Pemberton Street.</p>
Street Address	52-54 Pemberton Street, Botany NSW 2019
Applicant/Owner	<p>Applicant - Australand Property Group Pty Ltd</p> <p>Owner - Newtown Dyers and Bleachers Pty Ltd</p>
Number of Submissions	<p>First Round – 23 October 2013 to 29 November 2013 – Nine (9) letters of objection and two form letters of objection.</p> <p>Second Round – 15 October 2014 to 29 October 2014 – Forty three (43) submissions of objection, with thirty four (34) of these submissions being in form letters of objection.</p>
Regional Development Criteria (Schedule 4A of the Act)	<p>The development application is referred to the JRPP pursuant to Clause 3 of Schedule 4A of the Act as the Capital Investment Value (CIV) of the proposal is over \$20 million.</p> <p>The CIV of this development \$181,294,482.00.</p>
List of All Relevant s79C(1)(a) Matters	<ul style="list-style-type: none"> • Environmental Planning & Assessment Act 1979, Part 4 – Development Assessment • Environmental Planning & Assessment Regulation 2000, Part 6 – Procedures relating to development applications • State Environmental Planning Policy No. 55 – Contaminated Land • State Environmental Planning Policy 2004 (BASIX); • State Environmental Planning Policy No. 65 – Design Quality of Residential Flat buildings • Botany Bay Local Environmental Plan 2013 • Botany Development Control Plan 2013
List all documents	<ul style="list-style-type: none"> • Statement of Environmental Effects – Helen Mulachy Urban

submitted with this report for the panel's consideration	<p>Planning</p> <ul style="list-style-type: none"> • Clause 4.6 Exception – JBA Urban Planning/Australand • Architectural Plans – Turner, GSA Group • Traffic Impact Assessment – Traffix • Phase 1 and 2 Environmental Site Investigation - WSP • Masterplan Stormwater Management Report - MottMacDonald
Recommendation	<p>The Sydney East Joint Regional Planning Panel (JRPP), as the Determining Authority resolve to grant deferred commencement consent under Section 80(3) of the Environmental Planning & Assessment Act 1979, to Development Application No. 13/208 for a Stage 1 Master Plan for four (4) buildings containing a maximum Gross Floor Area (GFA) of 45,722 sqm; building heights between two (2) storeys to eight (8) storeys; basement and ground level parking; 3,000 sqm of publicly accessible open space; pedestrian and cycle through-site links; and new vehicular access from Pemberton Street, subject to conditions.</p>
Report by	Wil Nino, Consultant Planner, City of Botany Bay

Assessment Report and Recommendation Cover Sheet

RECOMMENDATION

That:

The Sydney East Joint Regional Planning Panel (JRPP), as the Determining Authority resolve to grant Deferred Commencement consent under Section 80(3) of the Environmental Planning & Assessment Act 1979, to Development Application No. 13/208 for a Stage 1 Master Plan for four (4) buildings containing a maximum Gross Floor Area (GFA) of 45,722 sqm; building heights between two (2) storeys to eight (8) storeys; basement and ground level parking; 3,000 sqm of publicly accessible open space; pedestrian and cycle through-site links; and new vehicular access from Pemberton Street, subject to conditions.

EXECUTIVE SUMMARY

This is a report to the Joint Regional Planning Panel (JRPP) in relation to an amended Development Application for a Stage 1 Master Plan at 52-54 Pemberton Street Botany.

The application is required to be referred to the Joint Regional Planning Panel pursuant to Clause 3 of Schedule 4A of the Environmental Planning and Assessment Act 1979 (EP&A Act) as the Capital Investment Value of the proposal is \$181,294,482.00.

The application is classified as Integrated Development, pursuant to Section 91 of the EP&A Act as the development involves construction dewatering (a temporary process) and therefore requires approval from the NSW Office of Water. Future Stage 2 applications will need to comply with the General Terms of Approved by NSW Office of Water.

The original application was lodged with Council on 11 October 2013 by Newtown Dyers and Bleachers Pty Ltd (ND&B Pty Ltd).

On 5 June 2014, Australand Property Group Pty Ltd (Australand) wrote to Botany Bay Council advising that it had purchased the site from ND&B Pty Ltd, and that it now will be the applicant.

On the 28 June 2014, the application was referred to the JRPP for determination with a recommendation of refusal. The JRPP resolved to defer the consideration of the application pending the submission of amended plans by the applicant that address the reasons for refusal in Council's report.

Between June 2014 and September 2014, the applicant (Australand) met with Council officers in relation to the submission of an amended application. During these meetings, the applicant advised of amendments relating to height, floor space ratio, public park, and building locations. At these meetings, in-principle agreements were made between the applicant and Council officers, subject to the applicant providing justification for any non-compliances. This is detailed in the body of this report.

On the 25 September 2014, the applicant submitted amended architectural plans and supporting documentation. The amended application seeks consent for the following:

- Four building envelopes containing a maximum gross floor area (GFA) of 45,722sqm.
- Maximum FSR of 1.25:1 for development on land zoned B4 Mixed Use and an FSR of 1.58:1 for development on land zoned R3 Medium Density Residential.
- Building envelopes ranging as follows:
 - o 3 storey row/terrace built form along Wilson Street and New Street 1
 - o 4 storey residential flat building along Pemberton Street frontage
 - o 4 to 7 storey residential flat building adjacent to the southern property boundary
 - o 4 storey residential flat building in the northern part of the site
 - o 2 to 6 storey buildings in the north central part of the site fronting the proposed new park and publicly accessible open space
 - o 7 and 8 storey built form in the central part of the site adjacent to the proposed publicly accessible open space and north-south through-site link
- 3,000 sqm deep soil park
- Publicly accessible pedestrian and cycle site links
- New vehicular access from Pemberton Street
- 4 metre road widening along Pemberton Street.

The application is a Stage 1 Master Plan which seeks consent for the overall built form that is proposed for the site, including building envelopes, building heights, floor space ratio, the location of parking, site entries, open space and pedestrian/cycle links. The application does not seek consent for a detailed building design, dwelling mix, dwelling size or car parking numbers. This detail shall form part of subsequent future Development Applications.

The original application was first publicly exhibited for a period of thirty six (36) days from 23 October 2013 to 29 November 2013. Nine (9) submissions in objection were received including two (2) petitions with thirty-seven (37) and five (5) signatures respectively.

The amended application was notified for a period of fourteen (14) days from 15 October 2014 to 29 October 2014. 43 submissions in objection were received, with 34 of these submissions being a form letter.

The issues raised in public submissions have been addressed in this report.

The applicant has addressed the 14 items listed in the previous report to JRPP that were needed to enable the application to be supported by Council.

Council's assessment concludes that the amended application does improve the overall urban outcome for the site and that the amended proposal, in most instances, does address the preferred outcomes for the site and the reasons for refusal. However, Council officers are of the opinion that further amendments are necessary, and therefore these changes are prescribed and are to be addressed as part of a deferred commencement approval. These amendments are include:

1. Reduction in height of Building A and Building B along Pemberton Street from 4 storeys to 3 storeys. This will result in a built form that complies with the 10 metre height within the B4 zone (with the exception that the flood level and parapet/lift overrun may partially breach the height).

2. As a result of the reduction in height of Building A and Building B within the B4 zone, there will be a reduction in FSR within the B4 zone which will improve compliance with the FSR standard or result in full compliance with the FSR standard.
3. Reduction in height of Building B at the north-east and Building D north-west from 6 storey to 5 storeys.
4. The building lengths of Building B (east) and Building D (west), facing the north-south link shall be separated above level 1 so that there is a maximum building length of 55 metres in the north-south direction and a separation of not less than 12 metres is to be provided.
5. The top floor and roof of the Building B (east) and Building D (west), facing the north-south link shall be setback from the frontage by not less than 5 metres.
6. The 3rd storey of Building D and Building E along Wilson Street shall be in the form of an attic, and not a full storey.
7. All ground floor tenancies of Building B that face Pemberton Street are to be commercial use/non-residential use.
8. The deep soil park is to be constructed and delivered as public open space within the first/early stage of construction.
9. All architectural plans are to be amended to reflect the Flood Planning Levels (FPL) and the Finished Floor Levels (FFL) outlined in the Masterplan Stormwater Management Report prepared by Mott MacDonald.

A condition of consent has been included requiring that the public park be dedicated to Council. However, the Wilson-Pemberton Street section of the DCP indicates that the dedication will trigger a reduction in the required section 94 contributions for local open space (in future Stage 2 DAs); and the embellishment will be offset against section 94 contributions. Hence, although a dedication as a direct result of the development would have been desirable, this would not be in accordance with the DCP. The shared pedestrian link central spine is over the basement, and is used for infrastructure drainage, so no offsets are applicable. A public ROW will be required. The widening of Pemberton Street is in the DCP and is required as a direct result of the development, and no section 94 offsets are applicable.

1. SITE DESCRIPTION

The legal description of the allotments to which this development application relates (the site) is described below. The site is zoned part B4 – Mixed Use (8,058.5 sqm²), Part R2 – Low Density Residential (one lot of 456 sqm) and Part R3 (22,565 sqm) – Medium Density Residential.

The site was originally in ownership by ND&B P/L, however as of 5 June 2014, Council was notified by Australand that it had purchased the site, and was now the applicant.

The following summarises the legal descriptions of the site:

- Lots 1-5 DP 979152 (Zoned B4 – Mixed Use);
- Lot 51 DP 15704 (known as No. 37 Kurnell Street, Botany). (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)

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 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.

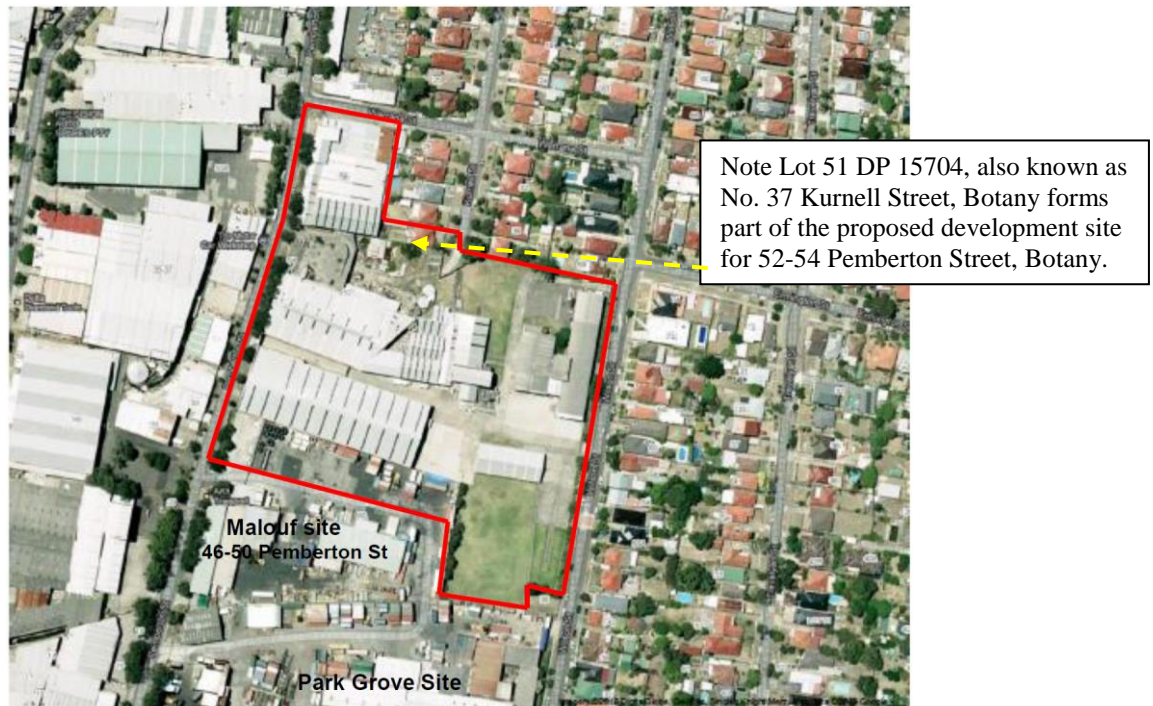


Figure 1 – The subject development site. Note the subject development application includes a residential allotment in Kurnell Street that is located outside the Precinct boundaries, as shown above.

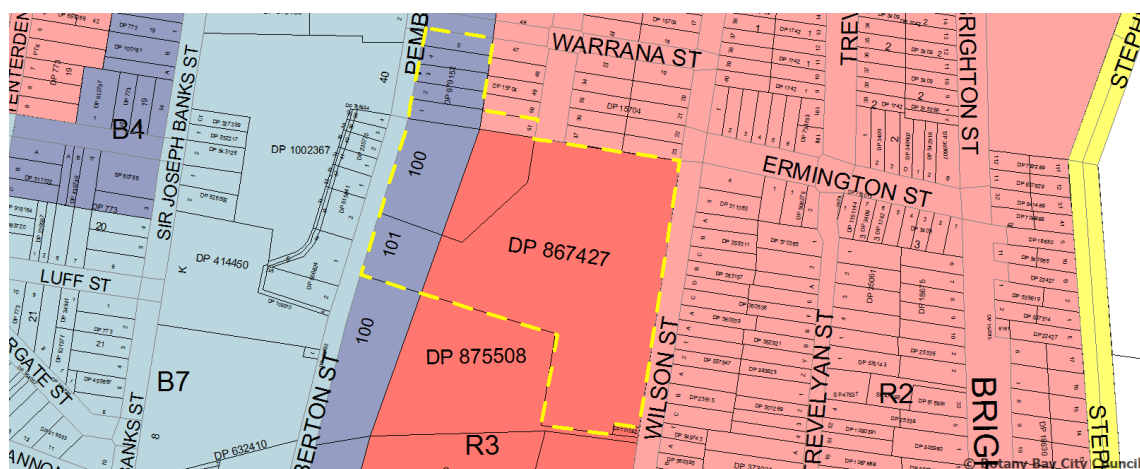


Figure 2 – Zoning Map of the development site

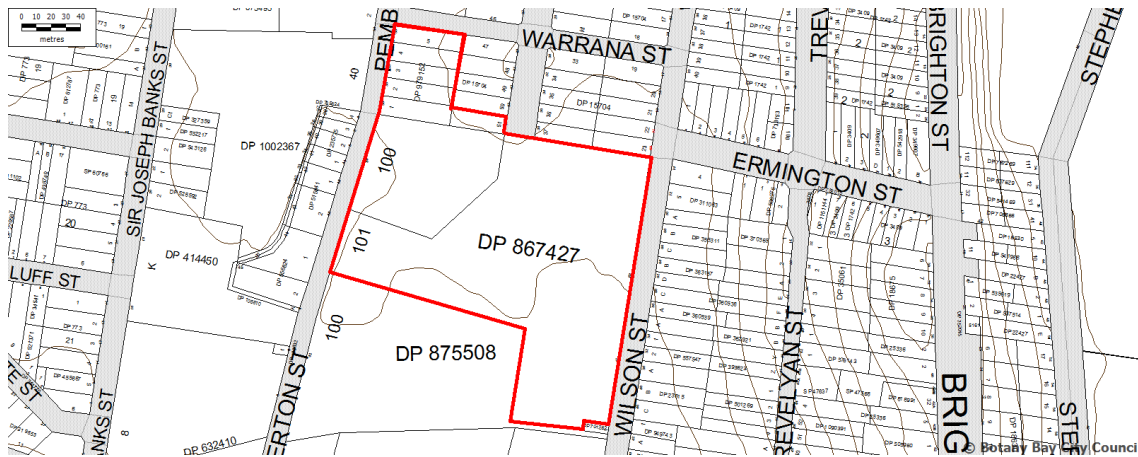


Figure 3: Site topography showing gentle slope across the site from the north-east to the south-west.

The development site (with the exception of No. 37 Kurnell Street) was previously used for the dying, 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.



Photo 1: Open space area at the south east corner of the development site.



Photo 2: Existing warehouse buildings as viewed from the central part of the development site looking west.

2. 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 42-44 Pemberton Street Botany, also referred to as 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 Parkgrove 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 3: Northern portion of Wilson Street, Botany showing townhouse development at the northern part of Parkgrove 1A, No. 25 Wilson Street.



Photo 4: 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 5: Development Site at Nos. 19-21 Wilson Street, Botany.

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.

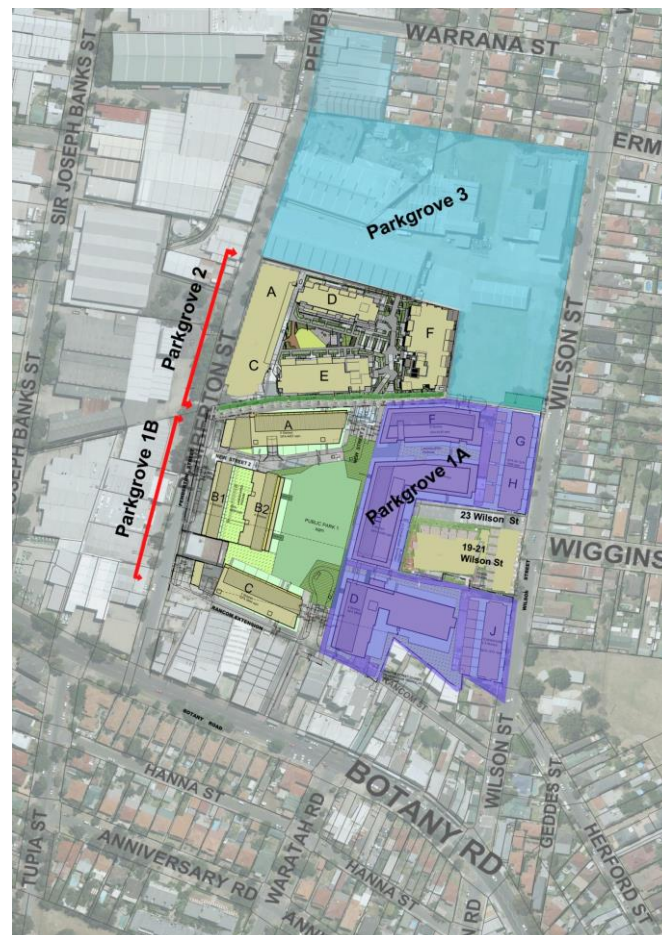


Figure 4: Development Sites within the Wilson Pemberton Precinct – the subject area is shown as 'Parkgrove 3 on this plan'..

3. THE PROPOSAL

The development application seeks approval from the Joint Regional Planning Panel (JRPP) for an Integrated Stage 1 Masterplan. On the 25 September 2014, the applicant submitted amended architectural plans and supporting documentation for the following:

- Four building envelopes containing a maximum gross floor area (GFA) of 45,722sqm.
- Maximum FSR of 1.25:1 for development on land zoned B4 Mixed Use and an FSR of 1.58:1 for development on land zoned R3 Medium Density Residential.
- Building envelopes ranging as follows:
 - o 3 storey row/terrace built form along Wilson Street and New Street 1.
 - o 4 storey residential flat building along Pemberton Street frontage.
 - o 4 to 7 storey residential flat building adjacent to the southern property boundary.
 - o 4 storey residential flat building in the northern part of the site.
 - o 2 to 6 storey buildings in the north central part of the site fronting the proposed new park and publicly accessible open space.
 - o 7 and 8 storey built form in the central part of the site adjacent to the proposed publicly accessible open space and north-south through-site link.
- 3,000 sqm deep soil park.
- Publicly accessible pedestrian and cycle site links
- New vehicular access from Pemberton Street.
- 4 metre road widening along Pemberton Street.

The original Development Application sought consent for a Stage 1 Master Plan for five (5) buildings (Buildings A to E) containing a maximum gross floor area (GFA) of 45,662 sqm and floor space ratio (FSR) of 1.27:1 in the B4 zone and 1.57:1 in the R3 zone; 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 links; and new vehicular access from Pemberton Street.

The primary amendments between the original application and the amended application include:

1. Re-distribution of building heights, including the introduction of a part 2/part 3 storey building along Wilson Street, in the form of terrace housing.
2. Deletion of Building C.
3. Provision of a 3,000 sqm deep soil park, with no portion of the park being located above a basement structure.
4. Increased setbacks to the low density residential dwellings along Kurnell Street.
5. Introduction of two ground floor commercial tenancies along Pemberton Street.

The application seeks consent for the overall built form of the proposal, including building envelopes, building heights, floor space ratio, the location of parking, site entries, open space and pedestrian / cycle linkages (through-site links). The application does not seek consent for a dwelling mix, dwelling size or car parking numbers, which shall form part of future Development Applications. The applicant has advised that there are two potential

schemes for the site which range in yield between 394 and 449 apartments. This will be detailed in future Stage 2 applications.

The Master Plan for the site is detailed in the following figures. A copy of the original master plan is provided at figure 7:

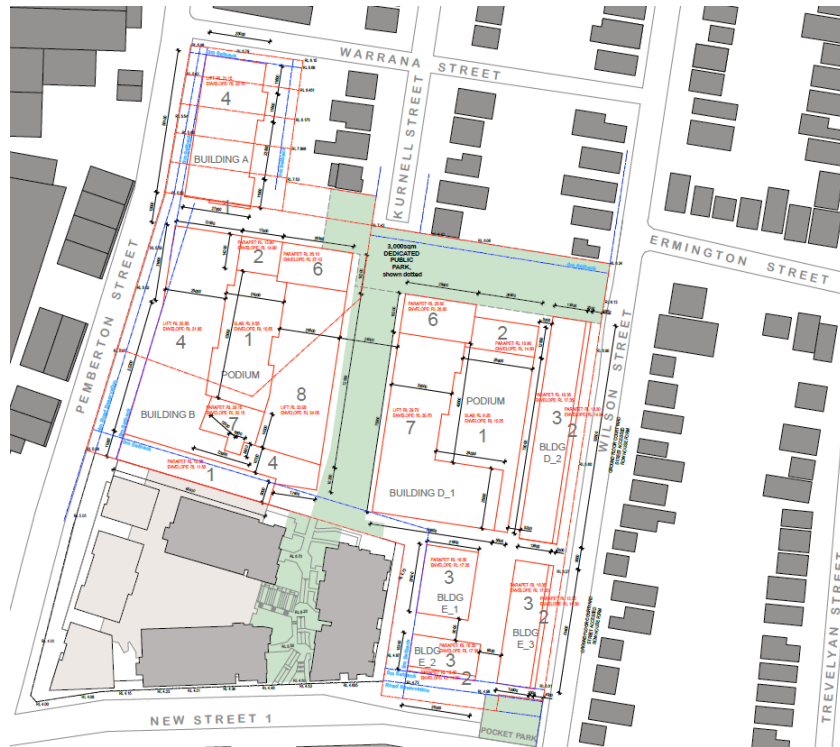


Figure 5: Stage 1 Proposed Masterplan showing indicative building heights, built form and through site links.



Figure 6: Context plan indicating heights of adjoining development to the south – note some heights to the south have been reduced in the actual approval.



Figure 7: Original master plan as lodged (now superseded).

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

Building	Location	Height (storeys)	Adjoining Development
A	North west portion of Site with frontage to Pemberton and Warrana Streets.	4 storeys along Pemberton Street	Two storey industrial warehouses on Pemberton Street and low density residential dwellings along Kurnell Street
B	Western portion of the site with frontage to Pemberton Street and the proposed park.	1-8 – taller heights located to the centre of the site	Two storey industrial warehouses on Pemberton Street, and recently approved mixed use development to the south
D	Eastern portion of the site with frontage to Wilson Street	1-7 - taller heights located to the centre of the site	1-2 storey residential dwellings on Wilson Street
E	South east portion of the site with frontage to Wilson Street and New Street 1.	2- 3	1-2 storey residential dwellings on Wilson Street

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

Numeric Overview

The numeric overview of the proposed Master Plan (as applied for by the applicant) is as follows:

Site Area	31,079.5 sqm
GFA	45,722 sqm
FSR	1.25:1 in the B4 zone and 1.58:1 in the R3 zone
Dwelling Yield	394 - 449 (indicative only)
Publicly Accessible Open Space	6,000m ² , comprising deep soil park 3,000 sqm and 3,000 sqm through-site link
Deep Soil	4,700 sqm (15% of site area, including deep soil park)

Table 2: Numeric overview of the proposal, according to the Applicant

B4 Mixed Use Zone

The western frontage of the site along Pemberton Street is zoned B4 Mixed Use, and the proposal seeks consent for a residential flat building with ground floor residential purposes, and two commercial tenancies. Part 9C.5 of the DCP and the LEP objectives of the B4 zone require that ground floor areas within the B4 Mixed Use zone be non-residential uses. Further, the site to the south at 42-44 Pemberton Street has included ground floor non-residential uses. This is addressed further in this report.

Height of Building

The application proposes a height non-compliance within the B4 and R3 zoned portions of the site that range from 2.09m to 5.99m. It is noted that some building heights comply with the height control. This is detailed in the assessment section of this report.

The applicant has submitted a Clause 4.6 Exception in support of the proposed non-compliance. Council officers have assessed the Clause 4.6 Exception and conclude that in certain instances, a reduction in height is necessary. This is discussed further in the body of this report.

Floor space ratio

The proposal seeks consent for an FSR of 1.25:1 in the B4 zone, 1.58:1 in the R3 zone and no FSR/Floor area within the R2 zone. The total gross floor area of the development is 45,722m². The distribution of the floor area results in a non-compliant FSR within the B4 zone, however the FSR is compliant within the R3 and R2 zone. This is detailed in the assessment section of this report.

Public Domain Works and Open Space

The Master Plan includes the provision of a publicly accessible park of 3,000sqm on the north-eastern corner of the site. The park is located on deep soil. The DCP required the dedication of a park of 3000 sq metres, and indicated that the dedication and embellishment may be off set against section 94 contributions. The applicant has indicated

in preliminary terms that the park may be dedicated to Council via a Voluntary Planning Agreement as part of a future Development Application. However, if the dedication is required, the offsets can be handled under section 94(6) of the Act, and a Planning Agreement is not required in this regard. Council has included a condition that the park must be dedicated to Council under the Stage 1 application. Council officer's support the provision of the relocated deep soil park, and this is consistent with the recommendations outlined in Council's previous report dated 18 June 2014.

The application includes a through site link from south to north, which follows the alignment of Kurnell Street and provides a connection between Kurnell Street and the development to the south at 42-44 Pemberton Street. The proposal also includes an east-west site link connecting Pemberton Street to the deep soil park and Wilson Street. The applicant has submitted concept landscape plan which shall be further refined as part of future Development Applications. This link is above the car park, and contains infrastructure needed as a result of the development, hence does not qualify for any offsets under section 94 contributions. The embellishment and creation of a public ROW will be a condition of approval, as a direct consequence of the development.

The application includes a 4 metre road reserve on Pemberton Street in accordance with the DCP. The road widening is a direct result of the development and no section 94 offsets are applicable.

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.

Parking and Traffic

Vehicular access to the external road network is proposed via Pemberton Street, with the potential for an additional access to New Street 1. The development includes a single level basement car park with a level of ground floor car parking within Building B and Building D. The applicant has indicated that the number of car parking spaces to be provided does not form part of the application and will be addressed as part of subsequent development applications, once the apartment mix and yield has been determined.

The applicant has submitted a Traffic Impact Assessment Report prepared by Traffix. The report undertook a survey of intersection performances and SIDRA modelling, including a cumulative assessment that considered adjoining development (42-44 Pemberton Street). The report concludes that the development shall have no impact on the current levels of service at intersections in the locality.

Flood and Stormwater Management

As part of the amended application, the applicant submitted a Stormwater and Services Concept Report. Council officers requested further information, particularly in relation to the flood levels associated with the development. The applicant submitted an amended report in the form of a Masterplan Stormwater Management Report on the 1 December

2014. Council engineers have advised that the information in the report is generally satisfactory, however have requested that further detailed information be submitted as part of future Stage 2 applications for the site. This has been included as a condition of consent.

In addition, the amended report outlines the minimum Flood Planning Level (FPL) requirements for habitable and non-habitable areas within the development. The architectural plans are required to be amended to adopt the minimum FPL. This has been included as a deferred commencement condition.

4. 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 comments on 19 December 2013.

The General Terms of Approval shall form a condition of consent with any future Stage 2 application for building works.

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 amended application was referred to the RMS on 20 October 2014. The RMS responded on 10 November 2014 raising no objection to the amended proposal.

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

As the application is a Stage 1 Master Plan, a BASIX Certificate was not submitted with the 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 industrial uses since the 1930s.

The Applicant submitted a Phase 1 and 2 Environmental Site Investigation prepared by WSP Environmental. The investigation recommends that a detailed site investigation report and Remedial Action Plan be lodged with future applications.

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 residential use.

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 subject Master Plan is 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. The amended application seeks consent for a height variations to Building A and B (west wing) within the B4 zone, and a height variation to Building B (south, east and west wing) and Building D (south and west wing) within the R3 zone. The height variation ranges between 2.09 metres and up to 5.99 metres, with the greatest height variation contained within the middle of the site, being an 8 storey building.

Council recommendation is that the height along Pemberton Street be reduced from 4 storeys to 3 storeys and that Building B to the north-east and Building D to the north-west be reduced from 6 storeys to 5 storeys. This reduction in height will result in a development that is contextually acceptable and is more consistent with the setting and desired future character of the area. The 8 storey portion is contained to the centre of the site, which is an appropriate location for the tallest building. This provides a buffer from the low density residential.

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 394 apartments (dependent upon the mix – approval is sought in this Stage 1 DA for GFA only, not apartment numbers) divided between 4 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 three-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 5.79 metres. The development to the south of the site at 42-44 Pemberton Street was approved by the JRPP with a height that transitions towards the south starting at 3 storeys, 4 storeys and up to 6 storeys within the B4 zone. It is appropriate that the subject site continues this transition, by adopting a maximum 3 storey height within the B4 zone. This will provide a consistent streetscape presentation along Pemberton Street and continue the transition north towards the low density development along Kurnell Street. Therefore, it is recommended that the buildings along Pemberton Street be reduced in height to a maximum 3 storeys.

Figure 6 below is an aerial of the site which shows the footprint of existing industrial buildings compared with the proposed Master Plan.

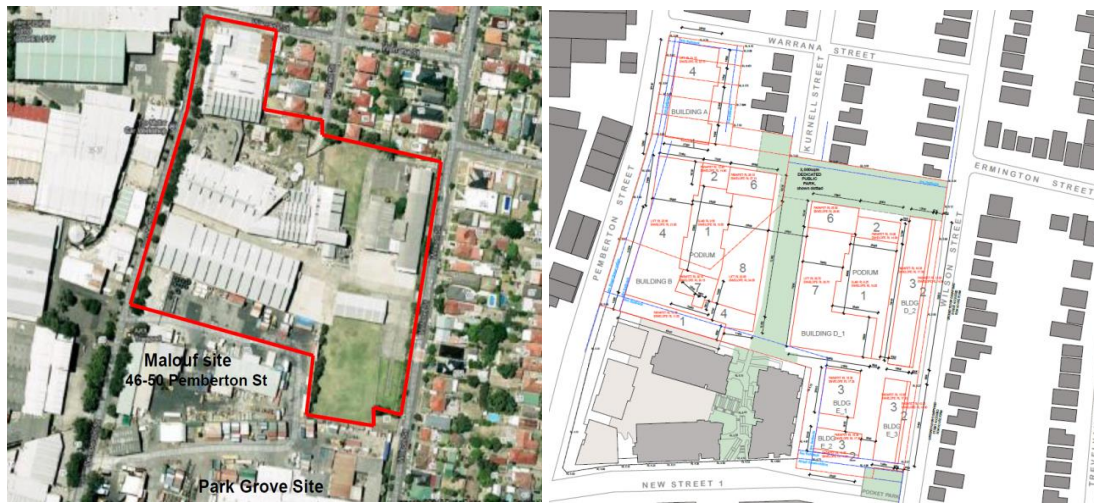


Figure 8: existing buildings compared to proposed building footprints and heights.

Figure 8 shows that the existing built form is evenly split between the east and west of the site, with a reduced height of 2 and 3 storeys along Wilson Street, improving the interface with adjoining low-density residential dwellings to the east.

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. However, this report recommends that the height of Building B north-east and Building D north-west be reduced from 6 storeys to 5 storeys to improve the scale of the development at the interface with the sensitive low density residential development to the north and mitigate impacts associated with privacy and interface.

In addition, Council officer's recommend that the buildings lengths of Building B (east) and Building D (west), facing the north-south link should including a building break, with a separation above level 1 so that there is a maximum building length of 55 metres in the north-south direction and that the separation be not less than 12 metres. This shall reduce the lengths and overall scale of the buildings when viewed from the north-south link.

The Master Plan, as amended by the recommendations in this report, will improve the interface between the proposed development and adjoining development. This is further demonstrated by the introduction of terrace style housing along Wilson Street (2-3 storeys), setbacks to the low-density dwellings on Kurnell Street, and positioning of taller buildings towards the centre of the site.

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 some have been included as a condition of consent, with details to be provided 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 supported.

In particular, Council officer's recommend that the ground floor of Building B along Pemberton Street be utilised for commercial/non-residential uses to provide activation. The adjoining development to the south at 42-44 Pemberton Street includes ground floor commercial uses along Pemberton Street. Therefore, it is appropriate to provide consistency along the Pemberton Street frontage by requiring the applicant to include commercial uses within the ground floor of Building B. This is recommended as a design amendment within this report.

It is noted that the building depths Building B west and east, Building D, west and east exceed the maximum 18m standard, however there is scope for the building depth to comply as part of future applications under Stage 2, where building layouts/design and articulation can be provided.

Principle 4: DensityDRP 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 45,722sqm, generating an FSR of 1.58:1 in the B4 zone and 1.25:1 in the R3 Zone.

There are around 394 to 449 units anticipated 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 applicant has submitted a Clause 4.6 Exception for the non-compliant FSR within the B4 zone. This report recommends that the height within the B4 zone be reduced, which correspondingly will reduce the FSR of the development within the B4 zone. An assessment in relation to the floor space ratio is provided under the Botany Bay LEP 2013 section within this report.

Notwithstanding the above, the proposed FSR within the R3 zone is compliant. It is noted that the lot that is zoned R2 proposes no built form upon it.

Principle 5: Resources, energy and water efficiencyDRP'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 application includes the provision of a 3,000sqm deep soil park along Wilson Street. The park has been relocated from previously being located in the centre of the site, and is supported. The applicant indicates that the park shall be dedicated to Council and shall become public open space. In addition to the park, the proposal includes a north-south site link, and east-west site link that provides pedestrian connectivity through the site and onto the adjoining public street network. The application is supported by a concept landscape plan. The proposed landscaping treatments include communal open space within the podium and at grade, park structures and furniture, pedestrian links and potential play areas. An extract is provided at Figure 9.



Figure 9: Concept Landscape plan.

The applicant submits that the footprint covers 17,228.2sqm, representing a site coverage of 55.4%. Council's assessment concludes that the site coverage is more likely to be approximately 70% of the site and extends outside the footprint of the proposed buildings due to the basement structure. This is illustrated in the figure 10 image, which shows the extent of the basement structure.



Figure 10: Basement plan.

In lieu of more substantial deep soil, the application proposes other forms of landscaping, such as the north-south link and the east-west link that are located above the basement structure and shall be landscaped. This is in addition to the 3,000sqm deep soil park on the Wilson Street frontage, and the deep soil zones along the perimeter of the site. The total proposed landscaped area equates 11,087sqm or 37.9% of the site area. The total level of deep soil is 4,700sqm or 15% of the site area.

In addition, Council consider that the early delivery of the park to the community would be of benefit. The park does not involve any substantial excavation and it would be beneficial to deliver the design and construction of the park in the early stages of the development, providing a community benefit in terms of early access to the public open space as well as installation new planting to screen the construction phase of the development from the low density areas to the north. A condition is included recommending that the park be delivered at the early stage within the construction of the development.

Other improvements for additional open space can include rooftop terraces on future buildings. This can be investigated as part of future Stage 2 applications.

The proposed landscaping treatments are considered acceptable with the requirements SEPP 65 and Council's DCP, and 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 will be 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 creation of common areas/open space on rooftops (green roofs). 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.

The orientation of the site allows for the majority of adjoining dwellings/development to retain a compliant level of solar access, with the exception of the development to the immediate south at 42-44 Pemberton Street. An assessment in relation to overshadowing is provided under the BB DCP 2013 section in this report.

In relation to solar access and cross ventilation of the apartments, these matters will need to be considered and assessed as part of future Stage 2 applications.

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. 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. These matters can be addressed as part of future Stage 2 applications.

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. This can be further addressed as part of future Stage 2 applications.

Principle 10: Aesthetics

DRP 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 an assessment of the application is provided at Appendix A.

The main areas of non-compliance are addressed as follows:

1. Use of ground floor of units in B4 Zone (Pemberton Street)

The applicant proposes to utilise the ground floor area of Building A and Building B which are located within the B4 Mixed use zone as residential uses with two tenancies nominated as commercial spaces. 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 building within the B4 zone is in the form of a residential flat building, with two ground floor commercial tenancies. Of the 20 tenancies/apartments on the ground floor, two are non-residential and the balance are residential apartments. The proposed use of the ground floor as primarily residential is inconsistent with the zone objectives for the B4 Mixed use zone and inconsistent with the requirements of the Botany Bay DCP 2013 – Part 9, which envisages non-residential ground floor uses that shall activate the precinct. It is accepted that a residential flat building is permissible within the B4 Mixed Use zone, however for the development to be supported, it must also be consistent with the zone objectives. In this regard, the primary use of the ground floor within the B4 zone as residential is not consistent with the objectives of the zone.

Whilst the application includes two commercial tenancies, this will not provide sufficient activation along Pemberton Street. In comparison, the development to the south at 42-44 Pemberton Street has included ground floor commercial uses along the entire frontage on Pemberton Street, which is also zoned B4 Mixed Use.

In order for compliance with the zone objectives of the B4 Mixed use zone, it is required that the entire ground floor of Building B along Pemberton Street be utilised for ground floor commercial uses. This will provide a greater activation of the ground floor and a consistency with the adjoining development to the south.

In relation to the ground floor of Building A, Council officers are willing to permit residential use, as this building interfaces with the adjoining low density residential development along Kurnell Street and parts of Warrana Street.

Therefore, it is required that the applicant amend the application to include ground floor non-residential uses within the portion of Building B that is located on the B4 Mixed Use zone and fronts onto Pemberton Street. This amendment is listed as one of the deferred commencement amendments to be carried out by the applicant.

2. Height of buildings – Clause 4.6 Exception

The application proposes the following height variations, which range from 2.09m to 5.99m as outlined in the Table 3 below:

Proposed Building Heights – 52-54 Pemberton Street Master Plan					
Building	Permitted Height (m)	Storeys	Proposed Height (m)	Storeys	Non-compliance
B4 Mixed Use Zone					
Building A	10	3 (**2 plus attic)	15.52	4	5.52 m
Building B (west)	10	3 (**2 plus attic)	15.79	4	5.79 m
R3 Medium Density Zone					
Building B (south wing)	22	7 (6*)	24.09	7	2.09 m
Building B (east wing)	22	7 (6*)	27.99	8	5.99 m
Building D (south/west wing)	22	7 (6*)	24.43	7	2.43 m
Building B (north east wing)	22	7 (6*)	21.04	6	Complies
Building D (east wing)	22	7 (6*)	11.38	2/3	Complies
Building E	22	7 (6*)	11.34	2/3	Complies

Table 3: Master Plan proposed heights

*The draft Botany Bay LEP amendment (not yet exhibited), originally proposed in December 2013, and as now re-drafted and agreed to by Council on 5 November 2013, limits development to 6 storeys in the 22 m zone.

**Clause C7.2 in the DCP requires sites over 2000 sqm that use the bonus clauses in the LEP to provide 2 storeys plus an attic form, and not three full storeys.

The height non-compliance occurs within both the B4 zone and the R3 zone. It is noted that some of the building heights within the R3 zone are compliant (for example Building B north-west wing, Building D east wing and Building E).

However, the proposed heights will be affected by the minimum Flood Planning Level (FPL) outlined in the Masterplan Stormwater Management Report prepared by Mott MacDonald, dated November 2014. It is likely that some heights may increase as a result of adopting the FPL. A deferred commencement condition has been included requiring the applicant to submit amended architectural plans that adopt the recommended FPL in the Masterplan Stormwater Management Report.

The development application is seeking a departure from Clause 4.3 Height of Buildings. The applicant has submitted a Clause 4.6 Exception in support of the non-compliance. An assessment of the Clause 4.6 Exception is provided below. In summary, Council officers do not support the proposed height departure within the B4 zone, for the reasons listed in this section and recommends that the height be reduced from 4 storeys to 3 storeys.

In relation to the R3 zone, Council officers have assessed the Clause 4.6 Exception and conclude that the objection is well-founded and can be supported for the reasons listed in this section.

Preliminary Assessment

Question 1 – Is the requirement a development standard and if so is it one to which subclause 8 applies?

Sub-clause (8)(a) and (b) are not relevant as the development standards that are relevant are not in relation to Complying Development or BASIX Commitments or miscellaneous development in Clause 5.4.

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

The objectives of the development standard being Clause 4.3 Height of Buildings are outlined as follows.

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

- (a) to ensure that the built form of Botany Bay develops in a coordinated and cohesive manner,*
- (b) to ensure that taller buildings are appropriately located,*
- (c) to ensure that building height is consistent with the desired future character of an area,*

- (d) to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development,*
- (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 applicant contends that the development application meets the objectives of the development standard, and further meets the objectives of the B4 and R3 zone. A copy of the applicant's Clause 4.6 Exception to the Development Standard is attached at Appendix C for the consideration of the JRPP.

Assessment of Variation to Development Standard

Question 1 – Is compliance with the development standard unreasonable or unnecessary in the circumstance of the case (Clause 4.63(a))?

His Honour Preston CJ sets out five alternative ways of establishing that compliance is unreasonable or unnecessary in *Wehbe v Pittwater Council (2007) NSW LEC 827*, albeit only one of these 5 ways needs to apply .

This may be found if the proposal meets the objectives of the development standard notwithstanding its non-compliance with the standard.

The objectives of Clause 4.3 - Height of Buildings as specified within BBLEP 2013 are outlined as follows:

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

Buildings A and Building B (west) fall within that part of the site zoned B4-Mixed Use. The maximum height limit is 10 metres under Clause 4.3 BBLEP 2013. The proposed development seeks a range in height from 15.52 metres (inclusive of lift overruns) to 15.79 metres (inclusive of lift overruns), being a 4 storey building. The building includes two non-residential uses on the ground floor. The proposed height results in a non-compliance with the maximum height limit of 5.52 metres to 5.79 metres. The building height includes a parapet and lift overrun, which increases the overall height non-compliance.

Reference is made to a recent approval by the JRPP for the development at 42-44 Pemberton Street Botany, which approved a height transition along Pemberton Street that ranged from 3 to 4 to 6 storeys. This is illustrated in Figure 11:



Figure 11: Extract of approved development along Pemberton Street, to the south at 42-44 Pemberton Street. Transition in height from 3 storeys, to 4 and 6 storeys.

The development at 42-44 Pemberton Street is located to the immediate south of the site, and therefore is part of the Pemberton Street streetscape. In this regard, it is necessary that a coordinated and cohesive streetscape presentation be delivered for Pemberton Street and that this is best provided by continuing the transition in height and requiring the subject development to be a maximum of 3 storeys along Pemberton Street. This improves the transition and interface to the low density development along Kurnell Street and Warrana Street.

The applicant contends that the additional storey within the B4 zone has enabled an enlogobo approach for the distribution of building heights across the site and that the proposed heights in the B4 zone are more comparable with the scale of existing industrial development to the west opposite the site, therefore providing an appropriate transition westwards from the R3 zone and across to the B7 Business Park zone which has a 12 metre height control.

Council disagrees with this position. The proposed height non-compliance within the B4 zone sits at odds with the recently approved 3 storey height within the B4 zone at 42-44 Pemberton Street and will not provide a cohesive and coordinated approach to the built form along Pemberton Street. It is necessary that the subject development have a reduction in height from 4 storeys to 3 storeys within the B4 zone in order to provide a cohesive streetscape within Pemberton Street.

In addition, the FSR within the B4 zone is also non-compliant, and the FSR non-compliance is as a direct result of the height non-compliance within the B4 zone. Thus, both the FSR and Height non-compliance within the B4 zone are self-propelling.

The recommended reduction in height within the B4 zone shall result in a reduction in FSR within this part of the development. This is discussed further at Note 3 – Floor Space Ratio.

In order to satisfy objective (a) of the height standard within the B4 zone, the height must be reduced from 4 storeys to 3 storeys. This is listed as a deferred commencement condition.

In relation to the R3 zone, the proposed non-compliant heights are Building B (south wing) 24.09 metres, Building B (east wing) 27.99 metres, Building D (south/west wing) 24.43 metres and Building B (north east wing), 21.04 metres. The height departure ranges from 2.09 metres to 5.99 metres.

The majority of the non-compliant height within the R3 zone is contained toward the centre of the site and is positioned away from the low-density residential. The height is further buffered from the low density residential by proposed setbacks, building separation and landscaped areas. This is provided in the form of the public park and the east-south link and north-south link. Notwithstanding, this report recommends that the heights of Building B (north-east) and Building D (north-west) be reduced from 6 storeys to 5 storeys separation distances from the low density to the north. The intent is that this provides a transition to the low density residential to the north (Warrana and Kurnell Streets) where the interface with building height is more sensitive.

As a result of this height reduction, it may be possible that additional height could be considered on Building E1 and E2 (west) from 3 storeys to 4 storeys. This could assist in re-distributing any lost FSR from the B4 zone, onto this R3 portion of the site. In discussions with the applicant, they did not consider this height distribution as an option for the application.

The non-compliant height within the R3 zone has been distributed to better respond to the surrounding context. Containing the taller builders to the centre of the site provides a better transition with the low density, so as to not dominate the skyline. The location of the building bulk removed from sensitive low density residential areas to the north and east ensure that there is a co-ordinated and cohesive approach to the distribution of building height within the Precinct and across the subject site taking into account the context of building height within the locality.

Further, the placement of terrace house form along the eastern portion of the site fronting Wilson Street provides a built form that is consistent with the adjoining terrace development and provides a cohesive and coordinated approach to the height along Wilson Street. The terrace form is substantially lower than the permitted 22 metre height, being 11.38 metres, and this distribution of height is considered acceptable.

Therefore, the building bulk within the R3 zone has been removed from the more sensitive low density areas and has been positioned toward the centre of the site to provide a coordinated and cohesive approach to the distribution of building height across the site.

Subject to the reduction in height along the B4 zone from 4 storeys to 3 storeys, and the reduction in height of Building B (north-east) and Building D (north-west) be reduced from 6 storeys to 5 storeys, the proposed distribution of height generally achieves a coordinated and cohesive built form.

(b) to ensure that taller buildings are appropriately located,

As stated above the proposed taller buildings are to be centrally located within the site. To address the transition in building height the proposal incorporates a reduction in height/storeys as you travel west/east and north from the centre of the site. The position of the taller buildings will be less visible from adjoining properties and shall not dominate the streetscape. Conversely, the proposal

accommodates reduces heights along Wilson Street to better address the sensitive parts of the site.

It is considered that the proposed distribution of heights allows for the taller buildings to be located in the most suitable position. However, to ensure that a better transition is provided, this report recommends that Building A and Building B within the B4 zone be reduced from 4 storeys to 3 storeys, and that the height of Building B (north-east) and Building D (north-west) be reduced from 6 storeys to 5 storeys. This will provide a better transition that supports the taller heights in the centre of the site.

It is therefore considered that the stepping of the built form has appropriately located the taller building element centrally located within the site.

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

The desired future character of the area is detailed within Part 9C of the BBDCP2013. The vision statement for the Precinct is that *it will be a predominately residential neighbourhood that integrates with the suburb of Botany and Banksmeadow. It will be a place where people can live, work and play in a safe and comfortable environment. To achieve this vision the area will offer a diversity of housing types of a high design standard, and good quality communal open spaces and local public open spaces to meet the needs of the Botany Bay local community.*

As stated above given that there are low density residential area surrounding the Precinct this has prompted the location of taller buildings toward the centre of the site, which are physically removed from the sensitive low density areas to the north and east. The height of the buildings however do present a consistent building height with the immediately adjoining residential flat buildings in the R3 zone within the Precinct. It is accepted that the site proposes taller buildings in the form of an 8 storey and 7 storey building, however, as discussed previously, these heights are contained toward the centre of the site and are appropriately positioned.

The proposal provides diversity in housing opportunities within the site and within with the provision of 1 bedroom, 2 bedroom and 3 bedroom apartments. Good quality communal open space is provided within the site in the form of the deep soil park and the through site links.

With reference to the B4 zone the BBDCP 2013 states that *Employment in the precinct will be maintained by providing the opportunity for new and emerging businesses along Pemberton Street. The businesses will be compatible with residential and provide residents with a buffer to the industry to the west. In addition, this strip of businesses will provide an opportunity for a live and work environment.*

The proposal includes two ground floor non-residential commercial uses on Pemberton Street. However, it is noted that the development to the south at 42-44 Pemberton Street was approved with the entire ground floor being non-residential. In order to provide consistency with the desired future character, it is recommended

that the entire ground floor of Building B facing Pemberton Street be amended to include non-residential uses. This shall encourage flexible opportunities for business development along Pemberton Street

This shall retain consistency with Part 9C of the BBDCP 2013, which identifies the desired future character for the B4 Mixed Use zone along Pemberton Street as the B4 zone within the Wilson/Pemberton Street Precinct is anticipated to develop into a high quality area of mixed uses featuring medium density housing, low impact commercial and business uses and creative industries. New works in the public domain along Pemberton Street will be required such as landscaping and pedestrian pathways to improve the amenity of the Street and encourage pedestrian movement and live/work opportunities. The redevelopment of the B4 Zone is to provide a transition from non-residential in the B7 Zone in the Botany South Precinct to surrounding residential uses with the intention of buffering any adverse amenity issues created within the B7 zone.

As stated above this report recommends that the ground floor of Building B be amended to include non-residential uses fronting Pemberton Street, which shall provide consistency with adjoining development and the desired future character of the area. In addition, the application includes road widening to Pemberton Street which will include improvements to the public domain including new footpaths, road surfaces, curb and guttering and street trees.

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

The applicant contends that the redevelopment of the site will change the visual appearance of the site when viewed from surrounding development, but that the change is not view loss or negative visual impact as the proposal will replace unsightly views of redundant and outdated industrial buildings, which do not provide high visual amenity.

It is generally agreed that replacement of the industrial buildings will improve the visual amenity of the site, and that any redevelopment on this site will result in a change in visual appearance.

The extent of visual impact is acceptable, as the proposal is generally in accordance with the desired future character for the area, as detailed in the BBDCP 2013. However, as recommended in this report, further height reductions are required in order to mitigate visual impact and privacy impacts and to improve solar access.

Further, the proposal incorporates adequate setbacks and building separation, with buffered landscaped areas to mitigate impacts to the more sensitive low density areas to the north. This report recommends that the height of the adjoining development to Warrana Street and Kurnell Street be reduced from 4 storeys to 3 storeys and from 6 storey to 5 storeys. This shall reduce the privacy impacts upon the adjoining sensitive low density areas. Detailed analysis of privacy impacts shall be undertaken as part of future Stage 2 applications, where detailed building design solutions can further mitigate privacy impacts.

- (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 JRPP recently approved a height of 3, 4 and 6 storeys along the B4 zone at 42-44 Pemberton Street, which is located to the immediate south of the site. The 3 storey portion of that site is located adjacent to the proposed 4 storey portion within the B4 portion of the subject site. The proposed four storey height along Pemberton Street will be inconsistent with the approved height at 42-44 Pemberton Street and therefore provide an adverse streetscape presentation when viewed from Pemberton Street.

In order to provide a consistent streetscape presentation, it is necessary that the subject site also accommodate a 3 storey height within the B4 zone along Pemberton Street. This has been discussed in this report, and is recommended as a deferred commencement amendment.

In relation to Wilson Street, the proposed 2 and 3 storey terrace form is considered to be appropriate and consistent with adjoining development and does not adversely affect the streetscape, skyline or landscaped. However, a deferred commencement condition has been included requiring that the 3rd storey be in the form of an attic.

In relation to the departing heights within the R3 zone, as outlined in this report, the heights are contained toward the centre of the site and are buffered from the streetscape by the building setbacks/separations and transitions in building heights. The taller buildings are visible, however their visibility does not adversely affect the streetscape, as the streetscape is appropriately addressed via 2/3 storey form on Wilson Street, and the amended 3 storey form on Pemberton Street.

In addition, the streetscape and landscape relationship is improved by the provision of a deep soil park along Wilson Street and the north-south and east-west through site links. Additionally, the proposed setbacks on Pemberton Street provide opportunities for landscaping as detailed in the concept landscape plan. This can be further detailed in Stage 2 applications.

Therefore, the height departure within the R3 zone retains compliance with this objective.

Conclusion

Council has considered the applicant's written request for a Clause 4.6 Exception. As outlined, Council supports the proposed height variation within the R3 zone for the reasons listed in this section. However, further height reductions are required as outlined in this section.

Council does not support the proposed height variation within the B4 zone, as it does not result in a cohesive and coordinated approach to building height along Pemberton Street and is not consistent with the desired future character of the area. As outlined in this section, the proposed height departure within the B4 zone does not attain compliance with the objectives of the height development standard and is not supported.

Council recommends as a deferred commencement condition, that the height within the B4 zone be amended from 4 storeys to 3 storeys.

The variation to the building height standard within the R3 zone is such that compliance with the development standard is unreasonable or unnecessary in the circumstance of this case as the numerical non-compliance maintains compliance with the objectives of the development standard. Given compliance with the objective is achieved, there is no need to go any further and assess other matters as stated in *Wehbe v Pittwater Council (2007) NSW LEC 82*.

The proposed development meets the objectives of the development standard as demonstrated above.

Consideration of the public interest and environmental planning grounds is addressed below to further justify the departure from the development standard.

Question 2 – Are there sufficient environmental planning grounds to justify contravening the development standard? (Clause 4.6(3)(b))

The applicant has outlined the environmental planning grounds to justify contravening the development standard. In the circumstances, Council Officers are of the opinion that the applicant has adequately addressed this requirement, to the extent that Council are willing to support the proposed non-compliances within the R3 zone.

However, as outlined in this report, Council officer's do not support the proposed height departure within the B4 zone, and there is no sufficient environmental planning grounds to justify a contravention of the height within the B4 zone. This is on the basis that the height departure within the B4 zone does not achieve compliance with the objectives of the height development standard, and cannot be supported.

Council believes there is environmental planning grounds to justify contravening the height development standard within the R3 zone for the following reasons:

- The proposed height departure within the R3 zone satisfies the objectives of the height development standard. An assessment of the objectives of the standard has been provided, and the proposal satisfies the objectives.
- The proposed height departure within the R3 zone retains compliance with the objectives of the zone. This is discussed further at Question 3 below.
- The proposed taller buildings have been appropriately sited in the centre of the site, and the proposal incorporates adequate transitions and building steps that provides an acceptable interface with the low density residential uses.
- The site was previously used for industrial purposes and as a result of these land uses remediation of the site and the Precinct as a whole has been required. The remediation

of the site does justify the contravention of the development standard as it has resulted in a better environmental amenity for the area and the future public open spaces to be providing within the Precinct.

- The proposed departure within the R3 zone does not raise any matters of significance or State or Regional environmental planning significance.

However, Council does not support the height departure within the B4 zone, as it considers that there is insufficient environmental planning grounds for this departure. This is outlined further at Question 3.

Question 3 – Will the proposed development 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?

In relation to the B4 zone, consideration is given to the objectives of the zone. The objectives of the B4 zone are as follows:

- *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 applicant contends that the proposal satisfies the objectives of the B4 zone, as the zone permits stand-alone residential flat buildings as a permissible use with consent in the zone, and that the development provides two commercial tenancies (including a café) on the ground floor fronting Pemberton Street.

Whilst it is accepted that residential flat buildings are permitted with consent, Council officer's disagree that a stand-alone residential flat building with two commercial uses within the B4 zone, achieves compliance with the objectives of the B4 zone. The objectives of the zone seek a mixture of compatible land uses and an integration of suitable business, commercial and residential land uses.

Reference is made to the approval of the adjoining development to the south at 42-44 Pemberton Street Botany which approved commercial uses on the entire ground floor of the building fronting onto Pemberton Street. As part of Council's consideration of that application, it was considered necessary that ground floor commercial uses be provided to deliver a compatible land use that integrates residential and commercial uses. Further, the desired future character for the precinct, as established by the BB DCP 2013, envisages that Pemberton Street shall accommodate an active frontage at street level within the B4 zone, which will include non-residential uses.

Accordingly, the proposal does not attain compliance with the objectives of the B4 zone, as it does not include any substantial commercial use along the ground floor of Pemberton Street. Therefore, the proposed variation to the height control does not satisfy the objectives of the B4 zone and cannot be supported.

Therefore, the variation to the height control in the B4 zone is not in the public interest and is not supported.

Council have included a deferred commencement condition requiring that the entire ground floor of Building B that fronts onto Pemberton Street include non-residential uses. Council is willing to accept that the ground floor of Building A along Pemberton Street can accommodate stand-alone residential flat buildings, given this building is at the interface with the low-density residential on Kurnell Street and Warrana Street,

In relation to the R3 zone, consideration is given to the objectives, which are:

- *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.*

The proposal is considered to achieve compliance with the objectives of the R3 zone as it provides for the housing needs of the community, providing a mixture of dwellings in the form of 1, 2 and 3 bedroom apartments and terrace dwellings along Wilson Street. The housing diversity will provide for housing choice for the community.

The proposal includes the provision of a deep soil park and pedestrian links that are proposed to be publicly available. This is considered a positive social outcome for the site and provides a compatible public open area to meet the day to day needs of residents.

In considering the impact to future developments within the B4 zone the departure from the height standard will not, as stated previously, affect the ability of adjoining sites to achieve their development potential as adequate building separation has been provided and the residential component has been design so as to reduce privacy impacts and overlooking. The stepping of building height across the site has addressed the context of built form within the Precinct by presenting a reduced building height towards the northern boundary to the low density residential beyond and a greater height towards the southern boundary to relate to the built form within the Precinct and Banksmeadow Neighbourhood Centre further south.

Therefore, the variation to the height within the R3 zone retains compliance with the objectives of the R3 zone and can be supported.

Public Interest

The proposed height variation within the R3 zone is consistent the objectives of the height standard and the objectives of the R3 zone. It is therefore concluded that the variation is in the public interest.

The proposed development as set out by the applicant in their Clause 4.6 Exception to the Development Standard will result in land dedication for public open space and through site links which will improve the public domain and the overall transformation of the Precinct from industrial uses to a mixed use/residential precinct supporting medium density residential uses and employment opportunities.

However, as outlined in this section, the proposed height variation in the B4 zone does not achieve compliance with the objectives of the Height standard and the objectives of the B4 zone. Therefore, it is not in the public interest and cannot be supported.

Conclusion

The proposed variation within the R3 zone has demonstrated compliance with the zone objectives and given the previous industrial uses of the site its redevelopment in line with the objectives of the R3 zone will be in the public interest facilitating the orderly economic development of land. A variation to the development standard within the R3 zone is supported in this case.

The proposal does not demonstrate compliance with the objectives of the B4 zone as it does not provide for adequate non-residential uses on the ground floor to activate the precinct and provide an integration of compatible uses. Therefore, the variation within the B4 zone is not supported. Further, Council have recommended that the height within the B4 zone be reduced from 4 storeys to 3 storeys.

Question 4-

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

Clause 4.6(5) requires consideration of whether the proposed development contravenes any State or Regional Planning Policy and whether there is public benefit in maintaining the development standard.

The proposed variation to the height standard does not raise any matters of significance for state or regional planning. The variation is also not contrary to any state policy or ministerial directive. The City of Botany Bay local government area is nominated within the Central Subregion within the Draft Metropolitan Strategy for Sydney 2031, but the Wilson Pemberton Street Precinct is not specifically nominated within the Strategy. The Draft East Subregional Strategy nominates housing and employment targets for the Botany Bay local government area. The proposed development is contributing to the achievement of these targets. The proposed development is not inconsistent with the key deliverable identified within the Metropolitan Plan for Sydney 2036.

(b) The public benefit of maintaining the development standard;

In relation to the R3 zone, there is no public benefit in maintaining the height standard within the R3 zone, but rather there is public benefit in allowing the non-compliance given the following outcomes:

- The proposed development achieves the objectives of the development standard and the objectives of the R3 zone.

- The height departure in the R3 zone is located to the centre of the site, and is separated from sensitive low density areas through setbacks, landscaping and building transitions. Therefore, there is minimal impact associated with the height departure within the R3 zone and there is no benefit in maintaining the 22 metre height limit in this instance.

Given the outcomes demonstrated by the proposed development there is public benefit in departing from the height standard within the R3 zone.

In relation to the B4 zone, there is a public benefit in maintaining the height standard, as the proposed height departure does not comply with the objectives of the standard and the objectives of the B4 zone. Council does not support the height departure, and has recommended that the height be reduced within the B4 zone from 4 to 3 storeys.

(c) Any other matters required to be taken into consideration by the Director General before granting concurrence?

Under letter dated the 13 August 2013, the Department of Planning and Infrastructure advised Council that its delegations in respect of Clause 4.6 remain and that Council does not need to apply for further delegations. Therefore, Council is not required to seek concurrence for each Clause 4.6 variation.

Council is not aware of any other matters that are required to be taken into account prior to granting concurrence.

3. Clause 4.4 Floor Space Ratio

The maximum floor space ratio (“FSR”) permitted under BBLEP 2013 for the subject site is:

- 1:1 in the B4 zone;
- 1:5:1 in the R3 zone; and
- 0.55: in the R2 zone (can increase up to 1:1 depending upon land use).

The site benefits from Clause 4.4B of the BB LEP 2013, which increases the FSR in the R3 zone to 1.65:1. Clause 4.4B is addressed at Note 4. The combined permissible gross floor area is 45,746.75m².

The proposal seeks consent for an FSR of 1.25:1 in the B4 zone, 1.58:1 in the R3 zone and no FSR/Floor area within the R2 zone. The total gross floor area of the development is 45,722m². The distribution of the floor area results in a non-compliant FSR within the B4 zone, however the FSR is compliant within the R3 and R2 zones.

The quantum of additional floor space that occurs within the B4 zone is 2,038.5m² or an additional 25% of gross floor area. Therefore, the application proposes a Clause 4.6 Exception to vary the FSR contained within the B4 zone.

It is noted that the FSR within the R3 and R2 zone is 2,063.25 m² under the maximum permissible FSR.

The floor space ratios for each zone 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	1.65:1	0.55:1 and up to 1:1 depending upon residential	
Permitted GFA/FSR (sqm)	8,058.5m ²	37,232.25 m ²	456m ²	45,746.75 m ²
Proposed FSR	1.27:1	1.57:1	0	
Proposed GFA (sqm)	10,097m ²	35,625m ²	0 (open space)	45,722m ²
Additional GFA sought	2,038.5 m² or 25% of permissible FSR in the B4 zone	0 (complies)	0 (complies)	Overall GFA complies (if re-distribute FSR)

Table 4: Floor space ratio summary.

The Applicant has submitted a Clause 4.6 variation to the FSR development standard within the B4 zone. The Clause 4.6 Exception only applies to the FSR within the B4 zone, as the FSR within the R3 and R2 zone is compliant.

It is relevant to consider that this report recommends that the height within the B4 zone be reduced from 4 storeys to 3 storeys. This reduction by 1 storey has the potential to reduce the FSR within the B4 zone to be compliant with the standard. Council officers have

calculated, based upon the concept plans prepared by Group GSA, that should the fourth storey within the B4 zone be deleted that this would result in a total of 10 x 1 bedroom, 14 x 2 bedroom and 2 x 3 bedroom apartments being deleted.

If these apartments are in accordance with the unit size requirements under the BB DCP 2013, then approximately 2,410sqm of GFA would be deleted (calculated as follows: $10 \times 75\text{sqm} + 14 \times 100\text{sqm} + 2 \times 130\text{sqm} = 2,410\text{sqm}$). This would result in a compliant FSR within the B4 zone.

This assessment concludes that the Clause 4.6 for the FSR variation within the B4 zone does not demonstrate compliance with the objectives of the FSR standard and the objectives of the B4 zone, and is not supported.

A copy of the Applicant's Clause 4.6 Exception to the Development Standard has been provided at Appendix D.

Preliminary Assessment

Question 1 – Is the requirement a development standard and if so is it one to which subclause 8 applies?

The matters raised within Clause 4.6(8) are not applicable with respect to the subject development application as such this clause allows the JRPP to grant consent to a numerical departure, if the applicant addresses the provisions contained in Clause 4.6 of the BBLEP 2013.

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

The objectives of the development standard being Clause 4.4 Floor Space Ratio are outlined as follows:

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

(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.

The applicant contends that the development application meets the objectives of the development standard, and further meets the objectives of the B4 and R3 zone. A copy of the applicant's Clause 4.6 Exception to the Development Standard has been attached for the consideration of the JRPP.

Detailed Assessment of Variation to Development Standard

Question 1 – Is compliance with the development standard unreasonable or unnecessary in the circumstance of the case?

His Honour Preston CJ sets out five alternative ways of establishing that compliance is unreasonable or unnecessary in *Wehbe v Pittwater Council (2007) NSW LEC 827*, albeit only one of these 5 ways needs to apply.

This may be found if the proposal meets the objectives of the development standard notwithstanding its non-compliance with the standard.

The objectives of Clause 4.4 Floor Space Ratio as specified within BBLEP 2013 are outlined as follows:

(a) to establish standards for the maximum development density and intensity of land use,

The proposal seeks consent for an FSR of 1.25:1 or an additional gross floor area of 2,038.5sqm, representing 25% more than the permitted FSR in the B4 zone.

The maximum density and intensity of the land use for development within the B4 zone is established by the FSR standard of 1:1 and the Height standard of 10 metres that is permitted under the BB LEP 2013. Intensity is also established by the type of land use that is permitted in the B4 zone.

The proposal seeks to vary both the FSR and height standard within the B4 zone, being an FSR of 1.25:1 and a height of up to 15.79 metres. The FSR non-compliance is attributed to the Height non-compliance, and is therefore self-propelling. Put simply, if the height of the buildings in the B4 zone were reduced to comply with the height, then the FSR of the buildings in the B4 zone would also comply with the FSR standard, or the extent of variation would significantly reduce.

This is similarly outlined in the applicant's Clause 4.6 Exception, where at page 13 the applicant states that the *'additional GFA is between that part of the building envelope that exceeds the maximum building height of 10 metres and the top of the buildings'*. The applicant is referencing the Clause 4.6 variation to building height

for Building A and Building B within the B4 zone. Therefore, it is clear that the additional GFA is attributed to the additional height within the B4 zone.

The density and intensity that is envisaged in the B4 zone by the BB LEP 2013 and BB DCP 2013, is of a mixed use development that accommodates ground floor commercial uses with upper levels of residential apartments within a 3 storey built form. The proposed building in the B4 zone is a 4 storey building that contains minimal commercial uses (two tenancy's) and is primarily a residential flat building.

The proposal does not satisfy the density and intensity test, as it is clear that the proposal is of a more dense development than what would be expected for the B4 zone, as demonstrated by both a non-compliant FSR and non-compliant height.

It is considered that a building with a compliant FSR within the B4 zone would present a density that is more commensurate with the proposed residential development within the site, the precinct and the wider low density residential area.

In terms of intensity, it is accepted that there are other land uses permitted in the B4 zone which may have a greater intensity than the subject proposal. Other land uses permitted in the B4 zone include child care centres, educational establishments, function centres, hotel or motel accommodation, light industries, passenger transport facilities, registered clubs, recreational facilities (indoor).

However, for a use to be granted consent, it must be not only permissible, but must also be compliant with the objectives of the zone and be consistent with the desired character for that area. In this regard, the objective of the zone encourages a mixture of compatible land uses, and requires that the character of the area be of a mixed use, which includes ground floor activating non-residential uses, and upper levels of residential use. This is established by the BB DCP 2013 and this is the type of intensity that would be reasonably expected from the site. The development does not provide sufficient ground floor activating land uses, and is therefore not of an intensity that is expected from the site.

Therefore, it is considered that the proposal does not satisfy the density and intensity test.

(b) to ensure that buildings are compatible with the bulk and scale of the existing and desired future character of the locality,

This report has outlined that the desired future character along Pemberton Street is that of a 3 storey built form with active ground floor non-residential uses and residential uses on the upper level.

The proposed building in the B4 zone is a 4 storey building that contains minimal commercial uses (two tenancy's) and is primarily a residential flat building. The non-compliant FSR is attributed to the non-compliant height, which is effectively 1 storey above the control.

A recent approval by the JRPP has approved a 3, 4 and 6 storey built form along Pemberton Street, with the 6 storey height located to the south on the corner, and a gradual transition in height down to 3 storeys.

It is considered that the subject site should continue this transition in height by accommodating a 3 storey built form along Pemberton Street. This would also improve the compatibility of the bulk and scale of the proposed development with the adjoining low-density residential development along Kurnell Street and Warrana Street.

The proposed FSR within the B4 zone does not deliver a building that has a bulk and scale that is compatible with the existing and desired future character of the locality. It is accepted that compatibility does not mean replication, but rather requires buildings to sit in harmony with each other. This is best established by reducing the FSR, and consequently, the height of the buildings in the B4 zone to provide a better interface and relationship with the low density residential development to the north and to provide consistency with the desired future character of the area, which is that of a 3 storey building.

In terms of improving the compatibility with the desired future character, it is recommended that the ground floor of Building B be amended to accommodate non-residential uses to activate the street.

Council officers do not agree that the proposed FSR within the B4 zone results in a development that has a bulk and scale that is compatible the existing and future character of the area. Therefore, Council officer's do not support the FSR variation within the B4 zone.

(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,

The area that is unlikely to undergo a substantial transformation are the low density residential properties to the north and east of the site fronting Kurnell Street and Wilson Street. Therefore, it is important to maintain an appropriate visual relationship between the proposal and the existing low density area.

The proposed FSR variation results in additional building bulk, mass and height and does not provide an appropriate visual relationship to the low density area. This is further exacerbated by the non-compliant height. The additional FSR has the potential to impact upon the visual relationship with existing low density development.

The relationship of the building on Pemberton Street will not be consistent with the adjoining future development to the south, which has been approved at a lower height. In order to provide an appropriate visual relationship, the buildings within the B4 zone should be reduced to 3 storeys. This would improve the visual relationship of the development along Pemberton Street and along Kurnell Street and Warana Street.

The properties to the west on Pemberton Street are likely to undergo substantial transformation in the medium to long term, and are less relevant in considering compliance with objective (c).

(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,

As previously outlined, the buildings in the B4 will form a streetscape presentation with the adjoining approved development at 42-44 Pemberton Street. In order for the building do not adversely affect the streetscape, it is considered necessary that the FSR and height be reduced to be consistent with the recent approved development at 42-44 Pemberton Street.

It is considered that the proposed built form is out of character or context with the prevailing pattern of approved development within the Precinct, and that a compliant FSR is warranted.

The applicant contends that the FSR exceedance does no compromise the Pemberton Street streetscape, by referring to the 4 metre wide road reserve and the proposed landscape setting, which shall contribute to the streetscape and visual amenity of the street. Whilst the road reserve and landscaping shall contribute to the streetscape, it is considered that the exceedance in FSR correspondingly results in the height variation, which in turn results in a built form that is not consistent with the desired future character for Pemberton Street and is not consistent with the recent approval for the site to the south.

The applicant's Clause 4.6 Exception, at paragraph 6 on page 13 (refer to Appendix D), states that the *'additional GFA is between that part of the building envelope that exceeds the maximum building height of 10 metres and the top of the buildings'*. It is clear that the additional GFA is attributed to the additional height within the B4 zone.

(e) to minimise adverse environmental effects on the use or enjoyment of adjoining properties and the public domain,

The additional FSR is considered to increase the overall height of the building, which will lead to adverse impacts to adjoining low density properties, including privacy impacts and visual impacts. The variation to the FSR will not minimise adverse impacts, but rather lead to an exacerbation of impacts to the low density dwellings at Kurnell Street and Warrana Street. Therefore the FSR variation does not satisfy this objective.

(f) to provide an appropriate correlation between the size of a site and the extent of any development on that site,

The portion of the site that is zoned B4 is 8,058.5sqm. The proposed variation is 2,038.5sqm. The variation equates to 25% of the permitted FSR standard.

The subject site is of a substantial size which can accommodate a compliant FSR. It is considered that there is no valid reason why a compliant FSR cannot be

accommodated on a site of such a substantial size. It is noted that the FSR within the R3 zone is compliant and is below the maximum FSR.

(g) to facilitate development that contributes to the economic growth of Botany Bay.

The additional residential population proposed by the development will also provide increased stimulus to the local centres therefore increased commercial activity and use of existing services.

However, the proposal does not include sufficient ground floor commercial uses to contribute to the economic viability of the precinct and adjoining business zones.

Conclusion

Taking into account the above, it is concluded that the proposed variation to the FSR within the B4 zone does not attain compliance with the objectives of the FSR standard, and is not supported.

The variation to the floor space ratio standard is such that compliance with the development standard is reasonable. Further, the FSR variation in the B4 zone is attributed to the height variation, which are both self-propelling and are both not supported.

Consideration of the public interest and environmental planning grounds is addressed below.

Question 2 – Are there sufficient environmental planning grounds to justify contravening the development standard?

The applicant contends that there are sufficient environmental planning grounds to justify the non-compliance as follows:

- *The non-compliance with the FSR control is predominantly caused by the proponent's intention to distribute built form across the site in a manner that recognises the site's contextual relationship, future desired character and the opportunity to provide significant publicly accessible open space that significantly exceeds Council's minimum open space requirements. This is a considered design response taking into account the submissions by Council and the community.*
- *The overall gross floor area to be provided across the whole development site does not exceed the total maximum gross floor area that could otherwise be accommodated if the maximum FSR was achieved within each of the three zoned portions of the site.*
- *The redistribution of gross floor area and consequently FSR from the R2 and R3 zoned portions of the site allow for a better planning outcome to be achieved which respects the context and character of the surrounding locality in addition to providing significant public benefits through a new 3,000m² deep soil park*

fronting Wilson street and connecting to Pemberton Street and Kurnell street through publicly accessible landscaped spaces.

- *The proposal satisfies the objectives of the FSR development standard. It will not adversely affect views, solar access or privacy and is generally compatible with the bulk, scale and desired character of the area.*
- *The proposal satisfies the objectives of the B4 Mixed Uses Zone. It provides for the housing needs of the community and provides a suitable apartment mix.*

Council officers have undertaken an assessment of the objectives of the FSR standard and conclude that the proposal does not satisfy the objectives of the standard and cannot be supported.

Whilst it is agreed that the overall gross floor area of the site is compliant, the variation within the B4 zone is considered substantial and generates an adverse streetscape presentation in the form of additional non-compliant height. It is considered that the non-compliant GFA should be re-distributed into the R3 zone so that both FSR's are compliant.

Council officer's do not agree that a better planning outcome is achieved by the proposal. Council officer's recommend that the FSR be reduced to comply within the B4 zone, which also relies upon a height reduction within the B4 zone.

Consideration of the objectives of the zone are addressed at question 3 below.

Question 3 – Will the proposed development 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?

The applicant contends that the proposed development has satisfied the B4 Mixed Use zone objectives and is in the public interest.

As outlined in this report, the proposed built form does not adequately satisfy the objectives of the B4 zone, as it does not provide for sufficient ground floor non-residential uses to activate the streetscape. The proposal only includes limited commercial spaces, which do not deliver on the desired mixture of uses that is envisaged for the site by the BB DCP 2013.

Therefore, the proposal does not satisfy the objectives of the B4 zone and the variation cannot be supported.

This report recommends that, as a result of the recommended height reduction in the B4 zone, that the FSR be reduced to comply.

The variation is not considered to be in the public interest, as it does not retain compliance with the objectives of the standard, or the objectives of the B4 zone.

Question 4-**(a) Whether or not non-compliance with the development standard raises any matters of significance for State or Regional environmental planning;**

Clause 4.6(5) requires consideration of whether the proposed development contravenes any State or Regional Planning Policy and whether there is public benefit in maintaining the development standard.

The proposed variation to the FSR standard does not raise any matters of significance for state or regional planning. The variation is also not contrary to any state policy or ministerial directive. The City of Botany Bay local government area is nominated within the Central Subregion within the Draft Metropolitan Strategy for Sydney 2031 but the Wilson Pemberton Street Precinct is not specifically nominated within the Strategy. The Draft East Subregional Strategy nominates housing and employment targets for the Botany Bay local government area.

However, the proposed FSR variation is not supported as it does not comply with the objectives of the standard or the objectives of the B4 zone.

(b) The public benefit of maintaining the development standard;

There is public benefit in maintaining the development standard in this case, given the proposed variation does not achieve compliance with the objectives of the FSR standard and the objectives of the B4 Mixed Use zone.

(c) Any other matters required to be taken into consideration by the Director General before granting concurrence?

Under letter dated the 13 August 2013, the Department of Planning and Infrastructure advised Council that its delegations in respect of Clause 4.6 remain and that Council does not need to apply for further delegations. Therefore, Council is not required to seek concurrence for each Clause 4.6 variation.

Council is not aware of any other matters that are required to be taken into account prior to granting concurrence.

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

Clause 4.4B of the Botany Bay Local Environmental Plan 2013 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 Medium Density Residential and Zone R4 High Density Residential.	Note the additional floor space only applies to the part of the site zoned R3.	Yes
(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	(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	Yes Yes Yes N/A

(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.	and is not located on a main road or near a railway. It is therefore unlikely to be adversely affected by noise.	Yes
	(d)(i) The development is generally considered to be compatible with the desired future character in terms of building bulk and scale. However, further design amendments are necessary for Council to recommend approval.	Yes
	(ii) The development, as amended by this report, can contribute to the amenity of the locality.	N/A
	(iii) N/A Discussed further below.	

Table 5: 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, and the consent authority is satisfied that the development is consistent with the objectives under sub-clause (d)(i) to (iii).

Council officer's form the view that the proposed development, subject to the recommended amendments in this report, can satisfy requirements under sub-clause (d) and therefore the applicable FSR within the R3 portion of the site is 1.65:1.

5. Stormwater Management and Flooding

As part of the amended application, the applicant submitted a Stormwater and Services Concept Report. Council officers requested further information, particularly in relation to the flood levels associated with the development. The applicant submitted an amended report in the form of a Masterplan Stormwater Management Report on the 1 December 2014. Council engineers have advised that the information in the report is generally satisfactory, however have requested that further detailed information be submitted as part of future Stage 2 applications for the site. This has been included as a condition of consent.

Botany Bay Development Control Plan 2013

The applicable clauses of the DCP are considered in the assessment of the proposal and are addressed at **Appendix B**.

The main areas of non-compliance are discussed as follows:

1. Deep Soil and Landscaping

The proposal includes 3,000sqm of deep soil park land along Wilson Street, plus 1,700sqm of deep soil around the perimeter of the site. This equates to 15% of the total site area. The DCP requires a minimum 25% deep soil planting for the site, which equates to 7,769m². Therefore, the proposal does not comply with the minimum required deep soil. Notwithstanding, the proposal includes a north-south link and east-west link which provides landscaping above the basement (not deep soil). The total landscaping proposed is 11,807sqm or 37.9% of the site area. Figure 12 of the concept landscape plan illustrates the indicative future landscaping treatments for the site.



Figure 12: Concept Landscape plan.

In principle, the level of landscaping is acceptable. The applicant has amended the location of the park to the preferred location along Wilson Street, and Council generally support the level of landscaping. However, further landscaping refinements will be considered necessary as part of future Stage 2 applications.

It is recommended that the public park be delivered early within the staging of the development to allow for landscaping along the northern edge of the site to mature during the construction phase and provide an immediate community benefit. This is recommended as a condition of consent.

2. Local Character

The precinct is guided by Council's LEP and DCP controls, which together provide a framework and overall vision for the precinct. The amended application goes some way toward being consistent with the vision for the precinct. However, as outlined in this report, further amendments to the proposal are necessary and have been recommended in the body of this report.

Development Interface

The interface with the low density residential dwellings at Warrana Street and Kurnell Street is considered to be the most sensitive. In particular, consideration must be given to maintain a reasonable level of amenity, particularly in terms of privacy, overlooking and overshadowing.

To provide a suitable interface, the applicant has incorporated building separation and setbacks which are managed by the deep soil park and site links. These provide an opportunity for significant landscape buffer. However, the impact on amenity is a function both of separation and of the height of the buildings that are in proximity to the low density dwellings. This is because the greater the height of buildings, the greater the number of new apartments may overlook the affected properties. It is noted that the exact nature of the impact of overlooking is dependent on a range of factors including detailed layout of apartments, position of landscape and height of future trees.

Specifically, the 6 storey buildings of Building B (east) and Building D (west) have the potential for overlooking particular into the backyards of dwellings on Kurnell Street. It is noted that a separation distance of 24 metres is provided. This is illustrated in Figure 13 below:

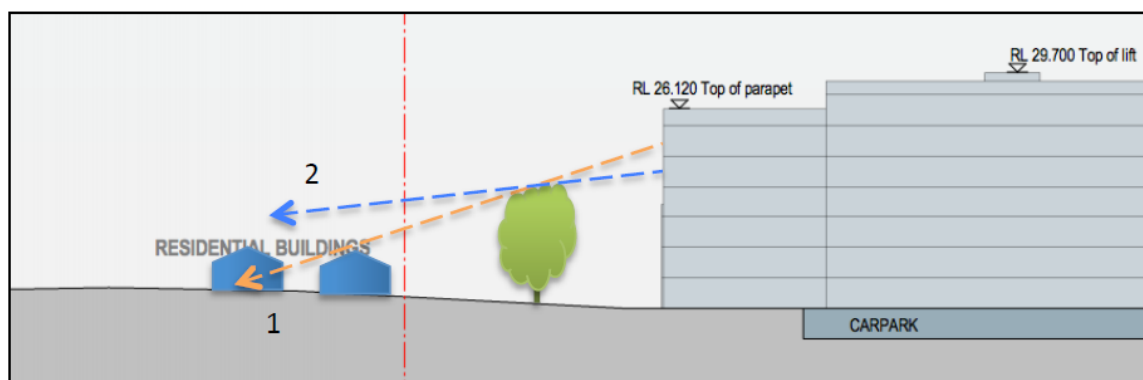


Figure 1 Extract of Section CC. The approximate height of residential buildings has been added in blue to the left of the diagram and a 12m high tree added in the middle of the park.

Line 1 (orange) shows that a person standing at level 6 with the arrangement shown will see over a 12m high tree into the second backyard. Line 2 (blue) shows that views from level 5 are effectively screened by 12m high trees.

Figure 13: Interface of Building B (east).

The interface between the 6 storey form of Building B (east) and Building D (west), and the low density dwellings in Kurnell Street should be improved and this is best undertaken by a reduction in height of these two buildings from 6 storeys to 5 storeys.

The interface between the 4 storey Building A and the low density dwellings to the east along Kurnell Street is also of concern. Particularly, the interface impact is exacerbated by the non-compliant height of Building A, which should be a 3 storey building (or maximum 10 metres) and not a 4 storey building. Council cannot support the variation to the height by 1 storey, when the departure can lead to interface impacts with adjoining low density development.

Whilst the development does incorporate a setback and landscaping to reduce impacts, Building A does not comply with the height control under the BB LEP 2013 and Council officer's do not support the applicant's Clause 4.6 Exception for the height variation. This report recommends a reduction in height to Building A from 4 storeys to 3 storeys is required and this is listed as a deferred commencement condition. This shall mitigate interface impacts to the low density dwellings at Kurnell Street.

B4 Mixed Use Zone

As outlined in this section of this report, the application proposes a 4 storey residential flat building with two ground floor commercial uses within the B4 zone.

Part 9C of the BBDCP 2013 identifies the desired future character for the B4 Mixed Use zone along Pemberton Street as *the B4 zone within the Wilson/Pemberton Street Precinct is anticipated to develop into a high quality area of mixed uses featuring medium density housing, low impact commercial and business uses and creative industries. New works in the public domain along Pemberton Street will be required such as landscaping and pedestrian pathways to improve the amenity of the Street and encourage pedestrian movement and live/work opportunities. The redevelopment of the B4 Zone is to provide a transition from non-residential in the B7 Zone in the Botany South Precinct to surrounding residential uses with the intention of buffering any adverse amenity issues created within the B7 zone.*

The proposed ground floor does not provide sufficient activation that is consistent with the objectives and vision of the BB DCP 2013. The entire ground floor of building within the B4 zone should accommodate non-residential uses. On this basis, it is recommended that the entire ground floor of Building B fronting onto Pemberton Street include non-residential uses to provide an activate streetscape and consistency with the recently approved development at 42-44 Pemberton Street. This is recommended as deferred commencement condition.

Wilson Street Terraces

The application proposes a part 2 and part 3 storey terrace form along Wilson Street. The terraces are considered to exhibit a good level of design quality and are of a form and typology that complements the streetscape. The terraces provide an appropriate transition to the low density areas to the east of Wilson Street and provide a mixture of housing choice within the precinct. Each terrace is designed as 4 bedroom dwelling and are located above the basement car park. Each terrace accommodates a front setback and private open space in the form of a rear yard. Details of the terrace layout and design shall be provided in future Stage 2 applications.

To provide consistency with adjoining terrace development along Wilson Street, this report recommends that the third storey of the terraces be in the form of an attic storey, and not a

full storey. This would provide consistency with recently approved/completed terraces along Wilson Street and positively contribute to the streetscape and character of the area.

3. Setbacks and Separation

The setbacks achieve general compliance with DCP 2013 with the exception of the setback on Pemberton Street (north), where the northern section does not meet the required building setback. Specifically, the setback on the north is 3 metres, instead of 7 metres, however the development does accommodate the 4 metre road reservation. The 3 metre setback is located upon deep soil, which can accommodate future landscaping to provide a suitable streetscape presentation. This can be detailed in future Stage 2 applications.

The basement design accommodates a minimum 3 metre setback from the boundary to allow for the deep soil planting and landscaping, with the exception of the southern setback, which is built to the boundary to allow for the basement driveway access.

In relation to building separation distances, the proposal has adopted by the minimum separation requirements that are outlined under the Residential Flat Design Code. Increased separation distances are provided for the larger buildings within the centre of the site and separation distances are complimented by landscaped areas which include the north-south link and east-west link. Further assessment of separation distances will be undertaken as part of Stage 2 applications, when further details of internal layouts of apartments is available to determine habitable-to-habitable and non-habitable separation requirements.

4. Building Depth and Lengths

The proposed master plans seeks consent for the building depths of up to 25 metres, and building lengths that are up to 98.9 metres at their greatest point.

Buildings Lengths

The buildings lengths range in size, however the buildings are stepped in height and accommodate some separations in built form. For example, Building B accommodates a 1 storey podium with a 2 storey separation between the 4 storey and 6 storey built form. This is similarly provided in Building D, between the terrace form on Wilson Street, the 2 storey form in the middle and the increase 6 storey building. However, it is noted that this report recommends certain reductions in height which can assist in offsetting any impact arising from the building lengths.

The length of Building D along Wilson Street is considered acceptable as it is in the form of a traditional attached terrace that provides a complimentary streetscape presentation. In addition, a 9 metre separation is provided along Wilson Street between the terraces.

Building B along Pemberton Street is recommended to be reduced in height from 4 storeys to 3 storeys. This reduction in height compensates for the building length of Building B along Pemberton Street. In addition a separation of 12 metres is provided between Building A and Building B to accommodate the east-west pedestrian link.

The building lengths of Building B (east) and Building D (west) are recommended to be reduced in length as they are substantially long and can lead to undesirable building bulk, scale and amenity impacts upon the public domain areas. To mitigate this impact, it is recommended that the building lengths be broken into distinct building forms and to accommodate a minimum separation of 12 metres. It is recommended that the building envelope on each side of the link shall be separated above level 1 so that there is a maximum building length of 55m in the north-south direction and the separation must be a minimum 12 metre to the next building. The desired location of the 12 metre separation is circled in Figure 14 below:



Figure 14: Building separation areas outlined in red.

Building Depths

The application seeks consent for building depths as follows:

- Building A = 25m
- Building B = 25m
- Building D = 13.9m- 25m
- Building E = 13.9m-21.6m

The building depths are indicative and shall be further detailed as part of Stage 2 applications in terms of apartment layout, balcony location, living room orientation and solar access and cross ventilation. The building depths, although greater than the DCP requirement, are likely to be able to accommodate the apartment sizes prescribed under the BB DCP 2013 and can provide an acceptable level of residential amenity for future occupants. The building depths will need to be further considered in the Stage 2 applications to ensure that residential amenity is enhanced.

5. Solar Access

The applicant has submitted concept shadow diagrams which demonstrate that the level of shadow caused by the proposal shall be acceptable. The site is within a medium density locality and it is likely that some adjoining properties will be overshadowed. The recommended design amendments will assist in reducing the extent of overshadowing. Further shadow analysis will be required as part of Stage 2 applications to determine the full extent of overshadowing on adjoining dwellings, between buildings within the development and shadowing upon the public/private open space.

The 8 storey building and 7 storey building have the potential to impact upon the level of shadowing upon the north-south site link. Specifically, the pedestrian link will be overshadowed in the morning period and afternoon period. The full extent of overshadowing will be more precise as part of future Stage 2 applications. In order to mitigate future shadow impacts, Council recommends the introduction of a 5 metre setback on the top levels of the 8 storey building and 7 storey building either side of the north-south link. The setback will assist in overshadowing reduction and shall reduce the scale of the buildings. This is recommended as a deferred commencement condition.

Consideration has been given to the overshadowing impacts of the proposed development upon the development to the south at 42-44 Pemberton Street Botany, specifically being Building A, Building B and Building F. The applicant has submitted hourly elevational shadow diagrams of the shadow cast in mid-winter (21 June). An extract of these are provided overleaf.

Figure 15 demonstrates that the proposal shall overshadow the ground floor of Building A between 9am and 11am in mid-winter. From 11am onwards, Building A shall not be in shadow. Further, the ground floor of Building A has been approved as non-residential tenancies, and access to direct solar access is less important.

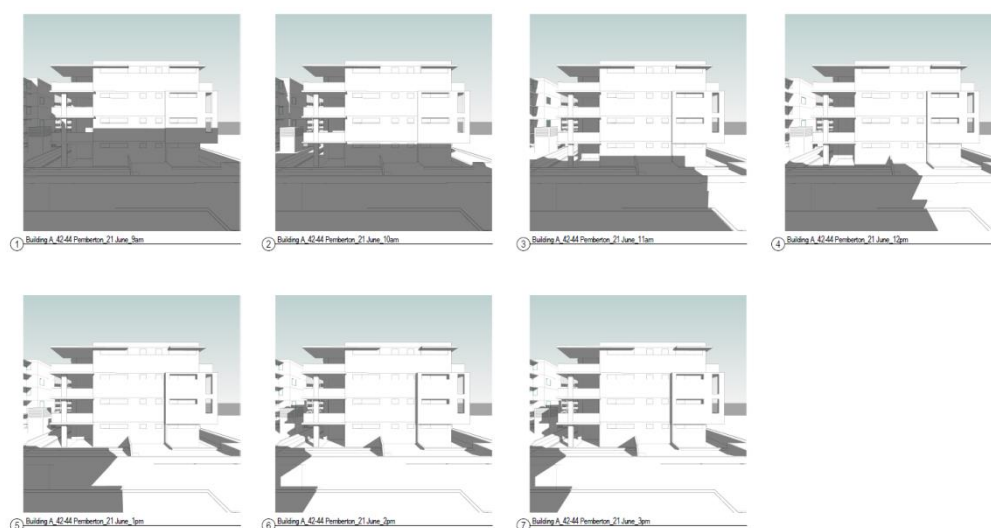


Figure 15: Elevational shadow of Building A at 42-44 Pemberton Street Botany

In relation to Building F, figure 15 demonstrates that the proposal casts a shadow on the northern elevation of Building F from 9am, however the shadow gradually decreases at hourly intervals and then increase to the lower level apartments in the afternoon. The

northern elevation of Building F contains windows to a study and dining/living room to each of the apartments within Building F. However the dining and living room of these units are orientated in either an east or west direction and benefit from a large sliding door to a balcony area which receives direct solar access. Therefore, the apartments in Building F that are overshadowed by the proposal shall retain solar access from the east or west. Further details of shadowing will be required in Stage 2 applications.

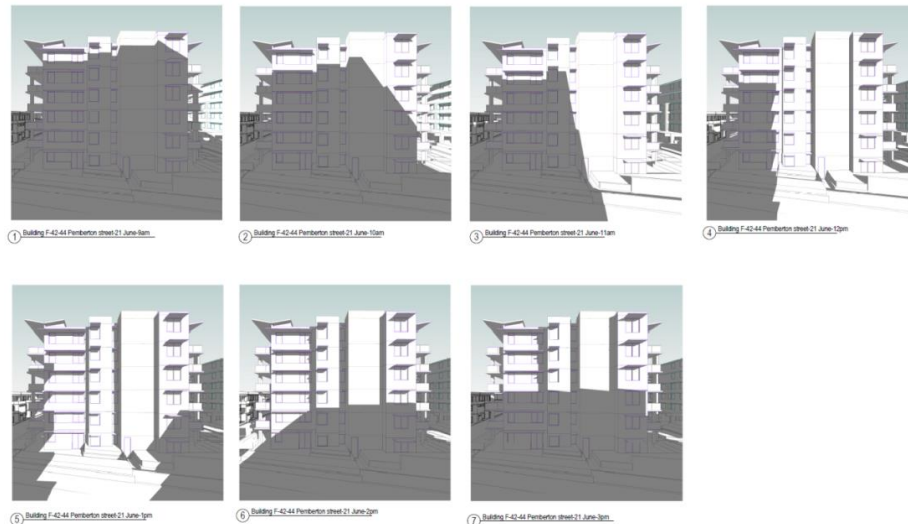


Figure 16: Elevational shadow of Building F at 42-44 Pemberton Street Botany

In relation to the shadow cast upon the northern elevation Building B, figure 17 demonstrates that the proposal casts a shadow from 9am to 12pm in mid-winter. From 12pm onwards, the northern elevation is unaffected by shadow, with the exception of 1 apartment that is located on the lower-ground floor of Building D (unit D1.01). This apartment is in shadow from 9am to 3pm in mid-winter, however the apartment has both a northern and eastern aspect, which will allow for some solar access during mid-winter. Given the medium density character of the area, it is reasonable to expect that some apartments shall be overshadowed in mid-winter.

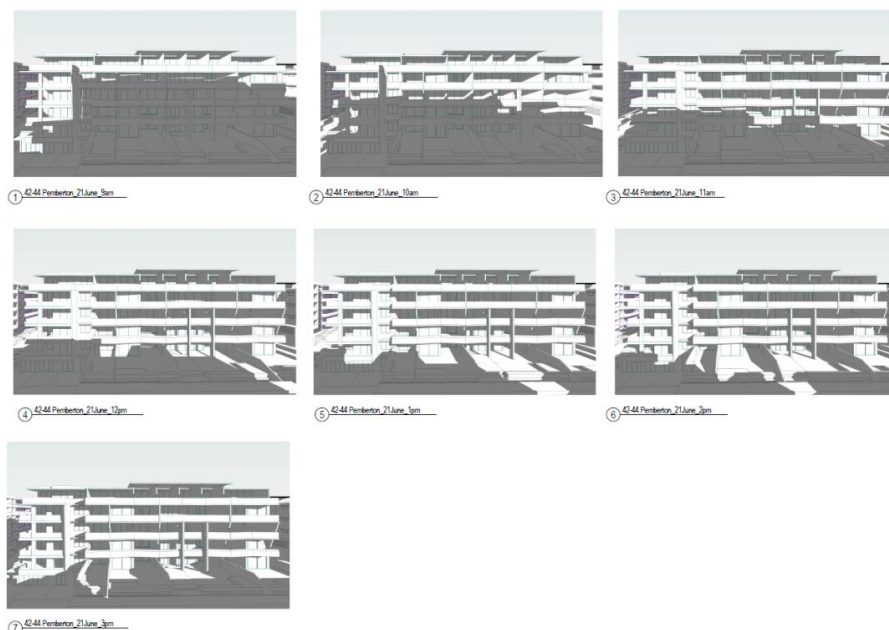


Figure 17: Elevational shadow of Building D at 42-44 Pemberton Street Botany

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

These matters have been considered in the assessment of the application. The proposal is considered to be generally consistent with the provisions of the BB LEP 2013, subject to the amendments recommended in this report. The application results in a non-compliance with the FSR and Building Height control under the BB LEP 2013. Whilst the applicant has submitted justification for the non-compliance, Council officer's recommend that a height reduction be carried out in order to improve compliance with the controls. Subject to this height reduction, the proposal is considered to be consistent with the BB LEP 2013.

The proposal, as amended by the recommendations in this report, shall not have adverse environmental, social and economic impacts on the locality.

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

These matters have been considered in the assessment of the development application. 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.

The application has been amended and compliance with the requirements of the BB LEP 2013 and BB DCP 2013 has improved. However, further amendments are necessary, prior to Council recommending the application for approval.

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

In accordance with Council's Notification Policy, the original 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) objections and two form letters in objection with thirty-seven (37) and five (5) signatures.

The amended application was lodged with Council on the 25 September 2014, and was notified for a period of fourteen (14) days from 15 October 2014 to 29 October 2014. 43 objections were received, with 34 of these objections being a form letter.

The objections raised the following issues:

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

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 noted. Council officers recommend that the application be amended to reduce the height along Pemberton Street and to reduce the height of Building B to the north-east. This will improve compliance with the height control along the B4 zone.

In regards to the height within the R3 zone, Council officers have assessed the Clause 4.6 Exception, and accept that the variation is well-founded, subject to any amendments that have been outlined in this report.

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 can be impacted by the taller buildings, particularly where the development interfaces with single dwellings in Warrana Street and Kurnell Street. The proposal includes greater setbacks and separation distances to mitigate visual impacts. This is provided by the public park and by setbacks. In addition, Council officers recommend that Building B to the north-east be reduced in height.

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. Rather, the proposed development has the potential to impact on the solar access of Building A and Building F at 42-44 Pemberton Street. An assessment of this impact has been carried out in this report.

With respect to privacy, it is considered that the proposed setbacks and separation distances will reduce the potential for overlooking of adjoining properties. Council has recommended that certain heights be reduced. This will assist in mitigating privacy impacts on adjoining properties. Further, privacy issues could be resolved and improved through the installation of privacy screens as part of any future Stage 2 application.

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: The amended application was forwarded to the RMS for comment and the RMS has raised no objection. The applicant has submitted a traffic impact assessment report in support of the application, and the report concludes that the proposal shall not generate traffic impacts.

Deep Soil Landscaping

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

Comment: The amended application includes a 3,000sqm deep soil open space/park area, plus perimeter deep soil zones. In addition, landscaping above the basement is provided via the north-south link and east-west link. The proposed landscaping is acceptable.

Unit Mix

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

Comment: The amended application does not propose any specific apartment mix or sizes, and this detail shall be provided as part of any future Stage 2 application. Council will require that the future application complies with the requirements of the BB DCP 2013 in terms of apartment mix and sizes, and this will be a requirement for future Stage 2 applications.

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 states:

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. Any ground floor commercial tenancies are unlikely to generate noise impact on adjoining properties.

Setbacks

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

Comment: Discussed in the section above of this report.

(e) The public interest

This report establishes that the amended application, subject to the further amendments detailed in this report, is generally consistent with the strategic vision of the site and the desired future character of the area. The proposed development will not have a significant adverse impact on the public interest.

The provisions of the proposed draft amendment to the bonus clauses of the LEP are relevant to the public interest, notwithstanding that the draft LEP has not been exhibited. Council is clear that it is a clear policy priority that the bonus is not as a right, but that development must provide a suitable interface with surrounding development.

Draft Amendments to Botany Bay LEP 2013

Consideration of the Draft Amendments to the Botany Bay LEP 2013 is provided below. The relevant parts of the new clause are intended to read:

4.3 Height of buildings

(2A) Despite subclause (2), if an area of land in Zone R3 Medium Density Residential or Zone R4 High Density Residential exceeds 2,000 square metres, the height of a building on that land may exceed the maximum height shown for the land on the Height of Buildings Map but must not exceed 22 metres and must be a maximum of six (6) storeys.

The application proposes building heights within the R3 zone that range from 1m storey to 8 storeys. An assessment of height of buildings under the current standards and objectives of the BB LEP 2013 has been undertaken in the body of this report, and this assessment concludes that the proposed heights are acceptable. Any variation to a height has been detailed in the Clause 4.6 assessment. Further, the subject application was lodged prior to the commencement of this clause, and Savings Provisions would be applicable. Therefore, the proposal is considered acceptable in relation to this clause.

4.4C Building Form and Scale

(1) This clause applies to land to which clause 4.3(2A) and clause 4.4(8) applies.

(2) Development consent must not be granted to development on land to which this clause applies, unless the consent authority is satisfied:

(a) The building form and scale at property boundaries achieve acceptable amenity outcomes, to adjoining land and buildings,

(b) The building form provides adequate landscape setback to lower scale built forms,

(c) A transition in building scale is achieved at property boundaries, and zone interface,

- (d) The development will be compatible with the character of the area in terms of bulk and scale, and*
- (e) The objectives of clause 4.3 and 4.48 have been met.*

The main objectives of this draft clause have been addressed in this report. The proposal, as amended by the recommendations in this report, shall provide an acceptable level of amenity to adjoining buildings and provides setbacks to the low density areas including landscaped areas. As recommended in this report, a transition has been provided to the low density dwellings, through the recommended heights, which include reductions in height. An assessment of the local character has been provided under the BB DCP 2013 and the proposal is considered compliant.

4.6 Exceptions to development standards

- (8) This clause does not allow development consent to be granted for development that would contravene any of the following:*
- (a) a development standard for complying development,*
- (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,*
- (c) clause 5.4*
- (d) clause 4.3(2A)*
- (e) clause 4.4B(3)*

The application was lodged prior to the commencement of this clause, and therefore Clause 4.6 remains applicable to the subject site. Savings provisions will need to be inserted into the LEP, if this stage 1 development is approved, to enable future DAs to exceed 6 storeys, consistent with the Stage 1 approval.

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 as part of the notification from the 23 October 2013 to 29 November 2013, are detailed 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 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

As part of the amended notification from 15 October 2014 to 29 October 2014, the following external referrals were made:

Authority	Comment	Date Received
Roads & Maritime Services	No objection raised to the amended application.	10 November 2014
SACL	SACL raised no objection – previous referral remains applicable.	21 November 2014

Section 94 Contributions

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

5. CONCLUSION

The applicant has amended the application to address the reasons for refusal and the items outlined in the preferred outcomes for the site.

The application relies upon a Clause 4.6 Exception for the Floor Space Ratio standard within the B4 Mixed Use portion of the site, and relies upon a Clause 4.6 Exception for a non-compliant Height within both the B4 Mixed Use and R3 Medium Density Residential portions of the site. It is noted that some building heights within the R3 portion of the site are compliant.

An assessment of the Clause 4.6 Exception for FSR and Height has been provided within this report. Council concludes that the non-compliance for the height within the R3 zone is well-founded and can be supported, however the non-compliant height within the B4 zone is not supported. This report recommends that the height within the B4 portion of the site be reduced, which in turn, shall reduce the non-compliant FSR within the B4 portion of the site. The non-compliant FSR within the B4 zone is not considered well-founded and is not supported.

In general, the application will deliver a well-designed master plan for the site, and the amendments recommended in this report will assist in providing appropriate building heights, transitions and public open space that is consistent with the objectives and standards of the BB LEP 2013 and BB DCP 2013.

The Joint Regional Planning Panel, Sydney East Region (JRPP) is the consent authority for the development application. The design currently before the Panel has been the subject of a design review process and the applicant has amended the application to address the reasons for refusal previously issued by Council.

Council officers that the following amendments are necessary and are recommended as deferred commencement conditions:

1. Reduction in height of Building A and Building B along Pemberton Street from 4 storeys to 3 storeys. This will result in a built form that complies with the 10 metre height within the B4 zone (with the exception that the flood level and parapet/lift overrun may partially breach the height).
2. As a result of the reduction in height of Building A and Building B within the B4 zone, there will be a reduction in FSR which will improve compliance with the FSR standard or result in full compliance with the FSR standard within the B4 zone.
3. Reduction in height of Building B at the north-east and Building D north-west from 6 storey to 5 storeys.
4. The building lengths of Building B (east) and Building D (west), facing the north-south link shall be separated above level 1 so that there is a maximum building length of 55 metres in the north-south direction and a separation of not less than 12 metres is to be provided.
5. The top floor and roof of Building B (east) and Building D (west), facing the north-south link shall be setback from the frontage by not less than 5 metres.
6. The 3rd storey of Building D and Building E along Wilson Street shall be in the form of an attic, and not a full storey.
7. All ground floor tenancies of Building B that face Pemberton Street are to be commercial use/non-residential use.
8. The deep soil park is to be constructed and delivered as public open space within the first/early stage of construction.
9. All architectural plans are to be amended to reflect the Flood Planning Levels (FPL) and the Finished Floor Levels (FFL) outlined in the Masterplan Stormwater Management Report prepared by Mott MacDonald.

Council's Assessment Report dated 18 June 2014, listed the preferred outcomes for the site. These 14 items are provided below:

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.

All of the above points have been addressed, or will be addressed with the additional amendments required above.

The proposal has been assessed in accordance with Section 79C of the *Environmental Planning and Assessment Act 1979* and the *Botany Bay Local Environmental Plan 2013*.

It is recommended that the Panel grant deferred commencement, requiring that the applicant submit amended plans as outlined above.

APPENDIX A – BOTANY BAY LOCAL ENVIRONMENTAL PLAN 2013

Principal Provisions of BBLEP 2013	Compliance Yes/No	Comment
Landuse Zone Is the proposed use/works permitted with development consent?	Yes	The site is zoned part B4 – Mixed Use, part R3 – Medium Density Housing and part R2 – Low Density Housing under BBLEP 2013. The proposed residential flat buildings and terrace houses/townhouses is permitted with Council's consent under BBLEP 2013. The proposed recreation area in the R2 zone (one lot) is permissible.
Does the proposed use/works meet the objectives of the zone?	Yes within R2 and R3 zone. No within B4 zone. Refer to item 1 under BB LEP 2013 assessment.	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: <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. The proposal includes two commercial tenancies on the ground floor of the proposed

Principal Provisions of BBLEP 2013	Compliance Yes/No	Comment
		building within the B4 zone. This is discussed further at Note 1.
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>	<p>No</p> <p>Refer to item 2 under BB LEP 2013 assessment</p>	<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, as follows:</p> <p><u>B4 zone</u></p> <p>Building A – 15.52 metres Building B (west) – 15.79 metres</p> <p><u>R3 Zone</u></p> <p>Building B (south wing) – 24.09 metres Building B (east wing) – 27.99 metres Building D (south/west wing) – 24.43 metres Building B (north east wing) – 21.04 metres Building D (east wing) – 11.38 metres Building E – 11.34 metres</p> <p>Consideration has been given to the Applicant's Clause 4.6 variation to the height.</p> <p>An assessment in relation to Clause 4.3 and Clause 4.6 is provided at Note 2</p>
<p>What is the proposed FSR?</p> <p>Does the FSR of the building exceed the maximum FSR?</p>	<p>No</p> <p>Refer to item 3 under BB LEP 2013 assessment</p>	<p>The site has an area of 31,079.5 m².</p> <p>The permitted FSR and GFA is as follows:</p> <p>R2 zone: 0.55 and up to 1:1 x 456m² (depending upon land use) = max. 456 m²</p> <p>R3 Zone: 1.65:1 x 22,565m² = 37,232.25 m²</p> <p>B4 Zone: 1:1 x 8,058.5m² = <u>8,058.5m²</u></p>

Principal Provisions of BBLEP 2013	Compliance Yes/No	Comment
		<p>Total permitted FSR = 45,746.75</p> <p>If an aggregate FSR over the site were calculated, the FSR would be = $45,746.75\text{m}^2 / 31,079.5\text{m}^2 = \mathbf{1.47:1}$</p> <p>The proposed FSR/GFA is as follows: R2 zone: $1:1 \times 0\text{m}^2 = 0\text{m}^2$ R3 Zone: $1.57:1 \times 22,565\text{m}^2 = 35,625\text{m}^2$ B4 Zone: $1.27:1 \times 8,058.5\text{m}^2 = \underline{10,097\text{m}^2}$ Total proposed GFA = 45,722 m²</p> <p>The non-compliance occurs in the B4 zone. The extent of non-compliance is 2,038.5 m². This is discussed at item 3</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	Part of the subject site is located in the R3 zone, and the proposed FSR within this portion is 1.57:1. Note, that Clause 4.4B is applicable, which increases the permissible FSR to 1.65:1. Therefore, Clause 4.4B prevails over Clause 4.4(2A).
Clause 4.4B Does this clause apply to the site.	Yes Refer to item 4 under BB LEP 2013 assessment	The site benefits from the 1.65:1 FSR 'bonus' control.
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	N/A	The proposed development is permissible within the relevant zone and does not rely upon the provisions of Clause 5.3.
The following provisions in Part 6 of the LEP apply to the	Yes	Clause 6.1 – Acid Sulfate Soils. The subject site is affected by Class 4 Acid Sulfate Soils.

Principal Provisions of BBLEP 2013	Compliance Yes/No	Comment
development:		
6.1 – 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.
6.2 – Earthworks	Yes	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 condition is required for future Stage 2 applications. The development is considered to be consistent with Clause 6.2 of BBLEP 2013.
6.3 – Stormwater management	Yes Refer to Note 5.	Clause 6.3 – Stormwater. Council's Engineer advises that the application is generally satisfactory for the master plan stage, however further information will be required as part of future stage 2 applications. This is included as a condition of consent. In addition, the application is to be amended to adopt the minimum Flood Planning Levels (FPL) recommended in the applicants report. This has been included as a deferred commencement condition.
6.8 - Airspace operations	Yes	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.

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.

APPENDIX B – BOTANY BAY DEVELOPMENT CONTROL PLAN 2013

Part	Control	Proposed	Complies
3A.2 Parking Provisions	A dwelling mix has not been provided, however based upon the indicative breakdown submitted by the applicant, the proposal would require a minimum 786 parking.	749 spaces	No – the proposal results in a shortfall of 37 spaces. Any future application will be required to comply with the car parking requirements.
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 consultant certifying full compliance with the requirements of Table 3.3 of AS2021-2000; (ii) Submission of plans and documentation indicating the subject premises will be fully air-conditioned or mechanically ventilated in accordance with Council guidelines; and (iii) Any additional information considered necessary by Council to enable it to make a decision.	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
4C.6.1 Adaptable Housing	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. 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	The application does not seek consent for specific apartment layouts and design. However any future Stage 2 application will need to provide adaptable apartments as per the requirements of the DCP.	This can be addressed by way of condition in the event of approval.

Part	Control	Proposed	Complies
	Housing.		
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 & AUSTROADS.	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. This will need to be addressed as part of a future Stage 2 application.	No
3B Heritage	Development in vicinity of heritage item or HCA	N/A	N/A
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.	The stormwater report has been reviewed by Council's Development Engineer. Council engineers advise that the application is generally satisfactory, subject to the provision of further information as part of Stage 2 applications. In addition, the development is to be amended to adopt the minimum Flood Planning Levels (FPL) recommended in the report. This has been addressed under Note 5 of the BB LEP 2013.	No Refer to item 5 under BB LEP 2013.
3H Sustainable Design	C1-C6 BASIX; Solar hot water encouraged.	BASIX Certificate to be provided at Stage 2.	N/A

Part	Control	Proposed	Complies
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.	The application includes a deep soil park along the Wilson Street frontage, and deep soil areas along the perimeter of the site. Discussed at Note 1.	Yes Refer to item 1 under BB DCP 2013.
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 Precincts	8.4.2 The proposed built form results in a non-compliance with the FSR within the B4 zone and a non-compliance with the height within the B4 and R3 zone. This has been addressed in the assessment under the BB LEP 2013. The application, subject to the design amendments recommended by Council, is generally consistent with the local character. This is discussed at Note 2.	No – refer to item 2 under BB DCP 2013.
4C.2.3 Streetscape Presentation	Compatible with bulk & scale of adjoining residential developments; Max building length 24m; Walls	Building lengths range from 22m to 95m.	No – refer to item 4 under BB DCP 2013.

Part	Control	Proposed	Complies
	>12m must be articulated; Street presentation.	This is discussed further at Note 4.	
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.	Proposed building heights are non-compliant. It is noted that some building heights are compliant.	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 1.65:1 for R3 zone	The proposal results in a non-compliant FSR within the B4 zone. The FSR within the R2 and R3 zone are compliant.	No Discussion provided within BBLEP 2012.
4C.2.6 Site Coverage	Max site cover 45%	Applicant submits that site coverage is 55.4%, due to basement car park.	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 = 37.9% Unbuilt = not confirmed, as there is no detailed design at this stage Deep soil = 15% or 4,700 sqm Basement appears to occupy 70% of site area.	Yes N/A No – Refer to item 1 under BB DCP 2013. No – Refer to item 1 under BB DCP 2013.
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 8,300m ² of communal open space (27% site area)	N/A No

Part	Control	Proposed	Complies
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 - 4 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. Refer to item 3 under BB DCP 2013.
4C.2.10 Through Site Links & View Corridors	Existing view retained; View corridors integrated.	Taller buildings have been positioned toward the centre of the site with separations provided by site links to mitigate view impacts.	Generally compliant – as discussed in the body of this report.
4C.3.1 Design Excellence	Excellence in urban design; Design principles; Daylight & ventilation to dwellings.	Buildings articulation to be provided as part of future Stage 2 applications.	Can comply as part of future applications.
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. Further details to be provided as part of Stage 2 application.	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 2 bed – 100m ² 3 bed – 130m ² 4 bed – 160m ² 25% max no. of 1bed units.	Internal unit layouts not provided with this 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.	N/A
4C.5.2 Internal Circulation	2m min. corridors; Articulate long corridors.	Details to be provided in Stage 2 submission.	N/A

Part	Control	Proposed	Complies
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 = 25m Building B = 25m Building D = 13.9m- 25m Building E = 13.9m-21.6m Other details to be provided in Stage 2 submission.	No – Refer to item 4 under BB DCP 2013
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. Impacts of overshadowing on the development to the south at 42-44 Pemberton Street is addressed at Note 5.	Yes Refer to item 5 under BB DCP 2013.
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 the proposed buildings are consistent with the requirements under SEPP 65. The location of windows/balconies/openings and habitable rooms will be provided as part of future Stage 2 applications and further assessment will be undertaken at that stage.	Yes Future Stage 2 applications to comply
4C.5.12 Acoustic Privacy	Table 6 of DCP; Multiple dwellings to be designed & constructed to	Details to be provided in Stage 2 submission.	N/A

Part	Control	Proposed	Complies
	comply with BCA.		
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.	The proposal, subject to the recommended amendments, is generally consistent with the character objectives relating to form, massing, scale & streetscape; solar access and views.	Yes – discussed at item 2 under BB DCP 2013
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 building security; Adjoining dwellings access to sunlight; Commercial parking to be conveniently located.	No Ground floor commercial or retail uses proposed. Council officers have recommended that the Building B along Pemberton Street within the B4 zone must include ground floor commercial uses.	No – discussed at item 2 under BB DCP 2013.
9.C Wilson/ Pemberton Street Precinct	Table 1 – New Street 1 (Public Street) 20m wide road reservation traversing the precinct from east to west for cars only and closed at	Building E fronts onto New Street 1, which would allow for two-way traffic.	Yes

Part	Control	Proposed	Complies
	<p>Wilson Street.</p> <p>Table 2 – New Street 2 & Table 6 Pedestrian Link</p> <p>Table 3 – Rancom Street</p> <p>Table 4 – Pemberton Street Widening</p> <p>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.</p> <p>Table 9 – Public Open Space north of New Street 1</p> <p>The size of the public open space will be a minimum of 3,000m² and is to be dedicated to Council.</p>	<p>Pedestrian through link provided measuring 24m in width.</p> <p>N/A</p> <p>4m strip of land to be dedicated to Council as shown on plans.</p> <p>Proposal includes a 3,000m² open space area. Applicant indicates that park shall be dedicated to Council. As outlined in this report, a formal offer of dedication should be submitted to provide certainty to Council of future dedication.</p>	<p>Yes</p> <p>N/A</p> <p>Yes</p> <p>Yes</p>
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> <ul style="list-style-type: none"> - 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 - 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>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>	<p>Noted – the proposal is generally compliant with the current controls that are in force under the BB LEP 2013. See section under BBLEP 2013 compliance table.</p>	Noted

Part	Control	Proposed	Complies
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.	The ground floor spaces of the buildings along Pemberton Street contain only two non-residential uses. Council officers recommend that at a minimum the ground floor of Building B that fronts onto Pemberton Street shall contain non-residential uses. Further, this report recommends that the buildings within the B4 zone be reduced in height to 3 storeys.	No – discussed at item 2 under BB DCP 2013.
	Height and FSR are to comply with the provisions of the Botany Bay LEP 2013.	<u>B4 zone</u> Permitted FSR: 1:1 Permitted Height: 10m Proposed FSR: 1.25:1 Proposed Height: 15.79m	No No Discussed under BB LEP 2013.
	The following setbacks apply to the site: <u>Building Setback</u> Front - 7m Side – adjoining a residential zone – 3m	<u>Building Setback</u> Front - 7m (Pemberton St north – note 4m of front setback will be excised for road widening). Front - 3m to Warrana St Front - 4m to Wilson St Front – 9m to New Street 1 (note 4m of front setback will be excised for road widening). Front – 13m to Pemberton St south (note 4m of front setback will be excised for road widening). Side – Ranges from 7m to 17.5m adjoining residential zones. Note - all setbacks appear to be landscaped in accordance with the DCP requirements.	Yes No No Yes Yes Yes Discussed at item 3 under BB DCP 2013

APPENDIX C – APPLICANT’S CLAUSE 4.6, HEIGHT OF BUILDING

APPENDIX D – APPLICANT’S CLAUSE 4.6, FLOOR SPACE RATIO