

## JOINT REGIONAL PLANNING PANEL (Sydney East Region)

JRPP No	2013SYE094
DA Number	13(208)
Local Government Area	City of Botany Bay
Proposed Development	<p>Joint Regional Planning Panel (JRPP) and Integrated Development Application for the redevelopment of the site for residential purposes, comprising:</p> <ul style="list-style-type: none"> <li>- excavation and site preparation works and construction of the site for residential purposes;</li> <li>- Four (4) buildings containing a maximum Gross Floor Area (GFA) of 42,804sqm and Floor Space Ratio (FSR) of 0.96:1 in the B4 zone and 1.55:1 in the R3 zone, comprising a total of 438 apartments;</li> <li>- Building heights between three (3) storeys to eight (8) storeys; basement and ground level parking;</li> <li>- 3,000sqm of publicly accessible open space;</li> <li>- pedestrian and cycle through-site links; and new vehicular access from Pemberton Street.</li> <li>- The proposal also includes dedication of land and stratum and Torrens Title subdivision.</li> </ul> <p>A letter of offer to enter into a Voluntary Planning Agreement has under S93F of the Environmental Planning and Assessment Act, 1979 accompanies the development application.</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> <p>Third Round - 22 April 2015 to 22 May 2015. Three (3) submissions of objection were received.</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 original development \$181,294,482.00.</p> <p>The CIV of amended application \$138,554,483.00.</p>
List of All Relevant s79C(1)(a) Matters	<ul style="list-style-type: none"> <li>• Environmental Planning &amp; Assessment Act 1979, Part 4 – Development Assessment</li> <li>• Environmental Planning &amp; Assessment Regulation 2000, Part 6 – Procedures relating to development applications</li> <li>• State Environmental Planning Policy No. 55 – Contaminated Land</li> <li>• State Environmental Planning Policy 2004 (BASIX);</li> <li>• State Environmental Planning Policy No. 65 – Design Quality of Residential Flat buildings</li> <li>• Botany Bay Local Environmental Plan 2013</li> <li>• Draft amendment to Botany Bay Local Environmental Plan 2013</li> <li>• Botany Development Control Plan 2013</li> </ul>
List all documents submitted with this report for the panel's consideration	<ul style="list-style-type: none"> <li>• Statement of Environmental Effects – JBA Urban Planning</li> <li>• Clause 4.6 Exception – JBA Urban Planning</li> <li>• Architectural Plans &amp; Design Report – Group GSA</li> <li>• Landscape Plans – Tract Landscape Architects</li> <li>• Traffic Impact Assessment – Ason Group</li> <li>• Phase 1 and 2 Environmental Site Investigation - WSP</li> <li>• Geotechnical Report – Douglas Partners</li> <li>• Access Report – Brentnall Technical Solutions</li> <li>• VPA Letter of offer – Australand</li> <li>• Acoustic Report – Acoustic Logic</li> <li>• Waste Management Plan - GHD</li> <li>• Housing Diversity Assessment – JBA Urban Planning</li> <li>• Remediation Action Plan – DLA Environmental</li> <li>• Survey – Dunlop Thorpe</li> <li>• Pedestrian Wind Environment Statement – Windtech</li> <li>• Stormwater Management and Flooding Analysis Report – Mott MacDonald</li> </ul>
Recommendation	Refusal
Report by	Heather Warton, Director City Planning & Environment

## **RECOMMENDATION**

That the Sydney East Joint Regional Planning Panel (JRPP), as the Determining Authority resolve to **refuse** development consent under Section 80(3) of the Environmental Planning & Assessment Act 1979, to Development Application No. 13/208 at 52 – 54 Pemberton Street Botany for the following reasons:

1. The proposed development is inconsistent with the development standard in Clause 4.3 of Botany Bay Local Environmental Plan 2013 as it exceeds the Maximum Height of Buildings for the subject site. (Environmental Planning & Assessment Act 1979 Section 79C(1)(a)(i)).
2. The proposed development in the R3 Medium Density Residential zone does not satisfy the draft amendment to the Botany Bay Local Environmental Plan 2013, being the Planning Proposal to amend Clause 4.4C, dated 27 January 2015, in terms of compliance with the removal of use of clause 4.6 with to variation to development standards relating to building height (Planning Proposal 2/2013, Department's reference: PP\_2014\_BOTAN\_001\_00). (Environmental Planning and Assessment Act 1979 s79C(1)(a)(ii)).
3. The proposed application fails to satisfy the recommended internal areas for apartments under Part 3 of the Residential Flat Design Code of State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development (SEPP 65). Consent can be refused in accordance with Clause 30A(1)(b) of SEPP 65 (Environmental Planning and Assessment Act 1979 s79C(1)(a)(i)).
4. The proposed development fails to satisfy the requirements of the Botany Bay Development Control Plan 2013, in relation to non-compliance with building height, unit mix, and unit sizes. (Environmental Planning & Assessment Act 1979 Section 79C(1)(a)(iii); and 79C(1)(b)).
5. The proposed development fails to satisfy the off street car parking for residential flat buildings required under the Botany Bay Development Control Plan 2013, in that a shortfall of 37 visitor car parking spaces is proposed. (Environmental Planning and Assessment Act 1979 s79C(1)(a)(iii) and 79C(1)(b)).
6. The proposed development and resulting non-compliant unit sizes and shortfall in off street car parking is not considered to be in the public interest as it will create adverse social and economic impacts in the locality by unreasonably contributing to the oversupply of under-sized units in the Botany local government area. (Environmental Planning and Assessment Act 1979 s79C(1)(e)).
7. The proposed development in its current form is not in the public interest. (Environmental Planning & Assessment Act 1979 Section 79C(1)(e)).

## EXECUTIVE SUMMARY

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

Council previously recommended Deferred Commencement approval of the former Stage 1 Development Application that was referred to the JRPP Meeting on 20 January 2015. At this meeting, the Panel unanimously determined to defer the application to allow the applicant to submit amended plans that address the Panel's Recommendations.

On 1 April 2015, the applicant submitted an amended application, which included conversion from a Stage 1 Development Application, to a Stage 2 Development Application, in accordance with Clause 55 of the Environmental Planning and Assessment Regulation 2000. The applicant has submitted legal advice in support of this amendment. Council officers did not object to this amendment.

The amended application was notified from 22 April 2015 to 22 May 2015. The notification included an offer by the applicant to enter into a Voluntary Planning Agreement for the dedication of land and public domain works. Three (3) public submissions were received. A late submission was received on 1 July 2015.

The amended proposal seeks development consent (no longer just in concept) for the following:

- excavation and site preparation works and construction of the site for residential purposes;
- Four (4) buildings containing a maximum Gross Floor Area (GFA) of 42,804sqm and Floor Space Ratio (FSR) of 0.96:1 in the B4 zone and 1.55:1 in the R3 zone, comprising a total of 438 apartments;
- Building heights between three (3) 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;
- The proposal also includes the dedication of land and stratum and Torrens Title subdivision.

The key amendments between the Stage 2 application, and the previous application, as outlined by the applicant are as follows:

- full compliance with the FSR development standards that apply to the site;
- conversion of Building A and Building B West along Pemberton Street from 4 storey residential flat buildings to a 3 storey terrace style apartment typology;
- setting back and reducing the height of the taller building elements at the end of Building B North and Building D North along the new Public Park and East West Pedestrian Link;
- provision of a 333m<sup>2</sup> commercial tenancy on Pemberton Street;
- provision of a break in Building B East and Building D West; and

- conversion of Building E south and west from terraces to a 5 storey residential flat building.

The amended application generally responds to and complies with the Panel's recommendation from the 20 January 2015.

However, the application results in a non-compliance with the Building Height standard under the Botany Bay LEP 2013 (BBLEP) and results in a non-compliance with the unit sizes and unit mix control under the Botany Bay DCP 2013 (BBDCP). In addition, the application does not entirely comply with the minimum internal unit sizes in the applicable Table in the Residential Flat Design Code (RFDC) of SEPP 65 (as unamended). Given the significant departures from the RFDC unit sizes and Council's consistently applied DCP units sizes, Council recommends refusal under Clause 30A(1)(b) of SEPP 65.

Under the Stage 1 application that was reported to the JRPP on 20 January 2015 with a recommendation of 'Deferred Commencement', a condition was included requiring that any future Stage 2 Development Application must comply with Council's unit sizes and unit mix. Therefore, the current application is inconsistent with Council's position on this matter.

Notwithstanding the above non-compliances, the application results in an improved distribution of floor space and an improvement in the built form via building breaks, introduction of terrace dwellings for building transitions, compliant FSR, provision of a public park and through-site links.

However, for the reasons outlined in this report, the application in its current form is not supported.

## **1. BACKGROUND**

### **Original 2013 Stage 1 Development Application**

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

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 Sydney East Joint Regional Planning Panel (JRPP) is the determining authority as the CIV of the original development application was \$181,294,482.00.

The application was 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.

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.

On the 28 June 2014, the application was referred to the JRPP for determination with a recommendation of refusal. The reasons for refusal related to FSR; Building Height; Land use; deep soil; SEPP 65 and building design; traffic; and flood matters. The JRPP resolved to defer the consideration of the application pending the submission of amended plans by the applicant to address the reasons for refusal in Council's report. An extract of the Stage 1 Master plan is provided below.



Figure 1: Original master plan as lodged June 2013

### Amended 2014 Stage 1 Development Application

Originally, the applicant was Newtown Dyers and Bleachers Pty Ltd (N D & B Pty Ltd). On 5 June 2014, Australand wrote to Botany Bay Council advising that it had purchased the site from N D & B Pty Ltd, and that it now will be the applicant.

On the 25 September 2014, the applicant submitted amended architectural plans and supporting documentation for a Stage 1 application. 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:

- 3 storey row/terrace built form along Wilson Street and New Street 1.
- 4 storey residential flat building along Pemberton Street frontage.
- 4 to 7 storey residential flat building adjacent to the southern property boundary.
- 4 storey residential flat building in the northern part of the site.
- 2 to 6 storey buildings in the north central part of the site fronting the proposed new park and publicly accessible open space.
- 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 was notified for a period of fourteen (14) days from 15 October 2014 to 29 October 2014. Forty three (43) submissions in objection were received, with 34 of these submissions being a form letter.

The Stage 1 Development Application was forwarded to the JRPP Meeting on 20 January 2015 with a recommendation of Deferred Commencement.

At this meeting, the Panel unanimously determined to defer the application to allow the applicant to submit amended plans that address the Panel's Recommendations. An extract of the Panel's decision is provided at Page 6 of this report.

An extract of this scheme is shown below.

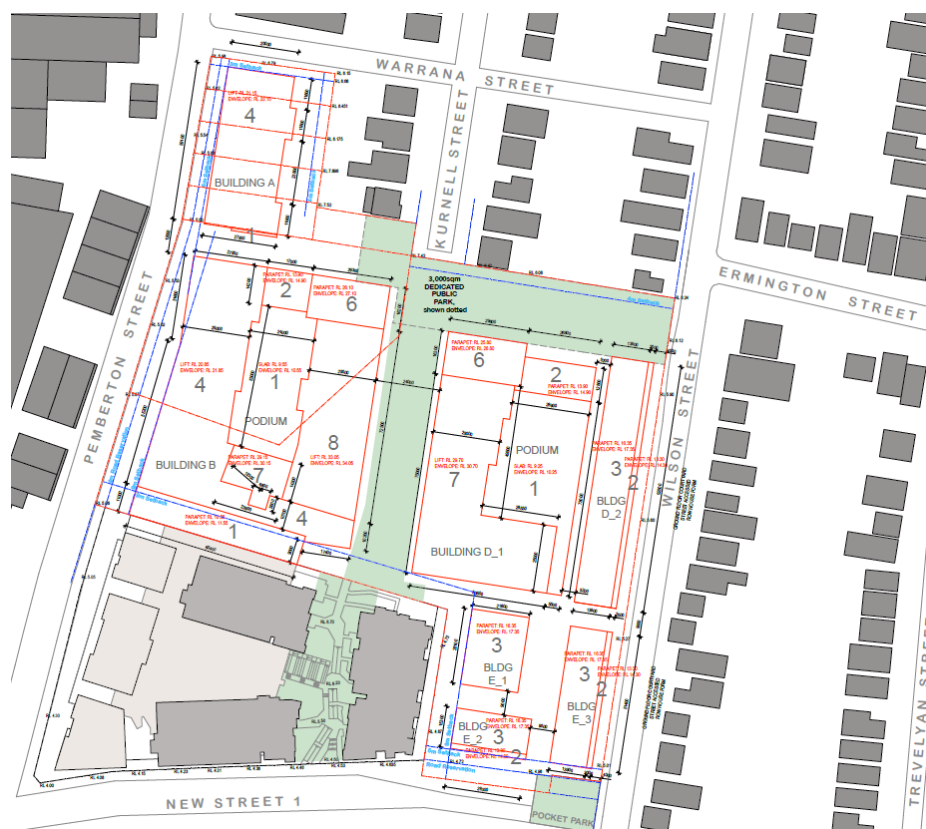


Figure 2: Stage 1 Masterplan – reported on 20 January 2015

**Panel Decision on 20 January 2015**

On the 20 January 2015, the amended application was referred to the JRPP for determination with a recommendation of Deferred Commencement, subject to amendments to reduce building height and FSR.

The Panel unanimously resolved to defer the application pending the submission of amended plans from the applicant. The Panel decision stated the following:

*1. The maximum building heights are to be amended as follows:*

- a) Buildings A and B (west) along Pemberton Street (within the B4 zone) shall be no greater than 10 metres (3 storeys);*
- b) Building B (south wing) shall retain the proposed 7 and 8 storey components, however the 4 storey component may increase to 5 storeys;*
- c) Building B (east wing) shall be no greater than 8 storeys;*
- d) Building B (north east wing) shall be a consistent 4 storeys (currently 6 and 2 storeys);*
- e) Building D (south/west wing) shall be no greater than 7 storeys;*
- f) Building D (north-west wing) shall be a consistent 4 storeys (currently 6 and 2 storeys);*
- g) Building D2 (east wing) along Wilson Street shall be a maximum of 3 storeys;*
- h) Building E3, along Wilson Street to be a maximum 3 storeys;*
- and i) Building E (west) may be increased from 3 to 5 storeys.*

*2. The amended plans are to be fully dimensioned, both horizontally and vertically in metres and include Relative levels referenced to AHD. The plans shall also specify the resulting gross floor area and floor space ratio within each of the applicable land use zones within the site and over the whole site.*

*3. Where buildings are located adjacent to single dwellings i.e., buildings A, B & D there shall be no increases in footprints or reductions in setbacks from common property boundaries. Building E west may increase its internal footprint (close the gap) if required.*

*4. The proposed public open space area may not be reduced.*

*5. The two 90 metre long buildings (B east & D west) must be physically broken to reduce their length.*

*6. Within the B4 zone a minimum of 300 square metres of non - residential floor space must be provided on the ground floor of buildings A & B and shown on the amended plans.*

*7. If required, the applicant shall prepare a Clause 4.6 submission in relation to any building heights and / or floor space ratios that exceed the maximum permissible in the Botany Bay Local Environmental Plan 2013 as a result of the amended plans.*

*8. The applicant shall lodge the required amended plans and associated documentation within 14 days of the date of these minutes.*



*9. Council shall determine whether or not the amended plans require notification in accordance with the relevant DCP.*

*10. The Council and the applicant shall discuss and determine the final draft conditions to reflect the amended plans and ensure certainty and clarity for subsequent Development Applications.*

*11. Subject to the need for notification and the consideration of any associated submissions, Council shall provide a supplementary report to the Panel Secretariat within 30 days of the receipt of the amended plans or conclusion of any notification period. The report shall include advice as to whether the amended plans meet the requirements of point 1 above, an assessment of any associated Clause 4.6 submission and any public submissions and the final draft conditions.*

*12. Upon receipt of the supplementary report the Panel Chair will determine whether the matter can be finalised by electronic means of communication or whether a further public meeting is required.*

In principle, the applicant has amended the application to comply with the Panel's recommendation, except the amendments retain a non-compliant building height and introduce non-compliant unit sizes and mix. Council officers recognise that the site is suitable for medium density residential and mixed use development. The application reconciles some of the deferred commencements recommendations that Council requested in the report submitted on 20 January 2015.

However, the Stage 2 Development Application has raised new non-compliance issues that were not apparent in the previous Stage 1 application, and these issues require further resolution, prior to granting approval.

### **Early Works Development Application - DA 14/239**

The applicant lodged an early works application on 3 October 2014, seeking consent for the demolition of all existing structures, minor excavation works and the removal of trees. This application has since been approved on 22 June 2015, subject to conditions.

## **2. 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 sqm<sup>2</sup>), Part R2 – Low Density Residential (one lot of 456 sqm) and Part R3 (22,565 sqm) – Medium Density Residential.

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.

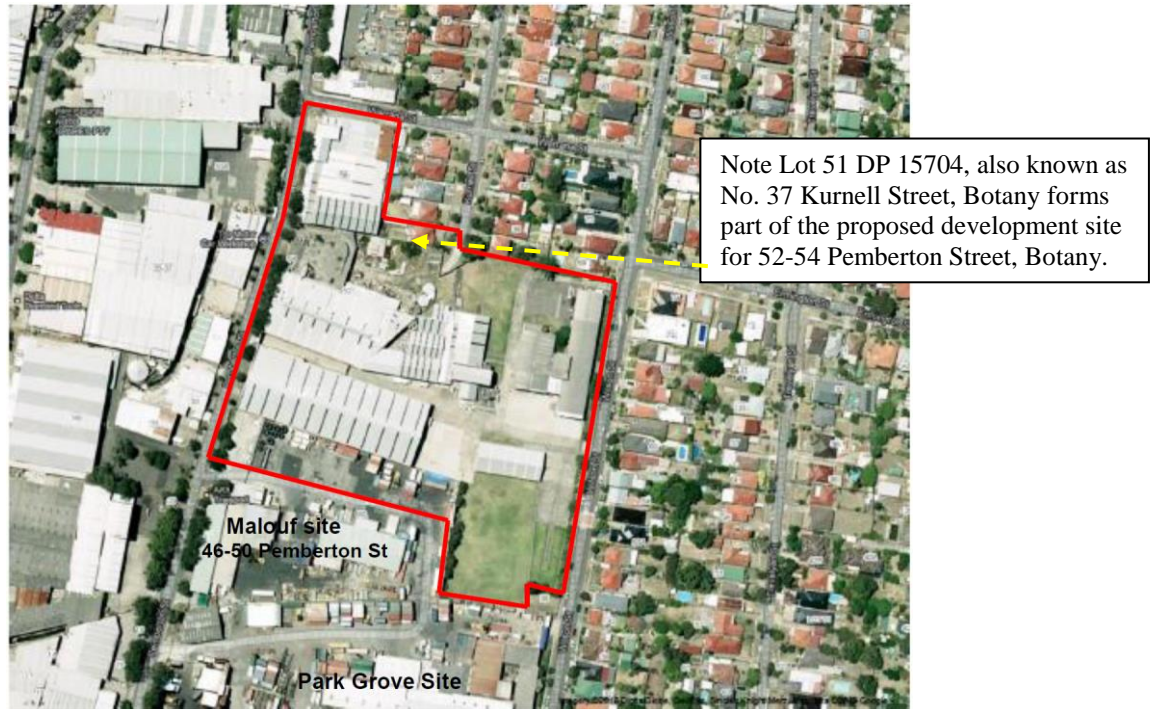


Figure 3 – The subject development site. Note the subject development application includes a residential allotment in Kurnell Street that is located outside the Precinct boundaries, as shown above.

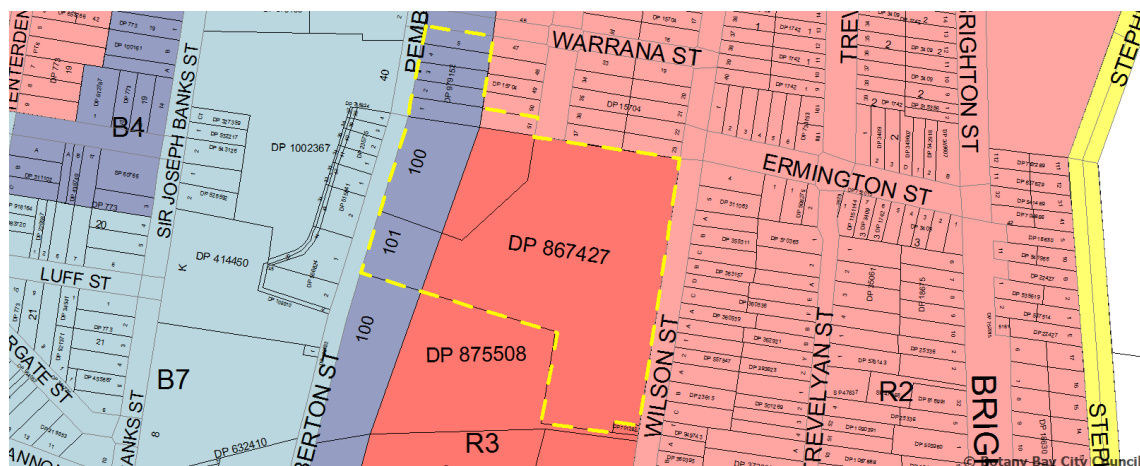


Figure 4 – Zoning Map of the development site

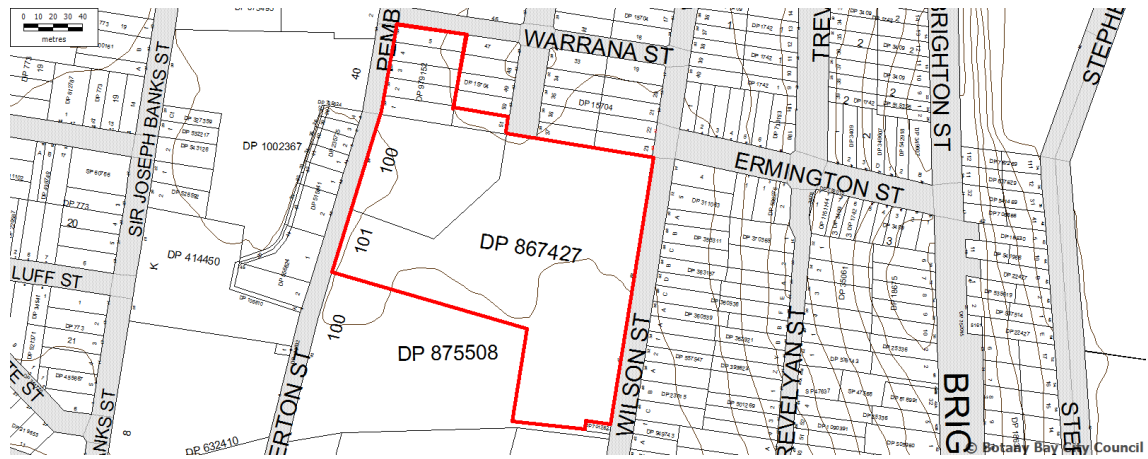


Figure 5: Site topography showing gentle slope across the site from the north-east to the south-west.



Figure 6: Open space area at the south east corner of the development site.



Figure 7: Existing warehouse buildings as viewed from the central part of the development site looking west.

### 3. 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.

Adjoining the development site to the south is a high density mixed use commercial and residential development developed at 42-44 Pemberton Street, Botany. This development comprises three buildings with Building A and C stepping down along Pemberton Street from six storeys at the New Street 1 and Pemberton Street corner, to three storeys in the north.

Included below are photographs which show the types of development that adjoin the site.





*Figure 8: 42-44 Pemberton Street, Botany – view from Pemberton Street looking north-east.*



*Figure 9: Northern portion of Wilson Street, Botany showing townhouse development at the northern part of Parkgrove 1A, No. 25 Wilson Street.*



*Figure 10: 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.*



*Figure 11: 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 2km 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 12: Development Sites within the Wilson Pemberton Precinct*

#### 4. THE PROPOSAL

The application has been amended to a Stage 2 Development Application. The amended development application seeks approval from the Joint Regional Planning Panel (JRPP) for the following works:

- excavation and site preparation works and construction of the site for residential purposes;
- Four (4) buildings containing a maximum Gross Floor Area (GFA) of 42,804sqm and Floor Space Ratio (FSR) of 0.96:1 in the B4 zone and 1.55:1 in the R3 zone, comprising a total of 438 apartments, as follows:
  - o Building A: 17 terrace style apartments and 2 regular apartments;
  - o Building B: 167 apartments, 14 terrace style apartments and 333 sqm of commercial uses fronting Pemberton Street;
  - o Building D: 162 apartments with 18 terraces fronting Wilson Street;
  - o Building E: 49 apartments with 9 terraces fronting Wilson Street.
- Building heights between three (3) storeys to eight (8) storeys;
- Basement and ground level parking with a total of 777 car spaces;
- 3,000sqm of publicly accessible open space;
- pedestrian and cycle through-site links; and new vehicular access from Pemberton Street.
- The proposal also includes dedication of land and stratum and Torrens Title subdivision.

The application includes an offer to enter into a Planning Agreement for the dedication of land and associated works.

The key amendments between the Stage 2 application, and the previous application, as outlined by the applicant are as follows:

- full compliance with the FSR development standards that apply to the site;
- conversion of Building A and Building B West along Pemberton Street from 4 storey residential flat buildings to a 3 storey terrace style apartment typology;
- setting back and reducing the height of the taller building elements at the end of Building B North and Building D North along the new Public Park and East West Pedestrian Link;
- provision of a 333m<sup>2</sup> commercial tenancy on Pemberton Street;
- provision of a break in Building B East and Building D West; and
- conversion of Building E south and west from terraces to a 5 storey residential flat building.

In relation to the second item above, it is noted that a portion of Building B west, which is located adjacent to the car park entry at Pemberton Street is 4 storeys in height, which is inconsistent with the JRPP recommendation of 20 January 2015.

The introduction of terraces at the corner of Pemberton Street and Warran Street is one of the key differences between the previous schemes for the site. The terraces range between 2, 3 and 4 bedroom typologies and generally provide a better transition to the adjoining low density dwellings. Previously, the schemes for the site proposed a residential flat building of 4 storeys in height.



Building A comprises terraces, being accessed via new entry off Warrana Street and provides at-grade car parking for the terraces. The terraces are part 2 and 3 storey.

Building E, similarly accommodates terrace dwellings along Wilson Street, that are proposed to be accessed via New Street 1 with at-grade parking. Building E ranges in height between 3 storeys and up to 5 storeys.

Building B is primarily a residential flat building, however includes some terraces on the lower levels fronting Pemberton Street and a ground floor commercial tenancy. Building B ranges in height between 3 to 8 storeys.

Building D is a residential flat building that ranges in height between 4 and 7 storeys. Building B west and Building D east have incorporated a 9 metre separation, which is consistent with the recommendations of the JRPP from 20 January 2015.

The following are extracts from the application.



*Figure 13: Photomontages of Wilson Street and proposed public park*



Figure 14: Site plan

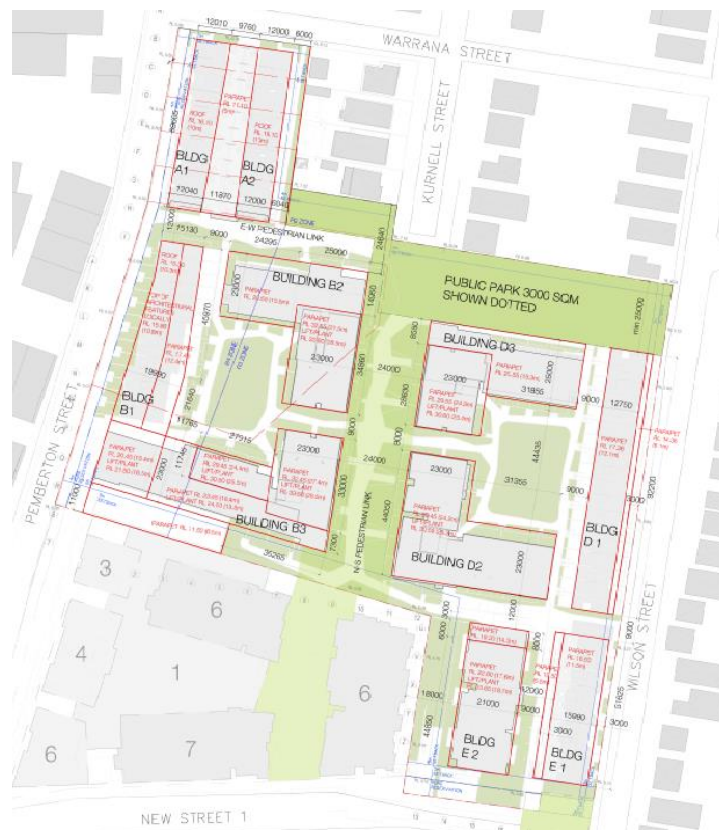


Figure 15: Envelope plan

### Description of the proposal

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

Building	Location	Zone	Height (storeys)	Adjoining Development
A	North west portion of Site with frontage to Pemberton and Warrana Streets.	B4	Part 2 and 3 storey terraces 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.	Part B4/R3	2-8 – includes terrace style apartments. 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	R3	2-7 - 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.	R3	2- 3 – includes terraces and apartments	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 proposal (as supplied by the applicant) is as follows:

Site Area	31,079.5 sqm
GFA	42,804 sqm
FSR	0.96:1 in the B4 zone and 1.55:1 in the R3 zone
Dwellings	438 apartments
Site Coverage	13,959.5 m <sup>2</sup> or 44.9%
Landscaped area	8,935.7 m <sup>2</sup> or 28.7%
Communal Open Space	5,795 m <sup>2</sup> or 18.65%
Deep Soil including public park	4,354.3 m <sup>2</sup> or 48.7% of landscaped area
Deep soil excluding public park	1,354.3 m <sup>2</sup>

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

A summary of proposed apartments and sizes, as provided by applicant is over:

Dwelling Type	Gross Floor Area (m <sup>2</sup> )	Number proposed	% of total
1 bed	54-71	147	33.5 %
1 bed + study	62-67	8	2 %
<b>1 bed subtotal</b>			<b>35.5</b>
2 bed (standard)	74-79	86	19.5 %
2 bed (medium)	81-98	79	18 %
2 bed (large)	93-107	26	6 %
Terrace - 2 bed	126	4	1 %
<b>2 bed subtotal</b>			<b>44.5</b>
3 bed	102-132	32	7.5 %
3 bed loft	107-121	2	0.5 %
Terrace - 3 bed	136-144	19	4.5 %
<b>3 bed subtotal</b>			<b>12.0 %</b>
Terrace - 4 bed	152-193	35	8 %
<b>4 bed subtotal</b>			<b>8 %</b>
<b>Total</b>		<b>438 dwellings</b>	

## 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 combination of terrace style dwellings and a residential flat building which includes a commercial tenancy. This is consistent with the Panel Recommendations from the 20 January 2015.

## Height of Buildings

The application proposes a height non-compliance within both the B4 and R3 zoned portions of the site that range from 2.4m and 9.5m in the B4 zone and 2.5m to 6.6m in the R3 zone. It is noted that some building heights comply with the height control. The heights vary between 2 storeys and up to 8 storeys.

It is noted that the proposed heights are generally consistent with the recommendations of the JRPP from 20 January 2015, with the exception that a portion of Building B west, which is located adjacent to the car park entry at Pemberton Street is 4 storeys in height.

The application has applied the bonus provisions in the R3 zone, under clause 4.3(2A). 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 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 0.96:1 in the B4 zone, 1.55:1 in the R3 zone and no FSR/Floor area within the R2 zone. The total gross floor area of the development is 42,804m<sup>2</sup>. The distribution of the floor area results in a compliant FSR. It is noted that the previous application did not comply with the FSR.

## Public Domain Works and Open Space

The DCP/Master Plan requires the provision and dedication of a public park of 3,000sqm, and indicated that the dedication and embellishment may be off set against section 94 contributions.

The development application included an offer to enter into a Planning Agreement (PA), dated 23 March 2015, under section 93F of the Environmental Planning and Assessment Act 1979 (the Act). This was notified with the application.

The offer was amended on 15 June 2015 and the final offer was negotiated on 26 June 2015 as follows:

1. Dedication to Council of the 3,000m<sup>2</sup> area of land which forms the proposed park facing Wilson Street as shown on the proposed DA plans.
2. Embellishment of the proposed 3,000m<sup>2</sup> park. Embellishment works to the public open space are to be completed prior to the issue of any occupation certificate for the last building.
3. Creation of public access easements over the east-west pedestrian link between the proposed park and Pemberton St;
4. Embellishment of the east-west pedestrian link.
5. Creation of public access easements over the north-south pedestrian link between the proposed park and the north-south link to be created on the adjoining development site to the south;
6. Embellishment of the north-south pedestrian link.
7. Widening of Pemberton St including new on-street parking, street trees and footpath and dedication of land to Council. Australand acknowledges and accepts Council's offer of a 10% reduction in the S94 contributions applicable for these works.
8. Widening of New Street 1 including new street trees and footpath and dedication of land to Council.
9. Prior to the issue of the construction certificate for each building (relating to works above the ground floor), payment of a monetary contribution of \$18,000 per dwelling (calculated as \$20,000 per dwelling and reduced by 10% as a consequence of item 7) with that contribution discounted by the agreed value of items 2, 4 and 6 and discounted to take into account the applicable credit for existing worker population calculated in accordance with Section 2.11 of the Council's s94 contributions plan.

The offer has been supported in-principle at a Council meeting on 1 July 2015, where the Council resolved to agree to enter into a Planning Agreement with the applicant, if the application were to be approved. This decision did not indicate that Council supported the proposal, but a Council position on the draft Planning Agreement was required prior to referral of the application to the Panel as it is a section 79C matter.

The public park is 3,000sqm with a frontage to Wilson Street. The park is located on deep soil. The dedication of a public park is required under the Wilson-Pemberton Street section of the Botany Bay DCP 2013. The DCP indicates that the embellishment of the open space will trigger an offset of Section 94 Contributions.



Council officers support the provision of the deep soil park, and this is consistent with the recommendations outlined in Council's previous JRPP Assessment report.

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. An offer for the embellishment of these links is supported.

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. However, as the road widening works are in the Section 94 Plan, Council officers have negotiated that the contributions not be collected for that element of the plan, being the 'transport management' portion. This results in a 10% reduction to the contribution per dwelling. The applicant had offered \$20,000 per dwelling, so this is now \$18,000 per dwelling. If the application were to be approved, there will be no conditions for Section 94 Contributions, as all payments will be made under the Planning Agreement.

Note, the applicant has not submitted a Draft Planning Agreement. A Draft Planning Agreement will need to be prepared and publicly notified for 28 days.

The location of the public works is shown overleaf.

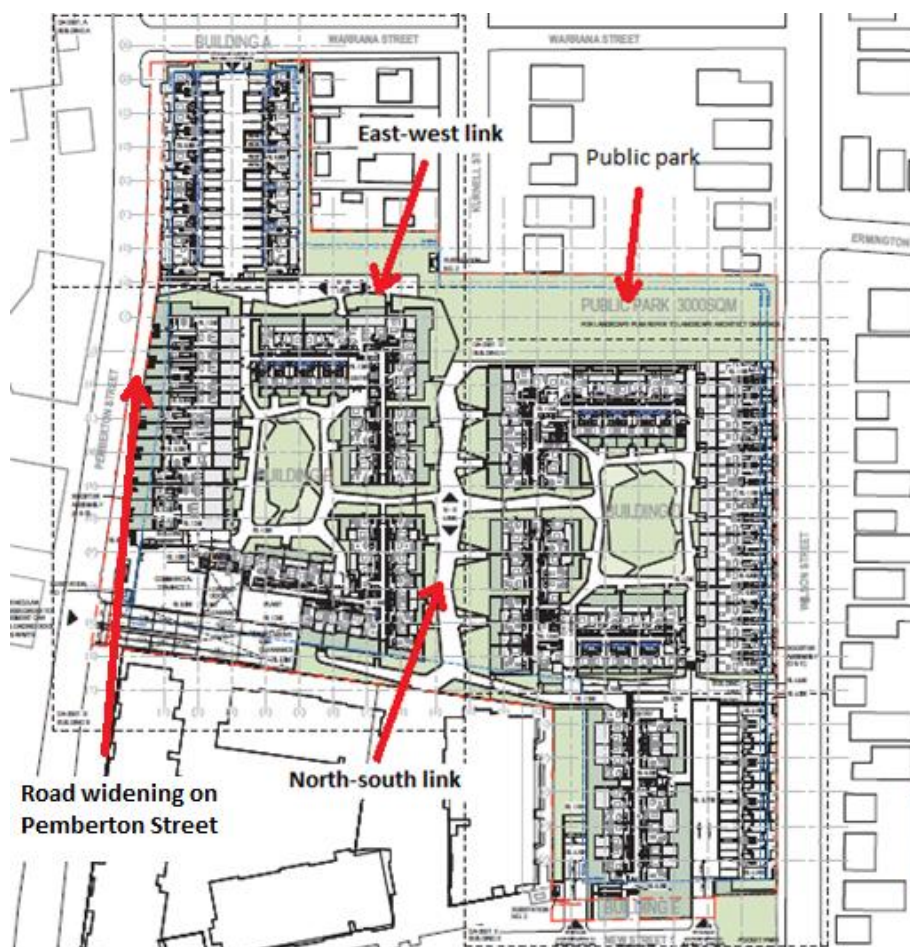


Figure 16: Public park and public domain works

## **Tree Removal**

On 26 June 2015, the applicant requested a tree removal plan be included as part of the subject application. The tree removal plan was originally lodged with the early works DA (DA 14/239), however Council only approved the removal of trees within the boundaries of the site.

Council's Landscape Officer has requested that trees within the Wilson Street setback and road verge should be further assessed and incorporated into the DA landscape proposal. Council Landscape officer has also requested that a revised arborist report be submitted in support of any tree removal. This remains an outstanding issues that requires further resolution but could be conditioned if the application was to be approved.

## **Parking and Traffic**

The development includes one level basement and at-grade car parking for a total of 777 car parking spaces. Some of the basement parking is provided in stacked-parking arrangement, which is not uncommon. The at-grade parking services the terraces that front onto Pemberton Street and Wilson Street. The application has introduced a new basement entry from New Street 1, in addition to the basement main basement entry at Pemberton Street. The proposal is deficient by 37 visitor car parking spaces, as the applicant has applied a visitor rate of 1/10 cars, as opposed to 1/5 cars as required by the BB DCP 2013

## **5. 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 for the original Stage 1 application. The NSW Office of Water has not provided any further comment during the additional two public notification of the application.

The General Terms of Approval shall form a condition of any consent.

#### **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 amended application was referred to the RMS on 10 April 2015. The RMS responded on 5 May 2015 raising no objection to the amended proposal.

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

A BASIX Certificate has been submitted with the application. The BASIX requirements shall form part of any future consent.

**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 previously submitted a Phase 1 and 2 Environmental Site Investigation prepared by WSP Environmental.

The amended application included a Remedial Action Plan.

The development application was referred to Council's Environmental Scientist who raised no objection to the proposal, subject to conditions. 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.

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

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.

An amendment to SEPP No. 65 was gazetted on 19 June 2015, and comes into force on 17 July 2015. However, the SEPP includes savings provisions for application lodged prior to 19 June 2015, whereby the previous version of the SEPP and the RFDC applies. Therefore, the application requires an assessment under the the previous SEPP 65 and RFDC. The draft SEPP 65 was in place during the life of the amended application.

The primary non-compliance with SEPP 65 and the RFDC is that all the apartments have been based upon the rule-of-thumb unit sizes and only 58% of the apartments comply with the table on page 69 of the RFDC. Therefore, the JRPP may refuse the application based upon non-compliance with unit sizes, as allowed by Clause 30A(1)(b) of SEPP 65.

**Design Quality Principles**

The ten design principles identified in the Residential Flat Design Code (RFDC) are addressed below together with a commentary provided by the Applicant.



***Principle 1: Context***Applicant's comments:

*The site is located in Botany, approximately 12 kilometres south of the Sydney CBD and approx.3km from Sydney Airport Domestic Terminal. Key aspects pertaining to the site and its context are:*

- > Former Newton Dyers & Bleachers Pty property, warehouses on site currently*
- > Land to the west of the site are still under light industrial uses. To the north and east of the site it is predominantly single and double storey dwellings, while to the south it is new high density residential developments*
- > Urban renewal already happening on neighbouring sites and is in line with Council's envisaged planning policies expressed in DCP*
- > Part of the urban renewal process with formerly industrial sites being transitioned into high density residential developments/areas*
- > Proposed 3,000 m<sup>2</sup> public park to be dedicated on site*
- > Five street addresses and interfaces to the site*
  - > improved pedestrian access through site links proposed by site links consistent with DCP linking two broader networks*
- > Regular bus services along Botany Road, bus stops within walking distance from site*

Officer's Comment:

The subject site is one of 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 within the B4 and R3 zone. These variations have been addressed in this report.

The application generally responds to the context of the site and provides a suitable development when compared with the previous application, via improved built form and a better transition in height.

***Principle 2: Scale***Applicant's comments:

*The scale of the proposed development complies with the envelopes discussed with Botany Council and the JRPP.*

*Transitional town houses and terrace style apartments are provided at the perimeter of the site on Pemberton Street, Wilson Street and Warrana Street frontages.*

*The development gradually steps up from the low-rise neighbouring dwellings through three storey town houses to four to five storey and ultimately seven to eight storey residential flat buildings in the centre of the site, away from neighbours' dwellings.*

*The massing that faces into the new public park is kept to four storeys to reduce the scale and transition down to the neighbouring single dwellings in the Warrana and Kurnell Street area. The 25m wide public park results in providing a substantial separation*

*between the proposed 4 storey building and the neighbouring houses to the north, which provides not only a green buffer and transition, but an above SEPP physical built form separation.*

*The architectural forms are clearly articulated with horizontal and vertical emphasis to reduce the scale of the massing and so create a composition of appropriate scale with sympathetic and detailed architectural expression.*

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 proposal generally responds to the JRPP's recommendations. The introduction of terraces along the B4 portion provides a better transition to the adjoining low density dwellings. 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 a similar transition. This will provide a consistent streetscape presentation along Pemberton Street and continue the transition north towards the low density development along Kurnell Street.

The figure overleaf is an aerial of the site which shows the footprint of existing industrial buildings compared with the proposed Master Plan.

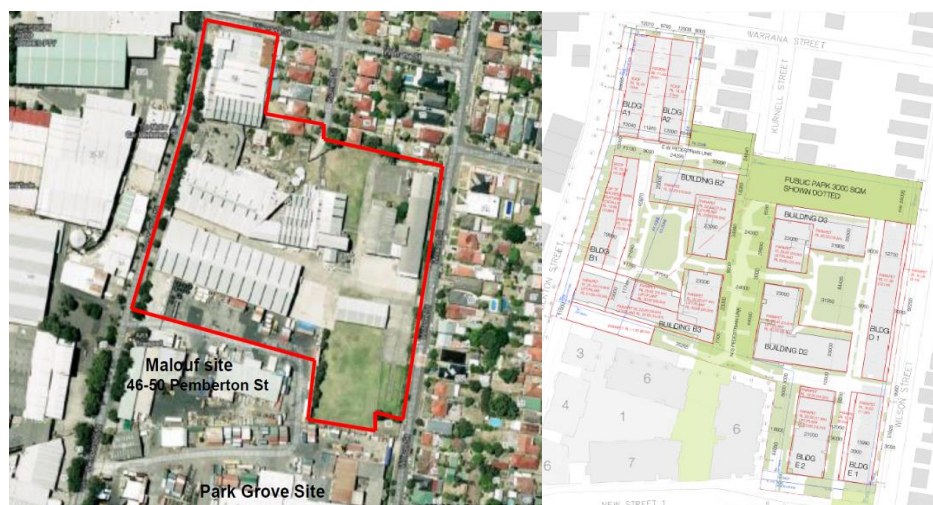


Figure 17: existing buildings compared to proposed building footprints and heights.

This figure shows that the existing built form is evenly split between the east and west of the site, 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. Particularly, the provision of part 2 and 3 storey terraces at Building A, improves the scale of the development at the interface with the sensitive low density residential development to the north and mitigates impacts associated with privacy and interface.

Previously, Council officer's recommend that the buildings lengths of Building B (east) and Building D (west), facing the north-south link should include a building break, which has been adopted in the scheme. This reduces the lengths and overall scale of the buildings when viewed from the north-south link.

The proposal generally improves 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***

#### Applicants Comments:

*There are four main groups of buildings : Building A to the north, Building B to the west, Building D to the east and Building E to the south.*

*Building A consists of two and three storey terrace style apartments and some units which serve as a scale transition from the neighbouring houses and adjacent industrial development. The interface between Building A and the Kurnell Street houses adjacent has been carefully considered to mitigate visual impact and maximise privacy for both the existing and future residents. Increased setbacks to 10m on the 2nd storey and limited windows minimise bulk and scale.*

*Building B is a perimeter group of buildings positioned around a central courtyard. The western address to Pemberton Street is primarily composed of terrace style apartments as a transition to adjacent residential, and rises in height and scale towards the centre of the site to eight storeys. The North-south building is separated into two with a 9m break and a large setback to the north creating a lower four storey section adjacent to the park.*

*Building D is like the mirror of Building B, similarly made up of four storey building with 30m setback to the north, three storey town houses on Wilson Street as a transition, and seven storey volume near the centre of the site. This minimises the visual impact of the development when viewed from site edges, and the site edge character remains a lower scale residential terrace style typology.*

*Building E is five storeys to the west and three storey terrace style apartments on the east, also to transition between higher density residential apartments and the adjacent detached houses. It provides an appropriate continuation along Wilson Street of the townhouse scale and typology.*

*Through site links (North-south and East-west) are provided to improve site permeability and increase pedestrian movement in the area. Both links are well served by surveillance from residential windows, front terraces and gates and balconies above, encouraging a safe environment.*

#### Officers Comments

The amended built form is considered an improvement and generates a better relationship with adjoining buildings. In particular, the terrace dwellings at Building A provide a suitable interface and transition to the adjoining dwellings. The positioning of the taller built form to the centre of the site is considered appropriate.

The through site-links provide greater permeability and links between the development, allowing for easier pedestrian movement. The links will also allow for public access.

***Principle 4: Density***Applicant's Comments:

*In response to SEPP 65 Principle 4 : Density, the design provides a density appropriate for the site and its context, in terms of floor space ratio, gross floor area and yield (or number of units) zone by zone. The proposed density is in line with Council's vision of urban renewal presented in the DCP. It is also consistent with development to the south of the site.*

*The proposed development provides 438 units containing a mix of terrace style apartments and conventional apartments. Density is carefully distributed throughout the site with maximized volumes in the central portion and significantly lowered scale and changed character to terrace house typology on eastern and western edges along Pemberton Street and Wilson Street alike.*

*This is a positive response of the proposed development with regards to the existing and future activation of the area. Reasonably increased density is a sustainable approach towards more efficient use of infrastructure and to ensure more efficient use of land and existing infrastructure. This also helps prevent further uneconomic urban sprawl with better use of available land and public transport.*

Officers Comment:

The application results in a compliant FSR. The proposal shall deliver 438 dwellings for the locality.

However, it is noted that the application does not comply with the unit sizes and unit mix under the BB DCP 2013. If compliant unit sizes were provided, then there would likely be a reduction in the number of dwellings in order to remain compliant with the FSR control.

The apartments within the development have primarily been based upon the rule-of-thumb unit sizes with 100% of the apartments being compliant with the rule-of-thumb and approximately 58% of the apartments being compliant with the table on page 69 of the RFDC. Therefore, the JRPP may refuse the application based upon non-compliance with unit sizes, as allowed by Clause 30A(1)(b) of SEPP 65.

***Principle 5: Resources, energy and water efficiency***Applicant's comments:

*The proposed development will incorporate ESD initiatives as part of the buildings, and also comply with the requirements outlined in the BASIX Certificate.*

*Public park is designed largely as deep soil area. This will promote substantial absorption for the site, as will the substantial landscape setback zones along the perimeter of the site. There are also landscaped areas provided on top of the basement car park slab to increase the landscape, resulting in a significant amount of landscaped area provided on site.*

*The orientation of buildings maximises the number of north, east and west facing apartments while minimising the ones facing south. Two storey cross over units have been implemented as part of the strategy to minimise the south facing dwellings. In terms of minimising the heatload on facades and subsequent air conditioning load,*

*shading devices are provided to protect against overheating and glare on windows. Green roofs over car park driveways on both the southern entry via New Street and the main car park entry from Pemberton Street are provided.*

Officer's comments:

It is noted that all units within the development are designed with open layouts and private balconies. BASIX Certificates have been submitted with the application that demonstrates the development is capable of meeting thermal, energy, and water efficiency targets.

The proposal incorporates a public park as deep soil landscape areas. The application has been referred to Council's engineer whom has raised no objection.

The applicant states that 74% of the apartments shall receive two hours of direct sunlight in mid-winter. However, views from the sun have not been provided to verify this compliance or demonstrate the level of sun that each apartment will receive.

***Principle 6: Landscape***

Applicant's comments:

*Landscaped pedestrian through site links bridge north with south and east with west across the site. These links allow for unlimited public access and provide large high quality communal areas. Meanwhile the design also ensures the privacy of the residents of the proposed buildings along these pedestrian links.*

*Landscaped communal open spaces in the form of courtyards enclosed by built forms of buildings B and D provides well surveilled secure play and resting area to residents.*

*Landscaped private open space for ground floor level to units have direct access either off the streets or pedestrian links.*

*Terrace style apartments are provided with front gardens and backyards. Landscaped private open spaces are also provided at Level 01 to the terrace style apartments in building A and E with direct access to the living spaces.*

Officer's comments:

The application includes the provision of a 3,000sqm deep soil park along Wilson Street. The park was previously located in the centre of the site. 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 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.

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 8,935.7sqm or 28.7% of the site area. The total level of deep soil is 4,354.3sqm.

The proposed landscaping treatments are considered acceptable with the requirements SEPP 65 and Council's DCP, and satisfy principle 6. However, it is noted that Council's Landscape officer has requested further information.

**Principle 7: Amenity**Applicant's comments:

*The individual apartment layouts are designed to ensure the intent of the Residential Flat Design Code (RFDC) amenity criteria have been taken into account. The amenity of apartments is optimised in terms of room dimensions and arrangement, access to sunlight, natural ventilation, with visual and acoustic privacy, indoor and outdoor space, with storage to meet the guidelines.*

*Individual unit layouts have well-proportioned rooms ( typically not more than 8m distance from glazing line to back of kitchen) and spacious balconies, arranged to maximise solar access and surrounding views. The minimum natural cross ventilation requirement and minimum two hours of sunlight requirement is comfortably exceeded with the proposal achieving 72% cross ventilated and 74% with two hours solar access indicating high amenity.*

Officer's comments:

The orientation of the site and configuration of buildings 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. The applicant has provided an assessment in relation to shadow impacts and it is concluded that the development at 42-44 Pemberton Street will receive some shadow in the morning period, with solar access being received from midday onwards. The subject application has incorporate adequate building separation to mitigate shadow impacts.

The apartments achieve a satisfactory level of amenity with regards to privacy, ventilation, and access to sunlight. The proposed design provides housing choice to future residents, with the units ranging in size and number of bedrooms. However, the proposed unit mix and unit sizes do not comply with the BB DCP 2013.

The application results in 74% of the apartments receiving two hours of solar access in mid-winter. Council considers this to be reasonable given the two hour control is an approach consistent with existing approvals in the immediate area. The development limits the number of single aspect apartments to a maximum 8%. 71% of apartments are cross ventilated.

However, as noted previously, 100% of the apartments are based upon the rule-of-thumb, and only 58% of the apartments comply with the table on page 69 of the RFDC of SEPP 65, which is considered to reduce the amenity of the apartments.

Private recreational areas are provided in the form of balconies or terraces off the living areas and are supplemented by communal landscaped areas to ensure an overall quality of living for future occupants.

**Principle 8: Safety and Security**Applicant's comments:

*Strong and legible addresses and entry points are provided directly from main streets to buildings (main entry off Pemberton Street and Wilson Street - refer to Site Entry and Access Diagram in Section 03.4 ). These two entries and the design of the landscape, paths and pedestrian accessways ensure that there is a clear delineation of private and public space.*

*Window placement, balconies, terraces and front gates have all been positioned to promote a safe and secure environment to the private courtyard spaces as well as the through site links and the public park. Particular care has been taken to make sure that all ground floor terraces have front gates and good visibility to all courtyard and public spaces to maximise surveillance and activation.*

*Within the landscape design, and supported by the built form, careful review has been given to making sure that there are no areas of entrapment, supported by good sightlines, careful design and fenestration as described above. The landscape design will accommodate appropriate and compliant lighting positions and lux levels to support a safe and visible public realm.*

Officer's comments:

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

The through site link provides for activation at the ground level. Casual surveillance to the public areas are provided by the site link and from upper level apartments. Pedestrian and vehicular entries are clearly separated and well defined. Safe internal access is available from the basement car park directly into the building and the public/private domain is clearly distinguished.

***Principle 9: Social Dimensions***

Applicant's comments:

*In response to SEPP 65 Principle 9: Social dimensions and housing affordability, the proposal provides a design that responds to the social context and needs of the local community in terms of lifestyles, affordability, and access to social facilities.*

*The projects' mix has been designed to suit the available market and needs of the surrounding area. The buildings incorporate a variety of dwelling types, size and affordability that range from 1 bedroom, 1 bedroom plus study, 2 bedrooms standard, 2 bedrooms medium, 2 bedrooms large, 3 bedrooms, 3 bedroom lofts, as well as 2 bedroom, 3 bedroom and 4 bedroom terrace style apartments along Pemberton Street, Wilson Street and Warrana Street.*

Officer's comments:

The development provides a balanced mix of apartments to a site located within close proximity to public transport, recreation facilities, and shopping facilities. It is noted that the proportion of one bedroom apartments and the unit sizes do not comply with the requirements under the BB DCP 2013 and Part 3 of the RFDC of SEPP 65. This is listed as a reason for refusal.

***Principle 10: Aesthetics***

Applicant's comments:

*As the typology and approach of the overall site focus on addressing the appropriate and sensitive knifing into the context, so does the materiality and degree of detail in the architectural expression.*

*The Terrace house typologies along Wilson, Pemberton and Warrana Streets all feature a consistent materials palette, which is intrinsically residential in character. This materials palette is shared with the apartment buildings, but the degree of detail and fineness of grain changes in scale from the typologies. This assists in providing diversity of built expression within a cohesive and harmonious palette. The fine degree of detail of the terraces and street interfaces is also carried throughout the public realm interface with the Public Park, East/West Connection, and the North South Link.*

Officer's comments:

The proposed contemporary design of the building is suitable and compatible with the design of other buildings. The proposal materials and finishes are supported.

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

A draft amendment to SEPP No. 65 was placed on public exhibition and ended on 31 October 2014. As such, Council will need to consider the draft amendments to the SEPP.

The amended SEPP No. 65 was gazetted on 19 June 2015, and comes into force on 17 July 2015. However, the SEPP includes savings provisions for application lodged prior to 19 June 2015, whereby the Residential Flat Design Code applies

The proposed development does accord with the overall aim with regard to housing and population targets.

The SEPP 65 requirements are less stringent than Council's DCP controls and as such, Council has lodged a submission to the Department of Planning and Environment on the SEPP 65 Review – Improving Apartment Design and Affordability (dated 30 October 2014). It is accepted that the units are capable of compliance with the new requirements under the ADG of SEPP 65.

### **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. Height of buildings – Clause 4.6 Exception**

The application proposes the following height variations, which range from 2.4m to 9.5m as outlined in the Table 3 below:

<b>Proposed Building Heights</b>				
<b>Building</b>	<b>Permitted Height (m)</b>	<b>Proposed Height (m)</b>	<b>Storeys</b>	<b>Non-compliance</b>
<b>B4 Mixed Use Zone</b>				
Building A	10	10	3	Complies



Building B (west Terraces)	10	12.4m	3	2.4m
Building B (south wing apartment fronting Pemberton Street)	10	16.2m	4	6.2m
Building B (south wing apartment building centre where it straddles zone boundary)	10	19.5m	Up to 5	9.5m
<b>R3 Medium Density Zone</b>				
Building B (south wing)	22	25.5	5/7	3.5m
Building B (east wing)	22	28.6	8	6.6m
Building B (north wing)	22	15.5	4	Complies
Building D (north wing)	22	15.3	4	Complies
Building D (west wing)	22	25.4	7	3.4m
Building D (terraces)	22	12.1	3	Complies
Building E (terraces)	22	11.5	3	Complies
Building E (apartments)	22	18.7	5	Complies

Table 3: Proposed heights

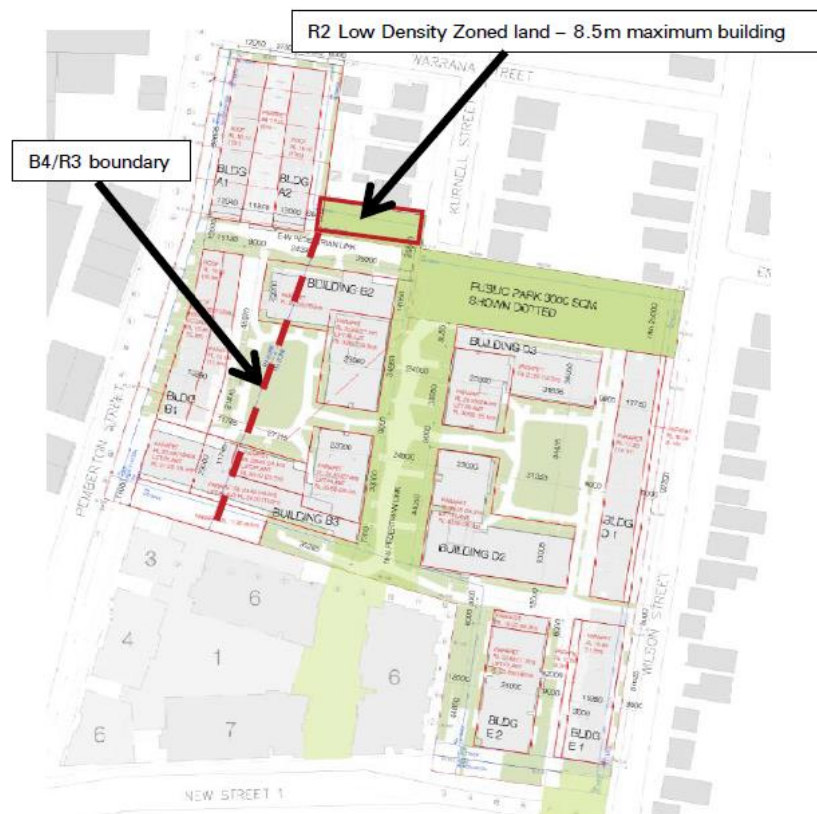


Figure 18: Zone boundary over heights

## Clause 4.6 Assessment

Consent may be granted for the proposal subject to Clause 4.6, notwithstanding that the proposal would contravene this development standard, as the height development standard is not expressly excluded from this Clause (Cl 4.6(2)). The applicant has provided a written request justifying the contravention of the development standard pursuant to Clause 4.6(3) of BBLEP 2013, which is considered below.

In assessing the proposed departure, consideration has been given to the objectives of the standard, the objectives of the zone, and the objectives of BBLEP 2013 (including Clause 4.6(1)) as outlined below. The applicant has submitted a Clause 4.6 Exception in support of the non-compliance and is attached at Appendix C.

In summary, the key justification provided by the applicant for the variation is:

- *The proposed non-compliance provides the opportunity to appropriately locate building heights across the site which best respond to their immediate context including existing, proposed and future development potential of neighbouring sites in accordance with planning controls, and allow for gross floor area to be concentrated in four (4) buildings in order to provide for a new deep soil park on the site in addition to publically accessible open space, noting that the development complies with the FSR controls for all parts of the site.*
- *The proposal is compatible with surrounding development, recognising that the site is located in a precinct undergoing transition with heights and built form that will differ in scale between single dwellings, residential apartment buildings and industrial development.*
- *The additional building height within certain portions of the site zoned B4 Mixed Uses and R3 Medium Density Residential is offset by the proposal proposing less than the maximum permitted height on the other parts of the site, including along the Wilson Street frontage, and on land immediately south of adjoining residential development on Kurnell and Wilson Streets where no buildings are proposed to be located to allow for development of a new public park and a landscaped area on land zoned R2 Low Density Residential.*
- *The proposed development seeks to redevelop an existing under-utilised site to provide for the housing needs of the community.*

As noted in the table, there are portions of the development that are well within the height control. The introduction of terrace dwellings provides a better transition to the adjoining low density dwellings on Kurnell Street and Warrana Street. However, the proposal results in both a non-compliant height within portions of the B4 and R3 zone.

The applicant submits that the “revised design distributes the height around the site to achieve an improved planning outcome taking into account the matters raised by the various stakeholders”, and “that in some cases the buildings protrude above the height standards due to the flood planning level above existing ground level”.

This Clause 4.6 variation has been assessed in accordance with the principles of *Wehbe v Pittwater Council [2007] NSW LEC 827 (Wehbe)* in which the Hon. Brian Preston, Chief Justice of the Land and Environment Court, set out a new test (the long-standing 5 part test

was set out in *Winten Property v North Sydney* (2001) 130 LGERA 79). This test sets out the following assessment process:

1. *The applicant must satisfy the consent authority that "the objection is well founded", and compliance with the development standard is unreasonable or unnecessary in the circumstances of the case;*
2. *The consent authority must be of the opinion that granting consent to the development application would be consistent with the policy's aim of providing flexibility in the application of planning controls where strict compliance with those controls would, in any particular case, be unreasonable or unnecessary or tend to hinder the attainment of the objects specified in s 5(a)(i) and (ii) of the Environmental Planning & Assessment Act 1979; and*
3. *It is also important to consider:*
  1. *whether non-compliance with the development standard raises any matter of significance for State or regional planning; and*
  2. *the public benefit of maintaining the planning controls adopted by the environmental planning instrument.*

The Chief Justice then expressed the view that there are 5 different ways in which an objection may be well founded and that approval of the objection may be consistent with the aims of the policy:

1. *the objectives of the standard are achieved notwithstanding non-compliance with the standard;*
2. *the underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;*
3. *the underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;*
4. *the development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;*
5. *the zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.*

These matters are considered below.

A. Objection well founded and compliance with the development standard is unreasonable or unnecessary in the circumstance of the case (Cl 4.6(3)(a))

1. *The objectives of the development standard are achieved notwithstanding non-compliance with the standard?*

The objectives of Clause 4.3 Height of the Botany Bay LEP 2013 are:

- 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 has provided a detailed response to each objective of the standard. In their opinion, the proposal satisfies the objectives of the height of building standard. Reference should be made to the applicant's Clause 4.6 at Appendix C.

Council officers agree that the proposal provides a better transition to adjoining development. It is also noted that due to the flood planning levels which include a 500 mm freeboard for habitable areas, the finished floor level of some ground floor areas are raised by up to 1100mm. Council's previous report acknowledged that this may lead to a variation to the height control.

In addition, it is noted that the height variations, with the exception of the non-compliant height of the southern portion of Building B west, have been supported in principle by the JRPP at the Panel meeting held on 20 January 2015.

However, the Council policy direction is that all applications should comply with the height standard, particularly on sites that benefit from the bonus height provisions. Greater objection is made to the height variation of Building B west (southern portion) within the B4 zone, as this is more visible from the streetscape. The bonus height is already a benefit to the development. Approving additional height is contrary to Council's draft Planning Proposal regarding urban design clause and non-application of Clause 4.6. Council has prepared the Planning Proposal, which is subject to a Gateway Determination to delete the bonus clauses.

On this basis, the proposal is considered to be inconsistent with the objectives of the height development standard for the following reasons:

- There is no planning reason why a compliant building cannot be accommodated on the site, given the large size of the site.
- There is no unique or exceptional circumstance to justify a variation of the development standard.
- It is considered that the portions of built form of the development that do not comply with the height, are not consistent with the context of the area and the desired future character of the area.
- The portions of non-complying height result in visual impact for future residents and residents in adjoining developments.

Council officer's do not object to the portions of the development that comply with the height control.

- 2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary*

The underlying objective and purpose of the height control has not been achieved as stated above, therefore the standard is relevant and strict compliance with the numerical requirement of 22m in the R3 zone and 10m in the B4 zone is considered necessary in this instance as the proposal does not meet all the objectives of Clause 4.3.

3. *The underlying object of the purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;*

The underlying objectives and purposes of the height control remain relevant to the proposed development. The proposed development is not consistent with the objectives of the height control in the BBLEP 2013 as detailed above.

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

It is noted that some variation to the height limit has been approved at adjoining developments, including 42-44 Pemberton Street Botany, where height penetrations above the building height control have been permitted as a result of lift over-run and roof structures.

Whilst the JRPP may have provided in-principle support to an 8 storey building on the subject site, even the progress of Council's Draft LEP to enforce no use of Clause 4.5 in conjunction with the bonus clause, Council officers do not support the proposed heights in the current scheme.

The development standard has not been abandoned. This development standard remains relevant in the area, and a variation to the standard is not warranted as discussed above.

5. *The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.*

The zoning is appropriate for the locality and the height control in the LEP is appropriate.

It is considered that the departure is not in the public interest given the non-compliance with height, results in a development that is inconsistent with the desired future character.

- B. Consistent with the policy's aim of providing flexibility in the application of planning controls where strict compliance with those controls would, in any particular case, be unreasonable or unnecessary or tend to hinder the attainment of the objects specified in s5(a)(i) and (ii) of the EP&A Act.

The Policy referred to in this instance is SEPP 1 which is not relevant in this case since Clause 4.6 is the applicable instrument, however, the objectives of both are similar in that flexibility in applying certain development standards to particular development and to achieve better outcomes for and from development by allowing flexibility in particular circumstances is desirable.

The objects specified in section 5 (a) (i) and (ii) of the Act are:-

a) *to encourage:*

- (i) *the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment,*
- (ii) *the promotion and co-ordination of the orderly and economic use and development of land.*

It is considered that in this instance, the development does achieve a suitable outcome, however, the non-compliance breaches the numerical height standard which is not acceptable. A compliant building could readily be approved on this site. Compliance with the controls results in a more orderly outcome.

The proposal does not achieve the objectives of the development standard and will not allow for the co-ordination of the orderly and economic use and development of land.

#### C. Sufficient Environmental Planning Grounds (Cl 4.6(3)(b))

The applicant submits that there is sufficient environmental planning grounds to justify flexible application of the building height. The applicant's justification includes:

- *the height, form and density of the proposed development is considered to be more appropriate in this context than would a strictly complying scheme;*
- *the proposal satisfies the objectives of the height development standard as it will not adversely affect views, solar access or privacy and is compatible with the bulk, scale and character of the area;*
- *the proposal satisfies the objectives of the B4 Mixed Uses and R3 Medium Density Residential Zones on the basis that it provides for the housing needs of the community and provides a suitable apartment mix;*
- *the proposed development does not raise any matters of significance for State or regional environmental planning significance set at Section 2.3 below and summarised as follows:*
  - *the proposed development is suitable for the site and exhibits demonstrable public interest despite the numerical non-compliances with the applicable height controls; and*
  - *the proposal is not inconsistent with the objectives of the Botany LEP 2013, Botany DCP 2013, Draft Metropolitan Strategy and the Draft South Subregional Strategy;*
- *there is no tangible public benefit in maintaining numerical compliance with the applicable height controls as demonstrated throughout this report and the Statement of Environmental Effects.*

Whilst there may be merit in the applicant's justification, Council officers do not support application of flexibility to the height standard, as there is no exception circumstance to allow flexibility.

#### D. Other Matters For Consideration (Cl 4.6(1), (4) & (5))

The following matters pursuant to Clause 4.6 also need to be considered:-

- Objectives of Clause 4.6;
- Public interest and public benefit of maintaining the development standard Cl 4.6(4)(a)(ii) and (5)(b) of BBLEP 2013); and
- Any matters of state or regional importance (Cl 4.6(5)(a) of BBLEP 2013)

##### *Objectives of Clause 4.6*

The objectives of Clause 4.6 (pursuant to Cl 4.6(1) of BBLEP 2013) are:

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

Council officer's do not agree that the development will achieve a better outcome and consider that compliance with the height standard could readily be achieved on this site.

Therefore, it is considered that flexibility cannot be applied to this development, as it does not achieve a better outcome for the site.

##### *Public Interest and Public Benefit*

The applicant submits the following justification in relation to the public benefit test:

*...various community benefits this development brings, including:*

- *revitalisation of an underutilised and derelict site;*
- *a new development that is compatible with the desired future character of the locality and recognises that Botany is an area undergoing significant and dynamic transformation;*
- *a new development offering high quality design and improvements to the streetscape;*
- *a new development including a public deep soil 3,200m<sup>2</sup> park in addition to publicly accessible landscaped site through pedestrian linkages;*
- *provision of construction jobs; and*
- *a capacity to achieve a better outcome by materially reducing heights in more sensitive locations on the site.*

The variation is not considered to compromise the public interest.

##### *Matters of State or Regional Importance*

The applicant submits the following justification in relation to matters of State or Regional importance:

*The proposal is consistent with the most recent Draft Metropolitan Strategy for Sydney to 2031 (dated March 2013) (the draft Metro Strategy) and the preceding Metropolitan Plan for Sydney 2036 (dated December 2010), as demonstrated by the Statement of Environment Effects submitted with the DA. In summary:*

- *The proposed development satisfies the “Balanced Growth” objectives of the draft Metro Strategy in that:*
  - *The site is effectively part of an urban renewal area.*
  - *The proposed development is within the Metropolitan Urban Area in a location experiencing strong market demand.*
  - *The proposed development reduces pressure on greenfield land which may contain agriculture and resource lands.*
  - *The proposed development reduces pressure on greenfield land which may contain high value environmental land.*
  - *The proposed development provides growth in an inner ring suburb of Sydney.*
  - *The proposed development encourages the growth of employment in those areas by co-locating housing and employment and encouraging small businesses servicing the resident population.*
- *The proposed development satisfies the “Liveable City” objectives of the draft Metro Strategy in that:*
  - *The proposed development provides much needed additional homes in the subregion.*
  - *The proposed development provides new housing close to existing infrastructure.*
  - *The proposed development provides a range of housing types (courtyard units and apartments) and sizes that are in demand in this location.*
  - *Whilst the proposed development will not provide housing for very low or low income earners it will provide “opportunities to invest in mid- and moderately-priced housing in accessible places to boost supply and improve overall housing affordability.” It also satisfies BASIX requirements and enables savings to household bills.*
  - *The proposed development provides for the growth and change in the Pemberton – Wilson Precinct as anticipated by the current local plans (including the relevant character statement).*
  - *The proposed development does not affect any heritage assets.*
  - *The proposed development follows good principles of urban design, including those in SEPP 65*

The variation to the height standard is not contrary to any State policy or Ministerial directive.

### Summary

The Clause 4.6 Exception to the height control has been assessed in accordance with relevant case law, being the principles of *Wehbe v Pittwater Council* [2007] NSW LEC 827. A copy of the applicant’s Clause 4.6 Exception is provided at Appendix C.



While it is acknowledge that the development will meet the needs of the local community by providing a high quality residential flat development with commercial uses, there is no planning reason why the development cannot comply with the height standard.

It is considered that adherence to the development standard in this instance is reasonable and necessary. Maintaining and enforcing the development standard in this case is reasonable and does not prevent the orderly and economic development of this site.

On this basis of, it is recommended that the development standard relating to the maximum height for the site pursuant to Clause 4.3 of the BBLEP 2013 should not be varied in the circumstances as discussed above.

## 2. 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. The combined permissible gross floor area is 45,746.75m<sup>2</sup>.

The proposal seeks consent for an FSR of 0.96:1 in the B4 zone, 1.55:1 in the R3 zone and no FSR/Floor area within the R2 zone. The total gross floor area of the development is 42,804m<sup>2</sup>. The distribution of the floor area results in a compliant FSR across the development. The floor space ratios for each zone are summarised below:

	<b>B4 zone</b>	<b>R3 zone</b>	<b>R2 zone</b>	<b>Total</b>
Site Area	8,058.5m <sup>2</sup>	22,565m <sup>2</sup>	456m <sup>2</sup>	31,079.5m <sup>2</sup>
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 <sup>2</sup>	37,232.25 m <sup>2</sup>	456m <sup>2</sup>	45,746.75 m <sup>2</sup>
Proposed FSR	0.96:1 (or 0.96:1)	1.55:1	0	
Proposed GFA (sqm)	7,736m <sup>2</sup>	35,066.01m <sup>2</sup>	0 (open space)	42,802.01m <sup>2</sup>
<b>Additional GFA sought</b>	<b>0 (complies)</b>	<b>0 (complies)</b>	<b>0 (complies)</b>	<b>0 (complies)</b>

Table 4: Floor space ratio summary – due to rounding of FSR, total GFA varies from applicant figure.

## 3. Planning Proposal (2/2013) dated 27 January 2015 to amend Botany Bay LEP 2013

Council has resolved to prepare two Planning Proposal's in accordance with the *Environmental Planning & Assessment Act 1979* and *Environmental Planning & Assessment Regulation 2000* to amend the Botany Bay Local Environmental Plan 2013.

The Planning Proposals seeks the following amendments:

- Planning Proposal No. 2/2013 for amendments to clause 4.6 to reduce the impact of the clause 4.3(2A) which relates to an increase in height up to 22m, and Clause 4.4B which relates to an increase in FSR up to a maximum of 1.65:1; and
- Planning Proposal No. 1/2015 to remove Clauses 4.3(2A) and 4.4B.

Planning Proposal No. 2/2013 was referred on 22 April 2015 to the Department of Planning and Environment for gazettal.

Planning Proposal No. 1/2015 was referred to the Department of Planning and Environment for a gateway determination on 26 February 2015.

The wording of new draft Clause 4.4C and the amendments to Clause 4.6 of the Botany Bay Local Environmental Plan 2013 are highlighted in red below:

#### **4.4C Building Form and Scale**

- 1. This clause applies to land to which clause 4.3(2A) and clause 4.4B 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 4.4B have been met.*

#### **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) (which permits a maximum height of 20 metres, for land zoned R3 and R4 that is greater than 2,000sqm).*
  - e) clause 4.4B(3) (which permits an FSR of 1.65:1, subject to meeting sub-clauses (a) to (d)).*

The proposed development seeks to use Clause 4.3(2A) of the BBLEP 2013 to increase the height in the R3 zone to 22m (from 10m) and Clause 4.4B(3) to increase the FSR within the R3 zone to 1.65:1 (from 1.5:1).

The applicant has addressed the draft planning provisions and has submitted a submission on the Draft Planning Proposal to Council. The applicant has the Department of Planning and Environment to include a savings provision to preserve the rights of the

development. As the LEP amendment has not been gazetted yet, the application does not yet need to be saved.

It is noted that the DA was lodged prior to the Planning Proposal being placed on public exhibition. Council's clear policy direction is to also remove Clause 4.3(2A) and 4.4B(3) altogether and a separate Planning Proposal has been referred for gateway determination on 26 February 2015.

Council has a clear policy priority that Clauses 4.3(2A) and 4.4B(3) require a development to further assess the impacts on the adjoining sites. A development may extend up to this limit provided a suitable interface with the surrounding development can be achieved. An assessment against Draft Planning Provision Clause 4.4C has been provided below.

Draft Planning Provisions	Council Comment
(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	<p>The building form is generally acceptable. The proposal provides a transition to adjoining land uses via the incorporation of a terrace form and the positioning of taller buildings to the centre of the site.</p> <p>The proposed development is considered to meet draft planning provision Clause 4.4(C)(2)(a)</p>
b) The building form provides adequate landscape setback to lower scale built forms	<p>The proposed development provides a 4m road widening to Pemberton Street, which is consistent with the DCP. In addition a 3 metre and 6 metre setback is provided along Pemberton Street. A 3 metre setback is provided to Wilson Street.</p> <p>Landscape setbacks are provided, including the provision of a public park.</p> <p>The proposed development is considered to meet draft planning provision Clause 4.4(C)(2)(b)</p>
c) A transition in building scale is achieved at property boundaries, and zone interface	<p>The proposal provides a suitable transition at the property boundaries along Kurnall Street and Pemberton Street via the introduction of terrace dwellings.</p> <p>Similarly the Wilson Street terraces provide a suitable transition at the Wilson Street frontage.</p> <p>The proposed development is considered to meet draft planning provision Clause 4.4(C)(2)(c)</p>
d) The development will be compatible with the character of the area in terms of bulk and scale, and	<p>Refer to the assessment against Part 8 of the DCP.</p> <p>The height variation attributed to the 8<sup>th</sup> storey limits the sites ability to be compatible with the character of the area in terms of scale.</p>
e) The objectives of clause 4.3 and 4.4B have been met	
<p>Clause 4.3 (height):</p> <p>(1) The objectives of this clause are as follows:</p>	<p>The height objective has been addressed in the Clause 4.6. The applicant has submitted justification for the proposed departure.</p>

Draft Planning Provisions	Council Comment
<ul style="list-style-type: none"> <li>a) to ensure that the built form of Botany Bay develops in a coordinated and cohesive manner,</li> <li>b) to ensure that taller buildings are appropriately located,</li> <li>c) to ensure that building height is consistent with the desired future character of an area,</li> <li>d) to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development,</li> <li>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.</li> </ul>	
<p>Clause 4.4B</p> <p>(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.</p>	<p>It is considered that the proposed design, in generally does facilitate a better-built form and urban design.</p> <p>The proposed development is considered to meet draft planning provision Clause 4.4B(1).</p>

*Table 5: Assessment against Draft Planning Provisions*

In conclusion, the application does not comply Clause 4.3(2A), however the applicant has provided justification in response to this in the form of a Clause 4.6 Exception. Clause 4.4B(3) which relates to FSR is complied with.

### **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. Unit sizes and unit mix

The proposed unit sizes and unit mix do not comply with the requirements of the Botany Bay DCP 2013. Council has provided some flexibility in the past to unit mix, however, no flexibility has been applied to Council's unit sizes.

Under the Stage 1 application that was reported to the JRPP on 20 January 2015 with a recommendation of 'Deferred Commencement approval', a condition was included requiring that any future Stage 2 Development Application must comply with Council's unit sizes and unit mix. Therefore, the current application is clearly inconsistent with Council's previous recommendation. Put simply, Council would not have recommended 'deferred commencement approval', if it was aware that the applicant was not going to comply with Council's unit sizes in a future Stage 2 application.

The following table summarises the unit sizes and unit mix.

Dwelling Type	Gross Floor Area (m <sup>2</sup> )	Number proposed	% of total
1 bed	54-71	147	33.5%
1 bed + study	62-67	8	2%
<b>1 bed subtotal</b>			<b>35.5</b>
2 bed (standard)	74-79	86	19.5%
2 bed (medium)	81-98	79	18%
2 bed (large)	93-107	26	6%
Terrace - 2 bed	126	4	1%
<b>2 bed subtotal</b>			<b>44.5</b>
3 bed	102-132	32	7.5%
3 bed loft	107-121	2	0.5%
Terrace - 3 bed	136-144	19	4.5%
<b>3 bed subtotal</b>			<b>12.0%</b>
Terrace - 4 bed	152-193	35	8%
<b>4 bed subtotal</b>			<b>8%</b>
<b>Total</b>		<b>438 dwellings</b>	

The Botany Bay DCP 2013 stipulates a unit size as follows:

- 75sqm for 1 bedroom units;
- 100sqm for 2 bedroom units;
- 130sqm for 3 bedroom units.

The application results in the following unit sizes:

- 1 bed: 54m<sup>2</sup> – 71m<sup>2</sup>
- 2 bed: 74m<sup>2</sup> – 107m<sup>2</sup>
- 3 bed: 102m<sup>2</sup> – 132m<sup>2</sup>

100% of the apartments comply with the rule of thumb requirement under SEPP 65, however 58% comply with the internal areas under the table on page 69 of the RFDC of SEPP 65.

In addition, the DCP states that the maximum number of studio and 1 bedroom apartments is 25% of the total apartment mix. The application proposes 35.5% as 1 bedroom apartments.

In support of the proposed unit sizes and mix, the applicant has submitted a Housing Diversity Assessment Report prepared by JBA Urban Planning. The report includes a review of demographic data to understand the existing and projected future characteristics of the local community in terms of mix of apartments and dwelling sizes with regard to the housing needs of the existing and future community.

The report provides the following justification for the apartment sizes:

- *Whilst families with children are the most common household type (35% of households), smaller household types such as lone person (24%) and couple-only (20%) represent a significant proportion of total households within the Botany Bay LGA.*
- *There is a significant gap between existing dwelling stock and dwelling need, particularly in the provision of smaller dwellings. Whilst at least 44% of households comprise only one*

*or two people (lone person and couple-only families), only 9% of dwellings in the Botany Bay LGA are a studio or 1-bedroom dwelling.*

- *A significant number of larger dwellings are being occupied by a small number of people, indicating that these households do not have suitable smaller housing options available to them. Whilst 81% of houses had three or more bedrooms, 43% of houses were occupied by only 1 or 2 people.*
- *Significant population growth within the Botany Bay LGA, accompanied by decreasing household sizes, is expected to require an addition 14,500 dwellings to be provided by 2031.*
- *50% of all new households will be either a lone-person or couple-only family that could be expected to require only 1 bedroom to fulfil their basic living requirements.*
- *There is an increasing acceptance by families of the prospect of apartment-living with children. As such, it is likely that a large proportion of the new family households residing in the LGA will be willing to live in 2-4 bedroom apartments and townhouses.*
- *The proposed development will meet or exceed other design standards or recommendations under SEPP 65 and the RFDC, with 74% of apartments receiving at least 3 hours of solar access between 9am and 3pm during the winter solstice and 72% of apartments designed to provide natural ventilation*
- *The proposal includes apartments that meet and exceed sizes under the RFDC 'Rules of Thumb' for each product, however, the proposed apartments do not achieve the minimum sizes specified in the Botany DCP. The Botany DCP specifies minimum apartment sizes that are between 37% and 50% greater than the RFDC 'Rules of Thumb'. As outlined in **Section 2**, we note that the draft Apartment Design Guide adopts the RFDC 'Rules of Thumb' internal sizes, and that the draft SEPP 65 Amendment (which is a matter for consideration under S79C of the EP&A Act) would not permit consideration of the DCP controls.*
- *Compliance with numerical controls must be considered in the context of the broader aims and objectives of the applicable controls, which are outlined in **Section 2** of this report. At the highest level, SEPP65, the RFDC, the Botany LEP and DCP all aim to provide housing choices that meet the needs of the existing and future community. A fundamental requirement for the attainment of these objectives is ensuring that the apartments delivered are affordable to the existing and future community. The RFDC states that providing a range of apartment sizes promotes housing affordability, and in establishing the 'Rules of Thumb' states that the use of these minimum apartment sizes can contribute to improved affordability. Whilst size represents only one of the factors contributing to affordability, by providing a range of smaller and larger apartments and different dwelling typologies allows households with different needs and budgets to only pay for the housing product that best meets their needs.*

The applicant's justification is noted. The applicant has provided detailed justification in support of the variation to the unit mix and sizes. Of less concern is the unit mix, which has in some instances, been varied. To a certain degree, the unit mix could be supported, if compliant unit sizes were provided.

However, the unit sizes under the BB DCP 2013 have not been varied, and Council has a clear policy position on this matter. Council's larger unit sizes are intended to provide increased amenity for residents living in this case, affected by aircraft and road traffic noise. The increased area is intended to provide better amenity.

The application states the following in its Housing Diversity Report:

*Clause 30A of SEPP 65 states that a consent authority must not refuse consent to a development if the proposed area for an apartment is equal to, or greater than, the recommended area for the relevant apartment type in Part 3 of the RFDC. It is accepted practice that this requirement relates to the apartment areas specified in the 'Rules of Thumb', which has been confirmed in recent Land and Environment Court judgements that deal with this issue.*

In the case of *Botany Bay Development Pty Ltd v Council of the City of Botany Bay (2014) NSWLEC 1073* and the Section 56A Appeal of *Council of the City of Botany Bay v Botany Bay Development Pty Ltd (2015) NSWLEC 55*, Justice Sheehan's judgement concluded that Commissioner Brown in *Botany Bay Development Pty Ltd v Council of the City of Botany Bay (2014) NSWLEC 1073* should have given consideration to the top table of the unit sizes in the Residential Flat Design Code and not the "rule of thumb" table found at the bottom of the page.

This confirms that the reference in Clause 30A of SEPP 65 for apartment sizes is the table on page 69 of the RFDC, and not the rule of thumb. Clause 30A permits the consent authority to refuse the application on this ground.

The 100% of the unit sizes have been designed to comply RFDC's 'Rules of Thumb', and only 58% of the apartments comply with the table on page 69 of the RFDC. Furthermore, the proposed apartments do not comply with the minimum sizes specified in the BB DCP 2013.

The proposed unit sizes represent a substantial breach from the requirements under the BB DCP 2013. Specifically, none of the 1 bedroom apartments comply with Council's unit size requirement and only a very minor portion of 2 bedroom apartments (less than 65%) appear to comply with the unit size requirement.

Council notes that applicant's justification is detailed, however, Council's own evidence suggest that its unit sizes and unit mix are appropriate for the area, and therefore, there is no requirement to vary the unit size and mix, to the extent proposed.

Despite the applicant's justification, Council officers cannot support such a substantial variation to the apartment sizes. This is listed as a reason for refusal.

## 2. Cumulative traffic, vehicle access and New Street 1

The development includes one level basement and at-grade car parking for a total of 777 car parking spaces. The application has introduced a new basement entry from New Street 1, in addition to the basement main basement entry at Pemberton Street. The proposal is deficient by 37 visitor car parking spaces, as the applicant has applied a visitor rate of 1/10 cars, as opposed to 1/5 cars as required by the BB DCP 2013.

The application is supported by a Traffic Impact Statement and a supplementary report was provided on 30 June 2015, which includes additional cumulative traffic assessment that takes into consideration adjoining development, including 42-44 Pemberton Street and 16 Pemberton Street. The report concludes that the "local road environment can accommodate the traffic generated by the subject development cumulative to the traffic generated by proposed developments nearby".

The applicant has provided turning circles to demonstrate that the proposed vehicle basement vehicle entry and the entry to Building E - terraces from New Street 1, can occur wholly within the applicant's land and Council/public land, given the balance of the New Street 1 carriageway has not yet been dedicated to Council and remains in private ownership of the adjoining developer and no landowners consent has been granted for use of this land for vehicular access. Access to the terraces can occur via the basement, which can be accessed from Pemberton Street. The traffic consultant has confirmed that the turning circles are compliant with AS 2890.1 and can be supported on traffic grounds. This is shown at Figure 19.

However, the approved D.A for the construction of New Street 1 which includes a footpath, kerb and landscaping. The proposed temporary driveway solution shown on Figure 19 will conflict with the approved DA for New Street 1 as it will be located over a new footpath. This entry arrangement is not ideal.

Initially, it is noted, that the applicant's plans indicated that the vehicle access would cross over the pocket park and portions of New Street 1 that are owned by the adjoining developer. This has since been resolved by way of supplementary documentation provided on 30 June 2015.

However, it is noted that upon the dedication of New Street 1 to Council, Building E and Building E-terraces shall have direct vehicular access from New Street 1. If the application were to be approved, then this will require a later Section 96 to amend the vehicle access from New Street 1, once this land has been wholly dedicated to Council. This is shown at Figure 20. Resolution of the public footpath and landscaping that is to be constructed under the DA for New Street 1 will be required.

Final details of this arrangement were only received by Council on 30 June 2015. Greater consideration is needed to determine if this should be allowed, including the suitability of the entrance now removing what was supposed to be footpath and consideration of potential conflicts with the entry to the terraces to the south. It may be that the entry will not be supported in the long or short term. This would mean all traffic must enter the basement via Pemberton Street, which was initially proposed in the Stage 1 Development Application. An extract of these plans are provided below.



Figure 19: Proposed vehicle movement





Figure 20: Future vehicle movement

The applicant shall need to contribute to the cost of the proposed traffic lights at the intersection of Pemberton Street and Botany Road. This would form a condition of consent if approval were to be granted.

### 3. Landscaping and Tree Removal

The application includes the dedication of a 3,000 sqm public park and the provision of through site links. The north-south link is 20 metres wide and includes landscaping and informal recreation areas. It is noted that due to the flood planning levels, there is limited ability to include soft landscaping upon the site frontages. The application is supported by landscape plans.

The application was referred to Council's landscape officer. In response, Council's Landscape Officer has requested further information:

- That a detailed landscape plan with construction details as well as a detailed public domain plan to include finishes be submitted.
- Trees within the Wilson Street setback and road verge should be further assessed and incorporated into the DA landscape proposal.
- A revised arborist report be submitted in support of any tree removal.
- Existing trees to be incorporated into the landscape plan

This outstanding issue could be resolved via conditions of consent that can be discussed with the applicant should the application be approved.

## 4. 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.

The interface with the low density residential dwellings at the northern end of the site, between Pemberton Street, Warrana Street and Kurnell Street has been improved via the

introduced of the 2 and 3 storey terraces. Previously, the scheme proposed a 4 storey residential flat building, which would have a greater density and intensity than the terraces. It is noted that the terraces have a reduced 6 metre setback to the rear of the dwellings on Kurnell Street, however this is considered acceptable, given the front façade has been designed in a manner to reduce privacy and overlooking impacts to the dwellings to the east, via the provision of screens, increased setbacks to the first floor and the provision of blank facades on the first floor. It is noted that the JRPP stated that the buildings should be no greater than 3 storeys. The proposed is consistent with this recommendation.

The development incorporates a suitable interface to adjoining development, via building separation and setbacks which accommodate the deep soil park and through site links. These provide an opportunity for a landscape buffer and separation.

Although Council does not support the Clause 4.6 Exception for the height penetration of the 22 metre control, the 7 and 8 storey buildings are located to the centre of the site, away from the low density dwellings. In addition, the applicant has amended both buildings to accommodate a 9 metre break, as per the recommendation of the JRPP. Therefore, the positioning of the buildings is considered appropriate.

The interface between Building B (east) and Building D (west) to the low density dwellings in Kurnell Street has been improved by reducing the height of the building to 4 storeys. This is consistent with the recommendations of the JRPP.

The application proposes a 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 accommodates a front setback and private open space in the form of a rear yard.

To provide consistency with adjoining terrace development along Wilson Street, a condition would be imposed in a future approval requiring 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.

## 5. Setbacks

The setbacks achieve general compliance with DCP 2013 with the exception of the setback on Pemberton Street (north) adjacent to Building A, 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.

The JRPP did not previously raised the setback as an issue, and given that Building A provides a better interface and transition with the adjoining low density dwellings, a 3 metre setback is considered appropriate. Further, a 7 metre setback would be more appropriate for a residential flat building, which would have a greater density and intensity, than the proposed terraces.

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.

#### **6. Flood Planning**

The site is affected by the 1:100 year flood. The applicant has submitted a Stormwater Management and Flooding Analysis Report, which has been reviewed by Council's Engineer. The report is generally satisfactory, subject to conditions which Council could impose if the application were to be approved.

The Flood report requires that a Flood Planning Level (FPL) be adopted for all habitable areas which includes a 500mm freeboard. This in turn raises the finished floor level of the ground floor of relevant buildings, by up to 1100mm. The development has adopted the required flood levels.

#### **(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, however the application results in a non-compliance with the 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 a compliant height, the proposal is considered to be consistent with the BB LEP 2013.

The proposal does not generate substantial 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.

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

In accordance with Council's Notification Policy, the application has been notified three separate times, which reflect the three amendments to the application.

The original development application was notified to surrounding property owners 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. These submissions have been addressed in the previous report.

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. These submissions have been addressed in the previous report.

The current application was notified for 30 days from 22 April 2015 to 22 May 2015. Three (3) public submissions were received. A late submission was received on 1 July 2015.

The three (3) objections raised the following issues:

- Height
- View Loss and visual impact
- Privacy
- Traffic and Parking
- Unit Mix and sizes
- Setbacks

#### Height and Floor Space Ratio

**Objection:** The proposal does not comply with the objectives and controls of both the Botany Bay LEP 2013 and the Botany Bay DCP 2013 in terms of height and FSR.

**Comment:** The application complies with the FSR. However, the application results in a non-compliant height. An assessment of the Clause 4.6 exception has been provided within this report.

It is noted that the JRPP outlined certain heights for the site. The proposal is generally compliant with the recommendations of the JRPP.

#### Privacy

**Objection:** The existing homes at the southern end of Kurnell Street will have 7 and 8 storeys blocks with uninterrupted views into front and rear yards.

**Comment:** With respect to privacy, it is considered that the proposed setbacks and separation distances will reduce the potential for overlooking of adjoining properties. Further, if the application were to be recommended for approval, privacy issues could be resolved and improved through the installation of privacy screens.

#### 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.

The traffic report has only considered the three closest intersections to the precinct, rather than the critical intersections of the local road network.

Traffic congestion will worsen once all large scale developments in the area have been completed. Cumulative traffic considerations have not been provided.

**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 has provided a supplementary traffic report on 30 June 2015, which includes a greater cumulative assessment of adjoining development. The traffic report concludes that the proposal shall not generate traffic impacts.

#### Unit Mix and Sizes

**Objection:** The development provides for 36% 1 bedroom dwellings which exceeds the DCP requirement.

The unit sizes for 1 bedroom and 2 bedroom apartments do not comply.

**Comment:** The application does not comply with the unit mix or sizes. The applicant has provided justification for this departure.

Notwithstanding, Council does not support the variation to the unit size and mix, and this is listed as a reason for refusal.

#### Building Setbacks

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

**Comment:** The proposal generally complies with the applicable setbacks, which align with the setbacks of adjoining approved development. In addition, the application has incorporated the appropriate road widening requirements.

#### Landscaping

**Objection:** No details provided regarding the landscaping at the end of Kurnell Street.

**Comment:** The application includes a landscape plan which details that the end of Kurnell Street will include landscaping treatments and paving connecting to the east-west through site-link. As detailed in this report, the landscape plan will require further amendments prior to a recommendation of approval.

#### Late Submission

##### **Objection:**

- Application relies upon private land and no land owners consent provided.
- Location of access to New Street 1 conflicts with Pocket Park.
- Applicant should be required to contribute to the cost of New Street 1.
- The DA will result in substantial cars entering New Street which will impact acoustic amenity and pedestrian safety of Parkgrove West and 42-44 Pemberton Street.
- Traffic report does not assess the cumulative impact of the proposed development and the impact on the flow of traffic at the intersection of Pemberton Street and New Street 1.
- DA does not contribute towards the provision of additional traffic lights in the precinct.

**Comment:** The applicant submitted supplementary documentation on 30 June 2015, which generally addresses the above issues. The above matters have been addressed in this report.

#### **(e) The public interest**

This report establishes that the application, is generally consistent with the strategic vision of the site.

However, 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's clear policy direction is to remove Clause 4.3(2A) and 4.4B(3) altogether and a separate Planning Proposal has been referred for gateway determination on 26 February 2015. In this regard, the development does not serve the public interest.

## Other Matters

### Internal Referrals

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

### External Referrals

Notification 1 - Stage 1 Development Application. External Referrals as part of the notification of the original application 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

Notification 2 - Stage 1 Development Application. As part of the amended notification from 15 October 2014 to 29 October 2014, the following external referrals were received:

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

Notification 3 – Stage 2 Development Application. External Referrals were sent out as part of the notification process from the 22 April 2015 – 22 May 2015 and are detailed in the Table below.

Authority	Comment	Date Received
Roads & Maritime Services	No objection raised to the amended application.	5 May 2015
Sydney Water	Response outstanding.	
Ausgrid	Ausgrid have advised that the applicant has lodged an application with Ausgrid for a new connection, and that it has no further correspondence since its letter of 4/11/13.	
NSW Police	Response outstanding.	

Service		
NSW Office of Water	Response outstanding.	
SACL	SACL raised no objection.	30 April 2015

### Section 94 Contributions

As detailed earlier in this report, the applicant has submitted a letter of offer to enter into a Planning Agreement. The Planning Agreement will detail the extent of applicable contributions. Therefore, if approval is granted, there will be no condition of consent relating to Section 94 Contributions.

## 6. CONCLUSION

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*.

In principle, the applicant has amended the application to comply with the Panel's recommendation. Council officers recognise that the site is suitable for medium density residential and mixed use development. The application reconciles some of the deferred commencements recommendations that Council requested in the report submitted on 20 January 2015.

However, the Stage 2 Development Application has raised new non-compliance issues that were not apparent in the previous Stage 1 application, and these issues require further resolution, prior to granting approval. This includes a non-compliance with the unit sizes and unit mix control under the BB DCP 2013.

In addition, the application results in a non-compliance with the Building Height standard under the BB LEP 2013. The application 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 Height has been provided within this report. Council concludes that the non-compliance for the height within the R3 zone is not supported.

Notwithstanding the above non-compliances, the application results in an improved distribution of floor space and an improvement in the built form via building breaks, introduction of terrace dwellings for building transitions, compliant FSR, provision of a public park and through-site links.

However, for the reasons listed in this report, the application in its current form is not supported.

**APPENDIX A – BOTANY BAY LOCAL ENVIRONMENTAL PLAN 2013**

<b>Principal Provisions of BBLEP 2013</b>	<b>Compliance Yes/No</b>	<b>Comment</b>
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"> <li>• To enable other land uses that provide facilities or services to meet the day to day needs of residents.</li> <li>• To encourage development that promotes walking and cycling.</li> </ul> R3 Zone Objectives <ul style="list-style-type: none"> <li>• To provide for the housing needs of the community within a medium density residential environment.</li> <li>• To provide a variety of housing types within a medium density residential environment.</li> <li>• To enable other land uses that provide facilities or services to meet the day to day needs of residents.</li> <li>• To encourage development that promotes walking and cycling.</li> </ul> B4 Zone Objectives: <ul style="list-style-type: none"> <li>• To provide a mixture of compatible land uses.</li> <li>• 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.</li> </ul> The proposal includes one commercial tenancy on the ground floor of the proposed building within the B4 zone. This is



Principal Provisions of BBLEP 2013	Compliance Yes/No	Comment
		consistent with the recommendation of the JRPP.
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 application seeks consent to amalgamate the site and subdivide the sites in to Lots 21-29 to accommodate further Stratum, Torrens and Strata subdivision lots. The applicant has submitted subdivision plans.</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 1 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 – 10 metres  Building B (west – terraces + south wing) – between 12.4 and 16.2 metres  Building B (south wing that straddles zone boundary) – 19.5 metres</p> <p><u>R3 Zone</u></p> <p>Building B (south wing) - 25.5 metres  Building B (east wing) - 28.6 metres  Building B (north wing) - 15.5 metres  Building D (north wing) - 15.3 metres  Building D (west wing) - 25.4 metres  Building D (terraces) - 12.1 metres  Building E (terraces) - 11.5 metres  Building E (apartments) - 18.7 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 m<sup>2</sup>.</p> <p>The permitted FSR and GFA is as follows:</p> <p>R2 zone: 0.55 and up to 1:1 x 456m<sup>2</sup>  (depending upon land use) = max. 456 m<sup>2</sup></p> <p>R3 Zone: 1.65:1 x 22,565m<sup>2</sup> = 37,232.25 m<sup>2</sup></p> <p>B4 Zone: 1:1 x 8,058.5m<sup>2</sup> = <u>8,058.5m<sup>2</sup></u></p>

Principal Provisions of BBLEP 2013	Compliance Yes/No	Comment
		<p>Total permitted FSR = <b>45,746.75</b></p> <p>The proposed FSR/GFA is as follows:</p> <p>R2 zone: 0 x 456m<sup>2</sup> = 0m<sup>2</sup></p> <p>R3 Zone: 1.55:1 x 22,565m<sup>2</sup> = 35,066.01m<sup>2</sup></p> <p>B4 Zone: 0.96:1 x 8,058.5m<sup>2</sup> = 7,736m<sup>2</sup></p> <p>Total proposed GFA = <b>42,802.01 m<sup>2</sup></b></p> <p>Complies</p>
Clause 4.4 (2A) Is the proposed development in a R3/R4 zone? If so does it comply with site of 2000m <sup>2</sup> min and maximum height of 22 metres and maximum FSR of 1.5:1?	No	Part of the subject site is located in the R3 zone, and the proposed FSR within this portion is 1.55:1. 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	<p>The site benefits from the 1.65:1 FSR 'bonus' control.</p> <p>The proposal complies with the FSR, being 1.55:1.</p>
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	<p>The subject site is affected by road widening on the Land Acquisition Map.</p> <p>The BBDCP 2013 identifies that Pemberton Street is to be further widened by 4m as per Part 9C.3 (Table 4) of the DCP. The proposal provides a 4m road widening along Pemberton Street.</p>
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 development:	Yes	Clause 6.1 – Acid Sulfate Soils. The subject site is affected by Class 4 Acid Sulfate Soils.
6.1 – Acid sulfate soils	Yes	The application was referred to Council's Environmental Scientist, whom raised no

Principal Provisions of BBLEP 2013	Compliance Yes/No	Comment
		objection to the application, subject to conditions, which relate to acid sulfate soils.
6.2 – Earthworks	Yes	<p>Clause 6.2 – Earthworks. The proposed development seeks to demolish the existing buildings and excavate the subject site for basement car parking.</p> <p>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 as part of the notification of the original application. The NSW Office of Water did not provide any further response to the most recent notification. The development is considered to be consistent with Clause 6.2 of BBLEP 2013.</p>
6.3 – Stormwater management	Yes	<p>Clause 6.3 – Stormwater. Council's Engineer advises that the application is generally satisfactory and has provided recommended conditions of consent.</p> <p>The application includes the required minimum Flood Planning Levels (FPL).</p>
6.8 - Airspace operations	Yes	<p>Clause 6.8 – Airspace Operations. The subject site lies within an area defined in the schedules of the Civil Aviation (Buildings Control) Regulations that limit the height of structures to 50 feet (15.24 metres) above existing ground height without prior approval of the Civil Aviation Safety Authority. The application proposed buildings which exceed the maximum height and was therefore referred to Sydney Airports Corporation Limited (SACL) for consideration. SACL raised no objections to the proposed maximum height of 33.6 metres AHD, subject to conditions to be imposed on any consent. The development is considered to be consistent with Clause 6.8 of BBLEP 2013.</p>
6.9 – Development in areas subject to aircraft noise	Yes	<p>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 has been submitted with the application. A condition of consent would be included requiring compliance with the acoustic report.</p>

**APPENDIX B – BOTANY BAY DEVELOPMENT CONTROL PLAN 2013**

Part	Control	Proposed	Complies (Yes/No)
<b>4C.2 Site Design</b>			
<b>4C.2.2 Local Character – Botany</b>	Address the Desired Future Character Statement in Part 8	<p>8.4.2 The proposed built form results in a compliant FSR.</p> <p>The proposal results in a non-compliant height within the B4 and R3 zone. This has been addressed in the assessment under the BBLEP 2013.</p> <p>The applications generally consistent with the local character. This is discussed further in the report.</p>	Satisfactory
<b>4C.2.3 Streetscape Presentation</b>	<p><b>C3</b> Development must comply with the following:</p> <p>(i) The maximum length of any building is 24 metres;</p> <p>(ii) All building facades must be modulated and articulated with wall planes varying in depth by not less than 0.6 metres.</p>	<p>Building lengths range from 22m to 95m, however breaks have been provided for the larger buildings.</p> <p>This is discussed further at BB DCP 2013.</p>	No
	<b>C4</b> Buildings must be sited to address the street and relate to neighbouring buildings. Developments on sites with two or more frontages should address both frontages, to promote and to reinforce the ambience of the streetscape. Buildings that are orientated across sites, contrary to the established development pattern, are intrusive and are not permitted (refer to Figure 4).	<p>The buildings have been orientated to address the streets. The western end of Building B addresses Pemberton Street.</p> <p>The proposed building layout is considered to be suitable for the site, as adequate separation is provided between the buildings and provides a suitable response in terms of height transitions, landscaping, separation and open space.</p>	Yes
	<b>C5</b> Street corners must be addressed by giving visual prominence to parts of the building façade, such as a change in building articulation, materials, colour, roof form or height.	The corner at Pemberton Street and Warrana Street incorporates a 3 storey terrace which provides a suitable street address, given the low density context.	Yes
<b>4C.2.4 Height</b>	<b>C1</b> The maximum height of buildings must not exceed the maximum height identified in the Height of Buildings Map and Clause 4.3 of the Botany Bay Local Environmental Plan 2013.	Refer to assessment under BBLEP 2013.	-
<b>4C.2.5 Floor Space Ratio (FSR)</b>	<b>C1</b> The maximum FSR of development is to comply with the Floor Space Ratio Map and Clauses 4.4, 4.4A and 4.4B of the Botany Bay Local Environmental Plan 2013.	Refer to assessment under BBLEP 2013.	-
<b>4C.2.6 Site Coverage</b>	<b>C1</b> Development for a residential flat building must not exceed a	Applicant submits 44.9% (13,959.5m <sup>2</sup> )	No

Part	Control	Proposed	Complies (Yes/No)
	maximum site coverage of 45%.	Council considers that the site coverage exceeds 45%, however this is necessary to provide a basement for compliant vehicle parking.	Considered Acceptable
<b>4C.2.7 Landscaped Area and Deep Soil Planting</b>	<b>C1</b> A residential flat development must have a minimum landscaped area of 35% and a maximum unbuilt upon area of 20% .	Landscaped area: 28.7% Unbuilt upon area: 26.3	No Yes Considered Acceptable
	<b>C14</b> The front landscaped setback shall be a minimum depth of 3 metres (4 metres on classified roads). This area shall be set aside exclusively for soft landscaping. Trees in this area shall attain a height of at least 8-10 metres at maturity.	Building A incorporates a 3 metre front setback, however this includes paved areas and not landscaping.  Similarly, Building E on Wilson Street incorporates a 3 metre front setback, however this includes paved areas and not landscaping.	No
	<b>C15</b> No more than one-third (1/3) of the front landscaped setback shall be paved (including driveways and pathways to individual dwellings) to enable sufficient landscaping to soften and buffer the development and reduce its impact upon the streetscape. This may necessitate an alteration of design and/or layout, shared or reduced width driveways and a reduced amount of access pathways.	The front landscaped area is comprised of planter box landscaping, however, includes a paved areas.	No
	<b>C16</b> Driveways and pathways shall be located at least 1.5 metres from common boundaries to allow for a continuous landscaped buffer strip to the side boundary and a significant landscaped setting for all paved areas. The landscape strip must contain tall screen planting that retains foliage to the ground.	The north-south pedestrian through-site link provides an adequate landscaped buffer.	Yes
	<b>C17</b> Planter beds shall be a minimum of 1 metre in width unless otherwise stipulated in setbacks.	Planter boxes are generally 1m in width.	Generally complies
	<b>C22</b> A minimum of 25% of the landscaped area should comprise a deep soil planting area of which: (i) A minimum of 50% should be located at the rear of the site. For sites with dual or	The applicant submits that 48.7% of the site is provided as deep soil.  The application information does not breakdown how much of the total landscaped area is deep soil.	Generally complies

Part	Control	Proposed	Complies (Yes/No)
	<p>rear lane frontages, this area may be relocated to allow buildings to address the secondary frontage or provide for rear lane car parking access;</p> <p>(ii) A minimum of 30% should be located within the front setback; and</p> <p>(iii) A minimum 2 metre wide strip of landscaping is to be located along one side boundaries; and</p> <p>(iv) Where building height is greater than 7 metres, a minimum 3 metres wide landscape planter bed for the purposes of dense, layered landscape screening is to be located on both the side and rear boundaries. If it is attached to private open space of ground floor apartments then a 2 meter buffer is sufficient.</p>		
	<p><b>C23</b> Communal open space must be deep soil zones (not over podium or car park).</p>	<p>There are portion of the common open space which includes the site links, that are over the basement car park.</p> <p>This is necessary to provide compliant car parking within the building.</p> <p>Planter beds are not considered deep soil landscaping. As such, these should not be included in the calculation of communal open space.</p>	No Satisfactory
	<p><b>C24</b> Basement car parks, where permitted, must not extend to the site boundaries 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).</p>	<p>Basement car parks are setback 3m from the future site boundary, with the exception of the southern boundary.</p>	Yes
<p><b>4C.2.8 Private and Communal Open Space</b></p>	<p><b>C1</b> The minimum private open space requirements (i.e. balconies) for a development are set out in <b>Table 2</b>.</p> <p>Studio &amp; 1 bed: 12qm 2 bed: 15qm 3 bed: 19qm 4 bed: 24sqm</p>	<p>Studio/ 1 bed: 12m<sup>2</sup> or greater 2 bed: 15m<sup>2</sup> or greater 3 bed: 27m<sup>2</sup> or greater</p>	Yes

Part	Control	Proposed	Complies (Yes/No)
	<b>C2</b> The minimum depth of balconies is 3 metres. Developments which seek to vary from the minimum standard depth of 3 metres must provide scaled plans of the balcony with furniture layout to confirm adequate, useable space can still be provided.	All balconies adjacent to living rooms provide 3m depths. Some balconies provide depths of less than 3m while others provide depths of more than 3m.  Notwithstanding this, each balcony has an area with a depth of 3m and sufficient width to locate balcony furniture.	Satisfactory
	<b>C5</b> The minimum private open space for ground floor apartments must comply with Table 3. Studio & 1 bed: 24.5sqm 2 bed: 35sqm 3 bed: 45.5sqm	The minimum private open space for ground floor apartments generally comply with the requirements of Table 3.	Satisfactory
	<b>C6</b> The minimum communal open space requirements for a development is 30% of the site area.	Discussed above.	Satisfactory
	<b>C8</b> Communal open space areas must receive at least 3 hours of direct sunlight between 9:00am and 3:00pm on 21st June	The communal open space between Building B and D receives adequate solar access on 21 June.	Satisfactory
	<b>C10</b> Communal open spaces must include area of deep soil zones (i.e. not to be located over suspended slabs, sub surface car parks or stormwater detention tanks).	The public park (3,000sqm) is located on deep soil. The public park and through-site links are considered to provide adequate deep soil zones within a 'communal' environment.	Satisfactory
<b>4C.2.9 Setbacks</b>	<b>C1</b> Residential flat buildings shall comply with the principles and provisions of State Environmental Planning Policy No. 65 and the Residential Flat Design Code in terms of setbacks.	Refer to assessment in report.	Yes
	<b>C3</b> All front, side and rear setbacks are to provide deep soil zones to allow unencumbered planting areas.	Deep soil zones have been provided, however paved portions are also provided.	Satisfactory
	<b>C6</b> Building setbacks from the existing front boundary must match the setback of adjoining properties, but must be a minimum of 3 metres or 4 metres if fronting a classified road.	All buildings incorporate a 3 metre setback to the primary road.	Yes
	<b>C10</b> The following side boundary setbacks apply: (i) A minimum setback of 900mm for single storey development (up to 4 metres in height);	Not Applicable.	N/A



Part	Control	Proposed	Complies (Yes/No)
	(ii) A minimum setback of 1.5 metres for two storey development (up to 7 metres in height); (iii) A minimum setback of 3 metres (greater than 7 metres in height); and (iv) A minimum setback of 3 metres where a site adjoins a business or industrial property.		
	<b>C12</b> Basement car parking areas must be a minimum of 1.5 metres from any side boundary for single storey development; or a minimum of 3 metres from any side boundary for two storey development.	Basement car parks are setback 3m from the future site boundary.	Yes
	<b>C13</b> Rear building setbacks must match those on adjoining properties but must be a minimum of 6 metres.	A 9 metre setback is provided to 42-44 Pemberton Street. A 5 metres setback is provided to the rear along Wilson Street.	Satisfactory
	<b>C14</b> Where land dedications are required resulting in a new boundary line all setbacks must be provided from this new boundary line, including basement car parking setbacks.	All setbacks on the plans have been shown from the new boundary line.	Yes
<b>4C.2.10 Through Site Links &amp; View Corridors</b>	<b>C1</b> Existing significant views are to be retained.	There are no existing significant views.	N/A
	<b>C2</b> View corridors are to be integrated into the design of any new development.	There are no existing significant views.	N/A
	<b>C3</b> Building footprints are to take into account the requirement for consolidated open space as well as for view corridors.	The building footprint takes into account the consolidation of open space.	Satisfactory
	<b>C4</b> If a site has a frontage to two (2) or more streets with a boundary length greater than 25 metres, then one through site link to the other street/s must be provided (refer to Figure 10).	The site has a frontage to three streets. As such, a north-south and east-west pedestrian through-site link has been provided.	Yes
<b>4C.2.12 Consideration of Isolated Sites</b>	<b>C1</b> Applicants must demonstrate to Council satisfaction that adjoining parcels not included in their development site will be capable of being economically developed as required by Council as part of the development assessment process for their site. This will include establishing appropriate separation distances	Not applicable.	N/A

Part	Control	Proposed	Complies (Yes/No)
	between adjoining buildings.		
<b>4C.3 Building Design</b>			
<b>4C.3.1 Design Excellence</b>	<p><b>C1</b> To achieve excellence in urban design, development shall:</p> <ul style="list-style-type: none"> <li>(i) Take into consideration the characteristics of the site and adjoining development by undertaking a thorough site analysis;</li> <li>(ii) Utilise innovative design which positively responds to the character and context of its locality;</li> <li>(iii) Provide a design which is sustainable;</li> <li>(iv) Enhance the streetscape character of the locality;</li> <li>(v) Ensure development is consistent in height and scale with surrounding development;</li> <li>(vi) Maintain established setbacks;</li> <li>(vii) Design buildings to minimise impacts on neighbours by maintaining appropriate levels of solar access and privacy;</li> <li>(viii) Ensure any development utilises materials and finishes which complement the locality;</li> <li>(ix) Design for acoustic and visual privacy;</li> <li>(x) Ensure dwellings and open space areas achieve good solar access, and are energy efficient;</li> <li>(xi) Ensure building entries address the street and are clearly visible from the street or footpaths;</li> <li>(xii) Design development that provides good quality landscaping;</li> <li>(xiii) Consider the relationship of private open space to the layout of the dwelling; and</li> <li>(xiv) Use design techniques, which promote safety and discourage crime.</li> </ul>	<p>The aesthetics and quality of the proposed buildings is considered to be satisfactory.</p> <p>The placement and orientation of the buildings is considered to result in a good urban design for the subject site.</p>	Yes
<b>4C.3.2 Corner Buildings</b>	<b>C1</b> Buildings are to align with and reflect the corner conditions of respective streets (refer to	The proposed corner treatments are suitable. Reduced heights have been provided to allow for a better transition to adjoining built form.	Yes

Part	Control	Proposed	Complies (Yes/No)
	Figure 13) to: (i) Accentuate the topography; (ii) Clarify the street hierarchy and indicate where there are intersections; and (iii) Reinforce the spatial relationships.	The open space along Wilson Street is supported.	
	<b>C2</b> Corner buildings are to reflect the architecture, hierarchy and characteristics of the streets they address.	See above.	Yes
<b>4C.3.3 Building Entries</b>	<b>C1</b> Residential flat buildings shall comply with the principles and provisions of State Environmental Planning Policy No. 65 and the Residential Flat Design Code in terms of building entry and pedestrian access.	Refer to assessment in report.	Yes
	<b>C2</b> Entrances must provide shelter and be well-lit and safe spaces to enter the building, meet and collect mail (refer to Figure 14). The front door must be oriented to the street and have direct access to the street.	Details regarding lighting of entrances and mail box has not been provided. This can be a condition of consent.	Satisfactory
	<b>C4</b> Street numbering and mailboxes must be clearly visible from the primary street.	Details regarding lighting of entrances and mail box has not been provided. This can be a condition of consent.	Satisfactory
	<b>C5</b> A main pedestrian entry is to be provided within a development. The entry is to be separate from car parks or car entries.	Entrance to Building B is off Pemberton Street. The terraces have individual entries from the street. Entries to Building B east and Building D west is provided via the pedestrian links. -south pedestrian through-site link. Building entries are separate from the car parking entries	Yes
<b>4C.3.4 Roofs and Attics/ Dormers</b>	<b>C1</b> Roofs should be pitched between 22.5 degrees and 36 degrees.	The development proposes flat roofs which is consistent with other developments in the immediate area.	Considered acceptable
	<b>C2</b> All rooftop or exposed structures including lift motor rooms, plant rooms, etc., together with air conditioning, ventilation and exhaust systems, are to be suitably screened and integrated with the building in order to ensure a properly integrated overall appearance.	Rooftop structures do not have screening devices.	No

Part	Control	Proposed	Complies (Yes/No)
	<b>C3</b> The visual impact of roof fixtures (e.g. vents, chimneys, aerials, solar collectors, mobile phone transmitters and satellite dishes) is to be minimised.	The visual impact of the roof fixtures is not considered to be detrimental and is not considered to be visible from the street.	Yes
<b>4C.3.6 Materials &amp; Finishes</b>	<b>C2</b> Materials, colours, architectural details and finishes must be consistent with those that are identified in the relevant Character Precinct in Part 8 - Character Precincts. If not identified in the character statement natural colours and muted tones and finishes are to be used.	The proposed materials, colours and finishes are consistent with the large-scale developments approved in the immediate area.	Yes
	<b>C3</b> No expansive use of white, light or primary colours which dominate the streetscape are permitted. Primary colours must only be used for small design features and accents to the building.	The proposed materials, colours and finishes are consistent with the large-scale developments approved in the immediate area.	Yes
	<b>C4</b> Any solar panels must be integrated into the design of a building.	Solar panels are not proposed.	N/A
	<b>C6</b> Materials and elements on the exterior of the building should be selected to be long wearing and require minimal maintenance.	The proposed materials are considered suitable for maintained.	Yes
<b>4C.5 Site and Building Amenity</b>			
<b>4C.5.1 Dwelling Mix, Room Size and Layout</b>	<b>C1</b> Dwellings within residential flat buildings must be designed to provide the following minimum internal areas: Studio: 60m <sup>2</sup> 1 bedroom: 75m <sup>2</sup> 2 bedrooms: 100m <sup>2</sup> 3 bedrooms: 130m <sup>2</sup> 4 bedrooms: 160m <sup>2</sup> Note: Dwelling size means the area inside the enclosing walls of a dwelling but excludes wall thickness, vents, ducts, staircases and lift wells.	Studio: None proposed 1 bed: 54m <sup>2</sup> – 71m <sup>2</sup> 2 bed: 74m <sup>2</sup> – 107m <sup>2</sup> 3 bed: 102m <sup>2</sup> – 132m <sup>2</sup> 3 bed terrace: 136m <sup>2</sup> – 144m <sup>2</sup> 4 bed terrace: 152m <sup>2</sup> – 193m <sup>2</sup> The apartments sizes do not comply. This is discussed further at Note 1 BB DCP 2013.	No
	<b>C2</b> The combined total number of one-bedroom and studio dwellings shall not exceed 25% of the total number of dwellings within any single site area in residential zones.	155 x 1 bed (35.5%) 195 x 2 bed (44.5%) 53 x 3 bed (12%) 35 x 4 bed (8%)	No

Part	Control	Proposed	Complies (Yes/No)
		<p>TOTAL: 438 units</p> <p>The applicant has submitted a Housing Diversity Report that support the unit mix.</p> <p>This is discussed further at Note 1 BB DCP 2013.</p>	
	<b>C3</b> Laundry, food preparation and sanitary facilities are to be provided in a convenient location within a dwelling (or a building containing a number of dwellings) and built appropriate to the function and use of the dwelling.	Laundry, kitchen and bathroom facilities are provided within each apartment.	Yes
	<b>C6</b> Single aspect apartments should be limited in depth to 8 metres from a window.	The unit depth provides for approx. 8-11.5 metres which is a minor variation to the recommendation.	Satisfactory
	<b>C7</b> The back of a kitchen should be no more than 8 metres from a window.	The depth to the back of a kitchen varies. Some apartments comply, some exceed the requirement.	Yes/No
<b>4C.5.2 Internal Circulation</b>	<b>C1</b> Common area corridors should be a minimum of 2 metres in width to facilitate ease of movement and may be required to be increased to reduce the confining effect of long and/or doubled corridors.	The minimum corridor measures 1.5m wide.	No
	<b>C3</b> In buildings of more than four storeys served by elevators, ensure that alternative access to another elevator is available in the event that any elevator is out-of-service due to breakdown or routine servicing.	Each building provides 2 or more elevators.	Yes
	<b>C4</b> Articulate longer corridors. Design solutions may include utilising a series of foyer areas; and providing windows along or at the end of a corridor.	The building lengths have been reduced and incorporate physical breaks.	Yes
<b>4C.5.3 Building Depth</b>	<b>C2</b> For residential flat development the maximum building depth of the building is 18 metres.	<p>Building A: 12 m (separation between terraces)</p> <p>Building B: up to 20 m</p> <p>Building D: up to 20m</p> <p>Building E: up to 20m</p>	Satisfactory
	<b>C3</b> The maximum depth of a habitable room from a window, providing light and air to that room, is 10 metres.	The unit depth provides for approx. 9 metres which is acceptable.	Yes
<b>4C.5.4 Balconies in</b>	<b>C1</b> In large developments (containing 20 or more	Different style balconies have been provided.	Yes

Part	Control	Proposed	Complies (Yes/No)
<b>Residential Flat Buildings</b>	units/dwellings) different styles and designs for balconies are required.		
	<b>C2</b> At least one balcony per apartment is to be provided off the living areas.	Complies.	Yes
	<b>C3</b> The minimum area of the balcony off the living area is 12m <sup>2</sup> and the minimum width is 3 metres.	The minimum area of balconies off each living are greater than 12sqm.	Yes
	<b>C4</b> The main balcony off the living area shall (refer to Figure 15): (i) Extend the dwelling's living space; (ii) Be sufficiently large and well-proportioned to promote indoor/outdoor living; (iii) Be able to position a dining table and chairs on the balcony; (iv) Provide space for flower boxes or potted plants; (v) Include sun screens, pergolas, shutters, operable walls; (vi) Receive full sunlight for at least two hours; and (vii) Be screened from winds.	The proposed development complies with items (i) – (vi).	Yes
	<b>C5</b> Balconies should allow visual privacy but not excessive transparency. They should allow surveillance over the street, common open space etc.	The balconies are oriented over various streets and open spaces and are considered to provide appropriate casual surveillance. The DRP have commented that additional screens could be added for privacy.	Yes
	<b>C6</b> Balconies must not be continuous across the entire façade of the apartment.	Complies.	Yes
<b>4C.5.5 Ground Floor Apartment in Residential Flat Developments</b>	<b>C2</b> Security is to be increased by encouraging active street edges by providing ground floor apartments with access and address to the street; doors and windows facing onto the street; and terraces and gardens where appropriate.	Complies.	Yes
	<b>C3</b> The public and private space and the edge between the two are to be clearly defined.	It is considered that the definition between public and private is satisfactory.	Yes
	<b>C4</b> Ground floor apartments are to have individual entries and/or front and rear garden spaces.	The Architectural Plans demonstrate that all ground floor apartments have individual entries	Yes

Part	Control	Proposed	Complies (Yes/No)																
		with garden space in the form of planter boxes.																	
	<p><b>C5</b> Privacy is to be increased whilst ensuring efficient use of soil zones and open space by designing gardens and terraces as a transition zone between the apartments and the street.</p> <p><b>C6</b> Deep soil zones and open space area shall be designed to provide a transition zone between apartments and the street and are to be landscaped.</p>	The application was referred to Council’s Landscape Officer who has requested further resolution of the landscape design. This is addressed under Note 2 of the BB DCP 2013.	No																
<b>4C.5.7 Ceiling Heights</b>	<p><b>C2</b> Development shall comply with the Table 5.</p> <table><tr><th colspan="2">Minimum Height</th></tr><tr><td>In locations where there is potential for future ground floor retail or commercial uses</td><td>3 metres</td></tr><tr><td>Ground floor, residential</td><td>2.7 metres</td></tr><tr><td>First floor, habitable rooms</td><td>2.7 metres</td></tr><tr><td>Above first floor habitable rooms</td><td>2.7 metres</td></tr><tr><td>Minimum wall heights in attics</td><td>1.5 metres over 1/3 of the floor area</td></tr><tr><td>Dwelling entries</td><td>2.4 metres</td></tr><tr><td>Attic space</td><td>2.4 metres over 2/3 of the floor area.</td></tr></table>	Minimum Height		In locations where there is potential for future ground floor retail or commercial uses	3 metres	Ground floor, residential	2.7 metres	First floor, habitable rooms	2.7 metres	Above first floor habitable rooms	2.7 metres	Minimum wall heights in attics	1.5 metres over 1/3 of the floor area	Dwelling entries	2.4 metres	Attic space	2.4 metres over 2/3 of the floor area.	The ceiling heights comply with the DCP controls.	Yes
Minimum Height																			
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Attic space	2.4 metres over 2/3 of the floor area.																		
<b>4C.5.8 Solar Access</b>	<p><b>C2</b> Development must demonstrate that living rooms and private open spaces for at least 70% of apartments in a development should receive a minimum of three hours direct sunlight between 9am and 3pm in mid-winter.</p>	<p>The proposal results in 74% of the apartments receiving two hours of solar access.</p> <p>The development does otherwise comply with the RFDC requirements under SEPP 65 and Council considers this to be reasonable given this is an approach consistent with existing approvals in the immediate area.</p>	Considered acceptable																
	<p><b>C3</b> Neighbouring developments will obtain at least three hours of direct sunlight to 50% of the primary private open space and 50% of windows to habitable rooms; and 30% of any common open space will obtain at least two hours of direct sunlight between 9am and 3pm on 21 June.</p>	<p>The norther elevation of Building A, Building B and Building F at 42-44 Pemberton Street will be overshadowed in mid-winter.</p> <p>It is likely that less than 3 hours sunlight is maintained to the western facades</p> <p>The subject application provides a compliant 9 metre setback to the southern boundary.</p>	No																
	<p><b>C6</b> Development sites and neighbouring dwellings are to achieve a minimum of 2 hours direct sunlight between 9am and 3pm on 21 June onto at least 50% of the required minimum amount of private open space, as well as to living rooms.</p>	The proposal shall no cast a shadow on the open space of adjoining development.	Satisfactory																
<b>4C.5.10 Building</b>	<p><b>C2</b> Dimensions within a development, for internal</p>	-	-																



Part	Control	Proposed	Complies (Yes/No)																
Separation	courtyards and between adjoining sites are outlined in Table 6.																		
	<table><tr><th>Building Height (metres)</th><th>Separation Between Habitable Rooms/Balconies</th><th>Separation Between Habitable Balconies &amp; Non-Habitable Rooms</th><th>Separation Between Non-Habitable Rooms</th></tr><tr><td>Up to 12m</td><td>12m</td><td>9m</td><td>6m</td></tr><tr><td>12-25m</td><td>18m</td><td>13m</td><td>9m</td></tr><tr><td>25m +</td><td>24m</td><td>18m</td><td>12m</td></tr></table>	Building Height (metres)	Separation Between Habitable Rooms/Balconies	Separation Between Habitable Balconies & Non-Habitable Rooms	Separation Between Non-Habitable Rooms	Up to 12m	12m	9m	6m	12-25m	18m	13m	9m	25m +	24m	18m	12m		
	Building Height (metres)	Separation Between Habitable Rooms/Balconies	Separation Between Habitable Balconies & Non-Habitable Rooms	Separation Between Non-Habitable Rooms															
	Up to 12m	12m	9m	6m															
	12-25m	18m	13m	9m															
25m +	24m	18m	12m																
Up to 12m	<p>Between buildings: 9m (where a blank wall is provided). Note, privacy screens have also been included.</p> <p>Building A, internally between terraces: 11.97 metres</p> <p>Bldg B west and Bldg B south: 6 metre separation between blank walls.</p> <p>Bldg. D north to Bldg D east: 9 metres</p>	<p>Satisfactory</p> <p>However, privacy screens will be required to select apartments</p>																	
12-25m	<p>Level 3 onwards.</p> <p>Bldg. D south to Bldg E: 12m</p> <p>Separaton/break to Bldg B east is 9 metres, however privacy screens have been included to window.</p> <p>Separaton/break to Bldg D west is 9 metres, however privacy screens have been included to window.</p>	<p>Satisfactory</p> <p>However, privacy screens will be required to select apartments</p>																	
25m+		N/A	N/A																
4C.5.11 Views	C1 Development is to preserve views of significant topographical features such as the urban skyline, landmark buildings and areas of high visibility.	There is considered to be no significant views or landmarks that are required to be maintained.	N/A																
	C2 Building design, location and landscaping is to encourage view sharing between properties.	There are no significant views that are required to be maintained.	No																
4C.5.14 Storage	C1 At least 50% of the storage is to be provided within the dwelling and accessible from either the hall or living area. The remaining 50% of the storage may be located in the basement car park and allocated to the individual dwelling.	A high percentage of apartments rely on more than 50% of the storage being provided within the basement level storage cages.	No																
	C2 Accessible and adequate storage facilities are to be provided at the following rates: <ul style="list-style-type: none"><li>Studios: 6m<sup>3</sup></li><li>1 bedroom dwelling: 8m<sup>3</sup></li><li>2 bedroom dwellings: 10m<sup>3</sup></li><li>3+ bedroom dwellings: 12m<sup>3</sup></li></ul>	<p>The SEE states that All units comply with the minimum requirement.</p> <p>1 bed: 8m<sup>3</sup></p> <p>2 bed: 10m<sup>3</sup></p> <p>3 bed: 12m<sup>3</sup></p>	Satisfactory																

Part	Control	Proposed	Complies (Yes/No)
	<b>C3</b> The storage area separate from the dwelling should be secured within the garage car parking area.	Storage areas separate from the units are contained within the basement car parking area.	Yes
	<b>C4</b> Storage areas are to have a minimum height of 1.5 metres.	The SEE states that All units comply with the minimum requirement.	Yes
<b>4C.5.15 Site Facilities</b>	<b>C3</b> One (1) lift is required per forty (40) dwellings or greater part thereof and two (2) for forty or more.	Two lifts are provided per building.	Yes
<b>4C.5.17 Car Parking &amp; Vehicle Access</b>	<p><b>C2</b> All developments must comply with the car parking and bicycle rates and design requirements within Part 3A - Car Parking.</p> <p><u>Car Parking Rates</u></p> <p>Studio: 1 space / dwelling</p> <p>1 bed: 1 space / dwelling</p> <p>2 bed: 2 space / dwelling</p> <p>3 bed: 2 space / dwelling</p> <p>Visitors: 1 space / 5 dwelling</p> <p>Commercial: 1 space / 40m<sup>2</sup></p>	<p>777 spaces provided</p> <p>719 spaces in basement &amp; 58 at-grade spaces</p> <ul style="list-style-type: none"> <li>- 718 for residents</li> <li>- 48 spaces for visitors</li> <li>- 2 spaces for car share</li> <li>- 9 for commercial</li> </ul> <p>Applicant has applied a visitor rate of 1/10 dwellings.</p> <p>This results in a non-compliance of 37 visitor spaces</p>	<p>Yes</p> <p>No</p>
<b>4C.6.1 Adaptable Housing</b>	Part 3C; Provide all access to common areas in accordance with DDA & BCA; Compliance with adaptable housing standards AS4299-1995.	An Access Report has been submitted with the application and concludes that the access and adaptability review of the development demonstrates the retail areas, common domain residential amenities, visitability and adaptability of residential apartments will comply with the accessibility requirements of the BCA and relevant sections 3A, 3C and 4C Council's DCP 2013.	Yes

Part	Control	Proposed	Complies (Yes/No)
<b>4C.7 Large Development Sites (in excess of 2000m<sup>2</sup>)</b>			
<b>4C.7.2 Design and Siting</b>	<p><b>C1</b> The design and layout of development on sites in excess of 2000 m<sup>2</sup> must comply with the controls identified in Figure 19. In particular:</p> <p>(i) Development along the street frontage must consist of multi-unit dwellings (with a maximum height of two storeys plus attic (refer to Part 4C.3.4 - Roofs and Attics/ Dormers).</p> <p>(ii) Any proposed residential flat building must be situated to the rear of the site, behind the multi-unit dwellings, to minimise the bulk and scale of the development and its visual impact on the streetscape.</p>	<p>The proposed development comprises 4 buildings.</p> <p>The siting and layout of the buildings are considered suitable.</p>	Yes
<b>4C.7.3 Height</b>	<p>If an area of land in Zone R3 Medium Density residential or Zone R4 High Density Residential exceeds 2000 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 and utilise Clause 4.3(2A) of the Botany Bay LEP 2013 provided that the height obtained is:</p> <p>a) Minimum of 30 metres in distance measured from the front property; and</p> <p>b) Minimum of 35 metres in distance measured from any other property boundary of the development site where the development site adjoins a R2 Low Density Residential Zone.</p>	<p>Refer to assessment under BBLEP 2013.</p> <p>The height of 22m (or more) is contained to the centre of the site, and is greater than 30 metres from the front boundary and 35 metres from an R2 low density. .</p>	No
<b>4C.7.4 Floor Space Ratio</b>	<p><b>C1</b> In accordance with Clause 4.4(2A) of Botany Bay LEP 2013, if the area of a site exceeds 2000m<sup>2</sup>, the maximum FSR is 1.5:1.</p>	Refer to assessment under BBLEP 2013.	-
	<p><b>C2</b> Despite sub clause (2A), consent may be granted to development on land to which (2A) applies that results in a floor space ratio of up to 1.65:1, subject to the provisions of clause 4.4B of Botany Bay LEP 2013 is</p>	Refer to assessment under BBLEP 2013.	-

Part	Control	Proposed	Complies (Yes/No)
	complied with.		

**DCP PART 9C WILSON PEMBERTON STREET PRECINCT**

<b>Part</b>	<b>Control</b>	<b>Proposed</b>	<b>Complies (yes/no)</b>
<b>9C.3 Public Domain</b>	<b>Road Construction</b> <b>C1</b> All road widening, extensions and new public streets proposed are to be constructed and dedicated to Council free of any cost. Remediation of the site is to be in accordance with Part 3K - Contamination.  <b>C2</b> Road construction and widening is to be carried out in accordance with the AUS-SPEC's standards.	The applicant proposes to dedicate all road widening and extensions and public open space to Council. These details of this arrangement have not been finalised.	-
	<b>Footpaths</b> <b>C4</b> All footpaths are to be provided with kerb ramps at intersections, to facilitate access for the less mobile and disabled.	The application was referred to Council's Landscape Officer who has requested further resolution of the landscape design. This is addressed under Note 2 of the BB DCP 2013.	No
	<b>Street Furniture</b> <b>C5</b> All street furniture including, bins, bollards, seating and drinking fountains, are to be coordinated throughout the Precinct and to Council's City identity specification.  <b>C6</b> Street furniture should be located in a one-metre zone along the kerb line, that is, out of the main line of pedestrian traffic.	As above.	No
	<b>Table 1 – New Street 1 (Public Street)</b> 20m wide road reservation traversing the precinct from east to west for cars only and closed at Wilson Street.	The applicant provides a 6 metre road reserve to New Street 1, which allows for the provision of a 20 metre road reserve. However, the road reserve will require parking bays as opposed to landscaping.	Yes/No
	<b>Table 4 – Pemberton Street Widening</b> 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.  <b>Table 5 – Wilson Street</b> Wilson Street to be retained as a low density residential street.	The proposal incorporates a 4 metre setback  The proposal includes 3 storey terraces which compliment the low density nature of the locality.	Yes  Yes

Part	Control	Proposed	Complies (yes/no)
<b>9C.3.2 Public Open Space</b>	<b>C2</b> The land to be provided as public open space is to be at ground level and unconstrained by roofs, building overhangs or underground parking, that is, they are to be ground deep natural soil zones.	The public open space provided is deep soil and not constrained by built forms.	Yes
	<b>C6</b> Public open space must be allocated, designed and constructed in accordance with Tables 9 and Table 10.	The Council dedicated park is located generally as per Part 9C.2.1. The size of the Council dedicated park is 3000m <sup>2</sup> and complies with the minimum requirement of 3000m <sup>2</sup> .	No
	<b>Table 10 – Public Open Space south of New Street 1</b> The size of the public open space will be a minimum of 3,000sqm and is to be dedicated to Council.	The architectural plans indicate a 3,000sqm park. Applicant indicates that park shall be dedicated to Council.	Yes
<b>9C.4 R3 Medium Density Residential Zone</b>	<b>O1</b> To encourage residential development that co-exists and provides a transition from non-residential uses to low scale residential and provides a safe and liveable environment;	The proposed development provides one ground floor commercial tenancy fronting Pemberton Street which is consistent with the objectives of the B4 Mixed Use zone.	Yes
	<b>O2</b> To encourage improvements to the Public Domain;	The proposed development is considered to improve the public domain through the provision of a public open space in excess of 3,000sqm, north-south and east-west through-site links.	Yes
	<b>O3</b> To ensure there is no land use conflicts on the interface between the non-residential and residential uses;	The commercial use has been provided at ground level along Pemberton Street, which is consistent with the intent of the DCP and the need for a buffer between the residential uses to the east and the existing industrial and proposed B7 Business Zone uses to the west of Pemberton Street. and providing no buffering to industry to the west.	No
	<b>O4</b> To ensure that future development contributes to the creation of a high quality landscape environment in the Precinct;	The provision of the north-south and east-west pedestrian through-site links are considered to create a good pedestrian environment through the site.	No

Part	Control	Proposed	Complies (yes/no)
	<p><b>O5</b> To retain existing trees both inside and outside the site and provide suitably proportioned areas of well-designed landscaping on each development site;</p> <p><b>O6</b> To ensure proposed development is designed to minimise the impact of noise and vibration from uses with the B7 zone;</p> <p><b>O7</b> To promote and encourage a high design quality of buildings; and</p> <p><b>O8</b> To ensure the drainage of the Precinct is not detrimentally impacted and property is protected.</p>	<p>Council's Landscape Architect notes that there is opportunity to provide to retain existing trees. This is discussed in the body of this report.</p> <p>The proposed interface with the B7 zone is considered satisfactory.</p> <p>The design quality of the proposed buildings is considered acceptable.</p> <p>The stormwater design of the buildings is acceptable.</p>	<p>No</p> <p>Yes</p> <p>Yes</p> <p>Yes</p>
	<b>C3</b> Residential development shall be designed and demonstrate that it will not be detrimentally impacted by any non-residential uses in the adjoining B4 Mixed Use Zone.	<p>A Noise Intrusion Assessment, has been submitted.</p> <p>The report concludes that when all recommendations in the report are carried out, that the intrusive aircraft noise levels, noise from road traffic, adjacent industrial and aircraft ground movements will conform with the recommendation in Australian Standard AS2021-2000 and AS2107-2000 respectively.</p> <p>A detailed assessment of this report has not been undertaken.</p>	Satisfactory
	<b>C5</b> The introduction of noise abatement measures to achieve compliance with current AS 2021 must be done in a manner that does not compromise the architectural design of a building or impact on the character of an existing streetscape.	As above.	Satisfactory
	<b>C7</b> Where the height of the proposed development is higher than the existing height of the localised building stock (and the proposed development has a direct line of sight to the seaport and/or the airport) an acoustical assessment by an accredited acoustical consultant is required which takes into account noise from the operations of Port	As above.	Satisfactory



Part	Control	Proposed	Complies (yes/no)
	Botany and Sydney Kingsford Smith Airport.		
	<p><b>Flooding</b></p> <p><b>C8</b> No structures shall be built over Sydney Water or Council stormwater drainage system/easements.</p> <p><b>C9</b> Foundations of development shall extend to at least 1m below the invert of the existing public stormwater drainage assets.</p> <p><b>C10</b> Finished floor levels of the habitable buildings/structures and non-habitable buildings/structures (including garage, ramps to the basement car parking area, etc.) shall be minimum 500mm and 300mm above the 1 in 100 year flood level respectively.</p> <p><b>C11</b> Structures/filling shall not be placed within the floodways or overland flow paths unless suitable and adequate mitigation measures have been proposed and implemented. A flood study may be required to be lodged with the DA to support the mitigation measures.</p> <p><b>C12</b> No structures/filling shall be allowed to obstruct the 1 in 100 year flood level.</p> <p><b>C13</b> Flood storage within the site shall be maintained before and after the development.</p>	<p>Council's Engineer notes that the stormwater design of the buildings is acceptable.</p> <p>The proposal has incorporated the relevant flood planning levels.</p>	Yes
	<p><b>C9</b> Finished floor levels of the habitable buildings/structures and non-habitable buildings/structures (including garage, ramps to the basement car parking area etc.) shall be minimum 500mm and 300mm above the 1 in 100 year flood level respectively.</p>	<p>Council's Engineer notes that the stormwater design of the buildings is acceptable.</p>	Yes
<b>9C.5 B4 Mixed Use Zone along Pemberton Street</b>	<p><b>C1</b> The ground and first floors of development must contain complementary non-residential uses permissible in the B4 zone</p>	<p>The applicant has included 1 commercial tenancy, which is consistent with the recommendations of the JRPP.</p>	No
	<p><b>C2</b> Height and FSR are to comply with the provisions of the Botany</p>	<p>Refer to Note 1 under the BBLEP 2013 assessment.</p>	No

Part	Control	Proposed	Complies (yes/no)
	Bay LEP 2013.		
	<p><b>C5</b> Internal habitable rooms of dwellings within the B4 Mixed Use Zone which are affected by high levels of external noise are to be designed to achieve internal noise levels of 50dBA maximum. Development Applications which contain residential accommodation are to be accompanied by a noise assessment prepared by a qualified acoustic consultant addressing the following:</p> <ul style="list-style-type: none"> <li>(i) address the noise requirements of the NSW Infrastructure SEPP in terms of road traffic noise;</li> <li>(ii) address the requirements of Part 4A, 4B or 4C (Acoustic Privacy controls), depending on the type of residential accommodation proposed;</li> <li>(iii) conduct detailed site attended audits during the day, evening and night periods to identify and assess noise from activities associated with the B7 Zone;</li> <li>(iv) assess noise from ground activities including aircraft take-off's and landing's at Sydney Airport referenced to each floor of the proposed building;</li> <li>(v) Where the height of the proposed development is higher than the existing height of the localised building stock (and the proposed development has a direct line of sight to the seaport) the acoustical assessment is to take into account noise from the operations of Port Botany;</li> <li>(vi) confirm noise exposure levels for each floor of the proposed residential building; and confirm building noise controls for internal noise levels to satisfy the recommended noise criteria.</li> </ul>	<p>A Noise Intrusion Assessment, has been submitted.</p> <p>The report concludes that when all recommendations in the report are carried out, that the intrusive aircraft noise levels, noise from road traffic, adjacent industrial and aircraft ground movements will conform with the recommendation in Australian Standard AS2021-2000 and AS2107-2000 respectively.</p> <p>A detailed assessment of this report has not been undertaken.</p>	-

Part	Control	Proposed	Complies (yes/no)																		
	<b>Amalgamation and Subdivision</b> <b>C6</b> Amalgamation of sites is encouraged to reduce the number of access points from Pemberton Street.	Amalgamation and subdivision of the site is included in the application.	Yes																		
	<b>Building and Site Layout</b> <b>C7</b> New buildings shall be designed to accommodate and minimise any adverse effects on the amenity of residential areas by way of overlooking, lighting, dust, noise or fumes from adjoining uses.	As discussed throughout the report, the proposed layout and configuration of the buildings is considered acceptable.	Yes																		
	<b>C8</b> Setbacks are to be in accordance with the <b>Table 2</b> (for B4 zone). <table border="1"><thead><tr><th>Boundary</th><th>Landscaping Setback</th><th>Building Setback</th></tr></thead><tbody><tr><td>Front</td><td>4m</td><td>7m</td></tr><tr><td>Side</td><td>Nil to 1.5m</td><td>Nil to 1.5m</td></tr><tr><td>Side – adjoining a Residential Use/zone</td><td>3m</td><td>3m</td></tr><tr><td>Rear</td><td>Nil to 3m</td><td>Nil to 3m</td></tr><tr><td>Rear - adjoining a Residential Use/zone</td><td>3m</td><td>6m</td></tr></tbody></table> <b>C9</b> Building setback must form a continuous and consistent alignment.	Boundary	Landscaping Setback	Building Setback	Front	4m	7m	Side	Nil to 1.5m	Nil to 1.5m	Side – adjoining a Residential Use/zone	3m	3m	Rear	Nil to 3m	Nil to 3m	Rear - adjoining a Residential Use/zone	3m	6m	The following setbacks are provided:  <u>Pemberton Street (Building A &amp; B):</u> 3m to 6m landscaped setback with paving.  The proposed development does not strictly comply with the 4m landscape setback or 7m building setback but provides varying degrees of setback for both. Notwithstanding this, the setback is considered acceptable given it will continue the setback established by adjoining sites.	Satisfactory
	Boundary	Landscaping Setback	Building Setback																		
	Front	4m	7m																		
Side	Nil to 1.5m	Nil to 1.5m																			
Side – adjoining a Residential Use/zone	3m	3m																			
Rear	Nil to 3m	Nil to 3m																			
Rear - adjoining a Residential Use/zone	3m	6m																			
<b>Parking and Vehicle Access</b> <b>C10</b> Access driveways should be paired so that adjacent properties locate driveways side by side to reduce the number of access points.  <b>C11</b> Any carparking spaces allocated for residential purposes are to be located at the rear of sites to provide a buffer from the R3 zone.  <b>C12</b> The provision of car parking must comply with Part 3A - Car Parking.	A single access driveway is provided off Pemberton Street and New Street 1  All parking is located within a basement car park, with terraces benefiting from at-grade parking.  The proposal does not comply with the visitor car parking rate.	Yes																			
<b>Flooding</b> <b>C13</b> No structures shall be built over Sydney Water or Council stormwater drainage system/easements.  <b>C14</b> Foundations of development	Council’s Engineer notes that the stormwater design of the buildings is acceptable.	Yes																			

Part	Control	Proposed	Complies (yes/no)
	<p>shall extend to at least 1m below the invert of the existing public stormwater drainage assets.</p> <p><b>C15</b> Finished floor levels of the habitable buildings/structures and non-habitable buildings/structures (including garage, ramps to the basement car parking area etc.) shall be minimum 500mm and 300mm above the 1 in 100 year flood level respectively.</p> <p><b>C16</b> Structures/filling shall not be placed within the floodways or overland flow paths unless suitable and adequate mitigation measures have been proposed and implemented. A flood study may be required to be lodged with the DA to support the mitigation measures.</p> <p><b>C17</b> No structures/filling shall be allowed to obstruct the 1 in 100 year flood level.</p> <p><b>C18</b> Flood storage within the site shall be maintained before and after the development.</p>		
	<p><b>Landscaping</b></p> <p><b>C19</b> A 3 metres wide buffer strip of dense landscape planting is required in the rear setback to provide a buffer between the B4 and R3 zones including landscaping of car park areas to achieve a high level of amenity which will screen the development from residential areas. This area is to be mass planted with shrubs and canopy trees.</p>	The proposal incorporates a 3 metre setback, however this is not in the form of dense landscaping. The setback accommodates paved areas, steps and access stairs. This is due to the flood planning level requirements.	Satisfactory
	<p><b>C23</b> A Plan of Management (POM) is required where non-residential uses are proposed within a mixed used development or in proximity of a residential land use</p>	This can be conditioned prior to OC. The proposed development is not advanced enough to determine specific tenancies for the retail component.	Can be conditioned

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