

Joint Regional Planning Panel

(Sydney East Region)

Meeting Date: 16 April 2014

JRPP Number:	2014SYE013
DA Number:	13(278)
Local Government Area:	City of Botany Bay
Proposed Development:	<p>The development proposes the construction of 2 x 6-storey buildings (known as Buildings A and C) comprising the following;</p> <ul style="list-style-type: none"> • 8 ground floor commercial units (formerly soho apartments) each of at least 100m²; and, • 65 residential units over 5 levels comprising: 4 x studios; 18 x 1-bedroom units; 42 x 2-bedroom units; and, 1 x 3-bedroom unit.
Street Address:	42-44 Pemberton Street, Botany
Applicant:	Krikis Tayler Architects
Number of Submissions:	5 – individual submissions from neighbouring/surrounding residents.
Recommendation:	Refusal.
Report by:	Rodger Dowsett, Director Planning and Development, City of Botany Bay

Précis

Development Application No.13/278 was received by Council on 24 December 2013, which originally sought consent for the construction of Buildings A and C being two x 6-storey buildings and comprising: 8 x soho units on the ground floor, plus 65 residential units over 5 additional levels (being 22 x studio and one-bedroom units, 42 x two-bedroom units, and 1 x three-bedroom unit). Buildings A and C are effectively one building divided into two sections and replace Buildings A, B, and C of the original Masterplan development approved under DA10/313 which is no longer relevant to the subject site due to subsequent development approvals.

On 20 February 2014, additional information was sought from the applicant to address the following:

- The proposal did not comply with a number of the provisions of the Botany Bay LEP 2013. The ‘mixture’ of development needed to include a commercial component. Height and FSR exceeded the LEP requirements and needed to be substantiated with a cl.4.6 variation to Council’s controls, and,
- The proposal did not comply with Part 9C.5 – *B4 Mixed Use Zone along Pemberton Street* of Council’s DCP 2013 which encourages “mixed-use” developments especially on the ground floor; and,
- Council requested the submission of detailed stormwater plans.

On 17 March and 21 March 2014, Council received additional information consisting of the following:

- Revised architectural plans which replaced the eight (8) ground floor soho units with 8 x commercial units;
- The submission of a cl.4.6 variation to Council’s LEP controls relating to height and floor space (cl.4.3 and cl.4.4);
- Revised stormwater details.
- Built-Form Urban Design Statement (revision B) prepared by AE Design Partnership dated March 2014;
- Access Report prepared by Accessibility Solutions (NSW) Pty Ltd dated 19 March 2014; and,
- Revised and updated architectural Basement and Level 1 floor plans to comply with the accessible parking provisions of the recently submitted Access Report (described above).

The development application was notified for a minimum period of 30 days from 22 January 2014 until 24 February 2014. Five (5) submissions were received which raise the issue of non-compliance with Council’s LEP and its DCP, together with traffic impacts, bulk, scale, height, FSR, overshadowing, visual amenity, and as a general overdevelopment of the site.

It should be noted that the Joint Regional Planning Panel on 21 August 2013, approved DA12/206 for the construction of the residential Buildings D, E and F on the subject site, being for the demolition of all existing structures and construction of 3 residential flat buildings comprising 164 residential units and 346 underground parking spaces.

Site Description

The subject site is located on the eastern side of Pemberton Street, some 200m north of the intersection with Botany Road. The map below identifies the location of the subject site. The site has a total area of 13,162m² and is irregular in shape with street frontage of 117m to Pemberton Street and 3.7m to Wilson Street. A 3.5m wide easement to drain water is located along part of the site in the southern boundary.

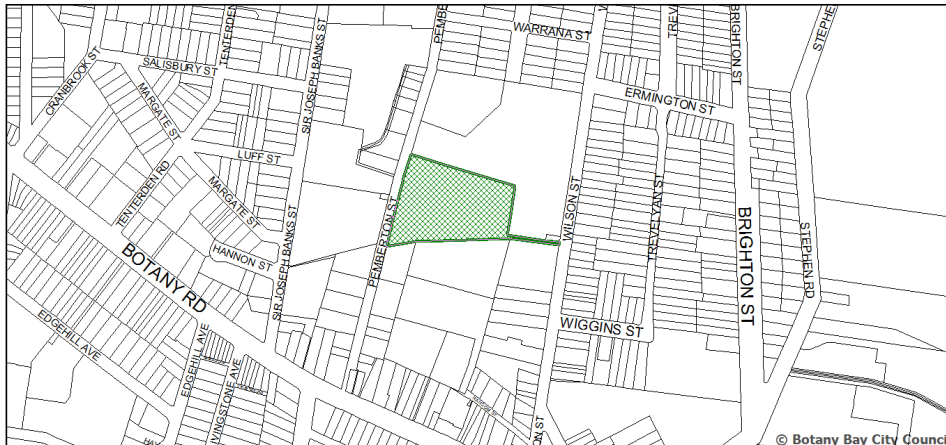


Figure 1 Site Plan.

The site has two zones as follows:

- Eastern Part – Zone *R3 – Medium Density Residential* and having an area of 8,847m²
- Western Part – Zone *B4 – Mixed Use* and having an area of 4,315m²

That part of the site to be developed under this application relates to development in the B4 zone only.

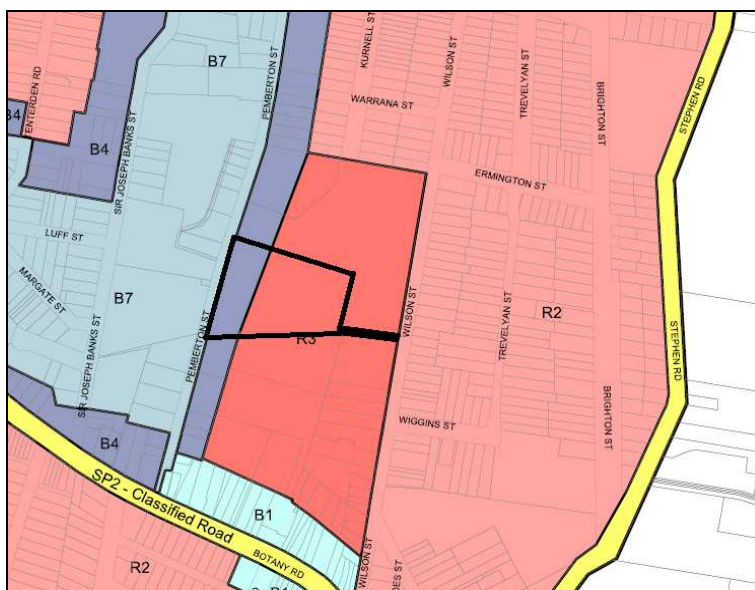


Figure 2 Site Plan with existing zonings (source: Botany Bay LEP 2013).

Existing and Proposed Development

Below are the approved development plans (DA12/206) showing the location of the underground parking and roof plan of Buildings D, E and F.

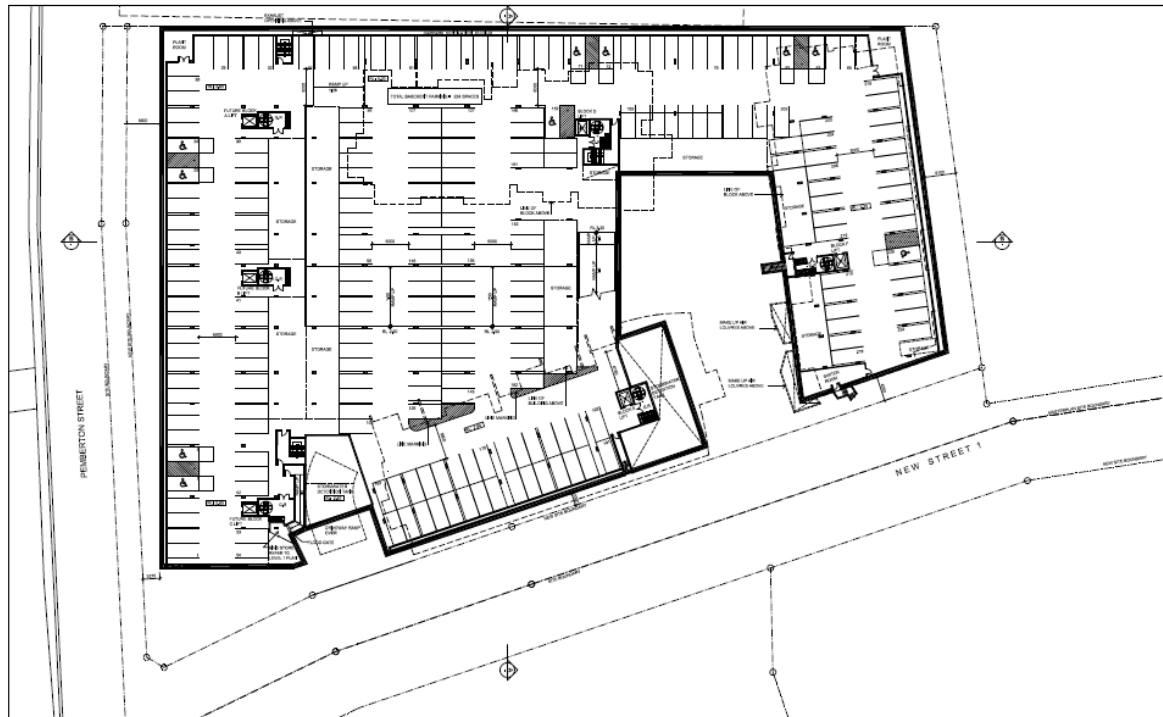


Figure 3 Approved Basement Plan of 42-44 Pemberton St – source Krikis, Tayler Architects.

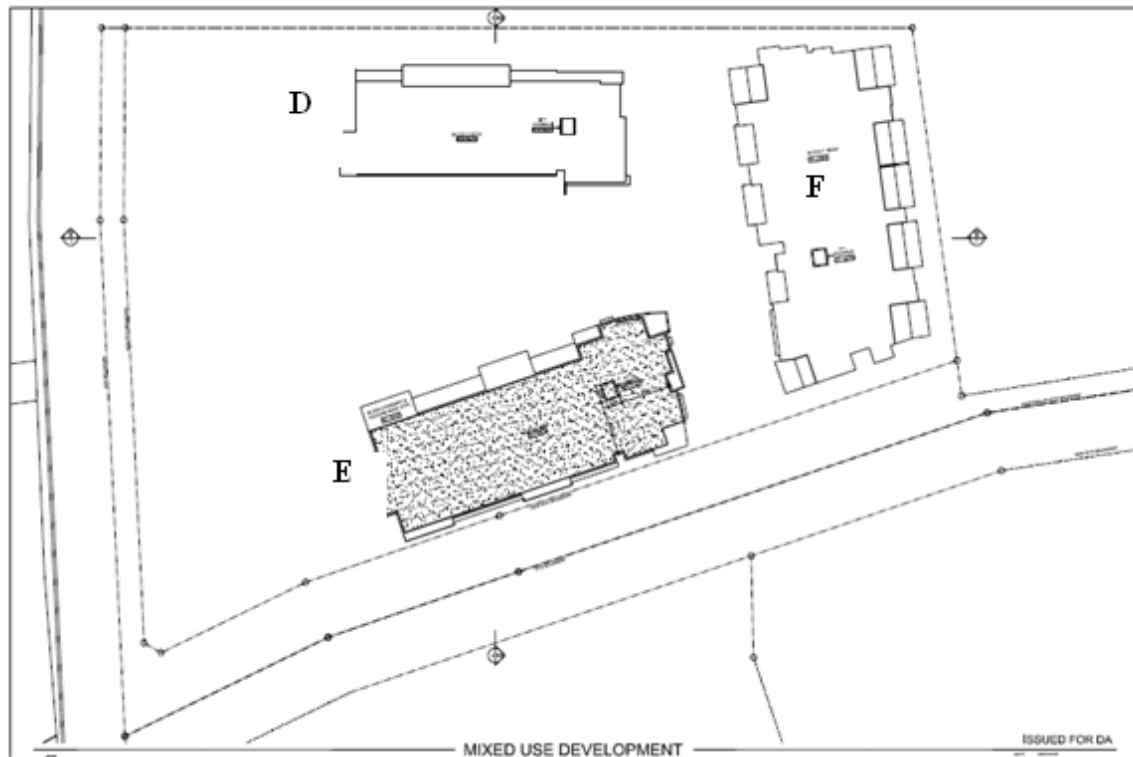


Figure 4 Approved Roof Plan of Buildings D, E and F – source Krikis, Tayler Architects.

Below is a site and floor plans showing the location of Buildings A and C.

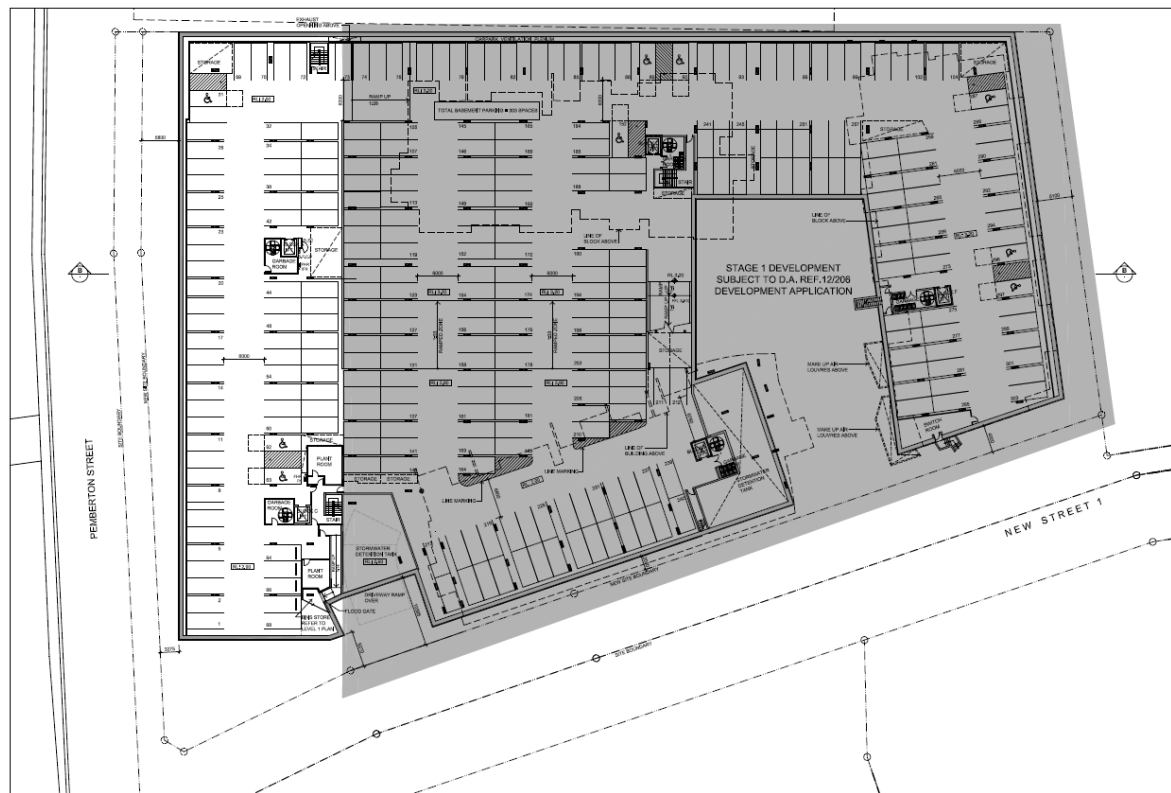


Figure 5 Revised underground parking layout – source Krikis, Tayler Architects.



Figure 6 Revised Level 1 Plan for Buildings A and C fronting Pemberton Street – source Krikis, Tayler Architects.

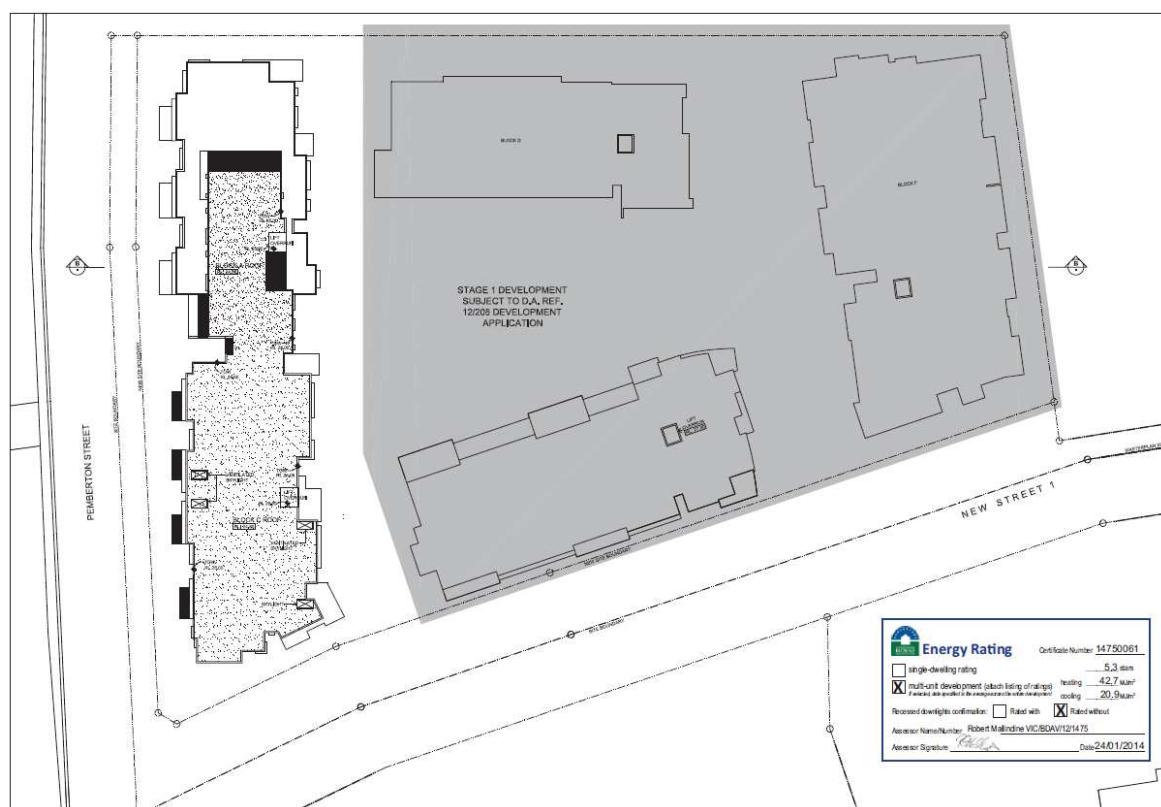


Figure 7 Roof locating Buildings A and C fronting Pemberton Street and Buildings D, E and F behind – source Krikis, Tayler Architects.

The amended development application seeks consent for the construction of 2 attached six-storey buildings, being Buildings A and C (Building B no longer exists), which will comprise the following:

- 8 x ground floor commercial units;
- 4 x studio apartments;
- 18 x one-bedroom units;
- 42 x two-bedroom units; and
- 1 x three-bedroom unit.

The table below provides a summary of compliance with respect to height and FSR in accordance with the Botany Bay LEP 2013. Also provided below is a summary of compliance with respect to car parking under the Botany Bay DCP 2013.

Development Standard	Required/Control	Proposed	Complies
Height	10m	Building A = 20.43m Building C = 21.6m	NO Clause 4.6 Variation submitted Variation > 100%

Development Standard	Required/Control	Proposed	Complies
Total site area = 13,162m² Area zoned R3 = 8,847m² Area zoned B4 = 4,315m²			
FSR	1:1 for B4 zoning (4,315m ²) 1.65:1 for R3 zoning (14,597m ²) Total GFA for site = 18,912m ² Combined FSR for site = 1.437:1	6,394m ² , or FSR = 1.48:1 Stage 1 DA12/206 = 14,179m ² Stage 2 DA13/278 = 6,394m ² Total = 20,573m ² FSR = 1.56:1	NO Clause 4.6 Variation submitted Variation 48% for B4 zoned land NO Variation <10% for entire site
Car Parking	DA12/206: Buildings D, E & F - conditioned to require 285 spaces for 164 residential units Current Application: 8 commercial units = 21spaces 22 x studio/1bed x 1space = 22spaces 43 x 2/3 bed = 86spaces Visitor 1 per 5dwgs = 13spaces Total = 142 spaces (+285 for Buildings D, E & F) TOTAL for entire site = 427	422 spaces over entire site	NO A shortfall of five (5) parking spaces – as a result in the change in the DCP. Can be conditioned to comply

Height

The maximum height for that part of the subject site zoned B4-Mixed Use is 10m. The proposed development seeks a maximum height of 21.6m.

The Panel should note that no height or floor space bonus provisions exist under Council's current LEP within the B4 zone. Bonus provisions only exist with respect to floor space and height in the R3 and R4 zones where sites have a site area in excess of 2,000m² (see clauses 4.3(2A) and 4.4B).

The Applicant has submitted an objection to Council's current height requirements which limits the height of buildings within the B4 zone to 10m under cl.4.3(2) of the LEP.

The applicant proposes a maximum variation of 11.6m above the LEP height control. A request to vary the development proposal from Council's height controls has been submitted under Clause 4.6 of the BBLEP 2013 "Exceptions to Development Standards".

It is Council officers opinion that having regard to the extent of the variation being sought to the permissible height, which exceeds Council's development standard by up to 116%, that this not a variation which can be considered under cl.4.6 of its LEP.

Floor Space Ratio

The maximum FSR of buildings permitted under Clause 4.4(2) of BBLEP 2013 for that part of the entire site is 1:1.

Clause 4.4(2A) provides for a floor space bonus only if the land is zoned R3 or R4 and exceeds 2,000m², but must not exceed 1.5:1.

The development application seeks a FSR of 1.48:1 (6,394m²) for that part of the site zoned 4B – Mixed Use, which does not comply with Clause 4.4(2) of BBLEP 2013 (being a maximum of 1:1).

As such, the Applicant has submitted a Clause 4.6 variation to development standard applying under Clause 4.4.

The rationale used by the applicant is that the combined permissible floor space for the residential and non-residential portions of the site is 1.437:1. The Applicant proposes a floor space of 1.56:1 over the entire site, which the applicant argues that in the context of the site and its surrounding locality, is not a significant departure from Council's LEP requirements.

Officer's Recommendation

DA No.13/278 has been assessed in accordance with the relevant requirements of the *Environmental Planning Assessment Act, 1979*, and is recommended that the Joint Regional Planning Panel (JRPP) for the Sydney East Region as the Consent Authority refuse the application for reasons detailed at the end of this report.

SITE DESCRIPTION

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

The subject site is identified as Lot 100 in DP 875508 (being Nos.42-44 Pemberton Street, Botany). The site known as 'Parkgrove Two' has a total area of 13,162m² and is irregular in shape with street frontage of 117m to Pemberton Street and 3.5m to Wilson Street. A 3.5m wide easement to drain water is located along part of the site in the southern boundary. The development site is relatively flat with a gentle slope towards the south-western side. It has a crossfall of approximately 1.5m from the north-eastern side to the south-western side of the site.

The site was previously occupied by Price and Speed – Containers and was used as a maritime container terminal in the Botany South Precinct. The properties immediately adjoining the proposed development and across on the western side of Pemberton Street are industrial/commercial, whilst existing residential areas predominate to the eastern side of Wilson Street and include one and two-storey detached dwellings. The area on the western side of Wilson Street is currently under construction with 2-3 storey townhouses

along the frontage to Wilson Street. To the north, there is a large factory/warehouse building occupied by a textile company and to the south is the former “Austcorp” site once containing a number of industrial/ warehouse buildings and container storage. The former Austcorp site has an approved Masterplan development for the redevelopment of the site to residential (known as ‘Parkgrove One’), together with approved development applications for Stage 1A and 1B on Wilson Street which are in the form of townhouses and terrace style residential developments (currently under construction).

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

EXISTING AND SURROUNDING DEVELOPMENT

Existing Development

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

On 27 May 2011, Council granted a 12-month Deferred Commencement consent to DA10/313 for a revised staged Masterplan comprising a mixed residential development and for demolition of all existing structures.

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

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

On 21 August 2013, the Joint Regional Planning Panel considered DA12/206 for the subject site which provided for a development proposal for the construction of 164 units in Buildings D, E and F and for the demolition of all existing structures. Development Consent for DA12/206 was issued on 21 October 2013. This DA also included the construction of 346 underground parking spaces over the entire site.

Demolition of all remaining buildings on the site has been undertaken and construction of Buildings D, E and F and the underground parking spaces has commenced.

THE PROPOSAL

The subject development application (DA13/278) proposes the following:

- Construction of Buildings A and C containing 8 ground floor commercial units (formerly soho apartments); and,
- 65 residential units over 5 levels comprising: 22 x studio and 1-bedroom units; 42 x 2-bedroom units; and, 1 x 3-bedroom unit; and,

- To have a FSR for the 2 Buildings of 1.48:1 for that part of the site zoned 4B (as calculated under BBLEP 2013), and which equates to 1.56:1 over the entire site (including Buildings D, E and F).

The proposed height and floor space ratio of the building/s is non-compliant with the maximum height provision under the BBLEP 2013.

PLANNING CONSIDERATIONS

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

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

The relevant requirements under Division 5 of the Act have been appropriately considered in the assessment of the DA. The subject application is not defined as 'Integrated Development' because it only involves the construction of two buildings on top of a previously approved underground car park.

That part of the proposal which will penetrate groundwater (being the underground car park) and thereby made the development to be defined as 'integrated development' was previously referred to the Controlled Activity Assessment Team at the NSW Office of Water as part of the assessment of DA12/206 for Buildings D, E and F.

Section 79C (1) Matters for Consideration - General

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

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

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

The Panel should note that DA12/206 was assessed against the requirements of SEPP 55 and no objection was raised subject to the imposition of appropriate conditions of development consent to ensure the recommendations in those relevant reports are carried out and that a separate DA lodged with Council for the demolition and, if applicable, remediation of the site.

Bulk excavations for installation of shoring walls and remediation excavation works have been subsequently approved by Council under DA13/70.

Supporting information provided by the applicant with DA13/70 advised that with regard to Clauses 9 and 14 of SEPP No. 55 (i.e. remediation works needing consent and remediation work not needing consent), the remediation works being Category 2 works in accordance with the provisions of the SEPP No.55 did not require consent.

Notwithstanding this, the information to be prepared as part of Category 2 remediation works were considered by Council's Environmental Scientist and appropriate conditions of consent were recommended and required to be fulfilled prior to the issuing of a Construction Certificate for DA13/70.

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

Conditions of consent have been imposed requiring the applicant provide a Site Audit Statement stating the site assessment criteria for the most sensitive use for the site prior to the issue of a Occupation Certificate for the residential components of the site (under DA12/206).

Conditions of consent have also been imposed requiring the remediation of land and a separate DA having to be submitted to Council for remediation works required for the civil works (ie: New Street 1) of that part of the site comprising this application (being Lot 1 in DP 158551, Lot C in DP 380476, Part Lot C in DP 402187 and Lot 100 in DP 875508) and which have not already been included by previously approved remediation works under the two Parkgrove Masterplan sites.

State Environmental Planning Policy No. 65 – Residential Flat Building

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

Council's Design Review Panel originally considered the Masterplan development for the entire site (including Buildings A, B, C, D, E and F) on 29 August 2012.

Significant amendments were made to the submitted development plans to Buildings D, E and F, which were considered by Council's Design Review Panel and on 3 May 2013, and which were subsequently addressed in the assessment of DA12/206.

State Environmental Planning Policy No. 65 aims to improve the design quality of residential flat development in New South Wales. *Part 1, Clause 2, Sub-clause 3* of the SEPP stipulates the aims through which the policy seeks to improve the design quality of residential flat development:

- (a) *to ensure that it contributes to the sustainable development of New South Wales:*
 - (i) *by providing sustainable housing in social and environmental terms, and*
 - (ii) *by being a long-term asset to its neighbourhood, and*
 - (iii) *by achieving the urban planning policies for its regional and local contexts, and*
- (b) *to achieve better built form and aesthetics of buildings and of the streetscapes and the public spaces they define, and*
- (c) *to better satisfy the increasing demand, the changing social and demographic profile of the community, and the needs of the widest range of people from childhood to old age, including those with disabilities, and*
- (d) *to maximise amenity, safety and security for the benefit of its occupants and the wider community, and*
- (e) *to minimise the consumption of energy from non-renewable resources, to conserve the environment and to reduce greenhouse gas emissions.*

The provisions of SEPP No. 65 have been considered in the assessment of the development application. The ten design principles under SEPP 65 (Context; Scale; Built form; Density; Resource, energy, water efficiency; Landscape; Amenity; Safety and security; Social dimensions; and Aesthetics) have been addressed by the applicant in the following terms:

The building's footprint massing, height, parking arrangement, access and uses meets the planning objectives of Botany Bay LEP & DCP 2013.

An assessment of the proposed development confirms that the form and scale of the development is acceptable on urban design grounds and will not adversely affect the amenity of the area or its surroundings. The buildings relate to the existing

topography of the site and the desired future character of the Area. This is supported by the accompanying Urban Design Analysis which supports the increased height along Pemberton Street.

The architectural style and design of the buildings are appropriate in the context of the site and with the desired future character of the area. The building will improve the internal amenity of the communal courtyard to the east and will activate the Pemberton Street frontage by the provision of SOHO units.

A landscape plan has been provided with the DA, which seeks to enhance the amenity of the landscaped areas in conjunction with the approved landscaping of the communal courtyard under DA12/206. The large internal communal area will provide good amenity for future residents.

The proposal provides passive solar energy devices, such as deep balconies, cross ventilation of units and high levels of solar access.

A BASIX report has been prepared, and accompanies this application which indicates that the development meets the water, energy and thermal comfort energy savings.

A Design Verification Statement prepared by Krikis Tayler Architects accompanies this application.

For reasons detailed in this report, having regard to the non-compliances with Council's LEP and DCP requirements, the proposal is not considered to adequately satisfy the development principles of SEPP 65 in terms of the proposals context, scale, built form and density.

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

A BASIX Certificate (dated 5 December 2013) has been submitted with the DA pursuant to the provisions of the *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004*.

Botany Bay Local Environmental Plan 2013

Land Use Table – Zone B4-Mixed Use

The subject site is zoned B4-Mixed Use in accordance with Botany Bay LEP 2013. The proposed development is permissible within the zone subject to the appropriate consent of Council.

The objectives of the B4 zoning is as follows:

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

Although the proposal provides for a mixture of permissible land uses (being commercial and residential), the suitability of the height and density of the 'residential' component of the development is and its ability to provide for a form of development which integrates in accordance with the desired future character of the area is questionable. Also, the location of excessive bulk and height being on the street frontage of the site is inconsistent with the building form of previously approved development fronting Wilson Street wherein the

entire purpose of development along the street frontages is to act as a 'buffer' for the larger bulkier developments behind.

Clause 4.3 – Height of Buildings

The subject site is affected by a maximum height requirement of 10m (Area 'K'). The proposed building/s will have a maximum height of 21.6m above the existing ground level (or a 116% non-compliance).

The proposed development is considered to be inconsistent with the objectives contained within *Clause 4.3 Height of buildings* of the Botany Bay LEP 2013, for the following reasons:

- a. The development proposal will result in a built form which has been developed in an uncoordinated and non-cohesive manner,
- b. The development proposal will result in a taller building being inappropriately located,
- c. The development proposal fails to ensure that building height is consistent with the desired future character of an area,
- d. The development proposal does not minimise the visual impact, disruption of views, loss of privacy and loss of solar access to existing development,
- e. The development proposal will adversely affect the streetscape, skyline or landscape when viewed from adjoining roads and other public places such as parks, and community facilities.

The non-compliance has been substantiated by the applicant with the submission of a clause 4.6 Exception to Council's LEP Development Standards and which is addressed below.

The Panel should also note that the height of building works required the referral of this application to Sydney Airport Corporation Limited (SACL), who raised no objection to the proposal subject to the imposition of certain conditions of consent.

Clause 4.4 – Floor Space Ratio

The floor space ratio of development on the subject site is restricted to a maximum of 1:1 (Area 'N'). For that part of the site being developed under this proposal, the B4 zoned portion of the site has an area of 4,315m² and therefore a maximum permissible floor area of 4,315m².

The proposal will result in a total floor space of 6,394m² (or 1.48:1) which is a 48% non-compliance with Council's maximum FSR requirement under its LEP for B4 zoned land.

The proposed development is inconsistent with relevant objectives contained within *Clause 4.4 Floor Space Ratio*, of the Botany Bay Local Environmental Plan 2013 for the following reasons:

- a. The development proposal is incompatible with the bulk and scale of the existing and desired future character of the locality,
- b. The development proposal fails to maintain an appropriate visual relationship between new development and the existing character of areas or locations that are not undergoing, and are not likely to undergo, a substantial transformation,

- c. The development proposal will adversely affect the streetscape, skyline or landscape when viewed from adjoining roads and other public places such as parks, and community facilities,
- d. The development proposal will result in an adverse environmental effect on the use or enjoyment of adjoining properties and the public domain,
- e. The development proposal will not provide an appropriate correlation between the size of a site and the extent of any development on that site,

The non-compliance has been substantiated by the applicant with the submission of a clause 4.6 Exception to Council's LEP Development Standards and which is addressed below.

Clause 4.6 – Exceptions to development standards

The applicant has submitted a request for an exception to Clauses 4.3 and 4.4 of the Botany Bay LEP 2013 as it applies to the subject development proposal. The applicant has submitted the following to justify the proposed variations to Council's LEP controls as they currently apply to height and floor space ratio within the B4 zone:

Clause 4.3 and 4.4 of the Botany Bay Local Environmental Plan 2013 contains development standards that allow for a maximum height and floor space ratio of buildings on the subject site. A written justification for the proposed variation to the height and floor space ratio is required in accordance with Clause 4.6 of the LEP.

The objectives of Clause 4.6 'Exceptions to Development Standards' are as follows:

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

Clause 4.6 allows for the contravention of development standards with approval of the consent authority.

A development standard is defined under the Environmental Planning and Assessment Act, 1979 as:

"Provisions of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development"

This exception is required under Clause 4.6 of the Botany Bay Local Environmental Plan 2013, to justify why the maximum height of buildings control under Clause 4.3 and maximum floor space ratio under Clause 4.4 is considered unreasonable or unnecessary for this site.

The proposed development satisfies the objectives of Clause 4.6 as demonstrated below.

Clause 4.6(1) Objectives:

The objectives of this clause are:

- (a) To provide an appropriate degree of flexibility in applying certain development standards to particular development; and*

- (b) *To achieve better outcomes for and from development allowing flexibility in particular circumstances.*

Comment

The objectives of the Clause seek to allow 'flexibility' in the application of the controls. This development is considered an appropriate form of development that warrants the flexible application of the Height of Buildings and Floor Space Ratio controls.

The western end of the site can accommodate additional height due to its location in the precinct, it is opposite current light industrial land uses which have been zoned B7 Business Park under the current Botany LEP 2013 and combined with the width of Pemberton Street the additional scale will not have unreasonable impacts on these sites.

The maximum height for the B7 zoned land opposite is 12m which is 2 metres higher than maximum height for the subject site. Both zones have a FSR of 1:1. This section of the precinct is the transition point between the residential and business park uses and is well removed from the low density housing along Wilson Street.

By allowing flexibility along the western part of the site with increased bulk and scale this will achieve a strong built edge to Pemberton Street which is a positive urban design outcome, framing the transition from Industrial/business uses to residential with a building form that embraces this transition and provides a quality urban design outcome

The wording of the LEP does not permit an uplift in the FSR and height controls in the B4 Mixed Use zone for sites over 2000m², which is permitted with the remainder of the precinct which falls within the R3 zone. There does not seem to be any planning reason or justification as to why this uplift does not apply in the B4 zone in particular in this location where the B4 zone forms part of a larger R3 Masterplan site. Flexible application of the controls is therefore considered appropriate.

The LEP permits a 10 metre height limit in the B4 zone. The height of Block A and C will be 20.43m and 21.6m respectively. This is below the height permitted across the eastern part of the site (falling in the R3 zone) of 22m and is consistent with heights of approved buildings. The building will provide a consistent building form that is considered appropriate in this location in the precinct.

The building is located at the furthest western extent of the Wilson & Pemberton Street Precinct from the low density areas along Wilson Street. The buildings generally transition in height from single dwellings at the eastern end of the site with two storey townhouses and up to 5 & 6 storey apartment buildings proposed towards the western part of the site. The transition in height is an appropriate urban design outcome that will have no impact on any surrounding dwellings.

The proposed FSR across the entire site is equivalent to 1.57:1. The average FSR based on the varied zonings is equivalent to 1.44:1. A variation of less than 10% is sought under the current DA.

By allowing an increase in FSR this will result in a better urban design outcome that will create a buffer between the communal open space approved to the east of the site from the non-residential uses along the western side of Pemberton Street.

The scale of the development will provide an appropriate scale along Pemberton Street and the development will not unreasonably overshadow adjoining properties

and will maintain adequate separation to enable deep soil planting and maintain privacy with adjoining sites.

The additional scale and the design of the building incorporating commercial units along Pemberton Street is appropriate due to the Business park zoning opposite. This will achieve a better outcome for the approved development on the eastern part of the site and integration with adjoining uses along Pemberton Street.

The proposed additional residential units can be accommodated on this site without adverse impact to the surrounding environment and traffic flow throughout the area. The proximity to public transport, desired future character and proximity to major centres as well as the CBD further justifies the proposed building form.

The flexible application of the height and floor space ratio controls are therefore considered appropriate on this site and the outcome will be much improved particularly the interface along Pemberton Street.

Clause 4.6(2)

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

Comment

Clause 4.3 and 4.4 of the Botany Bay LEP 2013 are considered to be development standards in accordance with the Act. It has not been excluded from the operation of this Clause or any other policy.

Clause 4.6(3)

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

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

Comment

The following comments provide written justification for a variation of Clause 4.3 in respect of maximum height of buildings and Clause 4.4 maximum floor space ratio under the Botany Bay LEP 2013.

Compliance with the development standards Clause 4.3 Height of Buildings and Clause 4.4 Floor Space Ratio is unreasonable or unnecessary for the following reasons:

- *The uplift permitted in the Botany Bay LEP 2013 does not apply to the B4 zone and there is no planning basis for this omission on the subject site due to the connectivity with the adjacent R3 zoned land and the separation from the low density residential areas along Wilson Street.*

- *The development maintains high levels of residential amenity to surrounding properties and the public domain. The development will not unreasonably overshadow adjoining properties and the scale and height is appropriate in the context of the B7 zoning opposite the site to the west and approved built form to the east.*
- *The layout of the buildings and setbacks ensures that a high level of both visual and aural privacy will be maintained with the use of privacy screens and high level windows incorporated into the design to provide increased privacy.*
- *The incorporation of commercial uses along Pemberton Street will further activate the frontage and provide a more pedestrian friendly environment.*
- *The building will have an improved relationship with Pemberton Street with the commercial activation at street level and increased passive surveillance from the commercial and residential units above.*
- *The increased number of car parking spaces required to service the additional residential units within the development will not unreasonably affect the existing traffic network as demonstrated in the accompanying traffic impact assessment.*
- *Compliance with the standard would be unreasonable as the built form proposed results in an adequate buffer between non-residential uses to the west and consistent with the approved built form to the east. Decreasing the height of the buildings along Pemberton Street will not provide a strong edge to Pemberton Street and will diminish the transitional nature of this part of the site.*
- *The proposed height and scale of the development will not be unreasonable when considering the urban design outcome of this architecturally designed development within the surrounding context.*
- *The proximity of the site to public transport, Botany, CBD, airport, shopping, services and open space is highly suitable for a development of this scale and height.*

Based on the above it is therefore considered that compliance with the standard is unreasonable and unnecessary.

Clause 4.6(4)

Consent must not be granted for development that contravenes a development standard unless:

- (a) the consent authority is satisfied that:*
 - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
- (b) the concurrence of the Director-General has been obtained.*

Comment

This report is a written request to vary the maximum Height of Buildings standard under Clause 4.3 and the maximum Floor Space Ratio under Clause 4.4 of the Botany Bay LEP 2013. The report has adequately demonstrated above that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify contravention of the standards.

The proposed development maintains compliance with the objectives of the zone and the maximum Height of Building and Floor Space Ratio controls as detailed below:

The site is currently zoned B4 Mixed Uses.

The objectives of the B4 Mixed Use Zone under the Botany Bay LEP 2013 are as follows:

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

The proposed development satisfies the objectives of the B4 Mixed Use zone, as outlined below:

- *The development provides for residential uses in a highly accessible location consistent with the objectives of the zone. This site is considered to be a 'suitable' location for residential uses due to its connection with the remainder of the site which is located in the R3 zone.*
- *The incorporation of commercial units which are directly accessible from Pemberton Street is an appropriate use in this location. Commercial uses in a mixed use building are highly compatible with residential uses above and these uses will function and integrate well to provide day time and night time activation of the street.*

'To encourage the promotion and co-ordination of the orderly and economic use and development of land'

- *The proposed development is permitted within the zone and the development of a residential flat building with commercial uses at ground level is appropriate and achieves the intent of the zoning.*
- *A residential use in this location is considered appropriate due to the low scale building heights on the adjacent and in general on industrial land. The low scale heights enable expansive views across the industrial land. The outlook for the apartments in the upper levels of Block A & C is therefore ideal and will improve the internal amenity of the units.*
- *Residential flat buildings can be developed as one use on any site within the mixed use zone.*
- *The commercial units at ground level will maintain appropriate non-residential uses ensuring that a mix of compatible uses is provided within the locality.*

- *The B4 portion of the site is opposite B7 zoned land and adjoins the R3 Medium Density Residential zone on the remainder of the site. A residential flat building containing commercial units can contextually exist next to these zones with minimal impact by providing adequate separation.*
- *The development will be consistent with the redevelopment of the eastern part of the site which contains residential flat buildings.*
- *The proposed development results in orderly and economic use of the land.*

The site is located within an area that has and is currently transitioning to provide a mixture of uses including greater residential development. The proposed development is consistent with the desired future character of the area and the zoning under Botany Bay LEP 2013 and vision in Botany Bay DCP 2013.

It is therefore considered that the development is capable of achieving the B4 Mixed Use Zone objectives.

The objectives of Clause 4.3 Height of Building under the Botany Bay LEP 2013 are as follows:

- (a) *to ensure that the built form of Botany Bay develops in a coordinated and cohesive manner,*
- (b) *to ensure that taller buildings are appropriately located,*
- (c) *to ensure that building height is consistent with the desired future character of an area,*
- (d) *to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development,*
- (e) *to ensure that buildings do not adversely affect the streetscape, skyline or landscape when viewed from adjoining roads and other public places such as parks, and community facilities.*

The objectives of Clause 4.4. Floor Space Ratio under the Botany Bay LEP 2013 are as follows:

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

The building height and floor space ratio are both measures of bulk and scale. The variation to both controls has been considered holistically below to demonstrate the proposal is capable of continuing to satisfy the objectives while being highly compatible with the locality.

The proposed development satisfies the objectives of the Height of Building and Floor Space Ratio controls as follows:

- *Given the transitional nature of the area from industrial to residential/mixed use, the design proposes an appropriate building form.*
- *The increased residential density will assist in meeting the increased housing targets within the Botany Bay LGA and as set out in the Metropolitan Plan.*
- *The height of the development is generally consistent with the desired future character of the remainder of the Precinct which seeks to provide increased building heights and densities. The additional height will not unreasonably affect adjoining properties or the public domain by way of overshadowing, privacy and/or noise as demonstrated in the SEE.*
- *The stepping up of the development towards Pemberton Street away from the low density residential dwellings in Wilson Street minimises the impacts to adjoining properties and concentrates greater development at the western extent of the precinct.*
- *The buildings are well below the maximum height control permitted on the adjacent R3 zoned land. Higher buildings, on the subject site, are appropriate due to the separation from the low density residential areas along Wilson Street and the opportunity to provide a strong built edge to Pemberton Street being an appropriate urban design outcome.*
- *The setbacks of the building and articulated facade ensures that the development will not unreasonably affect adjoining properties. Where necessary, high level windows have been provided to maintain high levels of privacy.*
- *Privacy screens will be installed to various balconies to minimise overlooking and adequate solar access can be maintained due to the orientation of the site combined with building location and proposed setbacks. The building maintains appropriate solar access to the communal courtyard to the east, as demonstrated in the shadow diagrams accompanying the DA.*
- *The buildings will not affect adjoining residential properties by way of overshadowing and view loss as demonstrated in the SEE and accompanying shadow diagrams.*
- *The building will significantly improve the streetscape and the highly articulated façade, and generous lobby entries ensure the scale is appropriate for the surrounding streetscape.*
- *The bulk and scale of the development is considered highly appropriate in this location and assists in buffering the communal open space to the east. The increased FSR is supported in the accompanying Urban Design Study prepared by AE Design Partnership and demonstrates that the desired future character is achieved.*

- *The proposed setbacks along Pemberton St provide sufficient deep soil areas to enable planting that will soften the appearance of the building and assist in absorbing noise associated with the industrial/Business Park precinct to the west.*
- *All car parking spaces will generally be provided below ground to minimise bulk and scale. The Traffic and Parking Assessment demonstrates that the development will not unreasonably impact on any existing on-street parking within close proximity to the site or significantly affect existing traffic flows.*
- *The redevelopment of the site will contribute positively to the economic growth of Botany Bay LGA by providing residential accommodation and commercial floor space that will support the surrounding industry and services within the immediate locality.*

The height and scale of the buildings within the development will achieve the objectives of the height and floor space ratio controls being an appropriate urban design outcome on this site consistent with the desired future character of the Wilson-Pemberton Street precinct and Botany area.

Based on the above, Council should be satisfied that the design is appropriate for the site and that the site is capable of sustaining building envelopes of this size and scale while still achieving the objectives of the Height of Building and Floor Space Ratio controls.

Clause 4.6(5)

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

- (a) *whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
- (b) *the public benefit of maintaining the development standard, and*
- (c) *any other matters required to be taken into consideration by the Director-General before granting concurrence.*

Comment

The variation to the Height of Building and Floor Space Ratio controls will not raise any matter of significance for State or regional environmental planning.

The proposed building form that will be a consequence of the additional height and floor space will maintain a built form that is highly compatible with the Wilson-Pemberton Street precinct and is similar to recent approved developments to the east of the site across the precinct.

The size of the site, topography and orientation is able to accommodate additional height and scale without compromising adjoining properties by way of overshadowing, aural and visual privacy and landscaping.

The building form maintains complaint solar access to the public domain.

Compliance with the development standards is unreasonable in this instance as the reduced height and FSR will not significantly reduce environmental impacts beyond what is proposed.

The development will present a more visually appealing and prominent building that will significantly enhance the Wilson-Pemberton Street precinct.

There is no public benefit of maintaining the standard given the sites excellent proximity to public transport, nearby centres, employment, services and public open space.

This site is highly accessible and the increased density and built form is a highly desirable outcome for a site of this size and will not compromise on the amenity of the surrounding properties, as demonstrated above.

Clause 4.6(6)

Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if:

- (a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or*
- (b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.*

Comment

The proposal does not seek to subdivide the land and therefore this Clause is not applicable.

Clause 4.6(7)

After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).

Should consent be granted for a variation of Clause 4.3 Height of Buildings and Clause 4.4 Floor Space Ratio, the Council is required to advise the Department of Planning of such variations, in which case the reasons outlined in this report provide adequate justification for these variations and should form part of this record.

Clause 4.6(8)

This clause does not allow 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.*

The proposed development is not complying development, will not affect any commitments set out in a BASIX certificate and is not affected by Clause 5.4 of the Botany Bay LEP 2013. Therefore, this Clause is not applicable.

It is therefore requested that pursuant to Clause 4.6 of the Botany Bay LEP 2013, that an exception be granted to compliance with Clause 4.3 Height of Buildings and Clause 4.4 Floor Space Ratio.

The variation to the development standards relating to Clause 4.3 and 4.4 of the Botany Bay LEP 2013, in respect of height of buildings and floor space ratio is considered appropriate in the circumstances of this development application.

It has been demonstrated that the development is capable of satisfying the objectives of the zone and the development standards.

The development will exceed the maximum height and floor space ratio controls but the built form can be accommodated on a site of this size without creating any further unreasonable amenity impacts.

Block A and C will be of a height and scale consistent with recently approved development on the eastern part of the site and is an appropriate continuation of the desired built form and character of the area.

The proposed building envelopes will further enhance the desired future character of the Wilson – Pemberton Street area providing building forms that will be highly articulated and designed to respond to the streetscape and character of the surrounding area.

The proposed variation to the development standard is considered reasonable and necessary.

Response to cl.4.6 submission: When determining the suitability of an applicants' request to seek an exception to particular requirements of the Botany Bay LEP 2013, clause 4.6 requires Council to consider the following:

- (2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*
- (3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
 - (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
 - (b) that there are sufficient environmental planning grounds to justify contravening the development standard.*
- (4) Development consent must not be granted for development that contravenes a development standard unless:*
 - (a) the consent authority is satisfied that:*
 - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
 - (b) the concurrence of the Director-General has been obtained.*

In response to subclause (2), variation is being sought to clauses 4.3 and 4.4 of the Botany Bay LEP 2013 being controls that restrict the maximum building height and floor space ratio of development in the B4 zone. Variation may be sought to the development standards of the LEP.

In response to subclauses (3) and (4), the applicant's justification seeking a departure from the height and floor space ratio controls is generally not concurred with. The extent of variations sought as provided within the development proposal is considered to be outside the scope of clause 4.6.

When considering the justifications within the above cl.4.6 submission, a number of key factors in addition to the requirements stated in cl.4.6 need to be considered and addressed:

1. *Is the requirement a development standard?*

The subject height and floor space ratio requirements are a development standard contained in Clauses 4.3 and 4.4 of the Botany Bay Local Environmental Plan 2013.

2. *What is the underlying object or purpose of the standard?*

The objectives for **Clause 4.3 – Height of Buildings** 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 objectives for **Clause 4.4 – Floor Space Ratio** are as follows:

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

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

The subject site is located within in the Wilson-Pemberton Street Precinct. Part 9C of Botany Bay DCP 2013 envisages a built form where commercial/industrial development within ground and first floor levels and live/work above along Pemberton Street integrate seamlessly with the residential landuses in the Precinct.

The redevelopment of the B4 Mixed Use zone (in which Buildings A and C are located within) is to provide a transition from the non-residential in the B7 zone in the Botany South precinct to surrounding residential uses with the intention of buffering any adverse amenity issues created by uses in the B7 zone.

The proposal does not integrate seamlessly with the existing residential landuses in the Precinct. Especially the approved built form of residential development that exists and has been approved along the street frontages of the precinct which are predominantly not more than three-storeys in height and mainly consist of townhouses with lofts/attics.

The six-storey building fronting Pemberton Street in this application is inconsistent with the desired future character objectives and built form controls outlined for the precinct in the Botany Bay DCP 2013.

3. *Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?*

- (a) *The proposal meets the objectives of the development standard notwithstanding its non-compliance with the standard. In this instance one must determine the objectives of the standard and if not expressly stated in the LEP what are the inferred objectives?*

The applicant claims that compliance with the maximum height and FSR development standards are unreasonable and unnecessary in the circumstances of the case as detailed earlier in this report.

- (b) *The underlying objective or purpose is not relevant to the development;*

The underlying objectives and purposes of the height and FSR controls remain relevant to the proposed development.

- (c) *The underlying objective or purpose would be defeated or thwarted if compliance was required with the standard;*

The applicant has provided written justification to demonstrate that the underlying objectives of the height and FSR controls of BBLEP 2013 would be thwarted or defeated if compliance were required.

The height control within the Botany Bay LEP 2013 has not been varied over time. The extent of floor space variations which have been approved in the past are minimal and to a lesser degree than that sought in this application. The degree of variation sought is outside the scope of clause 4.6 of the LEP.

- (d) *The development standard has been virtually abandoned or destroyed by Council's own actions.*

In this particular case the development standards have not been abandoned or destroyed by Council's own actions.

4. *Is the variation well founded?*

The variation sought is outside the scope of clause 4.6.

5. *Is the granting of consent consistent with the aims and objectives of Clause 4.6 of BBLEP 2013, namely:*

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

As mentioned previously in this report, the additional height and floor space created is outside the 'degrees of flexibility' ordinarily sought for under Clause 4.6.

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

In the discussion under point 3 above, it has been established that Council's view is that in the circumstances of the case, the proposed development is inappropriate and adherence to the development standard in this instance is reasonable and necessary.

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

The proposed variation to the height and FSR standards does not raise any matters of significance for state or regional planning. The variation is also not contrary to any state policy or ministerial directive.

6(b) *The public benefit of maintaining the planning controls adopted by the environmental planning instrument.*

The public benefit of maintaining the planning controls adopted within the BBLEP 2013 will be to fulfil the future character and density controls and objectives for the precinct and broader surrounding area.

Clauses 6.1 and 6.2 – Acid sulfate soils and Earthworks

The subject site is located within the Class 4 land affected by Acid Sulfate Soils. Class 4 is defined as: *works more than 2 metres below the natural ground surface, or, works by which the watertable is likely to be lowered more than 2 metres below the natural ground surface.*

The application does not propose any excavations or earthworks. Matters relating to the development and its impact with respect to the extent of excavations required for the underground car park were previously dealt with under the determination of Development Application No.12/206 and DA13/70.

Clause 6.3 – Stormwater management

The development application involves an on-site detention system/rainwater tanks for collection and reuse of rainwater for landscaping on site. The development is considered to be consistent with Clause 6.3 of BBLEP 2013.

Clause 6.8 – Airspace operations

The provisions of clause 6.8 state that Council may grant consent to development that would penetrate the nominated airspace in relation to Sydney Airport only if it has referred the DA to the Sydney Airport Corporation Limited.

The DA was referred to the Sydney Airport Corporation Limited (SACL). In correspondence dated 14 March 2014, no objection was raised to the proposal.

Clause 6.9 – Development in areas subject to aircraft noise

The requirements of this clause have been considered in the assessment of the development application, along with the requirements of Part 3J of the Botany Bay DCP 2013 relating to Aircraft Noise. The subject site is located within the 20–25 contour.

Residential flat buildings are otherwise ‘conditional’ within ANEF contours of 20-25.

A Noise Impact Assessment Report prepared by Acoustic Logic was submitted with the DA and which demonstrated that compliance with relevant noise assessment can be achieved with the installation of appropriate acoustic treatment devices in the development.

The proposal is considered to sufficiently fulfil the above requirements and appropriate conditions of consent have been imposed to ensure compliance with the AS2021-2000.

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

Botany Bay Development Control Plan 2013

BBLEP 2013 is the comprehensive development guideline for the City of Botany Bay. Council resolved on 11 December 2013 to adopt the BBDCP 2013 in accordance with the provisions of the *Environmental Planning & Assessment Act 1979* and the *Environmental Planning and Assessment Regulation 2000*.

The most relevant and applicable clause of the DCP are considered in the assessment of this development proposal and provided below:

Part	Control	Proposed	Complies
3A.2 Parking Provisions	8 commercial units = 21spaces 22 x studio/1bed x 1space = 22spaces 43 x 2/3 bed = 86spaces Visitor 1 per 5dwgs = 13spaces Total = 142 spaces (+285 for Buildings D, E & F) TOTAL for entire site = 427	422 spaces over entire site	Noted A shortfall of five (5) parking spaces – as a result in the change in the DCP. Can be conditioned to comply
3J.2 Aircraft Noise Exposure Forecast	C3 In certain circumstances, and subject to Council discretion, Council may grant consent to development where the building site has been classified as "unacceptable" under Table 2.1 of AS2021-2000. For Council to be able to consider such applications for development, the following factors must be complied with: (i) Submission of specialist	The site is located within the 20-25 ANEF. An acoustic report has been submitted with the development application which indicates that the design of the building can comply with the requirements of AS2021-2000.	Yes

Part	Control	Proposed	Complies
	<p>acoustic advice by an accredited acoustical consultant certifying full compliance with the requirements of Table 3.3 of AS2021-2000;</p> <p>(ii) Submission of plans and documentation indicating the subject premises will be fully air-conditioned or mechanically ventilated in accordance with Council guidelines; and</p> <p>(iii) Any additional information considered necessary by Council to enable it to make a decision.</p>		
4C.6.1 Adaptable Housing	<p>C3 - Disabled access to all common areas shall be provided even if the development has less than five (5) dwellings and does not contain an adaptable dwelling.</p> <p>C 4 - Where a development includes five (5) or more dwellings at least one (1) dwelling must be constructed to meet either Class A or B adaptable housing standards under AS 4299-1995 Adaptable Housing.</p>	<p>The DA has been accompanied by a Statement of Compliance Access For People with a Disability and can provide for 7 adaptable units.</p> <p>A condition of consent can be imposed to ensure compliance with this requirement.</p>	Yes
3A.3.1 Car Park Design	C1 – C41 Comply with AS2890.1 and AS2890.6; entry/exit forwards; residential parking separated in mixed-uses; Stormwater to comply with Council's Guidelines; Pedestrian routes delineated; Location; Access; Landscaping; Basement Parking; Residential; Non-Residential; Pavement; Lighting; Accessible Parking; Waste Collection Points	Complies with relevant AS; Traffic Assessment provided; Stormwater plans provided; Pedestrian access easily identifiable; All parking in basement; 1 vehicular access point – New Street 1; Landscaping complies with Part 3L; Parking rates comply; Waste collection from NS1 (WMP submitted).	Yes
3A.3.2 Bicycle Parking	C1-C5 To comply with AS2890.3 & AUSTROADS.	Bicycle parking provided & complies with relevant AS.	Yes
3A.3.4 On-site Loading & Unloading	C1-C11 1 courier van for 999m ² offices + 1 service bay/50dwgs	Separate service bays not provided, turning bays & visitor spaces can be utilised by delivery cars/vans.	Noted
3B Heritage	Development in vicinity of heritage item or HCA	N/A	N/A

Part	Control	Proposed	Complies
3C Access, Mobility & Adaptability	C1-C4 Compliance with DDA, AS4299.	Access Report submitted; 7 adaptable units provided & an accessible parking space to each.	Yes
3G.2 Stormwater Management	C1-C6 Comply with Stormwater Management Technical Guidelines; Part 3G.5 Stormwater Quality.	Stormwater plans submitted and reviewed by Council's Development Engineer.	Yes
3H Sustainable Design	C1-C6 BASIX; Solar hot water encouraged.	BASIX Certificate provided.	Yes
3I Crime Prevention Safety & Security	Site layout, design & uses; Building design; Landscaping & lighting; Public domain, open space & pathways; Car parking areas; Public Facilities.	Comments received from NSW Police & may be included as conditions of consent.	Yes
3J Aircraft Noise & OLS	ANEF; Aircraft height limits in prescribed zones.	SACL comments received – no objection.	Yes
3K Contamination	Consider SEPP 55 & Contaminated Land Management Act 1997.	Site has been remediated in accordance with Category 2 of SEPP 55.	Yes
3L Landscaping	General Requirements; Planting design & species; Landscaping in car parks; Green roofs.	No significant trees exist on site; Landscape plan submitted & reviewed by Council's Landscape Architect.	Yes
3N Waste Minimisation & Management	General Requirements; Residential Development; Mixed Use Development.	A WMP has been submitted for ongoing use of site & removal of waste.	Yes
4C Residential Flat Buildings	Only applicable to development in R3 & R4 zones. However Part 9C of DCP requires compliance.	See below	
4C.2.1 Site Analysis	Site Analysis Plan required.	Site Analysis Plan submitted & SEPP 65 assessment undertaken.	Yes
4C.2.2 Local Character – Botany	Desired Future Character Statement; Part 8-Character Precincts	8.4.2 Desired Future Character objectives provided in SoEE. Increased height along Pemberton St does not fulfil character objectives.	No (see note below Public domain & streetscape along Pemberton St affected by increased height of building)

Part	Control	Proposed	Complies
4C.2.3 Streetscape Presentation	Compatible with bulk & scale of adjoining residential developments; Max building length 24m; Walls >12m must be articulated; Street presentation.	Building length 100m & suitably articulated. Street frontage inconsistent with future height of buildings along Pemberton St.	No
4C.2.4 Height	Comply with cl.4.3 of BBLEP 2013; Buildings to respond to character of neighbourhood; Height & bulk must be distributed to ensure no significant loss of amenity to adjacent sites.	Building height non-compliant by up to 11.6m. height not distributed evenly; potential adverse impacts upon neighbouring sites & precedent.	No (Refer Clause 4.6 to variation)
4C.2.5 Floor Space Ratio	Compliance with cl.4.4, 4.4A & 4.4B of BBLEP 2013. 1:1 for B4 zoning (4,315m ²)	No bonus FSR given in 4B zone 1.48:1 (or 6,394m ²)	No (Refer Clause 4.6 to variation)
4C.2.6 Site Coverage	Max site cover 45%	Over entire site: 66% (with basement) 37% (without basement)	No (see note below)
4C.2.7 Landscaped Area and Deep Soil Planting	Landscaped area = 35% (min) Site Coverage = 45% (max) Unbuilt upon area = 20% (max) Deep soil = 25% (50% at rear; 30% within front setback; 2m wide landscaping along one side boundary).	Landscaping <15% Site Cover = 37% (without basement); 66% (with basement) Unbuilt area = 35% Deep soil = 8%	No
4C.2.8 Private & Communal Open Space	Studio & 1bed = 12m ² 2 bed = 15m ² 3 bed = 19m ² 4 bed = 24m ² Min depth of balconies = 3m (or adequate useable space). Min. communal open space = 30% >3hrs sunlight on 21 June	Minimum private open space provided for each unit type. Adequate useable open space provided. Approx. 30% of site area provided as communal open space. <3hrs of continuous direct sunlight available	Yes No
4C.2.9 Setbacks	Comply with SEPP 65; Front & side setbacks to provide deep soil; Minimise bulk & scale; Provide adequate exposure to sunlight; Front setback consistent with existing; 3m side setback (min); Basement car parking min 1.5m	SEPP 65 separation distances comply; Bulk not minimised; Front setback consistent with future desired character; Northern side boundaries 1-4m.	No (see note below – Generally non-compliant with min. side boundary setbacks)

Part	Control	Proposed	Complies
	from side boundaries.		
4C.2.10 Through Site Links & View Corridors	Existing view retained; View corridors integrated.	Views from Buildings D, E & F will be affected; Through site links N-S maintained.	No (see note below – Views will be affected by increased height)
4C.3.1 Design Excellence	Excellence in urban design; Design principles; Daylight & ventilation to dwellings.	Building highly articulated; Basement carpark appropriately designed; roof form consistent with previously approved (D, E & F); 71% units = 2hrs sunlight; 67% cross ventilation.	Yes
4C.3.2 Corner Buildings	To align & reflect corner conditions; Reflect architecture & street characteristics.	Appropriately addresses & articulates along New Street 1 frontage.	Yes
4C.3.3 Building Entries	Compliance with SEPP 65 for entry & pedestrian access; shelter & well-lit; pedestrian access separated from car parks.	RFDC assessment provided. Building entry easily identifiable. Lift lobbies can accommodate seating.	Yes
4C.3.6 Materials & Finishes	Schedule of finishes; Consistent with Part 8; long-wearing materials.	Sample board provided & considered appropriate for area.	Yes
4C.5.1 Dwelling Mix, room size & layout	Studio – 60m ² 1 bed – 75m ² 2 bed – 100m ² 3 bed – 130m ² 4 bed – 160m ² 25% max no. of 1bed units.	Min. unit sizes comply. 18 x 1bed units = 28% of total. Apartment schedule indicates good mix of dwgs – minor variation considered appropriate in this case.	Yes No (see note below – minor variation supported)
4C.5.2 Internal Circulation	2m min. corridors; Articulate long corridors.	Corridor widths 1.6m – 3m; Articulation provided.	Yes
4C.5.3 Building Depth	Max depth = 18m Max habitable room = 10m Single aspect units = 8m Min apartment width = 4m	Max building depth 21m (minor variation); Units are individually stepped to improve light & ventilation; Unit sizes generally larger than required by RFDC; Double fronted units greater than 4m width.	Noted (minor variations tolerable in unit size/design)
4C.5.4 Balconies in RFBs	Differing styles; Min. 12m ² ; Provides for privacy & visual surveillance; Not continuous across	All units provide for min. 12m ² of balcony. 67% receive 2hrs sunlight on 21	Yes

Part	Control	Proposed	Complies
	facade.	June.	
4C.5.5 Ground Floor Apartment in Residential Flat Developments	Active street edge; Individual entries; Privacy to be increased by providing gardens & terraces as a transition zone.	Individual entries with planter boxes facing Pemberton St.	
4C.5.6 Natural Ventilation	Comply with SEPP 65 & RFDC.	RFDC assessment table provided, 71% of units cross-ventilated.	Yes
4C.5.7 Ceiling heights	3m for shops; 2.7m for habitable units.	Min floor to ceiling heights provided.	Yes
4C.5.8 Solar Access	SEPP 65 & RFDC compliance; 70% of units receive 3 hrs direct sunlight on June 21; Minimal impact upon adjoining properties.	71% receive 2hrs of direct sunlight; Minimal impact upon adjoining properties.	Yes (RFDC) Yes
4C.5.9 Visual Privacy	SEPP 65 & RFDC; No direct views into windows of other dwellings; Attic windows shall not overlook.	Separation distances comply; windows designed not to overlook.	Yes
4C.5.10 Building Separation	SEPP 65 & RFDC; and Table 5 of DCP.	13.2m separation, does not comply with 18m separation however no opposing windows or balconies.	Yes
4C.5.11 Views	Preserve significant features; View sharing; Create new view corridors.	Upper level western facing views from Buildings D, E & F will be disadvantaged by increased height.	No
4C.5.12 Acoustic Privacy	Table 6 of DCP; Multiple dwellings to be designed & constructed to comply with BCA.	Acoustic Report submitted, all units capable of complying.	Yes
4C.5.14 Storage	Studio – 6m ² 1 bed – 8m ² 2 bed – 10m ² 3+ bed – 12m ²	Schedule of storage provided & demonstrates compliance.	Yes
4C.5.15 Site Facilities	1 lift per 40 units; Garbage storage; Sunlight available to clothes drying area; Undergrounding of major infrastructure.	2 lifts provided; WMP complies with Part 3N; Communal clothes drying not provided; AC to be designed not to be visible from street/public domain.	Yes
4C.5.16 Safety & Security	Comply with Part 3I Crime Prevention, Safety & Security; SEPP 65 & RFDC in terms of site amenity & safety.	DA considered by NSW Police in terms of CPTED design principles & appropriately conditioned.	Yes
4C.5.17 Car Parking & Vehicle Access	Pat 3A compliance; Basement car parking <1.2m out of ground.	Parking spaces comply; Basement protrudes >1.2m above ground to form the	N/A (previously

Part	Control	Proposed	Complies
		communal landscaped podium.	addressed as part of Buildings D, E and F – DA12/206)
4C.6.1 Adaptable Housing	Part 3C; Provide all access to common areas in accordance with DDA & BCA; Compliance with adaptable housing standards AS4299-1995.	Access Report submitted; Part 3C complies.	Yes
8.4 Botany Character Precinct	Existing Local Character; Desired Future Character.	Development inconsistent with character objectives relating to form, massing, scale & streetscape; solar access and views.	No
9.C Wilson/ Pemberton Street Precinct 9C.5 B4 Mixed Use zone along Pemberton St	Ground & first floor complementary non-residential uses; Height & FSR to comply with BBLEP 213; Residential not to be adversely impacted by non-residential uses; Setbacks to comply with Table 2; Flooding. Mixed Use Development – active street frontage; Plan of Management; Traffic movements to be managed; Site lighting for building security; Adjoining dwellings access to sunlight; Commercial parking to be conveniently located.	Ground floor commercial uses with direct access from Pemberton St to each unit; Min setbacks not fully compliant; FFL is 500mm above 1 in 100yr flood level. Ground floor commercial; Traffic movements suitably managed; Commercial & residential able to operate independently of each other; Solar access in Part 4.	No (see note below)

DISCUSSION

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

Botany Character Precinct

The subject Development Application seeks a significant departure in terms of maximum permissible height and floor space which significantly affects the ability of the proposed buildings (A and C) to fulfil the desired future character objectives for the Botany Character Precinct.

The proposal will have a significant adverse affect upon the public domain and streetscape when viewed from Pemberton Street. The excessive height, which is 11.6m beyond that permissible by Council's LEP, is inconsistent with the form, massing and streetscape objectives of the DCP.

Site coverage and landscaped areas

The development proposal does not comply with the maximum site coverage provisions of the DCP, nor is it able to comply with the minimum landscaping and deep soil areas requirements.

The extent of site coverage approved under DA12/206 provided for an underground car park which exceeded Council's maximum site coverage requirements and which are not being made any worse by the current proposal.

Sunlight access to communal open space

The subject site faces east-west, with west being the front Pemberton Street frontage of the site.

The approved buildings (D, E and F) will have a combined U-shape with a central courtyard facing west. With the construction of Buildings A and C and particularly because of their increased height, accessibility of direct sunlight into the area of communal open space will be significantly compromised. In this regard, during the Winter solstice, not more than 50% of the communal open space will receive 2hrs of direct sunlight.

Setbacks

The minimum northern side boundary setbacks are not in strict compliance with the requirements of the DCP. Again, although these in themselves are not considered major non-compliances, they are indicators of the overdevelopment of the site which is highlighted by the significant departures in compliance with Council's floor space controls which adds to the bulk and building envelope of the proposal and therefore is not able to fully comply with Council's requirements.

Cross views & view loss

Western facing views from the upper 3 levels of Buildings D, E and F (currently under construction) will lose views over the top of Buildings A and C were they to be otherwise constructed to the maximum permissible height of 10m.

Dwelling mix

The development proposes a "dwelling mix" over the site consisting of:

- 8 ground floor commercial units,
- 4 studio units,
- 18 x 1 bedroom units,
- 42 x 2 bedroom units, and,
- 1 x 3 bedroom unit.

Under Part 4C.5.1 of the DCP (Dwelling Mix, Room Size and Layout), Control C2 states:

The combined total number of one bedroom dwellings shall not exceed 25% of the total number of dwellings within any single site area

The 'site area' in this particular case is considered to be that part of the site zoned 4B on to which Buildings A and C are to be located.

This part of the development provides for a total of 65 dwellings.

Consequently, the 18 x one bedroom apartments out of the entire 65 dwellings represents 28% of the residential component of the development and which does not comply with the above requirement.

The variation in this case is not considered to be significant.

Solar Access to units within the site

With respect to access to direct sunlight, the Residential Flat Design Code states:

Living rooms and private open spaces for at least 70 percent of apartments in a development should receive a minimum of three hours direct sunlight between 9 am and 3 pm in mid winter. In dense urban areas a minimum of two hours may be acceptable.

The development proposal provides for 71% of the units receiving 2 hours of sunlight between 9am and 3pm in mid winter, which technically complies with the requirements of the RFDC due to the location of the site being within an urban area.

Council's DCP however requires a minimum of three hours of direct sunlight to 70% of the apartments, which the development in this case does not strictly comply with.

Botany Character Precinct

The development proposal in its current form and, particularly due to its excessive height and floor space, is considered to be inconsistent with the character objectives of the DCP.

Part 8.4 of the DCP (Botany Character Precinct) provides details of the existing character of the Botany area and provides a detailed schedule of 'desired future character' objectives which include:

- Enhance the public domain and streetscapes within the Precinct.

Development should:

- promote neighbourhood amenity and enhance pedestrian comfort;
- encourage site layout and building styles and designs that promote commonality and a visual relationship with the surrounding built form and dwelling styles;
- encourage dwelling styles that maintain and complement existing development patterns;
- encourage a strong landscape and vegetation theme within both the public and private domain; and

- encourage new development on larger sites (eg over 2,000m²) to promote a parkland setting for residential development.

The scale of the proposal will not enhance the neighbourhood amenity or the pedestrian streetscape due to the overwhelming bulk of the proposed building/s.

The site layout and building form commonly adopted throughout the Wilson/Pemberton Street precinct consists of two-storey townhouses (with attics above) along the street frontages and then with six-storey residential flat buildings behind. The front buildings act as a 'buffer' or as a 'transition zone' for the higher buildings behind.

That is why the height limit for the B4 zoned land has been set at 10m so that the finished built form is consistent in terms of bulk and height with the existing built form along Wilson Street and in other developing areas of Botany.

For reasons mentioned herein, the proposal is also considered to be inconsistent with the objectives of the DCP in relation to the finished built form, massing, scale and streetscape.

Part 9C Wilson/Pemberton Precinct

The development proposal in its current form and, particularly due to its excessive height and floor space, is considered to be inconsistent with the objectives and controls of Part 9C of the DCP.

9C.2.2 Planning Framework Principles

In terms of planning principle *P3 To achieve an integrated development of good quality design*, the proposal is considered not to fulfil the following objectives:

- The commercial/industrial development within ground and first floor levels and live/work above along Pemberton St will need to integrate seamlessly with the residential land uses in the Precinct.
- Issues of solar access and overshadowing, visual privacy, ventilation and acoustic privacy need to be considered generally and in transition in land uses and heights.
- Landscaping in developments is to be provided as a screen, to assist in softening buildings and creating comfortable and useable open space areas.

9C.5 B4 Mixed Use Zone along Pemberton Street

Stated objectives and controls in this part of the DCP which are relevant to the development proposal are as follows:

- Objectives:
 - O4 - To encourage low scale mixed-use development with residential at 2nd floor and a range of compatible vibrant uses such as shops, professional offices, and studio/workshops at ground floor and first floors, which are not impacted by adjoining industrial and commercial uses and that do not impact on adjoining and adjacent residential amenity.
 - O11 - To ensure non residential development is sympathetic with the streetscape character and maintains the amenity of surrounding residential development.
- Controls:
 - C2 - Height and FSR are to comply with the provisions of the Botany Bay LEP 2013

- A suitable area 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.

The B4 zone is based on the recommendations of the Botany South Industrial Study Final Report dated December 2003, prepared by SGC Consultants on behalf of Council.

As demonstrated previously in this report, the proposal is non-compliant with the height and floor space controls for development within the B4 zone. The height and bulk of the development proposal means that it is also unable to provide for a form of development which able to adequately fulfil the objectives for development in this zone and provide for a form of development consistent with the objectives for development in the Wilson/Pemberton Street Precinct.

(b) The likely impacts of the development including environmental impacts on both the natural and built environments, social and economic impacts in the locality.

These matters have been considered in the assessment of the Development Application. The proposal is considered will have a detrimental impact upon the existing natural and built environments for the following reasons:

- The development of the site in isolation of any adjoining properties will be entirely inconsistent with the height, bulk and scale of development envisaged by the Botany Bay LEP 2013 and DCP 2013 and which will in turn adversely affect the future development potential of the adjoining lands by virtue of its adverse impact of the proposal in terms of its height, design and proximity to adjoining property boundaries. This will also result in an adverse economic impact regarding the compromised future development potential of the adjoining land/s;
- The non-compliance of the proposal with the maximum height requirement represents a breach of Council's controls by 11.6m and will result in a development which exceeds the maximum permissible floor space ratio for the site. The increased height will detrimentally affect the site planning and development potential of the neighbouring and surrounding properties; and,
- The proposal will result in a form of development entirely inconsistent with the context, scale, built form and density of the site and its surrounds, and will adversely compromise the future development of this sub-precinct and its ability to respond to the emerging character of the locality.

(c) The suitability of the site for the development

These matters have been considered in the assessment of the development application. The land comprising the site is not known to be affected by any natural hazards likely to have a significant adverse impact on the proposed development. Groundwater issues have been addressed in the previous development application (12/206) submission and the NSW Office of Water has raised no objection to the development in this respect. Contamination issues have also been addressed in the previous development application submission.

For reasons detailed in this report, the site is considered to be unsuitable to be developed in the manner proposed by virtue of the significant increased height and

floor space proposed for the subject site and its resultant adverse impact upon the surrounding natural and built environments.

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

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

During the notification and advertising of the application, 5 submissions were received.

The main issues raised within the submissions are discussed below.

- *Overdevelopment of the site which will cause serious traffic and social problems in the future.*

Officer's Comments: The building/s are non-compliant with the maximum building height and floor space controls contained within the Botany Bay LEP and DCP 2013. The proposal is considered to be an overdevelopment of the site. The objection is generally concurred with.

- *Increased traffic throughout surrounding streets including Wilson, Wiggins and Herford.*

Officer's Comments: The access to the development is from New Street 1. However with the completion of New Street 1, following community consultation, will not be a through a road. No vehicles from the proposed development will have access to Wilson Street.

- *The design of the development proposal does not complement the existing scale and character of the street.*

Officer's Comments: For reasons mentioned in this report, the height and bulk of the building/s and their location along the street frontage are not consistent with the scale and character of similar 'street fronting' developments in the Wilson/Pemberton Street Precinct.

- *Unacceptable precedent for future development.*

Officer's Comments: The proposal if approved in its current form would set an undesirable precedent for future development in the B4 zone along Pemberton Street.

- *The proposal does not meet the relevant objective and controls or Planning Framework Principles.*

Officer's Comments: For reasons mentioned in this report, the proposal was found to be inconsistent with objectives and controls contained within the DCP and, including non-compliance with the Planning Framework Principles.

- *The DCP controls (DCP 31 and current DCP 2013) envisaged that lower storey buildings were to be located on the perimeter of the Precinct and the higher storey buildings towards the centre of the site.*

Officer's Comments: The desired future development for the area by providing for lower buildings on the edges of the precinct with higher buildings in the centre of the precinct is generally concurred with. The development proposal is entirely

inconsistent with the future desired building form for development along the perimeter of the precinct and within the B4 zone.

- *Solar access and overshadowing impacts from the previously approved developments within the site (Buildings D, E and F) upon the residential amenity within the proposal.*

Officer's Comments: Solar access to the residents within this proposal does not fulfil the minimum requirements of Council's DCP. The development does otherwise comply with the RFDC requirements under SEPP 65 which are considered to be reasonable in this case.

- *The 8 soho units do not satisfy objectives to provide a more active lively street.*

Officer's Comments: The application has since been amended to provide for 8 ground floor commercial tenancies which will fulfil the underlying objective of provide for a mixed-use development and will assist in activating the street frontage.

- *Under BBDCP 2013 no provision has been made for the widening of Wilson Street.*

Officer's Comments: The proposal provides for the widening of Pemberton Street in the manner envisaged by the DCP.

- *Traffic Assessment submitted with the application does not take into consideration traffic flows to and from the site into Kurnell and Warrana Streets.*

Officer's Comments: All traffic movements into and out of the site will be via New Street 1. The quantity of traffic movements heading south to Botany Road or heading north towards Warrana and Kurnell Street will not be known until the development has been completed. Traffic calming measures can be introduced to ensure that existing residential streets remain at tolerable volumes, but in any event traffic access to local roads north of the site has not been determined.

- *The proposal does not comply with SEPP 65 – Street presentation.*

Officer's Comments: The proposal is inconsistent in terms of height of neighbouring and surrounding buildings in Pemberton Street. Also, the proposal does not comply with the recommended floor space ratio of the LEP.

- *Dwelling mix does not comply with DCP.*

Officer's Comments: For reasons mentioned in this report, the extent of non-compliance with the proposed dwelling mix is considered to be acceptable.

- *The proposal is inconsistent with the approved Masterplan.*

Officer's Comments: The previously approved Masterplan which were approved under DA10/313 has no bearing on this application since DA12/206 was granted development consent by the JRPP.

- *Objection to the development on 17 listed non-compliances with Council's LEP and DCP.*

Officer's Comments: The non-compliances listed in objection have been addressed throughout this report.

Other Matters

Section 94 Contributions

The proposed development is for eight (8) new commercial units with 65 residential units above. The Department of Planning's direction under Section 94E of the Environmental Planning and Assessment Act 1979 states that residential development contributions have a maximum threshold of \$20,000 per dwelling. The Commercial component is calculated under Council's Section 94 Contributions Plan 205-2010. Accordingly, in accordance with Council's policy the Section 94 Contributions are as follows: -

Residential

Sixty-five (65) dwellings x \$20,000 = \$1,300,000

Commercial

8 Shops/commercial spaces = \$80, 424.00

Therefore, the **total Section 94 Contributions** required is \$1,380,424.00.

External Referrals

Sydney Water

In correspondence dated 31 January 2014 , Sydney Water raised no objection subject to the imposition of appropriate conditions of consent.

Sydney Airport Corporation

In correspondence dated 14 March 2014, Sydney Airport Corporation (SACL) has raised no objection to the increased height of the buildings subject to conditions of consent.

NSW Police

In correspondence dated 11 February 2014 the Mascot Police Local Area Command advised that a medium crime risk rating has been identified for the proposed development. The advice includes a range of recommendations regarding security, lighting and access control which are most appropriately incorporated as conditions or advices in any consent issued in respect of this application.

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.

RECOMMENDATION

In view of the preceding comments, it is RECOMMENDED that the Joint Regional Planning Panel for the Sydney East Region, as the Consent Authority, resolve to:-

Refuse Development Application No 13/278, for the construction of Buildings A and C at 42-44 Pemberton Street, Botany, for reasons detailed below:

1. The proposed development is considered to be an excessive form of development and is inconsistent with the maximum height controls as specified under clause 4.3 of the Botany Bay Local Environmental Plan 2013 (Environmental Planning and Assessment Act 1979 s79C(1)(a)(ii)).
2. The proposed development is considered to be an excessive form of development and is inconsistent with the maximum floor space ratio controls as specified under clause 4.4 of the Botany Bay Local Environmental Plan 2013 (Environmental Planning and Assessment Act 1979 s79C(1)(a)(ii)).
3. The proposed development is not considered to fulfil the objectives and requirements of State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Buildings regarding the proposals response in terms of its context, scale, built form and density (Environmental Planning and Assessment Act 1979 Section 79C (1)(a)(i)).
4. The proposed development is inconsistent with relevant objectives contained within *Clause 4.3 Height of buildings* of the Botany Bay Local Environmental Plan 2013.
(Environmental Planning and Assessment Act 1979 Section 79C (1)(a)(i)).
5. The proposed development is inconsistent with relevant objectives contained within *Clause 4.4 Floor space ratio* of the Botany Bay Local Environmental Plan 2013.
(Environmental Planning and Assessment Act 1979 Section 79C (1)(a)(i)).
6. The proposal will create an adverse environmental and social impact upon the amenity of the local area and adjoining properties and does not comply with the relevant objectives of the 4B Mixed Uses zone under the Land Use Table of the Botany Bay Local Environmental Plan 2013.
(Environmental Planning and Assessment Act 1979 Section 79C (1)(a)(i)).
7. The proposed development is inconsistent with Sections 3, 4, 8 and 9C of the City of Botany Bay DCP 201, in terms of the primary aims, objectives and development standards.
(Environmental Planning and Assessment Act 1979 Section 79C (1)(a)(iii)).
8. The proposed development is likely to have an adverse environmental impact upon the natural and built environment in that:
 - a. the development of the site will adversely affect the future development potential of the adjoining lands by virtue of its adverse impact upon those adjoining sites by the proposals height, design and proximity to adjoining property boundaries. This will also result in an adverse economic impact regarding the compromised future development potential of the adjoining land/s; and,
 - b. the proposal will result in a form of development entirely inconsistent with the context, scale, built form and density of the surrounding land/s and will

adversely compromise the future development of this sub-precinct and its ability to respond to the emerging character of the locality.

(Environmental Planning and Assessment Act 1979 s79C(1)(b)).

9. The proposed development is not in the public interest due to the adverse environmental issues relating to the proposed development.

(Environmental Planning and Assessment Act 1979 s79C(1)(e)).

10. Approval of the proposal would set an undesirable precedent in the locality.

(Environmental Planning and Assessment Act 1979 s79C(1)(e)).