

**SUPPLEMENTARY REPORT - JOINT REGIONAL PLANNING PANEL  
(Sydney East Region)**

<b>JRPP No</b>	<b>2014SYE013</b>
<b>DA Number</b>	<b>DA13/278</b>
<b>Local Government Area</b>	<b>City of Botany Bay</b>
<b>Proposed Development</b>	<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"> <li>• 8 ground floor commercial units each of at least 100m2; and,</li> <li>• 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.</li> </ul> <p><b>SUPPLEMENTARY REPORT</b></p>
<b>Street Address</b>	<b>42-44 Pemberton Street, Botany</b>
<b>Applicant/Owner</b>	<b>Krikis Tayler Architects</b>
<b>Number of Submissions</b>	<b>5 – individual submissions from neighbouring/surrounding residents.</b>
<b>Report by</b>	<b>Rodger Dowsett, Director Planning and Development</b>
<b>Date</b>	<b>25 June 2014</b>

## **PRECIS**

### **Background**

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. 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. These objections have been addressed in further detail within this supplementary report. Given that the built form has not been amended since the JRPP meeting on 16 April 2014 the application has not undergone any further notification.

On the 16 April 2014 the Joint Regional Planning Panel – Sydney East considered the amended development application seeking consent for the construction of 2 attached six-storey buildings, being Buildings A and C (Building B no longer exists), which when complete 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.

At this meeting of the 16 April 2014 Ms T. Bell registered to address the Panel and made a submission in the open session.

The Panel made the following decision on the 16 April 2014:

*By a majority (John Roseth, Sue Francis, Peter Fitzgerald and George Glinatsis) to defer the matter subject to receipt of a supplementary report to reach the Panel by 14 May 2014. A further public meeting will be scheduled on receipt of the supplementary report. David Furlong did not vote with the majority as he did not agree that the application should be deferred.*

The application was recommended for refusal by Council Officers however; the Panel determined that the applicant should address the reasons for refusal through the submission of additional information (an acoustic assessment and zone interface) and a supplementary report be prepared by Council Officers and presented to the Panel.

The following additional information has been submitted by the applicant for consideration, in support of the proposal:

- Acoustic Report prepared by Acoustic Logic dated 9 May 2014;
- Additional Noise Logging by Acoustic Logic dated 2 June 2014;
- Amended Plans detailing Acoustic Treatment of the Buildings prepared by KTA dated 23 June 2014;
- Acoustic Review and draft conditions prepared by Atkins Acoustic dated 25 June 2014; and
- Amended Clause 4.6 Objections to building height and floor space ratio development standards prepared by LJB Urban Planning Pty Limited dated 17 March 2014.

### **Recommendation of the Supplementary Report**

It is the recommendation of this supplementary report that the Joint Regional Planning Panel (JRPP) as the consent authority approve the application subject to conditions of consent for reasons detailed within this report.

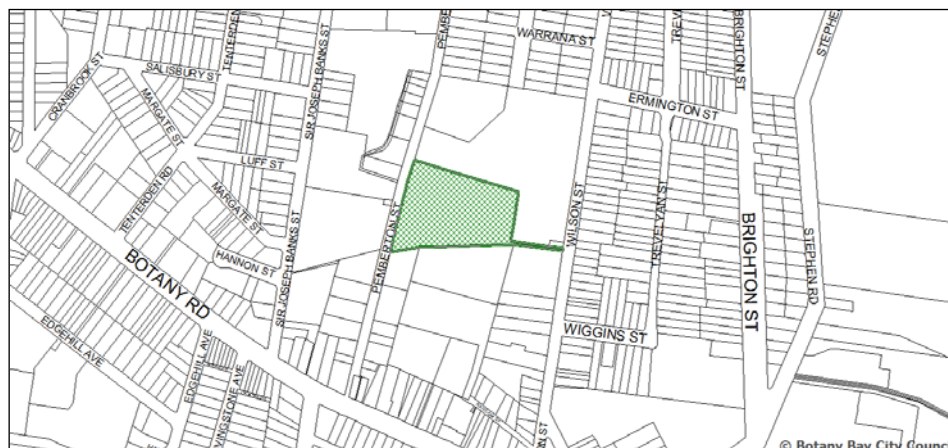
### **Site Description**

- The subject site is identified as Lot 100 in DP 875508 (being Nos.42-44 Pemberton Street, Botany) and is located on the eastern side of Pemberton Street, some 200m north of the intersection with Botany Road.
- Figure 1 identifies the location of the subject site.
- The site has a total area of 13,162m<sup>2</sup> 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.
- The subject site 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.

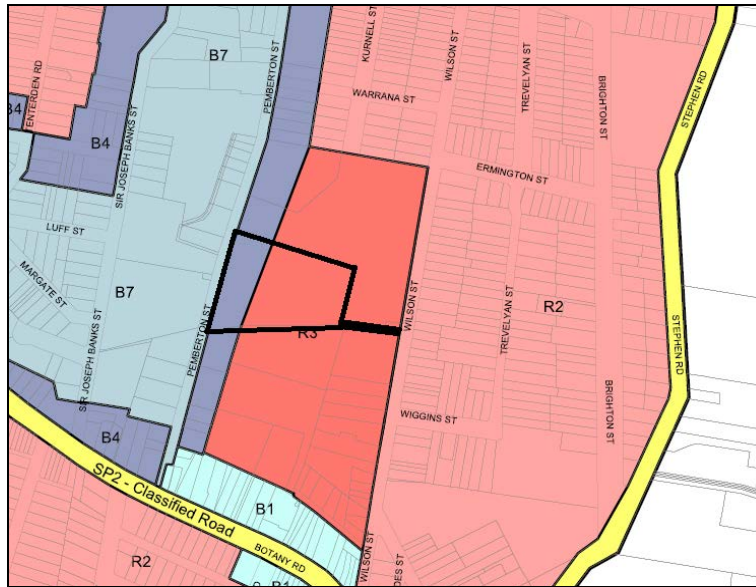
- The site has two zones as follows:
  - Eastern Part – Zone *R3 – Medium Density Residential* and having an area of 8,847m<sup>2</sup>
  - Western Part – Zone *B4 – Mixed Use* and having an area of 4,315m<sup>2</sup>

That part of the site to be developed under this application relates to development in the B4 zone only, see Figure 2.

- The site was previously occupied by Price and Speed – Containers and was used as a maritime container terminal in the Botany South Precinct.
- The subject site 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 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 Master plan 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).



**Figure 1 – Site Location**



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



*Figure 3- Recent Development within the Precinct.*



**Figure 4** –Townhouse development fronting Wilson Street with Buildings E and F from Parkgrove 1 (east) behind.



**Figure 5** – New Street 1 opening to Wilson Street to be converted to a pocket park with Building F in the foreground and Building E to the rear under construction from Parkgrove 2.



**Figure 6-** Warehouse operations on the opposite side of Pemberton Street.



***Figure 7 – Proposed location of Buildings A & C in the foreground with basement car parking and buildings D and E currently under construction.***



***Figure 8- Streetscape along Pemberton Street, without road widening.***



**Figure 9–** Location of New Street 1 viewed from Pemberton Street. Building E in the foreground under construction and Building F of Parkgrove 1 at the rear.



**Figure 10-** Industrial buildings located on 52-54 Pemberton Street, Botany (north of the subject site).

## **SECTION 79C CONSIDERATIONS**

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

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

The original assessment submitted to the JRPP on the 16 April 2014 raised non-compliances with the following matters for consideration which have been addressed in detail within this supplementary report, including:

- Height of buildings;
- Floor space ratio;
- Urban design;
- Amenity impacts associated with the desired future character of the area and adjoining zones;
- The undesirable precedent set in the locality;
- The proposal not being in the public interest; and
- The proposal not resulting in a form of development entirely inconsistent with the context, scale, built form and density of the surrounding land/s compromising the future development of this sub-precinct.

For the purposes of this supplementary report it has been agreed that the approved Master Plan DA10/313 is not applicable to this application and as such the supplementary report has not considered the proposal in compliance with the redundant Master Plan.

Secondly, this supplementary report has assumed that the assessment provided within the original planning report considered by the JRPP on 16 April 2013 provided a satisfactory assessment of the following relevant legislation and as such has not been reconsidered:

- *Environmental Planning and Assessment Act, 1979 – Division 5 – Special Procedures for Integrated Development*; and
- *State Environmental Planning Policy (SEPP) No. 55 – Remediation of Land*; and
- *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004*.

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

The original planning report stated that 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).*

This supplementary report has focused on the non-compliance with the following design quality principles contained within *State Environmental Planning Policy No 65—Design Quality of Residential Flat Development*. Each principle not satisfied within the original planning report has been considered below with respect to the Residential Flat Design Code (RFDC). It should be noted that the original assessment did not raise any non-compliances the following design principles:

- *Principle 5: Resource, energy and water efficiency*

- *Principle 6: Landscape*
- *Principle 7: Amenity*
- *Principle 8: Safety and security*
- *Principle 9: Social dimensions and housing affordability*
- *Principle 10: Aesthetics*

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.*

An Architectural Design Statement, a SEPP 65 Assessment and an assessment against the Residential Flat Design Code accompanied the original application. A design verification statement was submitted by way of a letter dated 20 December 2013 stating that the plans submitted were drawn by a registered Architect.

Council's Design Review Panel originally considered the Master plan 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.

Design Quality Principle	Architectural Design Statement- SEE	Council Officer Comment
<p><b>Principle 1: Context</b></p> <p><i>Good design responds and contributes to its context. Context can be defined as the key natural and built features of an area.</i></p> <p><i>Responding to context involves identifying the desirable elements of a location's current character or, in the case of precincts undergoing a transition, the desired future character as stated in planning and design policies. New buildings will thereby contribute to the quality and identity of the area.</i></p>	<p><i>The form of the building is considered highly appropriate for its context. The building configuration respects the adjoining uses and ensures high levels of residential amenity.</i></p>	<p>The site directly to the north is known as 52-54 Pemberton Street, Botany. Newtown Dyers and Bleachers operated from this site for the dying, bleaching and manufacturing of textiles and fabric. Prior to this, Bayer Australia Ltd operated an Agricultural Chemicals Formulation Plant at the site.</p> <p>52-54 Pemberton Street is now used for storage purposes with remaining industrial buildings on site ranging in height from single storey to 3 storeys. DA13 (208) was recently considered by the JRPP for the redevelopment of the site for mixed use purposes with an anticipated 450 dwelling yield. The design also proposed buildings ranging from 3 storeys in height (Wilson Street frontage) to 8 storeys in height central to the Precinct. It is known that the JRPP deferred the matter to resolve density and design outcomes however the concept of redevelopment from industrial to mixed use residential was supported.</p> <p>Given the redevelopment proposal for 52-54 Pemberton Street and the already approved developments within Parkgrove 2 (East) Buildings D, E and F as standalone 6 storey residential flat buildings within Parkgrove 1 (West) with townhouses fronting Wilson Street and Building D being a 6 storey residential building to the rear of Banksmeadow Neighbourhood Centre it is clear that this Precinct is undergoing contextual change not only in its built environment land uses but also in its density and scale of development. Therefore this changing context is best addressed through a response to the desired future character.</p> <p><i>BBDGP 2013 Part 9C.5 - B4 Mixed Use Zone along Pemberton Street</i> contains the desired future character for the Precinct. Each of the 13 objectives have been addressed in the assessment of the Clause 4.6 Objection to Building Height &amp; FSR. It has been</p>

Design Quality Principle	Architectural Design Statement- SEE	Council Officer Comment
		<p>established that the design has maintained live/work opportunities within the Precinct by providing a ground floor commercial uses. The scale of Buildings A &amp; C has provided a buffer between the residential (R3) and non-residential (B7) uses, ameliorating residential interface issues as a required outcome of the B4 Mixed Use zone. It has also been demonstrated that Buildings A &amp; C can be designed and acoustically treated to address amenity impacts (noise/visual) and still provide a satisfactory interface outcome for future occupants of the building.</p> <p>The main interface for this proposal is to the B7 zone opposite as this interface presents a transition between residential and non-residential land uses. The B7 zone currently contains industrial and warehouse operations (joinery manufacture, paint manufacture, metal/roofing suppliers, bakery and cake manufacture, French polishing workshop and motor mechanics).</p> <p>The BBDCP 2013 states that the B7 zone is to be preserved for local employment opportunities with a focus on light industries and high technology industries, therefore the existing motor mechanics (<i>vehicle repair stations</i>) and processing/manufacturing facilities (<i>industries</i>) would not fit with the desired future character or permissibility of the B7 zone. Therefore a reasonable expectation exists that these types of uses would not expand within the interface zone and over the long term would be replaced by more desirable land uses. The current interface zone is only for the short to medium term as the B7 zone similarly undergoes transition and amelioration of any interface impacts can be reasonably addressed within the design of Buildings A &amp; C therefore the proposed built form does respond to the desired future character of the area and should be supported.</p>

Design Quality Principle	Architectural Design Statement- SEE	Council Officer Comment
		Furthermore; the context with the R3 zone and B1 Neighbourhood Centre zone (south) with Banksmeadow Neighbourhood Centre is considered to be complementary and will provide a suitable contextual response to this urban mixed use residential environment as these zone already contain either standalone residential uses or mixed uses with commercial on the ground floor which Building A & C are consistent.
<p><b>Principle 2: Scale</b></p> <p><i>Good design provides an appropriate scale in terms of the bulk and height that suits the scale of the street and the surrounding buildings.</i></p> <p><i>Establishing an appropriate scale requires a considered response to the scale of existing development. In precincts undergoing a transition, proposed bulk and height needs to achieve the scale identified for the desired future character of the area.</i></p>	<p><i>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.</i></p> <p><i>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.</i></p> <p><i>The maximum building depth is approx. 21metres.</i></p> <p><i>The minor non-compliance is due to the articulation of the facades and design detailing to minimise continuous balconies along the facade. This results in a greater building depth due to this architectural treatment.</i></p> <p><i>The buildings have been designed to achieve compliant separation of the proposed buildings as follows:</i></p>	<p>Again there is a focus on the desired future character as both the B7 and B4 zones within this area undergo transition. The B7 zone is permitted to have a building height of 12m. The R3 has approved building heights of 22m (Building D, E and F within Parkgrove 2 and Building D within Parkgrove 1). 52-54 Pemberton Street (Parkgrove 3) is seeking 8 storeys (28.65 m) which has been identified as beyond the scale of development within the Precinct.</p> <p>Buildings A &amp; C have identified a maximum building height of 21.6m. This height is in context with the scale of buildings within the R3 zone to the east and does not extend beyond the skyline already established by these buildings.</p> <p>Whilst the B7 zone establishes a building height of 12m the change in building height to 22m metres on the opposite side of Pemberton Street can only be achieved where there are appropriate setbacks between the built form to reduce the dominance of the building bulk and provide a spatial relationship that does not constrict the visual corridor along Pemberton Street.</p> <p>Industrial buildings along the western side of Pemberton Street currently provide setbacks approx. 3- 20 metres from the street edge, many with established street trees within their front setback zones. Pemberton Street is currently a 12 m wide</p>

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	<ul style="list-style-type: none"> <li>• <i>Part Building A to D – min 13.5 metres</i></li> <li>• <i>Part Building C to E – min 13.2 metres</i></li> </ul> <p><i>The proposed buildings comply. At the upper levels there are high level windows and no opposing windows or balconies.</i></p> <p><i>The development provides appropriate setbacks.</i></p> <p><i>51% of the ground level open space is deep soil. A detailed landscape plan has been prepared and accompanies this application. The landscape design selects appropriate species for the area to facilitate lushly landscaped spaces.</i></p> <p><i>The area of communal open space is approximately 32% of the residual site area and 27% of the original site area.</i></p> <p><i>All units are provided with a private balcony compliant with the requirements of DCP 31.</i></p>	<p>thoroughfare with an additional 4 metre road widening proposed on the eastern side. The built form of Buildings A &amp; C is setback another 3m from the new property boundary. This will result in a minimum setback of 19m between the edge of the proposed residential balconies and the opposite side (western) of Pemberton Street.</p> <p>Given that the maximum height being sought is 21.6m compared to the built form separation of 19 metres between the B7 zone and Buildings A &amp; C the visual scale of the built form has been addressed through generous proportions and dimensions between the buildings reducing the perceived bulk and scale of Buildings A &amp; C. The setbacks also allow for the revitalisation of Pemberton Street further reducing the scale of the built form by providing a human scale to the existing buildings within Pemberton Street with the introduction of a pedestrian footpath and street tree planting, defining the public domain.</p>
<p><b>Principle 3: Built form</b></p> <p><i>Good design achieves an appropriate built form for a site and the building's purpose, in terms of building alignments, proportions, building type and the manipulation of building elements.</i></p>	<p><i>The orientation of the building maximised the opportunity for compliant solar access.</i></p> <p><i>Shading devices including metal sun hoods and pergolas are proposed to enable sun shading.</i></p> <p><i>The building form have a clearly defined base, middle and top which define the overall building proportions.</i></p>	<p>The building type and its uses have been design so that they function independently within the building with the commercial uses separated from the residential above with separate entry lobbies on the ground floor.</p> <p>The building materials used include brickwork facades in dark shades and painted rendered masonry in natural white, orange and lighter shades. Metal pergolas, aluminium glass and metal balustrades and louvers are feature elements of the building facades.</p>

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<p><i>Appropriate built form defines the public domain, contributes to the character of streetscapes and parks, including their views and vistas, and provides internal amenity and outlook.</i></p>	<p><i>The corners and ends of the building utilize signature elements which vary in scale to reinforce the public realm and respond to adjacent context.</i></p> <p><i>The building forms are well articulated with clearly identifiable entries, deep generous balconies and terraces in varying semi enclosed and open forms, utilizing a variety of balustrade types to provide privacy, identity and variety.</i></p> <p><i>The building forms and elements are enhanced by the use of a restrained materials pallet which reinforce the building modelling.</i></p> <p><i>Sufficient separation is provided to maintain privacy to all residents.</i></p> <p><i>Direct overlooking within the development and adjoining properties is avoided by building layout, location and design of windows and balconies and pergolas and landscape treatments.</i></p> <p><i>Access to the basement is clearly defined at the western end of New Street 1. Each building has a main entry lobby which is directly accessible from the north south through site link.</i></p> <p><i>The unit depth provides for approx. 8- 11 metres which is a minor variation to the recommendation. The units which exceed the 8 metre depth have been designed with a wide frontage and maintain sufficient levels of natural light and ventilation into the apartments and therefore are considered appropriate.</i></p>	<p>The use of darker brickwork and lighter shades for masonry walls allows for visual interest to the building form.</p> <p>The use of orange painted masonry wall features in the vertical elements of the building draws the eye through the built form from the street level through to the roof line as seen in the western and southern elevations.</p> <p>The use of glass balustrades on the balconies softens the expanse of the built form which exceeds 100 meters in length fronting Pemberton Street (west) and east towards Buildings D and E and their central open space.</p> <p>To address the considerable building length of 100m the built form has been articulated and stepped. The western facing units have modulated balcony projections. The configuration of units centrally located within the building and the use of two separate corridor elements through the building allows the central form to be stepped providing visual interest to the built form.</p> <p>At level five the built form is further articulated with the built form stepping from the roof form of Building A to a sixth level in Building C.</p>

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	<p><i>All units are well in excess of the recommended minimum sizes.</i></p> <p><i>The precinct is located within the Australian Noise Exposure Forecast, 20 ANEF Contour and as such the DCP requires the development be designed in accordance with AS2021, Acoustic Aircraft Noise Intrusion – Building Sitting and Construction and Councils Aircraft Noise DCP.</i></p> <p><i>An Acoustic Report has been prepared and accompanies this application.</i></p> <p><i>71% of the apartments achieve in excess of 2 hour's solar access between 9am to 3pm. 71% of units are naturally cross ventilated.</i></p> <p><i>The proposal will have appropriate identification with high quality character and scale which will successfully identify both buildings in the development.</i></p> <p><i>The entrance awnings to both parts of the building are designed to be an appropriate size, scale and character to provide weather protection to the entry lobbies and incorporate sufficient lighting to provide a safe, inviting atmosphere at night.</i></p>	<p>The fifth level of Building A is contracted to only provide 1x 2 bedroom unit and 1x 3 bedroom unit capping off the building form.</p> <p>As indicated by the applicant's statement the building configuration has ensured 71% of apartments achieve solar access for 2 hours per day even with a building depth that exceeds the RFDC 18 metre control.</p> <p>The setbacks provided for road widening, street tree planting and pedestrian footpaths address to the streetscape presentation of the built form. The built form is setback from the central open space provided for Building D and E to the east. The landscape plan shows a visual extension to this central communal open space and during mid-winter parts of this central open space receive sunlight providing amenity during mid-winter.</p> <p>The height of Buildings A &amp; C from 10m to 21.6 m does affect views and sightlines from Buildings D, E and F towards the west and south-west. It should be noted however the orientation of units within Building D will still maintain views to the north and views over the central open space. Building E will still maintain views to the south and north towards the central open space. Building E also extends further south than Building C thereby gaining views west and south-west from the western corner units. Building F to the east within Parkgrove 2 maintains views to the east over the existing townhouses and low-density residential fronting Wilson Street. Views to the west and south-west from Building F are already interrupted by Buildings D and E. A view corridor through to the central open space is maintained and shielded by Building A and C from visual and noise impacts associated with uses on the opposite side of Pemberton Street.</p>

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		<p>View loss will be experienced from Buildings D, E and F already approved within the Precinct however the shielding provided by Buildings A &amp; C preserves the amenity of buildings to the east and the view loss is not considered to be detrimental to the functioning or amenity of occupants within these buildings.</p> <p>Finally the form will not have an impact on the townhouses or low density residential developments to the east along Wilson Street as Building F will block the sightlines and the view corridor along New Street 1 will only afford an oblique angle of Building C behind the southern projection of Building E.</p> <p>Overall the built form is in keeping with the already approved built form within the Precinct and is visually attractive within use of building materials which articulate the built form.</p>
<p><b>Principle 4: Density</b></p> <p><i>Good design has a density appropriate for a site and its context, in terms of floor space yields (or number of units or residents).</i></p> <p><i>Appropriate densities are sustainable and consistent with the existing density in an area or, in precincts undergoing a transition, are consistent with the stated desired future density. Sustainable densities respond to the regional context, availability of infrastructure, public transport, community facilities</i></p>	<p><i>The subject site is located in the Wilson and Pemberton Street Precinct, Botany. The address of the site is 42-44 Pemberton Street, Botany and the site has a total area of 13,162m<sup>2</sup> but the portion of the site applicable to the development application is 4,315m<sup>2</sup>.</i></p> <p><i>The unit mix of the apartments is as follows:</i></p> <ul style="list-style-type: none"> <li>• 8 x commercial units</li> <li>• 4 x studio</li> <li>• 18 x one bed</li> <li>• 42 x two bed</li> <li>• 1 x three bed</li> </ul> <p><i>Total 73</i></p> <p><i>Parking for Blocks A &amp; C is within the basement</i></p>	<p>As shown in the Applicants submission the overall FSR for Parkgrove 2 is not considered to be excessive or out of context with the permitted FSR bonuses provided for sites affected by Acid Sulfate Soils, contamination or noise and over 2,000sqm, especially since the overall FSR is only seeking a 10% variation for Parkgrove 2. The specific variation for the B4 Mixed Use zone is 48% from 1:1 to 1.48:1.</p> <p>The density of development permitted within the Precinct has been considered in terms of its impact on the provision of infrastructure to service future residents. Previous approvals have required the following infrastructure which has been addressed either within Parkgrove 2 or Parkgrove 1:</p> <ul style="list-style-type: none"> <li>• Road widening along Pemberton Street;</li> <li>• Construction of New Street 1;</li> <li>• Provision of a cul-de-sac and pocket park at the eastern end of New Street 1;</li> </ul>

Design Quality Principle	Architectural Design Statement- SEE	Council Officer Comment
<p><i>and environmental quality.</i></p>	<p><i>carpark that was approved under DA 206/12. To accommodate the additional units under this DA, the basement is extended and provides a total of 417 parking spaces to accommodate the additional buildings.</i></p> <p><i>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.</i></p> <p><i>The proposed FSR across the entire site is equivalent to 1.56:1. 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.</i></p> <p><i>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.</i></p>	<ul style="list-style-type: none"> <li>• Provision of approximately 4,000sqm of public open space;</li> <li>• Provision of a north-south pedestrian link through the Precinct;</li> <li>• Provision of on-site stormwater detention systems for the Precinct;</li> <li>• Signalisation of Pemberton Street and Botany Road;</li> <li>• Provision of pedestrian crossings on Wilson Street and Botany Road; and</li> <li>• Provision of commercial land uses (employment and services) opportunities to meet the future needs of residents.</li> </ul> <p>It is understood that any infrastructure provision with Parkgrove 3 being the larger, northern Precinct will be provided within that development to cater for its future residential population.</p> <p>The future uses permitted within the B7 zone would not be adversely affected in terms of amenity from additional density on the opposite side of Pemberton Street as the built form is located over 19 metres from the B7 zone and the setbacks of the built form have been articulated to provide for streetscape planting which will mitigate the density of development along Pemberton Street and suitable infrastructure has been conditioned to support the increased density of development within the area.</p>

## **Botany Bay Local Environmental Plan 2013**

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

The assessment under BBLEP 2013 focuses on the areas of non-compliance being compatibility with the zoning, height of buildings and floor space.

<b>Principal Provisions of BBLEP 2013</b>	<b>Compliance Yes/No</b>	<b>Comment</b>
Land use Zone	Yes	The site is zoned B4- Mixed Use under the BBLEP 2013.
Is the proposed use/works permitted with development consent?	Yes	The proposed mixed use development comprising residential apartments and commercial retail uses is permissible with Council's consent under the BBLEP 2013.
Does the proposed use/works meet the objectives of the zone?	Yes	The proposed development is consistent with the following objectives in the BBLEP 2013: <ul style="list-style-type: none"> <li>▪ <i>To provide a mixture of compatible land uses.</i></li> <li>• <i>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.</i></li> </ul>
Does Clause 2.5 and Schedule 1 – Additional Permitted Uses apply to the site?	N/A	Clause 2.5 does not apply to the subject site.
What is the height of the building?  Is the height of the building below the maximum building height?	No	21.6 m exceeds the 10m height limit.  As such a Clause 4.6 variation has been submitted. Refer to discussion below.
What is the proposed FSR? Does the FSR of the building exceed the maximum FSR?	Yes	The proposed GFA is 6,394m <sup>2</sup> , or FSR = 1.48:1  1:1 for B4 zoning (4,315m <sup>2</sup> ) permitted.  Variation 48% for B4 zoned land however overall FSR variation is less than 10%. As such a Clause 4.6 variation has been submitted. Refer to discussion below.
Is the proposed development in a R3/R4 zone? If so does it comply with site of 2000m <sup>2</sup> min and maximum height of 22 metres and maximum FSR of 1.5:1?	N/A	The subject site is not located within an R3 or R4 zone. R3 zoned land adjoins to the immediate east and south of the subject site.

Principal Provisions of BBLEP 2013	Compliance Yes/No	Comment
Is the site within land marked "Area 3" on the FSR Map	N/A	The subject site is not identified as being within "Area 3" on the FSR map.
Is the land affected by road widening?	No	The Development Application involves the dedication of land to Council for the road widening. See assessment relating to BBDCP below. Road widening is not listed within the BBLEP 2013.
Is the site listed in Schedule 5 as a heritage item or within a Heritage Conservation Area?	N/A	The subject site is not identified as a Heritage Item or within a Heritage Conservation Area.
The following provisions in Part 6 of the LEP apply to the development:		
6.1 – Acid sulfate soils	Yes	The subject site is located within the Class 4 land affected by Acid Sulfate Soils. Class 4 is defined as: <i>works more than 2 metres below the natural ground surface, or, works by which the water table is likely to be lowered more than 2 metres below the natural ground surface.</i>
6.2 – Earthworks	Yes	<i>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.</i>
6.3 – Stormwater management	Yes	<i>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.</i>
6.8 – Airspace Operations	Yes	<i>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.</i>  <i>The DA was referred to the Sydney Airport Corporation Limited (SACL). In correspondence dated 14 March 2014, no objection was raised to the proposal.</i>
6.16 – Design excellence	Yes	The Precinct has been the subject of consideration by Council's Design Review Panel.

Principal Provisions of BBLEP 2013	Compliance Yes/No	Comment
		<p>Given the existing site constraints including, the shallow groundwater, the level of excavation required accommodating car parking for the development and the significant level of public benefits proposed, the density proposed is considered acceptable.</p> <p>The bulk, scale and height of the proposed development is appropriate as the development will not create any unreasonable impacts on the amenity of adjoining sites as identified in the assessment of the Clause 4.6 objections to height of building and FSR.</p> <p>The scale, context and density of the built form has been assessed in accordance with SEPP 65 Design Principles and is considered to be an appropriate location for the additional bulk and scale. The building design has also incorporated articulation and treatment of the building to provide amenity to future residents.</p> <p>On this basis, the proposed development is considered to be consistent with Clause 6.16 of BBLEP 2013.</p>

### **Clause 5.3 - Development near Zone Boundaries**

The JRPP questioned on 16 April 2014 why Clause 5.3 of the BBLEP 2014 had not been considered in the assessment of the application to allow flexibility in the consideration of development near zone boundaries. The Clause was considered and as indicated by the Applicant (*Figure 11*) the extension of the R3 Medium Density Zone over the B4 Mixed Use zone would not eliminate the B4 Mixed Use zone fronting Pemberton Street. As such consideration of the B4 Mixed Use zone would still apply to this application. Therefore the applicant has maintained that the application should be considered with respect to the provisions of the B4 Mixed Use zone and as such Clause 5.3 has not been applied to the assessment of this application.



**Figure 11- Zone Boundaries as identified by the Applicant.**

### ***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.*

Whilst it has been acknowledged that the built form can be treated to address aircraft movements within the 20-25 ANEF contour the desired future character and height of buildings development standard anticipated a lower scale of development along Pemberton

Street that did not project beyond the prevailing height of existing buildings in the area thereby potentially exposing residential uses on the upper levels to district noise impacts beyond the scope of AS2021-2000 which only addresses aircraft movements.

Council's Acoustic Consultant (Atkins Acoustics) requested that the applicant consider noise impacts to levels 4, 5 and 6 of the building that will project beyond the existing skyline. These upper level apartments may be subjected to noise impacts from Botany Road, industrial uses centrally located within the Botany South Precinct, operations from Sydney Airport following the curfew for aircraft movements and freight handling operations at Port Botany. To address the potential for noise from these land uses within the wider LGA Council's Acoustic Consultant recommended noise monitoring be undertaken at the higher levels from 6pm through until 6am to determine whether additional acoustic treatment is required for the building.

The Applicant's Acoustic Consultant undertook additional noise logging and an amended design was provided by the Applicant proposing glass louvers on the residential balconies and an update to the remaining glass windows and doors to the acoustic requirements for development. The amended architectural plan and undertaking by the applicant to treat the building to a higher acoustic standard has been included within the schedule of conditions.

Council's Acoustic Consultant has reviewed the additional information and recommended conditions regarding the treatment of the building to address internal amenity with respect to potential noise impacts associated with industrial uses within the Botany South Industrial Precinct, operations at Port Botany and Sydney Airport. These conditions have been included in the recommended conditions of consent.

#### **B4 Mixed Use Zone- Permissibility and Compliance with Objectives**

The original planning report determined that *'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 B4 Mixed Uses zone under the Land Use Table of the Botany Bay Local Environmental Plan 2013'*.

The objectives of the B4 Mixed Use zone are as follows:

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

#### **Council Officer Response:**

Clause 3 under the B4 Mixed Use zone permits stand-alone residential flat buildings as well as shop top housing where a commercial element is provided on the ground floor. Whilst the zoning does permit stand-alone residential flat buildings the objectives seek a mixture of compatible land uses within the zone and an integration of suitable business, commercial and residential land uses. Hence the response from the applicant to propose a shop top housing development with a suitable mix of business uses on the ground floor, integrated with residential accommodation above does satisfy the B4 zone objectives.

Given that the proposal has identified two land uses (residential and commercial) within a mixed use configuration, both of which are permitted within the B4 zone it could be argued that the proposed development does provide a mixture of compatible land uses.

It was questioned whether the proposal provided a compatible land use in accordance with the desired future character of the area. This supplementary report has considered the desired future character in response to the variations being sought to maximum building height and floor space.

#### **Clause 4.3(2A) and 4.4(B)**

It should be acknowledged that Council is currently pursuing a separate Planning Proposal (PP) to amend Clauses 4.3(2A) and 4.4(B) which relate to floor space and building height bonuses provided to developments within the R3 and R4 Residential zones for development sites over 2,000sqm. Whilst the subject site is wholly located within the B4 Mixed Use zone the R3 zone in which Buildings D, E and F are located were subject to the bonus FSR and building height provisions contained within the BBLEP 2013.

Council is addressing these exceptions to the FSR and height of buildings development standards within its PP in the following manner:

1. Limiting the exception in that the bonuses cannot be subject to variation under Clause 4.6;
2. Require an urban design clause to be addressed to Council's satisfaction prior to obtaining the exception to the development standards for additional height and FSR. The urban design clause may require applicants to addresses:
  - (a) The building form and scale at property boundaries to achieve acceptable amenity outcomes, to adjoining land and buildings,
  - (b) The building form to provide adequate landscape setback to lower scale built forms,
  - (c) A transition in building scale to be achieved at property boundaries, and zone interface,
  - (d) The development to be compatible with the character of the area in terms of bulk and scale, and
  - (e) The application to address the objectives of clause 4.3 and 4.4B relating the height of buildings and floor space.

Whilst the above draft urban design clause detailed above would not apply to the B4 Mixed Use zone nonetheless the intent of achieving development that provides an acceptable building form with respect to bulk, scale and context with the character of an area is applicable to developments of the scale proposed in Buildings A & C. The intent of the urban design clause is also to address the interface with the R2 Low Density Residential zones, it should be noted that the R2 zone is some distance from the development site.

### **CLAUSE 4.6 BBLEP 2013- Clause 4.4 (2) and Clause 4.3**

Council Officers as part of the original assessment questioned the applicability of Clause 4.6 to the extent of the variations being sought to the height of buildings and floor space ratio development standards within the BBLEP 2013. It has been resolved that Clause 4.6 can be relied upon to assess the departures from the development standards being proposed. As such this supplementary report considers the variations requested to the height of buildings and maximum floor space ratio as the Applicant has submitted a Clause 4.6 Exception to Council's LEP Development Standards.

It should be noted that the FSR and height of the buildings has not been altered from the original assessment and as such the development application seeks a FSR of 1.48:1 (6,394m<sup>2</sup>) 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).

The maximum height for that part of the subject site zoned B4-Mixed Use is 10 metres under Clause 4.3 BBLEP 2013. The proposed development seeks a range in height from 20.43 meters to 21.6 metres from Buildings A and C respectively.

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.

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

The objection to the height and FSR controls has been assessed in accordance with relevant case law and the applicant variation request is supported in this instance for the reasons outlined below.

### **Clause 4.6 Exceptions to Development Standards**

Clause 4.6 is reproduced as follows:

- (1) The objectives of this clause are as follows:*
  - (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
  - (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*
- (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.*

*(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.*

*(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.*

**Note.** *When this Plan was made it did not include 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 E3 Environmental Management or Zone E4 Environmental Living.*

*(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).*

*(8) This clause does not allow development consent to be granted for development that would contravene any of the following:*

- (a) a development standard for complying development,*
- (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy – Building Sustainability Index – BASIX (2004) applies or for the land on which such a building is situated.*

**1. *Is the requirement a development standard?***

The subject height and FSR limit are development standards contained in Clauses 4.3 and 4.4 of Botany Bay Local Environmental Plan 2013.

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

Clause 4.3 and Clause 4.4 of Botany Bay LEP 2013 contain the following specific objectives in respect of height.

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 objective for Clause 4.4 – *Floor space ratio* are 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.*

**Council Officer Response**

### ***Clause 4.3 – Height of Buildings***

The proposed development does present a built form that is co-ordinated and cohesive as it steps the building height from the B7 zone on the western side of Pemberton Street which allows a maximum height of 12 metres (4 storeys) up to 21.6 metres (6 storeys) proposed in the B4 zone to 22m (6 storeys) permitted in the central R3 zone down to 11 metres (2 storeys 3<sup>rd</sup> storey attic/loft setback) on the eastern side of the Precinct adjoining Wilson Street. The proposed height of the buildings reinforces the sensitive nature of low density residential land uses to the east of the Precinct by locating taller buildings with greater density on the far western side of the Precinct.

The original assessment report argues that the building height *is not consistent with the not more than three storey height limit set along the street frontages which mainly consistent of townhouses with loft/attics*. This scale of development is predominately along Wilson Street where a low scale interface has been enforced with the adjoining R2 zone. It would be anticipated that this sensitive interface would also apply the boundaries of Parkgrove 3 to the north with Kurnell Street and Warana Street R2 zones. The interface along Pemberton Street is different in nature for the subject site as it adjoins a B7 Business Park zone only and buildings fronting Pemberton Street are to act as an amenity buffer to the residential development located within the Wilson Pemberton Street Precinct. Council's Acoustic Consultant has reviewed the application and clarified that the proposed built form does present a suitable buffer between the R3 zone and the B7 zone which is the intent of the B4 Mixed Use zone. Given that the proposed building are of a similar height and scale to the residential flat buildings approved within the R3 zone, the stand alone residential flat buildings have been shielded by the bulk and scale of the proposed built form.

The proposed Buildings A and C do not restrict any views, visual privacy or solar access of any existing developments as the built form is located to the west of the residential development currently within the Wilson Pemberton Street Precinct and provides compliant building separation in accordance with the RFDC. It has been argued in the original report under the BBDCP 2013 assessment that views from the Residential Flat Buildings D, E and F will have their views impacted towards the west being Mascot and south to Sydney Airport and Botany Bay. The extent that these views are impacted is only a fraction of the district views maintained by these residential developments north towards the city skyline, east towards La Perouse and Little Bay and south towards Port Botany, Sir Joseph Banks Park and Botany Bay. The impact of view loss is therefore considered to be acceptable. The overshadowing to the B7 zone is not considered to be a significant amenity impact. Given that the proposed built form is of a similar scale to the previously approved stand-alone residential flat buildings centrally located to the Wilson Pemberton Street Precinct the proposed built form will not adversely impact on the streetscape or skyline when viewed from adjoining streets or public places. Furthermore the proposed development includes road widening along the Pemberton Street frontage and reinstatement of the pedestrian footpath and streetscape amenity with landscaping and street lighting which is currently in a poor state as a result of the industrial uses previously occupying the site.

The desired future character of the Wilson Pemberton Street Precinct is identified within *BBDCP 2013 Part 9C.5 - B4 Mixed Use Zone along Pemberton Street*. There are 13 objectives which outline the desired future character of the area including:

- *the encouragement of live/work opportunities and improvements to the Public Domain*

The proposed development includes a commercial element on the ground floor of the built form, thereby providing an opportunity for residents within the Precinct to work within the area. Parkgrove 1 and 2 have been identified to provide public open spaces in excess of 4,000sqm which is to be delivered within Parkgrove 1 to the south of this site. The development also contributes to the north-south pedestrian link through the Precinct which provides an improved public domain outcome for the previous industrial tenancies in line with the redevelopment of this Precinct as a mixed commercial/residential offering.

- *Ameliorate conflicts on the interface between the non-residential and residential uses;*

This objective relates to the B7 Business Development zone (Botany South Precinct) and B4 Mixed Use zone interface fronting Pemberton Street. The interface provided by the B4 zone is to limit the amenity impacts of the R3 Medium Density Residential zone on the local employment industries operating within the B7 zone to the west of the Precinct to allow local employment opportunities to continue to operate within the Botany Bay area.

Council has through the change in land use zoning under the BBLEP 2013 restricted the heavier industrial/manufacturing uses to IN1 General Industrial zones. To address uses currently within the Botany South Precinct Council has within the BLEP 1995 previously restricted the size of trucks being able to access the Precinct focusing on amenity impacts to residential land uses within the Precinct. Further the BBLEP 2013 has rezoned the Botany South Industrial Precinct to focus on a desired future character of high quality businesses with a mix of light industrial, creative industries, commercial, business and warehouse uses. A focus on light industrial uses within this zone would facilitate uses that *means a building or place used to carry out an industrial activity that does not interfere with the amenity of the neighbourhood by reason of noise, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil, or otherwise, and includes any high technology industry and home industry* as defined within the BBLEP 2013. As a result any uses permitted within the B7 zone must not interfere with the amenity of the neighbourhood which includes residential land uses both within the zone and external to it.

The proposed development presents a commercial use on the ground floor which is an acceptable interface with the street level including the operational movements on industrial businesses located on the western side of Pemberton Street. This allows the interface with residential land uses within the B4 Mixed Use zone to be improved. The applicant has also nominated the following design measures for Buildings A and C which will further address any potential interface impacts. These amendments will be conditioned within the consent.

1. Treatment of the building for internal acoustic amenity to address the AS2021-2000 standards applicable to residential development; and
2. The balconies facing Pemberton Street to the south and west are to be enclosed with operable glass louvers which occupants can operate to enclose the balcony areas, as circumstances require.

It could be argued that by permitting additional building height additional residential units are exposed to the interface with the B7 zone, but if the desired future character is

implemented for the B7 zone, being a focus on light industries and high technology industries and the acoustic measures are implemented for the residential portion of Buildings A and C the interface can be adequately ameliorated to provide an acceptable level of amenity.

- ***encourage low scale mixed use development with residential at 2<sup>nd</sup> 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;***

As stated above the interface uses can be satisfactorily ameliorated and the proposed development does present an opportunity for vibrant uses within the commercial offering on the ground floor, street level. The size and design of the commercial tenancies would support a range of commercial and business uses which could provide support services to the Botany South Precinct to the west.

- ***Ensure that proposed development is designed to minimise the impact of noise and vibration from uses within the B7 zone;***

As stated previously the applicant has identified that the internal and western facing private external balconies of the development shall be treated to the highest acoustic standard contained within AS2012-2000.

It should also be noted that new developments within the B7 zone shall be required to submit Plans of Management addressing hours of operation, loading/unloading and the amenity impacts of these industrial uses, any vibration impacts shall be addressed at its source within the B7 zone.

- ***create a focus for a wide variety of businesses that offer employees and visitors a lively and attractive environment, becoming more than just a 'place of work' but one that compliments and connects business activities with each other;***

The proposed development includes commercial land uses on the ground floor thereby providing opportunities for 'places of work'. Given the upgrades required as a result of the road widening along Pemberton Street and the subsequent streetscape upgrades the proposed development will create an attractive business environment.

- ***promote and encourage a high design quality of buildings;***

The design quality of the built form was not questioned by the original assessment as the materials and finishes are of a similar standard to buildings already approved within the Precinct.

- ***provide a high level of pedestrian amenity and create a vibrant and safe precinct;***

As stated previously public domain improvements have been articulated for the Parkgrove 2 precinct including improvements to Pemberton Street and public open spaces to be provided in the north-south pedestrian link adjoining Building D, E and F and recreational spaces to the south of the site within Parkgrove 1.

- ***encourage the provision of parking, vehicular access and servicing areas that provide a buffer between residential and non-residential uses and pleasant, safe and provide shared working environment;***

The widening of Pemberton Street along the eastern side will facilitate an improved streetscape to act as a buffer between the residential and non-residential uses. The building setback to Pemberton Street also identifies planter boxes at the street edge and generous paved courtyards in front of the commercial tenancies which is an improvement on the original proposal which provided soho units at the street edge resulting in conflicts between the private and public domain at the street edge and required a proliferation of private and public access ways to each soho unit, detracting from the streetscape.

The B7 zone controls also require new developments to provide a buffer to the street edge by locating offices and car parking to the street edge with warehousing to the rear. The combination of measures being undertaken along both sides of Pemberton Street as a result of new developments will improve the overall streetscape and contribute to a pleasant and safe working environment.

- ***ensure the protection and viability of the Botany Local Centre and Banksmeadow Neighbourhood Centre;***

The proposed development only identifies eight (8) commercial tenancies ranging between 100sqm and 119sqm. Given the low scale nature of the commercial offering at the street edge it is not anticipated that the economic investment generated by these tenancies would affect the economic viability of the Botany Local Centre or Banksmeadow Neighbourhood Centre. It could be argued that the extension of flexible commercial space along Pemberton Street would encourage vitality within the Banksmeadow Neighbourhood Centre and positively contribute to its economic growth.

- ***ensure non-residential development is sympathetic with the streetscape character and maintains the amenity of surrounding residential development;***

The non-residential development within the proposed development relates to the eight (8) commercial tenancies located on the ground floor which are completely separate in access to the residential above. The design identifies separate access points for the commercial level from the residential above and clearly articulates the plant and storage rooms as separate areas from the residential lobbies located on the ground floor. Residential balconies cantilever over the commercial level to provide articulation and visual interest to the built form. Amenity to the residential above as a result of future uses within the ground floor commercial areas can be addressed within subsequent use applications for the commercial tenancies.

- ***protect existing public stormwater drainage assets; and***

This matter has been assessed as part of the original application. This matter was not identified as a reason for refusal within the original assessment report and has been addressed through a Precinct design solution.

- *minimise impact of flooding to the developments, nature environment and built up areas.*

As stated above this matter was not identified as a reason for refusal previously and has been the subject of the Precinct design solution.

#### **Clause 4.4(2) – Floor Space Ratio**

The development application seeks a FSR of 1.48:1 (6,394m<sup>2</sup>) for that part of the site zoned 4B – Mixed Use. The reasons for refusal detail that *the proposed development is inconsistent with relevant objectives contained within Clause 4.4 Floor space ratio of the Botany Bay Local Environmental Plan 2013 resulting in an excessive form of development and is inconsistent with the maximum floor space ratio controls.*

Below is a table identifying the FSR proposed as indicated within the original assessment report.

<b>FSR</b>	1:1 for B4 zoning (4,315m <sup>2</sup> )	6,394m <sup>2</sup> , or FSR = 1.48:1	<b>NO</b>
	1.65:1 for R3 zoning (14,597m <sup>2</sup> )	<b>Stage 1</b> DA12/206 = 14,179m <sup>2</sup> <b>Stage 2</b> DA13/278 = 6,394m <sup>2</sup>	<b>Clause 4.6</b> <b>Variation submitted</b> Variation 48% for B4 zoned land
	Total <b>GFA</b> for site = 18,912m <sup>2</sup> Combined <b>FSR</b> for site = <b>1.437:1</b>	Total = 20,573m <sup>2</sup> FSR = 1.56:1	<b>NO</b> Variation <10% for entire site

The objectives for Clause 4.4(2) applicable to the proposed development are considered below with a focus on the form, density and scale of development provided in the assessment of the SEPP 65 design principles above.

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

Council Officer Response: The development standard has established a maximum density for land uses within the B4 zone however through the assessment of scale and density under SEPP 65 above it has been argued that the maximum FSR permitted can be exceeded as proposed as the design outcomes are acceptable and the intensity of the land use as proposed can be supported by infrastructure improvements within the immediate locality.

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

Council Officer Response: The original assessment states that the desired future character contained with Part 9C of the BBDCP 2013 envisages a built form where

commercial/industrial development on the ground floor and first floor and live/work above along Pemberton Street integrates seamlessly within the residential land use in the Precinct.

The proposed development has provided a mix of uses that allow for live work opportunities within the Precinct whilst also providing separation between the commercial ground floor and residential above. The seamless nature of the commercial and residential uses is shown through the design of building where by the commercial is located on the ground floor and does not dominate the built form. The design articulates the façade through the modulation of the built form and use of contrasting materials and finishes.

The desired future character has been address above with respect to building height which is a key element in determining the bulk and scale of a development. However the FSR objectives also identify a need for the FSR to also reflect the existing character of an area and areas undergoing substantial transformation. As addressed previously within this report the B7 Business Development zone on the opposite side of Pemberton Street will undergo substantial transformation over the long term and that the existing character should only be considered in the short to medium term. In this instance the existing character has been considered below however a greater weight has been applied to the desired future character of the B7 zone which anticipate light industrial uses and high technology industries.

The existing character of the B7 zone fronting Pemberton Street is shown in figures 6 and 8 of this report which includes single and two storey industrial/warehouse buildings with hard stand areas fronting Pemberton Street. These traditional factory buildings do not reflect the desired future character of the built form to be encouraged within the B7 zone however these buildings currently support uses including joinery manufacture, paint manufacture, metal/roofing suppliers, bakery and cake manufacture, French polishing workshop and motor mechanics. These uses would be classified as noise generating industries as they would require the operation of mechanical equipment for manufacturing of products. Given that these uses are likely to remain in the short to medium term and the proposed development through its increased FSR has resulted in additional residential uses being located in close proximity to these industrial occupations additional treatment of Building A and C is recommended to ensure a satisfactory level of amenity to future residents. Additional acoustic treatment of the built form has been discussed previously within this report and appropriate conditions of consent shall be imposed.

It should also be noted that the main areas of affectation will be the southern and western facing balconies which are also recommended for acoustic treatment through the introduction of acoustically treated glass louvers.

***(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,***

Council Officer Response: The assessment against the SEPP65 design principles has considered the human scale of development fronting Pemberton Street and the visual relationship between the height permitted within the B7 zone and the proposed bulk

and scale within Buildings A & C. The separation provided by Pemberton Street and its future road widening will address the visual dominance of the built form and improve the pedestrian amenity along Pemberton Street.

In the immediate locality all areas are undergoing transformation including the B7 zone, the R3 zone and the B1 Neighbourhood Centre zone affecting Banksmeadow shops. The only areas not undergoing change with a direct connection to the subject site is the R2 zones on the opposite side of Wilson Street, within Kurnell and Warana Streets to the north and Anniversary Street to the south on the opposite side on Botany Road. The site will be suitable shielded from these sensitive receivers by already approved developments within the Precinct.

The existing character of the B7 zone is traditional brick factory buildings which will be contrasted by the new mixed use developments proposed on the opposite side of Pemberton Street. This definitive contrast in built form may serve to revitalise the B7 area through the redevelopment of the Botany South Precinct to better align with the desired future character of the zone.

The FSR proposed by Buildings A & C is consistent with the R3 zone and will not detract from the development potential of the B7 zone on the opposite side of Pemberton Street.

***(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,***

Council Officer Response: The bulk and scale will be visible along Pemberton Street, New Street 1 and centrally within the Precinct itself from the major public open spaces to be dedicated within Parkgrove 1. The bulk and scale is consistent with other buildings within the Precinct including Building D, E and F within Parkgrove 2 and Building D within Parkgrove 1. There is a graduating of building height and bulk centrally within the Precinct and a graduation of bulk and scale along Pemberton Street from the north adjoining sensitive residential uses adjoining 52-54 Pemberton Street through to the Banksmeadow Neighbourhood Centre to the south which currently contains 2-4 storey buildings. The proposed built form will not be out of character or context with the prevailing pattern of the development within the Precinct.

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

Council Officer Response: The bulk of building will affect the development site to the south being Parkgrove 1 (west) by overshadowing however the design, location and articulation of the built form and public domain within the Parkgrove 1 site can address these amenity impacts as the overshadowing only extends to the northern corner of the Parkgrove 1 (west) site and will not adversely affect the development potential of this site.

Part 9C of the BBDCP 2013 requires x 3,000sqm two public parks to be provided to the north and south of New Street 1 and a north-south pedestrian link between Building D, E and F. The north-south link will not be impacted by the proposed development and the design of the public park will have a greater impact on its useability and amenity than the proposed bulk of Buildings A and C.

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

Council Officer Response: It is acknowledged that the site coverage requirement and minimum landscape area control outlined in the BBDCP 2013 have been exceeded however this development site cannot be considered in isolation. This site is located within the Wilson Pemberton Street Precinct which will include a substantial public park to the south directly opposite New Street 1. This public open space is to benefit all developments within Parkgrove 1 and 2.

The development and its extent are shared with that of Buildings D, E and F through a basement car park level which extends under all four buildings. Therefore to consider the extent of development as being solely related to Buildings A and C is unrealistic. Buildings A and C also have the benefit of the already approved central communal open space which serves Building D, E and F. When considered as a combined development site with Buildings D, E and F the size and extent of development is considered to be reasonable.

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

Council Officer Response: The increased FSR proposed will generate an increased demand for building materials and construction thereby supporting the economic stimulation with the local labour markets. The additional residential population proposed by the development will also provide increased stimulus to the local centre therefore increased commercial activity and use of existing services.

The merits of the additional building height and floor space have been discussed within the supplementary report. The proposal meets the objectives of the development standard notwithstanding its non-compliance with the standard and granting of consent consistent with the aims and objectives of Clause 4.6 of BBLEP 2013 is not required in this instance as the exceedence of the development standards does not adversely affect the public interest. Therefore it is recommended that the Clause 4.6 variations be supported in this instance.

**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?***

Compliance with Clauses 4.3 and 4.4(2) are unreasonable and unnecessary in this circumstance as expressed above compliance with the objectives of each clause has been demonstrated and the departures will not result in a development that is not consistent with the desired future character of the B4 Mixed Use zone as specified in the BBDCP 2013 Part 9C.

***(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. The proposed development is consistent with the objectives of the height and FSR controls in BBLEP 2013, as detailed above.

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

The underlying objectives and purposes of the height and FSR control remain relevant to the proposed development. The proposed development is consistent with the objectives of the height and FSR control in the BBLEP 2013 as detailed above.

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

Apart from the redundant master plan approvals for Parkgrove 1 and 2 the subject application is the first physical works application fronting Pemberton Street within the B4 Mixed Use zone. The master plan application for 52-54 Pemberton Street to the north is currently proposing 4 storeys to Pemberton Street, however this application is to be amended following a recent decision by the JRPP and as a result no built form has been approved fronting Pemberton Street.

Whilst Council has not undertaken any action to abandon or destroy the applicable development standards it has been demonstrated above that a departure from the standards does not result in a detrimental development outcome and the particular objectives of the relevant standards have been considered.

***4. Is the objection well founded?***

Council Officer Response: The rationale and argument presented in the Clause 4.6 variation is generally agreed with and it is recommended that the development standard relating to the maximum height and FSR for the site as contained within Clauses 4.3 and 4.4(2) of the BBLEP 2013 should be varied in the circumstances to allow the development to attain a height of 21.6m and floor space ratio of 1.48:1.

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

Council Officer Response: Applying Clause 4.6 to the subject application does allow a degree of flexibility and does not result in a development outcome that is detrimental to the viability of development within adjoining land or detrimental to the amenity of surrounding land uses. The proposed built form is consistent with the scale and bulk of approved development within the Wilson Pemberton Street Precinct and does not present an impact to sensitive residential receivers along Wilson Street.

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

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

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

Council Officer Response: There is merit in maintaining the planning controls adopted by the environmental planning instrument where a departure does not address the objectives of the development standard and the proposal presents a development that is inconsistent with the desired future character of an area. This specific development application has demonstrated that compliance with numerical standards of Clauses 4.3 and 4.4(2) are not required as the objectives have been reasonably achieved and the desired future character has not been abandoned.

The public benefit has also been maintained through the provision of public infrastructure to service the development and the amenity of future occupations has been addressed within the design of the development. Therefore strict compliance with the planning controls adopted within the BBLEP 2013 is not required and this particular application does set a precedent that adversely affects the public interests.

It is therefore recommended that the Clause 4.6 Variations to Height of Buildings and Floor Space Ratio be supported in this particular case as demonstrated above. The maximum height of buildings be amended to 21.6 metres and the FSR to reflect 1.48:1.

#### ***Applicant's Amended Justification Addressing Clause 4.6 (Height of Buildings and Floor Space Ratio)***

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 – Mixed Use zone:

- 2.1 *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.*
- 2.2 *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.*
- 2.3 *Clause 4.6 allows for the contravention of development standards with approval of the consent authority.*
- 2.4 *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”*
- 2.5 *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.*
- 2.6 *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.*
- 2.7 *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.*
- 2.8 *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.*
- 2.9 *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.*

- 2.10 *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*
- 2.11 *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 2000m<sup>2</sup>, 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.*
- 2.12 *The LEP permits a 10 metre height limit in the B4 zone. The height of Block A and C will be 21m 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.*
- 2.13 *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 acoustic amenity of the development is appropriate, the existing industrial uses to the west do not impact on the developments ability to achieve the required internal amenity.*
- 2.14 *The proposed FSR across the entire site is equivalent to 1.56:1. 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.*
- 2.15 *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.*
- 2.16 *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.*
- 2.17 *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. 2.18 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.*
- 2.19 *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.*
- 2.20 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.*

- 2.21 *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.*

- 2.22 *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.*

- 2.23 *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 submitted acoustic report confirms that the future acoustic amenity of the proposed residential development can achieve the required internal noise levels of the relevant standards and is therefore acoustically acceptable. The scale and form of the development achieves high levels of residential amenity. Due to the permissibility of residential use in the B4 zone and the acoustic amenity of the development, a lower scale non-residential development is not needed to provide a buffer to the residential uses to the east. Residential uses of this scale are highly appropriate in this location.*
- 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.*

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

Clause 4.6(4)

2.25 *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.*

2.26 *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. 2.27 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:*

2.28 *The site is currently zoned B4 Mixed Uses.*

2.29 *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.*
- 2.30 *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;*
  - *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;*
  - *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 nature of the proposed development is appropriate adjacent to the Business Park zoning which has a focus on commercial and light industrial uses;*
  - *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.*
- 2.31 *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.*
- 2.32 *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.
- 2.34 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.
- 2.35 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.
- 2.36 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 that provides a strong edge to Pemberton Street marking the western residential edge of the precinct.
  - 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 are 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.*
- 2.37 *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.*
- 2.38 *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.*

- 2.39 *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. 2.40 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.*
- 2.41 *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.*
- 2.42 *The building form maintains complaint solar access to the public domain.*
- 2.43 *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.*
- 2.44 *The development will present a more visually appealing and prominent building that will significantly enhance the Wilson-Pemberton Street precinct.*
- 2.45 *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.*
- 2.46 *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.*

- 2.47 *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).*

- 2.48 *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.*

*2.49 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 if not applicable.*

*2.50 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.*

## **BOTANY BAY DEVELOPMENT CONTROL PLAN 2013**

The following table details the areas of non-compliance which formed reasons for refusal as part of the original assessment. Only the matters which presented a non-compliance with the BBDCP 2013 have been addressed within this supplementary report.

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*.

<b>Part</b>	<b>Control</b>	<b>Proposed</b>	<b>Complies</b>
<b>3A.2 Parking Provisions</b>	<p>8 commercial units = 21spaces</p> <p>22 x studio/1bed x 1space = 22spaces</p> <p>43 x 2/3 bed = 86spaces</p> <p>Visitor 1 per 5dwgs = 13spaces</p> <p>Total = <b>142</b>spaces (+285 for Buildings D, E &amp; F)</p> <p><b>TOTAL</b> for entire site = <b>427</b></p>	<b>422</b> spaces over entire site	<p><b>Noted</b></p> <p><b>A shortfall of five (5) parking spaces – as a result in the change in the DCP.</b></p> <p><b>Can be conditioned to comply</b></p>
<b>3J.2 Aircraft Noise Exposure Forecast</b>	<p><b>C3</b> 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:</p> <p>(i) Submission of specialist 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>	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.	<b>Yes</b>

Part	Control	Proposed	Complies
<b>4C.6.1 Adaptable Housing</b>	<p><b>C3</b> - 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><b>C 4</b> - 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>	<b>Yes</b>
<b>3A.3.1 Car Park Design</b>	<b>C1 – C41</b> 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).	<b>Yes</b>
<b>3A.3.2 Bicycle Parking</b>	<b>C1-C5</b> To comply with AS2890.3 & AUSTRROADS.	Bicycle parking provided & complies with relevant AS.	<b>Yes</b>
<b>3A.3.4 On-site Loading &amp; Unloading</b>	<b>C1-C11</b> 1 courier van for 999m <sup>2</sup> offices + 1 service bay/50dwgs	Separate service bays not provided, turning bays & visitor spaces can be utilised by delivery cars/vans.	<b>Noted</b>
<b>3B Heritage</b>	Development in vicinity of heritage item or HCA	N/A	<b>N/A</b>
<b>3C Access, Mobility &amp; Adaptability</b>	<b>C1-C4</b> Compliance with DDA, AS4299.	Access Report submitted; 7 adaptable units provided & an accessible parking space to each.	<b>Yes</b>
<b>3G.2 Stormwater Management</b>	<b>C1-C6</b> Comply with Stormwater Management Technical Guidelines; Part 3G.5 Stormwater Quality.	Stormwater plans submitted and reviewed by Council's Development Engineer.	<b>Yes</b>
<b>3H Sustainable Design</b>	<b>C1-C6</b> BASIX; Solar hot water encouraged.	BASIX Certificate provided.	<b>Yes</b>
<b>3I Crime Prevention Safety &amp; Security</b>	Site layout, design & uses; Building design; Landscaping & lighting; Public domain, open space &	Comments received from NSW Police & may be included as conditions of	<b>Yes</b>

Part	Control	Proposed	Complies
	pathways; Car parking areas; Public Facilities.	consent.	
<b>3J Aircraft Noise &amp; OLS</b>	ANEF; Aircraft height limits in prescribed zones.	SACL comments received – no objection.	<b>Yes</b>
<b>3K Contamination</b>	Consider SEPP 55 & Contaminated Land Management Act 1997.	Site has been remediated in accordance with Category 2 of SEPP 55.	<b>Yes</b>
<b>3L Landscaping</b>	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.	<b>Yes</b>
<b>3N Waste Minimisation &amp; Management</b>	General Requirements; Residential Development; Mixed Use Development.	A WMP has been submitted for ongoing use of site & removal of waste.	<b>Yes</b>
<b>4C Residential Flat Buildings</b>	Only applicable to development in R3 & R4 zones. However Part 9C of DCP requires compliance.	See below	
<b>4C.2.1 Site Analysis</b>	Site Analysis Plan required.	Site Analysis Plan submitted & SEPP 65 assessment undertaken.	<b>Yes</b>
<b>4C.2.2 Local Character – Botany</b>	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.	<b>Yes</b> (see discussion regarding the public domain & streetscape along Pemberton St affected by building height and FSR).
<b>4C.2.3 Streetscape Presentation</b>	Compatible with bulk & scale of adjoining residential developments; Max building length 24m; Walls >12m must be articulated; Street presentation.	Building length 100m & suitably articulated.	<b>Yes</b> (see discussion regarding density of development under SEPP 65 assessment).
<b>4C.2.4 Height</b>	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.	<b>No</b> (Refer to Clause 4.6 variation)

Part	Control	Proposed	Complies
<b>4C.2.5 Floor Space Ratio</b>	Compliance with cl.4.4, 4.4A & 4.4B of BBLEP 2013. 1:1 for B4 zoning (4,315m <sup>2</sup> )	No bonus FSR given in 4B zone 1.48:1 (or 6,394m <sup>2</sup> )	<b>No</b> <b>(Refer to Clause 4.6 variation)</b>
<b>4C.2.6 Site Coverage</b>	Max site cover 45%	Over entire site: 66% (with basement) 37% (without basement)	<b>No</b> <b>(see note below)</b>
<b>4C.2.7 Landscaped Area and Deep Soil Planting</b>	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%	<b>No (see note below)</b>
<b>4C.2.8 Private &amp; Communal Open Space</b>	Studio & 1bed = 12m <sup>2</sup> 2 bed = 15m <sup>2</sup> 3 bed = 19m <sup>2</sup> 4 bed = 24m <sup>2</sup>  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	<b>Yes</b>          <b>No- assessment undertaken for high density areas reflecting compliance required for only 2 hrs</b>
<b>4C.2.9 Setbacks</b>	Comply with SEPP 65; Front & side setbacks to provide deep soil; Minimise bulk & scale; Provide adequate exposure to sunlight; Front setback consistent with existing; 3m side setback (min); Basement car parking min 1.5m from side boundaries.	SEPP 65 separation distances comply; Bulk not minimised; Front setback consistent with future desired character; Northern side boundaries 1-4m.	<b>Yes</b>  <b>The SEPP 65 setbacks are compliant.</b>  <b>The setback provides road widening to Pemberton Street with a setback of residential balconies 3m from the new property boundary.</b>

Part	Control	Proposed	Complies
<b>4C.2.10 Through Site Links &amp; View Corridors</b>	Existing view retained; View corridors integrated.	Views from Buildings D, E & F will be affected; Through site links N-S maintained.	<b>No</b> (see assessed within SEPP 65 section – Views will be affected by increased height however the view loss is not detrimental to the overall views obtained from adjoining buildings)
<b>4C.3.1 Design Excellence</b>	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.	<b>Yes</b>
<b>4C.3.2 Corner Buildings</b>	To align & reflect corner conditions; Reflect architecture & street characteristics.	Appropriately addresses & articulates along New Street 1 frontage.	<b>Yes</b>
<b>4C.3.3 Building Entries</b>	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.	<b>Yes</b>
<b>4C.3.6 Materials &amp; Finishes</b>	Schedule of finishes; Consistent with Part 8; long-wearing materials.	Sample board provided & considered appropriate for area.	<b>Yes</b>
<b>4C.5.1 Dwelling Mix, room size &amp; layout</b>	Studio – 60m <sup>2</sup> 1 bed – 75m <sup>2</sup> 2 bed – 100m <sup>2</sup> 3 bed – 130m <sup>2</sup> 4 bed – 160m <sup>2</sup>  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.	<b>Yes</b>  <b>No</b> (see note below – minor variation supported in original assessment)
<b>4C.5.2 Internal Circulation</b>	2m min. corridors; Articulate long corridors.	Corridor widths 1.6m – 3m; Articulation provided.	<b>Yes</b>
<b>4C.5.3 Building Depth</b>	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;	<b>Noted</b> (minor variations tolerable in unit)

Part	Control	Proposed	Complies
		Double fronted units greater than 4m width.	<b>size/design)</b>
<b>4C.5.4 Balconies in RFBs</b>	Differing styles; Min. 12m <sup>2</sup> ; Provides for privacy & visual surveillance; Not continuous across facade.	All units provide for min. 12m <sup>2</sup> of balcony. 67% receive 2hrs sunlight on 21 June.	<b>Yes</b>
<b>4C.5.5 Ground Floor Apartment in Residential Flat Developments</b>	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 for each commercial tenancy. Separate lobby entries provided for the residential component.	<b>Yes</b>
<b>4C.5.6 Natural Ventilation</b>	Comply with SEPP 65 & RFDC.	RFDC assessment table provided, 71% of units cross-ventilated.	<b>Yes</b>
<b>4C.5.7 Ceiling heights</b>	3m for shops; 2.7m for habitable units.	Min floor to ceiling heights provided.	<b>Yes</b>
<b>4C.5.8 Solar Access</b>	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.	<b>Yes (RFDC)</b> <b>Yes</b>
<b>4C.5.9 Visual Privacy</b>	SEPP 65 & RFDC; No direct views into windows of other dwellings; Attic windows shall not overlook.	Separation distances comply; windows designed not to overlook.	<b>Yes</b>
<b>4C.5.10 Building Separation</b>	SEPP 65 & RFDC; and Table 5 of DCP.	13.2m separation, does not comply with 18m separation however no opposing windows or balconies.	<b>Yes</b>
<b>4C.5.11 Views</b>	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.	<b>Yes-substantial views will still be obtained by Buildings D, E, and F to the north, south and east.</b>
<b>4C.5.12 Acoustic Privacy</b>	Table 6 of DCP; Multiple dwellings to be designed & constructed to comply with BCA.	Acoustic Report submitted, all units capable of complying.	<b>Yes</b>
<b>4C.5.14 Storage</b>	Studio – 6m <sup>2</sup> 1 bed – 8m <sup>2</sup> 2 bed – 10m <sup>2</sup> 3+ bed – 12m <sup>2</sup>	Schedule of storage provided & demonstrates compliance.	<b>Yes</b>
<b>4C5.15 Site Facilities</b>	1 lift per 40 units; Garbage storage; Sunlight available to clothes drying area; Undergrounding of major	2 lifts provided; WMP complies with Part 3N; Communal clothes drying	<b>Yes</b>

Part	Control	Proposed	Complies
	infrastructure.	not provided; AC to be designed not to be visible from street/public domain.	
<b>4C.5.16 Safety &amp; Security</b>	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.	<b>Yes</b>
<b>4C.5.17 Car Parking &amp; Vehicle Access</b>	Pat 3A compliance; Basement car parking <1.2m out of ground.	Parking spaces comply; Basement protrudes >1.2m above ground to form the communal landscaped podium.	<b>N/A</b> <b>(previously addressed as part of Buildings D, E and F – DA12/206)</b>
<b>4C.6.1 Adaptable Housing</b>	Part 3C; Provide all access to common areas in accordance with DDA & BCA; Compliance with adaptable housing standards AS4299-1995.	Access Report submitted; Part 3C complies.	<b>Yes</b>
<b>8.4 Botany Character Precinct</b>	Existing Local Character; Desired Future Character.	Development inconsistent with character objectives relating to form, massing, scale & streetscape; solar access and views.	<b>Yes- see discussion addressing building height and FSR.</b>
<b>9.C Wilson/ Pemberton Street Precinct</b> <b>9C.5 B4 Mixed Use zone along Pemberton St</b>	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.	<b>No</b> <b>(see note below)</b>

**Previous justification provided within the original assessment report for the following non-compliances**

***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 exacerbated 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 lessened. 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. It should be noted that the DCP control should also include studio apartments, the non-compliance is therefore 34%.

The variation in this case of 3% as assessed under the control as it reads is not considered to be significant and support is provided to the variation. It is acknowledged that there is a discrepancy in Council's BBDCP 2013 in that the 25% requirement for unit mix only applies to 1 bedroom units and does not include studios as was previously the case within the Wilson Pemberton Street DCP. It should be noted that the proposed development includes a mix of 18x 1 bedroom units and 4x studios.

#### ***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 midwinter. 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 midwinter, 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.

### **Part 9C Wilson/Pemberton Precinct**

The original development assessment indicated that the development was inconsistent with the planning framework principles of Part 9C of the BBDCP 2013 applying to the Wilson Pemberton Street Precinct. Each of the planning framework principles are considered below.

#### ***P1 To provide for adequate and legible vehicular, pedestrian and cycle circulation through and within the Precinct***

Council Officer Response: The proposed development has vehicular entry from New Street 1 as previously approved in DA12(206) for Buildings D, E and F as the site has a combined basement level. New Street 1 has a pedestrian pathway and cycleway to promote alternative modes of transportation through the Precinct as previously approved by the JRPP. Buildings A & C will provide road widening to Pemberton Street which will include a new pedestrian pathway and improved streetscape amenity to Pemberton Street.

#### ***P2 To provide high quality public open spaces which are accessible to new and existing residents***

Council Officer Response: Whilst the subject development application does not specifically provide a public open space it will benefit from the 3,000sqm public open space to be provided the south of New Street 1 within Parkgrove 1 as required by Part 9C of the BBDCP 2013. The pocket park approved at the eastern end of New Street 1 will also benefit the new and existing residents within the Precinct and surrounding locality.

#### ***P3 To achieve an integrated development and good quality design***

Council Officer Response: Buildings A & C do provide an integrated development approach with Buildings D, E and F as it is of a similar bulk and scale. The proposed land uses being mixed residential and commercial also complement the residential uses within buildings located to the east. Given that Parkgrove 2 has been proposed by the same applicant the design has been consistent throughout the Precinct which has presented a uniform architectural style.

***P4 To encourage a live and work environment in the west of the Precinct***

Council Officer Response: Buildings A & C propose eight (8) commercial tenancies on the ground level with a minimum floor area of 100sqm each. These commercial tenancies provide the opportunity for future residents within the Precinct to live and work within the immediate locality. The flexible design of Buildings A & C to include studies/home offices with the apartments also supports the opportunity for people to live and work within the 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.**

*The original assessment identified that the proposed 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.*

This position is questionable as future development to the south is separated by New Street 1 which has previously been approved by the JRPP to provide a 20m reserve along its western end (Pemberton Street) and a 13.5m reserve along its eastern end (Wilson Street). A 10.6m carriageway narrows to 6m (at Wilson Street). The western end will provide on-street parking on both sides of the carriageway. The carriageway will comprise a parallel parking lane (on both sides along the western end) of 2.3m each and 2x3m wide travel lanes which will accommodate two-way traffic. The 20 meter road reserve between the proposed development and future development site to the south being Parkgrove 1 is sufficient to allow development potential to be realised and any overshadowing cast by Building C as shown in the shadow diagrams only affects New Street 1 road reserve and potentially the northern elevation of future buildings within Parkgrove One (west). Given the size of Parkgrove One west and the provision of over 4,000sqm of public open space within this site the future buildings fronting New Street 1 could be setback or articulated to ensure that any overshadowing cast by Building C to the north is ameliorated.

The proposed development is also subject to road widening along the eastern side of Pemberton Street resulting in two-way traffic movements and parking lands along both sides of Pemberton Street. This building separation does not hamper the development potential of the B7 zone to the west.

With respect to the northern boundary between the subject site and Parkgrove 3 (52-54 Pemberton Street) this application is currently before the JRPP for determination as a Staged Development. The application for 52-54 Pemberton Street does not identify any development potential impacts resulting from the additional height or floor space being sought by 42-44 Pemberton Street.

Therefore; the assertions that the future development potential of adjoining lands will be adversely impacted by the proposed development have not been substantiated.

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

The site has been remediated in compliance with the relevant Remediation Action Plan approved as part of the original development approval for Parkgrove 2.

The increase in height and FSR do not set an undesirable precedent as the interface and compatibility of the built form has been satisfactorily addressed, particularly given that the six (6) storey height limit has already been established within the Wilson Pemberton Street Precinct. It is anticipated that a similar bulk and scale could occur to the north (Parkgrove 3) and south (Parkgrove 1) and the merits of any interface zones with the R2 Low Density Residential and B7 Business Park could be separately addressed within these application.

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

The original application was notified to surrounding property owners / occupiers, advertised in the local newspaper, and a sign placed on site for a thirty (30) day period from 2 October 2013 to 1 November 2013 in accordance with *Development Control Plan No. 24 – Notification of Development Applications* and the Integrated Development Provisions under the *Environmental Planning and Assessment Act 1979*. During the notification and advertising of the application, 5 submissions were received.

The main issues raised within the submissions are identified below from the original assessment report. This supplementary report has reconsidered these submissions as follows.

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

Officer's Comments: The proposal is non-compliant with the maximum building height and floor space controls contained within the Botany Bay LEP 2013. The Applicant has submitted a Clause 4.6 variation which has been assessed and supported within this report. The redevelopment of the Wilson Pemberton Street Precinct will require upgrade works to the existing road network and the provision of new street connections. These works have been specified within the BBDCP 2013 and these works are progressively being implemented. As can be seen from the site location photos earlier in this report the construction of New Street 1 is currently underway which will direct all new residential traffic associated with Buildings A, C, D, E and F in Parkgrove 2 to Pemberton Street. Recent approvals within Parkgrove 2 have also

been linked to traffic upgrades beyond the immediate precinct with the signalisation of Pemberton Street and Botany Road to address the increased traffic volumes within the Precinct.

It is unclear what specific social problems are anticipated by the objector however the proposed development has addressed the objectives of the B4 zone, the planning framework principles and will not propose uses that are prohibited within the zone. The proposal also includes employment opportunities and major public open spaces are planned for within the Precinct. The unit sizes are compliant with Council's requirements and the design is generally in accordance with the RFDC. It is therefore not anticipated that the proposal will result in unacceptable traffic or social problems.

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

Officer's Comments: Access to the development will be 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 direct access to Wilson Street. Even though the traffic will be directed to Pemberton Street the surrounding road network will experience increased traffic movements as a result of the redevelopment of the Precinct. A traffic assessment submitted with the application has considered the cumulative impacts of traffic from the development and the recently approved development within the Precinct. It should be noted that in the schedule of conditions it has been required that the intersection of Pemberton Street and Botany Road is to be signalised.

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

Officer's Comments: Pemberton Street is undergoing transition. The B4 Mixed Use zone along Pemberton Street is being redeveloped for mixed uses consistent with the B4 zone and the remaining industrial buildings within the B4 zone do not reflect the changing character of the area. The desired future character within the B4 zone is different to the existing industrial nature of Pemberton Street. The scale and context of development along Pemberton Street has been assessed in this report and is considered to be acceptable.

- *Unacceptable precedent for future development.*

Officer's Comments: The proposed development does not set an unacceptable precedent for future development as the context; bulk and scale have been addressed along with the desired future character of the area. The development does set a precedent for additional height and floor space within the B4 Mixed Use zone but given the location of the B4 zone within Parkgrove 2, the context of the site and the separation from sensitive receivers in the R2 zones afforded to the site by Parkgrove 1, 3 and the eastern portion of Parkgrove 2 the subject site is suitably located to facilitate additional height and FSR. Any proposal which seeks to depart from Council's development standards would need to address Clause 4.6 and the objectives of the development standards.

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

Officer's Comments: Whilst the proposed development does present a departure from the development standards, it remains consistent with the objectives of the BBLEP 2013 and BBDCP 2013 and the planning framework principles as detailed in this report. Departures from the relevant development standards do not necessarily result in development that is not in keeping with the desired future character of an area nor result in amenity impacts which affect the public interest.

- *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 intent for future development in the B4 zone was to provide *a transition from non-residential in the B7 zone in the Botany South Precinct to surrounding residential uses with the intention of buffering any adverse amenity issues created within the B7 zone.* The proposed development has met the intent of the B4 zone to buffer surrounding residential development, the design of the building has also addressed the potential amenity impacts that may result from uses within the B7 zone. It is questioned whether a building of a lower scale can appropriately buffer surrounding residential uses which are of a greater scale in terms of height as approved for Building D, E and F in Parkgrove 2. If these approved buildings exceed the height permitted in the B4 zone amenity issues, such as noise, from the B7 zone may impact on those residential uses beyond the 10 metre height limit, thereby affecting the ability of development within the B4 zone to appropriately buffer amenity issues created within the B7 zone. The applicant has submitted a revised acoustical assessment which will provide noise attenuation to Buildings A and C and these requirements have been included in the schedule of conditions thereby providing the appropriate level of amenity to future occupant and achieving the intent of buffering surrounding residential land uses.

Lower storey buildings on the perimeter of the Precinct is an important consideration where there is a transition to a low density area such as the R2 zone along Wilson Street. The western side of Pemberton Street has been designed to require townhouses along Wilson Street to address this interface with sensitive land uses. The interface between the B7 zone and B4 zone on the western side of the Precinct however has a different intent and development outcomes which have reasonable between achieved within the proposed development.

- *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; however, the development does otherwise comply with the RFDC requirements under SEPP 65 which are considered to be reasonable in this case, given that the RFDC as a State legislation requirement overarches Council's local planning controls.

- *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: Table 4 within Part 9C.3 Public Domain of the BBDCP 2013 identifies the requirements for road widening to Pemberton Street. The requirement of the BBDCP 2013 for road widening has been provided within the proposed development and will be conditioned with the consent.

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

Officer's Comments: All traffic movements into and out of the site will be via New Street 1. Traffic movements will be focused on Pemberton Street and serviced by the signalised intersection at Pemberton Street and Botany Road. The application was referred to Roads and Maritime Services (RMS) and a response received on 21 February 2014 which did not raise any issues regarding the traffic movements or volumes to be generated by the proposal. As a condition of consent it is required that prior to the issuing of the occupation certificate Botany Road and Pemberton Street intersection be signalised and that a further local traffic study of the area be undertaken.

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

Officer's Comments: The proposal has been considered with respect to the desired future character of the area and recently approved development within the Precinct. The proposed bulk and scale of development is considered to be acceptable as addressed within this report. The maximum building length identified with SEPP 65 RFDC is exceeded however the modulation and articulation of the built form as reasonable addressed the length of the building when viewed from Pemberton Street.

- *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 the objection have been addressed throughout this report and where a departure from Council's BBLEP 2013 and BBDCP 2013 has been identified the matter has been assessed on its merits.

**(e) The public interest.**

These matters have been considered in the assessment of the development applications. It is considered that approval of the proposed development will have no significant adverse impacts on the public interest.

The proposed development does not impact of development potential within the B7 zone nor does it affect amalgamation opportunities within the Precinct. Vehicular access from the development will be via Pemberton Street and not Wilson Street where there are sensitive receivers in the R2 Low Density Residential zone. The development will be facilitated by a signalised intersection with Botany Road and road widening along Pemberton Street to improve vehicular movements more in line with the changing traffic volumes resulting from the redevelopment of the precinct. The visual bulk and scale will be shielded by Building D, E and F in Parkgrove 2 from the sensitive receivers along Wilson Street and will not present a bulk and scale that is beyond developments already approved within the Wilson Pemberton Street Precinct.

## **Other Matters**

### 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; Strategic Planning Team, Traffic Department; Environmental Health and Council's Environmental Scientist for comment.

### 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.

## **CONCLUSION**

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

The application in its amended form is supported subject to condition of consent along with the Clause 4.6 variations to development standards Clause 4.3 and Clause 4.4 by permitting a maximum building height of 21.6 m and a floor space ratio of 1.48:1.

The application was the subject of five (5) objections and the matters have been addressed in the body of the report.

The proposal has been assessed in accordance with Section 79C of the *Environmental Planning and Assessment Act 1979*, the *Botany Local Environmental Plan 1995* and the *Botany Bay Local Environmental Plan 2013*. The proposal is permissible in the B4 – Mixed Use zone, and is considered to result in a development which is suitable in the context of the desired future character of the B4 Mixed Use zone. It is therefore recommended that the Panel grant approval to the application subject to the conditions in the attached schedule.

## **RECOMMENDATION**

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

- (a) Grant consent to the Clause 4.6 variation requests under Botany Bay Local Environmental Plan 2013 to permit a maximum FSR of 1.48:1 and a maximum building height of 21.6 metres (25.8m AHD) by reason that the two (2) variations are well founded; and
- (b) The Panel approve Development Application No. 13/278 comprising of a two x 6 storey mixed use buildings with 65 residential apartments (4 x studio, 18 x one bedroom, 42 x two bedroom and 1 x three bedroom units); eight ground floor commercial unit each of at least 100m<sup>2</sup> over a previously approved basement car parking containing 427 parking spaces.

## **SCHEDULE OF CONSENT CONDITIONS**

## **GENERAL CONDITIONS**

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

<b>Drawing No.</b>	<b>Author</b>	<b>Date Received by Council</b>
Mixed Use Development Stage 2 – Title Sheet & Location Plan, Project 3312, A01, Issue 02	Krikis Tayler Architects Pty Ltd	24 December 2013
Mixed Use Development Stage 2 – Basement Plan, Project 3312, A03, Issue 04	Krikis Tayler Architects Pty Ltd	21 March 2014
Mixed Use Development Stage 2 – Level 1 Plan, Project 3312, A04, Issue 06	Krikis Tayler Architects Pty Ltd	21 March 2014
Mixed Use Development Stage 2 – Level 2 Plan, Project 3312, A05, Issue 04	Krikis Tayler Architects Pty Ltd	24 December 2013
Mixed Use Development Stage 2 – Level 3 Plan, Project 3312, A06, Issue 05	Krikis Tayler Architects Pty Ltd	24 December 2013
Mixed Use Development Stage 2 – Level 4 Plan, Project 3312, A07, Issue 05	Krikis Tayler Architects Pty Ltd	24 December 2013
Mixed Use Development Stage 2 – Level 5 Plan, Project 3312, A08, Issue 06	Krikis Tayler Architects Pty Ltd	24 December 2013
Mixed Use Development Stage 2 – Level 6 Plan, Project 3312, A09, Issue 06	Krikis Tayler Architects Pty Ltd	24 December 2013
Mixed Use Development Stage 2 – Roof Plan, Project 3312, A11, Issue 04	Krikis Tayler Architects Pty Ltd	24 December 2013
Mixed Use Development Stage 2, Elevations 1 Acoustic Upgrade to windows west and south facades, Project 3312-2, SK101, Issue -	Krikis Tayler Architects Pty Ltd	23 June 2014

<b>Drawing No.</b>	<b>Author</b>	<b>Date Received by Council</b>
Mixed Use Development Stage 2, Elevations 2, Project 3312-2, A21, Issue 06	Krikis Tayler Architects Pty Ltd	17 March 2014
Mixed Use Development Stage 2 – Section, Project 3312, A23, Issue 03	Krikis Tayler Architects Pty Ltd	17 March 2014
Mixed Use Development Stage 2 – Photomontage, Project 3312, A40, Issue 01	Krikis Tayler Architects Pty Ltd	24 December 2013
Mixed Use Development Stage 2 – Blocks A and C - Material Board, Project 3312, A50, Issue 01	Krikis Tayler Architects Pty Ltd	24 December 2013
Stormwater Drawings – Cover Sheet, Legend & Drawing Schedule – Job No. 120361, Dwg D00 – Rev. E	Australian Consulting Engineers	17 March 2014
Stormwater Drawings – Erosion & Sediment Control Details – Job No. 120361, Dwg D01 – Rev. A	Australian Consulting Engineers	17 March 2014
Stormwater Drawings – Stormwater Drainage Catchment Plan – Job No. 120361 – Dwg D02 – Rev. B	Australian Consulting Engineers	17 March 2014
Stormwater Drawings – Basement Stormwater Drainage Plan and Details (for Stage 2) – Job No. 120361 – Dwg D03 – Rev. F	Australian Consulting Engineers	17 March 2014
Stormwater Drawings – Level 1 Stormwater Drainage Plan for Stage 2 – Job No. 120361, Dwg D04, Rev. G	Australian Consulting Engineers	17 March 2014
Stormwater Drawings – Level 2 Stormwater Drainage Plan for Stage 2 – Job No. 120361, Dwg D05, Rev. I	Australian Consulting Engineers	17 March 2014
Stormwater Drawings – Stormwater Drainage Details for Stage 2 – Job No. 120361, Dwg D06 – Rev. E	Australian Consulting Engineers	17 March 2014

<b>Drawing No.</b>	<b>Author</b>	<b>Date Received by Council</b>
Stormwater Drawings – Level 3 Stormwater Drainage Plan for Stage 2 – Job No. 120361, Dwg D09 – Rev. E	Australian Consulting Engineers	17 March 2014
Stormwater Drawings – Level 4 Stormwater Drainage Plan for Stage 2 – Job No. 120361, Dwg D10 – Rev. E	Australian Consulting Engineers	17 March 2014
Stormwater Drawings – Level 5 Stormwater Drainage Plan for Stage 2 – Job No. 120361 – Dwg D11 – Rev. E	Australian Consulting Engineers	17 March 2014
Stormwater Drawings – Level 6 Stormwater Drainage Plan for Stage 2 – Job No. 120361, Dwg D12 – Rev. E	Australian Consulting Engineers	17 March 2014
GFA Area Schedule – Stage 1 & 2 – 20 December 2013 – Issue D	Krikis Tayler Architects Pty Ltd	24 December 2013
Mixed Use Development Stage 2 – Communal Open Space, Level 1 Plan – Project No.3312, Dwg No.A25-2, Issue 01	Krikis Tayler Architects Pty Ltd	24 December 2013
Mixed Use Development Stage 2 – Communal Open Space, Level 2 Plan – Project No.3312, Dwg No.A26-2, Issue 02	Krikis Tayler Architects Pty Ltd	24 December 2013
Mixed Use Development Stage 2 – Site Coverage, Project No.3312, Dwg No.A27-2, Issue 02	Krikis Tayler Architects Pty Ltd	24 December 2013
Mixed Use Development Stage 2 – Deep Soil Area, Level 1, Project No.3312 – Dwg No.A28-2, Issue 01	Krikis Tayler Architects Pty Ltd	24 December 2013
Apartment Schedule, Buildings A and C, Project No.3312, Issue: L, 20 Dec 13	Krikis Tayler Architects Pty Ltd	24 December 2013

<b>Documentation</b>	<b>Author</b>	<b>Date Received by Council</b>
Noise Impact Assessment – 20120523/1806A/RO/ BW – 18 June 2012	Acoustic Logic	24 December 2013
Additional Noise Logging Impact Assessment Report	Acoustic Logic	9 May 2014
Waste Management Plan – Mixed Development Stage 2, Buildings A and C, December 2013	Elephants Foot Recycling Solutions	24 December 2013
Internal Traffic Assessment – Ref: 12-115-3 – December 2013	Thompson Stanbury Associates	24 December 2013
Stage 2 DA Landscape Report	iScape Landscape Architecture	24 December 2013
Pedestrian Wind Environment Statement – WA058-06F01(rev2)-WS Report – 18 December 2013	Windtech	24 December 2013
Access Report – 19 March 2014	Accessibility Solutions P/L	21 March 2014
Building Code of Australia Assessment Report – Stage 2	Barry Johnson and Associates P/L	10 March 2014
BASIX Certificate No. 518843M – 5 December 2013	Planning and Infrastructure – NSW Government	24 December 2013

<b>Reference Documentation</b>	<b>Author</b>	<b>Date Received by Council</b>
Statement of Environmental Effects – 20 December 2013	LJB Planning Pty Ltd	24 December 2013
Clause 4.6 Exception to the Building Height and Floor Space Ratio Standards – 6 March 2014	LJB Planning Pty Ltd	17 March 2014
Built Form Urban Design Statement – March 2014	ae design partnership	21 March 2014
Design Verification Statement – 20 December 2013	Krikis Tayler Architects Pty Ltd	24 December 2013

No construction works shall be undertaken prior to the issue of the Construction Certificate.

2. The proposed development, including residential flat buildings D, E and F, shall have a maximum floor space ratio of 1.56:1 over the entire site, and shall comply with the following maximum height requirements:
  - (a) Buildings 'A' and 'C' – 6 storeys, with a height of RL25 AHD to the roof and RL25.8 AHD to the lift overrun.
3. This development consent is to be read in conjunction with consent under DA2012 (206) approved for Buildings D, E and F at 42-44 Pemberton Street, Botany (known as Parkgrove 2).
4. The applicant must, prior to the issue of any Construction Certificate, pay the following fees:-

(a)	Development Control	\$11,200.00
(b)	Inspection and Plans checking fee	\$1,000.00
(c)	Waste Levy	\$4,000.00
5.
  - (a) All building work must be carried out in accordance with the provisions of the Building Code of Australia;
  - (b) All plumbing stacks, vent pipes, stormwater downpipes including balcony drainage and the like shall be kept within the building and suitably concealed from view; and,
6. This Consent relates to land in Lot 100 in DP 875508, as such, building works must not encroach on to adjoining lands or other public places apart from any approvals granted for the road widening to Pemberton Street which is to be submitted as a separate civil road works application.
7. Pursuant to clause 97A(3) of the Environmental Planning & Assessment Regulation 2000, it is a condition of this development consent that all the commitments listed in the relevant BASIX Certificate No.518834M, dated 5 December 2013, for the development are fulfilled.

**Note:** "relevant BASIX Certificate" means:

A BASIX Certificate that was applicable to the development when this development consent was granted (or, if the development consent is modified under section 96 of the Act, a BASIX Certificate that is applicable to the development when this development consent is modified); or

If a replacement BASIX Certificate accompanies any subsequent application for a construction certificate, the replacement BASIX Certificate.

BASIX Certificate has the meaning given to that term in the Environmental Planning and Assessment Regulation 2000.

8. The consent given does not imply that works can commence until such time that:-

- (a) detailed plans and specifications of the building have been endorsed with a Construction Certificate by:-
    - (i) the consent authority; or,
    - (ii) an accredited certifier; and,
  - (b) the person having the benefit of the development consent:-
    - (i) has appointed a Principal Certifying Authority; and,
    - (ii) has notified the consent authority and the Council (if the Council is not the consent authority) of the appointment; and,
    - (iii) the person having the benefit of the development consent has given at least 2 days notice to the Council of the persons intention to commence the erection of the building.
9. All costs associated with these development conditions shall be borne by the applicant. If, when actioning these conditions, Council's solicitor is required to act on behalf of Council, then Council's solicitor's fees and charges shall also be borne by the applicant.

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

10. The following conditions are imposed by the Sydney Airport Corporation Limited (SACL) and must be complied with:
- (a) The property development at 42 - 44 Pemberton street, Botany lies within an area defined in schedules of the Civil Aviation (Buildings Control) Regulations which limit the height of structures to 50 feet (15.24 metres) above existing ground height (AEGH) without prior approval of the Civil Aviation Safety Authority.
  - (b) CASA has no objection to the proposed development to a maximum building height of 25.8m above AHD. Any proposal to exceed this maximum height requirement will require a new application to be submitted to CASA.

**Note 1: Should the height of any temporary structure and/or equipment be greater than 50feet (15.24m) above existing ground height (AEGH), a new approval must be sought in accordance with the Civil Aviation (Buildings Control) Regulations Statutory Rules 1988 No.161.**

**Note 2: Construction cranes may be required to operate at a height significantly higher than that of the proposed controlled activity and consequently, may not be approved under the Airports (Protection of Airspace) Regulations.**

SACL advises that approval to operate construction equipment (ie cranes) should be obtained prior to any commitment to construct.

Information required by SACL prior to any approval is to include:

- the location of any temporary structure or equipment, ie. construction cranes, planned to be used during construction relative to Mapping Grid of Australia 1994 (MGA94);
- the swing circle of any temporary structure/equipment used during construction;

- the maximum height, relative to Australian Height Datum (AHD), of any temporary structure or equipment ie. construction cranes, intended to be used in the erection of the proposed structure/activity;
- the period of the proposed operation (ie. construction cranes) and desired operating hours for any temporary structures.

Any application for approval containing the above information, should be submitted to this Corporation at least 35 days prior to commencement of works in accordance with the Airports (Protection of Airspace) Regulations Statutory Rules 1996 No. 293, which now apply to this Airport.

For further information on Height Restrictions please contact Mr Peter Bleasdale on (02) 9667-9246.

Under Section 186 of the Airports Act 1996, it is an offence not to give information to the Airport Operator that is relevant to a proposed "controlled activity" and is punishable by a fine of up to 50 penalty units.

The height of the prescribed airspace at the site is 51.0 metres above Australian Height Datum (AHD). In accordance with Regulation 9 of the Airports (Protection of Airspace) Regulations Statutory Rules 1996 No. 293, "a thing to be used in erecting the building, structure or thing would, during the erection of the building, structure or thing, intrude into PANS OPS airspace for the Airport, cannot be approved".

### **Note 3:**

#### **Bird and Obstacle Hazard Management**

The area in which the proposed development is located is in the vicinity of Sydney (KS) Airport.

To minimise the potential for bird habitation and roosting, the Proponent must ensure that non-bird attracting plant species are used in any landscaping design.

Any landscaping design must minimise the attractiveness for foraging birds, ie: site is kept clean regularly, refuse bins are covered, and detention ponds are netted.

All trees to be planted shall not be capable of intruding into the Obstacle Limitation Surface when mature.

11. The following conditions are imposed by the Roads and Maritime Services (RMS) and must be complied with:
  - (a) The swept path of the longest vehicle (including garbage trucks) entering and exiting the subject site, as well as manoeuvrability through the site, shall be in accordance with AUSTROADS. In this regard, a plan shall be submitted to Council for approval, which shows that the proposed development complies with this requirement:
  - (b) The number of car parking and bicycle spaces should be provided to Council's satisfaction:
  - (c) The layout of the proposed car parking areas associated with the subject development (including driveways, grades, turn paths, sight distance requirements, aisle widths, aisle lengths and parking dimensions) should be in accordance with AS2890.1-2004, AS2890.2-2002 for heavy vehicle usage, and AS2890.6:2009 for people with a disability:

- (d) A Construction Traffic Management Plan detailing construction vehicle routes, number of trucks, hours of operation, access arrangements and traffic control should be submitted to Council for approval prior to the issue of a Construction Certificate: and,
  - (e) All work/regulatory signposting associated with the proposed development are to be at no cost to RMS.
12. The development is to comply with the conditions provided by Sydney Water dated 31 January 2013. The conditions are outlined as follows:
- (a) A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained from Sydney Water. This assessment will enable Sydney Water to specify any works required as a result of future development and to assess if amplification and/or changes to the system are applicable. The developer must fund any adjustments needed to Sydney Water infrastructure as a result of the development; and,
  - (b) The developer should engage a Water Servicing Coordinator to get a Section 73 Certificate and manage the servicing aspects of the development. The Water Servicing Coordinator will ensure submitted infrastructure designs are sized and configured according to the Water Supply Code of Australia (Sydney Water Edition WSA 03-2002) and the Sewerage Code of Australia (Sydney Water Edition WSA 02-2002).
13. The applicant should have regard to the following matters provided by NSW Police - Botany Bay Local Area Command, dated 11 February 2014:
- (a) As the proposed development may be exposed to Break Enter and Steals, Stealing, Steal from persons, Malicious Damage and Steal from Motor Vehicle offences, a closed circuit television system (CCTV) which complies with the Australian Standard – Closed Circuit Television System (CCTV) AS4806.2006 needs to be implemented to receive, hold or process data for the identification of people involved in anti-social or criminal behaviour. The system is obliged to conform with Federal, State or Territory Privacy and Surveillance Legislation.
  - (b) This system shall consist of surveillance cameras strategically located in and around the development to provide maximum surveillance coverage of the area, particularly in areas which are difficult to supervise. Cameras should be strategically mounted outside the development buildings and within the car parking areas to monitor activity within these areas. One or more cameras should be positioned at the entry and exit points to monitor these areas (underground car park, foyer entrance).
  - (c) Digital technology shall be used to receive, store and process data. Recording equipment should be secured away from public access areas to restrict tampering with the equipment and data. This equipment needs to be checked and maintained on a regular basis.
  - (d) Lighting (lux) levels for this development must be commensurate with a medium crime risk identified in this evaluation. The emphasis should be on installing low glare/high uniformity lighting levels in line with AS:1158.

- (e) Lighting sources shall be compatible with requirements of any surveillance system installed within the development. (Poor positioning choices in relation to light can cause glare on the surveillance screens).
- (f) The luminaries (light covers) shall be designed to reduce opportunities for malicious damage. Lighting within the development needs to be checked and maintained on a regular basis.
- (g) A limited amount of internal lighting should be left on at night to enable patrolling police, security guards and passing people to monitor activities within the development.
- (h) Improved lighting needs to extend from the development towards adjacent streets. Consideration must be given to pedestrians walking from the development to surrounding streets for the purpose of catching public transport etc. Areas adjoining pathways should be illuminated to avoid opportunities for concealment and entrapment.

**Notes:**

- (i) It is crucial that the aforementioned cameras are installed as soon as power is available to the site.
- (ii) By angling fire egress inlet walls 45 degrees or more, opportunities for entrapment, loitering and vandalism can be reduced.
- (iii) Any proposed seating area, playground or grass area should be positioned somewhere which can be viewed easily by the community. Consider whether the area will be used enough to warrant its development. Areas which are isolated, unused and maintained poorly become a breeding ground for anti-social behaviour.
- (iv) Care should be taken when using glazing in entry foyers. At night, the vision of departing occupants can be affected by reflections on the interior of the glass (can't see outside). Mirroring can be reduced by using appropriate external lighting.
- (v) The configuration of car parking spaces can impact the risk to car thieves. Grid rows increase natural surveillance. Avoid dark spots, corners and isolated car spaces.
- (vi) Public laundries, garbage disposal areas and other communal spaces should not be located in a buildings 'leftover space.' Poor supervision of communal facilities can greatly increase the risk of predatory crime, theft and vandalism. Areas that are unused or sporadically used after hours and unsupervised should not be accessible to the public.
- (vii) Uneven building alignments, insert doorways and hidden entrances should be avoided. They can facilitate predatory crimes, thefts, malicious damage and other offences.
- (viii) Bicycle parking areas should be located within view of capable guardians. The provision of covered lockable racks to secure bicycles increases the effort required to commit crime.
- (ix) Clear street numbers signs should be displayed and appropriately positioned at the front of the business to comply with Local government Act, 1993,

Section 124(8). Failure to comply with any such order is an offence under Section 628 of the act. Offences committed under Section 628 of the Act attract a maximum penalty of 50 penalty units (currently \$5500) for an individual and 100 penalty units (\$11000) for the corporation. The numbers should be in contrasting colours to the building materials and be larger than 120mm.

- (x) Warning signs should be strategically posted around the buildings to warn intruders of what security treatments have been implemented to reduce opportunities for crime.
  - 1. Warning, trespasser will be prosecuted.
  - 2. Warning, these premises are under electronic surveillance.
- (xi) Directional signage should be posted at decision making points (eg. Entry/egress points) to provide guidance to the uses of the development. This can also assist in access control and reduce excuse making opportunities by intruders.
- (xii) A graffiti management plan needs to be incorporated into the maintenance plan for the development. Research has shown that the most effective strategy for reducing graffiti attacks is the quick removal of such material generally within **24 hours**.
- (xiii) An Emergency control and evacuation plan which complies with the Australian Standard, Emergency Control Organisation and Procedures for Buildings, Structures and Workplace, AS:3745:2002, should be prepared and maintained by your development to assist management and staff in the event of an emergency.

Doors and windows should be fitted with locks that comply with the Australian Standard — Mechanical Locksets for doors and windows in buildings, AS:4145:1993, to restrict unauthorised access.
- (xiv) Any sliding doors **MUST** be fitted with lockable bolts in the bottom and top of the door frame.
- (xv) The main access to the underground car park should have restricted access with a security pass. The opening/closing mechanism should be protected from vandalism and tampering. All exit doors from the car park should have striker plates installed to minimise chance of tampering.
- (xvi) The main entry/egress doors to the development should have an electronically operated lock which require security swipe pass for entry. The lifts operating in the building should have the same security swipe pass technology. When an occupant buzzes in a visitor the lift should recognise the floor the occupant resides and only allow the visitor access to that floor in the lift.

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

14. To facilitate safe access to and from the proposed development the following external engineering works shall be constructed at no cost to Council as part of a subsequent civil works application for road widening to Pemberton Street.

- (a) The construction of new vertical kerb and gutter and associated footpath paving to Council's satisfaction along the entire frontage of the site to Pemberton Street, as widened.
- (b) The asphalt sheeting of half road width including reconstruction of any damaged road pavement along the entire frontage of the site to Pemberton Street, as widened.
- (c) The construction of underground piped drainage system where required including any other necessary engineering works where required to make the construction effective.

Detailed engineering plans prepared by a chartered Civil Engineer including certification indicating compliance with these requirements are to be submitted to Council for approval.

15. Prior to the issue of the Construction Certificate a detailed public domain plan is required to be submitted and approved by Council. The revised plan shall incorporate the following:

- (a) Pedestrian pathways and paving in accordance with Council's Draft Public Domain Manual and any other specification.
- (b) Street trees in accordance with Council's Street Tree Masterplan. Tree pits and tree guards in accordance with the Draft Public Domain Manual.
- (c) Street furniture in accordance with the Draft Public Domain Manual and Council specification and requirement.
- (d) The design must consider and incorporate the location of any above ground electrical pillars to be erected by the Energy Provider associated with the undergrounding of power around the site.
- (e) The public domain and Council footpath area shall be upgraded with new paving, street furniture, street light poles and street tree planting, to be installed by the applicant at the applicant's expense. All improvements shall be in accordance with final approved public domain plan and Council Landscaping and Engineering specifications and requirements, and shall be constructed and complete prior to the issue of an Occupation Certificate.
- (f) Detailed civil plans shall be provided for the public domain work on the footpath frontages of the site and is to align with the public domain landscape plan with respect to pavement types and construction, street trees, lighting and street furniture.

16. Prior to issue of Construction Certificate, the applicant shall contact "Dial Before You Dig" to obtain a utility service diagram for, and adjacent to the property. The sequence number obtained from "Dial Before You Dig" shall be forwarded to

Principal Certifying Authority. Any adjustments or damage to public utilities/services as a consequence of the development and associated construction works shall be restored or repaired at the applicant's expense. Written consent from the relevant public utilities owners are to be submitted to council and all their requirements are to be fully complied with.

17. Prior to issue of Construction Certificate, to ensure that utility authorities and Council are advised of any effects to their infrastructure by the development, the applicant shall: -
- (a) carry out a survey of all utility and Council services within the site including relevant information from utility authorities and excavation if necessary to determine the position and level of services;
  - (b) negotiate with the utility authorities (eg Energy Australia, Sydney Water and Telecommunications Carriers) and Council in connection with: -
    - (i) the additional load on the system; and
    - (ii) the relocation and/or adjustment of the services affected by the construction.

Any costs in the relocation, adjustment, and provision of land or support of services as requested by the service authorities and Council are to be the responsibility of the developer.

18. Prior to issue of any Construction Certificate, the construction plans shall be revised to address the following: -
- (a) the maximum of reflectivity of glazing shall not exceed 20%;
  - (b) any exterior lighting shall be designed to comply with *Section 9.2.1 – Lighting in the Vicinity of Aerodromes Manual of Standards*;
  - (c) all recommendations stated in the Internal Traffic Assessment Report, prepared by Thompson Stanbury Associates, Ref 12-118, dated November 2012 shall be incorporated into the construction plans;
  - (d) bollards shall be installed at the shared spaces of the disabled parking bays to comply with AS2890.6;
  - (e) the number of disabled parking bays shall comply with AS2890.6;
  - (f) garbage bins collection area shall not obstruct the shared vehicle access driveway, fire escape exits, vehicle entrance to the basement car parking area; and
  - (g) an intercom system shall be provided at the vehicle entrance to the development. This is to ensure visitors can gain access to the visitor parking bays located within the basement car parking area.
19. Prior to the issue of any Construction Certificate, design certification prepared by a suitably qualified engineer shall be submitted to the Principal Certifying Authority certifying the internal circulation, driveways, turning area and car parking area shown on the construction plans have been designed in accordance with AS 2890.1 and AS2890.6.

20. The applicant shall submit to the Principal Certifying Authority prior to the issuing of the Construction Certificate details of plans showing that the car wash bay meets the following requirements. The car wash bay(s) must:

- (a) Have adequate parking and washing floor space, turning area, and water supply;
- (b) Minimise water use with appropriate devices (such as a gun-type nozzle which closes when released and a timer operative valve; collection and use of rainwater);
- (c) Have a water supply cut out/fail-safe mechanisms provided to ensure that mechanical failure; drainage blockage or lack of maintenance cannot result in wastewater surcharge into the stormwater system;
- (d) Be designed to ensure that over spray, drift of water or detergent does not cause a nuisance to persons, vehicles, residences, other buildings, neighbouring properties or the environment;
- (e) Be designed to ensure that spillages and wastewater is not discharged to the stormwater system or surrounding environment;
- (f) Be located so that washing can occur with minimal disturbance to other residents;
- (g) Ensure that noise emissions from the car wash down bay does not exceed 5dB(A) above the background noise levels at any time, as measured at the nearest residential property boundary and install noise effective barriers;
- (h) Be suitably grouped and conveniently sited and identified;
- (i) Have good ventilation and good lighting;
- (j) Have regard to the safety of pedestrians and traffic; and
- (k) Discharge to the sewer via appropriate pre-treatment.

All car wash bays that discharge to sewer must meet the following requirements:

- (a) The floor must be sealed and graded to an internal drainage point, so that all wastewater and surface spillage is directed and drains to the approved treatment and disposal point;
- (b) The wash bay is to be roofed and bunded so that all uncontaminated stormwater from the roof areas and uncovered areas, are directed away from the bay;
- (c) A bund must be constructed and maintained around the perimeter of the bay. The bund is to be protected from the entry of external surface waters, by either; a minimum 2% change in grade; or combination of a minimum 2% grade change and a grated drainage system;
- (d) All uncontaminated stormwater/rainwater must be directed to the dedicated stormwater drainage systems;
- (e) The collection pit shall be a minimum of 1000 litres; and
- (f) A Permission to Discharge Trade Wastewater Certificate issued by Sydney Water must be obtained prior to the approval of the development.

21. Prior to the issue of any Construction Certificate, a detailed Construction Traffic Management Plan for the pedestrian and traffic management of the site during construction shall be prepared and submitted to Principal Certifying Authority for approval. The plan shall: -
- (a) be prepared by an RMS accredited qualified person;
  - (b) nominate a contact person who is to have authority without reference to other persons to comply with instructions issued by Council's Traffic Engineer or the Police;
  - (c) indicate the construction vehicle access point to the site be limited on Pemberton Street only;
  - (d) indicate the frequency of truck movements;
  - (e) ensure any vehicles accessing the site or associated with construction activities be restricted to 19m (defined as a Long Vehicle);
  - (f) ensure all traffic (including worker's vehicles) generated from the construction activities shall enter and leave the site in a forward direction; and,
  - (g) ensure any heavy vehicles and trucks associated with construction activities be restricted to the following designated traffic routes:
    - (i) **Ingress route:**  
Foreshore Drive – Botany Road – Pemberton Street.
    - (ii) **Egress route:**  
Pemberton Street – Botany Road – Foreshore Drive.
22. Prior to the issue of any Construction Certificate, a detailed Construction Management Plan (CMP) shall be submitted to Principal Certifying Authority and Council for approval of the site works. The CMP shall address the following:
- (a) The proposed method of access to and egress from the site for construction vehicles, including access routes through the Council area and the location and type of temporary vehicular crossing for the purpose of minimising traffic congestion and noise in the area, with no access across public parks or reserves being allowed.
  - (b) The proposed phases of construction works on the site and the expected duration of each construction phase.
  - (c) The proposed order in which works on the site will be undertaken, and the method statements on how various stages of construction will be undertaken.
  - (d) The proposed manner in which adjoining property owners will be kept advised of the timeframes for completion of each phase of development/construction process.
  - (e) The proposed method of loading and unloading excavation and construction machinery, excavation and building materials, formwork and the erection of any part of the structure within the site. Wherever possible mobile cranes should be located wholly within the site.

- (f) The proposed areas within the site to be used for the storage of excavated materials, construction materials and waste containers during the construction period.
- (g) The proposed method/device to remove loose material from all vehicles and/or machinery before entering the road reserve, any run-off from the washing down of vehicles shall be directed to the sediment control system within the site.
- (h) The proposed method of support to any excavation adjacent to adjoining properties, or the road reserve. The proposed method of support is to be designed and certified by an Accredited Certifier (Structural Engineering), or equivalent.
- (i) Proposed protection for Council and adjoining properties.
- (j) The location and operation of any on site crane.
- (k) The location of any Work Zone (if required) approved by Council's Engineering Section, including a copy of that approval.
- (l) The proposed method of access to and egress from the site for construction vehicle, including the proposed method of traffic control, access routes through the Council area and the location and type of temporary vehicular crossing for the purpose of minimising traffic congestion and noise in the area. Access across public parks and open space reserves is prohibited. Site access and egress is to be generally obtained from the public roads.
- (m) Obtain relevant permits required under this consent.
- (n) Legitimate vehicle access paths shall be established for all the lots between Pemberton Street and the development to permit vehicles associated with construction activities to access the construction area.
- (o) All vehicles (including worker's vehicles) associated with construction activities shall enter and leave the site in a forward direction ONLY.
- (p) All vehicles (including worker's vehicles) associated with the construction activities shall only be allowed to park within the site.
- (q) Construction building materials shall be stored wholly within the site, and their storage location/s shall not obstruct the floodway.
- (r) Access to adjacent buildings and pedestrian and vehicle access fronting Pemberton Street shall be maintained at all times. No closure of any road reserve will be permitted without Council approval.
- (s) Under no circumstance (except emergency) shall any trucks be permitted to queue and wait on public places, public streets or any road related area (eg. footpath, nature strip, road shoulder, road reserve etc) prior to entering the site.
- (t) Locations of site office, accommodation and the storage of major materials related to the project shall be within the site.
- (u) Protection of adjoining properties, pedestrians, vehicles and public assets shall be implemented at all times.
- (v) Location and extent of proposed builder's hoarding and Work Zones, if there is any, shall be shown on the plan.

- (w) Tree protection management measures for all protected and retained trees shall be implemented at all times.
23. Prior to the release of any Construction Certificate, the required Long Service Levy payable under Section 34 of the Building and Construction Industry Long Service payments Act 1986 must be paid. The Long Service Levy is payable at 0.35% of the total cost of the development, however, this is a State Government fee and can change without notice.
24. Prior to the issue of the Construction Certificate all units will have an air conditioning system installed in accordance with BASIX's Certificate and Construction Certificate AS 1668 Part 2 and further external air conditioning unit is not to be visible from a public vantage point. Details submitted with Construction Certificate in the form of amended plans.
25. Prior to the issue of the Construction Certificate, subject to the approval of CASA, the applicant is to provide in the Construction Certificate documentation roof mounted solar collector panels below a height of 50.3m AHD, to the rooftop area of each building, of which 20% of power generated shall be returned to the Ausgrid network together with tariff rebates. Details of the panel system are to be provided with the Construction Certificate including the approval from the Civil Aviation Safety Authority and the solar collectors system are to be installed before the issue of the Occupation Certificate.
26. Prior to issue of any Construction Certificate, plans and specifications for the storage room for waste and recyclable materials shall be submitted to the Principal Certifying Authority with the application for the Construction Certificate. Storage of Waste and recycling shall meet the following requirements:
- (a) Waste and recycling for commercial users shall be in a separate room from the storage of waste and recycling for residential users;
  - (b) The rooms for the storage of garbage and recyclable materials shall be fully enclosed;
  - (c) Adequately ventilated and of a suitable size to contain compaction equipment;
  - (d) Constructed with a concrete floor, concrete or cement rendered walls coved to the floor;
  - (e) The floor shall be graded to an approved sewer connection incorporating a sump and galvanized grate cover or basket in accordance with the requirements of Sydney Water Corporation; and,
  - (b) Washing facilities shall be provided within close proximity to the garbage and recycling storage area.
27. The following requirements apply to telecommunication facilities in the building:
- (a) Appropriate access and space within the plant area of the building shall be provided for a minimum of three telecommunication carriers or other providers of broad-band access by ground or satellite delivery.

- (b) Appropriate ducting and cabling shall be provided for a minimum of three telecommunication carriers or other providers for telecommunication access and broad-band cabling to each apartment of the building.
  - (c) The details of (a) and (b) above shall be submitted for the approval of the Principal Certifying Authority prior to issue of any Construction Certificate.
- 28.
- (a) Any lighting on the site shall be designed so as not to cause nuisance to other residences in the area or to motorists on nearby roads, and to ensure no adverse impact on the amenity of the surrounding area by light overspill;
  - (b) All lighting shall comply with AS4282-1997 Control of the obtrusive effects of outdoor lighting; and
  - (c) The installation of solar power to external space lighting. Details shall be submitted to the Principal Certifying Authority prior to the issue of any Construction Certificate.
29. Prior to issue of any Construction Certificate, the following measures shall be provided within the Construction Certificate documentation with respect to noise attenuation/treatment of the building/s in accordance with the criteria listed within this condition:
- (a) the measures Referenced to the Acoustic Logic Noise Impact Assessment Revision 2 dated 30 April 2014 the development shall be designed and constructed such that in-flight aircraft noise is mitigated by effective sound insulation and complies the requirements of AS 2021 -2000 'Aircraft Noise intrusion - Building Siting and Construction'.

#### ***CRITERIA***

- (i) A detailed impact assessment of in-flight aircraft noise intrusion shall be conducted by a suitably qualified Acoustic Engineer with MIE Australia membership or employed by a consulting firm eligible for AAAC membership prior to the issue of construction certificate to determine acoustic treatments required to ensure road traffic noise does not exceed the relevant Conditions of Consent and legislative requirements. A copy of the report shall be submitted to Principal Certifying Authority prior to the issue of a Construction Certificate.
- (b) The development shall be designed and constructed taking into account the requirements for effective sound insulation against external road traffic noise intrusion and satisfies an internal sound pressure level less than LAeq 1 hour 40dBA, with the doors and windows closed.

#### ***CRITERIA***

- (i) A detailed impact assessment of external road traffic noise intrusion shall be conducted by a suitably qualified Acoustic Engineer with MIE Australia membership or employed by a consulting firm eligible for AAAC membership prior to the issue of construction certificate to determine acoustic treatments required to ensure road traffic noise

does not exceed the relevant Conditions of Consent. A copy of the report shall be submitted to Principal Certifying Authority prior to the issue of a Construction Certificate.

- (c) The development shall be designed and constructed taking into account the requirements for effective sound insulation against external noise intrusion from industrial sources, associated land and water based Port Botany activities and all ground activities associated with the operation of Sydney Kingsford Smith Airport including aircraft take-offs and landings and satisfies an internal sound pressure level less than LA<sub>max</sub> 50dBA, with the doors and windows closed.

### ***CRITERIA***

- (i) A detailed impact assessment of noise from industrial sources, associated land and water based Port Botany activities and ground activities associated with the operation of Sydney Kingsford Smith Airport including aircraft take-offs and landings shall be conducted by a suitably qualified Acoustic Engineer with MIE Australia membership or employed by a consulting firm eligible for AAAC membership prior to the issue of construction certificate to determine acoustic treatments required to ensure noise from these sources does not exceed the relevant Conditions of Consent. A copy of the report shall be submitted to Principal Certifying Authority prior to the issue of a Construction Certificate.
- (d) The development shall be designed and constructed taking into account the requirements for effective sound insulation for mechanical plant/equipment installed and operated on the development, and
  - (i) shall not give rise to an equivalent continuous (LA<sub>eq</sub>) sound pressure level at any point on any residential property, external apartment balcony or external apartment window greater than 5dBA above the existing background LA<sub>90</sub> level (in the absence of the noise under consideration).
  - (ii) shall not give rise to an equivalent continuous (LA<sub>eq</sub>) sound pressure level at any point on any residential property, external apartment balcony or external apartment window that exceeds LA<sub>eq</sub> 50dBA daytime and LA<sub>eq</sub> 40dBA nighttime.
  - (iii) shall not give rise to an equivalent continuous (LA<sub>eq</sub>) sound pressure level at any commercial/industrial premises that exceeds LA<sub>eq</sub> 65dBA.

For assessment purposes the LA<sub>eq</sub> levels referenced above in sub-clauses i), ii) and iii) shall be assessed over a 15 minute period and adjusted in accordance with procedures referenced in the NSW Industrial Noise Policy for tonality, frequency weighting, impulsive characteristics, fluctuation and temporal content where necessary.

## **CRITERIA**

- (iv) A detailed noise impact assessment shall be conducted by a suitably qualified Acoustic Engineer with MIE Australia membership or employed by a consulting firm eligible for AAAC membership prior to the issue of construction certificate to determine acoustic treatments required to ensure that noise from mechanical plant/equipment systems installed and operated on the development does not exceed the relevant Conditions of Consent. A copy of the report shall be submitted to Principal Certifying Authority prior to the issue of a Construction Certificate.
  - (e) Prior to any field acoustic compliance testing of internal walls and floors a report shall be provided to the testing Acoustic Engineering certifying that all internal walls and floors within the development are constructed in accordance with the details submitted the documentation provided for the Construction Certificate. Any variations to CC approved documentation shall be approved by the Principal Certifying authority and identified in the report.
30. Prior to the issue of a Construction Certificate, details addressing the following matters shall be submitted to the Principal Certifying Authority:
- (a) The proposal shall comply with the following minimum unit sizes:
    - Studio apartment = 60m<sup>2</sup>
    - 1 bedroom apartment = 75m<sup>2</sup>
    - 2 bedroom apartment = 100m<sup>2</sup>
    - 3 bedroom apartment = 130m<sup>2</sup>
  - (b) Storage shall be provided for each unit in accordance with the following:
    - (i) The proposal shall comply with the minimum storage requirements contained within Council's BBDCP 2013 which are as follows:
      - Studio apartment = 6m<sup>2</sup>
      - 1 bedroom apartment = 8m<sup>2</sup>
      - 2 bedroom apartment = 10m<sup>2</sup>
      - 3 bedroom apartment = 12m<sup>2</sup>
  - (c) A minimum of 50% of the storage requirements shall be provided within the unit, and the remainder shall be provided in the basement, in accordance with Botany Bay Comprehensive DCP 2013;
  - (d) The storage areas shall have a minimum height of 1.5m;
  - (e) Storage areas within the basement shall be constructed in accordance with the following requirements as recommended by the NSW Police:
    - (i) The construction shall be undertaken using solid frame construction and each storage area shall be provided with a proper key lock that complies with Australian Standard AS:4145:1993; and
    - (ii) These storage areas shall be monitored by CCTV cameras at all times, and,

- (f) Three (3) adaptable housing units shall be designed and incorporated into the construction plans.
31. Prior to the issue of any Construction Certificate, a minimum 427 off-street car parking bays as defined in AS2890.2 shall be provided to the development as shown on the approved architectural plans. All parking bays and loading bays shall be line marked. The allocation of parking bays shall be in accordance with the following:-
- (a) *427 parking bays* shall be allocated to residents and visitors parking only. The allocation of parking bays shall be based on the following rate:
- 8 commercial units 1space/40m<sup>2</sup> GFA
  - Studio/ 1-bedroom unit 1 space/unit
  - 2-bedroom /3-bedroom 2 spaces/unit
- (b) Thirty (30) off-street parking bays shall be made available at all times for visitors parking, with minimum five (5) parking bays to also be used as car wash bays.
- (c) A minimum of ten (10) parking bays shall be dedicated to disabled parking and shall be constructed in accordance with the relevant Australian Standard.
- (d) A minimum five (5) car wash bays shall be provided and shall be connected to water and sewer.
- (e) The proposed car parking facility (space size, aisle widths, headroom clearance gradients and safe sight distance etc) shall be designed to ensure all vehicles visiting the site can safely enter and leave in a forward direction in accordance with relevant sections of AS2890. The architectural plans shall be amended where required and Traffic Engineering certification confirming compliance shall be submitted for approval with the Construction Certificate application

32. The site to which this approval relates must be adequately fenced or other suitable measures employed that are acceptable to the Principal Certifying Authority to restrict public access to the site and building works. Such fencing or other measures must be in place before the approved activity commences.
33. Prior to commencement of any works, application(s) shall be made to Council's Customer Services Counter for the following approvals and permits on Council's property/road reserve under Road Act 1993 and Local Government Act 1993: -
  - (a) Permit to erect hoarding on or over a public place, including Council's property/road reserve;
  - (b) Permit to construction works, place and/or storage building materials on footpaths, nature strips;
  - (c) Permit for roads and footways occupancy (long term/ short term);

- (d) Permit to construct vehicular crossings, footpaths, kerbs and gutters over road reserve;
- (e) Permit to open road reserve area, including roads, footpaths, nature strip, vehicular crossing or for any purpose whatsoever, such as relocation / re-adjustments of utility services;
- (f) Permit to place skip/waste bin on footpath and/or nature strip;
- (g) Permit to use any part of Council's road reserve or other Council lands;
- (h) Permit to stand mobile cranes and/or other major plant on public roads and all road reserve area; and,
- (i) Permit to establish "Works Zone" on public roads adjacent to the development site, including use of footpath area.

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

Copy of the approved permits shall be submitted to the Principal Certifying Authority attesting this condition has been appropriately satisfied.

**(Note:** It should be noted that:

- No works or occupancy shall be carried out in road reserve until permits have been granted from Council's engineers. Any works shown within Council's road reserve or other Council lands on the development approval plans are indicative only and no approval for these works is given until this condition is satisfied; and,
- The issue of such permits may involve approval from RTA and NSW Police. In some cases, the above Permits may be refused and temporary road closures required instead which may lead to longer delays due to statutory advertisement requirements.)

34. Erosion and sediment control devices shall be installed and functioning prior to the commencement of any demolition, excavation or construction works upon the site in order to prevent sediment and silt from site works (including demolition and/or excavation) being conveyed by stormwater into public stormwater drainage system, natural watercourses, bushland and neighbouring properties. In this regard, all stormwater discharge from the site shall meet the legislative requirements and guidelines.

These devices shall be maintained in a serviceable condition AT ALL TIMES throughout the entire demolition, excavation and construction phases of the development and for a minimum one (1) month period after the completion of the development, where necessary.

### **CONDITIONS WHICH MUST BE SATISFIED DURING WORKS RELATED TO THE DEVELOPMENT**

35. During, Construction and any associated deliveries activities, access to the site shall be available in all weather conditions. The area shall be stabilised and protected from

erosion to prevent any construction-related vehicles (including deliveries) tracking soil materials onto street drainage system/watercourse, Council's lands, public roads and road-related areas.

36. During construction, the principal contractor or owner builder must install and maintain water pollution, erosion and sedimentation controls in accordance with:

- (a) The Soil and Water Management Plan if required under this consent;
- (b) "Managing Urban Stormwater - Soils and Construction" (2004) Landcom ('The Blue Book'); and
- (c) Protection of the Environment Operations Act 1997.

Where there is any conflict The Blue Book takes precedence.

**Note:** The International Erosion Control Association – Australasia (<http://www.austieca.com.au/>) lists consultant experts who can assist in ensuring compliance with this condition. Where Soil and Water Management Plan is required for larger projects it is recommended that this be produced by a member of the International Erosion Control Association – Australasia.

**Note:** The "Do it Right On Site," can be down loaded free of charge from Council's website and further information on sediment control can be obtained from [www.ssroc.nsw.gov.au](http://www.ssroc.nsw.gov.au).

**Note:** A failure to comply with this condition may result in penalty infringement notices, prosecution, notices and orders under the Act and/or the *Protection of the Environment Operations Act 1997* without any further warning. It is a criminal offence to cause, permit or allow pollution.

**Note:** Section 257 of the *Protection of the Environment Operations Act 1997* provides inter alia that "the occupier of premises at or from which any pollution occurs is taken to have caused the pollution"

**Warning:** Irrespective of this condition any person occupying the site may be subject to proceedings under the Protection of the Environment Operations Act 1997 where pollution is caused, permitted or allowed as the result of their occupation of the land being developed.

- 37.

- (a) The applicant shall conduct all demolition, excavation, construction works and any related deliveries/activities wholly within the site. If any use of Council's road reserve is required, approval and permits shall be obtained from Council.
- (b) Construction operations such as brick cutting, washing tools or brushes and mixing mortar shall not be carried out on park/road reserve or in any other locations which could lead to the discharge of materials into the stormwater drainage system or onto Council's lands.
- (c) Hosing down or hosing/washing out of any truck (concrete truck), plant (e.g. concrete pumps) or equipment (e.g. wheelbarrows) on Council's road reserve or other property is strictly prohibited. Fines and cleaning costs will apply to any breach of this condition.

- (d) Pavement surfaces adjacent to the ingress and egress points are to be swept and kept clear of earth, mud and other materials at all times and in particular at the end of each working day or as directed by Council's Engineer.
  - (e) Shaker pads are to be installed at the entry/exit points to the site to prevent soil material leaving the site on the wheels of vehicles and /or other plant and equipment.
38. During construction and any associated deliveries activities, the applicant shall ensure that all works and measures have been implemented in accordance with following approved plans at all times:-
- (a) Approved Erosion and Sediment Control Plan; and
  - (b) Approved Construction Traffic Management Plan;
39. All works carried out on the road reserve (including future road reserve area) shall be inspected and approved by Council's engineer. Documentary evidence of compliance with Council's requirements shall be obtained prior to proceeding to the subsequent stages of construction, encompassing not less than the following key stages: -
- (a) Initial pre-construction on-site meeting with Council's engineers to discuss concept and confirm construction details, traffic controls and site conditions/constraints prior to commencement of the construction of the civil works
  - (b) Prior to backfill of street drainage pipes
  - (c) Prior to placement of concrete (vehicular crossings, kerb and gutter, footpaths and shared pedestrian/cyclist paths)
  - (d) Prior to placement of road pavement
  - (e) Final inspection
- Council's inspection fee will apply to each of the above set inspection key stages. Additional inspection fees may apply for any additional inspections undertaken by Council.
40. The development is to be constructed to meet the requirements detailed in the approved report (Noise Impact Assessment – 20120523/1806A/RO/BW Acoustic Logic 18 June 2012) and the following construction noise requirements.
41. Construction Noise shall be in accordance with the following:
- (a) Noise from construction activities associated with the development shall comply with the NSW Environment Protection Authority's Environmental Noise Manual – Chapter 171 and the Protection of the Environment Operations Act 1997.
  - (b) Level Restrictions
    - (i) Construction period of 4 weeks and under:
    - (ii) The L10 sound pressure level measured over a period of not less than 15 minutes when the construction site is in operating must not exceed the background level by more than 20dB(A).

- (c) Construction period greater than 4 weeks and not exceeding 26 weeks:
    - (i) The L10 sound pressure level measured over a period of not less than 15 minutes when the construction site is in operating must not exceed the background level by more than 10 dB(A).
  - (d) Time Restrictions
    - (i) Monday to Friday 07:00am to 06:00pm
    - (ii) Saturday 07:00am to 04:00pm
    - (iii) No Construction to take place on Sundays or Public Holidays.
  - (e) Silencing
    - (i) All possible steps should be taken to silence construction site equipment.
42. The construction of the premises shall not give rise to transmission of vibration at any affected premises that exceeds the vibration in buildings criteria outlined in the NSW EPA Environmental Noise Control Manual.
43. All vehicles transporting soil, sand or similar materials to or from the site shall cover their loads at all times.
44. A sign must be erected in a prominent position on any work site on which work involved in the erection or demolition of a building is being carried out:
- (a) stating that unauthorised entry to the work site is prohibited;
  - (b) showing the name of the person in charge of the work site and a telephone number at which that person may be contacted outside working hours;
  - (c) the Development Approval number;
  - (d) the name of the Principal Certifying Authority including an after hours contact telephone number; and,
  - (e) any such sign is to be removed when the work has been completed.

#### **CONDITIONS WHICH MUST BE SATISFIED PRIOR TO THE ISSUE OF AN INTERIM OR FINAL OCCUPATION CERTIFICATE**

45. Prior to the issue of any Occupation Certificate, the applicant shall lodge with the Council a performance bond of **\$100,000** against defective public civil works undertaken by the main contractor for a period of **twelve (12)** months from the date of the completion agreed by Council. The bond shall be lodged in the form of a cash deposit, cheque or unconditional bank guarantee, which will be refundable (with no interest) subject to the approval of Council at the end of the maintenance period. In this period, the Applicant is liable for any part of the work, which fails to achieve the design specifications. Council shall be given full authority to make use of the bond for such restoration works within the maintenance period as deemed necessary.
- 46.
- (a) Section 94 Contributions are required to be paid prior to the issue of the Occupation Certificate in accordance with the City of Botany Bay Section 94

Contributions Plan 2005-2010. The Section 94 Contribution is calculated at \$1,380,424.00.

- (b) The Section 94 Contribution fees are subject to annual review and the current rates are applicable for the financial year in which your consent is granted. If you pay the contribution in a later financial year you will be required to pay the fee applicable at the time.
47. A report is to be submitted to the Principal Certifying authority prior to the issue of the Occupation Certificate addressing the following.
- (a) Field testing and evaluation of internal walls and floor insulation systems is to be carried out at a post construction stage by a suitably qualified Acoustic Engineer with MIE Australia membership or employed by a consulting firm eligible for AAAC membership to demonstrate compliance with BCA Acoustic requirements. The report is to include details of the walls and floors separating apartments. Apartments with carpet covered floors shall be identified in the report.
  - (b) All noise reduction measures specified in the CC Noise Assessment reports and all other relevant conditions of consent shall be validated by a Certificate of Compliance prepared by an Acoustic Consultant. The report shall include measurement results from site attended noise audits and unmanned noise monitoring conducted over not less than three (3) consecutive 24 hours periods to demonstrate that the Development Conditions of Consent are satisfied.
48. All vehicular crossings are to be constructed prior to the issuing of any Occupation Certificate (or the completion of work or the use of the building). The applicant shall make a separate application to Council's Customer Service Counter to construct (or reconstruct) a vehicular crossing (either using Council's or own forces) to all vehicular entry points to the site. All vehicular crossings, which were shown on submitted plans, shall be in the correct location. All redundant vehicular crossings shall be removed and replaced to fit the main footpath cross-section.
49. Prior to the release of any Occupation Certificate, the following works shall be completed to Council's satisfaction at the applicant's expense to Council's satisfaction:
- (a) Dedicate at no cost to the Council that part of land required for road widening along the site's Pemberton Street frontage; and
  - (b) The construction of new vertical kerb and gutter and associated footpath and landscaping paving along the entire frontage of the site to Pemberton Street; and
  - (c) The asphalt sheeting of half road width including reconstruction of any damaged road pavement along the entire frontage of the site to Pemberton Street; and
  - (d) The overhead power cables to this development site frontage have been undergrounded; and

- (e) The construction of underground piped drainage system where required including any other necessary engineering works where required to make the construction effective; and
  - (f) The intersection of Botany Road and Pemberton Street shall be signalised with traffic lights in compliance with the requirements of the Roads and Maritime Service (RMS).
- 50.
- (a) Prior to the issue of the Occupation Certificate a Traffic Management Plan prepared by a suitably qualified Traffic Engineer shall be prepared and submitted to the Principal Certifying Authority and Council addressing traffic management measures required for Kurnell Street, Herford Street and Warana Street.
  - (b) The Traffic Management Plan shall be submitted to Council for consideration and any traffic management measures required shall be the subject of a separate development application to Council to undertake the necessary traffic management works at no cost to Council.
51. All services (Utility, Council, etc) within the road reserve (including the footpath) affected by the proposed development shall be relocated/adjusted where required to match the proposed/existing levels. All costs are to be borne by the applicant.
52. Prior to the issues of a Final Occupation Certificate, as required by Council's DCP for multi-unit dwellings:
- (a) Mailboxes shall be provided to all units in accordance with Australia Post standards; and
  - (b) The name and address of the premises shall be displayed in a visible position.
53. Prior to the issue of an Occupation Certificate, a Certificate from a Registered Surveyor shall be submitted to the Principal Certifying Authority to the effect that:
- (a) the entire development, including residential flat buildings D, E and F, shall have a maximum floor space ratio of 1.56:1 over the entire site and shall comply with the following maximum height restrictions:
    - (i) Buildings 'A' and 'C' – 6 storeys, with a height of RL25 AHD to the roof and RL25.8 AHD to the lift overrun.
54. Prior to the issue of an Occupation Certificate, New Street 1 shall be completed and commissioned in accordance with the terms and conditions of Development Consent No.12/195 as issued by Council on 17 July 2013.
- 55.
- (a) Prior to issue of an Occupation Certificate, to ensure that the site, including the land to be dedicated to Council as part of the Pemberton Street road widening is suitable for the use, a Site Audit Statement (SAS) completed by an accredited site auditor under the *Contaminated Land Management Act 1997* shall be submitted to Council/PCA clearly demonstrating that the site is suitable for the proposed development. This shall be provided prior to the issuing of the Occupation Certificate.

- (b) Any conditions imposed on the SAS affecting the approval granted for Buildings D, E and F in Parkgrove 2 under DA12 (206) shall form part of this consent. In circumstances where the SAS conditions (if applicable) are not consistent with the consent, a S96 application pursuant to the *Environmental Planning & Assessment Act 1979* shall be submitted to ensure that they form part of the consent conditions. The accredited site auditor shall provide Council with a copy of the Site Audit Report (SAR) and Statutory Site Audit Statement (SAS), confirming the suitability of the site for the proposed development prior to the issuing of any Occupation Certificate.
56. Prior to the issue of either an Interim or Final Occupation Certificate of the relevant stage, documentation from suitably qualified engineer shall be submitted to the Principal Certifying Authority certifying that the car parking area, loading area, turning area access ramps, driveways and internal circulation driveways have been constructed generally in accordance with the approved construction plan(s) and comply with AS2890.1, AS2890.2 and AS2890.6 requirements. All internal circulation road network, parking and loading facilities shall be clearly designated, sign posted (including “Passenger Vehicle Only”, “Entry Only” and “Exit Only” signs) and line marked. Signage and line marking shall comply with the current version of Australian Standards.
  57. Prior to the issue of either an Interim or Final Occupation Certificate, all applications associated with works on Council’s land must be made at least 7-10 days prior to the programmed completion of works and all construction must be completed and approved by Council.
  58.
    - (a) Prior to the issue of either an Interim or Final Occupation Certificate, the construction of the stormwater drainage system of the proposed development shall be completed in accordance with the approved stormwater management construction plan(s).
    - (b) Documentation from a practicing and qualified Civil Engineer experienced in stormwater drainage design shall be submitted to the Principal Certifying Authority certifying that the stormwater drainage system has been constructed in accordance with the approved stormwater management construction plan(s) and accepted practice.
  59. Prior to the issue of either an Interim or Final Occupation Certificate, the maintenance schedule of the stormwater drainage system (including on-site detention system, pump-out system and stormwater quality improvement devices) shall be prepared by a qualified engineer and submitted to Principal Certifying Authority. A copy of the maintenance schedule shall also be submitted to Council for record purposes.
  60. In order to ensure that the constructed stormwater drainage system for the development (including on-site detention system, pump-out system and stormwater quality improvement devices) will be adequately maintained, Positive Covenant and Restriction on the Use of Land on the Title under Section 88B/88E(3) of the *Conveyancing Act 1919* shall be created in favour of Council as the benefiting authority for the ‘as-built’ system. The wording of the terms of the Positive Covenant and Restriction on the Use of Land are available at Council. The relative location of

the system in relation to the building footprint shall be shown on a scale sketch attached as an annexure to the plans/forms. City of Botany Bay Council shall be the authority empowered to release, carry or modify the restriction. Proof of registration shall be submitted to the Principal Certifying Authority prior to the issue of Final Occupation Certificate.

61. Prior to the issue of Final Occupation Certificate, a Certificate of Survey from a Registered Surveyor shall be submitted to the Principal Certifying Authority to the effect that all reduced levels shown upon the approved plans, with relation to building height, drainage, boundary and road reserve levels, have been strictly adhered to.
62. Prior to the issue of either an Interim or Final Occupation Certificate, the developer must submit to the Principal Certifying Authority an acoustic report to verify that the measures stated in Condition No.29 of this consent have been carried out and certify that the construction meets those requirements. The report must be prepared by a qualified practicing acoustic engineer (who is a member of either the Australian Acoustical Society or the Association of Australian Acoustical Consultants).
63. The name of the development, street numbers and unit numbers shall be clearly displayed with such numbers being in contrasting colour and adequate size and location for viewing from the footway and roadway. Details of street numbering shall be submitted to Council and the PCA for approval prior to the release of the Occupation Certificate.
64. Prior to the issue of either an Interim or Final Occupation Certificate 427 off-street car parking bays as defined in AS2890.2 shall be provided to the development as shown on the approved architectural plans. All parking bays and loading bays shall be line marked. The allocation of parking bays shall be in accordance with the following:-
  - (a) 427 parking bays shall be allocated to residents and visitors parking only. The allocation of parking bays shall be based on the following rate:
 

(i) 8 commercial units	1space/40m2 GFA
(ii) Studio/ 1-bedroom unit	1 space/unit
(iii) 2-bedroom /3-bedroom	2 spaces/unit
  - (b) Thirty (30) off-street parking bays shall be made available at all times for visitors parking, with minimum five (5) parking bays to also be used as car wash bays.
  - (c) A minimum of ten (10) parking bays shall be dedicated to disabled parking and shall be constructed in accordance with the relevant Australian Standard.
  - (d) A minimum five (5) car wash bays shall be provided and shall be connected to water and sewer.
65. The Pemberton Street public footpath shall be re-constructed in accordance with Council specifications and the final, approved public domain plan. The footpath dimensions, location, paver type and construction methods shall be in accordance with these specifications only.

Note: Construction hold points and Council inspections are required at the following points:

- (i) after formwork installation and to prior pouring the concrete blinding slab,
- (ii) at the commencement of paving works, and
- (iii) at final completion.

Council approval of public domain works is required prior issue of an Occupation Certificate.

66.

- (a) Prior to use and occupation of the building an Occupation Certificate must be obtained under Section 109C(1)(c) and 109N of the Environmental Planning and Assessment Act, 1979.
- (b) Condition Nos.45 to 66 are pre-conditions prior to the issue of the Occupation Certificate.

### **OPERATIONAL CONDITIONS**

67. Any subsequent Strata Subdivision must be accompanied by a formal copy of the By-Laws which shall be in accordance with the plans and documentation approved under this Consent and should also address the following matters:

- (a) Responsibilities with regard to the ongoing maintenance of the building and landscaped areas at the property in accordance with the plans and details approved under Development Consent No.13/278;
- (b) Responsibilities with regard to the maintenance of artificial features at the property in accordance with the plans and details approved under Development Consent No.13/278;
- (c) Responsibilities regarding the maintenance of the car wash bays by the Owners Corporation / building owner;
- (d) Responsibilities for ensuring owners and/or tenants have adequate and hygienic disposal and collection arrangements and for ensuring the waste storage area is appropriately maintained and kept in a clean and safe state at all times in accordance the conditions of this consent;
- (e) Responsibilities to ensure that receptacles for the removal of waste, recycling etc. are put out for collection between 4.00pm and 7.00pm the day prior to collection, and, on the day of collection, being the day following, returned to the premises by 12.00 noon;
- (f) Responsibilities to ensure that wastewater and stormwater treatment devices (including drainage systems, sumps and traps) are regularly maintained in order to remain effective. All solid and liquid wastes collected from the devices shall be disposed of in a manner that does not pollute waters and in accordance with the Protection of the Environment Operations Act 1997;
- (g) Responsibilities to ensure that graffiti is removed as soon as practicable. In this regard a graffiti management plan is to be incorporated into the maintenance plan for the development;

- (h) The Owners Corporation/Executive Committee obligations under clauses 177, 182, 183, 184, 185 and 186 of the *Environmental Planning and Assessment Regulation 2000*;
68. The stormwater drainage system (including all pits, pipes, absorption, detention structures, treatment devices, infiltration systems and rainwater tanks) shall be regularly cleaned, maintained and repaired in accordance with the maintenance schedule submitted to Council/PCA to ensure the efficient operation of the system from time to time and at all times. The system shall be inspected after every rainfall event to remove any blockage, silt, debris, sludge and the like in the system. All solid and liquid waste that is collected during maintenance shall be disposed of in a manner that complies with the appropriate Environmental Guidelines.
  69. All vehicles (including deliveries) shall enter and exit the premises to the public roads in a forward direction.
  70. The landscaped areas on the property shall be installed and maintained in accordance with approved landscaped documents, the conditions of consent, Council's DCP and to Council's satisfaction at all times.
  71.
    - (a) All parking areas shown on the approved architectural plans shall be set aside for parking purpose only and shall not be used for other purposes, e.g. storage of goods.
    - (b) Vehicle turning areas shall be kept clear at all times and no vehicles are permitted to park in these areas.
  72. The operation of plant equipment shall comply with the City of Botany Bay's General Noise Criteria is as follows:
    - (a) The operation of all plant and equipment shall not give rise to an equivalent continuous (LAeq) sound pressure level at any point on any residential property greater than 5dB(A) above the existing background LA90 level (in the absence of the noise under consideration). The operation of all plant and equipment when assessed on any residential property shall not give rise to a sound pressure level that exceeds LAeq 50dB(A) day time and LAeq 40 dB(A) night time.
    - (b) For assessment purposes, the above LAeq sound levels shall be assessed over a period of 10-15 minutes and adjusted in accordance with EPA guidelines for tonality, frequency weighting, impulsive characteristics, fluctuations and temporal content where necessary.

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

    - (c) Noise controls specific to the amenity of the residential neighbourhood
      - (i) The La10 noise level emitted from the premises shall not exceed the background noise level in any Octave Band Centre Frequency (31.5Hz – 8kHz inclusive) by more than 5 dB between 7:00pm one

day and 7:00am the day following Monday to Sunday when measured at the boundary of any residential property; and,

- (ii) Notwithstanding compliance with the above (Condition No. 72(c)(i)), the noise from the premises shall not be audible within any habitable room in any residential premises between the hours of 7:00pm one day and 7:00am the day following Monday to Sunday.

- 73. Internal lighting should be left on at night to communal corridors and emergency exits enable patrolling police, security guards and passing people to monitor activities within the businesses and ground floor common areas.
- 74. Any new street trees shall be maintained by the Owner/Strata Corporation for 12 months after planting. Maintenance includes watering twice weekly for a minimum period of 4 months (or until established) and after that at a frequency to sustain adequate growth, bi-annual feeding with a suitable fertilizer, weed removal and replenishment of the mulched base, but does not include trimming or pruning the trees under any circumstances. Any trees that fail to thrive shall be replaced by the owner/strata corporation to Council's satisfaction at their expense.
- 75. All waste and recycling containers shall be stored in the designated waste storage area. The waste containers are not to be over filled and the lids kept closed at all times except when material is being put in them. The building owner shall be responsible for the following:
  - (a) Where waste and recycling containers need to be moved to the street;
  - (b) Movement of the waste and recycling containers to the footpath for collections, and the return of waste and recycling containers to the waste storage area;
  - (c) Refuse containers are to be returned to the waste storage area on the same day as the refuse is collected;
  - (d) Cleaning and maintaining the waste storage area, any drainage installations and waste collection containers; and
  - (e) Providing and maintaining signage and information to uses to encourage recycling.
- 76.
  - (a)
    - (i) The hours of operation for the commercial tenancies located on the ground floor shall be restricted to 8am- 7pm Monday to Saturday.
    - (ii) No work on Sundays or public holidays.
  - (b) The collection of garbage and any delivery of goods associated with the commercial tenancies shall be limited 8am-7pm Monday to Saturday.
- 77. The applicant being informed that this approval shall be regarded as being otherwise in accordance with the information and particulars set out and described in the Development Application registered in Council's records as Development Application No. 13/278 dated 24 December 2013, and that any alteration, variation,

or extension to the use, for which approval has been given, would require further consent from Council.