

**SECOND ROUND 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 amended development proposes the construction of mixed use building (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 100m<sup>2</sup>; and,</li> <li>• 62 residential units over Building A (4-5 storeys - RL22.7 inclusive of lift overruns) and Building C (6 storeys - RL25.8 inclusive of lift overruns)</li> </ul> <p>Mix of residential component:</p> <ul style="list-style-type: none"> <li>• 4 x studios;</li> <li>• 17 x 1-bedroom units; and</li> <li>• 41 x 2-bedroom units.</li> </ul>
<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 during the initial notification of the application.</b>
<b>Report by</b>	<b>Rodger Dowsett, Director Planning and Development</b>
<b>Date</b>	<b>21 August 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 the following:

### ***Initial Proposal***

- Buildings A and C being two x 6-storey buildings and comprising:
- 8 x soho units on the ground floor,
- 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.

The initial 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 previous reports to the Joint Regional Planning Panel.

The subject site has two (2) zones applying being the B4 Mixed Use zone along its entire frontage to Pemberton Street and an R3 Medium Density Residential over the remainder of the site with a finger projection to Wilson Street to the east 3.5 metres in width.

### ***Amended Proposal – First Round***

In March 2014, Council received additional information which modified the proposed development by revising the architectural plans which replaced the eight (8) ground floor soho units with 8 x commercial units.

On the 16 April 2014 the Joint Regional Planning Panel of Sydney East considered the amended development application. The application was recommended for refusal by Council Officers.

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 Panel determined that the applicant should address the reasons for refusal through the submission of additional information (an acoustic assessment and zone interface) together with a first round supplementary report prepared by Council Officers and presented to the

Panel. The matter was again reconsidered by the JRPP on 16 July 2014 and deferred until the 13 August 2014. The applicant prepared amended plans and the matter was again deferred on the 13 August 2014 with the Panel making the decision that the applicant to provide the amended plans to Council for review including any necessary supporting documentation and that Council Officers prepare a further supplementary report (2<sup>nd</sup> Round) for electronic submission to the JRPP. No further public meeting was required.

### ***Amended Proposal – Second Round***

On the 14 and 19 August 2014 the applicant submitted to Council the following additional information for consideration:

- Amended Architectural Plan prepared by Krikis Tayler Architects dated 13 August 2014;
- Amended Apartment Schedule prepared by Krikis Tayler Architects dated 13 August 2014; and
- Amended Clause 4.6 Objections to building height and floor space ratio development standards prepared by LJB Urban Planning Pty Limited dated 18 August 2014.

The amended proposal now seeks development consent for the following:

- Construction of a mixed use buildings (known as Buildings A and C) comprising:
  - 8 ground floor commercial units each of at least 100m<sup>2</sup>; and,
  - 62 residential units over Building A (4-5 storeys - RL22.7 inclusive of lift overruns) and Building C (6 storeys - RL25.8 inclusive of lift overruns);
- Mix of residential component:
  - 4 x studios;
  - 17 x 1-bedroom units; and
  - 41 x 2-bedroom units.

## **KEY AMENDMENTS**

### ***Floor Space Ratio***

The amended design presents a reduction in FSR for the B4 zone (Building A and C) from 1.48:1 to 1.44:1 which results in a reduction from 65 to 62 residential units and a reduction in building height at the northern end of the building. The R3 zone (Buildings D, E and F) have been approved with an FSR of 1.59:1 which is less than the permitted FSR of 1.65:1.

The average FSR proposed over the entire site including Buildings A, C, D, E and F will be 1.54:1 which is a variation of 9.35% to the average FSR assessed over the site and calculated as 1.44:1. The FSR proposed within the B4 Mixed Use zone is 1.44:1 compared to the permitted FSR of 1:1.

The variation to the average FSR assessed over the entire site has been offset by the public benefits including new roads, pedestrian links, remediation of the land and land dedication and compliance with Council's BBDCP 2013 in respect of minimum unit sizes and car parking.

### ***Building Height***

The subject site is affected by flooding and as such the finished floor level of the building has been raised by 1.6 metres above the existing natural ground level. Therefore the exceedence of the maximum building height limit of 10 metre is in part a response to the site constraints and the need to satisfactorily address on site flooding.

The need to address the flood level, the change in topography across the site and the reduction in building height at the northern end of the building has resulted in a gradual stepping of building height from 13.6 metres at the northern boundary through to 16.7 metres where the building steps up to New Street 1 at the southern boundary from 20 metres to 20.8 metres. The six storey element is only proposed over a length of 57 metres, while the five storey element presents over a length of 24 metres and the four storey element over 9.5 metres.

The gradual stepping in building height in response to the context of the site and its constraints means that closer to the northern boundary and residential low density beyond the exceedence of the 10 metre height limit is minimal and presents as a 4 storey building.

On the other hand the presentation to New Street 1 at its intersection with Pemberton Street of a 6 storey building reinforces the corner and complements the bulk and scale of buildings to the south within the Banksmeadow Neighbourhood Centre.

### **PUBLIC BENEFIT**

The public benefits directly attributed to the subject development application include:

- Dedication of 474m<sup>2</sup> of land for the widening of Pemberton Street;
- Half of the road reconstruction of Pemberton Street along the 120 metre frontage of 42-44 Pemberton Street; and
- Dedication and construction of the northern side of New Street 1 which provides vehicular access to the site off Pemberton Street, which extends for 145 metres along the sites southern boundary;
- Construction of a north south through site link including dedication of 354m<sup>2</sup> of land to Council for approximately two thirds of the length of the link and a right of way for public access or dedication of lot in stratum subdivision for the 77m<sup>2</sup> remainder of the link; and
- Provision of an east west pedestrian link between Pemberton Street and Wilson Street along New Street 1.

## **RECOMMENDATION OF THE SUPPLEMENTARY REPORT**

It is the recommendation of this second round 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.

## **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.**

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

This matter has been satisfactorily addressed.

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

This matter has been satisfactorily addressed.

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

This matter has been satisfactorily addressed.

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

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.

The amended design satisfies the principles of SEPP 65 and the requirements of the Residential Flat Design Code.

### **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, height of buildings and floor space.

Principal Provisions of BBLEP 2013	Compliance Yes/No	Comment
Land use Zone	Yes	The site is zoned B4- Mixed Use and R3 Medium Density Residential 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>▪ To provide a mixture of compatible land uses.</li> <li>• To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.</li> </ul>
Does Clause 2.5 and Schedule 1 of 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?  10 metres maximum permitted in the B4 Mixed Use zone.	No	<p><b>Building A (4-5 storeys)</b> Parapet Height of RL 21.7 m Lift Overrun of RL 22.7 m</p> <p><b>Building C (6 storeys)</b> Parapet Height of RL 25.0 m Lift Overrun of 25.80m</p> <p>As such a Clause 4.6 variation has been submitted. Refer to discussion below.</p>
What is the proposed FSR? Does the FSR of the building exceed the maximum FSR?  Maximum FSR permitted for the B4 Mixed Use zone is 1:1 or (4,228m <sup>2</sup> ).	No	<p>The proposed GFA for Buildings A and C is 6,097m<sup>2</sup>, or</p> <p>B4 zone FSR = 1.44:1</p> <p>Variation of 44% for the B4 zone is proposed however the overall FSR variation is 9.35% for the entire site which achieves an FSR of 1.54:1 compared to the assessed FSR of 1.44:1</p> <p>As such a Clause 4.6 variation has been submitted. Refer to discussion below.</p>
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 1.65:1?	Yes	<p>The subject site being Buildings A and C are not located within an R3 or R4 zone.</p> <p>R3 zoned land adjoins to the immediate east and south of the subject site.</p> <p>Buildings D, E and F have been approved with a building height of 22 metres and an FSR of 1.59:1 which is less than the permitted FSR.</p>

Principal Provisions of BBLEP 2013	Compliance Yes/No	Comment
Is the site within land marked ðArea 3ð on the FSR Map	N/A	The subject site is not identified as being within ðArea 3ð on the FSR map.
Is the land affected by road widening?	No	The Development Application involves the dedication of land to Council for road widening along Pemberton Street and the northern portion of New Street 1. Road widening is listed within the BBDCP 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 ð Acid sulfate soils	Yes	The subject site is located within the Class 4 land affected by Acid Sulfate Soils. Class 4 is defined as: works more than 2 metres below the natural ground surface, or, works by which the water table is likely to be lowered more than 2 metres below the natural ground surface.
6.2 ð Earthworks	Yes	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.
6.3 ð Stormwater Management	Yes	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.
6.8 ð Airspace Operations	Yes	The provisions of clause 6.8 state that Council may grant consent to development that would penetrate the nominated airspace in relation to Sydney Airport only if it has referred the DA to the Sydney Airport Corporation Limited.  The DA was referred to the Sydney Airport Corporation Limited (SACL). In correspondence dated 14 March 2014, no objection was raised to the proposal.
Clause 6.9 ð Development in areas subject to aircraft noise	Yes	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 20ð25 contour. Residential flat buildings are otherwise ðconditionalðwithin ANEF contours of 20-25. A Noise Impact Assessment Report prepared by Acoustic Logic was submitted with the DA and

Principal Provisions of BBLEP 2013	Compliance Yes/No	Comment
		<p>which demonstrated that compliance with relevant noise assessment can be achieved with the installation of appropriate acoustic treatment devices in the development.</p> <p>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.</p>
6.16 ó Design excellence	Yes	<p>The Precinct has been the subject of consideration by Council's Design Review Panel.</p> <p>Clause 6.16 does not specifically apply to the Wilson Pemberton Street Precinct however given the size of the Precinct the design excellence clause has been considered as a guide.</p> <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>

#### **CLAUSE 4.6 BBLEP 2013**

The subject building is located wholly within the B4 Mixed Use zone, the R3 zone in which Buildings D, E and F are located were subject to the FSR and building height provisions contained within the BBLEP 2013.

The applicant has amended the proposal by:

- reducing the building height for Building A from 6 storeys to a 4-5 storey building,



- reducing the FSR for the B4 zone from 1.48:1 to 1.44:1 resulting in an average FSR over the entire site including Buildings A, C, D, E and F of 1.54:1 which is a variation of 9.35% to the average FSR of 1.44:1 as assessed over the entire site; and
- reducing the number of residential units from 65 to 62 units.

The amended application is supported by Clause 4.6 submissions which are attached to this supplementary report.

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**

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.

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.*

### **Clause 4.3 Maximum Height of Buildings**

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 17.5 metres (inclusive of lift overruns) to 21.6 metres (inclusive of lift overruns) for Buildings A and C respectively.

A portion of Building C being Unit C607 and its balcony projects over the roof form of Building A and shown on Drawing No. A09 Issue 07 Level 6 Plan prepared by Krikis Tayler Architects dated 13 August 2014. The stepping of the built form, north to south provides visual interest to the bulk and scale of the development.

**Table 1- Amended Design Building Heights**

<b>Building</b>	<b>Parapet Height</b>	<b>Maximum Height (inclusive of lift overruns)</b>	<b>Exceedence of Building Height Control (10m) from the Parapet</b>
<b>Building A</b>	RL 18.70 to RL21.7 <b>13.6 m to 16.7 m</b>	RL22.70 <b>17.7m</b>	<b>3.6m to 6.7m</b>
<b>Building C</b>	RL 24.80 to RL 25.0 <b>20m to 20.8m</b>	RL25.80 <b>21.6m</b>	<b>10m to 10.8m</b>

**Note:** The subject site as previously discussed is affected by flooding and as such the finished floor level of the building has been raised by 1.6 metres above the existing natural ground level. Therefore; the maximum building height control has not accounted for the need to address the site constraints and the need to raise the finished floor level.

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

#### **Clause 4.3 - Height of Buildings**

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

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

(2) *The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.*

- (2A) *Despite subclause (2), if an area of land in Zone R3 Medium Density Residential or Zone R4 High Density Residential exceeds 2,000 square metres, the height of a building on that land may exceed the maximum height shown for the land on the Height of Buildings Map but must not exceed 22 metres.*
- (2B) *Subclause (2A) does not apply to land identified as “Area 1” on the Height of Buildings Map.*
- (2C) *Despite subclause (2), if an area of land identified as “Area 2” on the Height of Buildings Map has a site area exceeding 1,900 square metres, the maximum height for a building on that land may exceed the maximum height shown for the land on the Height of Buildings Map by no more than 2 metres.*

## **Five Part Test**

### ***1. The objectives of the standard are achieved notwithstanding non-compliance with the standard;***

As stated above the objectives of the standard as stated before have been achieved where the 6 storey element has been appropriately located to New Street 1 and the building height has been stepped towards the low density residential development (north). The proposal does not present amenity impacts associated with view loss, privacy or solar access as compliance with SEPP 65 building separation distances has been achieved as well as via the use of privacy screens and design of window openings. The streetscape along Pemberton Street (west) and New Street 1 to the south will be improved by the development. As stated above the desired future character of the B4 Mixed Use zone has been achieved while complementing the B7 Business Park zone opposite.

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

The underlying objective and purpose of the building height standard has been achieved as stated above by providing interface buffer between the B7 Business Park zone and the residential flat buildings within the R3 zone, therefore the standard is relevant but strict compliance with the numerical requirement being a maximum height of 10 metres is unnecessary.

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

The underlying purpose of the height standard is to provide a buffer between the B7 and R3 zoned land. If a building height of 22 metres is permitted in the R3 zone a building height of 10 metres in the B4 buffer zone would not provide amenity to residential development beyond the 10 metre height limit, as such the purpose of the standard in addressing the desired future character would be thwarted if compliance was required.

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

The development standard has not been abandoned as this is the first development application within the B4 Mixed Use zone fronting Pemberton Street. The standard does require specific consideration where a parcel of land has an interface with a low density residential zone where an exceedence of the 10 metre height limit may result in unacceptable amenity impacts. Given that the building form proposed is removed from existing low density residential zones compliance with the numerical requirement of the standard is unnecessary and unreasonable in this instance.

### ***5. The compliance with development standard is unreasonable or inappropriate due to existing use of land and current environmental character of the particular parcel of land should not have been included in the zone.***

Given the flooding impact across the site, as stated previously requires a finished floor level 1.6 metres above the natural ground level. The numerical height limit therefore did not consider the environmental constraints of the site. The environmental character of the land was previously for industrial uses which resulted in a contaminated site where its remediation would be the best outcome for the site and its surroundings. The site does not contain any specific environmental features that would have precluded it from redevelopment.

The Acoustic Report prepared by the applicant assessed the acoustic environmental character of the area and concluded that noise from the industrial land uses in Pemberton Street, Rochester Street and Cranbrook Street would not present a significant impact as the nature of those industrial uses were changing from general and heavy industries to be more in line with the B7 Business Park zone. The main noise source was identified as being aircraft noise from Sydney Airport. The building has subsequently been design to address AS2021-2000.

**Council Officer Response:**

The justification for the departure to the maximum height of buildings is supported for the following reasons:

- The amended design continues to provide a visual and acoustic buffer to the communal open spaces to the east;
- The height across the Parkgrove site is well located, being removed from the R2 Low Density interface zones along Wilson Street and north to Kurnell and Warana Street;
- Amenity impacts associated with view loss and overshadowing have been satisfactorily addressed through the building's design;
- The stepping of the built form will provide visual interest to the buildings and appropriately address the scale of development proceeding north towards the low density residential areas;
- The built form presents a strong corner element to New Street 1 and towards the Banksmeadow Neighbourhood Precinct along Botany Road without detracting from the economic viability of the neighbourhood centre;
- The retention of acoustic design measures including the use of louvered privacy screens and highlight windows will provide acceptable amenity outcomes for future residents;
- The separation distances provided between Buildings A to D and Buildings C to E are a minimum of 13.5 metres, in excess of SEPP 65 requirements;
- The height of the buildings has responded to the overflow and flood levels affecting the site and its topography;
- The building height is consistent with the Desired Future Character of the Wilson Pemberton Street Precinct B4 Mixed Use Zone;
- The additional height does present public benefits as outlined in this supplementary report;

- The proposed development complements the changing nature of the B7 Business Park zone on the opposite side of Pemberton Street;
- The commercial land uses on the ground floor will provide employment opportunities for the Wilson Pemberton Street Precinct which will activate Pemberton Street and contribute to the B7 zone on the western side of Pemberton Street; and

The variation to Clause 4.3 will not compromise Council's planning controls as the proposed development has demonstrated significant public benefit through a high quality design outcome as such the Clause 4.6 to Building Height is supported in this instance.

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

It should be noted that the FSR has been altered from the original assessment and as such the development application seeks an FSR of 1.44:1 (6,097m<sup>2</sup>) for that part of the site zoned B4 ó Mixed Use, which does not comply with Clause 4.4(2) of BBLEP 2013 (being a maximum of 1:1). The overall FSR applying the site including the R3 and B4 zones is 1.44:1 or (18,970m<sup>2</sup>). The proposal exceeds the assessed average FSR by 9.35% being 1.54:1 (20,276m<sup>2</sup>). These departures have been justified by the applicant within their Clause 4.6 Submission to Clause 4.4 and are supported for the following reasons.

#### ***Clause 4.4 – Floor space ratio***

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

- to establish standards for the maximum development density and intensity of land use,*
- to ensure that buildings are compatible with the bulk and scale of the existing and desired future character of the locality,*
- 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,*
- 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,*
- to minimise adverse environmental effects on the use or enjoyment of adjoining properties and the public domain,*
- to provide an appropriate correlation between the size of a site and the extent of any development on that site,*
- to facilitate development that contributes to the economic growth of Botany Bay.*

(2) *The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map.*

*(2A) Despite subclause (2), if an area of land in Zone R3 Medium Density Residential or Zone R4 High Density Residential exceeds 2,000 square metres, the floor space ratio of a building on that land may exceed the maximum floor space ratio shown for the land on the Floor Space Ratio Map but must not exceed 1.5:1.*

*(2B) Subclause (2A) does not apply to land identified as "Area 1" on the Floor Space Ratio Map.*

- (2C) Despite subclause (2), if an area of land identified as “Area 2” on the Floor Space Ratio Map has a site area exceeding 1,900 square metres, the maximum floor space ratio for a building on that land may exceed the maximum floor space ratio shown for the land on the Floor Space Ratio Map by no more than 0.65:1.*

### **Five Part Test**

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

As stated above the objectives of the standard have been achieved where the 6 storey element has been appropriately located to New Street 1, the building height has been stepped towards the low density residential development (north) and addresses the 6 storey built form within Buildings D, E and F to the east. The scale of development is compatible with the existing and desired future character of the area. The overall FSR is 1.54:1 which is a 9.35% variation to the assessed average FSR of 1.44:1. This is a variation of 1,306m<sup>2</sup> dispersed over a site area of 13,162m<sup>2</sup> containing five residential and mixed use buildings, with new road networks, public and communal open spaces. Given the overall design of the site the additional bulk proposed has been accommodated within the site without adversely impacting on the streetscape, the enjoyment of adjoining properties or public spaces, or the existing character of the area.

The additional floor space proposed within the B4 Mixed Use zone includes eight (8) ground floor commercial units which will contribute to the economic growth of the B7 Business Park zone to the west and Banksmeadow Neighbourhood Centre to the south.

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

The underlying objective and purpose of the standard has been achieved as stated above by providing interface buffer between the B7 Business Park zone and the residential flat buildings within the R3 zone which presents a bulk and scale of development consistent with the existing residential developments to the north and east and desired future character within the B7 zone, therefore the standard is relevant but strict compliance with the numerical requirement being a maximum FSR of 1:1 within the B4 Mixed Use zone is unnecessary.

The site also contains an R3 zone which is permitted to have an FSR of 1.65:1. Buildings D, E and F which have already been approved presented an FSR of 1.59:1 within the R3 zone which is compliant with the numerical standard.

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

The underlying purpose of the standard is to provide a buffer between the B7 and R3 zoned land and which presents a bulk and scale of development consistent with the existing and desired future character of the area. The proposed building has been stepped in its design to appropriately respond to the existing bulk and scale of development to the north and the desired future character of the B7 zone to the west and Neighbourhood Centre to the south.

As stated above the bulk and scale presenting to New Street 1 also addresses the corner of the new street network within the Wilson Pemberton Street Precinct.

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

The development standard has not been abandoned as this is the first development application within the B4 Mixed Use zone fronting Pemberton Street. The standard does require consideration of the bulk and scale of the immediate area and as stated above this has been satisfactorily achieved therefore; compliance with the numerical standard is unnecessary and unreasonable in this instance.

***5. The compliance with development standard is unreasonable or inappropriate due to existing use of land and current environmental character of the particular parcel of land should not have been included in the zone.***

As stated above flooding impacts across the site have impacted on the bulk and scale of development. The environmental character of the land was previously for industrial uses which resulted in a contaminated site where its remediation would be the best outcome for the site and its surroundings. The site does not contain any specific environmental features that would have precluded it from redevelopment.

**Council Officer Response**

The justification for the departure to the maximum FSR is supported for the following reasons:

- The variation to the maximum FSR does present public benefits as outlined in this supplementary report;
- The variation is less than 10% over the entire site being 9.35% where the site can accommodate an average FSR of 1.44:1 and the proposed development presents an overall FSR of 1.54:1;
- The buildings address the Desired Future Character of the Wilson Pemberton Street Precinct B4 Mixed Use zone through the provision of employment opportunities within the ground floor commercial units; improvements to the public domain; and the creation of an appropriate mixed use interface with the B7 Business Park zone on the western side of Pemberton Street;
- The scale and bulk of the built form presents an acoustic and visual barrier to the communal open spaces and residential buildings to the east;
- The bulk and scale takes into account the environmental constraints of the site being a flood liable site with a finished floor level 1.6 metre above NGL which is screened to Pemberton Street by planter beds, street tree planting and ramped access ways to the commercial level;
- The built form has been acoustically treated to ensure the amenity of future residents;



- The stepping of the built form reduces the building bulk, north towards the sensitive residential low density areas whilst providing a high quality architectural response in context with the neighbourhood centre further south to Botany Road;
- The additional floor space will not adversely impact on the amenity of existing residential developments by way of overshadowing, privacy or overlooking; and
- Significant communal and public landscaped open spaces at ground level are provided within the Parkgrove site accommodating the scale and bulk of the development whilst providing appropriate landscaped areas for future residents and the public.

Given the points outlined above the Clause 4.6 submission to Clause 4.4(2) is supported in this instance.

### **Botany Bay Development Control Plan 2013**

BBDEP 2013 is the comprehensive development guideline for the City of Botany Bay. Council resolved on 11 December 2013 to adopt the BBDCP 2013 in accordance with the provisions of the *Environmental Planning & Assessment Act 1979* and the *Environmental Planning and Assessment Regulation 2000*. The application as amended is considered to be satisfactory with respect to the provisions contained within the BBDCP 2013.

**(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 environmental, social and economic impacts associated with the proposed development have been satisfactorily addressed through the provision of flood mitigation measures, the widening of Pemberton Street, the provision of commercial uses within the mixed use zone, and the appropriate location of the bulk and scale of development in context with the B7 Business Park zone and the low density residential zones.

**(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 are considered to be satisfactory and presents a suitable development outcome for the site.

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

The issues raised within the submissions have now been satisfactorily resolved.

(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.

**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 62 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-two (62) dwellings x \$20,000 = \$1,240,000

Commercial

8 Shops/commercial spaces = \$80, 424.00

Therefore, the **total Section 94 Contributions** required is \$1,320,424.00.

The public benefits directly attributed to the subject development application include:

- Dedication of 474m<sup>2</sup> of land for the widening of Pemberton Street;

- Half of the road reconstruction of Pemberton Street along the 120 metre frontage of 42-44 Pemberton Street; and
- Dedication and construction of the northern side of New Street 1 which provides vehicular access to the site off Pemberton Street, which extends for 145 metres along the sites southern boundary;
- Construction of a north south through site link including dedication of 354m<sup>2</sup> of land to Council for approximately two thirds of the length of the link and a right of way for public access or dedication of lot in stratum subdivision for the 77m<sup>2</sup> remainder of the link; and
- Provision of an east west pedestrian link between Pemberton Street and Wilson Street along New Street 1.

## **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 25.8 metres inclusive of lift overruns and a floor space ratio of 1.44:1 applying to the B4 Mixed Use zone in combination with development on the R3 aspect of site achieves and an average FSR over the entire site of 1.54:1.

## **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 1.44:1 applying to the B4 Mixed Use zone and FSR of 1.54:1 as assessed over the entire site and a maximum building height of 25.8 metres inclusive of lift overruns by reason that the two (2) variations are well founded; and
- (b) The Panel approve Development Application No. 13/278 comprising of a two mixed use buildings ranging in height from 4 to 6 storeys with 62 residential apartments (4 x studio, 17 x one bedroom and 41 x two bedroom); eight (8) ground floor commercial unit each of at least 100m<sup>2</sup> over a previously approved basement car parking containing 126 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**

Drawing No.	Author	Date Received by Council
Mixed Use Development Stage 2 ó Title Sheet & Location Plan, Project 3312, A01, Issue 02	Krikis Tayler Architects Pty Ltd	24 December 2013
Mixed Use Development Stage 2 ó Basement Plan, Project 3312, A03, Issue 04	Krikis Tayler Architects Pty Ltd	21 March 2014
Mixed Use Development Stage 2 ó Level 1 Plan, Project 3312, A04, Issue 06	Krikis Tayler Architects Pty Ltd	21 March 2014
Mixed Use Development Stage 2 ó Level 2 Plan, Project 3312, A05, Issue 04	Krikis Tayler Architects Pty Ltd	24 December 2013
Mixed Use Development Stage 2 ó Level 3 Plan, Project 3312, A06, Issue 05	Krikis Tayler Architects Pty Ltd	24 December 2013
Mixed Use Development Stage 2 ó Level 4 Plan, Project 3312, A07, Issue 05	Krikis Tayler Architects Pty Ltd	24 December 2013
Mixed Use Development Stage 2 ó Level 5 Plan, Project 3312, A08, Issue 07	Krikis Tayler Architects Pty Ltd	13 August 2014
Mixed Use Development Stage 2 ó Level 6 Plan, Project 3312, A09, Issue 07	Krikis Tayler Architects Pty Ltd	13 August 2014
Mixed Use Development Stage 2 ó Roof Plan, Project 3312, A11, Issue 05	Krikis Tayler Architects Pty Ltd	13 August 2014
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
Mixed Use Development Stage 2, Elevations 2, Project 3312-2, A20, Issue 07	Krikis Tayler Architects Pty Ltd	13 August 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 07	Krikis Tayler Architects Pty Ltd	13 August 2014
Mixed Use Development Stage 2 ó Section, Project 3312, A23, Issue 04	Krikis Tayler Architects Pty Ltd	13 August 2014
Mixed Use Development Stage 2 ó Photomontage, Project 3312, A40, Issue 01	Krikis Tayler Architects Pty Ltd	24 December 2013
Mixed Use Development Stage 2 ó Blocks A and C - Material Board, Project 3312, A50, Issue 01	Krikis Tayler Architects Pty Ltd	24 December 2013
Stormwater Drawings ó Cover Sheet, Legend & Drawing Schedule ó Job No. 120361, Dwg D00 ó Rev. E	Australian Consulting Engineers	17 March 2014
Stormwater Drawings ó Erosion & Sediment Control Details ó Job No. 120361, Dwg D01 ó Rev. A	Australian Consulting Engineers	17 March 2014
Stormwater Drawings ó Stormwater Drainage Catchment Plan ó Job No. 120361 ó Dwg D02 ó Rev. B	Australian Consulting Engineers	17 March 2014
Stormwater Drawings ó Basement Stormwater Drainage Plan and Details (for Stage 2) ó Job No. 120361 ó Dwg D03 ó Rev. F	Australian Consulting Engineers	17 March 2014
Stormwater Drawings ó Level 1 Stormwater Drainage Plan for Stage 2 ó Job No. 120361, Dwg D04, Rev. G	Australian Consulting Engineers	17 March 2014
Stormwater Drawings ó Level 2 Stormwater Drainage Plan for Stage 2 ó Job No. 120361, Dwg D05, Rev. I	Australian Consulting Engineers	17 March 2014
Stormwater Drawings ó Stormwater Drainage Details for Stage 2 ó Job No. 120361, Dwg D06 ó Rev. E	Australian Consulting Engineers	17 March 2014
Stormwater Drawings ó Level 3 Stormwater Drainage Plan for Stage 2 ó Job No. 120361, Dwg	Australian Consulting Engineers	17 March 2014

<b>Drawing No.</b>	<b>Author</b>	<b>Date Received by Council</b>
D09 ó Rev. E		
Stormwater Drawings ó Level 4 Stormwater Drainage Plan for Stage 2 ó Job No. 120361, Dwg D10 ó Rev. E	Australian Consulting Engineers	17 March 2014
Stormwater Drawings ó Level 5 Stormwater Drainage Plan for Stage 2 ó Job No. 120361 ó Dwg D11 ó Rev. E	Australian Consulting Engineers	17 March 2014
Stormwater Drawings ó Level 6 Stormwater Drainage Plan for Stage 2 ó Job No. 120361, Dwg D12 ó Rev. E	Australian Consulting Engineers	17 March 2014
GFA Area Schedule ó Stage 1 & 2 ó 20 December 2013 ó Issue D	Krikis Tayler Architects Pty Ltd	24 December 2013
Mixed Use Development Stage 2 ó Communal Open Space, Level 1 Plan ó Project No.3312, Dwg No.A25-2, Issue 01	Krikis Tayler Architects Pty Ltd	24 December 2013
Mixed Use Development Stage 2 ó Communal Open Space, Level 2 Plan ó Project No.3312, Dwg No.A26-2, Issue 02	Krikis Tayler Architects Pty Ltd	24 December 2013
Mixed Use Development Stage 2 ó Site Coverage, Project No.3312, Dwg No.A27-2, Issue 02	Krikis Tayler Architects Pty Ltd	24 December 2013
Mixed Use Development Stage 2 ó Deep Soil Area, Level 1, Project No.3312 ó 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 ó 20120523/1806A/RO/ BW ó 18 June 2012	Acoustic Logic	24 December 2013
Additional Noise Logging Impact Assessment Report	Acoustic Logic	9 May 2014
Waste Management Plan ó	Elephants Foot Recycling	24 December 2013

<b>Documentation</b>	<b>Author</b>	<b>Date Received by Council</b>
Mixed Development Stage 2, Buildings A and C, December 2013	Solutions	
Internal Traffic Assessment ó Ref: 12-115-3 ó December 2013	Thompson Stanbury Associates	24 December 2013
Stage 2 DA Landscape Report	iScape Landscape Architecture	24 December 2013
Pedestrian Wind Environment Statement óWA058-06F01(rev2)-WS Report ó 18 December 2013	Windtech	24 December 2013
Access Report ó 19 March 2014	Accessibility Solutions P/L	21 March 2014
Building Code of Australia Assessment Report ó Stage 2	Barry Johnson and Associates P/L	10 March 2014
BASIX Certificate No. 518843M ó 5 December 2013	Planning and Infrastructure ó NSW Government	24 December 2013

<b>Reference Documentation</b>	<b>Author</b>	<b>Date Received by Council</b>
Statement of Environmental Effects ó 20 December 2013	LJB Planning Pty Ltd	24 December 2013
Clause 4.6 Exception to the Building Height and Floor Space Ratio Standards ó 18 August 2014	LJB Planning Pty Ltd	19 August 2014
Built Form Urban Design Statement ó March 2014	ae design partnership	21 March 2014
Design Verification Statement ó 20 December 2013	Krikis Tayler Architects Pty Ltd	24 December 2013
Apartment and Car Parking Schedule	Krikis Tayler Architects	13 August 2014

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

2.

- (a) The proposed development, including residential flat buildings D, E and F, shall have a maximum floor space ratio of 1.54:1 (20,276m<sup>2</sup>) over the entire site, and
- (b) shall comply with the following maximum height requirements:

- (i) Building Aø (4-5 storeys) with a parapet height of RL21.70 and a height of RL22.7 to the lift overrun; and
  - (ii) Building Cø (6 storeys) with a parapet height of RL24.80 and a height of RL25.8 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 6 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 (cannot 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 ô 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 ó Botany Road ó Pemberton Street.
    - (ii) **Egress route:**  
Pemberton Street ó Botany Road ó 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>
  - (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 BBDP 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>
  - (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 126 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) *126 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/50m<sup>2</sup> GFA
  - Studio/ 1-bedroom unit 1 space/unit
  - 2-bedroom 2 spaces/unit
- (b) Seven (7) off-street parking bays shall be made available at all times for visitors parking, with minimum two (2) parking bays to also be used as car wash bays.
- (c) A minimum of four (4) parking bays shall be dedicated to disabled parking and shall be constructed in accordance with the relevant Australian Standard.
- (d) At least one (1) disabled parking bay shall be available for visitor parking.
- (e) A minimum two (2) car wash bays shall be provided and shall be connected to water and sewer.
- (f) 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

**CONDITIONS WHICH MUST BE SATISFIED PRIOR TO THE COMMENCEMENT OF ANY DEVELOPMENT OR WORKS**

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 a 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 of 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 of Australasia.

**Note:** The "Do it Right On Site," can be downloaded 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 6 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 6 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 \$1,320,424.00.
  - (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 frontages 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 signalled 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 1.54:1 over the entire site and shall comply with the following maximum height restrictions:
    - (i) Building A (4-5 storeys) with a parapet height of RL21.70 and a height of RL22.7 to the lift overrun; and
    - (ii) Building C (6 storeys) with a parapet height of RL24.80 and a height of RL25.8 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 126 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) 126 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 1 space/50m2 GFA
    - (ii) Studio/ 1-bedroom unit 1 space/unit
    - (iii) 2-bedroom 2 spaces/unit
  - (b) Seven (7) off-street parking bays shall be made available at all times for visitors parking, with minimum two (2) parking bays to also be used as car wash bays.
  - (c) A minimum of four (4) parking bays shall be dedicated to disabled parking and shall be constructed in accordance with the relevant Australian Standard.
  - (d) At least one (1) disabled parking bay shall be available for visitor parking.
  - (e) A minimum two (2) 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 and Development Consent No.12/208;
- (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 and Development Consent No.12/208;
- (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 to 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.