

Joint Regional Planning Panel

(Sydney East Region)

Meeting Date: 27 August 2014

JRPP Number:	2014SYE019
DA Number:	13(279)
Local Government Area:	City of Botany Bay
Property:	39 and part of 47 Rhodes Street (rear lot of Hillsdale Bowling Club), Hillsdale
Lot & DP Nos:	SP 33080, Lot 2 DP 445433 and Lot B DP 445635
Proposed Development:	<p>Integrated Development – proposing:</p> <ul style="list-style-type: none"> • Demolition of existing structures • Construction of three (3) residential flat buildings with a total of 246 units • Basement level car parking for 435 vehicles • The development proposes a floor space ratio of 1.87:1 • The buildings have the following heights: Building A: 22.2 metres (seven (7) storeys); Building B: part 28.2 metres (nine (9) storeys) and part 16.2 metres (5 storeys); and Building C: 22.2 metres (seven (7) storeys). • Excavation and site remediation to be undertaken in accordance with the Remediation Action Plan submitted.
Applicant:	Krikis Tayler Architects Pty Ltd
Applicant Address:	Level 7, 97 Pacific Highway North Sydney NSW 2060
Number of Submissions:	Thirteen submissions
Recommendation:	Conditional consent
Report by:	Rodger Dowsett, Director Planning and Development, City of Botany Bay

THE DIRECTOR OF PLANNING AND DEVELOPMENT REPORTS:

Précis

Council received Development Application No. 13/279 on the 24 December 2013, which seeks consent for the demolition of existing structures, excavation and remediation of the site and construction of three residential flat buildings with a total of 246 units, ranging in height between five to nine storeys, and construction of a part two/part three level basement car park for 435 vehicles.

In addition, the applicant has submitted an offer to enter into a Voluntary Planning Agreement (VPA) to carry out public domain works within Grace Campbell Reserve. The applicant has provided a Quantity Surveyors certificate that indicates the value of the public domain works to be \$1.1 Million.

The site is located at 39 Rhodes Street and part of 47 Rhodes Street Hillsdale, and is irregular in shape and is formed by the following three allotments legally known as SP 33080, Lot 2 DP 445433 and Lot B DP 445635, which make up a total site area of 11,747m².

The development application is required to be determined by the Joint Regional Planning Panel meeting, as the Capital Investment Value of the proposal is \$54,000,000.00. A Panel Briefing was undertaken in April 2014. A Panel Meeting has been scheduled for the 27 August 2014.

The Development Application is also Integrated Development, pursuant to Section 91 of the EP&A Act as the development involves temporary construction dewatering and therefore requires approval from the NSW Office of Water. In a letter dated 11 February 2014, the NSW Office of Water has granted its General Terms of Approval to the proposed development. Where applicable, these have been included as conditions of consent.

The development application was notified for a period of 30 days from 12 February 2014 to 14 March 2014. Thirteen (13) submissions were received which raise issues including traffic generation and impacts on local road network, bulk, scale, height, FSR, overshadowing, privacy, disturbance to contaminated soils and water table during construction, streetscape impacts, acoustic impacts, and amenity. The issues raised in public submissions have been addressed in this report.

The Applicant on 11 August 2014 lodged Class 1 proceedings in the Land and Environment Court (No: 10587 of 2014) against the deemed refusal of the application. A directions hearing is 4 September 2014.

Council officer's received additional information in respect of the proposed development as follows:

- On the 01 July 2014, the applicant submitted additional information in relation to Flood related issues, including a response from Cardno dated 30 June 2014;
- On the 10 July 2014, the applicant submitted: amended architectural plans prepared by Krikas Tayler Architects; Clause 4.6 Exception prepared by LJB Urban

Planning; Stormwater plans prepared by Australian Consulting Engineers; traffic letter prepared by Thompson Stanbury & Associates; and letter by environmental consultant Environmental Investigations;

- On the 14 July 2014, the applicant submitted additional acoustic information, prepared by Day Design, dated 14 July 2014;
- On the 16 July 2014, the applicant submitted a Risk Assessment report, prepared by Bow-Tie Consulting, dated 10 July 2014. The Risk Assessment was forwarded to the Department of Planning & Environment for assessment.
- On the 18 July 2014, the applicant submitted a formal offer to enter into a VPA to carry out public domain works within Grace Campbell Reserve. The offer is supported by a concept landscape plan and QS Certificate confirming the scope and value of the works.

The additional information responded to matters raised by Council Officers and did not warrant re-notification.

The Risk Assessment was assessed by the Department of Planning & Environment, whom advised that the risk criteria due to exposure from incidents at Botany Industrial park are satisfied, however requested that additional risk control measures be implemented to reduce risk. The applicant has been requested to respond to this issue, and this will be addressed in an Addendum Report to the JRPP prior to the Panel Meeting on 27 August 2014, together with the views of Council's independent risk consultant.

In assessing this application, Council officers consider that the primary issues for consideration are the proposed height and FSR non-compliance.

Height

The maximum height of buildings permitted under Botany Bay LEP 2013 within the B4 Mixed Use land is 12 metres and within the R3 Medium Density Residential land is 22 metres, subject to meeting certain criteria. The development results in a maximum height of 28.2 metres within the R3 zoned land and 22.2 metres within the B4 zoned land. Therefore, the application does not comply with the height control within both the B4 Mixed Use zone and the R3 Medium Density Residential zone. However, Block B (east) which faces Rhodes Street complies with the height control.

The applicant has submitted a Clause 4.6 variation in support of the height departures. The proposal results in two main departures, being 10.2 metres at Building C within the B4 Mixed Use zone and 6.2 metres at Building B (west) being within the R3 Medium Density Residential zone. The 200mm departure at Building A is considered to have minimal impact and is attributed to the lift overrun structure. It is noted that in the assessment of this application, Council officers held discussions with the applicant regarding the re-distribution of the height as an alternative design solution.

An assessment of the Clause 4.6 variation concludes that the proposal retains compliance with the objectives of the Height of Building standard, the objectives of the zone and the objectives of the Botany Bay LEP 2013. The proposal will replace a light industrial use with a medium density residential flat building that shall deliver new housing and employment opportunities in line with Local and State objectives. The proposal is considered to generate minimal impact upon adjoining properties and the public domain, and will provide an acceptable streetscape presentation.

In addition, the applicant proposes to carry out public domain works to Grace Campbell Reserve, with an estimated cost of \$1.1 Million. Council officers have reviewed the public domain works and provide in-principle support to these works. Therefore, the proposal results in a tangible public benefit for the locality and is considered to be in the public interest.

On the balance of these issues, Council officers consider that the height variation is acceptable.

Floor Space Ratio

The maximum FSR permitted by BB LEP 2013 is 1:1 within the B4 Mixed Use zone and 1.65:1 within the R3 Medium Density Residential zone, or a total GFA of 17,561.9 m².

The development application seeks an FSR of 1.87:1 (21,999m²) which does not comply with Clause 4.4 of BBLEP 2013. The extent of the non-compliance is 4437.1 m² or 25.26%. The Applicant has submitted a Clause 4.6 Exception in support of the non-compliance.

The assessment of the applicant's Clause 4.6 Exception concludes that the proposal retains compliance with the objectives of the FSR standard, the objectives of the zone and the objectives of the Botany Bay LEP 2013. Further, the additional density does not generate any significant adverse impact.

It is also accepted that the apartment sizes under the BB DCP 2013 are larger than those required under SEPP 65 and the Residential Flat Design Code (RFDC). The application of the apartment sizes under the BB DCP 2013 translates to a reduced apartment yield, and in terms of density and intensity of development results in a reduced population when compared with a development that would have apartment sizes as per the RFDC.

Therefore, Council officers consider that a variation to the FSR is acceptable.

Officer Recommendation

The Development Application No. 13/279 has been assessed in accordance with the relevant requirements of the Environmental Planning Assessment Act, 1979 and is recommended that the Joint Regional Planning Panel (JRPP) for the Sydney East Region, as the Consent Authority, resolve to approve Development Application No. 13/279 as follows:

It is recommended that the Joint Regional Planning Panel (JRPP), as the determining Authority in this instance, resolve to:

Approve Development Application No. 13/279 for the following works at 39 Rhodes Street and part of 47 Rhodes Street, Hillsdale, subject to the conditions imposed in the attached schedule:

- *Demolition of existing structures*
- *Construction of three (3) residential flat buildings with a total of 246 units*
- *Basement level car parking for 435 vehicles*
- *The development proposes a floor space ratio of 1.87:1*

- *The buildings have the following heights: Building A: 22.2 metres (seven (7) storeys); Building B: part 28.2 metres (nine (9) storeys) and part 16.2 metres (5 storeys); and Building C: 22.2 metres (seven (7) storeys).*
- *Excavation and site remediation to be undertaken in accordance with the Remediation Action Plan submitted.*

SITE DESCRIPTION

The subject site is located on the western side of Rhodes Street and is known as 39 Rhodes Street and part of 47 Rhodes Street Hillsdale. The site is irregular in shape and is formed by the following three allotments legally known as SP 33080, Lot 2 DP 445433 and Lot B DP 445635, which make up a total site area of 11,747m².

The site has a frontage of 28.53 metres to Rhodes Street and approximately 160 metres frontage to Grace Campbell Reserve to the south. 39 Rhodes Street is irregular in shape and forms an L shape and has a site area of 8,946m². The site includes the rear portion of 47 Rhodes Street, which was acquired by the developer from the adjoining Hillsdale Bowling Club and has an area of 2,801 m². The lot layout of the site results in 8,946m² of R3 zoned land (39 Rhodes Street) and 2,801m² of B4 zoned land (part of 47 Rhodes Street).

The site has a significant fall from Rhodes Street. The site falls approximately 8.3 metres from the north-eastern corner of the Rhodes Street frontage to the south-western corner of the site adjacent to Grace Campbell Reserve. The significant fall of the site is consistent with the topography of the adjacent Grace Campbell reserve.

39 Rhodes Street is affected by a sewerage easement and drainage easement which are located underneath the bitumen car park on the western end of the site. These easements generally run north to south across the site. The rear portion of 47 Rhodes Street is affected by an easement to drain water which is located towards the centre of the site and runs north to south.

39 Rhodes Street accommodates a 2 storey brick warehouse with at grade car parking at the eastern end, concrete driveway and car parking between the single storey brick factories located at the centre and rear of the site. The portion of 47 Rhodes Street that is included in the site, contains several outbuildings, concrete tank, bitumen car park and a bowling green. The front portion of 47 Rhodes Street contains the Hillsdale Bowling Club. The site is predominately developed with minimal deep soil planting, in the form of small planter beds that contain shrubs and small trees. All existing trees and plants within these planter beds on the site will be removed to facilitate the works.

The surrounding context to the east includes a variety of older of walk-up residential flat buildings ranging in height from between two to three storeys and some more recent residential flat buildings up to 7 storeys in height, which is located at 22 Rhodes Street Hillsdale. There are also detached dwellings located along Rhodes Street. To the west there are warehouse buildings that accommodate light industrial uses, including a Customs Dog enclosure. To the north of the site is the Hillsdale Bowling Club, and other industrial warehouse uses. To the south is Grace Campbell Reserve.

The immediate context is undergoing a transitional shift towards medium density residential and mixed use development. This is reflected by the planning controls under the

Botany Bay LEP 2013. The existing industrial development along Rhodes Street has been rezoned R3 Medium Density residential, B4 Mixed Use and B7 Business Park, which moves away from the current general industrial nature of the area. It is noted that B7 Business Park allows for light industrial uses, however the wider precinct, which includes land to the east and south are primarily zoned for R3 Medium Density residential.

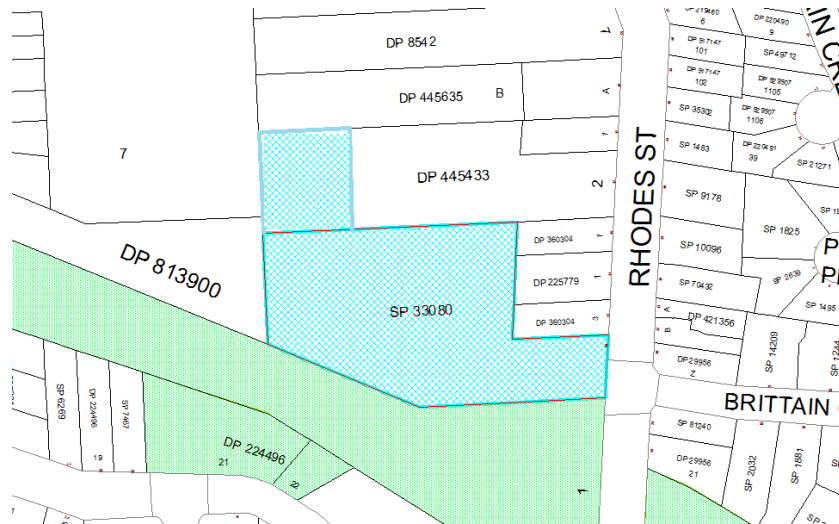


Figure 1 – The subject development site.



Figure 2 – Photos of the site.



Figure 3 – Photos of the site.

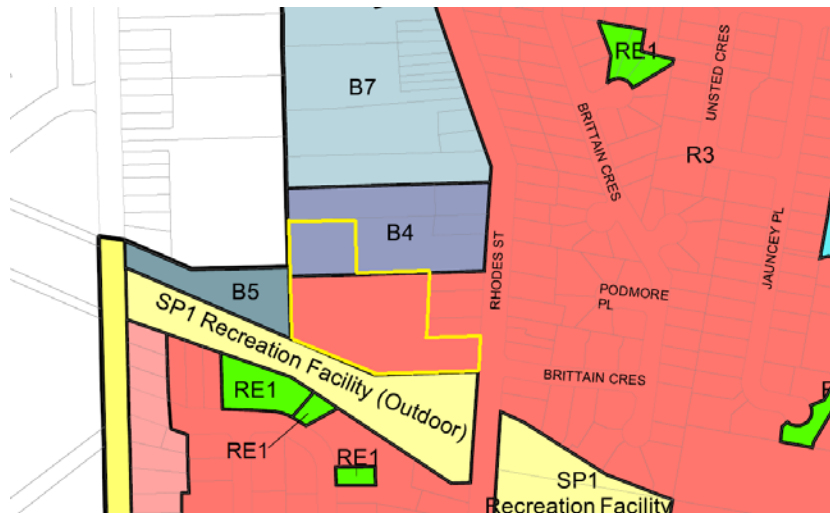


Figure 4 – Zoning Map of the development site.

Site and Development History

The site has a longstanding history for light industrial and warehouse uses. Previous approvals for the site include:

- Council approved Development Consent No.11/061 on 10 October 2011 for a change of use of the existing premises and internal alterations to accommodate a commercial production kitchen and distribution.
- Development Consent No.1802 approved on 5 August 1988 for use of the existing factory unit for the purposes of bulk storage of pianos and furniture.
- Development Consent No.13/220 approved on 14 May 2014, for the Deferred Commencement of the subdivision of 47 Rhodes Street into two (2) Torrens Title lots. The subdivision allows for the creation of a new lot at the rear of 47 Rhodes Street to be consolidated with the adjoining lot at 39 Rhodes Street Hillsdale.

THE PROPOSAL

The development application requests consent for the demolition of existing buildings, excavation and site remediation and construction of three residential flat buildings with a total of 246 apartments, ranging in height between five to nine storeys, construction of a part two/part three level basement car park for 435 vehicles.

The development is designed as three built forms, separated by communal open space that is approximately 2962 m². Each apartment is provided with a private balcony, with some ground floor and top floor apartments benefiting from larger terrace areas. One common room is proposed within Block B for access by all residents.

The development contains two levels of basement car parking under Building A and C and three levels of basement car parking under Building B accommodating parking for up to 435 vehicles. The basements have been positioned generally underneath each of the buildings to enable deep soil landscaping along the western boundary, between Buildings A, B and C and to the eastern side of Building B of the site.

In addition, the applicant has submitted an offer to enter into a Voluntary Planning Agreement (VPA) to carry out public domain works within Grace Campbell Reserve. The proposed landscape works include:

- Removal of existing pathways as necessary and construction of a new 1.8 metre wide pathway.
- Upgrade of landscaping including the installation of new trees, bushes, and ground cover.
- Supply and installation of new bench seating and garbage bins to Council's specification.
- Installation of new fencing and gates.
- Extension of existing vehicular layback at the Denison Street frontage.

The offer is supported by concept landscape plans prepared by Iscape Landscape Architecture. The applicant has provided a Quantity Surveyors certificate that indicates the value of the public domain works to be \$1.1 Million. A condition of consent has been included requiring the developer to enter into a VPA with Council.



Figure 5 – Photomontage of the proposal.

The unit mix of the application is as follows:

	TOTAL	Unit Mix
1 bedroom	83	33.7%
2 bedroom	161	65.4%
3 bedroom	2	Less than 1%
	246	100%

Table 1 – Unit Mix

The development is designed as three separate buildings, labelled Building A, B and C. Each building contains the following apartments:

- Building A – 53 units
- Building B – 113 units
- Building C – 80 units

Nine (9) of the apartments are proposed as adaptable, being 4 x 1 bedroom apartments and 5 x 2 bedroom apartments. An Access Report prepared by Accessibility Solutions Pty Ltd

has been submitted with the application to confirm compliance with the BCA and Botany Bay DCP.

All apartments comply with the minimum unit size, as stipulated in the Botany Bay DCP 2013.

Summary table:

This table contains a summary of the proposed development based a total of 246 dwellings.

Unit No.	No. of bed ro	Internal Apartment Area (sq.m)	Private open space	Storage	Natural cross ventilated	2 Hours solar access between 9am – 3pm
Building A						
Lower ground 2						
A101	1	75	71	8	YES	NO
A102	1	75	61	8	NO	NO
A103	2	100	80	1	NO	NO
A104	2	100	80	1	YES	NO
A105	2	100	53	1	NO	YES
A106	1	75	41	8	NO	YES
A107	1	75	41	8	YES	YES
A108	1	75	49	8	NO	YES
Lower ground 1						
A201	1	75	37	8	YES	YES
A202	1	75	16	8	NO	NO
A203	2	100	20	1	NO	NO
A204	2	100	31	1	YES	YES
A205	2	100	17	1	YES	YES
A206	1	75	14	8	YES	YES
A207	1	75	16	8	YES	YES
A208	2	100	20	1	YES	YES
Ground						
A301	1	75	35	8	YES	NO
A302	1	75	18	8	NO	YES
A303	2	100	22	1	NO	YES
A304	2	100	36	1	YES	YES
A305	2	100	20	1	YES	YES
A306	1	75	16	8	YES	YES
A307	1	75	18	8	YES	YES
A308	2	100	32	1	YES	YES
Level 1						
A401	1	75	35	8	YES	NO
A402	1	75	18	8	NO	YES
A403	2	100	22	1	NO	YES
A404	2	100	36	1	YES	YES
A405	2	100	20	1	YES	YES
A406	1	75	16	8	YES	YES
A407	1	75	18	8	YES	YES
A408	2	100	32	1	YES	YES
Level 2						
A501	1	75	35	8	YES	NO
A502	1	75	18	8	NO	YE
A503	2	10	22	1	NO	YE

A504	2	10	36	1	YES	YE
A505	2	10	20	1	YES	YE
A506	1	75	16	8	YES	YE
A507	1	75	18	8	YES	YE
A508	2	10	32	1	YES	YE
Level 3						
A601	1	75	35	8	YES	NO
A602	1	75	18	8	NO	YES
A603	2	100	22	1	NO	YES
A604	2	100	36	1	YES	YES
A605	2	100	20	1	YES	YES
A606	1	75	16	8	YES	YES
A607	1	75	18	8	YES	YES
A608	2	100	32	1	YES	YES
Level 4						
A701	2	100	36	1	YES	YES
A702	2	100	39	1	YES	YES
A703	2	103	51	1	YES	YES
A704	2	100	63	1	YES	YES
A705	2	100	106	1	YES	YES
Building B						
Lower ground 2						
B101	1	75	34	8	YES	YES
B102	2	100	39	1	NO	NO
B103	2	100	39	1	YES	NO
B104	1	75	30	8	NO	YES
B105	2	100	58	1	YES	NO
Lower ground 1						
B201	2	100	33	1	YES	YES
B202	1	75	18	8	NO	YES
B203	2	100	20	1	NO	YES
B204	2	100	20	1	YES	YES
B205	1	75	14	8	YES	YES
B206	2	100	17	1	YES	YES
B207	2	100	214	1	YES	YES
B208	2	100	123	1	NO	YES
B209	2	100	123	1	NO	YES
B210	2	100	123	1	NO	YES
B211	1	75	103	8	NO	YES
B212	1	75	108	8	NO	YES
Ground						
B301	2	100	38	1	YES	YES
B302	1	75	20	8	NO	YES
B303	2	100	22	1	NO	YES
B304	2	100	22	1	YES	YES
B305	1	75	16	8	YES	YES
B306	2	100	20	1	YES	YES
B307	2	100	31	1	YES	YES
B308	2	100	20	1	NO	YES
B309	2	100	20	1	NO	YES
B310	2	100	20	1	NO	YES
B311	1	75	18	8	NO	YES
B312	1	75	15	8	YES	YES

B313	3	130	120	1	YES	YES
B314	3	130	120	1	YES	YES
Level 1						
B401	2	100	38	1	YES	YES
B402	1	75	20	8	NO	YES
B403	2	100	22	1	NO	YES
B404	2	100	22	1	YES	YES
B405	1	75	16	8	YES	YES
B406	2	100	20	1	YES	YES
B407	2	100	36	1	YES	YES
B408	2	100	22	1	NO	YES
B409	2	100	22	1	NO	YES
B410	2	100	22	1	NO	YES
B411	1	75	20	8	NO	YES
B412	2	100	32	1	YES	YES
B413	1	75	12	8	YES	NO
B414	2	100	15	1	YES	YES
B415	2	100	15	1	YES	YES
B416	1	75	12	8	YES	YES
Level 2						
B501	2	100	38	1	YES	YES
B502	1	75	20	8	NO	YES
B503	2	100	22	1	NO	YES
B504	2	100	22	1	YES	YES
B505	1	75	16	8	YES	YES
B506	2	100	20	1	YES	YES
B507	2	100	36	1	YES	YES
B508	2	100	22	1	NO	YES
B509	2	100	22	1	NO	YES
B510	2	100	22	1	NO	YES
B511	1	75	20	8	NO	YES
B512	2	100	32	1	YES	YES
B513	1	75	12	8	YES	NO
B514	2	100	15	1	YES	YES
B515	2	100	15	1	YES	YES
B516	1	75	12	8	YES	YES
Level 3						
B601	2	100	38	1	YES	YES
B602	1	75	20	8	NO	YES
B603	2	100	22	1	NO	YES
B604	2	100	22	1	YES	YES
B605	1	75	16	8	YES	YES
B606	2	100	20	1	YES	YES
B607	2	100	36	1	YES	YES
B608	2	100	22	1	NO	YES
B609	2	100	22	1	NO	YES
B610	2	100	22	1	NO	YES
B611	1	75	20	8	NO	YES
B612	2	100	32	1	YE	YES
B613	1	75	18	8	YE	YES
B614	1	80	22	8	YE	YES
B615	2	100	15	1	YE	YES
B616	1	75	12	8	YE	YES

Level 4						
B701	2	100	38	1	YES	YES
B702	1	75	20	8	NO	YES
B703	2	100	22	1	NO	YES
B704	2	100	22	1	YES	YES
B705	1	75	16	8	YES	YES
B706	2	100	20	1	YES	YES
B707	2	100	36	1	YES	YES
B708	2	100	22	1	NO	YES
B709	2	100	22	1	NO	YES
B710	2	100	22	1	NO	YES
B711	1	75	20	8	NO	YES
B712	2	100	32	1	YES	YES
B713	2	102	18	1	YES	YES
B714	2	104	48	1	YES	YES
Level 5						
B801	2	100	38	1	YES	YES
B802	1	75	20	8	NO	YES
B803	2	100	22	1	NO	YES
B804	2	100	22	1	YES	YES
B805	1	75	16	8	YES	YES
B806	2	100	20	1	YES	YES
B807	2	100	36	1	YES	YES
B808	2	100	22	1	NO	YES
B809	2	100	22	1	NO	YES
B810	2	100	22	1	NO	YES
B811	1	75	20	8	NO	YES
B812	2	100	32	1	YES	YES
Level 6						
B901	2	100	66	1	YES	YES
B902	2	100	39	1	YES	YES
B903	2	100	39	1	YES	YES
B904	2	100	86	1	YES	YES
B905	2	100	137	1	YES	YES
B906	2	100	36	1	YES	YES
B907	2	100	36	1	YES	YES
B908	2	100	50	1	YES	YES
Building C						
Lower Ground 2						
C101	1	75	78	8	YES	NO
C102	1	75	61	8	NO	NO
C103	2	100	80	1	NO	NO
C104	2	100	80	1	NO	NO
C105	2	100	80	1	NO	NO
C106	2	100	209	1	YE	YE
C107	2	100	189	1	YE	YE
C108	1	75	65	8	NO	YE
C109	2	100	65	1	YE	YE
C110	2	100	65	1	NO	YE
C111	1	75	50	8	NO	YE
C112	1	75	76	8	NO	NO
Lower ground 1						
C201	1	75	24	8	YES	NO
C202	1	75	16	8	NO	YES

C203	2	100	20	1	NO	YES
C204	2	100	20	1	NO	YES
C205	2	100	20	1	NO	YES
C206	2	100	31	1	YES	YES
C207	2	100	17	1	YES	YES
C208	1	75	14	8	YES	YES
C209	2	100	20	1	YES	YES
C210	2	100	20	1	NO	YES
C211	1	75	16	8	NO	YES
C212	2	100	19	1	YES	YES
Ground						
C301	1	75	26	8	YES	NO
C302	1	75	18	8	NO	YES
C303	2	100	22	1	NO	YES
C304	2	100	22	1	NO	YES
C305	2	100	22	1	NO	YES
C306	2	100	36	1	YES	YES
C307	2	100	20	1	YES	YES
C308	1	75	15	8	YES	YES
C309	2	100	22	1	YES	YES
C310	2	100	22	1	NO	YES
C311	1	75	18	8	NO	YES
C312	2	100	20	1	YES	YES
Level 1						
C401	1	75	26	8	YES	NO
C402	1	75	18	8	NO	YES
C403	2	100	22	1	NO	YES
C404	2	100	22	1	NO	YES
C405	2	100	22	1	NO	YES
C406	2	100	36	1	YES	YES
C407	2	100	20	1	YES	YES
C408	1	75	15	8	YES	YES
C409	2	100	22	1	YES	YES
C410	2	100	22	1	NO	YES
C411	1	75	18	8	NO	YES
C412	2	100	20	1	YES	YES
Level 2						
C501	1	75	26	8	YES	NO
C502	1	75	18	8	NO	YES
C503	2	100	22	1	NO	YES
C504	2	100	22	1	NO	YES
C505	2	100	22	1	NO	YES
C506	2	100	36	1	YE	YES
C507	2	100	20	1	YE	YES
C508	1	75	15	8	YE	YES
C509	2	100	22	1	YE	YES
C510	2	100	22	1	NO	YES
C511	1	75	18	8	NO	YES
C512	2	100	20	1	YE	YES
Level 3						
C601	1	75	26	8	YES	NO
C602	1	75	18	8	NO	YES
C603	2	100	22	1	NO	YES
C604	2	100	22	1	NO	YES
C605	2	100	22	1	NO	YES
C606	2	100	36	1	YES	YES
C607	2	100	20	1	YES	YES
C608	1	75	15	8	YES	YES

C609	2	100	22	1	YES	YES
C610	2	100	22	1	NO	YES
C611	1	75	18	8	NO	YES
C612	2	100	20	1	YES	YES
Level 4						
C701	2	100	40	1	YES	YES
C702	2	100	40	1	YES	YES
C703	2	100	40	1	YES	YES
C704	2	100	70	1	YES	YES
C705	2	100	84	1	YES	YES
C706	2	100	40	1	YES	YES
C707	2	100	40	1	YES	YES
C708	1	75	28	8	YES	YES

Table 2 – Apartment Summary

The following table provides a summary of compliance:

Control	Required	Proposal	Complies
FSR	B4 Mixed use: 1:1 (GFA 2,801 m ²) R3 Medium Density Residential: 1.65:1 (GFA 14,760.9 m ²) Total : GFA of 17,561.9 m ²	B4 Mixed use: 1.87:1 or GFA 5,246 m ² R3 Medium Density Residential: 1.87:1 or GFA 16,753 m ² Total: 1.87:1 or GFA 21,999m ² Equivalent to a departure of 4,437.1 m ² or 25.26%.	No – Clause 4.6 Exception submitted
Height	B4 Mixed use: 12 metres R3 Medium Density Residential: 22 metres	B4 Mixed use ▪ Building C - 7 storeys high to a max height of 22.2 metres. R3 Medium Density Residential ▪ Building A - 7 storeys high to a max height of 22.2 metres. ▪ Building B (west): 9 storeys high to a max height of 28.2 m. ▪ Building B (east): 5 storeys to a max height of 16.2 metres.	Building A – No Building B (east) – Yes Building B (west) – No Building C - No Clause 4.6 Exception submitted
Car Parking	459 spaces are required as follows for the amended proposal: • 409 residential; • 50 visitors; • Total: 459	435 spaces are proposed as follows: • 409 residential; • 26 visitors. 9 disabled resident parking spaces and 1 disabled visitor parking space. 12 bicycle spaces	No – A shortfall 24 visitor car parking spaces. Conditioned to comply.
Deep Soil	Minimum 25% of site area (2,936.75 m ²)	28% of site area (3,291 m ²)	Yes
Common open space	Minimum 30% of the site area (3,524 m ²)	25% of the site area (2,962 m ²)	No

Landscaped area	Minimum 35% (5,286.15 m ²)	45.7% of site area (5,573m ²)	Yes
Site Coverage	Maximum 45% (5,286.15 m ²)	37% (4,354 m ²) excluding basement 60% (7,054 m ²) includes basement	Yes

Table 3 – Summary of ComplianceFloor Space Ratio

The maximum FSR permitted by BB LEP 2013 is 1:1 within the B4 Mixed Use zone and 1.65:1 within the R3 Medium Density Residential zone, or a total GFA of 17,561.9 m².

The development application seeks an FSR of 1.87:1 or a total GFA of 21,999m² which does not comply with Clause 4.4 of BBLEP 2013. The extent of the non-compliance is 4437.1 m² or 25.26%. The Applicant has submitted a Clause 4.6 Exception in support of the non-compliance.

Height

The maximum height of buildings permitted under BBLEP 2013 within the B4 Mixed Use land is 12 metres and within the R3 Medium Density Residential land is 22 metres. The development results in maximum height of 28.2 metres within the R3 zoned land and 22.2 metres within the B4 zoned land.

The Applicant has submitted a Clause 4.6 exception to the development standard applying under Clause 4.3.

Notwithstanding the numerical non-compliance, the proposal is considered to retain compliance with the objectives of the standard and results in a public benefit in the form of public domain works to Grace Campbell reserve.

Basement Car Parking

The proposed development requires 459 parking spaces. The basement car park contains 435 spaces that will comprise of 409 resident spaces and 26 visitor spaces. The car parking is provided over two basement levels. The proposal includes 12 bicycle parking spaces. The proposal is deficient by 24 visitor parking spaces. In support of the deficiency, the applicant has submitted a supplementary response by their traffic consultant, Thompson Stanbury & Associates.

Notwithstanding, a condition of consent has been included requiring that compliant visitor parking be provided within the development.

PLANNING CONSIDERATIONS

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

SECTION 79C CONSIDERATIONS

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

- (a) **The provisions of any EPI and DCP and any other matters prescribed by the Regulations. (S.79C(1)(a)(i)and(iii))**

Environmental Planning and Assessment Act 1979 – Integrated Development

The proposal constitutes Integrated Development as it involves the construction of a basement that will transect the water table. The application was referred to the NSW Office of Water for its approval under the *Water Management Act 2000*.

Before granting development consent to an application, the consent authority must, in accordance with the regulations, obtain from each relevant approval body the general terms of any approval proposed to be granted by the approval body in relation to the development. In this regard, the development application was referred to the NSW Office of Water. In a letter dated 11 February 2014, NSW Office of Water has provided its General Terms of Approval for the proposed development, which have been imposed upon the development in the Schedule of Consent Conditions section of this report.

State Environmental Planning Policy (Infrastructure) 2007

Clause 104 - Traffic Generating Development

The proposed development falls within the provisions of Schedule 3 of the SEPP – Traffic Generating Development that is required to be referred to the NSW RMS. The application was accompanied by a Traffic Impact Assessment Report prepared by Thompson Stanbury Associates.

The RMS responded on 12 March 2014, with advisory comments in relation to compliant car parking and that all works associated with the development shall be undertaken at no cost to the RMS.

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

A BASIX Certificate has been submitted with the application. A condition of consent has been included requiring that the proposal complies with the requirements of the BASIX Certificate.

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

The provisions of SEPP No. 55 have been considered in the assessment of the development application. Clause 7 of SEPP No. 55 requires Council to be certain that the site is or can be made suitable for its intended use at the time of determination of an application. The applicant submitted a Phase 2 Environmental Site Assessment prepared by Environmental Investigation Services dated October 2013 and a Remediation Action Plan prepared by Environmental Investigations, dated November 2013.

Council's Environmental Scientist is required to be satisfied that the health and safety of the future residents is ensured as per the requirements of the Environmental Planning and Assessment Regulations 2000.

The Environmental Site Assessment report concludes that there are two confirmed underground storage tanks (UST's) within the site, and the possibility of another two to three unconfirmed USTs. Laboratory analysis of soil samples conclude that there is contaminated soils contained within the land. In response, a Remediation Action Plan has been prepared by the applicant.

Council's Environmental Scientist has reviewed the Phase 2 Environmental Site Assessment report and Remediation Action Plan, and requires that further sampling and testing be undertaken, prior to the commencement of construction works. Specifically, Council's Environmental Scientist requires that additional sampling at depth across the site is required and identification of any further UST be confirmed, prior to the commencement of construction.

The additional sampling and laboratory analysis can be undertaken following demolition of the building to slab level, and any additional analysis must be included in an amended Phase 2 Site Assessment and amended Remedial Action Plan, both of which must be completed prior excavation and construction. Both reports will need to be reviewed to Council's satisfaction, prior to the issue of a Construction Certificate. A condition of consent to this effect has been included in the conditions.

Further Council's Environmental Scientist has confirmed that there is no indication from site history and initial sampling that the site cannot be made suitable for the intended residential use.

Accordingly, subject to the additional sampling, testing and any subsequent amendment of the Phase 2 Environmental Site Assessment report and Remediation Action Plan to the satisfaction of Council officer's, Council officers can be satisfied that the land can be made suitable for the intended residential use.

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

SEPP 65 aims to improve the design quality of residential flat development in New South Wales. The policy recognises the significance of residential flat development and aims to improve the built form and sustainability of development and to satisfy the demand for appropriate development in the social and built form context.

Council's Design Review Panel has considered the proposed development prior to the lodgment of the application on 31 July 2013. The current plans which are the subject of this assessment have addressed the concerns raised by the Design Review Panel and along with other design changes to accommodate the concerns of the Council.

In performing a detailed assessment, it is considered that the proposed development is consistent with the aims and objectives of the policy as the proposal responds to the urban context in terms of scale, bulk, materials, setbacks, security and amenity.

The ten design principles are addressed as follows:

Principle 1: Context

Good design responds to and contributes to its context. Context can be defined as the key natural and built features of an area.

Responding to context involves identifying the desirable elements of a locations current character or, in the case of precincts undergoing transition, the desired future character as stated in planning and design policies. New buildings will thereby contribute to the quality and identity of the area.

The site falls within the Hillsdale Precinct that has been identified for re-development in accordance with the BBDCP 2013.

The surrounding built form context consists of residential development to the east and commercial/light industrial development to the north and west, with public open space to the south. The area is undergoing a transition towards medium density mixed use and residential development, as reflected through by the zoning under the Botany Bay LEP 2013.

The proposed residential flat building is permissible in the zone and is considered to be an appropriate built form response for the site and is reflective of the desired future character for the area.

On this basis, it is considered that the proposed use of the subject site for the purposes of a residential flat development is consistent with its context.

Principle 2: Scale

Good design provides an appropriate scale in terms of the bulk and height that suits the scale of the street and the surrounding buildings.

Establishing an appropriate scale requires a considered response to the scale of existing development. In precincts undergoing a transition, proposed bulk and height needs to achieve the scale identified for the desired future character of an area.

The scale of the proposed development is that of a five to nine storey residential flat building, with the taller built forms contained towards the middle and rear of the site, located away from the street. The development presents to the street as a five storey building. The site slopes away from Rhodes Street, which assists in reducing the overall scale and bulk of the development.

As stated in this report, the immediate context is undergoing a transition towards R3 Medium Density Residential, and therefore, the scale of development in the immediate area is shifting from the current industrial and low scale residential to medium density residential. This is reflected by the recently constructed seven storey residential flat building at 22 Rhodes Street Hillsdale.

Notwithstanding, the proposal results in a height departure under the Botany Bay LEP 2013. An assessment of this height departure is provided in this report. The height departure retains compliance with objectives of the Height of Building standards and generates minimal adverse impact in terms of scale, bulk, and amenity. Therefore, the departure is considered acceptable.

Principle 3: Built Form

Good design achieves an appropriate built form for a site and the building's purpose, in terms of building alignments, proportions, building type and the manipulation of building elements.

Appropriate built form defines the public domain, contributes to the character of streetscapes and parks, including their views and vistas, and provides internal amenity and outlook.

The development form will comprise of three separate residential buildings. The proposal provides a contemporary built form that is articulated through horizontal elements, balcony treatments, and a modern and varied material/finishes selection to provide visual interest and relief.

The overall built form is compatible with the contemporary development in the area and the emerging character of the area as it undergoes redevelopment. The building height and form steps down toward the rear, reducing the visibility of the taller portions of the development as viewed from the streetscape. The proposed modern architectural form will contribute to the public domain as it enhances the streetscape amenity.

Principle 4: Density

Good design has a density appropriate for a site and its context in terms of floor space yields (or number of units or residents).

Appropriate densities are sustainable and consistent with the existing density in an area or, in precincts undergoing a transition, are consistent with the stated desired future density. Sustainable densities respond to the regional context, availability of infrastructure, public transport, community facilities and environmental quality.

The proposed FSR of 1.87:1 or GFA of 21,999 m² does not comply with the maximum FSR permitted for the subject site which is 1:1 within the B4 Mixed Use zone and 1.65:1 within the R3 Medium Density Residential zone or a total GFA of 17,561.9 m². A Clause 4.6 Exception has been submitted in support of the departure. An assessment of the departure is provided in this report.

A total of 246 apartments are proposed. This will comprise of 83 x 1 bedroom apartments, 161 x 2 bedroom apartments and 2 x 3 bedroom apartments. The number of units provided within the building is appropriate given that sufficient landscaping, car parking, private open space, appropriate internal layouts, and setbacks are integrated into the design.

Principle 5: Resource, energy and water efficiency.

Good design makes efficient use of natural resources, energy and water throughout its full life cycle, including construction.

Sustainability is integral to the design process. Aspects include demolition of existing structures, recycling of materials, selection of appropriate and sustainable materials, adaptability and reuse of buildings, layouts and built form, passive solar design principles, efficient appliances and mechanical services, soil zones for vegetation and reuse of water.

The location, orientation and design of the development provides for adequate solar access and cross ventilation to the majority of apartments in accordance with SEPP 65. The Residential Flat Design Code (RFDC) recommends that at least 60% of the proposed units shall achieve flow through ventilation with the proposal indicating 60% of proposed units able to achieve cross flow ventilation.

The RFDC recommends that at least 70% of all proposed units and balconies shall achieve 2 hours of direct sunlight during the period 9.00am and 3.00pm at mid-winter in dense urban areas. The proposal indicates that 89% of proposed units will receive at least 2 hours sunlight during mid-winter to balconies. In addition, the development can meet the requirements of BASIX.

It is noted that all units within the development are designed with open layouts and private balconies. BASIX Certificates have been submitted with the application that demonstrates the development is capable of meeting thermal, energy, and water efficiency targets. Further, a rainwater tank will be constructed for the retention of stormwater to be re-used for irrigation of communal landscape areas.

Principle 6: Landscape

Good design recognises that together landscape and buildings operate as an integrated and sustainable system, resulting in greater aesthetic quality and amenity for both occupants and the adjoining public domain.

Landscape design builds on the existing site's natural and cultural features in responsible and creative ways. It enhances the development's natural environmental performance by co-ordinating water and soil management, solar access, micro-climate, tree canopy and habitat values. It contributes to the positive image and contextual fit of development through respect for streetscape and neighbourhood character, or desired future character.

Landscape design should optimise useability, privacy and social opportunity, equitable access and respect for neighbours' amenity, and provide for practical establishment and long term management.

There are two types of landscape open space provided to the development. This includes communal open space on the ground level and private open space balconies with some apartments benefiting from ground floor terrace areas. A landscape plan has been submitted with the application which demonstrates that a quality landscaped setting for the proposed development will provide a significant level of amenity for future occupants and adjoining properties, with street planting to enhance the streetscape.

In addition, the applicant has proposed to carry out public domain works to Grace Campbell Reserve.

Council's Landscape Officer has reviewed the proposal and provided conditions. The proposed landscape planting is commensurate with the building size and bulk; hence it is considered that the proposal is consistent with this design quality principle.

Principle 7: Amenity

Good design provides amenity through the physical, spatial and environmental quality of a development.

Optimising amenity requires appropriate room dimensions and shapes, access to sunlight, natural ventilation, visual and acoustic privacy, storage, indoor and outdoor space, efficient layouts and service areas, outlook and ease of access for all age groups and degrees of mobility.

All units within the building achieve a satisfactory level of amenity with regards to privacy, ventilation, and access to sunlight. The proposed design provides high levels of internal amenity to future residents, with the units ranging in size and number of bedrooms. The room dimensions and layouts are appropriate for residential use and the maximum separation distance possible for the site has been achieved for visual outlook and privacy.

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

An assessment of acoustic impacts as well as a road traffic noise and aircraft noise assessment have accompanied the application, which details measure to be implemented to mitigate impacts to residents.

The proposal complies with disability access requirements and incorporates sufficient service areas as required. It is considered that the development satisfies the provisions with respect to layout and amenity, and therefore the development is consistent with this principle.

Principle 8: Safety and Security

Good design optimises safety and security, both internal to the development and for the public domain.

This is achieved by maximising overlooking of public and communal spaces while maintaining internal privacy, avoiding dark and non-visible areas, maximising activity on streets, providing clear, safe access points, providing quality public spaces that cater for desired recreational uses, providing lighting appropriate to the location and desired activities, and clear definition between public and private spaces.

The development provides for safe direct pedestrian access from Rhodes Street. Casual surveillance to the public areas along Rhodes Street and Grace Campbell Reserve is available from the street and from upper level apartments. Pedestrian and vehicular entries are clearly separated and well defined. Safe internal access is available from the basement car park directly into the building and the public/private domain is clearly distinguished. The proposal satisfies the requirements of Crime Prevention Through Environmental Design (CPTED) as assessed by NSW Police (Mascot Local Area Command), and conditions have been provided in this regard.

Principle 9: Social Dimensions

Good design responds to the social context and needs of the local community in terms of lifestyles, affordability, and access to social facilities.

New developments should optimise the provision of housing to suit the social mix and needs in the neighbourhood or, in the case of precincts undergoing transition, provide for the desired future community.

New developments should address housing affordability by optimising the provision of economic housing choices and providing a mix of housing types to cater for different budgets and housing needs.

The development provides a balanced mix of apartments to a site located within close proximity to public transport, recreation facilities, and shopping facilities.

The subject site is located in an area identified for medium density residential and mixed development. The applicant proposes a moderate mix of unit types, both in terms of layout and number of bedrooms that are likely to provide an appropriate style of dwelling for a variety of demographics. On this basis, the proposed development is considered to contribute to the social mix of the locality and provide housing that will enhance and provide for the local population.

Principle 10: Aesthetics

Quality aesthetics require the appropriate composition of building elements, textures, materials and colours and reflect the use, internal design and structure of the development. Aesthetics should respond to the environment and context, particularly to desirable elements of the existing streetscape or, in precincts undergoing transition, contribute to the desired future character of the area.

Aesthetically and functionally, the development proposes quality internal and external design, having regard to built form, landscaping, setbacks, internal layouts and provision of underground parking. Particular emphasis has been placed on external appearance to enhance the streetscape and create visual interest in the architecture of the building for all elevations, along with a selection of appropriate finishes. The contemporary design of the building is compatible with the desired future character for the Hillsdale Precinct. It is considered that the proposed materials and finishes and articulation contribute to the overall contemporary style. Therefore the proposed development is considered to be consistent with this design quality principle.

The proposal is thus considered satisfactory in addressing the matters for consideration and is consistent with the aims and objectives of SEPP No 65. The proposed development satisfies with the ten design principles that provide a basis for evaluation of residential buildings within the SEPP.

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:

Principal Provisions of BBLEP 2013	Compliance Yes/No	Comment
Landuse Zone	Yes	The site is zoned part B4 – Mixed Use and part R3 – Medium Density Residential under BBLEP 2013. A residential flat building is permissible in both zones.

Principal Provisions of BBLEP 2013	Compliance Yes/No	Comment
		Further assessment is provided under Note 1.
Is the proposed use/works permitted with development consent?	Yes	The proposed residential flat building is permissible with Council's consent under BB LEP 2013.
Does the proposed use/works meet the objectives of the zone?	Yes Refer to Note 1.	<p>The proposed development is consistent with the following objectives in the BB LEP 2013:</p> <p>R3 Zone Objectives</p> <ul style="list-style-type: none"> • To provide for the housing needs of the community within a medium density residential environment. • To provide a variety of housing types within a medium density residential environment. • To enable other land uses that provide facilities or services to meet the day to day needs of residents. • To encourage development that promotes walking and cycling. <p>B4 Zone Objectives:</p> <ul style="list-style-type: none"> • To provide a mixture of compatible land uses. • To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling. <p>The proposal does not provide for any retail/commercial floor space in the B4 zone. The portion of the site that is zoned B4, is located at the rear of the site and has no direct frontage to Rhodes Street. Any commercial use in this portion of the site is not considered suitable.</p> <p>Further assessment is provided under Note 1.</p>
Does Clause 2.6 apply to the site?	N/A	<p>Clause 2.6 states that land to which this Plan applies may be subdivided, but only with development consent.</p> <p>The proposal does not seek consent for any subdivision.</p>
What is the height of the building? Is the height of the building below	Yes/No – refer to Note 2.	<p>The permitted heights are as follows:</p> <ul style="list-style-type: none"> - B4 Mixed use: 12 metres - R3 Medium Density Residential: 22 metres

Principal Provisions of BBLEP 2013	Compliance Yes/No	Comment
the maximum building height?		<p>The proposal seeks consent for the following heights:</p> <p>B4 Mixed use</p> <ul style="list-style-type: none"> ▪ Building C - 7 storeys high to a max height of 22.2 metres. <p>R3 Medium Density Residential</p> <ul style="list-style-type: none"> ▪ Building A - 7 storeys high to a max height of 22.2 metres. ▪ Building B (west): 9 storeys high to a max height of 28.2 metres. ▪ Building B (east): 5 storeys to a max height of 16.2 metres. <p>Therefore Building B (east) complies with the height control, however Building A, Building B (west) and Building C result in a departure from the numerical height control.</p> <p>It is noted that the departure at Building A is approximately 200mm.</p> <p>In support of the departure, the applicant has submitted a Clause 4.6 variation. The Clause 4.6 Variation establishes that the proposal results in compliance with the objectives of the standard. Further, the proposal results in a public benefit, in the form of public domain works.</p> <p>An assessment in relation to Clause 4.3 and Clause 4.6 is provided at Note 2.</p>
<p>What is the proposed FSR?</p> <p>Does the FSR of the building exceed the maximum FSR?</p>	No – refer to Note 3.	<p>The total site area is 11,747 m² comprising 2,801m² within the B4 zone and 8,946 m² within the R3 zone.</p> <p>The permitted FSR is as follows:</p> <p>R3 Zone: 1.65:1 x 8,946 m² = 14,760.9m²</p> <p>B4 Zone: 1:1 x 2,801m² = 2,801m²</p> <p>Total permitted FSR = 1.495 or 17,561.9m²</p> <p>The proposed FSR is as follows:</p> <p>R3 Zone: 1.87:1 or 16,753 m²</p> <p>B4 Zone: 1.87:1 or 5,246 m²</p> <p>Total proposed FSR = 1.87 or 21,999m²</p> <p>Extent of non-compliance in sqm =</p> <p>21,999m² – 17,561.9m² = 4,437.1 m² /</p>

Principal Provisions of BBLEP 2013	Compliance Yes/No	Comment
		25.26% An assessment under Clause 4.6 is provided at Note 3.
Clause 4.3(2A) and 4.4 (2A) Is the proposed development in a R3/R4 zone? If so does it comply with site of 2000m ² min and maximum height of 22 metres and maximum FSR of 1.5:1?	Yes	The majority of the subject site is located in the R3 zone, and the site is greater than 2,000sqm. Therefore, the R3 portion of the site has a maximum Height control of 22 metres and an FSR control of 1.5:1.
Clause 4.4B Does this clause apply to the site.	Yes Refer to Note 4.	The site is greater than 2,000sqm; is proposed development is identified as Class 5 on the Acid Sulfate Soils map and is likely to be affected by contamination. Accordingly, the FSR within the R3 portion of the site is 1.65:1 FSR, if the development is for the purpose of a residential flat building. The proposal is considered to satisfy the provisions under Clause 4.4B for the additional FSR within the R3 zone. This is further addressed under Note 4.
Is the site within land marked "Area 3" on the FSR Map	N/A	The subject site is not identified as being within "Area 3" on the FSR map.
Is the land affected by road widening?	N/A	The subject site is not affected by road widening on the Land Acquisition Map.
Is the site identified on the Key Sites Map?	N/A	No.
Is the site listed in Schedule 5 as a heritage item or within a Heritage Conservation Area?	N/A	The subject site is not identified as a Heritage Item or within a Heritage Conservation Area.
Development near zone boundaries	N/A	Not applicable to the development.
The following provisions in Part 6 of the LEP apply to the development: 6.1 – Acid Sulphate soils	Yes	Clause 6.1 – Acid Sulfate Soils. The subject site is affected by Class 5 Acid Sulfate Soils. The applicant has submitted a Phase 2 Site Environmental Assessment Report and Remedial Action Plan to address any contaminated soils.
6.2 – Earthworks	Yes	Clause 6.2 – Earthworks. The proposed development seeks to demolish the existing

Principal Provisions of BBLEP 2013	Compliance Yes/No	Comment
6.3 – Stormwater management	Yes	buildings and excavate the subject site for basement car parking. The development application is Integrated Development and as such, the NSW Office of Water has provided its General Terms of Approval for the proposed development. These conditions are included in the draft Schedule of Conditions. The development is considered to be consistent with Clause 6.2 of BBLEP 2013. Clause 6.3 – Stormwater. Council's Engineer raised no objections to the proposal, subject to the imposition of conditions of consent. These conditions have been included in the schedule of conditions.
6.8 – Airspace operations	Yes	Clause 6.8 – Airspace Operations. The application was referred to SACL. SACL raised no objection, subject to the maximum height being 43.6m AHD. The development is considered to be consistent with Clause 6.8 of BBLEP 2013.
6.9 – Development in areas subject to aircraft noise	Yes	Clause 6.9 – Aircraft Noise. The site is not affected by aircraft noise. The development is considered to be consistent with Clause 6.9 of BBLEP 2013. In addition, relevant acoustic conditions have been included to address acoustic impacts to the future occupants.

Table 4: BBLEP 2013 Compliance Table.

Note 1 – B4 Mixed Use zone

The site is partly zoned B4 Mixed use under the Botany Bay LEP 2013. The objectives of the zone are as follows:

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

The portion of the site that is zoned B4 Mixed Use is located towards the rear of the site, behind the Hillsdale Bowling Club and has an area of 2,801 sqm, representing 23.8% of the total site area. This portion of the site has no direct street frontage to Rhodes Street. This is illustrated in the following image:

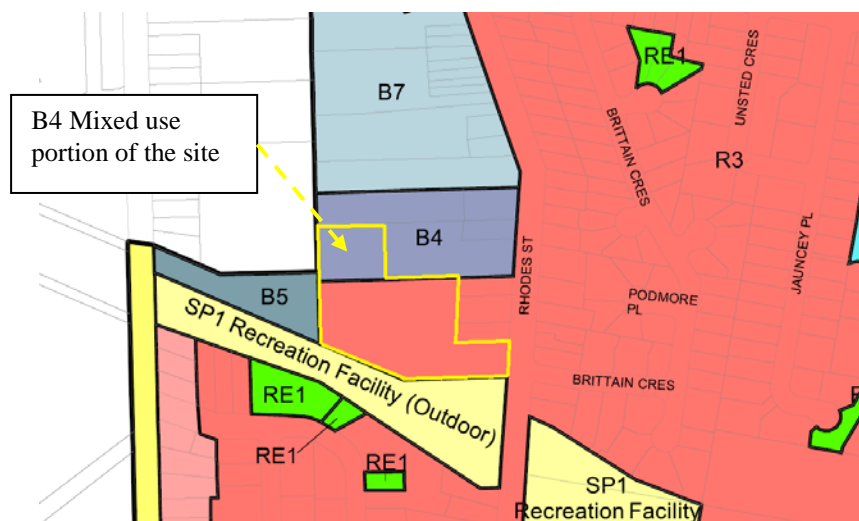


Figure 6 – Zoning Map of the development site.

The design intent of the proposal is to provide a consolidated site for a residential flat development in the form of three separate buildings over the site. The applicant does not propose any commercial development within the B4 Mixed Use zone, and the use that is proposed is a residential flat building, which is permissible with consent in the zone.

The intention of the B4 Mixed Use zone is to provide a mixture of uses which include commercial and residential development. However, it is considered unsuitable that the subject site include any commercial development, given the portion of the site that is zoned B4 Mixed Use is located at the rear of the site and has no street frontage. Any commercial development in this area is considered unviable given it is not visible from the street and has direct street frontage.

Therefore, any commercial development within the B4 Mixed Use portion of this site is not considered compatible, and the proposed residential flat building is supported. Notwithstanding, the adjoining site accommodates the Hillsdale Bowling Club, which provides an active frontage to the street. Any future redevelopment of this site can include a commercial floor area along the Rhodes Street frontage.

Note 2 – Clause 4.3 Height of buildings

The following table outlines the Building Height standard under the Botany Bay LEP 2013, the proposed height and the extent of non-compliance:

Permissible Height	Proposed height	Extent of non-compliance
B4 Mixed use: 12 metres R3 Medium Density Residential: 22 metres	B4 Mixed use <ul style="list-style-type: none"> ▪ Building C – 7 storeys high to a max height of 22.2 metres. R3 Medium Density Residential <ul style="list-style-type: none"> ▪ Building A – 7 storeys high to a max height of 22.2 metres. ▪ Building B (west): 9 storeys high to a max height of 28.2 metres. ▪ Building B (east): 5 storeys to a max height of 16.2 metres. 	B4 Mixed use <ul style="list-style-type: none"> ▪ Building C – 10.2 metres. R3 Medium Density Residential <ul style="list-style-type: none"> ▪ Building A – 0.2 metres. ▪ Building B (west): 6.2m. ▪ Building B (east): complies

The extent of non-compliance ranges between 0.2 metres up to 10.2 metres. It is noted that Building B (east) which is located along the Rhodes Street frontage complies with the height control.

The applicant has submitted a Clause 4.6 Exception in support of the proposed departure. The applicant's justification for the proposed variation states the following:

- *In respect of the building form, the additional height and scale will not be extremely obvious from Rhodes Street due to the fall of land and location of the buildings. The site can sustain additional bulk and scale due to the orientation of each building combined with the topography of the site which is beneficial in reducing the overall scale of the development.*
- *By allowing additional height and FSR the development will provide a much improved amount of deep soil planting throughout the site as currently the site is fully developed with very minimal garden beds.*
- *By allowing flexibility in the application of the height of building and floor space ratio development standards this will create additional public benefits to the surrounding locality due to the offer to enter into a Voluntary Planning Agreement to undertake embellishment on adjacent Grace Campbell Reserve*
- *The development maintains high levels of residential amenity to surrounding properties and the public domain. The development will not unreasonably overshadow Grace Campbell Reserve and properties to the south.*
- *The site area of 11,747m² and fall of the land by over 8m from the Rhodes Street frontage to the south-western corner reduces the impact of the development when viewed from the street. Resulting in the additional building height and scale of the western part of Building B being below a compliant level of 22m if measured at ground level at the Rhodes Street frontage of the property.*
- *The stepping up of the development to the middle of the site minimises the impacts from height and scale to adjoining properties which may redevelop in the future, by concentrating greater development through the centre of the site where it will be partly obscured from Rhodes Street and located towards the low point of the site.*

- *Building A, Building B-East Wing and Building C are either below or extend marginally above the 22m height control. The western portion of Building B exceeds the height control but is appropriately located to minimise bulk and scale when viewed from Rhodes Street. The increased height can be accommodated on this part of the site as discussed above.*
- *The significantly lower height of Building B-East Wing provides a more human scale along Rhodes Street being consistent with existing development and the desired future character of the area. This will also reduce the overall scale and bulk of the development. The buildings are appropriately located.*
- *The layout of the buildings and setbacks ensures that a high level of both visual and aural privacy will be maintained. As well as large tracts of deep soil planting particularly along 3 sides of Building C which will provide an adequate buffer to non-residential uses on the adjoining allotments of land.*
- *The fall of the land away from Rhodes Street minimises the bulk and scale presented to the street. Compliance with the height and FSR is not necessary in this instance as the scale is greatly reduced by the natural topography of the site, the siting of buildings and the lower scale of the eastern-wing of Building B providing an appropriate human scale consistent with the 3 storey RFBs located along Rhodes Street.*
- *The building will have a much improved relationship with the adjoining Grace Campbell Reserve and will activate and significantly improve passive surveillance of this extremely large tract of open space which currently is not afforded.*
- *The proposed height and scale of the development will not be unreasonable when considering the urban design outcome of this architecturally designed development within the surrounding context.*
- *However, it would be unreasonable to not allow a variation in the circumstance where it has been clearly demonstrated that the built form will not result in any unreasonable impacts.*
- *The proximity of the site to public transport, Hillsdale, East Gardens, CBD, shopping, services and open space is highly suitable for a development of this scale and height.*

Comment

The proposal results in two main departures, being 10.2 metres at Building C within the B4 Mixed Use zone and 6.2 metres at Building B (west) being within the R3 Medium Density Residential zone. The 200 mm departure at Building A is considered to have minimal impact and is attributed to the lift overrun structure.

In considering the proposed non-compliance, it is necessary to consider the objectives of the standard, the objectives of the zone, the objectives of the BB LEP 2013 and to consider the impact of the departure and what public benefit, if any, there shall be from the development. This consideration will determine whether or not it is unreasonable or unnecessary for the proposed development to comply with the relevant standard, and whether a compliant development would result in a better planning outcome.

In addition, during the assessment of this application, Council officers held discussions with the applicant regarding the re-distribution of the height as an alternative design solution. This included the re-location of the ninth storey from Building B (west) to Building B (east), which would improve the overall numerical compliance to the height standard for both Building B (west) and Building B (east). This could retain the proposed

height to Building C, which is contained to the rear of the site. However, the applicant did not adopt this suggested amendment.

In terms of public benefit, the applicant has submitted an offer to undertake substantial public domain works to Grace Campbell Reserve. The extent of public domain works has been discussed with Council's Landscape Officer, whom provides in-principle support to the works. Therefore, should the application be approved, it shall deliver a direct tangible public benefit for the locality.

The Clause 4.6 Exception to the height control has been assessed in accordance with relevant case law, being the principles of *Wehbe v Pittwater Council* [2007] NSW LEC 827.

His Honour Preston CJ set out five alternative ways of establishing that compliance is unreasonable or unnecessary in the preparation of a SEPP 1 objection in *Wehbe v Pittwater Council* (2007) NSW LEC 827, albeit only one of these 5 ways needs to apply in order for the objection to be well founded.

The same approach has been held by the Land and Environment Court to be appropriate in assessing a clause 4.6 request (see for example *Geeves V Marrickville Council* (2013) NSW LEC 1117 per Commissioner O'Neill).

(28) 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.***

Comment:

The proposal seeks consent to vary Clause 4.3 Height of Buildings of the Botany Bay LEP 2013. The proposed variations to the height standard are 0.2 metres, 6.2 metres and 10.2 metres.

The height departure is outlined in the following extracts of the plans:

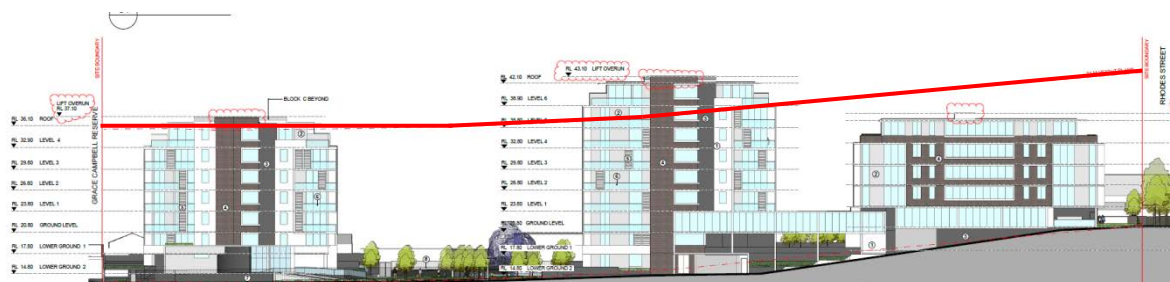


Figure 6: Building B, located in the middle – height control in red



Figure 7: Building C – height control in red

By virtue of this Clause, it is possible to vary the development standard to the extent that is proposed in this application, if the application results in a better outcome for the site, and if the development satisfies the provisions of Clause 4.6. This is addressed further in this assessment.

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

Comment:

The proposal seeks consent to vary Clause 4.3 Height of Buildings of the Botany Bay LEP 2013. The proposed variations to the height standard are 0.2 metres, 6.2 metres and 10.2 metres.

This clause allows the JRPP to grant consent to a numerical departure, if the development complies with the provisions contained in Clause 4.6.

(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.

Comment:

In order to establish that compliance is unreasonable or unnecessary in the circumstances of this case, consideration must be given to relevant planning principles.

Consideration of the five alternative ways of establishing that compliance is unreasonable or unnecessary, as set out in *Wehbe v Pittwater Council* (2007) NSW LEC 827, is addressed below. The 5 alternative criteria are:

a. Establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.

b. Establish that the underlying objective or purpose is not relevant to the

development with the consequence that compliance is unnecessary.

c. Establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable.

d. Establish that 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 unreasonable or unnecessary.

e. Establish that "the zoning of particular land" was "unreasonable or inappropriate" so that "a development standard appropriate for that zoning was also unreasonable or unnecessary as it applied to that land" and that "compliance with the standard in that case would also be unreasonable or unnecessary..."

Consideration of criteria (a) of *Wehbe* is addressed below:

28. Establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.

An assessment in relation to each objective of Clause 4.3 is provided as follows:

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

The proposal facilitates the redevelopment of a former light industrial site, into a residential flat building. The site is a large land holding that is capable of redevelopment. It is considered that the proposed built form has been designed in a coordinated and cohesive manner, and is reflective of the built form that would be reasonably contemplated for the site. The built form is informed by the land use zone, building height and FSR control. The proposal is permissible in the zone and is a land use that is reasonably expected for the site.

The additional height is contained to the centre and rear of the site and follows the topography of the land. Therefore, the bulk and height of the proposal is not immediately visible from the Rhodes Street streetscape, and where it is visible, it is not considered to generate an adverse visual impact. Rhodes Street acts as a buffer between new and future development on former industrial land to the west, and existing older style apartment buildings to the east. Therefore, the interface and transition between new and old development is considered contextually appropriate.

Accordingly, the proposal is considered to sit in a cohesive manner and facilitates a built form that is reasonably contemplated by the planning controls.

(b) to ensure that taller buildings are appropriately located

In principle, the taller built forms are appropriately located toward the centre and rear of the site. The taller buildings are not readily visible from Rhodes Street, and they follow the topography of the land, being located at a low point on the site. Therefore, the positioning of the taller buildings, are considered to be appropriately located.

I to ensure that building height is consistent with the desired future character of an area

An assessment of the desired future character is provided under Note 2 of the BB DCP 2013 assessment contained in this report.

The site is located within the Hillside Precinct and the desired future character of the area is that of a medium to high density residential and mixed use locality, with heights that range from 12 metres to 22 metres. It is acknowledged that the proposal results in a numerical departure from the building height standard. However, this numerical departure does not result in the development being inconsistent with the desired future character.

The assessment under Note 2 of BB DCP 2013 concludes that the development is of a built form that is contemplated for the site, and therefore it is reasonable to establish that the development is of a built form that is reflective of the desired future character of the area.

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

The site and immediate surrounds do not have any significant views or vistas. Therefore, the proposal shall not adversely impact any existing views.

The site is surrounded by light industrial uses, a bowling club and public open space. Therefore, any privacy impacts are considered negligible. Rather, the proposal will provide casual surveillance opportunities of existing open areas.

The positioning of the built form results in a minor amount of shadowing upon a building on Grace Campbell Crescent and a building on Rhodes Street. However, both these buildings are only partially shadowed, and shall retain a minimum of 2 to 3 hours of solar access. The development also results in shadowing of Grace Campbell Reserve, however the extent of shadow is considered acceptable as there are significant portions of Grace Campbell Reserve which remain un-shadowed. Therefore, the extent of shadowing generated by the development is considered reasonable and typical of a medium density residential flat building.

I to ensure that buildings do not adversely affect the streetscape, skyline or landscape when viewed from adjoining roads and other public places such as parks, and community facilities

The front portion of the development (Building B east) is a 5 storey building which complies with the height control and presents to the street as a built form that is consistent with development on the eastern side of Rhodes Street, in terms of streetscape presentation of the built form.

The topography and slope of the land allows for the taller buildings that are located at the centre and rear of the site to not be readily visible from the streetscape. Therefore, the development does not adversely affect the streetscape or skyline.

However, the building will be visible from Grace Campbell Reserve. The buildings have been designed as three separate built forms, with separations between the buildings, including common open space in between the two larger buildings, being Building A and Building B. Building A and Building B have been orientated in a north-south aspect, thereby minimising the building length that is visible from Grace Campbell Reserve. The separation and orientation minimises the building mass and bulk that shall be visible from Grace Campbell Reserve, and therefore are not considered to generate any adverse impact.

Summary

This assessment concludes that, although the proposal departs from the numerical height standard, the proposal retains compliance with the objectives of the building height standard. This satisfies the test under *Wehbe*.

The application satisfies criteria (a) under *Wehbe*. Therefore, consideration of criteria (b) to I are not required.

It is necessary to establish that the proposal complies with the objectives of the standard, before any consideration is given to the offer to carry out public domain works. If the application does not comply with the objectives of the standard, then no weight can be given to the offer to carry out public domain works.

However, this assessment concludes that the application retains compliance with the objectives of the building height standard, and therefore it is considered appropriate to also consider the proposed public domain works in determining whether to support the proposed departure.

The extent of the public domain works are considered substantial and beneficial for the community, as they will improve the use and presentation of the public reserve. Council's landscape officer has reviewed the proposed landscaped design and provides in-principle support to the scope of works.

Therefore, in balancing the extent of the departure, with the impacts it shall generate and the public benefit that will result from the development, it is considered that the public benefit is superior and the impact from the proposal, as outlined in this report, is minimal and acceptable. Further, the proposed height departure retains compliance with the objectives of the building height standard, and can be supported.

(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.

Comment:

This assessment concludes that the development retains compliance with the objectives of the building height standard. Therefore, the non-compliance can be supported.

Consideration has been given to the applicant's Clause 4.6 Exception which details the justification provided for the height departure. In general, Council officers agree that there is planning merit to support the proposed departure.

In addition, consideration is given to the objectives of the zone.

The objectives of the B4 Mixed use are as follows:

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

The objectives of the R3 Medium Density Residential zone are as follows:

- *To provide for the housing needs of the community within a medium density residential environment.*
- *To provide a variety of housing types within a medium density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To encourage development that promotes walking and cycling.*

The proposed residential flat building is permissible in both zones. The proposal is of a land use that would be reasonably be contemplated for the site. In addition, the proposal meets the objectives of both zones, through providing a compatible land use that provides for the housing needs of the community, and provides a variety of housing types. As such, the proposal is considered to be compliant with the objectives of the zone.

Concurrence from the Director-General is not required.

***(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
I any other matters required to be taken into consideration by the Director-General before granting concurrence.***

Comment:

Concurrence from the Director-General is not required for this application. The proposed variation to the height of building development standard does not raise any matters of significance for state or regional planning.

There is no public benefit in maintaining the development standard, but rather there is public benefit in allowing the non-compliance as this will result in public domain works to

Grace Campbell Reserve. This assessment concludes that the proposal retains compliance with the objectives of the standard and the proposal generates an acceptable level of impact that would be reasonably expected from a medium density residential flat building.

The proposal will replace a light industrial land use with an architecturally designed residential building that will provide housing and employment opportunities and improve the streetscape presentation of the site. The redevelopment of the site is in line with the objectives of the BB LEP 2013 and the BB DCP 2013, in addition to Local and State Policies for the delivery of housing.

Therefore despite the numerical departure, there is planning merit to support the proposed height departure.

Note 3 – Clause 4.4 Floor space ratio

The floor space ratios for each land use zone that applies to the development site are summarised below:

Permissible FSR	Proposed FSR
B4 Mixed use: 1:1 (GFA 2,801 m ²)	B4 Mixed use: GFA 5,246 m ²
R3 Medium Density Residential: 1.65:1 (GFA 14,760.9 m ²)	R3 Medium Density Residential: GFA 16,753 m ²
Total : 1.495 (17,561.9 m ²)	1.87:1 (21,999m ²)
	Equivalent to a departure of 4,437.1 m ² or 25.26%

The proposal results in an FSR of 1.87:1 or a gross floor area of 21,999 m². The quantum of additional floor space equates to 4,437.1m² or an additional 25.26% of gross floor area. Specifically, the proposal equates to a departure of 2,445 m² in the B4 Mixed Use zone and 1,992.1 m² in the R3 Medium Density Residential zone.

Accordingly, the proposal exceeds the permissible FSR.

In assessing the proposed departure, consideration has been given to the objectives of the standard, the objectives of the zone, the objectives of the BB LEP 2013 and as well as consideration of SEPP 65 and the Residential Flat Design Code (RFDC). In particular, it is noted that the RFDC encourages flexibility in the application of the FSR if there is a public benefit from a development. In this regard, the applicant has submitted an offer to undertake public domain works to Grace Campbell Reserve. Therefore there is a public benefit that will arise from the proposed development.

It is also accepted that the apartment sizes under the BB DCP 2013 are larger than those required under SEPP 65 and the Residential Flat Design Code (RFDC). The implementation of compliant apartment sizes under the BB DCP 2013 translates to a reduced apartment yield, and in terms of intensity of development results in a reduced population when compared with a development that would have apartment sizes as per the

RFDC. Put simply, a development with apartment sizes under the RFDC would yield a greater number of apartments and therefore generate a greater population increase.

Notwithstanding this public benefit, an assessment in accordance with the provisions of Clause 4.6 is provided below.

The applicant has submitted the following justification for the proposed departure:

- *The applicant has offered to enter into a VPA with Council for the purpose of making contributions for a public purpose towards the future embellishment of the adjoining reserve; that will be resolved further during the development assessment process. The provision of these works will enable the community to benefit from the increased development sought under this development application. This public benefit will not proceed if this development is not supported.*
- *Compliance with the development standards is unreasonable in this instance as the reduced height and FSR will not significantly reduce environmental impacts beyond what is proposed.*
- *The development will present as a more visually appealing and prominent building that will significantly enhance the Hillsdale area and the adjoining Grace Campbell Reserve.*
- *There is no public benefit of maintaining the standard given the sites excellent proximity to public transport, nearby centres, employment, services and public open space.*
- *This site is highly accessible and the increased density and built form is a highly desirable outcome for a site of this size and will not compromise on the amenity of the surrounding properties, as demonstrated above.*
- *The development will be a significant improvement from the current built form which is a traditional brick industrial building which lacks visual appeal and little to no deep soil landscaped areas. The development will respond appropriately to the Rhodes St frontage and the adjoining public reserve with all buildings being highly articulated with high quality architectural finishes.*

The objectives of Clause 4.6 are addressed as follows:

(28) 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.***

Comment:

The proposal seeks to vary the Clause 4.4 Floor Space Ratio of the Botany Bay LEP 2013. The FSR standard is 1.495:1. The proposal seeks consent for an FSR of 1.87:1. This equates to a departure that is equivalent to 4,437.1sqm or 25.26% above the permissible

FSR. For the reasons outlined this assessment, it is considered that flexibility can be applied to this development, as it achieves a better outcome for the site.

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

Comment:

This clause allows Council to grant consent to a numerical departure, if the development complies with the provisions contained in Clause 4.6. This assessment establishes that the development does not comply with Clause 4.6 and therefore cannot be supported.

(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.

Comment:

The applicant has submitted a written request to justify the departure of the development standard.

Consideration of the five alternative ways of establishing that compliance is unreasonable or unnecessary, as set out in *Wehbe v Pittwater Council* (2007) NSW LEC 827, is addressed below. The 5 alternative criteria are:

- a. Establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.*
- b. Establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary.*
- c. Establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable.*
- d. Establish that 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 unreasonable or unnecessary.*
- e. Establish that "the zoning of particular land" was "unreasonable or inappropriate" so that "a development standard appropriate for that zoning was also unreasonable or unnecessary as it applied to that land" and that "compliance with the standard in that case would also be unreasonable or unnecessary..."*

Consideration of criteria (a) of *Wehbe* is addressed below:

- 28. Establish that compliance with the development standard is unreasonable or***

unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.

The objectives of Clause 4.4 Floor Space Ratio, of the Botany Bay LEP 2013, stipulates:

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

The applicant submits that compliance with the maximum FSR development standard is unreasonable and unnecessary in the circumstances of the case as the proposal retains compliance with the objectives of the standard. Furthermore, the applicant submits that the proposal will deliver a significant public benefit with future embellishment of the adjoining Grace Campbell Reserve.

As outlined in this report, the impacts from the proposed development are considered minimal and the built form combined with the proposed landscape treatment and public domain works shall improve the public domain. Council officers agree that the proposal will result in a public benefit.

It is considered that the proposal is generally consistent with the underlying objectives of the standard identified. The proposed development provides a high quality residential development that facilitates the orderly and economic development of land in a manner that is appropriate for the site. The dwelling sizes are compliant with Council's BBDCP 2013. Due to past industrial uses, the land is contaminated and required to be remediated. In addition, the site is affected by high water table issues. These two factors alone contribute to the high cost of development within the precinct.

The rationale and argument presented in the Clause 4.6 variation is generally agreed with and it is recommended that the development standard relating to the maximum FSR for the site as contained within Clauses 4.4 of the BBLEP 2013 should be varied in the circumstances to allow the development to a floor space ratio of 1.87:1.

Public Benefit

It is noted that the criteria listed in *Wehbe* for determining whether compliance is unreasonable or unnecessary are not intended to be exhaustive (*Liberty Investments Pty Ltd v Blacktown City Council* [2009] NSWLEC 7 per Sheahan J).

Consideration is given to the Residential Flat Design Code contained under SEPP 65 – Design Quality of Residential Flat Development, which puts forward an additional ground for considering flexibility in the application of FSR controls, as follows:

Consider varying floor space ratio to provide incentives for housing, sustainability and public benefits including:

- *Affordable housing*
- *Street widening*
- *Open space and parkland dedication*
- *Colonnades, walkways and arcades*
- *Public parking*

As detailed in this report, the proposal results in public domain works to Grace Campbell Reserve which is considered a direct public benefit. Therefore, it is considered that a variation to the FSR is in the public interest.

Accordingly, it is considered that there is sufficient planning merit to justify the FSR non-compliance.

(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.

Comment:

The applicant has submitted a Clause 4.6 Exception that adequately addresses the relevant provisions of Clause 4.6, as well as the objectives of the standard and the objectives of the zone.

As discussed in this Clause 4.6 assessment, it has been established that from an assessment position that the proposed development is appropriate and strict adherence to the development standard in this instance is unreasonable and unnecessary. The departing floor space does not manifest itself in any substantive impact to adjoining properties in terms of residential amenity, overshadowing or visual impact. To strictly apply the development standard, in the absence of any tangible impact, would be unreasonable and without basis.

It is considered that the applicant's Clause 4.6 is well-founded and the departure is in the public interest as it will result in public domain works to Grace Campbell Reserve.

(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

I any other matters required to be taken into consideration by the Director-General before granting concurrence.

Comment:

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

The proposed variation retains compliance with the objectives of the standard and results in an architecturally designed development that provides good residential amenity for future occupants. Furthermore, the application will facilitate the delivery of public benefits in the form of public domain works to Grace Campbell Reserve. On the basis of this assessment, it is concluded that the variation can be supported.

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

The portion of the site zoned R3. Clause 4.4B of the Botany Bay Local Environmental Plan 2013, states:

(28) The objective of this clause is to encourage the development of larger sites (former industrial sites) to facilitate better built form and urban design.

(2) This clause applies to land in Zone R3 Medium Density Residential and Zone R4 High Density Residential.

(3) Despite clause 4.4, development consent may be granted to development for the purposes of multi dwelling housing and residential flat buildings on land to which this clause applies that results in a floor space ratio that does not exceed 1.65:1 if:

(a) the site area is equal to or greater than 2,000 square metres, and

(b) the site area is land identified on the Acid Sulfate Soils Map, and

I the consent authority considers that the development is, or is likely to be, adversely affected by any of the following:

(28) contamination,

(ii) noise (including aircraft, rail or road noise), and

(d) the consent authority is satisfied that:

(i) the development will be compatible with the desired future character in terms of building bulk and scale, and

(ii) the development will contribute to the amenity of the surrounding locality, and

(iii) any consolidation of lots for the purposes of this clause is not likely to result in adjoining lots that cannot be developed in accordance with this Plan.

An assessment against Clause 4.4B is provided below:

Trigger	Comment	Trigger satisfied?
Clause 4.4B (1) The objective of this clause is to encourage the development of larger sites (former industrial sites) to facilitate better built form and urban design.	Noted.	Noted.
(2) This clause applies to land in Zone R3 Medium Density Residential and Zone R4 High Density Residential.	The additional floor space applies to the part of the site zoned R3.	Yes
<p>(3) Despite clause 4.4, development consent may be granted to development for the purposes of multi dwelling housing and residential flat buildings on land to which this clause applies that results in a floor space ratio that does not exceed 1.65:1 if:</p> <p>(a) the site area is equal to or greater than 2,000 square metres, and</p> <p>(b) the site area is land identified on the Acid Sulfate Soils Map, and</p> <p>I the consent authority considers that the development is, or is likely to be, adversely affected by any of the following:</p> <p>(i) contamination,</p> <p>(ii) noise (including aircraft, rail or road noise), and</p> <p>(d) the consent authority is satisfied that:</p> <p>(i) the development will be compatible with the desired future character in terms of building bulk and scale, and</p> <p>(ii) the development will contribute to the amenity of the surrounding locality, and</p> <p>(iii) any consolidation of lots for the purposes of this clause is not likely to result in adjoining lots that cannot be developed in accordance with this Plan.</p>	<p>(a) The site area is 11,747m², being greater than 2,000 m².</p> <p>(b) The site area is land identified on the Acid Sulfate Soils Map</p> <p>I see below</p> <p>(i) The site is likely to be adversely affected by contamination.</p> <p>(ii) The site is not affected by noise.</p> <p>(d)(i) The development is considered to be compatible with the desired future character in terms of building bulk and scale, which is a medium density residential area.</p> <p>(ii) The mass and bulk of the development will not unduly impact the amenity of the surrounding locality.</p> <p>(iii) N/A</p> <p>Discussed further below.</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p> <p>N/A</p> <p>Yes</p> <p>No</p> <p>N/A</p>

Table 5: Clause 4.4B FSR.

Clause 4.4B allows for a maximum FSR 1.65:1 within the R3 zone, where a site is affected by two or more site constraints such as aircraft noise, acid sulphates and contamination.

However the consent authority must be satisfied that:

- i. the development is compatible with the desired future character in terms of bulk and scale,
- ii. the development will contribute to the amenity of the surrounding locality, and

- iii. any consolidation of lots for the purpose of this clause is not likely to result in adjoining lots that cannot be developed in accordance with this Plan.

Council officer's form the view that the proposed development satisfies the requirements under Clause 4.4B, given it is affected by contamination and the development is of a built form that is reflective of the desired future character of the area in terms of bulk and scale. The proposal does not adversely impact on the amenity of the locality and does not result in any isolation of adjoining lots. Therefore, the site benefits from an FSR of 1.65:1 within the R3 Medium Density Residential zone.

Botany Bay Development Control Plan 2013

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 BBDCP 2013 is a translation of DCP 31 and does not contain any savings provisions. It is therefore the only applicable DCP.

The applicable clauses of the DCP are considered in the assessment of the proposal and are addressed below:

Part	Control	Proposed	Complies
3A.2 Parking Provisions	<p>C7 – Bicycle parking equivalent to 10% of the required car parking shall be provided.</p> <p>Table – Specific Parking Requirements for specific land uses.</p> <p>Residential Flat Buildings:</p> <p>1 space for studio or one bedroom units 2 spaces for two (2) or more bedroom units; 1 designated visitor space per 5 dwellings</p>	<p>The development requires a total of 459 spaces as follows:</p> <ul style="list-style-type: none"> 83 x 1 bed: 83 163 x 2/3 bed: 326 50 visitors. <p>Total: 459</p> <p>The proposal results in a total of 435 spaces as follows:</p> <ul style="list-style-type: none"> 409 residential; 26 visitors. <p>The car park includes stacked/tandem parking spaces. The applicant has confirmed that any tandem parking spaces shall be allocated to one apartment. The car park is deficient by 24 visitor parking spaces. A condition of consent has been included requiring compliant visitor car parking to be provided in the form of amended plans to the satisfaction of Council, prior to a Construction Certificate.</p>	<p>No – A shortfall of 24 visitor car parking spaces.</p> <p>Refer to Note 1.</p> <p>Conditioned to comply.</p>
3A.3.1 – Car Park Design	C1 – All off –street parking facilities shall be designed in	The applicant has submitted a traffic report prepared by	Condition to comply

Part	Control	Proposed	Complies
	<p>accordance with current Australian Standards AS2890.1 and AS2890.6 (for people with disabilities). The design of off – street commercial vehicles facilities (including parking) shall be in accordance with AS2890.2.</p>	<p>Thompson Stanbury Associates. The report confirms that all car parking areas have been designed to comply with AS2890.1 and AS2890.6. A condition has been imposed to ensure compliance is met.</p> <p>The development results in a residential land use that moves away from industrial purposes. This will generate a change in traffic demand, with a reduction in the volume of heavy vehicles (trucks) accessing the site. This shift in traffic demand in the area is considered a positive outcome.</p>	
	<p>C2 – Vehicle access points, loading /unloading area and the internal circulation of an off-street parking facility shall be designed in a manner that entry to and exit from the site is made in a forward direction (except for dwelling houses).</p>	<p>Vehicle access to the car parking areas is by way of a two lane access driveway of 6 metres width.</p>	Yes
	<p>C3 – Parking spaces for small cars shall comply with AS2890.1 and only be permitted to the off-street parking facilities that are open to the general public.</p>	<p>No small car parking spaces are proposed or required.</p>	N/A
	<p>C4 – For mixed use development, residential off-street parking facilities shall be separated from the other uses and security roller doors shall be installed to provide security to residents;</p>	<p>Not applicable.</p>	N/A
	<p>C6 – All parking bays shall be clearly designated, sign posted and line marked. Signage and line marking shall comply with AS2890.1. These markings shall be maintained at all times.</p>	<p>Condition for all parking bays to be clearly signposted and marked.</p>	Condition to comply.
	<p>Basement Car Parking C20 – Basement car parking facilities are preferred for large scale development.</p>	<p>Two levels of basement car parking are proposed.</p>	Yes
	<p>C21 - Basement parking areas are to be located directly under building footprints to maximize opportunities for deep soil planting.</p>	<p>Basement parking is located directly beneath the building footprint.</p>	Yes

Part	Control	Proposed	Complies
	<p>C22 - Ventilation grills and screening devices of car park openings are to be integrated into the overall façade and landscape design of the development.</p> <p>C26 – the minimum width of the access driveway shall be 5.5 metres for 6m inside the circulation roadway</p> <p>C34 - All off-street parking facilities shall allocate accessible parking spaces for people with disabilities at the rate in accordance with Part 3C - Access and Mobility.</p> <p>C37 - For residential development, accessible car parking spaces are to be allocated to adaptable unit, or as visitor parking.</p>	<p>The basement car park will be mechanically ventilated.</p> <p>6m width proposed.</p> <p>In accordance with Part 3C and AS2890.6, ten (10) disabled car parking spaces are proposed. 9 disabled are residents spaces and 1 disabled is for visitor parking.</p> <p>Conditioned to comply</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Conditioned to comply</p>
3A.3.2 Bicycle Parking	C1-C5 To comply with AS2890.3 & AUSTROADS.	The proposal includes 12 bicycle spaces within the basement. The Traffic Report prepared by Thompson Stanbury Associates confirms that the bicycle spaces comply with relevant Australian Standards.	Yes
3A.3.4 – On Site Loading and Unloading	<p>C1 - Service bays and parking area for commercial vehicles shall be designed in accordance with AS2890.2 and AUSTROADS guidelines.</p> <p>C2 - The number of service bays shall be provided in accordance with Table 2 . Where calculated provision of servicing bays numbers results in a fraction, the requirements shall be rounded up to the nearest whole number.</p> <p>C3 - For land uses not specifically listed, number of service bays shall be provided b as per the most similar use of equivalent intensity; evidence in support of such provision shall be provided to Council for assessment</p>	<p>No commercial/retail component proposed.</p> <p>The proposal includes a car wash within the basement to service the residents.</p>	Yes
3B Heritage	Development in vicinity of heritage item or HCA	N/A	N/A

Part	Control	Proposed	Complies
4C.6.1 Adaptable Housing	<p>C3 - Disabled access to all common areas shall be provided even if the development has less than five (5) dwellings and does not contain an adaptable dwelling.</p> <p>C 4 - Where a development includes five (5) or more dwellings at least one (1) dwelling must be constructed to meet either Class A or B adaptable housing standards under AS 4299-1995 Adaptable Housing.</p>	The application is supported by an Access Report prepared by Accessibility Solutions Pty Ltd, which confirms that 9 adaptable units are proposed.	Yes
28.3C Access, Mobility & Adaptability	C1-C4 Compliance with DDA, AS4299.	Compliance with Australian Standards demonstrated in Access Report.	Yes
3G.2 Stormwater Management	C1-C6 Comply with Stormwater Management Technical Guidelines; Part 3G.5 Stormwater Quality.	Stormwater plans submitted and reviewed by Council's Development Engineer. Council's Engineer has recommended conditions of consent which have been included in the consent.	Yes
3H Sustainable Design	C1-C6 BASIX; Solar hot water encouraged.	BASIX Certificate has been submitted with the application.	Yes
3I Crime Prevention Safety & Security	Site layout, design & uses; Building design; Landscaping & lighting; Public domain, open space & pathways; Car parking areas; Public Facilities.	Comments received from NSW Police & have been included as conditions of consent.	Yes
3J.2 Aircraft Noise Exposure Forecast	<p>C3 In certain circumstances, and subject to Council discretion, Council may grant consent to development where the building site has been classified as "unacceptable" under Table 2.1 of AS2021-2000. For Council to be able to consider such applications for development, the following factors must be complied with:</p> <p>(i) Submission of specialist acoustic advice by an accredited acoustical consultant certifying full compliance with the requirements of Table 3.3 of AS2021-2000;</p> <p>(ii) Submission of plans and documentation indicating the subject premises will be fully air-conditioned or</p>	The site is not affected by Aircraft noise exposure.	N/A

Part	Control	Proposed	Complies
	mechanically ventilated in accordance with Council guidelines; and (iii) Any additional information considered necessary by Council to enable it to make a decision.		
3J OLS	Aircraft height limits in prescribed zones.	SACL comments received – no objection.	Yes
3K Contamination	Consider SEPP 55 & Contaminated Land Management Act 1997.	An assessment under SEPP No 55 has been provided in this report. The applicant has submitted a Phase 2 Environmental Site Assessment Report and a Remediation Action Plan. Council's Environmental Scientist has reviewed the application and determined that the site can be made suitable for the proposed use, subject to further testing prior to the issue of a Construction Certificate. Conditions to this effect have been included in the consent.	Yes
3L Landscaping	General Requirements; Planting design & species; Landscaping in car parks; Green roofs.	The application was referred to Council's landscape architect, whom supports the application, subject to conditions of consent. These conditions have been included in the report.	Yes
3N Waste Minimisation & Management	General Requirements; Residential Development; Mixed Use Development.	A Waste Management Plan has been prepared by Elephant's Foot Recycling Solutions and is submitted with the application.	Yes
4C Residential Flat Buildings	Only applicable to development in R3 & R4 zones. However Part 8 of DCP is also applicable.	See below	
4C.2.1 Site Analysis	Site Analysis Plan required.	Site Analysis Plan submitted & SEPP 65 assessment undertaken.	Yes
4C.2.2 Local Character – Botany	Desired Future Character Statement; Part 8-Character	An assessment in relation to the desired future character	Yes – refer to note 2.

Part	Control	Proposed	Complies
	Precincts	statement and Part 8 Character Precincts is provided at Note 3. The proposed built form does not comply with the numerical floor space ratio and height of building standards under the BB LEP 2013. However, the applicant has submitted a Clause 4.6 Exception in response to this departure.	
4C.2.3 Streetscape Presentation	Compatible with bulk & scale of adjoining residential developments; Max building length 24m; Walls >12m must be articulated; Street presentation.	The proposal presents to the street as a five storey residential flat building, with the taller buildings contained towards the centre and rear of the site. An assessment in relation to character and streetscape presentation is provided at Note 3.	Yes – refer to note 2.
4C.2.4 Height	Comply with cl.4.3 of BBLEP 2013; Buildings to respond to character of neighbourhood; Height & bulk must be distributed to ensure no significant loss of amenity to adjacent sites.	The proposed height is non-compliant. The applicant has submitted a Clause 4.6 in support of the departure. An assessment under the BBLEP 2013 concludes that the departure has planning merit and can be supported.	No Discussion provided within BBLEP 2013.
4C.2.5 Floor Space Ratio	Compliance with cl.4.4, 4.4A & 4.4B of BBLEP 2013. 1:1 for B4 zone 1.65:1 for R3 zone	The proposed FSR is non-compliant. The applicant has submitted a Clause 4.6 in support of the departure. An assessment under the BBLEP 2013 concludes that the departure has planning merit and can be supported.	No Discussion provided within BBLEP 2013.
4C.2.6 Site Coverage	Max site cover 45%	Site Cover = 37% excluding basement and 60% including basement	Yes
4C.2.7 Landscaped Area and Deep Soil Planting	Landscaped area = 35% (min) Unbuilt upon area = max of 20% Deep soil = 25% (50% at rear; 30%	Currently, the site has no landscaping or deep soil. The proposal results in a general increase in landscaping and deep soil, as follows:	Yes

Part	Control	Proposed	Complies
	<p>within front setback; 2m wide landscaping along one side boundary).</p> <p>Basement car parks, where permitted, must not extend to the full width of a site and excavation for any associated garages, car parking, plant rooms or ancillary storage must not exceed 65% of the site area (which equates to maximum site cover + unbuilt upon area).</p>	<p>Landscaped Area = 45.7% of site area or 5,573m²</p> <p>Unbuilt upon area = 15.5% or 1820 m²</p> <p>Deep soil = 28% of site area or 3,291 m²</p> <p>Basement occupies 60% of site area.</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p>
4C.2.8 Private & Communal Open Space	<p>Studio & 1bed = 12m² 2 bed = 15m² 3 bed = 19m² 4 bed = 24m²</p> <p>Min depth of balconies = 3m (or adequate useable space).</p> <p>Min. communal open space = 30% >3hrs sunlight on 21 June</p>	<p>Each apartment is provided with a balcony that complies with the minimum balcony size and minimum depth.</p> <p>The proposal incorporates 2,962 m² of communal open space (25% site area) which does not comply with the numerical requirement. However the site is located adjacent to public open space which provides a suitable alternate recreational area for occupants. The departure of 5% is considered acceptable in this instance.</p>	<p>Yes</p> <p>No</p>
4C.2.9 Setbacks	<p>Comply with SEPP 65; Front & side setbacks to provide deep soil; Minimise bulk & scale; Provide adequate exposure to sunlight; Front setback consistent with existing; 3m side setback (min); Basement car parking min 1.5m from side boundaries.</p>	<p>The proposal results in the following setbacks:</p> <p>Building A</p> <ul style="list-style-type: none"> - Western (rear) = 6m - South-western (side) = 6m <p>Building B – Eastern Wing</p> <ul style="list-style-type: none"> - Southern (side) = 9m - Eastern (front) = 5.68m - Northern (side) = 3m <p>Building B – Western Part</p> <ul style="list-style-type: none"> - Southern (side) = 9.69m - Eastern (side) = 11.02m - Northern (side) = 6m <p>Building C</p> <ul style="list-style-type: none"> - Eastern (side) = 6.26m - Northern (side) = 6m - Western (side) = 6m <p>However the basement car park encroaches within the setback to the south-western</p>	<p>Yes,</p>

Part	Control	Proposed	Complies
		<p>boundary of Building A and the northern boundary of Building B.</p> <p>The application provides for a total of 3,291sqm of deep soil, within the setback areas.</p>	
4C.2.10 Through Site Links & View Corridors	Existing view retained; View corridors integrated.	The proposal does not impact on any existing views. A though site link is not required, however the proposal provides direct access to Grace Campbell Reserve.	Yes
4C.3.1 Design Excellence	Excellence in urban design; Design principles; Daylight & ventilation to dwellings.	The proposed residential flat building is considered to be well articulated and designed. The apartments are considered to have a high level of residential amenity in the form of solar access, cross ventilation, private open space and services including car parking, storage and common areas. The proposal is considered to be an acceptable planning response for the site.	Yes
4C.3.2 Corner Buildings	To align & reflect corner conditions; Reflect architecture & street characteristics.	The site is not a corner building.	N/A
4C.3.3 Building Entries	Compliance with SEPP 65 for entry & pedestrian access; shelter & well-lit; pedestrian access separated from car parks.	RFDC assessment provided. Building entry easily identifiable. Lift lobbies can accommodate seating.	Yes
4C.3.6 Materials & Finishes	Schedule of finishes; Consistent with Part 8; long-wearing materials.	The applicant has provided a schedule of finishes, which are considered to be acceptable for the site.	Yes
4C.5.1 Dwelling Mix, room size & layout	<p>Studio – 60m²</p> <p>1 bed – 75m²</p> <p>2 bed – 100m²</p> <p>3 bed – 130m²</p> <p>4 bed – 160m²</p> <p>25% max no. of 1bed units.</p>	<p>Each apartment complies with the minimum apartment size.</p> <p>A total of 33% of 1 bedroom apartments have been proposed.</p>	<p>Yes</p> <p>No Refer to Note 3</p>

Part	Control	Proposed	Complies
4C.5.2 Internal Circulation	2m min. corridors; Articulate long corridors.	The proposed corridors range in size between 1.6 metres at a minimum, and up to 3 metres at a maximum. The proposed corridor sizes are considered acceptable.	No
4C.5.3 Building Depth	Max depth = 18m Max habitable room = 10m Single aspect units = 8m Min apartment width = 4m	The following maximum building depths are proposed: Building A = 27.6m Building B West = 27.6m Building B east = 13.4m Building C = 27.6m An assessment in relation to the building depth is provided at Note 4.	No – Refer to Note 4
4C.5.4 Balconies in RFBs	Differing styles; Min. 12m ² ; Provides for privacy & visual surveillance; Not continuous across facade.	Each apartment has a balcony, with balcony sizes varying in depth and form and size. Balconies have been positioned to be accessed from living rooms.	Yes
4C.5.5 Ground Floor Apartment in Residential Flat Developments	Active street edge; Individual entries; Privacy to be increased by providing gardens & terraces as a transition zone.	The ground floor apartments that face the internal courtyard have been provided with individual entries via a private courtyard that includes planter landscaping. The ground floor apartments that face the Rhodes Street streetscape have a terrace area with landscaping that addresses the street.	Yes
4C.5.6 Natural Ventilation	Comply with SEPP 65 & RFDC.	The orientation and positioning of apartments allows for 60% to be naturally cross ventilated.	Yes
4C.5.7 Ceiling heights	3m for shops; 2.7m for habitable units.	All habitable rooms within the apartments have a ceiling height of 2.7 metres.	Yes
4C.5.8 Solar Access	SEPP 65 & RFDC compliance; 70% of units receive 3 hrs direct	The proposal results in 89% of the apartments receiving 2	Yes

Part	Control	Proposed	Complies
	sunlight on June 21; Minimal impact upon adjoining properties.	<p>hours of solar access between 9am to 3pm in mid-winter.</p> <p>The development will overshadow a residential flat building located on Grace Campbell Crescent, between 9am to approx. 11am. However from 11am onwards there shall be in excess of 3 hours of solar access.</p>	
4C.5.9 Visual Privacy	SEPP 65 & RFDC; No direct views into windows of other dwellings; Attic windows shall not overlook.	<p>The orientation and separation between the buildings allow for adequate privacy between apartments. The development will provide casual surveillance opportunities of the streetscape and public domain areas. The windows have been positioned to mitigate direct overlooking of adjoining properties.</p>	Yes
4C.5.10 Building Separation	SEPP 65 & RFDC; and Table 5 of DCP.	<p>Separation distances between the buildings comply up to 12 metres.</p> <p>The separation distances are non-compliant from 12 metres onwards. An assessment is provided at Note 6.</p>	No – Refer to Note 6.
4C.5.12 Acoustic Privacy	Table 6 of DCP; Multiple dwellings to be designed & constructed to comply with BCA.	<p>The applicant has submitted an Environmental Acoustic Report prepared by Day Design.</p> <p>At Council's request, the applicant undertook additional acoustic testing regarding the impact from the nearby industrial area to the upper level apartments. A BCA Report has been submitted which indicates that the development is capable of compliance with the acoustic requirements of the BCA.</p> <p>Subject to the implementation of the recommendations contained</p>	Yes

Part	Control	Proposed	Complies
		in the acoustic report/s, the proposal is capable of complying with the acoustic requirements of the DCP and BCA. A condition of consent has been included requiring compliance with the acoustic report/s.	
4C.5.14 Storage	Studio – 6m ² 1 bed – 8m ² 2 bed – 10m ² 3+ bed – 12m ²	Storage has been provided to each residential apartment and complies with the minimum size requirement.	Yes
4C.5.15 Site Facilities	1 lift per 40 units; Garbage storage; Sunlight available to clothes drying area; Undergrounding of major infrastructure.	5 elevators are provided to service the development. The requirement under the DCP is 6 elevators. Each building is serviced by a garbage room and garbage chute.	No
4C.5.16 Safety & Security	Comply with Part 3I Crime Prevention, Safety & Security; SEPP 65 & RFDC in terms of site amenity & safety.	DA considered by NSW Police in terms of CPTED design principles & appropriately conditioned.	Yes
4C.5.17 Car Parking & Vehicle Access	Pat 3A compliance; Basement car parking <1.2m out of ground.	The basement car park is primarily located below natural ground level. A traffic report is submitted with the application and confirms that car parking is capable of complying with the applicable Australian Standards.	N/A
4C.6.1 Adaptable Housing	Part 3C; Provide all access to common areas in accordance with DDA & BCA; Compliance with adaptable housing standards AS4299-1995.	The proposal includes 9 adaptable apartments. An access report has been prepared by Accessibility Solutions and confirms that the development is compliant with the BCA and relevant Australian Standards.	Yes
8.2 Hillsdale Character Precinct	Existing Local Character; Desired Future Character.	An assessment in relation to the desired future character of the local area is provided under Note 2.	Yes Refer to Note 2

Table 6: DCP 2013 Compliance Table


Note 1 - Visitor Parking

The BB DCP 2013 applies a visitor parking rate of 1 space per 5 dwellings. As detailed in this report, the proposal results in a shortfall of 24 visitor car parking spaces. Given the large site area and the level of excavation proposed as part of the development, it is considered unreasonable that the development not comply with the required visitor car parking spaces.

Council officers consider that any development of this size must provide compliant car parking. Therefore, a condition of consent has been included that prior to the issue of a Construction Certificate, the applicant is to submit an amended architectural plan that demonstrates DCP compliant visitor car parking.

Note 2 – Local Character and streetscape presentation




The site is located within the Hillside Character Precinct. DCP Part 8.2 details the desired future character for development in the area. The following table provides an assessment of the desired future character:


	Control	Compliance
Function & diversity	<i>Enhance the public domain and streetscapes within the Precinct.</i>	<p>Block B (East) which fronts Rhodes Street is 5 storeys in height and present to the street as a similar built form in terms of height and scale to the development located across the Road on Rhodes Street. (see photo below).</p>  <p>In addition, the proposal includes landscaping along the Rhodes Street frontage and public domain works to Grace Campbell Reserve. Therefore, the development is considered to enhance the public domain and the streetscape.</p>
	<i>Encourage and enhance connections of public domain and open space areas with recreational facilities</i>	<p>The proposal includes a pedestrian link from the common open space to the Grace Campbell Reserve.</p> <p>This provides a direct link to</p>

	Control	Compliance
		recreational facilities.
	<i>Encourage the amalgamation and redevelopment of older housing stock in the Precinct.</i>	The development results in a consolidation of two lots that have formerly been utilised for non-residential uses.
	<i>Enhance the presentation to the street of older housing stock in the Precinct through redevelopment to improve the streetscape amenity for residents.</i>	The development is not seeking to redevelop older housing stock – N/A to the application.
	<i>Upgrade older housing stock to meet the fire safety requirements only if redevelopment of the housing stock cannot occur. Upgrading is also to include new kitchens, bathrooms, and laundries as well as to the external part of the building, including balustrades, guttering and downpipes etc</i>	The development is not seeking to redevelop older housing stock – N/A to the application.
	<i>Encourage and promote retail activities in the Hillsdale Local Centre and along Bunnerong Road and Flint Street (refer to Part 5.2.2.9 - Hillsdale Local Centre).</i>	N/A to the application. An assessment in relation to development within the B4 Mixed Use zone has been provided in the assessment under the BB LEP 2013.
	<i>Encourage business development at the corner of Denison Street & Smith Street and business park development along the western side of Rhodes Street.</i>	An assessment in relation to development within the B4 Mixed Use zone has been provided in the assessment under the BB LEP 2013.

	Control	Compliance
	<i>Encourage a mixed use development at 47 Rhodes Street, being the Hillsdale Bowling Club site.</i>	<p>The site is adjacent to 47 Rhodes Street. The future development of the Hillsdale Bowling Club can include a mixed use development.</p> <p>The proposal is permissible in the zone and is considered to be compliant with the objectives of the B4 Mixed Use zone and the R3 Medium Density Residential zone.</p>
	<i>Ensure that development along the western side of Rhodes Street considers the overland flow path that runs from Smith Street between Denison Street and Rhodes Street which may constrain development in its path.</i>	The application has been assessed by Council's Engineer, which concludes that the proposed flood measures are acceptable.
Form, Massing, Scale and Streetscape	<i>Encourage development to follow the topography of the land.</i>	The residential flat buildings have been designed to follow the sloping topography of the land. The three buildings are positioned on a low point on the site, which minimises the view of the building from the streetscape.
	<i>Promote multi unit housing development on the western side of Nilson Avenue with 2 storeys plus attic (within the 9m height limit).</i>	N/A to this site.
	<i>Contain residential flat buildings within the R3 Medium Density Zone within the Precinct with a maximum 4 storeys (12 metres) height limit unless the site area is over 2000m² which then permits a FSR of 1.5:1 and heights of 2 to 6 storeys (a maximum</i>	<p>Building B (East) which fronts Rhodes Street complies with the height control and is of a similar height and scale to adjoining development.</p> <p>However, it is noted that Building C and Building B (west) results in a departure from the height being 10.3 metres and 6.3 metres respectively. Building A results in a nominal</p>

	Control	Compliance
	<i>height of 22 metres).</i>	200mm departure. An assessment in relation to this departure has been provided under the BB LEP 2013. In summary, the departure does not generate adverse impacts on adjoining properties or the locality, and the height departure retains compliance with the objectives of the standard.
	<i>Encourage and promote low density residential accommodation in the form of detached/attached dwellings on the eastern side of Denison Street south of Rhodes Street Reserve with a 2 storey (8.5 metres) height limit.</i>	N/A to this site.
	<i>Promote site access and parking facilities that do not dominate the streetscape.</i>	Car parking is located within the basement. A condition has been included requiring compliant visitor car parking to be provided.
	<i>Encourage new development or alterations and additions to existing development which complements the height and architectural style found in the immediate vicinity, particularly where there is an established character.</i>	There is no established residential character on the western side of Rhodes Street, apart from industrial uses. Therefore, the proposal will establish the residential character for the western side of Rhodes Street. The streetscape presentation of the building is considered complimentary and consistent with adjoining development, as shown on the images below. The building is capable of sitting harmoniously with adjoining development to the east along Rhodes Street.

	Control	Compliance
		 
	<p><i>Maintain roof forms which are characteristic of the prevailing designs within the street.</i></p>	<p>Contemporary development in the area have been designed with a flat roof (refer to the photos below). The proposed roof design is considered typical of contemporary architectural design and is supported:</p> 

	Control	Compliance
		
Setbacks	<i>Retain front setbacks which are consistent within a street and promote landscaping to soften the built form.</i>	The proposed front setback is compliant with the requirements of the DCP.
	<i>Retain side setbacks where they are consistent within a street.</i>	The proposed side setbacks are generally compliant, and include landscaping and planter beds where possible.
Landscaping	<i>Encourage landscaping within the front and side setback to soften the built form particularly in high density terraces, units and residential flat buildings.</i>	Council's Landscape architect has provided in-principle support to the proposed landscaping treatments and public domain work.
	<i>Promote landscaping in rear private open space areas to provide privacy to adjoining properties.</i>	The proposed landscaping design includes a central communal open space area with deep soil. Council's landscape officer supports the proposed landscape treatments.
	<i>Maintain street trees.</i>	The proposal includes new public domain works along Grace Campbell Reserve, which includes new plantings.
Heritage	<i>Promote sympathetic urban design and uses that protect and enhance the character and the significance of Heritage Items.</i>	There are no heritage items involved.

	Control	Compliance
	<i>Conserve and enhance Heritage Items within the Precinct</i>	There are no heritage items involved.
Fencing	<i>Encourage and retain fencing character, styles and height for each street which may in some circumstances include no fences.</i>	The proposal include new landscaping and a front fence along the Rhodes Street frontage.
Noise	<i>Ensure development along Denison Street, Beauchamp Road and Bunnerong Road is designed to minimise traffic noise transmission.</i>	This control is not applicable as the site does not front Denison Street, Beauchamp Road and Bunnerong Road.
	<i>Where the height of the proposed development is higher than the existing height of the localised building stock (and the proposed development has a direct line of sight to the seaport and/or the airport) an acoustical assessment by an accredited acoustical consultant is required which takes into account noise from the operations of Port Botany and Sydney Kingsford Smith Airport.</i>	As the development is higher than surrounding building stock, the applicant was requested to provide additional acoustic assessment to the upper level apartments from adjoining industrial sources. The applicant has submitted this additional assessment and this has been included as a condition of consent.
Subdivision	<i>Retain the residential rectilinear grid pattern within the Precinct.</i>	The site consolidation is considered acceptable.
	<i>Encourage the amalgamations of allotments for the redevelopment of existing residential flat buildings.</i>	N/A to this application.

	Control	Compliance
Public Domain and Environment	<i>Promote pedestrian links in and around the Hillsdale Local Centre (refer to Part 5.2.2.9 - Hillsdale Local Centre).</i>	The application includes a pedestrian link from communal areas within the development to Grace Campbell Reserve.
	<i>Encourage pedestrian links, linking the pocket park open space system and street system within the Precinct.</i>	As above
	<i>Provide sufficient open space to meet a variety of recreational needs.</i>	The development includes a large communal open space area.
	<i>Encourage landscaping and vegetation planting within both the public and private domain of the Precinct.</i>	The application is supported in-principle by Council's Landscape Architect.
	<i>Preserve residential amenity by reducing impacts from non-residential uses such as traffic, noise and air pollution</i>	The applicant has submitted additional acoustic assessment and this has been included as a condition of consent.
Solar Access	<i>Encourage buildings to maximise solar access to surrounding residential properties and to public and private open spaces.</i>	The application results in some overshadowing of the public open space at Grace Campbell Reserve. However, the extent of shadowing is considered acceptable, given there shall be substantially greater areas of un-shadowed portions of the Reserve. Therefore, the level of shadowing is considered acceptable in this context.
	<i>Preserve solar access to adjoining properties.</i>	As detailed in this report, the proposal results in minor shadow of two residential buildings. The two affected residential buildings shall retain a minimum of 2-3 hours of solar access in mid-winter. Therefore, the shadowing is compliant.
Traffic and Access	<i>Encourage new</i>	The applicant has submitted a Traffic

	Control	Compliance
	<i>development to have a minimal impact on traffic flow and demand for on street parking spaces.</i>	Impact Assessment which details that the proposal shall not have a significant impact on traffic flow. The development results in a residential land use that moves away from industrial purposes. This will generate a change in traffic demand, with a reduction in the volume of heavy vehicles (trucks) accessing the site. This shift in traffic demand in the area is considered a positive outcome.
	<i>Encourage development to provide adequate on-site parking to assist in reducing traffic congestion on local road networks.</i>	The development results in a shortfall of 24 visitor car parking spaces. A condition of consent has been included requiring that compliant car parking be provided within the basement.
	<i>Discourage through traffic throughout the Precinct by the means of traffic calming measures.</i>	This matter is not required to be addressed by this application, but rather through a precinct wide study of existing traffic calming measures.
	<i>Promote walking and cycling to provide a safe pedestrian environment in the Hillsdale Local Centre.</i>	Pedestrians links have been provided within the development and bicycle storage is included to encourage walking and cycling.
Views	<i>Retain existing views.</i>	There are minimal existing views and vistas in the immediate area.
Risk		The applicant has submitted a Risk Assessment with the application. The Risk Assessment has been referred to the Department of Planning & Environment, whom advised that the risk criteria due to exposure from incidents at Botany Industrial park are satisfied, however requested that additional risk control measures be implemented to reduce risk. The applicant has been requested to respond to this issue, and this will be

	Control	Compliance
		addressed in an Addendum Report to the JRPP prior to the Panel Meeting on 27 August 2014, together with the views of Council's independent risk consultant.

In considering the compatibility of the development with the desired future character of the area, reference is made to the Planning Principles of *Project Venture Developments Pty Ltd v Pittwater Council (2005) NSWLEC 19*, which establishes that for a development to be compatible with the local area it does not need to be the 'same as other development, but rather being capable of existing in harmony with other development' meaning, compatibility does not mean replication.

The planning principles of Project Venture state that compatible development means being 'capable of existing together in harmony' and 'that it is generally accepted that buildings can exist together in harmony without having the same density, scale or appearance'.

Former Senior Commissioner Roseth, establishes in *Project Venture Developments Pty Ltd v Pittwater Council (2005) NSWLEC 19* that the "most important contributor to urban character is the relationship of built form to surrounding space, a relationship that is created by building height, setbacks and landscaping".

The immediate area contains a variety of land uses, including single dwellings, residential flat buildings and light-industrial uses, all of varying architectural styles that reflect the various stages of settlement and growth within the area. However, the fundamental change is that the area is undergoing a shift towards medium density residential and mixed use development. Therefore, the existing character will be outdated by future development.

The proposal results in a streetscape height that is not dissimilar to the height of development on the eastern side of Rhodes Street. In addition the proposed setbacks are consistent with similar residential flat development in the area. Therefore, the relationship of the built form with the streetscape is considered acceptable.

The proposal provides suitable landscaping within the site and includes public domain works along Grace Campbell Reserve. On this basis, the level of landscaping within the site and the immediate surrounds is considered to be a positive relationship that assists in the contextual fit of the buildings.

As outlined in this report, the orientation and positioning of the buildings in a north-south aspect generate minimal adverse impact and are consistent with the type of intensity that would be anticipated from a medium density residential development.

Therefore, it is considered that the proposal is of a bulk, scale and height that is capable of sitting harmoniously with adjoining development, and is consistent with the desired future character of the area.

Note 3 – Apartment mix

The application results in 34% of the total number of apartments being 1 bedroom apartments, which exceeds the DCP control of a maximum 25%. The applicant has submitted the following justification:

- *The configuration of the site, floor plates and Council's minimum unit sizes tends to result in a high proportion of one bedroom units. The minimum unit areas of the Botany Bay DCP are well in excess of that recommended to encourage housing affordability in the RFDC. In order to achieve a development that can meet the expectations of the market and provide an affordable option, a higher proportion of one bed units is necessary. The design of the one bed units are spacious and functional being true one bedroom apartments that meet the expectations of the market.*
- *The demand for smaller units is increasing in the Botany housing market. Census data indicates that in 2011 32% of all occupied dwellings in the Botany Bay LGA were under-occupied. This demonstrates that the number of bedrooms was higher than occupants.*
- *The census data also indicates that the Botany LGA has a low proportion of one bedroom units at 8% when compared with other Inner Sydney and Eastern Suburbs which have a higher percentage of approx. 22%.*
- *Historically, one bedroom units within other Toplace projects in the Botany Bay area have been in high demand and are often undersupplied in relation to demand. Particular reference is made to the recently completed residential flat development at 22-24 Rhodes Street, Hillsdale where 30% of the apartments are studio and 1 bedroom. In this development, demand for these smaller apartments exceeded the number available.*
- *The proposed minor variation to the DCP control will enable the development to meet the expectations of the market while still provide a broad mix of unit types that will satisfy a range of housing structures.*

The variation requested is equivalent to 9% of the total number of apartments within the development. The apartments comply with the minimum apartment size and are considered to provide good residential amenity for future occupants. The submitted justification is considered reasonable and the minor variation to the number of one bedroom apartments is accepted.

Note 4 – Building Depth

The DCP specifies a maximum building depth of 18 metres. The objective of the control is 'To provide adequate amenity for building occupants in terms of sun access and natural ventilation'. In addition, the RFDC specifies that development that proposes wider than 18 metres must demonstrate how satisfactory daylighting and ventilation are achieved.

The applicant submits that the building depth is appropriate as the apartments have individually stepped facades to reduce the effective depth of units and improve light and ventilation. The applicant submits that the proposal results in 60% of the apartments being naturally cross ventilated and 89% of the apartments achieve 2 hours of solar access in mid-winter.

On this basis, the proposal attains compliance with the amenity requirements under the BB DCP 2013 and the RFDC, and therefore the building depth is considered acceptable.

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

These matters have been considered in the assessment of the Development Applications. It is considered that the proposed development will have no significant adverse environmental, social or economic impacts on the locality. Any likely impacts of the proposed development are considered to have been adequately dealt with in the assessment of the Development Application.

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

These matters have been considered in the assessment of the development application. The subject site is currently a light industrial warehouse building. Contamination matters have been addressed by the submission of a Site Environmental Assessment Report that confirms the site can be made suitable for the proposed residential development. It is essential that all works forming part of this application be undertaken in an appropriate manner to ensure the ongoing health and safety of adjoining residents and future occupants of the site.

Accordingly, it is considered that the site is suitable for the proposed development.

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

These matters have been considered in the assessment of the development application. In accordance with Council's Notification Policy (Development Control Plan No. 24), the development application was notified to surrounding property owners and occupants and advertised in the local newspaper from 12 February 2014 to 14 March 2014, and thirteen (13) submissions were received raising the following issues:

- Traffic generation and impacts on local road network
- Height, bulk, scale and streetscape impacts
- Overshadowing and Privacy
- Disturbance to contaminated soils and water table
- Acoustic and amenity impacts

Traffic generation and impacts on local road network

Objection: The proposed development will result in traffic impacts to the local road network. There has already been a substantial increase in vehicles and Rhodes Street is very narrow. There is insufficient car parking.

Comment: The applicant has submitted a Traffic Impact Statement prepared by Thompson Stanbury Associates, which undertook an assessment of the proposal in accordance with the RMS Guide to Traffic Generating Developments. The application was referred to the RMS and the RMS raised no objection to the development, subject to the car parking complying with the relevant Australian standards.

The applicant's traffic engineer states that the surrounding road network is capable of accommodating the additional traffic projected by the development. The applicant's traffic engineer confirms that the car parking spaces comply with the applicable Australian standards.

The development results in a residential use that moves away from industrial purposes. This will generate a change in traffic demand, with a reduction in the volume of heavy vehicles (trucks) accessing the site. This shift in traffic demand in the area is considered a positive outcome.

It is noted that the application does not provide compliant visitor car parking. A condition of consent has been included requiring the application to comply with the required visitor car parking spaces.

Height, Bulk and Scale and streetscape impacts

Objection: The proposal does not comply with Council's height controls. The proposal is a significant breach of Council's height control. The height is not keeping with the Hillsdale environment. All buildings in the street are a maximum of 4 storeys and the proposed buildings are 7 and 9 storeys, which is far too large. The proposal includes 4 buildings not 3 buildings.

Comment: As outlined in this report, the proposal results in a non-compliance with the height control. This report has considered the impacts of the additional height and what benefits, if any, the proposal shall generate. This consideration includes an assessment under Clause 4.6, Character test, height, bulk and scale and consideration of the offer for public domain works to Grace Campbell Reserve.

On the balance of these issues, as outlined in this report, the proposed height numerical non-compliance retains compliance with the objectives of the standard, the objectives of the zone and the objectives of the BB LEP 2013. Therefore, the height departure is considered acceptable.

Overshadowing and Privacy

Objection: The proposed development results in overshadowing impacts to adjoining landowners. The new buildings will be facing down on the existing properties therefore infringing on privacy.

Comment: The applicant has submitted shadow diagrams with the application. An assessment in relation to shadow impacts is provided within this report. The shadow diagrams indicate that the shadow cast by the development will be primarily to the adjoining industrial land to the west and to Grace Campbell Reserve. There is a minor amount of shadowing that occurs at 9am to a residential flat building on Grace Campbell Crescent and at 3pm in mid-winter to a residential flat building on Rhodes Street. However, in general, both affected properties receive in excess of 3 hours of solar access in mid-winter. The general aspect and positioning of the development does not generate shadowing to adjoining landowners.

With respect to privacy, the proposed development will provide casual surveillance opportunities overlooking Grace Campbell Reserve. The applicant has incorporated louvre screens to the majority of apartments. Given the orientation and location of the site, the proposal will not generate any significant privacy impacts.

Compliant separation distances have been incorporated between the proposed three buildings. Any future development to the Hillsdale Bowling Club will need to incorporate adequate setbacks and separation to mitigate any privacy impacts.

Disturbance to contaminated soils and water table

Objection: The proposed development includes a basement and can disturb contaminants in the soil.

Comment: Noted. The applicant has submitted a Phase 2 Site Environmental Assessment Report and Remediation Action Plan. Council's Environmental Scientist has confirmed that there is no indication from site history and initial sampling that the site cannot be made suitable for the intended residential use. An assessment under SEPP No 55 has been carried out in this report, and concludes that the site can be made suitable for the proposed residential use, subject to the conditions of consent listed in this report.

Acoustic and amenity impacts

Objection: The proposed development would increase noise in the area and impact on the amenity of adjoining landowners. Noise levels from a possible 500 residents will have a huge impact on our area.

Comment: The proposed development is for a residential use within a medium density area, and the noise impacts are unlikely to impact on adjoining landowners.

(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 MattersInternal Referrals

The development application was referred to Council's Engineering Services Department, Parks and Landscape Department; Traffic Department; Environmental Health and Council's Environmental Scientist for comment. Relevant conditions have been imposed into the recommendation of the operational consent.

Design Review Panel (DRP)

The design of this development application currently before the Panel was referred to the DRP, which met on 15 August 2013. The panel generally supports the proposal, noting *"that the proposal responds creatively to the context of the site and should resulting in a residential development of good quality"*. However, the DRP noted that there is *"no justification for exceeding the LEP controls in relation to density and height"*. The DRP noted that there was no public benefit proposed that would warrant the variations sought to Council's controls.

At the time of the DRP's review of the application, the proposal did not involve any public domain works. However, as part of the Development Application, the applicant has submitted a formal offer to Council to enter into a VPA to deliver public domain works to

Grace Campbell Reserve, at no cost to Council. Notwithstanding this, the applicant has submitted a Clause 4.6 Exception in support of the proposed Height and FSR departures. An assessment of the Clause 4.6 Exception is provided within this report. This report concludes that the Clause 4.6 Exception is well-founded and has planning merit.

Accordingly, considering that the Clause 4.6 Exception is supported and the proposal involves public domain works, the proposal is considered to satisfy the intent and comments of the DRP.

External Referrals

External Referrals are summarised in the Table below:

Authority	Comment	Date Received
Roads & Maritime Services	No objection, subject to car parking complying with relevant standards.	12 March 2014
Sydney Water	No objection, subject to conditions and lodgement of a Section 73 Application.	26 February 2014 and 27 June 2014
Ausgrid	No objection, subject to conditions relating to the installation of an electricity substation. A condition of consent has been included to this effect.	18 February 2014
NSW Police Service	No objection, subject to conditions relating to CPTED principles	26 March 2014
SACL	No objection subject to limitation of height to a maximum 43.6m AHD.	28 March 2014
NSW Office of Water	No objection, subject to General Terms of Approval.	11 February 2014
Sydney Ports	No objection to the development.	10 March 2014

Table 14: External Referrals Summary Table

Section 94 Contributions

At Council Development Committee on 6 May 2009, Council was advised of the changes made to the Section 94 Contributions imposed by the State Government. The Minister for Planning issued a Section 94E Direction on 23 January 2009, which capped levies for residential development and residential subdivision to \$20,000.00. Council responded to the Direction by passing a resolution on the 18 March 2009 to comply with the cap. Therefore based on the cap the Section 94 Contributions may be applied to the proposed 84 residential units. As such, the calculations are as follows:

- DA13/279 = 246 units @ \$20,000.00 each = \$4,920,000.00

Therefore a total Section 94 Contribution of **\$4,920,000.00** is required to be paid to Council in accordance with the draft schedule of Conditions attached to this report.

Conclusion

The Joint Regional Planning Panel, Sydney East Region (JRPP) is the consent authority for the development application. A total of thirteen (13) submissions were received as a result

of the public exhibition process and matters raised have been addressed in this report. The design currently before the Panel has been the subject of a design review process.

The proposal has been assessed in accordance with Section 79C of the *Environmental Planning and Assessment Act 1979* and the *Botany Bay Local Environmental Plan 2013*. The proposal is permissible in the R3 Medium Density Residential and B4 Mixed Use zone, and is considered to deliver a development which is suitable in the context. The assessment concludes that the proposal shall generate minimal adverse impacts, and that the overall built form is reflective of the desired future character for the area. It is the opinion of the Council that the current design has addressed the concerns of local residents and on this basis the proposed development is supported.

It is therefore recommended that the Panel grant approval to the application subject to the conditions in the attached schedule.

RECOMMENDATION

It is recommended that the Joint Regional Planning Panel (JRPP), as the determining Authority in this instance, 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 1.87:1 and a maximum building height of 22.2 metres (7 storeys) in the B4 Mixed Use zone and building heights of 22.2 metres (7 storeys), 28.2 metres (9 storeys) in the R3 Medium Density Residential zone, by reason that the two (2) variations are well founded; and
- (b) Approve Development Application No. 13/279 for the following works at 39 and part of 47 Rhodes Street Hillsdale, subject to the Conditions imposed in the attached schedule:
 - Demolition of existing structures
 - Construction of three (3) residential flat buildings with a total of 246 units
 - Basement level car parking for 435 vehicles
 - The development proposes a floor space ratio of 1.87:1
 - The buildings have the following heights: Building A: 22.2 metres (seven (7) storeys); Building B: part 28.2 metres (nine (9) storeys) and part 16.2 metres (5 storeys); and Building C: 22.2 metres (seven (7) storeys).
 - Excavation and site remediation to be undertaken in accordance with the Remediation Action Plan submitted.

Premises: 39 and part 47 Rhodes Street Hillsdale**DA No: 13/279****SCHEDULE OF CONSENT CONDITIONS****GENERAL CONDITIONS**

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

Drawing No.	Author	Dated
Site Analysis	Krikis Tayler Architects	16 December 2013
Basement 2	Krikis Tayler Architects	9 July 2014
Basement 1	Krikis Tayler Architects	9 July 2014
Lower ground 2	Krikis Tayler Architects	9 July 2014
Lower ground 1	Krikis Tayler Architects	17 December 2013
Ground level	Krikis Tayler Architects	17 December 2013
Level 1-2	Krikis Tayler Architects	13 December 2013
Level 3	Krikis Tayler Architects	13 December 2013
Level 4	Krikis Tayler Architects	14 August 2014
Level 5	Krikis Tayler Architects	24 July 2014
Level 6	Krikis Tayler Architects	13 August 2014
Roof plan	Krikis Tayler Architects	13 August 2014
Elevations 1	Krikis Tayler Architects	14 August 2014
Elevations 2	Krikis Tayler Architects	14 August 2014
Section A-A & Section B-B	Krikis Tayler Architects	14 August 2014
Shadow diagrams – equinox	Krikis Tayler Architects	13 December 2013
Shadow diagrams – winter	Krikis Tayler Architects	24 July 2014
Material board	Krikis Tayler Architects	13 December 2013
Landscape plan	Iscape Landscaping	December 2013
Stormwater concept drawings	Australian Consulting Engineers Pty Ltd	10 April 2014

Drawing No.	Author	Dated
Photomontages	Krikis Tayler Architects	22 December 2013

Reference Document(s)	Author	Dated
Statement of Environmental Effects Amended	LJB Urban Planning Pty Limited	23 December 2013
Clause 4.6 Exceptions to Development Standards Report	LJB Urban Planning Pty Limited	28 January 2014
Design Verification Statement – SEPP 65	Krikis Tayler Architects	18 December 2013
Survey Plan	H Ramsay Surveyors	23 May 2013
BASIC Certificate 519697M	SLR Consulting	18 December 2013
Acoustic Report, Report No. 5290-1-1R	Day Design	23 December 2013
Additional Noise Monitoring 5290-2-1L	Day Design	14 July 2014
Preliminary Risk Assessment	Bow-tie consulting	10 July 2014
QS Report – Grace Campbell Reserve	Washington Brown	28 July 2014
Drains Model & Results, 130816.Drain1	Australian Consulting Engineers Pty Ltd	9 May 2013
Flood Impact Assessment	Cardno	18 December 2013
DA Landscape Report	Iscape Landscaping	December 2013
Access Report	Accessibility Solutions	23 December 2013
Detailed Cost Report	MMD Construction Consultants	19 December 2013
Remediation Action Plan Ref E1958.1 AB	Environmental Investigations Pty Ktd	7 November 2013
BCA Report	Barry Johnson & Associates	12 May 2014
Traffic Impact Assessment Report ref 13-148	Thompson Stanbury Associates	December 2013
Construction Waste Management Plan	Toplace Pty Ltd	12 December 2013
Geotechnical Investigation, Report No. 2239-A	Asset Geotechnical Engineering Pty Ltd	27 September 2013
Environment Site Assessment Report Ref E1958AA	Environmental Investigations Pty Ltd	31 October 2013

Reference Document(s)	Author	Dated
Residential Waster Management Plan	Elephants Foot Recycling Solutions	19 December 2013
Pedestrian Wind Environment Statement WB862-01F02 (Rev 1)	Windtech	20 December 2013

No construction works (including excavation) shall be undertaken prior to the issue to the Construction Certificate.

2

(a) The applicant must prior to the issue of the Construction Certificate, pay the following fees:

- (i) Builders Security Deposit \$50,000.00;
- (ii) Development Control \$11,011.00;
- (iii) Waste Contribution \$25,000.00;

3

(a) This Consent relates to land in SP 33080, part of Lot 2 DP 445433 and part Lot B DP 445635, and as such, building works must not encroach on to adjoining lands or the adjoining public place, other than public works required and as otherwise permitted by this consent; and

(b) Prior to the issue of the Occupation Certificate, a survey report must be submitted to Council to verify that Condition 3(a) above has been complied with.

4

The basement car park is to be amended to provide an additional 24 visitor car parking spaces. Amended architectural plans demonstrating additional 24 visitor spaces complying with the Botany Bay DCP 2013, are to be submitted to Council prior to the issue of a Construction Certificate.

5

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.

- 6 All building work must be carried out in accordance with the provisions of the Building Code of Australia.
- 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 each relevant BASIX Certificate for each building in the development are fulfilled.

(a) Note:

Relevant BASIX Certificate means:

- (i) 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
- (ii) If a replacement BASIX Certificate accompanies any subsequent application for a construction certificate, the replacement BASIX Certificate.
- (iii) BASIX Certificate has the meaning given to that term in the Environmental Planning and Assessment Regulation 2000.

8 Public Domain Works and Voluntary Planning Agreement

The applicant is to enter into a Voluntary Planning Agreement with Botany Bay Council to undertake the public domain works within Grace Campbell Reserve. The Voluntary Planning Agreement is to be entered into, prior to the issue of a Construction Certificate. The Concept Landscape plans prepared by Iscape Landscape Architect is to be amended as follows, prior to the issue of a Construction Certificate:

- A replacement fence to be provided on the Grace Campbell frontage.
- The Kunzea on the eastern boundary of property at 23 Grace Campbell Crescent to be deleted and the Banksia trees retained.

- 9 Any masonry boundary fence/walls or retaining wall across the street frontage or southern boundary of the property adjoining trees shall be of piered or bridged construction to minimise damage to major or structural tree roots. Trench or strip footings are not permitted in these areas. If a tree root 40mm diameter or greater is in the location of a pier and the root cannot be cut without compromising the tree (must be obtained after Council inspection and advice), the pier will need to be relocated and the root bridged.

To ensure satisfactory growth and maintenance of the landscaping, a fully automatic drip irrigation system is required in all landscape areas, installed by a qualified landscape contractor. The system shall provide full coverage of all planted areas with no more than 300mm between drippers, automatic controller and

backflow prevention device and shall be connected to a recycled water source, where provided. Irrigation shall comply with both Sydney Water and Council requirements as well as Australian Standards, and be maintained in effective working order at all times.

The existing boundary fences surrounding the rear and side boundaries of the property shall be replaced with lapped and capped timber or similar to Council's satisfaction to a height of 1.8m, but not forward of the street building alignment. A steel palisade fence, powdercoated in a dark colour shall be installed for a portion of the southern boundary fronting Rhodes Reserve in alignment with the communal open space area.

Planter boxes constructed over a concrete slab shall be built in accordance with the following requirements :

- a. Ensure soil depths in accordance with Council's Landscape DCP. The base of the planter must be screeded to ensure drainage to a piped internal drainage outlet of minimum diameter 90mm, with no low points elsewhere in the planter. There are to be no external weep holes.
- b. A concrete hob or haunch shall be constructed at the internal join between the sides and base of the planter to contain drainage to within the planter.
- c. Planters are to be fully waterproofed and sealed internally with a proprietary sealing agent and applied by a qualified and experienced tradesman to eliminate water seepage and staining of the external face of the planter. All internal sealed finishes are to be sound and installed to manufacturer's directions prior to backfilling with soil. An inspection of the waterproofing and sealing of edges is required by the Certifier prior to backfilling with soil.
- d. Drainage cell must be supplied to the base and sides of the planter to minimize damage to the waterproof seal during backfilling and facilitate drainage. Apply a proprietary brand filter fabric and backfill with an imported lightweight soil suitable for planter boxes compliant with AS 4419 and AS 3743. Install drip irrigation including to lawns.
- e. Finish externally with a suitable paint, render or tile to co-ordinate with the colour schemes and finishes of the building.

Fire booster assemblies are to be located within the external face of the building structure and not within the landscaped setback or near entries to the property. If this cannot be achieved, the assembly must be housed within a decorative structure for screening purposes. The location of, and screening treatment of this utility is to be approved by Council's Landscape Architect prior installation.

CONDITIONS IMPOSED BY AN EXTERNAL AUTHORITY

- 10 The following condition is imposed by Ausgrid and is to be complied with:
Provision shall be made for accommodation for an electricity substation within the premises.

- 11 The following condition is imposed by Sydney Water and is to be complied with:

Water

- (a) The site has a frontage to a DN 150 water main located on the eastern side of Rhodes Street that can provide for the domestic needs of the development.
- (b) The size of the development will need a connection larger than the standard domestic 20mm size.
- (c) To get approval for the connection, the proponent will need to lodge an application with a Quick Check agent.

Wastewater

- (d) The proposed development is traversed by a 450mm waste water main with an easement for Drainage'
- (e) This easement cannot be removed or modified without Sydney water's approval including: landscaping, earthworks, road works or stacking of materials on the easement.
- (f) The proposed development is also traversed by a 300mm water water main on the sites western boundary
- (g) Where proposed works are in close proximity to a Sydney Water asset, the developer may be required to carry out additional works to facilitate their development and protect the wastewater main. Subject to the scope of development, servicing options may involve adjustment/deviation and or compliance with the Guidelines for building over/adjacent to Sydney Water assets. The proponent should refer to a Water Servicing Coordinator fo details of requirements.

Sydney Water Servicing

- (h) Sydney Water does not allow any buildings or permanent structures to be built over the stormwater channel or within 1 mere from outside face of the stormwater channel or within easement. The proponent must ensure there are no buildings or permanent structures over or within 1 metre from Sydney Water's stormwater asset. Permanent structures include, but are not limited to; roof eaves, hanging balconies, basement parking, hanging staircases, detention tanks, stormwater pits or similar structures

Flood impact assessment

- (i) The proponent is required to undertake a flood study to ascertain the impacts of flooding on the proposed development, and the impacts of the proposed development on the local flood regime.
- (j) The following outcomes are to be clearly demonstrated in the flood study as a result of the development:
 - No adverse impact on flood behaviour
 - No loss in flood plain storage within the site; and
 - No increase in the frequency or degree of inundation of properties upstream or downstream.

- (k) In addition to above, the flood study should identify areas of the site that should be kept clear to provide appropriate and effective overbank flow paths during major stormwater events and identify appropriate flood hazard minimisation/isolation and damage reduction measures (e.g. floor level control).
- (l) Once an initial flood study has identified the nature of the local flooding, further detail assessment of the proposed development be undertaken.

Direct Stormwater Connection

- (m) Sydney Water would not object for any direct stormwater connection to Sydney Water's stormwater system provided they comply with the Sydney Water's connection requirements
- (n) On site Detention and water quality improvements Devices are to be provide as part of the connection process.
- (o) The stormwater connection is to be part of the Section 73 application process for this development and required to follow the Asset Creation process. The connection details are to be drawn in AutoCad form water and given to Water Servicing Coordinator. Water Servicing Coordinator is required to transfer these drawings onto Sydney Water's template prior to submit as design drawings.
- (p) If the proposed connection size is equal or more than 300mm, then the actual connection details are to be designed by a qualified structural engineer and the structural engineers certificate is to be attached with design drawing.

On Site Detention

- (q) On Site Detention is required for direct stormwater connection to Sydney Water's stormwater system. In order to calculate the required On Site Detention and Permissible site discharge, the following details are to be given to Sydney Water:
 - Total site area
 - Pre development impervious area
 - Post development impervious area

Water Quality Improvement Device

- (r) Direct connections to Sydney Water's stormwater channels are also required to meet contemporary stormwater quality targets. A WSUD Strategy and MUSIC Model must be prepared and submitted to Sydney Water for the development. The MUSIC Model must be prepared in line with the Draft NSW MUSIC Modelling Guidelines (Sydney Metro CMA).
- (s) Sydney Water's requirements are that the water quality improvement should meet the target as described in the "Botany Bay & Catchment Water Quality Improvement Plan" which was prepared by the Sydney Metropolitan Catchment Management Authority in April 2011.

- 12 The following conditions are imposed by the NSW Roads and Maritime Service (RMS).

- (a) Off street parking shall be designed and constructed in accordance with AS 2890.1-2004.
 - (b) All works associated with the proposed development shall be at no cost to RMS.
- 13 The following conditions form the General Terms of Approval by the NSW Office of Water and must be complied with:

General and Administrative Issues.

- a) An authorisation shall be obtained for the take of groundwater as part of the activity. Groundwater shall not be pumped or extracted for any purpose other than temporary construction dewatering at the site identified in the development application. The authorisation shall be subject to a currency period of 12 months from the date of issue and will be limited to the volume of groundwater take identified.
- b) The design and construction of the building must prevent any take of groundwater after the authorisation has lapsed by making any below-ground levels that may be impacted by any water table watertight for the anticipated life of the building. Waterproofing of below-ground levels must be sufficiently extensive to incorporate adequate provision for unforeseen high water table elevations to prevent potential future inundation.
- c) Construction methods and material used in and for construction shall not cause pollution of the groundwater.

Prior to Excavation

- d) Measurements of groundwater levels beneath the site from a minimum of three monitoring bores shall be taken and a report provided to the NSW Office of Water. A schedule and indicative plans of the proposed ongoing water level monitoring from the date of consent until at least two months after the cessation of pumping shall be included in the report.
- e) A reasonable estimate of the total volume of groundwater to be extracted shall be calculated and a report provided to the NSW Office of Water. Details of the calculation method shall be included in the report.
- f) A copy of a valid development consent for the project shall be provided to the NSW Office of Water.
- g) Groundwater quality testing shall be conducted and a report supplied to the NSW Office of Water. Samples must be taken prior to the commencement of pumping, and a schedule of the ongoing testing throughout the dewatering activity shall be included in the report. Collection and testing and interpretation of results must be done by suitably qualified persons and NATA certified laboratory identifying the presence of any contaminants and comparison of the data against accepted water quality objectives or criteria.
- h) The method of disposal of pumped water shall be nominated (i.e. street drainage to the stormwater system or discharge to sewer) and a copy of the written permission from the relevant controlling authority shall be provided to the NSW Office of

Water. The disposal of any contaminated pumped groundwater (tailwater) must comply with the provisions of the *Protection of the Environment Operations Act 1997* and any requirements of the relevant controlling authority.

- i) Contaminated groundwater shall not be reinjected into any aquifer. The reinjection system design and treatment methods to remove contaminants shall be nominated and a report provided to the NSW Office of Water. The quality of any pumped water (tailwater) that is to be reinjected must be compatible with, or improve the intrinsic or ambient groundwater in the vicinity of the reinjection site.

During Excavation

- j) Piping or other structures used in the management of pumped groundwater (tailwater) shall not create a flooding hazard. Control of pumped groundwater (tailwater) is to be maintained at all times during dewatering to prevent unregulated off-site discharge.
- k) Measurement and monitoring arrangements to the satisfaction of the NSW Office of Water are to be implemented. Monthly records of the volumes of all groundwater pumped and the quality of any water discharged are to be kept and a report provided to the NSW Office of Water after dewatering has ceased. Daily records of groundwater levels are to be kept and a report provided to the NSW Office of Water after dewatering has ceased.
- l) Pumped groundwater (tailwater) shall not be allowed to discharge off-site (e.g. adjoining roads, stormwater system, sewerage system, etc) without the controlling authorities approval and/or owners consent. The pH of discharge water shall be managed to be between 6.5 and 8.5. The requirements of any other approval for the discharge of pumped groundwater (tailwater) shall be complied with.
- m) Dewatering shall be undertaken in accordance with groundwater-related management plans applicable to the excavation site. The requirements of any management plan (such as acid sulphate soils management plan or remediation action plan) shall not be compromised by the dewatering activity.
- n) The location and construction of groundwater extraction works that are abandoned are to be recorded and a report provided to the NSW Office of Water after dewatering has ceased. The method of abandonment is to be identified in the documentation.
- o) Access to groundwater management works used in the activity is to be provided to permit inspection when required by the NSW Office of Water under appropriate safety precautions.

Following excavation

- p) All monitoring records must be provided to the NSW Office of Water after the required monitoring period has ended together with a detailed interpreted hydrogeological report identifying all actual resource and third party impacts.

14 The following conditions are imposed by the NSW Police Service:

- (a) As the proposed development may be exposed to Break and Enter Steals, Stealing, Steal from persons, Malicious Damage and Steal from Motor Vehicle offences, a closed circuit surveillance system (CCTV) which complies with the Australian Standard - Closed Circuit Television System (CCTV) AS:4806:2006 shall to be implemented to receive, hold or process data for the identification of people involved in anti-social behaviour prior

to the issue of the Occupation Certificate. The system is obliged to conform with Federal, State or Territory Privacy and Surveillance Legislation;

- (b) The CCTV system should consist of surveillance cameras strategically located in and around the development to provide maximum surveillance coverage of the area, particularly in areas that 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 strategically mounted at entry and exit points to monitor activities around these areas (underground car park, foyer entrance);
- (c) Any proposed landscaping and vegetation should adhere to the following principles:
 - (i) Shrubs bushes, plants should remain under 900mm in height;
 - (ii) Branches or large trees should start at a height of two (2) metres and higher;

This will assist with natural surveillance and reduce hiding spots and dark areas for potential offenders.
- (d) 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;
- (e) Any storage cages in the underground car park areas should not be constructed in an isolated area. CCTV cameras must cover this area, as they are easy targets when they have little supervision. Solid steel housing and quality key locks should be used to prevent access.

15 The following conditions are imposed by the Sydney Airport Corporation Limited (SACL) and must be complied with:

- (a) The PROPERTY DEVELOPMENT at 39 RHODES STREET HILLSDALE 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 this Corporation.
- (b) The Civil Aviation Safety Authority (CASA) have no objection to the erection of the building to a height of 43.6 metres above Australian Height Datum (AHD).
- (c) The approved height is inclusive of all lift over-runs, vents, chimneys, aerials, TV antennae, construction cranes etc.
- (d) Should you wish to exceed the above heights, a new application must be submitted. Should the height of any temporary structure and/or equipment be greater than 50 feet (15.24 metres) 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.
- (e) 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:

- (i) 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);
 - (ii) the swing circle of any temporary structure/equipment used during construction;
 - (iii) 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;
 - (iv) the period of the proposed operation (ie. construction cranes) and desired operating hours for any temporary structures.
- (f) 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.
- (g) The development is to comply with the Civil Aviation Safety Authority (CASA) requirements as outlined in the Council's Development Application Guide for Multi-Unit Residential, Commercial and Industrial.

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

- 16 Prior to the issue of the Construction Certificate, the applicant shall contact "Dial Before You Dig on 1100" to obtain a 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 damage to utilities/services will be repaired at the applicant's expense.
- 17 Soil and Water Management Plan (SWMP)

A Soil and Water Management Plan (SWMP) shall be prepared in accordance with the Landcom *Managing Urban Stormwater – Soils and Construction* 4th Edition (2004) and submitted to the Principal Certifying Authority prior to the release of the Construction Certificate.

This plan shall be implemented prior to commencement of any site works or activities. All controls in the plan shall be maintained at all times during the construction works. A copy of the SWMP shall be kept on-site at all times and made available to Council Officers on request.

- 18 Soil Stockpile Area –SWMP

A sufficient area shall be provided onsite to enable separate stockpiling of excavated materials for sampling and analysis prior to removal or reuse on site.

Details of this area shall be provided in the Soil and Water Management Plan (SWMP) prior to the release of the construction certificate.

This plan shall incorporate and reference the construction management plan and address site limitations.

19 Contamination – Additional Investigation

Additional sampling at depth in natural soil shall be undertaken at each sampling location where this has not been completed in accordance with:

- a) NSW Office of Environment and Heritage (OEH) ‘Contaminated Sites – Guidelines for Consultants Reporting on Contaminated Sites’;
- b) NSW Environment Protection Authority (NSW EPA) approved guidelines under the Contaminated Land Management Act 1997; and
- c) State Environmental Planning Policy 55 (SEPP55) – Remediation of Land;

The Stage 2 Detailed Site Investigation “*Environmental Site Assessment-39 Rhodes Street, Hillsdale NSW* (Report No. E1958AA) completed by Environmental Investigations dated 31 October 2013” shall be amended by a suitably qualified and experienced environmental consultant and shall be provided to the Principal Certifying Authority and the Council for approval prior to the issue of the Construction Certificate.

Approvals from appropriate government departments where required shall be obtained and full details of the investigation are to be submitted to and approved by Botany Bay City Council, in accordance with Section 80(A)2 of the Environmental Planning and Assessment Act 1979 prior to a Construction Certificate being issued for the proposed development.

20 Contaminated Land – Remedial Action Plan

Following the additional sampling of natural and fill soil at depth, the Stage 3 – Remedial Action Plan (RAP) “*Remediation Action Plan – 39 Rhodes Street, Hillsdale NSW* (Report No. E1958.1AB) completed by Environmental Investigations dated 7 November 2013” shall be amended as required by a suitably qualified and experienced contaminated land consultant and in accordance with:

- a) NSW Office of Environment and Heritage (OEH) ‘Contaminated Sites – Guidelines for Consultants Reporting on Contaminated Sites’; and
- b) NSW Environment Protection Authority (NSW EPA) approved guidelines under the Contaminated Land Management Act 1997; and
- c) State Environmental Planning Policy 55 (SEPP55) – Remediation of Land.

The amended RAP shall incorporate all findings and recommendations in the Phase1 Preliminary Site Assessment and the amended Phase 2 Detailed Site Assessment for the site, it shall clearly state proposed clean-up objectives, and demonstrate how the site will be made suitable for the proposed residential use.

The RAP shall be submitted to Council for review and approval prior to the commencement of any remedial action and prior to the issue of a construction certificate.

21 Acid Sulfate Soils Management Plan

Should any excavation occur at a level equivalent to 7m below existing ground level at the lowest point of the site an Acid Sulfate Soils Management Plan (prepared by a suitably qualified and experienced environmental/geotechnical consultant) shall be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate. This plan shall include any site specific procedures and mitigation measures required and shall include a site analysis from a NATA registered laboratory. The plan shall provide details of the following:

- (a) Site specific mitigation measures to both minimise the disturbance of acid sulfate soils as well as any measures relating to acid generation and acid neutralisation of the soil;
- (b) Management of acid sulfate soil affected excavated material;
- (c) Measures taken to neutralise the acidity of any acid sulfate soil affected material; and
- (d) Run-off control measures for the acid sulfate affected soil.

This report shall be provided prior to the issue of a construction certificate and all recommendations of the report shall be implemented during works on site.

22 Prior to the issue of the Construction Certificate the required Long Service Levy payable under Section 34 of the Building and Construction Industry Long Service Payments Act 1986 has to 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.

23 Prior to the issue of the Construction Certificate design verification is required to be submitted from a qualified designer to confirm the development is in accordance with the approved plans and details and continues to satisfy the design quality principles in State Environmental Planning Policy No. 65 Design Quality of Residential Flat Development.

24

- (a) All plumbing stacks, vent pipes, stormwater downpipes and the like shall be kept within the building and suitably concealed from view. This Condition does not apply to the venting to atmosphere of the stack above roof level;
- (b) The basement of the building must be designed and built so that on completion, the basement is a “fully tanked” structure, i.e. it is designed and built to prevent the entry of ground water / ground moisture into the inner part of the basement;
- (c) The provision of disabled access throughout the development is required and shall be in compliance with the Building Code of Australia Part D3 “Access for People with Disabilities” and Australian Standard AS1428.1 (2001) - Design for Access and Mobility - Part 1 General Requirements for Access - Buildings. This requirement shall be reflected on the Construction Certificate plans.

- (d) Prior to the issue of a Construction Certificate, the construction drawings shall indicate the following:
- (i) That water will be prevented from penetrating behind fittings/linings and into concealed spaces in laundry, sanitary areas and bathrooms etc;
 - (ii) That floor to ceiling in laundry and bathroom areas to be tiled;
 - (iii) That timbers used in the development are plantation, recycled or regrowth timbers of timbers grown on Australian farms or State forest plantations and that no old growth or rainforest timbers are to be used in any circumstances; and
 - (iv) That plumbing to each dwelling will be separated and adequately contained to prevent noise transmission and vibration.
- 25 Prior to the issue of the Construction Certificate, the measures required in the Pedestrian Wind Environment Assessment, Report No. WB862-01F02 (Rev 1) prepared by Windtech Consultants Pty Ltd shall be detailed on the Construction Certificate plans. These shall include additional wind mitigation treatments to exposed south west facing balconies.
- 26
- (a) Prior to the issue of the Construction Certificate, the measures required in the Acoustic Report: Report No. 5290-1-1R, prepared by Day Design dated 23 December 2013, and the measures required in the Additional Noise Monitoring report prepared by Day Design, dated 14 July 2014 shall be undertaken in accordance with the provisions of *AS2021-2000: Acoustics – Aircraft Noise Intrusion – Building Siting and Construction* to establish components of construction to achieve indoor design sound levels in accordance with Table 3.3 of AS2021-2000 shall be incorporated into the construction of the buildings; and
- (b) Prior to the issue of the Construction Certificate, a compliance report from a suitably qualified acoustic consultant shall be submitted to Council indicating any required noise mitigation measures to the approved development, as detailed in the NSW Road Noise Policy 2011 in accordance with AS 3671-1989 – Acoustic – Road Traffic Intrusion;
- (c) 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 the Construction Certificate in the form of amended plans.
- 27 Prior to the issue of the Construction Certificate, a Certificate under Section 73 of the Water Board (Corporation) Act 1994 shall be obtained and submitted to Council for each stage of construction to ensure that the developer has complied with all relevant Sydney Water requirements, including appropriate connections, correctly sized amplifications, procurement of trade waste agreements, where necessary, and the payment of developer charges.

Note: Immediate application should be made to Sydney Water for this Certificate to avoid problems in servicing the development.

- 28 Plans and specifications for the storage room for waste and recyclable materials to allow for on site waste and recyclable collection shall be submitted to the Principal Certification Authority with the application for the Construction Certificate. Storage of Waste and recycling shall meet the following requirements:

- (a) The rooms for the storage of garbage and recyclable materials shall be:
 - (i) fully enclosed;
 - (ii) adequately ventilated;
 - (iii) Constructed with a concrete floor, concrete or cement rendered walls coved to the floor;
 - (iv) 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.
 - (v) Washing facilities shall be provided within close proximity to the garbage and recycling storage area.
- (b) The area can be serviced easily accessed and serviced by a garbage truck or MRV.

- 29 A suitable intercom system linked to all units within the development shall be provided at the vehicle entrance to the development to ensure any visitors to the site can gain access to the visitor parking in the car parking area. The details of the intercom system shall be submitted to Principal Certifying Authority prior to the issue of a Construction Certificate and its location and specifications endorsed on the construction drawings.

- 30 Prior to the issue of the Construction Certificate:

- (a) The public areas of the residential parts of each building must be designed by a practicing Interior Designer or other appropriately qualified person and include (but not limited to) colour schemes, artwork surface finishes, timber mid rails/skirting boards and historic photographs of the Botany Local Government Area etc;
- (b) The details of interior design required by Condition 30(a) above are to be included with the Construction Certificate;
- (c) The pedestrian mall area must be provided with male and female conveniences including the provision of conveniences with those persons with a disability.

31

The Applicant is to submit payment for a Tree Preservation Bond of \$20,000.00 to ensure protection of the 2 mature and significant street trees and the line of existing trees adjoining the southern boundary from damage during construction. The duration of the Bond shall be limited to a period of 12 months after issue of the

Occupation Certificate. At the completion of the 12 month period the Tree Preservation Bond shall be refunded pending a satisfactory inspection by Council or a qualified Arborist. If a tree was found to be in decline, damaged (including roots), dead or pruned without Council permission or, if tree protection measures were not satisfied at any time, then Council will forfeit all, or part thereof, of the bond. The Tree Preservation Bond was calculated using the Thyer Tree Evaluation method.

The landscape areas shown on the plan by iScale dated December 2013 shall be the subject of amended landscape construction documentation to be submitted to and approved by the City of Botany Bay Council's Landscape Architect. The landscape documentation is to be prepared by a suitably qualified Landscape Architect, in accordance with Council's DCP. The detailed (construction level) plan shall include, but not be limited to:

- a. Specifications detailing soil and mulch finishes, irrigation, edging and other landscape hardworks such as retaining walls. Details of hard landscape elements such as furniture, seating walls, lighting etc.
- b. Areas of paving, schedule of materials, edge treatments and sectional construction details. Planter box finishes.
- c. All fencing, privacy screening and pergolas – construction details, elevations and materials. The pergola over the BBQ area is to be fully detailed for approval by Council prior construction.
- d. Planter box on slab sectional details, where provided. Planter box depths to be in accordance with Council's DCP and the conditions of this consent.
- e. The deciduous trees on the boundaries of the site shall be replaced with an adequate number of evergreen species to suitably screen adjoining industrial properties. As these areas are deep soil medium sized trees are to be specified.
- f. *Gordonia* shall be reduced in number and substituted for a suitable evergreen that grows well in the Botany area and has a fuller canopy such as *Tuckeroo*, *Native Frangipanni*, *Lillypilly*.
- g. The density of private patio shrubbery shall be increased to 0.75m centres minimum.
- h. The communal deep soil area is to comprise a mixture or variety of tree species and heights - primarily evergreens but is to include some broader leaved evergreens eg. *Native Frangipanni* and some selected medium sized deciduous for colour and interest. Smaller *Eucalypts* suited to the local area such as *E. maculata*, *Dwarf Gum* and *E. haemastoma* may be used. *E. pilularis* is not suitable.
- i. The trees on the northern and western property boundaries should be denser to adequately screen adjoining properties and land uses.
- j. *L. laevigatum* to be replaced with *L. petersonii* or similar.
- k. A larger pot size *Native Frangipanni* is required for the street setback ie. 200 litre or greater.
- l. The playground area is to be designed and constructed in accordance with Australian Standards.

- 32 Plans submitted with the Construction Certificate shall demonstrate compliance with the following:
- (a) All residential unit size excluding balconies as minimum must be as following:
 - (i) Studio = 60m²
 - (ii) 1 bedroom = 75m²
 - (iii) 2 bedroom = 100m²
 - (b) Adaptable units must be provided in accordance with Section 4C.6.1 of Botany Bay Development Control Plan 2013. Such units shall be designed in accordance with AS 4299 and BBDCP 2013 (Section 4C.6.1). Details to be submitted with the Construction Certificate.

- 33 In order to maximise visibility in the basement car parks, the ceilings shall be painted white. This requirement shall be reflected on the Construction Certificate plans.

- 34 The development shall make provision for the following car parking allocations:

Car Parking Rates	Required
1 space per studio and 1 bedroom units	83 spaces
2 spaces per 2 or 3 bedroom units	326 spaces
1 visitor space per 7 dwellings	50 spaces
TOTAL REQUIRED	459

This requirement shall be reflected on the Construction Certificate plans. The approved car parking spaces shall be maintained to the satisfaction of Council, at all times.

- 35 Photographic Survey

Prior to the issue of any Construction Certificate, at the proposed point of construction site entry, photographic survey showing the existing conditions of Council's infrastructure shall be submitted to Council and Principal Certifying Authority.

The survey shall detail the physical conditions and identify any existing damages to the roads, kerbs, gutters, footpaths, driveways, street trees, street signs and any other Council assets fronting the property and extending to a distance of 50m from the development. Failure to do so may result in the applicant/developer being liable for any construction related damages to these assets. Any damage to Council's infrastructure during the course of this development shall be restored at the applicant's cost.

36 Construction Management Plan

A Construction Management Program shall be submitted to, and approved in writing by the Council prior to the issue of a Construction Certificate. The program shall detail:

- (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 public 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, and
- (j) The location and operation of any on site crane. Please note that a crane may require prior approval from Sydney Airports Corporation.

The location of any Construction Zone (if required) approved by Council's Traffic Committee, including a copy of that approval.

37 Traffic Management Plan

A detailed Traffic Management Plan for the pedestrian and traffic management of the site and Rhodes St during construction shall be prepared and submitted to the relevant road authority (Council or Roads and Maritime Services) for approval. The plan shall:

- (a) be prepared by a RMS accredited consultant.

- (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) if required, implement a public information campaign to inform any road changes well in advance of each change.
- (d) Note: Any temporary road closure shall be confined to weekends and off-peak hour times and is subject to Council's Traffic Engineer's approval. Prior to implementation of any road closure during construction, Council shall be advised of these changes and Traffic Control Plans shall be submitted to Council for approval. This Plan shall include times and dates of changes, measures, signage, road markings and any temporary traffic control measures.
- (e) During construction, all works and measures shall be implemented in accordance with approved Traffic Management Plan at all times.

38 Compliance with AS2890.1 Off-street Carparking

Prior to the release of the Construction Certificate, the following required section(s) are to be submitted to and approved by Council:

- All driveways/access ramps/vehicular crossings shall conform to Australian Standards AS 2890.1 and Council requirements,
- For multi-unit developments, the applicant shall provide longitudinal sections along the extremities and the centre line of each internal driveway/access ramp at a scale of 1:25. These long sections shall extend from the horizontal parking area within the property to the centre line of the roadway. The sections shall also show the clear height from the ramp to any overhead structure,
- The applicant shall provide 409 resident carparking spaces that must be clearly linemarked and signposted,
- The applicant shall provide 50 visitor carparking spaces that must be clearly linemarked and signposted,
- A minimum of four (4), 3.5m wide carwash bay with the appropriate drainage systems shall be provided for resident use as per the Traffic Impact Assessment Report by Thompson Stanbury Associates, and
- A minimum of six (6) storage racks capable of accommodating 12 bicycles as per the Traffic Impact Assessment Report by Thompson Stanbury Associates.

39 Compliance with AS2890.2 Commercial (Service) Vehicle parking

Prior to the release of the Construction Certificate, the following required section(s) are to be submitted to and approved by Council:

- All service vehicles shall enter the property front in front out. This includes Council's garbage collection service and off street removalist vehicle parking, and
- For multi-unit developments, the applicant shall provide longitudinal sections along the extremities and the centre line of each internal driveway/access ramp at a scale of 1:25. These long sections shall extend from the horizontal parking area within the property to the centre line of the roadway. The sections shall also show the clear height from the ramp to any overhead structure.

40 Compliance with AS2890.6 Off-street Carparking for People with Disabilities

Prior to the release of the Construction Certificate, the following required section(s) are to be submitted to and approved by Council:

- A minimum 9 disabled car parking spaces shall be provided and clearly marked as per Australian Standards AS 2890.6, SEPP 65 Design Code and Council requirements, and
- All off street disabled parking shall have access to the adjacent road(s) and to the communal open space as per Australian Standards AS 2890.6 and Council requirements.

41 CCTV Report of Existing Council Pipe System

A qualified practitioner, with a certificate of attainment in NWP331A Perform Conduit Evaluation, shall undertake a closed circuit television (CCTV) inspection and then report on the existing condition of the Stormwater Culvert traversing the development site. The camera and its operation shall comply with the following:

- The internal surface of the drainage pipe/culvert shall be viewed and recorded in a clear and concise manner,
- The CCTV camera used shall be capable to pan, tilt and turning at right angles to the pipe axis over an entire vertical circle to view the conduit joints,
- Distance from the manholes shall be accurately measured, and
- The inspection survey shall be conducted from manhole to manhole.

The written report, together with a copy of the digital video footage of the pipeline shall be submitted to Council prior to the commencement of any works. A written acknowledgment shall be obtained from Council (attesting to this condition being appropriately satisfied) and submitted to the Principal Certifying Authority.

42 Public Utility Adjustment

To ensure that utility authorities and Council are advised of any effects to their infrastructure by the development, the applicant shall:

- 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.
- Negotiate with the utility authorities (eg AusGrid, Sydney Water, Telecommunications Carriers and Council in connection with:
 - The additional load on the system; and
 - The relocation and/or adjustment of the services affected by the construction.
 - As part of this development, part of the existing Sydney Water sewer main shall be decommissioned and a new connecting sewer main shall be constructed. The location and properties of the new sewer main shall be confirmed with Sydney Water and Council prior to the issue of the Construction Certificate.
 - Any interallotment stormwater drainage system traversing the site shall be either maintained or relocated with the approval of the beneficiary and Council.
 - Two (2) new access pits on opposite sides of the development site shall be constructed over the existing Sydney Water stormwater infrastructure.

The new pits shall have min 900mm diameter opening with trafficable bolt down lids and steps as per Council's Infrastructure Specifications. Any costs in the relocation, adjustment, and provision of land or support of services as requested by the service authorities, beneficiaries and Council are to be the responsibility of the developer.

43 Detail Stormwater Management Plan

Prior to the issue of any Construction Certificate, detail design and construction plans in relation to stormwater management and disposal system for the development shall be submitted to the Principal Certifying Authority for approval. *(The detail drawings and specifications shall be prepared by a suitably qualified and experienced civil engineer and to be in accordance with Council's Development Control Plan 'Stormwater Management Technical Guidelines', AS/NSZ 3500 – Plumbing and Drainage Code, Sydney Water regulations and the BCA. All drawings shall correspond with the approved architectural plans.)*

The plans shall incorporate but not be limited to the following:

- The provisions made in the stormwater concept drawings D00 – D13, by Australian Consulting Engineers, dated December 2013,
- The On-Site Detention System (OSD) shall be designed according to Part 6 of the SMTG. It should be noted that OSD systems shall be designed to detain the stormwater runoff from the site for all storm events up to and including 1 in 100 year ARI storm and permissible site discharge (PSD) shall be based on 1 in 5 year ARI peak flow generated from the site under the "State of Nature" condition (i.e. the site is totally grassed/turfed), rather than pre-development condition.
- No pump-out shall be used to drain seepage from the basement due to the elevated water table level. That is the basement shall be designed as a "fully tanked" structure,
- The pump-out can only be utilized to dispose runoff that may enter the basement carpark from driveway access to the basement,
- The pump out system from the basement carpark proposed shall discharge to the on-site stormwater detention system,
- All stormwater runoff from the site shall pass through a pollution control device capable of removing litter and sediment (e.g. Gross Pollutant Trap, (GPT)) prior to entering Sydney Water's and Council drainage system. As such, details of the pollution control device shall be shown on stormwater management plan,
- The underground rainwater tank size shall be designed based on a supply/demand management approach. In addition, please note that in order to contribute to environmental sustainability and apply Water Sensitive Urban Design (WSUD) principles, consideration can be given to offset the storage requirements of the OSD system provided that the rainwater tank for reuse and all downpipes are connected to the rainwater tank. The volume to be offset from the OSD system is equivalent to 50% of the size of the rainwater tanks,
- The water quality improvement system and WSUD strategy proposal shall be designed to capture and treat at least 85% flows generated from the site,
- The on-site detention and water quality improvement devices are to be provided to Sydney Water as part of the connection process. The

stormwater connection is to be part of the Section 73 application process for the development and required to follow the Asset Creation Process. The connection details are to be drawn in AutoCad format and given to Water Servicing Coordinator. Water Servicing Coordinator is required to transfer these drawings on to the Sydney Water's template prior to submit as design drawings. If the proposed connection size is equal or greater than 300mm, then the actual connection details are to be designed by a qualified structural engineer and the structural engineer's certificate is to be attached with the design drawing, and

- A WSUD Strategy and MUSIC model must be prepared and submitted to Council and Sydney Water for the development. The MUSIC model must be prepared in line with the Draft NSW MUSIC Modelling Guidelines (Sydney Metro CMA). Sydney's Water's requirements are that the water quality improvement should meet or exceed the target as described in the "Botany Bay & Catchment Water Quality Improvement Plan" which was prepared by the Sydney Metropolitan Catchment Management Authority in April 2011.

44 Proposed New Service Easements

Prior to the issue of the Construction Certificate, the following easements shall be created in conjunction with Council and the beneficiary:

- Register a new 4.57m wide Easement for Sewerage Purposes" over the new sewer main in conjunction with Sydney Water and Council, and
- Register a new 2.44m wide Easement(s) to Drain Water" over any new inter allotment stormwater infrastructure and/or overland flow route in conjunction with the beneficiary(ies) of easement X757885 and Council.

45 Acoustic Condition

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) As per the measures Referenced in the Day Design Noise Acoustic report dated 23 December 2013 and the Additional Noise Monitoring report dated 14 July 2014.
- (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 satisfies an internal sound pressure level less than LA_{max} 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 as well as fixed industrial land uses within 500 metres, 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_{eq}) sound pressure level at any point on any residential property, external apartment balcony or external apartment window greater than 5dBA above the existing background LA₉₀ level (in the absence of the noise under consideration).
- (ii) shall not give rise to an equivalent continuous (LA_{eq}) sound pressure level at any point on any residential property, external apartment balcony or external apartment window that exceeds LA_{eq} 50dBA daytime and LA_{eq} 40dBA nighttime.
- (iii) shall not give rise to an equivalent continuous (LA_{eq}) sound pressure level at any commercial/industrial premises that exceeds LA_{eq} 65dBA.

For assessment purposes the LA_{eq} 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 the Construction Certificate approved documentation shall be approved by the Principal Certifying authority and identified in the report.

46

A Tree Preservation Order applies to all existing trees on Council's nature strip and in the park adjoining the southern boundary line, accordingly they are required to be retained and protected. In order to ensure that the 2 x *Eucalyptus maculata* and *Eucalyptus microcorys* situated on the road verge fronting the property and the row of Paperbarks located adjoining the southern boundary and within the park are protected during construction, and its health and structural stability ensured, the following is required :

- a. Prior to commencing demolition the trees are to be physically protected by erecting fencing underneath the canopy dripline using 1.8 metre high chainwire fence to form the Tree Protection Zone (TPZ). The fence shall remain in place until construction is complete.
- b. If there is insufficient space to erect fencing on the property boundary side of the park trees, wrap the trunk with hessian or carpet underlay to a height of 2.5 metres or to the tree's first lateral branch, whichever is greater, and affix timber palings around the tree with strapping or wire (not nails).
- c. Before any works commence on the site, the Applicant is required to contact Council for an inspection and/or provide photographic evidence of the fenced TPZ's. Council approval is required prior commencement of any work.
- d. All detailed Construction Certificate plans shall show all trees to be protected and the TPZ.

CONDITIONS WHICH MUST BE SATISFIED PRIOR TO THE COMMENCEMENT OF ANY DEVELOPMENT AT WORK

47 Soil and Water Management Plan Implementation (SWMP)

All management measures recommended and contained within the Soil and Water Management Plan (SWMP) submitted as part of the construction certificate shall be implemented in accordance with the *Landcom Managing Urban Stormwater – Soils and Construction* 4th Edition (2004). This plan shall be implemented prior to commencement of any site works or activities. All controls in the plan shall be maintained at all times and made available to council officers on request.

48 Erosion and Sediment Control Measures

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.

49 Erosion Controls – Vehicular Entry/Exit Points

The vehicular entry/exits to the site must be protected from erosion and laid with a surface material which will not wash into the street drainage system or watercourse.

50 Shaker Pads

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 other plant and equipment.

51 Dewatering – Water Quality Requirements

For any water from site dewatering to be permitted to go to stormwater, the water must meet ANZECC 2000 Water Quality Guidelines for Fresh and Marine Water for the 95% protection trigger values for marine water. The results of all testing must be completed by a NATA accredited laboratory.

All laboratory results must be accompanied by a report prepared by a suitably qualified person indicating the water meets these guidelines and is acceptable to be released into council's stormwater system. If it is not acceptable, details of treatment measures to ensure the water is suitable for discharge is to be provided in this report.

Reports shall be provided to council prior to discharge of groundwater to the stormwater system.

52 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 as appropriate:

- (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, footpath, kerb and gutter over road reserve
- (e) Permit to open road reserve area, including roads, footpaths, nature strip, vehicular crossing or for any purpose whatsoever
- (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

(It should be noted that 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.)

- (i) Permit to establish "Works Zone" on public roads adjacent to the development site, including use of footpath area.

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

53

- (a) Erection of a building is being carried out, at the rate of one toilet for every 20 persons or part of 20 persons employed at the site;
- (b) Each toilet provided:
 - (i) must be standard flushing toilet; and,
 - (ii) must be connected:
 - (1) to a public sewer; or
 - (2) if connection to a public sewer is not practicable to an accredited sewerage management facility approved by the Council; or,
 - (3) if connection to a public sewer or an accredited sewerage management facility is not practicable to some other sewerage management facility approved by the Council.
 - (iii) The provisions of toilet facilities in accordance with this clause must be completed before any other work is commenced.

54 A sign must be erected in a prominent position on any work site on which work involved in the erection 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.
- 55 The Applicant must indemnify Council against all loss of or damage to the property of others and injury or death to any persons which may arise out of or in consequence of the carrying out of the work and against all claims, demands, proceedings, costs, charges and expenses whatsoever in respect thereof or in relation thereto. In this regard, the Applicant shall take out a public liability policy during the currency of the works in the sum of not less than \$20,000,000 and to be endorsed with City of Botany Bay Council as principal, and keep such policy in force at the Applicant's own expense. A certificate from the Applicant's insurers to this effect is to be **LODGED WITH COUNCIL BEFORE ANY WORK IS COMMENCED**. The amount of Common Law liability shall be unlimited.
- 56 During construction, 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;
 - (b) Approved Traffic Management Plan and;
 - (c) Approved Construction Management Plan.
- 57 All works carried out on the public roads 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 associated with the road widening;
 - (b) Prior to placement of concrete (kerb and gutter and footpath);
 - (c) Prior to construction and placement of road pavement materials; and
 - (d) Final inspection.
- Note:** Council's standard inspection fee will apply to each of the above set inspection key stages. Additional inspection fees may apply for additional inspections required to be undertaken by Council.
- 58 Erosion and Sediment Control Measures
- Erosion and sediment control devices shall be installed and in function 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, trees 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.

59 Shoring for Adjoining Property

Where any shoring is to be located on or is supporting Council's property, or any adjoining private property, engineering drawings certified as being adequate for their intended purpose by an appropriately qualified and practising engineer, showing all details, including the extent of encroachment and the method of removal (or any other method) and de-stressing of shoring elements, shall be submitted with the Construction Certificate to the Principle Certifying Authority along with Council's (or other) consent if the works intrude on Council's (or other) property.

DURING WORKS

60 Additional information – Contamination

Any new information that comes to light during demolition or construction which has the potential to alter previous conclusions about site contamination and remediation must be notified to Council and the accredited certifier immediately.

61 Asbestos

Any material containing asbestos found on site during the demolition process shall be removed and disposed of in accordance with:

- a) WorkCover NSW requirements. An appropriately licensed asbestos removalist must complete all asbestos works if they consist of the removal of more than 10m² of bonded asbestos and/or any friable asbestos.
- b) Protection of the Environment Operations Act 1997;
- c) Protection of the Environment Operation (Waste) Regulation
- d) DECC Waste Classification Guidelines 2008.

62 Monitoring

Results of the monitoring of any field parameters such as soil, groundwater, surface water, dust or noise measurements shall be made available to Council Officers on request throughout the remediation and construction works.

63 Erosion and Sediment Controls - SWMP

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; and
- b) "Managing Urban Stormwater - Soils and Construction" (2004) Landcom ('The Blue Book'); and
- c) Protection of the Environment Operations Act 1997.

64 Erosion Controls - Access to Site and Transportation of Materials

During Demolition, Excavation, 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. Hosing down of vehicle tyres shall only be conducted in a suitable off-street area where wash waters do not enter the stormwater system or Council's lands.

65 Remediation Works

All remediation work must be carried out in accordance with:

- a) NSW Office of Environment and Heritage (OEH) 'Contaminated Sites – Guidelines for Consultants Reporting on Contaminated Sites'; and
- b) NSW Environment Protection Authority (NSW EPA) guidelines under the Contaminated Land Management Act 1997; and
- c) State Environmental Planning Policy 55 (SEPP55) – Remediation of Land; and
- d) The Remedial Action Plan (RAP) required to be submitted prior to the issue of the Construction Certificate.

66 Acid Sulfate Soil Management

The management of potential and actual acid sulfate soils shall be conducted in accordance with all recommendations within the Acid Sulfate Soil Management Plan required to be submitted prior to the construction certificate including:

- (a) Site specific mitigation measures to both minimise the disturbance of acid sulfate soils as well as any measures relating to acid generation and acid neutralisation of the soil; and
- (b) Management of acid sulfate affected excavated material;
- (c) Measures taken to neutralise the acidity of any acid sulfate affected material; and
- (d) Run-off control measures for the acid sulfate affected soil.

67 Dewatering Water Quality Requirements

For any water from site dewatering to be permitted to go to stormwater, the water must meet ANZECC 2000 Water Quality Guidelines for Fresh and Marine Water for the 95% protection trigger values for Marine Water. All testing must be completed by a NATA accredited laboratory. All laboratory results must be accompanied by a report prepared by a suitably qualified and experienced person indicating the water is acceptable to be released into Councils stormwater system.

If the groundwater does not meet these guideline levels a Trade Waste permit from Sydney Water must be sought to put the groundwater to sewer.

68 Waste Classification – Excavated Materials

All materials excavated from the site (fill or natural) shall be classified in accordance with the NSW Office of Environment and Heritage (OEH) Waste Classification Guidelines (2008) prior to being disposed of to a NSW approved landfill or to a recipient site.

69 Importation of Fill (General)

To prevent contaminated soil being used onsite and to ensure that it is suitable for the proposed land use, all imported fill shall be appropriately certified material and shall be validated in accordance with the:

- a) Office of Environment and Heritage (OEH) approved guidelines; and
- b) Protection of the Environment Operations Act 1997; and
- c) Protection of the Environment Operations (Waste) Regulation 2005.

All imported fill shall be accompanied by documentation from the supplier which certifies that the material has been analysed and is suitable for the proposed land use.

70 Construction Operations

- a) The applicant shall conduct all 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 (eg concrete pumps) or equipment (eg 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.

71 Protection of Council's Property

During Demolition, Excavation and Construction, care must be taken to protect Council's infrastructure, including street signs, footpath, kerb, gutter and drainage pits etc. Protecting measures shall be maintained in a state of good and safe condition throughout the course of demolition, excavation and construction. The area fronting the site and in the vicinity of the development shall also be made safe for pedestrian and vehicular traffic at all times. Any damage to Council's infrastructure (including damage caused by, but not limited to, delivery vehicles, waste collection, contractors, sub-contractors, concrete delivery vehicles) shall be fully repaired in accordance with Council's specification and AUS-SPEC at no cost to Council.

72 Erosion Controls - Access to Site and Transportation of Materials

During Demolition, Excavation, Construction and Deliveries, access to the site shall be available in all weather conditions. The area shall be stabilised and protected from erosion to prevent any vehicles (including deliveries) tracking soil materials onto street drainage system/watercourse, Council's lands, public roads and road-related areas. Hosing down of vehicle tyres shall only be conducted in a suitable off-street area where wash waters do not enter the stormwater system or Council's land.

73 Excavation – Zone of Influence

If an excavation associated with the proposal extends below the level of the base of the footings of a building on an adjoining allotment of land or the common boundary fence the person causing the excavation to be made:

- a) Must preserve and protect the building/ fence from damage; and,
- b) If necessary, underpin and support such building in an approved manner;
- c) Must at least be 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of the intention to do so to the owner of the adjoining allotment of land and, furnish particulars of the excavation to the owner of the building being erected or demolished;

Any retained existing structures and or services on this and adjoining properties are not endangered during any demolition excavation or construction work associated with the above project. The applicant is to provide details of any shoring, piering, or underpinning prior to the commencement of any work. The construction shall not undermine, endanger or destabilise any adjacent structures.

If the soil conditions required it:

- a) Retaining walls associated with the erection of a building or other approved methods of preventing movement or other approved methods of preventing movement of the soil must be provided, and
- b) Adequate provision must be made for drainage.

74 Implementation of Traffic Management Plan and Construction Management Plan

During construction, the applicant shall ensure that all works and measures have been implemented in accordance with approved Traffic Management Plan and Construction Management Plan at all times.

75 Implementation of Construction Management Plan

During construction, the applicant shall ensure that all works and measures have been implemented in accordance with approved Construction Management Plan at all times.

76 If the work involved in the construction of a building:

- (a) likely to cause pedestrians or vehicular traffic in a public place to be obstructed or rendered inconvenient; or,
- (b) involves the enclosure of a public place:
 - (i) a hoarding or fence must be erected between the work site and the public place.
 - (ii) If necessary an awning is to be erected sufficient to prevent any substance from or in connection with the work falling into the public place.
 - (iii) The work site must be kept lit between sunset and sunrise if it is likely to be hazardous to person(s) in the public place.
 - (iv) Any such hoarding, fence or awning is to be removed when the work has been completed.

- (c) Suitable consent shall be obtained from Council prior to the erection of any hoarding at the property.

77

- (a) Any new information that comes to light during construction which has the potential to alter previous conclusions about site contamination and remediation must be notified to Council;
- (b) Results of the monitoring of any field parameters such as soil, groundwater, surface water, dust or noise measurements shall be made available to Council Officers on request throughout the remediation and construction works.

78 Throughout the construction period, Council's warning sign for soil and water management shall be displayed on the most prominent point of the building site, visible to both the street and site workers. A copy of the sign is available from Council's Customer Service Counter.

79 During construction works, the applicant / builder is required to ensure the protection and preservation of all boundary fencing or boundary walls between the subject site and adjoining properties. Any damage caused as a result of such works will be at the full cost of the applicant/builder.

80 All vehicles transporting soil, sand or similar materials to or from the site shall cover their loads at all times.

81

- (a) The operations of the site shall be conducted in such a manner as not to interfere with or materially affect the amenity of the neighbourhood by reason of noise, vibration, odour, fumes, vapour, steam, soot, ash, dust, particulate matter, waste water, waste products or other impurities which are a nuisance or injurious to health.
- (b) All possible and practicable steps shall be taken to prevent nuisance to the inhabitants of the surrounding neighbourhood from wind-blown dust, debris, noise and the like.

82 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 Environmental Noise Control Manual.

83

- (a) In order to prevent vehicles tracking soil or other materials onto public roads and washing of materials into the street drainage system or watercourse, during excavation, construction and deliveries, access to the

site shall be available in all weather conditions. The area shall be stabilised and protected from erosion;

- (b) Concrete trucks and any other trucks that used for the transportation of building materials or similar, shall not traffic soil cement or other materials onto the road reserve. Hosing down of vehicle tyres shall only be conducted in a suitable off-street area where wash waters do not enter the stormwater system or enter Council's land;
- (c) Building operations such as brick cutting, washing tools or brushes and mixing mortar shall not be carried out on public roadways or footways or in any other locations which could lead to the discharge of materials into the stormwater drainage system or onto Council's lands;
- (d) Hosing down or hosing/washing out of any truck (concrete truck), plant (eg concrete pumps) or equipment (eg wheelbarrows) on Council's road reserve or other property is strictly prohibited. Fines and cleaning costs will apply to any breach of this condition.
- (e) During construction works the area in front of the premises and for the full width of the site, be maintained at all times and kept clean and tidy.

84 The Development is to be constructed to meet the following construction noise requirements:

- (a) Construction Noise
 - (i) Noise from construction activities associated with the development shall comply with the NSW Environment Protection Authority's Environmental Noise Manual – Chapter 171 and the Protection of the Environment Operations Act 1997.
- (b) Level Restrictions
 - (i) Construction period of 4 weeks and under:
 - (1) 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 10dB(A).
 - (ii) Construction period greater than 4 weeks and not exceeding 26 weeks:
 - (1) 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).
- (c) Time Restrictions
 - (i) Monday to Friday 07:00am to 06:00pm;
 - (ii) Saturday 08:00am to 04:00pm
 - (iii) No Construction to take place on Sundays or Public Holidays.
- (d) Silencing

- (i) All possible steps should be taken to silence construction site equipment.
- 85 During construction, care must be taken to protect Council's infrastructure, including street signs, footpath, kerb, gutter and drainage pits etc. Protecting measures shall be maintained in a state of good and safe condition throughout the course of construction. The area fronting the site and in the vicinity of the development shall also be safe for pedestrian and vehicular traffic at all times. Any damage to Council's infrastructure (including damage caused by, but not limited to, delivery vehicles, waste collection, contractors, sub-contractors, concrete delivery vehicles) shall be fully repaired in accordance with Council's specification and AUS-SPEC at no cost to Council.
- 86 The fire hydrant and booster assembly are required to be housed within an external façade/wall of the building or elsewhere within the building structure and shall be enclosed/screened with doors to Council approval.
- 87
- (a) All imported fill shall be validated in accordance with Department of Environment and Conservation approved guidelines to ensure that it is suitable for the proposed development from a contamination perspective. Imported fill shall be accompanied by documentation from the supplier, which certifies that the material is suitable for the proposed residential/recreational land use and not contaminated based upon analyses of the material.
- (b) To prevent contaminated soil being used onsite, all imported fill shall be certified VENM material and shall be validated in accordance with the Office of Environment and Heritage (OEH) approved guidelines to ensure that it is suitable for the proposed development. Imported fill shall be accompanied by documentation from the supplier which certifies that the material has been analysed and is suitable for the proposed land use.
- (c) Any soil disposed of offsite shall be classified in accordance with the procedures in the Department of Environment and Climate Change Waste Classification Guidelines (2008).

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

- 88 The City of Botany Bay being satisfied that the proposed development will increase the demand for public amenities within the area, and in accordance with Council's Section 94 Contributions Plans a contribution of \$4920,000.00 is payable.

The Section 94 Contribution of \$4,920,000.00 is to be paid to Council prior to the issue of an Occupation Certificate.

Note: 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.

- 89 The public domain works within Grace Campbell Reserve as listed under the Voluntary Planning Agreement must be completed prior to the issue of an Occupation Certificate.

90 Contaminated Land – Site Validation Report

A Stage 4 – Site Validation Report (SVR) shall be prepared by a suitably qualified contaminated land consultant and shall be in accordance with:

- a) NSW Office of Environment and Heritage (OEH) ‘Contaminated Sites – Guidelines for Consultants Reporting on Contaminated Sites’;
- b) NSW Environment Protection Authority (NSW EPA) approved guidelines under the Contaminated Land Management Act 1997; and
- c) State Environmental Planning Policy 55 (SEPP55) – Remediation of Land.

The site validation report shall provide a notice of completion of remediation works, whether there are any ongoing site management requirements and a clear statement on the suitability of the likely proposed site use. The report shall be submitted to the Principal Certifying Authority (and the Council if the Council is not the Principal Certifying Authority for review and concurrence). The report is to be submitted after completion of remediation works.

91 Site Audit Statement – Site Suitability

To ensure that the site is suitable for the proposed use, a Site Audit Statement (SAS) completed by an accredited site auditor under the *Contaminated Land Management Act 1997* shall be submitted to Council clearly demonstrating that the site is suitable for the proposed development. This shall be provided prior to the release of the Occupation Certificate.

Any conditions imposed on the SAS shall form part of this consent. The accredited site auditor shall provide Council with a copy of the Site Audit Report (SAR) and Site Audit Statement (SAS) prior to the issuing of the Occupation Certificate. In circumstances where the SAS conditions (if applicable) are not consistent with the consent, a Section 96 application pursuant to the *Environmental Planning & Assessment Act 1979* shall be submitted to ensure that they form part of the consent conditions.

92

- (a) Prior to the issue of the Occupation Certificate, the development is to be constructed to meet the requirements detailed in the Acoustic Report, prepared by Day Design dated 23 December 2013.

- (b) All acoustic work including that acoustic work required at Condition No. 26 shall be completed prior to the issue of the Occupation Certificate and validated by a person with appropriate qualifications and experience.

93 Prior to the issue of the Occupation Certificate, the following is to be complied with:

- (i) Replace all the existing above ground electricity and telecommunication cables to underground cables that adjoin the site and road reserve area fronting Rhodes Street in accordance with the guidelines and requirements of the relevant utility authorities and Ausgrid. The applicant shall bear all the cost of the construction and installation of the below ground cables and any necessary adjustment works. These works and payments shall be completed prior to the issue of the Occupation Certificate; and
- (ii) Provide appropriate and suitable street lighting to a high decorative standard to both street frontages of the site together with those internally publicly accessible paths, spaces and corridors, so to provide safety and illumination for residents of the development and pedestrians in the area. All street lighting shall comply with relevant electricity authority guidelines and requirements.

94 The applicant is to submit payment for a Public Works Defects Liability Bond of \$15,000.00. The duration of the Bond shall be limited to a period of 12 months after final Council approval of all public domain works. At the completion of the 12 month period the Bond shall be refunded pending a satisfactory inspection of the public domain work by Council. If rectification or maintenance work is required in this period then Council will forfeit all or part of the bond to undertake the required work.

95

- (a) A total of 459 car parking spaces shall be provided for within the development. Resident parking spaces shall made available to residents and visitors at all times, with such spaces being clearly marked and signposted prior to issue of the Occupation Certificate;
- (b) Allocation of the car parking shall be as follows:

Car Parking Rates	Required
1 space per studio and 1 bedroom units	83 spaces
2 spaces per 2 or 3 bedroom units	326 spaces
1 visitor space per 7 dwellings	50 spaces
TOTAL REQUIRED	459

- 96 All services (Utility, Council, etc) within the road reserve (including the footpath) shall be relocated/adjusted to match the proposed/existing levels as required by the development.
- 97 Prior to the issue of the Occupation Certificate, street numbers shall be clearly displayed with such numbers being of contrasting colour and adequate size and location for viewing from the footway and roadway.
- 98 Prior to the issue of the Occupation Certificate, documentation from a practising civil engineer shall be submitted to the Principal Certifying Authority certifying that the car parking areas, driveways entrances and egresses have been constructed generally in accordance with the approved construction plan(s) and comply with AS2890.1, AS2890.2 and AS2890.6 requirements. The internal parking facilities shall be clearly designated, sign posted and line marked. Signage and line marking shall comply with the current Australian Standards.
- 99 The following shall be complied with prior to the issue of the Occupation Certificate:
- (a) A new vehicular crossing including layback and/or gutter and any associated road restoration shall be constructed in accordance with Council's requirements. The applicant shall make a separate application to Council's Customer Service Counter for the construction/ reconstruction of vehicular crossing (either by Council or own forces) to the vehicular entry point of the site as shown on the submitted approved plan.
 - (b) The crossing shall be able to accommodate the turning movement of Heavy Rigid Vehicle (HRV) entering and leaving the site and at 90° to the kerb and gutter in plain concrete. All adjustments to the nature strip, footpath and/or public utilities' mains and services as a consequence of the development and any associated construction works shall be carried out at the full cost to the Applicant.
 - (c) The redundant vehicular crossing, together with any necessary works shall be removed and the footpath, nature strip and kerb and gutter shall be reinstated in accordance with Council's specification.
 - (d) Written confirmation / completion certificate obtained from Council.
 - (e) Inspection report (formwork and/or final) for the works on road reserve obtained from Council's engineer.
 - (f) A copy of the approved public domain civil works plans showing Work-as-Executed details (together with an electronic copy) prepared by a registered surveyor.
 - (g) Driveways and vehicular access paths shall be designed and constructed to comply with the minimum requirements (including changes of grade) of AS/NZS 2890.1.

- 100 Prior to the issue of the Occupation Certificate, a Certificate of Survey from a Registered Surveyor shall be submitted to the Principal Certifying Authority and the Council to the effect that:
- (a) All reduced levels shown upon the approved plans, with relation to the required solar panels, drainage, boundary and road reserve levels, have been strictly adhered to; and
 - (b) A Floor Space Ratio (FSR) of 1.87:1 and height of 43.10m AHD for Building B (west), 37.80 AHD for Building B East, 37.10 AHD for Building A and 37.30 AHD for Building C, as approved under this Development Consent No. 13/279, have been strictly adhered to and any departures are to be rectified in order to issue the Occupation Certificate.
 - (c) The development as built, stands within SP 33080, part of Lot 2 DP 445433 and part Lot B DP 445635.
- 101 The applicant is responsible for the installation and protection of all regulatory/parking / street signs fronting the property. Any damaged or missing street signs as a consequence of the development and associated construction works shall be replaced at full cost to the applicant.
- 102 Prior to the issue of the Occupation Certificate:
- (a) the construction of the stormwater drainage system of the proposed development shall be generally in accordance with the approved stormwater management construction plan(s), Council's 'Guidelines for the Design of Stormwater Drainage Systems within City of Botany Bay', AS/NSZ 3500 – Plumbing and Drainage Code and the BCA; and
 - (b) documentation from a practising civil engineer shall be submitted to the Principal Certifying Authority certifying that the stormwater drainage system has been constructed generally in accordance with the approved stormwater management construction plan(s) accepted practice and the construction standard referred to in Condition 102(a) above.
- 103 Prior to the issue of the Occupation Certificate, landscaping within the private property shall be installed in accordance with the landscape plans by Iscape Landscape Architecture Landscape Plans Ref 13/506 dated December 2013.
- 104 At the completion of landscaping on the site, the Applicant is required to obtain a Certificate of Compliance from the Landscape Consultant to certify that the landscaping has been installed in accordance with the Council approved landscape plan. The Certificate is to be submitted to the City of Botany Bay Council prior to the Issue of an Occupation Certificate.
- 105 Prior to the issue of an Occupation Certificate, planter boxes constructed over a concrete slab shall be built in accordance with the following requirements :
- (a) Ensure soil depths and dimensions in accordance with Council's DCP allowing a minimum soil depth of 1 metre to support trees. The base of the planter must be screeded to ensure drainage to a piped internal drainage

- outlet of minimum diameter 90mm, with no low points elsewhere in the planter. There are to be no external weep holes;
- (b) A concrete hob or haunch shall be constructed at the internal join between the sides and base of the planter to contain drainage to within the planter;
 - (c) Planters are to be fully waterproofed and sealed internally with a proprietary sealing agent and applied by a qualified and experienced tradesman to eliminate water seepage and staining of the external face of the planter. All internal sealed finishes are to be sound and installed to manufacturer's directions prior to backfilling with soil. An inspection of the waterproofing and sealing of edges is required by the Certifier prior to backfilling with soil;
 - (d) Drainage cell must be supplied to the base and sides of the planter to minimize damage to the waterproof seal during backfilling and facilitate drainage. Apply a proprietary brand filter fabric and backfill with an imported lightweight soil suitable for planter boxes compliant with AS 4419 and AS 3743. Install drip irrigation including to lawns; and
 - (e) Finish externally with a suitable paint, render or tile to co-ordinate with the colour schemes and finishes of the building.
- 106 Prior to the issue of the Occupation Certificate, to ensure satisfactory growth and maintenance of the landscaping, a fully automatic drip irrigation system is required in all landscaped areas. The system shall be installed by a qualified landscape contractor and provide full coverage of planted areas with no more than 300mm between drippers, automatic controllers and backflow prevention devices, and should be connected to a recycled water source. Irrigation shall comply with both Sydney Water and Council requirements as well as Australian Standards, and be maintained in effective working order at all times.
- 107 Any air conditioning units shall comply with the following requirements:
- (a) Air conditioning units are not to be visible from the street or public place and are not to obscure windows/window frames or architectural features of the dwelling.
 - (b) A person must not cause or permit an air conditioner to be used on residential premises in such a manner that it emits noise that can be heard within a habitable room in any other residential premises (regardless of whether any door or window to that room is open):
 - (i) Before 8 am or after 10 pm on any Saturday, Sunday or public holiday, or
 - (ii) Before 7 am or after 10 pm on any other day.
- 108
- (a) Prior to use and occupation of the building an Occupation Certificate must be obtained under Section 109C(1)(c) and 109M of the Environmental Planning and Assessment Act 1979.
 - (b) Condition Number 3(b), of this consent are pre-conditions to the issue of the Occupation Certificate.

109 Photographic Survey After Works

Any damage not shown in the photographic survey submitted to Council before site works have commenced will be assumed to have been caused by the site works (unless evidence to prove otherwise). All damages as a result from site works shall be rectified at the applicant's expense to Council's satisfaction, prior to occupancy of the development and release of damage deposit.

110 CCTV Report of Council's Drainage System After Completion of Works

At the completion of all construction works, a qualified practitioner, with a certificate of attainment in NWP331A Perform Conduit Evaluation, shall undertake a closed circuit television (CCTV) inspection and then report on the existing condition of the Stormwater Culvert traversing the development site. The camera and its operation shall comply with the following:

- The internal surface of the drainage pipe/culvert shall be viewed and recorded in a clear and concise manner,
- The CCTV camera used shall be capable to pan, tilt and turning at right angles to the pipe axis over an entire vertical circle to view the conduit joints,
- Distance from the manholes shall be accurately measured, and
- The inspection survey shall be conducted from manhole to manhole.

The written report, together with a copy of the digital video footage of the pipeline shall be submitted to Council for review. Any damage to the culvert/pipeline since the commencement of construction on the site shall be repaired in full to the satisfaction of Council. A written acknowledgement shall be obtained from Council (attesting this condition being appropriately satisfied) and submitted to the Principal Certifying Authority.

111 Stormwater Drainage System - Engineering Certification

Prior to the issue of the Occupation Certificates, documentation from a practising civil engineer shall be submitted to the Principal Certifying Authority certifying that the stormwater drainage system has been constructed generally in accordance with the approved stormwater management construction plan(s) and all relevant standards.

112 Construction of Public Domain Works

Prior to the issue of Final Occupation Certificate, the applicant shall carry out the following works:

- On Rhodes St, adjacent to development, reconstruct existing Kerb and Gutter for the full length of the property in accordance with Council Infrastructure Specifications,
- On Rhodes St, adjacent to development, demolish existing concrete footpath driveways and construct new concrete footpath as per Council's Infrastructure specifications, and
- On Rhodes St, reconstruct half width of the road, the road asphalt adjacent to development in accordance with Council's Infrastructure Specifications.

113 Works on Council's lands / Road Reserve – Inspection Reports

Prior to the issue of the Occupation Certificate, inspection reports (formwork and final) for the works on the road reserve shall be obtained from Council's engineer and submitted to the Principal Certifying Authority attesting that this condition has been appropriately satisfied.

114 Positive Covenant(s) Register

Prior to the issue of the Occupation Certificate, a restriction on Use of Land and Positive Covenant(s) shall be imposed on the development. The following covenants shall be imposed under Section 88(E) of the Conveyancing Act 1919 and lodged with the NSW Land and Property Information:

- Restriction on Use of Land for On-Site Detention System. Refer to Appendix B of the SMTG for suggested wording, and
- Restriction on Use of Land for Stormwater Quality Improvement Device. Refer to Appendix E of the SMTG for suggested wording.

115 Existing Service Easements

Prior to the issue of the Occupation Certificate, the following easements shall be extinguished with the prior approval of the beneficiary:

- Registered 4.57m wide "Easement for Sewerage Purposes" title reference G52933 shall be extinguished with the written approval from Sydney Water and Council, and
- Registered 2.44m wide "Easement to Drain Water" title reference X757885 shall be extinguished with the written approval from the beneficiary(ies) and Council.

116 Landscaping shall be installed in accordance with the final approved landscape plans. This amended, approved plan will supercede the original landscape plan. The landscaped areas on the property shall be installed and maintained in accordance with the approved landscape documentation, the conditions of consent and to Council's satisfaction at all times.

a. An experienced Landscape Contractor shall be engaged to undertake the landscaping work and shall be provided with a copy of both the approved landscape drawing and the conditions of approval to satisfactorily construct the landscape to Council requirements.

b. The contractor shall be engaged weekly for a minimum period of 26 weeks from final completion of landscaping for maintenance and defects liability, replacing plants in the event of death, damage, theft or poor performance. After that time regular and ongoing maintenance is required.

c. At the completion of landscaping on the site, the Applicant is required to obtain a Certificate of Compliance from the Landscape Consultant or Certifier to certify that the landscaping has been installed in accordance with the Council approved landscape plan. The Certificate is to be submitted to the City of Botany Bay Council prior to the Issue of an Occupation Certificate.

CONDITIONS WHICH MUST BE SATISFIED DURING THE ONGOING USE OF THE DEVELOPMENT

- 117 On site waste material removal and recycling collection is to occur from the Rhodes Street vehicular entry.
- 118 The landscape contractor shall be engaged weekly for a minimum period of 52 weeks from final completion of landscaping for maintenance and defects liability, replacing plants in the event of death, damage, theft or poor performance. After that time monthly maintenance is required.
- 119 New street trees shall be maintained by the Applicant/Owner/Strata Corporation for a 24 months after final inspection by Council. Maintenance includes twice weekly watering within the first 6 months then weekly thereafter to sustain adequate growth and health, bi-annual feeding, weed removal round the base, mulch replenishment at 3 monthly intervals (to 75mm depth) and adjusting of stakes and ties. Maintenance but does not include trimming or pruning of the trees under any circumstances.
- 120 The landscaped areas on the property shall be maintained in accordance with the Council stamped and approved landscape documentation, the conditions of development consent and Council's DCP all times.
- 121 The use of the premises shall not give rise to any of the following when measured or assessed at "sensitive" positions within any other property. These "sensitive" positions should be selected to reflect the typical use of a property (ie any outdoor areas for day and evening but closer to the façade at night time), unless other positions can be shown to be more relevant.
- (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).
 - (b) 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.
 - (c) The operation of all plant and equipment when assessed on any neighbouring commercial/industrial premises shall not give rise to a sound pressure level that exceeds LAeq 65dB(A) day time/night time.
 - (d) 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.
- 122
- (a) Each residential dwelling (apartment) is approved as a single dwelling for use and occupation by a single family. They shall not be used for separate residential occupation or as separate residential flats. No plumbing

- fixtures, fittings, walls shall be deleted or added, doorways enclosed or any other changes made from the approved plans in Condition No. 1 of this Consent without the prior Consent of the Council;
- (b) The adaptable apartments approved under this development consent are to remain unaltered at all times; and
 - (c) The storage areas located within the basement shall be allocated to the relevant residential dwelling in any future subdivision of the site. In addition, any isolated storage areas and other spaces identified by the NSW Police in Condition 13, shall be monitored by CCTV cameras at all times.
- 123 All parking bays 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. Vehicle turning areas shall be kept clear at all times and no vehicles are permitted to park in these areas.
- 124 The Development must be managed as follows:-
- (i) 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. 13/200.
 - (ii) Responsibilities with regard to the maintenance of artificial features at the property in accordance with the plans and details approved under Development Consent No. 13/279
 - (iii) Responsibilities regarding the maintenance of the car wash bay the Owners Corporation / building owner.
 - (iv) 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 with the Plan of Management required under the conditions of this consent.
 - (v) 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;
 - (vi) 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.
 - (vii) The Owners Corporation/Executive Committee obligations under clauses 177, 182, 183, 184, 185 and 186 of the *Environmental Planning and Assessment Regulation 2000*.
 - (viii) The linen plan must include details of any easements, encroachments, rights of way, including right of footway. restriction as to user or positive covenants and include a Section 88B Instrument under the *Conveyancing Act, 1919*. Council is to be nominated as the only authority permitted to release, vary or

modify any easements, encroachments, rights of way, restriction as to user or positive covenants;

- (ix) A graffiti management plan for the removal of graffiti and similar vandalism within seven (7) days of its occurrence and surface re-instatement;
- (x) Maintenance of required acoustic measures of Development Consent No. 13/279; and
- (xi) CCTV surveillance of all public areas within the development site.

125 Maintenance of Stormwater Drainage System

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 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.

- 126 Ongoing maintenance of the nature strip shall be undertaken by the occupiers/owners/strata. Maintenance includes mowing, watering and maintaining an even coverage of grass at all times. Maintenance does not include pruning, trimming, shaping or any work to street trees located on the nature strip under any circumstances at any time. Pruning is undertaken by Council only.

- 127 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. 13/279 dated as 24 December 2013 and that any alteration, variation, or extension to the use, for which approval has been given, would require further Approval from Council.