

**JOINT REGIONAL PLANNING PANEL**  
**(Sydney East)**

JRPP No	2014SYE062
DA Number	14/080
Local Government Area	City of Botany Bay
Proposed Development	<p>Integrated Development Application for the remediation of the site, removal of existing vegetation and construction of:</p> <ul style="list-style-type: none"> <li>• 35 x two and three storey townhouses fronting Holloway and Page Streets;</li> <li>• Two residential flat buildings comprising of a total of 221 apartments (135 studio/1 bedroom apartments, 80 x 2 bedroom apartments and 6 x 3 bedroom apartments);</li> <li>• Above ground parking for 465 vehicles;</li> <li>• Landscaping and public domain works including excavation/earthworks to alter the level of the site.</li> </ul>
Street Address	32 Page Street, Pagewood
Lot & DP Nos.	Lot 201 in DP 788578
Applicant/Owner	TMG Capital Projects Botany Pty Ltd
No. of Submissions	<p>First notification – approximately 500 individual submissions</p> <p>Second Notification – 214 individual submissions</p>
Regional Development Criteria	Development with a CIV of \$89,940,000
List of All Relevant s79C(1)(a) Matters	<ul style="list-style-type: none"> <li>• Environmental Planning &amp; Assessment Act 1979, Part 4 – Development Assessment;</li> <li>• Environmental Planning &amp; Assessment Regulation 2000, Part 6 – Procedures relating to development applications;</li> <li>• State Environmental Planning Policy No. 55 – Contaminated Land;</li> <li>• State Environmental Planning Policy 2004 (BASIX);</li> <li>• State Environmental Planning Policy No. 65 – Design Quality of Residential Flat buildings;</li> <li>• Botany Bay Local Environmental Plan 2013;</li> <li>• Botany Development Control Plan 2013;</li> </ul>
Documents submitted with this report for the panel's consideration	<ul style="list-style-type: none"> <li>• Statement of Environmental Effects – Urbis;</li> <li>• Clause 4.6 Variation – Urbis;</li> <li>• Amended Architectural Plans – Elenberg Fraser;</li> <li>• Traffic Impact Assessment – McLaren Traffic Engineering;</li> </ul>

	<ul style="list-style-type: none"> <li>• Remedial Action Plan (RAP) JBS&amp;G;</li> <li>• Site Audit Statement (SAS) Zoic Environmental;</li> </ul>
Recommendation	Conditional Consent
Report by	Christopher Mackey – Senior Assessment Planner

## 1. RECOMMENDATION

The Joint Regional Planning Panel (JRPP), as the determining Authority resolve that:

- (a) The Joint Regional Planning Panel note that the applicant's written request to vary the height development standard under Botany Bay Local Environmental Plan 2013 is not supported, and that it has not been demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case; there are insufficient environmental planning grounds to justify contravening the development standard; the proposed development will be in contravention of the development standard and will not be in the public interest; the contravention will be inconsistent with the objectives of the zone and will have an adverse impact on the locality.

Hence, Condition No. 33 as recommended proposes the deletion of Level 7 of Building 1 and 2;

- (b) The JRPP subject to the conditions in the attached schedule, approve Development Application No. 14/080 for the remediation of the site, removal of existing vegetation and construction of:
- 35 x two and three storey townhouses fronting Holloway and Page Streets;
  - Two residential flat buildings comprising of a total of 221 apartments (135 studio/1 bedroom apartments, 80 x 2 bedroom apartments and 6 x 3 bedroom apartments);
  - Above ground parking for 465 vehicles;
  - Landscaping and public domain works including excavation/earthworks to alter the level of the site.

## EXECUTIVE SUMMARY

The application was originally lodged as a Stage 1 Development Application. On the 2 April 2014, the applicant then re-lodged the application as a Development Application, which (in its amended form) seeks consent for the remediation of the site, removal of vegetation and construction of:

- 35 x two and three storey townhouses fronting Holloway and Page Streets ranging from 2 to 4 bedrooms;
- Two residential flat buildings comprising of a total of 221 apartments (135 studio/1 bedroom apartments, 80 x 2 bedroom apartments and 6 x 3 bedroom apartments);
- Above ground parking for 465 vehicles;
- Landscaping and public domain works including excavation/earthworks to alter the level of the site.

The development application is required to be referred to the Joint Regional Planning Panel pursuant to Clause 3 of Schedule 4A of the Environmental Planning and Assessment Act 1979 (EP&A Act) as the Capital Investment Value of the proposal exceeds \$20 million.

The Development Application was advertised as being Integrated Development, pursuant to Section 91 of the EP&A Act as the development was thought to involve temporary construction dewatering and requiring approval from the NSW Office of Water (OOW). However, the Applicant submitted a Geotechnical report indicating that the groundwater is between 3m – 3.5m below existing ground level, will not be intercepted during remediation or construction nor would the site require ongoing dewatering. It is a condition of the Site Audit Statement (SAS) that no groundwater extraction takes place. The application was referred to NSW Office of Water and the Department has issued its General Terms of Approval on 19 June 2014 recognising that limited interaction with the groundwater will occur. These conditions are recommended, and a permit will be required from OOW in the event that groundwater is encountered during remediation and construction.

The western part of the site is zoned R3 Medium Density Residential and the eastern part of the site is zoned B7 Business Park pursuant to the Botany Bay Local Environmental Plan 2013 (BBLEP 2013). The proposal falls within the definition of “residential flat building” and is permissible in R3 zone with development consent. No part of the proposal falls within the B7 zone, other than the site access driveway.

The total area of the subject site is 18,908m<sup>2</sup> and the proposal seeks to use the bonus provisions of Clause 4.3(2A) and Clause 4.4B of the BBLEP 2013 relating to maximum floor space ratio (FSR) and height, which apply to development sites that are zoned R3 Medium Density Residential and have over 2,000m<sup>2</sup> in site area. The R3 zoned part of the site is 14,821 m<sup>2</sup>. Clause 4.4B and Clause 4.3(2A) allows an FSR of 1.65:1 and a height of 22 metres, subject to the test in the Cluses being met. The proposed development has an FSR of 1.65:1 and therefore complies with the additional FSR development standard with the bonus. However, it exceeds the height standard provisions of BBLEP 2013 as the height will be 25.5m.

The applicant has submitted a Clause 4.6 variation in respect of the exceedence to the LEP height provision. It is considered that the variation is not well founded as the proposed additional height is not in the public interest, is not consistent with the desired future character of the area, the desired future character of the site and has an adverse visual impact on the locality. In this regard, it is recommended that Level 7 be deleted from the proposal by way of a condition of consent.

The application has been assessed against the provisions and objectives of SEPP 55, SEPP 65, BBLEP 2013 and BBDCP 2013. The proposal complies with the maximum FSR, setbacks, building separation, private open space and unit sizes under Council’s DCP and SEPP 65. The proposal has non-compliances with residential visitor car parking however this can be addressed by way of the deletion of Level 7. The proposed departures from the communal open space, site coverage, landscaping, unit mix and provision of deep soil are addressed in the assessment and on balance are reasonable in the circumstances due to the site constraints.

The development proposes significant public works and improvements to embellish Page Street, Holloway Street and Green Street including new street tree planting, landscaping, footpath, road asphalt, lighting, and undergrounding of services such as power lines.

The proposed townhouses fronting Holloway Street and Page Street result in satisfactory height transition from the residential flat buildings behind and the lower scale buildings on Page Street.

The major issue of contention raised in the assessment relate to the remediation, height and traffic impacts on the surrounding locality.

The proposal achieves the anticipated density for the site, however the proposed height exceedence is not supported for the reasons outlined in this report. It is recommended that consent be granted, subject to a condition that Level 7 be deleted from Building 1 and Building 2.

## **1. DESCRIPTION OF SITE & SURROUNDING LOCALITY**

The subject site is located on the southern side of Holloway Street and south-east of the intersection of Holloway Street and Page Street, Pagewood. The legal description of the land is Lot 201 in DP 788578. The site is irregular in shape with a frontage of 153.3 metres to Holloway Street and 118 metres to Page Street with a total site area of 18,900m<sup>2</sup>. Collins Lane is located along the western boundary, a public pedestrian thoroughfare connecting Page Street to Spring Street and Simon Walk Lane which connects through to Green Street. Existing vegetation exists on site along the each of the street frontages.

The site is generally flat, with a slight fall to the south-west. All former buildings on site have been demolished with hardstand areas and concrete slabs remaining in situ. An enclosed substation and metal container are currently situated on site and there is existing overgrown vegetation along the northern, eastern and western boundaries.

The subject site is burdened by the following easements and restrictions:

- Right of Way (A) for water services running along the southern boundary 3.6m wide, 5m wide and variable width;
- Right of Way (B) variable width benefiting DP 786310 located at the western part of the site;
- Right of Way (C) 5m wide and variable width benefiting H 24286 located adjacent to Collins lane along the western boundary;
- Easement (D) for sewer piped located at the western part of the site;
- Lease (E) to Energy Australia for Substation, located along the Holloway Street frontage;
- Right of Footway (F) running from Page Street to the location of the demolished building on site.

Surrounding development within the vicinity of the subject site is described as follows:

- Directly opposite the site on the northern side of Holloway Street is the Pagewood Public School.

- To the south and east are located industrial properties in Green Street and beyond in Baker Street.
- To the north, west and south - west are located low scale residential dwellings.



**Figure 1 – Location Plan**



**Figure 2 – Aerial photo of subject site and surrounding locality**





**Photo 1 – The site as viewed from Holloway Street, looking south**



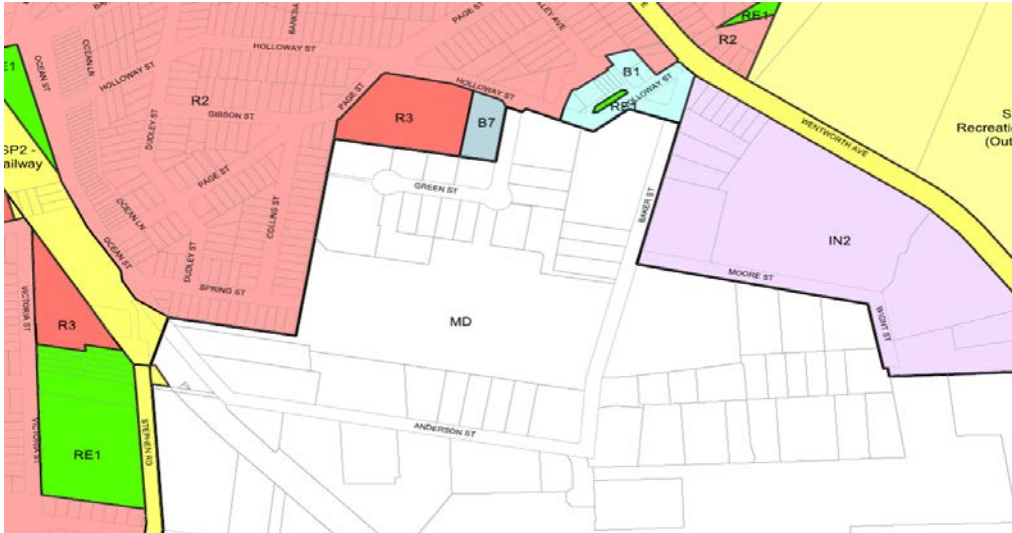
**Photo 2 – The site as viewed from Page Street looking south**



**Photo 3 – The site as viewed from Green Street looking west.**

## **2. ZONING**

The site zoned part R3 Medium Density Residential and part B7 Business Park under BBLEP 2013 as indicated in Figure 1 below.



**Figure 1 - Land Zoning Map (BBLEP 2013)**

### **3. SITE HISTORY**

The site has a history of past industrial use. From 1917 until 1989, the site was owned by Davis Gelatin Company, however this part of that companies land was largely undeveloped until the 1950's. Davis Gelatin was the largest gelatine manufacturing plant in Australia. The manufacturing components of this company were located further south of the subject site, towards Anderson Street.

The land appears to have been leased and progressively purchased by Grimwood Electrical Products from 1954 onwards.

Between 1989 and 2001, the site was owned by Email and was used for the manufacturing of electrical tubing and electrical heating elements. Contaminating processes continued under these operations including the use of TCE (Trichloroethylene) based solvents. However, as detailed further in this report, groundwater contamination is a result of multiple polluters in the region, and not purely a result of the past uses of this site alone.

Council approved Development Application No. 2007/302 on 15 June 2007 for the demolition of all existing industrial/warehouse buildings on site.

### **4. BACKGROUND**

On 16 April 2014, Council received Development Application No. 14/080, which initially sought consent for Stage 1 Integrated Development Application which sought concept approval for the following development on the subject site:

- Building envelopes comprising:
  - Attached (terrace-style) dwellings of 2-3 storeys along Page and Holloway Streets (maximum height of RL 25.0)
  - Two residential flat buildings of maximum height of RL 40.8;

- Building of two storeys on the corner of Holloway and Green Streets for future B7 Business Park uses (maximum height of RL 23.2);
- Uses including attached dwellings, residential apartments (on the western part of the site) and uses permissible in the B7 Business Park Zone (on the eastern part of the site);
- Vehicular access, driveway cross-over locations and above ground car parking for 463 vehicles (which includes 3 car-share spaces);
- Landscape concept design, including communal parks and pedestrian walkways;
- Potential public domain improvements to Holloway and Page streets.

On 17 March 2014 a preliminary proposal for a Masterplan DA for a part residential and part commercial development for the site was presented to and reviewed by the Design Review Panel (DRP). The DRP raised concerns in regards to the justification of the height non – compliance, the mesh screen layer at the upper levels of the RFB’s, variation to the façade at the upper level, the effect of contamination on the long term growth of trees on site, eliminate long internal corridors, overlooking from the RFB’s onto the townhouses.

The development application was first advertised and notified to nearby residents in accordance with Part 2 – Notification and Advertising of Botany Bay Development Control Plan 2013 from 28 May 2014 to 27 June 2014. In response to the notification period, Council received approximately 500 individual submissions objecting to the proposal. The issues raised by the submissions relate to the sites contamination status, context, height and traffic impacts.

In a letter to the Applicant dated 13 October 2014, Council raised issues in regards to the proposed height, FSR, solar access, building separation, setbacks, landscaping deep soil area, unit mix, remediation strategy and traffic/parking impacts.

Council officers held further meetings with the applicant that resulted in further amendments to the application received by Council on 2 April 2015 and a change from a Stage 1 Development Application to a formal Development Application for construction.

The development application in its amended form, seeks consent for the remediation of the site, removal of vegetation and construction of:

- 35 x two and three storey townhouses fronting Holloway and Page Streets;
- Two residential flat buildings comprising of a total of 221 apartments (135 studio/1 bedroom apartments, 80 x 2 bedroom apartments and 6 x 3 bedroom apartments);
- Above ground parking for 465 vehicles;
- Landscaping and public domain works including excavation/earthworks to alter the level of the site.

The original application involved the indicative construction of a two storey commercial building fronting Green Street and the closure of Holloway Street. These aspects no longer form part of the application. The Applicant seeks consent to construct traffic calming measure in Dalley Avenue and at the intersection of Page Street and Holloway Street.

The amended proposed has been renotified to nearby residents and the previous objectors for a period of thirty (30) days from 29 April 2015 to 29 May 2015. In response to the second notification Council received 214 individual submissions.



On 4 August 2015, the Applicant submitted further revised plans incorporating changes to the ground floor car parking arrangements to address Council's concerns regarding the shared visitor parking. The changes relocate all visitor and commercial spaces fully onto the B7 zoned part of the site and increased the landscape area between the car spaces and the podium; The amended plans were accompanied by a letter from the Applicant's Traffic Consultant to justify the shortfall in visitor spaces, discussed further in this report.

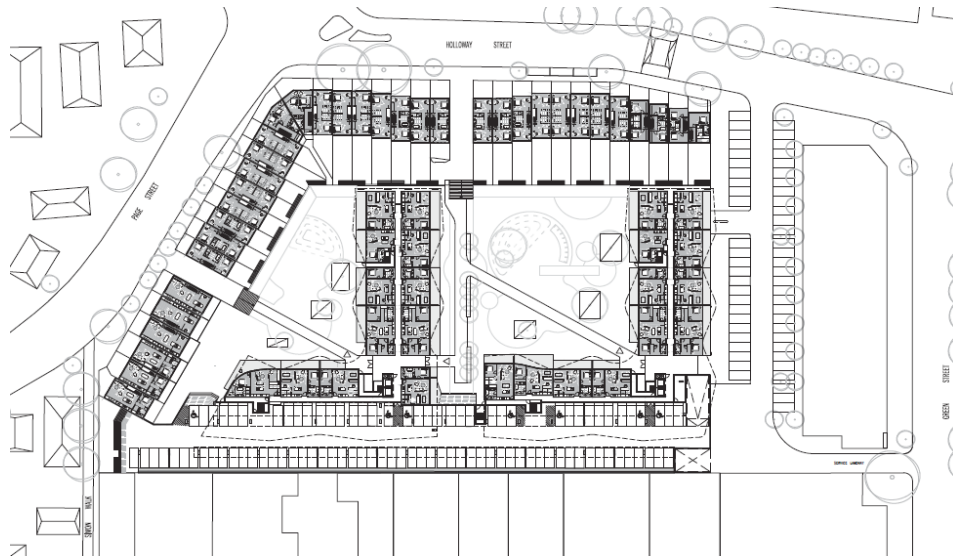
## **5. DESCRIPTION OF DEVELOPMENT**

The Development Application comprises of:

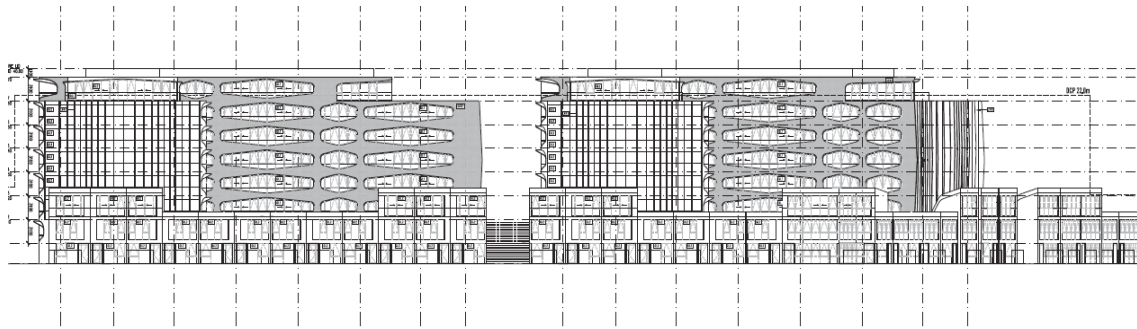
- 35 x 2-3 storey townhouses fronting Holloway Street and Page Street. The townhouses each have two car parking spaces within the at grade car park and each townhouse has direct access to the street. The townhouses range from 2 bedroom to 3 bedroom with one x 4 bedroom townhouse.
- Located behind the townhouses, two separate residential flat buildings are proposed with separate street access from Holloway Street and private open space areas in the form of front or rear courtyards and roof terraces. The two residential flat buildings are separated by extensive communal open space for the use of residents.

The apartments comprise the following:

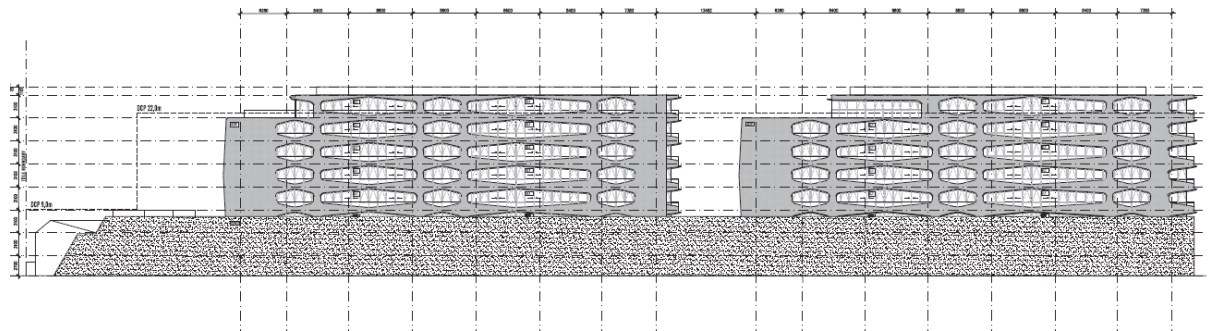
- 37 x studio apartments
- 98 x one bedroom apartments
- 80 x two bedroom apartments
- 6 x three bedroom townhouses
- **Total of 221 apartments**
- Two levels of car parking, being one at grade level and a second level at Level 1 along the southern boundary to accommodate a total of 465 vehicles. 54 spaces are proposed at grade along the access driveway. Of these, 34 spaces will be residential visitor spaces and the remainder will be spaces for the future commercial floor area on the B7 zoned land. At this stage, the commercial B7 zoned land is vacant and an indicative footprint has been provided as part of this application. However, it is recommended that a condition be imposed that no parking is to be allocated to the future commercial building under this consent. This shall form part of a future application with the required parking forming part of that separate application.
- A service access road from Green Street provides the development with loading/service bays garbage collection access.



**Figure 4 - Proposed Site Plan**



**Figure 5 - Proposed Northern Elevation**



**Figure 6 - Proposed Southern Elevation**



**Figure 7 – Perspective of the site looking north along Green Street.**



**Figure 8 – Perspective of the site internally looking west**



**Figure 9 – Perspective4 of the site from Page Street**

## 6. 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:

### 6.1 The provisions of any Environmental Planning Instrument(S79C(1)(a)(i).

#### 6.1.1 Environmental Planning and Assessment Act 1979 – Part 4, Division 5 – Special Procedures for Integrated Development and Environmental Planning and Assessment Regulations 2000 – Part 6, Division 3 – Integrated Development

The Development Application was advertised as being Integrated Development, pursuant to Section 91 of the EP&A Act as the development was thought to involve temporary construction dewatering and requiring approval from the NSW Office of Water. The Applicant has submitted a Geotechnical report which indicates that the groundwater, which is between 3m – 3.5m below existing ground level, will not be intercepted during remediation or construction nor would the site require ongoing dewatering. It is a condition of the Site Audit Statement (SAS) that no groundwater extraction takes place. In any event, the application was referred to NSW Office of Water and the Department has issued its General Terms of Approval on the 19 June 2014, recognising that limited interaction with the groundwater will occur. These terms of approval are included in the schedule of conditions. A permit will be required in the event that groundwater is encountered during remediation and construction.

#### 6.1.2 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 because it involves more than 50 residential parking spaces. The application was accompanied by a Traffic Impact Assessment Report prepared by McLaren Traffic Engineering. RMS provided its conditions in a letter dated 16 June 2014.

Council recognises that the proposal will have an impact on the local road network and the function of the intersection at Page Street/Wentworth Avenue, as well as the intersection of Baker Street/Wentworth Avenue. Council is committed to the upgrade of the intersection of Wentworth Avenue and Page Street. However, the timing of this upgrade is likely to be realistically 3 years away. The traffic impacts of the development are addressed in full under Section 6.2.1 below.

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

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.

In 2005, the site was declared “significantly contaminated land” by DEC, now DECCW under the *Contaminated Land Management Act 1997*. The site became subject to a Declaration Order (Order No. 21085. Area No. 3211) due to off site groundwater impacts and off site groundwater migration. The required on site remediation works to ensure the site can be made suitable for residential and mixed use need to be distinguished from the ongoing EPA monitored remediation of volatile

organic compound (VOC) contamination within the groundwater plume, which has migrated off site.

The site was declared a remediation site on 31 August 2005; and a Management Order was issued by the NSW EPA on 17 January 2013 in regards to the VOC remediation. On 24 April 2013 Council received a Site Audit Report and on 30 April 2013 a Site Audit Statement (SAS) was received. The SAS was prepared by NSW EPA Contaminated Land Accredited Site Auditor. The Audit concludes:

*Based on the discussion presented above the Auditor considers that the remediation proposed in CES (March 2012) presents an appropriate method to address identified soil contamination at the site and, subject to competent implementation and appropriate demonstration of validation, can make the site soils suitable for residential use. The major risk to site occupants posed by contaminants at the site is through the intrusion of contaminated soil vapours into buildings. This mechanism of exposure is not likely to result in adverse health effects in open areas of the development, but is particularly applicable to basement and ground floor areas of buildings. The Auditor notes that basement car parking is proposed and it is essential that appropriate vapour protections are installed in buildings.*

*Such measures should be passive and able to function effectively and indefinitely in the absence of power as occupants will need to be protected even in times when power is cut or otherwise unavailable at the site. This will necessitate an environmental management plan (EMP) being developed and legally attached to the site (for example as a binding agreement with strata bodies, or as a public positive covenant on title under the Conveyancing Act of 1919) which incorporates appropriate maintenance, monitoring and contingency measures in relation to the control of vapour intrusion into site buildings.*

*The potential for vapour intrusion risk to persist at the site is anticipated to remain as long as groundwater contamination with volatile chlorinated solvents remains in shallow groundwater beneath the site.*

*The issue of groundwater remediation may need to be addressed both on site and offsite to ensure that groundwater is protected for sensitive use and/or to ensure that ongoing vapour mitigation is not required, but the data does support that soil excavation and vapour mitigation will be sufficient to ensure adequate protection for residential and commercial use.*

It was this report, which Council relied upon in rezoning the land from 4(a) Industrial pursuant to BLEP 1995 to R3 Medium Density Residential under BBLEP 2013.

In November 2014, a Remedial Action Plan (RAP) was prepared by JBS&G which outlined various measures for remediation of the site, including:

- Excavation and on site remediation (by hand) of asbestos impacted soils (ACM), including the raking, collection and off site disposal of collected ACM material. Validation of picked soils for possible re-use on site following validation;



- Asbestos fibre/friable soils will be excavated and validated and either relocated to a site where they will not pose a risk or classified and disposed off site;
- Further analysis of the TPH hotspot and if remediation is required then excavation and validation on site to determine whether material is suitable for re-use on site or whether off site disposal is required.
- On site treatment of chlorinated ethene impacted soils until COPC concentrations are less than the remediation criteria specific to the destination zone and suitable for re-use. Relocation to another zone, provided that concentrations of COPC in the excavated soils are less than the remediation criteria specific to the destination zone and suitable for re-use.

On 2 April 2015, the applicant submitted correspondence from JBS & G regarding the depth of the basement and potential for a full below ground basement to reduce the overall height and address Council concerns with the vapour control method. The Consultant advises that groundwater in the vicinity of the site is at a depth of between 3m-3.5m below ground level and is a constraint on the site. The following conclusions are made in respect to a full below ground basement:

- *The basement would require to be fully waterproofed and provision included to address any leakage of contaminated water into the basement;*
- *The “no vapour control” constraint would not be able to be achieved in a below ground basement scenario as the natural ventilation afforded by the current ‘partially sunk’ basement*
- *Significant additional soil excavation and associated impacts would be required for a full basement design;*
- *Chlorinated ethene soil vapour associated with existing off site contamination, as identified in previous assessments reviewed by NSW EPA and provided as the bases as Email not being the sole polluter in the area, will laterally migrate back onto the site where a submerged basement causes advective vapour migration pathways. This would require vapour controls to isolate any submerged basement to the contamination present in the off site soils and/or groundwater.*
- *Tanking of the structure would be required against water inflow and design against hydrostatic lift, and or;*
- *Designing the basement with drainage and appropriate dewatering capacity. In this scenario, potential risks associated with contaminants in water inflow would need to be assessed and mitigated. Dewatering would require treatment and/or disposal*
- *Locating the basement at a greater depth would require an additional 4,500 m<sup>2</sup> of excavated material requiring onsite treatment. This is not a sustainable practise and would result in approximately an additional 100 truck movements and an additional 3 months of on site excavation activity.*

A Site Audit Statement (SAS) has been prepared by Kylie Lloyd of Zoic Environmental Pty Ltd, dated 17 December 2014, which states that the site can be made suitable for:

- (i) *residential with accessible soil, including garden (minimal home grown produce contributing less than 10% fruit and vegetable intake), excluding poultry;*
- (ii) *Residential with minimal opportunity for soil access, including units;*
- (iii) *Commercial/industrial.*

This is provided that site is managed in accordance with the RAP prepared by JBS&G dated 25 November 2014 and that conditions are complied with. The Site Auditor comments on the basement depth and concurs with the JBS&G letter that the proposed partial basement is the most appropriate option for the site.

Council's engaged an independent Contamination Consultant to review the submitted reports. Council's Consultant has advised that the amended RAP and SAS is now acceptable. Appropriate conditions have been recommended in the conditions of consent.

Therefore, that the applicant has adequately demonstrated that the site can be made suitable to accommodate the proposed residential and commercial uses on site and it satisfies the provisions of SEPP No. 55.

The RAP and SAS are designed so that there is no extensive groundwater remediation on site and that long term excavation on site is minimised, which involve unacceptable impacts in the locality. Therefore, excavation on site to accommodate basement car parking cannot occur and the required car parking is provided at grade and at Level 1.

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

State Environmental Planning Policy (SEPP) No. 65 was amended on 19 June 2015. Clause 31(2) of the SEPP states:

“If a development application or an application for the modification of a development consent has been made before the notification on the NSW legislation website of the making of *State Environmental Planning Policy No 65- Design Quality of Residential Flat Development (Amendment No 3)* and the application has not been finally determined before the commencement of that amendment, the application must be determined as if the amendment had not commenced.”

Therefore based on the above the application is assessed under the pre June 2015 SEPP 65 and Residential Flat Design Code (RFDC), and not the new Apartment Design Guide. (ADG).

A Design Verification and Residential Flat Design Code compliance table has been submitted with the application and generally satisfies the requirement of Clause 50 of SEPP 65.

An Architectural Design Statement, a SEPP 65 Assessment and an assessment against the Residential Flat Design Code accompany the application.

The Council's Design Review Panel (DRP) has considered the proposed development prior to the lodgement of the application on 17 March 2014.

It should be noted that the initial proposal presented to the DRP was a similar in form and scale to that currently before the JRPP. The original scheme was for 262 apartments and 36 townhouses.

The specific recommendations of the DRP were:

- *Context: Overall the site planning and massing is appropriate in that it respects the existing context and would provide a reasonable relationship to the adjoining and surrounding development which includes a mixture of low height, residential development, industrial to the south and east and Pagewood Public School opposite to the north.*
- *Scale: The proposal seeks to exceed the height limit by 2.5m to enable an additional residential storey for the two RFB's at the rear of the southern side of the development site. There is no specific justification in the pre-DA submission for this height non-compliance. The creation of a new park is proposed between Holloway Street and Green Streets, a small part of which is on the development site and could be dedicated as public open space in the future. The distribution of bulk and height should reasonably accord with the existing and future character, scale of the streets and neighbouring development.*
- *Built Form: The contemporary design is appreciated however could be improved by including some degree of reflection of the existing character of the residential building envelope/roof forms in the locality. The mesh screens layer at the upper level of the RFB's should be modulated horizontally to break down the scale of the facades. The top storey could be defined by a variation in the façade treatment including a lightweight structure for visual lightness and to provide a top to the RFB's.*
- *Density: Proposed density of 1.59:1 would be within the 1.65:1 permissible under the LEP for large sites, and could be supported subject to the issues raised above being resolved.*
- *Energy & Resources – Incorporate the provision of ESD uses for the roof tops including solar collection for hot water.*
- *Landscaping: The design of the car park with natural light and ventilation is commended. Each communal area should include a toddler play space and a meeting place for the respective building block. It is suggested that the cut outs be increase from three to five. This would allow for two more large species canopy trees and more natural light to the back of the carpark.*
- *Amenity:*
  - *Maximise the usability of balconies by providing a variety of balustrade treatments and adjustable louvre screens as appropriate.*
  - *Natural light to lift lobbies and corridors and the long internal corridors are undesirable as planned and should be reconfigured.*
  - *At the least provide natural light to the lift lobbies and to both ends of the corridors.*

- *Ensure that the townhouses are not overlooked from the northern end of the RFB's;*
  - *Each lobby should provide sufficient space for an alcove and bench seat;*
  - *Ensure adequate aural and visual privacy at the re-entrant corners of the RFB's;*
  - *Provide roof lighting and ventilation to the top level internal bathrooms and laundries;*
  - *Provide weather protection (sun and rain) to all unprotected glazing and window openings.*
- *Social Dimensions: The provision of a small enclosed community room (with kitchen) for each RFB; Provide a small meeting alcove with a bench seat as part of the residential entries to the RFB's, close to the mail boxes.*
  - *Aesthetics: High quality, low maintenance external materials are recommended.*

The proposal as amended has incorporated the comments provided by the DRP and addresses the crucial issues relating to built form and amenity, made by the Panel.

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

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies to the proposed development. The development application was accompanied by BASIX Certificate No. 617081M committing to environmental sustainable measures.

#### 6.1.6 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:

<b>Principal Provisions of BBLEP 2013</b>	<b>Compliance Yes/No</b>	<b>Comment</b>
Landuse Zone	Yes	The site is zoned part R3 – Medium Density Residential and part B7 Business Park under the BBLEP 2013.
Is the proposed use/works permitted with development consent?	Yes	The proposed <i>residential flat building</i> is permissible with Council's consent under the BBLEP 2013.
Does the proposed use/works meet the objectives of the zone?	Yes	The proposed development is consistent with the following objectives of the R3 zone pursuant to BBLEP 2013: <ul style="list-style-type: none"> <li>• <i>To provide for the housing needs of the community within a medium density residential environment.</i></li> <li>• <i>To provide a variety of housing types within a medium density residential environment.</i></li> <li>• <i>To encourage development that promotes walking and cycling.</i></li> </ul>
Does Clause 2.5 and Schedule 1 –	N/A	Clause 2.5 does not apply to the subject site.

Principal Provisions of BBLEP 2013	Compliance Yes/No	Comment
Additional Permitted Uses apply to the site?		
What is the height of the building?  Is the height of the building below the maximum building height?	No – Refer to Note 2	25.5m – Refer to Clause 4.6 variation assessment below
Is the proposed development in a R3/R4 zone? If so does it comply with site of 2000m <sup>2</sup> min and maximum height of 22 metres and maximum FSR of 1.5:1?  Clause 4.4(2A)	Yes	The site area of the R3 zoned land is 14,821m <sup>2</sup> . The proposed GFA is 24,455m <sup>2</sup> .  The subject site exceeds 2000m <sup>2</sup> in area and is located in the R3 zone.  The proposed FSR is 1.65:1, which exceeds the FSR of 1.5:1 permitted by Clause 4.4(2A) of BBLEP 2013.
To achieve an FSR of 1.65:1, the site must be affected by contamination, acid sulphate soils or noise. The consent authority must be satisfied that : (i) The development will be compatible with the desired future character in terms of building bulk and scale; (ii) The development will contribute to the amenity of the surrounding locality; (iii) Any consolidation of lots for the purpose of this clause is not likely to result in adjoining lots that cannot be development in accordance with this plan. Clause 4.4B(3)	Yes – Refer to Note 1	The site is affected by Acid Sulfate Soils and is a significantly contaminated site.  The proposal is compatible with the desired future character of the site which envisages townhouses to the street frontages with residential flat buildings towards the rear of the site. The additional height is not supported.  Whilst the development will generate additional traffic in the area, the proposal involves significant public domain works and contributions towards the upgrade of the intersections of Wentworth/Baker Street and Page Street/ Wentworth Avenue. Remediation of the site will provide a significant contribute to the residential amenity of the area.  The B7 zoned part of the site can be developed in accordance with BBLEP 2013.
Is the land affected by road widening?	Yes	The subject site is not affected by the road widening.
Is the site listed in Schedule 5 as a heritage item or within a Heritage Conservation Area?	N/A	The subject site is not identified as a Heritage Item or within a Heritage Conservation Area.
The following provisions in Part 6 of the LEP apply to the development:  6.1 – Acid sulfate soils         6.2 – Earthworks	Yes	Clause 6.1 – Acid Sulfate Soils. The subject site is affected by Class 2 Acid Sulfate Soils.  The development application has not been accompanied by an Acid Sulfate Soils Assessment. An investigation of ASS will be required prior to any excavation commencing on site as the presence of ASS is likely at the subject site. The development is consistent with Clause 6.1 of BBLEP 2013.  Clause 6.2 – Earthworks. The proposed development involves limited excavation for a partial basement level. The development



Principal Provisions of BBLEP 2013	Compliance Yes/No	Comment
6.3 – Stormwater management		<p>application has been accompanied by a Geotechnical Assessment indicating that groundwater will not be intercepted.</p> <p>Clause 6.3 – Stormwater. The development application involves an underground On Site Detention system/rainwater tank for collection and reuse of rainwater for landscaping on site. The development is consistent with Clause 6.3 of BBLEP 2013.</p>
6.8 - Airspace operations		<p>Clause 6.8 – Airspace Operations. The subject site lies within an area defined in the schedules of the Civil Aviation (Buildings Control) Regulations that limit the height of structures to 50 feet (15.24 metres) above existing ground height without prior approval of the Civil Aviation Safety Authority. The application proposes buildings to this maximum height and was referred to Sydney Airports Corporation Limited (SACL) for consideration. In a letter dated 28 July 2014, SACL raised no objections to the proposed maximum height of 40.8 metres AHD. The development is consistent with Clause 6.8 of BBLEP 2013.</p>
6.9 – Development in areas subject to aircraft noise		<p>Clause 6.9 – Aircraft Noise. The subject site is located outside of the 20 ANEF contour. The development is consistent with Clause 6.9 of BBLEP 2013.</p>
6.16 – Design excellence		<p>Clause 6.16 Design Excellence. The proposed design has been the subject of consideration by Council's Design Review Panel in 2014. The recommendations of the DRP have largely been incorporated into the current design before the Panel.</p> <p>The proposal is compliant with FSR, however the height exceeds that permitted under BBLEP 2013. A Clause 4.6 variation has been submitted and is discussed below. The proposal is consistent with the Desired Future Character of the Banksmeadow Precinct which is a Character Statement specific to the subject site.</p>

### BBLEP 2013 Compliance Table

#### Note 1 – Floor Space Ratio

Clause 4.4B permits an FSR of 1.65:1 where a site is affected by contamination, acid sulphate soils or noise impacts. However, the consent authority must be satisfied that:

- The development will be compatible with the desired future character in terms of building bulk and scale;*
- The development will contribute to the amenity of the surrounding locality;*
- Any consolidation of lots for the purpose of this clause is not likely to result in adjoining lots that cannot be development in accordance with this plan. Clause 4.4B(3)*

The site is significantly contaminated and affected by acid sulphate soils. The proposal is compatible with the desired future character which envisages townhouses to the street frontages with residential flat buildings towards the rear of the site. It is recommended that the bulk and scale of the building be further reduced by the deletion of Level 7 from Building 1 and 2 as the additional height is not supported. Whilst the development will generate additional traffic in the area, the proposal involves public domain works and contributions towards the upgrade of the intersections of Wentworth/Baker Street and Page Street/ Wentworth Avenue. Remediation of the site will provide a welcome contribute to the residential amenity of the area. In this regard, the proposed FSR of 1.65:1 is acceptable. The B7 zoned part of the site can be developed in accordance with BBLEP 2013. With the deletion of Level 7 from Building 1 and 2, the FSR will reduce from 1.65:1 down to 1.56:1 which will be consistent with Clause 4.4B of BBLEP 2013.

**Note 2 – Clause 4.6 Variation to Maximum Height of Buildings**

Clause 4.3(2A) and 4.4(2A) of the BBLEP 2013 provide for a maximum height of 22m (37.6m AHD) and an FSR of 1.5:1 for large sites over 2,000m<sup>2</sup>. The application proposes a height of 25.5m and an FSR of 1.65:1 and therefore exceeds both numerical development standards. The subject site is in excess of 2,000m<sup>2</sup> and is zoned R3. Only the R3 zoned part of the site is included in these calculations, ie. site area of 14,821m<sup>2</sup>.

The proposed buildings will have a height of 25.5 metres, being RL 40.80 metres, being 3.5 metres in excess to accommodate Level 7 and the lift overruns, which results in an additional 12 x 2/3 bedroom apartments. This level is a result of the applicant re-grading the site to allow for a partial basement and ground floor car parking. This level has been setback further at the southern part of Buildings 1 and 2 under the amended scheme, however this does not eliminate the bulk, scale and massing concerns of Council and has an adverse visual impact on the locality. On this basis, the Clause 4.6 variation is not well founded and it is recommended that consent be granted with a condition to remove Level 7 from the proposal.

The Applicant has submitted a Clause 4.6 variation to Clause 4.3(2A) requesting a greater height which is also relied upon in the assessment contained within this report. A copy of the Applicants Clause 4.6 is contained in Appendix A.

In summary, the applicants key justification for the variation to the height is:

- *The proposal largely complies with the building height standard of BBLEP 2013, with the exception of a projection at the southern part of the site which interfaces with the B7 Business Park uses.*
- *Such a variation is reasonable on the basis that:*
  - *The breach of the height control does not result in a breach in maximum floor space so there is no tangible nexus between the height variation and the overall intensity of the site use;*
  - *The characteristics of the site (eg. Very large site area/contamination/situated between detached housing and large scale industrial uses) warrant an approach that properly considers and*

*mitigates these factors beyond strict adherence to the LEP provisions, and*

- *The proposed height variation is situated in a location which will not result in any demonstrable detrimental impact to any sensitive land uses (eg. residential or open space) so the impact of the variation appears negligible.*

This Clause 4.6 variation has been assessed in accordance with the principles of *Wehbe v Pittwater Council [2007] NSW LEC 827 (Wehbe)* in which the Hon. Brian Preston, Chief Justice of the Land and Environment Court, set out a new test (the long-standing 5 part test was set out in *Winten Property v North Sydney (2001) 130 LGERA 79*). This test sets out the following assessment process:

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

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

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

These matters are considered below.

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

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

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

- (a) *To ensure that the built form of Botany developments in a coordinated and cohesive manner:*

**Applicants Justification**

*The subject site was recently rezoned from industrial to R3 Medium Density Housing under BLEP 2013, reflecting a very comprehensive and coordinated strategic planning process which recognised the potential of achieving a defined scale and density on the site. Subsequently, DCP 2013 provides more detailed design guidance specifically in relation to how this scale and density would be arranged in a massing scenario for the site. Therefore, there is a reasonable expectation that future development on the site would have the ability to provide a commensurate building height and FSR that was consistent with the maximum standards provided in BLEP 2013.*

*However, as discussed in Section 6 of the SEE, by providing an elevated car park/landscape solution (by effectively raising the ground floor plane) and provision of larger apartment sizes and parking space requirements under DCP 2013 this has meant that spatially the site cannot achieve a commensurate density/FSR intended for the site. Preliminary design options meant that a six-storey scheme could only achieve an FSR of 1.36:1 (i.e. circa 20% less than the permitted FSR of 1.65:1).*

*Therefore, an additional part-level, setback above the building envelopes (24.4m to parapet and 25.5m to top of lift core) on the southern part of the site was explored on the basis that this part of the site could accommodate additional scale without giving rise to unreasonable impacts on surrounding uses (i.e. less sensitive industrial uses).*

*This exercise demonstrated that a relatively minor increase in building height at an appropriate part of the site achieved a more consistent density (albeit still below the standard at 1.59:1) with no unreasonable impacts on surrounding properties. It also demonstrated that there is no tangible nexus between the height variation and the overall intensity of site use.*

*On this basis, the proposed height variation is reasonable and is not encouraging uncoordinated or non-cohesive development in the LGA.*

- (b) *To ensure that taller buildings are appropriately located:*

**Applicants Justification**

*Clause 4.3(2A) of BLEP 2013 provides that sites which exceed 2,000m<sup>2</sup> in area may allow for building heights up to a maximum of 22 metres. The intent of the clause is that larger sites generally have the critical mass and capability to allow applicants to provide appropriate building massing and appropriate design measures to respond to achieve a scale of approximately 6 storeys in an R3 zone.*

*While this policy applies throughout the Botany LGA, site-specific guidance within DCP 2013 reinforces the opportunity for taller buildings on the subject site by providing very precise massing guidance, which states:*

*“Encourage maximum of two (2) storeys with attic development fronting Page and Holloway Streets and a maximum of six (6) storeys at the rear of the site adjacent to the existing industrial development fronting Green Street”*

*This guidance provides that taller buildings are appropriate within the site’s immediate context on the basis that a smaller scale is provided on the street frontages along Page and Holloway Streets. Indeed, while a maximum of 6 storeys is encouraged (and predominantly provided in the proposal), the addition of a part 7 storey element does not fundamentally change the site’s ability to accommodate taller buildings, but rather ensure that the impacts of such height is appropriate with regard to the surrounding context.*

*In particular, the proposed height element which exceeds the 22 metre height standard is located on the southern portion of the site which is adjacent to the light-industrial uses which is significantly setback from the Page and Holloway streets, and which is not sensitive to shadows which fall generally to the south.*

*Therefore, the proposal ensures that taller built form elements are appropriately located within the site and in relation to the surrounding built form context.*

- (c) *To ensure that building height is consistent with the desired future character of an area*

**Applicants Justification**

*The desired future character of the area is articulated within the site-specific ‘character precinct’ statements in DCP 2013 and more broadly the zone objectives of the R3 Medium Density Housing zone.*

*Both these policy documents reinforce that residential development of a ‘medium density’ scale should be encouraged which provide a variety of dwelling typologies. In addition, enhancement of the public domain and open spaces is a key objective of the character precinct statements, as well as promotion of neighbourhood amenity and enhanced pedestrian comfort.*

*BLEP 2013 permits a maximum building height of 22 metres on the site. DCP 2013 provides more detailed design guidance which encourages a lower scale (2-3 storeys) adjacent to surrounding lower scale uses along Page and Holloway Street, with taller elements setback beyond this which interfaces with adjacent light-industrial uses.*

*The proposal provides a massing arrangement which responds positively to this policy framework, with attached terrace style dwellings (2-3 storeys) along Page and Holloway Streets, and two residential flat buildings setback beyond this which are predominantly 6 storeys. A part 7 storey element (to which this variation relates) is proposed at the southern boundary of the site, which is not inconsistent with the intent or objectives of BLEP 2013 or DCP 2013.*

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



### **Applicants Justification**

*The proposed height variation is situated in a location which will not result in any demonstrable detrimental impact to any sensitive land uses (e.g. residential or open space). In particular, the part 7 storey height element is strategically located in the southern part of the site which interfaces with the industrial (B7) which adjoins Green Street. This provides the following positive response with regard to potential impacts:*

- *Visual impact – The additional height subject to this variation is generously setback from Page and Holloway Streets to ensure that the relationship with surrounding lower-scale residential properties (in particular their amenity) is respected.*
- *Disruption of views – There are no significant views that are affected by the proposal.*
- *Loss of privacy – The proposal provides high levels of visual privacy to surrounding residents and incoming residents by provision of appropriate setbacks, building separation and use of landscaping. In addition, use of materials and privacy screening at the detailed design stage will further enhance these proposed privacy measures. The closest interface with surrounding residential properties is at the south-western corner of the site (19 Page Street). This property contains a garage along a large part of the north-eastern property boundary, as well as a very large fence which projects above the windows of the dwelling. The proposal provides landscape embellishments and deep soil planting zones adjacent to this interface which will provide for increased privacy and a higher level of amenity to what currently exists.*
- *Loss of solar access – As indicated on the shadow diagrams prepared by Elenberg Fraser the shadows of the proposed development fall predominantly within the light industrial properties to the south of the subject site which are not sensitive to overshadowing. This shadow analysis demonstrates that surrounding residential properties along Page Street will enjoy generous solar access from 10am until the late afternoon, well in excess of the minimum guidance contained in DCP 2013.*

- (e) To ensure that buildings do not adversely affect the streetscape, skyline or landscape when viewed from adjoining roads and other public places such as parks and community facilities.*

### **Applicants Justification**

*The subject site is a current void in the streetscape, which presents an opportunity for a positive response to this surrounding context.*

*The current streetscape along Page and Holloway Streets in the immediate vicinity of the site is inconsistent in terms of setbacks and street address, but is generally low scale around these street frontages. Taller elements include the industrial development which fronts Green Street to the south and east of the site.*

*When viewed from adjoining roads and other public places, the proposed development will read as a contiguous, low scale, attached residential street which relates to the adjacent low-scale dwellings along Page Street. Setback significantly beyond this finer grain street edge will be the taller 6 storey element which is consistent with the massing controls in DCP 2013. The part 7 storey element (to which this variation relates) is setback further beyond this 6 storey element which would be less visible from Page and Holloway Street.*

*The proposed landscape strategy for the site will significantly enhance the streetscape, public domain and amenity of the local area and will play an important role in softening the visual impact of the proposal.*

*On this basis, the proposed height variation will not give rise to any adverse impacts on the streetscape, skyline or landscape when viewed from adjoining roads and other public places such as parks, and community facilities.*

Officer Comment:

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

Council officers agree that the proposal provides a better transition to adjoining development as envisaged in the DCP. It provides the townhouses to the street edge with the taller buildings to the rear of the site interfacing with the B7 zone. It is also noted that due to the contamination and groundwater levels, the design of the development is to avoid excavation and to regrade the site and this results in the exceedence to the height control by 3.5 metres. This contamination constraint on the site has been historically recognised and should not be used as a reason to increase the height of the development. The additional 12 units also results in non-compliance with residential visitor car parking.

It is Council policy direction that all applications should comply with the height standard, particularly on sites that benefit from the bonus height provisions. Further, Council has prepared two Planning Proposals with regard to the bonus provisions. Regarding height, the draft Planning Proposal is close to gazettal and removes the use of Clause 4.6. The intention is to allow the bonus provisions, but not to exceed them. The Planning Proposal also includes urban design clauses. The second Planning Proposal for which Council has been given conditional Gateway approval, seeks to remove the bonus clauses. The Planning Proposal is discussed further under Section 6.17 below.

Greater objection is made to the height variation of Building 1 and 2 (southern portion) as these parts of the development are visible from the streetscape and the immediate area. The bonus height is already a benefit to the development. Approving additional height is contrary to Council's draft Planning Proposal regarding urban design clause and non-application of Clause 4.6.

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

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

- The built form of the proposed development is inconsistent with the desired future character of the specific site which requires an appropriate visual relationship with the surrounding built form and dwelling styles;
- When viewed from all directions, the additional height will result in adverse visual impacts arising from the inappropriate bulk, scale and massing of the taller buildings positioned to the rear of the site along the southern boundary;
- The proposed additional height will permit an additional 12 apartments, being a combination of 2 and 3 bedroom apartments, which will generate demand for an additional 24 car parking spaces over that which are required in a complying scheme;
- The proposal results in a shortfall of 18 residential visitor parking spaces.

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

The underlying objective and purpose of the height control has been achieved as stated above, therefore strict compliance with the numerical requirement of 22m in the R3 zone is unreasonable in this instance as the proposal meets all the objectives of Clause 4.3. The proposed development is compatible with the existing and desired future character of the area.

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

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

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

The development standard has not been abandoned or destroyed by Council in the locality. There is no merit in the proposed height variation which is inconsistent with the desired future character of the site. Whilst the applicant has increased the setbacks to the level and reduced the apartments from 14 down to 12, the additional level to the building is excessive and results in adverse visual impact, together with creation of additional parking demand. The variation to the height control is therefore not supported in this instance.

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

The zoning is appropriate for the locality, however the bonus FSR and height provisions under Clause 4.4B permitting an overall height of 22m and FSR of 1.65:1

are to encourage redevelopment of industrial site for better built form and urban design. The additional height proposed of 3.5m results in adverse visual impact within the locality and contributes adversely to the bulk, scale and massing of the development. The site is not located within a public transport hub the additional 12 apartments generated by the proposed height non compliance are not supported, as they result in a development that will not be consistent with the desired future character of the immediate locality and will result in a shortfall of residential visitor parking.

It is considered that the applicant's Clause 4.6 is not well-founded and the departure is in the not public interest given that the non-compliance with height results in an additional 12 apartments, an additional 24 car parking spaces and the proposal involves a shortfall of 18 visitor parking spaces. The proposed additional height results in additional bulk, scale and massing which is not supported in this instance.

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

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

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

a) *to encourage:*

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

In this instance, non-compliance with the planning controls is not acceptable. The proposal is inconsistent with the objectives of the development standard and will result in an overdevelopment of the site. Whilst Council acknowledges that the site is heavily constrained by contamination, the current development standards are considered appropriate for the site and the reliance upon the additional height provisions of the LEP is not justified or warranted for the subject site.

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

There insufficient environmental planning grounds arising from the proposal to support the variation to the height development standard given:

- The built form of the proposed development is inconsistent with the desired future character of the specific site which requires an appropriate visual relationship with the surrounding built form and dwelling styles;
- When viewed from all directions, the additional height will result in adverse visual impacts arising from the inappropriate bulk, scale and massing of the taller buildings positioned to the rear of the site along the southern boundary;
- The proposed additional height will permit an additional 12 apartments, being a combination of 2 and 3 bedroom apartments, which will generate demand for an additional 24 car parking spaces over that which are required in a complying scheme;
- The proposal results in a shortfall of 18 residential visitor parking spaces;

Therefore, there are insufficient planning grounds for a variation to the height and the variation is in the public interest.

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

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

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

##### *Objectives of Clause 4.6*

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

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

The proposed development achieves permitted density for the site, however the additional permitted height now sought results in adverse visual impact in the locality.

On this basis and for the reasons outlined this assessment, flexibility cannot be applied to this development, as it does not achieve a better outcome for the site or the immediate locality and is an overdevelopment of the site.

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

The applicant contends that the development will provide an improved public domain to Page Street, Holloway Street and Green Street. The Applicant has submitted proposed concept plans for a round-a-bout treatment to the intersection of Page Street and Holloway Street, as well as a roundabout at the Dalley Avenue shops. The design in its amended form does not result any tangible adverse impacts onto adjoining dwellings to the west or north in terms of privacy, visual impact and overshadowing.



The planning control, in this instance, should not be varied as it will adversely affect the immediate locality in terms of visual impact being inconsistent with the desired future character of the locality and resulting in insufficient parking.

On the basis of this assessment, it is concluded that the variation is not in the public interest and it is recommended that consent be granted with a condition to require an amendment to the plans to delete Level 7 from the development.

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

The proposed variation to the height standard does not raise any matters of significance for state or regional planning.

The variation is not contrary to any state policy or ministerial directive.

#### Summary

The Clause 4.6 Exception to the FSR control has been assessed in accordance with relevant case law, being the principles of *Wehbe v Pittwater Council [2007] NSW LEC 827*. It is considered that the proposal is not consistent with the underlying objectives of the standard identified:

- There is no planning reason why a compliant building cannot be accommodated on the site, given the large size of the site;
- There is no unique or exceptional circumstance to justify a variation of the development standard;
- It is considered that the portions of built form of the development that do not comply with the height, are not consistent with the context of the area and the desired future character of the area;
- The portions of non-complying height result in visual impact for future residents and residents in adjoining developments;
- The built form of the proposed development is inconsistent with the desired future character of the specific site which requires an appropriate visual relationship with the surrounding built form and dwelling styles;
- When viewed from all directions, the additional height will result in adverse visual impacts arising from the inappropriate bulk, scale and massing of the taller buildings positioned to the rear of the site along the southern boundary;
- The proposed additional height will permit an additional 12 apartments, being a combination of 2 and 3 bedroom apartments, which will generate demand for an additional 24 car parking spaces over that which are required in a complying scheme;
- The proposal results in a shortfall of 18 residential visitor parking spaces.

It is considered that the Applicant has not adequately addressed the requirements of Clause 4.6(4) and the granting of consent is inconsistent with the aims and objectives of Clause 4.6 of BBLEP 2013 further the applicant's Clause 4.6 is not well-founded. On this basis it is recommended that the development standard relating to the maximum height for the site pursuant to Clause 4.3(2A) of the BBLEP 2013 should

not be varied in the circumstances, however consent can be granted subject to a condition to require an amendment to the plans to delete Level 7.

#### 6.17 Draft Planning Proposal

Council at its Meeting held 11 December 2013 resolved to prepare a Planning Proposal to amend the BBLEP 2013 as follows:

- Delete Sub-clause (2A) in Clause 4.3 – Height of Buildings relating to a 22 metre height for sites zoned R3 and R4; and
- Delete Clause 4.4B as it relates to exceptions to FSR in Zone R3 and R4.

The resolution came about as a result of the impacts resulting from multi unit residential developments in the R3 and R4 Zones where the bonus provisions have applied.

Council at its Meeting held 5 November 2014 resolved to prepare a revised planning proposal to include a proposed new clause on building form and scale for development to which Clause 4.3(2A) and Clause 4.4(8) apply to; to impose a 6 storey height limit to Clause 4.3 Height of Buildings; and to restrict the application of Clause 4.6 Exceptions to development standards to development which clause 4.3(2A) and 4.4B would apply.

It is anticipated that the LEP Amendment will be gazetted shortly. The Department have indicated that a Savings Provision will be included in the amendment, such that if the amendment is gazetted, the application will be saved (and the use of Clause 4.6 retained).

#### 6.18 Botany Bay Development Control Plan (BBDCP) 2013

BBLEP 2013 is the comprehensive development guideline for the City of Botany Bay. The most relevant and applicable clauses of the DCP are considered in the assessment of this development proposal and are provided below:

Part	Control	Proposed	Complies
<b>3A.2 Parking Provisions</b>	402 spaces are required with the deleted Level 7, as follows: <ul style="list-style-type: none"> <li>• 353 residential</li> <li>• 49 visitors</li> </ul>	402 spaces are proposed as follows: <ul style="list-style-type: none"> <li>• 353 residential</li> <li>• 49 visitors</li> </ul>	<b>The applicant proposes a shortfall in residential visitor parking. Refer to discussion</b>
<b>3A.3.1 Car Park Design</b>	<b>C1 – C41</b> Comply with AS2890.1 and AS2890.6; entry/exit forwards; Stormwater to comply with Council's Guidelines; Pedestrian routes delineated; Location; Access; Landscaping; Basement Parking; Residential; Non-Residential; Pavement; Lighting; Accessible Parking; Waste Collection Points	Waste collection and servicing from Green Street access. Traffic Assessment provided; Stormwater plans provided; Pedestrian access easily identifiable; All parking in partial basement and at grade; Landscaping complies with Part 3L;	Yes

<b>3A.3.2 Bicycle Parking</b>	<b>C1-C5</b> To comply with AS2890.3 & AUSTRROADS.	Bicycle parking provided & complies with relevant AS.	Yes
<b>3A.3.4 On-site Loading &amp; Unloading</b>	<b>C1-C11</b> 1 service bay/50dwgs (50% to be Medium Rigid Vehicle (MRV) or larger)	The proposed loading/waste collection area off Green Street can accommodate an 8.8m MRV and 12.5m HRV.	Yes
<b>3G.2 Stormwater Management</b>	<b>C1-C6</b> Comply with Stormwater Management Technical Guidelines; Part 3G.5 Stormwater Quality.	Stormwater plans submitted and reviewed by Council's Development Engineer.	Yes
<b>3H Sustainable Design</b>	<b>C1-C6</b> BASIX; Solar hot water encouraged.	BASIX Certificate provided.	Yes
<b>3I Crime Prevention Safety &amp; Security</b>	Site layout, design & uses; Building design; Landscaping & lighting; Public domain, open space & pathways; Car parking areas; Public Facilities.	Comments received from NSW Police included as conditions of consent.	Yes
<b>3J Aircraft Noise &amp; OLS</b>	ANEF; Aircraft height limits in prescribed zones.	SACL comments received – no objection.	Yes
<b>3K Contamination</b>	Consider SEPP 55 & Contaminated Land Management Act 1997.	Contamination Report, RAP and Site Audit submitted. The site must be remediated in accordance with requirements of the RAP and the conditions imposed under the SAS.	<b>Yes Refer to SEPP55 discussion</b>
<b>3K.3 Containment or Capping of Contaminated Material</b>	C2 If on site containment or capping is proposed then the application must, where relevant demonstrate that the technical issued associated with on site capping or the use of other physical barriers to contain contamination have been considered.	Full site remediation of contaminated soils is proposed and detailed in the RAP and SAS, which is subject to conditions including no extraction of groundwater. The proposed at grade car parking is designed to assist in capping groundwater contamination and any future residual contaminants that arise from the plume migration back to the site. Refer to the SEPP55 discussion in this report.	<b>Yes – Refer to SEPP 55 discussion</b>
	C4 Soil remediation management should be undertaken in the following order: (i) On site treatment so that contaminants are either destroyed or reduced to an acceptable level; (ii) Off site treatment of excavated soil so that the contaminant is either destroyed or the associated hazard is reduced to an acceptable level, after which soil is returned to the site; (iii) Removal of contaminated soil to an approved site or facility,	The proposed remediation is fully detailed in the RAP and SAS. This includes a number of methods of remediation of contaminated soils.  As mentioned throughout this report, remediation of contaminated groundwater is ongoing and subject to monitoring by the EPA.	<b>Yes– Refer to SEPP 55 discussion</b>

	followed where necessary by replacement with clean fill; (iv) Consolidation and isolation of the soil by containment with a properly designed barrier.		
<b>3L Landscaping</b>	General Requirements; Planting design & species; Landscaping in car parks; Green roofs.	No significant trees exist on site; Landscape plan submitted & reviewed by Council's Landscape Architect.	Yes
<b>3N Waste Minimisation &amp; Management</b>	General Requirements; Residential Development; Mixed Use Development.	A WMP has been submitted for ongoing use of site & removal of waste.	Yes
<b>4C Residential Flat Buildings</b>			
<b>4C.2.1 Site Analysis</b>	Site Analysis Plan required.	Site Analysis Plan submitted & SEPP 65 assessment undertaken.	Yes
<b>4C.2.2 Local Character – Banksmeadow</b>	Desired Future Character Statement; Part 8-Character Precincts	8.9.2 Desired Future Character Banksmeadow (32 Page Street)  The site is mapped as falling within Banksmeadow the Character Precinct.	<b>Yes (See Note 1)</b>
<b>4C.2.3 Streetscape Presentation</b>	Compatible with bulk & scale of adjoining residential developments; Walls >12m must be articulated; Street presentation.	Townhouses are proposed to front Page Street and Holloway Street and are suitably articulated and with direct access to the street.	Yes
<b>4C.2.4 Height</b>	Comply with Cl.4.3 (2A) 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.  Height limit = 22 metres	Height transition is provided from two to three storey dwellings to the residential flat buildings to the south.  The southern part of Building 1 and 2 exceeds 22m, at 25.5m	<b>No – Refer to Clause 4.6 discussion.</b>
<b>4C.2.5 Floor Space Ratio</b>	Compliance with cl.4.4, 4.4A & 4.4B of BBLEP 2013.  FSR = 1:65:1	1.65:1 (GFA of 24,454m <sup>2</sup> )  Site Area = 14,821 m <sup>2</sup>	Yes
<b>4C.2.6 &amp; 4C.7 Site Coverage</b>	Max site cover 45% (4C.2.6)	69%	<b>No (See Note 4)</b>
<b>4C.2.7 Landscaped Area and Deep Soil Planting</b>	Landscaped area = 35% (min)  Unbuilt upon area = 20% (max)  Deep soil = 25% (50% at rear; 30% within front setback; 2m wide landscaping along one side boundary).	Landscaping 52%  Unbuilt area = 12%  Deep soil = 12%	Yes  <b>No (See Note 3)</b>  <b>No</b>
<b>4C.2.8 Private &amp; Communal Open Space</b>	Studio & 1bed = 12m <sup>2</sup> 2 bed = 15m <sup>2</sup> 3 bed = 19m <sup>2</sup> 4 bed = 24m <sup>2</sup>	Minimum private open space provided for each unit type.	Yes

	<p>Min depth of balconies = 3m (or adequate useable space).</p> <p>Min. communal open space = 30%</p> <p>&gt;3hrs sunlight on 21 June</p>	<p>Adequate useable private open space provided.</p> <p>Approx. 34% of site area provided as communal open space.</p> <p>At least 3hrs of direct sunlight available</p>	
<b>4C.2.9 Setbacks</b>	Comply with SEPP 65; front & side setbacks to provide deep soil; Front setback consistent with existing; 3m side setback (min); Basement car parking min 1.5m from side boundaries.	<p>3m front setback consistent with the streetscape;</p> <p>Rear setback is 12m for townhouses and 8.6m for RFB's.</p>	<p>Yes</p> <p>Yes</p>
<b>4C.2.10 Through Site Links &amp; View Corridors</b>	Existing view retained; View corridors integrated.	Existing views will be maintained through the central courtyards and pedestrian access pathways. Through site links not required as site only has one street frontage.	Yes
<b>4C.3.1 Design Excellence</b>	Excellence in urban design; Design principles;	Building façade highly articulated; Partial basement car park appropriately designed;	Yes
<b>4C.3.2 Corner Buildings</b>	To align & reflect corner conditions; Reflect architecture & street characteristics.	Building is located on a corner and the townhouses are presented to the corner.	Yes
<b>4C.3.3 Building Entries</b>	Compliance with SEPP 65 for entry & pedestrian access; shelter & well-lit; pedestrian access separated from car parks.	Building entry easily identifiable. Separate entries to street facing townhouses and access to communal open space from ground floor apartments.	Yes
<b>4C.3.6 Materials &amp; Finishes</b>	Schedule of finishes; Consistent with Part 8; long-wearing materials.	Sample board provided & considered are satisfactory.	Yes
<b>4C.5.1 Dwelling Mix, room size &amp; layout</b>	<p>Studio – 60m<sup>2</sup></p> <p>1 bed – 75m<sup>2</sup></p> <p>2 bed – 100m<sup>2</sup></p> <p>3 bed – 130m<sup>2</sup></p> <p>4 bed – 160m<sup>2</sup></p> <p>25% max no. of 1bed units.</p>	<p>Min. unit sizes comply.</p> <p>135 x studio/1bed units = 52% of total.</p>	<p>Yes</p> <p><b>No - See Note 5</b></p>
<b>4C.5.2 Internal Circulation</b>	2m min. corridors; Articulate long corridors.	Corridor widths 1.8m – 2.5m; Articulation provided.	Yes
<b>4C.5.3 Building Depth</b>	<p>Max depth = 18m</p> <p>Max habitable room = 10m</p> <p>Single aspect units = 8m</p> <p>Min apartment width = 4m</p>	<p>Max building depth 18-24m (minor variation); Units are individually stepped to improve light &amp; ventilation; Unit sizes generally larger than required by RFDC; Double fronted units greater than 4m width.</p>	<b>Noted</b> <b>(Satisfactory due to larger unit size requirements)</b>
<b>4C.5.4 Balconies in RFBs</b>	Differing styles; Min. 12m <sup>2</sup> ; Provides for privacy & visual	All units provide for min. 12m <sup>2</sup> of balcony. Majority	Yes

	surveillance; Not continuous across facade.	of apartment are dual aspect with a mix of balconies and roof terraces provided.	
<b>4C.5.5 Ground Floor Apartment in Residential Flat Developments</b>	Active street edge; Individual entries; Privacy to be increased by providing gardens & terraces as a transition zone.	Individual entries provided from street facing townhouses to Page Street and Holloway Street.	
<b>4C.5.6 Natural Ventilation</b>	Comply with SEPP 65 & RFDC.	RFDC assessment table provides 60% of units are cross-ventilated.	Yes
<b>4C.5.7 Ceiling heights</b>	2.7m for habitable units.	Min 2.7m floor to ceiling heights provided.	Yes
<b>4C.5.8 Solar Access</b>	SEPP 65 & RFDC compliance; 70% of units receive 2-3 hrs direct sunlight on June 21; Minimal impact upon adjoining properties. Neighbouring dwellings receive 2 hours sunlight to 50% of private open space and living room windows.	78% receive 2hrs of direct sunlight.	Yes
<b>4C.5.9 Visual Privacy</b>	SEPP 65 & RFDC; No direct views into windows of other dwellings; Attic windows shall not overlook.	Separation distances generally comply; windows designed not to overlook, fixed screens provided to the West Block, western elevation to minimise overlooking into private open space.	Yes
<b>4C.5.10 Building Separation</b>	SEPP 65 & RFDC; and Table 5 of DCP.  Five to Eight storeys (25m): 18 metres between habitable rooms/balconies - 13 metres between habitable rooms/balconies and non-habitable rooms - 9 metres between non-habitable rooms	Townhouses to Building 1 & 2 = 12m -14.4m  Building 1 to Building 2 = 12m between Levels 1-6 balconies to non habitable rooms  24.7m at Level 7	Yes Acceptable
<b>4C.5.11 Views</b>	Preserve significant features; View sharing; Create new view corridors.	Upper level apartments will have views across the Pagewood catchment. No major view corridors are affected and the buildings are separated by an internal courtyard.	Yes
<b>4C.5.12 Acoustic Privacy</b>	Table 6 of DCP; Multiple dwellings to be designed & constructed to comply with BCA.	Acoustic Report submitted. All units capable of complying.	Yes
<b>4C.5.14 Storage</b>	Studio – 6m <sup>2</sup> 1 bed – 8m <sup>2</sup> 2 bed – 10m <sup>2</sup> 3+ bed – 12m <sup>2</sup>	Schedule of storage provided & demonstrates compliance.	Yes
<b>4C.5.15 Site Facilities</b>	1 lift per 40 units; Garbage storage; Sunlight available to clothes drying	2 lifts provided to each building; AC to be designed	Yes

	area; Undergrounding of major infrastructure.	not to be visible from street/public domain.  Undergrounding of services within the street shall be conditioned.  Servicing and garbage collection from the Green Street is supported.	
<b>4C.5.16 Safety &amp; Security</b>	Comply with Part 3I Crime Prevention, Safety & Security; SEPP 65 & RFDC in terms of site amenity & safety.	DA considered by NSW Police in terms of CPTED design principles & appropriately conditioned.	Yes
<b>4C.5.17 Car Parking &amp; Vehicle Access</b>	Pat 3A compliance; Basement car parking <1.2m out of ground.	There is a shortfall in residential visitor parking and commercial parking. Car parking levels above ground.	<b>No - Refer to Note 2</b>
<b>4C.6.1 Adaptable Housing</b>	Part 3C; Provide all access to common areas in accordance with DDA & BCA; Compliance with adaptable housing standards AS4299-1995.	Access Report submitted; Part 3C complies.	Yes
<b>4C.7 Large Development Sites (2,000m<sup>2</sup>)</b>			
<b>4C.7 Design and Siting</b>	Development along the street frontage must consist of multi-unit dwellings (2 storeys plus attic). Residential flat buildings must be positioned to the rear of the site to minimize bulk and scale and visual impact to the street	The townhouses are located along the Page Street and Holloway Street frontages with the residential flat building located at the southern rear part of the site.	Yes
<b>4C.7.2 Height</b>	Max height for buildings along the street frontage is two storeys plus attic. Residential flat buildings to have a maximum height of six storeys with the top 2 storeys set back.	Townhouses are a combination of two and three storey townhouses which contributes to the streetscape. These are a combination of 2 and 3 bedroom dwellings.  Building 1 and 2 are 7 storey with the upper level being setback and positioned at the far southern part of the site.	Yes – Refer to Clause 4.6 discussion
<b>8.9.2 Banksmeadow Character Precinct</b>	Existing Local Character; Desired Future Character.	Proposal is consistent with character objectives relating to form, massing, scale & streetscape; solar access and views.	Yes ( <b>See Note 1</b> )

### **Note 1 – Banksmeadow Character – 32 Page Street**

Part 8.9.2 of BBDCP 2013 states that the Desired Future Character of the 32 Page Street site (a site specific statement) is as follows:

- *Enhance the public domain and streetscapes within the Precinct.*
- *Encourage and enhance connections of public domain and open space areas with recreational facilities.*

- *Encourage residential development at 32 Page Street, within the R3 Medium Density Residential Zone. Such development is to:*
- *Promote neighbourhood amenity and enhance pedestrian comfort;*
- *Encourage a site layout and building styles and designs that promote commonality and a visual relationship with the surrounding built form and dwelling styles;*
- *Encourage dwelling styles that maintain and complement existing development patterns; and*
- *Encourage a strong landscape and vegetation theme within both the public and private domain.*
- *Encourage maximum of two (2) storeys with attic for development fronting Page and Holloway Streets and a maximum of six (6) storeys at the rear of the site adjacent to the existing industrial development fronting Green Street.*
- *Promote site access and parking facilities that do not dominate the streetscape.*
- *Encourage new development or alterations and additions to existing development to complement the height and architectural style found in the immediate vicinity, particularly where there is an established character.*
- *Maintain roof forms to reflect the characteristics of the prevailing designs within the street.*
- *Development of 4 storeys or more in height, adjacent to a school, are to consider the following:*
- *Mitigation of overshadowing impacts on the school and its grounds through setbacks and controlled bulking and scaling of buildings;*
- *Orientating internal spaces so that low occupancy rooms face school property; and*
- *Windows and balconies are to be designed to reduce opportunities for overlooking school grounds.*

Comment: The proposed development is permissible in the R3 Medium Density Residential zone and is consistent with the FSR development standard of 1.65:1 applying to the site. However, as discussed under the Clause 4.6 variation discussion above, the applicant seeks to obtain additional height of up to 3.5m to achieve an overall height of 25.5m above the maximum 22m permitted. This results in an additional Level 7 to the building accommodating an additional 12 x 2/3 bedroom apartments.

Whilst the proposal incorporates remediation of contaminated land and provides for townhouses to the street frontages of Page Street and Holloway Street, sites the residential flat buildings to the rear of the site create an adverse visual impact in the locality due to its excessive height, and is not in context with surrounding development.

The desired future character statement is specific to this site and encourages roof forms that reflect the characteristics of the prevailing designs within the street. It is considered that the proposal is inconsistent with the Desired Future Character of the area as the additional height sought does not provide an appropriate visual relationship with the surrounding built form and dwelling styles.

## **Note 2 – Car Parking**

Control C1 of Section 3A.2 requires the following car parking provision for the proposed development:

	<b>Required Spaces</b>	<b>Proposed</b>
--	------------------------	-----------------



<b>1 space/ Studio</b>	37	37
<b>1 space/1 bedroom</b>	98	98
<b>2 spaces/ 2 bedroom</b>	196	196
<b>2 spaces/ 3 bedroom</b>	46	46
<b>Visitor spaces = 1 space per 5 units</b>	52	34
<b>TOTAL</b>	<b>426</b>	<b>411</b>

**Table 12 – Required and Proposed Car Parking**

As can be seen from the above table, there is a shortfall of 18 residential visitor spaces. The total of the required residential parking spaces are provided within the car parking levels below podium. In addition, 34 residential visitor parking spaces are proposed within these parking levels. External at grade parking provides an additional 54 spaces. The applicant requests these 54 spaces be approved as commercial parking spaces for the future commercial building on the B7 zoned part of the site. This would be a shortfall of 23 commercial spaces based on the indicative floor areas indicated on the plans.

This is not considered acceptable as the site is not located in close proximity to any major transport centres. The current car park design which is at grade has been chosen for the site and there is no additional space for additional parking within the footprint of the R3 zoned part of the site. Therefore, the shortfall in visitor parking (ie. 18 space) will need to be accommodated within the 54 commercial spaces. It is recommended that a separate DA be lodged for the future commercial building, so that an appropriate built form with its required car parking can be accommodated on that part of the site.

The additional height sought by the applicant results in an additional 12 x 2/3 bedroom apartments which equates to 24 residential car parking spaces and 3 visitor parking spaces. Therefore, the reduction of the 12 additional apartments would result in the following parking allocation.

	<b>Required Spaces</b>	<b>Proposed</b>
<b>1 space/ Studio</b>	37	37
<b>1 space/1 bedroom</b>	98	98
<b>2 spaces/ 2 bedroom</b>	184	184
<b>2 spaces/ 3 bedroom</b>	34	34
<b>Visitor spaces = 1 space per 5 units</b>	49	49
<b>TOTAL</b>	<b>402</b>	<b>402</b>

On this basis, the proposed shortfall in residential visitor parking is not appropriate for the site. All required residential visitor parking should be provided in full, by way of a condition of consent, and that condition is to also state that the residual parking spaces (ie. 36 spaces) can be made available for a future commercial building.

### **Note 3 – Landscape Area**

In accordance with Clause 4C.2.7, a minimum of 35% of the site area shall be provided as landscaped area. The proposal provides 30.7% (1822m<sup>2</sup>) of the site as landscaping and therefore does not comply with this provision.

The application involves 52% of the site as landscape area, however it is not deep soil area due to groundwater contamination constraints. Given the level of groundwater contamination and potential for the site to be affected by the plume in the future, the proposal involves an at grade parking level across part of the site. This is considered the most appropriate option for the site to ensure the future health and safety of the sites occupants.

The concept landscape plan submitted for the development proposes a suitable number of plantings including many new trees to be planted around the site, to ameliorate the development. The proposal involved raised planter beds across the podium area and this is enhanced with trees, shrubs and lawn areas. Conditions shall be imposed to require the planting of additional trees at the perimeter of the site, undergrounding of overhead cables and further embellishment of the public domain areas. As such, the communal open space will be highly attractive and useable for future resident.

Notwithstanding the departure from the numerical requirement for landscaping, on balance the proposal will provide a high level of amenity to future residents and will be suitably ameliorated by deep soil planting provided onsite and significant public domain improvements to Page Street and Holloway Street as well as contribution to the improvement public open space facilities within the locality.

#### **Note 5 – Site Coverage**

In accordance with 4C.2.6, the maximum site coverage is 45%. The proposed development has a site coverage of 69% and therefore exceeds 4C.2.6. The objectives of Clause 4C.2.6 are as follows:

- *01 To ensure that new development is consistent with the Desired Future Character of the area;*
- *02 To ensure site coverage creates a development that provides a balance between built form, landscaped area and private open space; and*
- *03 To control site density.*

The applicant states that the site coverage is due to the site specific requirements of the at grade carpark being required to traverse much of the site. A deeper basement on site to accommodate multiple levels of car parking is not feasible, either economically or sustainably. This due to the extent of groundwater contamination and its shallow nature at 3-3.5m below ground level. As discussed in this report, the site is subject to a Remediation Order for groundwater contamination and this is an ongoing remediation process. On this basis, the site constraints require at grade car parking and this in turn contributes to the higher site coverage.

Therefore, the departure with the DCP requirement for site coverage whilst significant is supported in this instance as it allows the site to be properly developed without interference with the contaminated groundwater.

#### **Note 6 – Unit Mix**

In accordance with the BBDCP 2013, Part 4C.5.1, the total number of studio and one bedroom apartments must not exceed 25% of the total number of dwellings within any single site area in a residential zone. As indicated in the table below, the total number of studio and one bedroom apartments for the proposed development is 52%.

	<b>TOTAL</b>	<b>Unit Mix</b>
<b>Studio/1 bedroom</b>	135	53%
<b>2 bedroom</b>	98	39%
<b>3 bedroom</b>	29	8%
	<b>256</b>	<b>100%</b>

**Table – Proposed Unit Mix**

While the proposal does not comply with the unit mix under BBDCP 2013, the proposal delivers a range of apartment sizes to achieve Council's minimum DCP requirements. The proposal also features a range of apartment styles and layouts including 35 townhouses, split-level street facing apartments, cross through apartments, and apartments that either have a dual aspect or located on a corner or roof terrace. The remaining apartments within the development are one or two bedroom units with a single aspect.

The applicant has submitted an Apartment Mix Analysis on the 2 April 2015. The key findings of this report are:

- *The existing household structure across Botany LGA is characterised by a high proportion of lone person households and families with no children. Around 25% of households in Botany LGA are lone person households. Families with no children comprise 32% of all family households.*  
*These cohorts typically require fewer bedrooms, favouring apartments that meet their lifestyle requirements at an affordable price;*
- *Average household income in Botany LGA is \$83,054 which is -12% below the Sydney metro average per capita income is \$32,575 which is -10% below Sydney metro average.*  
*Price point is therefore an important factor in Botany LGA residents. Apartments with fewer bedrooms typically provide a more affordable proposition than multiple bedroom dwellings.*
- *Currently around 8% of housing stock across the LGA is one bedroom dwellings, compared to the Metropolitan Sydney average of 6.7%. This ratio is low compared to the nearby LGA's including Randwick (11%) and City of Sydney (31%).*  
*A higher proportion of 1 bedroom apartments would therefore better align Botany LGA with the broader trend in the Sydney LGA and eastern suburbs market.*
- *Between 2006 and 2011 the amount of studio and one bedroom apartments increased by a greater percentage than other larger dwellings types in the Botany LGA, This demonstrates that developers are responding to market preference.*

Comment: In December 2014, Council engaged SGS Economics and Planning to review its Unit Mix DCP control. The report concludes that:

- The 13% growth in demand for apartments between 2011 and 2031 is projected to be for studios and 1 bedroom dwellings, which is well beneath the current 25% cap for the Botany LGA.
- The fastest growing family/household type was ‘couple family with no children’ (31%), whereas the slowest percentage growth occurred in the ‘one parent family’ category (6%).

There are parallels in the findings of both reports and it is acknowledged that the current housing market with its shortfall in new affordable dwellings across Sydney is increasing the demand for studio/1 bedroom apartments, there is no reciprocal increase in the provision of 2 and 3 bedroom apartments in the LGA, which if more affordable could also increase in demand. Therefore, it is Council's view that the higher proportion required under the DCP, ie. 75% 2/3 bedroom apartments should be maintained in the DCP to cater for the increasing number of households (31%) in the Botany LGA that are ‘couple family with no children’ that will soon require a 2 and 3 bedroom apartment for a growing family, particularly if they choose not to transition into non-apartment dwellings and instead move into a 2 or 3 bedroom apartment.

The proposed unit mix will contribute to the social mix of Pagewood and contributes to a balance of dwelling types available in this suburb. The Council's unit mix control is in conjunction with the unit size control, that also encourages larger family sized units. With the reduction of the top floor, the unit mix will be 56%. On the basis that larger unit have been provided, this is acceptable.

## **6.2 The likely impacts of the development including environmental impacts on both the natural and built environments, social and economic impacts in the locality.**

The proposal with its additional Level 7 will result in adverse visual impact in the locality. On this basis, it is recommended that consent be granted subject to a condition requiring an amended plan to delete the top level of Building 1 and 2.

The contamination impacts are discussed under Section 6.1.3 of this report.

The parking and traffic impacts are discussed as follows:

### **6.2.1 Traffic Impacts**

In 2014, Council engaged SMEC to prepare a Precinct based Traffic Study for Botany/Banksmeadow, which has addressed the subject site and the required local traffic measures. The recommended measures of the final report received March 2015, in relation to the intersection of Page Street/Wentworth Avenue are:

- *Provide additional right turn bay lane on the Wentworth Avenue north approach within the existing right turn bay pocket length;*
- *Provide two-lanes in each direction on Page Street between Wentworth Avenue and approximately 30 m west of Holloway Street\*. (\*Note: This upgrade option is identified from the vehicle traffic operation perspective only. Road safety implications of the proposed upgrade option were not part of this study scope. It is recommended to undertake road safety assessment in the concept design stage to assess implications of this upgrade option to the existing pedestrian zebra crossing on Page Street*

- between Holloway Street and Dalley Avenue);*
- *Extend existing exclusive right turn bay on Page Street western approach to Dalley Avenue (Page Street in eastbound direction will have three lanes from Dalley Avenue to Wentworth Avenue);*
- *Extend existing exclusive right turn bay on Page Street eastern approach to Lang Avenue (Page Street in westbound direction will have three lanes from Lang Avenue to Wentworth Avenue);*
- *Extend two-lane section on Page Street in westbound direction 60 m east of Lang Avenue;*
- *Provide left turn slip lane on Page Street western approach*
- *Provide left turn slip lane on Wentworth Avenue southern approach (Optional. Needs detailed assessment).*

Council's traffic engineer advises, supported by advice received from SMEC is that the development will result in significant impacts on the surrounding intersections, that are already well over capacity. Extensive queuing already occurs back to subject site by cars trying to exit onto Wentworth Avenue on Page Street. The intersection is at level of service F.

It appears that no detailed consideration was given to the traffic implications at the time this site was rezoned to R3 density (with a bonus). Development on the site may occur, but traffic improvements will be needed to be in place.

Under the amended scheme, the applicant has identified a number of traffic measure options being

- 50% contribution towards the construction of a roundabout at the intersection of Page Street and Holloway Street; and
- Payment for a traffic calming device within Holloway Street, east of Dalley Avenue.

The roundabout would assist in traffic leaving the and entering the site, but will create new impacts on the main Page Street/Wentworth Avenue intersection, that will be unacceptable. The roundabout will only result in further queuing, back as far as Ocean street and beyond. Council does not support the roundabout due to the flow on effects.

Council has entered into a Planning Agreement with Karimbla Constructions Services (NSW) Pty Ltd for the upgrade of the intersection of Wentworth Avenue and Page Street in line with the recommended works listed above. This is associated with the development of the former BATA site, at 130- 150 Bunnerong Road, Eastgardens. The interstation should be upgraded within the next three years. Council is in the process of preparing the design for the works.

Given the severity of the traffic impacts, without the intersection upgrade, it is recommended that there be no occupancy of the development until such time as the upgrade works at Wentworth Avenue and Page Street have been completed. Given the time required to undertake remediation and construction, this is not considered unrealistic.

### 6.3 The suitability of the site for the development.

The subject site has been used continuously for many years for industrial manufacturing and is therefore significantly contaminated with in situ contaminated soils and contaminated groundwater. A Site Audit Statement (SAS) has been submitted with the application, which indicates that subject to conditions, the site can be made suitable for the proposed development. Accordingly, it is considered that the site is suitable for the proposed development. The traffic impacts are discussed above.

### 6.4 Any submission made in accordance with the Act or Regulations.

The application was first notified for a period of 30 days from 28 May 2014 to 27 June 2014 in accordance with Council's Notifications Policy together with the Integrated Development provisions under the EP&A Act 1979.

In response to the notification period, Council received approximately 500 individual submissions objecting to the proposal. The issues raised by the submissions relate to the contamination, context, height and traffic impact. A submission was received from Pagewood Public School in opposition to the closure of Holloway Street. As a result of discussions with the school and the applicant and also separate discussions between the school and the applicant, the closure of Holloway Street has now been deleted from the proposal.

The amended proposal was renotified to nearby residents and the previous objectors for a period of thirty (30) days from 29 April 2015 to 29 May 2015. In response to the second notification Council received 214 individual submissions.

Issues raised within submissions relating to building height, traffic congestion, and land use conflict with industrial land to the south and east. Matters raised within the submissions are summarised and addressed as follows:

- ***The visual impact of this multi storey design incorporating an additional 262 residences is inappropriate in its context and fails to improve the character and quality of the area. The abrupt increase in building height to 7 storeys will result in a loss of privacy for surrounding residential homes, and will look directly into the school grounds which is highly inappropriate. The building height proposal is excessive for this area and should be refused.***

Comment: The base FSR and height for this site is 1.5:1 and a height of 22m. The site benefits from the bonus clause provisions and the rezoning of this site to higher density as a measure to have it remediated was progress before LEP 2013. The permitted height of buildings is a maximum of 22m for sites in excess of 2,000m<sup>2</sup>. The proposal seeks consent for two residential flat buildings of part 6 storey and part 7 storeys. The 7 storey component is located at the rear part of Building 1 and 2 along the southern boundary. The applicant has amended the top floor footprint under the amended scheme so that it is marginally reduced in width and length.

The design incorporates appropriate setbacks to each boundary, with the Townhouses along the street frontages to create an appropriate scale. The scale of the 2 residential flat buildings is consistent with the envisaged by the controls, however the additional height contributes to an inappropriate bulk and scale which has an adverse visual

impact on the immediate locality and which is inconsistent with the desired future character of the site and locality. As such, it is recommended in this report that consent be granted subject to a condition that requires an amended plan to delete Level 7 from Building 1 and 2.

In respect to the Pagewood Public School, the design and orientation of the residential flat buildings is such that there is no direct overlooking into playground areas. These appear to be located at the northern part of the school site with the classroom buildings running along the southern boundary to Holloway Street. Therefore, there is no adverse privacy impact from the proposal onto the school.

- ***The proposal generates demand for 506 vehicles and 1,145 vehicle movements per day which is a staggering increase in traffic volume for the already congested area. The intersection of Page Street and Wentworth Avenue already suffers an unacceptable level of delay in the AM peak. The extra vehicles funnelled through the area will only create further traffic congestion, noise and pollution. We strongly encourage Council to progress swiftly with the intended provision of traffic signals at the junction of Wentworth Avenue and Baker Street as it will more equally distribute traffic and ease congestion at the Page Street intersection with Wentworth Avenue and keep traffic away from Pagewood Public School.***

This matter is discussed in Section 6.1.2 of this report. Council recognises that the proposal will have an impact on the local road network and the function of the intersection at Page Street/Wentworth Avenue, as well as the intersection of Baker Street/Wentworth Avenue. Council is committed to the upgrade of the intersection of Wentworth Avenue and Page Street. However, the likely upgrade is still 3 years away. ***The site is toxic and laden with high levels of TCE's/PCE's. Furthermore, asbestos and fibres have been identified on site. These chemicals are linked to cancer, increased incidence of Parkinsons disease and groundwater contamination. To protect the community the entire site has to be properly remediated. Any excavations on the site due to the development work will result in these chemicals becoming airborne and could harm our kids at the school across the road, and the local community. Building on top of this contaminated site is not an option as this will only serve to concentrate these toxic gases within the walls of the new residential dwelling as well as further contaminating the groundwater in the local area. The only responsible course of action is full remediation of the entire site.***

This matter has been discussed under the SEPP 55 assessment of this report. The Applicant proposes to fully remediate the site to make it suitable for the proposed development, the groundwater contamination will not be remediated as this forms part of a Voluntary Management Proposal with NSW EPA, which will ultimately lead to a Site Audit Statement in 2017. The development has been designed to not traverse or intersect with the groundwater. Residual contamination from groundwater migration is addressed in the Site Audit Statement (SAS) submitted with the application and prepared by Zoic Environmental. The SAS states that the site can be made suitable, subject to compliance with the RAP and other conditions, which must be met.

- ***The proposal will result in 7 storey residential towers adjacent to 24 hour port container facilities. This will clearly create land use conflicts and is inappropriate regardless of the LEP decisions Council has made. The site would***

***benefit the community with a development at a much smaller scale and one that incorporated full site remediation. The health and safety of the local community should always be the highest priority.***

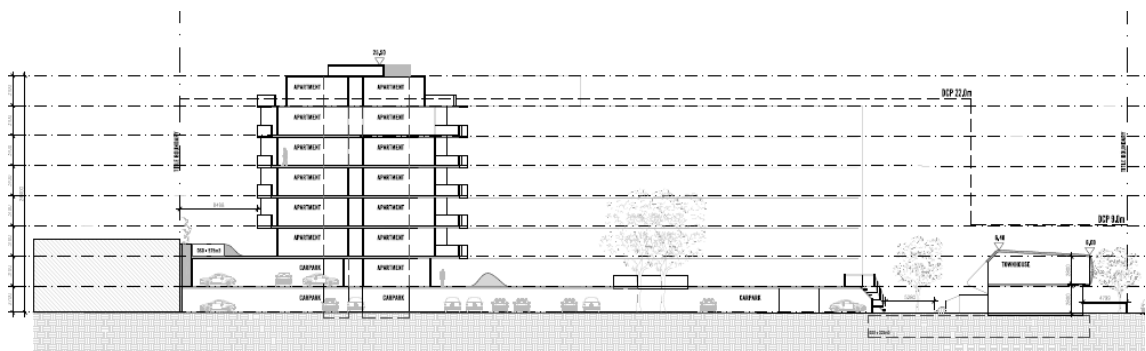
The land adjoining to the immediate south falls within the Three Ports SEPP area which is zoned IN1 – General Industrial. Indeed there are a number of 24 hour port related container handling facilities in this precinct, however these are not directly adjoining the subject site. In any event, these sites are subject to development consents and are required to comply with conditions of consent including hours of operation and noise intrusion and site specific management plans, that assist in ensuring there are no adverse impacts on nearby residential areas.

- ***The proposal exceeds the 25% maximum for the total dwellings being one (1) bedroom dwellings in accordance with Control C3 of Part 4B.5.1. The applicant is proposing 53%.***

The proposed unit mix is 52% studio/1 bedroom apartments or 56% if Level 7 is removed. The Applicant has submitted a Unit Mix Analysis to justify the proposed variation to the control. In December 2014, Council engaged SGS Economics to undertake a review of the unit mix control and the findings of that report are that the control should be maintained as the projected increase in demand for 1 bedroom dwellings Refer to the DCP discussion above. The proposed unit mix is acceptable as the unit sizes comply with DCP. Refer to the DCP discussion.

- ***The proposal development has been advertised and documented as 6 storeys and a part 7 storey element when in fact it is a 7 storey building with a part 8 storey element as the car park is above ground and should be counted as one storey.***

Comment: The LEP does not stipulate the maximum number of storeys. The DCP specifically encourages the construction of a 6 storey residential flat building on the subject site. The proposal includes the full remediation of the site and regrading of the surface levels of the site. The resulting development will be part 7 and part 8 storey building, however due to its design with the car park levels abutting the adjoining warehouse buildings, the development has the effect of being 6-7 storeys. The following section of the building is provided.



As stated, there is no LEP limitation on the maximum number of storeys. As depicted by the submitted drawings, it is possible that 7 storeys can be accommodated within the 22 metre height limit. The top floor is over and above the built form envisaged by Council and on this basis, it is recommended the Level 7 be deleted from both



Building 1 and Building 2. This will bring the building into compliance with the 22m height control.

## **6.5 The public interest.**

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

## **7.0 OTHER MATTERS**

### **7.1 EXTERNAL REFERRALS**

- *Sydney Water*  
Sydney Water in a letter dated 30 May 2014 have raised no objection to the proposed development, subject to conditions.
- *Ausgrid*  
Ausgrid have by letter dated 30 May 2014 advised that a new substation is required to service the proposed development.
- *NSW Police Service*  
NSW Police in a letter dated 11 May 2014 have raised no objection to the proposed development, subject to conditions.
- *NSW RMS*  
NSW RMS in a letter dated 16 June 2014 provided its conditions for the proposal, which included a recommendation that Council determine the application on the basis that there is no closure of Holloway Street. As stated in this report, the closure of Holloway Street has been deleted by the applicant. In lieu it is proposed, as an option that a roundabout be considered at the intersection of Page Street and Holloway Street, however this is not supported by Council due to its impact on the Page Street/Wentworth Avenue intersection. It is therefore recommended that consent be granted to the development with conditions, including that there is to be no occupation of the building until such time as the upgrade works to the intersection of Page Street and Holloway Street are completed.
- *NSW Health*  
In a letter dated 2 July 2014, NSW Health has raised no objections to the proposed development.
- *NSW EPA*  
NSW EPA in a letter dated 25 June 2014 has raised no objections to the proposed development.
- *NSW Office of Water*  
The Development Application was advertised as being Integrated Development, pursuant to Section 91 of the EP&A Act as the development was thought to involve temporary construction dewatering and requiring approval from the NSW Office of Water. However, the Applicant has submitted a Geotechnical report which indicates that the

groundwater, which is between 3m – 3.5m below existing ground level, will not be intercepted during remediation or construction nor would the site require ongoing dewatering. On this basis, the proposed development is not Integrated Development. It is also a condition of the Site Audit Statement (SAS) that no groundwater abstraction takes place. In any event, the application was referred to NSW Office of Water and the Department has issued its General Terms of Approval on 19 June 2014. These conditions will be imposed on any consent granted, in the event that groundwater is encountered during remediation and construction.

- *Sydney Airports Corporation Limited (SACL)*

SACL by letter dated 28 July 2014 confirmed that they raise no objections to the development to a maximum height of 40.8 metres (AHD) as shown on the plans. This does not include the height required for construction cranes, etc. and further approvals may be required prior to issue of a Construction Certificate.

## **7.2 INTERNAL REFERRALS**

The development application was referred to relevant internal departments within Council including the Development Engineer, Traffic Engineer, Landscape Officer, Environmental Scientist and Environmental Health Officer for consideration. Appropriate conditions are recommended to be imposed on any consent issued.

## **7.3 SECTION 94 CONTRIBUTIONS**

The Section 94 Contributions for the proposed development with the reduction of the 12 apartments deleted from Level 7, is calculated as follows:

- 244 units @ \$20,000.00 each = \$4,880,000.00

Community Facilities:	\$527,040.00
Administration:	\$19,520.00
Transport:	\$268,400.00
Open Space and Recreation:	\$4,065,040.00

Therefore a total Section 94 Contribution of **\$4,880,000.00** is required to be paid to Council in accordance with the draft schedule of Conditions attached to this report.

## **8.0 CONCLUSION**

The main issues with this application are the building height, traffic impacts and contamination. The applicant has submitted an amendment to the original design to incorporate additional setbacks to Level 7 to reduce its impact. The amendments do not reduce the visual impact to the desired extent, to promote a responsive visual relationship with the surrounding built form and dwelling styles. The matter of contamination has been addressed and the issue of traffic remains, however by way of condition, it is recommended that there be no occupancy of the building until such time as the traffic signal upgrade occurs at the intersection of Wentworth Avenue and Page Street.

Integrated Development Application No. 14/080 in its amended form seeks consent for the remediation of the site, removal of existing vegetation and construction of:

- 35 x two and three storey townhouses fronting Holloway and Page Streets;
- Two residential flat buildings comprising of a total of 221 apartments (135 studio/1 bedroom apartments, 80 x 2 bedroom apartments and 6 x 3 bedroom apartments;
- Above ground parking for 465 vehicles;
- Landscaping and public domain works including excavation/earthworks to alter the level of the site.

The Joint Regional Planning Panel, Sydney East Region (JRPP) is the consent authority for the development application. In determining the application, the Panel is requested to consider the content of the submissions received as a result of the public exhibition and the planning response to these submissions contained within the body of this report.

The application has been assessed against the development standards within the BBLEP 2013 and complies with the maximum FSR of 1.65:1, however exceeds the 22m additional height control. A Clause 4.6 variation has been submitted and is not supported in this instance as it is considered that the additional Level 7 sought is not consistent with the Desired Future Character of the locality and results in adverse visual impacts.

The application has been assessed against the provisions and objectives of SEPP 55, SEPP 65, BBLEP 2013 and BBDCP 2013. The proposal complies with the maximum FSR, setbacks, building separation, private open space and unit sizes under Council's DCP and SEPP 65. The proposal has non-compliances with residential visitor car parking however this can be addressed by way of the deletion of Level 7. The proposed departures from the communal open space, site coverage, landscaping, unit mix and provision of deep soil are addressed in the assessment and on balance are reasonable in the circumstances due to the site constraints with elevated groundwater levels in the locality, which is subject to ongoing remediation.

The design currently before the JRPP has been the subject to an extensive design review process and amendments to the design originally put to the DRP in 2014. The design incorporates townhouses to Page Street/Holloway Street with the residential flat buildings located at the rear. The proposal is generally consistent with the built form envisaged by Council for the site, except that the additional height sought is not consistent with the Desired Future Character of the site under BBDCP 2013. On this basis, it is recommended that consent be granted subject to a condition that Level 7 be deleted from the proposal as the applicants Clause 4.6 variation is not well founded and not in the public interest.

The application has been assessed in accordance with Section 79C of the *Environmental Planning and Assessment Act 1979* and the *Botany Local Environmental Plan 2013* and it is recommended to the Panel that the application be granted approval, subject to the conditions in the attached schedule.

## **9.0 RECOMMENDATION**

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

- (a) The Joint Regional Planning Panel note that the applicant's written request to vary the height development standard under Botany Bay Local Environmental Plan 2013 is not supported, and that it has not been demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case; there are insufficient environmental planning grounds to justify contravening the development standard; the proposed development will be in contravention of the development standard and will not be in the public interest; the contravention will be inconsistent with the objectives of the zone and will have an adverse impact on the locality.

Hence, Condition No. 33 as recommended proposes the deletion of Level 7 of Building 1 and 2;

- (b) The JRPP subject to the conditions in the attached schedule, approve Development Application No. 14/080 for the remediation of the site, removal of existing vegetation and construction of:
- 35 x two and three storey townhouses fronting Holloway and Page Streets;
  - Two residential flat buildings comprising of a total of 221 apartments (135 studio/1 bedroom apartments, 80 x 2 bedroom apartments and 6 x 3 bedroom apartments);
  - Above ground parking for 465 vehicles;
  - Landscaping and public domain works including excavation/earthworks to alter the level of the site.

**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.

<b>Drawing No.</b>	<b>Author</b>	<b>Date Received</b>
Survey, Drawing No. A001, Revision G	Elenberg Fraser	2 April 2015
Site Plan, Drawing No. A010, Revision P	Elenberg Fraser	4 August 2015
Level 00 Ground Floor Plan, Drawing No. A200, Revision X	Elenberg Fraser	4 August 2015
Level 01 Podium Plan, Drawing No. A201, Revision V	Elenberg Fraser	4 August 2015
Level 02 Plan, Drawing No. A202, Revision T	Elenberg Fraser	4 August 2015
Level 03-06 Plan, Drawing No. A203, Revision U	Elenberg Fraser	4 August 2015
Level 07 Plan, Drawing No. A207, Revision U	Elenberg Fraser	4 August 2015
Roof Plan, Drawing No. A 208, Revision M	Elenberg Fraser	4 August 2015
East Elevation, Drawing No. A400, Revision G	Elenberg Fraser	2 April 2015
North Elevation, Drawing No. A401, Revision F	Elenberg Fraser	2 April 2015
West Elevation, Drawing No. A402, Revision G	Elenberg Fraser	2 April 2015
South Elevation, Drawing No. A403, Revision F	Elenberg Fraser	2 April 2015
Streetscape Elevations, Drawing No. A410, Revision F	Elenberg Fraser	2 April 2015
Section A-A, Drawing No. A 500, Revision K	Elenberg Fraser	2 April 2015
Section B-B, Drawing No. A501, Revision J	Elenberg Fraser	2 April 2015

<b>Drawing No.</b>	<b>Author</b>	<b>Date Received</b>
Site Sections C-C and DD, Drawing No. A502, Revision G	Elenberg Fraser	2 April 2015
Detail Sections E-E, F-F, G-G, H-H and I-I, Drawing No. A503	Elenberg Fraser	4 August 2015
Level 00 Interior Layout, Drawing No. A900, Revision C	Elenberg Fraser	4 August 2015
Level 01 Interior Layout, Drawing No. A901, Revision D	Elenberg Fraser	4 August 2015
Level 02 Interior Layout, Drawing No. A902, Revision D	Elenberg Fraser	4 August 2015
Level 03-06 Interior Layout, Drawing No. A903, Revision D	Elenberg Fraser	4 August 2015
Level 07 Interior Layout, Drawing No. A907, Revision D	Elenberg Fraser	4 August 2015
Townhouse 2 Bedroom Type, Drawing No. A950, Revision G	Elenberg Fraser	2 April 2015
Townhouse 3 Bedroom Type, Drawing No A951, Revision G	Elenberg Fraser	2 April 2015
Typical 1 Bedroom Apartment and Adaptable Type, Drawing No A952, Revision G	Elenberg Fraser	2 April 2015
Typical 2 Bedroom Apartment and Adaptable Type, Drawing No. A953, Revision G	Elenberg Fraser	2 April 2015
Concept Stormwater Design Level 00 Ground Plan Sheet 1 of 2, Drawing No. SW02, Revision B	Integrated Group Services	2 April 2015
Concept Stormwater Design Level 00 Ground Plan Sheet 2 of 2, Drawing No. SW03, Revision C	Integrated Group Services	2 April 2015
Concept Stormwater Design Level 01-Podium Plan Sheet 1 of 2, Drawing No. SW04, Revision B	Integrated Group Services	2 April 2015
Concept Stormwater Design Level 01-Podium Plan, Sheet 2 of 2, Drawing No. SW05, Revision B	Integrated Group Services	2 April 2015

<b>Drawing No.</b>	<b>Author</b>	<b>Date Received</b>
Concept Stormwater Plan – Catchment Plan, Drawing No. SW06, Revision A	Integrated Group Services	2 April 2015
Survey Plan, Ref No. 140102, Sheets 1-3	Denny Linker	16 April 2014

<b>Reference Document(s)</b>	<b>Author</b>	<b>Date Received</b>
Statement of Environmental Effects	Urbis	16 April 2014
Amended Application Submission	Urbis	2 April 2015
Clause 4.6 Variation	Urbis	16 April 2014
SEPP65 Design Verification Statement	Elenberg Fraser	2 April 2015
Ecologically Sustainable Design Report	Integrated Group Services	16 April 2014
Amended Traffic Report, Final Issue C, dated 16 February 2015	McLaren Traffic Engineering	2 April 2015
Supplementary Traffic Advised dated 4 August 2015	McLaren Traffic Engineering	2 April 2015
Engineering Services Infrastructure Report, Job No. VE-N13_19, dated April 2014	Integrated Group Services	14 April 2014
Geotechnical Study, Report No. E221216, dated 31 March 2014	Environmental Investigations	16 April 2014
Waste Management Plan	Elephants Foot	16 April 2014
Remedial Action Plan, No. 43188 – 58013 (Rev 1), dated 25 November 2014	JBS&G	2 April 2015
Letter from JBS&G dated 16 December 2014 regarding Modified Plans	JBS&G	2 April 2015
Letter from JBS&G dated 19 March 2015 regarding Modified Plans	JBS&G	2 April 2015
Site Audit Statement No. KJL096, dated 17 December 2014	Zoic Environmental	2 April 2015
BCA Assessment Report, dated 14 April 2014	Steve Watson & Partners	16 April 2014

<b>Reference Document(s)</b>	<b>Author</b>	<b>Date Received</b>
BASIX Certificate No. 617081M	Planning & Infrastructure	2 April 2015
Shadow Study	Elenberg Fraser	2 April 2015
Response to SEPP 65	Elenberg Fraser	2 April 2015
Solar Access Analysis, dated 11 February 2014	Steve King	2 April 2015
Natural Ventilation Analysis, dated 7 February 2014	Steve King	2 April 2015
Letter from Steve King dated 8 December 2014 regarding SEPP65 compliance	Steve King	2 April 2015
GFA Validation Survey, dated 14 April 2014	Denny Linker	16 April 2014
Apartment Mix Analysis, dated 29 January 2015	Urbis	2 April 2015

2. This Consent relates to land in Lot 201 in DP 788578 and as such, building works must not encroach on to adjoining lands or the adjoining public place, other than public works required by this consent.
3. 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 the consent authority; or an accredited certifier; and
  - b) The person having the benefit of the development consent:
    - i) Has appointed a principal certifying authority; and has notified the consent authority and the Council (if the Council is not the consent authority) of the appointment;
    - ii) 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.
  - c) All building work must be carried out in accordance with the provisions of the Building Code of Australia.
4. The applicant shall construct and/or contribute to traffic works such as a temporary roundabout at the intersection of Page and Holloway Streets, or enter into arrangements with Council for other traffic works of a similar value, in order to reduce the traffic



impacts of the development. The package of works needs to be negotiated with Council prior to the issue of any construction certificate.

5. The applicant shall carry out the following works, to be completed prior to the issue of any Occupation Certificate:

- a) On Page, Holloway and Green Streets, adjacent to development
  - i) Reconstruct the existing kerb and gutter for the full length of the property; and
  - ii) demolish the existing concrete footpath and construct new footpath in accordance with Council's Infrastructure and Landscape Architect specifications;
- b) On Page, Holloway and Green Streets, adjacent to development, mill 50mm of half road asphalt and re-sheet with 50mm thick AC14 per RMS and Council's Infrastructure specifications;
- c) On Collins Lane, adjacent to development:
  - i) demolish the existing concrete footpath and construct new footpath as per Council's Infrastructure and Landscape Architect specifications; and
  - ii) install new lighting poles satisfying P2 lighting requirements any other requirements as specified by Council, RMS and any other service provider;
- d) Replace all the existing above ground electricity and telecommunication cables to underground cables within the site and road reserve area fronting Page Street, Holloway Street and Green Street in accordance with the guidelines and requirements of the relevant utility authorities. The applicant shall bear all the cost of the construction and installation of the cables and any necessary adjustment works. These works and payments shall be completed prior to the issue of the Occupation Certificate;
- e) Provide appropriate and suitable street lighting to both street frontages of the site, 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.

**Note:** Council's normal requirement for the payment of Damage Deposit (\$1,089,555.00 for this site based on Council's Fees and Charges) to Council against possible damage to Council's asset during the course of the building works has not applied as Conditions 5(a), (b) and (c) require the re-construction of the infrastructure.

**CONDITIONS IMPOSED BY AN EXTERNAL AUTHORITY**

6. The following conditions are imposed by the **Roads and Maritime Services (RMS)**:

- a) Off street car parking associated with the development shall be in accordance with AS2890.1 – 2004 and AS2890.1 – 2002;
- b) The swept path of the longest vehicle entering and exiting the subject site, as well as manoeuvring through the site shall be in accordance with Austroads;
- c) All works/regulatory signposting associated with the proposed development are to be at no cost to the Roads and Maritime.

7. The following conditions are imposed by **Sydney Airports Corporation**:

Height Restrictions

- a) The subject site 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 without prior approval of the Civil Aviation Safety Authority;
- b) The approved height is inclusive of all lift over-runs, vents, chimneys, aerials, TV antennae and construction cranes;
- c) Should the proposed development wishes to exceed 40.8 metres above Australian Height Datum (AHD), a new application must be submitted;
- d) 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. 16'1;
- 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;
- f) Sydney Airport advises that approval to operate construction equipment (ie cranes) should be obtained prior to any commitment to construct;
- g) Information required by Sydney Airport 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) structure/activity;
  - v) the period of the proposed operation (ie. construction cranes) and desired operating hours for any temporary structures.

- h) 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;
- i) Under Section 186 of the Airports Act 1996, it is an offence not to give information to the Airport Operator that is relevant to a proposed "controlled activity" and is punishable by a fine of up to 50 penalty units;
- j) The height of the prescribed airspace at the site is 51 metres above Australian Height Datum (AHD). In accordance with Regulation 9 of the Airports (Protection of Airspace) Regulations Statutory Rules 1996 No. 293, "a thing to be used in erecting the building, structure or thing would, during the erection of the building, structure or thing, intrude into PANS OPS airspace for the Airport, cannot be approved";
- k) The application proposes buildings which exceed the maximum height and was therefore referred to Sydney Airports Corporation Limited (SACL) for consideration. SACL raised no objections to the proposed maximum height of 40.8 metres AHD, subject to conditions to be imposed on any consent;

#### Birds and Obstacle Hazard Management

- l) The area in which the proposed development is located is in the vicinity of Sydney (KS) Airport;
- m) To minimise the potential for bird habitation and roosting, the Proponent must ensure that non-bird attracting plant species are used in any landscaping design;
- n) Any landscaping design must minimise the attractiveness for foraging birds, i.e. site is kept clean regularly, refuse bins are covered, and detention ponds are netted;
- o) All trees to be planted shall not be capable of intruding into the Obstacle Limitation Surface when mature;

#### Planning for Aircraft Noise and Public Safety Zones

- p) Current planning provisions (s.117 Direction 3.5 NSW Environmental Planning and Assessment Act 1979) for the assessment of aircraft noise for certain land uses are based on the Australian Noise Exposure Forecast (ANEF). The current ANEF for which Council may use as the land use planning tool for Sydney Airport was endorsed by Airservices Australia on 13 March 2009 (Sydney Airport 2029 ANEF);
- q) Whilst there are currently no national aviation standards relating to defining public safety areas beyond the airport boundary, it is recommended that proposed land uses which have high population densities should be avoided."

8. The following conditions are imposed by **NSW Office of Water**:

#### General

- a) An authorisation shall be obtained from NSW Office of Water 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 in the authorization;
- 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 in contact with groundwater watertight for the anticipated life of the building. Waterproofing of below-ground levels must be sufficiently extensive to incorporate adequate provision for reasonably foreseeable high water table elevations to prevent potential future inundation;
- c) Construction methods and material used in and for construction shall be designed to account for the likely range of salinity and pollutants which may be dissolved in groundwater, and shall not themselves 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. These measurements should be included in a report provided to the NSW Office of Water in support of the dewatering licence application, along with a schedule and indicative level predictions for 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 parameters (e.g. permeability predicted by slug-testing, pump-testing or other means) and calculation method shall be included in the report submitted to the NSW Office of Water in support of the dewatering licence;
- f) A copy of valid development consent for the project shall be provided in the report to the NSW Office of Water;
- g) Groundwater quality testing shall be conducted on a suitable number of samples using a suitable suite of analytes and completed by a NATA-certified laboratory, with the results collated and certificates appended to a report supplied to the NSW Office of Water. Samples must be taken prior to the substantial commencement of dewatering, 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. reinjection, 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 (sometimes referred to as “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 (i.e. above appropriate NEPM 2013 investigation thresholds) shall not be reinjected into any aquifer without the specific authorisation of the NSW Environment Protection Authority (any such discharge would be regulated through a licence issued under the Protection of the Environment Operations Act 1997 [POEO Act]). 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 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) Engineering measures designed to transfer groundwater around the basement shall be incorporated into the basement construction to prevent the completed infrastructure from restricting pre-existing groundwater flows;
- k) Piping, piling or other structures used in the management of pumped groundwater shall not create a flooding hazard. Control of pumped groundwater is to be maintained at all times during dewatering to prevent unregulated off-site discharge;
- l) 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;
- m) Pumped groundwater 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 shall be complied with;
- n) 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 sulfate soils management plan or remediation action plan) shall not be compromised by the dewatering activity;
- o) 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;
- p) 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 procedures;

Following excavation

- q) 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.
9. The following conditions are imposed by **NSW Police**:
- a) As the proposed development may be exposed to Stealing, Steal from persons, Malicious Damage and Steal from Motor Vehicle offences, anti-social behaviour, assault and robbery 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. Facial recognition ability is crucial in identifying potential offenders;
  - b) This CCTV system should consist of surveillance cameras strategically located around the development to provide maximum surveillance coverage of the area, particularly 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;
  - 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;
    - iii) 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) It is not advised to install storage cages or similar for the residents in the car park. If it is required, consider that they should not be constructed in isolated areas. The cages are easy targets when they have little supervision. CCTV cameras must cover this area if they are constructed. Solid steel housing and quality key locks should be used to prevent access.
10. The following conditions are imposed by **Sydney Water Corporation**:
- a) The drinking water main available for connection is the 150mm main on Green Street or the 150mm main in Holloway Street.

- b) An extension of the wastewater system will be required from the 300mm constructed under WO 41221 or the 225mm main constructed under WN 304015. The proposed extension will provide a point of connection at least 1m inside all the proposed lot boundaries.
- c) The proposed wastewater infrastructure for this development will be sized and configured according to the Sewerage Code of Australia (Sydney Water Edition WSA 02-2002-2.2).

### **CONDITIONS TO BE COMPLIED WITH DURING REMEDIATION**

11. Construction works the subject of this development consent shall not commence until the land subject of the consent has been remediated and validated in accordance with the Remedial Action Plan prepared by JBS&G, dated 25 November 2015.

12.

- a) A Stage 4 – Site Validation Report (SVR) shall be prepared by a suitably qualified contaminated land consultant. The Report shall be in accordance with:
  - i) NSW Department of Environment, Climate Change and Water (DECCW) ‘Contaminated Sites – Guidelines for Consultants Reporting on Commercial Sites’; and
  - ii) State Environment Planning Policy 55 (SEPP 55) – Remediation of Land.
- b) 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.
- c) The report shall be submitted to the Council, and to the Principal Certifying Authority (if the Council is not the PCA). The report is to be submitted after completion of remediation works and prior to commencing any building works.

13.

- a) 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 any works associated with this DA and prior to the release of the Construction Certificate.
- b) Any conditions imposed on the SAS shall form part of this consent. In circumstances where the SAS conditions (if applicable) are not consistent with the consent, a s96 application pursuant to the Environmental Planning & Assessment Act 1979 shall be submitted to ensure that they form part of the consent conditions.

14. The applicant is to undertake the re-installation of groundwater wells on the site by the polluter (or others) for the purpose of monitoring contamination associated with the current (and any future agreements) VMP as implemented with the EPA.

**CONDITIONS THAT MUST BE SATISFIED DURING REMEDIATION WORKS**

- 15.
- a) Prior to the commencement of any work on the site, the applicant is to pay a Tree Preservation Bond of \$25,000.00 to ensure protection of all Council street trees adjoining the site from damage during site works.
  - b) The duration of the Bond shall be limited to a period of 6 months after issue of the Occupation Certificate. At the completion of the 6 month period the Tree Preservation Bond shall be refunded pending a satisfactory inspection by Council or a qualified Arborist. If tree/s are found to be in decline, damaged (including roots), dead, excessively pruned or removed 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.
16. At all times during remediation, excavation and construction works:
- a) The requirements of the approved Remedial Action Plan (RAP) and Site Audit Statement (SAS) listed in Condition No. 1 are to be complied with.
  - b) Any conditions imposed on the SAS shall form part of this consent. In circumstances where the SAS conditions (if applicable) are not consistent with the consent, a s96 application pursuant to the Environmental Planning & Assessment Act 1979 shall be submitted to ensure that they form part of the consent conditions.
  - c) During remediation 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 work. 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.
17. During remediation 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.
18. Vibration levels induced by demolition activities shall not exceed 1mm/sec peak particle velocity (ppv) when measured at the footing of any occupied building.



19. Should the excavation/remediation/construction process require a building waste container(s) (builders' skip), then such container must not be placed or left upon the public road, footpath, reserve or the like without the prior approval of the Council. The use of any part of Councils road reserve must also have prior approval of Council.
20. Any material containing asbestos found on site during the demolition process shall be removed and disposed 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 10m<sup>2</sup> 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
21. 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.
22. A Tree Preservation Order applies to the existing trees on the adjoining site to the west and on Council's nature strip, accordingly they are required to be retained and protected at all times. The property owner is required to ensure the protection and preservation of trees on adjoining properties, in close proximity to the proposed development and/or property boundaries. Any tree removals, canopy pruning or trimming of large tree roots (40mm diameter or more) requires the written consent of Council's Tree Preservation Officer under separate application.
23.
  - a) Prior to commencement of any works on-site, a dilapidation report of the immediate adjoining properties and public infrastructure (including Council and public utility infrastructure) shall be prepared by a qualified person and submitted to Council. The report shall include records and photographs of the all properties immediately adjoining the site; and Page Street, Holloway Street and Green Street.
  - b) In relation to Council's infrastructure, the report shall include at the proposed point of construction site entry, photographic survey showing the existing conditions of Council's infrastructure. The survey shall detail the physical conditions and identify any existing damage 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.
  - c) Prior to commencement of the surveys, the applicant/ owner shall advise (in writing) all property owners of buildings to be surveyed of what the survey will entail and of the process for making any future claim regarding property damage. A copy of this communication shall be submitted to Council.

- d) The applicant shall bear the cost of all restoration works to buildings/ structures and public infrastructure that been damaged during the course the demolition, site clearing and site remediation works. Any damage to buildings/structures, infrastructures, roads, lawns, trees, gardens and the like shall be fully rectified by the applicant/developer, at the applicant/developer's expense.
  - e) A copy of the dilapidation report together with the accompanying photographs shall be given to all immediately adjoining properties owners and public utility authorities, including Council. The report shall be agreed by all affected parties as a fair record of existing conditions prior to commencement of any works;
  - f) A second dilapidation report, including a photographic survey shall then be submitted at least one month after the completion of all works. A copy of the second dilapidation report together with the accompanying photographs shall be given to Council, public utilities authorities and all adjoining properties owners.
24. There shall be no loss of support to the Council's nature strip area as a result of the construction within the site. Details prepared by a practicing Structural Engineer of how this support will be maintained during the demolition works shall be submitted to Council prior to the commencement of works.
25. Council's property shall be supported at all times. Where any shoring is to be supporting (or located on) Council's property, certified engineering drawings showing all details including the extent of encroachment, the type of shoring and the method of removal, shall be submitted prior to commencement of any work. If the shoring cannot be removed, it shall be cut to 150mm below footpath level and the gap between the shoring and any buildings shall be filled with a 5Mpa lean concrete mix.
26. In order to ensure that all Council street trees in the road reserve adjoining the site are protected during construction, the following is required :
- a) Prior to commencing any works on the property the trees are required to be physically protected by 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. This work is to be undertaken by an AQF Level 5 Consulting Arborist.
  - b) The area within the fencing is to be mulched with leaf mulch to a depth of 100mm and a weekly deep watering program undertaken during construction.
  - c) Fencing shall be erected to ensure the public footway is unobstructed.
  - d) If there is insufficient space to erect fencing in a particular area, and after Council approval, 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).
  - e) Before any works commence on site, the Applicant is required to contact Council for an inspection of the fenced TPZ's. Council approval is required prior commencement of any work.

- f) All detailed Construction Certificate plans shall show trees to be protected and the TPZ.
27. Prior to commencement of any works, application(s) shall be made to Council's Customer Services Counter and obtained the following approvals and permits on Council's property/road reserve under Road Act 1993 and Local Government Act 1993:
- a) Permit to erect hoarding on or over a public place, including Council's property/road reserve;
  - b) Permit to construction works, place and/or storage building materials on footpaths, nature strips;
  - c) Permit to install temporary ground anchors in public land;
  - d) Permit to discharge groundwater to Council's stormwater drainage system;
  - e) Permit for roads and footways occupancy (long term/ short term);
  - f) Permit to construct vehicular crossings, footpaths, kerbs and gutters over road reserve;
  - g) Permit to open road reserve area, including roads, footpaths, nature strip, vehicular crossing or for any purpose whatsoever, such as relocation / re-adjustments of utility services;
  - h) Permit to place skip/waste bin on footpath and/or nature strip; and
  - i) Permit to use any part of Council's road reserve or other Council lands.
  - j) Note: Any works shown within Council's road reserve or other Council land on the development approval plans are indicative only and no approval for these works is given until this condition is satisfied.
28. 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.
- 29.
- a) 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 being conveyed by stormwater into public stormwater drainage system, natural watercourses, bushland, trees and neighbouring properties.

- b) 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 three (3) month period after the completion of the development, where necessary.

30.

- a) At all times during demolition, excavation and construction, noise from associated with the development shall comply with the NSW Environmental Protection Authority's Environmental Noise Manual – Chapter 171 and the *Protection of the Environment Operations Act 1997*.
- b) For site works including demolition and remediation works with period of 4 weeks and under the L10 sound pressure level measured over a period of not less than 15 minutes when the construction site is in operating must not less than 15 minutes when the construction site is in operating must not exceed the background level by more than 10dB(A).
- c) For site works with a period greater than 4 weeks and not exceeding 26 weeks 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).

31.

- a) The hours of site works shall be
  - i) Monday to Friday 07:00am to 06:00pm;
  - ii) Saturday 08:00am to 04:00pm
  - iii) No work to take place on Sundays or Public Holidays.

32. Toilet facilities are to be provided at or in the vicinity of the work site on which work involves:

- 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 to a public sewer; or if connection to a public sewer is not practicable to an accredited sewerage management facility approved by the Council; or 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.

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

33. Prior to the issue of the Construction Certificate the applicant is to submit to Council for approval, an amended plan which deletes Level 7 from both Building 1 and 2. This will result in approval for a total of 244 dwellings, and 402 car parking spaces (including visitor car parking).
34. Prior to the issue of the Construction Certificate, the Applicant is to submit documentary evidence to the Principal Certifying Authority that the required Licence under the Water Management Act 2000 has been obtained.
35. Prior to the issue of the Construction Certificate, the Applicant, the residential apartment building must be provided with a mechanical/forced ventilation system and the lift shaft must be naturally ventilated. Details are to be provided with the Construction Certificate.
- 36.
37. The applicant must prior to issue of the Construction Certificate, pay the following fee:
  - a) Development Control \$10,000.00
38. 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 2005-2010, the following development contributions are required (based on a reduced number of dwellings as a result of the deletion of Level 7 as per Condition 33):
  - a) Community Facilities: \$527,040.00
  - b) Administration: \$19,520.00
  - c) Transport: \$268,400.00
  - d) Open Space and Recreation: \$4,065,040.00

**Total Section 94 Contributions 2005/2010 \$4,880,000.00**

The Section 94 Contribution of **\$4,880,000.00** is to be paid to Council prior to the issue of the first Construction 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.
39. 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.
- 40.

- a) A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained. Application must be made through an authorised Water Servicing Coordinator. Please refer to “Your Business” section of Sydney Water’s web site at [www.sydneywater.com.au](http://www.sydneywater.com.au) then the “e-developer” icon or telephone 13 20 92.
  - b) Following application a “Notice of Requirements” will detail water and sewer extensions to be built and charges to be paid. Please make early contact with the Co-ordinator, since building of water/sewer extensions can be timed consuming and may impact on other services and building, driveway or landscape design. The Section 73 Certificate must be submitted to the Principal Certifying Authority prior to the Construction Certificate being issued.
41. Details on the operational mechanical plant and equipment for the buildings is to be submitted to the Principal Certifying Authority prior to the release of the Construction Certificate. The report must:
- a) Identify each item of plant and equipment;
  - b) Demonstrate that:
    - i) the operation of all plant and equipment shall not give rise to an equivalent continuous (L<sub>eq</sub>) sound pressure level at any point on any residential property greater than 5dB(A) above the existing background L<sub>A90</sub> level (in the absence of the noise under construction);
    - ii) that the operation of all plant and equipment when assessed on any residential property shall not give rise to a sound pressure level that exceeds L<sub>Aeq</sub> 50dB (A) day time and L<sub>Aeq</sub> 40dB (A) night time.
    - iii) 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 L<sub>Aeq</sub> 65dB(A) day time/night time
  - c) For assessment purposes, the above L<sub>Aeq</sub> sound levels shall be assessed over a period of 10-15 minutes when adjusted in accordance with EPA guidelines for tonality, frequency, weighting, impulsive characteristics, fluctuations and temporal content where necessary.
    - i) **Note** “sensitive” positions should be selected to reflect the typical use of a property (i.e. any outdoor areas for day and evening but closer to the façade at night time), unless other positions can be shown more relevant.
42. Plans and specifications for the storage room and for waste and recyclable materials must meet the requirements of Part 3N.3 of Botany Bay Development Control Plan 2013 and shall be submitted to the Certifying Authority with the application for the Construction Certificate.
- 43.
- a) Prior to the issue of the Construction Certificate for above ground works, the landscape areas shown on the conceptual plans by Oculus as submitted in April 2015 with the amended Development Application, shall be the subject of detailed

landscape construction documentation (plans and specifications) that are to be submitted to and approved by the Council's Landscape Architect.

- b) The landscape documentation is to be prepared by a suitably qualified Landscape Architect, in accordance with BBDCP2013. The detailed, construction level plan shall include, but not be limited to:
- i) A site plan showing building envelopes, paved areas and areas to be landscaped;
  - ii) A detailed planting plan at 1:100 scale showing all plant locations, groupings and centres. There is to be a dense layered planting scheme consisting of trees, shrubs and groundcovers/lawn in all landscaped areas;
  - iii) A plant schedule listing all plants by botanical name, total plant numbers, plant spacings, pot sizes and staking;
  - iv) Specifications detailing soil and mulch finishes, root barriers, irrigation, edging and other landscape hardworks such as retaining walls;
  - v) Areas of paving, schedule of materials, edge treatments and sectional construction details;
  - vi) All external and internal fencing, privacy screening and pergolas – elevations and materials;
  - vii) Details of other landscape elements such as furniture, amenity lighting, artwork and water features. 'Provide sectional construction details and elevations;
  - viii) Planter box on slab sectional details. Planter box depths to be in accordance with BBDCP 2013 and SEPP65;
  - ix) In communal open spaces, soft landscaping is to be maximised and accessways/ dissecting pathways minimised. Provide lawn as well as planted areas, trees for shade and seating;
  - x) A mixture of tree heights and forms shall be used extensively throughout the site – in private courtyards, communal areas and in setbacks using small, medium and large canopy trees ranging in height from 3 to 15 metres. Trees must be of an appropriate scale to complement and ameliorate the development and to pedestrianise landscaped open spaces. Deep soil zones must include larger canopy trees. Setbacks are to include appropriate sized trees to soften the development and integrate it with the streetscape. Trees to be predominantly native, evergreen species using open canopy evergreens or some selected deciduous for solar penetration;
  - xi) Show the location of underground stormwater and rainwater tanks and the like and impact on landscape outcome;

- xii) Provide landscape furniture and recreational facilities appropriate to the development such as BBQ areas, shelters, seating, playground, water features and the like;
  - xiii) Street setbacks are to be primarily green spaces for the 3 metre setback width. Patios shall be provided in private landscape areas behind townhouses, not in the street frontage;
  - xiv) Planting is to be provided to all ground floor townhouse rear private open spaces;
  - xv) Clearly demonstrate tree survival/growth within the sunken tree pits regarding watering, contaminated soils, potential impacts on tree growth, form and health. Will the planting result in mostly only canopy visible at the podium communal open space level and is this optimal regarding aesthetics, visual surveillance etc;
  - xvi) Large/wide format, deep planters are required on podium to support trees, not linear type planters.
- c) All landscaping shall be installed in accordance with the approved landscape as stamped by Council's Landscape Architect prior to the issue of an Occupation Certificate. The landscaped areas on the property shall be maintained in accordance with the approved landscape documentation, the conditions of consent and Council's Landscape DCP at all times.
44. Prior to the issue of the relevant Construction Certificate, an amended hydraulics proposal shall be submitted to Council to satisfy the following:
- a) No on-site detention tanks to be located in private townhouse open space due to impact on available space for landscaping;
  - b) No detention tanks/rainwater tanks to be located in communal open space areas or deep soil landscape areas as they impede the area available for large canopy trees and landscaping;
  - c) An OSD has been located in the at-grade carpark between the residential and commercial components of the re-development, which reduces the carpark tree planting requirements and therefore shade and screening. This inclusion conflicts with the landscaping depicted in the landscape sketches;
  - d) A pollution device has been located at the main pedestrian entry and mews off Page Street –to be relocated.
- 45.
- a) Prior to the issue of the Construction Certificate for above ground works, a public Domain Improvements Plan shall be submitted for approval by Council. The proposal is required to incorporate improvements to the streets surrounding the development, to Simon Walk and public domain areas opposite the site in Page and Holloway Streets.



- b) The Plan shall be undertaken by a suitably experienced Landscape Architect and shall include but not be limited to new street tree planting, footpath paving (segmental paving may be required), street tree pit treatments, tree guards, street furniture, in ground landscaping, furniture. The Plan shall be in accordance with Council specification or requirement. Civil drawings shall be included detailing levels and detailed footpath construction sections in accordance with Council's Engineering Services requirements and shall be consistent with the landscape drawings.
46. A Construction Management Plan 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;
  - j) The location and operation of any on site crane. Please note that a crane may require prior approval from Sydney Airports Corporation; and
  - k) The location of any Construction Zone (if required) approved by Council's Traffic Committee, including a copy of that approval.

47. Prior to the issue of the Construction Certificate, a detailed Traffic Management Plan for the pedestrian and traffic management of the site during construction shall be prepared and submitted to the relevant road authority (Council and/or Roads and Maritime Services) for approval.
- a) The plan shall be prepared by a RMS accredited consultant shall nominate a contact person who is to have authority without reference to other persons to comply with instructions issued by Council's Traffic Engineer, RMS or the Police.
  - b) The Plan shall include times and dates of changes, measures, signage, road markings and any temporary traffic control measures.
  - c) If required, a public information campaign to inform any road changes must be implemented well in advance of each change. The campaign may be required to be approved by the Traffic Committee.
    - i) 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.
48. Compliance with the following must be shown on the Construction Certificate drawings:
- a) All driveways/access ramps/vehicular crossings shall conform with Australian Standards AS 2890.1 and Council requirements including but not limited to Section 8(v) of the DCP Stormwater Management Technical Guidelines;
  - b) For large scale 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;
  - c) All service vehicles shall enter the property front in front out;
  - d) Swept path analysis shall be provided for manoeuvring of commercial vehicles;
  - e) A longitudinal section plotting headroom clearance above driveway access is to be provided for assessment;
  - f) Disabled car parking spaces shall be provided and clearly marked as per the Traffic and Parking Impact Assessment Review job ref. 2013/306 by McLaren Traffic Engineering, dated 16 February 2015, Australian Standards AS 2890.6, SEPP 65 RFDC and Council requirements; and
  - g) 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.

49. Prior to the issue of any Construction Certificate, the applicant shall contact “Dial Before You Dig” to obtain a utility service diagram for, and adjacent to the property. The sequence number obtained from “Dial Before You Dig” shall be forwarded to Certifying Authority. All utilities within the work zone shall be protected during construction.
50. To ensure that utility authorities and Council are advised of any effects to their infrastructure by the development, the applicant shall:
- a) Carry out a survey of all utility and Council services within the site including relevant information from utility authorities and excavation if necessary to determine the position and level of services;
  - b) Negotiate with the utility authorities (eg AusGrid, Sydney Water, Telecommunications Carriers and Council in connection with:
    - i) The additional load on the system; and
    - ii) The relocation and/or adjustment of the services affected by the construction.
- 51.
- a) The Ausgrid lighting poles along Page St, will need to be decommissioned and new lighting poles shall be constructed satisfying V2 lighting requirements any other requirements as specified by Council, RMS and any other service provider;
  - b) The Ausgrid lighting poles along Holloway and Green Sts, will need to be decommissioned and new lighting poles shall be constructed satisfying V2 lighting requirements any other requirements as specified by Council, RMS and any other service provider;
  - c) All above ground utilities shall be relocated underground in accordance with Ausgrid and any other affected and relevant service provider; and
  - d) All underground and above ground infrastructure shall be constructed as specified by Ausgrid, RMS, Council and any other affected service provider. The location of the new electrical pillars, new lighting poles, any new pits and trenches for utilities shall be confirmed with Council prior to the issue of the Construction Certificate.
  - e) 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.
52. 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 existing stormwater drainage infrastructure on Page, Holloway and Green Streets adjacent to the development. The camera and its operation shall comply with the following:

- a) The internal surface of the drainage pipe/culvert shall be viewed and recorded in a clear and concise manner;
- b) 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;
- c) Distance from the manholes shall be accurately measured, and
- d) The inspection survey shall be conducted from manhole to manhole.
- e) The written report, together with a copy of the digital video footage of the pipeline and detail maps recording which video is of which pipe 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 Certifying Authority.

**Note:** If the existing pipe is full of debris preventing the effective inspection of the pit and pipe system, the contractor shall clear the pipe to a degree where CCTV inspection is possible at the applicants expense.

53.

- a) 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 Council for approval and to be provided to the Certifying Authority.
- b) 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 and the BCA. All drawings shall correspond with the approved architectural plans.
- c) The plans shall incorporate but not be limited to the following:
  - i) The provisions made in the Concept Stormwater Plan project no. VE-N13\_19 by IGS, dated 18 March 2015;
  - ii) 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;**
  - iii) Provision of a minimum 10kL rainwater tank collection system for each separate Lot for internal reuse in accordance with Section 4 of Botany Bay's SMTG;

- iv) 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;
  - v) The pump-out can only be utilized to dispose runoff that may enter the basement carpark from driveway access to the basement;
  - vi) The pump out system from the basement carpark proposed shall discharge to the on-site stormwater detention (OSD) system;
  - d) If an OSD system is proposed, incorporate a Stormwater Quality Improvement system to ensure compliance with Section 16 of Botany Bay’s SMTG;
  - e) The water quality improvement system and WSUD strategy proposal shall be designed to capture and treat at least 85% flows generated from the site;
  - f) A WSUD Strategy and MUSIC model must be prepared and submitted to Council 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, and
  - g) The submission of detailed calculations including computer modelling where required supporting the proposal.
54. 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.
55. The construction certificate drawings shall show the following car parking allocations. This is based on a total of 244 dwellings, as reduced by Condition 33. The total number of residential visitor spaces required on site is 49 spaces. The commercial parking spaces do not form part of this consent.

<b>Car Parking Rate</b>	<b>Required spaces</b>
1 space/ studio and 1 bedroom units	135
2 spaces per 2 or 3 bedroom unit	218
1 visitor space per 5 dwellings	49
<b>TOTAL REQUIRED</b>	<b>402</b>

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.

## **DURING WORKS**

56. During construction and any associated deliveries activities, the applicant shall ensure that all works and measures have been implemented in accordance with following approved plans at all times:
- a) Approved Erosion and Sediment Control Plan;
  - b) Approved Construction Traffic Management Plan;
  - c) Approved Construction Management Plan; and
  - d) Approved Waste Management Plan.
57. In order to ensure that ALL Council street trees in the road reserve adjoining the site are protected during construction, the following is required :
- a) All TPZ's as well as the entire Council nature strip are a "No-Go" zone. There shall be no access to the property excluding existing crossovers, no stockpiling, storage or sorting of waste or building materials, no construction work, no concrete mixing, strictly no washing down of concrete mixers or tools, no chemicals mixed/disposed of, no excavation or filling, no service trenching. Any unavoidable work within the fenced zone shall be under the direction of Council's Tree Officer.
  - b) Where unavoidable foot access is required in the TPZ, provide temporary access with timber sheets to minimise soil compaction, spillage or root damage.
  - c) Excavation within the canopy dripline and within an area extending 3 metres outward of the canopy dripline of any street tree shall be carried out manually using hand tools to minimise root damage or disturbance.
  - d) Tree roots 40mm in diameter or greater that require pruning shall be done only under the direction of Council's Tree Officer after a site inspection so as not to unduly impact or stress the tree.
  - e) Ensure that there is no damage to the canopy, trunk or root system (including the surrounding soil) of any tree. There shall be no canopy pruning unless approval has been granted by Council's Tree Officer under separate application.
  - f) The Applicant must ensure a minimum offset of 3 metres between any driveway crossover and street tree. Excavation for the crossover shall be undertaken manually. If major roots are encountered Council's Tree Officer is required to inspect and provide advice.
  - g) Masonry boundary fencing/walls or retaining walls shall be of piered or bridged construction to minimise damage to major or structural street tree roots. Trench or strip footings are not permitted. 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.

- h) There shall be no walls retaining or otherwise, pavements, change in levels, trenching for new sub-surface utilities or the location of new overhead services within the primary root zone or canopy of any tree. Any such structures in close proximity to trees must accommodate tree roots without damage or pruning.
  - i) The Applicant shall undertake any tree maintenance/remedial pruning as required by Council at the completion of construction.
  - j) If there is any contravention of these tree preservation conditions, or a tree was found to be damaged (including roots), in decline, dead or pruned without permission, then Council may claim all or part of the lodged security bond prior to its release as well as require remedial pruning work or for trees on private property, the Applicant will be required to undertake tree maintenance/replacement work, as specified by Council.
58. During the entire construction phase signage shall be fixed on site identifying the PCA and principal contractor (the coordinator of the building work), and providing phone numbers.
  59. 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 upon request throughout construction works.
  60. All materials excavated from the site (fill or natural) shall be classified in accordance with the NSW Department of Environment and Climate Change (DECC) Waste Classification Guidelines (2008) prior to being disposed of to a NSW approved landfill or to a recipient site.
  61. 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 Freshwater. 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.
  62. 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 PCA immediately.
  63. Council requires an application to discharge water to a Council road or stormwater system. The application must be made in writing to Council estimating volume and number of days involved and must be accompanied by a current dewatering license from the NSW Office of Water. For water 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 Freshwater. 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.
  64. The applicant is responsible for the installation and protection of all regulatory/ parking / street signs fronting the site during construction. Any damaged or missing street signs

as a consequence of the construction works associated with the development shall be replaced at full cost to the applicant.

65.

- a) The Principal Contractor must install and maintain water pollution, erosion and sedimentation controls in accordance with:
  - i) The *Soil and Water Management Plan* if required under this consent;
  - ii) “*Do it Right On Site, Soil and Water Management for the Construction Industry*” published by the Southern Sydney Regional Organisation of Councils, 2001; and
  - iii) “*Managing Urban Stormwater - Soils and Construction*” published by the NSW Department of Housing 4<sup>th</sup> Edition” (The Blue Book).

- b) Where there is any conflict The Blue Book takes precedence.  
Notes:

- i) The International Erosion Control Association -Australasia (<http://www.austieca.com.au/>) lists consultant experts who can assist in ensuring compliance with this condition. Where Soil and Water Management Plan is required for larger projects it is recommended that this be produced by a member of the International Erosion Control Association – Australasia.
  - ii) The “Do it Right On Site,” can be down loaded free of charge from Council’s website at <http://www.botanybay.nsw.gov.au/council/services/planning/factsheets.htm>, further information on sediment control can be obtained from [www.ssroc.nsw.gov.au](http://www.ssroc.nsw.gov.au).
- c) A failure to comply with this condition may result in penalty infringement notices, prosecution, notices and orders under the Act and/or the Protection of the Environment Operations Act 1997 (POEO Act) without any further warning. It is a criminal offence to cause, permit or allow pollution. Section 257 of the POEO Act provides inter alia that “the occupier of premises at or from which any pollution occurs is taken to have caused the pollution”. Irrespective of this condition any person occupying the site may be subject to proceedings under the POEO Act where pollution is caused, permitted or allowed as the result of their occupation of the land being developed.

66. 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 free copy of the sign is available from Council’s Customer Service Counter.

67. 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.
68. Existing structures and or services on this and adjoining properties are not endangered during any excavation or construction work associated with the development. The applicant is to provide details of any shoring, piercing, or underpinning prior to the commencement of any work. The construction shall not undermine, endanger or destabilise any adjacent structures.
69. As the development involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
- a) Protect and support the adjoining premises from possible damage from the excavation, and
  - b) Where necessary, underpin the adjoining premises to prevent any such damage.
70. Should the applicant encounter acid sulphate soils during the excavation works, work is to cease and an Acid Sulphate Soils Management Plan (prepared by a suitably qualified and experienced environmental/geotechnical consultant) shall be submitted to the Principal Certifying Authority prior to the continuance of works. This report shall include any site specific procedures and mitigation measures required and shall include a site analysis from a NATA registered laboratory. The report shall provide details of the following:
- a) Site specific mitigation measures to both minimise the disturbance of acid sulphate soils as well as any measures relating to acid generation and acid neutralisation of the soil;
  - b) Management of ASS affected excavated material;
  - c) Measures taken to neutralise the acidity of any ASS affected material; and
  - d) Run-off control measures for the ASS affected soil.
  - e) A copy of the report shall be submitted to Council. All necessary recommendations of the report shall be implemented prior to the commencement of building works.
71. Planter boxes constructed over podium shall be built in accordance with the following requirements:
- a) Ensure soil depths in accordance with Council's 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.

72. The following must be complied with during construction:

- 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.

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

- 73. No part of the development shall be occupied by any residents, and no occupation certificate shall be issued until the required upgrade to the intersection of Wentworth Avenue and Page Streets has been completed.
- 74. All works identified in Condition 4 must be implemented prior to the issue of any occupation certificate.
- 75. 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.
- 76. 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 existing stormwater drainage infrastructure on Page, Holloway and Green Streets:
  - a) The camera and its operation shall comply with the following:
  - b) The internal surface of the drainage pipe/culvert shall be viewed and recorded in a clear and concise manner;
  - c) 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;
  - d) Distance from the manholes shall be accurately measured, and
  - e) The inspection survey shall be conducted from manhole to manhole.
  - f) The written report, together with a copy of the digital video footage of the pipeline and detail maps recording which video is of which pipe shall be submitted to Council for review. Any defect/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.
- 77. Prior to the issue of any 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.

78. Prior to the issue of any Occupation Certificate, the Applicant is to submit payment of a Tree Maintenance Bond of \$25,000.00. The duration of the Bond shall be limited to a period of 12 months after planting of the new street trees and a satisfactory inspection from Council. At the completion of the Bond period the Bond will be refunded pending a satisfactory inspection of the trees by Council. If a tree is found to be dead, pruned or dying and will not recover Council will forfeit all or part of the bond to replace or maintain the tree/s, unless the Applicant undertakes this work under instruction from Council.
79. Prior to the issue of any Occupation Certificate:
- 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) 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.
  - c) 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.
80. Prior to the issue of any 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.
81. Prior to the issue of any 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:
- a) Restriction on Use of Land for On-Site Detention System. Refer to Appendix B of the SMTG for suggested wording, and
  - b) Restriction on Use of Land for Stormwater Quality Improvement Device. Refer to Appendix E of the SMTG for suggested wording.
  - c) The terms of the 88 E instruments are to be submitted to Council for review and approval and Proof of registration at the Lands and Property Information Office shall be submitted to the Principal Certifying Authority and Council prior to occupation.
82. Prior to the issue of any Occupation Certificate, a report prepared by a qualified air quality/mechanical engineer certifying that the mechanical ventilation/exhaust system as installed complies in all respects with the design and operation standards of AS 1668

- Mechanical Ventilation and Air Conditioning Codes, and the relevant provisions of the Protection of the Environment Operations Act 1997 shall be submitted to Council within 21 days of the installation of the system and prior to the occupation of the premises.
83. Prior to the issue of any Occupation Certificate, Any electrical kiosk/substation, fire booster assembly or similar utilities must be housed within the external face of the building structure and screened from view from the public domain area. The utilities must be screened by a built screen enclosure and landscaping so as not to reduce the visual amenity of the development or the streetscape and public domain. The location of, and screening treatment surrounding these utilities is to be approved by Council's Landscape Architect **prior** to installation.
84. 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 1.59:1 and height of 37.7m AHD as approved under this Development Consent No. 14/080, 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 Lot 201 in DP 788578.
85. 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.
86. Prior to the issue of the Occupation Certificate, all letter boxes must be constructed and located in accordance with the relevant provisions of Australian Standard AS/NZS 4253:1994 Mailboxes and to Australia Post's satisfaction.
- 87.
- a) Residents of this development are not eligible to participate in Council's on-street resident parking scheme. Before entering a purchase/lease/occupancy agreement, or individual units are on-sold, all tenants and occupiers of the development are to be advised of this by the owner of the building.
  - b) Prior to the issue of the Occupation Certificate, a sign to this effect shall be located in a prominent place, to Council's satisfaction, such as a directory board or notice board, where it can easily be observed and read by persons entering the building;
  - c) Where a building is to be Strata subdivided, a condition should be placed in the by-laws advising residents that they are not eligible to participate in on-street resident parking schemes.

88. A copy of the Building Management Statement and By-Laws for each of the proposed lots shall be submitted to Council for approval prior to the issue of the Occupation Certificate. The Building Management Statement and By-Laws shall address all conditions associated with the ongoing use of the development of Development Consent No. 14/080 and include:
- a) Responsibilities with regard to the ongoing maintenance of the building and landscaped areas at the property in accordance with the plans and details approved under Development Consent No. 14/080;
  - b) Responsibilities with regard to the maintenance of artificial features at the property in accordance with the plans and details approved under Development Consent No. 14/080;
  - c) Responsibilities regarding the maintenance of the car wash bay the Owners Corporation / building owner;
  - d) Responsibilities for ensuring owners and/or tenants have adequate and hygienic waste sterile, 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;
  - e) Responsibilities to ensure that receptacles for the removal of waste, recycling etc. are put out for collection between 4.00pm and 7.00pm the day prior to collection, and, on the day of collection, being the day following, returned to the premises before 12.00 noon;
  - f) The Owners Corporation/Executive Committee obligations under clauses 177, 182, 183, 184, 185 and 186 of the Environmental Planning and Assessment Regulation 2000;
  - g) 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;
  - h) 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;
  - i) A graffiti management plan for the removal of graffiti and similar vandalism within seven (7) days of its occurrence and surface re-instatement;
  - j) 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;

k) CCTV surveillance of all public areas within the development site; and

89. 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 the Principal Certifying Authority prior to the issue of the Occupation Certificate.

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

90.

- 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 8, shall be monitored by CCTV cameras at all times;
- d) The approved Waste Management Plan shall be complied with at all times during the on-going use of the site / premises.

91. 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.

92. All intruder alarms shall be fitted with a timing device in accordance with the requirements of *Regulation 12A of the Noise Control Act, 1975*, and *AS2201, Parts 1 and 2 -1978 Intruder alarm systems*.

93. The landscape contractor shall be engaged weekly for a minimum period of 13 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.

94. New street trees shall be maintained by the Applicant/Owner/Strata Corporation for twelve (12) after planting. Maintenance includes twice weekly watering to sustain adequate growth, annual feeding, weed removal around the base and maintenance of a 100mm deep mulch ring at all times. Maintenance does not include pruning, trimming or any work to Council's street tree assets located on the Council nature strip under any circumstances at any time. This includes existing and new street trees. All pruning work is undertaken by Council only.
95. Ongoing maintenance of the grass/landscaped nature strips that are located outside the property boundaries shall be undertaken by the occupier, strata or owner. Maintenance includes mowing, watering and maintaining an even coverage of grass or plant material in accordance with the approved landscape plan.
96. 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.
97. 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.



- c) The transmission of vibration to any place of different occupancy above the requirements of AS2670, Australian Standard AS2021- 2000: Acoustics, Aircraft Noise Intrusion, Building Siting and Construction. Australian Standard AS2107 2000: Recommended Design Sound levels and Reverberation levels for Building Interiors;
  - d) Any air-conditioning unit shall comply with the City of Botany Bay's General Noise Criteria detailed in Condition 109 above.
98. Should the external fabric of the building(s), walls to landscaped areas and like constructions be subject to graffiti or like vandalism, then within seven (7) days of this occurrence, the graffiti must be removed and the affected surface(s) returned to a condition it was in before defilement.
- 99.
- a) The base of the lift shaft (ie. lift pit) of the residential apartment building must not be provided with any open drains/substantial penetrations that may significantly compromise the integrity of the pavement; and
  - b) At all times, the maximum lift speed in lift shafts of the residential apartment buildings must not exceeds 1.75m/s as recommended in the Site Audit Statement listed in Condition No. 1.
100. 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. 14/080 dated as 16 April 2014 and that any alteration, variation, or extension to the use, for which approval has been given, would require further Approval from Council.

## **APPENDIX A – CLAUSE 4.6 VARIATION**