

# Joint Regional Planning Panel

(Sydney East Region)

*Meeting Date: 4 March 2015*

<b>JRPP Number:</b>	2014SYE076
<b>DA Number:</b>	14/123
<b>Local Government Area:</b>	City of Botany Bay
<b>Property:</b>	152 Bunnerong Road Pagewood, Westfield Eastgardens
<b>Lot &amp; DP Nos:</b>	Lot 2 DP 776089
<b>Proposed Development:</b>	<p>Alterations and additions to the existing Westfield Shopping Centre Eastgardens comprising the following:</p> <ul style="list-style-type: none"> <li>• Construction of new retail mall at Level 3 comprising two (2) mini major tenancies including a super market, 11 new specialty retail shops, and two (2) new kiosks;</li> <li>• New loading dock on Level 2 and new goods lift on Level 3;</li> <li>• New escalator connecting new mall to Retail Level 2;</li> <li>• Modified Level 3 car park with new pedestrian mall entry and driveway ramp up to new roof top parking;</li> <li>• Modified commercial entry to commercial office building and amenities within lobby;</li> <li>• New rooftop car parking area on Level 4; and</li> <li>• Ancillary access and servicing works and minor relocation of existing services and facilities.</li> </ul> <p>Total additional retail floor space of 5,415m<sup>2</sup> (5.7% increase).</p>
<b>Applicant:</b>	Westfield Ltd
<b>Applicant Address:</b>	85 Castlereagh Street Sydney 2000
<b>Number of Submissions:</b>	Two (2) submissions
<b>Recommendation:</b>	Conditional consent
<b>Report by:</b>	Heather Warton, Director Planning and Development, City of Botany Bay

## THE DIRECTOR OF PLANNING AND DEVELOPMENT REPORTS:

### Executive Summary

Development Application No. 14/123 was received by Council on 6 June 2014, which seeks consent for alterations and additions to the existing Westfield Shopping Centre Eastgardens comprising the construction of a new retail mall on the existing Level 3. The development proposes the following:-

- *Construction of new retail mall at Level 3 comprising two (2) mini major tenancies including a super market, 11 new specialty retail shops, and two (2) new kiosks;*
- *New loading dock on Level 2 and new goods lift on Level 3;*
- *New escalator connecting new mall to Retail Level 2;*
- *Modified Level 3 car park with new pedestrian mall entry and driveway ramp up to new roof top parking;*
- *Modified commercial entry to commercial office building and amenities within lobby;*
- *New rooftop car parking area on Level 4; and*
- *Ancillary access and servicing works and minor relocation of existing services and facilities*

The development application is required to be determined by the Joint Regional Planning Panel (JRPP) pursuant to Clause 3 of Schedule 4A of the *Environmental Planning and Assessment Act 1979* (EP&A Act) as the Capital Investment Value (CIV) of the proposal is over \$20 million. The CIV of this development is approximately \$25 million. A JRPP briefing was undertaken on 14 August 2014 when issues relating to FSR, car parking, economic analysis, risk analysis and access requirements were discussed. These issues have been adequately addressed in this proposal.

The site is located at 152 Bunnerong Road Pagewood, and comprises a large allotment legally known as Lot 2 in DP 776089. The site is surrounded by roads, bounded by Wentworth Avenue to the south, Bunnerong Road to the east, Westfield Drive to the north and Banks Avenue to the west. The site has a total site area of 92,900m<sup>2</sup>.

The site is zoned B3 Commercial Core pursuant to the *Botany Bay Local Environmental Plan 2013* (BBLEP 2013). The proposal falls within the definition of “Commercial Premises” and is therefore permissible in this zone with development consent.

The development application was notified for a period of 30 days from 25 June 2014 to 25 July 2014. Two (2) submission were received which raised issues including risk analysis from the dangerous goods transportation route to the south of the site along Denison Street, retail function, FSR variation, urban form and advertising along the northern elevation and the visual and acoustic impact from the existing vehicle ramp on northern elevation. These issues have been addressed in this report and are considered to be satisfactorily addressed by the proposal.

Council received additional information in respect of the proposed development in relation to revised traffic and economic analyses, a revised Clause 4.6 variation to FSR and a surveyors report on the Gross Floor Area calculations (GFA) and car parking on the site. A Quantitative Risk Analysis on the dangerous goods route along Denison Street was also provided.

In assessing this application, Council officers consider that the primary issues for consideration are the proposed FSR non-compliance and risk assessment in relation to dangerous goods route along Denison Street. Other issues which were considered in this assessment included car parking and access, strategic context, potential visual and acoustic impact of the existing vehicle ramp along the northern elevation and the potential economic impact of the proposal. These issues have been adequately addressed in this assessment.

**The application is recommended to the JRPP for consideration and approval, subject to conditions.**

## 1. BACKGROUND

The subject site has a long standing history as a major regional shopping centre. The existing shopping centre on the site was officially opened as 'Westfields Eastgardens' in October 1987 and extended and refurbished in 2001. The proposed development is similar to a previous consent for a retail extension on Level 3 issued by Council in 2007.

Development Consent No 07/301 was approved on 29 August 2007 for an extension to the Level 3 retail area comprising 15 speciality shops and a mini major tenancy. This approved addition proposed an additional 8,482m<sup>2</sup> of GFA ('the 2007 extension'). The existing FSR for the site (at the time of the lodgement of this 2007 DA) was 1.38:1 (127,853m<sup>2</sup>) which was based on the definition of gross floor area (GFA) under the *Botany Local Environmental Plan 1995*. It should be noted that the GFA definition was changed in June 2006 to include a significant portion of any car parking above ground level and therefore direct comparisons between GFA calculations and FSR between planning instruments is difficult.

The plans for the 2007 extensions indicated that following the approved expansion, the FSR would be 1.46:1 or 136,335m<sup>2</sup>, which represented a non-compliance of 43,435m<sup>2</sup>. A SEPP 1 objection was submitted for the 2007 expansion which was supported by the Council. While the current proposal involves a very similar proposal, additional floor space is proposed (under the current GFA definition) beyond that approved in the 2007 extension given an additional mini-major tenancy is proposed. An additional 81 car parking spaces were to be provided.

Relevant specific conditions included:-

- provision of an accessible lift
- extension of the right hand turn bay from Bunnerong Road into Westfield Drive by an additional 50m (to an overall length of 180m).
- the left-hand turn lane from Wentworth Avenue into Banks Avenue, Pagewood be improved to prevent the trailer part of articulated semi-trailers from mounting the kerb and public footway.

In relation to the current application, Council received additional information in respect of the proposed development as follows:

- On 5 August, a Quantity Surveyors report was provided outlining the Capital Investment Value (CIV) of the project to be \$25,090,950.00. This additional information was provided following a request from Council on 11 July 2014.

- On 18 August 2014, a surveyors report was provided which accurately outlined the existing and proposed gross flora areas and car parking spaces for the proposal. This additional information was provided following a request from Council on 11 July 2014.
- On 11 December 2014, the applicant submitted additional information in relation to issues raised by Council in correspondence dated 5 September 2014, including the following responses:-
  - Amended Statement of Environmental Effects dated November 2014 including a revised Clause 4.6 objection and response to strategic issues raised by Randwick Council;
  - Amended Economic Analysis prepared by Urbis dated 7 November 2014;
  - Amended Traffic and Parking Report prepared by Colston Budd Hunt & Kafes Pty Ltd dated 24 October 2014; and
  - Risk Assessment prepared by Scott Lister dated 10 December 2014 was provided by the applicant.

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

## **2. SITE DESCRIPTION AND SURROUNDING DEVELOPMENT**

The subject site is located on the northern side of Wentworth Avenue and extends between Banks Avenue to the west and Bunnerong Road to the east. Westfield Drive forms the site's northern boundary. The subject site is known as 152 Bunnerong Road Pagewood and comprises the Westfield's Eastgardens shopping centre. The site is an irregularly shaped allotment and is formed by Lot 2 DP 776089 and has a total site area of 92,900m<sup>2</sup>.

The site has a frontage to Wentworth Avenue of approximately 385 metres and a frontage to Banks Avenue of approximately 195 metres. The frontage to Westfield Avenue is approximately 342 metres, which comprises a two way service road extending along the northern boundary and connects Banks Avenue in the west to Bunnerong Road at the eastern end of the site. The eastern boundary of the site has frontage to Bunnerong Road.

Westfield Eastgardens shopping centre comprises a fully enclosed, multi-level centre which was officially opened in October 1987 and extended and refurbished in 2001. Myer, Big W, Coles, Target, Woolworths and over 250 specialty stores currently occupy the centre. A commercial office building including a library of approximately 5,100 sqm and a multi-screen cinema complex accommodating around 1,800 seats also exists on the site.

There are various vehicular access ramps from Banks Avenue, Wentworth Avenue and Westfield Drive with express ramps to and from the rooftop parking accessed from Westfield Drive. A bus and taxi drop off/pick-up area is also provided along the Bunnerong Road frontage, accessed from Westfield Drive.

The main loading docks and service vehicle entry points are also located off Westfield Drive. Landscaping is provided along the Bunnerong Road and Wentworth Avenue frontages. All of the landscaping and access ramps are proposed to be retained by the proposal. The proposed alterations and additions are located at the uppermost level at the eastern end of the existing shopping centre on Levels 3 and 4.

The subject site is centrally located in the region, being located along the two arterial roads of Wentworth Avenue and Bunnerong Road. Sydney airport is located a short distance to the southwest of the site while the heavy industrial areas of Port Botany and Banksmeadow are located to the south of the site along Denison Street and Foreshore Drive. The surrounding context comprises a mix of land uses including industrial, residential and open space and comprises a variety of land zonings as illustrated in Figure 5.

Immediately to the north beyond Westfield Drive is an existing industrial precinct which is occupied by British American Tobacco Australia (the BATA site). This site was purchased by Meriton and partially rezoned to residential and mixed uses in 2013. Masterplan consent has been issued for a mixed use development comprising high density residential and mixed use including a 5,000m<sup>2</sup> retail centre as well as the continuation of the industrial use in an area of the site.

To the west of the site beyond Banks Avenue is the southern end of the Bonnie Doon Golf Course. On the southern side of Wentworth Avenue, there is the Botany Athletic Centre as well as some low density residential development. Low density residential development also exists to the east of the site beyond Bunnerong Road.

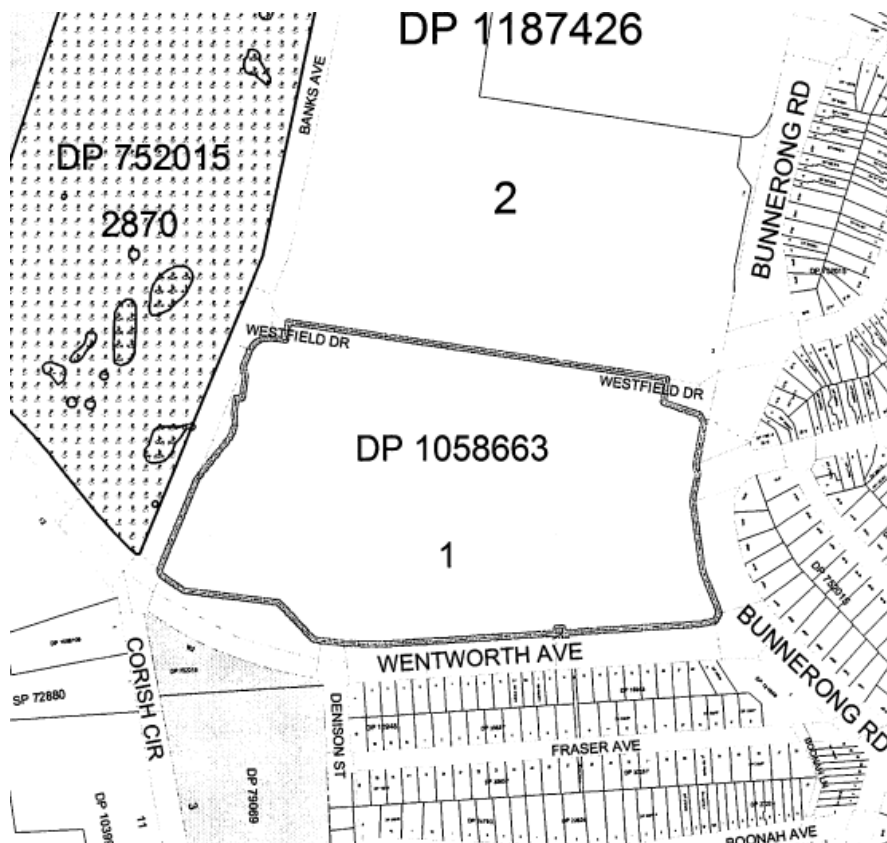


Figure 1 – The subject development site.



Figure 2 – Photos of the site – existing entrance at corner of Bunnerong Road and Westfield Drive



Figure 3 – Photos of the site – Looking north: existing office tower to right, existing shopping centre to left



Figure 4 – Photos of the site – Looking south towards the Botany industrial Park and DG route



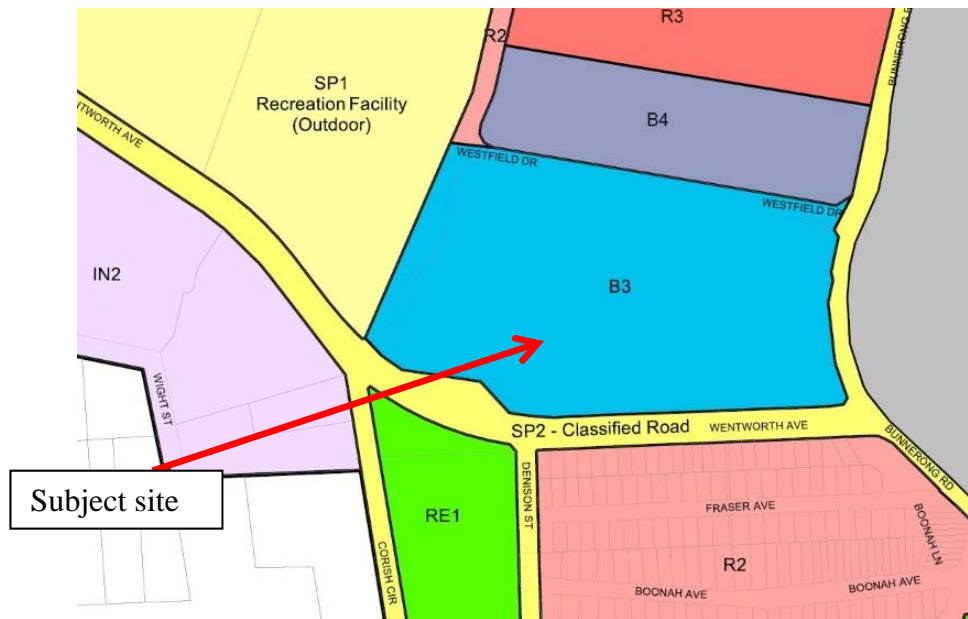


Figure 5 – Zoning Map of the development site.

### 3. DESCRIPTION OF THE DEVELOPMENT

The applicant is proposing works to increase the retail floor area of the existing shopping centre. The proposed alterations and additions are contained on Level 3 at the eastern end of the existing shopping centre on the site.

The proposed alterations and additions to the existing shopping centre aim to provide a new retail mall connecting the existing eastern mall entry (adjacent to roof top car park) with the existing commercial office building. The new retail mall will include a supermarket, a mini major retail tenancy, 11 specialty retail shops and two (2) kiosks. The proposal also seeks to modify the parking arrangement on the site, predominantly at Level 3 adjacent to the new retail mall as well as providing additional parking on the new rooftop area on Level 4.

The proposal comprises the following:-

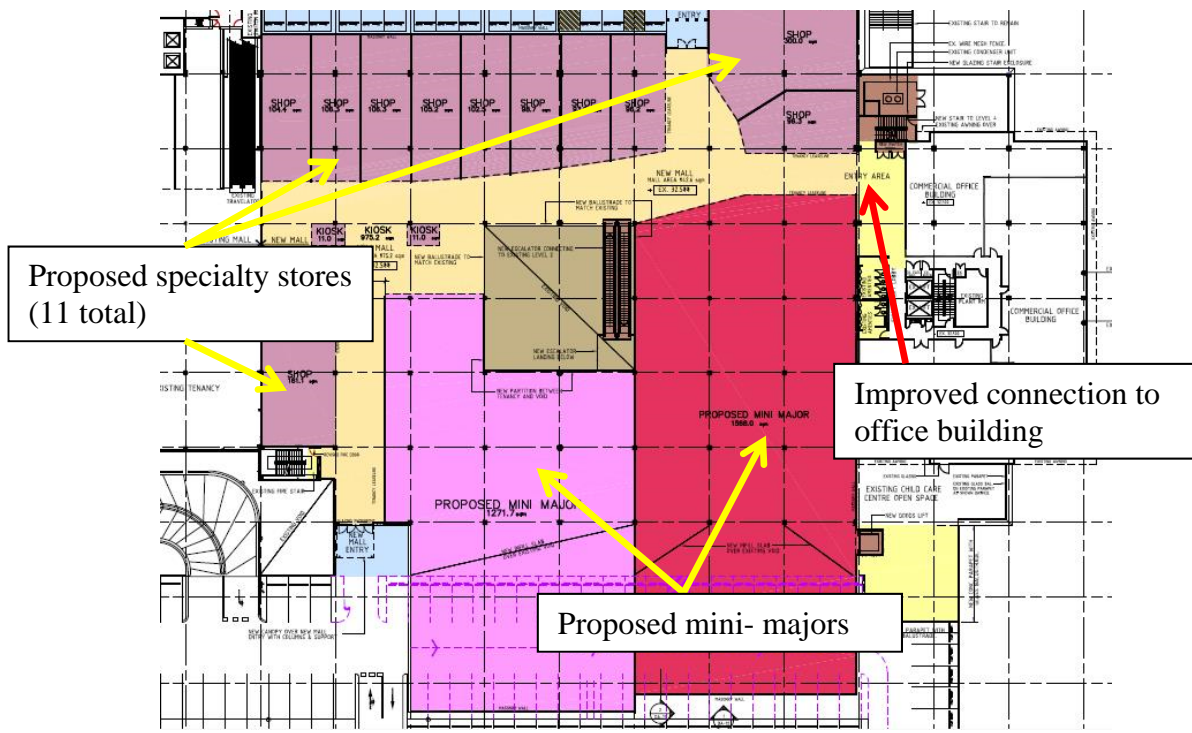
- Construction of new retail mall at Level 3 comprising two (2) mini major tenancies including a super market, 11 new specialty retail shops, and two (2) new kiosks;
- New loading dock on Level 2 and new goods lift on Level 3;
- New escalator connecting new mall to Retail Level 2;
- Modified Level 3 car park with new pedestrian mall entry and driveway ramp up to new roof top parking;
- Modified commercial entry to commercial office building and amenities within lobby;
- New rooftop car parking area on Level 4; and
- Ancillary access and servicing works and minor relocation of existing services and facilities.

A total additional gross floor area of 5,415m<sup>2</sup>, representing a 5.7% increase on existing floor space, is proposed in this application.

[illegible]

Page 8





*Figure 9 – Level 3 Proposed Floor Plan*

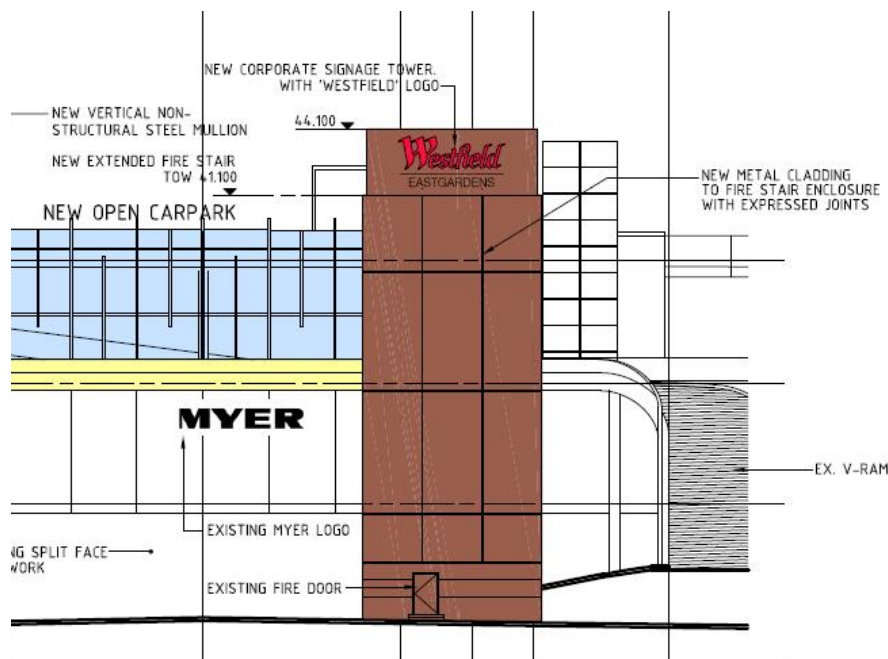


Figure 10 – Level 3 Proposed Floor Plan (East elevation along Bunnerong Road)

The following table provides a summary of compliance:

Control	Required	Proposal	Complies
<b>FSR</b>	B3: Commercial Core: 1:1 (GFA 92,900 m <sup>2</sup> )	<p>The proposed additional gross floor area is 5,415m<sup>2</sup> or a 5.7% increase on the existing GFA.</p> <p>The resulting total proposed FSR is 1.087:1 (100,962m<sup>2</sup>).</p> <p>Extent of non-compliance in sam</p>	<b>No – Clause 4.6 Exception submitted</b>

		$= 100,962\text{m}^2 - 92,900\text{m}^2 = 8062\text{m}^2 / 8.68\%$	
<b>Height</b>	B3 Commercial Core: 25 metres	Max height of 24.2 metres.	Yes
<b>Car Parking</b>	3340 car parking spaces are required based on a 1/25m <sup>2</sup> as recommended by the RTA's <i>Guide to Traffic Generating Developments</i> .	3340 car parking spaces are proposed to be provided in total following the proposed extensions..	Yes

**Table 1 – Summary of Compliance**Floor Space Ratio

The maximum FSR permitted by BBLEP 2013 is 1:1 within the B3 Commercial Core zone, or a total GFA of 92,900 m<sup>2</sup>. The proposal seeks an additional 5,415 of gross floor area to be added to the existing Level 3, representing an increase in floor space of 5.7%.

The development application seeks an FSR of 1.087:1 or a total GFA of 100,962m<sup>2</sup> which does not comply with Clause 4.4 of BBLEP 2013. The extent of the non-compliance is 8062 m<sup>2</sup> (or 8.68% variation). The Applicant has submitted a Clause 4.6 Exception in support of the non-compliance.

**4. SECTION 79C CONSIDERATIONS**

The proposed development has been assessed under the provisions of the EP&A Act. The matters below are those requiring the consideration of the JRPP. In considering the Development Application, the matters listed in Section 79C of the EP&A Act have been taken into consideration in the preparation of this report and are as follows:

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

**State Environmental Planning Policy (Infrastructure) 2007***Clause 101 – Development with frontage to classified road*

Development of land with a frontage to a classified road should avoid vehicular access to the land from the classified road, should ensure the safety, efficiency and ongoing operation of the classified road should not be adversely affected by the development and the development should be of a type that is not sensitive to traffic noise or vehicle emissions.

The proposal involves alterations and additions to an existing regional shopping centre in which the existing vehicular access arrangements are retained. There is no additional direct access to the proposal from the classified roads of Wentworth Avenue and Bunnerong Road. The adjoining classified roads will not be adversely affected by the proposal as the existing road network is capable of absorbing the additional traffic generated by the proposal with some modifications to the right turn bay into Westfield Drive from Bunnerong Road. The proposal will not be sensitive to traffic noise or vehicular emissions given the enclosed nature of the existing facilities on the site.

*Clause 104 - Traffic Generating Development*

The proposed development falls within the provisions of Schedule 3 of the *Infrastructure SEPP – Traffic Generating Development* that is required to be referred to the NSW Roads and Maritime Services (RMS). The application was accompanied by a Traffic Impact Assessment Report prepared by Colston Budd Hunt and Kafes Pty Ltd dated June 2014 and an Addendum provided dated 24 October 2014.

The RMS responded on 29 July 2014, advising there were no objections to the proposal with advisory comments in relation to a Construction Traffic Management Plan to be provided prior to the issue of a Construction Certificate, a compliant car parking area, that all works associated with the development shall be undertaken at no cost to the RMS, all vehicles to enter and leave in a forward direction and that there must be no additional stormwater discharged into the road drainage system.

The proposal is therefore considered to be consistent with the Infrastructure SEPP subject to these conditions required by the RMS. These conditions have been included in the consent.

**State Environmental Planning Policy (SEPP) No. 64 – Advertising and Signage**

The plans accompanying this application appear to include new corporate logo signage on the tower in the north-eastern corner of the car parking area above Level 4. This corporate signage consists of the ‘Westfields’ corporate logo. There are no details of this proposed signage and the provisions of SEPP 64 and other signage controls of the relevant DCP have not been addressed in the application. The information submitted does not enable assessment of the proposed signage nor provide any certainty about the scale and materials proposed.

Accordingly, it is considered that any new signage is to be the subject of a future development application if such signage is proposed beyond the provisions of Complying Development. Relevant conditions have been imposed.

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

The provisions of *State Environmental Planning Policy (SEPP) No. 55 – Remediation of Land* (SEPP 55) have been considered in the assessment of the development application. Clause 7 of SEPP 55 requires Council to be certain that the site is or can be made suitable for its intended use at the time of determination of an application.

The proposal involves alterations and additions to Level 3 of the existing shopping centre and therefore any contamination that may exist on the site from past uses will not adversely affect the proposal. There is no excavation proposed and therefore there is minimal risk from land contamination by the current proposal. The proposal is therefore consistent with SEPP 55.

**Botany Bay Local Environmental Plan 2013**

The provisions of the BBLEP 2013 have been considered in the assessment of this Development Application and the following information is provided in Table 2:

Principal Provisions of BBLEP 2013	Compliance Yes/No	Comment
Land use Zone (Cl 2.2)	Yes	The site is zoned B3 Commercial Core. Commercial premises, including retail premises, are permissible in the zone.
Land Use Table (Cl 2.3)	Yes	The proposed alterations and additions to the existing commercial premises are permissible with Council's consent.
Zone objectives (Cl 2.3)	Yes	<p>The proposed development is consistent with the following zone objectives:</p> <ul style="list-style-type: none"> <li><i>To provide a wide range of retail, business, office, entertainment, community and other suitable land uses that serve the needs of the local and wider community.</i></li> <li><i>To encourage appropriate employment opportunities in accessible locations.</i></li> <li><i>To maximise public transport patronage and encourage walking and cycling.</i></li> </ul> <p>The proposal is considered to be consistent with these objectives given the proposed addition will allow for the provision of a greater range of retail and business uses that serves both the local and regional populations. The proposed addition will also increase employment opportunities at the site and will allow public transport to be maximised given the existing bus and taxi facilities that are to be retained at the site under the proposal.</p> <p>The economic analysis provided with the application outlines that there is significant market share remaining for various other retail outlets in the vicinity of the site to ensure that a wide range of services are provided throughout the region and the existing and planned centres will remain viable.</p>
Subdivision – consent requirements (Cl 2.6)	N/A	Subdivision is permissible with consent. The proposal does not seek consent for any subdivision.
Demolition requires development consent (Cl 1.7)	Yes	Some minor demolition will be required to allow for the proposed alterations and additions. Relevant conditions are imposed.
Height of buildings (Cl 4.3) What is the height of the building? Is the height of the building below the maximum building height?	Yes	<p>The maximum permitted height is 25 metres.</p> <p>The proposal seeks consent for the following heights:</p> <ul style="list-style-type: none"> <li>12.5 to 19.6 metres to top of parapet;</li> <li>24.2 metres to top of tower in NE corner along Bunnerong Road (RL</li> </ul>

Principal Provisions of BBLEP 2013	Compliance Yes/No	Comment
		44.1).
<p>Floor Space Ratio (Cl 4.4)</p> <p>What is the proposed FSR?</p> <p>Does the FSR of the building exceed the maximum FSR?</p>	<p><b>No</b></p> <p>Refer to Note 1.</p>	<p>The total site area is 92,900 m<sup>2</sup></p> <p>The permitted FSR is 1:1(92,900m<sup>2</sup>)</p> <p>The proposed additional gross floor area is 5,415m<sup>2</sup> or a 5.7% increase on the existing gfa.</p> <p>The resulting total proposed FSR is 1.087:1 (100,962m<sup>2</sup>).</p> <p>Extent of non-compliance in sqm =</p> <p><math>100,962\text{m}^2 - 92,900\text{m}^2 = 8062\text{m}^2 / 8.68\%</math></p> <p>An assessment under Clause 4.6 is provided at Note 1.</p>
Is the site within land marked “Area 3” on the FSR Map (Cl 4.4A)	N/A	The subject site is not identified as being within “Area 3” on the FSR map.
Is the land affected by road widening or other purposes for acquisition? (Cl 5.1)	N/A	The subject site is not affected by road widening and is not noted for acquisition on the Land Acquisition Map.
Is the site identified on the Key Sites Map?	N/A	No.
Development near zone boundaries (Cl 5.3)	N/A	Not applicable to the development as the proposal is permissible with consent in the zone.
Is the site listed in Schedule 5 as a heritage item or within a Heritage Conservation Area? (Cl 5.10)	N/A	The subject site is not identified as a Heritage Item or within a Heritage Conservation Area.
Acid sulphate soils (Cl 6.1)	Yes	The subject site is affected by Class 5 Acid Sulfate Soils in the SW corner of the site. There are no works in this area of the site and there is no excavation proposed. There will be no adverse impact arising from acid sulphate soils from the current proposal.
Earthworks (Cl 6.2)	Yes	There are no significant earthworks proposed in this proposal.
Stormwater management (Cl 6.3)	Yes	Council’s Engineer raised no objections to the proposal, subject to the imposition of conditions of consent. These conditions have been included in the schedule of conditions.
Airspace operations (Cl 6.8)	Yes	The application was referred to SACL. SACL raised no objection, subject to the maximum height being 44.1m AHD.
Development in areas subject to aircraft noise (Cl 6.9)	Yes	The proposal will not be affected by aircraft noise given the proposal is for commercial premises which is acceptable (pursuant to the BBDGP 2013).



Principal Provisions of BBLEP 2013	Compliance Yes/No	Comment
Active Street frontages (Cl 6.15)	N/A	The site is not affected by the Active Street Frontages Map.
Design excellence (Cl 6.16)	N/A	This clause applies to land at Mascot Station Precinct, as shown edged heavy pink, and the BATA site at Eastgardens, as shown edged heavy orange, on the Key Sites Map. Therefore it does not apply to the subject site.

**Table 2: BBLEP 2013 Compliance Table****Note 1 – Clause 4.4 Floor Space Ratio****Clause 4.6 Exceptions to a Development Standard (FSR)**

The floor space ratio (FSR) that applies to the site is 1:1 pursuant to Clause 4.4 of BBLEP 2013, which results in a maximum gross floor area of 92,900m<sup>2</sup> for the site.

The existing gross floor area on the site (pursuant to the BBLEP 2013 definition) is 95,547m<sup>2</sup>, which equates to an FSR of 1.028:1. The existing approved FSR for the site under DA 07/301 was 1.46:1 (or 136,335m<sup>2</sup>), which represented a non-compliance of 43,435m<sup>2</sup>, however, this FSR and GFA calculations was based on the definitions contained in the Botany LEP 1995 which included car parking. While this development consent was not commenced and was calculated under a now repealed planning instrument, it is instructive in terms of overall gross floor area previously approved.

The proposed additional GFA is 5,415m<sup>2</sup> (pursuant to BBLEP 2013) which comprises the additional floor area to existing Level 3 of the building, and represents a 5.7% increase in gross floor area. The resulting total proposed gross floor area is 100,962m<sup>2</sup>, which equates to an FSR of 1.087:1. Accordingly, the proposal exceeds the permissible FSR. This resulting FSR represents a departure from the development standard by 8,062m<sup>2</sup> or 8.68% above the maximum FSR.

Accordingly, the proposal is inconsistent with the FSR development standard pursuant to Clause 4.4 of the BBLEP 2013. The applicant has submitted a variation to Clause 4.4 pursuant to Clause 4.6 requesting a greater FSR. This variation is considered below.

Clause 4.6 of BBLEP 2013 states:-

- 1) *The objectives of this clause are as follows:*
  - a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
  - b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*
- 2) *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*

- 3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
    - a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
    - b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*
  - 4) *Development consent must not be granted for development that contravenes a development standard unless:*
    - a) *the consent authority is satisfied that:*
      - (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
      - (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
    - b) *the concurrence of the Director-General has been obtained.*
  - 5) *In deciding whether to grant concurrence, the Director-General must consider:*
    - a) *whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
    - b) *the public benefit of maintaining the development standard, and*
    - c) *any other matters required to be taken into consideration by the Director-General before granting concurrence.*
  - 6) *Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if:*
    - a) *the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or*
    - b) *the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.*
- Note.** *When this Plan was made it did not include Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E3 Environmental Management or Zone E4 Environmental Living.*
- 7) *After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).*
  - 8) *This clause does not allow development consent to be granted for development that would contravene any of the following:*
    - a) *a development standard for complying development,*
    - b) *a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,*
    - c) *clause 5.4.*

Consent may be granted for the proposal subject to Clause 4.6, notwithstanding that the proposal would contravene this development standard, as the FSR development standard is not expressly excluded from this Clause (Cl 4.6(2)). The applicant has provided a written

request justifying the contravention of the development standard pursuant to Clause 4.6(3) of BBLEP 2013, which is considered below. The matters for consideration pursuant to Clause 4.6(4) and (5) are also considered below. Clause 4.6 (6), (7) and (8) are not relevant to the current proposal.

In assessing the proposed departure, consideration has been given to the objectives of the standard, the objectives of the zone, and the objectives of BBLEP 2013 (including Clause 4.6(1)) as outlined below. The following justification for this proposed departure from the FSR development standard has been provided by the applicant:

- *The proposal achieves the aims of the development standard;*
- *There is an historical exceedance of FSR on the site, in the order of 1.09:1;*
- *This large site can support the density and scale of development proposed within the application;*
- *A 6% increase in retail floor space in a form and scale that is similar to the previously approved 2007 scheme is considered to be an appropriate density and intensity of land use for the commercially zoned site and will allow the centre to maintain its role for the wider population of the area;*
- *The overall bulk and scale of the additional built form is considered minor because of the extremely large area covered by the existing development and the confinement of the extensions to the upper level of the existing development. The additional retail floor space is set back away from the building edges between the existing office building and the existing Level 3 retail mall and will not be seen from any adjoining public area;*
- *The proposal will not adversely impact on the streetscape;*
- *There will be no significant environmental effect on the use and enjoyment of adjoining properties and the public domain since the site is surrounded by roads and the proposed works are compatible with the overall development of this major centre.*
- *The proposed retail extension is compatible with the size and role of this site as the major centre in the region;*
- *The proposal will facilitate ongoing investment and employment within the region assisting the economic growth of Botany Bay;*
- *A significant amount of the floor space within the development can be attributed to the mall areas which enable pedestrian circulation. These are of generous proportion reflecting the high standards of internal layout which the shopping centre operator seeks to achieve. The floor area of the circulation routes is included in the calculation of FSR yet does not in itself contribute to traffic generation or the intensity of site usage. There is no traffic generation created by the public arcades and thoroughfares;*
- *The proposed additional retail floor space will not result in any significant adverse impacts on the surrounding road network;*
- *There is no state or regional planning matter of significance relating to the proposed minor increase in retail floor space;*
- *There is no overriding public benefit in maintaining strict compliance with the FSR control in the circumstances of this case;*
- *The proposal is consistent with environmental planning legislation;*
- *It is considered that strict compliance with the numerical standard would both hinder the attainment of the objectives of the Act, namely "the promotion and coordination of the orderly and economic use and development of land." The proposal results in the proper management and use of urban land zoned for*

*commercial purposes that will promote the social and economic welfare of the community with no significant environmental impacts.*

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))

The Land and Environment Court have set out a five part test for consent authorities to consider when assessing an application to vary a standard to determine whether the objection to the development standards is well founded. This test is outlined below for the variation to FSR.

- 1) The objectives of the standard are achieved notwithstanding noncompliance with the standard*

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

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

The proposal is considered to be consistent with the objectives of the FSR development standard for the following reasons:-

- The proposed development is compatible with the bulk and scale of the existing development in the area and the future desired character of the locality, given the mixed use nature of the site and locality;
- There will be no adverse impacts on the streetscape or the road network as a result of the proposed additional GFA;
- The proposed development is of a high quality and modern design that will result in an appropriate visual relationship between new development and the existing character of the area, noting that the land to the north is undergoing a transition from a largely industrial site to a mixed use commercial and residential development with the southern end of the site allowing a building height of 14 storeys and an FSR of 3:1 adjoining Westfield. The breaking up of the building into separate forms assist in reducing bulk and scale;
- There is unlikely to be any significant adverse impacts from the additional floor space proposed on the amenity of adjoining properties. There will be no overshadowing of the adjoining development and there are no significant areas directly facing adjoining properties.
- The site is capable of accommodating the additional floor space given the large overall size of the site and its multiple road frontages which allows bulk to be distributed to different elevations. The landscaping along various frontages also ensures that the floor space is offset and can be integrated into the site. The proposal also provides adequate car parking, manoeuvring and open space on the site;
- The proposal is compatible with the size and role of this site as the major centre in the region;
- The proposal will facilitate ongoing investment and employment within the region assisting the economic growth of Botany Bay;



- A significant amount of the floor space within the development can be attributed to the mall areas which enable pedestrian circulation.
- 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 Floor Space Ratio control has been achieved as stated above, therefore the standard is relevant but strict compliance with the numerical requirement of 1.1:1 is considered unnecessary in this instance as the proposal meets the objectives of Clause 4.4. The proposed development is compatible with the existing and desired future character and reinforces the commercial nature of this site.

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

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

- 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*

While the FSR control has been varied previously for this site, the development standard has not been abandoned. This development standard remains generally relevant in the area, however, a variation in this instance is considered warranted as outlined in this assessment.

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

It has been established that in the circumstances of the case, the proposed development is appropriate and strict adherence to the development standard in this instance is unreasonable and unnecessary. Furthermore, the additional floor space does not result in any significant impact to adjoining properties in terms of residential amenity, overshadowing or visual impact. To strictly apply the development standard, in the absence of any tangible impact, would be unreasonable and without basis. The proposed development provides a high quality commercial development that facilitates the orderly and economic development of the land in a manner that is appropriate in this area.

Accordingly, since the proposal achieves the objectives of the FSR development standard pursuant to Clause 4.4 of BBLEP 2013, the proposed development is considered to be appropriate and strict adherence to the development standard in this instance is unreasonable and unnecessary. The departing floor space does not manifest itself in any substantive impact to adjoining properties in terms of residential amenity, overshadowing or visual impact. To strictly apply the development standard, in the absence of any tangible impact, would be unreasonable and without basis.

It is considered that the applicant's Clause 4.6 is well-founded and the departure is in the public interest given the increased retail services will be provide in an appropriate location

and the increased employment and investment opportunities associated with the proposal for the area.

- 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 s 5(a)(i) and (ii) of the Environmental Planning & Assessment Act 1979; and

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.*

It is considered that in this instance, flexibility in the application of the planning controls is acceptable given the proposal achieves the objectives of the development standard and the zone and that flexibility in this instance will allow for the co-ordination of the orderly and economic use and development of land.

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

It is considered that there are sufficient environmental planning grounds arising from the proposal to warrant support of this variation to the FSR development standard given:-

- There is an improved interface between the existing retail areas of the existing shopping centre with the commercial office uses contained within the same building footprint;
- The proposal will provide additional employment and investment opportunities within an existing commercial/retail building;
- There will be minimal impacts on the surrounding road network, adequate car parking has been provided and satisfactory access arrangements have been provided and retained;
- The role of the site as a major regional shopping centre warrants additional gross floor area to be tolerated;
- The historical exceedence of the development standard in that previous development consents have been issued on the basis of FSR exceedances;
- The compatibility of the proposed built form with the existing development on the site and the integration of the proposed extensions within the existing shopping centre;
- The similarity in terms of bulk and scale with the previously approved extensions which were not commenced (2007);

- The proposal complies with the car parking and height controls;
- The exceedance is not significant having regard to the amount of existing floor space existing on the site; and
- There is unlikely to be any adverse visual impacts arising from the proposed built form given the location and construction of the additions are compatible with the existing building form and the commercial zoning of the site.

Therefore, it is considered that there are sufficient planning grounds for a variation to the FSR and the variation is in the public interest. Accordingly, it is considered that there is sufficient planning merit to justify the FSR non-compliance.

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.*

It is considered that the proposed development will achieve a better outcome for the site in that further retail floor space and employment and investment opportunities can be achieved without adversely impacting on the visual amenity, adjoining road network or viability of existing commercial centres. This is addressed further in this assessment. Therefore, for the reasons outlined this assessment, it is considered that flexibility can be applied to this development, as it achieves a better outcome for the site.

*Public Interest and Public Benefit*

In terms of public benefit, the proposal will provide for a wider range of retail and other services within a retail environment and will provide employment and investment opportunities in the area. The proposed development is considered to be compatible with the existing development on the site and there will be minimal adverse impacts to surrounding properties. Council officers agree that the proposal will result in a public benefit.

Preston CJ noted that there is a public benefit in maintaining planning controls and a SEPP 1 objection should not be used in an attempt to effect general planning changes throughout the area. It is considered that in the current case, the planning control can be varied without effecting general planning change in the area given the large size of the site and the historical exceedance of FSR on this site.

The proposed variation achieves compliance with the objectives of the standard and results in an architecturally designed development that provides good amenity for future users

with minimal impacts to adjoining uses. Furthermore, the application will facilitate the delivery of public benefits in the form of increased retail offering, investment and employment opportunities with minimal impact on the surrounding environment. On the basis of this assessment, it is concluded that the variation is in the public interest and can be supported.

### *Matters of State or Regional Importance*

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

### 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 generally consistent with the underlying objectives of the standard identified.

The proposed development provides a high quality commercial development that facilitates the orderly and economic development of land in a manner that is appropriate for the site. Additional commercial services will be provided in an appropriate location and will provide increased employment and investment opportunities for the area. The impacts from the proposed development on the amenity of surrounding properties resulting from the departing FSR are considered minimal and the built form is considered compatible with the existing development on the site. Council officers agree that the proposal will result in a public benefit.

It has been established that the proposed development is appropriate and strict adherence to the development standard in this instance is unreasonable and unnecessary. Maintaining and enforcing the development standard in this case would unreasonably prevent the orderly and economic development of this site and would unnecessarily preclude the provision of public benefits.

It is considered that the applicant's Clause 4.6 is well-founded and the departure is in the public interest. On this basis of, it is recommended that the development standard relating to the maximum FSR for the site pursuant to Clause 4.4 of the BBLEP 2013 should be varied in the circumstances to allow the development to a floor space ratio of 1.087:1.

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

The Botany Bay Development Control Plan 2013 (BBDCP 2013) is the comprehensive development guideline for the City of Botany Bay and was adopted by Council on 11 December 2013 in accordance with the provisions of the EP&A Act and the *Environmental Planning and Assessment Regulation 2000*.

The applicable clauses of the DCP are considered in the assessment of the proposal and are addressed below (Note: Part 5 (Business Centres), Part 6 (Employment Zones) and Part 7 (Other Development Types & Land Uses) do not apply to the subject site):

Part	Control	Proposed	Complies
------	---------	----------	----------

Part	Control	Proposed	Complies
<b>3A.2 Parking Provisions</b>	<p>C1 &amp; C3 - All required car and bicycle parking must be provided on-site.</p> <p>C2 Car parking shall be provided in accordance with Table 1– Specific Parking Requirements for specific land uses:-</p> <p><b>Shops:</b> 1 space/25m<sup>2</sup></p> <p>C7 – Bicycle parking - 10% of required car parking (180 spaces are required for the additional 4509m<sup>2</sup> of additional GFA, 18 bicycle spaces are required).</p>	<p>3340 spaces have been provided (83,516m<sup>2</sup>) at a rate of 1/25m<sup>2</sup>.</p> <p>Bicycle parking has not been shown, however, a condition can be imposed to address this.</p>	<p>Yes – see Note 1</p> <p>Condition for bicycle parking</p>
<b>3A.3 General Requirements</b>  <b>3A.3.1 Car Park Design</b>	<p>C1 – All off –street parking facilities designed in accordance with current Australian Standards AS2890.1 and AS2890.6 (for people with disabilities). The design of off – street commercial vehicles facilities (including parking) shall be in accordance with AS2890.2.</p> <p>C2 – Vehicle access points, loading /unloading area and the internal circulation of an off-street parking facility shall be designed in a manner that entry to and exit from the site is made in a forward direction.</p> <p>C3 – Parking spaces for small cars shall comply with AS2890.1 and only be permitted to the off-street parking facilities that are open to the general public.</p> <p>C4 – N/A</p> <p>C5 A swept path analysis shall be provided for manoeuvring of commercial vehicles. The diagrams shall include a scale, dimension and legend and be prepared by standard software (e.g. Auto Track, Auto Turn or equivalent) or based upon the turning templates in AS2890.2.</p> <p>C6 All parking bays shall be clearly designated, sign posted and line marked. Signage and line marking shall comply with AS2890.1. These markings shall be maintained at all times.</p> <p>C7 Stormwater disposal systems in car parks shall comply with Council’s Stormwater Management Technical Guidelines.</p>	<p>A traffic report prepared by Colston Budd Hunt &amp; Kafes P/L has been submitted. The report confirms that all car parking areas have been designed to comply with AS2890.1 and AS2890.6. A condition has been imposed to ensure compliance is met.</p> <p>Existing vehicle access to the car parking areas is to be retained and is appropriate for the site.</p> <p>5 small car parking spaces are proposed.</p> <p>Not applicable.</p> <p>There is adequate manoeuvring for all vehicles.</p> <p>The existing car parking is to be retained and proposed additional car parking is consistent with the DCP controls. Condition for all parking bays to be clearly signposted and marked.</p> <p>There are no changes to the existing stormwater arrangements on the site.</p>	<p>Condition to comply – see Note 1</p> <p>Yes – see Note 1</p> <p>Yes – see Note 1</p> <p>N/A</p> <p>Yes</p> <p>Condition to comply – see Note 1</p> <p>Yes</p>



Part	Control	Proposed	Complies
	C8 Walking routes through large car parks are to be clearly delineated with appropriate marking, pedestrian crossing and signposting.	There are existing pedestrian areas to be retained and a new pedestrian crossing within the proposed level 4 car parking area is proposed.	Yes
	C9 Off-street parking facilities are not permitted within the front setbacks.	Car parking is not provided in the front setback area.	Yes
	C10 Car parks must provide a direct and safe access to a building's entry and exit (well-lit and free of concealment opportunities).	The existing car parking is to be retained and proposed additional car parking is consistent with the DCP controls.	Yes
	C11 Off-street parking facilities must not dominate the streetscape and are to be located away from the primary frontages of the site.	The existing car parking is to be retained and is consistent with these controls.	Yes
	C12 – C18 Access to the site	The existing access points are to be retained and are appropriate for the site.	Conditioned to comply.
	C19 – Landscaping, C20-22 – Basement parking.	Not applicable	Yes – see Note 1
	C23 – At-grade parking shall be avoided for large scale residential and commercial development.	The existing car parking is to be retained and proposed additional car parking is consistent with the DCP controls.	N/A Yes
	C24-26 Residential	Not applicable	N/A
	C27 Car parking areas shall be adequately finished with fully sealed surfaces, internal drainage systems, line markings, appropriate kerbing, paved aisle dividers and/or wheel stops.	The existing car parking is to be retained and proposed additional car parking is consistent with the DCP controls.	Yes
	C28 Appropriate landscaping which responds to the site conditions and surrounding context, particularly the transition between public and private spaces must be provided on-site. Landscaping shall comply with Part 3L - Landscaping.	The existing car parking and access is to be retained and proposed additional car parking is consistent with the DCP controls.	Yes
	C29 The minimum width of access driveway for non-residential development shall be designed to accommodate the largest commercial vehicle accessing the site in accordance with AS2890.2	The existing car parking is to be retained and proposed additional car parking is consistent with the DCP controls.	Yes
	C30 & C31– Pavement and C32 – lighting.	The existing car parking is to be retained and proposed additional car parking is	Yes

Part	Control	Proposed	Complies
	<p>C33 Accessible parking spaces for people with disabilities shall be designed in accordance with AS2890.6.</p> <p>C34 All off-street parking facilities shall allocate accessible parking spaces for people with disabilities at the rate in accordance with Part 3C - Access and Mobility.</p> <p>C35 Accessible parking spaces shall be located close to an accessible lift, ramp or building entrance and be provided with an accessible path of travel.</p> <p>C36 Accessible parking spaces shall be indicated by a permanent sign as specified in AS 1428.1.</p> <p>C37 N/A</p> <p>C38 - Waste Collection Points</p>	<p>consistent with the DCP controls.</p> <p>Accessible parking spaces have been provided in accordance with these controls, although 9 in total must be provided and only 6 spaces are noted on the plans.</p> <p>Existing waste collection arrangements are to be retained.</p>	<p>Conditioned to comply.</p> <p>Yes</p>
<b>3A.3.2 Bicycle Parking</b>	C1-C5 To comply with AS2890.3 & AUSTROADS.	The proposal does not include any bicycle spaces. A condition requiring bicycle parking has been imposed.	Conditioned to comply.
<b>3A.3.3 Traffic and Transport Plans and Reports</b>	A traffic and Parking Impact Assessment Report shall be provided for any development Listed in Schedule 3 of State Environmental Planning Policy (Infrastructure) 2007.	A Traffic Impact Report has been provided.	Yes
<b>3A.3.4 – On Site Loading and Unloading</b>	<p>C1 - Service bays and parking area for commercial vehicles shall be designed in accordance with AS2890.2 and AUSTROADS guidelines.</p> <p>C2 - The number of service bays shall be provided in accordance with Table 2.</p> <ul style="list-style-type: none"> <li>Retail premises –42,000m<sup>2</sup>+ = <ul style="list-style-type: none"> <li>10 courier van,</li> <li>3 small rigid vehicle;</li> <li>4 medium rigid vehicles;</li> <li>5 AV.</li> </ul> </li> </ul> <p>C6 All service bays shall be located</p>	<p>The proposal includes an additional loading dock in the south-western corner of the site which can cater from small rigid vehicles up to 15.6m articulated vehicles.</p> <p>An additional loading bay is also provided along the eastern boundary in the modified level 3 car parking area.</p> <p>It is considered that given</p>	Yes- see Note 1

Part	Control	Proposed	Complies
	<p>away, as far as practicable, from adjoining sensitive land uses.</p> <p>C7 Deliveries are prohibited to be made from a public place or thoroughfare.</p> <p>C8 Delivery vehicles shall only carry out loading and unloading activities from the designated loading areas.</p> <p>C9 All delivery vehicles shall stand wholly within the dedicated loading /unloading area and shall not obstruct the car parking area of the subject property.</p> <p>C10 Delivery vehicles shall enter and leave the property in a forward direction.</p> <p>C11 In commercial development, the loading / unloading of vehicles and collection of waste shall be separately located from the public parking areas. These areas shall be designed and operated so that the vehicles can complete a three-point or semi-circular turn on site without interfering with buildings, parked vehicles, and landscaping or outdoor storage areas.</p>	<p>the existing loading areas to be retained on the site, the proposed additional loading dock and bay areas will be sufficient to cater for the proposed additional gross floor area.</p> <p>Delivery vehicles can enter and leave the site in a forward direction and can stand in the loading area when servicing the site.</p>	
<b>3C Access &amp; Mobility</b>	<p><b>C1-C4</b> Compliance with DDA, AS4299.</p> <p>Commercial and industrial developments (including office premises, business premises, retail premises, industry and warehouses.) - Statement of consistency lodged with DA</p> <ul style="list-style-type: none"> <li>• Appropriate access to and within all areas normally used by the occupants, designed in accordance with the BCA and relevant Australian Standards.</li> <li>• General access for all persons to appropriate sanitary facilities and other common facilities including kitchens, lunch room, shower facilities, indoor and outdoor</li> </ul>	<p>Compliance with Australian Standards is demonstrated in Access Report prepared by ILC Access dated 26 May 2014.</p> <p>Additional lifts and toilets have been requested in public submissions; to be located in a more central location within the building given the existing lift access is located at each end of the centre.</p> <p>The current proposal (where no new lifts etc are proposed) complies with the BCA and accessibility requirements and Westfields has commercial agreements with existing tenants which</p>	Yes – conditions required

Part	Control	Proposed	Complies
	<p>recreational facilities.</p> <ul style="list-style-type: none"> <li>5% of parking to be provided as accessible parking spaces.</li> </ul>	<p>is likely to trigger the 'financial hardship' provisions of the accessibility requirements.</p> <p>6 additional accessible car parking spaces have been provided. 5% of the additional car parking required by the proposed additional 4,506m<sup>2</sup> (for car parking purposes – minus mall areas) required 9 spaces (5% of 180 additional spaces).</p> <p>Relevant conditions to be provided.</p>	
<b>3G.2 Stormwater Management</b>	<b>C1-C6</b> Comply with Stormwater Management Technical Guidelines; Part 3G.5 Stormwater Quality.	Council's Engineer has recommended conditions of consent which have been included in the consent.	Yes
<b>3H Sustainable Design</b>	<p>3H.2.2 Energy &amp; Water Efficiency for Non-BASIX Development</p> <p>C1 Buildings are to be oriented and designed to achieve optimum solar access and natural ventilation where practical.</p> <p>C2 Measures to reduce heat loss and gain in winter and summer must be incorporated into the building design. Details to be provided at DA stage.</p> <p>C3 Incorporated natural ventilation.</p> <p>C4 Solar hot water systems encouraged in all new developments and major alterations and additions.</p> <p>C5 The location and placement of photovoltaic solar panel is to take into account the potential permissible building form on adjacent building.</p> <p>C6 Where possible proposal for new building, alterations and additions and major tree planting are to maintain solar access to existing photovoltaic solar panel having regard to the performance, efficiency, economic viability and reasonableness of their location.</p> <p>C7 Roof mounted solar collector panels are to be provided for new development to the rooftop area of</p>	<p>The SEE provided an undertaking that the energy efficiency requirements of the DCP for non-BASIX development would be undertaken and that a report would be prepared prior to the Construction Certificate.</p> <p>Relevant conditions have been imposed requiring the development to be consistent with these energy efficiency provisions.</p>	Yes – Condition to be imposed

Part	Control	Proposed	Complies
	<p>each new building, of which 20% of power generated shall be returned to the Ausgrid network together with tariff rebates.</p> <p>C28 An ESD statement must be prepared by accredited professional providing design evidence that the required NABERS rating can be achieved.</p>		
<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 have been received from NSW Police which indicate the proposal has a medium level of crime risk. Relevant conditions have been provided by the NSW Police & have been included as conditions of consent.	Yes
<b>3J.2 Aircraft Noise Exposure Forecast</b>	<p>C1 In certain circumstances, and subject to Council discretion, Council may grant consent to development where the building site has been classified as "unacceptable" under Table 2.1 of AS2021-2000.</p> <ul style="list-style-type: none"> <li>Commercial building is acceptable in ANEF 25 or less.</li> </ul>	The site is within the 20-25 ANEF contour and proposes a commercial development which is 'acceptable'. Comments from SACL have been provided and there are no objections subject to the height being limited to the height outlined on the plans.	Yes
<b>3J.3 Obstacle Limitation Surfaces</b>	Aircraft height limits in prescribed zones.	SACL comments received – no objection.	Yes
<b>3K Contamination</b>	Consider SEPP 55 & Contaminated Land Management Act 1997.	The site is not known to be affected by any contamination that is likely to cause any adverse impacts by the current proposal as there is no excavation proposed. There are no conditions required.	Yes
<b>3L Landscaping</b>	General Requirements; Planting design & species; Landscaping in car parks; Green roofs.	The proposal does not involve any additional landscaping. All landscaping existing on the site is to be retained by the proposal.	Yes
<b>3N Waste Minimisation &amp; Management</b>	General Requirements; Residential Development; Mixed Use Development.	A Waste Management Plan is to be prepared for the Construction Certificate application. Relevant conditions have been imposed.	Yes

Table 3: DCP 2013 Compliance Table

Note 1 – Car Parking and Access

Westfields Eastgardens currently exists on the site and contains multi-deck car parking within four (4) car parking levels located on the southern side of the centre as well as rooftop parking on Level 3. The proposal involves an extension to the retail area between the existing Level 3 section of the building and the office tower building along the eastern elevation. The proposed alterations and additions will result in the loss of car parking spaces on Level 3, as well as the provision of new car parking spaces on Level 3 and a new rooftop car parking level on Level 4.

There are currently 3301 car parking spaces on the site, and approximately 341 car parking spaces will be lost for the proposed development while 380 car parking spaces are proposed in this development. In total, there will be a total of 3,340 car parking spaces provided following this proposal which is consistent with the DCP controls. For car parking purposes, the GFA is 83,516m<sup>2</sup> (it excludes the proposed mall/circulation areas), which provides the required number of spaces for RMS recommended rate of 1 per 25m<sup>2</sup>. There is no bicycle parking proposed and therefore conditions have been imposed for such provision.

The existing vehicle access to the site will be retained under the current proposal, with vehicle access to the revised Level 3 car parking area and the additional roof top car parking provided from the existing express ramps from Westfield Drive. A new vehicular ramp from Level 3 car park to the new car parking area on Level 4 is also proposed. A new loading dock in the southeast corner of the site is proposed for the new retail area (serviced from Level 2 to Level 3 via a goods lift), which is consistent with the existing layout for deliveries within the centre. The car parking spaces, including disabled spaces, have been provided in accordance with the relevant requirements.

In relation to traffic generation resulting from this proposal, the traffic report has analysed the surrounding road network (including intersections using SIDRA) and has included recently approved nearby developments including Bunnings, Orica and BATA developments. The 2007 approval for the site required the extension of the right turn lane from Bunnerong Road into Westfield Drive to be extended by 60 metres to accommodate the previously proposed extension to Westfields. Having now considered these recently approved nearby developments and to account for a general increase in traffic flows in the area, the traffic report now recommends extending this right turn lane by 80 metres, to allow an overall length of the turning lane of 210 metres to be achieved. This will assist traffic flow and delays at the intersection of Westfield Drive and Bunnerong Road. The applicant has committed to undertake these road works and therefore this right hand turn bay extension of 80 metres forms a condition of consent.

#### Local Character and Streetscape Presentation – BBDCP 2013

The site is located within the Eastgardens Character Precinct pursuant to Part 8.8 of the BBDCP 2013, which details the desired future character for development in the area. The following table provides an assessment of the desired future character:

	Control	Compliance
Function & diversity	<i>Enhance the public domain and streetscapes within the Precinct.</i>	The proposal is consistent with the form and scale of the existing development on the site and is appropriate for its setting.
	<i>Encourage and enhance connections of public domain and open space areas with recreational facilities.</i>	Not relevant.
	<i>Maintain Eastgardens Westfields</i>	The proposal involves alterations and

	Control	Compliance
	<i>Shopping Centre as the major shopping centre providing goods and essential services for the region.</i>	additions to the existing Westfields Eastgardens which will assist in maintaining the centre as the major shopping centre in the area.
	<i>Retain the area south of Wentworth Avenue for low density detached dwelling houses.</i>	Not relevant.
	<i>Maintain &amp; enhance the bus interchange facility at Eastgardens Westfields Shopping Centre to service bus routes connecting Eastgardens with the City, Bondi Junction, Burwood, Rockdale, Little Bay, Port Botany and La Perouse</i>	The proposal allows for the retention of the existing bus interchange facility at the existing centre.
	<i>Facilitate pedestrian and street access for any extensions/additions/alterations to Westfields Eastgardens.</i>	The existing pedestrian and vehicular access to the centre is to be retained by the proposal.
<b>Form, Massing, Scale and Streetscape</b>	<i>Maintain predominantly low density residential accommodation in the form of detached dwellings south of Wentworth Avenue with a maximum height of 2 storeys (8.5 metres).</i>	Not relevant.
	<i>Encourage development to follow the topography of the land.</i>	The proposed additions are contained within the existing building at the site.
	<i>Promote site access and parking facilities that do not dominate the streetscape.</i>	The existing pedestrian and vehicular access to the centre is to be retained by the proposal which is appropriate for the site.
	<i>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.</i>	The proposed additions are contained within the existing building at the site and are of a compatible design and scale to the existing built form on the site – discussed in more detail below.
	<i>Maintain roof forms to reflect the characteristics of the prevailing designs within the street.</i>	The proposed additions are contained within the existing building at the site and roof top parking is proposed to be compatible with the existing building. The proposal is considered to be of a compatible design and scale to the existing built form on the site.
<b>Setbacks</b>	<i>Retain front setbacks which are consistent within a street and promote landscaping to soften the built form.</i>	The proposed alterations and additions are contained within the existing building footprint on the site and therefore there are no changes to the existing setbacks on the site.
	<i>Retain side setbacks, where they are consistent within a street.</i>	See above
<b>Landscaping</b>	<i>Encourage landscaping within the front and side setback to soften the built form particularly in high density terrace, unit and residential flat buildings.</i>	There are no additional landscaping proposed under the current proposal and there is sufficient landscaping existing on the site along the boundaries.
	<i>Promote landscaping in rear private open space areas to provide privacy to adjoining properties.</i>	There will be no privacy loss resulting from the proposal.
	<i>Maintain street trees.</i>	There are no street trees proposed to be removed under the current proposal.
<b>Heritage</b>	<i>Promote sympathetic urban design and uses that protect and enhance the</i>	The proposal is compatible with the existing development on the site and in the locality.

	Control	Compliance
	<i>character and the significance of Heritage Items.</i>	There are no heritage items which will be adversely affected by the proposal.
	<i>Conserve and enhance Heritage Items within the Precinct.</i>	There are no heritage items which will be adversely affected by the proposal
<b>Fencing</b>	<i>Encourage and retain fencing character, styles and height of each street which may in some circumstances include no fences.</i>	There is no fencing proposed in the current proposal.
<b>Noise</b>	<i>Ensure development along Wentworth Avenue and Bunnerong Road is designed to minimise traffic noise transmission.</i>	The proposal will not be adversely affected by traffic noise.
<b>Subdivision</b>	<i>Retain and preserve the rectilinear grid pattern within the precinct.</i>	There is no subdivision proposed.
<b>Public Domain and Environment</b>	<i>Provide sufficient open space to meet a variety of recreational needs.</i>	Since the proposal is for alterations and additions to an existing commercial development, open space is not required.
	<i>Encourage landscaping and vegetation planting within both the public and private domain of the precinct.</i>	There is sufficient landscaping existing within the public domain on the site.
	<i>Facilitate landscaping and street plantings to complement the built form and create cohesiveness throughout the Precinct.</i>	There is sufficient landscaping existing within the public domain on the site, including street street planting.
	<i>Encourage landscaping to be incorporated within development and the site layout to soften the built form, promote pedestrian comfort and enhance the aesthetics of the neighbourhood.</i>	There is sufficient landscaping existing within the public domain on the site to ensure the development is integrated into the site and the locality.
	<i>Encourage the impacts of non-residential uses, such as traffic and noise/air pollution on residential amenity to be minimised.</i>	There will be minimal impacts from traffic generation and noise likely to adversely affect residential development as outlined in this assessment.
<b>Solar Access</b>	<i>Encourage buildings to maximise solar access to surrounding residential properties and to public and private open spaces.</i>	There will be no additional overshadowing to adjoining or nearby residential properties resulting from the current proposal.
	<i>Preserve solar access to adjoining properties.</i>	Solar access is preserved for adjoining properties which are minimal due to isolated nature of the site being surrounded by the road network.
<b>Traffic and Access</b>	<i>Encourage new development to have a minimal impact on traffic flow and demand for on street parking spaces.</i>	The proposal will have minimal impact on traffic flow and there are adequate car parking spaces provided on the site.
	<i>Encourage development to provide adequate on-site parking to assist in reducing traffic congestion on local road networks.</i>	There are the required numbers of car parking spaces provided on the site.
	<i>Discourage through traffic throughout the Precinct through traffic calming measures.</i>	The site is located on the existing road network with adequate access points to be retained by the current proposal.
	<i>Promote walking, cycling and a safe pedestrian environment in and around the Eastgardens Westfields Shopping Centre.</i>	The existing bus interchange is to be retained by the current proposal.
<b>Views</b>	<i>Retain existing views.</i>	There will be no impact on existing views.
<b>Risk</b>	<i>Recognise that development for 'residential intensification', 'sensitive</i>	The potential risk from the dangerous goods route has been considered in this assessment



	Control	Compliance
	<p><i>use intensification', and development that will result in increased traffic volumes or access points onto Denison Street (being a designated Dangerous Goods Route) must:</i></p> <ul style="list-style-type: none"> <li>– <i>Consider a transport risk assessment report. The contents and outcomes of a transport risk assessment report are to be in general accordance with the principles outlined in the Hazardous Industry Advisory Paper N° 6: Guidelines for Hazard Analysis (Planning NSW, 1992), Hazardous Industry Advisory Paper N° 4: Risk Criteria for Land Use Safety Planning (Planning NSW, 1992), 'Hazardous Industry Planning Advisory Paper No. 10 Land use Safety Planning' published by the NSW Department of Planning in January 2011 and 'Hazardous Industry Planning Advisory Paper No. 11 – Route Selection dated January 2011.</i></li> <li>– <i>Receive development concurrence for the application from the Department of Planning &amp; Environment.</i></li> </ul>	and by the DPE.
	<i>Any other applications for development adjacent to / or within the vicinity of routes designated as 'Dangerous Goods Routes' will be assessed under the relevant Council planning instruments and controls.</i>	See above.
	<i>Where a site is considered by Council to be located adjacent to a dangerous goods route defined in this plan, any development on the site will be assessed and viewed as though it was located within the area with the more stringent risk-related development controls specified in this development control plan.</i>	See above.

**Table 4: Character Precinct Compliance Table**

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

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

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

The immediate area contains a variety of land uses, including single dwellings, public open space and industrial uses, all of varying architectural styles that reflect the various stages of settlement and growth within the area. The proposed built form on the site has been designed to be incorporated into the existing building on the site and be of a compatible size, scale and design to that currently existing on the site.

The proposal results in a streetscape height that is similar to the height of the existing development on the site. The proposed future development of the adjoining BATA site is likely to result in buildings up to 13 storeys near the Westfield drove frontage of this adjoining site. The proposal will therefore be compatible with the height of this adjoining development, representing the likely future character of the area.

Since the proposed built form is within the existing footprint of the building, the setbacks are consistent with existing development in the area. Therefore, the relationship of the built form with the streetscape is also considered acceptable.

The proposal involves the retention of the existing landscaping within the site and retains the bus interchange along Bunnerong Road and the existing access points. On this basis, the level of landscaping and the public domain interface within the site and the immediate surrounds is considered to be a positive relationship that assists in the contextual fit of the building.

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

On this basis, the proposal is considered to satisfy the local character and streetscape requirements of the BBDCP 2013 and is considered acceptable.

#### **(b) Impacts of the development (S79(c)(1)(b) of the EP&A Act)**

The consideration of impacts on the natural and built environments includes:

Context and setting – The proposed development generally satisfies the numerical requirements (except for FSR) and objectives of the development standards and controls. The development has been designed to be a compatible addition to the locality and is of an appropriate size and density to the surrounding commercial and mixed use developments. The existing commercial environment is the most appropriate location for the proposal.

Noise generation – The potential for noise generation from the proposed development needs to be considered since there is residential development in the close proximity to the site. There were concerns raised in public submissions for the adjoining BATA site that there may be some acoustic impacts resulting from the increased use of the existing vehicular access ramp along the northern elevation of the building on the site. Council’s Environmental Health Officer has recommended that an acoustic report be prepared prior to the issue of a Construction Certificate which considers the likely acoustic impacts of this

ramp to the adjoining BATA site. This has been included as a condition and will ensure any potential impacts from the proposal can be mitigated.

Access and traffic – The proposed development provides the required number of car parking spaces within the building footprint of the existing building and provides adequate vehicle access from the existing vehicular access points. The existing access points will be retained by the proposal and is adequate for the proposed use of the site. The proposal will generate additional traffic in the area; however, the Traffic report concluded that such traffic can be accommodated in the existing local road network. The car parking and access arrangements are considered in detail in the BBDCP 2013 assessment.

Public Domain – The proposed development is compatible with the existing streetscape and will allow for the required number of car parking spaces generally within the existing building on the subject site. The proposal will not impede pedestrian access in the area and will not impinge on any public areas. There will be no additional loss of on-street car parking resulting from this proposal, given it is proposed to use the existing access driveway.

Utilities – All utilities are available to the site and as a consequence there are no impacts on utilities. Relevant engineering conditions have been imposed in the schedule of conditions.

Natural environment – The proposed development will have minimal impact on the natural environment, as it is located in an area already zoned for development and there are no significant healthy trees being removed. There are also no changes to the natural contours of the site. The proposed development is considered unlikely to result in any adverse effects in the locality in terms of water or air quality impacts. Appropriate measures are to be taken in respect of stormwater run-off and waste removal and accordingly the proposal is considered acceptable in this regard.

Social and economic impact – The proposed development will improve the social and economic environment of the locality through better utilisation of the existing site. The proposed development will continue to use the site for commercial purposes and for employment generating activities.

An Economic Impact Statement (EIS) has been prepared in relation to the proposed. The EIS describes the existing Westfields Eastgardens as a good performing major regional shopping centre that achieves a turnover on a per square metre basis, on average, 14% above the regional shopping centre average. The EIS considers that this performance demonstrates the centre's affinity with the local community and that an excess market demand exists that could support a higher provision of retailing at the centre. Furthermore, the existing centre has around 41% of shopfronts comprising mini-majors and speciality shops, with the remaining centre comprising major stores, which is lower than the regional centre average of around 44% of such shops. Accordingly, there is a need for a greater amount of mini-majors and speciality shops which is proposed in this application.

The Eastgardens trade area extends around 5km to 7km radius from the centre which contains approximately 258,000 people, which is a sufficiently sized catchment for a major regional centre. Currently, the total retail spending market generated by residents of the trade area is estimated at \$3.3 billion (excluding GST). This trade area is expected to experience significant population growth to the year 2021 of around 2.2% per annum, which forecasts indicate a further 50,000 people in this trade area to 2021. This population

increase is most likely to arise from developments in Zetland and around town centre such as Maroubra and Randwick as well as infill sites such as the adjoining BATA site. The proposed additional retail area is expected to potentially increase turnover at Eastgardens by around \$42.2 million in 2016. Retail market growth across the trade area is forecast to grow at a sizable \$366 million in the period 2013 - 2016 and \$1.1 billion between 2103-2021.

This expected population growth, coupled with the good performance of the existing shopping centre and expected retail market growth, indicates that there is sufficient demand for the additions to the existing proposed in this application and that the proposal is likely to be a viable development.

The potential impact on both existing and planned shopping centres, precincts and town centres must also be considered. In particular, Randwick Council was concerned with the potential economic impact on Maroubra Junction and Matraville and the smaller neighbourhood centres of Maroubra Road West and Maroubra South. These centres, as well as the potential impact of the proposed additions on the adjoining BATA site which is to include 5000m<sup>2</sup> of retail floor space as well as the planned retail developments considered included (among others) redevelopment of Eastlakes, Marrickville Metro, Green Square Town Centre were considered in the EIS.

The EIS concluded that given the proposed alterations and additions to the existing shopping centre are a modest increase in retail floor space, the proposed additions are expected to have minimal impact on existing and planned centres in the region for the following reasons:-

- The additional \$42.2 million generated by the proposed additions (\$31.5 million of which would be drawn from the trade area market) would account for only 9% of trade area market growth to 2016 (i.e. \$42.2 million of +\$366 million from 2013 to 2016). Other retail centres and locations serving trade area residents would still have access to more than 91% of market growth to 2016.
- The proposed expansion is assessed to reduce turnover at competing centres by an average of -1% (including -1.1% in non-food retailing) in 2016. Market growth would offset this impact within less than a year; therefore, any loss of turnover would be temporary and short term.
- The new retail floor space would compete with existing retailers at Eastgardens. A proportion of the potential one-off impact therefore would be directed at retailers within the centre.
- The majority of other retail areas in the trade area support a different role in the retail hierarchy to Eastgardens such that there is unlikely to be any significant viability of concerns. The majority of the other retail areas are for convenience and day to day shopping needs or comprise bulky goods retailing.
- The assessed impacts would be widely dispersed amongst the existing retail network and would not be of a level that would be detrimental to the viability of any particular shopping destination or affect future planned centres.

The EIS considered the potential impact on the BATA site, which is to provide a new commercial/retail centre to support the increased residential population. The BBDCP 2013 indicates that this new centre will consist of small to medium scale retail opportunities including banks, post office, hairdressers, small scale supermarkets, convenience stores and cafes and restaurants. These retail uses on the BATA site are therefore considered to mainly serve the lower order shopping needs of the future new immediate local population.

This is in contrast to Westfields Eastgardens which is the established regional centre for the region. The EIS concluded that the proposed additions to Westfields Eastgardens will not impact the potential development of retail facilities at the BATA site.

In terms of other centres and retail areas, the EIS concluded that the future market growth will generate a need for new retail floor space in the region across all forms of retailing, including Eastgardens, and that the proposed expansion will only capture a small share of the forecast market growth. It is also reasonable to expect that any potential economic impacts of the proposal are likely to be widely dispersed amongst the existing retail network and which is unlikely to be detrimental to the viability of any particular shopping area. The area has an established and comprehensive retail hierarchy, which is led by Westfield Bondi Junction, Eastgardens and the Sydney CBD. The majority of the centres in the region cater for the day to day convenience shopping and service's needs, although Randwick and Maroubra Junction also provide some limited comparison shopping similar to Eastgardens. There are also several bulky goods retailers in the area, of which Eastgardens does not compete.

Council therefore considers that there appears to be a need for the proposed additions and that such additions are unlikely to have an adverse economic impact on existing and planned centres in the region.

Site design and internal design – The proposed development is appropriately set out on the site to allow for manoeuvring and minimises adverse impacts on adjoining properties.

Construction – The building works proposed in this application will be required to comply with the Building Code of Australia which forms a condition of consent.

Cumulative impacts – The proposed development will not result in any adverse cumulative impacts as the development generally complies with the zone objectives and development standards and controls as outlined in this Statement. The amount of FSR satisfies the objectives of the development standard, the objectives of the zone and is in the public interest.

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

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

There are several matters that need to be considered in relation to the suitability of the site for the development. The proposed development is considered to be suitable for the subject site as follows:-

Compatibility with locality – the proposed development will be compatible with existing development as there is no adjacent land use, which is prohibitive of the proposal. Furthermore, the proposal utilises the existing access arrangements to the subject site, thereby minimising impacts on the streetscape. The proposal will occupy an existing commercial building and will not alter the building or be in conflict with current activities in the vicinity of the subject site.

Strategic Context – there are several strategic planning policies which need to be considered for the proposal outlined below.

*Metropolitan Plan for Sydney 2036* establishes a long-term planning framework to manage Sydney's growth in a sustainable manner and strengthen its economic development whilst enhancing the unique lifestyle, heritage and environment of Sydney. The subject site is located within the "Global Economic Corridor".

The following objectives and actions are applicable:

- **Objective B1** – *To focus activity in accessible centres.*
- **Action B1.1** *Plan for centres to grow and change over time.*
- **Objective E2** – *To focus Sydney's economic growth and renewal, employment and education in centres.*
- **Action E2.1** *Plan for more commercial and retail jobs in highly accessible Strategic –Centre.*

The proposal is considered to be consistent with these actions and objectives since the proposal seeks consent for extensions of a commercial use within an existing centre.

The draft *Metropolitan Strategy for Sydney to 2031* is a new plan to guide our Sydney's growth to 2031. The draft Metropolitan Strategy is a consultation document and was placed on public exhibition until 28 June 2013. This document has now been adopted (following DA lodgement) as *A Plan for Growing Sydney* in December 2014. The subject precinct is located within the "Global Economic Corridor" and the following objectives and actions are applicable:

- **Objective 2** – *Strengthen and grow Sydney's centres.*
- **Objective 3** – *Make Sydney connected.*
- **Objective 7** – *Deliver well-designed and active centres that attract investment and growth.*
- **Objective 10** – *Provide capacity for jobs growth and diversity across Sydney.*
- **Objective 15** – *Provide for a good supply of retail space.*

The proposal is considered to be consistent with these objectives since the proposal seeks consent for extensions of a commercial use within an existing centre and will provide additional employment opportunities. The continued use of the site for a major regional shopping centre is consistent with the strategic planning principles which have applied to the site and will represent an orderly and efficient use of the site by providing an increased amount of commercial uses in an area close to population and public transport. In this way, the proposal is consistent with the strategic planning for the area.

#### *Botany Bay Planning Strategy 2031*

The *Botany Bay Planning Strategy 2031* establishes a framework for growth and development for the Botany Bay Local Government Area and addresses the draft East Subregional Strategy dwelling and job targets. The Strategy also provides the foundation for the development of the BBLEP 2013. The subject site is located within Area 4: Pagewood and Banksmeadow. The future direction of the

Eastgardens Employment Area is to retain employment and plan for mixed-use centre in the long-term. The proposal is consistent with the future directions of the Eastgardens Employment Area as the proposal will provide additional employment opportunities in an appropriately zoned area.

Environmental hazards – Dangerous goods (DG) are frequently moved along Denison Street due to the heavy industrial nature of this area, which is located to the south of the site. The main contributors to DG movements along Denison Street are a combination of deliveries to and from the Botany Industrial Park (BIP) and Port Botany. A Quantitative Risk Assessment (QRA) of the movement of DG along Denison Street was prepared by Scott Lister, '*Dangerous Goods Transportation QRA, Denison Street Hillsdale*' dated 5 September 2014 (QRA 2014), which considered the potential risk this DG transportation may pose to a proposed Bunnings store on Denison Street.

This study concluded that the risk criteria was satisfied and that the risks associated with DG transport on Denison Street and the BIP should not present a barrier to the Bunnings development proceeding. This QRA 2014 study also modelled various other proposed developments, including the BATA site, which adjoins the site to the north.

A quantitative risk modelling of the DG transportation along Denison Street was undertaken by Scott Lister dated 10 December 2014 for this proposal to establish the acceptability of the proposed development at the site. This report concluded that the maximum individual risk is less than the maximum acceptable for commercial uses according to the Department's advisory paper, '*Hazardous Industry Planning Advisory Paper No 4 Risk Criteria for Land Use Safety Planning*' (HIPAP 4), January 2011. The individual risk is therefore considered acceptable. Furthermore, the incremental increase in societal risk generated by the proposal (due to an increase in the potential number of people attracted to the site) was also found to be well below the lower criteria line and as such the societal risk from the proposal can be considered tolerable.

This Risk Assessment was referred to the Department of Planning and Environment, who advised in an email dated 13 February 2015 that the proposal was considered acceptable.

Soils and Contamination – The subject site has been zoned and used for commercial purposes. There are no known soil contamination risks as there is no significant excavation proposed which is likely to adversely affect any acid sulphate soils which may exist in the locality.

These matters have been considered in the assessment of the development application. The subject site currently consists of the existing Westfield's Shopping Centre Eastgardens.

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

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

These matters have been considered in the assessment of the development application. In accordance with Part 2 of the BBDCP 2013 (Notification and Advertising), the development application was notified to surrounding property owners and occupants and advertised in the local newspaper (Southern Courier on 24 June 2014) from 25 June 2014 to 25 July 2014, and two (2) submissions were received raising the following issues:

- Dangerous goods transportation route

- Retail function
- FSR variation
- Urban Form and Advertising on northern elevation
- Visual impact from vehicle ramp on northern elevation

#### Dangerous Goods Transportation Route

**Objection:** The site has frontage to Denison Street, which is classified in the 2001 Botany/Randwick Industrial Area Land Use Safety Study as a DG Route. The traffic report does not address the issue of the existing levels of individual and societal risk levels affecting the site from the activities and operations on the Botany Industrial Park and the movements of hazardous materials along Denison Street, Wentworth Avenue and Bunnerong Road. No consent for any development within the vicinity of the Botany Randwick Industrial Complex should be made until a rigorous comprehensive area study of the Botany/Randwick Industrial area and Port Botany is undertaken and planning controls applied in terms of HIPAP 4 and the 2001 Botany /Randwick Industrial Area Land Use Safety Study.

**Comment:** The applicant has provided a Quantitative Risk Modelling Assessment for the proposal which has been considered by the Risk Specialist (Hazards) Division of the NSW Department of Planning and Environment (DPE). The DPE concluded that ‘from a land use safety planning risk perspective, there is no grounds to preclude retail extension proposal ‘and ‘the relevant societal risk criteria are satisfied.’

#### Retail Function

**Submission/Objection:** The extension will support the centre’s role as a major regional centre and the broader growth of its catchment while the local centre (on the adjoining Meriton/BATA site) will support the day to day needs of a large residential precinct with a completely different shopping function and experience.

**Comment:** This submission supports the proposal by outlining that the retail functions of the proposal and the adjoining site are completely different, but both important, roles in the local retail hierarchy. The Council concurs with this assessment and this issue is considered in detail in this report.

#### FSR variation

**Submission/Objection:** It is unclear what the extent of the variation is and therefore the adequacy of the Clause 4.6 variation. Notwithstanding this, the centre has a role to play in maintaining its function and we do not see an issue in the application relying on Clause 4.6 to seek a variation to Council’s controls noting that there were previous approvals to allow the centre to vary controls by approximately 37%.

**Comment:** This submission supports the proposed FSR variation which is also supported by Council. This issue is considered in detail in this report.

#### Urban Form and Advertising on northern elevation

**Submission/Objection:** We would object to any unapproved, new or illuminated signage on the northern elevation of the shopping centre. We seek particular consideration be given



Architectural elevation drawing of the proposed Big W Woolworths store at 100-102 Westfield Road, Eastgardens. The drawing shows a multi-story building with various levels, including a new vertical lift shaft, new stairs, and new ramps. It also features existing and proposed entrances, a new canopy, and a new ramp. The drawing is labeled with 'BIG W' and 'WOOLWORTHS' logos, and includes a scale bar and a north arrow.

### Visual Impact from Vehicle Ramp on Northern Elevation

**Comment:** This request is considered to be reasonable given there will be an increase to the number of vehicles likely to be using this existing northern access ramp arising from the proposal. The potential acoustic impact of this ramp on the future residential development on this adjoining BATA land has been considered by Council's Environmental Health Officer (discussed above) who concluded that an acoustic report should be provided prior to the Construction Certificate which assesses the potential acoustic impact on this adjoining residential development and any associated mitigation measures which may be required. These requirements have been imposed as conditions of development consent.

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

## Internal Referrals

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

The proposal was not referred to the Design Review Panel (DRP) or Council's Access Committee.

#### External Referrals

Numerous external referrals were made for the proposal which is summarised below:

- *Roads and Maritime Services (RMS)*

The RMS in a letter dated 29 July 2014 did not raise any objections to the proposal subject to car parking complying with relevant standards, no additional stormwater being discharged to the RMS drainage system, all vehicles to enter and leave the site in a forward direction and the requirement for a Construction Traffic Management plan prior to the issue of a Construction Certificate. These conditions have been imposed in the consent conditions.

- *Sydney Water*

Sydney Water provided no comments to the development.

- *Department of Planning and Environment*

The DPE provided comments in a email dated 13 February 2015 on the risk posed by the DG transportation route.

- *Ausgrid*

Ausgrid provided no comments to the development.

- *Port Authority of NSW*

The Port Authority of NSW provided comment on the proposal in an email dated 17 July 2014. No objection or comment was provided given the site is not within the vicinity of the VTS lines of sight and therefore no comments were made on the development.

- *NSW Police Service*

NSW Police provided comments and conditions in a letter dated 25 July 2014. No objections were raised to the proposed development, subject to conditions relating to CPTED principles.

- *Sydney Airports Corporation Limited (SACL)*

The SACL in a letter dated 28 August 2014 raised no objection to the proposal subject to limitation of height to a maximum 44.1m AHD. The proposal is consistent with this height.

## **6. Section 94 Contributions**

In accordance with Council's Section 94 Contributions Plan, *City of Botany Bay Section 94 Contributions Plan 2005 – 2010*, payment of a sum in the amount of **\$409,654.08** is to be paid prior to the issue of a Construction Certificate. The contribution is based on the number of workers/staff to be employed on the commercial development.

The contribution rates for employment development pursuant to Table 7 of the Section 94 Contributions Plan are:

- Community Facilities \$349.00 per worker
- Administration \$53.00 per worker
- Shopping Centre Improvements \$226.00 per worker
- Open Space & Recreation (outside Mascot Station Precinct) \$2,460.00 per worker

The drainage and transport management provisions of the Section 94 Contributions Plan do not apply to the subject site.

Table 8.2 of the Contributions Plan identifies the workforce occupancy rate for the following uses:-

- Specialty shops in centres or arcades as 20.4m<sup>2</sup> GFA per employee;
- Supermarkets as 48.0m<sup>2</sup> GFA per employee; and
- Department stores as 40.1m<sup>2</sup> GFA per employee.

The mini major has been classified as a 'Department store' for the purposes of the Section 94 calculations. Accordingly, the Section 94 contribution is calculated based on:-

- Specialty shops (including the 2 x 11m<sup>2</sup> kiosks) =  $1393\text{m}^2 / 20.4\text{m}^2 = 68.28$  employees;
- Supermarket (proposed mini-major) =  $1568\text{m}^2 / 48.0\text{m}^2 = 32.67$  employees; and
- Department store (proposed mini-major) =  $1271.7\text{m}^2 / 40.1\text{m}^2 = 31.71$  employees.

A total of 132.66 staff members result from the proposed commercial development.

The Section 94 Contribution consists of the following:

- (i) Community Facilities \$46,298.34
- (ii) Administration \$7,030.98
- (iii) Shopping Centre Improvements \$29,981.16
- (iv) Open Space & Recreation \$326,343.60

**Total \$409,654.08**

## 7. Conclusion

In accordance with Clause 3 of Schedule 4A of the EP&A Act, the Application is referred to the JRPP Sydney East Region for determination.

The proposed development has an FSR of 1.087:1 which exceeds the maximum FSR of 1:1 under the BBLEP 2013, however the applicant has submitted a Clause 4.6 Variation which demonstrates that the proposal satisfies the underlying objectives of the FSR control and that the proposal will result in an improved planning outcome for the site. The variation to

the maximum FSR is considered to be well founded and the variation to the FSR controls is supported by Council in this case.

A total of two (2) submissions were received as a result of the public exhibition process and matters raised have been addressed in this report and conditions (where relevant).

The proposal has been assessed in accordance with Section 79C of the EP&A Act and the BBLEP 2013. The proposal is permissible in the B3 Commercial Core zone and is considered to deliver a development which is suitable in the context.

The assessment concludes that the proposal shall generate minimal adverse impacts, and that the overall built form is compatible with the existing building on the site and is reflective of the desired future character for the area. It is the opinion of the Council that the current design has addressed the concerns of local residents and on this basis the proposed development is supported subject to conditions.

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

### **RECOMMENDATION**

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

- (a) Grant consent to the Clause 4.6 variation requests under *Botany Bay Local Environmental Plan 2013* to permit a maximum FSR of 1.087:1 by reason that the variation is well founded; and
- (b) Approve Development Application No. 14/123 for the following works at 152 Bunnerong Road Pagewood, subject to the Conditions imposed in the attached schedule:
  - Construction of new retail mall at Level 3 comprising two (2) mini major tenancies including a super market, 11 new specialty retail shops, and two (2) new kiosks;
  - New loading dock on Level 2 and new goods lift on Level 3;
  - New escalator connecting new mall to Retail Level 2;
  - Modified Level 3 car park with new pedestrian mall entry and driveway ramp up to new roof top parking;
  - Modified commercial entry to commercial office building and amenities within lobby;
  - New rooftop car parking area on Level 4; and
  - Ancillary access and servicing works and minor relocation of existing services and facilities.

**Premises: 152 Bunnerong Road Pagewood****DA No: 14/123****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.

<b>Drawing No.</b>	<b>Author</b>	<b>Dated</b>
DA01 - Location Plan and Drawing Schedule	Westfield Design and Construction Pty Limited	16 May 2014
DA02 - Existing Level 2	Westfield Design and Construction Pty Limited	16 May 2014
DA03 - Existing Level 3	Westfield Design and Construction Pty Limited	16 May 2014
DA04 – Existing Roof	Westfield Design and Construction Pty Limited	16 May 2014
DA05 – Existing Section and North Elevation	Westfield Design and Construction Pty Limited	16 May 2014
DA06 – Existing East and South Elevation	Westfield Design and Construction Pty Limited	16 May 2014
DA07 – Modified Level 1	Westfield Design and Construction Pty Limited	16 May 2014
DA08 – Modified Level 2	Westfield Design and Construction Pty Limited	16 May 2014
DA09 - Modified Level 3	Westfield Design and Construction Pty Limited	16 May 2014
DA10 - Modified Level 4	Westfield Design and Construction Pty Limited	16 May 2014
DA11 – Proposed Section and Elevation (North)	Westfield Design and Construction Pty Limited	16 May 2014
DA12 – Proposed Section and Elevation (South & East)	Westfield Design and Construction Pty Limited	16 May 2014
DA13 – South & East External Elevation	Westfield Design and Construction Pty Limited	16 May 2014
DA14 – North External Elevation	Westfield Design and Construction Pty Limited	16 May 2014

<b>Reference Document(s)</b>	<b>Author</b>	<b>Dated</b>
Statement of Environmental Effects Amended	Ingham Planning Pty Ltd	June & November 2014
Clause 4.6 Exceptions to Development Standards Report	Ingham Planning Pty Ltd	June & November 2014
Preliminary Risk Assessment	Scott Lister	10December 2014
Traffic Impact Assessment Report Ref 9388/2 (revised)	Colston Budd Hunt & Kafes Pty Ltd	June 2014 & 24 October 2014

Reference Document(s)	Author	Dated
Economic Impact Statement (revised)	Urbis	June 2014 & 7 November 2014
Accessibility Report	ILC Access	26 May 2014
Surveyors Report (GFA & Car Parking)	Urbanex Pty Limited	11 August 2014
Quantity Surveyors Report	Hanna Newman Associates Pty Limited	4 August 2014

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

- 2 The applicant must prior to the obtainment of the approved plans and specifications pay the following fees:-
  - i) Development Control \$2,750.00
- 3 This Consent relates to land known as No 152 Bunnerong Road Pagewood, and as such, building works must not encroach on to adjoining lands or the adjoining public place, other than public works required and as otherwise permitted by this consent.
- 4 The consent given does not imply that works can commence until such time that:
  - (a) Detailed plans and specifications of the building have been endorsed with a Construction Certificate by:
    - (i) The consent authority; or,
    - (ii) An accredited certifier; and,
  - (b) The person having the benefit of the development consent:
    - (i) Has appointed a principal certifying authority; and
    - (ii) Has notified the consent authority and the Council (if the Council is not the consent authority) of the appointment; and,
    - (iii) The person having the benefit of the development consent has given at least 2 days' notice to the council of the person's intention to commence the erection of the building.
- 5 All building work must be carried out in accordance with the provisions of the Building Code of Australia.
- 6 No signage, other than signage permitted as exempt or complying development, shall be installed or displayed at the premises without a development application being lodged with Council and consent thereto being given by Council in accordance with Council's guidelines and *State Environmental Planning Policy No. 64 – Advertising and Signage*.

- 7 The use and fit-out of each of the tenancies, including the kiosks, are not approved under this development consent. The future use(s) of each tenancies/kiosks is to form the subject of a separate development application(s) to be submitted to and approved by Council.

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

- 8 The following conditions are imposed by the NSW Roads and Maritime Service (RMS) and are to be complied with:

- (a) A Construction Traffic Management Plan detailing construction vehicle routes, number of trucks, hours of operation, access arrangements and traffic control should be submitted to Council prior to the issue of a Construction Certificate.
- (b) The layout of the proposed car parking areas associated with the subject development (including driveways, grades, turn paths, sight distance requirements, aisle widths, aisle lengths and parking bay dimensions) should be in accordance with AS 2890.1 – 2004 and AS2890.2 – 2002 for heavy vehicle usage.
- (c) All vehicles to enter and leave in a forward direction.
- (d) Post development stormwater discharge from the subject site into the Roads and Maritime drainage system must not exceed the pre-development discharge. Detailed design plans and hydraulic calculations of any changes to the stormwater drainage system are to be submitted to the Roads and Maritime for approval, prior to the commencement of any works. Details shall be forwarded to:-  
  
Sydney Asset Management  
Roads and Maritime Services  
PO Box 973  
Parramatta NSW 2124
- (e) All works associated with the proposed development shall be at no cost to Roads and Maritime.

- 9 The following conditions are imposed by the NSW Police Service:

#### **Surveillance**

- (a) As the proposed development may be exposed to Stealing, Steal from persons, Malicious Damage, 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 needs to be implemented to receive, hold or process data for the identification of people involved in anti-social or criminal behaviour. The system is obliged to conform with Federal, State or Territory Privacy and Surveillance Legislation. Facial recognition ability is crucial in identifying potential offenders.
- (b) This system should consist of surveillance cameras strategically located in and around the development to provide maximum surveillance coverage of

the area, particularly in areas which are difficult to supervise. Cameras should be strategically mounted outside the development buildings and within the car parking areas to monitor activity within these areas. One or more cameras should be positioned at the entry and exit points to monitor these areas.

- (c) Digital technology should be used to receive, store and process data. Recording equipment should be secured away from public access areas to restrict tampering with the equipment and data. This equipment needs to be checked and maintained on a regular basis.
- (d) A monitored intruder alarm system which complies with the Australian Standard – *Systems Installed within Client Premises*, AS:2201 should be installed within the premises to enhance the physical security and assist in the detection of unauthorised entry to the premises. This standard specifies the minimum requirements for intruder alarm equipment and installed systems. It shall apply to intruder alarm systems in private premises. Commercial premises and special installations. The system should be checked and tested on a regular (monthly) basis to ensure that it is operating effectively. Staff should be trained in the correct use of the system.
- (e) Detection devices should be strategically located throughout the premises to detect any unauthorised access. The light emitting diodes (LEDs red lights) within the detectors should be deactivated, to avoid offenders being able to test the range of the system.
- (f) As a number of business premises have had telephone lines cut to prevent alarms being reported to the security monitoring company, a supplementary system such as Global Satellite Mobile (GSM) or Radio Frequency (RF) systems should be used to transmit alarm signal by either mobile telephone or radio frequency.
- (g) By angling fire egress inlet walls 45 degrees or more, opportunities for entrapment, loitering and vandalism can be reduced.
- (h) Uneven building alignments, insert doorways and hidden entrances should be avoided. They can facilitate predatory crimes, thefts, malicious damage and other offences.
- (i) Any proposed 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.

#### Lighting

- (j) Lighting (lux) levels for this development must be commensurate with a **MEDIUM** crime risk identified in this evaluation. The emphasis should be on installing low glare/high uniformity lighting levels in line with Australian Standard AS:1158.
- (k) Lighting sources should be compatible with requirements of any surveillance system installed within the development (poor positioning choices in relation to light can cause glare on the surveillance screens).
- (l) It is extremely important to have sufficient lighting in the car parking of the development. It provides safety to staff and visitors and acts as a deterrent to thieves.



- (m) The luminaries (light covers) should be designed to reduce opportunities for malicious damage. Lighting within the development needs to be checked and maintained on a regular basis.

#### Territorial Reinforcement

- (n) The street number must be prominently displayed at the front of your property to comply with the *Local Government Act 1993* Section 124(6). Failure to comply with any such order is an offence under Section 628 of the Act. Offences committed under Section 628 of the Act attract a maximum penalty of 50 penalty units (currently \$5500) for an individual and 100 penalty units (currently \$11000) for a corporation. The number should be in contrasting colours to building materials and be a minimum height of 120mm.
- (o) **Warning signs** should be strategically posted around the buildings to warn intruders of what security treatments have been implemented to reduce opportunities for crime.  
  
Warning, trespassers will be prosecuted  
Warning, these premises are under electronic surveillance
- (p) **Directional signage** should be posted at decision making points (e.g. entry/egress points) to provide guidance to the users of the development. This can also assist in access control and reduce excuse making opportunities by intruders.
- (q) A **Fire Safety Statement** must be prominently displayed within the development to comply with the *Environmental Planning and Assessment Regulations (1994)* Clause 80GB. The annual fire safety statement is a statement issued by the owner of a building.
- (r) Signage needs to be provided at fire exist to assist occupants to identify exists in emergency situations.
- (s) Signage needs to be provided to assist staff and customers to identify fire suppression equipment, e.g. extinguishes, fire hoses etc.
- (t) A graffiti management plan needs to be incorporated into the maintenance plan for the development. Research has shown that the most effective strategy for reducing graffiti attacks is the quick removal of such material generally within **24 hours**.
- (u) **Graffiti resistant materials** and anti-graffiti coating should be utilised throughout the development.

#### Space/Activity Management

- (v) An emergency control and evacuation plan which complies with the **Australian Standard, Emergency Control Organisation and Procedures for Buildings, Structures and Workplaces, AS:3745** should be prepared and maintained by your development to assist management and staff in the event of an emergency. This standard sets out the requirements for the development of procedures for the controlled evacuation of the building, structures and workplaces during emergencies. Further information in relation to planning for emergencies can be obtained from Emergency NSW <http://www.emergency.nsw.gov.au> or Emergency Management Australia <http://ema.gov.au>.

- (w) Maintenance policies need to be developed and implemented for the proposed development to deal with rubbish collection and disposal, damage and repairs to property, e.g. lighting and structures as quickly as possible.
- (x) Access Control
- (y) Doors should be fitted with locks that comply with the Australian Standard – Mechanical Locksets for doors in buildings, **AS:4145:1993**, to restrict unauthorised access and the Building Code of Australia (fire regulations). This standard specifies the general design criteria, performance requirements and procedures for testing mechanical lock sets and latch sets for their resistance to forced entry and efficiency under conditions of light to heavy usage. The standard covers lock sets for typical doorways, such as wooden, glass or metal hinged swinging doors or sliding doors in residential premises. Requirements for both lock and associated furniture are included. Certain area may require higher level of locking devices not referred to in this standard (e.g. locking bars, electronic locking devices and detection devices).
- (z) There are some doors within the premises which are designated as fire exits and must comply with the Building Code of Australia. This means that they provide egress to a road or open space, an internal or external stairway, a ramp, a fire isolated passageway, a doorway opening to a road or open space. The doors in the required exits must be readily open-able without a key from the side that face the person seeking egress, by a single hand downward action or pushing action on a single device which is located between 900mm and 1.2m from the floor.
- (aa) The windows and window-frames to these premises should be of solid construction. These windows should be fitted with locks with comply with the **Australian Standard – Mechanical Locksets for windows in buildings, AS:4145** to restrict unauthorised access. This standard specifies the general design criteria, performance requirements and procedures for testing mechanical lock sets and latch sets for their resistance to forced entry and efficiency under conditions of light to heavy usage. The standard covers lock set for typical windows, such a wooden, glass or metal hinged swinging windows or sliding windows in residential and business premises, including public buildings, warehouses and factories. Requirements for both the lock and associated furniture are included. Certain areas may require higher level of locking devices not referred to in this standard (e.g. locking bars, electronic locking devices, detection devices, alarms).
- (bb) The windows to the business need to be secured to restrict access and increase surveillance opportunities to and from the business. Shops and businesses should avoid obstructed windows and doors as these environments are considered attractive to many armed robbers and thieves. Glass within windows can be reinforced by either having a shatter-resistant film adhered internally to the existing glass, or by replacing the existing glass with laminated glass.
- (cc) Any finished manufactured products need to be stored in a secure area, away from the view of the public.

- (dd) Fencing and gates should be of solid construction to withstand being rammed by a motor vehicle or consider the use of bollards and other physical objects to prevent access around the site.
  - (ee) Consider tyre spikes in areas that only should allow access one way (ie to stop the entrance being used as an exit).
  - (ff) Staff to be issued with personal security lockers.
- 10 The following conditions are imposed by the Sydney Airport Corporation Limited (SACL) and must be complied with:
- (a) The property development at 152 BUNNERONG ROAD EASTGARDENS (WESTFIELD) lies within an area defined in schedules of the Civil Aviation (Buildings Control) Regulations, which limit the height of structures to 50 feet (15.24 metres) above existing ground height (AEGH) without prior approval of the Civil Aviation Safety Authority.
  - (b) The Civil Aviation Safety Authority (CASA) have no objection to the erection of the building to a height of 44.1 metres above Australian Height Datum (AHD).
  - (c) The approved height is inclusive of all lift over-runs, vents, chimneys, aerials, TV antennae, construction cranes etc.
  - (d) Should you wish to exceed 44.1 metres above AHD , a new application must be submitted. Should the height of any temporary structure and/or equipment be greater than 50 feet (15.24 metres) above existing ground height (AEGH), a new approval must be sought in accordance with the Civil Aviation (Buildings Control) Regulations Statutory Rules 1988 No. 161.
  - (e) Construction cranes may be required to operate at a height significantly higher than that of the proposed controlled activity and consequently, may not be approved under the Airports (Protection of Airspace) Regulations. SACL advises that approval to operate construction equipment (ie cranes) should be obtained prior to any commitment to construct. Information required by SACL prior to any approval is to include:
    - (i) the location of any temporary structure or equipment, ie. construction cranes, planned to be used during construction relative to Mapping Grid of Australia 1994 (MGA94);
    - (ii) the swing circle of any temporary structure/equipment used during construction;
    - (iii) the maximum height, relative to Australian Height Datum (AHD), of any temporary structure or equipment ie. construction cranes, intended to be used in the erection of the proposed structure/activity;
    - (iv) the period of the proposed operation (ie. construction cranes) and desired operating hours for any temporary structures.
  - (f) Any application for approval containing the above information, should be submitted to this Corporation at least 35 days prior to commencement of works in accordance with the Airports (Protection of Airspace) Regulations Statutory Rules 1996 No. 293, which now apply to this Airport.

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

- 11 The City of Botany Bay being satisfied that the proposed development will increase demand for services and facilities within the area. Therefore, the Section 94 Contributions are required to be paid in accordance with Council's Section 94 Contribution Plans 2005-2010 a sum of **\$409,654.08** listed below towards the provision of services is to be paid to Council prior to the issuing of a Construction Certificate.

- i) Community Facilities \$46,298.34
- ii) Administration \$7,030.98
- iii) Shopping Centre Improvements \$29,981.16
- iv) Open Space & Recreation \$326,343.60

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 fees applicable at that time.

- 12 Prior to the issue of the Construction Certificate, the applicant shall contact "Dial Before You Dig on 1100" to obtain a Service Diagram for, and adjacent to, the property. The sequence number obtained from "Dial Before You Dig" shall be forwarded to Principal Certifying Authority. All utilities within the work zone shall be protected during construction. Any adjustments or damage to public utilities/services as a consequence of the development and associated construction works shall be restored or repaired at the applicant's expense.
- 13 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. 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. Building plans must be lodged at Sydney Water Quick Agent for approval prior to commencement of works.
- 14 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.
- 15 The right hand turn bay from Bunnerong Road into Westfield Drive shall be extended by an additional 80m (to an overall length of 210m). Prior to the issue of the Construction Certificate, detailed plans and specifications in accordance with the requirements of the Roads and Maritime Services (RMS) for this extension of

the right turn lane from Bunnerong Road into Westfield Drive is to be provided and endorsed by a suitably qualified and chartered Engineer . Any required approvals from the RMS must also be provided. Certified copies of the civil/traffic design plans shall be submitted to the RMS for consideration and approval prior to the release of the construction certificate and commencement of road works.

- 16 Prior to the issue of the Construction Certificate, detailed plans and specifications are to be provided for a visual screen along the northern side along the Westfield Drive of the car parking ramp facing the BATA site. This screen is to mitigate any potential headlight glare to the adjoining BATA site. This visual screen must be constructed in accordance with this consent.
- 17 Prior to issue of any Construction Certificate, an acoustic report prepared by a suitably qualified and practising consultant must be submitted which considers the potential noise impacts from the use of the vehicle access map along the northern side of the existing shopping centre (Westfield Drive frontage). This report shall address any noise emitted from traffic using the ramp (which will increase as a result of the approved development), particularly later in the evening and any speed bumps that are located on the ramp that may result in an increase in noise levels and any associated mitigation measures which may be required.
- 18 A report prepared by a suitably qualified and experienced energy efficiency consultant is to be submitted to the Principal Certifying Authority, prior to the issue of the Construction Certificate. The report is to confirm that the design of the building meets the Energy Efficiency provisions pursuant to Part 3H of the *Botany Bay Development Control Plan 2013* as outlined in correspondence prepared by Wood and Grieve Engineers dated 4 June 2014. Details are to be indicated on the Construction Certificate plans and all works shall be completed prior to the issue of the Occupation Certificate.
- 19 Any lighting on the site shall be designed so as not to cause nuisance to other residences in the area or to motorists on nearby roads, and to ensure no adverse impact on the amenity of the surrounding area by light overspill. All lighting shall comply with *AS4282-1997 Control of the obtrusive effects of outdoor lighting*; and the installation of solar power to external space lighting. Details are to be submitted to the Principal Certifying Authority prior to the release to the Construction Certificate
- 20 The Construction Certificate application must be accompanied by a Certificate of Adequacy prepared by a practising professional Structural Engineer in accordance with Part A2.2 of the Building Code of Australia to the effect that the existing footings and structure are capable of withstanding the additional loads to be imposed thereon.
- 21 A Soil and Water Management Plan (SWMP) shall be prepared in accordance with the Landcom *Managing Urban Stormwater – Soils and Construction* 4<sup>th</sup> Edition (2004) and submitted to the Principal Certifying Authority prior to the release of the Construction Certificate. This plan shall incorporate and reference the construction environmental management plan and address site limitations.

This plan shall be implemented prior to commencement of any site works or activities. All controls in the plan shall be maintained at all times during the

construction works. A copy of the SWMP shall be kept on-site at all times and made available to Council Officers on request.

- 22 A Construction Management Program shall be submitted to, and approved in writing by the Council prior to the issue of a Construction Certificate. The program shall detail:-
- a) The proposed method of access to and egress from the site for construction vehicles, including access routes through the Council area and the location and type of temporary vehicular crossing for the purpose of minimising traffic congestion and noise in the area, with no access across public parks or 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.
  - k) The location of any Construction Zone (if required) approved by Council's Engineering Section, including a copy of that approval.
  - l) Obtain Permits required under this consent.
- 23 Prior to the issue of any Construction Certificate, at the proposed point of construction site entry, photographic survey showing the existing conditions of Council's infrastructure shall be submitted to Council and Principal Certifying Authority. The survey shall detail the physical conditions and identify any existing damages to the roads, kerbs, gutters, footpaths, driveways, street trees, street signs and any other Council assets fronting the property and extending to a distance of

50m from the development. Failure to do so may result in the applicant/developer being liable for any construction related damages to these assets. Any damage to Council's infrastructure during the course of this development shall be restored at the applicant's cost.

- 24 To ensure that utility authorities and Council are advised of any effects to their infrastructure by the development, the applicant shall:-
- a) Carry out a survey of all utility and Council services within the site including relevant information from utility authorities and excavation if necessary to determine the position and level of services.
  - b) Negotiate with the utility authorities (eg Energy Australia, Sydney Water and Telecommunications Carriers) and Council in connection with:-
    - i) The additional load on the system; and
    - j) The relocation and/or adjustment of the services affected by the construction.
  - k) Any costs in the relocation, adjustment, provision of land or support of services as requested by the service authorities and Council are to be the responsibility of the developer.

The above details are to be submitted to the Principal Certifying Authority prior to the prior to the Construction Certificate.

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

- (a) The rooms for the storage of garbage and recyclable materials shall be:
  - (i) fully enclosed;
  - (ii) adequately ventilated;
  - (iii) Constructed with a concrete floor, concrete or cement rendered walls coved to the floor;
  - (iv) The floor shall be graded to an approved sewer connection incorporating a sump and galvanized grate cover or basket in accordance with the requirements of Sydney Water Corporation.
  - (v) Washing facilities shall be provided within close proximity to the garbage and recycling storage area.
- (b) The area can be serviced easily accessed and serviced by a garbage truck or MRV.

- 26 A Waste Management Plan prepared in accordance with Part 3N - Waste Minimisation and Management of *Botany Bay Development Control Plan 2013* shall be submitted to the Council for approval prior to the release of the Construction Certificate. The Waste Management Plan shall include the size and storage of bins, the collection point for the waste contractor recycling contractor, maintenance of the bins and the provision of recycling and composting facilities.

- 27 The development shall make provision for a total of **3,340** car parking spaces, including nine (9) additional accessible parking spaces in accordance with Part 3C of the BBDCP 2013. 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.

- 28 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 or Roads and Maritime Services) for approval. The plan shall:
- (a) be prepared by a RMS accredited consultant.
  - (b) nominate a contact person who is to have authority without reference to other persons to comply with instructions issued by Council's Traffic Engineer or the Police.
  - (c) if required, implement a public information campaign to inform any road changes well in advance of each change. The campaign may be required to be approved by the Traffic Committee.
  - (d) Note: Any temporary road closure shall be confined to weekends and off-peak hour times and is subject to Council's Traffic Engineer's approval. Prior to implementation of any road closure during construction, Council shall be advised of these changes and Traffic Control Plans shall be submitted to Council for approval. This Plan shall include times and dates of changes, measures, signage, road markings and any temporary traffic control measures.
  - (e) During construction, all works and measures shall be implemented in accordance with approved Traffic Management Plan at all times.
- 29 Prior to the release of the Construction Certificate the following required section(s) are to be submitted to and approved by Council.
- a) All driveways/access ramps/vehicular crossings shall conform with Australian Standards AS 2890.1 and Council requirements.
  - b) With regard to industrial, commercial and multi-unit housing, 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.
  - c) The sections shall also show the clear height from the ramp to any overhead structure.
  - d) All service vehicles shall enter the property front in front out.
- 30 All loading docks shall state the type of truck (as denoted in the current version of AS 2890.2: for example Small Rigid Vehicles (SRV), Heavy Rigid Vehicle (HRV), Articulated Vehicle (AV)) using the dock and show the appropriate template on the plans showing how the truck accesses and exits the site in a forward direction, appropriate headroom has been provided and how they manoeuvre into the loading docks. These plans shall be submitted and approved prior to the issue of the Construction Certificate. The site operators shall be limited to these approved vehicles.
- 31 The proposed traffic movements and parking arrangements within and adjoining the development shall conform with Australian Standard AS2890-1, Australian Road Rules; and the NSW Road Transport (Safety and Traffic Management) Regulation (and any other relevant legislation) unless otherwise stipulated by another condition of this Consent. Details to be submitted to the Principal Certifying Authority prior to release of the Construction Certificate.



- 32 Bicycle storage racks capable of accommodating a minimum of 18 bicycles must be provided on the site. This on-site bicycle storage area shall conform to the current version of Council's guidelines for design of off-street parking facilities and bicycle rail to be designed in accordance with the current version of AS 2890. Details to be submitted to and approved by the Principal Certifying Authority prior to release of the Construction Certificate.
- 33 Any wall or fence or solid object on either side of the driveway/vehicular crossing where it meets the Council's road reserve at the boundary must comply with sight distances stipulated in Australian Standard AS 2890.1. Details shall be submitted to the Principal Certifying Authority prior to release of the Construction Certificate.
- 34 Any exhaust ventilation from the car park is to be ventilated away from the property boundaries of the adjoining dwellings, and in accordance with the provisions of AS1668.1 and AS1668.2. Details are to be submitted to the Principal Certifying Authority prior to release of the Construction Certificate.
- 35 Prior to the release of the Construction Certificate, the following required section(s) are to be submitted to and approved by Council:
  - A minimum of 9 disabled car parking spaces shall be provided and clearly marked as per Australian Standards AS 2890.6 Off-street Car parking for People with Disabilities and Council requirements, and
  - All off street disabled parking shall have access to the adjacent road(s) as per Australian Standards AS 2890.6 and Council requirements.
- 36 The gradient for all disabled access ramps shall not exceed a maximum of one (1) (vertical) in fourteen (14) (horizontal) as per the requirements of Australian standard as1428.1(2001)– design for access and mobility– general requirements for access– new building work. the final design of the proposed disabled access ramps shall be submitted to council or the principal certifying authority prior to the release of a construction certificate.
- 37 Toilet facilities shall be provided for disabled persons in accordance with the design criteria in AS1428.1(2001)– design for access and mobility– general requirements for access– new building work. This requirement shall be submitted to council or the principal certifying authority prior to the release of a construction certificate.
- 38 Detailed plans for the approved development shall be submitted in accordance with the requirements of AS 1428 Part 1 prior to the release of a Construction Certificate, showing detailed levels, ramp slopes, door widths, and circulation spaces.
- 39 Signs incorporating the international symbol of access for disabled persons must be provided to identify each accessible:
  - a) entrance;
  - b) lift or bank of lifts; and
  - c) sanitary facility.

This requirement shall be submitted the principal certifying authority prior to the release of a construction certificate.

- 40 Prior to the release of the Construction Certificate, a plan (written and/or diagrammatic) shall be submitted and approved by the Engineering and Regulatory Services Department, showing the method of access of building materials and plant to the property, and storage location on the property during construction and shall include all existing structures.
- 41 Prior to the issue of any Construction Certificate, detail design and construction plans in relation to stormwater management and disposal system for the development shall be submitted to the Principal Certifying Authority for approval. *(The detail drawings and specifications shall be prepared by a suitably qualified and experienced civil engineer and to be in accordance with Council's Development Control Plan 'Stormwater Management Technical Guidelines', AS/NSZ 3500 – Plumbing and Drainage Code and the BCA. All drawings shall correspond with the approved architectural plans.)*

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

- The provision for new stormwater drainage infrastructure servicing the new roof and roof car park;
- Connect the new stormwater drainage infrastructure to the existing stormwater drainage infrastructure.

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

- 42 Prior to commencement of any works, application(s) shall be made to Council's Customer Services Counter for the following approvals and permits on Council's property/road reserve under Road Act 1993 and Local Government Act 1993 as appropriate *(It should be noted that any works shown within Council's road reserve or other Council Lands on the development approval plans are indicative only and no approval for these works is given until this condition is satisfied):*
- (a) Permit to erect hoarding on or over a public place, including Council's property/road reserve
  - (b) Permit to construction works, place and/or storage building materials on footpaths, nature strips
  - (c) Permit for roads and footways occupancy (long term/ short term)
  - (d) Permit to construct vehicular crossings, footpath, kerb and gutter over road reserve
  - (e) Permit to open road reserve area, including roads, footpaths, nature strip, vehicular crossing or for any purpose whatsoever, such as relocation/readjustment of utility services;
  - (f) Permit to place skip/waste bin on footpath and/or nature strip
  - (g) Permit to use any part of Council's road reserve or other Council lands

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

- 43 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*.
  - a) Level Restrictions  
Construction period of 4 weeks and under:  
the  $L_{10}$  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 20 dB(A).  
Construction period greater than 4 weeks and not exceeding 26 weeks:  
the  $L_{10}$  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).
  - b) Time Restrictions  
Construction/demolition work shall be limited to the following hours:  
Monday to Friday: 07:00 am to 06:00 pm  
Saturday: 07:00 am to 01:00 pm  
No Construction to take place on Sundays or Public Holidays.
  - c) Silencing  
All possible steps should be taken to silence construction site equipment.
- 44 The construction of the premises shall not give rise to transmission of vibration at any affected premises that exceeds the vibration in buildings criteria outlined in the NSW EPA *Environmental Noise Control Manual*.
- 45 The use of any part of Council's road reserve or other Council lands must have prior approval of Council via the Council's Customer Services Department.
- 46 All management measures recommended and contained within the Soil and Water Management Plan (SWMP) submitted as part of the construction certificate shall be implemented in accordance with the *Landcom Managing Urban Stormwater – Soils and Construction* 4<sup>th</sup> Edition (2004). This plan shall be implemented prior to commencement of any site works or activities. All controls in the plan shall be maintained at all times and made available to council officers on request.
- 47 Erosion and sediment control devices shall be installed and functioning prior to the commencement of any demolition, excavation or construction works upon the site in order to prevent sediment and silt from site works (including demolition and/or excavation) being conveyed by stormwater into public stormwater drainage system, natural watercourses, bushland and neighbouring properties. In this regard, all stormwater discharge from the site shall meet the legislative requirements and guidelines.

These devices shall be maintained in a serviceable condition AT ALL TIMES throughout the entire demolition, excavation and construction phases of the

- development and for a minimum one (1) month period after the completion of the development, where necessary.
- 48 The principal contractor must install and maintain water pollution, erosion and sedimentation controls in accordance with:
- a) The Soil and Water Management Plan if required under this consent;
  - b) “Managing Urban Stormwater - Soils and Construction” (2004) (‘The Blue Book’); and
  - c) Protection of the Environment Operations Act 1997.
- 49 The vehicular entry/exits to the site must be protected from erosion and laid with a surface material which will not wash into the street drainage system or watercourse.
- 50 Shaker pads are to be installed at the entry/exit points to the site to prevent soil material leaving the site on the wheels of vehicles and other plant and equipment.
- 51 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.
- 52 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:
      - (1) to a public sewer; or
      - (2) if connection to a public sewer is not practicable to an accredited sewerage management facility approved by the Council; or,
      - (3) if connection to a public sewer or an accredited sewerage management facility is not practicable to some other sewerage management facility approved by the Council.
    - (iii) The provisions of toilet facilities in accordance with this clause must be completed before any other work is commenced.
- 53 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.
-

- 54 All works carried out on the public roads shall be inspected and approved by Council's engineer. Documentary evidence of compliance with Council's requirements shall be obtained prior to proceeding to the subsequent stages of construction, encompassing not less than the following key stages:
- (a) Initial pre-construction on-site meeting with Council's engineers to discuss concept and confirm construction details, traffic controls and site conditions/constraints prior to commencement of the construction of the civil works associated with the road widening;
  - (b) Prior to placement of concrete (kerb and gutter and footpath);
  - (c) Prior to construction and placement of road pavement materials; and
  - (d) Final inspection.

**Note:** Council's standard inspection fee will apply to each of the above set inspection key stages. Additional inspection fees may apply for additional inspections required to be undertaken by Council.

- 55 The applicant shall conduct all construction and related deliveries wholly on site or shall make a separate application to Council's Engineering and Regulatory Services Department for a "Work Zone" adjacent to the development site. This application should be submitted one (1) month prior to the planned commencement of works on the development site. Application forms are available at Council's Customer Service Counter.

- 56 Prior to the commencement of any demolition work, a licensed demolisher who is registered with the WorkCover Authority must prepare a Work Method Statement to the satisfaction of the Principal Certifying Authority (Council or an accredited certifier) and a copy sent to Council (if it is not the PCA). A copy of the Statement must also be submitted to the WorkCover Authority.

The statement must be in compliance with: AS2601-1991 Demolition of Structures," the requirements of WorkCover Authority and conditions of the Development Approval, and must include provisions for:

- a) Enclosing and making the site safe, any temporary protective structures must comply with the "Guidelines for Temporary Protective Structures (April 2001)";
- b) Induction training for on-site personnel;
- c) Inspection and removal of asbestos, contamination and other hazardous materials (by appropriately licensed contractors);
- d) Dust control – Dust emission must be minimised for the full height of the building. A minimum requirement is that perimeter scaffolding, combined with chain wire and shade cloth must be used, together with continuous water spray during the demolition process. Compressed air must not be used to blow dust from the building site;
- e) Disconnection of Gas and Electrical Supply;
- f) Fire Fighting – Fire fighting services on site are to be maintained at all times during demolition work. Access to fire services in the street must not be obstructed;

- g) Access and Egress – No demolition activity shall cause damage to or adversely affect the safe access and egress of this building;
  - h) Waterproofing of any exposed surfaces of adjoining buildings;
  - i) Control of water pollution and leachate and cleaning of vehicles tyres – Proposals shall be in accordance with the “Protection of the Environmental Operations Act 1997”;
  - j) Working hours, in accordance with this Development Consent;
  - k) Confinement of demolished materials in transit;
  - l) Proposed truck routes, in accordance with this Development Consent;
  - m) Location and method of waste disposal and recycling in accordance with the “Waste Minimisation and Management Act 1995”;
  - n) Sewer – common sewerage system;
  - o) On site monitoring both during asbestos removal and the remainder of demolition activities.
- 57 Demolition work shall be carried out in accordance with Australian Standards AS 2601-1991 *Demolition of Structures* and the requirements of the NSW WorkCover Authority.
- 58 Hazardous or intractable wastes arising from the demolition process shall be removed and disposed of in accordance with the requirements of WorkCover NSW and the Department of Environment and Climate Change and Water and with the provisions of:
- a) New South Wales Occupational Health and Safety Act, 2000;
  - b) The Occupational Health and Safety (Hazardous Substances) Regulation 2001;
  - c) The Occupational Health and Safety (Asbestos Removal Work) Regulation 2001;
  - d) Protection Of the Environment Operations Act 1997 (NSW); and
  - e) Department of Environment and Climate Change Waste Classification Guidelines (2008).
- 59 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.
- 60 Where any shoring is to be located on or is supporting Council’s property, or any adjoining private property, engineering drawings certified as being adequate for their intended purpose by an appropriately qualified and practising engineer, showing all details, including the extent of encroachment and the method of

removal (or any other method) and de-stressing of shoring elements, shall be submitted with the Construction Certificate to the Principle Certifying Authority along with Council's (or other) consent if the works intrude on Council's (or other) property.

## **DURING WORKS**

- 61 During construction, the applicant shall ensure that all works and measures have been implemented in accordance with following approved plans at all times:
  - (a) Approved Erosion and Sediment Control Plan;
  - (b) Approved Traffic Management Plan and;
  - (c) Approved Construction Management Plan.
- 62 The approved Waste Management Plan for the site shall be complied with at all times during demolition works and construction works.
- 63 The principal contractor or owner builder must install and maintain water pollution, erosion and sedimentation controls in accordance with:
  - a) The Soil and Water Management Plan; and
  - b) "Managing Urban Stormwater - Soils and Construction" (2004) Landcom ('The Blue Book'); and
  - c) *Protection of the Environment Operations Act 1997*.
- 64 During Demolition, Excavation, Construction and any associated deliveries activities, access to the site shall be available in all weather conditions. The area shall be stabilised and protected from erosion to prevent any construction-related vehicles (including deliveries) tracking soil materials onto the street drainage system/watercourse, Council's lands, public roads and road-related areas. Hosing down of vehicle tyres shall only be conducted in a suitable off-street area where wash waters do not enter the stormwater system or Council's lands.
- 65 The following shall be complied with at all times:-
  - a) The applicant shall conduct all construction works and any related deliveries/activities wholly within the site. If any use of Council's road reserve is required, approval and permits shall be obtained from Council.
  - b) Construction operations such as brick cutting, washing tools or brushes and mixing mortar shall not be carried out on park/road reserve or in any other locations which could lead to the discharge of materials into the stormwater drainage system or onto Council's lands.
  - c) Hosing down or hosing/washing out of any truck (concrete truck), plant (e.g. concrete pumps) or equipment (e.g. wheelbarrows) on Council's road reserve or other property is strictly prohibited. Fines and cleaning costs will apply to any breach of this condition.
  - d) Pavement surfaces adjacent to the ingress and egress points are to be swept and kept clear of earth, mud and other materials at all times and in particular at the end of each working day or as directed by Council's Engineer.

- 66 During Demolition, Excavation and Construction, care must be taken to protect Council's infrastructure, including street signs, footpath, kerb, gutter and drainage pits etc. Protecting measures shall be maintained in a state of good and safe condition throughout the course of demolition, excavation and construction. The area fronting the site and in the vicinity of the development shall also be made safe for pedestrian and vehicular traffic at all times. Any damage to Council's infrastructure (including damage caused by, but not limited to, delivery vehicles, waste collection, contractors, sub-contractors, concrete delivery vehicles) shall be fully repaired in accordance with Council's specification and AUS-SPEC at no cost to Council.
- 67 If the work involved in the construction of a building:
- (a) likely to cause pedestrians or vehicular traffic in a public place to be obstructed or rendered inconvenient; or,
  - (b) involves the enclosure of a public place:
    - (i) a hoarding or fence must be erected between the work site and the public place.
    - (ii) If necessary an awning is to be erected sufficient to prevent any substance from or in connection with the work falling into the public place.
    - (iii) The work site must be kept lit between sunset and sunrise if it is likely to be hazardous to person(s) in the public place.
    - (iv) Any such hoarding, fence or awning is to be removed when the work has been completed.
  - (c) Suitable consent shall be obtained from Council prior to the erection of any hoarding at the property.
- 68 Any costs in the relocation, adjustment, and provision of land or support of services as requested by the service authorities and Council are to be the responsibility of the developer.
- 69 Throughout the construction period, Council's warning sign for soil and water management shall be displayed on the most prominent point of the building site, visible to both the street and site workers. A copy of the sign is available from Council's Customer Service Counter.
- 70 During construction works, the applicant/builder is required to ensure the protection and preservation of all boundary fencing or boundary walls between the subject site and adjoining properties. Any damage caused as a result of such works will be at the full cost of the applicant/builder.
- 71 All vehicles transporting soil, sand or similar materials to or from the site shall cover their loads at all times.
- 72 The operations of the site shall be conducted in such a manner as not to interfere with or materially affect the amenity of the neighbourhood by reason of noise, vibration, odour, fumes, vapour, steam, soot, ash, dust, particulate matter, waste



- water, waste products or other impurities which are a nuisance or injurious to health.
- 73 The fire hydrant and booster assembly are required to be housed within an external façade/wall of the building or elsewhere within the building structure and shall be enclosed/screened with doors to Council approval.
- 74 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.
- 75 Any material containing asbestos found on site during the demolition process shall be removed and disposed of in accordance with:
- a) WorkCover NSW requirements. An appropriately licensed asbestos removalist must complete all asbestos works if they consist of the removal of more than 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.
- 76 Results of the monitoring of any field parameters such as soil, groundwater, surface water, dust or noise measurements shall be made available to Council Officers on request throughout the construction works.

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

- 77 Prior to use and occupation of the building, an Occupation Certificate must be obtained under Section 109C(1)(c) and 109M of the *Environmental Planning and Assessment Act 1979*.
- 78 Prior to the issue of the Occupation Certificate, the development is to be constructed to meet the requirements detailed in the Acoustic Report required by this development consent for potential acoustic impacts to the adjoining BATA site. All acoustic work required by this report shall be completed prior to the issue of the Occupation Certificate and validated by a person with appropriate qualifications and experience.
- 79 Prior to the issue of the Occupation Certificate, the 80 metre extension to the right turn bay on Bunnerong Road into Westfield Drive is to be constructed to meet the requirements of the RMS required by this development consent. All roadwork shall be completed prior to the issue of the Occupation Certificate and validated by a person with appropriate qualifications and experience.
- 80 Prior to the issue of the Occupation Certificate, the visual screen along the northern side of the car parking ramp (along Westfield Drive) facing the BATA site is to be constructed to meet the requirements of this development consent. All work shall be completed prior to the issue of the Occupation Certificate and validated by a person with appropriate qualifications and experience.

- 81 Prior to the issue of the Occupation Certificate, documentation from a practising civil engineer shall be submitted to the Principal Certifying Authority certifying that all of the car parking spaces and areas, driveways entrances, ramps and egresses have been constructed generally in accordance with the approved construction plan(s) and comply with AS2890.1, AS2890.2 and AS2890.6 requirements. The internal parking facilities shall be clearly designated, sign posted and line marked. Signage and line marking shall comply with the current Australian Standards.
- 82 Prior to the release of the Occupation Certificate all applications associated with works on Council's land must be made at least 7-10 days prior to the programmed completion of works and all construction must be completed and approved by Council.
- 83 All services (Utility, Council, etc) within the road reserve (including the footpath) shall be relocated/adjusted to match the proposed/existing levels as required by the development.
- 84 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.
- 85 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, in relation to the parapets, towers, lift enclosures, drainage, boundary and road reserve levels, have been strictly adhered to; and
  - (b) A Floor Space Ratio (FSR) of 1.087:1 and height of 39.5m AHD (top of parapet) and 44.1m AHD (for tower along eastern elevation) as approved under this Development Consent No. 14/123 have been strictly adhered to and any departures are to be rectified in order to issue the Occupation Certificate; and
  - (c) The development as built, stands within No 152 Bunnerong Road Pagewood.
- 86 The applicant is responsible for the installation and protection of all regulatory/parking / street signs fronting the property. Any damaged or missing street signs as a consequence of the development and associated construction works shall be replaced at full cost to the applicant prior to the issue of the Occupation Certificate.
- 87 Prior to commencing trading all new food businesses must register the food premises with Council and register with the New South Wales Food Authority (contact details for registration for the Food Authority NSW are <http://www.foodnotify.nsw.gov.au/nafsis> or by telephone 1300 650 124).
- 88 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 any relevant damage deposit.

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

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

91

(a) Prior to the use and occupation of the building an Occupation Certificate must be obtained under Section 109C(1)(c) and 109N of the Environmental Planning and Assessment Act, 1979.

(b) Condition No.'s 77 to 90 are pre-conditions prior to the issue of the Occupation Certificate.

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

92 All parking bays shown on the approved architectural plans shall be set aside for parking purposes only and shall not be used for other purposes, e.g. storage of goods. Vehicle turning areas shall be kept clear at all times and no vehicles are permitted to park in these areas.

93 The operation of the premises shall be conducted in such a manner as not to interfere with or materially affect the amenity of the neighbourhood by reason of noise, vibration, odour, fumes, vapour, steam, soot, ash, dust, particulate matter, waste water, waste products or other impurities which are a nuisance or injurious to health.

94 No offensive odour from any process shall be detected outside the premises by an authorised Council Officer as defined in the *Protection of the Environment Operations Act 1997*.

95 Any lighting on the site shall be designed so as not to cause nuisance to other residences in the area or to motorists on nearby roads, and to ensure no adverse impact on the amenity of the surrounding area by light overspill. All lighting shall comply with AS4282-1997 Control of the obtrusive effects of outdoor lighting.

96 All vehicles shall enter and exit the premises in a forward direction.

- 97 All loading and unloading of vehicles in relation to the use of the premises shall take place wholly within the dedicated loading dock/area, which is wholly within the building.
- 98 The operation of all plant and equipment shall not give rise to an equivalent continuous ( $L_{Aeq}$ ) sound pressure level at any point on any residential property greater than 5dB(A) above the existing background  $L_{A90}$  level (in the absence of the noise under consideration). The operation of all plant and equipment when assessed on any residential property shall not give rise to a sound pressure level that exceeds  $L_{Aeq}$  50dB(A) day time and  $L_{Aeq}$  40dB(A) night time. 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  $L_{Aeq}$  65dB(A) day time/night time. For assessment purposes, the above  $L_{Aeq}$  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.
- 99 The operation of the premises shall be conducted in a manner that does not pollute waters as defined by the *Protection of the Environment Operations Act 1997*.
- 100 All waste and recycling containers shall be stored in the designated waste storage area. The waste containers are not to be over filled and the lids kept closed at all times except when material is being put in them. The occupier shall be responsible for cleaning the waste storage area, equipment, and waste collection containers.
- 101 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.
- 102 The applicant being informed that this approval shall be regarded as being otherwise in accordance with the information and particulars set out and described in the Development Application registered in Council's records as Development Application No. 14/123 and that any alteration, variation, or extension to the use, for which approval has been given, would require further Approval from Council.