

## JOINT REGIONAL PLANNING PANEL (Sydney East Region)

JRPP No	2015SYE030
DA Number	14(68)
Local Government Area	City of Botany Bay
Proposed Development	Joint Regional Planning Panel and Integrated development application for the construction of a mixed use development comprising 3 x 8 storey buildings containing 351 residential apartments and 2 commercial tenancies, and basement car park for 605 spaces. A Draft Voluntary Planning Agreement proposed to the application under S93F of the Environmental Planning and Assessment Act, 1979 accompanies the development application.
Street Address	16 Pemberton Street and 1619 Botany Road Botany. Lots 1 & 2 DP 913863; Lots C & D DP 414612; Lot 1 DP 135377; Lot 1 DP 656310; Lots B & C DP 402187; and Lots B & C DP 380476.
Applicant/Owner	Applicant – Krikis Tayler Architects Owner – JKN Australia Pty Ltd
Number of Submissions	21.01.2015 – 23.02.2015 (notification of scheme with 343 units & 562 car spaces) – 48 objection letters and 2 x petitions totalling 83 signatures
Regional Development Criteria (Schedule 4A of the Act)	The development application is referred to the JRPP pursuant to Clause 3 of Schedule 4A of the Act as the Capital Investment Value (CIV) of the proposal is over \$20 million.  The CIV of this development \$83.1 million.
List of All Relevant s79C(1)(a) Matters	<ul style="list-style-type: none"> <li>• Environmental Planning &amp; Assessment Act 1979, Part 4 – Development Assessment</li> <li>• Environmental Planning &amp; Assessment Regulation 2000, Part 6 – Procedures relating to development applications</li> <li>• State Environmental Planning Policy No. 55 – Contaminated Land</li> <li>• State Environmental Planning Policy 2004 (BASIX);</li> <li>• State Environmental Planning Policy No. 65 – Design Quality of Residential Flat buildings</li> <li>• Botany Bay Local Environmental Plan 2013</li> <li>• Draft amendment to Botany Bay Local Environmental Plan 2013</li> <li>• Botany Development Control Plan 2013</li> </ul>
List all documents submitted with this report for the panel's consideration	<ul style="list-style-type: none"> <li>• Access Report – Accessibility Solutions (NSW) Pty Ltd</li> <li>• Noise Intrusion Assessment – Day Design Pty Ltd</li> <li>• Environmental Noise Assessment – Day Design Pty Ltd</li> </ul>

	<ul style="list-style-type: none"> <li>• 3D Model – Krikis Tayler Architects Pty Ltd</li> <li>• Area Calculations – Krikis Tayler Architects</li> <li>• Architectural Plans – Krikis Tayler Architects</li> <li>• Design Verification Statement – Krikis Tayler Architects</li> <li>• Unit Schedule – Krikis Tayler Architects</li> <li>• Thermal Comfort Assessment – SLR Consulting Pty Ltd</li> <li>• BASIX Certificate – SLR Consulting Pty Ltd</li> <li>• BCA Report – Barry Johnson &amp; Associates Pty Ltd</li> <li>• Civil Engineering Drawings – KF Williams &amp; Associates Pty Ltd</li> <li>• Remediation Action Plan – Consulting Earth Scientists</li> <li>• Report on Additional Groundwater Investigation – Consulting Earth Scientists</li> <li>• Flood Study Addendum Report – KF Williams &amp; Associates Pty Ltd</li> <li>• Landscape Drawings – Krikis Tayler Architects</li> <li>• Photomontages – Krikis Tayler Architects</li> <li>• Statement of Environmental Effects (incl. Clause 4.6 for Height) – LJB Urban Planning Pty Limited</li> <li>• Stormwater Drawings (incl. Music Model Snapshot) – Australian Consulting Engineers</li> <li>• Survey – Brunskill McClenahan &amp; Associates Pty Ltd</li> <li>• Internal Traffic Assessment – Thompson Stanbury Associates</li> <li>• Waste Management Plan – Elephants Foot</li> <li>• Pedestrian Wind Environment Statement – Windtech</li> <li>• Draft Voluntary Planning Agreement – Krikis Tayler Architects</li> </ul>
Recommendation	<p>The Sydney East Joint Regional Planning Panel (JRPP), as the Determining Authority resolve to refuse development consent under Section 80(3) of the <i>Environmental Planning &amp; Assessment Act 1979</i>, to Development Application No. 14/68 for a Joint Regional Planning Panel and Integrated development application for the construction of a mixed use development comprising 3 x 8 storey buildings containing 351 residential apartments and 2 commercial tenancies, and basement car park for 605 spaces. A Draft Voluntary Planning Agreement proposed to the application under S93F of the Environmental Planning and Assessment Act, 1979 accompanies the development application.</p>
Report by	Amy Suta, Senior Development Assessment Planner, City of Botany Bay

**RECOMMENDATION:**

That:

The Sydney East Joint Regional Planning Panel (JRPP), as the Determining Authority resolve to refuse development consent under Section 80(3) of *the Environmental Planning*

Reasons for refusal:

1. The proposed development is considered to be an excessive form of development and is inconsistent with the maximum height controls as specified under clause 4.3 of the Botany Bay Local Environmental Plan 2013 (*Environmental Planning and Assessment Act 1979 s79C(1)(a)(ii)*)
2. The proposed development is considered to be an excessive form of development and is inconsistent with the maximum floor space ratio controls as specified under clause 4.4 of the Botany Bay Local Environmental Plan 2013 (*Environmental Planning and Assessment Act 1979 s79C(1)(a)(ii)*)
3. The proposed development is inconsistent with the relevant objectives contained within Clause 4.3 Height of buildings of the Botany Bay Local Environmental Plan 2013. (*Environmental Planning and Assessment Act 1979 Section 79C (1)(a)(i)*)
4. The proposed development is inconsistent with the relevant objectives contained within Clause 4.4 Floor Space Ratio of the Botany Bay Local Environmental Plan 2013. (*Environmental Planning and Assessment Act 1979 Section 79C (1)(a)(i)*).
5. The proposed Clause 4.6 Exception to the height standard is not well founded and compliance with the development standard is not considered to be unreasonable or unnecessary in the circumstance of the case. (*Environmental Planning and Assessment Act 1979 Section 79C (1)(a)(ii)*).
6. A Clause 4.6 Exception has not been provided in support of the variation to the FSR standard within the B4 and R3 zones. (*Environmental Planning and Assessment Act 1979 s79C(1)(a)(i)*)
7. The proposed development does not satisfy the draft amendment to the Botany Bay Local Environmental Plan 2013, Planning Proposal to amend Clause 4.4C, dated 27 January 2015, in terms of compliance with the Urban Design Clauses (Planning Proposal 2/2013, Department's reference: PP\_2014\_BOTAN\_001\_00). (*Environmental Planning and Assessment Act 1979 s79C(1)(a)(ii)*)
8. The proposed development is not considered to fulfil the objectives or requirements of State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Buildings regarding the proposals response in terms of its context, scale, built form, density, landscape, amenity and social dimensions (*Environmental Planning and Assessment Act 1979 Section 79C (1)(a)(i)*)
9. The total provision of open space is inconsistent with the conditions within DA-05/459/05 and DA-12/210 (approved by way of s34) relating to minimum open space requirements. (*Environmental Planning and Assessment Act 1979 s79C(1)(a)(ii)*);
10. The proposed development does not comply with the BBDCP 2013 as follows
  - a. The amount of communal open space provided does not comply with Part 4C.2.8,

- b. Communal open space at podium level between Buildings B & C will receive no solar access on 21 June (mid-winter) and does not comply with Part 4C5.8, Control C3;
  - c. The depth of the buildings do not comply with Part 4C.5.3, Control C2;
  - d. The length of the buildings do not comply with Part 4C.2.3, Control C3;
  - e. The depth of single aspect apartments do not comply with Part 4C.5.1, Control 6;
  - f. The application has provided insufficient information demonstrating compliance with the dwelling mix controls at Part 4C.5.1, Control C2;
  - g. The location and configuration of the open space is inconsistent with the controls and intent of Part 9C, Table 10;
  - h. The proposed landscaping, site coverage and unbuilt upon area does not comply with Part 4C.2.7, Table 1;
  - i. The setbacks within the B4 zone do not comply with Part 9C.5, Table 2;
  - j. The setback of Building C to Rancom Street within the R3 zone does not comply with Part 4C.2.9, Control C8;
  - k. The proposal does not comply with Part 4C.2.10, Control C2 and C3 relating to view corridors and consolidation of open space.
11. The applicant has not provided sufficient information to justify the isolation of No. 12 Pemberton Street in accordance with Part 4C.2.12. (*Environmental Planning and Assessment Act 1979 s79C(1)(a)(iii)*)
12. The applicant has not provided sufficient information to confirm whether traffic impacts have reasonably been addressed with respect to the proposed development. (*Environmental Planning and Assessment Act 1979 s79C(1)(b)*);
13. The proposed development is not in the public interest due to the adverse environmental issues relating to the proposed development. (*Environmental Planning and Assessment Act 1979 s79C(1)(e)*);
14. The proposed development is likely to have an adverse environmental impact upon the natural and built environment in that the proposal will result in a form of development entirely inconsistent with the context, scale, built form and density of the surrounding land/s and will adversely compromise the future development of this sub-precinct and its ability to respond to the emerging character of the locality. (*Environmental Planning and Assessment Act 1979 s79C(1)(b)*).

## EXECUTIVE SUMMARY

This is a report to the Joint Regional Planning Panel (JRPP) in relation to an amended Development Application for an Integrated Development Application at Pemberton Street, Botany.

The application is required to be referred to the Joint Regional Planning Panel pursuant to Clause 3 of Schedule 4A of the *Environmental Planning and Assessment Act 1979* (EP&A Act) as the Capital Investment Value of the proposal is \$83.1 million.

The application is classified as Integrated Development as it transects the watertable and as such requires the approval of the NSW Office of Water under the *Water Management Act, 2000*.

The original Development Application was lodged with Council on 2 April 2014 for a residential and mixed-use development for 343 residential units, 2 commercial tenancies and 514 car spaces across 3 buildings between 6 – 8 storeys in height.

On 18 August 2014, amended plans were received for a residential and mixed-use development for 423 residential units, 2 commercial tenancies and 708 car spaces across 3 buildings between 8 – 14 storeys in height.

On 13 January 2015 further amended plans were received for a residential and mixed-use development for 343 residential units, 2 commercial tenancies and 562 car spaces across 3 buildings measuring 8 storeys in height. This application reduced the height of the development from 14 storeys back to the original application which was a maximum of 8 storeys.

The application was then notified for a period of 30 days from 21 January 2015 – 23 February 2015. The key issues from the objections were provided to the applicant by email on 1 April 2015. These are discussed further in this report. The applicant has not provided Council with a response to the key objections.

On 23 March 2015, further amended plans were received for a development for 351 residential units, 2 commercial tenancies and 605 car spaces across 3 buildings with Building A measuring 6-8 storeys in height and Buildings B & C measuring 8 storeys in height. The main change from the 13 January 2015 development was an increase of 8 residential units and 43 car parking spaces. Specifically, the development introduced 3 additional studio bedrooms, 8 additional 2 bedroom units and lost 3 x 3 bedroom units.

The application submitted on 23 March 2015 was not re-notified. On 1 May 2015, the applicant was advised that following the assessment of the application fundamental redesign requirements had been identified. Council indicated to the applicant that the development application will be referred to the 3 June 2015 JRPP meeting.

Urban design advice has been received from Urbanac and provided an analysis of the proposed development with regard to the BBLEP 2013, BBDPC 2013 and DA-05/459/05 (the 'masterplan').

The application was referred to Council's Design Review Panel (DRP) on 9 April 2015. Comments from the DRP are discussed further in this report.

Council held a resident's meeting on Wednesday 6 May 2015. The applicant was in attendance at the request of Council and presented a summary overview of the proposed development. Questions were responded to by Council and the applicant.

Council's assessment concludes that the application does not result in a satisfactory urban design outcome and is a far less superior design when compared to the approved masterplan layout.

In most instances the proposed development departs from the BBLEP 2013 and BBDCP 2013 controls. Council Officers are of the opinion that further significant redesign is necessary in order to provide a satisfactory amenity and urban design outcome.

Council recommends that the application be refused.

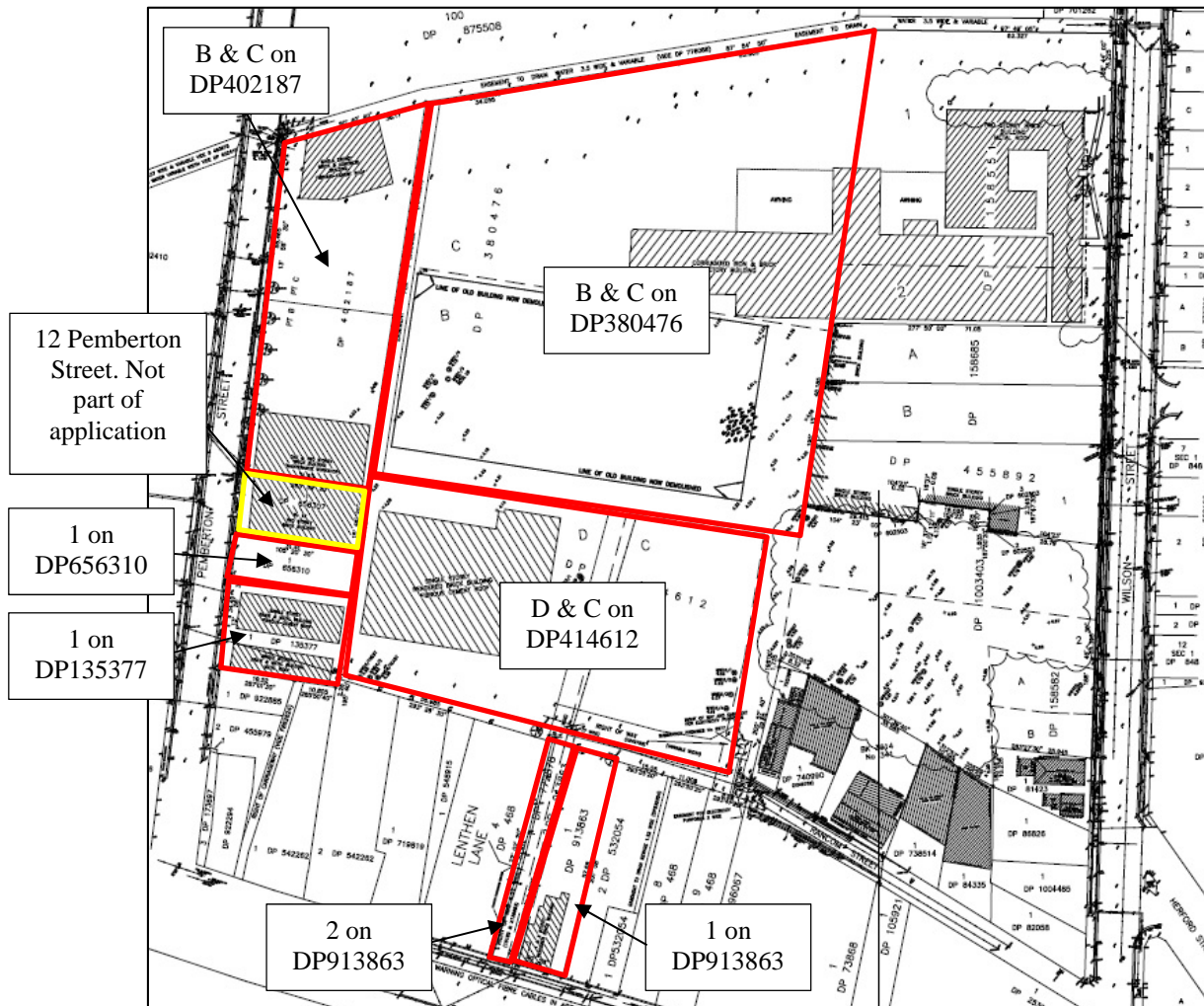
## 1. SITE DESCRIPTION

The legal description of the allotments to which this development application relates (the subject site) is described as follows:

Lot on Plan	Street description	Registered Owner
Lot 1 on DP913863	Known as 1619 Botany Road, Botany	JKN Australia Pty Ltd
Lots 1 on DP913863	Known as 1619 Botany Road, Botany	JKN Australia Pty Ltd
Lot 4 on DP414612	Known as 1617 Botany Road, Botany	JKN Australia Pty Ltd
Lot D on DP414612	Known as 1617 Botany Road, Botany	JKN Australia Pty Ltd
Lot 1 on DP135377	Known as 8 Pemberton Street, Botany. Subject to ROW	JKN Australia Pty Ltd
Lot 1 on DP656310	Known as 1617 Botany Road, Botany	JKN Australia Pty Ltd
Part Lot B on DP402187	Known as 14 Pemberton Street, Botany	JKN Australia Pty Ltd
Part Lot C on DP402187	Known as 14 Pemberton Street, Botany	JKN Australia Pty Ltd
Part Lot B on DP380476	Known as 1617 Botany Road, Botany	JKN Australia Pty Ltd
Part Lot C on DP380476	Known as Wilson Street	JKN Australia Pty Ltd

*Table 1: Site description*

For the purposes of this assessment report, all calculations are based on the site as outlined below and do not include Parkgrove East.



**Figure 1: The subject development site (Source: Survey Plan submitted with application)**

The subject site is zoned as follows (and is depicted in Figure 2):

- B1 – Neighbourhood Centre;
- B4 – Mixed Use;
- R3 – Medium Density Residential.



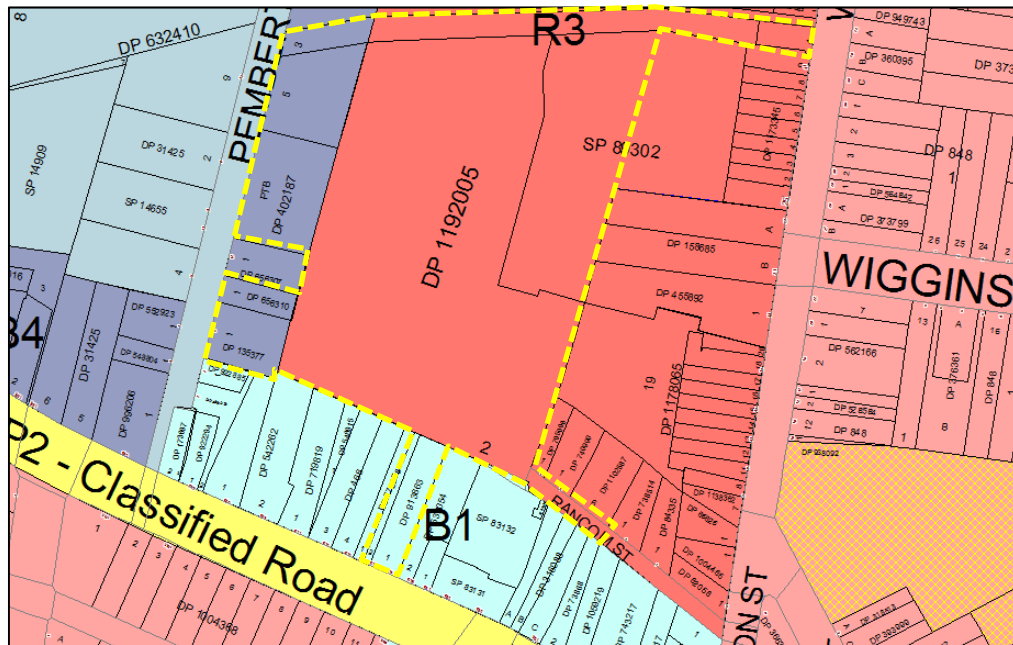
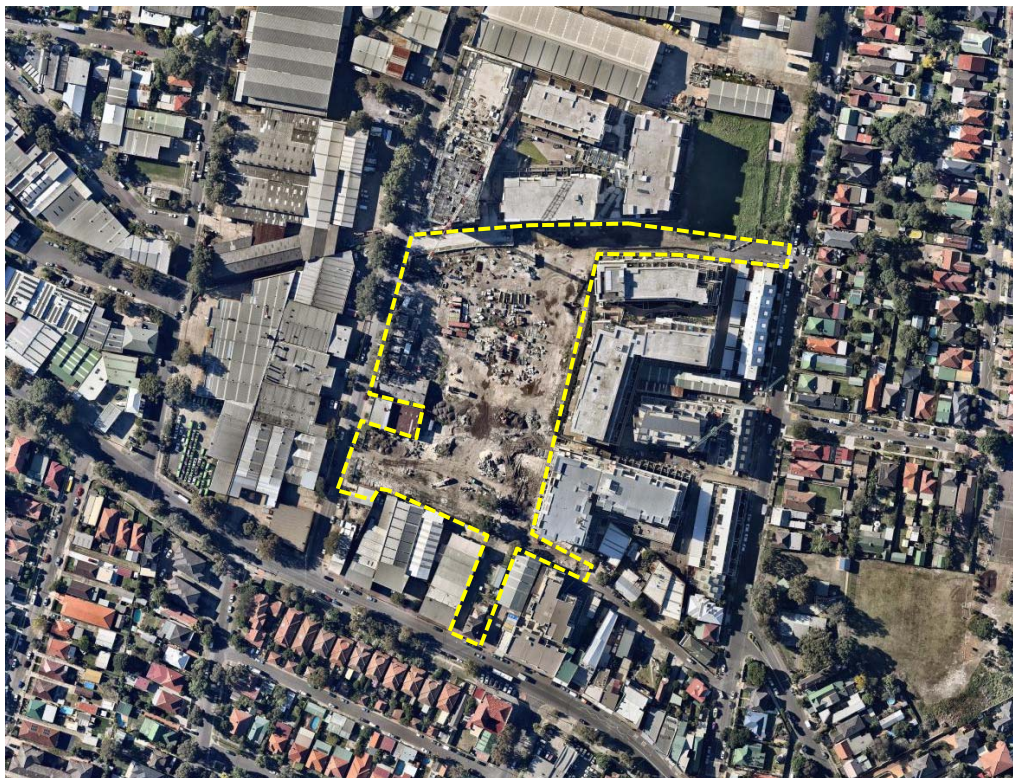


Figure 2: Zoning Map of the development site

The site is located on the eastern side of Pemberton Street and 55 metres to the north of the Banksmeadow shops on Botany Road with two lots (Lots 1 & 2 on DP913863) fronting Botany Road. The combined area of the subject site is 19,507sqm and is defined by New Street 1 to the north, Parkgrove 1 (East) (No. 25-33 Wilson Street, Botany) to the east, Rancom Street to the south and Pemberton Street to the west.



*Figure 3: Subject site aerial view*



Located further to the south of Botany Road is Sir Joseph Banks Park, a 28 hectare regional park which runs parallel to Foreshore Drive. Beyond the Park further to the south is Port Botany and the northern shores of Botany Bay.

The Sydney (Kingsford-Smith) Airport is located approximately 3.2km to the northwest of the site. Bus services are available along Botany Road. The closest bus stops to the subject site are located in Botany Road, approximately 400m to the south and in Swinbourne Street, approximately 250m to the north.

## 2. SURROUNDING DEVELOPMENT

Adjoining the development site to the immediate north is a high density mixed use commercial and residential development developed by the same developer, known as Parkgrove 2 at No. 42-44 Pemberton Street, Botany. This development comprises three buildings with Building A and C stepping down along Pemberton Street from six storeys at the New Street 1 and Pemberton Street corner, to three storeys in the north. Building E fronting New Street 1 and opposite the subject site is seven storeys.



*Figure 4: Parkgrove 2 (No. 42-44 Pemberton Street, Botany) – view from Pemberton Street looking north-east. Building C at the corner of Pemberton and New Street 1 in the foreground.*

Further to the north is a proposed residential development known as Parkgrove 3 at No. 52-54 Pemberton Street developed by Australand Property Group, Botany. At the time of writing, an amended development application was under assessment. A series of buildings and building configurations ranging in height from 2 storey town houses to 8 storey residential flat buildings located towards the centre of the site proposed.

Further north in Warrana and Kurnell Streets is low-density residential.



*Figure 5: Residential development in Kurnell and Warana Streets – view looking south-east*

The residential development to the north and east is predominantly one and two storey single dwellings dating from the 1950's, interspersed with larger, two storey, more contemporary dwellings. Development to the east of Wilson Street comprises one and two storey dwellings and semi-detached dwellings.



*Figure 6: Residential development along the eastern side of Wilson Street – view looking south-east*

To the immediate east of the subject site is a residential development known as Parkgrove East which incorporates low scale townhouses fronting Wilson and then steps up to 6 storey buildings referred to as Buildings E, F & D.





*Figure 7: Residential development along the western side of Wilson Street – view looking south-west from Wilson Street*



*Figure 8: Buildings F and E – view looking east from Pemberton Street (across the subject site)*

To the south of the subject site are the existing tenancies fronting Botany Road.



*Figure 9: Existing tenancies fronting Botany Road – view looking east along Botany Road*

To the west is an established light industrial area which is characterised by a range of low-rise, large and small scale industrial warehouses. Vehicle repair stations are a common land use in this area. This area has been rezoned as B7 Business Park.



*Figure 10: Existing industrial development to the west of Pemberton Street – view looking north-west along Pemberton Street*



### The Wilson Pemberton Precinct

The subject site is part of the Wilson Pemberton Street Precinct. The Wilson Pemberton Street Precinct (depicted in the figure below) is an area planned for revitalisation after the demand for heavy industry began to diminish in the 1970s.



**Figure 11: Development Site at Nos. 19-21 Wilson Street, Botany**

The precinct is 8.5 hectares in area and is located to the south-east of the Botany Bay local government area. It is 12 kilometres (km) south of the Sydney Central Business District, 2km from Sydney Airport and 2 km from Port Botany. It forms the eastern edge of an industrial area which is bounded by part of Warrana Street to the north, Wilson Street to the east, part of Rancom Street to the south and Pemberton street to the west. The precinct is characterised by industrial warehouses that interface with single dwellings to the north (Warrana and Kurnell Street) and the east (Wilson Street). To the south, the precinct interfaces with a mix of uses (residential, commercial and industrial) in Rancom Street. Warehouses are located adjacent to the precinct to the west.

Industrial development within the precinct is generally sub-standard in condition and appearance. Warehouses have aged visibly and minimal improvements have been made to the existing building stock. Industrial uses appear to have outgrown local road infrastructure with Pemberton Street too narrow to accommodate on street parking and two-way truck movements and remain outside of policy considerations of the Council in relation to the industrial interface with residential zones.

### 3. BACKGROUND

#### 3.1. History of the DA

The development application seeks approval from the JRPP for an Integrated Development Application.

The original Development Application (DA-14/68) was lodged with Council on 2 April 2014 for a residential and mixed-use development for 343 residential units, 2 commercial tenancies and 514 car spaces across 3 buildings between 6 – 8 storeys in height.

On 18 August 2014, amended plans were received for a residential and mixed-use development for 423 residential units, 2 commercial tenancies and 708 car spaces across 3 buildings between 8 – 14 storeys in height.

On 13 January 2015, further amended plans were received for a residential and mixed-use development for 343 residential units, 2 commercial tenancies and 562 car spaces across 3 buildings measuring 8 storeys in height. This application reduced the height of the development from 14 storeys back to the original application which was a maximum of 8 storeys.

The application was then notified for a period of 30 days from 21 January 2015 – 23 February 2015. Council received a total of 48<sup>1</sup> objection letters and two petitions totalling 83 signatures. The key issues from the objections were provided to the applicant via email on 1 April 2015 and are discussed and addressed further in this report.

The application submitted on 23 March 2015 was not re-notified. On 1 May 2015, the applicant was advised that following the assessment of the application fundamental redesign requirements had been identified. Council indicated to the applicant that the development application will be referred to the 3 June 2015 JRPP meeting.

#### 3.2. Masterplan DA

Development Application DA-05/459 was approved by Council at its Development Committee meeting on 2 August 2006 which established the Masterplan for the subject site including the number of buildings, dwellings & commercial/industrial units, heights, car parking spaces, internal road network, internal footpath and cycleway network, open space and associated landscaping. Subsequent, significant amendments have been made to the Masterplan by the following applications:

DA Number	Approval Date	Details
DA-05/459/02	Approved 21 May 2008 (Council meeting)	Amendments to layout and configuration of the buildings, namely: <ul style="list-style-type: none"> <li>Buildings A, B1, B2, C, D, E, F, G, H, I and J;</li> </ul>

<sup>1</sup> Note: The total number of submissions includes separately received submissions from the same person but does not double count one submission signed by two or more people (i.e. family, husband and wife, etc.).



DA Number	Approval Date	Details
		<ul style="list-style-type: none"> <li>• A reduction in the number of residential flat buildings;</li> <li>• An increase in the number of townhouses;</li> <li>• An overall increase in the total number of dwellings and off street parking spaces;</li> <li>• A reduction in the industrial/commercial floor area;</li> <li>• An increase in the overall GFA and reduction in the overall site coverage of buildings;</li> <li>• Deletion of building G and replacement with communal open space and communal facilities;</li> <li>• Replacement of building K with townhouses;</li> <li>• Reduction in the basement car park so that it does not extend under the townhouses fronting Wilson Street – and inclusion of below podium car park between B1 and B2;</li> <li>• Deletion of New Street 3 and alternative access proposed; and</li> <li>• Amendments to the stormwater detention arrangements for the site; and overall increase in deep soil landscaping.</li> </ul>
DA-05/459/05	Approved 1 August 2012 (Council meeting). Approval dated 5 September 2012.	<p>Application to make amendments to DA 05/459 including:</p> <ul style="list-style-type: none"> <li>• Increase heights of Buildings E &amp; F;</li> <li>• Delete Townhouses I &amp; J;</li> <li>• Relocate communal open space;</li> <li>• Reduce public open space from 3,900sqm to 3,554sqm;</li> <li>• Relocate New Street 2;</li> <li>• Close eastern end of New Street 1;</li> <li>• Closure of middle of Rancom Street; and introduce traffic signals at the intersection of Pemberton St &amp; Botany Road.</li> </ul>
DA-05/459/06	Refused 23 August 2013 (Council meeting)	<p>Application to make modifications to DA 05/459 including:</p> <ul style="list-style-type: none"> <li>• Increase the height of Building D from 4 storeys to 6 storeys (additional 6m) and increase its building footprint to become an L-shaped building extending</li> </ul>

DA Number	Approval Date	Details
		<p>to the east;</p> <ul style="list-style-type: none"> <li>• Increase the number of units from 24 to 100 units and contain a total of 173 car parking spaces;</li> <li>• Relocation of south-eastern area of communal open space from between Buildings J &amp; D to be dispersed throughout the entire site and to increase the overall site area of the central main area of public open space to be not less than 4,000sqm;</li> <li>• Provision of a pedestrian and cycleway connecting the public park with Wilson Street; and</li> <li>• Increase the overall Parkgrove Masterplan site by including No. 12 Rancom Street.</li> </ul>
DA-12/210	Approved through the Land and Environment Court	Construction of a 6 storey RFB containing 100 units (as requested as part of DA-05/459/06).

Table 2: History of approvals

The SEE argues that as the masterplan has been subsequently amended and was not submitted as a formal ‘Staged Development Application’, “*the subject DA does not need to be consistent.*” The SEE further argues that “*The Masterplan DA was prepared and approved under the superseded Botany Bay LEP 1995 and therefore it does not reflect the density and heights permitted under the current controls.*” As such, the applicant does not view the masterplan as a valid document and has lodged a new Development Application as opposed to a s96 modification to DA-05/459/05 (i.e. the ‘masterplan’).

Council has received legal advice confirming that the masterplan has legal status. As such, the proposed development is required to be consistent with the masterplan. An assessment of the proposed development has been provided within this section of the report and has clearly identified that the development application is not consistent in terms of the masterplan approval.

The masterplan was approved on 5 September 2012 (modified by Section 96) and resulted in the layout depicted in the figure below.



Figure 12: Approved Masterplan (DA-05/459/05)

Consideration of the masterplan is discussed in detail below. A summary of the key differences between the proposed development and the masterplan are outlined as follows:

- Shortening of Building A and relocation of the western portion fronting Pemberton Street to create a dog-leg extending south and adjacent to the through-site link;
- Removal of New Street 2 (remaining western portion);
- Consolidation of Buildings B1 and B2 and reorientation to run parallel to Building C;
- Relocation of the public park to address the Pemberton Street and New Street 1 corner and extension south-east to the middle of the through-site link;
- Reconfiguration of the public park into two smaller spaces;
- Removal of New Street 3;
- Inclusion of a north-south through-site link from New Street 1 to Rancom Street;
- Increase the height of Building A from 5 storeys to 8 storeys, with the dog-leg stepping progressively down to 6 storeys;
- Increase the height of Building B from 3 storeys along Pemberton, 6 in the middle and 5 addressing the park, to 8 storeys;
- Increase the height of Building C from 3 storeys along Pemberton Street and 5 storeys along Rancom Street to 8 storeys.

The applicant has justified the proposal and the variation from the masterplan. Below is an outlines of the improvements on the masterplan (extract from the SEE):

- *“Shifts the public park to the north western corner of the site where it has direct frontage to two public streets and achieves high levels of solar access;*
- *Removes New Street 2 which is an unnecessary service road;*
- *Enables the site to utilise the permitted FSR under Botany Bay LEP 2013 according with the objects of the Act;*
- *Steps the building heights towards Pemberton Street providing an appropriate transition from low density residential dwellings in Wilson Street to the Business Park precinct in Pemberton St;*
- *Concentrates all vehicular movements off Pemberton Street with no through connection to Wilson Street; and*
- *Maintains a strong north south link that is highly overlooked to improve passive surveillance and a sense of safety and security.”*

It should be noted that the permitted FSR under the Botany Bay LEP 1995 was 1:1 in the 2(b) Residential zone (which is in a commensurate location to the R3 zone) and in the 4(b1) Mixed Industrial Restricted zone (which is in a commensurate location to the B4 zone). The key difference being that residential uses were not previously permitted within the 4(b1) zone, however they are currently permitted within the B4 zone.

A summary of the key numerics regarding the masterplan and the proposed development are outlined in the table below. The key differences are discussed in detail below.

Issue	Development	Proposed	Consistent (Yes/No)
<b>Numeric controls from the approved plans</b>			
<b>GFA</b>	Building A: 6,516sqm Buildings B: 5,964sqm Building C: 5,969sqm <b>Total GFA: 18,449sqm</b>	29,824sqm	No 11,375sqm GFA increase
<b>Total Dwellings</b>	Building A: 54 Buildings B: 52 Building C: 50 <b>Total units: 156</b>	351	No Increase of 195 units
<b>Dwelling Mix</b>	7 x Studio (4%) 43 x one bed (27%) 93 x two bed (59%) 11 x three bed (7%) 2 x four bed (1%) <b>TOTAL: 156</b>	13 x studio (3%) 168 x one bed (47%) 166 x two bed (47%) 4 x three bed (1%) <b>Total 351</b>	No
<b>Numeric controls from the conditions</b>			
<b>7</b>	Minimum 3,554sqm open space park + 1,000sqm additional	3,220sqm	No 1,334sqm decrease
<b>8</b>	Maximum RLs as follows: Building A: RL25.6 Building B1: RL18.6 Building B2: RL26.1	Building A: RL30 Building B: RL30.7 Building C: RL30.6	No Building A: 4.4m increase Building B: 4.6m – 12.1m increase Building C: 8.1m increase

Issue	Development	Proposed	Consistent (Yes/No)
	Building C: RL 22.5		
22(a)	3,000sqm of the park is to receive 3 hours of direct solar access to at least 75% of that area between 9:00am to 3:00pm on 21 June.	Approximately 2-3 hours of solar access is provided to 75% of the park. Exact calculations have not been provided.	Generally
28	A pedestrian and cycle link is to be provided between Pemberton and Wilson Streets to facilitate internal circulation within the Precinct and access through the Precinct. It is to be located south of New Street 1 (generally in line with Wiggins Street).	A pedestrian and cycle link is provided from the Pemberton Street and New Street 1 corner, east through the public open space to join with the existing east-west through-site link within Parkgrove East.  The proposed through-site link is generally in line with Wiggins Street. The approved through-site link within Parkgrove East is south of the alignment of Wiggins Street.	Yes
60	For the residential portion of the development, the number of on-site car parking spaces to comply with the following provisions: a) 1 bedroom and studio units: 1 space b) 2 bedroom units: 2 spaces c) 3+ bedroom units: 2 spaces d) Visitor car parking spaces shall be provided at 1 space per 10 dwellings in developments of 20 or more dwellings	605 spaces  The DCP requires visitor parking to be provided at the rate of 1 space / 5 dwelling	Yes  Car parking provision complies with the DCP and provides more visitor parking than what was required under the masterplan
67	Minimum ceiling heights for habitable rooms shall be 2.7m.	2.7m	Yes
68	The building height and bulk is to be distributed on the site so that there is no significant loss of amenity to adjacent sites, open space and public streets.	Council, supported by the Urban design review consider that the relocation and placement of buildings and public open space result in a les superior design with resulting adverse impacts to amenity for the residents and adjacent sites	No

Table 3: Summary of key numeric controls of DA-05/459/05 (Source: Approved Plans and Development Consent DA-05/459/05)

### 3.2.1. Public Open Space

Development Consent DA-05/459/05 required the provision of an open space park with a minimum of 3,554sqm. This consent relates to Parkgrove East and West. Condition No. 7(c) required an additional area of 1,000sqm (minimum) to be dedicated as 'public open space' to be for the benefit of future residents and surrounding neighbours, thereby resulting in a total of 4,554sqm. The additional 1,000sqm is required to be provided as a public park, and proportioned in a usable shape between Buildings E, D and J (refer to the figure above).

Subsequent to the approval of DA-05/459/05, and by way of a Land and Environment Court s34 agreement, approval of Building D was allowed to extend east into the public open space between Buildings D, E and J, thereby removing a significant area of public open space.

The approval of Building D thereby required the absorption of that lost space into the Parkgrove West development. An open park space of 4,554sqm was to be provided on the subject site.

The proposed relocation and reconfiguration of the park into a more linear form comprised of two smaller open spaces is considered to be a substantial variation from that approved under the masterplan. Additionally, a total of 3,220sqm public open space is provided over two separate areas. The size proposed is significantly smaller than the total size required under the masterplan and as amended by DA-12/210.

The Urban design review notes that whilst these spaces are somewhat contiguous, it is considered that they will have the feel of a series of separate but interlinked spaces due to their different outlooks, solar access and the way that they are framed by the proposed buildings to have internal corners and constrained views.

The urban design review also notes that the masterplan provided a more superior and readily achievable urban design outcome arrangement of a single consolidated open space which would:

- maximise opportunities for active recreation;
- maximise opportunities for solar access;
- maximise opportunities for view sharing for dwellings in the proposed development and from the adjacent Parkgrove East development; and
- provide a frontage of the open space which connects into a public street (New Street 2, the north-south pedestrian link).

The urban design review further notes that in Section 9C.3.2 of the DCP (Table 10 – Public Open Space south of New Street 1), the size of the proposed public open space will be a minimum of 3000sqm. The table talks about potential benefits in extending the open space to Botany Road, and also for it to be used to potentially close New Street 2 (the north-south pedestrian link) there is no requirement for it to connect to Pemberton Street. It is also considered that the DCP wording is intended to provide for a single contiguous open space rather than a fragmented open space composed of a series of interlinked spaces.

It is considered that across precincts there should be a wide range of open spaces from small-scale pocket parks to large ovals in order to allow communities to have a full range



of recreational opportunities. Given the scale of the development across the entire Pemberton Wilson Street Precinct, it is considered that there is a far greater public benefit to be had from a single open space with a substantial size than by constructing a series of smaller interconnected public spaces. In part this is because the individual developments across the precinct each have smaller scale private open spaces where residents may interact and find more intimate open-space in which to recreate. This site represents the last opportunity in the southern side of the precinct to create a large-scale open space that would complement the suite of open spaces across the precinct. Providing a single continuous large-scale open-space also provides opportunities for more active forms of recreation in the precinct that cannot be provided by small spaces.

Council agrees with the assessment made in the Urban design review and cannot support the relocation and reconfiguration of the public open space.

### **3.2.2. Deletion of Part of New Street 2 and New Street 3**

It should be noted that the extract of the masterplan provided in Figure 13 above has not been amended to illustrate the requirement under Condition No. 7(a) for the deletion of New Street 2 adjoining and contiguous with the eastern boundary of Public Park 1. The removal of New Street 2 extends from its entry along New Street 1 to the extent of the red dotted line halfway along Building A (refer to Figure 13 above).

The development proposes the removal of the remaining part of New Street 2 and New Street 3. The removal of both street networks are considered to be a significant variation to the approved masterplan.

The approved internal street network is considered to be fundamental with regard to the subsequent placement of buildings and open space. Council considers that the removal of these road networks has thereby facilitated the relocation of buildings, as well as the increase of building envelopes that had previously been restricted by the location of the internal road network.

The driveway access for Building A is considered to be consistent with the masterplan development as it complies with the DCP intent of minimising/eliminating driveway entries off Pemberton Street.

With respect to the masterplan, the Urban design review summarises that by sharing a substantial interface with the public road the public open space becomes clearly part of the public domain and easily recognisable by members of the public that it is their space to use. The interface with the public road also provides good levels of accessibility and passive and active surveillance by the public.

Council considers that the removal of New Street 2 significantly impacts the location of the public open space and results in adverse amenity impacts.

Council considers that the removal of New Street 3, whilst a variation to the masterplan, is a better planning outcome as it increases the public open space on the site thereby resulting in better amenity to residents and adjoining development.

The basement entry to Building D is off the proposed Rancom Street extension. It should also be noted that a separate s96 application has been submitted to Council for assessment to amend the Land and Environment Court approval for Building D (DA-12/210) which seeks to remove New Street 3 and provide a reduced turning circle in a similar location.

### **3.2.3. Building Placement**

The reconfiguration of Buildings A, B1 and B2 is considered to be a substantial variation from the approved masterplan.

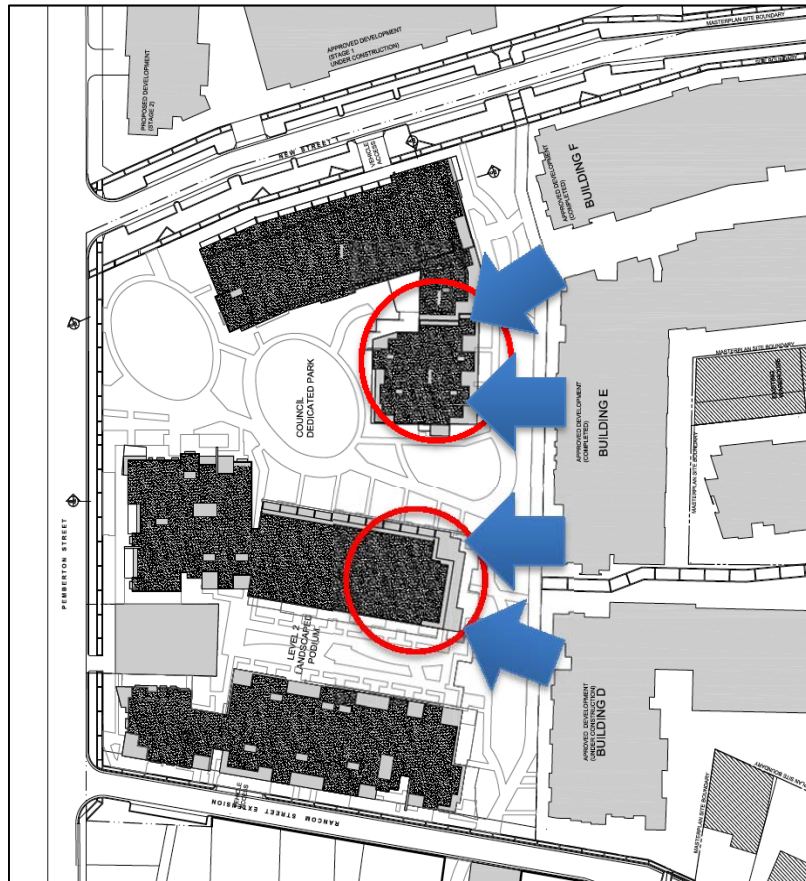
The relocation of the western portion of Building A to create a dog-leg fronting Building E will subsequently result in increased overshadowing to the east and any space to the immediate west. The removal of the built form from the Pemberton Street and New Street 1 intersection results in the loss of a strong corner edge.

The Urban design review notes that in general terms buildings that have internal corners arising out of “U” and “L” shaped building plans create significant internal community impacts in the corners including overlooking, acoustic impacts, and poor of cross-ventilation. This is the case in Building A. This form creates poor visual outlook from the apartment in the corner and a curious arrangement of blank walls.

Council considers that the consolidation and reorientation of Buildings B1 and B2 results in the creation of an awkward space between Buildings A and B in which the placement of public open space seems to have been an afterthought.

The consolidation and reorientation of Buildings B1 and B2 closer to the existing development to the immediate east and in front of that site’s east-west pedestrian link obstructs outlook from Building D and E to the west.

The Urban design review goes onto state that the placement of buildings along the north-south pedestrian link adversely impacts on opportunities for view sharing towards the west, and a generally less expansive outlook across the site. This is demonstrated in the Figure below.



*Figure 13: Plan extract showing areas where view sharing and outlook is significantly affected compared to the masterplan layout (Source: Urban design review prepared by Urbanac).*

Council considers that the proposed development results in an urban design that creates significant adverse amenity impacts on the future residents and adjoining residents. Council considers that the masterplan represents a superior urban design response in terms of building placement and the resulting amenity impacts.

Council cannot support the proposed development in its current form with regard to building placement.

### 3.2.4. Height

The proposed increase in height of all proposed buildings is considered a substantial variation from that approved under the masterplan.

The proposed development seeks to increase the height as follows:

- Building A by 3 storeys in the R3 zone;
- Building B by 5 storeys in the B4 zone and 2-3 storeys in the R3 zone;
- Building C by 5 storeys in the B4 zone and 3 storeys in the R3 zone.

The proposed development provides no transition in height to the site boundaries and adjoining development. This is a clear contrast to what is achieved in the masterplan.

The Urban design review also notes this and provides the following assessment:

- the arrangement of building form does not result in a high quality internal amenity or an effective buffer for the apartments fronting Pemberton Street;
- the resulting substantial height increases on Pemberton Street are not considered to satisfactorily manage the scale relationship to the existing and proposed adjacent development;
- there is no apparent attempt to manage the impacts of the additional height, such as by corralling taller buildings towards the centre of the precinct, to manage transitions in height between the proposed development and the context, or to use variations in height to minimise overshadowing on significant public and private open space areas and adjacent development;
- there does not appear to be any justification for the blanket exceeding of the 22m height plane in every building;
- a more appropriate response would introduce a lower-height built form in keeping with the height controls;
- residential uses could be provided in a building that had an internal arrangement (and likely narrow width) to enable dwellings to have an eastern aspect, buffered from Pemberton Street;
- the height of Building B and C should be in accordance with the maximum height controls in the LEP, but could be locally increased at the New Street corner (in accordance with the DCPS's provisions for corner development) in order to respond to both the corner situation and to approved or existing taller street frontage buildings to the north;
- further to the east, higher building forms consistent with the R3 zoning would be more appropriate, where height, scale and bulk impacts can be more effectively managed as a result of their substantial effective setback from Pemberton Street;
- the height of Building C is also not supported as an appropriate transition to the adjacent development on the south side of Rancom Street extension, where there is a height limit of 14m.

Council considers that the proposed urban design response does not adequately manage the transition in scale between the proposed higher density on the subject site, and lower density forms in immediate proximity. Whilst the separation distances are consistent with the SEPP65 Principle, the exceedance in height and FSR are considered to warrant further treatment in order to manage the observable transition in scale between buildings.

Council does not support the proposed development with regard to height.

#### **4. THE PROPOSAL**

On 23 March 2015, amended plans for 351 residential units, 2 commercial tenancies and 605 car spaces were submitted. This proposal is comprised as follows:

- Three building envelopes (Buildings A, B & C) containing a maximum gross floor area (GFA) of 29,824sqm;
- Total of 351 units with the following breakdown:
  - o 13 x studios;
  - o 168 x 1 bed units;
  - o 166 x 2 bed units;

- 4 x 3 bed units
- 2 x commercial tenancies (Buildings B & C) with a total GFA of 481sqm;
- FSR of 1.69:1 in the R3 Medium Density zone, 1.33:1 in the B4 Mixed Use zone and 0.2:1 in the B1 Neighbourhood Centre zone;
- Building envelopes ranging as follows:
  - Building A: 6 – 8 storeys fronting New Street 1;
  - Building B: 8 storeys fronting Pemberton Street (upper 2 levels are recessed on the eastern side);
  - Building C: 8 storeys fronting Pemberton and Rancom Street (upper 2 levels are recessed on the eastern side)
- 3,220sqm of open space in addition to a north-south and east-west through-site link to be dedicated to Council, via a draft Voluntary Planning Agreement;
- 4m road widening along Pemberton Street;
- 3 basement levels of car parking for 605 spaces.

The built form of the development and its relationship to existing development is summarised as follows:

Building	Location	Zone	Height (storeys)	Adjoining Development
A	Frontage to New Street 1	R3	8 The dog-leg steps down to 6 storeys	6 storey RFB to the east (Buildings E & F). 7 storey RFB to the north (Building E).
B	Frontage to Pemberton Street	Part B4	8	Single storey industrial building to the west. Zoned B7 with a height of 12m.
	The length of the building extending east into the middle of the site	Part R3	8 Top two levels on the eastern end are recessed	
C	Frontage to Pemberton Street and Rancom Street	Part B4	8	Single storey industrial building to the west. Zoned B7 with a height of 12m.
	The length of the building extending east along Rancom Street	Part R3	8 Top two levels on the eastern end are recessed	2 storey shop top housing fronting Botany Road. 4-6 storey RFB to the east.

Table 4: Parkgrove West – proposed built form summary table.

#### 4.1. Numeric Overview

The numeric overview of the proposed development (as applied for by the applicant) is as follows:

Key Numeric	Details
Site Area	19,507sqm (as per Section 1 – Site Description)
GFA	29,824sqm
FSR	B4 – 1.33:1 R3 – 1.69:1 B1 – 0.2:1
Publically Accessible Open Space	6,526sqm, comprising 3,220sqm deep soil park, 2,306sqm through site link, 374sqm Lenthen Lane deep soil area, and 626sqm remainder deep soil area.

*Table 5: Numeric overview of the proposal, as per application documentation*

#### 4.2. Height of Building

The application proposes a height non-compliance within the B4 zoned portion of the site up to 17m, and in the R3 zone a height non-compliance of up to 5.4m. The application has applied the bonus provisions in the R3 zone, under clause 4.3(2A). This is detailed in the assessment section of this report.

The applicant has submitted a Clause 4.6 Exception in support of the proposed non-compliance. Council officers have assessed the Clause 4.6 Exception and conclude that a reduction in height is necessary. This is discussed further in the body of this report.

#### 4.3. Floor Space Ratio

The proposal seeks consent for an FSR of 1.33:1 in the B4 zone, 1.69:1 in the R3 zone and 0.2:1 in the B1 zone. The total gross floor area of the development is 29,824sqm. The distribution of the floor area results in a non-compliant FSR within the B4 and R3 zone, however the FSR is compliant within the B1 zone as no works are proposed and the floor space of an existing building that is to remain is compliant. The applicant indicates that the average FSR proposed across the subject site is compliant. This is detailed in the assessment section of this report.

#### 4.4. Public Domain Works and Open Space

The proposed development is comprised of a series of joined open spaces totalling 3,220sqm and spreads from the northwest corner of the block (Pemberton and New Street 1) through to the middle of the eastern boundary of the site. A park is located on deep soil and includes a series of interlinked pedestrian walkways that bind the open spaces. The DCP required the dedication of a park of 3000sqm.



The application includes a through-site link from north (New Street 1) to south (Rancom Street) along the eastern boundary. This link is continued across Rancom Street and through to Botany Road as the Lenthen Lane through-site link.

The application includes a 4m road widening along Pemberton Street in accordance with the DCP.

A substantial number of the objections received by Council relate to the relocation of the open space from the centre (as per the approved masterplan). Council does not support the fragmentation of and location of the proposed open space and believes the current design is contrary to the intention of the DCP to provide for a single contiguous open space. Further, the Urban design review confirms that the location and design as per the approved masterplan is recommended. This is detailed in the assessment section of this report.

#### **4.5. Parking and Traffic**

Vehicular access to the external road networks is proposed via New Street 1 (for Building A) and Rancom Street (for Buildings B & C). This is consistent with the DCP which seeks to limit the number of driveway crossings along Pemberton Street. Building A includes a three level basement while Building B & C includes a two level basement and at grade basement.

The development proposes 605 car parking spaces which satisfies the DCP parking requirements for residential, commercial and visitor spaces.

The applicant has submitted an Internal Traffic Assessment prepared by Thompson Stanbury Associates. The Report assesses the internal development traffic considerations including the suitability of the proposed vehicular access arrangements, the adequacy of the proposed off-street parking provision and the proposed parking layout with respect to internal circulation and vehicle manoeuvrability. The report concludes that:

- The proposed access arrangements comply with the minimum requirements of AS2890.1-2004 with respect to the land-use proposed, the capacity of the parking areas serviced and the functional order of the frontage road;
- The proposed off-street parking provision accords with Council's relevant DCP requirements;
- The proposed car park layout suitably conforms to the intentions of the requirements of AS2890.1-2004, AS2890.6-2009 and AS2890.2-2002; and
- The proposed internal circulation and manoeuvring arrangements are capable of providing for safe and efficient vehicular movements during peak times.

Council's Traffic Engineer notes that no pedestrian, bike or public transport assessment within the vicinity of the site has been provided and on-street waste collection from New Street 1 for building A is not acceptable.

An external traffic impact report was not submitted with the application.

## 5. PLANNING CONSIDERATIONS

The proposed development has been assessed under the provisions of the *EP & A Act 1979*. The matters below are those requiring the consideration of the Joint Regional Planning Panel.

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

### **5.1. s79(C)(a) The provisions of any EPI and DCP and any other matters prescribed by the Regulations. (S.79C(1)(a)(i)and(iii))**

#### **5.1.1. Environmental Planning and Assessment Act 1979 – Integrated Development**

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

The NSW Office of Water provided a response on 26 March 2015 requesting Council to stop the clock to allow the submission of further information. The NSW Office of Water requested that the determination of groundwater take volumes is to be separately detailed for:

- The construction phase; and
- The occupational phase (i.e. the predicted ongoing pumping for the life of the building) of the development project.

The Applicant has not provided the additional information as requested by the NSW Office of Water.

#### **5.1.2. State Environmental Planning Policy (Infrastructure) 2007**

The proposed development was referred to the Roads and Maritime Services in accordance with the provisions of State Environmental Planning Policy (Infrastructure) 2007 Schedule 3 – Traffic Generating Development.

The application was referred to the RMS on 20 October 2014. The RMS responded on 10 November 2014 raising no objection to the amended proposal.

The RMS responded on 25 March 2015 and provided comments for Council to consider. These comments have been included as conditions.

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

A BASIX Certificate (540244M\_02) and Thermal Comfort Assessment (prepared by SLR) was submitted with the application. The report concludes that implementation of the modelling specifications will allow the ABSA and BASIX specifications to be achieved.

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

The provisions of SEPP No. 55 have been considered in the assessment of the development application. Clause 7 of SEPP No. 55 requires Council to be certain that the site is or can be made suitable for its intended use at the time of determination of an application.

The Applicant submitted the following documents prepared by Consulting Earth Scientists:

- Remediation Action Plan for the former aerosols Australia site and proposed commercial redevelopment (1617 Botany road, 8 Pemberton Street and part 25-33 Wilson Street);
- Remediation Action Plan for part of the former Brambles site (25-33 Wilson Street, Botany);
- Report on Additional Groundwater Investigation (1617 Botany Road, 9-17 Wilson Street, 25-33 Wilson Street and 8 Pemberton Street);
- Report on Additional Groundwater Investigation (Former Brambles Site Area 1: 25-33 Wilson Street).

From the SEE it is not clear if this part of Parkgrove has been remediated. Council's Environmental Scientist has reviewed the development application and notes the extensive history of the site from the masterplan stage to date. Although contaminated land assessment was completed and submitted with the masterplan that was approved, each development application for the site requires assessment to ensure the information at that date of lodgement is sufficient and meets current regulatory requirements and guidelines, and is no out of date.

Given the changes in guidelines, the time elapsed since the completion of the environmental site assessments and remediation action plans, and the use of a portion of the site for potentially contaminating uses till 2014, there is insufficient information to determine how and if the site can be made suitable for the proposed development uses, including the park that is to be dedicated to Council.

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

A set of plans were referred to Council's Design Review Panel (DRP) for comment. On 9 April 2015 the DRP met with the Applicant and provided comments in the context of the ten design quality principles for residential flat development. In their report it states that *"the Panel has reservations in relation to the design proposed"* given the departure from the 2006 Master Plan. The Panel further states *"If nevertheless Council were to support the overall block layout as now submitted, it should only be on the basis of convincing evidence as to why the proposal could not conform to the 2006 Masterplan, and resolution of the other issues raised above, particularly those under 'Amenity'"*.

The DRP, Applicant and Council's response to the ten Design Quality Principles is outlined below. A more detailed assessment of the Design Quality Principles is provided at APPENDIX 1. It should be noted that the applicant has not specifically addressed each of the principles.

Comments from the Urban design review have also been included within this section.

### **Design Quality Principles**

The ten design principles identified in the Residential Flat Design Code (RFDC) are addressed below and where relevant, include the specific comments raised by Council's Design Review Panel (from their report dated April 2015) together with a commentary provided by the Applicant.

#### **Principle 1: Context**

##### **DRP comments:**

*The site is part of the Wilson and Pemberton Streets Precinct in Botany which has been progressively redeveloped over a number of stages in accordance with the Masterplan for the site approved by Botany Council in 2006. Detailed information as to the history of the process and contextual issues is covered in the S.E.E. and need not be reiterated.*

##### **Applicant's comments:**

*The architectural style and design of the buildings are appropriate in the context of the site and with the desired future character of the area. The buildings will significantly increase natural surveillance and usability to the proposed public park and through-site link through the positioning of the Building A and B alongside the park and each building designed to adjoin the through-site link.*

##### **Council Officer's comments:**

Council engaged an Urban Designer to provide advice on the application (Urban design review).

The urban design review indicated the built form of the Parkgrove East development establishes the context to the east of the site, with an arrangement of buildings and spaces separating buildings to which the proposed development should respond. There is, however, little or no continuity between the layout of building forms for the proposed development and those buildings already constructed on Parkgrove East. The proposed buildings are generally not aligned with existing buildings, and the spaces separating the buildings do not flow into Parkgrove West to form extended vistas or potential view corridors. Instead, these are instead blocked by proposed buildings. This is illustrated below.

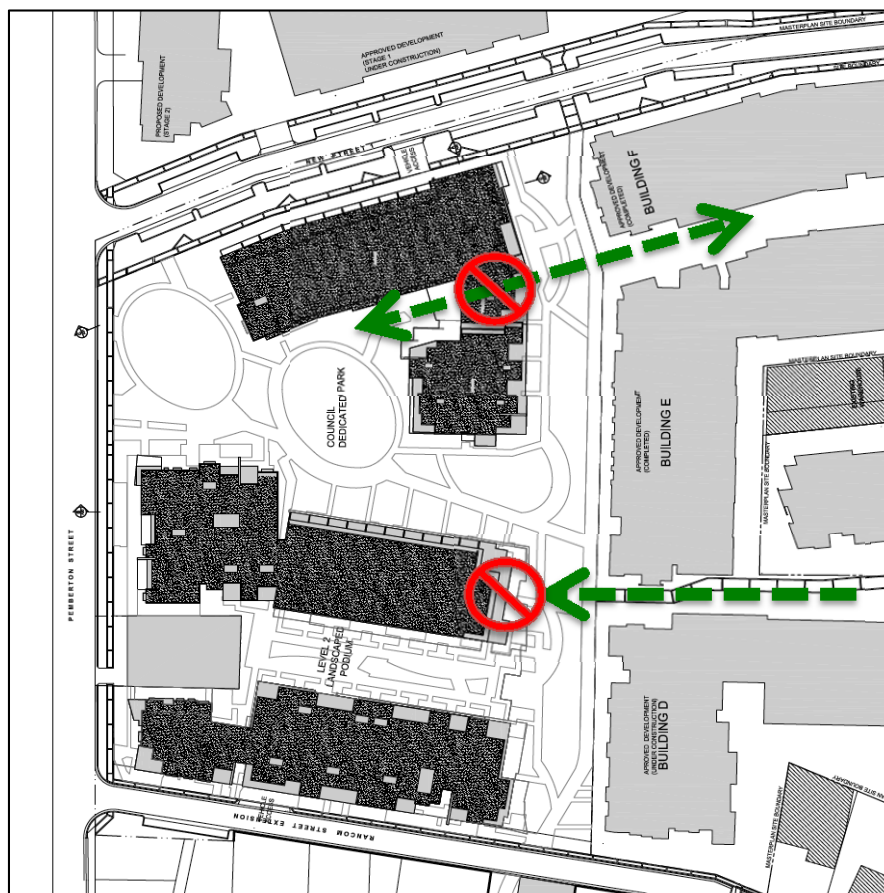


Figure 14: Plan extract showing the lack of alignment of buildings and the blocking of potential views and the flow of open space through the precinct (Source: Urban design review, prepared by Urbanac)

The Urban design review considers that the appropriate urban design response is to have regard to the layout of the buildings on the adjoining blocks and in particular the alignment of open spaces separating those buildings. Better urban design practice would seek to align those open spaces in the new development so that there is a continuity and flow of space across the precinct and an opening up of views through the precinct.

In light of the above, it is Council's view that that the proposed building layout is not considered to be a satisfactory response to the context established by Parkgrove East.

## Principle 2: Scale

### DRP comments:

*The general form and height overall of the buildings is in scale with development in the precinct. In relation to the individual buildings, the design emphasizes and articulates the ground floor facades and creates a suitable human scale.*

### Applicant's comments:

*An assessment of the proposed development confirms that the form and scale of the development is acceptable on urban design grounds and will not adversely affect the amenity of the area or its surroundings. The buildings relate to the existing topography of the site and the desired future character of the Area.*

*All buildings will be stepped from 8 storeys at the western edge of the site to 6 storeys. This will reduce the bulk and scale of each building to ensure adequate levels of solar access can be maintained to future residential units, public domain and adjoining sites.*

Council Officer's comments:

The urban design review states that an appropriate scale relationship must be established between the proposed development and the remainder of the adjacent and surrounding street forms at 10-12m. In particular, the proposed development completely dominates No. 12 Pemberton Street with buildings 17m higher to both the north and south. Across Pemberton Street, the western side has a height control of 12m, equally dominated by the site's proposed building heights. This is considered a poor scale relationship.

Council considers that the relationship to the north should at least match the 7 storey form and be of a lower height along the south to interface and provide an appropriate transition with the lower height built forms fronting Botany Road. The buildings should step down in height where they adjoin the public open space so as not to confine the space or restrict solar access.

**Principle 3: Built Form**

DRP comments:

*The subject application proposes very significant variations to the approved Masterplan in relation to the basic configuration of the buildings. The S.E.E. argues that since the Masterplan was not submitted as a formal 'Staged Development Application', 'the subject DA does not need to be consistent'. (p.3) The approved Masterplan proposed a single large public open space in the centre of the site, framed by the building forms. The present design proposes a series of linked smaller spaces, one on the corner of Pemberton and 'New' streets, and one in the centre of the site. A north-west pedestrian through-site link is common to both designs.*

*It is considered that the 2006 approved Masterplan would result in a superior outcome, and the submission did not adequately demonstrate why it should not be implemented. There are three key issues:*

- A. As approved there would be a potentially excellent and much larger central open space, integrated with the through-site link, with more winter sunlight and far better related to the height of the surrounding buildings. The main positive attribute of the proposed new arrangement relates to the location of open space on the Pemberton/New Street corner, which could appear more accessible to residents from outside the immediate area and with good winter sunlight. Whilst this is agreed, the other adjoining space to its west would be substantially overshadowed until mid-afternoon, and much of it is confined within the acute internal corner of 'Building A', presenting more as private than public space. Whilst skilful landscape design can ameliorate some of the negative impacts, and indeed the design as presented has thoughtfully considered these issues, the fundamental difficulties raised by the now proposed building forms remain.*
- B. Council officers advised that a number of objections have been received from residents who have purchased flats in the completed buildings on the adjoining site to the east of the subject development, and when doing so assumed that future development on the subject site would comply with the adopted 2006 Masterplan. Instead of enjoying outlook to the large open space, under the submitted design the*



*majority of these flats, as now proposed would look over the much narrower north south pedestrian link directly towards the proposed new 6 & 8 storey buildings, - with only a small proportion having an open view directly towards the proposed park. There would also be overshadowing impacts, additional to those resulting from a complying development, at least on some of the lower-level units. This is an issue with ethical and legal implications requiring careful assessment: information was not submitted with the application quantifying the extent of additional negative impacts on existing buildings in relation to outlook and shading.*

- C. The individual buildings A, B & C as proposed differ significantly in their form from those in the approved Masterplan, with impacts which appear to be mainly negative in comparison with a development consistent with the Masterplan, such as those itemized below under Amenity.*

*The built form is stated to exceed the LEP height control by 5.5 metres, only because of lift overruns, and this additional height appear to have no unacceptable impacts. The density which in essence generates the building bulk is appropriate in principle, and in the S.E.E is stated to be compliant.*

Applicant's comments:

*An assessment of the proposed development confirms that the form and scale of the development is acceptable on urban design grounds and will not adversely affect the amenity of the area or its surroundings. The buildings relate to the existing topography of the site and the desired future character of the Area.*

Council Officer's comments:

The proposed development varies significantly from the approved masterplan with regard to the location of the public open space, placement of buildings, height and density. This has been discussed further in the report.

The proposed development application exceeds the FSR limit within the B4 and R3 zones. The proposed development exceeds the height limit within the B4 and R3 zones. The exceedance in height is not a result of the lift runs alone but a result of the top 1-2 levels within the R3 zone and levels 4-8 within the B4 zone.

The exceedance in height and FSR, in conjunction with the orientation and length of the buildings contribute to an overdevelopment of the site and a bulk that creates unacceptable amenity impacts.

In addition, the public open space has been relocated and reconfigured resulting in two smaller, linear open spaces. This is inconsistent with the intent in the DCP, decreases the separation distance between the buildings on the subject site and those to the immediate east, and blocks the views originally afforded the residents in Buildings E, F and D to the immediate east.

Council cannot support the built form of the proposed development.

## Principle 4: Density

### DRP comments:

*The density is stated to be 1.58:1 and compliant "...with the maximum permitted under the LEP when taking into account an average of the B4 and B5 zones." (p.32) Assessment of the density is somewhat complicated due to the different standards applying to the two zones. Overall the density is of the order appropriate for development on this site, but the Panel defers to Council as to detailed interpretation of compliance in relation to the controls.*

### Applicant's comments:

*All buildings will be stepped from 8 storeys at the western edge of the site to 6 storeys. This will reduce the bulk and scale of each building to ensure adequate levels of solar access can be maintained to future residential units, public domain and adjoining sites.*

### Council Officer's comments:

70% of units receive at least 2 hours of solar access between 9am to 3pm. This does not comply with 4C.8 of the BBDCP 2013 in that it considers this area as requiring 3 hours as this is not a high-density area. Notwithstanding this, the development does otherwise comply with the RFDC requirements under SEPP 65 and Council considers this to be reasonable given this is an approach consistent with existing approvals in the immediate area.

The proposed FSR exceeds the maximum requirement in the B4 Mixed Use zone and R3 Medium Density Residential zone, including an uplift to 1.65:1 (pursuant to Clause 4.4B(3)).

The applicant has not submitted a Clause 4.6 Exception to justify the variation to the FSR standard. The applicant provides the following justification:

*"Given that this is a Masterplan site, the maximum permitted FSR when considering the combined development area of Stage 1 and 2 (entire site) is 1.58:1. (this is reduced from 1.65:1 due to the B4 zoned land that only permits a FSR of 1:1). The FSR across the entire site complies with the maximum permitted of 1.58:1. 4.2.118 On the basis of the area of the allotments the subject of this DA and the FSR across the entire Masterplan site, the DA complies with the maximum FSR permitted under the LEP."*

With regard to this application, Parkgrove East is not included within the area calculations of the 'subject site'.

As is consistent with other large-scale developments in the Wilson Pemberton Street Precinct, FSR is assessed on a per zone basis, not as an average across a subject site.

With regard to numeric density, the proposed development exceeds the controls and cannot be supported.

With regard to perceivable density, the proposal is considered to be an overdevelopment of the site which results in unacceptable amenity impacts.

The dog-leg of Building A will be stepped from 8 storeys to 6 while the upper two levels on the western edge of Buildings B and C will be recessed. This recess is not considered to have any readily perceivable reduction on overshadowing to the public open space given its location to the immediate south.

During mid-winter, the eastern half of the public open space remains overshadowed until 2pm. The western half of the public open space receives full solar access from 11am onwards. The north-south pedestrian through-site link receives solar access during the mid-day hours. The acute internal corner of 'Building A' will remain overshadowed during mid-winter and on 20 March. Stepping the dog-leg of Building A may be contributing to greater solar access to the public open space during 22 December than if it were 8 storeys. However there remains partial overshadowing of this area during the morning hours when the public open space should be receiving full solar access.

The stepping the dog-leg of Building A and the recess to the western end of Buildings B and C may have some benefit with regard to solar access to the upper levels of Buildings D, E & F to the east during mid-winter.

### **Principle 5: Resource, Energy and Water Efficiency**

#### DRP comments:

*Although the proposal is stated to comply with BASIX, there are no apparent initiatives beyond these requirements. In a development of this scale it would be unfortunate if the opportunity is not taken to include additional measures such as solar generation, water recycling etc.*

#### Applicant's comments:

*The proposal provides passive solar energy devices, such as deep balconies, cross ventilation of units and high levels of solar access.*

#### Council Officer's comments:

A BASIX Certificate (540244M\_02) and Thermal Comfort Assessment (prepared by SLR) was submitted with the application. The report concludes that implementation of the modelling specifications will allow the ABSA and BASIX specifications to be achieved.

No other additional measures have been proposed.

### **Principle 6: Landscape**

#### DRP comments:

*The landscape design as proposed responds creatively to the constraints imposed by the building forms, and is supported in principle, subject to Council being satisfied that the planting is consistent with its strategy for street-tree planting, paving etc. The extensive use of native species is endorsed.*

*Further consideration should be given to the projected population profile over coming decades and the detailed design developed to provide for example small toddlers play areas, shade structures and seating etc. for elderly residents. Since it is proposed that the substantial areas of open space would be dedicated to Council for its maintenance and upkeep as public parkland, detailed design is a matter for Council consideration*

Applicant's comments:

*A landscape plan accompanies the DA, which seeks to enhance the amenity of the landscaped areas in conjunction with the Public Park and through-site link. These areas will be landscaped to meet the needs of future users.*

Council Landscape Officer's comments:

- The park is subjected to a moderate amount of shading during the winter period but there are some areas of the park that remain in deep shade all day throughout winter.
- The 3m landscaped setback to New Street 1 is minimal considering the height of the building on this frontage (24 metres). A more ideal landscaped setback of 4-5m would enable the planting of larger/canopy trees. A 3m width is very restrictive for tree a canopy, restricting the palette of suitable species to ameliorate the building. Secondly, the setback appears to be terraced which further limits the planting of trees by allowing inadequate space for root development.
- Planter beds should be at the one level.
- A 6.1m building setback to Rancom Street has been indicated however only a 3m depth of landscaping. This leaves 3m of unspecified treatment. The Landscape Masterplan drawing treatment/setback width (3m) appears to conflict with the width indicated on the architectural Ground Floor Plan (6.1m to building). A 3m landscape setback to a building with a 22m height plane is inadequate. This setback area also appears terraced which further limits the planting of trees by allowing inadequate space for root development. Planter beds should be at the one level.
- The 3m landscape setback to Pemberton Street is not continuous due to ramping and its width restrictive for large trees to enable building screening. This setback appears to be terraced which limits the planting of larger trees by allowing inadequate space for root development.
- The internal frontages to the park provide 1.2m wide planters within the ground floor terraces. The lack of landscaping on these building frontages should be offset by the extensive landscaping and tree planting that can be achieved in the public park, improving internal screening of Buildings A and B. Similarly the north-south through-site link enables large canopy tree planting and additional screening and amelioration of the eastern facades of these buildings but not the open space outlook originally approved.
- There is only an internal communal room and no external communal green space for Building A.
- The expansive rooftops of all three buildings have not taken advantage of solar access by placing rooftop gardens in these areas.
- The Pemberton Street public domain treatment is inconsistent with the proposal for the adjoining development to the north.
- A concept landscape plan has been provided but is inadequate to fully assess the landscape proposal (e.g. planting plan, pavement finishes to all locations, finishes to setback ramps etc.).
- Paving finishes in plan view are not provided. The details also do not indicate all paved finishes (e.g. to both through site links (share paths), New Street 1, Pemberton and Rancom Streets).
- The park adjacent the heritage building should have a heritage connection to it through the use of specific design and finishes.

**Principle 7: Amenity**DRP comments:

*Amenity of the residential flats generally would be acceptable, although the percentages scheduled as receiving solar access and cross-ventilation are only marginally above the RFDC recommendations for “dense” residential areas. It might be questioned whether this large open site should be categorized as “dense”, but it is appreciated that the height control in this case acts as a significant constraint in achieving high levels of solar access.*

*The cross-over units typically would provide excellent amenity, and the balconies generally are recessed and well-planned in relation to living spaces. The liveability of balconies would be enhanced with the provision of adjustable screens to provide privacy and solar protection when needed: in particular projecting corner balconies should be screened to minimize wind impacts. Clear glass balustrading should be avoided at lower levels in particular, and at the upper levels a balance between clear glass and solid materials should be developed to provide both adequate privacy and take advantage of views where available.*

*A further issue is the large number of units with bedrooms set at the rear of units, with ‘snorkel-type’ access to light and natural ventilation. On balance it is considered that these would be acceptable, given that the width of the link to the balconies appears to be adequate to allow perhaps for seating, dressing table and the like.*

*The building forms as varied from the approved Masterplan generate a number of serious concerns in relation to access:*

- Building A is L-shaped in plan, with undesirably long corridors and a very large number of units accessed on alternate floors, approximately three times the 8 per core recommended by the RFDC. Although commendably there is daylight and outlook provided at the ends and centres of the corridors, this configuration is not attractive. Two separate cores serving the two wings would be far preferable.*
- Buildings B & C similarly have unduly long corridors and a large number of units accessed from them. Some of the units in both blocks are very distant from their main entrance/lift core.*

*The approved Masterplan with its four separate blocks and buildings of simpler form has the potential for the building plans to better address these concerns.*

Applicant’s comments:

*Adequate separation is provided between the buildings to maintain privacy and improve the amenity for future residents.*

*The proposal provides passive solar energy devices, such as deep balconies, cross ventilation of units and high levels of solar access.*

*A BASIX report has been prepared, and accompanies this application which indicates that the development meets the water, energy and thermal comfort energy savings target.*

Council Officer’s comments:

*The following has been proposed with regard to solar access and ventilation:*

- 70% of apartments with 2 hours of sun between 9:00am and 3:00pm on 21 June;
- 61% of apartments with natural cross ventilation;
- 9% of apartments as single aspect apartments.

The proposed development meets the RFDC requirements for building separation except for the acute internal corner of Building A which does not meet the 12m separation distance between habitable rooms and balconies.

The sizes of the units are larger than the minimum requirement within the RFDC and BBDCP 2013 and all units are provided with compliant sized balconies. It is considered that despite the depth of the units which exceed the RFDC and DCP requirements, the outperformance on internal unit and balcony size justifies this non-compliance as an acceptable level of internal amenity would be achieved.

Council agrees with the DRP comment that the liveability of balconies would be enhanced with the provision of adjustable screens.

Notwithstanding the above, Council reiterates the DRPs statement that the height control in this case act as a significant constraint in achieving high levels of solar access. This is readily apparent with regard to the communal open space between Buildings B and C and the public open space between Buildings A and B. Solar access to the buildings to the east is limited and is considered to be largely attributed to the height of the dog-leg of Building A, and the height and separation distance of Buildings B and C (notwithstanding technical compliance with the RFDC).

The proposed development does not comply with the DCP controls regarding 3 hours of solar access (as this is not a high density area). The development does otherwise comply with the RFDC requirements under SEPP 65, which are considered to be reasonable in this case. Additionally, this is consistent with existing approved development in the immediate area.

The Urban design review provides an assessment on building length and the resulting amenity impacts. The Urban design review notes that the arrangement of the two very long eight storey buildings at the south of the site is considered to be a poor urban design outcome. Apartments towards the centre of each building and facing the private space will not have access to distance views or a substantial outlook other than looking at the opposite building.

Council reiterates that the proposed height, FSR and building length cannot be supported in its current form as it impacts on the amenity of future residents and neighbouring residents.

### **Principle 8: Safety and Security**

#### DRP comments:

*Generally acceptable, with reservations as to the proposed public park space located within the internal corner area of Block A. This could be better allocated as communal area, perhaps with some fencing/screening and secure entry gate.*

Applicant's comments:

*The buildings will significantly increase natural surveillance and usability to the proposed public park and through-site link through the positioning of the Building A and B alongside the park and each building designed to adjoin the through-site link.*

*The provision of separate entries for the majority of Level 1 (ground) units to and from the public domain further reinforces the increased activity throughout the site and the public domain.*

Council Officer's comments:

All ground level apartments provide access to either the street level, the public open space or through-site link. Council considers that this will increase the usability and safety of these spaces.

The main pedestrian entry lobby for Building A adjoins the northern end of the through-site link. The main pedestrian entry lobby for Building B adjoins the public open space and the main pedestrian entry lobby for Building C is off the southern end of the through-site link. These entries are considered acceptable as they are not enclosed spaces and are in locations that are more heavily trafficked.

Two commercial tenancies have been provided along the frontage of Pemberton Street which provides a physical separation between the street and residential uses above. The residential uses above provides opportunities for passive surveillance over Pemberton Street.

The public open space, through-site links, New Street 1 and Rancom Street will also be subject to passive surveillance opportunities from the residential uses.

Basement entries have been provided off New Street 1 for Building A and Rancom Street for Buildings B and C (combined basement). This is in accordance with the DCP which aims to limit or remove driveway entries onto Pemberton Street.

Council considers that safety and security have been adequately taken into account however note the DRP's comment regarding the acute internal corner of the public open space at Building A.

**Principle 9: Social Dimensions**DRP comments:

*Within each of the three residential blocks the large number of units at each level would have negative consequences in relation to social interaction. The communal space where planned in Block A is internal and without sunlight. That in Block B located adjacent to the entrance and with outlook to the park should be attractive and could be well-utilized, but no such facility is provided for Block C.*

*Although the buildings would be adjacent to the proposed public park areas, it is important to also provide effective communal facilities within each block. As the applicant would be aware, in developments of this scale the Panel advocates provision of communal space at roof-top on each block, with a small enclosed area fitted with facilities. These would have good sunlight and attractive outlook, some to the waters of the Bay. Some*

*minor intrusion above the height control in the centre of the blocks would have no negative impacts, could enhance the profile of the buildings, and would be strongly supported.*

Applicant's comments:

*The retail tenancies along Pemberton Street will activate the public domain and provide an appropriate interface with the industrial uses on the western side of Pemberton Street and retail/commercial uses on Botany Road.*

Council Officer's comments:

Opportunities for social interaction should be incorporated in accordance with the DRP comments. Any proposal for a roof-top space would be considered by Council provided height and FSR standards were met.

**Principle 10: Aesthetics**

DRP comments:

*Reservations relate primarily to the issues raised under Built Form, which inevitably have aesthetic implications. The detailed architectural character as proposed is generally supported, but could be enhanced by the detailed variation which would result from development of screening and balustrades to balconies as suggested above. Two additional detailed refinements are suggested:*

- The western end wall of Block A has been articulated to some extent, but still presents as an 'end wall': further detailed design development, perhaps by way of returning balconies around the corner, providing windows to the stair etc. could overcome this concern.*
- The top of the masonry wall elements in the elevations could be enhanced perhaps by a fine 'floating' cap to provide visual refinement.*

Applicant's comments:

*The architectural style and design of the buildings are appropriate in the context of the site and with the desired future character of the area.*

Council Officer's comments:

Enhancements to the architectural character of the proposed development should be incorporated in accordance with the DRP comments.

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

The amended SEPP and new Apartment Design Guide is due for release in 2015.

The amendments include the inclusion of car parking as an item that cannot be used as grounds to refuse development applications if the recommended minimums set out in the Apartment Design Guide are satisfied. This is in addition to the existing standards relating to minimum ceiling height and apartment area.

The proposed amendments also include a new clause (6A) that makes certain sections of the Apartment Design Guide prevail over a development control plan. The sections of the Apartment Design Guide that would prevail are:



- visual privacy
- solar and daylight access
- common circulation and spaces
- apartment layout
- ceiling heights
- balconies and private open space
- natural ventilation and
- storage

The proposed development does not comply with many of the above controls, as highlighted in the SEPP 65 Assessment above. However, the proposed development does accord with the overall aim with regard to housing and population targets.

The SEPP 65 requirements are less stringent than Council's DCP controls and as such, Council has lodged a submission to the Department of Planning and Environment on the SEPP 65 Review – Improving Apartment Design and Affordability (dated 30 October 2014).

#### 5.1.7. Botany Bay Local Environmental Plan 2013

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

Principal Provisions of BBLEP 2013	Compliance (Yes/No)	Comment
Land Use Zone  Is the proposed use/works permitted with development consent?	Yes	Under the BBLEP 2013 the site is zoned: <ul style="list-style-type: none"> <li>• Part B4 – Mixed Use;</li> <li>• part R3 – Medium Density Residential;</li> <li>• part B1 – Neighbourhood Centre.</li> </ul> Building A is permitted within the R3 zone with Council's consent under BBLEP 2013. Buildings B & C include 2 x ground level tenancies and are permitted within the B4 zone with Council's consent under BBLEP 2013. The proposed recreation area in the R3 zone is permissible as it is identified as 'any other development not specified in item 2 or 4'. Only landscaping works are proposed in the B1 zone and are permitted with consent.
Does the proposed use/works meet the objectives of the zone?	Yes	The following objectives are relevant to the proposed development: <p>R3 Zone Objectives</p> <ul style="list-style-type: none"> <li>• To provide for the housing needs of the community within a medium density residential environment.</li> </ul>

Principal Provisions of BBLEP 2013	Compliance (Yes/No)	Comment
		<ul style="list-style-type: none"> <li>To provide a variety of housing types within a medium density residential environment.</li> <li>To enable other land uses that provide facilities or services to meet the day to day needs of residents.</li> <li>To encourage development that promotes walking and cycling.</li> </ul>
	Yes	<p>B4 Zone Objectives:</p> <ul style="list-style-type: none"> <li>To provide a mixture of compatible land uses.</li> <li>To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.</li> </ul> <p>The size of the commercial tenancies fronting Pemberton Street provide flexibility for a range of tenancies including the fit-out for smaller tenancies if required. The development does not propose any ground floor residential units with frontage to Pemberton Street. It is considered that the proposed ground floor commercial tenancies satisfy the objectives of the B4 zone.</p>
	Yes Only landscaping works proposed	<p>B1 Zone objectives:</p> <ul style="list-style-type: none"> <li>To provide a range of small-scale retail, business and community uses that serve the needs of people who live or work in the surrounding neighbourhood.</li> <li>To ensure that development does not adversely impact on residential amenity and is compatible with the existing streetscape.</li> </ul>
Does Clause 2.6 (subdivision) apply to the site?	No	<p>Subdivision is not proposed as part of the development application.</p> <p>However, the size of this DA will be excised from the remainder of the site via a separate subdivision DA, currently being assessed by Council.</p>
What is the height of the building?	-	The permitted and proposed height of buildings within each zone is as follows:

Principal Provisions of BBLEP 2013	Compliance (Yes/No)	Comment										
Is the height of the building below the maximum building height?	No <b>Refer to discussion below</b>	<table><tr><th>Required</th><th>Proposal</th></tr><tr><td>B4: 10m</td><td>Part Building B - 27.4m Part Building C - 27.4m</td></tr><tr><td>R3: 10m</td><td>Building A - 25.79m Part Building B - 27.4m Part Building C - 27.4m</td></tr><tr><td>B1: 14m</td><td>N/A (existing heritage building – no works proposed)</td></tr></table>	Required	Proposal	B4: 10m	Part Building B - 27.4m Part Building C - 27.4m	R3: 10m	Building A - 25.79m Part Building B - 27.4m Part Building C - 27.4m	B1: 14m	N/A (existing heritage building – no works proposed)		
		Required	Proposal									
		B4: 10m	Part Building B - 27.4m Part Building C - 27.4m									
		R3: 10m	Building A - 25.79m Part Building B - 27.4m Part Building C - 27.4m									
		B1: 14m	N/A (existing heritage building – no works proposed)									
B4 zone												
R3 zone												
B1 zone												
Clause 4.3 (2A) Is the proposed development in a R3/R4 zone?	Yes	Part of the subject site is located in the R3 zone.										
If so does it comply with site of 2000m <sup>2</sup> minimum; and	Yes	The R3 zone part of the site has an area of 14,191sqm.										
maximum height of 22m?	No <b>Refer to discussion below</b>	All buildings within the R3 zone exceed the 22m height as follows: Building A: exceeds height by 3.79m Part Building B: exceeds height by 5.4m Part Building C: exceeds height by 5.4m										
What is the proposed FSR?	-	The permitted and proposed height of buildings within each zone is as follows: <table><tr><th>Required</th><th>Proposal</th></tr><tr><td>B4 – 1:1</td><td>B4 – 1.33:1</td></tr><tr><td>R3 – 1:1</td><td>R3: 1.69:1</td></tr><tr><td>B1 – 2:1</td><td>B1 – 0.2:1</td></tr><tr><td>Average: 1.53:1 (29,837.15m<sup>2</sup>)</td><td>1.53:1 (29,824m<sup>2</sup>)<sup>1</sup></td></tr></table>	Required	Proposal	B4 – 1:1	B4 – 1.33:1	R3 – 1:1	R3: 1.69:1	B1 – 2:1	B1 – 0.2:1	Average: 1.53:1 (29,837.15m <sup>2</sup> )	1.53:1 (29,824m <sup>2</sup> ) <sup>1</sup>
Required	Proposal											
B4 – 1:1	B4 – 1.33:1											
R3 – 1:1	R3: 1.69:1											
B1 – 2:1	B1 – 0.2:1											
Average: 1.53:1 (29,837.15m <sup>2</sup> )	1.53:1 (29,824m <sup>2</sup> ) <sup>1</sup>											

Principal Provisions of BBLEP 2013	Compliance (Yes/No)	Comment
Compliance with the maximum FSR?	No <b>Refer to discussion below</b>	The proposed FSR exceeds the maximum FSR permitted within each zone. A clause 4.6 submission has not been lodged.
Clause 4.4 (2A) Is the proposed development in a R3/R4 zone?	Yes	Part of the subject site is located in the R3 zone.
If so does it comply with site of 2000m <sup>2</sup> minimum; and	Yes	The R3 zone has an area of 14,191sqm.
maximum FSR of 1.5:1?	No <b>Refer to discussion below</b>	The proposed FSR within the R3 zone exceeds the permissible FSR of 1.5:1 FSR. A clause 4.6 submission has not been lodged.
Clause 4.4B Does this clause apply to the site.	Yes	The site benefits from an additional 1.65:1 FSR (pursuant to Clause 4.4B(3)).
Does the proposed development comply with Clause 4.4B?	No <b>discussion below</b>	The proposed FSR within the R3 zone exceeds the permissible uplift of 1.65:1.
Is the land affected by road widening?	Yes	The BBDCP 2013 identifies that Pemberton Street is to be further widened by 4m as per Part 9C.3 (Table 4) of the DCP. The proposal provides a 4m road widening along Pemberton Street.
Is the site listed in Schedule 5 as a heritage item or within a Heritage Conservation Area?	Yes	Lot 1 on DP913863 is identified as a local Heritage Item (I60 – Commercial Building). This lot is included within the development application. The proposal plans state that Lot 1 on DP913863 is an area for future development and that the Heritage Building is to be refurbished and restored for adaptive reuse. however, no works are proposed to the existing heritage building.
Development near zone boundaries	N/A	The proposed development is permissible within the relevant zone and does not rely upon the provisions of Clause 5.3.
The following provisions in Part 6 of the LEP apply to the development:		The subject site is affected by Class 4 Acid Sulfate Soils. An Acid Sulfate Soils (ASS) assessment was

Principal Provisions of BBLEP 2013	Compliance (Yes/No)	Comment
6.1 – Acid Sulfate Soils	Insufficient Information	prepared by Consulting Earth Scientists and submitted as part of the overall site Masterplan. Council's Environmental Scientist has reviewed the development application. Given the changes in guidelines, the time elapsed since the completion of the environmental site assessments and remediation action plans, and the use of a portion of the site for potentially contaminating uses till 2014, there is insufficient information to determine how and if the site can be made suitable for the proposed development uses, including the park that is to be dedicated to Council.
6.2 – Earthworks	No	<p>The proposed development seeks excavation for basement levels. A Geotechnical Report has been submitted.</p> <p>The proposal constitutes Integrated Development as it involves the construction of a basement that will transect the water table. The application was referred to the NSW Office of Water for its approval under the <i>Water Management Act 2000</i>.</p> <p>The NSW Office of Water provided a response on 26 March 2015 requesting Council to stop the clock to allow the submission of further information. The NSW Office of Water requested that the determination of groundwater take volumes is to be separately detailed for:</p> <ul style="list-style-type: none"> <li>• The construction phase; and</li> <li>• The occupational phase (i.e. the predicted ongoing pumping for the life of the building) of the development project.</li> </ul> <p>Satisfactory information has not been provided in order to make an adequate assessment.</p>
6.3 – Stormwater management	Insufficient Information	<p>The application has been referred to Council's Engineer for comment and has provided the following:</p> <ul style="list-style-type: none"> <li>• The stormwater management plan by ACE submitted to Council proposes an Onsite Detention System that includes an 11kL rainwater tank. The characteristics of the proposed system are an acceptable design that is in accordance with Council's DCP.</li> <li>• There is no provision for service vehicles, i.e. Medium Rigid Vehicles (MRV) to enter the property and service the development. This includes garbage</li> </ul>

Principal Provisions of BBLEP 2013	Compliance (Yes/No)	Comment
		<p>collection by Council's garbage trucks and delivery and removalist vehicles. According to AUSROADS, MRV is a vehicle 4.5m high and 8.8m long. Council's DCP requires all developments consisting of 20 units or more, must have provision for MRV type service vehicles on private property.</p> <ul style="list-style-type: none"> <li>The Flood Study Addendum report by KFW modelled the effect of the development to the flood levels at the development and surrounding sites. The flood model showed a slight drop in the flood levels as a result of the relocation and reorientation of the public park. From a flooding extent perspective, this proposal delivers a better outcome compared the master plan building and park locations.</li> </ul>
6.8 - Airspace operations	No Referral response outstanding	<p>The subject site lies within an area defined in the schedules of the Civil Aviation (Buildings Control) Regulations that limit the height of structures to 50 feet (15.24 metres) above existing ground height without prior approval of the Civil Aviation Safety Authority. The application proposed buildings which exceed the maximum height and was therefore referred to Sydney Airports Corporation Limited (SACL) for consideration.</p> <p>At the time of writing this report a response from SACL remained outstanding.</p> <p>An adequate assessment against Clause 6.8 of the BBLEP 2013 is unable to be carried out and as such, the proposed development is not considered to be satisfactory.</p>
6.9 – Development in areas subject to aircraft noise	Yes	<p>Clause 6.9 – Aircraft Noise. The western half of the site lies within the 20-25 ANEF contour. This includes all of the B4 zone, part of the R3 zone and a small portion of the south-west corner of the B1 zone.</p> <p>A Noise Intrusion Assessment, prepared by Day Design Pty Ltd has been submitted.</p> <p>The report concludes that when all recommendations in Section 7 of the report are carried out, Day Design Pty Ltd are confident that the intrusive aircraft noise levels, noise from road traffic, adjacent industrial and aircraft ground movements will conform with the recommendation in Australian Standard</p>

Principal Provisions of BBLEP 2013	Compliance (Yes/No)	Comment
		AS2021-2000 and AS2107-2000 respectively. The development is considered to be consistent with Clause 6.9 of BBLEP 2013.

Table 6: Assessment against principal provisions of BBLEP 2013

The main areas of non-compliance are addressed below.

### Height of buildings

The height permitted and proposed for each zone is outlined in the table below.

Building	Permitted Height	Proposed Height (m)	Non-compliance (variation)
<b>B4 Mixed Use Zone</b>			
LEP Map	10m	Part Building B: 27.4m Part Building C: 27.4m	17.4m 17.4m
<b>R3 Medium Density Zone</b>			
LEP Map	10m	Building A: 25.79m Part Building B: 27.4m Part Building C: 27.4m	15.79m 17.4m 17.4m
Clause 4.3(2A)	22m	Building A: 25.79m Part Building B: 27.4m Part Building C: 27.4m	3.79m 5.4m 5.4m
<b>B1 Neighbourhood Centre Zone</b>			
Existing heritage item (local)	14m	No increase	-

Table 7: Required and Proposed Height

As demonstrated in the table above, the height within the B1 zone complies. Landscaping works are proposed within the B1 zone. There are no building works proposed. The existing building does not exceed the 14m height limit.

The maximum height permitted by the BBLEP 2013 is 22m in the R3 zone and 10m in the B4 zone. Building A, part Building B and part Building C that are located within the R3 zone exceed the height of 22m being an additional 3.79m – 5.4m above this. This represents 1-2 storeys above the 22m height limit. Part Building B and part Building C that are located within the B4 zone exceeds the height limit of 10m, being an additional 17.4m. This represents 5-6 storeys above the height limit.

Accordingly, the proposal is inconsistent with the height development standard pursuant to Clause 4.3 of the BBLEP 2013. The applicant has submitted a variation to Clause 4.3 pursuant to Clause 4.6 requesting a greater height (refer to APPENDIX D). This variation is considered below.

## Clause 4.6 Assessment

Consent may be granted for the proposal subject to Clause 4.6, notwithstanding that the proposal would contravene this development standard, as the height 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.

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. A detailed justification for this proposed departure from the height development standard has been provided by the applicant, and is attached at APPENDIX D.

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

- The variation to the development standards relating to Clause 4.3 of the Botany Bay LEP 2013, in respect of Height is considered appropriate in the circumstances of this development application;
- The development is capable of satisfying the objectives of the zone and the development standards;
- The development will exceed the maximum height but will provide a quality urban design outcome and provide a significant public benefit;
- The development will be highly compatible with the transitioning nature and desired future character of the Wilson Pemberton Street Precinct and the wider Botany Bay LGA;
- The proposed variation to the development standards is considered reasonable and necessary.

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

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



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

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

These matters are considered below.

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

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

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

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

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

- It is considered that the built form of the proposed development is not consistent with the context of the area which has been established by Parkgrove East and the development at No. 42-44 Pemberton Street, Botany;
- The proposed development does not respond to the approved buildings and spaces of the Parkgrove East development;
- The desired future character of the area has been established by the approved developments within the Wilson Pemberton Street Precinct as low scale on the precinct boundary and higher density towards the centre. The proposed

development makes no attempt to maintain consistency with the established character of the area;

- As noted in the Urban design review, there is no apparent attempt to manage the impacts of the additional height, such as by corralling taller buildings towards the centre of the precinct;
- The proposed development does not manage the transitions in height between the proposed development and the surrounding lower scale context;
- The proposed development results in significant visual impact with regard to loss of outlook and views, loss of solar access and loss of privacy for future residents and residents in adjoining developments;
- There proposed building placement restricts views to the public open space from the eastern and northern adjoining sites;
- The proposed height of the development is a concern for views obtained from the Banksmeadow Local Centre and surrounding residential development, which are of a low scale. The photomontage demonstrates that the top of the buildings are visible from the corner of Botany Road and Wilson Street.

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

The underlying objective and purpose of the height control has not been achieved as stated above, therefore the standard is relevant and strict compliance with the numerical requirement of 22m in the R3 zone and 10m in the B4 zone is considered necessary in this instance as the proposal does not meet all the objectives of Clause 4.3. The proposed development is not compatible with the existing and desired future character of the area.

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

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

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

Variation to the height limit has been approved for the DA for Buildings D, E and F (Parkgrove East) to raise the building for flooding, and for Buildings A & C at 42-44 Pemberton Street for the same reason. The proposed Australand development, currently under assessment includes one building of up to 8 storeys which, when at a concept stage, has been supported in principle by the JRPP. In the B4 zone, Australand's buildings will comply.

The approved masterplan did not approve building heights above six storeys. The development standard has not been abandoned. This development standard remains relevant in the area, and a variation to the standard is not warranted as discussed above.

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

The zoning is appropriate for the locality and the height control in the LEP is appropriate.

It is considered that the applicant's Clause 4.6 for both the R3 and B4 zones is not well-founded and the departure is not in the public interest given the non-compliance with height and FSR which in conjunction with building placement, length and depth, result in unacceptable amenity impacts within the subject site and adjoining development.

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

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

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

a) *to encourage:*

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

It is considered that in this instance, non-compliance with the planning controls is not acceptable. The proposal does not achieve the objectives of the development standard and will not allow for the co-ordination of the orderly and economic use and development of land, as the development results in unacceptable amenity impacts within the subject site and adjoining development.

A compliant building can be built which would significantly minimise the amenity impacts associated with this development. A development consistent with the masterplan is considered to be a superior urban design for the subject site. Compliance with the controls results in a more orderly outcome.

The applicant has cited the various public domain works proposed as part of the Cl. 4.6 justification. It is noted that of these:

- The Pocket Park dedicated to Council on the north-east corner of the site was considered under DA-12/195 and required under the masterplan DA (DA-05/459/05);

- The dedication of New Street 1 was considered under several DAs and was a condition of consent included under the DA for 1617 Botany Road;
- The dedication of land and extension and construction of Rancom Street was required under DA-12/210 for Building D; and is required to be constructed prior to final occupation of Building D;
- The traffic lights required at the intersection of Botany Road and Pemberton Street has a condition of approval in DA-05/459/05, the latest masterplan modification amended in 2012; and is also required under DA-13/278 for Buildings A and C.

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

It is considered that there are insufficient environmental planning grounds arising from the proposal to not support of this variation to the height development standard given:-

- The extent to which the development will impact on the surrounding road network has not been assessed;
- The proposed development exceeds the maximum height standard within the B4 and R3 zone (including the height increase to 22m in the R3 zone pursuant to Clause );
- The proposed development does not meet the objectives of the height standard;
- The proposed development exceeds the maximum FSR standard within the R3 and B4 zones;
- Other development in the immediate vicinity is considered to establish the context of the area. The buildings on Parkgrove East and No. 42-44 Pemberton Street, Botany do not exceed the 22m height limit afforded by Cl 4.3(2A);
- The increased height is considered to result in unacceptable overshadowing and view loss impacts to adjoining neighbours;
- The height and corners created by the placement of buildings is considered to result in poor amenity for future residents residing in these corners;
- No satisfactory justification has been given as to why this development cannot comply.

Therefore, it is considered that there are insufficient planning grounds for a variation to the height and the variation is not in the public interest.

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

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

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

*Objectives of Clause 4.6*

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

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

It is considered that the proposed development will not achieve a better outcome for the site as the proposal will adversely impact on the amenity for future residents and adjoining residents.

Therefore, for the reasons outlined in this assessment, it is considered that flexibility cannot be applied to this development, as it does not achieve a better outcome for the site. Particularly when compared to the approved masterplan which is considered to achieve a better planning outcome and results in a more superior form of development for the subject site.

#### *Public Interest and Public Benefit*

The applicant contends that the development will provide benefits including a picket park, Rancorn Street extension (discussed above) and New Street 1. However, these benefits are a requirement of other approved DAs. The proposed public park is a significant benefit, but as discussed, the park configuration is not supported.

It is considered that in this current case, the planning control should not be varied as it will affect the general planning change in the area, as it will not be consistent with other mixed-use development and residential development already approved and under construction in the area. Furthermore, the proposed development results in substantial adverse amenity impacts to future residents and existing adjoining neighbours.

Significant public objection has been received regarding the variation to the approved masterplan. This has been discussed further in the report but as a summary, the key objections relate to building placement, increase in height, increase in FSR and the resulting amenity impacts regarding loss of solar access, view loss, loss of outlook, decreased access to the public open space, reconfiguration and relocation of the public open space and increased traffic impacts on the wider road network.

It is considered that the proposed development has not adequately responded to the existing built form to the east at Parkgrove East and as such has resulted in many significant amenity impacts for these adjoining residents. Additionally, the proposed design does not provide satisfactory amenity outcomes for future residents as a result of building and open space placement, increased height and density.

On the basis of this assessment, it is concluded that the variation is not in the public interest due to the substantial adverse amenity impacts and can not be supported.

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

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

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

### Summary

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

The proposed development provides for a mixed use development that does not comply with the height or FSR standard, and exhibits non-compliance with the DCP and SEPP 65 controls. The proposed development exhibited a compliant building envelope under the approved masterplan. As such, there is no reasonable justification as to why the proposed development cannot achieve compliance with the LEP standards. Therefore it is considered that the site is not being developed in an orderly and economic manner that is appropriate for the site and the locality.

While it is acknowledge that the development will meet the needs of the local community by providing a high quality residential flat development with commercial uses, however it will impact on the existing area through the non-compliance with height which results in significant adverse amenity impacts.

The Urban design review provides a comparison with the approved masterplan which provides for 4 separate built forms within a compliant building envelope. The masterplan design is considered to be a superior design outcome for the site which responds well to the surrounding established context. Given a complying building envelope can be achieved, as demonstrated in the approved masterplan layout, there is no reason why the proposed development cannot.

The impacts from the proposed development on the amenity of surrounding properties resulting from the departing height are adverse as they it will not be consistent with the existing and future amenity of the area. Council officers disagree that the proposal will result in a public benefit.

It has been established that the proposed development is inappropriate and strict adherence to the development standard in this instance is reasonable and necessary. Maintaining and enforcing the development standard in this case is reasonable and does not prevent the orderly and economic development of this site. This has clearly been demonstrated in the approved masterplan.

It is considered that the applicant's Clause 4.6 is not well-founded and the departure in height is not in the public interest. On this basis of, it is recommended that the development standard relating to the maximum height for the site pursuant to Clause 4.3 of the BBLEP 2013 should not be varied in the circumstances as discussed above.



## Floor Space Ratio

The floor space ratios (“FSR”) permitted and proposed for each zone are outlined in the table below.

Item	B4 zone	R3 zone	B1 zone	Total
Site Area	4,210m <sup>2</sup>	14,191m <sup>2</sup>	1,106m <sup>2</sup>	19,507m <sup>2</sup>
Permitted FSR	1:1 (4,210m <sup>2</sup> )	1:1 (14,191m <sup>2</sup> )	2:1 (2,212m <sup>2</sup> )	20,613m <sup>2</sup>
Permitted FSR (Clause 4.4(2A))	N/A	1.5:1 (21,286.5m <sup>2</sup> )	N/A	27,708.5m <sup>2</sup>
Permitted FSR (Clause 4.4B(3))	N/A	1.65:1 (23,415.15m <sup>2</sup> )	N/A	29,837.15m <sup>2</sup>
Proposed FSR	1.33:1 (5,603m <sup>2</sup> )	1.69:1 (24,023m <sup>2</sup> )	0.2:1 (198m <sup>2</sup> )	1.53:1 (29,824m <sup>2</sup> )
Complies (yes/no)	No	No	Yes	-

Table 8: Required and Proposed FSR

As demonstrated above, the proposed FSR exceeds the permitted FSR within the R3 Medium Density Residential zone and B4 Mixed Use zone. The site benefits from Clause 4.4(2A) and Clause 4.4B(3) of the BBLEP 2013 which increases the FSR in the R3 zone to 1.5:1 and 1.65:1 respectively. The proposed FSR within the R3 zone exceeds the maximum permissible FSR of 1.65:1.

It is noted that the FSR figure provided has included Lot 2 (1617 Botany Road) and Lot 1 (1619 Botany Road) for the purposes of calculating FSR. Although minor landscaping will only be included, the drawing shows that on Lot 2 on DP913863, there will be potential for future development. This requires further clarification.

It should be noted that the FSR figure provided has not been calculated in accordance with Council’s definition of *gross floor area*, which excludes internal corridors and includes storage.

It can be reasonably deduced that if a revised FSR figure was provided, based on the exclusion of Lot 1 and 2 and inclusion of corridors, it would be more than what is currently proposed.

Notwithstanding this, the applicant provides the following justification:

*“Based on the average FSR of 1:1 for the B4 zone and 1.65:1 for the R3 zone the maximum permitted FSR across the Stage 2 site area of 19,507m<sup>2</sup> equates to 1.53:1 (29,837m<sup>2</sup>). Stage 2 proposes a total GFA of 29,824m<sup>2</sup> being equivalent to an FSR of 1.53:1. The development complies with the current maximum FSR requirement in the LEP for this part of the site.”*

With regard to this application, and as is consistent with other large-scale developments in the Wilson Pemberton Street Precinct, FSR is assessed on a per zone basis, not as an average across a subject site. The Applicant has not submitted a Clause 4.6 Exception for the variation within the B4 and R3 zones. As such, the variation to FSR cannot be supported.

In summary, the FSR figure provided has not been calculated in accordance with Council's definitions, the FSR exceeds the LEP standard in the B4 and R3 zones and a Clause 4.6 Exception has not been submitted. The proposed FSR is not supported.

In addition, Council has a clear policy priority that Clauses 4.3(2A) and 4.4B(3) are not a right. The previous assessment has demonstrated that the proposed development cannot satisfy Draft Planning Policy Clause 4.4C, as discussed below.

### **Planning Proposal (2/2013) dated 27 January 2015 to amend Botany Bay**

Council has resolved to prepare two Planning Proposals in accordance with the *Environmental Planning & Assessment Act 1979* and *Environmental Planning & Assessment Regulation 2000* to amend the Botany Bay Local Environmental Plan 2013.

The Planning Proposals seek the following amendments:

- Planning Proposal No. 2/2013 for amendments to clause 4.6 to reduce the impact of the clause 4.3(2A) which relates to an increase in height up to 22m, and Clause 4.4B which relates to an increase in FSR up to a maximum of 1.65:1; and
- Planning Proposal No. 1/2015 to remove Clauses 4.3(2A) and 4.4B.

Planning Proposal No. 2/2013 was referred on 22 April 2015 to the Department of Planning and Environment for gazettal.

Planning Proposal No. 1/2015 was referred to the Department of Planning and Environment for a gateway determination on 26 February 2015.

The wording of new draft Clause 4.4C and the amendments to Clause 4.6 of the Botany Bay Local Environmental Plan 2013 are highlighted in red below:

#### ***4.4C Building Form and Scale***

- 1. This clause applies to land to which clause 4.3(2A) and clause 4.4B applies.*
- 2. Development consent must not be granted to development on land to which this clause applies, unless the consent authority is satisfied:*
  - a) The building form and scale at property boundaries achieve acceptable amenity outcomes, to adjoining land and buildings,*
  - b) The building form provides adequate landscape setback to lower scale built forms,*
  - c) A transition in building scale is achieved at property boundaries, and zone interface,*
  - d) The development will be compatible with the character of the area in terms of bulk and scale, and*
  - e) The objectives of clause 4.3 and 4.4B have been met.*

#### ***4.6 Exceptions to development standards***

- 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*

*d) clause 4.3(2A)*

*e) clause 4.4B(3)*

The proposed development seeks to use Clause 4.3(2A) of the BBLEP 2013 to increase the height in the R3 zone to 22m (from 10m) and Clause 4.4B(3) to increase the FSR within the R3 zone to 1.65:1 (from 1.5:1). The applicant has not addressed the draft planning provisions with regard to height and FSR as it is noted that the DA was lodged prior to the Planning Proposal being placed on public exhibition. Council's clear policy direction is to also remove Clause 4.3(2A) and 4.4B(3) altogether and a separate Planning Proposal has been referred for gateway determination on 26 February 2015.

Council has a clear policy priority that Clauses 4.3(2A) and 4.4B(3) require a development to further assess the impacts on the adjoining sites. It is amended in that a development may extend up to this limit provided a suitable interface with the surrounding development can be achieved. An assessment against Draft Planning Provision Clause 4.4C has been provided below.

Draft Planning Provisions	Council Comment
(2) Development consent must not be granted to development on land to which this clause applies, unless the consent authority is satisfied:	-
a) The building form and scale at property boundaries achieve acceptable amenity outcomes to adjoining land and buildings	As previously discussed, the proposed building form and scale across the site is an overdevelopment and results in significant amenity impacts to adjoining land and buildings.  The proposed development is not considered to meet draft planning provision Clause 4.4(C)(2)(a)
b) The building form provides adequate landscape setback to lower scale built forms	The proposed development provides a 4m road widening to Pemberton Street, which is consistent with the DCP.  The proposed development however does not comply with the numeric setback within the B4 zone and does not match the prevailing setback of Building D within the R3 zone. The building form is considered to encroach on the front setbacks thereby increasing the scale of the built form at the street edge.  It is considered that with development of sites in excess of 2,000sqm, the proposal should at least seek compliance with the minimum setback requirements. Further, it is considered that with a development that seeks a substantial increase in the maximum height and FSR allowable under the LEP, outperformance of the building and landscaping setbacks should be sought in order to mitigate any resulting adverse impacts.  The proposed development does not provide compliant landscape setbacks in the B4 zone or R3 zone along

Draft Planning Provisions	Council Comment
	<p>Rancom Street. Further, the proposed development has not demonstrated, through setbacks, a design justifies an exceedance in height at the site boundaries.</p> <p>The proposed development is not considered to meet draft planning provision Clause 4.4(C)(2)(b)</p>
<p>c) A transition in building scale is achieved at property boundaries, and zone interface</p>	<p>Commercial uses have been provided at ground level along Pemberton Street, which is consistent with the intent of the DCP and the need for a buffer to the existing industrial and proposed B7 Business Zone uses to the west of Pemberton Street.</p> <p>As previously discussed, it is considered that the proposed built form does not provide an adequate transition to adjoining development at the property boundaries.</p> <p>The Urban design review reinforces the comment made above in response to subclause (b) that <u>there is no apparent attempt to manage the impacts of the additional height</u>. Instead, the proposed development has buildings consistently above the maximum permitted height fronting every boundary, with Buildings A (along New Street), B and C all at the same the height, and significantly overshadowing open spaces. The height of Building C is also not supported as an appropriate transition to the adjacent development on the south side of Rancom Street extension, where there is a height limit of 14m. The resulting substantial height increases on Pemberton Street is not considered to satisfactorily manage the scale relationship to the existing and proposed adjacent development.</p> <p>The proposed development is not considered to meet draft planning provision Clause 4.4(C)(2)(c)</p>
<p>d) The development will be compatible with the character of the area in terms of bulk and scale, and</p>	<p>Please refer to the assessment against Part 8 of the DCP.</p>
<p>e) The objectives of clause 4.3 and 4.4B have been met</p>	
<p>Clause 4.3 (height):</p> <p>(1) The objectives of this clause are as follows:</p> <ul style="list-style-type: none"> <li>a) to ensure that the built form of Botany Bay develops in a coordinated and cohesive manner,</li> <li>b) to ensure that taller buildings are appropriately located,</li> <li>c) to ensure that building height is consistent with the desired future character of an area,</li> <li>d) to minimise visual impact,</li> </ul>	<ul style="list-style-type: none"> <li>(a) As noted in the Urban design review, the built form of Parkgrove East development establishes the context to the east of the site, with an arrangement of buildings and spaces separating buildings to which the proposed development should respond.</li> <li>It is considered that the built form of the proposed development has not been designed in coordination with the approved buildings and spaces of the Parkgrove East development.</li> <li>(b) As noted in the Urban design review, there is no apparent attempt to manage the impacts of the additional height, such as by corralling taller buildings towards the centre of the precinct or to manage transitions in height between the proposed</li> </ul>

Draft Planning Provisions	Council Comment
<p>disruption of views, loss of privacy and loss of solar access to existing development,</p> <p>e) to ensure that buildings do not adversely affect the streetscape, skyline or landscape when viewed from adjoining roads and other public places such as parks, and community facilities.</p>	<p>development and the context.</p> <p>(c) The desired future character of the area has been established by the approved developments within the Wilson Pemberton Street Precinct as low scale on the precinct boundary and higher density towards the centre. The proposed development makes no attempt to maintain consistency with the established character of the area.</p> <p>(d) As discussed throughout the report, the proposed development results in significant visual impact with regard to loss of outlook and views, loss of solar access and loss of privacy for future residents and residents in adjoining developments. With regard to the masterplan, the proposed development is not considered to provide an acceptable urban design which minimises adverse amenity impacts to amenity.</p> <p>(e) The proposed development provides a north-south and east-west through-site link. This is considered to provide adequate permeability through the subject site. Whilst the location and reconfiguration of the public open space is not supported, the open space at the Pemberton Street and New Street 1 corner provides wide views through the site to the north-south through-site link.</p> <p>The proposed height of the development is a concern for views obtained from the Banksmeadow Local Centre and surrounding residential development, which are of a low scale.</p> <p>There are also restricted views to the public open space from the eastern and northern adjoining sites. Under the masterplan, the building placement provided a more open view to the park.</p>
<p>Clause 4.4B</p> <p>(1) The objective of this clause is to encourage the development of larger sites (former industrial sites) to facilitate better-built form and urban design.</p>	<p>It is considered that the proposed design does not facilitate a better-built form and urban design.</p> <p>The proposed development is not considered to meet draft planning provision Clause 4.4B(1).</p>

*Table 9: Assessment against Draft Planning Provisions*

In conclusion, the application exceeds Clause 4.3(2A) and 4.4B(3) with little justification and does not meet the intent of the draft Planning Provisions that need to be satisfied in order to even reach the “bonus” height provisions.

### 5.1.8. Botany Bay Development Control Plan 2013

The applicable clauses of the DCP (Part 4C Residential Flat Buildings and Part 9C Wilson Pemberton Street Precinct) are considered in the assessment of the proposal and are addressed in detail at Appendix B and C.

The main areas of non-compliance are discussed below.

#### **Building Depth and Length**

The proposed development seeks consent for the building depths of up to 37m and building lengths that are up to 88m at their greatest point.

##### Building Depth

The application seeks consent for building depths as follows:

- Building A (north-south wing): 16.4m to 25.4m
- Building B (east-west wing): 22m
- Building B: 22m - 29m
- Building C: 24m

The building depths do not comply with the maximum DCP control of 18m.

The applicant provides the following justification: *“The depth of the buildings are appropriate as the units are individually stepped to reduce the depth of units and improve light and ventilation. In addition, the unit sizes are much larger than required under the RFDC with larger balconies generally provided. The depths are acceptable due to high residential amenity that can still be achieved. All 2 storey units achieve a minimum width of 4m and all remaining units are double fronted and greater than the minimum 4m width requirements. The depth of the buildings is considered appropriate and will result in units with high residential amenity.”*

Council agrees that an exceedance in depth can be reasonably offset by larger unit sizes and balconies. The proposed development provides much larger than the RFDC Table (pg. 69) requirement and balconies that are compliant with the DCP minimum size requirement.

Notwithstanding this, it is considered that this building is excessively deep. This is reiterated within the Urban design review which states that a reduction in depth would result in flow on effects to reduce the bulk and length of the buildings to achieve a better scale relationship.

##### Building Length

The development application seeks the proposed building lengths:

- Building A: 66.5m to New Street 1 and 64m along the through-site link;
- Building B: 36m to Pemberton Street and 87m to the through-site link;
- Building C: 88m to Rancom Street and 19m to Pemberton Street.

The dog-leg portion of Building A is stepped in height from 8 storeys down to 6 storeys. This provides a building length along the through-site link of 62m at Level 6, 39m at Level 7 and 21m at Level 8.

The upper two levels at the eastern ends of Buildings B and C are recessed. This recess provides a minimal decrease in building length (approximately 7m on Building B and 1-2m on Building C).

All buildings on the subject site exceed the maximum building length of 24m, with the exception of Building C's 20m frontage to Pemberton Street.

The Urban design review considers that *“these very long buildings are not satisfactory and give rise to a number of significant impacts in terms of scale, outlook and amenity. the very long building forms establish a scale and bulk that is not desirable or appropriate to the existing context, or the desired future character of the precinct. The very long forms will dominate the surrounding buildings and the proposed open public and private space.”*

In addition, the proposed buildings are approximately 10m longer than the longest buildings approved on Parkgrove East and elsewhere in the Pemberton Wilson Street Precinct.

With regard to the masterplan, the Urban design review states: *“The masterplan is superior despite its long building forms in excess of the DCP's 24m. Its maximum building length is approximately 70 and 75m at 5 levels high. The indicative plan shows two cores per building given appropriate street addresses and reduced internal corridor lengths.”*

### Unit Mix

The proposed development provides the following unit mix:

- 13 x studio (3.7%)
- 168 x 1 bed (47.86%)
- 166 x 2 bed (47.29%)
- 4 x 3 bed (1.13%)
- TOTAL: 351 units

The proposed development provides a total of 51.5% of studio and 1 bedroom apartments. This exceeds the maximum allowable of 25%.

The Applicant has not provided sufficient evidence (i.e. Residential Apartment Marketability Report) to justify this exceedance.

### Landscaping and Deep Soil

The proposed development provides the following with respect to landscaped area and deep soil landscaping:

Control	Required	Proposal	Complies
Landscaping	35% of site area	29% (5,730sqm) Includes deep soil and landscape area on structure)	No
Deep Soil	Minimum 25%	33% (6,526sqm)	Yes

Table 10: Landscaped Area and Deep Soil



Both the landscaped area and deep soil figures include the following areas:

- Council dedicated park: 3,220sqm;
- North-south through-site link: 2,306sqm;
- Lenth Lane site through-site link: 374sqm;
- Remainder deep soil area: 626sqm.

As demonstrated above the provision of landscaping does not comply with the DCP minimum requirements however, the deep soil provisions do.

The area calculations provided by the applicant do not provide a clear breakdown of how the landscaped area and deep soil area was calculated. As such, an accurate assessment cannot be provided.

Notwithstanding the above, the size of the Council dedicated park is not in accordance with the masterplan DA-05/459/05, which required the provision of an open space park with a minimum of 3,554sqm and Condition No. 7(c) which required an additional area of 1,000sqm (minimum). This has been discussed in detail under Section 3.2 of the report.

### **Communal Open Space**

The proposed development provides the following with respect to communal open space:

Control	Required	Proposal	Complies
<b>Communal Open Space</b>	Minimum 30% of site	8% (excluding park) 31% (including park, through-site links & lane works)	No Yes

*Table 11: Communal Open Space*

As demonstrated the proposed development complies with the provision of communal open space only when the calculations include the following areas which are intended to be dedicated as public open space:

- Council dedicated park;
- North-south through-site link;
- Lenth Lane site through-site link;
- Remainder deep soil area.

Additionally, the applicant has not calculated communal open space as per the DCP definition which states:

*“C23 Communal open space must be deep soil zones (not over podium or car park)”.*

As such, the proposed development results in no provision of communal open space as the podium level is not comprised of deep soil zones. Given that the applicant is dedicating a substantial area of deep soil landscaped area to Council, and in close proximity to the proposed buildings, the amount of communal open space is considered satisfactory.

Notwithstanding the above, the solar access provided to the communal open space and public open space is considered unsatisfactory due to the location of these spaces and building placement.

### Setbacks

The proposed development provides a 4m road widening to Pemberton Street, which is consistent with the DCP. The provision of this will be considered in the calculation of Section 94 contributions, if approval was proposed.

The proposed development however does not comply with the numeric setback within the B4 zone and does not match the prevailing setback of Building D within the R3 zone. The building form is considered to encroach on the front setbacks thereby increasing the scale of the built form at the street edge.

It is considered that a development of this scale should comply with the minimum requirements of the BBDCP 2013. In addition to this, it proposes to exceed the requirements with no additional landscape area to compensate for the increased densities on site.

The proposed development does not provide compliant landscape setbacks in the B4 zone or R3 zone along Rancom Street. Further, the proposed development has not demonstrated, through setbacks, a design justifies an exceedance in height at the site boundaries.

### Building Separation

The proposed development provides the following with respect to building separation:

Required	Proposal	Complies
<u>12m (4 storeys):</u> min. 12m habitable rooms/balconies, min. 9m between non-habitable rooms and habitable balconies and min. 6m between non-habitable rooms	Bldg. A (to Bldg. A): 9m Bldg. A (to east): 18.3m Bldg. B (to Bldg. A): 21.58m Bldg. B (to Bldg. C): 18m Bldg. B (to east): 18.2m Bldg. C (to east): 17.4m	Building A: No Building B: Yes Building C: Yes
<u>12m-25m (5-8 storeys):</u> min. 18m habitable rooms/balconies, min. 13m between non-habitable rooms and habitable balconies and min. 9m between non-habitable rooms	Bldg. A (to Bldg. A): 13m Bldg. A (to east): 18.3m Bldg. B (to Bldg. A): 21.58m Bldg. B (to Bldg. C): 18m Bldg. B (to east): 18.2m Bldg. C (to east): 18.5m	Building A: No Building B: Yes Building C: Yes
<u>&gt;25m (9-storeys +):</u> min. 24m habitable rooms/balconies, min. 18m between non-habitable rooms and habitable balconies and min. 12m between non-habitable rooms	N/A	N/A

*Table 12: Building Separation*

As identified above, the proposed development complies with the numeric separation distances outlined under the RFDC with the exception of the internal corner of Building A which does not meet the separation distance.

However, the Urban design review argues that even though the separation distances are considered satisfactory for the purposes of managing amenity and privacy impacts, the view sharing impacts are significantly greater.

### Solar Access

The proposed development provides the following with respect to solar access:

Required	Proposal	Complies
Living rooms and POS for at least 70% of apartments should receive a minimum of 3 hours direct sun between 9am and 3pm in mid-winter	70% receive at least 2 hours <sup>2</sup> This does not comply with 4C.8 of the BBDP 2013 in that it considers this area as requiring 3 hours as this is not a high-density area. Notwithstanding this, the development does otherwise comply with the RFDC requirements under SEPP 65 and Council considers this to be reasonable given this is an approach consistent with existing approvals in the immediate area.	No Considered acceptable
Neighbouring developments will obtain at least 3 hours of direct sunlight to 50% of the primary private open space and all windows to living rooms; and  30% of any common open space will obtain at least two hours of direct sunlight between 9am and 3pm on 21 June.	Building F: overshadowing to western façade from 3pm Building E: overshadowing to western façade from 1pm Building D: overshadowing to western façade from 1pm Buildings D, E & F Less than 3 hours sunlight is maintained to the western facades During March & December 3 hours is provided during mid-day to the western facades	No  Acceptable during March & December
Development sites and neighbouring sites to achieve a min. 2 hours direct sunlight between 9am and 3pm on 21 June onto at least 50% of the required min. amount of POS.	The apartment schedule states that 70% receive at least 2 hours to living areas of the development. Self-overshadowing occurs to the western façade of Buildings D, E & F till approximately 11am on 21 June. Overshadowing as a direct result of the proposed development occurs from approximately 1pm onwards. Approximately 1-2 hours of solar access are provided to the western oriented unit of Buildings D, E & F.	No

Table 13: Solar Access

<sup>2</sup> Taken from Apartment Schedule, Issue G, dated 09.03.2015.

The Urban design review reiterates that the proposed layout of buildings, height and density on the subject site gives rise to a number of significant impacts in terms of overshadowing. This has been demonstrated in the table above, where the proposed development does not achieve the minimum solar access requirements for the living space of the proposed units, the common open space of the proposed development or private open space of adjoining development, as required by the DCP controls.

Of significant concern is:

- the almost continued overshadowing of the eastern half of the public open space and the area between the dog-leg of Building A and Building B;
- complete overshadowing of the communal open space between Buildings B and C during 21 June; and
- significant overshadowing of the lower levels of Building C which will exhibit adverse impacts on internal residential amenity due to the close proximity of Buildings B and C.

Whilst it has been discussed in the 'Masterplan' section of this Report, it warrants reiteration that if the design had arranged buildings in a north-south orientation (and complied with the LEP height control), such as that shown in the masterplan, overshadowing impacts would be substantially lesser.

This is demonstrated in the following diagrams.

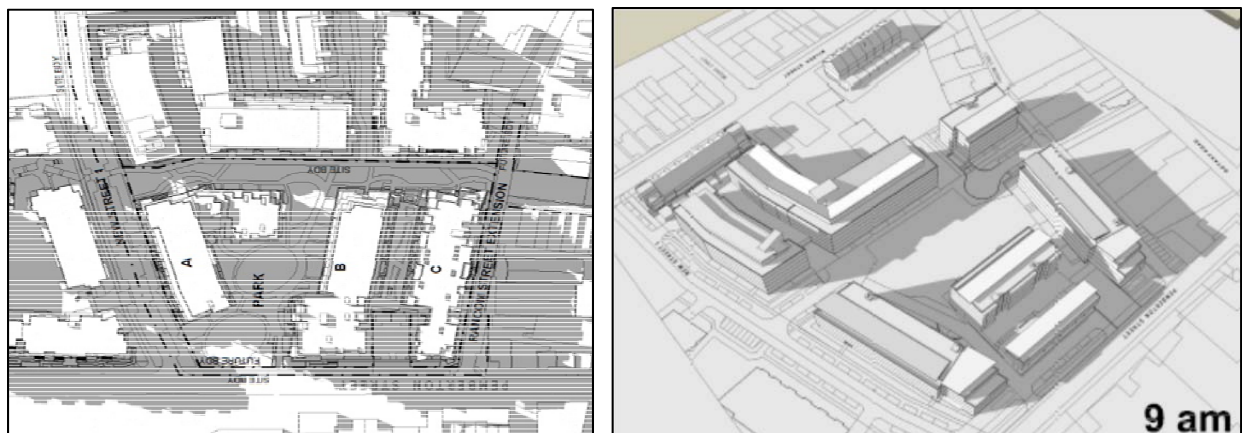


Figure 15: Shadow Diagrams 9am. Proposal (left), masterplan (right)

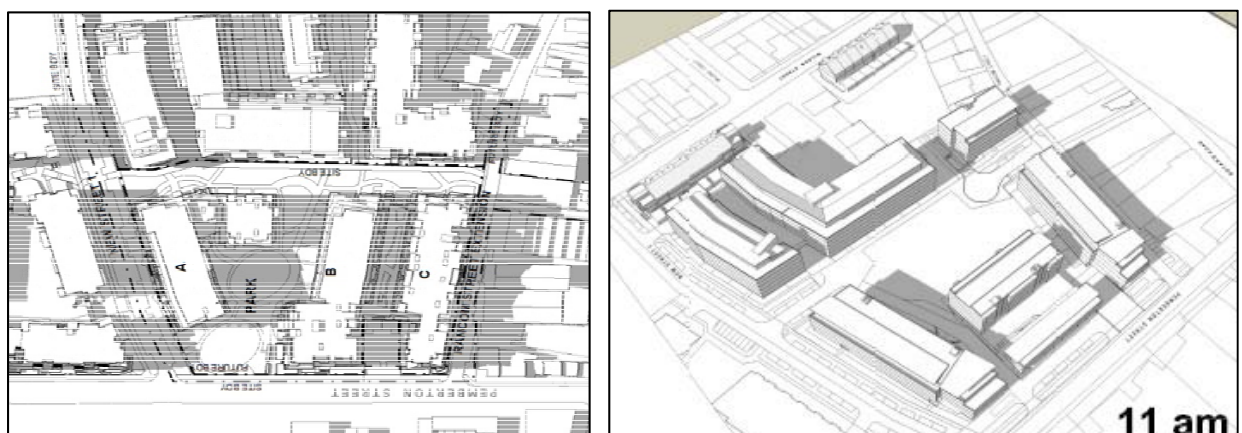


Figure 16: Shadow Diagrams 11am. Proposal (left), masterplan (right).



Figure 17: Shadow Diagrams 1pm. Proposal (left), masterplan (right).

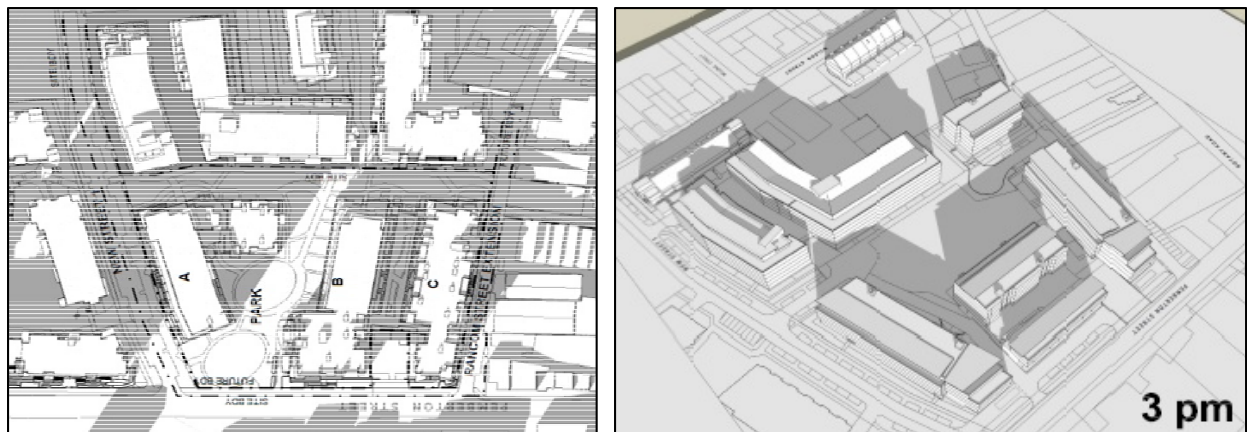


Figure 18: Shadow Diagrams 3pm. Proposal (left), masterplan (right).

The Urban design review concludes that overshadowing with the masterplan design is less as the spaces between the long buildings would be able to receive full sunlight in the middle of the day throughout the year. The public open space shown in the master plan as a single area with a greater north-south dimension would also be subject to less overshadowing overall from a building to the north along New Street.

Based on the above, it is clearly demonstrated that the height of the development has significant impact on the solar amenity and should not be supported. A new development of this size should have minimal impact on the public open space as per the masterplan.

### Site Isolation

The proposed development excludes No. 12 Pemberton Street, Botany, which is a small lot of 518.5sqm located with frontage to Pemberton Street to the west and bounded by the proposed subject site to the north, east and south. This site is privately owned by Mr I S & Mrs I Lengyel.





Figure 19: Subject site aerial view

Within the SEE, the applicant states that the Case of *Melissa Grech v Auburn Council [2004] NSWLEC 40* is not applicable as there is no minimum allotment size but nevertheless, has made attempts to purchase the property. The applicant provides the following justification:

*“My client has made numerous attempts to purchase this property and incorporate as part of the Parkgrove site. A formal written offer was made to purchase the property on 17 December 2012. This offer was formally rejected in writing. A subsequent offer was made on 21 March 2014. The offer was rejected in writing by the owners agent on 24 March 2014. At the time of writing this report, a further offer based on a market valuation was being made to demonstrate that all reasonable attempts to purchase the property have been made. My client is more than willing to purchase the land, however can only offer what is considered to be reasonable market value, otherwise the economic viability of the project will be compromised.”*

While the SEE states that attempts had been made to purchase No. 12 Pemberton Street, and copies are available to Council as required, no documentary evidence to support this statement had been provided with the application.

Council is unable to determine whether a reasonable offer had been made. Council also cannot determine if amalgamation is reasonable given the alternative presented to Council is considered a poor urban design response to the isolated site.

The applicant, within the SEE, further justifies that:

*“The Council has no planning impediment to approving the development application in relation to lot consolidation. Part 9C of the DCP which relates to the Wilson-Pemberton Street site does not require lot consolidation. The section that relates to the Mixed Use zone, in which 12 Pemberton Street is located states ‘amalgamation of sites is encouraged to reduce the number of access points from Pemberton Street’. The LEP and DCP do not include a minimum site area for the development of land in the Precinct. It is noted that the LEP permits an uplift in FSR and height for sites over 2000m<sup>2</sup>, however this only applies to the R3 zone and does not apply to the B4 zone in which 12 Pemberton St located.”*

Council is satisfied that the subject site has been amalgamated and as part of the proposed development, access points to Pemberton Street have been removed (with the exception of No. 12 Pemberton Street, Botany).

The Urban design review states that *“because the development does not include 12 Pemberton Street, but has it surrounded as an isolated site, it must be sympathetic to its existing and potential future character. There is little probability of the 12 Pemberton Street achieving a height of more than 3-4 storeys in accordance with the LEP height development standard of 10m. The proposed development however completely dominates this site with buildings 17m higher to both the north and the south. Across Pemberton Street, the western side has a height control of 12m, equally dominated by the site’s proposed building heights. This is considered a poor scale relationship.”*

The applicant has not demonstrated any attempt to respond to the isolated site in terms of height transition, scale relationship, FSR, possible shared access arrangement for basement parking, building separation distances, setback or streetscape continuity.

As demonstrated in the western elevation, the proposed streetscape would not provide for a consistent presentation. The streetscape appears disjointed and is exacerbated by the location of the open space at the Pemberton Street and New Street 1 corner.



Figure 20: Western Elevation. Red line indicates the Pemberton Streetscape presentation with regard to height.

Further, Council considers that the application has not satisfactorily addressed the principles outlined in the case of Cornerstone Property Group Pty Ltd v Warringah Council which states:

*The key principle is whether both sites can achieve a development that is consistent with the planning controls. If variations to the planning controls would be required, such as non-compliance with a minimum allotment size, will both sites be able to achieve a development of appropriate urban form and with acceptable level of amenity.*



*To assist in this assessment, an envelope for the isolated site may be prepared which indicates height, setbacks, resultant site coverage (both building and basement). This should be schematic but of sufficient detail to understand the relationship between the subject application and the isolated site and the likely impacts the developments will have on each other, particularly solar access and privacy impacts for residential development and the traffic impacts of separate driveways if the development is on a main road.*

*The subject application may need to be amended, such as by a further setback than the minimum in the planning controls, or the development potential of both sites reduced to enable reasonable development of the isolated site to occur while maintaining the amenity of both developments.*

The applicant provides the following justification:

*“3.79 As noted above, the isolation of this allotment does not raise issues with non-compliance with planning controls.*

*3.80 Consistent with the Grech judgement, an envelope was established for 12 Pemberton Street utilising the heights and density permitted in the B4 zone. The envelope study results in a three storey development compliant with the 10 metre height control and a FSR of approximately 0.96:1 which is compliant with the maximum permitted FSR of 1:1. The design of Parkgrove West accommodates the possible redevelopment of this site independently and addresses issues such as separation and privacy accordingly.*

*3.81 The scheme provides sufficient detail to understand the relationship between the sites. The envelope study demonstrates that the site can be developed independently.”*

The applicant has not submitted envelope diagrams that demonstrate the minimum building setbacks, building separation distances, internal vehicular turning movements or how the isolated site can achieve the maximum FSR.

### **Botany Character Precinct**

The applicant provides the following points of justification:

- *“The development provides for a significant improvement to the Pemberton, Rancom and New Street 1 Streetscape.*
- *The site is located with direct connection to the proposed Public Park to be located in the north-western corner of the site which will also connect through to the north-south through-site link.*
- *The site is located within an area between ANEF 25 and 30.*
- *The site is greater than 2000m<sup>2</sup> and the proposed FSR is 1.53:1 across the entire western part of the site complies with the maximum permitted FSR of 1.58:1. It is noted that this FSR is based in an average of the 1:1 in the B4 zone and 1.65:1 in the R3 zone.*
- *Limited retail equivalent to 481m<sup>2</sup> is proposed within the B4 Mixed uses zone.*
- *The size will not detrimentally affect the viability of the local centre.*

- *The development design will connect with the nearby local centre.*
- *The extension of the Local Centre west along Pemberton Street is proposed with retail at ground level along Pemberton Street.*
- *The form and scale of the development provides for an appropriate transition to the residential uses in the R3 zones.*
- *The development provides adaptable dwellings.*
- *The proposed development provides home office and live work opportunities due to generous size of units and study areas.*
- *The development enhances the residential amenity of the R3 zone by providing a strong building form within the B4 zone that provides a transition between the industrial land and the residential zoned land.*
- *The building also provides a buffer of road and industrial noise that could not otherwise be achieved in the communal courtyard.”*

As previously discussed throughout this report, the proposed FSR and height are not consistent with the character of the area, which has been established by the development to the north at 42-44 Pemberton Street, Botany and to the east at Parkgrove East.

The building placement does not respond to the existing development to the east with regard to the continuation of open spaces and built form in order to create and continue view corridors and open outlooks.

The treatment of the Pemberton Street edge is not consistent with the development to the north as it lacks a strong built form on the Pemberton Street and New Street 1 corner which would continue the commercial strip along the eastern side of Pemberton Street.

The Urban design review reinforces these points and provides the following:

- *“It is considered that the very long building forms establish a scale and bulk that is not desirable or appropriate to the existing context, or the desired future character of the precinct. The very long forms will dominate the surrounding buildings and the proposed open public and private space. Providing shorter length buildings would improve solar access, reduce bulk and scale impacts and provide a better fit with the existing context and the desired future character.*
- *The proposed development locates an open space rather than a built form on the corner of Pemberton Street and New Street. This arrangement is not supported as it erodes rather than contributes to the urban form and desired future character of Pemberton Street.”*

It is considered that the proposed development is not consistent with the desired future character of the Botany Precinct.

### **Traffic Impacts**

The applicant submitted an Internal Traffic Assessment, which concluded that there are no internal traffic related issues that should prevent approval of the subject application.

The development application was referred to Roads and Maritime Services (RMS) who provided comments for Council’s consideration.

Traffic reports were prepared by Colston Budd Hunt & Kafes Pty Ltd on behalf of the development proposal dated June 2012, July 2013 and July 2014.

These reports were prepared to consider the traffic implications of the proposed development on the surrounding road network taking into account previous development approvals and potential traffic generation and their effects. The latest report however does not accurately describe development that has been approved in the Wilson Pemberton Street Precinct to-date, nor does it incorporate the potential development and traffic impacts associated with the Australand site located to the north at 52-54 Pemberton Street, Botany.

Therefore, the assumptions relied upon in these reports, and the conclusions, cannot be relied upon, and further assessment is required of the traffic impacts within the precinct as a result of this development and the cumulative nature of development within the precinct as a whole. This is clearly a deficiency in the application.

An internal traffic assessment has been prepared by Thompson Stanbury Associates, dated March 2015. This report focuses on the internal access arrangements for the development site. However, it relies upon internal road networks that are yet to be completed.

Given the deficiencies in the traffic information provided, Council cannot form the view as to whether traffic impacts have reasonably been addressed with respect to the proposed development.

Furthermore, Council's Traffic Engineer has advised that there has been no pedestrian, bike or public transport assessment within the vicinity of the site and on-street waste collection from New Street 1 for building A is not acceptable.

Finally, any traffic assessment should address the cumulative traffic impacts for the proposed development at No. 52-54 Pemberton Street, Botany to the north and the surrounding local traffic network including Warrana Street, Kurnell Street, Wilson Street north to Swinbourne Street. It is noted that previous traffic reports prepared as part of DA-05/459 identified the need for a signalised intersection at Botany Road and Pemberton Street along with other traffic upgrades as a result of development within the Precinct. These works have been conditioned as part of DA-05/459 and DA-13/278.

### **Flood and Stormwater Management**

The stormwater management concept plan for Buildings A, B & C as well as Buildings D, E & F to the east of the subject site were resubmitted as part of the application.

Council's Stormwater Engineer has reviewed the stormwater drawings and notes the following:

- The stormwater management plan by ACE submitted to Council proposes an Onsite Detention System that includes a 11kL rainwater tank. The characteristics of the proposed system are an acceptable design that is in accordance with Council's DCP.
- There is no provision for service vehicles, i.e. Medium Rigid Vehicles (MRV) to enter the property and service the development. This includes garbage collection by

Council's garbage trucks and delivery and removalist vehicles. According to AUSROADS, MRV is a vehicle 4.5m high and 8.8m long. Council's DCP requires all developments consisting 20 units or more, must have provision for MRV type service vehicles on private property.

- The Flood Study Addendum report by KFW modelled the effect of the development to the flood levels at the development and surrounding sites. The flood model showed a slight drop in the flood levels as a result of the relocation and reorientation of the public park. From a flooding extent perspective, this proposal delivers a better outcome compared the master plan building and park locations.

### **Compliance with B4 Zone Objectives**

The western frontage of the site along Pemberton Street is zoned B4 Mixed Use.

The proposed development is considered to generally satisfy the B4 Zone objectives for the following reasons:

- it encourages live/work opportunities by providing commercial uses at ground floor (this is consistent with existing approved developments in the immediate area);
- The proposed development encourages improvements to the public domain through the provision of a public park of at least 3,000sqm, and several through-site links;
- The proposed development generally ameliorates conflicts on the interface between the non-residential and residential uses;
- The Noise Intrusion Assessment submitted with the application confirms that subsequent to the inclusion of all recommendations, the development will be acceptable with regard adjacent industrial movements;
- create a focus for a wide variety of businesses; and
- promotes and encourages a high design quality of buildings.

It should be noted, however, that whilst the objectives of the B4 zone are considered to be met, the extent to which some of the objectives have been achieved is arguable.

Whilst a buffer has been provided to the B7 zone opposite the proposed commercial uses, the extent to which this buffer is considered adequate is arguable. The Urban design review states that proposed development does not produce an effective buffer to the street, and in the north western corner introduces public open space completely out of character with the street and providing no buffering to industry to the west.

Additionally, whilst a high level of pedestrian amenity has been provided, this could be improved through better placement of buildings and open space to increase solar access and open outlook.

In summary, it is accepted that a residential flat building is permissible within the B4 Mixed Use zone and it is considered that the objectives of the B4 Mixed Use zone (Part 9C.5 of the BBDCP 2013) are generally satisfied.

### **5.2. S79(C)(b) Impacts of the development S79(c)(1)(b).**

These matters have been considered in the assessment of the application. The proposal is considered to be inconsistent with the provisions of the BBLEP 2013.

The application results in a non-compliance with the FSR and Building Height control under the BBLEP 2013. The applicant has submitted a Clause 4.6 Exception to justify the height non-compliance. Notwithstanding this, Council cannot support the proposed height.

The application results in a non-compliance with several of the BBDCP 2013 controls including setbacks, building length, building depth, building separation, solar access, communal open space, unit mix, unbuilt upon area and site coverage.

The proposed development is considered to have adverse environmental, social and economic impacts on the locality.

### **5.3. s79(C)(c) The suitability of the site for the development S79C(1)(c)**

These matters have been considered in the assessment of the development application. The site is considered suitable for a larger scale medium to high density residential and mixed use development. It is located in close proximity to the commercial centres of Banksmeadow and Botany, and is located in an area that is strategically earmarked for revitalisation.

### **5.4. S79(C)(d) Any submission made in accordance with the Act or Regulations.**

In accordance with Council's Notification Policy, the development application lodged on 13 January 2015 was notified to surrounding property owners and occupants and advertised in the local newspaper for a period of 30 days from 21 January 2015 – 23 February 2015. Council received a total of 48<sup>3</sup> objection letters and 2 petitions totalling 83 signatures.

The key objections raised include:

1. Inconsistency with the Masterplan;
2. Relocation & reconfiguration of the park;
3. Height;
4. FSR and bulk;
5. Context/Design/Character;
6. Amenity (solar access, view, privacy, outlook);
7. Traffic;
8. Unethical practice/conduct of developer;
9. DCP non-compliance.

The key objections are detailed below. These issues have also been provided to the applicant.

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<sup>3</sup> Note: The total number of submissions includes separately received submissions from the same person but does not double count one submission signed by two or more people (i.e. family, husband and wife, etc.).

#### 5.4.1. Inconsistency with the Masterplan

**Objection:** The proposed development demonstrates significant variations to the approved masterplan with regard to building placement, public open space relocation and reconfiguration, building height and density. Whilst the “approved master plan” may not be definitive, it is nonetheless a relevant consideration.

**Comment:** Council has sought legal advice on the standing of the masterplan. Council’s legal advice concludes that the masterplan approval has weight and should be considered as a policy framework in a similar fashion as the DCP.

The variation from the approved masterplan has been noted and addressed in a separate section within this report. Council considers that the proposal varies significantly from the masterplan approval in a number of key areas.

#### 5.4.2. Relocation and reconfiguration of the park

**Objection:** A summary of objections regarding the proposed public open space are as follows:

- Reconfiguration and reduced size of the park;
- The park is fragmented which compounds the excessive scale-related impacts;
- Increased shadowing of the current layout of the park.

**Comment:** Council note that the proposed public open space varies significantly with respect to its location, size and configuration when compared to the masterplan. As discussed above, an assessment against the masterplan has been addressed in a separate section within this report.

With regard to the proposed park and its compliance with the DCP controls, Council considers that there are a number of issues including the configuration as a fragmented but interlinked space, significant overshadowing to the eastern half and the intended use of the park.

The application was referred to Council’s Landscape Officer who supports the comments made in the Urban design review.

#### 5.4.3. Height non-compliance

**Objection:** A summary of objections regarding the proposed height are as follows:

- Non-compliant height in the B4 and R3 zones;
- High-rise buildings do not form part of the current streetscape in the Botany Bay area;
- The 8-storey built form is inappropriately located;
- The design and placement of the proposed buildings is not seen within the Botany Bay area;

- The original building height on the Master Plan indicated 6 storeys or lower, the proposal departs from this;
- Developments on Jasmine Street and The Esplanade are in keeping with all other neighbouring buildings. The development is not consistent with this;
- The controls clearly anticipate a 3-storey scale in presentation to Pemberton Street, which is consistent with a “high street” urban form, the proposal departs from this;
- The proposal does not provide a transition to the western side of Pemberton Street;
- The Clause 4.6 variation is not well-founded. The applicant justifies that the light industrial-oriented area is not sensitive to the impacts of a high scale development. The western side of Pemberton Street is B7 Business Park zone, which will permit stand alone office premises and will encourage the future development of an office park. Such development will be enhanced by the provision of a “high street” form with a 3-storey scale on the eastern side of Pemberton Street.

**Comment:** Objection to the proposal on the grounds of height is noted. Within this report Council has provided an assessment against the LEP including Clause 4.6 as the applicant has sought a variation above the maximum LEP control.

Council considers the proposed height to be excessive with significant and substantial adverse amenity impacts to future residents and residents in adjoining developments.

#### 5.4.4. FSR and bulk

**Objection:** A summary of objections regarding the proposed FSR and bulk are as follows:

- Overdevelopment of the site;
- Was previously proposed as a low density development;
- Increased bulk with no proportional enhancements to public infrastructure;
- No calculation of GFA within each respective FSR area and therefore not sufficient information to determine whether the proposal complies;
- Clause 4.4B(3)(d)(ii) permits an FSR in excess of 1.5:1 if the consent authority is satisfied that the development will contribute to the amenity of the surrounding locality. Departure from the master plan is inconsistent with this provision.

**Comment:** The proposed FSR exceeds the maximum within the B4 and R3 zone. The applicant has not provided a Clause 4.6 Exception to justify this departure, but instead relies on a compliant “average” FSR.

Council has provided an assessment of FSR under the BBLEP 2013 section of this report. Council assesses compliance with FSR on a ‘per zone’ basis, of which the



application does not comply. To “average” the FSR would be to simply borrow site area from one zone to the other, which makes a nonsense of the calculation of FSR as it relates to the intended built form.

Council considers, as has been reiterated in the Urban design review, that the FSR and bulk of the proposed development is excessive and contributes to adverse amenity impacts.

#### **5.4.5. Context/Design/Character**

**Objection:** A summary of objections regarding the context, design and character of the proposed development are as follows:

- The context of future development of Parkgrove West is in the established pattern of development of Parkgrove East, which is densely developed in a manner that warrants provision of a centralised, consolidated area of open space;
- Proposal does not fit in with the company’s stated “core values of integrity, excellence, community and trust”;
- The modification to the location of the public open space so that it is within the B4 Mixed Use zone area of the site detracts from the intention within the zoning of establishing a “high street” style shopping strip along Pemberton Street;
- The proposed corner public open space reduces the extent of that shopping street, which will detract from the identity of the area;
- The proposal is not consistent with the “desired future character” of the area, which is reflected in the approved “master plan”;
- The desired future character of the Wilson Pemberton Precinct is not reflected in the current proposal;
- The proposed design does not provide a strong street edge to Pemberton Street. It includes a park on the corner that is remote from the greatest number of apartments, which weakens the urban edge along Pemberton Street.

**Comment:** The Urban design review has provided an extensive assessment of how the proposed development responds to the context, design and character of the area.

Council considers that based on the Urban design review, the proposed development is inconsistent with the future desired character of the Wilson Pemberton Street Precinct and does not respond well to the established context of the immediate area. This has been addressed in detail within this report.

#### **5.4.6. Amenity (solar access, view, privacy, outlook)**

**Objection:** A summary of objections regarding amenity are as follows:

- Loss of solar access, privacy, outlook, view, ventilation;

- Increased overshadowing;
- Reducing access to open space;
- Increased noise and dust levels;
- Through-site link will become a trafficable road;
- Reduced distance between apartment blocks (particularly to Block E);
- Proposed fragmentation of public open space will reduce the extent of casual surveillance.

**Comment:** Council notes that the proposed development results in significant amenity impacts for future residents of the development as well as neighbouring residents.

These issues have been addressed in detail within this report. It is considered that, and as confirmed in the Urban design review, that the masterplan layout would result in less amenity impacts.

#### 5.4.7. Traffic

**Objection:** A summary of objections regarding traffic are as follows:

- Increased congestion;
- Insufficient parking;
- Traffic management issues and insufficient parking along Wilson/Pemberton Streets;
- Wilson & Pemberton Streets are too narrow to accommodate increased traffic demand;
- No attempt to upgrade or increase the width of local roads;
- Only one convenient bus servicing the area;
- No attempt to introduce additional frequent public transport services to alleviate traffic congestion;
- No indication of additional schools, health services or shopping facilities;

**Comment:** The applicant has provided an Internal Traffic Assessment however has not provided an assessment of the cumulative traffic impacts. The parking cannot be considered inadequate as it complies with Council's DCP generous requirements.

Council therefore cannot adequately assess the impacts on the surrounding road network and its impact in conjunction with other large-scale developments that are currently being constructed and/or under assessment.

#### **5.4.8. Unethical practice/conduct of developer**

**Objection:** A summary of objections regarding unethical practice/conduct of the developer are as follows:

- Units were bought on the basis and at a price that reflected a situation that was presented to all purchasers as an established fact (i.e. the location and size of the park was a major selling point for current owners);
- Unethical practice/conduct of developers (to sell units without confirmation of park centrepiece);
- Advertisement of the park as the centrepiece of Parkgrove is still on the website;
- Park relocation / reduced size will decrease of property value & saleability;
- Park relocation / reduced size will impact on potential rental return;
- The promise of the properties characteristics can be regarded as an offence under the state and federal law for misleading and deceptive conduct.

**Comment:** The actions of the developer in representing future development is not a matter for s79(C) consideration. Purchasers need to make their own independent enquiries on future development.

#### **5.4.9. DCP non-compliance**

**Objection:** DCP non-compliances include maximum length of building, maximum depth, width of corridors, amount of communal sunlight, unbuilt upon area, minimum car spaces, building setbacks, natural ventilation.

**Comment:** The non-compliances with the DCP have been addressed in the table at Appendix B and the key issues of non-compliance addressed within Notes 1-10 under BBDCP 2013.

### **5.5. S79(C)(e) The public interest**

This report establishes that the proposed development, in its current form, is considered to have a significant adverse impact on the public interest.

It is also reiterated that Council's clear policy direction is to also remove Clause 4.3(2A) and 4.4B(3) altogether and a separate Planning Proposal has been referred for gateway determination on 26 February 2015.

## Other Matters

### Internal Referrals

The development application was referred to Council's Engineering Services Department, Landscape Department; Traffic Department; Environmental Health, Strategic Department and Council's Environmental Scientist for comment. Where relevant, these comments have been incorporated into the body of this report.

### External Referrals

External Referrals were sent out as part of the notification process from the 21 January 2015 – 23 February 2015 and are detailed in the Table below.

Authority	Comment	Date Received
NSW Office of Water	Response received. Further information required from the Applicant. No response provided by applicant.	26 March 2015
NSW Ports	Response received. Further information required from the Applicant. No response provided by applicant.	23 March 2015
Roads & Maritime Services	Response received. Comments for consideration have been provided to the applicant. No response provided by applicant.	25 March 2015
Sydney Water	Response received. Comments for consideration have been provided. No response provided by applicant.	19 March 2015
Local Police	Response outstanding.	-
Ausgrid	Response received. Further information required from Applicant. No response provided by applicant.	20 April 2015
Sydney Ports Corporation	Response outstanding.	-
SACL	Response outstanding.	-

*Table 14: External Referrals*

## Section 94 Contribution and Proposed Planning Agreement

If the development was to be approved, contributions of \$7.02 million would be required based on the City of Botany Bay Section 94 Contributions Plan 2005-2010.

A reduction in the Section 94 contributions would be given due to the applicant considering Pemberton Street widening.

The applicant has submitted a Draft Planning Agreement with this DA. The only works provided in the Planning Agreement that directly relate to the DA are:

- North South pedestrian link between Rancom Street and New Street 1;
- Through-site link through 1619 Botany Road;
- East West pedestrian link between Pemberton Street and Parkgrove East;
- Pemberton Street road widening.

The other works (e.g. Rancom Street extension and dedication and construction of New Street 1) relate to other DAs already approved. The Planning Agreement seeks to recoup the cost of these public domain works, and thus reduce contributions overall.

The application has expressed the view that this approach has been agreed to by Council's Officers, however, no written advice to this effect, nor any indication of this approach is evident in previous discussions.

## **5. CONCLUSION**

The assessment of the application has identified significant departures from the BBLEP and BBDCP 2013 controls. In addition to this, there has been significant public objection to the departure from Development Consent DA-05/459/05 (the 'masterplan').

An Urban design review prepared by Urbanac has provided the basis of comments with regard to the urban design of the proposed development, including the overall layout, building placement and configuration, open space placement and configuration, response to context, height, bulk and scale, building length and depth and the resulting impacts such as overshadowing, view loss, outlook loss and amenity.

The application relies upon a Clause 4.6 Exception for the height standard within the B4 Mixed Use and R3 Medium Density Residential portion of the site. The application exceeds the FSR standard within the B4 and R3 zones. A Clause 4.6 Exception has not been provided justified by a compliant 'average' FSR across the site.

An assessment of the Clause 4.6 Exception for height has been provided within this report. Council concludes that the non-compliance for the height within the B4 and R3 zones is not reasonable as it results in significant adverse amenity impacts and is not supported.

An assessment of the FSR has been provided within this report. FSR is assessed on a per zone basis, not as an average across a subject site. As such, the variation to FSR cannot be supported.

In general, the configuration of the development does not respond to the context of the area, which has been established by the existing approved developments to the north and east.

The proposal is considered to be an overdevelopment of the subject site and the exceedance of height and FSR, combined with the building and open space placement, results in significant and unacceptable adverse amenity impacts for the future residents and neighbouring residents.

The Urban design review has concluded that the aspects where the current design fails, is improved by the masterplan layout.

The proposal has been assessed in accordance with Section 79C of the *Environmental Planning and Assessment Act 1979* and the *Botany Bay Local Environmental Plan 2013*.

The Sydney East Region JRPP is the determining authority for the development application and it is recommended that the application be refused for the above reasons.

## APPENDIX A – SEPP 65 DESIGN QUALITY OF RESIDENTIAL FLAT BUILDINGS

**Table 15: Detailed SEPP 65 Assessment**

Requirement	Complies (yes / no)	Comment
<b>PART 01: LOCAL CONTEXT</b>		
<b><i>Building Height</i></b>		
Development responds to the desired scale and character of the street and local area	No	<p>The proposed development exceeds the height limit in the B4 and R3 zone. The applicant has provided a Clause 4.6 Exception to support this variation.</p> <p>The proposed height is not consistent with the height of adjoining development.</p> <p>The proposed height and scale of the development is considered to be out of context with the character of the street and local area.</p>
Allow reasonable daylight access to all developments and the public domain	No	<p>The proposed development does not comply with the DCP requirements for solar access for the living space of the proposed units, the common open space of the proposed development or private open space of adjoining development.</p> <p>The proposed development results in significant overshadowing of the eastern half of the public open space and complete overshadowing of the communal open space between Buildings B and C.</p>
<b><i>Building Depth</i></b>		
Maximum internal depth of building – 18m from glass line to glass line. Where greater than 18m depth, must justify how satisfactory daylight and ventilation is achieved	No	<p>The development proposes the following building depths:</p> <ul style="list-style-type: none"> <li>• Building A (north-south wing): 16.4m to 25.4m</li> <li>• Building B (east-west wing): 22m</li> <li>• Building B: 22m - 29m</li> <li>• Building C: 24m</li> </ul> <p>Only the north-western wing of Building A complies.</p>
<b><i>Building Separation</i></b>		
Development scaled to support desired area character with appropriate massing/spacing between buildings	Generally complies	Generally complies
<p><i>Up to 4 storeys/12m height:</i></p> <p>12m between habitable rooms/balconies</p> <p>9m between habitable/balconies and non-habitable rooms</p> <p>6m between non-habitable rooms</p>	<p>Generally Complies</p> <p>No for Building A</p>	<p><u>Separation within the site</u></p> <p>Building A (internal): 9m</p> <p>Between Building A &amp; B: 18.4m</p> <p>Between Building B &amp; C: 15.8m</p> <p>Between Building B &amp; No. 12: zero – 3m</p> <p>Between Building C &amp; No. 12: 3.9m</p> <p><u>Separation to Parkgrove 1 (east)</u></p> <p>Building A &amp; F: 19.1m</p>

Requirement	Complies (yes / no)	Comment
		Building A & E: 19.6m Building B & E: 18m Building C & D: 17.5m
5-8 storeys/12-25m height: 9m between non-habitable rooms 18m between habitable rooms/balconies 13m between habitable/balconies and non-habitable rooms	Generally Complies  No for Building A	<u>Separation within the site</u> Building A (internal): 13m Between Building A & B: 18.7m Between Building B & C: 18m  <u>Separation to Parkgrove 1 (east)</u> Building A & F: 18.3m Building A & E: 19.6m Building B & E: 18m Building C & D: 18.2m
9 storeys +/-over 25m height: 24m between habitable rooms/balconies 18m between habitable/balconies and non-habitable rooms 12m between non-habitable rooms	N/A	N/A
Zero building separation only in appropriate context (between street wall building types – party walls)	Yes	Zero building separation is proposed between Buildings B & C and proposed future development potential of No. 12 Pemberton Street, Botany.
<b>Street Setbacks</b>		
Minimise overshadowing of the street and/or other buildings	No	The proposed development overshadows the western façade of Parkgrove East from 1pm onwards. The proposed development results in total overshadowing of Rancom Street. The masterplan is considered to result in less overshadowing impacts to Parkgrove East.
No part of the building is to encroach into a setback zone	No	The proposed development does not comply with the minimum landscape and building setbacks in the B4 zone. Building C is not in line with the approved Building D at Parkgrove East.
<b>Side and Rear Setbacks</b>		
Side setbacks minimise impact of development on light, air, sun, privacy, views and outlook for neighbouring properties (including future buildings)	N/A	The subject site is considered to have three frontages (New Street 1, Pemberton Street and Rancom Street) and a rear setback to Parkgrove East.
Side setbacks retain/create pattern of development that positively defines streetscape	N/A	The subject site is considered to have three frontages (New Street 1, Pemberton Street and Rancom Street) and a rear setback to Parkgrove East.
Rear setbacks maintain deep soil zones	Yes	The rear setback is considered to be to Parkgrove East. The proposed development provides a north-south through-site link along the eastern (rear) boundary which is comprised of deep soil landscaping.




Requirement	Complies (yes / no)	Comment
Rear setbacks maximise opportunity to retain/reinforce mature vegetation	Yes	The Landscape Plan submitted with the application indicates the opportunity for the planting of mature vegetation along the eastern (rear) boundary.
Rear setbacks should optimise use of land at rear and surveillance of the street at front	Yes	Due to the subject site having three frontages, the rear boundary is the interface with Parkgrove East. The rear setback provides a north-south through-site link. Units oriented towards this area have opportunities for passive surveillance of the through-site link.
Rear setbacks should maximise building separation to provide visual and acoustic privacy	Yes	The separation distance between Buildings A, B and C and the buildings within Parkgrove East comply with the minimum building separation distances within the RFDC.
No part of a building is to encroach into a setback zone	No	As outlined above, the proposed development does not comply with the minimum landscape and building setbacks in the B4 zone.  Building C is not in line with the approved Building D at Parkgrove East.
<b>Floor Space Ratio</b>		
Development in keeping with optimum capacity of site and local area	No	The proposed development exceeds the maximum FSR within the B4 zone and R3 zone.
<b>PART 02: SITE DESIGN</b>		
<b>Site Analysis</b>		
Detailed site analysis required to be submitted with development application	Yes	A site analysis was prepared with the lodgement of this DA.
<b>Deep Soil Zones</b>		
Minimum 25% of open space area of a site should be deep soil zone – more is desirable	Yes	The proposed development provides 5,730sqm of landscaped area. 25% of the landscaped area equates to 1,466sqm.  The proposed development provides 6,526sqm of deep soil, thereby exceeding the 25% requirement.  The above calculations provided by the applicant do not provide a clear breakdown of landscaped area and deep soil zones.
Optimise provision of consolidated deep soil zones by design of basement/sub-basement car parking so it does not fully cover the site and by the use of front and side setbacks	Yes	The proposed development is considered to have adequately consolidated the deep soil zones. The basement car parking does not cover the entire site, thereby providing adequate areas to achieve deep soil planting.
Optimise extent of deep soil zones beyond the site by locating them contiguous with deep soil zones to adjacent properties	N/A	There are no significant deep soil zones adjoining the subject site.
Increase permeability of paved areas by limiting paved area and/or using pervious paving materials	Yes	Paved areas are limited to the bicycle and pedestrian links through the public open space and the north-south through-site link.

Requirement	Complies (yes / no)	Comment
<b><i>Fences and Walls</i></b>		
Respond to identified architectural character for the street/area	Generally Complies	<p>Clear glass balustrades are proposed to the apartments. A mixture of solid and translucent materials have been utilised. The DRP provided the following comments:</p> <ul style="list-style-type: none"> <li>the liveability of balconies would be enhanced with the provision of adjustable screens;</li> <li>the western end wall of Building A presents as an 'end wall'. Further detailed design development, perhaps by way of returning balconies around the corner, providing windows to the stair etc. could overcome this concern;</li> <li>the top of the masonry wall elements in the elevations could be enhanced perhaps by a fine 'floating' cap to provide visual refinement.</li> </ul>
Delineate public and private domain without compromising safety or privacy	No	<p>Safety is considered to be adequately addressed within this development application.</p> <p>The Urban design review states that the public open space arrangement tends to have the effect of privatising this open space and is unsatisfactory. Additionally, the acute open space within the corner of Building A has the feel of a private area but is actually part of the public open space. The treatment of this corner has not been adequately addressed with regard to delineating the public and private domain.</p>
Contribute to amenity, beauty and useability of private and communal open space	Yes	Planter boxes, BBQ, water features, benches and seats are located within the communal open space and public open space.
Retain and enhance amenity of the public domain	No	It is considered that the public open space does not provide sufficient amenity due to significant overshadowing, the configuration into two smaller deep soil spaces and location adjacent the New Street 1 and Pemberton Street corner.
Comprise durable materials that are easy to clean and graffiti resistant	Yes	The SEE states that the materials are selected to minimize the need for maintenance. Pre-finished materials are proposed for all external metalwork items such as pergolas, balustrades, sunhoods etc. The design considers access for window cleaning with a substantial number accessible via balconies.
<b><i>Landscape Design</i></b>		
Improve amenity of open space by good landscape design	-	Refer to the Landscape Officer's comments within the SEPP65 assessment.
Contribute to streetscape character and amenity of the public domain	-	-
Improve energy efficiency and solar efficiency of dwellings and microclimate of private open spaces	-	-
Contribute to positive site characteristics	-	-

Requirement	Complies (yes / no)	Comment
Integration of water and stormwater management with landscape design	-	-
Sufficient depth of soil above paving slabs for mature tree growth	-	-
Use of robust elements to minimise maintenance	Yes	The SEE states that the materials are selected to minimize the need for maintenance.
<b>Open Spaces</b>		
Communal Open space should be minimum 25-30% of site area	No	<p>The proposed development provides 8% (excluding park) and 31% (including park, through-site links &amp; lane works).</p> <p>Notwithstanding the above, the communal open space has not been calculated in accordance with Council's definition, which requires that communal open space is comprised of deep soil.</p> <p>The communal open space is located at podium level and the landscaping is comprised of planter beds.</p>
Where 25% communal open space is not achieved, the applicant must demonstrate that residential amenity is provided in a form of increased private open space and/or in contribution to public open space	N/A	<p>Based on the calculations provided by the applicant, communal open space complies with the 25% requirement.</p> <p>Notwithstanding this, the proposed development outperforms the minimum unit and balcony size as stipulated in the DCP.</p>
Minimum private open space for ground level apartments is 25m <sup>2</sup> with minimum 4m dimension in one direction	No	<p>Building A: 8/21 provide POS greater than 25sqm</p> <p>Building B: 4/8 provide POS greater than 25sqm</p> <p>Building C: 1/6 provide POS greater than 25sqm</p> <p>Dimensions for all ground floor POS areas are a minimum of 4m in one direction.</p>
<b>Orientation</b>		
Position and orient buildings to maximise north facing walls – within 30° east and 20° west of north	Yes/No	<p>Building A is oriented north, east, south and a small portion oriented west.</p> <p>Building B is oriented north, south and a small portion oriented west.</p> <p>Building C is oriented north, south and a small portion oriented west.</p>
Align buildings to streets on east-west streets and use courtyards, L-shaped configurations and increased setbacks to side boundaries on north-south streets	Yes/No	<p>Building A and C have been aligned along New Street 1 and Rancom Street respectively.</p> <p>Building B has not been aligned along Pemberton Street.</p>
Orient living spaces and associated private open space to north	Generally complies	9% (33 apartments) orient their living spaces and private open space (balconies) to the south-east and south-west.
Building elements used to modify environmental conditions to maximise sun access in winter and sun shading in summer	No	Opportunities to maximise sun access in winter to the southerly aspect apartments are restricted by the buildings orientation.

Requirement	Complies (yes / no)	Comment
<b><i>Planting on Structures</i></b>		
<p><i>Large trees</i> (16m canopy): min. soil volume 150m<sup>3</sup>, min soil depth 1.3m, min soil area 10m x 10m</p> <p><i>Medium trees</i> (8m canopy): min soil volume 35m<sup>3</sup>, min soil depth 1m, min soil area 6m x 6m</p> <p><i>Small trees</i> (4m canopy): min soil volume 9m<sup>3</sup>, min soil depth 800mm, min soil area 3.5m x 3.5m</p> <p><i>Shrubs</i>: min soil depth 500-600mm</p> <p><i>Ground cover</i>: min. soil depth 300-450mm</p> <p><i>Turf</i>: min. soil depth 100-300mm</p>	No	<p>The proposal has been referred to Council's Landscape Assessment for review.</p> <p>Street tree provision and detailing and planter box depths to be in accordance with STMP, the latter to allow for the provision of a mixture and even spread of small and medium sized trees in podium areas.</p> <p>Planter beds should be at the one level/grade.</p>
<b><i>Stormwater Management</i></b>		
Minimise impervious areas by using pervious/open pavement materials	Yes	The proposal has been referred to Council's Development Engineer for review who states that the design of the buildings looks acceptable.
Retain runoff from roofs in water features for landscaping/reuse	Yes	As above.
Landscape design to incorporate appropriate vegetation	Yes	As above.
Minimise formal drainage systems (e.g. pipes)	Yes	As above.
Protection devices to ensure stormwater quality	Yes	As above.
Appropriate erosion and sediment control	Yes	As above.
<b><i>Safety</i></b>		
Reinforce development boundary to distinguish between public and private space	No	<p>The proposed development does not comply with the DCP requirements for solar access for the living space of the proposed units, the common open space of the proposed development or private open space of adjoining development.</p> <p>The proposed development results in significant overshadowing of the eastern half of the public open space and complete overshadowing of the communal open space between Buildings B and C.</p>
Orient building entrances to public street	No Considered acceptable	Entrance to Building A is off the northern end of the north-south pedestrian through-site link. The entry to Building B is off the public open space and entry to Building C is off the southern end of the north-south pedestrian through-site link.
Provide clear lines of sight between entrances, foyers and street	Yes/No	<p>The line of sight from the entry of Building A and C is to the western façade of Building F and E respectively.</p> <p>The entry to Building B provides a clear line of sight to the New Street 1 and Pemberton Street corner.</p>

Requirement	Complies (yes / no)	Comment
Provide direct entry to ground level units	Yes	Direct entry has been provided to all ground level apartments.
Direct and well lit access between car parks and dwellings, car parks and lift lobbies and to all unit entries	Yes	Considered adequate.
Orient living areas with views over public or communal areas	Yes/No	<p>Units in Building A that are oriented south and west and units in Building B oriented north will have views over the public open space.</p> <p>Units in Building A, B and C that are oriented east will have views over the north-south through-site link.</p> <p>Units in Building B and C oriented south and north respectively will have views over the communal open space.</p> <p>Units in Building A oriented north are addressed to New Street 1.</p> <p>Units in Building B and C oriented west are addressed to Pemberton Street.</p> <p>Units in Building C oriented south are addressed to Rancom Street.</p>
Use bay windows/ balconies that protrude beyond main façade to enable wider angle of vision	Yes/No	Balconies are generally contained within the main façade of the buildings. Some balconies protrude beyond the main face.
Use corner windows to provide oblique views	Yes/No	Corner windows are used in some units.
Casual views available to common internal areas	Yes	Bedroom windows of some units are oriented over the communal open space between Buildings A and B.

Requirement	Complies (yes / no)	Comment
No blind/dark alcoves in design/layout	No	<p>The dog-leg of Building A creates an acute corner which is subject to total overshadowing.</p> <p>The Urban design review notes that the proposed development has several internal corners from “L” shaped building plan forms that give rise to amenity and overlooking issues. This is demonstrated in the figure below:</p> 
Provision of well lit routes through the site and appropriate illumination to all common areas	Yes	Satisfactory.
Graded illumination to car parks and illuminating entries higher than acceptable standard	Yes	Satisfactory.
Apartments to be inaccessible from balconies, roofs, windows of neighbouring buildings	Yes	Balconies are generally separated by a balcony party wall, planter beds or privacy screen, or are stepped so that the balconies do not align.
Separate residential component of car parking from other building uses and control car park access from public/ common areas	Yes	<p>Building B and C provide visitor and retail parking on the ground level car park. Residential parking is physically separated and provided at Basement Level 1 and 2.</p> <p>Building A does not have any associated retail component. As such, basement levels 1-3 are for visitor and residential parking only.</p>
Direct access for car parks to apartment lobbies for residents	Yes	Lift access from basement car park levels to apartment lobbies for residents and street access for retail patrons.
Separate access for residents in mixed-use buildings	Yes	There are separate vehicular and pedestrian entry points to Buildings B and C.
Intercom system at entry on in lobby for visitors	TBD	To be determined
Key card access for residents	TBD	To be determined
<b>Visual Privacy</b>		

Requirement	Complies (yes / no)	Comment
Site layout to increase building separation	No	The Urban design review notes that the placement and orientation of buildings on the site does not achieve an adequate site layout and results in significant impacts to privacy, view, outlook and overlooking.
Layout to minimise direct overlooking of rooms/ private open spaces	No	The Urban design review notes that the placement and orientation of buildings on the site does not achieve an adequate site layout and results in significant impacts to privacy, view, outlook and overlooking.
Use of site and building design element to increase privacy without compromising access to light and air	No	The Urban design review notes that the placement and orientation of buildings on the site does not achieve an adequate site layout and results in significant impacts to privacy, view, outlook and overlooking.
<b>Site Access</b>		
Entries to relate to existing street/ subdivision pattern, street tree planting, pedestrian access network	Yes/No	The layout of the site does not respond to the existing development to the east. Entries do not address the streets.  The proposed pedestrian access network is considered satisfactory as it provides a north-south link and east-west link as per the DCP.
Entries to be clearly identifiable element in the street	Yes	Main entries to the residential component of the buildings are not addressed to the street.  The entry to the commercial component is a clearly identifiable element along Pemberton Street.
Multiple entries to be provided – main entry plus private ground floor entries	Yes	A main residential entry is provided for each building. In addition, each ground floor apartment is provided with separate entries.
Direct physical and visual connection between street and entry	Yes/No	Main entries to the residential component of the buildings are not addressed to the street. However, there is a visual line of sight from the entry to Building B to the Pemberton Street and New Street 1 corner.
Provide separate entries from the street for pedestrians and cars and different uses	Yes	Separate entries are provided for pedestrians and vehicles.
Entries and circulation space of adequate size to allow movement of furniture	No	Minimum corridor width is 1.2m wide.
Mailboxes to be convenient and not add to street clutter	Yes/No	Mailboxes for Building A are located along the north-south pedestrian through-site link.  Mailboxes for Building B are located adjacent the main entry which is off the public open space.  Mailboxes for Building C are located along Rancom Street.  The mailboxes for Building B and A are not considered to be in a convenient and obvious location and should be along a street front.
<b>Parking</b>		
Appropriate parking provision	Yes	605 spaces provided. The car parking complies with the retail, residential and visitor rates per building.

Requirement	Complies (yes / no)	Comment
Limit visitor parking on small sites where impact on landscape/open space is significant	N/A	The site is not a small site.
Preference to underground parking – where above ground parking is proposed the design must mitigate impacts on streetscape/amenity	Yes	Above ground parking is not proposed. Building B and C provide one level of at-grade (ground level) parking due to the associated commercial uses. The residential parking is provided within 2 basement levels. Building A provides 3 levels of basement parking.
Provision of bicycle parking easily accessible from ground level	Yes	Bicycle parking within all buildings is located adjacent to the vehicle or pedestrian entries.
<b><i>Pedestrian Access</i></b>		
Site planning optimises accessibility to development	Yes	There are separate vehicular and pedestrian entrances to the site.
High quality accessible routes to public/ semi-public areas of development	Yes	
Main building entrance accessible for all from the street – ramps to be integrated into overall building design	No Considered acceptable	Entrance to Building A is off the northern end of the north-south pedestrian through-site link. The entry to Building B is off the public open space and entry to Building C is off the southern end of the north-south pedestrian through-site link.
Ground floor apartments and associated private open space to be accessible from street	Yes	Ground floor apartments and associated private open space are accessible from the street or the public open space.
Maximise accessible, visitable and adaptable apartments – min. AS1428 requirements	Yes	There is opportunity to ensure there are more adaptable units within the site.
Separate and clearly delineated pedestrian and vehicle entries	Yes	There is one vehicular access to the site from Rancom Street and one vehicular access to the site from New Street 1.
Provision of public through-site pedestrian accessways in large developments	Yes	The development proposes a north-south through-site pedestrian link as well as an east-west through-site link which runs through the public open space.
Barrier free access to at least 20% dwellings	Yes	Lifts have been provided to all Buildings.
<b><i>Vehicle Access</i></b>		
Max. driveway width = 6m	Yes	The driveway width is 6.645m at the New Street 1 boundary and 10m at the Rancom Street boundary.
Maintain pedestrian safety by minimising pedestrian/ vehicle conflicts	Yes	There are separate vehicular and pedestrian entry points to the buildings.
Limited number of vehicle accessways at site	Yes	Vehicular access to Building A is provided via New Street 1 and vehicular access to Building B is provided via Rancom Street. There is no vehicular access to Pemberton Street.



Requirement	Complies (yes / no)	Comment
Car park entry/access located to secondary frontages/lanes	Yes	Vehicular access to Building A is provided via New Street 1 and vehicular access to Building B is provided via Rancom Street. There is no vehicular access to Pemberton Street.
<b>PART 03: BUILDING DESIGN</b>		
<b><i>Apartment Layout</i></b>		
<p><i>Studio:</i> Internal area = 38.5m<sup>2</sup> External area = 6m<sup>2</sup> <i>1 Bed cross through:</i> Internal area = 50m<sup>2</sup> External Area = 8m<sup>2</sup> <i>1 bed maisonette/loft:</i> Internal area = 62m<sup>2</sup> External area = 9.4m<sup>2</sup> <i>1 bed single aspect:</i> Internal area = 63.4m<sup>2</sup> External area = 10m<sup>2</sup> <i>2 bed corner:</i> Internal area = 80m<sup>2</sup> External area = 11m<sup>2</sup> <i>2 bed cross through:</i> Internal area = 89m<sup>2</sup> External area = 21m<sup>2</sup> <i>2 bed cross over:</i> Internal area = 90m<sup>2</sup> External area = 16m<sup>2</sup> <i>2 bed corner with study:</i> Internal area = 121m<sup>2</sup> External area = 33m<sup>2</sup> <i>3 bed:</i> Internal area = 124m<sup>2</sup> External area = 24m<sup>2</sup></p>	Generally Yes	<p>The following sizes have been provided:</p> <ul style="list-style-type: none"> <li>• Studio: 60m<sup>2</sup></li> <li>• 1 bed: 75m<sup>2</sup> – 83m<sup>2</sup></li> <li>• 2 bed: 100m<sup>2</sup> – 111m<sup>2</sup></li> <li>• 3 bed: 131m<sup>2</sup> – 144m<sup>2</sup></li> </ul> <p>A detailed breakdown has not been provided.</p>
Single aspect apartments max 8m depth from window	No	The SEE states that the unit depth provides for approximately 8-11.5 metres.

Requirement	Complies (yes / no)	Comment
Back of a kitchen max. 8m from window	No	<p>The SEE states that the unit depth provides for approximately 8-11.5 metres which is a minor variation to the recommendation. The units which exceed the 8 metre depth have been designed with a wide frontage and maintain sufficient levels of natural light and ventilation into the apartments with recessed balconies allowing for increased openings, this is considered appropriate.</p> <p>Council notes that while all units are in excess of the recommended minimum sizes, all units exceed the maximum depth.</p> <p>The Urban design review reinforces that the overall depth of buildings is not satisfactory.</p>
Cross over/cross through apartments over 15m - min. 4m width	Yes	The SEE states that this complies.
Units to accommodate a variety of furniture arrangements, range of activities, household types, furniture removal/ placement	Yes/No	Most apartments have a variety of furniture arrangements as there are a variety of apartment layouts and types.
Unit layout to respond to natural and built environment/ optimise site opportunities	No	<p>9% (33 apartments) orient their living spaces and private open space (balconies) to the south-east and south-west.</p> <p>Opportunities to provide highlight west and east-facing windows are not envisioned on the plans for all units.</p>
Kitchen not main circulation space of unit	Yes/No	Some kitchens are located within an entry space to the apartment.

**APPENDIX B – DCP PART 4C RESIDENTIAL FLAT BUILDINGS**

<b>Part</b>	<b>Control</b>	<b>Proposed</b>	<b>Complies (Yes/No)</b>
<b>4C.2 Site Design</b>			
<b>4C.2.2 Local Character – Botany</b>	Address the Desired Future Character Statement in Part 8	8.4.2 The proposed built form results in a non-compliance with the FSR within the B4 zone and a non-compliance with the height within the B4 and R3 zone. This has been addressed in the assessment under the BBLEP 2013. The application, subject to the design amendments recommended by Council's independent Urban Design advice, is generally consistent with the local character. This is discussed further in the report.	Please refer to the assessment at Note 9 under the BBDCP 2013 assessment
<b>4C.2.3 Streetscape Presentation</b>	<b>C3</b> Development must comply with the following: (i) The maximum length of any building is 24 metres; (ii) All building facades must be modulated and articulated with wall planes varying in depth by not less than 0.6 metres.	Building A: 66m to New Street 1 and 58m along the through-site link Building B: 37m to Pemberton Street and 30m to the through-site link Building C: 86m to Rancom Street and 16m to Pemberton Street	<b>No</b>
	<b>C4</b> Buildings must be sited to address the street and relate to neighbouring buildings. Developments on sites with two or more frontages should address both frontages, to promote and to reinforce the ambiance of the streetscape. Buildings that are orientated across sites, contrary to the established development pattern, are intrusive and are not permitted (refer to Figure 4).	Buildings A and C are oriented to address the streets. The western end of Building B addresses Pemberton Street but the length extends into the centre of the site. The proposed building layout is considered to be contrary to the established design and does not respond to the existing building placement or open space placement of Parkgrove East.	<b>No</b>
	<b>C5</b> Street corners must be addressed by giving visual prominence to parts of the building façade, such as a change in building articulation, materials, colour, roof form or height.	The corner of Pemberton and Rancom Streets is addressed by Building C with ground level commercial and pedestrian access at the corner. The corner of Pemberton Street and New Street 1 is addressed by the western half of the public open space and is not considered to provide for a strong street edge or continuation of the built form along Pemberton Street.	<b>No</b>
<b>4C.2.4 Height</b>	<b>C1</b> The maximum height of buildings must not exceed the maximum height identified in the	Refer to assessment under BBLEP 2013.	-

Part	Control	Proposed	Complies (Yes/No)
	Height of Buildings Map and Clause 4.3 of the Botany Bay Local Environmental Plan 2013.		
<b>4C.2.5 Floor Space Ratio (FSR)</b>	<b>C1</b> The maximum FSR of development is to comply with the Floor Space Ratio Map and Clauses 4.4, 4.4A and 4.4B of the Botany Bay Local Environmental Plan 2013.	Refer to assessment under BBLEP 2013.	-
<b>4C.2.6 Site Coverage</b>	<b>C1</b> Development for a residential flat building must not exceed a maximum site coverage of 45%.	41% <sup>4</sup> (8,069m <sup>2</sup> )	No Considered Acceptable
<b>4C.2.7 Landscaped Area and Deep Soil Planting</b>	<b>C1</b> A residential flat development must have a minimum landscaped area of 35% and a maximum unbuilt upon area of 20% .	Landscaped area: 29% Unbuilt upon area: 25%	No No Considered Acceptable
	<b>C14</b> The front landscaped setback shall be a minimum depth of 3 metres (4 metres on classified roads). This area shall be set aside exclusively for soft landscaping. Trees in this area shall attain a height of at least 8-10 metres at maturity.	Building C is not in line with the approved Building D at Parkgrove East.  Building A is consistent with the setback of approved Building F at Parkgrove 1 (East).	No  Yes
	<b>C15</b> No more than one-third (1/3) of the front landscaped setback shall be paved (including driveways and pathways to individual dwellings) to enable sufficient landscaping to soften and buffer the development and reduce its impact upon the streetscape. This may necessitate an alteration of design and/or layout, shared or reduced width driveways and a reduced amount of access pathways.	Generally complies. The front landscaped area is comprised of planter box landscaping.	Yes
	<b>C16</b> Driveways and pathways shall be located at least 1.5 metres from common boundaries to allow for a continuous landscaped buffer strip to the side boundary and a significant landscaped setting for all paved areas. The landscape strip must contain tall screen planting that retains foliage to the ground.	The north-south pedestrian through-site link provides an adequate landscaped buffer strip to the common boundary to the east.	Yes
	<b>C17</b> Planter beds shall be a minimum of 1 metre in width unless otherwise stipulated in	Planter boxes are generally 1m in width.	Generally complies

<sup>4</sup> The site coverage calculation includes the basement.

Part	Control	Proposed	Complies (Yes/No)
	setbacks.		
	<p><b>C22</b> A minimum of 25% of the landscaped area should comprise a deep soil planting area of which:</p> <p>(i) A minimum of 50% should be located at the rear of the site. For sites with dual or rear lane frontages, this area may be relocated to allow buildings to address the secondary frontage or provide for rear lane car parking access;</p> <p>(ii) A minimum of 30% should be located within the front setback; and</p> <p>(iii) A minimum 2 metre wide strip of landscaping is to be located along one side boundaries; and</p> <p>(iv) Where building height is greater than 7 metres, a minimum 3 metres wide landscape planter bed for the purposes of dense, layered landscape screening is to be located on both the side and rear boundaries. If it is attached to private open space of ground floor apartments then a 2 meter buffer is sufficient.</p>	<p>33% of the site is provided as deep soil.</p> <p>The application information does not breakdown how much of the total landscaped area is deep soil.</p>	Generally complies
	<b>C23</b> Communal open space must be deep soil zones (not over podium or car park).	<p>The Area Calculations Plans (SK1040319-52; SK1040319-53; SK1040319-54) identify 1,237sqm (8%) of communal open space.</p> <p>The Area Calculations Plans include the podium level (between Buildings B &amp; C) and the ground level planter beds within the calculations.</p> <p>As per the definition within the DCP, landscaping on the podium level is not deep soil. Communal open spaces must be deep soil. As such, the podium level should not be included in the calculations of communal open space.</p> <p>Planter beds are not considered deep soil landscaping. As such, these should not be included in the calculation of communal open</p>	No

Part	Control	Proposed	Complies (Yes/No)
		space. Council's calculations indicate that the total communal open space provided is nil.	
	<b>C24</b> Basement car parks, where permitted, must not extend to the site boundaries and excavation for any associated garages, car parking, plant rooms or ancillary storage must not exceed 65% of the site area (which equates to maximum site cover + unbuilt upon area).	Basement car parks are setback 3m from the future site boundary.	Yes
<b>4C.2.8 Private and Communal Open Space</b>	<b>C1</b> The minimum private open space requirements (i.e. balconies) for a development are set out in <b>Table 2</b> . Studio & 1 bed: 12qm 2 bed: 15qm 3 bed: 19qm 4 bed: 24sqm	Studio/ 1 bed: 12m <sup>2</sup> – 54m <sup>2</sup> 2 bed: 15m <sup>2</sup> – 74m <sup>2</sup> 3 bed: 27m <sup>2</sup> – 49m <sup>2</sup>	Yes
	<b>C2</b> The minimum depth of balconies is 3 metres. Developments which seek to vary from the minimum standard depth of 3 metres must provide scaled plans of the balcony with furniture layout to confirm adequate, useable space can still be provided.	All balconies adjacent to living rooms provide 3m depths. Some balconies provide depths of less than 3m while others provide depths of more than 3m. Notwithstanding this, each balcony has an area with a depth of 3m and sufficient width to locate balcony furniture.	Satisfactory
	<b>C5</b> The minimum private open space for ground floor apartments must comply with Table 3. Studio & 1 bed: 24.5sqm 2 bed: 35sqm 3 bed: 45.5sqm	Studio/1 bed: 5/19 (26.3%) comply 2 bed: 8/16 (50%) comply 3 bed: None on ground floor  The minimum size for the studio/1 bed ground floor units is 12sqm which complies with minimum POS for non-ground floor units. The minimum size for 2 bed ground floor units is 19sqm which is larger than the minimum POS requirement for non-ground floor units.	Satisfactory
	<b>C6</b> The minimum communal open space requirements for a development is 30% of the site area.	Please refer to the response to C23 above. The Area Calculations indicate that the proposal provides the following: <ul style="list-style-type: none"> <li>8% (excluding park)</li> <li>31% (including park, through-site links &amp; lane works)</li> </ul>	No Yes Satisfactory

Part	Control	Proposed	Complies (Yes/No)
		Council's calculations indicate that the total communal open space provided is nil. Notwithstanding this, the dedication of a 3,220sqm park in addition to various through-site links is considered acceptable.	
	<b>C8</b> Communal open space areas must receive at least 3 hours of direct sunlight between 9:00am and 3:00pm on 21st June	The communal open space between Building B and C does not receive any solar access on 21 June.	No
	<b>C10</b> Communal open spaces must include area of deep soil zones (i.e. not to be located over suspended slabs, sub surface car parks or stormwater detention tanks).	The Architectural Plans indicate that the communal open space on level 2 (between Building B & C) provides 'on-structure landscaping'. The public park (3,220sqm) and various through-site links provide deep soil zones. The public park and through-site links are considered to provide adequate deep soil zones within a 'communal' environment.	Satisfactory
<b>4C.2.9 Setbacks</b>	<b>C1</b> Residential flat buildings shall comply with the principles and provisions of State Environmental Planning Policy No. 65 and the Residential Flat Design Code in terms of setbacks.	Refer to Appendix A.	Refer to Appendix A.
	<b>C3</b> All front, side and rear setbacks are to provide deep soil zones to allow unencumbered planting areas.	The Area Calculation Plans (SK140319-55 & SK140319-56) indicate that the setbacks along New Street 1, Pemberton Street and Rancom Street (with the exception of access ramps & vehicle entry) are deep soil zones.	Yes
	<b>C6</b> Building setbacks from the existing front boundary must match the setback of adjoining properties, but must be a minimum of 3 metres or 4 metres if fronting a classified road.	Building C is in line with approved Building D at Parkgrove 1 (East). Building A is consistent with the setback of approved Building F at Parkgrove 1 (East).	Yes
	<b>C10</b> The following side boundary setbacks apply: (i) A minimum setback of 900mm for single storey development (up to 4 metres in height); (ii) A minimum setback of 1.5 metres for two storey development (up to 7 metres in height); (iii) A minimum setback of 3 metres (greater than 7 metres	Not Applicable.  The site is considered to have 3 front boundaries (Rancom Street to the south, Pemberton Street to the west and New Street 1 to the north) and a rear setback to Parkgrove 1 (East) to the east.	N/A

Part	Control	Proposed	Complies (Yes/No)
	in height); and (iv) A minimum setback of 3 metres where a site adjoins a business or industrial property.		
	<b>C12</b> Basement car parking areas must be a minimum of 1.5 metres from any side boundary for single storey development; or a minimum of 3 metres from any side boundary for two storey development.	Basement car parks are setback 3m from the future site boundary.	Yes
	<b>C13</b> Rear building setbacks must match those on adjoining properties but must be a minimum of 6 metres.	The subject site is considered to have a rear setback to Parkgrove East. The minimum building separation distance is 17.4m.	Yes
	<b>C14</b> Where land dedications are required resulting in a new boundary line all setbacks must be provided from this new boundary line, including basement car parking setbacks.	All setbacks on the plans have been shown from the new boundary line.	Yes
<b>4C.2.10 Through Site Links &amp; View Corridors</b>	<b>C1</b> Existing significant views are to be retained.	There are no existing significant views.	N/A
	<b>C2</b> View corridors are to be integrated into the design of any new development.	Council considers that view corridors and outlooks have not been retained due to the placement of buildings that do not complement the existing buildings on Parkgrove East.	No
	<b>C3</b> Building footprints are to take into account the requirement for consolidated open space as well as for view corridors.	The building footprint does not appear to take into account the consolidation of open space. It appears as if the public open space has been provided as an afterthought to the placement of the buildings.	No
	<b>C4</b> If a site has a frontage to two (2) or more streets with a boundary length greater than 25 metres, then one through site link to the other street/s must be provided (refer to Figure 10).	The site has a frontage to three streets. As such, a north-south and east-west pedestrian through-site link has been provided.	Yes
<b>4C.2.12 Consideration of Isolated Sites</b>	<b>C1</b> Applicants must demonstrate to Council satisfaction that adjoining parcels not included in their development site will be capable of being economically developed as required by Council as part of the development assessment process for their site. This will include establishing appropriate separation distances	Please refer to the assessment under Note 8 of BBDCP 2013.	No



Part	Control	Proposed	Complies (Yes/No)
	between adjoining buildings.		
	<b>C2</b> The development of existing isolated sites is not to detract from the character of the streetscape and is to achieve a satisfactory level of residential amenity for its occupants (refer to Figure 11).	At the time of writing this report, there was no proposal to develop the existing isolated site at No. 12 Pemberton Street, Botany.	N/A
	<b>C3</b> Where it is demonstrated by an applicant (with written documentation) that attempts have been made to address a potentially isolated site (i.e. an off to acquire the isolated site and reply from the owner of that site) the proposed development will be assessed on its merits.	Please refer to the assessment under Note 8 of BBDCP 2013.	No
	<b>C4</b> Where adjacent sites are developing concurrently, site planning options for development as an amalgamated site are to be explored.	Please refer to the assessment under Note 8 of BBDCP 2013.	No
	<b>C5</b> Developments which will result in potential isolated sites are required to address the Land and Environment Court Principles on isolation of site by redevelopment of adjacent site(s) (refer to <a href="http://www.lec.lawlink.nsw.gov.au/lec/principles/planning_principles.html">http://www.lec.lawlink.nsw.gov.au/lec/principles/planning_principles.html</a> ).	Please refer to the assessment under Note 8 of BBDCP 2013.	No
<b>4C.3 Building Design</b>			
<b>4C.3.1 Design Excellence</b>	<b>C1</b> To achieve excellence in urban design, development shall: <ul style="list-style-type: none"> <li>(i) Take into consideration the characteristics of the site and adjoining development by undertaking a thorough site analysis;</li> <li>(ii) Utilise innovative design which positively responds to the character and context of its locality;</li> <li>(iii) Provide a design which is sustainable;</li> <li>(iv) Enhance the streetscape character of the locality;</li> <li>(v) Ensure development is consistent in height and scale with surrounding development;</li> <li>(vi) Maintain established</li> </ul>	<p>The aesthetics and quality of the proposed buildings is considered to be satisfactory.</p> <p>The placement and orientation of the buildings is not considered to result in a good urban design for the subject site or in response to existing developments in the immediate area.</p> <p>The Urban design review has provided a detailed assessment of the proposed development against the approved masterplan. It concludes that the approved masterplan results in a more superior design.</p>	No

Part	Control	Proposed	Complies (Yes/No)
	setbacks; (vii) Design buildings to minimise impacts on neighbours by maintaining appropriate levels of solar access and privacy; (viii) Ensure any development utilises materials and finishes which complement the locality; (ix) Design for acoustic and visual privacy; (x) Ensure dwellings and open space areas achieve good solar access, and are energy efficient; (xi) Ensure building entries address the street and are clearly visible from the street or footpaths; (xii) Design development that provides good quality landscaping; (xiii) Consider the relationship of private open space to the layout of the dwelling; and (xiv) Use design techniques, which promote safety and discourage crime.		
<b>4C.3.2 Corner Buildings</b>	<b>C1</b> Buildings are to align with and reflect the corner conditions of respective streets (refer to Figure 13) to: (i) Accentuate the topography; (ii) Clarify the street hierarchy and indicate where there are intersections; and (iii) Reinforce the spatial relationships.	The Urban design review states that the proposed development locates an open space rather than a built form on the corner of Pemberton Street and New Street. This arrangement is not supported as it erodes rather than contributes to the urban form and desired future character of Pemberton Street.	No
	<b>C2</b> Corner buildings are to reflect the architecture, hierarchy and characteristics of the streets they address.	See above.	No
<b>4C.3.3 Building Entries</b>	<b>C1</b> Residential flat buildings shall comply with the principles and provisions of State Environmental Planning Policy No. 65 and the Residential Flat Design Code in terms of building entry and pedestrian access.	Refer to the assessment at Appendix A.	Refer to the assessment at Appendix A.
	<b>C2</b> Entrances must provide shelter and be well-lit and safe spaces to enter the building, meet	None of the mailboxes are provided with shelter. Details regarding lighting of	No

Part	Control	Proposed	Complies (Yes/No)
	and collect mail (refer to Figure 14). The front door must be oriented to the street and have direct access to the street.	entrances has not been provided.	
	<b>C4</b> Street numbering and mailboxes must be clearly visible from the primary street.	Mailboxes for Building C are located along Rancom Street whilst mailboxes for Buildings A and B are not clearly visible from the street.	No
	<b>C5</b> A main pedestrian entry is to be provided within a development. The entry is to be separate from car parks or car entries.	Entrance to Building A is off the northern end of the north-south pedestrian through-site link. The entry to Building B is off the public open space and entry to Building C is off the southern end of the north-south pedestrian through-site link. Building entries are separate from the car parking entries	Yes
<b>4C.3.4 Roofs and Attics/ Dormers</b>	<b>C1</b> Roofs should be pitched between 22.5 degrees and 36 degrees.	The development proposes flat roofs which is consistent with other developments in the immediate area.	Considered acceptable
	<b>C2</b> All rooftop or exposed structures including lift motor rooms, plant rooms, etc., together with air conditioning, ventilation and exhaust systems, are to be suitably screened and integrated with the building in order to ensure a properly integrated overall appearance.	Rooftop structures do not have screening devices.	No
	<b>C3</b> The visual impact of roof fixtures (e.g. vents, chimneys, aerials, solar collectors, mobile phone transmitters and satellite dishes) is to be minimised.	The visual impact of the roof fixtures is not considered to be detrimental and is not considered to be visible from the street.	Yes
<b>4C.3.6 Materials &amp; Finishes</b>	<b>C2</b> Materials, colours, architectural details and finishes must be consistent with those that are identified in the relevant Character Precinct in Part 8 - Character Precincts. If not identified in the character statement natural colours and muted tones and finishes are to be used.	The proposed materials, colours and finishes are consistent with the large-scale developments approved in the immediate area.	Yes
	<b>C3</b> No expansive use of white, light or primary colours which dominate the streetscape are permitted. Primary colours must only be used for small design features and accents to the building.	The proposed materials, colours and finishes are consistent with the large-scale developments approved in the immediate area. White colours are used sparingly on buildings that have a street orientation.	Yes

Part	Control	Proposed	Complies (Yes/No)
	<b>C4</b> Any solar panels must be integrated into the design of a building.	Solar panels are not proposed. Council's Landscape Officer makes the following comment: The expansive rooftops of all 3 buildings have not taken advantage of solar access by placing rooftop gardens in these areas.	N/A
	<b>C6</b> Materials and elements on the exterior of the building should be selected to be long wearing and require minimal maintenance.	The SEE states that the materials are selected to minimize the need for maintenance. Pre-finished materials are proposed for all external metalwork items such as pergolas, balustrades, sunhoods etc. The design considers access for window cleaning with a substantial number accessible via balconies.	Yes
<b>4C.5 Site and Building Amenity</b>			
<b>4C.5.1 Dwelling Mix, Room Size and Layout</b>	<b>C1</b> Dwellings within residential flat buildings must be designed to provide the following minimum internal areas: Studio: 60m <sup>2</sup> 1 bedroom: 75m <sup>2</sup> 2 bedrooms: 100m <sup>2</sup> 3 bedrooms: 130m <sup>2</sup> 4 bedrooms: 160m <sup>2</sup> Note: Dwelling size means the area inside the enclosing walls of a dwelling but excludes wall thickness, vents, ducts, staircases and lift wells.	Studio: 60m <sup>2</sup> 1 bed: 75m <sup>2</sup> – 83m <sup>2</sup> 2 bed: 100m <sup>2</sup> – 111m <sup>2</sup> 3 bed: 131m <sup>2</sup> – 144m <sup>2</sup>	Yes
	<b>C2</b> The combined total number of one-bedroom and studio dwellings shall not exceed 25% of the total number of dwellings within any single site area in residential zones.	13 x studio (3.7%) 168 x 1 bed (47.86%) 166 x 2 bed (47.29%) 4 x 3 bed (1.13%) TOTAL: 351 units  The applicant has not demonstrated compliance with the dwelling mix controls or provide documentary evidence as to why this control cannot be achieved.	No
	<b>C3</b> Laundry, food preparation and sanitary facilities are to be provided in a convenient location within a dwelling (or a building containing a number of dwellings) and built appropriate to the function and use of the dwelling.	Laundry, kitchen and bathroom facilities are provided within each apartment.	Yes

Part	Control	Proposed	Complies (Yes/No)
	<b>C6</b> Single aspect apartments should be limited in depth to 8 metres from a window.	The unit depth provides for approx. 8-11.5 metres which is a minor variation to the recommendation.	No
	<b>C7</b> The back of a kitchen should be no more than 8 metres from a window.	The depth to the back of a kitchen varies. Some apartments comply, some exceed the requirement.	Yes/No
<b>4C.5.2 Internal Circulation</b>	<b>C1</b> Common area corridors should be a minimum of 2 metres in width to facilitate ease of movement and may be required to be increased to reduce the confining effect of long and/or doubled corridors.	The minimum corridor measures 1.2m wide.	No
	<b>C3</b> In buildings of more than four storeys served by elevators, ensure that alternative access to another elevator is available in the event that any elevator is out-of-service due to breakdown or routine servicing.	Each building provides 2 elevators. Notwithstanding this, the Urban design review notes that the RFDC rules of thumb for internal circulation state “in general, where units are arranged off a double-loaded corridor, the number of unit accessible from a single core/corridor should be limited to eight”. There does not appear to be any significant reason to allow an exception to the rules of thumb.	Yes/No
	<b>C4</b> Articulate longer corridors. Design solutions may include utilising a series of foyer areas; and providing windows along or at the end of a corridor.	The Urban design review notes that the building lengths are far in excess and do not provide for good urban design and result in poor internal amenity and access. Additionally, each building is serviced by one lift core only.	No
<b>4C.5.3 Building Depth</b>	<b>C2</b> For residential flat development the maximum building depth of the building is 18 metres.	Building A (north-south wing): 16.4m to 25.4m Building B (east-west wing): 22m Building B: 22m - 29m Building C: 24m	No
	<b>C3</b> The maximum depth of a habitable room from a window, providing light and air to that room, is 10 metres.	The unit depth provides for approx. 8-11.5 metres which is a minor variation to the recommendation.	No
<b>4C.5.4 Balconies in Residential Flat Buildings</b>	<b>C1</b> In large developments (containing 20 or more units/dwellings) different styles and designs for balconies are required.	Different style balconies have been provided.	Yes
	<b>C2</b> At least one balcony per apartment is to be provided off the living areas.	Complies.	Yes
	<b>C3</b> The minimum area of the	The minimum area of balconies off	Yes

Part	Control	Proposed	Complies (Yes/No)
	balcony off the living area is 12m <sup>2</sup> and the minimum width is 3 metres.	each living area ranges from 12sqm to 80sqm.	
	<b>C4</b> The main balcony off the living area shall (refer to Figure 15): (i) Extend the dwelling's living space; (ii) Be sufficiently large and well proportioned to promote indoor/outdoor living; (iii) Be able to position a dining table and chairs on the balcony; (iv) Provide space for flower boxes or potted plants; (v) Include sun screens, pergolas, shutters, operable walls; (vi) Receive full sunlight for at least two hours; and (vii) Be screened from winds.	The proposed development complies with items (i) – (vi). The DRP have commented that additional screens be added especially to upper level balconies to screen from winds.	Yes
	<b>C5</b> Balconies should allow visual privacy but not excessive transparency. They should allow surveillance over the street, common open space etc.	The balconies are oriented over various streets and open spaces and are considered to provide appropriate casual surveillance. The DRP have commented that additional screens could be added for privacy.	Yes
	<b>C6</b> Balconies must not be continuous across the entire façade of the apartment.	Complies.	Yes
<b>4C.5.5 Ground Floor Apartment in Residential Flat Developments</b>	<b>C2</b> Security is to be increased by encouraging active street edges by providing ground floor apartments with access and address to the street; doors and windows facing onto the street; and terraces and gardens where appropriate.	Complies.	Yes
	<b>C3</b> The public and private space and the edge between the two are to be clearly defined.	This has been discussed further in the report and it is considered that the definition between public and private is not satisfactory. This namely concerns the location and reconfiguration of the public open space.	No
	<b>C4</b> Ground floor apartments are to have individual entries and/or front and rear garden spaces.	The Architectural Plans demonstrate that all ground floor apartments have individual entries with garden space in the form of planter boxes. Ground floor apartments in Building A, B & C	Yes

Part	Control	Proposed	Complies (Yes/No)																
		facing east front the through-site link while ground floor apartments in Building B facing north and Building A facing south and west front the council dedicated park.																	
	C5 Privacy is to be increased whilst ensuring efficient use of soil zones and open space by designing gardens and terraces as a transition zone between the apartments and the street.	The application was referred to Council's Landscape Officer who provided the following:  The internal frontages to the park provide 1.2m wide planters within the ground floor terraces. The lack of landscaping on these building frontages should be offset by the extensive landscaping and tree planting that can be achieved in the public park, improving internal screening of buildings A and B. Similarly the N-S through site link enables large canopy tree planting and additional screening and amelioration of the eastern facades of these buildings but not the open space outlook originally approved.	No																
	C6 Deep soil zones and open space area shall be designed to provide a transition zone between apartments and the street and are to be landscaped.																		
4C.5.7 Ceiling Heights	C2 Development shall comply with the Table 5. <table><tr><th colspan="2">Minimum Height</th></tr><tr><td>In locations where there is potential for future ground floor retail or commercial uses</td><td>3 metres</td></tr><tr><td>Ground floor, residential</td><td>2.7 metres</td></tr><tr><td>First floor, habitable rooms</td><td>2.7 metres</td></tr><tr><td>Above first floor habitable rooms</td><td>2.7 metres</td></tr><tr><td>Minimum wall heights in attics</td><td>1.5 metres over 1/3 of the floor area</td></tr><tr><td>Dwelling entries</td><td>2.4 metres</td></tr><tr><td>Attic space</td><td>2.4 metres over 2/3 of the floor area.</td></tr></table>	Minimum Height		In locations where there is potential for future ground floor retail or commercial uses	3 metres	Ground floor, residential	2.7 metres	First floor, habitable rooms	2.7 metres	Above first floor habitable rooms	2.7 metres	Minimum wall heights in attics	1.5 metres over 1/3 of the floor area	Dwelling entries	2.4 metres	Attic space	2.4 metres over 2/3 of the floor area.	The ceiling heights comply with the DCP controls.	Yes
Minimum Height																			
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Dwelling entries	2.4 metres																		
Attic space	2.4 metres over 2/3 of the floor area.																		
4C.5.8 Solar Access	C2 Development must demonstrate that living rooms and private open spaces for at least 70% of apartments in a development should receive a minimum of three hours direct sunlight between 9am and 3pm in mid-winter.	70% receive at least 2 hours <sup>5</sup>  This does not comply with 4C.8 of the BBDCP 2013 in that it considers this area as requiring 3 hours as this is not a high-density area. Notwithstanding this, the development does otherwise comply with the RFDC requirements under SEPP 65 and Council considers this to be reasonable given this is an approach consistent with existing approvals in the immediate area.	No Considered acceptable																
	C3 Neighbouring developments will obtain at least three hours of direct sunlight to 50% of the primary private open space and 50% of windows to habitable rooms; and 30% of any common open space will obtain at least two hours of direct sunlight between 9am and 3pm on 21	Building F: overshadowing to western façade from 3pm  Building E: overshadowing to western façade from 1pm  Building D: overshadowing to western façade from 1pm  Buildings D, E & F	No																

<sup>5</sup> Taken from Apartment Schedule, Issue G, dated 09.03.2015.

Part	Control	Proposed	Complies (Yes/No)																
	June.	Less than 3 hours sunlight is maintained to the western facades  During March & December 3 hours is provided during mid-day to the western facades																	
	C6 Development sites and neighbouring dwellings are to achieve a minimum of 2 hours direct sunlight between 9am and 3pm on 21 June onto at least 50% of the required minimum amount of private open space, as well as to living rooms.	70% receive at least 2 hours. No impact on the Primary Open Space of Parkgrove 1 which is located on the eastern side of Building D and between Bldgs. E & F.	Yes																
4C.5.10 Building Separation	C2 Dimensions within a development, for internal courtyards and between adjoining sites are outlined in Table 6. <table><tr><th>Building Height (metres)</th><th>Separation Between Habitable Rooms/Balconies</th><th>Separation Between Habitable Balconies &amp; Non-Habitable Rooms</th><th>Separation Between Non-Habitable Rooms</th></tr><tr><td>Up to 12m</td><td>12m</td><td>9m</td><td>6m</td></tr><tr><td>12-25m</td><td>18m</td><td>13m</td><td>9m</td></tr><tr><td>25m +</td><td>24m</td><td>18m</td><td>12m</td></tr></table>	Building Height (metres)	Separation Between Habitable Rooms/Balconies	Separation Between Habitable Balconies & Non-Habitable Rooms	Separation Between Non-Habitable Rooms	Up to 12m	12m	9m	6m	12-25m	18m	13m	9m	25m +	24m	18m	12m	-	-
	Building Height (metres)	Separation Between Habitable Rooms/Balconies	Separation Between Habitable Balconies & Non-Habitable Rooms	Separation Between Non-Habitable Rooms															
	Up to 12m	12m	9m	6m															
	12-25m	18m	13m	9m															
	25m +	24m	18m	12m															
Up to 12m	Bldg. A (to Bldg. A): 9m Bldg. A (to east): 18.3m Bldg. B (to Bldg. A): 21.58m Bldg. B (to Bldg. C): 18m Bldg. B (to east): 18.2m Bldg. C (to east): 17.4m	Building A: No Building B: Yes Building C: Yes																	
12-25m	Bldg. A (to Bldg. A): 13m Bldg. A (to east): 18.3m Bldg. B (to Bldg. A): 21.58m Bldg. B (to Bldg. C): 18m Bldg. B (to east): 18.2m Bldg. C (to east): 18.5m	Building A: No Building B: Yes Building C: Yes																	
25m+	N/A	N/A																	
4C.5.11 Views	C1 Development is to preserve views of significant topographical features such as the urban skyline, landmark buildings and areas of high visibility.	There is considered to be no significant views or landmarks that are required to be maintained.	N/A																
	C2 Building design, location and landscaping is to encourage view sharing between properties.	The Urban design review states that there is little or no continuity between the layout of building forms for the proposed development and those buildings already constructed on Parkgrove East. Proposed buildings are	No																



Part	Control	Proposed	Complies (Yes/No)
		generally not aligned with existing buildings, and the spaces separating buildings do not flow into Parkgrove West to form extended vistas or potential view corridors but are instead blocked by proposed buildings.	
<b>4C.5.14 Storage</b>	<b>C1</b> At least 50% of the storage is to be provided within the dwelling and accessible from either the hall or living area. The remaining 50% of the storage may be located in the basement car park and allocated to the individual dwelling.	Studio: At least 90% of storage is provided in the apartment with the exception of apartments B501 & B701, which show a total of 6m <sup>3</sup> breakdown as 1m <sup>3</sup> in the apartment and 4m <sup>3</sup> in the basement, which total 5m <sup>3</sup> .  1 bed: 87% - 100% of storage is provided within the apartments 2 bed: 12/166 units (7.2%) provide less than 50% of storage within the unit. The remaining 154 (92.7%) provide between 50% - 100% of storage within the unit. 3 bed: Provide between 83% - 100% of storage within the unit	Yes
	<b>C2</b> Accessible and adequate storage facilities are to be provided at the following rates: <ul style="list-style-type: none"> <li>Studios: 6m<sup>3</sup></li> <li>1 bedroom dwelling: 8m<sup>3</sup></li> <li>2 bedroom dwellings: 10m<sup>3</sup></li> <li>3+ bedroom dwellings: 12m<sup>3</sup></li> </ul>	Studio: 11/13 provide 6m <sup>3</sup> . 2 studios provide 5m <sup>3</sup>  1 bed: 8m <sup>3</sup> 2 bed: 10m <sup>3</sup> 3 bed: 12m <sup>3</sup>	Yes
	<b>C3</b> The storage area separate from the dwelling should be secured within the garage car parking area.	Storage areas separate from the units are contained within the basement car parking area.	Yes
	<b>C4</b> Storage areas are to have a minimum height of 1.5 metres.	The SEE states that All units comply with the minimum requirement.	Yes
<b>4C.5.15 Site Facilities</b>	<b>C3</b> One (1) lift is required per forty (40) dwellings or greater part thereof and two (2) for forty or more.	Two lifts are provided per building.	Yes
<b>4C.5.17 Car Parking &amp; Vehicle Access</b>	<b>C2</b> All developments must comply with the car parking and bicycle rates and design requirements within Part 3A - Car Parking. <u>Car Parking Rates</u> Studio: 1 space / dwelling 1 bed: 1 space / dwelling	605 spaces provided	Yes

Part	Control	Proposed	Complies (Yes/No)
	2 bed: 2 space / dwelling 3 bed: 2 space / dwelling Visitors: 1 space / 5 dwelling Commercial: 1 space / 40m <sup>2</sup>		
<b>4C.6.1 Adaptable Housing</b>	Part 3C; Provide all access to common areas in accordance with DDA & BCA; Compliance with adaptable housing standards AS4299-1995.	An Access Report has been submitted with the application and concludes that the access and adaptability review of the development demonstrates the retail areas, common domain residential amenities, visitability and adaptability of residential apartments will comply with the accessibility requirements of the BCA and relevant sections 3A, 3C and 4C Council's DCP 2013 pertaining to accessible pathways, visitable, adaptable housing for people with disabilities.	Yes
<b>4C.7 Large Development Sites (in excess of 2000m<sup>2</sup>)</b>			
<b>4C.7.2 Design and Siting</b>	<b>C1</b> The design and layout of development on sites in excess of 2000 m <sup>2</sup> must comply with the controls identified in Figure 19. In particular: (i) Development along the street frontage must consist of multi-unit dwellings (with a maximum height of two storeys plus attic (refer to Part 4C.3.4 - Roofs and Attics/ Dormers). (ii) Any proposed residential flat building must be situated to the rear of the site, behind the multi-unit dwellings, to minimise the bulk and scale of the development and its visual impact on the streetscape.	The proposed development comprises three x 8 storey buildings.	No
	<b>C7</b> A proposed development on a large site (over 2000m <sup>2</sup> ) must comply with the following: <ul style="list-style-type: none"> <li>A maximum site cover of 40%;</li> </ul>	41% <sup>6</sup> (8,069m <sup>2</sup> )	Yes
	<ul style="list-style-type: none"> <li>A minimum landscaped area of 35%;</li> </ul>	29%	Yes

<sup>6</sup> The site coverage calculation includes the basement.

Part	Control	Proposed	Complies (Yes/No)
	<ul style="list-style-type: none"> <li>A minimum of 30% deep soil planting;</li> </ul>	41%	Yes
	<ul style="list-style-type: none"> <li>A maximum unbuilt upon area of 20%;</li> </ul>	25%	No
	<ul style="list-style-type: none"> <li>Dwellings within the development must be designed to provide the following minimum internal areas: Studio: 60m<sup>2</sup> 1 bedroom: 75m<sup>2</sup> 2 bedrooms: 100m<sup>2</sup> 3 bedrooms: 130m<sup>2</sup> 4 bedrooms: 160m<sup>2</sup></li> </ul>	Studio: 60m <sup>2</sup> 1 bed: 75m <sup>2</sup> – 83m <sup>2</sup> 2 bed: 100m <sup>2</sup> – 111m <sup>2</sup> 3 bed: 131m <sup>2</sup> – 144m <sup>2</sup>	Yes
<b>4C.7.3 Height</b>	<p>If an area of land in Zone R3 Medium Density residential or Zone R4 High Density Residential exceeds 2000 square metres, the height of a building on that land may exceed the maximum height shown for the land on the Height of Buildings Map and utilise Clause 4.3(2A) of the Botany Bay LEP 2013 provided that the height obtained is:</p> <p>a) Minimum of 30 metres in distance measured from the front property; and</p> <p>b) Minimum of 35 metres in distance measured from any other property boundary of the development site where the development site adjoins a R2 Low Density Residential Zone.</p>	<p>Refer to assessment under BBLEP 2013.</p> <p>The height of 22m is not achieved at least 30m from the front property boundary.</p>	No
<b>4C.7.4 Floor Space Ratio</b>	<p><b>C1</b> In accordance with Clause 4.4(2A) of Botany Bay LEP 2013, if the area of a site exceeds 2000m<sup>2</sup>, the maximum FSR is 1.5:1.</p>	Refer to assessment under BBLEP 2013.	-
	<p><b>C2</b> Despite sub clause (2A), consent may be granted to development on land to which (2A) applies that results in a floor space ratio of up to 1.65:1, subject to the provisions of clause 4.4B of Botany Bay LEP 2013 is complied with.</p>	Refer to assessment under BBLEP 2013.	-

**APPENDIX C – DCP PART 9C WILSON PEMBERTON STREET PRECINCT**

<b>Part</b>	<b>Control</b>	<b>Proposed</b>	<b>Complies (yes/no)</b>
<b>9C.3 Public Domain</b>	<b>Road Construction</b> <b>C1</b> All road widening, extensions and new public streets proposed are to be constructed and dedicated to Council free of any cost. Remediation of the site is to be in accordance with Part 3K - Contamination.  <b>C2</b> Road construction and widening is to be carried out in accordance with the AUS-SPEC's standards.	The applicant proposes to dedicate all road widening and extensions and public open space to Council. These details of this arrangement have not been finalised.	-
	<b>Footpaths</b> <b>C4</b> All footpaths are to be provided with kerb ramps at intersections, to facilitate access for the less mobile and disabled.	Council's Landscape Officer makes the following comment: Paving finishes in plan view are not provided. The details do not indicate all paved finishes e.g. to both through site links (share paths), New Street 1, Pemberton Street and Rancom Streets.	No
	<b>Street Furniture</b> <b>C5</b> All street furniture including, bins, bollards, seating and drinking fountains, are to be coordinated throughout the Precinct and to Council's City identity specification.  <b>C6</b> Street furniture should be located in a one-metre zone along the kerb line, that is, out of the main line of pedestrian traffic.	Council's Landscape Officer makes the following comment: The design of the public parkland requires more detailed resolution in terms of active and passive recreational facilities. The playground is considered too small and requires a much greater level of detailing to determine its suitability for projected and local populations. Other recreational provisions to the parkland are to be explored to cater for all sectors of the community. Refer DRP comments. Furniture and lighting also requires detailing.	No
	<b>Table 1 – New Street 1 (Public Street)</b> 20m wide road reservation traversing the precinct from east to west for cars only and closed at Wilson Street.	Complies.	Yes
	<b>Table 4 – Pemberton Street Widening</b> Pemberton Street will be widened by a 4m strip of land along the eastern side of the street to achieve a 20m wide road reserve.	Complies	Yes
	<b>Table 7 – Pedestrian Link</b>	Complies.	Yes

Part	Control	Proposed	Complies (yes/no)
	<p><b>South of New Street 1 (Private)</b> A pedestrian and cycle link is to be provided between Pemberton and Wilson Streets to facilitate internal circulation within the Precinct and access through the Precinct. It is to be located south of New Street 2. 3 metre wide, paved to Council's specification.</p> <p><b>Table 8 – Lethen Lane (Private)</b> To link the Precinct to Botany Rd a pedestrian and cycleway access (3m wide) will be provided in Lethen Lane</p>	Complies.	Yes
<b>9C.3.2 Public Open Space</b>	<b>C2</b> The land to be provided as public open space is to be at ground level and unconstrained by roofs, building overhangs or underground parking, that is, they are to be ground deep natural soil zones.	The public open space provided is deep soil and not constrained by built forms.	Yes
	<b>C6</b> Public open space must be allocated, designed and constructed in accordance with Tables 9 and Table 10.	<p>The Council dedicated park is located generally as per Part 9C.2.1.</p> <p>The size of the Council dedicated park is 3025m<sup>2</sup> and complies with the minimum requirement of 3000m<sup>2</sup>.</p> <p>Parallel parking is provided along the southern side of New Street 1 which complies with the requirement for 4 spaces in association with the public open space.</p> <p>The application was referred to Council's Landscaping Officer who commented: The proposed public park area is just over 3000 square metres in size. The recommendations of the Urban design review are supported.</p> <p>The park is subjected to a moderate amount of shading during the winter period but there are some areas of the park that remain in deep shade all day throughout winter. By reducing the westward extension of Building A, solar access to the public open space could be improved.</p>	No
	<p><b>Table 10 – Public Open Space south of New Street 1</b> The size of the public open space</p>	The architectural plans indicate a 3,220sqm park. Applicant indicates that park shall be dedicated to	Yes

Part	Control	Proposed	Complies (yes/no)
	will be a minimum of 3,000sqm and is to be dedicated to Council.	Council.	
<b>9C.4 R3 Medium Density Residential Zone</b>	<b>O1</b> To encourage residential development that co-exists and provides a transition from non-residential uses to low scale residential and provides a safe and liveable environment;	The proposed development provides two ground floor commercial tenancies fronting Pemberton Street which is consistent with the objectives of the B4 Mixed Use zone. The proposed development does not provide a transition in residential development with regard to scale.	No
	<b>O2</b> To encourage improvements to the Public Domain;	The proposed development is considered to improve the public domain through the provision of a public open space in excess of 3,000sqm, north-south and east-west through-site links. Notwithstanding this, the placement and reconfiguration of the public open space is considered to result in adverse amenity impacts.	Yes
	<b>O3</b> To ensure there is no land use conflicts on the interface between the non-residential and residential uses;	Commercial uses have been provided at ground level along Pemberton Street, which is consistent with the intent of the DCP and the need for a buffer between the residential uses to the east and the existing industrial and proposed B7 Business Zone uses to the west of Pemberton Street. Notwithstanding this, the arrangement of building form does not result in a high quality internal amenity or an effective buffer for the apartments fronting Pemberton Street. The Urban design review states that proposed development does not produce an effective buffer to the street, and in the north western corner introduces public open space completely out of character with the street and providing no buffering to industry to the west. Additionally, the frontages from level 2 up to level 8 contain five residential dwellings facing Pemberton Street on each floor, all of which have living areas oriented to the street, and three of which are single aspect. It is considered that this arrangement of building form does not result in a	No

Part	Control	Proposed	Complies (yes/no)
		high quality internal amenity or an effective buffer for these apartments.	
	<b>O4</b> To ensure that future development contributes to the creation of a high quality landscape environment in the Precinct;	The provision of the north-south and east-west pedestrian through-site links are considered to create a good pedestrian environment through the site. However, the proposed public open space is not considered to contribute to the creation of a high quality landscape environment. The public open space experiences significant overshadowing to the eastern half and the interface with the Pemberton Street and New Street 1 corner is considered a poor design response.	No
	<b>O5</b> To retain existing trees both inside and outside the site and provide suitably proportioned areas of well-designed landscaping on each development site;	Council's Landscape Architect notes that there is opportunity to provide for greater mature landscaping.	No
	<b>O6</b> To ensure proposed development is designed to minimise the impact of noise and vibration from uses with the B7 zone;	The proposed interface with the B7 zone is not considered satisfactory.	No
	<b>O7</b> To promote and encourage a high design quality of buildings; and	The design quality of the proposed buildings is considered acceptable. The DRP have provided some recommendations for improvement.	Yes
	<b>O8</b> To ensure the drainage of the Precinct is not detrimentally impacted and property is protected.	The stormwater design of the buildings looks acceptable.	Yes
	<b>C3</b> Residential development shall be designed and demonstrate that it will not be detrimentally impacted by any non-residential uses in the adjoining B4 Mixed Use Zone.	A Noise Intrusion Assessment, prepared by Day Design Pty Ltd has been submitted.  The report concludes that when all recommendations in Section 7 of the report are carried out, Day Design Pty Ltd are confident that the intrusive aircraft noise levels,	-

Part	Control	Proposed	Complies (yes/no)
		noise from road traffic, adjacent industrial and aircraft ground movements will conform with the recommendation in Australian Standard AS2021-2000 and AS2107-2000 respectively. A detailed assessment of this report has not been undertaken.	
	<b>C5</b> The introduction of noise abatement measures to achieve compliance with current AS 2021 must be done in a manner that does not compromise the architectural design of a building or impact on the character of an existing streetscape.	As above.	-
	<b>C7</b> Where the height of the proposed development is higher than the existing height of the localised building stock (and the proposed development has a direct line of sight to the seaport and/or the airport) an acoustical assessment by an accredited acoustical consultant is required which takes into account noise from the operations of Port Botany and Sydney Kingsford Smith Airport.	As above.	-
	<b>Flooding</b> <b>C8</b> No structures shall be built over Sydney Water or Council stormwater drainage system/easements.  <b>C9</b> Foundations of development shall extend to at least 1m below the invert of the existing public stormwater drainage assets.  <b>C10</b> Finished floor levels of the habitable buildings/structures and non-habitable buildings/structures (including garage, ramps to the basement car parking area, etc.) shall be minimum 500mm and 300mm above the 1 in 100 year flood level respectively.  <b>C11</b> Structures/filling shall not be placed within the floodways or overland flow paths unless suitable and adequate mitigation measures have been proposed and	Council's Engineer notes that the stormwater design of the buildings looks acceptable.	Yes



Part	Control	Proposed	Complies (yes/no)
	<p>implemented. A flood study may be required to be lodged with the DA to support the mitigation measures.</p> <p><b>C12</b> No structures/filling shall be allowed to obstruct the 1 in 100 year flood level.</p> <p><b>C13</b> Flood storage within the site shall be maintained before and after the development.</p>		
	<b>C9</b> Finished floor levels of the habitable buildings/structures and non-habitable buildings/structures (including garage, ramps to the basement car parking area etc.) shall be minimum 500mm and 300mm above the 1 in 100 year flood level respectively.	Council's Engineer notes that the stormwater design of the buildings looks acceptable.	Yes
<b>9C.5 B4 Mixed Use Zone along Pemberton Street</b>	<b>C1</b> The ground and first floors of development must contain complementary non-residential uses permissible in the B4 zone	Refer to Item 1 under the 'notes' section of the BBLEP 2013 assessment.	No
	<b>C2</b> Height and FSR are to comply with the provisions of the Botany Bay LEP 2013.	Refer to Note 2 and 3 under the BBLEP 2013 assessment.	No
	<p><b>C5</b> Internal habitable rooms of dwellings within the B4 Mixed Use Zone which are affected by high levels of external noise are to be designed to achieve internal noise levels of 50dBA maximum. Development Applications which contain residential accommodation are to be accompanied by a noise assessment prepared by a qualified acoustic consultant addressing the following:</p> <ul style="list-style-type: none"> <li>(i) address the noise requirements of the NSW Infrastructure SEPP in terms of road traffic noise;</li> <li>(ii) address the requirements of Part 4A, 4B or 4C (Acoustic Privacy controls), depending on the type of residential accommodation proposed;</li> <li>(iii) conduct detailed site attended audits during the day, evening and night</li> </ul>	<p>A Noise Intrusion Assessment, prepared by Day Design Pty Ltd has been submitted.</p> <p>The report concludes that when all recommendations in Section 7 of the report are carried out, Day Design Pty Ltd are confident that the intrusive aircraft noise levels, noise from road traffic, adjacent industrial and aircraft ground movements will conform with the recommendation in Australian Standard AS2021-2000 and AS2107-2000 respectively.</p> <p>A detailed assessment of this report has not been undertaken.</p>	-

Part	Control	Proposed	Complies (yes/no)																		
	<p>periods to identify and assess noise from activities associated with the B7 Zone;</p> <p>(iv) assess noise from ground activities including aircraft take-off's and landing's at Sydney Airport referenced to each floor of the proposed building;</p> <p>(v) Where the height of the proposed development is higher than the existing height of the localised building stock (and the proposed development has a direct line of sight to the seaport) the acoustical assessment is to take into account noise from the operations of Port Botany;</p> <p>(vi) confirm noise exposure levels for each floor of the proposed residential building; and confirm building noise controls for internal noise levels to satisfy the recommended noise criteria.</p>																				
	<p><b>Amalgamation and Subdivision</b></p> <p><b>C6</b> Amalgamation of sites is encouraged to reduce the number of access points from Pemberton Street.</p>	Amalgamation and subdivision of the site is sought pursuant to a separate application.	N/A																		
	<p><b>Building and Site Layout</b></p> <p><b>C7</b> New buildings shall be designed to accommodate and minimise any adverse effects on the amenity of residential areas by way of overlooking, lighting, dust, noise or fumes from adjoining uses.</p>	As discussed throughout the report, the proposed layout of the buildings is considered to result in significant adverse amenity impacts for future residents and adjoining neighbours.	No																		
	<p><b>C8</b> Setbacks are to be in accordance with the <b>Table 2</b> (for B4 zone).</p> <table><tr><th>Boundary</th><th>Landscaping Setback</th><th>Building Setback</th></tr><tr><td>Front</td><td>4m</td><td>7m</td></tr><tr><td>Side</td><td>Nil to 1.5m</td><td>Nil to 1.5m</td></tr><tr><td>Side – adjoining a Residential Use/zone</td><td>3m</td><td>3m</td></tr><tr><td>Rear</td><td>Nil to 3m</td><td>Nil to 3m</td></tr><tr><td>Rear - adjoining a Residential Use/zone</td><td>3m</td><td>6m</td></tr></table> <p><b>C9</b> Building setback must form a continuous and consistent</p>	Boundary	Landscaping Setback	Building Setback	Front	4m	7m	Side	Nil to 1.5m	Nil to 1.5m	Side – adjoining a Residential Use/zone	3m	3m	Rear	Nil to 3m	Nil to 3m	Rear - adjoining a Residential Use/zone	3m	6m	<p>It is considered that the subject site has 3 frontages (New Street 1, Pemberton Street and Rancom Street) and a rear setback (through-site link and Parkgrove development to the east).</p> <p>The B4 zone fronts Pemberton Street and provides a corner to Rancom Street, and contains part of Buildings B &amp; C.</p> <p>The following setbacks are provided:</p>	Satisfactory
Boundary	Landscaping Setback	Building Setback																			
Front	4m	7m																			
Side	Nil to 1.5m	Nil to 1.5m																			
Side – adjoining a Residential Use/zone	3m	3m																			
Rear	Nil to 3m	Nil to 3m																			
Rear - adjoining a Residential Use/zone	3m	6m																			

Part	Control	Proposed	Complies (yes/no)
	alignment.	<p><u>Pemberton Street (Building B &amp; C):</u> 3m landscaped setback &amp; 3m – 6m building setback</p> <p><u>Rancom Street (Building C):</u> 1.8m – 6.1m landscaped setback (incl. ramp) &amp; 6.1m building setback</p> <p>The proposed development does not strictly comply with the 4m landscape setback or 7m building setback but provides varying degrees of setback for both. Notwithstanding this, the setback along Rancom Street is considered acceptable given it will continue the setback within the R3 zone which is compliant. The setback to Pemberton Street is also considered appropriate given it continues the reduced setback line approved at No. 42-44 Pemberton Street to the immediate north of the subject site.</p>	
	<p><b>Parking and Vehicle Access</b></p> <p><b>C10</b> Access driveways should be paired so that adjacent properties locate driveways side by side to reduce the number of access points.</p> <p><b>C11</b> Any carparking spaces allocated for residential purposes are to be located at the rear of sites to provide a buffer from the R3 zone.</p> <p><b>C12</b> The provision of car parking must comply with Part 3A - Car Parking.</p>	<p>A single access driveway is provided off New Street 1 and Rancom Street.</p> <p>All parking is located within a basement car park.</p> <p>The provision of car parking is compliant with Councils minimum rates.</p>	Yes
	<p><b>Flooding</b></p> <p><b>C13</b> No structures shall be built over Sydney Water or Council stormwater drainage system/easements.</p> <p><b>C14</b> Foundations of development shall extend to at least 1m below the invert of the existing public stormwater drainage assets.</p> <p><b>C15</b> Finished floor levels of the habitable buildings/structures and</p>	<p>Council's Engineer notes that the stormwater design of the buildings looks acceptable.</p>	Yes

Part	Control	Proposed	Complies (yes/no)
	<p>non-habitable buildings/structures (including garage, ramps to the basement car parking area etc.) shall be minimum 500mm and 300mm above the 1 in 100 year flood level respectively.</p> <p><b>C16</b> Structures/filling shall not be placed within the floodways or overland flow paths unless suitable and adequate mitigation measures have been proposed and implemented. A flood study may be required to be lodged with the DA to support the mitigation measures.</p> <p><b>C17</b> No structures/filling shall be allowed to obstruct the 1 in 100 year flood level.</p> <p><b>C18</b> Flood storage within the site shall be maintained before and after the development.</p>		
	<p><b>Landscaping</b></p> <p><b>C19</b> A 3 metres wide buffer strip of dense landscape planting is required in the rear setback to provide a buffer between the B4 and R3 zones including landscaping of car park areas to achieve a high level of amenity which will screen the development from residential areas. This area is to be mass planted with shrubs and canopy trees.</p>	<p>The application was referred to Council's Landscape Officer who made the following comments:</p> <p>The 3 metre landscaped setback to New Street 1 is minimal considering the height of the building on this frontage (24 metres). A more ideal landscaped setback of 4-5 metres would enable to planting of larger/canopy trees. A 3 metre width is very restrictive for tree canopy, restricting the palette of suitable species to ameliorate the building. Secondly, the setback appears to be terraced which further limits the planting of trees by allowing inadequate space for root development. Planter beds should be at the one level.</p> <p>A 6.1 metre building setback to Rancom Lane has been indicated however only a 3 metre depth of landscaping. This leaves 3 metres of unspecified treatment. The Landscape Masterplan drawing treatment/setback width (3m) appears to conflict with the width indicated on the architectural Ground Floor Plan (6.1m to building). A 3 metre landscape setback to a building with a 22m</p>	No

Part	Control	Proposed	Complies (yes/no)
		<p>height plane is inadequate. This setback area also appears terraced which further limits the planting of trees by allowing inadequate space for root development. Planter beds should be at the one level.</p> <p>The 3 metre landscape setback to Pemberton Street is not continuous due to ramping and its width restrictive for large trees to enable building screening. This setback appears also to be terraced which, as already discussed, limits the planting of larger trees by allowing inadequate space for root development. Planter beds should be at the one level/grade.</p> <p>The internal frontages to the park provide 1.2m wide planters within the ground floor terraces. The lack of landscaping on these building frontages should be offset by the extensive landscaping and tree planting that can be achieved in the public park, improving internal screening of buildings A and B. Similarly the N-S through site link enables large canopy tree planting and additional screening and amelioration of the eastern facades of these buildings but not the open space outlook originally approved.</p>	
	<p><b>C23</b> A Plan of Management (POM) is required where non-residential uses are proposed within a mixed used development or in proximity of a residential land use</p>	<p>This can be conditioned prior to OC. The proposed development is not advanced enough to determine specific tenancies for the retail component.</p>	<p>Can be conditioned</p>

**APPENDIX D – APPLICANT’S CLAUSE 4.6 EXCEPTION TO HEIGHT**