

JOINT REGIONAL PLANNING PANEL (Sydney East Region)

JRPP No	2015SYE030
DA Number	14(68)
Local Government Area	City of Botany Bay
Proposed Development	Integrated Development – Amended application seeking approval for the redevelopment of the site for residential purposes; comprising the erection of a mixed use development comprising of 3 residential flat buildings ranging in height between 3 to 8 storeys, containing 313 residential apartments, 2 commercial tenancies, and basement car park for 552 spaces. An offer to enter into a Planning Agreement under S93F of the <i>Environmental Planning and Assessment Act, 1979</i> accompanies the development application. The offer includes, the dedication of the 3270 m² park located off New Street 2, dedication of a north-south through-site link and associated public domain works; and associated offsets from section 94 contributions.
Street Address	16 Pemberton Street, 8 Pemberton Street, 14 Pemberton Street, and 12 Rancom Street, Botany; known as Parkgrove West.
Applicant/Owner	Applicant – Krikis Tayler Architects Owner – JKN Australia Pty Ltd
Number of Submissions	First round: 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 Second round (amended application): 30.09.2015-30.10.2015: 13 objections.
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 \$78.4 million.
List of All Relevant s79C(1)(a) Matters	• Environmental Planning & Assessment Act 1979, Part 4 – Development Assessment • Environmental Planning & Assessment Regulation 2000, Part 6 – Procedures relating to development applications • State Environmental Planning Policy No. 55 – Contaminated Land • State Environmental Planning Policy 2004 (BASIX); • State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Buildings

	• Botany Bay Local Environmental Plan 2013 • Draft amendment to Botany Bay Local Environmental Plan 2013 • Botany Development Control Plan 2013
List all documents submitted with this report for the panel's consideration	• Statement of Environmental Effects and Clause 4.6 Exception for Height and FSR – LJB Urban Planning Pty Ltd • Architectural Plans – Krikis Tayler Architects • BASIX Certificate – SLR Consulting Pty Ltd • Survey – Brunskill McClenahan & Associates Pty Ltd • Noise Intrusion Assessment – Day Design Pty Ltd • Civil Engineering Drawings – KF Williams & Associates Pty Ltd • Remedial Action Plan – Consulting Earth Scientists • Report on Additional Groundwater Investigation – Consulting Earth Scientists • Report on Additional Soil Investigation – Consulting Earth Scientists • Flood Study Addendum Report – KF Williams & Associates Pty Ltd • Landscape Drawings – Site Image Landscape Architects • Stormwater Drawings (incl. Music Model Snapshot) – Australian Consulting Engineers • Internal Traffic Assessment – Thompson Stanbury Associates • Cumulative Traffic Statement – Colston Budd Hunt & Kafes • Waste Management Plan – Elephants Foot • Pedestrian Wind Environment Statement – Windtech • Offer to enter into a Planning Agreement – JKN Australia Pty Ltd
Recommendation	Refusal
Report by	Wil Nino, Consultant Planner, City of Botany Bay

RECOMMENDATION

That the Sydney East Joint Regional Planning Panel as the Determining Authority resolve to refuse consent under Section 80(1)(b) of the *Environmental Planning & Assessment Act 1979*, to Development Application No. 14/68 for Integrated development for the construction of a mixed use development comprising of 3 residential flat buildings ranging in height between 3 to 8 storeys, containing 313 residential apartments, 2 commercial tenancies, and basement car park for 552 spaces at 16 Pemberton Street, 8 Pemberton Street, 14 Pemberton Street, and 12 Rancom Street, Botany, known as the Parkgrove West site for the following reasons:

Reasons for refusal:

Building Height

- 1.(a) The proposed development is excessive in form 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)(i), (b) and (c)*).
- 1.(b) The applicant's Clause 4.6 Exceptions to the building height development standards has not demonstrated that compliance with the Building Height development standards is unreasonable or unnecessary in the circumstance of the case and there is insufficient environmental planning grounds to justify contravention of the development standards; and the development will not be in the public interest as it is not consistent with the objectives of the development standards and the objectives for the B4 Mixed Use and R3 Medium Density Residential zones. (*Environmental Planning and Assessment Act 1979 Section 79C (1)(a)(i)*).
- 1.(c) The non-compliant heights results in the following impacts:
 - A built form that is not consistent with the context of the area.
 - The heights over and above that allowed under the LEP, and in the case of Building C along Rancom Street, above what is appropriate in context for the location and future character, contribute to the excessive FSR in the B4 zone (see Reason 2 below).
 - The prevailing height of the adjoining development is up to six storeys. The proposed 7 and 8 storey buildings, with length up to 90 metres with no building break or setbacks is at odds with the height of the immediate context.
 - The 8 storey building will dwarf the public park, providing an overbearing built form along its entire length. This compromises the public benefit that could be achieved by the public park.
 - The Wilson Pemberton Street Precinct is characterised by lower scale development on the precinct boundaries and higher density towards the centre. The proposed building heights do not maintain consistency with this character.
 - The proposed buildings heights result in substantial overshadowing of the common open space between Buildings A and B.
 - The proposed height of Building C, combined with inadequate setbacks results in significant overshadowing and loss of privacy for future residents in adjoining developments, particularly future development along Botany Road

that faces north toward Rancom Street. 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.

FSR

- 2.(a) The proposed FSR within the B4 Mixed Use zone is excessive 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)(i), (b) and (c)*).
- 2.(b) The applicant's Clause 4.6 Exception to the Floor Space Ratio (FSR) development standard has not demonstrated that compliance with the FSR development standard is unreasonable or unnecessary in the circumstance of the case and there is insufficient environmental planning grounds to justify contravention of the development standard; and the development will not be in the public interest as it is not consistent with the objectives of the development standard and the objectives for the B4 Mixed Use zone (*Environmental Planning and Assessment Act 1979 Section 79C (1)(a)(i)*).
- 2.(c) The non-compliant FSR results in the following impacts:
 - The height impacts in the B4 zone, as outlined on Reason 1 above.
 - The resultant building has a bulk and scale that is not compatible with the existing and desired future visual character of the locality
 - The additional FSR will lead to adverse impacts to adjoining future development to the south on Rancom Street, including privacy impacts and visual impacts. The variation to the FSR will not minimise adverse impacts, but rather lead to an exacerbation of impacts.
 - There is no particular circumstance that justifies the contravention of the FSR standard within the B4 zone. A suitable transition can be achieved to adjoining zones with a 3 storey building that complies with the height standard.

Draft Amendment to Botany Bay LEP 2013

3. The development in the R3 Medium Density Residential zone does not satisfy the draft amendment to the Botany Bay Local Environmental Plan 2013, being the Planning Proposal to amend Clause 4.4C, dated 27 January 2015, in terms of compliance with the Urban Design Clauses and the removal of use of Clause 4.6 for variation to development standard relating to building height (Planning Proposal 2/2013, Department's reference: PP_2014_BOTAN_001_00). (*Environmental Planning and Assessment Act 1979 s79C(1)(a)(ii)*).

Inconsistency with SEPP 65

4. (a) The proposed development does not fulfil the objectives or requirements of State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Buildings (SEPP 65) 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) and (b)*).
4. (b) The proposed application fails to satisfy the recommended internal areas for apartments under Part 3 of the Residential Flat Design Code of SEPP 65. Consent can be refused in accordance with Clause 30A(1)(b) of SEPP 65 (*Environmental*

*Planning and Assessment Act 1979 s79C(1)(a)(i)).***Inconsistency with Botany Bay DCP 2013**

5. The proposed development does not comply with the BBDCP 2013 as follows:
- a) The depth of the buildings do not comply with Part 4C.5.3, Control C2;
 - b) The length of the buildings do not comply with Part 4C.2.3, Control C3;
 - c) The unit sizes do not comply with Part 4C.5.1, Control C1;
 - d) The application has provided insufficient justification to vary the dwelling mix controls at Part 4C.5.1, Control C2;
 - e) The proposed landscaping, site coverage and unbuilt upon area does not comply with Part 4C.2.7, Table 1;
 - f) The proposed public park is partially located over a stormwater infiltration trench and an unauthorised stormwater infiltration trench that service the adjoining development. The configuration of the public park has not been optimised and its value as public open space has been reduced as it will not wholly comprise deep soil as required by the Part 9C3.2, Control C2;
 - g) The common area between Building A and Building B is substantially overshadowed and receives less than 1.5 hours of solar access in mid-winter. This does not comply with Part 4C2.8, C8;
 - h) The setbacks within the B4 zone do not comply with Part 9C.5, Table 2;
 - i) The setback of Building C to Rancom Street within the R3 zone does not comply with Part 4C.2.9, Control C8;
- (Environmental Planning and Assessment Act 1979 s79C(1)(a)(iii),(b))*

Environmental Impacts

6. The proposal is an overdevelopment of the site and will have to have an adverse environmental impact particularly in terms of visual bulk and overshadowing upon the natural and built environment. In an already dense precinct, the proposal will result in a form of development that is not consistent with the context, scale, built form and density of the surrounding land. *(Environmental Planning and Assessment Act 1979 s79C(1)(b) and (c)).*
7. The applicant has failed to provide sufficient information to determine the impacts of the development in relation to the requested information by the NSW Office of Water; and the requested documentation in relation to Acid Sulfate Soils. *(Environmental Planning & Assessment Act 1979 Section 79C(1)(b)).*

Public Interest

8. The proposed development is not in the public interest due to the adverse environmental planning impacts relating to the proposed development, specifically being the excessive height, FSR, bulk, building length and scale *(Environmental Planning and Assessment Act 1979 s79C(1)(d) and (e));*

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 16 Pemberton Street, Botany. The subject development is known as “Parkgrove West” and is the last development within the Wilson-Pemberton Precinct.

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 \$78.4 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*.

This reports provides an assessment on the amended application submitted to Council on the 15 September 2015. Given the extent of amendments undertaken by the applicant, a revised assessment report is provided to the JRPP.

On 3 June 2015, the original application was referred to the JRPP for determination with a recommendation of refusal. The JRPP resolved to defer the consideration of the application pending the submission of amended plans by the applicant. In its decision, the Panel listed amendments that the applicant was required to comply with, generally to reduce the scale of the development and reinstate a large central park, as required by the previous Master Plan.

The application does not comply with the requirements set by the Panel at the meeting on 3 June 2015. Following the JRPP meeting, the applicant provided a revised sketch proposal. Council responded to this on 22 June 2015 and clearly advised as to the further changes that would be required to comply with the Panel’s requirements and to obtain a recommendation for approval.

On 15 September 2015, amended plans were received for an amended scheme for 313 residential units, 2 commercial tenancies (422 sqm) and 552 car spaces across 3 buildings (Buildings A, B & C). Building A fronts Pemberton Street and ranges in height between 3-6 storeys. Building B fronts New Street 1 and is contained to the centre of the site, with heights that range between 4-8 storeys. Building C fronts Pemberton Street and Rancom Street with a height of between 3-7 storeys.

The application includes an offer to enter into a Planning Agreement for the dedication of land for a 3270 m² park located off New Street 2, a north-south through-site link and associated public domain works.

Although some building heights have been reduced, as has the FSR; the buildings have been repositioned and a park provided, Council’s assessment concludes that the application does not result in a satisfactory planning outcome for the site. In particular, the application results in departures from the height standard across the site and does not comply with the FSR standard within the B4 Mixed Use zone. The Clause 4.6 Exceptions for the building height and FSR standards are not well founded and compliance with the development standards is not considered to be unreasonable or unnecessary in the circumstance of the case. There is no reason why the development could not comply with the LEP height in

the R3 zone; and the development could comply with regards to height for the most part on the Pemberton Street frontage in the B4 zone.

Council officers further wrote to the applicant on 2 November 2015 requesting that amendments be made to the application to comply with the standards under the BBLEP 2013 and BBDCP 2013. The amendment relate to reductions in building height, FSR, height transition, setbacks, positioning of the public park and general building bulk and scale. The letter advised the applicant that the application as lodged could not be supported.

A meeting was held with the applicant on 6 November 2015, where the applicant outlined proposed indicative amendments to the application. However, it was clear that the amendments did not sufficiently address the issues raised by Council and would continue to result in non-compliances with the FSR and Height standards under the BBLEP 2013.

The applicant did not formally submit any amended plans, however submitted a letter with a concept sketch outlining potential amendments on 30 November 2015. The submission did not include sufficient information for Council officer's to assess, and in any case, the deadline for reporting to the Panel was 2 December 2015.

The site is the last remaining within the Wilson Pemberton Street Precinct and its redevelopment is to be expected. There are positive aspects of the amended application, including the re-positioning of the park along New Street 2, the re-orientation of the private open space and its improved solar access and amenity, the re-positioned building layout, the reduction in some height and a better resolution of street addresses and building entries. The applicant has also submitted documentation relating to attempts to acquire the isolated site at 12 Pemberton Street including plans to demonstrate that the site can potentially be developed. The amended application has reduced some of the building height and FSR, when compared with the original application.

However, on balance, Council's Officers are of the opinion that further amendments are necessary in order to provide a satisfactory urban outcome for the site and that the applications continued non-compliances with the height and FSR standard cannot be supported. Further, the application does not entirely comply with the requirements set by the Panel at the meeting on 3 June 2015

Accordingly, the application is not supported in its current form and is recommended for refusal.

1. SITE DESCRIPTION

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

- Lot 5 DP 1192005;
- Lot B DP 402187;
- Lot 1 DP 656310;
- Lot 1 on DP 135377;
- Part Lot 2 DP 1192005

- Lot 4 DP 1203451.

The amended application no longer includes 1619 Botany Road Botany (heritage item), which is zoned B1 Neighbourhood Centre under the BB LEP 2013.

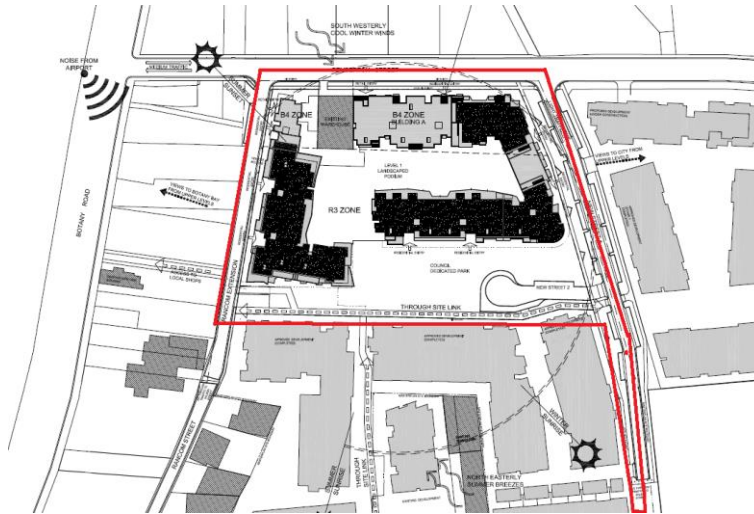


Figure 1: The subject development site (Source: applicant)

The subject site is located on the northern side of Botany Road, between New Street 1 to the north, Wilson Street to the east and Pemberton Street to the west.

The site area is now 18,454m² (previously 19,507m²) and has an irregular shape (refer to Figure 1). The subject site excludes No. 12 Pemberton Street (formally described as Lot 1 on DP656307) which currently contains El Cid Marbleworks. The site includes a portion of land associated with Building D at Parkgrove East, and Council has advised the applicant that this land can be counted toward the site area for the subject development.

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

- B4 – Mixed Use;
- R3 – Medium Density Residential.

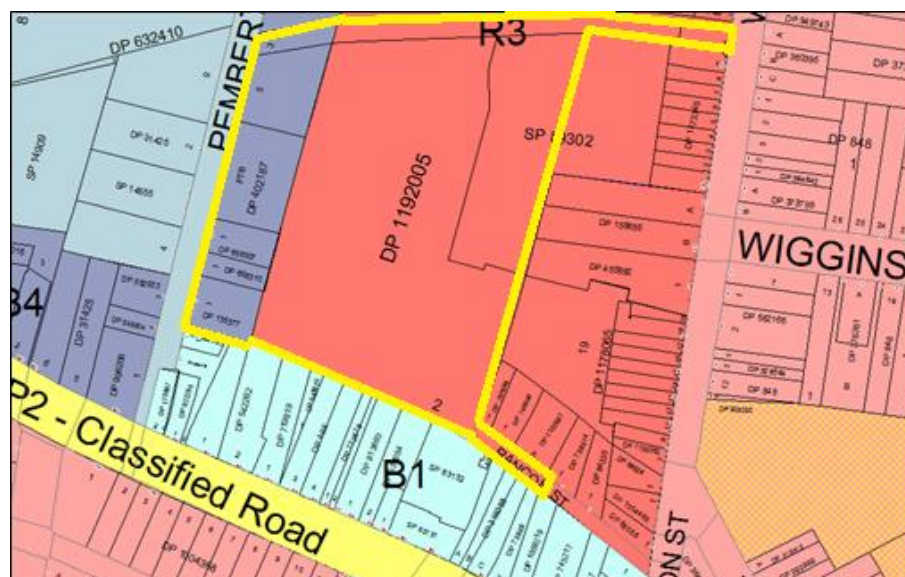


Figure 2: Zoning Map of the development site

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.

North: To the north of the site is New Street 1 and No. 42-44 Pemberton Street, which has an approval for 3 Residential Flat Buildings.

East: Immediately to the east of the site is Parkgrove East which contains Buildings E & F (6-storeys) which are complete and tenanted, Building D (6-storeys) which is nearing completion and a series of townhouses fronting Wilson Street. The area fronting Wilson Street also has a separate RFB development at No. 19-21 Wilson Street and an application for a series of terrace-style houses currently with Council for No. 23 Wilson Street.

South: To the south is Rancom Street which is nearing completion. Adjoining Rancom Street to the south is a mix of retail and commercial uses fronting Botany Road.

West: To the west of the site is existing light industrial and warehouse buildings. This land is zoned B7 Business Park under BBLEP 2013.



Figure 3: Subject site aerial view

2. SURROUNDING DEVELOPMENT

A detailed description of the surrounding context including the Wilson Pemberton Precinct was provided in Council's Assessment Report, dated May 2015.

3. BACKGROUND

3.1 History of the DA

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.

On 23 March 2015, amended plans were received for a residential and mixed-use development for 351 residential units, 2 commercial tenancies and 552 car spaces across 3 buildings with Building A measuring 6-8 storeys in height and Buildings B & C measuring 8 storeys in height. The application submitted on 23 March 2015 was not re-notified.

The application was considered by Council's Design Review Panel on 9 April 2015.

Council held a resident's meeting on Wednesday 6 May 2015.

On 1 May 2015, the applicant was advised that following the assessment of the application fundamental redesign requirements had been identified and that the application was not supported by Council staff.

On 3 June 2015, the application was referred to the JRPP for determination with a recommendation of refusal. The JRPP resolved to defer the consideration of the application pending the submission of amended plans by the applicant. In its decision, the Panel listed amendments that the applicant was required to comply with.

On 15 June 2015, the applicant provided Council with proposed sketch amended plans that it considered addressed the directions issued by the JRPP.

On 17 June 2015, Council wrote to the applicant informing them that the amended plans did not sufficiently address the issues raised by the JRPP and advised the applicant that further amendments were necessary.

On 15 September 2015, amended plans were received. The amended application was not forwarded to the DRP, however did undergo an independent urban design review by an independent urban designer (Alan Cadogan, UrbanAC).

Application subject to JRPP Determination on 3 June 2015

The application that was subject to the JRPP's deferral on 3 June 2015, sought consent for the following:

- 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;

- 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 JRPP determined to defer the application to allow the applicant to submit amended plans that address the Panel's Recommendations. Below is a perspective of the previous application.



Figure 4: Perspective of original application, viewed from corner of Pemberton Street and New Street 1

3.2 Masterplan DA

A detailed description of the master plan for the site and its application to the site was provided in Council's Assessment Report, dated May 2015.

As outlined in Council's Assessment report from May 2015, Council obtained legal advice confirming that the masterplan has legal status. The applicant is of the opinion that the DA does not need to be consistent with the Master plan approval. Further, applicant states that the application improves the Masterplan, as follows (extract from the SEE):

- *Shifts the public park to the north where it has direct frontage to New Street 1 and the shared way cul-de-sac and achieves high levels of solar access;*
- *Removes New Street 2 which is an unnecessary service road and replaces this with a north south cul-de-sac [note, the cul-de-sac, known as New Street 2 has already been approved via an earlier DA, and the applicant has been requested to expedite its construction to ensure appropriate permanent fire safety access to Building E and F]*
- *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 Rancom 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 is agreed that the amended application is an improvement from the original application, particularly as the public park has a frontage to New Street 1 and New Street 2 and provides a public amenity to service the precinct. Additionally, Building A has been orientated toward Pemberton Street and the general configuration of the development in terms of the building positioning is an improvement.

However, the primary issues with the application is that it does not comply with the height and FSR standards and thereby results in an undesirable building bulk, scale and density that is not reflective of the intent of the Master Plan. For these reasons, the application is not supported.

4 THE PROPOSAL

4.1 Background to the current amendment

On 26 August 2015, the applicant submitted the amended application in part, with complete information being lodged on 15 September 2015.

The amended application was notified from 30 September 2015 to 30 October 2015. To date, **thirteen** public objections have been received.

The amended proposal seeks consent for the following:

- Three building envelopes (Buildings A, B & C) containing a maximum gross floor area (GFA) of 27,688 sqm;
- Total of 313 units with the following breakdown:
 - 15 x studios;
 - 133 x 1 bed units;
 - 160 x 2 bed units;
 - 5 x 3 bed units
- 2 x commercial tenancies (Buildings A & C) with a total GFA of 422 sqm;
- FSR of 1.46:1 in the R3 Medium Density zone, 1.62:1 in the B4 Mixed Use zone;
- Building envelopes ranging as follows:
 - Building A: 3 – 6 storeys fronting Pemberton Street and New Street 1;
 - Building B: 4 - 8 storeys, contained to the centre of the site, fronting public park;

- Building C: 5-7 storeys fronting Pemberton and Rancom Street.
- On the applicant's calculations, 3,270 sqm of open space to be dedicated to Council, via a proposed Planning Agreement (offer submitted);
- 4m road widening along Pemberton Street;
- 2 basement levels of car parking for 552 car parking spaces.

Building A – Located within B4 Mixed use zone. 66 units (1 x studio, 33 x 1 bed, 32 x 2 bed) and 1 x retail tenancy of 258 sqm at ground level. 3 storeys (11.90 metres) and up to 6 storeys (21 metres).

Building B – Located within R3 Medium Density Residential zone. 138 units (1 x studio, 59 x 1 bed, 76 x 2 bed, 2 x 3 bed). 4 storeys (14.9 metres) to 8 storeys (26.86 metres).

Building C – Located primarily within R3 Medium Density Residential zone with a portion within B4 Mixed use zone. 109 units (13 x studio, 41 x 1 bed, 52 x 2 bed) and 164 m² retail tenancy at ground level. 5 storeys (17 metres) to 7 storeys (23.5 metres).

Basement – 552 car parking spaces, accessed from Rancom Street. Basement includes loading areas, building services, storage areas, OSD and bicycle spaces.

Park – proposed 3,270m² park with a frontage to New Street 2 providing a north-south 'through site link'. The park includes footpaths, landscaping, new trees and a playground.



Figure 5: Photomontages of proposal



Figure 6: Perspective of proposal, viewed from corner of Pemberton Street and Rancom Street

4.2 Current Proposal

In summary, the application proposes the following amendments to the previous application that was before the Panel:

- Relocation of 3,270 sqm public park to the centre of the site with frontage to New Street 1 and New Street 2.
- Reduction in height to buildings across the site, with height ranging between 3 to 8 storeys, with the predominant height being between 6 to 8 storeys (previously 3 x 8 storey buildings).
- Reduction in apartments from 351 apartments to 313 apartments.
- Reduction in FSR from 1.69:1 in the R3 zone to 1.46:1 and increase in FSR from 1.33:1 in the B4 zone to 1.62:1.
- Re-positioning of buildings throughout the site, with Building A having a frontage to Pemberton Street, Building B having a frontage to New Street 1 and the public park and Building C positioned toward Rancom Street.
- Provision of new basement entry from Rancom Street with the provision of one x two storey basement (previously entry was from both Rancom Street and New Street 1, with two separate basement structures).
- Deletion of 1619 Botany Road (heritage item) including proposed Lenthen Lane site link from the site.

4.3 Compliance with the Panel's Recommendations

A summary in relation to the Panel's recommendations is provided below:

Panel recommendations	Proposed	Complies?
• Reinstatement of a large consolidated central park facing New Street 2;	The application includes a park of 3,270sqm, that is accessed off New Street 2.	Yes (but Council has requested the applicant to make the park wider)
• Maintain a built form along the length of Pemberton Street with height consistent with the B4 zoning (10 m);	The proposal does not comply with the 10 metre height limit within the B4 zone.	No The proposal is up to 21 m
• Reduce the height of buildings along the Rancom Street extension to establish a better scale relationship with the existing built form to the south;	The proposed buildings along Rancom Street are 5 and 7 storeys. They do not provide a suitable interface with the existing built form to the south.	No The buildings have not been sufficiently reduced in height.
• Re-orient Building B to the north-south to improve solar access;	Building B has been positioned in a north-south direction and has a frontage to the public park. However, communal open space between Building A and B receives less than 2 hours of solar access.	Yes No

Introduce partial road access to address site isolation of Buildings E and F.	The provision of New Street 2 cul-de-sac provides partial road access to Buildings E and F of Parkgrove East.	Yes Note: New Street 2 was already approved and does not form part of this proposal, however the applicant had delayed its construction – council has been requesting its finalisation.
In an amended application, the applicant should submit all necessary material such as valuations and evidence of reasonable offer, in relation to 12 Pemberton Street.	The applicant has submitted documentation including evidence of a reasonable offer and valuations reports. Additionally, the plans provide an indicative floor plan and envelope for the development of 12 Pemberton Street.	Yes

Table 1: Compliance with JRPP recommendations.

4.4 Numeric Overview

The numeric overview of the proposed development is as follows:

Key Numeric	Details
Site Area	18,454 sqm (previously 19,507 sqm)
Proposed GFA	27,688 sqm (previously 29,824 sqm)
Proposed FSR	B4 – 1.62:1 – (previously 1.33:1) R3 – 1.46: (previously 1.69:1) B1 – N/A (previously 0.2:1)
Publically Accessible Open Space	3,270 sqm, comprising park and through site link.

Table 2: Numeric overview of the proposal, as per application documentation

Building	Location	Zone	Proposed Height (storeys)	Adjoining Development
A	Frontage to Pemberton Street	B4	3 to 6 storeys	Single storey industrial building to the west. Zoned B7 with a height of 12m. 6 storey RFB to the north – 42-44 Pemberton Street

B	Frontage to New Street 1 and centre of the site	R3	4 to 8 storeys	6 storey RFB to the east (Buildings E & F). 6 storey RFB to the north (Building E of 42-44 Pemberton Street).
C	Frontage to Pemberton Street and Rancom Street	Part R3/Part B4	5 to 7 storeys	2 storey shop top housing fronting Botany Road. 6 storey RFB to the east (Building D). Single storey industrial building to the west. Zoned B7 with a height of 12m.

Table 3: Parkgrove West – proposed built form summary table.

4.5 Height of Building

The application proposes a height within the B4 zoned portion of the site up to 21 metres, and in the R3 zone a height of up to 26.86 metres. The application has relied on 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.

4.6 Floor Space Ratio

The proposal seeks consent for an FSR of 1.62:1 in the B4 zone and 1.46:1 in the R3 zone. The total gross floor area of the development is 27,688 sqm. The distribution of the floor area results in a non-compliant FSR within the B4 zone, however the FSR is compliant within the R3 zone. The applicant indicates that the average FSR proposed across the subject site is compliant. This is detailed in the assessment section of this report.

4.7 Public Domain Works and Open Space

The proposed includes a public park that is of area 3,270 sq m, with a frontage to New Street 2 and provides a north-south 'through site link' from Rancom Street to New Street 1. The location and size of the public park is consistent with the Masterplan and the DCP. However, Council had requested the applicant to expand the width of the park, by reducing the large setback between Buildings A and B, thus improving the public domain outcome.

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

However, it should be noted that whilst the public park is identified as being located on deep soil, the developer has constructed two stormwater infiltration systems with and

without out Council approval under portions of the land that form part of the park to service the adjoining Building D, E and F at Parkgrove East. One of the infiltration trenches (associated with Buildings E and F - unapproved) is shown in the following image. The other trench is located underneath the proposed north-south link portion. This diminishes the ability to provide tree planting in a large portion of the park.

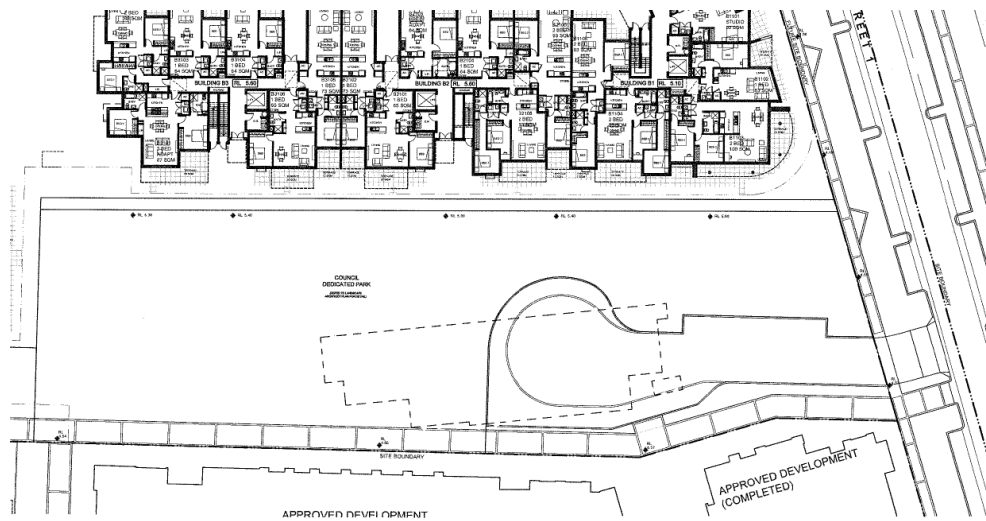


Figure 7: Indicative location of infiltration trench shown hatched, to service Building E and F

4.8 Parking and Traffic

Vehicular access to the external road networks is proposed via Rancom Street. This is consistent with the DCP which seeks to limit the number of driveway crossings along Pemberton Street. The development comprises a two level basement that provides 552 car parking spaces. The basement includes loading areas, building services, storage areas, OSD and bicycle spaces, which complies with the DCP.

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.

Additionally, a Cumulative Traffic Statement was provided and was reviewed by Council's external traffic consultant. The report was deemed to be satisfactory.

4.9 Draft Planning Agreement

The amended development application includes an offer to enter into a Planning Agreement, dated 8 September 2015, under section 93F of the EP & A Act.. The offer is made by JKN Australia Pty Ltd and has been notified with the application. Note, the application did not include a Draft Planning Agreement. The offer provides for the following:

1. Dedication of land to Council for the widening of Pemberton Street and half road reconstruction including new footpath, kerb, gutter and verge. The road widening works are identified in Council's Section 94 Plan and accordingly the Developer

- seeks an offset of the payment towards the 'transport management' portion of the Section 94 Plan. This would result in a 10% reduction in contribution per dwelling.
2. Dedication of 3,270 sqm of land to Council which forms the public park located adjacent to New Street 1 and New Street 2 cul-de-sac and the north-south pedestrian and cycle pathway running from the Rancom Street extension to New Street 1.
 3. Embellishment of the public park including soft and hard landscaping, furniture and lighting.
 4. Contribution towards the traffic light signalisation of the intersection of Botany Road and Pemberton Street subject to approval by RMS. The total cost to be shared by 16 Pemberton St, 42-44 Pemberton St and 52-54 Pemberton St.
 5. Prior to the issue of the Construction Certificate for each building (relating to works above the ground floor), payment of a monetary contribution of \$18,000 per dwelling (discounted by 10% as a consequence of Item 1). The Section 94 Monterey contributions will be further reduced by the agreed value of item 3.
 6. There will be no conditions for Section 94 contributions applicable in the development consent. All Section 94 contributions will be made under the proposed VPA.

The public park is approximately 3,270sqm. The dedication of a public park is required under the Wilson-Pemberton Street section of the Botany Bay DCP 2013. The DCP indicates that the embellishment of the open space will trigger an offset of Section 94 Contributions. The park will provide a through site link from south to north and will have a frontage to New Street 2 cul-de-sac.

The proposal includes a 4 metre widening of Pemberton Street, as required under the DCP and is required as a direct result of the development, and no section 94 offsets are applicable. However, as the road widening works are in the Section 94 Plan, Council officers agree that the contributions not be collected for that element of the plan, being the 'transport management' portion. This results in a 10% reduction to the contribution per dwelling. The applicant has offered \$18,000 per dwelling, which is acceptable. If the application were to be approved, then all contribution payments would be made via the Planning Agreement.

The offer was considered by Council at the meeting on 18 November 2015 and Council resolved to agree in principle to enter into a Planning Agreement generally in accordance with the letter of offer made by JKN Australia Pty Limited, subject to confirmation of the area of open space to be dedicated; clarification of the extent and cost of the open space embellishment, and agreement on the proportion of the total cost of the traffic lights upgrade attributable to the development.

The councillors were advised that agreement to the Planning Agreement did not fetter the consideration of the development application, but that a council position on the proposed Agreement was needed for the reporting of the application to the JRPP.

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 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 to the original application 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.

This outstanding information was raised in the original report considered by the JRPP on 3 June 2015. The Applicant has not provided the additional information as requested by the NSW Office of Water. The amended application was forwarded to the NSW Office of Water and no new response was received. Therefore this issue remains outstanding, and has been included as a reason for refusal.

5.2 The provisions of any Environmental Planning Instrument (s79C(a)(i))

5.2.1 State Environmental Planning Policies

1. 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. No comments were received.

The original application had also been referred to the RMS with a response being provided on 25 March 2015 and the RMS provided comments for Council to consider. Should the application be approved, the comments from RMS would be incorporated into the Notice of Determination.

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

A BASIX Certificate (540244M_03) was submitted with the application. The report concludes that implementation of the modelling specifications will allow the ABSA and BASIX specifications to be achieved.

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

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:

- Remedial Action Plan (RAP) for the former aerosols Australia site and proposed commercial redevelopment (1617 Botany Road, 8 Pemberton Street and part 25-33 Wilson Street);
- Remedial 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);

Additionally on the 21 September 2015, the applicant submitted an Interim Advice prepared by Zoic Environmental being the NSW EPA Accredited Contaminated Site Auditor and a planning statement prepared by LJB Planning in relation to SEPP 55.

The Interim Advice confirms the process undertaken to date and the currency of the contamination reports that have been previously undertaken. The Interim Advice concludes that the RAPs are suitable to guide the remedial approach for the site and that the site is capable of being made suitable for its intended residential use.

The statement from LJB Planning states that the remediation of the site falls under Category 2 of SEPP 55 and does not require development consent. Therefore, the remediation of the site does not form part of the development application.

On this basis, Council is satisfied that the land can be made suitable for the proposed use. Notwithstanding, any approval would impose relevant conditions of consent in relation to contamination and remediation.

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

An amendment to SEPP No. 65 was gazetted on 19 June 2015, and came into force on 17 July 2015. However, the SEPP includes savings provisions for application lodged prior to 19 June 2015, whereby the previous version of the SEPP and the RFDC applies. Therefore, the application requires an assessment under the previous SEPP 65 and RFDC.

The amended application was not referred to Council's Design Review Panel (DRP) for comment. Council engaged an Urban Designer to provide advice on the amended application.

The previous comments provided by the DRP remain applicable, and the amended application is assessed in this context. The applicant has not provided a response to the DRP comments in relation to the amended application.

The DRP stated 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'"*.

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 DRP from their report dated April 2015, which was based upon the original application. The RFDC and not the Apartment Design Guide (ADG) is applicable to the application, as

the application was lodged prior to the commencement of Amendment No.3 to SEPP 65 which introduced the ADG. The ADG does not apply to this application.

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.

Council Officer's comments:

The subject site is the last site to be developed within the Wilson-Pemberton Precinct. It forms part of an area strategically planned for revitalisation and is zoned part R3 medium density residential and part B4 mixed use.

Council engaged an urban designer to provide advice on the amended application. The urban designer states that the amended application is an improvement on the original application; however, further amendments are necessary particularly in terms of transitions in height and relationship with adjoining built form in order to support the application.

Whilst the context is that of a medium to high density development, the application seeks consent for heights that are above and beyond the approved height of adjoining buildings. Specifically, all the buildings adjoining the site are six storeys in height. It is noted that there are buildings within the Precinct that have been approved by the JRPP at heights taller than 6 storeys, however, in that instance, the additional height is contained to the centre of the site and comprises only portions of the upper form of the building.

The application proposes buildings that are 7 and 8 storeys in height with lengths of up to 90 metres containing no building breaks and minimal relief. The increased height sits out of context with the adjoining built form.

Therefore, it is Council's view that that the proposed building height and bulk is not a suitable response to the context established by adjoining approved development.

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.

Council Officer's comments:

Building A provides a better relationship with the isolated site at 12 Pemberton Street and generally provides a suitable transition to the industrial development to the west, with the exception that the length of the six storey component is excessive.

A three storey height along the entire length of Pemberton Street would produce a satisfactory outcome and would comply with the JRPP's comments, resulting in a development that complies with the height and FSR standard under the BB LEP 2013.

Notwithstanding, an additional height of up to six storeys could be supported if the length of the 6 storey component was reduced to approximately 20 metres. This is on the basis of the transition in height to the adjoining six storey building. However, this is not considered to be essential, and a building that had a height of 3, 4 or 5 storeys on the corner would also achieve the same outcome.

Building B is an 8 storey building of 90 metres in length. It is out of context when compared with adjoining approved development. It will be the longest building as well as the tallest. Its scale is not supported as it is too long and should accommodate reductions in height including such as setbacks and lighter treatments on the upper levels. The building should either accommodate reductions in height at the upper levels, or introduce a physical building break.

Building C is primarily 7 storeys in height, and it does not achieve an appropriate transition in scale between the existing or desired future character of built form to the south. Further, the setback of Building C from Rancom Street is 3 metres and not considered acceptable. At a minimum the setback should be 6 metres, which can provide for compliant building separation to the south and a better built form relationship. It is unlikely that buildings on the south side of Rancom Street will achieve a height higher than 5 storeys and therefore the case for exceeding 5 storeys has not been made and the height of buildings on Rancom Street should not exceed 5 storeys.

Overall, the proposal scale is out of context with adjoining existing, approved and future development. Greater reductions in height and scale are necessary to provide a better relationship with adjoining development.

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.

Council Officer's comments:

The location of public open space and the general building positioning is an improvement and results in a development that better aligns with the approved masterplan with regard to the location of the public open space and placement of buildings. However, the proposed height and density is above what would be reasonably expected for the site.

This is demonstrated by the proposed height and FSR variations.

The proposed development application exceeds the FSR standard within the B4 zone and exceeds the height limit within both the B4 and R3 zones. The exceedance in height and FSR, in conjunction with the length of the buildings contributes to an overdevelopment of the site and a bulk that creates an unacceptable outcome for the site.

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.

Council Officer's comments:

As is consistent with the LEP FSR is assessed based on the zone to which the control applies and not as an average across a subject site. Council's LEP clearly designated the B4 zone as a transition zone, and required a lesser density of development on Pemberton Street, than in the adjoining R3 zone.

The proposed FSR exceeds the maximum requirement in the B4 Mixed Use, where the standard is 1:1 and the application seeks consent for an FSR of 1.62:1. This is an excessive departure from the standard and also clearly contributes to the also non-compliant height within the B4 zone.

With regard to the overall density of the site, the proposal is considered to be an overdevelopment of the site which results in an unacceptable planning outcome.

Principle 5: Resource, Energy and Water EfficiencyDRP 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.

Council Officer's comments:

A BASIX Certificate (540244M_03) 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: LandscapeDRP 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

Council Officer's comments:

The application includes the provision of a 3,270sqm public park at New Street 1 and 2. The park was previously located toward the corner of Pemberton Street and New Street 1. The park shall be dedicated to Council and shall become public open space. In addition to the park, the proposal includes a north-south site link that provides pedestrian connectivity through the site and onto the adjoining public street network. The application is supported by a landscape plan. The proposed landscaping treatments include communal open space within the podium and at grade, park structures and furniture, pedestrian links and potential play areas.

The proposed landscaping treatments are considered acceptable with the requirements SEPP 65 and Council's DCP, and satisfy principle 6.

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 [units] 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 [service] 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.

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;
- 62% of apartments with natural cross ventilation;

The proposed development meets the RFDC requirements for building separation, with the acute corner of Building A and B accommodating screens to select balconies.

However, as noted previously, 84% of the apartments are based upon the RFDC unit size table and 5% comply with the RFDC "affordable table", with only 14% comply with the

unit sizes under the BBDGP 2013. This results in reduced amenity within the development.

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

Additionally, the common area on the ground floor between Building A and Building B does not reduce sufficient solar access in mid-winter, with the shadow diagrams demonstrating that it receives less than 2 hours.

The urban design review provides an assessment on building length and the resulting amenity impacts. The arrangement of the two very long 7 storey (Building C) and 8 storey (Building B) buildings result in an undesirable 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.

With regards to the number of units serviced from a core and the snorkel apartments, this remains an issue in Building C.

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.

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.

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 Rancom Street. 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.

Council Officer's comments:

The development provides a mix of apartments to a site located within proximity to public transport, recreation facilities, and shopping facilities. It is noted that the proportion of one bedroom apartments and the unit sizes do not comply with the requirements under the BB DCP 2013 and Part 3 of the RFDC of SEPP 65.

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 otherwise 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.*

Council Officer's comments:

Enhancements to the architectural character of the proposed development should be incorporated in accordance with the DRP comments. Additionally, the lightening of the top floors of the taller buildings, including additional setbacks would improve the architectural presentation of the buildings.

5.2 Botany Bay Local Environmental Plan 2013

5.2.1 Summary of Assessment of Controls

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: - part B4 – Mixed Use; - part R3 – Medium Density Residential; The proposed development is permissible with Council's consent in the B4 and R3 zone 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'.
Does the proposed use/works meet the objectives of the zone?	Yes	The following objectives are relevant to the proposed development: R3 Zone Objectives - To provide for the housing needs of the community within a medium density residential environment. - To provide a variety of housing types within a medium density residential environment. - To enable other land uses that provide facilities or services to meet the day to day needs of residents. - To encourage development that promotes walking and cycling.
	Yes	B4 Zone Objectives: - To provide a mixture of compatible land uses. - To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling. The size of the commercial tenancies fronting Pemberton Street provide flexibility for a range of tenancies including the fit-out for smaller tenancies if required. It is considered that the proposed ground floor commercial tenancies satisfy the objectives of the B4 zone.
Does Clause 2.6 (subdivision) apply to the site?	N/A	Subdivision is not proposed as part of the development application.
What is the height of the building? Is the height of the building below the maximum building height?	No Refer to discussion below No Refer to	The permitted and proposed height of buildings within each zone is as follows: B4 zone: 10m permitted Building A – 21 metres proposed Part Building C – 17 metres proposed R3 zone: 22m permitted under clause 4.3(2A)) Building B – 26.86 metres proposed

Principal Provisions of BBLEP 2013	Compliance (Yes/No)	Comment
	discussion below	Part Building C – 23.5 metres proposed
Clause 4.3 (2A) Is the proposed development in a R3/R4 zone? If so does it comply with site of 2000m² minimum; and maximum height of 22m?	Yes Yes No Refer to discussion below	Part of the subject site is located in the R3 zone. The R3 zone part of the site has an area of 14,244sqm. All buildings within the R3 zone exceed the 22m height as follows: Building B: exceeds height by 4.86 m Majority of Building C: exceeds height by 1.14 m
What is the proposed FSR? Compliance with the maximum FSR?	No Refer to discussion below	The permitted and proposed height of buildings within each zone is as follows: <u>Permitted</u> B4 zone: 1:1 R3 zone: 1.5 and up to 1.65:1 <u>Proposed</u> B4 zone: 1.62:1 R3 zone: 1.46:1 The proposed FSR exceeds the maximum FSR permitted within the B4 zone, however complies with the FSR within the R3 zone. A clause 4.6 submission has been submitted.
Clause 4.4 (2A) Is the proposed development in a R3/R4 zone? If so does it comply with site of 2000m² minimum; and maximum FSR of 1.5:1?	Yes Yes Yes Refer to discussion below	Part of the subject site is located in the R3 zone. The R3 zone has an area of 14,244 sqm. The proposed FSR within the R3 zone complies with the FSR standard of 1.5:1 FSR.
Clause 4.4B Does this clause apply to the site. Does the proposed development comply with Clause 4.4B?	Yes Yes discussion below	The site may benefit from an FSR up to additional 1.65:1 FSR (pursuant to Clause 4.4B(3)). The proposed FSR within the R3 zone complies with the permissible FSR of 1.65:1.

Principal Provisions of BBLEP 2013	Compliance (Yes/No)	Comment
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?	N/A	The amended application no longer includes the heritage item site at 1619 Botany Road.
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: 6.1 – Acid Sulfate Soils	Insufficient Information	The subject site is affected by Class 4 Acid Sulfate Soils. An Acid Sulfate Soils (ASS) assessment was 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	The proposed development seeks excavation for basement levels. A Geotechnical Report has been submitted. 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>. The NSW Office of Water provided a response to the original application 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

Principal Provisions of BBLEP 2013	Compliance (Yes/No)	Comment
		project. Satisfactory information has not been provided in order to make an adequate assessment.
6.3 – Stormwater management	Insufficient Information	The application has been referred to Council's Engineer for comment and has provided the following: • 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. • 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 of 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.
6.8 - Airspace operations	No Referral response outstanding	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. At the time of writing this report a response from SACL remained outstanding. An adequate assessment against Clause 6.8 of the BBLEP 2013 is unable to be carried out until

Principal Provisions of BBLEP 2013	Compliance (Yes/No)	Comment
		such time as a response is received by SACL.
6.9 – Development in areas subject to aircraft noise	Yes	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. 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, noise from road traffic, adjacent industrial and aircraft ground movements will conform with the recommendation in Australian Standard AS2021-2000 and AS2107-2000 respectively. The development is considered to be consistent with Clause 6.9 of BBLEP 2013.

Table 4: Assessment against principal provisions of BBLEP 2013

The main areas of non-compliance are addressed below.

5.2.2 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)
B4 Mixed Use Zone			
LEP Map	10m	Building A – 21 m Part Building C: 17m	11m 7m
R3 Medium Density Zone			
LEP Map	10m	Building B: 26.86m Part Building C: 23.5m	16.86m 13.5m
Clause 4.3(2A)	22m	Building B: 26.86m Part Building C: 23.5m	4.86m 1.5m

Table 5: Required and Proposed Height

The maximum height permitted by the BBLEP 2013 is 22m in the R3 zone and 10m in the B4 zone. None of the proposed heights across the site comply. Specifically, the six storey portion of Building A within the B4 zone exceeds the permissible height by 11 metres or approximately 3 storeys. Building B within the R3 zone exceeds the permissible height by 4.86 metres, or 2 storeys across the entire length of the building.

Within the R3 zone, Council's urban designer advice advises that some additional height could be supported if it were contained to the centre of the site and did not comprise the entire building length and incorporated some form of building break. This would require setbacks on the upper levels and reductions in building length to offset the increase in height. However, this position is not supported by Council's officers as it is contrary to

Council's policy to limit the use of clause 4.6 on sites already given a bonus. Additionally, the six storey component in the B4 zone on the only on the corner of New Street One could potentially be supported if it were reduced in length and width, as this would match the heights already approved by the JRPP opposite in Buildings A and C.

The applicant was advised of Council's position and provided with an opportunity to amend the application. However, the applicant was not willing to accommodate the extent of amendments Council required.

Accordingly, the proposal as it stands, is inconsistent with the height development standard pursuant to Clause 4.3 of the BBLEP 2013. The applicant has submitted a Clause 4.6 Exception to vary the height standard, dated 28 August 2015.

In summary, Council's impartial evaluation of the Clause 4.6 Exception concludes that it cannot be satisfied that compliance with the standard is unreasonable or unnecessary in the circumstances of the case and Council considers that there are insufficient environmental planning grounds to justify contravening the standard. Specifically, Council is of the opinion that the extent of the proposed variation will generate adverse environmental planning impacts upon the site and adjoining properties and that the proposal does not satisfy the five principles of *Whebe V Pittwater Council [2007] NSW LEC 82* and does not satisfy the test under *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90*, in establishing that there are sufficient environmental planning grounds that are particular to the circumstances of the proposed development, in order to justify the Clause 4.6 Exception.

Therefore, the proposed Clause 4.6 is not in the public interest and is not well founded and cannot be supported.

This variation is considered below.

Clause 4.6 Assessment – Building Heights in R3 and B4 zones

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.

The applicant has provided a Clause 4.6 Exception that addresses the five principles of *Whebe V Pittwater Council [2007] NSW LEC 82* and the principles of *Winten Developments Pty Ltd v North Sydney Council [2001] NSWLEC 46*. The Clause 4.6 submission also makes reference to *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90*. However, the Clause 4.6 submission does not articulate how the variation satisfies the criterion of *Four2Five*, which is to establish grounds that are particular to the application, as opposed to grounds that would apply to any similar development within the vicinity of the site.

The submitted Clause 4.6 focuses its justification on addressing the objectives of the height standard and addressing the objective for each zone as provided under the BB DCP 2013 (page 26 and 28 of Part 9C Wilson Pemberton Precinct), rather than the zone objectives under the BB LEP 2013. Council is of the opinion that the reference to the zone objectives

under the sub-clause 4(a)(ii) of Clause 4.6 of the BB LEP 2013 relate to zone objectives under Clause 2.3 LEP 2013 and not the DCP 2013.

Therefore, whilst this assessment may assist in articulating the reasons for the variation to the standard, it has limited statutory weight.

The Clause 4.6 also states that the 'Council has abandoned the height control by recent approvals in the precinct', with specific reference to the approved development at 42-44 Pemberton Street and 52-54 Pemberton Street. This is incorrect. The Council has not abandoned the height control, and the Council was not the consent authority for these DAs in any case. The resultant development in the Precinct is predominately within the height control.

In summary, the applicant's concluding justification for the variation to the height is:

- *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 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 adjoining developments have been approved at a height of up to six storeys. The proposed 8 storey building, at a length of 90 metres with no building break or setbacks sits entirely at odds with the height of the immediate context. The proposed 7 and 8 storey buildings will dwarf the height of adjoining development and is at polar opposite ends with the desired bulk, mass and length of building that will forms the future character of the area.
- The height variations of 6 storeys and 5 storeys within the B4 zone 3 storey area are not 'minor' as described in the applicant's Clause 4.6 Exception. A 2 to 3 storey height variation is excessive and beyond the realm of what should be reasonably considered under the provisions of Clause 4.6. It is considered that the height breach is a fundamental change to the underlying planning controls for this locality. To consider such a height variation should require a strategic analysis of the planning controls for the locality, and, only if appropriate an amendment to those controls via a Planning Proposal. This is beyond the scope of this application.
- Whilst the taller buildings are located to the centre, they are unreasonably long and large and do not provide any building break to mitigate their length, visual bulk and overall scale.
- The development does not achieve a built form that is coordinated and cohesive. The proposed built form is uncharacteristic with the area.

- The 8 storey building will dwarf the public park, providing an overbearing built form along its entire length. This compromises any public benefit that could be achieved by the public park.
 - 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.
 - The proposed development makes no apparent attempt to reduce the height of the taller buildings to provide a better transition to adjoining development.
 - The proposed development results in substantial overshadowing of the common open space between Buildings A and B.
 - The proposed development results in significant shadow and loss of solar access and loss of privacy for future residents in adjoining developments, particularly future development along Botany Road that faces north toward Rancom Street. Specifically, the development will compromise the holistic amenity of these future properties, which is exacerbated by the 3 metre setback to Rancom Street that is provided by Building C which is 7 storeys and does not comply with the height control. This building should be setback a minimum 6 metres to provide for compliant building separation to future development to the south.
 - 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.
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 comply with 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 by the Panel 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 Panel approved up to eight storeys in the Australand site to the north, but this had compliant FSR in all zones and the additional height was confined to the middle of the site.

The integrity and applicability of the height standard remains and Council is of the position that compliance is necessary and reasonable. 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 variation to the building heights in both the R3 and B4 zones is not well-founded and the departure is not in the public interest. The excessive heights in conjunction with building length, bulk and scale, 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. Contrary to the applicant's justification, Council is of the opinion that 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.

Compliant buildings can be provided on the site, which would significantly minimise the holistic amenity impacts associated with this development. 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. Whilst these public domain works will provide a tangible benefit, they are not grounds that can be utilised to justify a contravention of the standard. The provision of

a public park has been a long standing requirement for development on this site. The eight storey buildings will visually overpower the open space and lessen its amenity.

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 support the variation to the height development standard given:-

- The additional height results in excessive overshadowing of the common area between Building A and B.
- The proposed height does not provide a suitable transition to adjoining approved development.
- The proposed development does not meet the objectives of the height standard;
- The proposed development exceeds the maximum FSR standard within the B4 zone and demonstrates that the additional height and FSR within the B4 zone is self-propelling and a direct result of the increase in height. This indicates that the proposal is an over-development of the site.
- Building C provides non-compliant side setbacks to Rancom Street, resulting in a 7 storey building that will not comply with the building separation requirements under SEPP 65.
- 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.
- There is no particular circumstance or unique site characteristic that demonstrates that compliance is unreasonable or unnecessary in the circumstances of the case.

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 this assessment, it is considered that flexibility cannot be applied to this development, as it does not achieve a better outcome for the site. A development that complies with the height standard and generally retains the buildings in the proposed location would result in a better urban outcome.

Public Interest and Public Benefit

The applicant contends that the development will provide benefits including a public park, Rancom Street extension (discussed above) and New Street 1. However, these “benefits” (other than the park) were basic infrastructure requirements of other approved DAs. The proposed public park is a public benefit, but this is not sufficient grounds to justify varying the standard.

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.

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 cannot 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.

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. As such, there is no reasonable justification as to why the proposed development cannot achieve compliance with the height standard. Therefore the proposal does not represent the orderly and economic development of land.

The impacts from the proposed development on the amenity of surrounding properties resulting from the departing height are adverse. 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.

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.

5.2.3 Floor Space Ratio

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

Control	Permitted FSR	Permitted GFA sq m	Proposed GFA sq m	Proposed FSR sq m	Complies Yes/No
B4 Zone					
Site Area	4210 sq m				
Permitted FSR	1:1	4,210	6,833	1.62:1	No
R3 zone					
Site area	14,244 sq m				
a.Permitted FSR under Clause 4.4(2A)	1.5:1	21,366	20,855	1.46:1	Yes
b.Permitted FSR with bonus Clause 4.4B(3)	1.65:1	23,503			
Total site area	18,454 sq m				
Total GFA	27,688 sq m				

Table 6: Required and Proposed FSR

Notes to Table:

FSR of 1.5:1 is the applicable FSR as the site is greater than 2000 sq m.

FSR of 1.65 :1 is the applicable FSR as the site is greater than 2000 sq m and affected by acid sulphate soils; and is affected by contamination, and the consent authority must be satisfied that (i) the development will be compatible with the desired future character in terms of building bulk and scale, and (ii) the development will contribute to the amenity of the surrounding locality, and (iii) and any consolidation of lots for the purposes of this clause is not likely to result in adjoining lots that cannot be developed in accordance with this Plan.

As demonstrated above, the proposed FSR exceeds the permitted FSR within the B4 Mixed Use zone, however, complies with the FSR standard of 1.5:1 under Clause 4.4(2A) and does not rely upon Clause 4.4B(3) which increases the FSR to 1.65:1.

It should be noted that the FSR figure provided has been calculated in accordance with Council's definition of *gross floor area*, which includes internal corridors and includes storage.

The applicant states that the development complies with the maximum FSR allowed by the LEP based on an average across the two zones, being 1.50:1. However, FSR relates to the zone and site area in which the building is located. The concept of averaging the FSR only means that site area from the zone with the higher FSR has been "borrowed" to allocate it to that part of the site with the lower FSR, thus making the development appear more

“compliant”. The B4 zone and lower FSR was very deliberately set in the LEP. If an argument is made that FSR should be redistributed from the R3 zone to the B4 zone, then the development is really one that requires a planning proposal – ie that the zoning of the precinct and the consideration of the FSR and height that apply to the Pemberton Street part of the site needs to be reviewed.

In summary, Council’s is not satisfied that compliance with the FSR standard is unreasonable or unnecessary in the circumstances of the case and Council considers that there are insufficient environmental planning grounds to justify contravening the FSR standard.

Council is of the opinion the FSR departure within the B4 zone is a direct result of the height departure within the B4 zone, and if the FSR was compliant with the B4 zone, then the height would also likely to be compliant with the B4 zone. This demonstrates that the FSR and height non-compliances are both self-propelling and there is no genuine particular circumstance to justify the variation.

The proposed FSR variation will generate adverse environmental planning impacts upon the site and adjoining properties and that the proposal does not satisfy the five principles of *Whebe V Pittwater Council [2007] NSW LEC 82* and does not satisfy the test under *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90*, in establishing that there are sufficient environmental planning grounds that are particular to the circumstances of the proposed development, in order to justify the Clause 4.6 Exception.

Therefore, the proposed Clause 4.6 is not in the public interest and is not well founded and cannot be supported. This variation is considered below.

Clause 4.6 Assessment – FSR in the B4 Zone

Consent may be granted for the proposal subject to Clause 4.6, notwithstanding that the proposal would contravene this development standard, as the FSR development standard is not expressly excluded from this Clause (Cl 4.6(2)). The applicant has provided a written request justifying the contravention of the development standard pursuant to Clause 4.6(3) of BBLEP 2013, which is considered below.

The applicant has provided a Clause 4.6 Exception that addresses the five principles of *Whebe V Pittwater Council [2007] NSW LEC 82* and the principles of *Winten Developments Pty Ltd v North Sydney Council [2001] NSWLEC 46*. The Clause 4.6 also makes reference to *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90*. However, the submitted Clause 4.6 does not articulate how the FSR variation satisfies the criterion of *Four2Five*, which is to establish grounds that are particular to the application, as opposed to grounds that would apply to any similar development within the vicinity of the site.

In summary, the applicant’s concluding justification for the variation to the FSR is:

- *It has been demonstrated that the development is capable of satisfying the objectives of the zone and the development standards.*
- *The development will exceed the maximum permitted FSR when calculated on the basis of the B4 zone only. As an average across the B4 and R3 zone, the resultant density is well below what could be expected by the planning controls.*

- *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*

As noted in relation to Building Height, the FSR 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 test (the long-standing 5 part test was set out in *Winten Property v North Sydney* (2001) 130 LGERA 79).

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 4.4 FSR of the Botany Bay LEP 2013 are:

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

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

- The non-compliant FSR within the B4 zone is a direct result of the non-compliant height within the B4 zone, being the 6 storey building at the corner of Pemberton Street and New Street 1 and the 5 storey building at the corner of Pemberton Street and Rancom Street. The non-compliant FSR is self-propelling with the non-compliant height. Put simply, if the height of the buildings in the B4 zone were reduced to comply with the height, then the FSR of the buildings in the B4 zone would also comply with the FSR standard, or the extent of variation would significantly reduce.
- The FSR variation results in an over-development of the site.
- The non-compliant FSR and height within the B4 zone is contrary to the recommendations provided by the JRPP on 2 June 2015.

- The density and intensity that is envisaged in the B4 zone by the BB LEP 2013 and BB DCP 2013, is of a mixed use development that accommodates ground floor commercial uses with upper levels of residential apartments within a 3 storey built form. The proposed building in the B4 zone is between 3 to 6 storeys and contains minimal commercial uses (two tenancies) and is primarily a residential flat building. The proposal does not satisfy the density and intensity test, as it is clear that the proposal is a more dense development than what would reasonably be expected for the B4 zone, as demonstrated by both a non-compliant FSR and non-compliant height.
- The proposed FSR within the B4 zone does not deliver a building that has a bulk and scale that is compatible with the existing and desired future character of the locality. It is accepted that compatibility does not mean replication, but rather requires buildings to sit in harmony with each other. This is best established by reducing the FSR, and consequently, the height of the buildings in the B4 zone to provide a better interface and relationship with adjoining development and to provide consistency with the desired future character of the area, which is that of a 3 storey building.
- The proposed FSR variation results in additional building bulk, mass and height and does not provide an appropriate visual relationship to the area. This is further exacerbated by the non-compliant height. The additional FSR has the potential to impact upon the visual relationship with existing 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 previously outlined, the buildings in the B4 will form a streetscape presentation with the adjoining approved development at 42-44 Pemberton Street. In order for the building do not adversely affect the streetscape, it is considered necessary that the FSR and height be reduced to be consistent with the recent approved development at 42-44 Pemberton Street. Whilst the applicant considers that a 6 storey building provides a better height transition, the length and bulk of the 6 storey portion is not supported. Furthermore, it is not considered necessary to provide a height transition at the corner of Pemberton Street and New Street 1. A 3 storey building at this location would provide an appropriate transition and interface and will maintain the integrity of the height standard.
- The additional FSR is considered to increase the overall height of Building A within the B4 zone, which will lead to adverse impacts to adjoining future development to the south on Rancom Street, including privacy impacts and visual impacts. The variation to the FSR will not minimise adverse impacts, but rather lead to an exacerbation of impacts.
- There is no particular circumstance that justifies the contravention of the FSR standard within the B4 zone. The applicant's justification that the increase in FSR provides a better transition to adjoining development is baseless. Council's urban design advice states that a suitable transition can be achieved from a 3 storey building that complies with the height standard.

Therefore, in summary, the FSR variation does not satisfy the objective of the standard.

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 FSR standard has not been achieved as stated above, therefore the standard is relevant and strict compliance with the numerical requirement of 1:1 within the B4 zone is considered necessary in this instance as the proposal does not comply with the objectives of Clause 4.4. 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 FSR standard remain relevant to the proposed development. The proposed development is not consistent with the objectives of the FSR standard 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.*

Council has not abandoned or destroyed the standard by its action.

The integrity and applicability of the FSR standard remains and Council is of the position that compliance is necessary and reasonable. 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 FSR standard in the LEP is appropriate.

It is considered that the applicant's Clause 4.6 for the B4 zone is not well-founded and the departure is not in the public interest given the non-compliance with FSR which in conjunction with height within the B4 zone, 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:-

- b) *to encourage:*

- (iii) 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,*
- (iv) 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. Contrary to the applicant's justification, Council is of the opinion that 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.

The applicant states that the FSR complies within the average across the site and that the building height has been shifted across the site to enable the provision of a public park, allowing for the variation to the FSR standard in the B4 zone to be appropriate.

Council does not agree with this statement. A compliant FSR can be provided within the B4 zone, which would reduce the holistic amenity impacts associated with the increase in FSR and density. Compliance with the controls results in a more orderly outcome.

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 support the variation to the FSR standard given:-

- The non-compliant FSR within the B4 zone is a direct result of the non-compliant height within the B4 zone, being the 6 storey building at the corner of Pemberton Street and New Street 1 and the 5 storey building at the corner of Pemberton Street and Rancom Street. The non-compliant FSR is self-propelling with the non-compliant height.
- It is not necessary to provide a non-compliant FSR and height within the B4 zone in order to provide a transition in height to adjoining approved development. An appropriate transition in height can be achieved by a compliant FSR and height.
- The proposed development does not meet the objectives of the FSR standard;
- Other development in the immediate vicinity is considered to establish the context of the area. The development approved at 52-54 Pemberton Street Botany within the B4 zone was 3 storeys and generally complied with the height.
- The increased height is considered to result in unacceptable overshadowing and view loss impacts to adjoining southern properties.
- There is no particular circumstance or unique site characteristic that demonstrates that compliance is unreasonable or unnecessary in the circumstances of the case.

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:

- c) to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
- d) 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 this assessment, it is considered that flexibility cannot be applied to this development, as it does not achieve a better outcome for the site. A development that complies with the FSR standard and generally retains the buildings in the proposed location would result in a better urban outcome.

Public Interest and Public Benefit

There is a clear public interest and benefit in maintaining compliance with the FSR standard. The applicant's justification relates to transition in adjoining built form. This has minimal public interest and benefit in terms of an outcome. As outlined, an acceptable height transition can be achieved by a complying height, which better serves the public interest and provides a benefit in maintaining the integrity of the standard.

On the basis of this assessment, it is concluded that the variation is not in the public interest and cannot be supported.

Matters of State or Regional Importance

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

Summary

The Clause 4.6 Exception to the FSR standard 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.

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. As such, there is no reasonable justification as to why the proposed development cannot achieve compliance with the FSR standard. Therefore the proposal does not represent the orderly and economic development of land.

It is considered that the applicant's Clause 4.6 is not well-founded and the departure in FSR is not in the public interest. On this basis of, it is recommended that the development standard relating to the maximum FSR for the site pursuant to Clause 4.4 of the BBLEP 2013 should not be varied in the circumstances as discussed above.

5.3 Planning Proposal (2/2013) dated 27 January 2015 to amend Botany Bay LEP 2013 (S79C(a)(ii))

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 to introduce a new Clause 4.4C – Building Form and Scale into the BBLEP 2013 to ensure that development applications which utilise Clauses 4.3(2A) and 4.4B take into account the surrounding development; and prevent the use of Clause 4.6 for developments to which Clauses 4.3(2A) and 4.4B(3) apply to; and
- Planning Proposal No. 1/2015 to remove Clauses 4.3(2A) and 4.4B.

Planning Proposal No. 2/2013 was referred on 27 August 2015 to the Department of Planning and Environment for gazettal. The Department was adding a savings clause to the amendment (with respect to DAs already lodged), and it was expected that the amendment would have been gazetted by now, so this should be occurring shortly.

Planning Proposal No. 1/2015 was referred to the Department of Planning and Environment for a gateway determination on 26 February 2015. A Gateway Determination was issued on 7 September 2015. The Department has requested additional information from Council to support this proposal, which is being prepared.

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 Consent to development in Zone R3 and Zone R4

Development consent must not be granted to development on land in Zone R3 Medium Density Residential or Zone R4 High Density Residential unless the consent authority is satisfied that the development will:

- (a) achieve acceptable amenity outcomes (including in terms of overlooking, overshadowing and comparative streetscape elevation) in relation to adjoining land, and*
- (b) provide appropriate building setback, and*
- (c) provide a transition in building scale to development on adjoining land, and*
- (d) be compatible with the character of the area in terms of building bulk and scale, and*
- (e) not impede the fulfilment of an objective of clause 4.3 or 4.4B.*

Note. Because clauses 4.3 (2A), 4.4 (2A) and 4.4B also apply only to land in Zone R3 Medium Density Residential and Zone R4 High Density Residential, this clause applies to development on land to which those clauses apply.

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), however the application complies with the FSR standard under Clause 4.4(2)(A), being a standard of 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. 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
Development consent must not be granted to development on land in Zone R3 Medium Density Residential or Zone R4 High Density Residential unless the consent authority is satisfied that the development will:	
a) achieve acceptable amenity outcomes (including in terms of b) overlooking, overshadowing and comparative streetscape elevation) in c) relation to adjoining land, and	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)
d) provide appropriate building setback, and	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 Building C does not match the prevailing setback of the adjoining Building D within the R3 zone. The building form is considered to encroach on the 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

Draft Planning Provisions	Council Comment
	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 is not considered to meet draft planning provision Clause 4.4(C)(2)(b)
a) provide a transition in building scale to development on adjoining land, b) and	Two 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. As previously discussed, it is considered that the proposed built form does not provide an adequate transition to adjoining development at the property boundaries. 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, and significantly overshadowing the common open space. 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. The proposed development is not considered to meet draft planning provision Clause 4.4(C)(2)(c)
a) be compatible with the character of the area in terms of building bulk b) and scale, and	Please refer to the assessment against Part 8 of the DCP.
c) not impede the fulfilment of an objective of clause 4.3 or 4.4B	
Clause 4.3 (height): (1) The objectives of this clause are as follows: a) to ensure that the built form of Botany Bay develops in a coordinated and cohesive manner, b) to ensure that taller buildings are appropriately located, c) to ensure that building height is consistent with the desired future character of an area, d) to minimise visual impact, disruption of views, loss of privacy and loss of solar access	(a) 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. (b) The proposed buildings are substantially taller than what the controls reasonably contemplate. Further, the building length of up to 90 metres for 8 storeys in height is excessive and entirely out of character with adjoining development. 8 storey building will dwarf the public park and will deliver a poor urban outcome. (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

Draft Planning Provisions	Council Comment
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.	to maintain consistency with the established character of the area. (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. Specifically, the common open space between Buildings A and B will receive insufficient solar access (less than 1.5 hours). (e) The proposed development provides a north-south through-site link. This is considered to provide adequate permeability through the site. Whilst the location and reconfiguration of the public open space is supported, the proposed built form that adjoins it will completely dwarf the park, to the extent that it compromises its layout, use and function. 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.
Clause 4.4B (1) The objective of this clause is to encourage the development of larger sites (former industrial sites) to facilitate better-built form and urban design.	It is considered that the proposed design does not facilitate a better-built form and urban design. The proposed development is not considered to meet draft planning provision Clause 4.4B(1).

Table 7: Assessment against Draft Planning Provisions

In conclusion, the application exceeds Clause 4.3(2A) 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.

5.4 Botany Bay Development Control Plan 2013 (79C(a)(iii))

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**.

The main areas of non-compliance are discussed below.

Building Length

The proposed development seeks consent for the building depths of up to 90 metres that are 8 storeys in height.

The development application seeks the proposed building lengths:

- Building A: 67m to Pemberton Street and 25 m to New Street 1.
- Building B: 45m to New Street 1 and 90 m to park/through-site link.
- Building C: 90m to Rancom Street and 20m to Pemberton Street.

All buildings on the subject site exceed the maximum building length of 24m. The length of building of Buildings A and B are substantial and generate an undesirable bulk, scale and amenity impact in terms of overshadowing. The overall impact of the length is exacerbated by the non-compliant height of 7 and 8 storeys. The building lengths are not characteristic in the area. It is noted that similar developments within the precinct have incorporated physical building breaks, or and minimised the component of additional height that is beyond 6 storeys. The proposal does not incorporate any such design technique to reduce the overall mass of building.

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.”*

Substantial re-design is required in order to reduce the building length to provide a better urban outcome for the site.

Unit Mix

The proposed development provides the following unit mix:

- 15 x studio (5%)
- 133 x 1 bed (42.5%)
- 160 x 2 bed (51%)
- 5 x 3 bed (1.5%)
- TOTAL: 313 units

The proposed development provides a total of 47% of studio and 1 bedroom apartments. This exceeds the maximum allowable of 25%.

The Applicant has submitted an Economic Report prepared by HillPDA to justify the exceedance. Council does not agree with the findings of the Economic Report and consider that the unit mix contained within the DCP remain appropriate for the area.

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	31% (4,335sqm) Includes the public park	No
Deep Soil	Minimum 25%	22% (3,029sqm) Comprising of the public park	No

Table 8: Landscaped Area and Deep Soil

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

- Council dedicated park: 3,270sqm.

- North-south through-site link: 2,306sqm.

As demonstrated above the provision of landscaping does not comply with the DCP minimum requirements.

Further, as previously stated, the area that forms the public park and north-south through site link includes two stormwater infiltration systems, associated with other occupied adjoining unit development . As such, the public park does not comply with the DCP as it is not located on deep soil and can entirely accommodate deep soil planting such as trees.

Communal Open Space

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

Control	Required	Proposal	Complies
Communal Open Space	Minimum 30% of site	12.76% or 2355 sqm (excluding park)	No

Table 9: Communal Open Space

As stated above, the proposed development does not comply with the provision of communal open space. The common open space is located wholly above a basement car park.

Therefore, 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)”.

Further, the height and length of Buildings A and B results in the common open space being in full shadow between 9am to 3pm in mid-winter, except for 1.5 hours between 11am to approximately 12.30pm

Therefore the solar access provided to the communal open space is unsatisfactory due to the height and length of Buildings A and B.

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 3 metre setback of Building A does not comply with the 4 metre setback requirement for the B4 zone and the 3 metre setback of Building C does not match the prevailing setback for Rancom Street, which is 6 metres, which is consistent with the setback of the adjoining approved Building D. The building form is considered to encroach on the front setbacks thereby increasing the scale of the built form at the street edge.

Specifically, the setback of Building C limits the ability for any future development to the south on Botany Road to comply with the separation distances and results in increased overshadowing.

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

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.

The applicant has submitted documentation to demonstrate that attempts to acquire the property at 12 Pemberton Street Botany have been made. This includes the submission of chronology of events, valuation reports and evidence of formal offers. The applicant provides the following chronology of events:

Date	Action	Document Reference
17 December 2012	Formal offer made of \$700,000+ gst based on market valuation.	Valuation undertaken by Colliers International dated 1 December 2012. Letter of Offer dated 17 December 2012 by Woodbury Pty Ltd.
18 December 2012	Vendors agent advised in writing that the offer was rejected.	Email dated 18 December 2012
1 May 2013	Agent for JKN wrote to the vendors' agent to try and negotiate a reasonable value for the property.	Email dated 1 May 2013
2 May 2013	Vendors' agent advised that the property is available for sale with an	Email dated 2 May 2013

Date	Action	Document Reference
	asking price of \$1.8 million.	
21 March 2014	Formal offer made of \$800,000+ gst based on market valuation and historical sales in the area.	Letter of Offer dated 21 March 2014 by Woodbury Pty Ltd
19 June 2014	Formal offer made of \$1 million + gst based on agents appraisal.	Email dated 19 June 2014
24 June 2014	Email received from agent of 12 Pemberton St with a counter offer of \$2.45 million + gst	Email dated 24 June 2014
26 June 2014	Response sent to agent advising that the counter offer does not reflect market value.	Email dated 26 June 2014
5 August 2015	Market Valuation prepared by Property Logic	Valuation dated 5 August 2014
7 August 2015	Further offer made of \$1.2 million based on updated market valuation	Email dated 7 August 2015
As at time of writing this report.	No response to offer	

Additionally, the applicant has submitted an envelope diagram and floor plans including indicative FSR, internal vehicular turning movements and building layout for 12 Pemberton Street. Therefore, Council considers that the application has addressed the principles outlined in the case of *Cornerstone Property Group Pty Ltd v Warringah Council*.

Council is satisfied that the applicant has made reasonable attempts to acquire the site at 12 Pemberton Street in accordance with the principles of *Melissa Grech v Auburn Council [2004] NSWLEC 40*, *Cornerstone Property Group Pty Ltd v Warringah Council [2004] NSWLEC 189* and *Karavellas v Sutherland Shire Council [2004] NSWLEC 251*.

Council is also satisfied that provided that the future development at 12 Pemberton Street be 3 storeys in height, it can reasonably provide a suitable streetscape presentation with adjoining development.

Botany Character Precinct

The precinct is guided by Council's LEP and DCP controls, which together provide a framework and overall vision for the precinct. The amended application goes some way toward being consistent with the vision for the precinct.

However, as previously discussed throughout this report, the proposed FSR and height are not consistent with the character of the area. The building length and height does not

respond to the existing development to in the precinct with regard to the built form in order to create and continue view corridors and open outlooks.

The amended application does not entirely comply with the recommendations made by the JRPP, and in its current it is considered that the application is not consistent with the desired future character of the Botany Precinct.

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

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 submitted Clause 4.6 Exception is not well-founded as there are insufficient environmental planning grounds to justify the contravention to the standard.

The application results in a non-compliance with several of the BBDCP 2013 controls including setbacks, building length, building depth, 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.

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

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.

5.7 Any submission made in accordance with the Act or Regulations (S79(C)(d))

In accordance with Council's Notification Policy, the amended development application lodged on 15 September 2015 was notified to surrounding property owners and occupants and advertised in the local newspaper for a period of 30 days from 30 September 2015 to 30 October 2015. Council received a total of 13 objection letters.

The key objections raised include:

- Inconsistency with the JRPP reasons for deferral and Masterplan;
- Relocation & reconfiguration of the park;
- Height;
- FSR and bulk;
- Context/Design/Character;
- Amenity (solar access, view, privacy, outlook);
- Traffic;
- Conduct of developer;
- DCP non-compliances.

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

Inconsistency with the JRPP's reasons for deferral and the Masterplan

Objection: The proposal does not comply with the JRPP's deferral, in that it does not comply with the Height and FSR and the public park is more like a thoroughfare with an 8 storey building along its length taking the afternoon sun.

The proposed development demonstrates significant variations to the approved masterplan with regard to the size of the public park, building height and density. .

Comment: The application retains non-compliance with the JRPP's reasons for deferral as it does not comply with the height and FSR standards. This has been addressed within this report.

Relocation and reconfiguration of the park

- Reconfiguration and reduced size of the park;
- Park is more like a wind tunnel than a proper park, with an 8 storey building alongside it.
- Increased shadowing of the proposed layout of the park.

Comment: Council considers that the amended park location is an improvement from the previous application and better aligns with the original master plan. The park provides a north-south link and connects to New Street 1 and 2. It also receives improved solar access.

Height non-compliance

- Non-compliant height;
- 8 storey building is too high and out of character.
- The height does not comply in the B4 zone, as required by the JRPP.
- Height should be reduced in Rancom Street to establish a better scaled relationship with existing buildings to the south.
- High-rise buildings do not form part of the current streetscape in the Botany Bay area;
- The original building height on the Master Plan indicated 6 storeys or lower, the proposal departs from this;
- The development is totally out of character with the area, in contrast to development in William Street which are examples of suitable development.

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.

FSR and bulk

- Overdevelopment of the site;
- Non-compliant FSR.
- Departure from the master plan is inconsistent with this provision.

Comment: The proposed FSR exceeds the maximum within the B4 zone. The applicant has submitted a Clause 4.6 Exception, however, Council does not support the extent of the variation.

Council has provided an assessment of FSR under the BBLEP 2013 section of this report. Council considers that the FSR and bulk of the proposed development is excessive and contributes to adverse amenity impacts. The non-compliance with the FSR is listed as a reason for refusal.

Context/Design/Character

- The development is totally out of character with the area, in contrast to development in William Street which are examples of suitable development.
- The development will contribute to making the area a ghetto with associated social problems.
- The development will deny access to response units in case of fire or emergency.
- The proposal is not consistent with the “desired future character” of the area, which is reflected in the approved “master plan”;

Comment: Council considers that the extent of FSR and height variation results in a development that is not consistent with the surrounding context and character of the Wilson Pemberton Precinct and is not reflective of the desired future character of the area. This has been addressed in detail within this report.

Amenity (solar access, view, privacy, outlook)

- Loss of solar access, privacy, outlook, view, ventilation;
- 8 storey building causes increased overshadowing;
- Reducing access to open space;

Comment: The layout of the building is an improvement on the original application. However, the proposal does result in overshadowing of the communal area between Building A and B. The increase in shadow is created by the non-compliances with the height and FSR standards.

These issues have been addressed in detail within this report.

Traffic

- Increased congestion;
- Insufficient parking;
- Traffic management issues and insufficient parking along Wilson/Pemberton Streets.

Comment: The applicant has provided an Internal Traffic Assessment and a cumulative traffic statement. The cumulative traffic statement has been reviewed by an external traffic consultant and is considered adequate.

Conduct of developer

- Units were bought based on the Master Plan, being a larger communal park in the middle of the development.
- Park relocation / reduced size will decrease of property value & saleability;

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.

DCP non-compliance

- DCP non-compliances include site coverage, unbuilt maximum area, height, landscaped area, loss of open space, overlooking, length of building, depth, 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 under BBDCP 2013.

5.8 The public interest S79(C)(e)

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

6. Other Matters**6.1 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.

6.2 External Referrals

Notification of original application - 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 1: External Referrals

Notification of amended application - External Referrals were sent out as part of the notification process from the 30 September 2015 to 30 October 2015. As of late November, all external referrals remain outstanding.

6.3 Section 94 Contribution and Proposed Planning Agreement

As detailed earlier in this report, the applicant has submitted a letter of offer to enter into a Planning Agreement. The Planning Agreement will detail the extent of applicable contributions. Therefore, if approval is granted, there will be no condition of consent relating to Section 94 Contributions.

7. CONCLUSION

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 assessment of the application has identified significant departures from the BBLEP and BBDCP 2013 controls. Specifically, is not compliant with the Building Height standards in both the R3 and B4 zones and is not compliant with the FSR standard in the B4 zone. The application relies upon a Clause 4.6 Exception for a non-compliant Heights and FSR. An assessment of the Clause 4.6 Exception submissions has been provided within this report. Council concludes that the non-compliance is not well founded as there are insufficient environmental planning grounds to justify the contravention of the standard. Further, there are no grounds that are particular to the application that would warrant the variations sought by the applicant.

Council Officers are of the opinion that further amendments are necessary in order to provide a satisfactory urban outcome for the site and that the applications continued non-compliances with the height and FSR standard cannot be supported. Further, the application does not entirely comply with the requirements set by the Panel at the meeting on 3 June 2015.

Council officers recognise that the site is suitable for medium density residential and mixed use development and any future development on the site would be expected to comply with the reasons for refusal outlined in this report.

An urban design review prepared for Council by UrbanAC has provided the basis of comments with regard to the urban design of the proposed development, including the overall building configuration, response to context, height, bulk and scale, building length and depth.

In its current form, the proposal is considered to be an overdevelopment of the subject site and the exceedance of height and FSR, combined with the building length, form and mass, results in an unacceptable planning outcome for the site.

The Sydney East Region JRPP is the determining authority for the development application and it is recommended that the application be refused for the reasons as set out in the Recommendation.

APPENDIX A – SEPP 65 DESIGN QUALITY OF RESIDENTIAL FLAT BUILDINGS

Table 2: Detailed SEPP 65 Assessment

Requirement	Complies (yes / no)	Comment
PART 01: LOCAL CONTEXT		
<i>Building Height</i>		
Development responds to the desired scale and character of the street and local area	No	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. The proposed height is not consistent with the height of adjoining development. The proposed height and scale of the development is considered to be out of context with the character of the street and local area.
Allow reasonable daylight access to all developments and the public domain	No	The proposed development does not comply with the DCP requirements for solar access for the common area and will substantially over-shadow future development to the south. The proposed development results in significant overshadowing of the common open space between Buildings A and B.
<i>Building Depth</i>		
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	The development proposes the following building depths: Building A: 18m to 22m Building B: 18m to 21m Building C: 18m to 20m Only the north-western wing of Building A complies.
<i>Building Separation</i>		
Development scaled to support desired area character with appropriate massing/spacing between buildings	No	Proposed mass and scale is inappropriate for the site.
<i>Up to 4 storeys/12m height:</i> 12m between habitable rooms/balconies 9m between habitable/balconies and non-habitable rooms 6m between non-habitable rooms	Generally Complies	<u>Separation within the site</u> Bldg. A (to Bldg. B): 18.5m Bldg. B (to Bldg. C): 15.6 – 27.8m Bldg. C (to Park Grove East Building D): 17.5m <u>Separation to Parkgrove 1 (east)</u> Building B & E,F: 32 m Building C & D: 18.5m

Requirement	Complies (yes / no)	Comment
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	<u>Separation within the site</u> Bldg. A (to Bldg. B): 19.8m Bldg. B (to Bldg. C): 15.6 – 27.4m Bldg. C (to Park Grove East Building D): 17.5m <u>Separation to Parkgrove 1 (east)</u> Building B & E,F: 32 m Building C & D: 17.5m
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
Street Setbacks		
Minimise overshadowing of the street and/or other buildings	No	The proposed development results in total overshadowing of Rancom Street.
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 along Rancom Street.
Side and Rear Setbacks		
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	As above.
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 landscaping.
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.

Requirement	Complies (yes / no)	Comment
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.
Floor Space Ratio		
Development in keeping with optimum capacity of site and local area	No	The proposed development exceeds the maximum FSR within the B4 zone.
PART 02: SITE DESIGN		
Site Analysis		
Detailed site analysis required to be submitted with development application	Yes	A site analysis was prepared with the lodgement of this DA.
Deep Soil Zones		
Minimum 25% of open space area of a site should be deep soil zone – more is desirable	Yes	The proposed development provides 31% or 4,335sqm as landscaped area. The proposed development provides 22% (3029 sqm) comprising the public park.
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	No	The proposed deep soil comprises the park only and there is insufficient deep soil within the development.
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.
Fences and Walls		
Respond to identified architectural character for the street/area	Generally Complies	Clear glass balustrades are proposed to the apartments. A mixture of solid and translucent materials have been utilised.
Delineate public and private domain without compromising safety or privacy	Generally Complies	Safety is considered to be adequately addressed within this development application.
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	Yes	The new location of the park now receives more than 3 hours of solar access. However, the common area receives only 1.5 hours of solar access and is significantly overshadowed.

Requirement	Complies (yes / no)	Comment
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.
Landscape Design		
Improve amenity of open space by good landscape design	No	The amended location of the public park is supported. However, the public park is located above an infiltration trench and is therefore not deep soil as stated in the applicants documents.
Contribute to streetscape character and amenity of the public domain	Yes	The landscape design contributes to the character and amenity of the public areas.
Improve energy efficiency and solar efficiency of dwellings and microclimate of private open spaces	No	The development does not include any solar devices.
Contribute to positive site characteristics	Yes	The landscape design contributes to the site characteristics.
Integration of water and stormwater management with landscape design	No	Considered suitable.
Sufficient depth of soil above paving slabs for mature tree growth	No	Insufficient deep soil.
Use of robust elements to minimise maintenance	Yes	The SEE states that the materials are selected to minimize the need for maintenance.
Open Spaces		
Communal Open space should be minimum 25-30% of site area	No	12.76% or 2355sqm (excluding park), however is not deep soil. The communal open space is located at podium level and the landscaping is comprised of planter beds.
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	No	Based on the calculations provided by the applicant, communal open space does not comply with the 25% requirement.
Minimum private open space for ground level apartments is 25m ² with minimum 4m dimension in one direction	No	Studio/ 1 bed: 10m ² – 31m ² 2 bed: 16m ² – 32m ² 3 bed: 37m ² Dimensions for all ground floor POS areas are a minimum of 4m in one direction.
Orientation		
Position and orient buildings to maximise north facing walls – within 30° east and 20° west of north	Yes/No	Building A is oriented north, east, south and west. Building B is oriented north, south, east and west. Building C is oriented north, south and a small portion oriented east and west.
Align buildings to streets on east-	Yes/No	Building A has been aligned along Pemberton Street,

Requirement	Complies (yes / no)	Comment
west streets and use courtyards, L-shaped configurations and increased setbacks to side boundaries on north-south streets		Building B along New Street 1 and the public park and Building C has been aligned along Rancom Street.
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.
Planting on Structures		
<i>Large trees</i> (16m canopy): min. soil volume 150m³, min soil depth 1.3m, min soil area 10m x 10m <i>Medium trees</i> (8m canopy): min soil volume 35m³, min soil depth 1m, min soil area 6m x 6m <i>Small trees</i> (4m canopy): min soil volume 9m³, min soil depth 800mm, min soil area 3.5m x 3.5m <i>Shrubs</i>: min soil depth 500-600mm <i>Ground cover</i>: min. soil depth 300-450mm <i>Turf</i>: min. soil depth 100-300mm	No	The proposal has been referred to Council's Landscape Assessment for review. 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. Planter beds should be at the one level/grade.
Stormwater Management		
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 appears 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.
Safety		
Reinforce development boundary to distinguish between public and private space	No	The proposed development does not comply with the DCP requirements for solar access for the common open space of the proposed development. The proposed development results in significant overshadowing of the central common area between Building A and B.
Orient building entrances to public street	Considered acceptable	Proposed building entrances are suitable. .
Provide clear lines of sight between entrances, foyers and street	Considered acceptable	Proposed building entrances are suitable. .
Provide direct entry to ground level units	Yes	Direct entry has been provided to the majority of ground level apartments.

Requirement	Complies (yes / no)	Comment
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	Units in Building A that are oriented east and west as is Building B, and will have views over the common open space and public park. Units in Building C oriented south and north respectively will have views over the communal open space and Rancom Street.
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.
No blind/dark alcoves in design/layout	No	Building B creates an acute corner which is subject to total overshadowing.
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	All parking is provided within basement 1 and 2.
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 each building.
Intercom system at entry on in lobby for visitors	TBD	To be determined
Key card access for residents	TBD	To be determined
Visual Privacy		
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.

Requirement	Complies (yes / no)	Comment
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.
Site Access		
Entries to relate to existing street/subdivision pattern, street tree planting, pedestrian access network	Yes/No	The proposed pedestrian access network is considered satisfactory as it provides a north-south 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 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 A 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	Mail boxes to form a condition of consent.
Parking		
Appropriate parking provision	Yes	552 spaces provided. The car parking complies with the retail, residential and visitor rates per building.
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. There is a two level basement car park.
Provision of bicycle parking easily accessible from ground level	Yes	Bicycle parking within all buildings is located adjacent to the vehicle or pedestrian entries.
Pedestrian Access		
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	The entrance to each building is accessible from the street level or public park.

Requirement	Complies (yes / no)	Comment
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.
Provision of public through-site pedestrian accessways in large developments	Yes	The development proposes a north-south through-site pedestrian link which runs through the public open space.
Barrier free access to at least 20% dwellings	Yes	Lifts have been provided to all Buildings.
Vehicle Access		
Max. driveway width = 6m	No	The driveway width is two way and is 9 metres.
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	There is no vehicular access to Pemberton Street.
Car park entry/access located to secondary frontages/lanes	Yes	There is one vehicular access to the site from Rancom Street.
PART 03: BUILDING DESIGN		
Apartment Layout		
Studio: Internal area = 38.5m ² External area = 6m ² 1 Bed cross through: Internal area = 50m ² External Area = 8m ² 1 bed maisonette/loft: Internal area = 62m ² External area = 9.4m ² 1 bed single aspect: Internal area = 63.4m ² External area = 10m ² 2 bed corner: Internal area = 80m ² External area = 11m ² 2 bed cross through: Internal area = 89m ² External area = 21m ² 2 bed cross over: Internal area = 90m ² External area = 16m ² 2 bed corner with study: Internal area = 121m ²	Generally Yes	The proposal provides a mix of unit areas as follows: - BB DCP: 14% - RFDC unit types table: 84% - RFDC affordable table: 5% Studio: 38-50 m ² 1 bed: 53m ² – 67m ² 2 bed: 80m ² – 120m ² 3 bed: 119m ² – 131m ²

Requirement	Complies (yes / no)	Comment
External area = 33m ² 3 bed: Internal area = 124m ² External area = 24m ²		
Single aspect apartments max 8m depth from window	No	The SEE states that the unit depth provides for approximately 8-11.5 metres.
Back of a kitchen max. 8m from window	No	The SEE states that the unit depth provides for approximately 8-11.5 metres which is a minor variation to the recommendation.
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.
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

Part	Control	Proposed	Complies (Yes/No)
4C.2 Site Design			
4C.2.2 Local Character – Botany	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 is an overdevelopment and results in an inconsistent relationship with the local character. T	No
4C.2.3 Streetscape Presentation	C3 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: 67m to Pemberton Street and 25 m to New Street 1 Building B: 45m to New Street 1 and 90 m to park/through-site link Building C: 90m to Rancom Street and 20m to Pemberton Street	No
	C4 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 ambience 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, B and C are oriented to address the streets. However, Building B largely address the public park. 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.	No
	C5 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 six storey portion of Building A and provides a suitable street edge that continues the built form along Pemberton Street.	Yes
4C.2.4 Height	C1 The maximum height of buildings must not exceed the maximum height identified in the Height of Buildings Map and Clause 4.3 of the Botany Bay Local Environmental Plan 2013.	Refer to assessment under BBLEP 2013.	-
4C.2.5 Floor Space Ratio	C1 The maximum FSR of development is to comply with	Refer to assessment under BBLEP 2013.	-

Part	Control	Proposed	Complies (Yes/No)
(FSR)	the Floor Space Ratio Map and Clauses 4.4, 4.4A and 4.4B of the Botany Bay Local Environmental Plan 2013.		
4C.2.6 Site Coverage	C1 Development for a residential flat building must not exceed a maximum site coverage of 45%.	49% with basement (9,218m ²) 32% without basement (5,906m ²)	No Considered Acceptable
4C.2.7 Landscaped Area and Deep Soil Planting	C1 A residential flat development must have a minimum landscaped area of 35% and a maximum unbuilt upon area of 20% .	31% (4,335sqm) Includes deep soil Unbuilt upon area: 14%	No No Considered Acceptable
	C14 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.	The front landscaped setback contains footpaths, ramps and building entries.	No
	C15 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
	C16 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
	C17 Planter beds shall be a minimum of 1 metre in width unless otherwise stipulated in setbacks.	Planter boxes are generally 1m in width.	Generally complies
	C22 A minimum of 25% of the landscaped area should comprise a deep soil planting area of which: (i) A minimum of 50% should be located at the rear of the site. For sites with dual or rear lane frontages, this area	22% (3029 sqm) comprising the public park	No Considered Acceptable

Part	Control	Proposed	Complies (Yes/No)
	may be relocated to allow buildings to address the secondary frontage or provide for rear lane car parking access; (ii) A minimum of 30% should be located within the front setback; and (iii) A minimum 2 metre wide strip of landscaping is to be located along one side boundaries; and (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.		
	C23 Communal open space must be deep soil zones (not over podium or car park).	The application identifies a total of 2,355 sqm (12.7%) of communal open space, which is provided on the ground floor level above the basement car park. As per the definition within the DCP, landscaping on the car park level is not deep soil. Communal open spaces must be deep soil. Planter beds are not considered deep soil landscaping. As such, these should not be included in the calculation of communal open space.	No
	C24 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, with minor encroachments on basement level 1.	Yes
4C.2.8 Private and Communal Open Space	C1 The minimum private open space requirements (i.e. balconies) for a development are set out in Table 2. Studio & 1 bed: 12qm 2 bed: 15qm 3 bed: 19qm	Studio/ 1 bed: 10m² – 31m² 2 bed: 16m² – 32m² 3 bed: 37m²	Generally compliant

Part	Control	Proposed	Complies (Yes/No)
	4 bed: 24sqm		
	C2 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.	The majority of 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
	C5 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	The minimum size for the studio/1 bed ground floor units is 11sqm which does not comply with minimum POS for non-ground floor units. The minimum size for 2 bed ground floor units is 18 sqm which is larger than the minimum POS requirement for non-ground floor units.	Satisfactory
	C6 The minimum communal open space requirements for a development is 30% of the site area.	Please refer to the response to C23 above. The application identifies a total of 2,355 sqm (12.7%) of communal open space, which is provided on the ground floor level above the basement car park. Additionally, the dedication of a 3,270 sqm park is considered acceptable.	Satisfactory
	C8 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 A and B receives less than 1.5 hours of solar access in mid-winter.	No
	C10 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 public park (3,270 sqm) 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
4C.2.9 Setbacks	C1 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.
	C3 All front, side and rear setbacks are to provide deep soil zones to allow unencumbered	The architectural plans indicate that the setbacks along New Street 1, Pemberton Street and Rancom	Yes

Part	Control	Proposed	Complies (Yes/No)
	planting areas.	Street (with the exception of access ramps & vehicle entry) are deep soil zones.	
	C6 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.	The positioning of Building A is supported. The setback of Building C is not considered to match the setback of the adjoining Building D of Parkgrove East. The setback should be a minimum 6 metres.	Yes
	C10 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 in height); and (iv) A minimum setback of 3 metres where a site adjoins a business or industrial property.	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 East to the east.	N/A
	C12 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
	C13 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 17.5m.	Yes
	C14 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
	C1 Existing significant views are to be retained.	There are no existing significant views.	N/A
4C.2.10 Through Site Links & View Corridors	C2 View corridors are to be integrated into the design of any new development.	There are no existing significant views.	Satisfactory
	C3 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	No

Part	Control	Proposed	Complies (Yes/No)
		has been provided as an afterthought to the placement of the buildings.	
	C4 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 pedestrian through-site link has been provided.	Yes
4C.2.12 Consideration of Isolated Sites	C1 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 between adjoining buildings.	Refer to the assessment under BB DCP 2013.	Satisfactory
	C2 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
	C3 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.	Refer to the assessment under BB DCP 2013.	Satisfactory
	C4 Where adjacent sites are developing concurrently, site planning options for development as an amalgamated site are to be explored.	Refer to the assessment under BB DCP 2013.	Satisfactory
	C5 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 http://www.lec.lawlink.nsw.gov.au/lec/principles/planning_principles.html).	Refer to the assessment under BB DCP 2013.	Satisfactory
4C.3 Building Design			
4C.3.1 Design Excellence	C1 To achieve excellence in urban design, development shall: (i) Take into consideration	The aesthetics and quality of the proposed buildings is considered to be satisfactory.	No

Part	Control	Proposed	Complies (Yes/No)
	the characteristics of the site and adjoining development by undertaking a thorough site analysis; (ii) Utilise innovative design which positively responds to the character and context of its locality; (iii) Provide a design which is sustainable; (iv) Enhance the streetscape character of the locality; (v) Ensure development is consistent in height and scale with surrounding development; (vi) Maintain established 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.	However, the bulk, scale and height 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.	
4C.3.2 Corner Buildings	C1 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 building aligns with the corner conditions of Pemberton Street, New Street 1 and Rancom Street. However, the proposed height and density of the proposed building is considered excessive and does not contribute to the desired urban form.	No

Part	Control	Proposed	Complies (Yes/No)
	C2 Corner buildings are to reflect the architecture, hierarchy and characteristics of the streets they address.	See above.	No
4C.3.3 Building Entries	C1 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.
	C2 Entrances must provide shelter and be well-lit and safe spaces to enter the building, meet and collect mail (refer to Figure 14). The front door must be oriented to the street and have direct access to the street.	Mailboxes can form a condition of consent. Details regarding lighting of entrances has not been provided.	Can be conditioned
	C4 Street numbering and mailboxes must be clearly visible from the primary street.	Mailboxes can form a condition of consent.	Can be conditioned
	C5 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 Pemberton Street. The entry to Building B is off the public park and entry to Building C is off Rancom Street. Building entries are separate from the car parking entries	Yes
4C.3.4 Roofs and Attics/ Dormers	C1 Roofs should be pitched between 22.5 degrees and 36 degrees.	The development proposes flat rooves which is consistent with other developments in the immediate area.	Considered acceptable
	C2 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
	C3 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
4C.3.6 Materials & Finishes	C2 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	The proposed materials, colours and finishes are consistent with the large-scale developments approved in the immediate area.	Yes

Part	Control	Proposed	Complies (Yes/No)
	used.		
	C3 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
	C4 Any solar panels must be integrated into the design of a building.	Solar panels are not proposed.	N/A
	C6 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
4C.5 Site and Building Amenity			
4C.5.1 Dwelling Mix, Room Size and Layout	C1 Dwellings within residential flat buildings must be designed to provide the following minimum internal areas: Studio: 60m ² 1 bedroom: 75m ² 2 bedrooms: 100m ² 3 bedrooms: 130m ² 4 bedrooms: 160m ² Note: Dwelling size means the area inside the enclosing walls of a dwelling but excludes wall thickness, vents, ducts, staircases and lift wells.	The proposal provides a mix of unit areas as follows: - BB DCP: 14% - RFDC unit types table: 84% - RFDC affordable table: 5% Studio: 38-50 m ² 1 bed: 53m ² – 67m ² 2 bed: 80m ² – 120m ² 3 bed: 119m ² – 131m ²	No
	C2 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.	15 x studio (5%) 133 x 1 bed (42.5%) 160 x 2 bed (51%) 5 x 3 bed (1.5%) TOTAL: 313 units 47% studio/1 bedroom The applicant has not demonstrated compliance with the dwelling mix controls or provide documentary evidence as to why this control cannot be achieved.	No
	C3 Laundry, food preparation and sanitary facilities are to be provided in a convenient location within a dwelling (or a building containing a number of	Laundry, kitchen and bathroom facilities are provided within each apartment.	Yes

Part	Control	Proposed	Complies (Yes/No)
	dwelling) and built appropriate to the function and use of the dwelling.		
	C6 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
	C7 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
4C.5.2 Internal Circulation	C1 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
	C3 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 or more. Notwithstanding this, 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". Building C does not comply with this requirement.	Yes/No
	C4 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 building lengths are in excess and do not provide for good urban design and result in poor internal amenity and access.	No
4C.5.3 Building Depth	C2 For residential flat development the maximum building depth of the building is 18 metres.	Building A: 18m to 22m Building B: 18m to 21m Building C: 18m to 20m	No
	C3 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
4C.5.4 Balconies in Residential Flat Buildings	C1 In large developments (containing 20 or more units/dwellings) different styles and designs for balconies are required.	Different style balconies have been provided.	Yes
	C2 At least one balcony per apartment is to be provided off the living areas.	Complies.	Yes
	C3 The minimum area of the balcony off the living area is 12m ² and the minimum width is 3 metres.	The minimum area of balconies off each living area ranges from 12sqm to 80sqm.	Yes
	C4 The main balcony off the	The proposed development	Yes

Part	Control	Proposed	Complies (Yes/No)
	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.	generally complies with items (i) – (vi).	
	C5 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
	C6 Balconies must not be continuous across the entire façade of the apartment.	Complies.	Yes
4C.5.5 Ground Floor Apartment in Residential Flat Developments	C2 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
	C3 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
	C4 Ground floor apartments are to have individual entries and/or front and rear garden spaces.	The Architectural Plans demonstrate that the majority of ground floor apartments have individual entries with garden space in the form of planter boxes.	Yes
	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 includes deep soil zones around the perimeter of the site, however, the zone between apartments and the streets primarily comprises footpaths, paving and ramps.	No
	C6 Deep soil zones and open		

Part	Control	Proposed	Complies (Yes/No)																
	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><thead><tr><th colspan="2">Minimum Height</th></tr></thead><tbody><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></tbody></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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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 hours¹ 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 June.	Building F: overshadowing to western façade from 1pm Building E: overshadowing to western façade from 2pm Building D: overshadowing to western façade from 2pm Buildings D, E & F Approximately 3 hours sunlight is maintained to the western facades During March & December 3 hours is provided during mid-day to the western facades	Considered acceptable Acceptable during March & December																
	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><thead><tr><th>Building Height (metres)</th><th>Separation Between Habitable Rooms/Balconies</th><th>Separation Between Habitable Balconies & Non-Habitable Rooms</th><th>Separation Between Non-Habitable Rooms</th></tr></thead><tbody><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></tbody></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																

¹ Taken from Apartment Schedule, Issue H, dated 08.09.2015.

Part	Control	Proposed	Complies (Yes/No)
	Up to 12m	Bldg. A (to Bldg. B): 18.5m Bldg. B (to Bldg. C): 15.6 – 27.8m Bldg. C (to Park Grove East Building D): 17.5m	Building A: Yes Building B: Yes Building C: Yes
	12-25m	Bldg. A (to Bldg. B): 19.8m Bldg. B (to Bldg. C): 15.6 – 27.4m Bldg. C (to Park Grove East Building D): 17.5m	Building A: Yes Building B: Considered acceptable as separation has a blank wall 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 proposal does not compromise any views between properties.	Yes
4C.5.14 Storage	C1 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.	All apartments have storage, either within the unit or within the basement storage cages.	Yes
	C2 Accessible and adequate storage facilities are to be provided at the following rates: - Studios: 6m³ 1 bedroom dwelling: 8m³ 2 bedroom dwellings: 10m³ 3+ bedroom dwellings: 12m³	The unit schedule states that All units comply with the minimum requirement. 1 bed: 8m ³ 2 bed: 10m ³ 3 bed: 12m ³	Satisfactory
	C3 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
	C4 Storage areas are to have a minimum height of 1.5 metres.	The unit schedule states that all units comply with the minimum requirement.	Yes
4C.5.15 Site Facilities	C3 One (1) lift is required per forty (40) dwellings or greater	Two lifts are provided per building.	Yes

Part	Control	Proposed	Complies (Yes/No)
	part thereof and two (2) for forty or more.		
4C.5.17 Car Parking & Vehicle Access	C2 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 2 bed: 2 space / dwelling 3 bed: 2 space / dwelling Visitors: 1 space / 5 dwelling Commercial: 1 space / 40m²	○ 15 x studios x 1 = 15 ○ 133 x 1 bed x 1 = 133 ○ 160 x 2 bed x 2 = 320 ○ 5 x 3 bed x 2 = 10 ○ Visitor: 62.6 Commercial: 422 / 40 = 10.55 Total required: 55 552 spaces provided	Yes
4C.6.1 Adaptable Housing	Part 3C; Provide all access to common areas in accordance with DDA & BCA; Compliance with adaptable housing standards AS4299-1995.	A revised Access Report has not been submitted with the application.	No
4C.7 Large Development Sites (in excess of 2000m²)			
4C.7.2 Design and Siting	C1 The design and layout of development on sites in excess of 2000 m² 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 buildings, ranging in height between 3 to 8 storeys.	No
	C7 A proposed development on a large site (over 2000m²) must comply with the following: • A maximum site cover of 40%;	49% with basement (9,218m ²) 32% without basement (5,906m ²)	Satisfactory
	• A minimum landscaped area of 35%;	31% (4,335sqm) Includes deep soil	No
	• A minimum of 30% deep soil planting;	22% (3029 sqm) comprising the public park	No

Part	Control	Proposed	Complies (Yes/No)
	A maximum unbuilt upon area of 20%;	14%	No
	Dwellings within the development must be designed to provide the following minimum internal areas: Studio: 60m² 1 bedroom: 75m² 2 bedrooms: 100m² 3 bedrooms: 130m² 4 bedrooms: 160m²	The proposal provides a mix of unit areas as follows: - BB DCP: 14% - RFDC unit types table: 84% - RFDC affordable table: 5% Studio: 38-50 m² 1 bed: 53m² – 67m² 2 bed: 80m² – 120m² 3 bed: 119m² – 131m²	Yes
4C.7.3 Height	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: - Minimum of 30 metres in distance measured from the front property; and - 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.	Refer to assessment under BBLEP 2013. The height of 22m is not achieved at least 30m from the front property boundary.	No
4C.7.4 Floor Space Ratio	C1 In accordance with Clause 4.4(2A) of Botany Bay LEP 2013, if the area of a site exceeds 2000m², the maximum FSR is 1.5:1.	Refer to assessment under BBLEP 2013.	-
	C2 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.	Refer to assessment under BBLEP 2013.	-

APPENDIX C – DCP PART 9C WILSON PEMBERTON STREET PRECINCT

Part	Control	Proposed	Complies (yes/no)
9C.3 Public Domain	Road Construction C1 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. C2 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.	-
	Footpaths C4 All footpaths are to be provided with kerb ramps at intersections, to facilitate access for the less mobile and disabled.	The footpaths accommodate ramps for access.	Yes
	Street Furniture C5 All street furniture including, bins, bollards, seating and drinking fountains, are to be coordinated throughout the Precinct and to Council's City identity specification. C6 Street furniture should be located in a one-metre zone along the kerb line, that is, out of the main line of pedestrian traffic.	If the application were to be approved, relevant conditions of consent would be included.	No
	Table 1 – New Street 1 (Public Street) 20m wide road reservation traversing the precinct from east to west for cars only and closed at Wilson Street.	Complies.	Yes
	Table 4 – Pemberton Street Widening 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
	Table 7 – Pedestrian Link South of New Street 1 (Private) 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	Complies.	Yes

Part	Control	Proposed	Complies (yes/no)
	of New Street 2. 3 metre wide, paved to Council's specification. Table 8 – Lethen Lane (Private) To link the Precinct to Botany Rd a pedestrian and cycleway access (3m wide) will be provided in Lethen Lane	Not proposed.	No
9C.3.2 Public Open Space	C2 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
	C6 Public open space must be allocated, designed and constructed in accordance with Tables 9 and Table 10.	The Council dedicated park is located generally as per Part 9C.2.1. The size of the Council dedicated park is 3270m² and complies with the minimum requirement of 3000m². 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. The park receives direct solar access from 10am to 12.30pm-1pm. The park location is supported.	Yes
	Table 10 – Public Open Space south of New Street 1 The size of the public open space will be a minimum of 3,000sqm and is to be dedicated to Council.	The architectural plans indicate a 3,270 sqm park. The park shall be dedicated to Council via VPA.	Yes
9C.4 R3 Medium Density Residential Zone	O1 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.	No
	O2 To encourage improvements to the Public Domain;	Two commercial tenancies 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.	Yes
	O3 To ensure there is no land use conflicts on the interface between	Notwithstanding this, the arrangement of building form does	No

Part	Control	Proposed	Complies (yes/no)
	the non-residential and residential uses;	not result in a high quality internal amenity or an effective buffer for the apartments fronting Pemberton Street. The Urban design review states that the proposed development does not provide an acceptable transition in height with adjoining buildings and in some areas the proposed buildings are not setback sufficiently to allow adequate building separation (Building C on Rancom Street). There should be a greater reduction in mass and height to Building A and B in order to provide a better scaled relationship with adjoining approved development, which is primarily 6 storeys. It is considered that the arrangement of building form does not result in a high quality internal amenity or an effective buffer for the future apartments.	
	O4 To ensure that future development contributes to the creation of a high quality landscape environment in the Precinct;	The provision of the north-south pedestrian through-site link is considered to create a good pedestrian environment through the site.	No
	O5 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
	O6 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 considered satisfactory.	No
	O7 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
	O8 To ensure the drainage of the Precinct is not detrimentally impacted and property is protected.	The stormwater design of the buildings looks acceptable.	Yes

Part	Control	Proposed	Complies (yes/no)
	C3 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, 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.	-
	C5 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.	-
	C7 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.	-
	Flooding C8 No structures shall be built over Sydney Water or Council stormwater drainage system/easements. C9 Foundations of development shall extend to at least 1m below the invert of the existing public stormwater drainage assets. C10 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 appears acceptable.	Yes

Part	Control	Proposed	Complies (yes/no)
	C11 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. C12 No structures/filling shall be allowed to obstruct the 1 in 100 year flood level. C13 Flood storage within the site shall be maintained before and after the development.		
	C9 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 appears acceptable.	Yes
	9C.5 B4 Mixed Use Zone along Pemberton Street C1 The ground and first floors of development must contain complementary non-residential uses permissible in the B4 zone	Building A contains two non-residential uses, which are considered acceptable.	Yes
	C2 Height and FSR are to comply with the provisions of the Botany Bay LEP 2013.	Refer to assessment under the BBLEP 2013 assessment.	No
	C5 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: (i) address the noise requirements of the NSW Infrastructure SEPP in terms of road traffic noise; (ii) address the requirements of Part 4A, 4B or 4C (Acoustic Privacy controls), depending on the type of residential accommodation proposed;	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, 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.	-

Part	Control	Proposed	Complies (yes/no)																		
	(iii) conduct detailed site attended audits during the day, evening and night periods to identify and assess noise from activities associated with the B7 Zone; (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; (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; (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.																				
	Amalgamation and Subdivision C6 Amalgamation of sites is encouraged to reduce the number of access points from Pemberton Street.	Amalgamation of the site is sought pursuant to a separate application.	N/A																		
	Building and Site Layout C7 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.	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																		
	C8 Setbacks are to be in accordance with the Table 2 (for B4 zone). <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> C9 Building setback must form a continuous and consistent	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	The 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). The B4 zone fronts Pemberton Street and provides a corner to Rancom Street, and contains Building A and part of Building C. The following setbacks are provided:	No Building C setback is not supported
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.	Pemberton Street (Building A & C): 3m setback (including ramps and courtyard entries). 4 metre road widening along Pemberton Street has been provided. Building B 1.8m to 3m. Is generally in line with the approved Building F at Parkgrove East. Building C is 2.5-3m from Rancom Street which is not consistent with the setback of approved Building D at Parkgrove East. 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 unacceptable. The setback should be a minimum 6 metres to match the setback of Building D at Parkgrove East. This also provides compliant building separation distances with future development to the south.	
	Parking and Vehicle Access C10 Access driveways should be paired so that adjacent properties locate driveways side by side to reduce the number of access points. C11 Any carparking spaces allocated for residential purposes are to be located at the rear of sites to provide a buffer from the R3 zone. C12 The provision of car parking must comply with Part 3A - Car Parking.	A single access driveway is provided off Rancom Street. All parking is located within a basement car park. The provision of car parking is compliant with Councils minimum rates.	Yes
	Flooding C13 No structures shall be built over Sydney Water or Council stormwater drainage system/easements. C14 Foundations of development shall extend to at least 1m below the invert of the existing public stormwater drainage assets.	Council's Engineer notes that the stormwater design of the buildings appears acceptable.	Yes

Part	Control	Proposed	Complies (yes/no)
	C15 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. C16 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. C17 No structures/filling shall be allowed to obstruct the 1 in 100 year flood level. C18 Flood storage within the site shall be maintained before and after the development.		
	Landscaping C19 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.	The application was referred to Council's Landscape Officer who made the following comments: 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. 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	No

Part	Control	Proposed	Complies (yes/no)
		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 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. 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.	
	C23 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	This can be conditioned prior to OC. The proposed development is not advanced enough to determine specific tenancies for the retail component.	Can be conditioned