

## JOINT REGIONAL PLANNING PANEL

### (Sydney East Region)

<b>JRPP No</b>	2015SYE067
<b>DA Number</b>	DA-2014/283/C
<b>Local Government Area</b>	ROCKDALE
<b>Proposed Development</b>	Modification to mixed use development including conversion of ground floor plant room to commercial tenancy, increase in height of parapet and lift overruns, relocation of substation, addition of windows, increase to balcony sizes, addition of plant room to roof level, provision of shelter over lap pool and changes to materials
<b>Street Address</b>	286A, 294-298 Forest Road & 159 Frederick Street, BEXLEY NSW 2207
<b>Applicant/Owner</b>	Fox Johnston
<b>Number of Submissions</b>	Nil
<b>Regional Development Criteria (Schedule 4A of the Act)</b>	The proposal is a S96 Application to a development that has a capital investment value of more than \$20 million
<b>List of All Relevant s79C(1)(a) Matters</b>	<p>List all of the relevant environmental planning instruments; s79C(1)(a)(i):</p> <ul style="list-style-type: none"> <li>• Environmental Planning and Assessment Act 1979</li> <li>• SEPP 65 – Design Quality of Residential Flat Development</li> <li>• SEPP 55 – Remediation of Land</li> <li>• SEPP Infrastructure 2007</li> <li>• Rockdale Local Environmental Plan 2011</li> </ul> <p>List any proposed instrument that is or has been the subject of public consultation under the Act and that has been notified to the consent authority: s79C(1)(a)(ii):</p> <ul style="list-style-type: none"> <li>• SEPP 65</li> </ul>

	<p>List any relevant development control plan: s79C(1)(a)(iii);</p> <ul style="list-style-type: none"> <li>• Rockdale Development Control Plan 2011</li> </ul> <p>List any relevant planning agreement that has been entered into under section 93F, or any draft planning agreement that a developer has offered to enter into under section 93F s79C(1)(a)(iv);</p> <ul style="list-style-type: none"> <li>• N/A</li> </ul> <p>List any coastal zone management plan: s79C(1)(a)(v);</p> <ul style="list-style-type: none"> <li>• N/A</li> </ul> <p>List any relevant regulations; s79C(1)(a)(iv) e.g. Regulations 92, 93 94, 94A, 288;</p> <ul style="list-style-type: none"> <li>• Environmental Planning and Assessment Regulations 2000</li> </ul>
<b>List all documents submitted with this report for the panel's consideration</b>	Planning report & draft determination
<b>Recommendation</b>	Approval subject to conditions
<b>Report by</b>	Fiona Prodromou – Senior Development Assessment Planner

### Assessment Report and Recommendation Cover Sheet

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## Precis

On 28<sup>th</sup> October 2014, the JRPP approved DA-2014/283 for the demolition of existing structures and construction of a part 5 – 7 storey mixed use development including 4 retail shops, 87 units, basement car parking and subdivision.

On 5<sup>th</sup> May 2015 the subject S96 was submitted to Council. A number of modifications are proposed, including an increase in height and FSR, relocation of substation, addition of windows, plant room to roof level, provision of shelter over lap pool and changes to materials.

The proposal as modified varies the height requirement for the site by 0.47m to the top of the building parapet and 2m to the top of the sewer vent stack pipe. The proposal as modified further increases the FSR on site by 94.99sq/m, this is accommodated within the approved building envelope.

The proposal was assessed on its merits against the relevant objectives of the height and FSR standards. It was deemed that the proposed variations are unlikely to result in adverse environmental planning impacts and that the variations proposed were acceptable in this instance.

The proposal as amended results in a requirement for 2 additional commercial car parking spaces on site given the conversion of plant room to commercial floor space. No additional car parking is provided on site however the 2 additional spaces can be accommodated within the development as part of a shared car parking register. The proposal has been conditioned accordingly.

The proposal as amended does not result in adverse amenity impacts on site or to neighbouring properties.

The proposal was publicly notified in accordance with the requirements of DCP 2011, no submissions were received.

The proposal is a Section 96(2) and has a Capital Investment Value greater than \$20 million and as such the development application is referred to the Joint Regional Planning Panel (JRPP) for determination. The recommendation is for approval.

## Officer Recommendation

1. That the Section 96(2) Application DA-2014/283/C for modifications to mixed use development including conversion of ground floor plant room to commercial tenancy, increase in height of parapet and lift overruns, relocation of substation, addition of windows, increase to balcony sizes, addition of plant room to roof level, provision of shelter over lap pool and changes to materials at 286A, 294-298 Forest Road & 159 Frederick Street, BEXLEY NSW 2207 be **APPROVED** pursuant to Section 96(1A) of the Environmental Planning and Assessment Act 1979 and subject to the modifications to conditions of consent attached to this report.

## Report Background

### BACKGROUND

*DA-2014/283 - Approved by the JRPP 28<sup>th</sup> October 2014*

Demolition of existing structures and construction of a part 7, part 6 and part 5 storey mixed use development, including 4 retail shops, 87 residential units, two basement levels comprising 120 parking spaces, front fencing, lap pool and strata subdivision creating 93 lots

*DA-2014/283/A - Approved by Council on 29 May 2015*

Modification to Condition 49 and 105

*DA-2014/283/B –Approved under delegation 9 July 2015*

Modification to Condition 39, 102 & 120

*DA-2014/283/C – Submitted to Council 5 May 2015*

Modification to mixed use development including conversion of ground floor plant room to commercial tenancy, increase in height of parapet and lift overruns, relocation of substation, addition of windows, increase to balcony sizes, addition of plant room to roof level, provision of shelter over lap pool and changes to materials

*DA-2014/283/D – Submitted to Council 3 September 2015 (under assessment)*

Modification to amend Condition 45(ii)

## PROPOSAL

The proposed S96(2) application seeks to undertake the following modifications to the originally consented scheme.

### *Basement Levels*

- Integrating services and service risers including grease arrestor room;
- Modifying the residential bin room including introducing bulky waste item storage & relocating commercial bin room;
- Relocating commercial staff facilities to the ground floor;
- Modifying basement level RLs to reduce the depth of excavation and incorporate a stepped arrangement as a lower level is not required for entire basement only to loading area.

*(Note – the following modifications as a result of conditions of consent. Car spaces modified to 2.5m & entry ramp altered to permit 3.5m clearances)*

### *Ground Floor*

- Integrating service rises and plant including the addition of a car park air intake and exhaust riser, main switch and communications rooms;
- Relocating substation to accommodate Aus Grid requirements as per condition No. 45 of the development consent for DA-2014/283;

- Modifications to booster cupboards to align with the wall at the Frederick Street entry;
- Creation of a new egress path and adjustment of the fire stairs adjacent to No. 292 Forest Road
- Modification of the ramp and wall adjacent at the basement entry to incorporate structural requirements;
- Incorporating amenities for ground floor retail spaces;
- Incorporating pool amenities and landscaping store;
- Modifying lap pool to include E shaped shelter cabanas (2.9m H x 3.8m D x 5.8m L) and avoid location of sewer;
- Modifying plant room to accommodate an office & amenities

*(Note – the following modifications as a result of conditions of consent. Modification of lobby, retail tenancies & relocation of substation. Changes to ground floor RL and minor reduction in landscaped area on site by 51sq/m. Conversion of unit G03 from adaptable to non adaptable dwelling)*

#### *Levels 1 to 6 and the Roof Level*

- Minor façade modifications to incorporate structural requirements including adjustments to glazing lines and balconies of Units 101, 102, 201, 202, 301, 302, 401, 402, 501, 502, 503 and 504;
- Integrating structural requirements and internal layout changes;
- Adjusting parapet, modifying the glazing lines and increasing the balcony spaces for Units 101, 102, 201, 202, 301, 302, 401, 402, 501, 502, 503 and 504;
- Modifying RL's and parapets to incorporate lift overruns at Level 5 and Level 6, resulting in an increase in building height from 22.23m to 22.7m (additional 0.47m)
- Modifying the roof skylight for Units 503 and 504;
- Relocating the hot water plant from the basement level to the roof level;
- Integrating services and service risers;
- Modifying eastern façade including introducing windows to further improve the amenity of Apartment 509; and
- Adjusting the Schedule of Colours and Finishes to incorporate the sample board accompanying this Section 96(2) modification proposal.

*(Note – the following modifications as a result of conditions of consent. Modification of exposed wall along northern facade fronting Forest Road by incorporating additional glazing to units and articulation)*

In addition to the above a Sewer Vent Pipe Stack is required to be provided on site. This stack is integrated into the development and will rise 2m above the top of the building to meet the requirements of Sydney Water. The top of the sewer vent will comprise an RL of 77.810 AHD.

The proposal further seeks to modify the floor to ceiling height (2.7m to 2.4m) of bathrooms, parts of bedrooms, circulation spaces, studies, laundries and kitchens within the development in order to provide a bulkhead and accommodate exhausts, down lights etc.

The above applies to units G07/304/305/306/404/405/406/108/208/308/408/110/113/210/213 /310/313/410/413/506/509.

***The proposal requires modification to the description and conditions of the development consent DA-2014/283 as follows:***

*Demolition of existing structures and construction of a part 7, part 6 and part 5 storey mixed use development, including 5 retail shops, 87 residential units, two basement levels comprising 120 parking spaces, front fencing, lap pool and strata subdivision creating 93 lots.*

2. The development must be implemented substantially in accordance with the plans listed below, the application form and on any supporting information received with the application, except as may be amended in red on the attached plans and by the following conditions.

Plan Title	Number	Rev	Dated	Received
Architectural Plans by Fox Johnston				
<i>Site Plan</i>	<i>DA0.02</i>	<i>G</i>	<i>March 2015</i>	<i>05/05/2015</i>
<i>Basement 2 Plan</i>	<i>DA1.00</i>	<i>G</i>	<i>March 2015</i>	<i>05/05/2015</i>
<i>Basement 1 Plan</i>	<i>DA1.01</i>	<i>G</i>	<i>March 2015</i>	<i>05/05/2015</i>
<i>Ground Floor Plan</i>	<i>DA1.02</i>	<i>G</i>	<i>March 2015</i>	<i>05/05/2015</i>
<i>L1 Plan</i>	<i>DA1.03</i>	<i>G</i>	<i>March 2015</i>	<i>05/05/2015</i>
<i>L2 Plan</i>	<i>DA1.04</i>	<i>G</i>	<i>March 2015</i>	<i>05/05/2015</i>
<i>L3 Plan</i>	<i>DA1.05</i>	<i>G</i>	<i>March 2015</i>	<i>05/05/2015</i>
<i>L4 Plan</i>	<i>DA1.06</i>	<i>G</i>	<i>March 2015</i>	<i>05/05/2015</i>
<i>L5 Plan</i>	<i>DA1.07</i>	<i>G</i>	<i>March 2015</i>	<i>05/05/2015</i>
<i>L6 Plan</i>	<i>DA1.08</i>	<i>G</i>	<i>March 2015</i>	<i>05/05/2015</i>
<i>Roof Plan</i>	<i>DA1.09</i>	<i>H</i>	<i>June 2015</i>	<i>25/06/2015</i>
<i>North &amp; East Elevations</i>	<i>DA2.01</i>	<i>H</i>	<i>June 2015</i>	<i>25/06/2015</i>
<i>South &amp; West Elevations</i>	<i>DA2.02</i>	<i>G</i>	<i>March 2015</i>	<i>05/05/2015</i>
<i>Section AA</i>	<i>DA2.03</i>	<i>G</i>	<i>March 2015</i>	<i>05/05/2015</i>
Stormwater Plans numbered I4009 drawn by Scott Collis Consulting, dated 11 August 2014 and received by Council on 14 August 2014.				
<i>Landscape plans numbered L101 &amp; L102, Issue D, drawn by Jane Irwin Landscape Architecture, dated 13/03/2015 and received by Council on 05/05/2015.</i>				

Draft Plan of Subdivision drawn by John A Watson, reference number 13/533, Sheets 1 to 9 and received by Council on 14 August 2014.
Pool shelter plans (DA5.03B) dated July 2015, drawn by Fox Johnston and received by Council on 01/07/2015.

5. *The development must be implemented and all BASIX commitments thereafter maintained in accordance with BASIX Certificate Number (531852M\_04) other than superseded by any further amended consent and BASIX certificate.*

**Note:** *Clause 145(1)(a1) of the Environmental Planning & Assessment Regulation 2000 provides: A certifying authority must not issue a construction certificate for building work unless it is satisfied of the following matters: -*

- *(a1) that the plans and specifications for the building include such matters as each relevant BASIX certificate requires.*

**Note:** *Clause 154B(2) of the Environmental Planning & Assessment Regulation 2000 provides: "A certifying authority must not issue a final occupation certificate for a BASIX affected building to which this clause applies unless it is satisfied that each of the commitments whose fulfilment it is required to monitor has been fulfilled."*

**Note:** *For further information please see <http://www.basix.nsw.gov.au>.*

32. Ceiling heights as measured vertically from finished floor level to the underside of the ceiling shall be provided as follows:

- Habitable areas shall be a minimum of 2.7 metres (*excluding portions of bedrooms, studies & circulation spaces to units G07/304/305/306/404/405 /406/108/208/308/408/110/113/210/213 /310/313/410/413/506/509 which are to be a minimum of 2.4metres*)
- Non-habitable areas shall be a minimum of 2.4 metres
- Commercial units shall be a minimum of 3 metres

Construction details demonstrating compliance with the above shall be submitted to the satisfaction of the Principal Certifying Authority prior to the issue of the Construction Certificate.

42. The following conditions relate to the quality of construction and finishes to ensure a high quality development:

- *The building shall be constructed of a masonry or brick wall construction with select coloured finishes as per the approved Schedule of Colours and Finishes submitted to Council on 05/05/2015.*
- The north eastern side elevation of the building adjacent to 292 Forest Road is to be treated to create visual interest and provide relief until such time as the neighbouring properties are redeveloped. The proposed architectural treatment should include recesses to create shadow lines and variations in colours, materials and finishes as appropriate.
- The materials and finishes in all elevations are to conceal the edge of the concrete slab on each floor of the building.

- The use of graffiti resistant materials, particularly on fences and all ground floor areas.

Details of the above are to be submitted to and approved by Council prior to the release of the Construction Certificate.

Any changes to the approved schedule of colours and finishes shall require further approval by way of a Section 96 application to Council.

43. *Compliance with Council's Development Control Plan (DCP) 2011 – Requirements for Access. Access in accordance with Australian Standard 4299 must be provided to and within nine (9) residential units, and between these units and their allocated car parking spaces. The allocated parking space will be located in close proximity to the access points of the building. The adaptable units are to be lot numbers 6, 18, 21, 36, 39, 54, 57, 72 and 75. Please note that compliance with this condition requires the relevant unit(s) to be constructed to comply with all the essential (Type C) requirements of AS4299.*

*Compliance with Council's Development Control (DCP) 2011 in relation to requirements for access. Compliance with this condition will require the design and fitout of the commercial/retail areas to be in accordance with Australian Standard 1428.1-2009.*

**Note:** *Compliance with Council's Development Control Plan (DCP) 2011 and the Building Code of Australia does not necessarily guarantee that the development meets the full requirements of the Disability Discrimination Act (DDA) 1992. It is the responsibility of the applicant to make the necessary enquiries to ensure that all aspects of the DDA legislation are met.*

44. *Compliance with Council's Development Control Plan (DCP) 2011 – Requirements for Access. Compliance with this condition requires a minimum of 10 adaptable car parking spaces on site to be provided (9 residential / 1 visitor). The car spaces shall be identified and reserved at all times and be in the vicinity to lifts or as close as possible to public areas and facilities. The car spaces shall have minimum dimensions in accordance with AS 2890.6 and all spaces shall have an uninterrupted minimum headroom clearance of 2.5 metres free of all obstructions, such as service pipes, fittings etc for use by vehicles fitted with roof mounted wheelchair racks.*

119. *Parking spaces shall be allocated to dwellings in the development in the following manner: (This shall be reflected in the subsequent strata subdivision certificate):*

<i>Small/medium dwelling (s) (&lt;100m2 GFA) 1 space each</i>	<i>83 spaces</i>
<i>Large dwelling(s) (&gt;100m2) 2 spaces each</i>	<i>8 spaces</i>
<i>Four lots (2 to 290 and 292 Forest Rd) 2 spaces each</i>	<i>4 spaces</i>
<i>Commercial and retail units</i>	<i>7 spaces</i>



<i>Visitor spaces</i>	<i>18 spaces including 1 shared space with commercial / retail</i>
<i>Minimum total</i>	<i>120 spaces</i>
<i>Motorcycle</i>	<i>7 spaces</i>
<i>Bicycle</i>	<i>11 spaces</i>

*All common property spaces shall be labelled as visitor spaces on the final strata plan for the site.*

*The Loading / Delivery bay shown on the basement 1 plan (Drawing DA1.01 Revision H) shall be designated as a service vehicle space (common property) on the strata plan.*

### ***Shared parking register***

*One visitor parking space shall be a shared space servicing the commercial and retail uses. In this regard, a Shared Parking Register is to be submitted to Certifying Authority in accordance with the requirements of clause 4.6 of Council's DCP 2011 prior to the release of the Construction Certificate for the relevant stage of development.*

*Where Council is not the PCA, a copy of the report shall be provided concurrently to Council.*

**Note:** *This parking allocation condition applies to any Strata Certificate issued with respect to a Consent issued in accordance with Section 81 (1)(A) of the Environmental Planning and Assessment Act 1979 or a Complying Development Certificate issued in accordance with Part 6 of State Environmental Planning Policy (Exempt and Complying Development Codes) 2008.*

121. The building must not exceed a maximum height of 77.810 metres relative to Australian Height Datum (AHD). This height is inclusive of all lift over-runs, vents, chimneys, aerials, TV antennae, lightning rods, exhaust flues and construction cranes etc. No permanent or temporary structure is to exceed this height without further approval from Sydney Airport Corporation Limited.

The building must be obstacle lit with low intensity red steady obstacle lights at the highest point of the building. The obstacle lights are to be arranged so as to at least indicate the points' or edges of the building to ensure the object can be observed in a 360° radius as per subsection 9.4.3 of the Manual of Standards Part 139 - Aerodromes.

Separate approval must be sought under the Airports (Protection of Airspace) Regulations 1996 for any cranes required to construct the building. Construction cranes may be required to operate at a height significantly higher than that of the proposed controlled activity and consequently, may not be approved under the Airports (Protection of Airspace) Regulations.

At the completion of the construction of the building, a certified surveyor is to notify (in writing) the airfield design manager of the finished height of the building.

**Note:** Under Section 186 of the Airports Act 1996, it is an offence not to give information to the Airport Operator that is relevant to a proposed “controlled activity” and is punishable by a fine of up to 50 penalty units. For further information on Height Restrictions please contact SACL on 9667 9246.

***The following condition is to be inserted in order to allow for the management of the shared visitor / commercial car parking space within the development.***

120A. A positive covenant shall be created over the visitor parking space to ensure that the commercial units retain exclusive use of the spaces between 7.30am to 6.00pm Monday to Friday and 7.30am to 1.00pm on Saturdays. A suggested wording for the covenant is indicated below:

“The Registered Proprietors covenant as follows with Council in respect to the area of common property identified as ‘Visitor Parking’ spaces on the Strata Plan (herein called ‘The Burdened Land’).

The Registered Proprietor will:

- i) permit the registered proprietors and/or invitees of the registered proprietors of the commercial / retail lots to enter upon The Burdened Land with a vehicle or vehicles whether motorized or not and to park, leave or place such a vehicle upon The Burdened Land within the times commencing at 7.30am in the morning Monday to Saturday and ending at 6.00pm in the evening Monday to Friday and 1.00pm in the afternoon on Saturdays. The times referred to are Australian Eastern Standard time or Australian Eastern daylight saving time whichever is in effect at the time that the registered proprietor or invitee enters upon The Burdened Land.
- ii) not obstruct or inhibit in any manner whatsoever access to or exclusive use of The Burdened Land in accordance with the prior cause.
- iii) comply with the terms of any written notice issued by Council in respect to the requirements of this clause within the time stated in the notice.”

***The following condition is to be deleted:***

21. The floor space ratio of the mixed use development is to be limited to a maximum of 2:1. A report with accompanying floor plans from a qualified surveyor is to be submitted to and approved by Council and the Private Certifying Authority (PCA) confirming compliance with this requirement prior to the release of the Construction Certificate.

The above condition is to be deleted given the proposal as amended exceeds the 2:1 FSR for the site and is thus no longer relevant.

## EXISTING AND SURROUNDING DEVELOPMENT

The site has an irregular shape and comprises ten lots which combine with a frontage of approximately 55.175m to Frederick Street and approximately 39.52m to Forest Road which

is a State Road. The site benefits from a right of way separated by 286 and 288 Forest Road. This right of way adds an additional 3.94m to the Forest Rd frontage.

The site has an irregular shape with 294-298 Forest Road being regular lots with the front boundary at an angle, 286A Forest Road being two battle axe lots and 159 Frederick St being perpendicular at the rear. A sewer line traverses the eastern boundary of the site.

The total area of the site is 3,100m<sup>2</sup> (*this excludes the ROW at 286A Forest Road as it will not be built upon*). The development is currently under construction.

Existing development on land adjoining the site along Forest Road is characterized by a low to medium density retail strip being to the north of the Bexley Shopping Centre. It comprises a mix of predominantly two storey developments with shops at street level and flats or commercial uses above. This type of two storey commercial development is also on the opposite side of Forest Road to the north west of the site.



Figure 1 – Aerial Context

The subject site lies at the northern end of the Bexley Shopping Centre retail strip. On the opposite corner towards the south is a Shell petrol and car service station and then further to the south is a public school. Further south, the southern end of the retail strip is commercially more dominant.

Towards the south and east the site adjoins lower density residential development primarily comprising single dwelling houses. These development types directly adjoin the subject site within Frederick St along its southern and eastern boundaries. The development adjoining the site to the north comprises two storey shops with a flat above. Further to the north are more single and two storey dwelling houses.

The subject site is zoned B4 - Mixed Use and is subject to the following:

- Frontage to a state road
- 7.62m building height civil aviation regulations / 51 obstacle limitation surface
- Groundwater protection zone
- Class 5 - acid sulfate soils
- Provision for surface flows
- Herbert street inter allotment drainage scheme

## PLANNING CONSIDERATION

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

### Section 96 – Modifications of consents

#### **Section 96(2) states:**

A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:

*(a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and*

*Comment:* The proposal involves a range of modifications including a minor increase in gross floor area as a result of the conversion of a plant room to commercial space, modifications to internal configuration of the development, changes to selected materials & height of lift overrun.

The proposal as modified is substantially the same as the development for which consent was originally granted.

*(b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and*

*Comment:* Condition 121 of the original development consent related to the maximum height of the development, imposed by Sydney Airports in order to protect the airspace above the development and associated flight path of aircraft.

The development was permitted to be erected to a maximum height of 75.34RL. The proposal seeks to amend the height of the approved development as follows:

- 75.810RL – top of parapet.
- 77.81RL – top of sewer vent stack pipe.

The proposal as modified was referred to Sydney Airports and the Civil Aviation Safety Authority who granted concurrence for the development to comprise a maximum height of 77.810RL.

Additionally the proposal as modified was referred to Ausgrid who raised no objections to the proposed modifications.

Condition 21 has been modified accordingly.

*(c) it has notified the application in accordance with:*

*(i) the regulations, if the regulations so require, or*

*(ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and*

*Comment:* The proposal has been notified in accordance with Council's Development Control Plan 2011 and no submissions were received.

*(d) it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be.*

*Comment:* N/A

***Section 96(3) states:***

In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 79C (1) as are of relevance to the development the subject of the application. The relevant matters under S79C(1) as listed below.

**Section 79C (1) Matters for Consideration - General  
Provisions of Environmental Planning Instruments (S.79C(1)(a)(i))**

***State Environmental Planning Policy Building Sustainability Index (BASIX)***

The applicant has submitted a revised BASIX Certificate for the proposed development. The Certificate number is 531852M\_04. The proposal as modified will be conditioned to ensure the revised BASIX certificate is reflected within the determination.

***State Environmental Planning Policy No.55 - Contaminated Land (SEPP 55)***

The original application was accompanied by a Stage 2 Detailed Site Investigation (DSI). An assessment of the original application concluded that the site was suitable for the proposed use. The original consent was conditioned to ensure the recommendations of the aforementioned documents were implemented on site.

On the basis of the above, the JRPP can be satisfied that it has fulfilled its statutory obligations under SEPP 55, in relation to this application.



### ***State Environmental Planning Policy (Infrastructure) 2007 (ISEPP)***

Clause 45 of the ISEPP requires consultation with electricity supply authorities. The original consent was conditioned accordingly. Ausgrid was notified of the proposal as modified.

The following clauses of the ISEPP are relevant in the assessment of the proposal as modified.

- *Clause 101 - Development with Frontage to Classified Road*
- *Clause 102 - Impact of Road Noise or Vibration on Non Road Development*
- *Clause 104 – Traffic Generating Development*

The original proposal was designed and approved to address the above, incorporating vehicular access from Frederick Street, ensuring dwellings are designed and constructed to minimise the impact of external noise intrusion and was further referred to the RMS who raised no objections to the development subject to the imposition of conditions of development consent which were imposed on the original determination.

The proposal is satisfactory with regards to the ISEPP 2007.

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

In accordance with clause 30 of this policy, the consent authority must take into consideration the following:

a. The advice of the Design Review Panel (DRP)

Given the minor nature of modifications proposed, the proposal was not referred to the Design Review Panel for comment. A merit assessment has been undertaken with respect to SEPP 65.

b. The design quality of the residential flat building when evaluated in accordance with the ten design quality principles

The 10 design quality principles have been considered in the assessment of the proposal and are found to be satisfactory as indicated below.

#### **Principle 1 – Context / Principle 2 – Scale / Principle 3 - Built Form**

The scale & built form of the development generally remain as approved and are therefore appropriate with regards to the context of the site.

#### **Principle 4 - Density**

A 2:1 FSR applies to the subject site, this equates to a gross floor area of 6200sq/m. The development was approved with a maximum gross floor area of 6186sq/m which represents a FSR of 1.99:1 for the site.

A minor increase in density on site is proposed, given the conversion of a previously approved plant room to commercial space at ground level. This results in a minor non compliance with the FSR standard for the site as the modified proposed comprises a GFA 6294.99sq/m and resultant FSR of 2.03:1.

The proposal as modified comprises a 94.99sq.m exceedence to the maximum FSR for the subject site. Notwithstanding, the additional FSR is located within the existing approved building envelope and is unlikely to therefore result in any adverse amenity impacts on site or otherwise. The minor variation to the FSR standard on site is acceptable in this instance.

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

The revised BASIX Certificate demonstrates that the proposal meets the targets of the SEPP.

### **Principle 6 - Landscape**

The proposal as amended results in a minor lateral increase in excavation on site in order to increase the size of car parking spaces at basement levels as a result of Condition 26 of the original consent.

As a result, a total of 51sqm of approved landscaped area within the rear communal open space area of the site is reduced.

Notwithstanding is it noted that as approved the development comprised a total of 1078sqm (35% of the site) of landscaped area. This exceeds the minimum 25% required by DCP 2011.

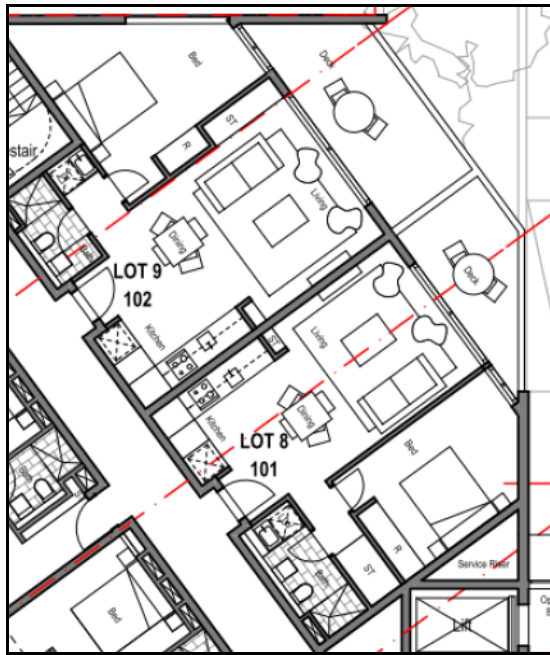
The proposal as amended will retain compliance & exceed the DCP 2011 requirement providing 1027sqm (33% of the site) of landscaped area on site. The proposal is acceptable in this regard.

### **Principle 7 – Amenity**

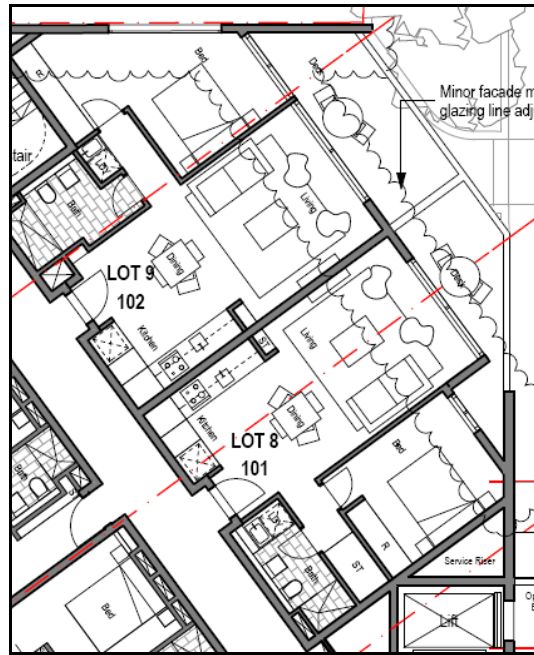
The proposal seeks to slightly modify the internal configuration of units 101-501, 102-502, 503 & 504 and modify the size of private open space areas. A summary of the changes to private open space areas is provided as follows:

<i>Unit No.</i>	<i>Beds</i>	<i>DCP 2011</i>	<i>Approved</i>	<i>Proposed</i>
101	1-bed	8sqm	8.04sqm	8.05sqm
102	1-bed	8sqm	12.78sqm	10.5sqm
201	1-bed	8sqm	8.04sqm	8.05sqm
202	1-bed	8sqm	12.78sqm	10.5sqm
301	1-bed	8sqm	8.04sqm	8.05sqm
302	1-bed	8sqm	12.78sqm	10.5sqm
401	1-bed	8sqm	8.04sqm	8.05sqm
402	1-bed	8sqm	11.76sqm	10.5sqm
501	2-bed	11sqm	20.66sqm	44.4sqm
502	3-bed	50sqm	46.28sqm	85.44sqm
503	3-bed	50sqm	46.12sqm	49.2sqm
504	3-bed	50sqm	18.02sqm	32.37sqm

The size of private open space areas to units is modified as a result of minor changes to glazing lines, the introduction of a step to the building line at units 101-501 above & the use of slab levels at floors below.



Units 101-102: As Approved

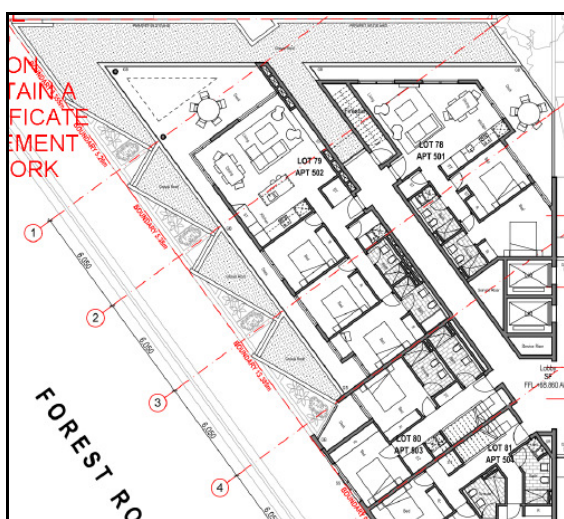


Units 101-102: As Proposed

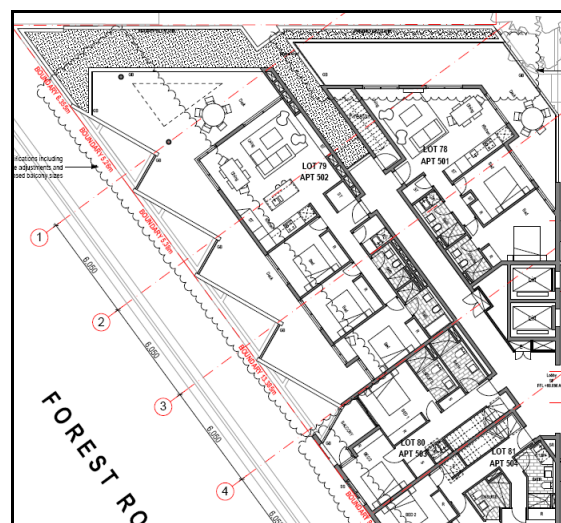
Minor changes indicated above provide a logical bedroom layout avoiding the provision of storage and potential clutter adjoining glazed areas. Bathroom and laundry facilities are amalgamated, allowing a larger bathroom to be incorporated into units.

Modifications to the bedroom at units 101 – 501 as noted in the table above and diagrams below allow for an increase to the balcony size for these units, this increases residential amenity.

Units 501, 502 & 503 have been provided with an increase in balcony size, by making use of the slab of the floor level below. Given the orientation of these balconies to the NE & NW and their location adjoining living rooms and habitable areas this will result in increased amenity to these units.



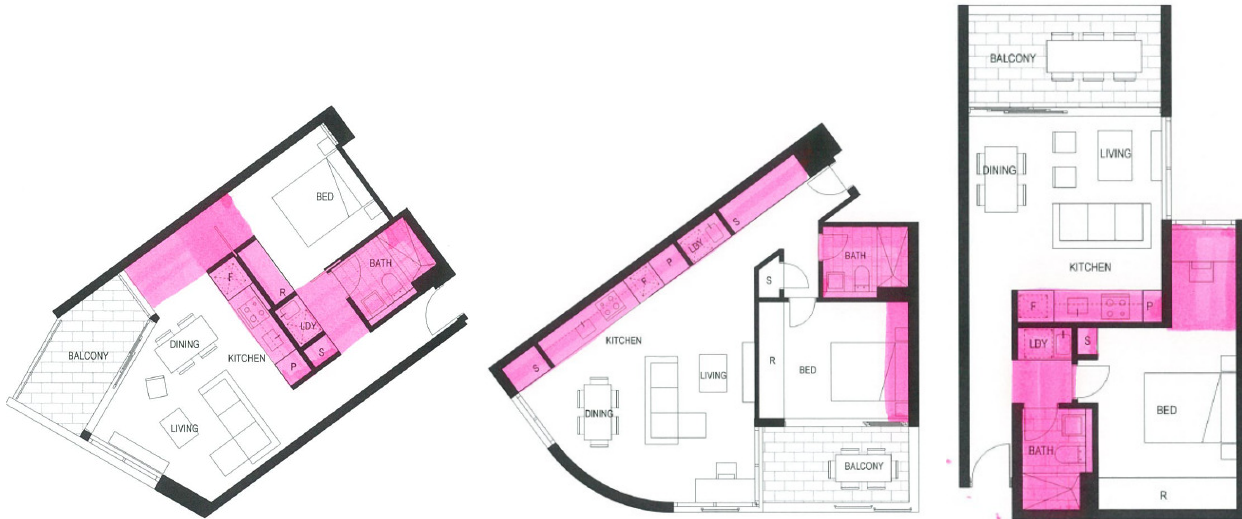
Units 501, 502, 503 - As Approved



Units 501, 502, 503 - As Proposed



The proposal further seeks to modify the floor to ceiling height (2.7m to 2.4m) of bathrooms, parts of bedrooms, circulation spaces, studies, laundries and kitchens within the development in order to provide a bulkhead and accommodate exhausts, down lights etc. The above applies to units G07/304/305/306/404/405/406/108/208/308/408/110/113/210/213 /310/313/410/413/506/509 as can be seen in the floor plans below.



Units 304/305/306/404/405/406

108/208/308/408

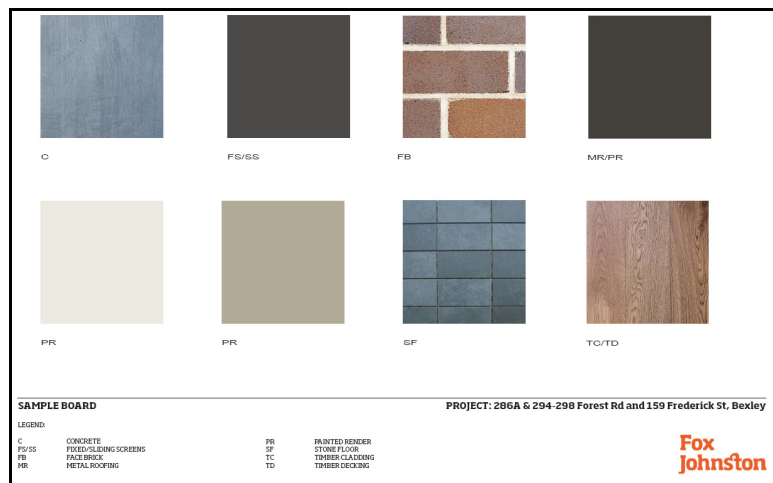
110/113/210/213/310/313/410/413/506/509

A minor reduction in the floor to ceiling heights of the above identified areas is satisfactory in this instance, given the reduction primarily applies to non habitable areas, with minor portions of circulation areas and habitable rooms affected. The identified units will retain reasonable levels of solar access and ventilation and as such appropriate amenity within the subject units will be retained.

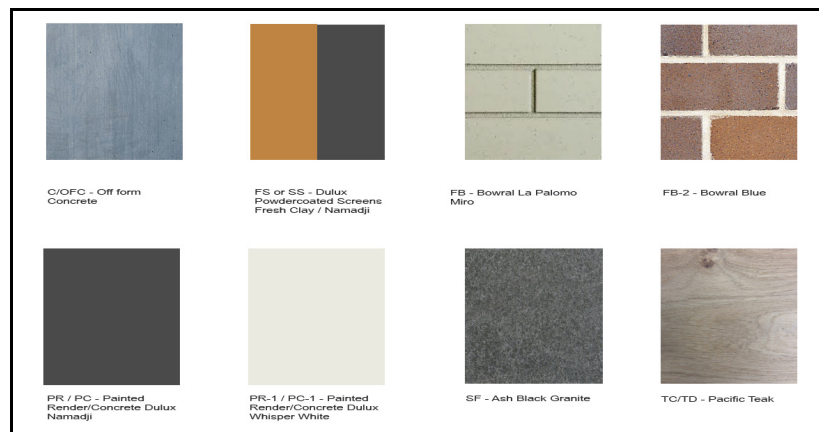
The proposal further seeks to provide shelters to the common pool area within the development. This will provide weather protection to future users of the pool, increasing the amenity of this communal open space area.

## Principle 10 - Aesthetics

The proposal seeks to modify the approved colours, finishes and materials of the development.



*Finishes Schedule - As approved*



*Finishes Schedule - As Proposed*

As can be seen above the changes to the colours and finishes of the development incorporate additional brick colours, variations to aluminium powder coated screens & painted render, granite flooring as opposed to stone and minor change to the colour of timber decking. Modified colours and finishes are of a similar quality and calibre and are considered to be satisfactory.

c. The Residential Flat Building Code.

The proposal as modified remains generally consistent with the design quality principles of the RFDC. The siting, massing and scale of the development remain generally as approved.

***Rockdale Local Environmental Plan 2011 (RLEP 2011)***

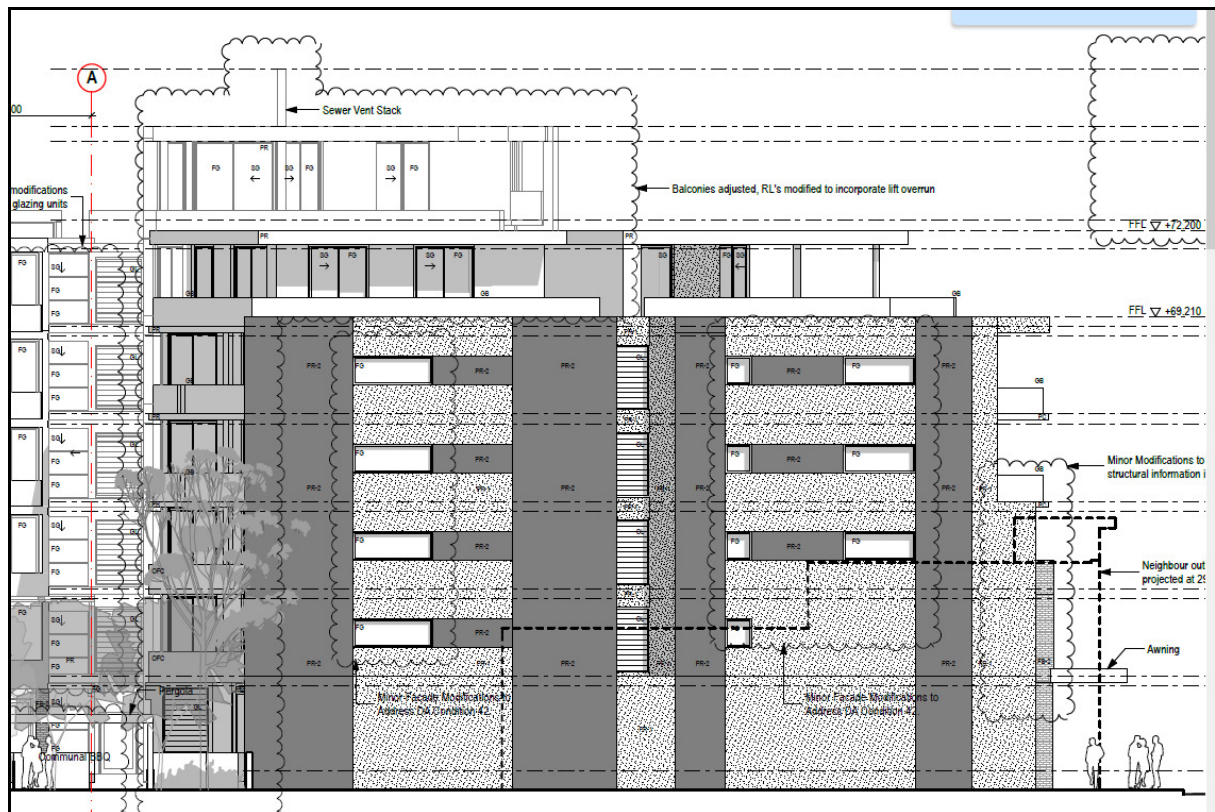
The site is zoned B4 Mixed Use under the provisions of RLEP 2011. Development for the purpose of mixed use development with a residential flat building is permissible with Council consent. The proposal as modified is consistent with the objectives of the zone. The relevant clauses that apply to the proposal are below.

***Clause 4.3 - Height of buildings***

The maximum permitted height under this clause is 16m. The original development was accompanied by a *Clause 4.6 - Exceptions to Development Standards*, which was supported by Council and thus the original development was approved with a maximum height of 22.23m to the parapet of level 6 (75.34RL) on the corner element.

The proposal as modified increases the height of the parapet of the building component at the junction of Forest Road & Frederick Streets, by 0.47m to 75.810RL. This results in an overall building height of 22.7m on site to both the top of the parapet and lift overrun beyond.

Additionally a sewer vent pipe stack is required to be provided on site. This stack is integrated into the development and will rise 2m above the top of the building to meet the requirements of Sydney Water. The top of the sewer vent will comprise an RL of 77.810 AHD resulting in an overall height of 24.7m.



*Sewer vent stack as viewed from northern elevation*

The location of the above structures and additional height proposed is as such that the proposal as amended does not give rise to unacceptable overshadowing or adverse amenity impacts upon surrounding properties. The proposal as amended is satisfactory in this instance.

#### *Clause 4.4 – Floor Space Ratio (FSR)*

A maximum floor space ratio (FSR) of 2:1 is permitted on the site. The original development was approved with a maximum gross floor area of 6186sq/m which represents a FSR of 1.99:1 for the site.

The proposal as modified results in a minor increase in FSR on site given the conversion of a plant room at ground level to commercial space

The proposal as amended comprises a GFA 6294.99q/m and resultant FSR of 2.03:1. This additional floor space is located within the existing approved building envelope and as such does not increase the mass, bulk or scale of the approved development.

The minor variation in this instance is acceptable as it does not give rise to unreasonable amenity impacts upon surrounding properties.

#### *Clause 6.1 – Acid Sulphate Soils*

The site is within an area classified as Class 5 in the acid sulphate soils map. The original application was accompanied by an Acid Sulphate Soils Investigation Report which stated

that the site presents a very low risk of the presence of acid sulphate soils. As such, the preparation of an acid sulphate soil management plan was considered to be unwarranted.

The proposal as modified does not alter the above and as such the original consent is conditioned appropriately with respect to the subject clause.

#### *Clause 6.2 – Earthworks*

The proposal as approved involves extensive excavation within the site to accommodate the two basement car parking levels.

The proposal as modified does not alter the above and as such the original consent is conditioned appropriately with respect to the subject clause.

#### *Clause 6.3 – Development in areas affected by aircraft noise*

The site is located 220m away from the 20 ANEF contour for 2023/24. As such, the property is not affected by the ANEF. Despite this, an Acoustic Report was submitted by the applicant as part of the original development application.

The report recommended acoustic measures to ensure compliance with the relevant standards as required by clause 6.3 for aircraft noise.

The proposal as modified does not alter the above and as such the original consent is conditioned appropriately with respect to the subject clause.

#### *Clause 6.4 – Airspace operations*

The site is affected by the 7.62m building height Civil Aviation regulation. Condition 121 of the original development consent permitted a maximum height of 75.34RL (22.23m from NGL) as restricted by Sydney Airports Corporation.

The proposal as modified increases the height to 77.810RL (24.7m) as a result of the sewer vent pipe stack required to be provided on site. This stack is integrated into the development and will rise 2m above the top of the building to meet the requirements of Sydney Water.

The proposal as amended was referred to Sydney Airport Corporation Limited (SACL) and the Civil Aviation Safety Authority for comment. No objections were raised and condition 121 has been modified accordingly.

#### *Clause 6.6 – Flood Planning*

The site is not affected by flooding and as such the proposal complies with the requirements of this clause.

#### *Clause 6.7 – Stormwater*

The proposal as modified does not seek to alter the approved stormwater system for the site. As such the proposal as modified, is consistent with the requirements of this clause.

### *Clause 6.12 – Essential Services*

Services are generally available on the site, the original consent was conditioned appropriately to ensure compliance with this clause.

#### **Provisions of any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (S.79C(1)(a)(ii))**

At the time of the lodgement of the proposal as modified, draft SEPP 65 applied to the subject site. This instrument has since been finalised.

The proposal as modified improves the general residential amenity of dwellings within the development and is considered to be generally consistent with the objectives of the ADG.

#### **Provisions of Development Control Plans (S.79C(1)(a)(iii))**

##### ***Development Control Plan 2011(DCP 2011)***

The original development was approved with variations to corridor width, size of apartments and private open spaces, first floor floor to ceiling height & unit mix.

The proposal as modified & previously discussed within this report improves the residential amenity of the development and is generally consistent with the objectives & requirements of DCP 2011.

#### **Any Planning Agreement that has been entered into under section 93F, or any draft planning agreement that the developer has offered to enter into under section 93F (S.79C(1)(a)(iiia))**

The proposal is not subject to a Voluntary Planning Agreement (VPA).

#### **Provisions of Regulations (S.79C(1)(a)(iv))**

All relevant provisions of the Regulations have been considered in the assessment of this proposal as modified. The applicant has submitted a design verification statement confirming the proposal as amended complies with the principles of SEPP 65.

#### **Impact of the Development (S.79C(1)(b))**

##### ***Provision of Adaptable Dwellings***

The development was approved with a total of 87 residential dwellings, of which DCP 2011 requires 10% (9) to be provided as adaptable dwellings. The proposal as modified does not increase the number of dwellings on site.

Condition 43 specifies that 10 adaptable dwellings are required on site, this was an error and only 9 are required to be provided. Condition 43 will be modified to reflect the correct number of adaptable dwellings on site.



### *Character / Streetscape / Density / Bulk / Scale*

As previously discussed within this report the proposal as modified comprises a 94.99sq.m exceedence to the maximum FSR for the subject site. Minor changes to glazing lines, balcony sizes, colours, materials and finishes are proposed.

Notwithstanding the above, the additional FSR is located within the existing approved building envelope, with aforementioned changes being unlikely to result in any adverse amenity impacts on site or to neighbours or result in a drastic change to the appearance of the development as approved.

The proposal as modified generally retains a similar overall bulk, scale and streetscape appearance to the development as approved.

### *Visual Privacy*

The approved development provides a common lawn area within the rear north eastern portion of the site, directly behind the private open space of the dwelling at 108 and 112 Herbert Street.

The proposal as modified seeks to raise the level of the common lawn area from 52.180RL (as approved (0.18m above natural ground level) to proposed levels of 52.580RL – 52.620RL which are 0.58m – 0.62m above natural ground level. This is a direct result of condition No. 26 of the development consent which required 3.5m clearance levels within the basement.

It is noted that an outbuilding is positioned upon the entire width of the rear boundary of 112 Herbert Street, with an outbuilding also positioned along the rear boundary of 108 Herbert Street and a swimming pool also within the rear of this property.

In order to mitigate visual privacy impacts between neighbours in particular to the rear private open space of 108 Herbert Street, substantial landscape periphery planters incorporating *Michelia figo* *Port Wine Magnolia* are provided to the north eastern boundaries of the site with common adjoining neighbours. These species have the ability to grow to a mature height of 3m.

Given the location of existing outbuildings and provision of appropriate screening, the proposal as modified is deemed to be acceptable & does not result in any adverse visual privacy impacts to neighbours.

### *Overshadowing*

Minor additional overshadowing occurs on site as a direct result of the additional height proposed for the lift overrun & parapets at the Forest Road frontage. The additional shadows cast do not result in adverse amenity impacts given they fall directly upon the roof level of the development. The proposal as modified is appropriate in regards to solar access.

### *Traffic/Parking*

The proposal as modified results in a requirement for 2 additional car parking spaces on site as a result of the conversion of the plant room to commercial space at ground level. The

proposal has been conditioned to require a shared car parking arrangement between commercial / visitor car parking on site.

A positive covenant will be required to be registered prior to the issue of the Strata Certificate which confirms the shared car parking arrangement on site.

The shared arrangement will ensure appropriate car parking is provided on site. In this regard the proposal is satisfactory in regard to traffic and parking.

### *Noise*

The development as approved will include noise attenuation measures to retain interior noise levels as well as an appropriate design of external walls to minimise noise emitted from balcony areas. The acoustic report submitted with the original application outlined the noise attenuation measures & the original consent was conditioned accordingly.

As discussed within the original report the proposal is likely to result in an increase in noise emissions from the site given the increase in residential density, however this is ordinarily expected given the high density residential nature of the site and any noise would remain residential in nature.

The proposal as modified does not alter the above and as such the original consent is conditioned appropriately with respect to the matter of noise.

### *Views and Vistas*

The proposal as modified represents a minor increase in building height to the top of the lift overrun by 0.47m.

Notwithstanding, the proposal as modified is unlikely to adversely interrupt any iconic or pristine view corridors of esteemed value to any significant degree.

Accordingly, the proposal as modified is considered acceptable with respect to views.

### *Management of Waste*

The proposal as modified alters the waste arrangement on site as follows:

- Layout modification to the ground level bin holding area (same number of bins accommodated)
- Introduction of a bulk waste store in basement level 1
- Relocating the commercial bin room to the upper level basement

The proposal as amended is satisfactory with respect to waste management on site.

### *Wind Impacts*

A Wind Assessment Report prepared by WindTech Consultants Pty Ltd was submitted with the original application. The original consent was conditioned to require compliance with the recommendations of this report.

The proposal as modified does not alter the above and as such the original consent is conditioned appropriately.

**Suitability of the Site (S.79C(1)(c))**

The relevant matters pertaining to the suitability of the site for the proposed development have been considered in the assessment of the proposal. Additional conditions of consent are proposed to further minimise any impacts on neighbouring properties. There are no known major physical constraints, environmental impacts, natural hazards or exceptional circumstances that would hinder the suitability of the site for the proposed development.

**Public Submissions (S.79C(1)(d))**

The development application has been notified in accordance with Council's Development Control Plan 2011 and nil submissions were received.

**Public Interest (S.79C(1)(e))**

The proposal as modified has been assessed against the relevant planning policies applying to the site having regard to the objectives of the controls. As demonstrated in the assessment of the application, the proposal as modified will not result in a decrease in residential amenity on site, nor result in adverse visual or general amenity impacts to neighbouring properties. As such it is considered that the development application is in the public interest.

**CONCLUSION**

The proposal as amended has been considered under S96 and S79C(1) of the Environmental Planning and Assessment Act, 1979. The proposal as modified is consistent with the objectives of the controls under RLEP 2011, DCP 2011 and relevant state policies. As such, the application DA-2014/283/C is recommended for approval.