

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

JRPP No	2016SYE069
DA Number	DA14/080/02
Local Government Area	Bayside Council
Proposed Development	<p>Section 96(2) application to modify Development Consent No. 14/080 approved by the Joint Regional Planning Panel for the remediation of the site, removal of existing vegetation and construction of 35 x two and three storey townhouses and two residential flat buildings, above ground parking for 465 vehicles, and associated landscaping and public domain works. This Section 96(2) application now seeks to:</p> <ul style="list-style-type: none"> • Delete Level 7 in accordance with the conditions of consent; • Amend the unit layout to reduce the number of apartments from 221 to 219; • Increase diversity of unit size and mix with an introduction of four bedroom units and a decrease in studio/1 bedroom apartments; • Increase the height of the ground floor car park from 2.7m to 3.1m for service vehicle access; • Increase the height of the central portion of the buildings to provide additional areas at the rooftop levels for communal lounge and open space; • Provide two additional townhouses resulting in a total of 37 townhouses; • Increase the parking spaces to provide a total of 496 spaces at ground level to reflect the changes in unit mix; • Minor changes to the approved landscaping to reflect the amendments to the ground floor level parking and built form.
Street Address	32 Page Street, Pagewood
Applicant/Owner	VIG Pagewood Developments Pty Ltd
Number of	Two submissions

Submissions	
Regional Development Criteria (Schedule 4A of the Act)	Section 96(2) Application to modify a consent determined by the Panel in October 2015.
List of All Relevant s79C(1)(a) Matters	<ul style="list-style-type: none"> • List all of the relevant environmental planning instruments: s79C(1)(a)(i) <ul style="list-style-type: none"> ○ State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development; ○ Botany Bay Local Environmental Plan 2013; • 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); <ul style="list-style-type: none"> ○ Nil • List any relevant development control plan: s79C(1)(a)(iii); <ul style="list-style-type: none"> ○ Botany Bay Development Control Plan 2013; • 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); <ul style="list-style-type: none"> ○ Nil • List any coastal zone management plan: s79C(1)(a)(v) <ul style="list-style-type: none"> ○ Nil • List any relevant regulations: s79C(1)(a)(iv) eg. Regs 92, 93, 94, 94A, 288; <ul style="list-style-type: none"> ○ Nil
List all documents submitted with this report for the panel's consideration	<ul style="list-style-type: none"> • Planning Assessment report with amended conditions, amended architectural plans and supporting information.
Recommendation	Approval
Report by	Christopher Mackey – Team Leader Development Assessment

EXECUTIVE SUMMARY

On 1 October 2015, the Joint Regional Planning Panel determined to approve Integrated Development Application No. 14/080 for the remediation of the site, removal of existing vegetation and construction of:

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

The reasons for the Panel's decision were:

- *The proposal complies with the majority of the relevant planning controls with the exception of the LEP control for the maximum building height, applicable to the site;*
- *The Panel concurred with the Planning Assessment report that there were no site specific grounds to vary the statutory building height limit and therefore the request to do so under Clause 4.6 of the LEP was not well founded;*
- *The site is capable of remediation to the level required to make it suitable for the proposed development;*
- *Following the exhibition of the amended plans, the number of public submissions was reduced considerably, with many of those matters dealt with by the assessment process or by the proposed conditions of consent.*

Council received this Section 96(2) application on the 7 June 2016, which seeks to make design changes internally and externally, to change unit mix, introduce 4 bedroom apartments, increase the total number of townhouses, increase car parking to support the change in unit mix and introduce a communal rooftop terrace. Since approval of the application in October 2015, the site has been sold to a new owner and the proposal now before the Panel is a result of a new architect with a slight shift in the design theme.

The proposed amended architectural plans incorporate the deletion of apartments at Level 7, as approved under Condition No. 2. The new plans propose to introduce a communal rooftop terrace to both Building A and B, which together with the lift overruns will exceed the 22m height limit under BBLEP 2013. The extent of the height variation at its greatest is 4.8m or 22%, and this is not supported as it remains that there are no reasons for a variation of this extent. The concept of the communal rooms is commended and it is recommended that an apartment on Level 6 of each building is converted for this purpose in lieu of that now proposed on Level 7.

The application also seeks to delete conditions requiring traffic contributions and the restriction on occupancy, subject to the intersection upgrades. However, at this stage, Council has submitted its detailed design to NSW RMS for approval for the

intersection works, however it remains to date, that no timeframe for commencement can be provided. There would be no fundamental objection to the deletion of these conditions in the future, where Council has certainty that the intersection upgrades are progressing. On this basis, it is recommended in this report that these conditions remain unaltered on the consent.

The proposed changes to apartment mix result in changes to parking requirements and Section 94 Contributions imposed on the consent. The Botany Bay Section 94 Contributions Plan 2016 now applies and the proposal will be calculated under this new Plan. This will reduce the overall Section 94 amount under Condition No. 37. A number of other condition changes are required and discussed further.

The Section 96(2) Application has been assessed in accordance with the relevant requirements of the *Environmental Planning and Assessment Act 1979* and is recommended for approval, except that the traffic conditions are to remain unaltered at this point in time and that the communal rooftop terrace and all of the lift overruns which exceed the maximum height control are not supported.

DESCRIPTION OF SITE & SURROUNDING LOCALITY

The subject site is located on the southern side of Holloway Street and south-east of the intersection of Holloway Street and Page Street, Pagewood. The legal description of the land is Lot 201 in DP 788578. The site is irregular in shape with a frontage of 153.3 metres to Holloway Street and 118 metres to Page Street with a total site area of 18,900m². Collins Lane is located along the western boundary, a public pedestrian thoroughfare connecting Page Street to Spring Street and Simon Walk Lane which connects through to Green Street. Existing vegetation exists on site along the each of the street frontages.

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

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

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

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

- Directly opposite the site on the northern side of Holloway Street is the Pagewood Public School.
- To the south and east are located industrial properties in Green Street and beyond in Baker Street.
- To the north, west and south - west are located low scale residential dwellings.

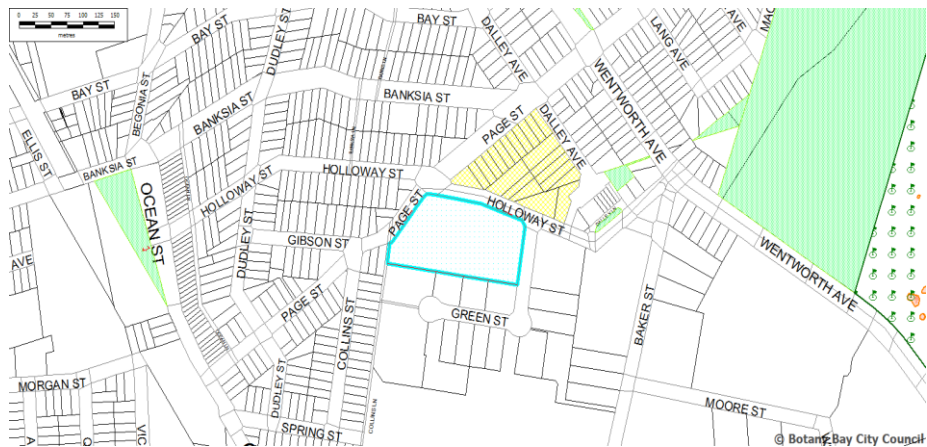


Figure 1 – Location Plan

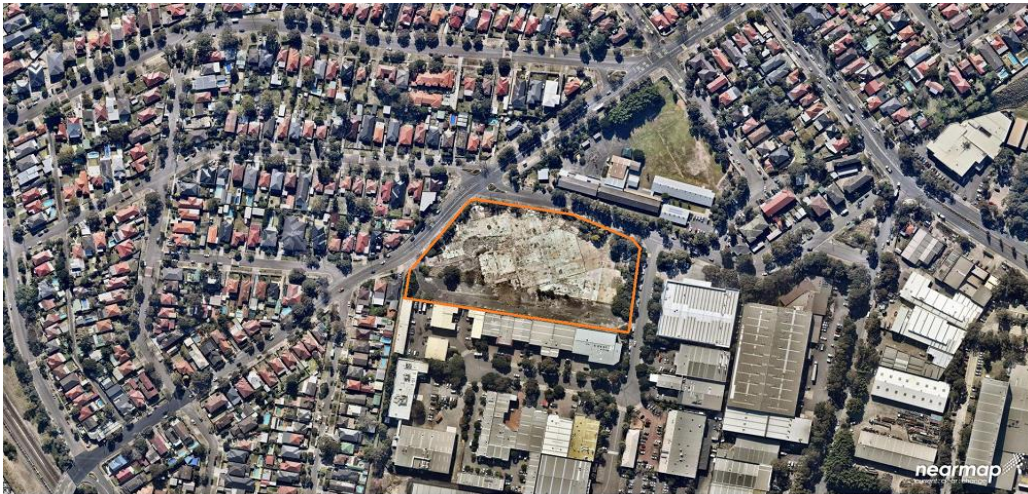


Figure 2 – Aerial photo of subject site and surrounding locality



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



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



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

APPROVED DEVELOPMENT

In its approved form, and as modified at the JRPP meeting (reflected in Condition No. 2), the development is for:

- Remediation of the site, removal of existing vegetation;
- Construction of 35 two storey townhouses fronting Holloway Street and Page Street;
- Construction of two x residential flat buildings comprising a total of 209 apartments (135 studio/1 bedroom apartments and 74 x 2 bedroom apartments);
- Above ground parking for 402 vehicles;
- Landscaping and public domain works including excavation/earthworks to alter the level of the site.

The following is a breakdown of the number of dwellings within the approved development:

Type of Units	No. of Units
Townhouses	35
Studio/1 Bedroom	135
2 Bedroom	74
Total	244

The following montages and plans depict the approved development.

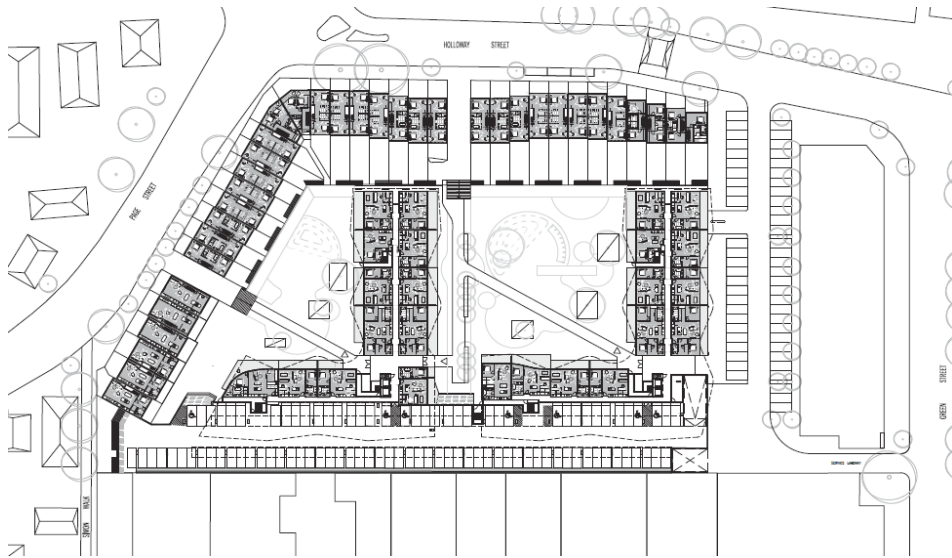


Figure 3 - Approved Site Plan

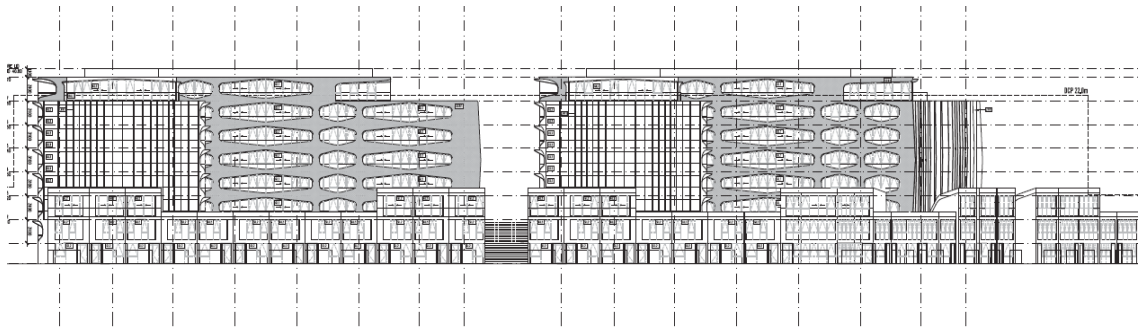


Figure 4 – Approved Northern Elevation (top level deleted under Condition 2)

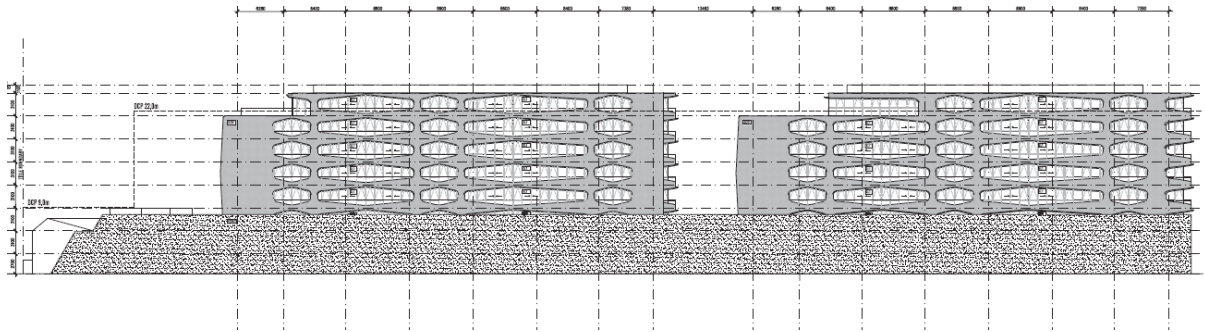


Figure 5 – Approved Southern Elevation (top level deleted in Condition 2)



Figure 6 – Perspective of the site looking north along Green Street.



Figure 7 – Perspective of the site looking west (rear of Townhouses on right)



Figure 8 – Perspective of the site from Page Street

DESCRIPTION OF MODIFICATIONS

This Section 96(2) modification application was received on 7 June 2016 and seeks to modify Development Consent DA 2014/080 in the following manner:

Changes to the approved residential flat building:

- Delete Level 7 residential apartments in accordance with Condition No. 2;
- Reduction in the total number of apartments from 221 to 219;
- Increase in the variety of unit sizes as follows:
 - 1 bedrooms – 53-66m²
 - 2 bedrooms – 75-93m²
 - 3 bedrooms – 103-117m²
 - 4 bedrooms – 140m²
- Increase in the mix with the introduction of 4 bedroom apartments and decrease the number of studio and one bedroom apartments to provide:
 - 1 bedroom = 68 (31%)
 - 2 bedroom = 130 (59%)
 - 3 bedroom = 18 (8%)
 - 4 bedroom = 3 (2%)
- Increase residential amenity through more efficient apartment layouts and provision of more cross ventilated units to meet the Apartment Design Guideline criteria;
- Increase in height of the ground floor car park from 2.7m to 3.1m to accommodate more head height for vehicles and servicing;
- Increase in height limited to the central portion of the buildings to provide additional areas at the rooftop levels for communal lounge and open space;

Changes to the approved townhouses:

- Provision of two additional townhouses with a total of 37 townhouses;

Changes to Parking

- Increase parking spaces at Ground Level and part of Level 1 from 402 to 496 spaces to reflect the modifications to the unit mix and align with DCP requirements. This has been achieved with only minor amendments to the approved car parking footprint through inclusion of 99 tandem spaces;

Changes to Landscaping

- Changes to the approved landscaping to reflect the amendments to the ground floor level parking and built form;

Overall Height

- It is proposed to introduce a communal rooftop lounge and terrace to both Building A and B, to create an overall building height of RL42.1m, being

26.8m above existing ground level, which is an overall height exceedence of 4.8m.

The amended proposal is depicted in the following elevations and montages.



Figure 9 – Perspective View of Building B looking east



Figure 10 – Perspective View of Townhouses on Holloway Street looking south-west

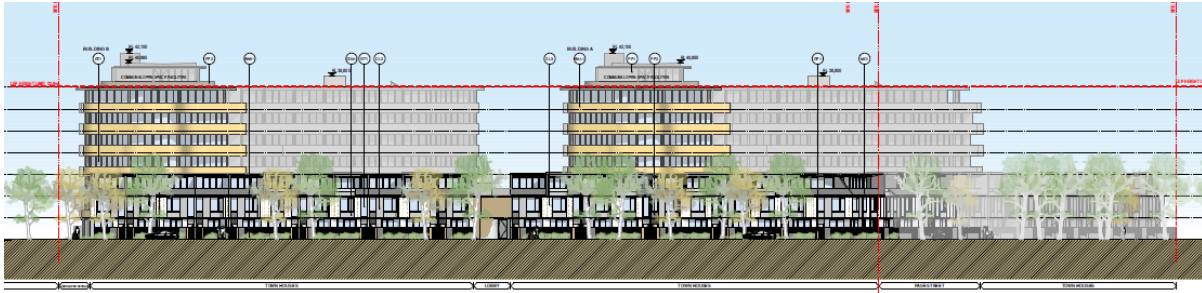


Figure 11 – Section View looking south from Holloway Street

ASSESSMENT OF MODIFICATION

1. Increased Height

The approved height was restricted under Condition Nos. 2 and 85 to 37.3 metres AHD (22m). The original Clause 4.6 variation request was determined to be not well founded and additional height at Level 7 was conditioned to be deleted. The reasons that the Clause 4.6 variation request was not well founded was the resulting visual impact from the additional height and that there were no specific grounds to vary the planning control.

The applicant now seeks to increase the height to 42.1 metres AHD (26.8m), a variation of 4.8 metres for the lift overrun. Specifically, the variations are:

Building A = as depicted below:

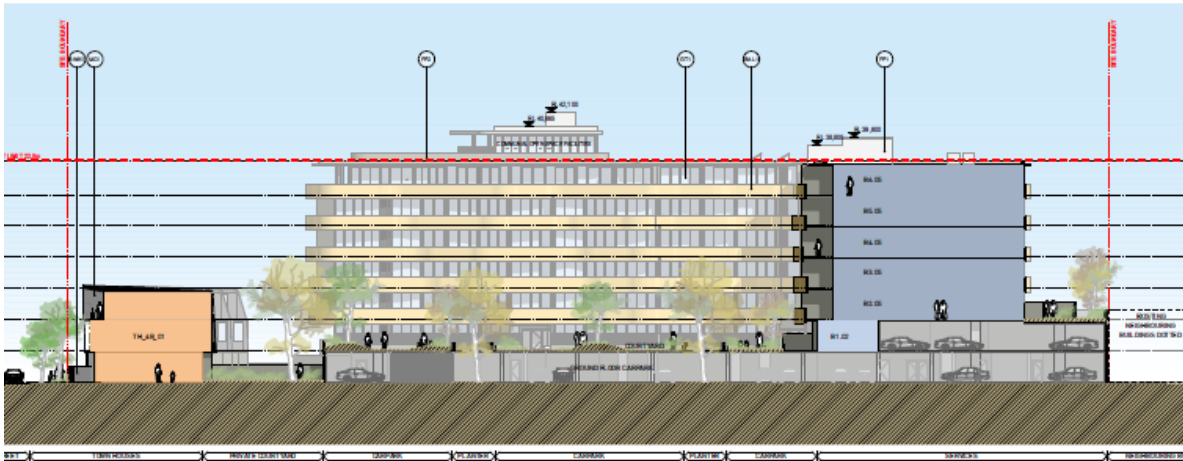


Figure 12 - Section View looking south

The applicant states the following:

The modified height is a maximum of 26.5m. The additional height being between 1.5m and 4.8m above the height control) is a result of:

- *Lift overruns which exceed the control by approximately 1.5m, which is considered consistent with the approved DA.*

- *The rooftop lounge which is approximately 3.4m above the height control, with a lift overrun approximately 4.8m above the control.*

The majority of the proposed development complies with the BBLEP height standard, with the exception of the lift overruns and the rooftop communal spaces. Justification of the additional height is provided below.

- *The majority of the proposal complies with the 22 m height standard. The main non compliance is a result of the rooftop communal areas. This space is provided to benefit the future residents providing a lounge area and landscaping with a northern aspect. This is consistent with the ADG objective 3D-1 to provide adequate area of communal open space to enhance residential amenity and opportunities for landscaping.*
- *The communal open space at the rooftop is 500sqm (each with only 80.6sqm of GFA) which is recessed to reduce the visible bulk and scale of the development and minimise visual impacts. The area of non compliance is setback significantly from the street and the southern interface with adjoining industrial development. The minor nature of the additional height ensures that there will not be any amenity impacts as a result of the additional height.*
- *As the approved development relies upon above ground car parking to avoid exacerbation of contamination and water table interception, the ground floor of the residential flat buildings is 3.1m (RL 18.4) above the natural ground level (RL15.3) where the definition of building height is measured. In addition, the approved car park level has had to increase from 2.7m to 3.1m to ensure that appropriate head height for service vehicles and inter-floor services can be accommodated. Therefore, this presents challenges with being able to accommodate a 6 storey building (and lift cores) comfortably within the LEP height standard.*
- *Further, the approved development only accounted for a 1.1 metre lift core above the building parapet, which is much less than a standard lift core size of (1.5m). Therefore, when combined with the need for an enlarged car park level, cumulatively this has created the need for an additional 0.8m for servicing which was not accounted for in the approved DA.*
- *The proposal complies with the FSR standard under BBLEP 2013 to ensure an appropriate bulk and scale is achieved.*
- *The proposed height remains consistent with the objectives of the standard in BBLEP.*
- *The proposed built form and height is generally consistent with the desired future character of the area, as envisaged by the Botany Bay DCP 2013.*

Officer Comment:

The applicants arguments are not agreed with. The assertion that the original DA approved a lift overrun of 1.5m is not correct, as the Panel approved the original DA with a condition that the maximum height of the building must not exceed 22m. The definition of height includes lift overruns, therefore the applicant was required to explore alternative measures to ensure there was no breach of the height control.

The additional height sought by this modification will result in a significant variation to the control, purely for the communal lounge room, communal terrace and lift overruns of differing heights (including one up to 4.8m), being 1 metre over that originally proposed under the original DA. Each communal room is 80.61m². Overall the proposed GFA to Level 7 is within the existing approved GFA, as there is a re-distribution of the GFA through a complete redesign of each floorplate. However, despite the GFA and FSR remaining compliant, the extent of the height variation at its greatest is 4.8m or 22%. The extent of this variation is not supported as there are no sound reasons for the variation. The concept of communal spaces both internally and externally is supported, however the proposed location on Level 7, beyond the height limit is not accepted, as there is no reason why these spaces cannot be

provided at a level below which would bring the height into compliance which can still be lowered through the use of lifts which do not have overruns.

Clause 4.3(2A) of BBLEP 2013 states:

Despite subclause (2), if an area of land in Zone R3 Medium Density Residential or Zone R4 High Density Residential exceeds 2,000 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](#) but must not exceed 22 metres.

The ability to modify a consent lies in Section 96, however in order to vary a development standard, Clause 4.6 is ordinarily relied upon, but as the application is submitted under Section 96, Clause 4.6 does not apply. The Height of Buildings Map under BBLEP 2013 specifies a maximum height of 10m, therefore the bonus height now approved under Clause 4.3(2A), gave consent to an additional 12 metres. The ability to vary Clause 4.3(2A) does not exist at all, as the 22 metre height control under is a bonus height provision, expressed as a maximum variation that could be permitted, for sites in excess of 2,000sqm.

The ability to approve additional height beyond the 22m does not exist and an amendment to the LEP would be required to permit an exceedence under this Clause. If the applicant submitted a fresh DA for this additional height, it could not be supported under Clause 4.6(8).

Clause 4.6(8) of BBLEP 2013 states the following:

- (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,*
 - (b1) clause 4.3 (2A),*
 - (b2) clause 4.4B (3),*
 - (c) clause 5.4.*

Therefore it is recommended that an apartment on Level 6 of each of Building A and B is converted to a communal lounge and terrace in lieu of that now proposed on Level 7. The introduction of the communal area to the roof top of Building A and B will create an undesirable precedent for variations to height controls and were there are no sound reasons to do so. In this instance, there is no reason why the communal area cannot be provided at Level 6 and alternative lift overruns be explored.

2. Increase FSR

The application was approved with a Condition to delete Level 7. With the deletion of Level 7 from Building 1 and 2, the FSR reduced from 1.65:1 down to 1.56:1 which remained consistent with Clause 4.4B of BBLEP 2013.

The application now involves a complete re-design internally, to create a larger proportion of larger apartments. The overall floor plates for each level of the residential flat buildings has been increased, by pushing and pulling of the facades and in places, the separation distance from the townhouses (to the west) is reduced, although remaining compliant with the ADG minimums. In addition, an additional 2 townhouses are also proposed.

The following diagram depicts the approved floorplates compared with the proposed floorplates, which indicates the degree of change to each level.



The additional GFA will remain compliant with Clause 4.4B(3) which allows an FSR up to 1.65:1 and as there are no adverse impacts from the additional GFA, there is no objection to the increase in GFA and FSR, which will improve the amenity of the apartments and dwellings in the development.

3. Unit Size and Unit Mix

The approved unit mix is outlined in the table below:

	TOTAL	Unit Mix
Studio/1 bedroom	135	55%
2 bedroom	74	29%
3 bedroom	35	16%
	244	100%

The proposed unit mix, which introduces 4 bedroom apartments is indicated in the table below, (which includes the 37 townhouses):

	TOTAL	Unit Mix
1 bedroom	68	26.5%
2 bedroom	130	51%
3 bedroom	48	19%
4 bedroom	10	3.5%
	256	100%

The unit mix proposed reduced the overall number of studio/1 bedroom apartments from 52% to 27% and increasing the number of 2, 3 and 4 bedroom apartments. Overall, there is a reduction of 2 apartments from 221 to 219. There is no objection to the change in unit mix, which will provide a greater number of family friendly sized apartments for evolving household dynamics within the locality. The site is located in close proximity to local schools and services as well as local transport networks which are committed to being upgraded and therefore the provision of apartment accommodation for families at this location is commended.

4. Car Parking Changes

The approved car parking was compliant with Council’s DCP parking rates as indicated in the table below:

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

The proposed parking rates also remain compliant with Council’s DCP car parking rates as indicated in the table below:

	Required Spaces	Proposed
1 space/1 bedroom	68	68
2 spaces/ 2 bedroom	130	260
2 spaces/ 3 or 4 bedroom	58	116
Visitor spaces = 1 space per 5 units	49	52
TOTAL	493	496

The car parking increase is to accommodate the change in unit mix, which increased the number of 2, 3 and 4 bedroom apartments, therefore increasing the required spaces. The additional parking required is provided wholly within the parking area at grade and at the Level 1 parking area and has been achieved by the introduction of tandem spaces. There is no objection to the proposed increase in car parking spaces, which results in fully compliant car parking for the proposed development.

5. SEPP 65 and amenity changes under ADG

As detailed above, this Section 96(2) application involves the assessment of new architectural plans by a new architect, who has submitted an Architectural Design Verification Statement. In addition, the application was referred to Council’s Design

Review Panel on 28 July 2016 and was largely acceptable. Refer to the SEPP 65 assessment in this report for further detail.

6. Traffic Consideration/Conditions

The application also seeks to make changes to the consent conditions, primarily to delete the traffic conditions imposed, including Condition Nos. 5, 74 and 75, which require the applicant to either construct or contribute to traffic work in the locality; and that which restrict occupation of the development until such time as the intersection upgrade works to both Wentworth Avenue/Page Street and Wentworth Ave/Baker Street have been completed.

At this stage, Council has submitted its detailed design to NSW RMS for approval for the intersection works, however it remains to date, that no timeframe for commencement can be provided. There would be no fundamental objection to the deletion of these conditions in the future, where Council has certainty that the intersection upgrades are progressing. On this basis, it is recommended in this report that these conditions remain unaltered on the consent.

7. Section 94 Contributions

As the application is submitted under Section 96, the application must be considered under Council's new Section 94 Contributions Plan 2016. The Section 94 calculated for the proposed unit mix are indicated in the following table:

<i>Dwelling Type (number)</i>	<i>Contribution Rate</i>	<i>Total</i>
3 Bedroom attached townhouses (30)	\$16,810.28	\$504,308.40
4 Bedroom attached townhouses (7)	\$21981.87 (\$20,000 Cap applicable)	\$140,000.00
1 Bedroom Apartment (68)	\$8,029.65	\$546,016.20
2 Bedroom Apartment (130)	\$13,211.47	\$1,717,491.10
3 Bedroom Apartment (18)	\$17,265.80	\$310,784.40
4 Bedroom Apartment (3)	\$13,924.40	\$41,773.20
Grand Total		\$3,260,373.30

On this basis, Condition No. 37 is recommended to be updated to reflect the revised contribution amount.

8. Other Condition Changes

- Amend Condition No. 1 and 99 to reference the amended plans and documents relating to the amending plans and reference documents;

- Insert Condition No. 6A to require compliance with the submitted updated BASIX Certificate;
- Amend Condition No. 2 which currently requires amended plans to delete Level 7 prior to the issue of the Construction Certificate, to now read that amended plans deleting all physical structures over 22m to be provided prior to the issue of the Construction Certificate. Include the additional recommendations of the Design Review Panel;
- Amend Condition No. 8(c) to update the reference from SACL;
- Amend Condition Nos. 37 to update the Section 94 Contributions;
- Amend Condition No. 52(c)(i) to refer to the updated civil drawings;
- Amend Condition No. 54 to update the car parking allocation;
- Amend Condition No. 83(b) to reflect the increase in FSR.

SECTION 96(2) CONSIDERATIONS

In considering the Section 96(2) Modification Application, the matters listed in Section 96(2) of the *Environmental Planning and Assessment Act 1979* has been taken into consideration in the preparation of this report as follows:

(a) Substantially the same development

The Section 96(2) modification application seeks to make both internal and external changes which will not have an adverse impact on the locality in terms of privacy, overshadowing or intensity of use, and as such, these modifications will result in substantially the same development as approved under DA14/080, being the remediation of the site, construction of townhouses fronting Holloway and Page Street and 2 residential flat building located beyond with at grade car parking and parking on level 1 with residential levels above). The proposed modifications are suitable in the context of the site and the locality and do not result in any radical change from the development as already approved. Consideration has been given to the increase in parking, the change in unit mix and the height variation for the communal lounge and terrace, and whilst the height variation cannot supported, the modifications will otherwise result in a development which is substantially the same development as that already approved by the JRPP.

(b) Consult with the relevant Minister

The proposed modification was not required to be referred to any Minister for further concurrence. The application was referred to NSW RMS under the Infrastructure SEPP 2007 and was referred to Sydney Airport Corporation for consideration under the Regulations. Refer to discussion below.

(c) Notification.

The Section 96(2) Application was notified to surrounding property owners from 29 June 2016 to 20 July 2016 in accordance with Part 2 - Notification & Advertising of the Botany Bay Development Control Plan (BBDCP) 2013.

(d) Submissions.

Two submissions relating to the impact on the local intersections were received. These are discussed further, however it is re-iterated that Council does not support the deletion of the conditions requiring the applicant to contribute to the local traffic measure and to restrict occupancy until such time as the intersections are completed.

The proposed modifications are therefore considered to address the relevant provisions of Section 96(2).

SECTION 79C CONSIDERATIONS

The relevant matters for consideration pursuant to Section 79C are addressed as follows:

(a) The provisions of any EPI and DCP and any other matters prescribed by the Regulations.

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

Clause 7 of State Environmental Planning Policy 55 requires Council to be certain that the site is or can be made suitable for its intended use at the time of determination of an application. In this regard, the proposed changes do not alter the previous conclusions for this site in respect of contamination. In making its original determination, the Panel relied on the presence of a Section B Certificate issued by the Site Auditor which confirms that the proposed remediation works will meet the relevant standards. Therefore, the existing conditions imposed on the consent are recommended to remain unaltered on the consent.

State Environmental Planning Policy (Infrastructure) 2007

Clause 104 - Traffic Generating Development

The original application fell within the provisions of Schedule 3 of State Environmental Planning Policy (Infrastructure) 2007 that was required to be referred to the NSW RMS for consideration. The Section 96(2) application has also been referred to RMS. RMS provided its conditions in a letter dated 7 July 2016, and no objection was raised from a traffic generation/impact point of view.

The applicant seeks to delete conditions imposed on the consent which require the applicant to contribute to the local traffic measures and that restrict

the occupancy of the development until such time as the intersection upgrade of Wentworth Avenue/Page Street and Wentworth Avenue/Baker Street are completed. This is discussed further in this report and whilst RMS did not specifically comment in relation to this request from the applicant, Council is consulting with RMS in relation to the final detailed design of the intersection and it is recommended that these conditions remain unaltered on the consent at this point in time.

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

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies to the proposed development. The Section 96(2) application was accompanied by BASIX Certificate No. 617081M_02, dated 15 June 2016, received by Council 15 June 2016, committing to environmental sustainable measures.

State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development (Amendment No. 3)

The provisions of SEPP No. 65 have been considered in the assessment of the Section 96(2) application. The SEPP was amended on the 17 July 2015 and applies to applications to modify a development consent. The Section 96(2) application has been supported by Architectural Design Statement prepared by Registered Architect, Jason Goggi of Turner Architects. The design quality principles area addressed below.

Principle 1 - Context & Neighbourhood Character

Applicants statement:

The proposal responds and contributes to the immediate context as well as the surrounding area in line with the approved DA. The massing follows that of the approved DA, scaling down from the warehouses at the rear to the lower density dwelling opposite. The ground plane is designed to produce an attractive semi-active streetscape with clear access points for pedestrians, promoting greater activity at ground level. Vehicle movement is limited to a single entry point. Materials and finishes are of a high standard with the townhouse materiality referential to the surrounding dwelling typology. The development is serviced by transport, services and recreational facilities and is a short commute to the city.

DRP comment:

- *The frontage to Page & Holloway Street provide spatial separation from the school and existing residential development;*
- *The site is adjoined to the south by existing industrial development. There is a 2/3 storey blank wall on the common boundary for most of its length which is proposed to be screened by the 2 storey car park podium;*
- *The overall site planning and massing continues to be appropriate in that it respects the existing context and will provide a reasonable relationship to the adjoining and surrounding development which includes a mixture of low height residential development, industrial to the south and east and Pagewood Public School opposite to the north.*

Principle 2 - Built Form & Scale

Applicants statement:

The proposal follows the built form and scale approved in the DA. The apartment buildings are located to the rear away from the street and public domain. Car parking is similarly pushed back against the warehouse forms at the rear. Townhouse typologies are located at the street edge providing a scale down from the buildings behind to the lower density residential opposite. The modulation, expression and materiality of the townhouse forms is of a finer grain and more tactile in response to the surrounding low scale dwellings. The roofline of the townhouses is stepped along the streetscape to create interest and variation in the roof scape while breaking down the form into smaller elements and accentuating the attic level. The considerable setbacks between the apartment buildings provide generous areas of communal open space with a northerly aspect at podium level.

DRP comment:

- *The modified proposal complies with the 22m height control, except for the roof top communal area and stair and lift overrun projections;*
- *The Panel supports the height non compliance, which is justified as the roof top area would improve the amenity of the proposed residential flat buildings with no adverse environmental impacts.*
- *Although the proposed setback to the eastern boundary would be inadequate if an applicant were to seek to develop the adjoining B7 zoned lot with a similar nil setback, there would be a new road and landscape along the common boundary. This would fully resolve this issue, but Council must impose a condition for this.*
- *Architectural Character: The contemporary design for the townhouses and the residential flat buildings is supported and should be acceptable relative to the existing character of the residential building envelopes, façades and roof forms in the locality.*
- *Façade Design: The following modifications are suggested:*
 - *The mesh screen layer wave balustrades on the RFB's could be modulated horizontally (perhaps to express individual units) to break down the scale of the facades;*
 - *The top storey could be defined by a variation in the façade treatment (behind the balustrades) including a lightweight structure for visual lightness and to provide a top to the RFB's.*
 - *The Panel would prefer to see the two pedestrian entries from Page St and Holloway St widened so that they provide a more obvious break in the long façades and more in keeping with the scale of the open spaces beyond.*

Principle 3 – Density

Applicants statement:

Retain key features and approaches of the approved DA, whilst providing an adjusted range of apartment typologies. The proposal achieves the GFA and 1.65:1 FGS respectively in line with that already approved, the planning controls and density appropriate for the site.

DRP comment:

- *The proposed FSR is 1.65:1 which complies with the maximum permissible. The proposed density is appropriate in terms of the massing of the building envelopes, separation distances and the relationship to the existing context.*

Principle 4 – Sustainability

Applicants statement:

The massing, orientation and internal apartment planning have been organised to maximise natural daylighting and solar access to the primary living spaces, external living spaces and communal open spaces. The proposal improves on the natural cross ventilation in the approved DA, satisfying SEPP65. The development achieves the deep soil and open space recommendations of the ADG and in doing so provides areas of open space and landscape for both outlook and enjoyment. A BASIX Certificate is provided outlining thermal performance and sun shading is provided to apartments exposed to the western and northern aspects via full width deep balconies. Internally, hydraulic fixtures are specified as low water use types and lights are low energy fittings. General waste and recycling facilities are associated with each core on each level and a bulky waste area is allocated in the basement adjacent to the loading area.

DRP comment:

- *It would be expected that the ultimate scheme for this site would incorporate best practice environmental design principles. Incorporate the provision of ESD uses for the roof tops including solar collection for hot water.*

Principle 5 - Landscape

Applicants statement:

The proposal builds upon the landscape scheme approved in the DA. The concept design is integrated into the architecture to provide deep soil zones, communal and private open spaces and a rejuvenated interface with Page Street and Holloway Street frontages. The landscape elements that were approved have been retained including deep soil planting to the car park areas, private yards and street frontages. The considerable open space at podium level is complemented by the proposed roof top communal landscaped area, which transforms an otherwise unutilised hardspace into a haven for residents. This space provides opportunity for interaction between residents and a space for communal and private gatherings.

DRP comment:

- *The submitted comprehensive landscape design is acknowledged and supported. Street trees should be provided to replace those in poor conditions and to achieve continuity of the street. Underground existing overhead cables.*

Principle 6 - Amenity

Applicants statement:

The concept is to orient and separate the buildings to allow good visual and pedestrian permeability through the site. Building orientation responds to solar access and maximises the views to the north across the golf course towards the city. Given the considerable area of communal open space areas proposed, a great number of apartments enjoy views over this space. Visual and acoustic privacy is considered with building mass, window location, semi

opaque glazing and landscaping utilised to address the objectives of the ADG. Accessible apartments are provided to meet the 20% requirement.

DRP comment:

- *Balconies – Maximise the usability of balconies by providing a variety of treatments (mesh or solid) and adjustable louvre screens as appropriate;*
- *Overlooking – Ensure that the townhouses are not overlooked from the northern ends of the RFB'S;*
- *Lifts – Whilst a single lift in each core should provide adequate service in the lifetime of the lifts they will inevitably be out of service due to breakdown or servicing. It is highly desirable to include a cross-over from another lift core at an upper floor or rooftop to provide an alternative access to upper level in these situations.*
- *Lift lobbies – each lobby should be provided with sufficient space for an alcove and bench;*
- *Internal Planning – Ensure adequate aural and visual privacy at the re-entrant corners of the RFB'S;*
- *Natural Light & Ventilation – Provide roof lighting and ventilation at the top level internal bathrooms and laundries. The design of the car park as proposed with some natural lighting and ventilation is commended.*
- *Weather Protection – Provide weather protection to all unprotected glazing and window openings;*
- *Play Area – Provide adequate seating for adults supervising children in the play area.*

Principle 7 – Safety

Applicants statement:

The proposal optimises safety and security by carefully defining the entry points to the development and providing adequate levels of security at access points. There are clear pedestrian routes to enable safe access to and from the site with lobbies and building entries legible and easily located from the public domain. All foyers include clear lines of site to the street frontages and will be fully glazed. Active and passive surveillance to the public domain is achieved by the placement of the townhouses along the street frontages courtyards and windows overlooking the ground plane. Direct street access to these dwellings also creates an activated street frontage to the full length of the street frontage. The residential apartment levels are separated from the street via secured lobbies and lifts. The buildings will utilise a security system at all entry points, and within the lifts.

DRP comment:

- *Satisfactory subject to detailed design. Ensure that there is adequate security of the central open spaces.*

Principle 8 - Housing diversity & Social Interaction

Applicants statement:

The development contains a mix of 1, 2, 3 and 4 bedroom apartments, along with 3 and 4 bedroom townhouses. The proposal amends the apartment mix of the approved scheme, removing the studios and significantly reducing the number of 1 bedroom apartments in line with the BBDCP preferred mix. Additionally, a larger proportion of 3 bedroom apartments have provided and 4 bedroom townhouses and apartments introduced to provide a greater diversity of product. Within each bedroom type there are multiple layouts and sizes allowing a variety of options for differing demographics and price points. The sizing of apartments is varied to provide a broad range from ADG compliant models to substantially larger apartments in line with Council's previous preference.

The townhouse and podium level apartments are provided with generous terraces that allow planting and direct access to the road/communal open space where achievable. 20% of apartments are designed as adaptable with silver level liveability standards. Communal spaces are designed to engender community spirit for residents. The rooftop lounge and north facing communal open spaces include areas for groups to congregated and also for more private gatherings. Common areas are designed for equitable access.

DRP comment:

- *The rooftop communal areas would be attractive but in this location it would primarily cater for residents serviced by that lift core. It is strongly recommended that a small rooftop communal room and terrace be provided to serve the residents grouped around each of the lift cores of the RFB's. This would also provide opportunity for a roof top connection between the lift cores in the case of lift breakdown and resolve the concern raised above under amenity.*
- *Provide a small meeting alcove with a bench seat as part of the residential entries to the RFB's, close to the mail boxes and at each upper storey lift lobby.*

Principle 9 – Aesthetics

Applicants statement:

The proposal is designed with a clear architectural approach to achieve a well balanced aesthetic and an appropriate visual presence from vantage points around the site. The primary façade treatment is consistent with the approved DA, with a fluid skin wrapping the apartment buildings. This creates a fluid and interesting form that enables areas of depth, shadow, inflection and release.

The skin is a continuous ribbon, both balustrade and clad spandrel that sheaths the building to create ripples and a play on light and shadow. This form shifts slightly as it moves up the building to suggest a sense of movement and ripples. This ribbon language is carried throughout the façade with the bends an, turns and celebrated as unique moments for differentiation.

The townhouse aesthetic is referential to the surrounding vernacular single houses. These buildings are solid robust and anchored to the earth. Depth in the façade allows shadows to define the plans of the building, with a series of horizontal bands defining the building datums.

The roof form of the terraces is articulated to provide modulation and interest within the roofscape, which is carried through the lower levels façade with repeating elements defining a rhythm of weaving façade planes. The materials and finishes for the townhouses and apartment buildings vary considerably but create a cohesive palette. The townhouses reference the materials of surrounding dwellings with masonry concrete and steel roof providing the backdrop for the insertion of texture and colour, in this case the sandstone clad wall elements along the street frontages.

The apartment buildings have a single materiality approach with shimmering gold balustrade ribbon wrapping the building to create the perceived form. The singular palette is complemented by the introduction of roof, landscape and podium elements.

DRP comment:

- *Details of the wave mesh balustrades should be submitted including connections of divisions between consecutive units. The mesh should provide both adequate privacy for residents and protection from strong winds.*
- *High quality, low maintenance external materials are recommended. Ensure that all building elements and attachments including services are integrated with the overall design of the facades.*

Conclusion

The resulting development will provide an improved level of amenity for the future occupants of the site without adversely impacting on nearby and adjacent development. The Section 96(2) application seeks to make changes to the internal and external appearance of the approved development and this will be achieved within the built form footprint already approved. The suggested modifications from the Design Review Panel are largely supported and should be incorporated into the amended design to the satisfaction of Council. This is recommended as a condition of consent. The proposed modifications are

The Apartment Design Guide

The proposal has been assessed against the Apartment Design Guide (ADG). The proposed development is considered to have performed adequately in respect to the objectives and design criteria contained within the ADG. The relevant issues are discussed below:

Clause	Design Criteria	Comments	Complies
3A Site Analysis	Objective 3A-1 Site Analysis illustrates that design decisions have been based on opportunities and constraints of the site conditions and their relationship to the surrounding context	The setbacks, massing and form proposed is consistent with the approved scheme, which was carefully considered taking into account surrounding land uses and built form, including the low scale dwellings to the west and south-west, Pagewood Public School to the north, the warehouse development to the south and east and the street frontages.	Yes
3B Orientation	Objective 3B – 1 Building types and layouts respond to the streetscape and site while optimising solar access within the development. Objective 3B – 2 Overshadowing of neighbouring properties is minimised during mid winter.	The townhouses will have a northerly and western aspect and the RFB's will have an east-west and north south orientation to maximise solar access Neighbouring properties to the immediate south are overshadowed by the proposal in mid winter, however these are industrial warehouse building	Yes

Clause	Design Criteria	Comments	Complies
		with near full site cover and this is acceptable.	
3C Public Domain Interface	<p>Objective 3C – 1 Transition between private and public domain is achieved without compromising safety and security.</p> <p>Objective 3C-2 Amenity of the public domain is retained and enhanced.</p>	<p>The entrance lobbies from Page Street and Holloway Street are through spaces between the townhouses and provide direct access to the ground floor parking area, a lift and stairwell to the upper level and podium open space area.</p> <p>The amenity of the public domain interface is enhanced by the construction of the townhouse with a direct relationship to the street.</p>	<p>Yes</p> <p>Yes</p>
3D Communal and public open space	<p>Objective 3D-1 An adequate area of communal open space is provided to enhance residential amenity and to provide opportunities for landscaping.</p> <p>Design Criteria</p> <ul style="list-style-type: none"> ▪ Communal open space has a minimum area equal to 25% of the site area; ▪ Minimum 50% direct sunlight to the principal usable part of the communal open space for a minimum of 2 hours between 9am and 3pm on June 21 ▪ Communal open space should have a minimum dimension of 3m. 	<p>A total of 3,738sqm of communal open space is propose, which equates to 25%.</p> <p>This area is located at podium level and with a northerly aspect which achieves solar access throughout the day on June 21.</p>	Yes
3E Deep Soil Zones	Objective 3E-1 Deep soil zones provide areas on the site that allow for and support healthy plant	Deep soil zones are provided along the boundaries to the street frontages and	Consistent with approved limited deep soil area, due to the sites

Clause	Design Criteria	Comments	Complies
	and tree growth. They improve residential amenity and promote management of water and air quality.	between the townhouses and car park area. A total of 1,993sqm of deep soil is proposed, equating to 13% of the site area.	affection by groundwater contamination.
3F Visual Privacy	Building separation for a building up to 25m (5-8 storeys) = 9m to habitable rooms and balconies	Separation distances are 9m - 12m. Where there is a minor variation, this is addressed by offsetting windows, frosted glazing and dual aspects for greater outlook from affected apartments.	Yes
3G Pedestrian Access and Entries	Objective 3G – 1 Building entries and pedestrian access connects to and addresses the public domain. Objective 3G – 2 Access, entries and pathways are accessible and easy to identify.	2 lobbies at the street level frontage to each street providing a central access point. The access entries will be open glazed atrium in form for ease of identification.	Yes
3H Vehicle Access	Objective 3H – 1 Vehicle access points are designed and located to achieve safety, minimise conflicts between pedestrians and vehicles and create high quality streetscapes	Vehicle access point is from Holloway Street driveway and is separate from the pedestrian entrance.	Yes
3J – Bicycle and Car Parking	Objective 3J – 1 Car parking is provided based on proximity to public transport in metropolitan Sydney and centres in regional areas. Design Criteria ▪ Car parking needs for developments must be provided off street.	Car parking is compliant with BBDCP requirements, which are adequate to accommodate the future occupants of the site. All parking is provided at Ground Level and Level 1.	Yes Yes
4A – Solar and daylight access	Living rooms and private open space of at least 70% of apartments receive	70% of apartments achieve the ADG recommended 2 hours solar access	Yes

Clause	Design Criteria	Comments	Complies
	<p>minimum 2 hours direct sunlight between 9am and 3pm midwinter.</p> <p>Max 15% apartments receive no direct sunlight between 9am and 3pm midwinter</p>	<p>between 9am and 3pm mid winter.</p> <p>12% of apartments received no direct sunlight.</p>	
4B – Natural Ventilation	<p>Min 60% of apartments are naturally ventilated in the first 9 storeys of the building.</p> <p>Overall depth of a cross over or cross through apartment does not exceed 18m, measured glass line to glass line.</p>	<p>60% of apartments achieve the ADG criteria.</p> <p>No apartments exceed 18m, except the apartment that wraps around the lift core, which is 18.7m.</p>	<p>Yes</p> <p>Acceptable.</p>
4C Ceiling Heights	<p>Min for habitable room = 2.7m</p> <p>Min for non habitable room = 2.4m</p>	3.1m floor to ceiling is proposed.	Yes
4D – Apartment Size and Layout	<p>Min internal areas:</p> <p>Studio = 35m²</p> <p>1 bed = 50m²</p> <p>2 bed = 70m²</p> <p>3 bed = 90m²</p>	<p>Nil Studios</p> <p>1 bed = 53-66m²</p> <p>2 bed = 75-93m²</p> <p>3 bed = 103-117m²</p> <p>4 bed = 140m²</p>	Yes
4E – Private Open Space and Balconies	<p>Min external areas:</p> <p>Studios = 4m²</p> <p>1 bed = 8m²</p> <p>2 bed = 10m²</p> <p>3 bed = 12m²</p>	Each apartment achieves the minimum balcony areas and depths.	Yes
4F – Common circulation spaces	Achieve good amenity and properly service the number of apartments. Maximum of 8 per core.	5-8 apartments per core	Yes
4G Storage	<p>Adequate well designed storage to be provided to each apartment.</p> <p>1 bedroom = 6m³</p> <p>2 bedroom = 8m³</p> <p>3 bedroom = 10m³</p> <p>At least 50% of the required storage is to be located within the apartment.</p>	Each apartment is provided with adequate storage to meet the ADG requirement.	Yes
4H Acoustic Privacy	Minimise noise transfer through the siting of buildings and building layout	Through adequate building separation from neighbouring buildings and uses. Bedrooms of adjacent	Yes

Clause	Design Criteria	Comments	Complies
		apartments are located next to each other and living rooms where possible are located next to adjacent apartment living rooms.	
4K Apartment Mix	Provide a range of types and sizes to cater for different household types now and into the future. Distribute apartment mix to suitable locations in the building.	The Section 96 provides a greater number of 2, 3 and 4 bedroom apartments. Townhouses are located along the street frontages	Yes
4L Ground floor apartments	Maximise street activity through provisioned ground floor apartments.	Townhouses have direct access and frontage to Page Street and Holloway Street.	Yes
4M Facades	Provide visual interest along the street whilst respecting the character of the area	The townhouse provide visual interest to the street frontages and the materials proposed are derived from the existing elements of nearby dwellings.	Yes
4N Roof Design	Roof treatments are integrated into the roof design and positively respond to the street. Encourage roof space for use as residential accommodation and open space.	Upper level of townhouses expressed as a typical roof form to minimise perceived height, with rooftop open space area.	Yes
4O Landscape Design	Provide a viable and sustainable landscape design which contributes to the streetscape and residential amenity.	The detailed landscape theme is acceptable and will provide for a sustainable and high quality area for future residents.	Yes
4P Planting on Structures	Provide an appropriate soil profile. Planting on structures contributes to the quality and amenity of the communal and public open space areas.	Adequate soil profile is provided for the deep soil areas of the development. Podium planters are also proposed as required.	Yes
4Q Universal Design	Encourage spaces which are flexible housing.	20% adaptable apartments are proposed and also	Yes

Clause	Design Criteria	Comments	Complies
	Achieve a 20% silver level liveable housing	allow compliance with the silver level universal design standard.	
4T Awnings and Signage	Awnings to be well located and integrated into the design of the building	Awnings are proposed at the entrances at street level and podium level and are integrated into the overall design.	Yes
4U Energy Efficiency	Incorporate passive design, passive solar access to maximise heat storage in winter and reduce heat transfer in summer and provide adequate natural ventilation.	The design provides natural light to all habitable rooms, incorporates passive solar access measures including overhangs, insulated walls, roofs and floors.	Yes
4V Water Management and conservation	Minimise potable water use; Encourage treatment of urban stormwater prior to discharge; and integrate flood management systems.	Water efficient fixtures and appliances are proposed. Rainwater collection storage for re-use on site is proposed.	Yes
4W Waste Management	Adequately sized storage areas for rubbish. Waste storage area to be designed to minimise impacts on streetscape, building entry and amenity of residents.	A communal waste chute is proposed. Separate garbage and recycling chutes are proposed centrally at each core.	Yes

Botany Bay Local Environmental Plan (BBLEP) 2013

The following provides an assessment against the relevant provisions of BBLEP 2013:

Principal Provisions of BBLEP 2013	Compliance Yes/No	Comment
Landuse Zone	Yes	The site is zoned R3 – Medium Density Residential under the BBLEP 2013.
Is the proposed use/works permitted with development consent?	Yes	The approved residential flat buildings and townhouses are permissible with Council's consent under BBLEP 2013.
Does the proposed	Yes	The proposed modification

Principal Provisions of BBLEP 2013	Compliance Yes/No	Comment
use/works meet the objectives of the zone?		<p>application is consistent with the following objectives in the BBLEP 2013:</p> <ul style="list-style-type: none"> • <i>To provide for the housing needs of the community within a medium density residential environment.</i> • <i>To provide a variety of housing types within a medium density residential environment.</i> • <i>To encourage development that promotes walking and cycling.</i>
Does Schedule 1 – Additional Permitted Uses apply to the site?	N/A	Schedule 1 does not apply to the subject site.
<p>What is the proposed FSR? Does the FSR of the building exceed the maximum FSR?</p> <p>Is the proposed development in a R3/R4 zone? If so does it comply with site of 2000m² min and maximum height of 22 metres and maximum FSR of 1.5:1?</p>	No – already approved by the JRPP	<p>The site area of the R3 zoned land is 14,821m². The proposed GFA is 24,455m².</p> <p>The subject site exceeds 2000m² in area and is located in the R3 zone.</p> <p>The proposed FSR is 1.65:1, which exceeds the FSR of 1.5:1 permitted by Clause 4.4(2A) of BBLEP 2013. However, this is already approved and there is no proposed increase in GFA or FSR.</p> <p>The proposed modification seeks to increase the height of the building beyond 22m, which is not supported. Refer to discussion on height in this report.</p>
Is the site within land marked “Area 1” on the FSR Map?	N/A	The subject site is not located within “Area 1” on the FSR Map.
Is the land affected by road widening?	N/A	The subject site is not affected by road widening.
Is the site listed in Schedule 5 as a heritage item or within a Heritage Conservation Area?	N/A	The subject site is not listed as a Heritage Item or within a Heritage Conservation Area.

The objectives and provisions of the BBLEP 2013 have been considered in the assessment of the Section 96(2) application and the proposal is consistent with the provisions of BBLEP 2013, except for Clause 4.3(2A) in that the proposed modification exceeds the maximum 22m building height permitted. Refer to the discussion on building height earlier in this report, where the variation is assessed and is not supported.

Botany Bay Development Control Plan (BBDCP) 2013

The provisions of the Botany Bay Development Control Plan (BBDCP) 2013 have been considered in the assessment of the proposed modifications. It is not likely that the additional works will impact on any adjoining or nearby residential dwellings.

The proposed changes to unit mix and car parking are supported and will not result in a significant change to the intensity of the site, from that initially envisaged by Council in the approved development. The internal and external changes are proposed in order to improve the amenity for nearby and adjoining development and in particular the future occupants of the development. Accordingly, the proposed modifications raise no concerns in relation to compliance with the BBDCP 2013.

(b) The public interest.

The proposed amendments relate to changes to the overall position of the building, and internal reconfiguration of the basement car park area and at grade parking area layout. The proposed changes will not result in any adverse amenity impacts on the streetscape or onto adjoining properties. The proposed amendments will have no significant adverse impact upon the public interest.

(b) The likely impacts of the development including environmental impacts on both the natural and built environments, social and economic impacts in the locality.

The proposed modifications are minor in nature and will not affect the design or operation of the development in any significant manner. The proposed amendments will not have an adverse environmental, social or economic impact on the immediate locality. The changes will result in a development that will provide a range of residential dwelling types to meet the needs of the local population and encourages walking and cycling.

(c) The suitability of the site for the development.

The site is suitable for the development as proposed to be modified.

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

In accordance with Part 2 – Advertising and Notification of BBDCP 2013, the Section 96(2) Application was notified to adjoining property owners and those that originally made a submission for a period of fourteen (14) days from 28 October 2015 to 11 November 2015. No submissions were received.

(e) The public interest.

The proposed modifications are in the public interest, except that the proposed height variation exceeds the control by 4.8m at its greatest which is a variation of 22% for the lift overruns and communal lounge and terrace.

CONCLUSION

The Section 96(2) Application seeks to modify Development Consent No. 14/080 that was approved by the JRPP in October 2015 for the remediation of the site, removal of existing vegetation and construction of 35 x two and three storey townhouses and two residential flat buildings, above ground parking for 465 vehicles, and associated landscaping and public domain works

This Section 96(2) application seeks to make design changes internally and externally, to change unit mix, introduce 4 bedroom apartments, increase the total number of townhouses, increase car parking to support the change in unit mix and introduce a communal rooftop terrace. Since approval of the application in October 2015, the site has been sold to a new owner and the proposal now before the Panel is a result of a new architect with a slight shift in the design theme.

The proposed amended architectural plans incorporate the deletion of apartments at Level 7, as approved under Condition No. 2. The new plans propose to introduce a communal rooftop terrace to both Building A and B, which together with the lift overruns will exceed the 22m height limit under BBLEP 2013. The extent of the height variation at its greatest is 4.8m or 22%, and cannot be supported. The concept of the communal rooms is commended and it is recommended that an apartment on Level 6 of each building is converted for this purpose in lieu of that now proposed on Level 7.

The proposed modifications are suitable in the context of the site and the locality and do not result in any radical change from the development as already approved. Consideration has been given to the increase in parking, the change in unit mix and the height variation for the communal lounge and terrace, and whilst the height variation cannot supported, the modifications will otherwise result in a development which is substantially the same development as that already approved by the JRPP.

The application also seeks to delete conditions requiring traffic contributions and the restriction on occupancy, subject to the intersection upgrades. However, at this stage, Council has submitted its detailed design to NSW RMS for approval for the intersection works, however it remains to date, that no timeframe for commencement can be provided. There would be no fundamental objection to the deletion of these conditions in the future, where Council has certainty that the intersection upgrades are progressing. On this basis, it is recommended in this report that these conditions remain unaltered on the consent.

The proposed changes to apartment mix result in changes to parking requirements and Section 94 Contributions imposed on the consent. The Botany Bay Section 94 Contributions Plan 2016 now applies and the proposal will be calculated under this new Plan. This will reduce the overall Section 94 amount under Condition No. 37. A number of other condition changes are required and discussed further.

The proposed modifications will not result in any adverse impacts on adjoining properties or the locality in terms of overshadowing, privacy, visual impact or excessive traffic movements. On this basis, the proposed modifications are

acceptable, except for the height variation and the deletion of the traffic conditions, and the application is recommended for approval.