

SYDNEY CENTRAL PLANNING PANEL

SCPP No	2016SYE089
DA Number	16/143
Local Government Area	Bayside Council
Proposed Development	Stage 2 Integrated Development Application for the construction of a residential flat building consisting of one level of basement car parking, a 3 storey podium including car parking sleeved with apartments, and 2 x 6 storey, 1 x 8 storey and 1 x 16 storey towers above
Street Address	130-150 Bunnerong Road, Pagewood NSW 2035
Applicant	Karimbla Constructions Services (NSW) Pty Ltd
No. of Submissions	Nine (9) submissions; one petition with 36 signatures
Regional Development Criteria	Development with a CIV of \$69,616,383
List of All Relevant s79C(1)(a) Matters	<ul style="list-style-type: none"> • Environmental Planning & Assessment Act 1979, Part 4 – Development Assessment & Schedule 4A – Development for which regional panels may be authorised to exercise consent authority functions of councils • Environmental Planning & Assessment Regulation 2000, Part 6 – Procedures relating to Development Applications • State Environmental Planning Policy (Infrastructure) 2007 • State Environmental Planning Policy No. 55 – Contaminated Land • State Environmental Planning Policy 2004 (BASIX); • State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development • Botany Bay Local Environmental Plan 2013 • Botany Development Control Plan 2013
Documents submitted with this report for the panel's consideration	<ul style="list-style-type: none"> • Report and Annexure A- SEPP 65 and ADG compliance table; • Architectural Plans, Survey Plan & Photomontage – Nettleton Tribe; • Landscape Plans and Report – Urbis; • Arboricultural Assessment Report – Tree and Landscape Consultants (TALC); • Clause 4.6 variation.
Recommendation	<p>The Sydney Central Planning Panel, as the Determining Authority resolve to:</p> <p>a) <i>Grant consent to the Clause 4.6 variation request under Botany Bay Local Environmental Plan 2013 to permit a maximum height of 52.6m (RL 74.4m) for the height of</i></p>

	<p><i>building and overall height of RL 75.6m; and</i></p> <p><i>b) Issue “Deferred Commencement” consent under Section 80(3) of the Environmental Planning and Assessment Act 1979 for Development Application No. 16/143 with such consent not to operate until the following conditions are satisfied:</i></p> <p><i>DC1 A <u>correctly scaled</u> Tree Retention Plan shall be submitted which <u>clearly</u> indicates the 13 trees to be retained in the Westfield Drive setback and references the Arborist report. These trees are:</i></p> <ul style="list-style-type: none"> <i>a) 27 to 29 – 3 x 17 metre high E. microcorys</i> <i>b) 30 – 18m high E. punctata</i> <i>c) 47 and 50 – 2 x 15 metre high E.botryoides</i> <i>d) 51 and 52 – 2 x 17 metre high E. microcorys</i> <i>e) 54 to 58 – 5 x 16m high E. microcorys</i> <p><i>DC2 The Applicant shall provide a Tree Impact Assessment and Management Plan for approval by Council’s Tree Management Officer and is required to address the following as a minimum:</i></p> <ul style="list-style-type: none"> <i>a) Discussion of the impacts that the proposed building works and piling/shoring Clearance Line may have on the trees to be retained in the Westfield Drive setback and evidence that the trees can be retained without detrimental impact;</i> <i>b) Demonstrate how the proposal complies with AS4970-2009 – Protection of Trees on Development Sites for trees to be retained and AS4373-2007 - Pruning of Amenity Trees in respect to canopy pruning;</i> <i>c) Description of measures to ameliorate potential impacts to trees to be retained;</i> <i>d) Address how the trees are to be managed during construction to negate any impacts to the trees;</i> <i>e) Recommendations for remedial or other works to the trees during or post construction including watering regime, fertilising etc;</i> <i>f) Supporting evidence such as photographs</i> <p><i>DC3 The detailed sections through the Westfield Drive setback are to be revised to delete the 1-1.3 metre increase in soil levels throughout which is not supportive of tree retention. The natural ground line/soil levels must be maintained throughout the setback. Revised sections 1 and 2 are required to</i></p>
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	<p><i>indicate this and the landscape plan, construction management plan and any other detailed plan updated accordingly.</i></p> <p><i>DC4 The period of the “Deferred Commencement” consent is to be limited to 6 months.</i></p>
Report by	Angela Lazaridis – Senior Development Assessment Officer
Annexure A:	SEPP 65 Assessment: Apartment Design Guide

RECOMMENDATION

In view of the below comments, it is RECOMMENDED that the Sydney Central Planning Panel (SCPP), as the Consent Authority, resolve to:

- a) *Grant consent to the Clause 4.6 variation request under Botany Bay Local Environmental Plan 2013 to permit a maximum height of 52.6m (RL 74.4m) for the height of building and overall height of RL 75.6m; and*
- b) *Issue “Deferred Commencement” consent under Section 80(3) of the Environmental Planning and Assessment Act 1979 for Development Application No. 16/143 with such consent not to operate until the following conditions are satisfied:*

DC1 A correctly scaled Tree Retention Plan shall be submitted which clearly indicates the 13 trees to be retained in the Westfield Drive setback and references the Arborist report. These trees are:

- a) 27 to 29 – 3 x 17 metre high E. microcorys*
- b) 30 – 18m high E. punctata*
- c) 47 and 50 – 2 x 15 metre high E.botryoides*
- d) 51 and 52 – 2 x 17 metre high E. microcorys*
- e) 54 to 58 – 5 x 16m high E. microcorys*

DC2 The Applicant shall provide a Tree Impact Assessment and Management Plan for approval by Council’s Tree Management Officer and is required to address the following as a minimum:

- a) Discussion of the impacts that the proposed building works and piling/shoring Clearance Line may have on the trees to be retained in the Westfield Drive setback and evidence that the trees can be retained without detrimental impact;*
- b) Demonstrate how the proposal complies with AS4970-2009 – Protection of Trees on Development Sites for trees to be retained and AS4373-2007 - Pruning of Amenity Trees in respect to canopy pruning;*
- c) Description of measures to ameliorate potential impacts to trees to be retained;*
- d) Address how the trees are to be managed during construction to negate any impacts to the trees;*
- e) Recommendations for remedial or other works to the trees during or post construction including watering regime, fertilising etc;*
- f) Supporting evidence such as photographs*

DC3 The detailed sections through the Westfield Drive setback are to be revised to delete the 1-1.3 metre increase in soil levels throughout which is not supportive of tree retention. The natural ground line/soil levels must be maintained throughout the setback. Revised sections 1 and 2 are required to indicate this and the landscape plan, construction management plan and any other detailed plan updated accordingly.

DC4 The period of the "Deferred Commencement" consent is to be limited to 6 months.

EXECUTIVE SUMMARY

Council received Development Application No. 16/143 on 17 August 2016 for the construction of a residential flat building consisting of one level of basement car parking, a 3 storey podium including car parking sleeved with apartments, and 2 x 6 storey, 1 x 8 storey and 1 x 16 storey towers above at Urban Block 5E of 130-150 Bunnerong Road, Pagewood.

The Development Application is required to be referred to the Sydney Central Planning Panel (SCPP) pursuant to Clause 3 of Schedule 4A of the *Environmental Planning and Assessment Act 1979* (EP&A Act) as the Capital Investment Value of the proposal is greater than \$20,000,000.

The Development Application was originally notified as Integrated Development under Section 91 of the EP&A Act as the development is deemed to be an aquifer interference activity as part of the development intercepts or extracts groundwater. Water NSW has responded and confirmed that the proposal will not intercept the ground water.

The application is a Stage 2 application. The Stage 1 application (DA-14/96) was received by Council on 5 May 2014, the applicant filed a Class 1 Appeal. The application was considered at a series of Section 34 conferences, whereby a series of amended plans were considered. Council and the applicant reached a Section 34 agreement and the appeal was upheld with court orders issued on 7 August 2015. The Stage 1 consent is a concept approval for the overall site including an indicative 2,223 apartments across 7 urban blocks.

Prior to lodgement, the application underwent an Architectural Design Competition. The successful Architect has prepared the design forming this development application.

The Development Application was advertised from 31 August to 30 September 2016. Nine (9) submissions and one petition with 36 signatures were received which generally raised issue with the scale of the overall Stage 1 development site in particular to the height, bulk, overshadowing, impact of vibration and on the surrounding infrastructure, and visual privacy. These issues have been discussed in detail throughout the report.

Key issues that were raised in the assessment of the proposal include a non-compliance in building height, non-compliances with the Stage 1 consent particularly relating to separation distances and tower and podium articulation, ADG non-compliances relating to ceiling heights, study rooms, lift cores and location of storage and DCP non-compliances relating to on-site loading and unloading facilities, family friendly apartments and unit layouts.

The development proposes a maximum building height of 52.6 metres (RL 74.7m). This departs from the maximum building height that was approved as part of Stage 1 which was 51 metres (RL 73.0m) as well as the maximum LEP requirement for 44 metres. The applicant has provided a Clause 4.6 variation to the standard which is supported by Council. While the building height component does not comply with the maximum height established

in Stage 1 consent, the overall height of the proposal (to the top of the plant room) remains compliant.

The Stage 1 consent set parameters for any future development on the site. The proposal does not comply with Condition No. 18 relating to separation distances and Condition Nos. 24 and 25 relating to tower and podium articulation. The non-compliance in separation distances results in a shortfall of 400mm between Tower B and C. The approved consent required 12.4 metres and the proposal provides 12 metres. This is between two bedrooms on either tower. The applicant has provided a privacy plan which Council is satisfied with and the non-compliance is accepted as there will be only minimal impacts. The non-compliances with Condition Nos. 24 and 25 relating to articulation encroachments are considered acceptable as the majority of the non-compliances are on Tower B. The proposal has incorporated greater recessive areas along the Bunnerong Road elevations as well as along the podium levels. This issue is discussed in greater detail in Note 2.

The proposal does not comply with the minimum ceiling height requirement of 3.3 metres for the ground and first floor within the podium. The proposal provides a ceiling height of 2.7 metres. Stage 1 had approved the Urban block for residential use only and not for ground floor retail. On this basis, the non-compliance is accepted. There are a number of units (Apartment C-307, C-407 and C-507) which do not comply with the requirements for study rooms within the ADG. Windows have been conditioned to be installed within the study rooms to meet the ADG requirements. This is similar with the location of the storage areas. The development complies with the total requirement for storage for the unit mix however the majority of the storage areas are located within the car parking levels and not within the units. Due to the size of the units being greater than the minimum unit size applicable within the ADG, Council considers that the units can accommodate 50% of their storage. This has been recommended as a condition of consent.

The development falls short on the number of lift cores required to access each tower. Towers A, C and D comply with the requirement however Tower B does not. Tower B has a total of 88 units that access two lift cores. The requirement requires 3 lift cores to access the tower. The non-compliance is acceptable as the shortfall is minor and Council considers that the departure would not significantly impact the lift quality available to occupants. In regards to loading and unloading requirements, the DCP requires that the site provide for 6 service bays (2 for MRV). The proposal provides one space for MRV servicing and is located along the south-western side of the ground floor car parking level. The RTA Guidelines require that residential development comprise of one loading dock for residential use. As this has been provided, the departure is accepted.

In regards to the DCP family friendly apartment controls, the proposal does not comply with the requirement for separate study rooms for 2 or more bedroom units. The apartment sizes allow for space to provide for a separate study nook which has been conditioned in the consent. Other non-compliances with the DCP family friendly controls have been conditioned in the consent. Finally, the proposed development does not comply with the apartment layouts provided. Due to the orientation of the furniture, the living and dining areas could be considered as separate spaces therefore Council is satisfied with this arrangement. The study rooms that are provided are not larger than 9sqm and cannot be considered as bedrooms. Regardless, a condition has been recommended that the study rooms are not to be used as bedrooms.

In summary, the proposed DA has been assessed against the relevant controls and on balance, Council is generally supportive of the proposal. However, issues relating to landscaping and tree management had not been resolved at the time of compiling the report.

It is recommended that the application be issued with a deferred commencement, in order to enable the applicant to resolve the remaining outstanding issues.

BACKGROUND

Stage 1 – Master Plan (DA-14/96)

Integrated Development Application No. 14/96 was received by Council on 5 May 2014 for the redevelopment of the site for a staged mixed use development involving subdivision and concept approval for the location of public road network, private access ways through the site, on-site stormwater detention including water sensitive urban design (WSUD), Building Envelopes and Building Heights facilitating approximately 2,733 dwellings on site, parking spaces in above ground and basement facilities, and provision of 8,000sqm of public open space. The Capital Investment Value CIV for these works was \$128,431,190.00, therefore the former Joint Regional Planning Panel (JRPP) was the consent authority. On 28 August 2014, this application was referred to the JRPP in accordance with Schedule 4A of the Environmental Planning & Assessment Act 1979 (EP&A Act) as it has a CIV in excess of \$20 million (Reference No. 2014/SYE/105).

On 12 September 2014, Karimbla Constructions (NSW) Pty Ltd filed a Class 1 Appeal against Council's 'deemed refusal' of the application. The application was considered at a series of Section 34 conferences, whereby a series of amended plans were considered. Council and the applicant reached a Section 34 agreement and the appeal was upheld. On 7 August 2015 the development consent was issued.

The Stage 1 Masterplan consent is a concept approval and does not grant consent for any demolition, remediation, excavation or building works. It is noted however that remediation works have commenced on-site as Category 2 works under the State Environmental Planning Policy No. 55 – Remediation of Land. The approval is limited to the massing, modulation, overall siting and setbacks, maximum height of buildings, maximum GFA, uses, maximum FSR, public domain provisions, unit mix minimum unit sizes, indicative unit numbers, and minimum car parking provisions.

The key details of the approved Masterplan are as follows:

- The applicant must enter into a Planning Agreement including the following:
 - Central Park embellished and dedicated to Council,
 - Roads within the site constructed, embellished and dedicated to Council,
 - Traffic lights and any other necessary traffic control systems constructed,
 - Monetary contribution of \$10.5 million towards the cost of providing transport infrastructure in the form of upgrade to the intersection of Page Street and Wentworth Avenue.
- Concept subdivision of the site
- Central Park of 8,000sqm.
- Linear Park of 2,703sqm.
- Building envelopes, setbacks, maximum GFA and FSR for each urban block.
- Indicative maximum of 2,223 residential apartments, up to 5,000sqm of retail space and four child care centres.
- Residential unit mix – max 20% 1 bedroom, 50% 2 bedroom, min 30% 3 bedroom.
- Residential unit sizes.
- Car parking rates including an indicative minimum number of 3,693 spaces.

It is noted that Part 9D of the BDDCP 2013 specifically relates to the redevelopment of the subject site, 130-150 Bunnerong Road, Pagewood, and guided the Stage 1 consent. The Stage 1 consent includes conceptual details of the proposed buildings which have been altered from the provisions of Part 9D. Accordingly, the Stage 1 consent now contains the relevant provisions for the subject Stage 2 application for UB5E.

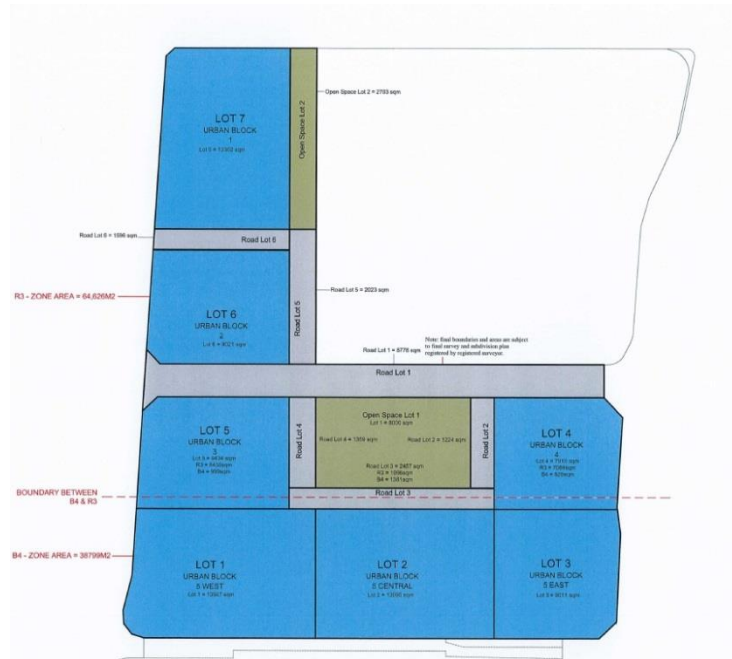


Figure 1: Approved Master plan concept subdivision plan DA-14/96



Figure 2: Approved Building Envelope Plan DA-14/96

Stage 2 – East-West Boulevard and realignment of Sydney Water Stormwater Culvert (DA-14/159)

On 15 July 2014, Council received a Stage 2 Development Application (DA-14/159) which originally was for the construction of the entire road network and civil works associated with the Stage 1 DA. Over subsequent amendments, the proposed development was reduced to only include the kerb-to-kerb construction of East-West Boulevard and the realignment of the existing Sydney Water stormwater channel.

The application was determined by Council on 4 March 2015 by way of refusal. The reasons for refusal were as follows:

- The proposed development is not appropriate in the absence of an approved Master plan;
- It is not in the public interest to approve an aspect of a Master plan proposal when all other parameters are in dispute;
- A commitment to an aspect of the Master plan as a fixed point does not allow for the orderly and economic development of land.

On 9 March 2015, Karimbla Constructions (NSW) Pty Ltd filed a Class 1 Appeal against Council's refusal of the application. The application was considered in conjunction with the ongoing Section 34 conferences for the Stage 1 DA. Council and the applicant reached a Section 34 agreement and on 7 August 2015 the development consent was issued in conjunction with the Stage 1 (Master plan) consent.

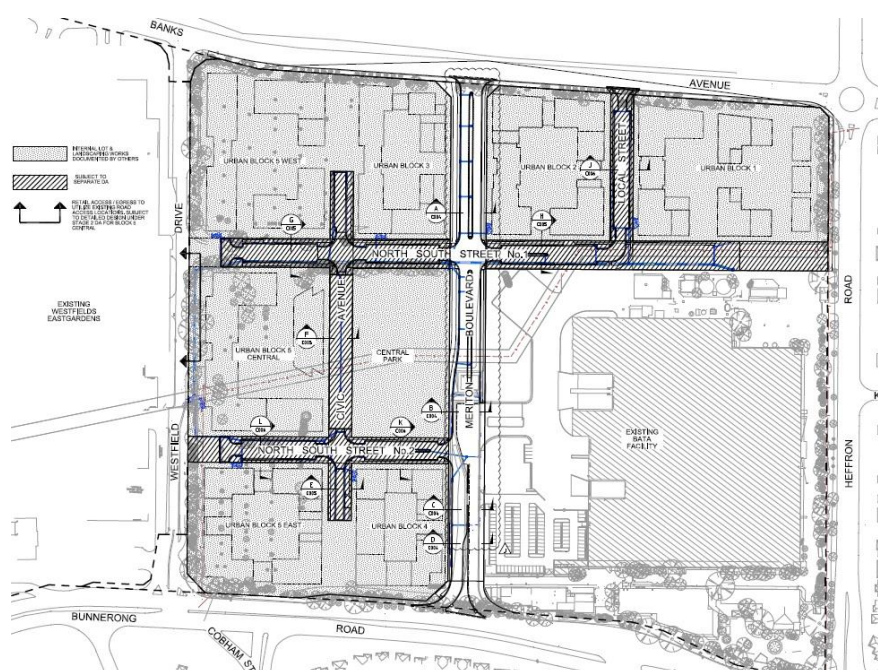


Figure 3: Approved Site Plan DA-14/159

Stage 2 – Subdivision of the site and construction of the road network (excluding East-West Blvd and the private access ways) and associated civil works (DA-15/104)

On 26 June 2015, Council received a Stage 2 Development Application (DA-15/104) for the construction of the road network (excluding the approved East-West Blvd) and associated civil works. The application was subsequently amended to also include the subdivision of the site in accordance with the Stage 1 Master plan and the private access roads were excluded

from the proposal. The CIV for the works was \$2,707,356 and therefore Council was the consent authority.

The proposal was generally consistent with the Stage 1 consent DA-14/96 and was approved on 8 January 2016.

Stage 2 - Integrated Development Application for the construction of a mixed use development incorporating 487 apartments and a childcare centre within a building consisting of a 5 storey podium including 847 car spaces sleeved with apartments and 2 x 16 storey and 2 x 20 storey towers above.

On 16 February 2016, Council received a Stage 2 Development Application (DA-16/18) which proposed the construction of a mixed use development incorporating 487 apartments and a childcare centre within the building consisting of a 5 storey podium including 847 car parking spaces sleeved behind the apartments and 2 x 16 storey and 2 x 20 storey towers above. The CIV for the works was \$116,742,078 and therefore was referred to the former Sydney East Joint Regional Planning Panel. On 9 June 2016, the development application was approved subject to conditions of consent amended at the Panel Meeting. Construction is currently underway for this urban block.

Stage 2 – Landscaping and embellishment of the public domain and the construction of Central Park and Linear Park (DA-16/65)

On 3 May 2016, Council received a Stage 2 Development Application (DA-16/65) for landscaping and embellishment of the public domain and the construction of Central Park and Linear Park. The CIV for the works is \$9,795,899 and therefore Council is the consent authority.

The application is currently under assessment.

APPLICATION HISTORY

On 4 October 2016, Council sent an additional information letter addressing a number of non-compliances with the proposal, primarily relating to the redesign of the proposal different to the winning design scheme. The key urban design/architectural issues are as follows:

Unsupported changes from Winning Design Competition Scheme

- Building cut/indentation on northern façade – The building cut/indentation on northern façade of the main tower (Building B) has been completely removed. This is a significant architectural feature of the winning design and provides a visually interesting element that breaks up this large façade. The indentation is to be reinstated in its original form (Figure 1);
- Building cut/indentation on western façade – The building cut/indentation on western façade of the main tower (Building B) has been reduced in depth and materials changed from soft timber elements to hard metal elements. The proposed indentation is not considered deep enough, and the materials too similar to the building, to appropriately break up the façade and provide visual interest. The indentation in its original form is to be reinstated (Figure 1);
- Ground floor apartments – The ground floor 2 storey townhouse style apartments have been replaced with single level apartments. The townhouse style apartments are to be reinstated on the ground floor as they are considered to provide an improved street level

presentation of the development and improved amenity for these ground level apartments;

- Materials main tower and podium – The DA plans have removed the bronze cladding and screens replaced with plain aluminium, removed most of the timber cladding, replaced with plain aluminium and removed brick walls (eg. street walls) replaced with tiled walls. These materials are considered to be integral features of the winning design and appropriately soften and provide visual interest to the development. The original materials and finishes are to be reinstated;
- Materials of Bunnerong Road street wall – The DA plans have removed vertical cladding, concrete effect finishes, white brick and feature warm brick. These materials are considered to be integral features of the winning design and are to be reinstated.

Other issues relate to solar amenity, apartment type count, missing or inaccurate plans relating to cross ventilation, GFA, setbacks and height, address Condition No. 33 of the Stage 1 and ADG balcony sizes, ADG compliance with apartment layouts and privacy, communal open space, storage rates and lift cores, and compliance with Condition No. 17, 24, 25 and 29 of Stage 1.

The application was presented at a briefing meeting on 5 October 2016 where the above issues were addressed relating to the site/application background and the design scheme.

On 9 November 2016, the applicant provided amended plans demonstrating that the proposal was more consistent to the winning design scheme. This included re-installing building indentation on Tower B, re-instating materials in the main tower and podium and along the street wall, and justification relating to the non-compliances with the Stage 1 conditions. A review of the amended was accepted however further issues were apparent with the design.

On 8 December 2016, a further additional information letter was sent to the applicant addressing the non-compliance in height which is greater than the Building height approved in the masterplan. Additionally, more information relating to shadow diagrams, provision of apartment type plans, justification for the non-compliance in building separation and family friendly requirements, loading dock requirements and minor design issues to have the plans amended. This information was provided on 4 January 2017. Between 4 January and 1 February 2017, amended plans and an arborist report were provided for assessment as required by Council.

STAGE 1 MASTERPLAN SITE & SURROUNDING LOCALITY

The overall Stage 1 Master plan site is contained within the block bound by Bunnerong Road to the east, Banks Avenue to the west, Heffron Road to the north, and Westfield Drive to the south. The north eastern portion of this block is the consolidated British American Tobacco Australia (BATA) operations which does not form part of the subject site. The site is made up of one allotment legally described as Lot 2 in DP 1187426, with a total site area of 103,547m².

The site is irregular in shape with frontages to Bunnerong Road, Heffron Road, Banks Avenue and Westfield Drive of 194.21m, 107.22m, 419.85m and 342.34m respectively. The site also has two internal boundaries of 237.75m and 238.20m with the remaining BATA site.

The southern portion of the site has been cleared of all structures and construction works have been completed on the roads and stormwater works approved under the Stage 2 DA's

No.14/159 and 15/104. In the north-western portion of the site, a large warehouse building from the former BATA operations remains.

A variety of development is located in the vicinity of the site. To the north is Pagewood consisting primarily of low density residential development. To the east is Maroubra which is also primarily low density residential development. To the immediate south of the site is Westfield Eastgardens which is a large regional shopping centre. To the immediate west is the Bonnie Doon Golf Course.

The site is generally flat however it is slightly elevated and retained by a wall along Banks Avenue in the north-west (up to 2m), retained by a lower 450-600mm wall in the south to Banks Avenue and is cut below the level of Bunnerong Road in the south-east by up to 5m.

In terms of vegetation, landscaping beds including medium and large sized mature trees form the perimeter of the site along the Bunnerong Road, Westfield Drive, Banks Avenue, and Heffron Road frontages. Internally, the most significant vegetation is an avenue of large Lemon Scented Gum trees running north-south in the southern half of the site.

External vehicular access to the site is provided via an existing road that provides access to the BATA facility from Bunnerong Road. External vehicular access is also available from Banks Avenue and Westfield Drive.

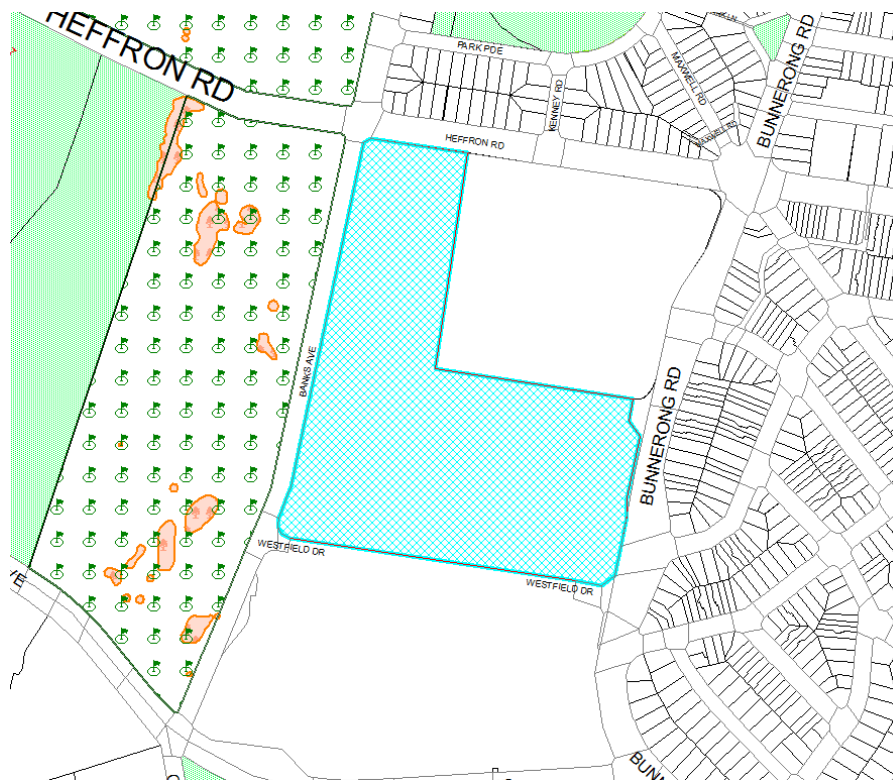


Figure 4: Cadastre of the subject site



Figure 5: Aerial photograph of the subject site dated 5 May 2016 (Source: nearmap.com.au)

SPECIFIC PORTION OF THE SITE SUBJECT OF THIS APPLICATION

The portion of the overall site relevant to this application is known as Urban Block 5 East (UB5E) in the Stage 1 consent. UB5E is located on the south-eastern corner of the site at the intersection of Westfield Drive and Bunnerong Road. The subdivision of the site in accordance with the Stage 1 consent has been approved under DA- 15/104 however is yet to be registered. UB5E is Lot 3 on the approved subdivision plan and has an area of 9,011sqm. The lot is generally rectangular in shape with a frontage to Bunnerong Road of 170 metres and 78 metres to Westfield Drive. The lot includes the private access way on the western side which adjoins the approved North-South Street 2 (DA-15/104).

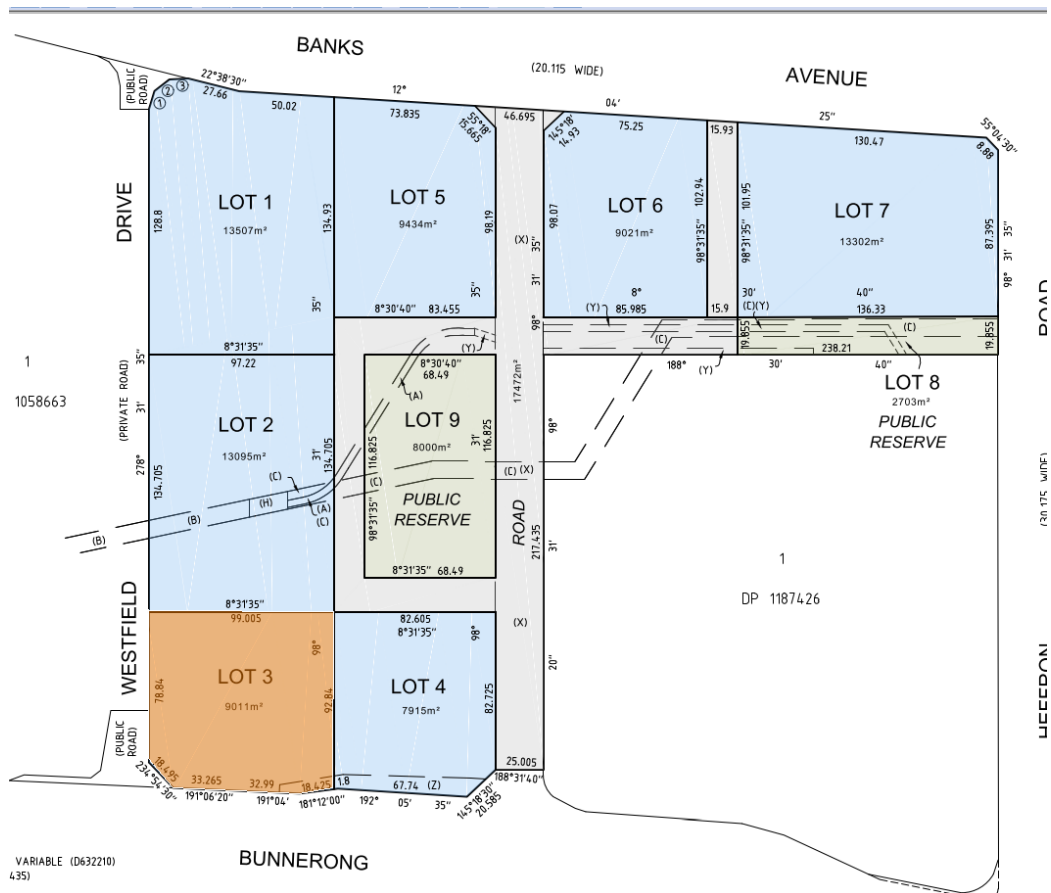


Figure 6: Approved subdivision plan (DA-15/104) with UB5E highlighted in orange

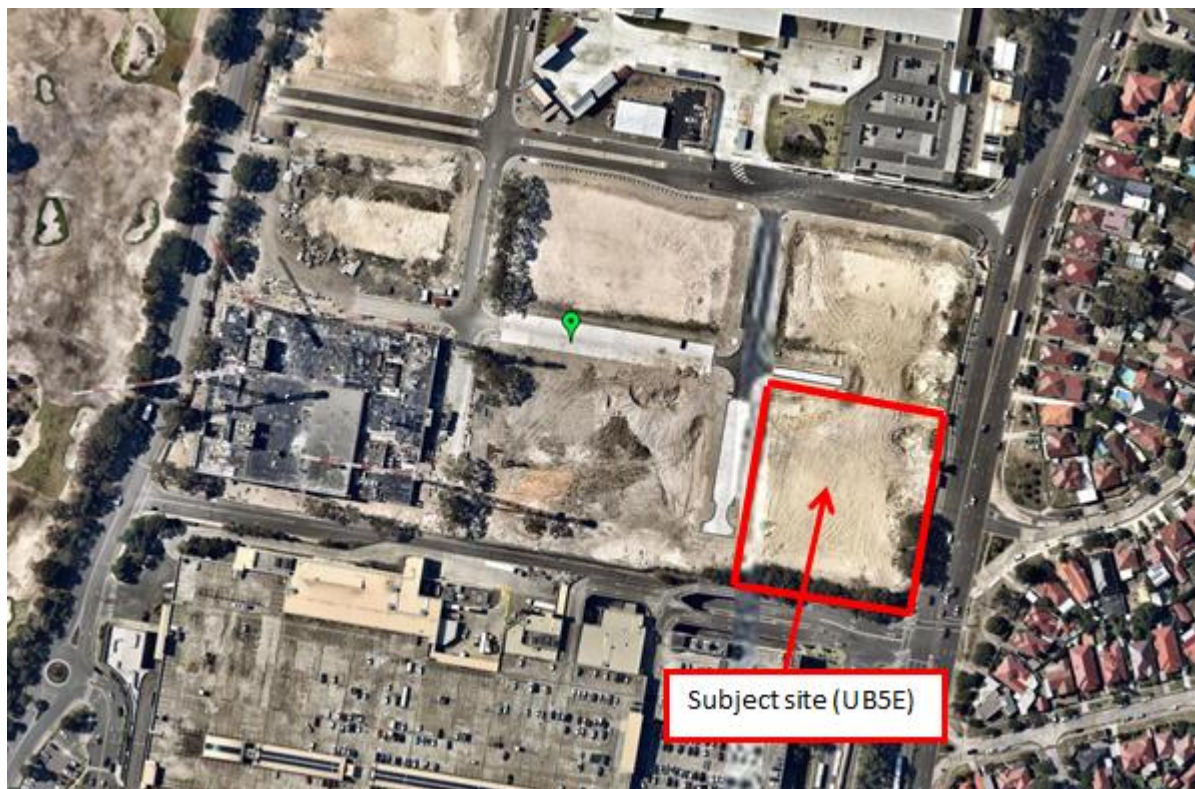


Figure 7: Aerial photograph of the subject site



Figure 8: UB5E looking north-east from Westfield Drive



Figure 9: UB5E looking west from Bunnerong Road



Figure 10: UB5E looking south- west from Bunnerong Road



Figure 11: Low density residential along the eastern side of Bunnerong Road

SITE HISTORY

The overall Stage 1 Master Plan site was originally formed in the 1930s through reclamation of virgin marshland. Since its reclamation a number of parcels along the eastern boundary were used mainly for residential/rural purposes (possibly including paddocks and poultry farming) from at least 1929 (the year the records start) to 1938/1939.

The site was owned by General Motors Holden (GMH) and was operated as an automobile assembly plant from 1939 to 1982 when the plant was closed down. The site was subsequently purchased by Quintilis Pty Ltd (a subsidiary of BATA) in 1982. Quintilis Pty Ltd was incorporated into British American Tobacco Services Limited in 1989 and BATA in 2001.

The GMH factory was officially opened on 15 February 1940 by Prime Minister Menzies. The factory assisted in manufacturing of car bodies during WWII. Afterwards, the facility was used for the assembly and distribution of Holden vehicles. The manufacturing areas were largely concentrated in the north-eastern portion of the GMH owned land parcel.

BATA operated within the western and southern portions of the site, either as owner or tenant, until July 2014. The main factory building, used for the manufacturing and packaging of various cigarette products, occupied the greater portion of the site. Several ancillary buildings were located around the main factory building including corporate, administration, security, and IT buildings. Utility buildings (flavour room, boiler house, electrical substation, etc.), a technical centre and a canteen are other buildings detached from the main factory building and were located generally along the eastern portion of Lot 1 adjacent to Bunnerong Road. A large warehouse type building (No. 1 Bond Store) located on the north western portion of the site still exists. The south western portion of the site where Urban Block 5 West is located was used for car parking by BATA staff and visitors.



Figure 12: Aerial photograph of the subject site dated 5 May 2016 (Source: nearmap.com.au)

PROPOSED DEVELOPMENT

The proposed development (as amended) is for the construction of a residential flat building consisting of one level of basement car parking, a 3 storey podium including car parking sleeved with apartments, and 2 x 6 storey, 1 x 8 storey and 1 x 16 storey towers above. The proposed development also includes tree removal and landscaping across the site.

Built Form

The building is arranged into four cores servicing the four towers and the podium:

Tower A (north-west)

- Tower A – 18 apartments in podium, 20 apartments in tower = Total 38 apartments;
- Tower has a maximum building height of 26.9 metres and plant room height of 29.3m;
- 5 storeys above the podium;
- Lobby and one lift core.

Tower B (south-west)

- Tower B – 6 apartments in podium, 82 apartments in tower = Total 88 apartments;
- Tower has a maximum building height of 52.6 metres and plant room height of 55.8 metres;
- 13 storeys above the podium;
- Lobby and two lift cores.

Tower C (south-east)

- Tower C – 13 apartments in podium, 31 apartments in tower = Total 44 apartments;
- Tower has a maximum building height of 21.2 metres and plant room height of 23.1 metres;
- 3 storeys above the podium;
- Lobby and two lift cores.

Tower D (north-east)

- Tower D – 15 apartments in podium, 17 apartments in tower = Total 26 apartments;
- Tower has a maximum building height of 20.7 metres and a plant room height of 23.1 metres;
- 3 storeys above the podium;
- Lobby and one lift core.

Apartment Mix

A breakdown of the apartment mix is as follows:

42 x 1 bed room apartments– 20.8%

95 x 2 bed room apartments– 47%

65 x 3 bedroom apartments – 32.1%

Car Parking and Servicing

The development includes 3 levels of above ground car parking located within the podium of the building and one level of basement car parking. The above ground car park is sleeved behind apartments on the northern, eastern and western sides. The car park is accessed via an entry/exit located on the western frontage to the private access way which connects to North-South Street 2. Details of the car park are as follows:

Total amount of car spaces: 341 car spaces

Residential: 319 car spaces

Bicycle parking: 41 spaces proposed (based on SEE)

The development includes the following areas of communal open space:

- Podium – 1,796.8sqm. This is the primary area of COS to be used by the residents. The space includes lawn area, bench and table seating, children's play area and outdoor gym.
- Ground Level – 460sqm. This open area is located on the south-eastern corner of the site directly adjacent to Tower C.
- Swimming Pool and Gym – Indoor swimming pool and gym facilities are located within the Basement car parking level underneath Tower A and D.

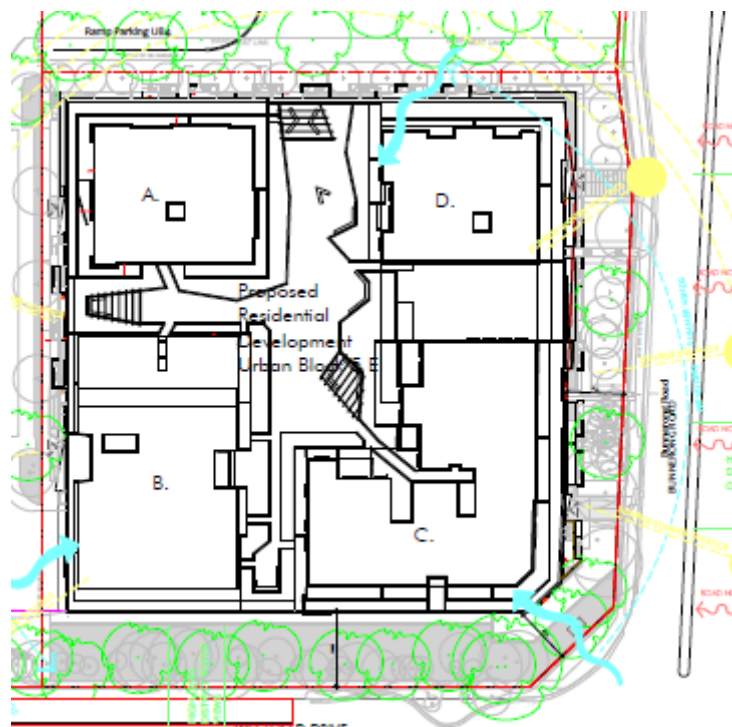


Figure 13. Site Analysis Plan

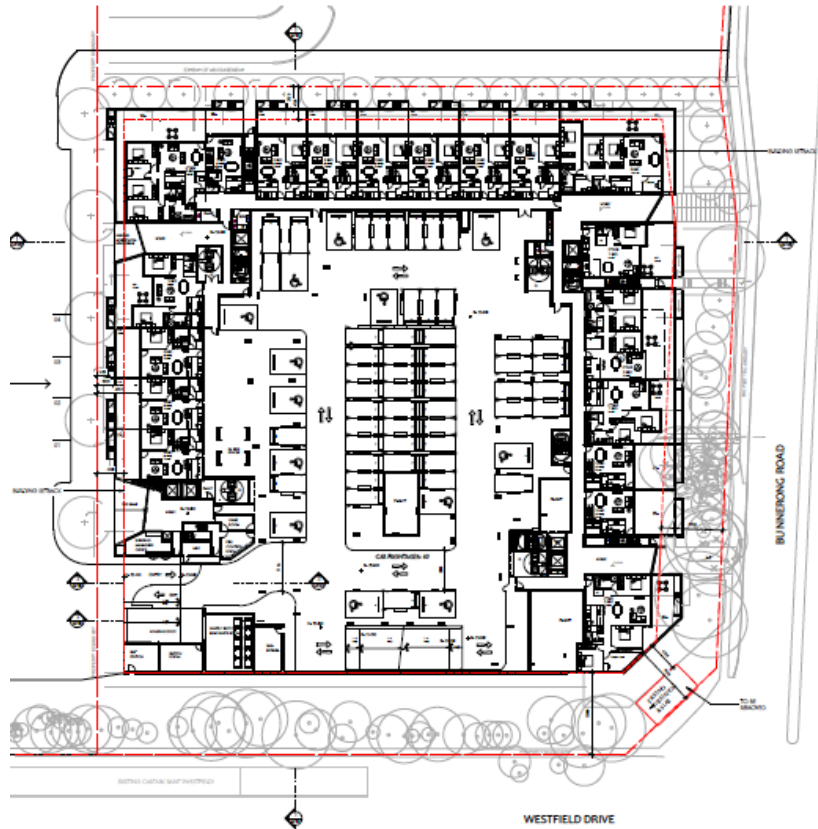


Figure 14: Proposed Ground Floor Level

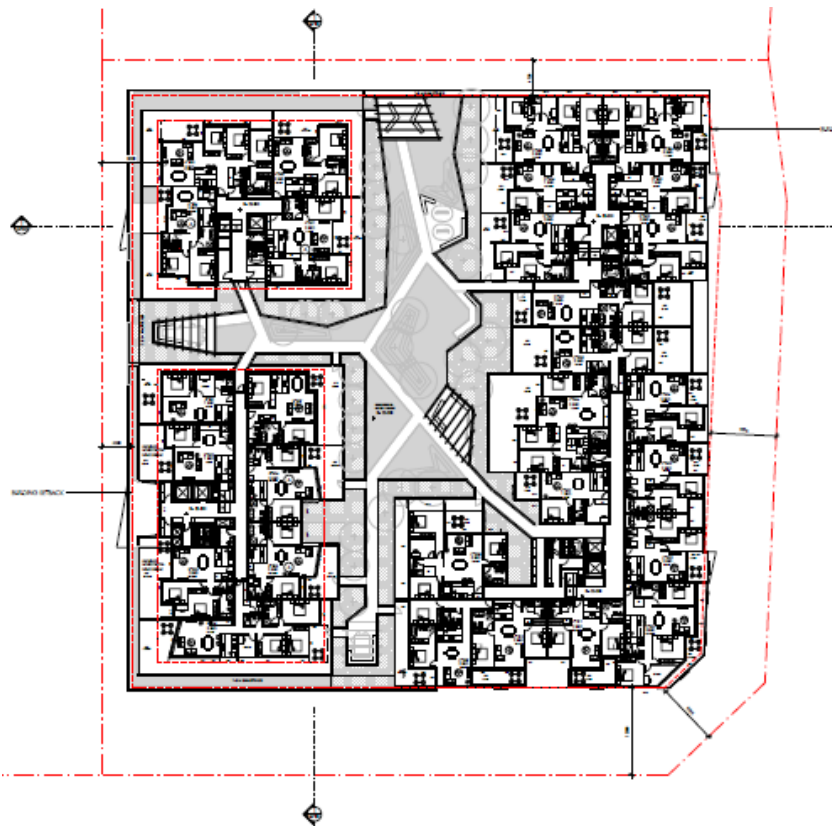


Figure 15: Proposed Podium Level

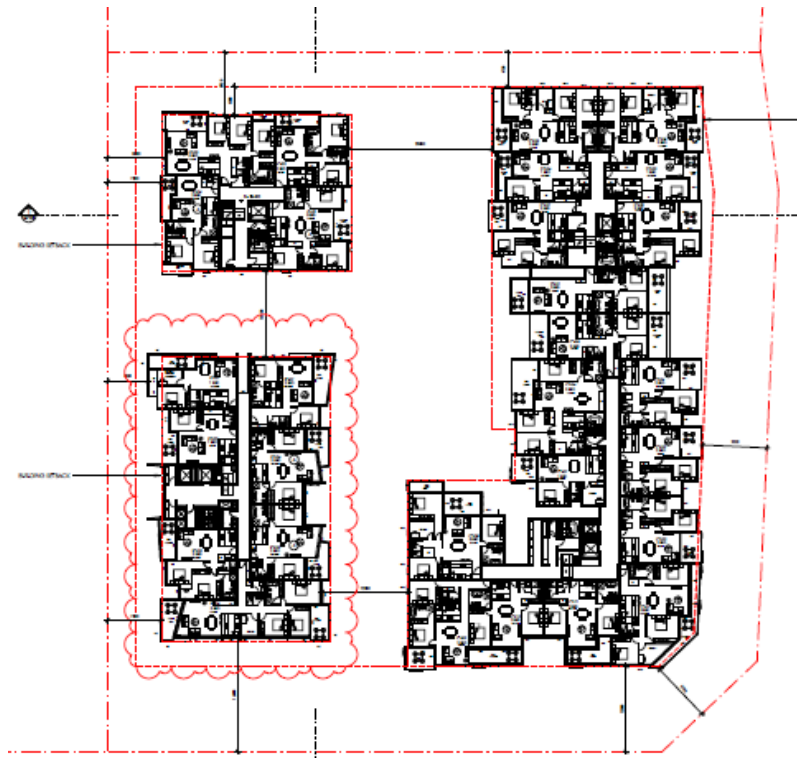


Figure 16: Proposed Level 4



Figure 17: Northern Elevation



Figure 18: Southern Elevation



Figure 19: Eastern Elevation



Figure 20. Western Elevation

Key Controls

Table 1: Compliance with key provisions

Control		Required		Proposal		Complies																							
Site Area		-		Site Area: 9,011sqm		N/A																							
Stage 1 Consent																													
GFA and FSR		Max FSR 2.49:1 Max GFA 22,412sqm		Proposed FSR: 2.49:1 Proposed GFA: 22,403sqm		Yes																							
Height				Max heights proposed except Tower B (B4) maximum building height has exceeded the requirement to 52.6sqm (RL 74.7m).		No – Refer to Note 7																							
Tower No.	Maximum Podium Height	Maximum Building Height	Maximum Plant Room Height																										
B2, B3	16.9m (RL38.9)	20.0m (RL42.0)	22.6m (RL44.6)																										
B1	10.7m (RL32.7)	26.2m (RL48.2)	28.8m (RL50.8)																										
B4	10.7m (RL32.7)	51.0m (RL73.0)	53.6m (RL75.6)																										
Setbacks		Podium and building setbacks to comply with setback hierarchy plan – min 8m (Bunnerong Road), 12m (Westfield Drive), 4m to the north and west		<ul style="list-style-type: none">Bunnerong Road: 9mWestfield Drive: 12mNorthern: 4mWestern: 4m		Yes																							
Car Parking		<u>Residential</u> 1 space / 1 bedroom (42 req) 1.5 space / 2 bedroom (143 req) 2 space / 3 bedroom (130) Total = 315 1 visitor space /10 (21) 22 car share spaces (10 in basements) across entire site (5 req) <u>Total spaces</u> 341 car spaces		<u>Residential</u> <ul style="list-style-type: none">319 spaces for apartments21 visitor spaces1 car share spaces Total spaces proposed = 341		Yes																							
Dwelling Sizes		<table><tr><th>Unit Type</th><th>Area</th><th>Size sq. m</th></tr><tr><td rowspan="2">One bedroom</td><td>Internal</td><td>65</td></tr><tr><td>External</td><td>12</td></tr><tr><td rowspan="2">Two bedroom</td><td>Internal</td><td>85</td></tr><tr><td>External</td><td>12</td></tr><tr><td rowspan="4">Three bedroom</td><td>Internal</td><td>50% of units per urban block 124 50% of units per urban block 110</td></tr><tr><td>External</td><td>24 for 124 sq. m units 15 for 110 sq. m units</td></tr><tr><td></td><td></td></tr><tr><td></td><td></td></tr></table>		Unit Type	Area	Size sq. m	One bedroom	Internal	65	External	12	Two bedroom	Internal	85	External	12	Three bedroom	Internal	50% of units per urban block 124 50% of units per urban block 110	External	24 for 124 sq. m units 15 for 110 sq. m units					1 bed units: 65sqm 2 bed units: 85sqm-99sqm 3 bed units: 110sqm-126sqm		Yes	
Unit Type	Area	Size sq. m																											
One bedroom	Internal	65																											
	External	12																											
Two bedroom	Internal	85																											
	External	12																											
Three bedroom	Internal	50% of units per urban block 124 50% of units per urban block 110																											
	External	24 for 124 sq. m units 15 for 110 sq. m units																											
Unit Mix		<table><tr><th>Unit Size</th><th>Proportion</th><th>Indicative Maximum Number of Units</th></tr><tr><td>Studios</td><td>N/A</td><td>0</td></tr><tr><td>One bedroom</td><td>Maximum 20 %</td><td>445</td></tr><tr><td>Two bedroom</td><td>50%</td><td>1,112</td></tr><tr><td>Three + bedroom</td><td>Minimum 30%</td><td>666</td></tr><tr><td>TOTAL</td><td></td><td>2,223</td></tr></table>		Unit Size	Proportion	Indicative Maximum Number of Units	Studios	N/A	0	One bedroom	Maximum 20 %	445	Two bedroom	50%	1,112	Three + bedroom	Minimum 30%	666	TOTAL		2,223	1 bed – 20.8% 2 bed – 47% 3 bed – 32.1%		Yes					
Unit Size	Proportion	Indicative Maximum Number of Units																											
Studios	N/A	0																											
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Two bedroom	50%	1,112																											
Three + bedroom	Minimum 30%	666																											
TOTAL		2,223																											
SEPP 65 – ADG																													

Control	Required	Proposal	Complies
Car Parking	Not located within 800m of a train station. Accordingly, BBDCP 2013 car parking rates apply.	-	N/A
Dwelling Size	Minimum internal areas as follows: 1 bed unit: 50sqm 2 bed unit: 70sqm 3 bed unit: 90sqm	1 bed units: 65sqm 2 bed units: 85-99sqm 3 bed units: 110-126sqm	Yes Yes Yes
Ceiling Height	Habitable Rooms: 2.7m Non-habitable: 2.4m	Habitable rooms: 2.7m Non-habitable rooms: 2.4m	Yes Yes
Deep Soil	Objective 3E-1 requires 7% of the site (for sites over 1,500sqm) as deep soil area with min. dimensions of 6m.	The site achieves 1,560sqm or 17% of the site as deep soil with min. dimensions of 6m.	Yes
Communal Open Space	25% of site.	25% (2,256.8sqm)	Yes
Solar Access	50% direct sunlight to the principal usable part of the COS for a minimum of 2 hours during mid-winter.	More than 50% of COS receives greater than 2 hours of sun.	Yes
	Living rooms and POS for at least 70% of apartments (and in neighbouring development) to achieve 2 hours between 9am and 3pm.	77% achieved (155 out of 202 apartments)	Yes
Cross Ventilation	60% required for first 9 storeys. (Required: 101 apartments out of 169)	109 out of 169 apartments are cross ventilated (64%).	Yes
Building Depth	Use a range of appropriate maximum apartment depths of 12-18 metres.	Depths have been established by Stage 1 masterplan. Apartment depths are less than 18 metres.	Yes
Building Separation	<u>Up to 4 storeys (approx. 12m):</u> 3m from non-habitable rooms to site boundary 6m from habitable rooms/balconies to site boundary	<u>Up to 4 storeys: 12m required (podium)</u> <ul style="list-style-type: none"> Front to rear towers – 10m No Rear to rear towers – 10m No Front to front towers – 16m Yes Acceptable as on podium	Acceptable

Control	Required	Proposal	Complies
	<u>Five to eight storeys (25m):</u> 4.5m from non-habitable rooms to site boundary 9m from habitable rooms/balconies to site boundary <u>Nine storeys and above (over 25m):</u> 6m from non-habitable rooms to site boundary 12m from habitable rooms/balconies to site boundary	<u>5-8 Storeys: 18m required</u> <ul style="list-style-type: none"> Front to rear towers – 12m No Rear to rear towers – 12m No Front to front towers – 20m Yes <u>9+ Storeys: 24m required</u> <ul style="list-style-type: none"> Complies as only one tower is over 9 storeys Yes 	No – Refer to Note 1
Balcony Sizes	1 bed: 8sqm 2 bed: 10sqm 3+ bed: 12sqm Ground Floor: 15sqm	1 bed: Min 12sqm 2 bed: Min 10sqm 3 bed: Min 12sqm Ground Floor: 26sqm	Yes
Storage	1 bed: 6m ³ 2 bed: 8m ³ 3+ bed: 10m ³	1 bed: Min 6sqm 2 bed: Min 8sqm 3 bed: Min 10sqm Majority of storage area located in basement.	Refer to Note 6
BBLEP 2013			
Zone	B4	Residential Apartments	Yes
FSR	3:1 under BBLEP 2013.	2.49:1	Yes
GFA	22,412sqm (maximum) calculated based on permissible FSR under BBLEP 2013.	22,403sqm	Yes
Height	Variable maximum height limit of 44 metres, 39 metres and 32 metres.	Maximum building height proposed 52.6m (RL 74.4m); maximum plant room height 53.6m (RL 75.6m).	No – Refer to Note 7
BBDGP 2013			
Bicycle Parking	In every new building, where the floor space exceeds 600m ² GFA, bicycle parking equivalent to 10% of the	Total provided: 41 spaces (based on SEE)	Yes

Control	Required	Proposal	Complies
	required car spaces or part therefore as required in Table 1 shall be provided. Total required: 41 (403 car spaces required by DCP).		
Basement Access	Minimum clearance height of 4.5m for MRV.	Min 4.5m clearance provided to ground floor of car park.	Yes
Dwelling Layout	<ul style="list-style-type: none"> No doors to studies. No saddleback bedroom designs. Studies max 9sqm otherwise considered a bedroom. 	<ul style="list-style-type: none"> All study rooms include doors. Saddleback rooms are not proposed and windows are provided within all bedrooms. All studies are 9sqm or less. 	No - Refer Note 12 Yes Yes

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979 CONSIDERATIONS

Part 4 Division 2A – Special procedures concerning staged Development Applications

The Stage 1 Master plan consent DA-14/96 is the first of a Staged Development Application as per Section 83B of the Environmental Planning and Assessment Act. The subject application is a Stage 2 Development Application and as per the Section 83D(2) it cannot be inconsistent with the Stage 1 consent. Below is an assessment of the proposed development against the relevant requirements of the Stage 1 consent.

Table 2: Compliance with Stage 1 Consent Conditions

Condition Control	Required	Proposal	Consistent																
GFA and FSR (Condition 12)	GFA 22,412sqm FSR 2.49:1 Indicative Units 224	GFA: 22,403sqm FSR: 2.49:1 Units: 202	Yes																
Heights (Condition 15)	<table border="1"> <thead> <tr> <th>Tower No.</th><th>Maximum Podium Height</th><th>Maximum Building Height</th><th>Maximum Plant Room Height</th></tr> </thead> <tbody> <tr> <td>B2, B3</td><td>16.9m (RL35.9)</td><td>20.0m (RL42.0)</td><td>22.6m (RL44.6)</td></tr> <tr> <td>B1</td><td>10.7m (RL32.7)</td><td>26.2m (RL48.2)</td><td>28.8m (RL50.8)</td></tr> <tr> <td>B4</td><td>10.7m (RL32.7)</td><td>51.0m (RL73.0)</td><td>53.6m (RL75.6)</td></tr> </tbody> </table>	Tower No.	Maximum Podium Height	Maximum Building Height	Maximum Plant Room Height	B2, B3	16.9m (RL35.9)	20.0m (RL42.0)	22.6m (RL44.6)	B1	10.7m (RL32.7)	26.2m (RL48.2)	28.8m (RL50.8)	B4	10.7m (RL32.7)	51.0m (RL73.0)	53.6m (RL75.6)	<p>Tower B exceeds the maximum building height of RL 73m by proposing a building height of RL74.7m.</p> <p>Remaining towers proposed meet the RL's in the Consent. The maximum podium and plant room heights comply.</p>	No – Discussed in Note 7 below
Tower No.	Maximum Podium Height	Maximum Building Height	Maximum Plant Room Height																
B2, B3	16.9m (RL35.9)	20.0m (RL42.0)	22.6m (RL44.6)																
B1	10.7m (RL32.7)	26.2m (RL48.2)	28.8m (RL50.8)																
B4	10.7m (RL32.7)	51.0m (RL73.0)	53.6m (RL75.6)																
FFL Ground floor	FFL of GF apartments no greater than 1 metre above EGL	GF FFL is 1m above EGL.	Yes																

Condition Control	Required	Proposal	Consistent
(Condition 17)			
Separation (Condition 18)	In accordance with building envelope detail and building separation plans.	Building separation between Tower B and C requires 12.4 metres. The development proposes 12 metres.	No – Refer to Note 1
Podium height (Condition 19)	UB5E 5 storey podium for 6 storey towers, 3 storey podium for 8 storey and 16 storey towers and 3.6 metres FFL to FFL	Complies	Yes
Tower setbacks (Condition 23)	Min 4m setback for towers above a podium.	All towers setback 4m from edge of podium. Balconies encroach within 4 metre setback.	Yes
Tower Articulation (Condition 24)	Max protrusion of 500mm from building envelopes for the towers for a maximum of 50% of each façade.	The four facades of each tower have an average articulation outside the envelope of less than 50% except for Tower B. Tower A: 41% Tower B: 35.8% Tower C: 66.3% Tower D: 0%	Acceptable- Refer to Note 2
Podium Articulation (Condition 25)	Max protrusion of 500mm from building envelopes for the podiums for a maximum of 20% of each façade.	Minor protrusions for the ground floor apartment are up to 500mm outside envelope. Significant articulation provided through cuts in the podium particularly along the northern, eastern and western sides.	Refer to Note 2
Setbacks (Condition 26)	Podium and building setbacks to comply with setback hierarchy plan – 8m to Bunnerong Road, 12m to Westfield Drive, 4m to north and west.	<ul style="list-style-type: none"> Bunnerong Road: 9m Westfield Drive: 12m Northern: 4m Western: 4m 	Yes
Car Parking (Condition 29)	<u>Residential</u> 1 space / 1 bedroom (42 req) 1.5 space / 2 bedroom (143 req) 2 space / 3 bedroom (130) Total = 315 1 visitor space /10 (21) 22 car share spaces (10 in basements) across entire site (5 req) <u>Total spaces</u> 341 car spaces	<u>Residential</u> <ul style="list-style-type: none"> 319 spaces for apartments 21 visitor spaces 1 car share space Total spaces proposed = 341	Yes

Condition Control	Required			Proposal	Consistent
Dwelling Sizes (Condition 33)	Unit Type	Area	Size sq. m	Internal areas comply: 1 bed units: 65sqm 2 bed units: 85sqm-99sqm 3 bed units: 110sqm-126sqm External areas comply.	Yes
	One bedroom	Internal	65		
		External	12		
	Two bedroom	Internal	85		
		External	12		
	Three bedroom	Internal	50% of units per urban block 124 50% of units per urban block 110		
		External	24 for 124 sq. m units 15 for 110 sq. m units		
Unit Mix (Condition 34)	Unit Size	Proportion	Indicative Maximum Number of Units	1 bed – 20.8% 2 bed – 47% 3 bed – 32.1%	Yes
	Studios	N/A	0		
	One bedroom	Maximum 20 %	445		
	Two bedroom	50%	1,112		
	Three + bedroom	Minimum 30%	666		
	TOTAL		2,223		
Adaptable Units (Condition 35)	Minimum number of adaptable units: 51 plus units = 2 units, plus an additional 1 unit for each 30 units (req. 9 adaptable units)			Total number of adaptable units is 22.	Yes
Solar Access (Condition 36)	70% solar access to living rooms and private open space for minimum of 2 hours between 9am – 3pm in mid-winter			77% achieved.	Yes
	Podium communal open space minimum 2 hours solar access between 9am-3pm in mid-winter			More than 50% of COS receives greater than 2 hours of sun. Podium: 2 hours to 50%	

Note 1 – Separation Distances (Condition No. 18)

Condition No.18 of the Stage 1 Masterplan is worded as follows:

“The separation distances shall be provided in accordance with DWG No. A006 Building Envelope Detail prepared by PTW dated 29 April 2015 and DWG No. A007 Building Separation Plan prepared by PTW dated 29 April 2015.”

Figure 21 is DWG No. A007 demonstrating the approved building separation envelope for UB5E under Stage 1:

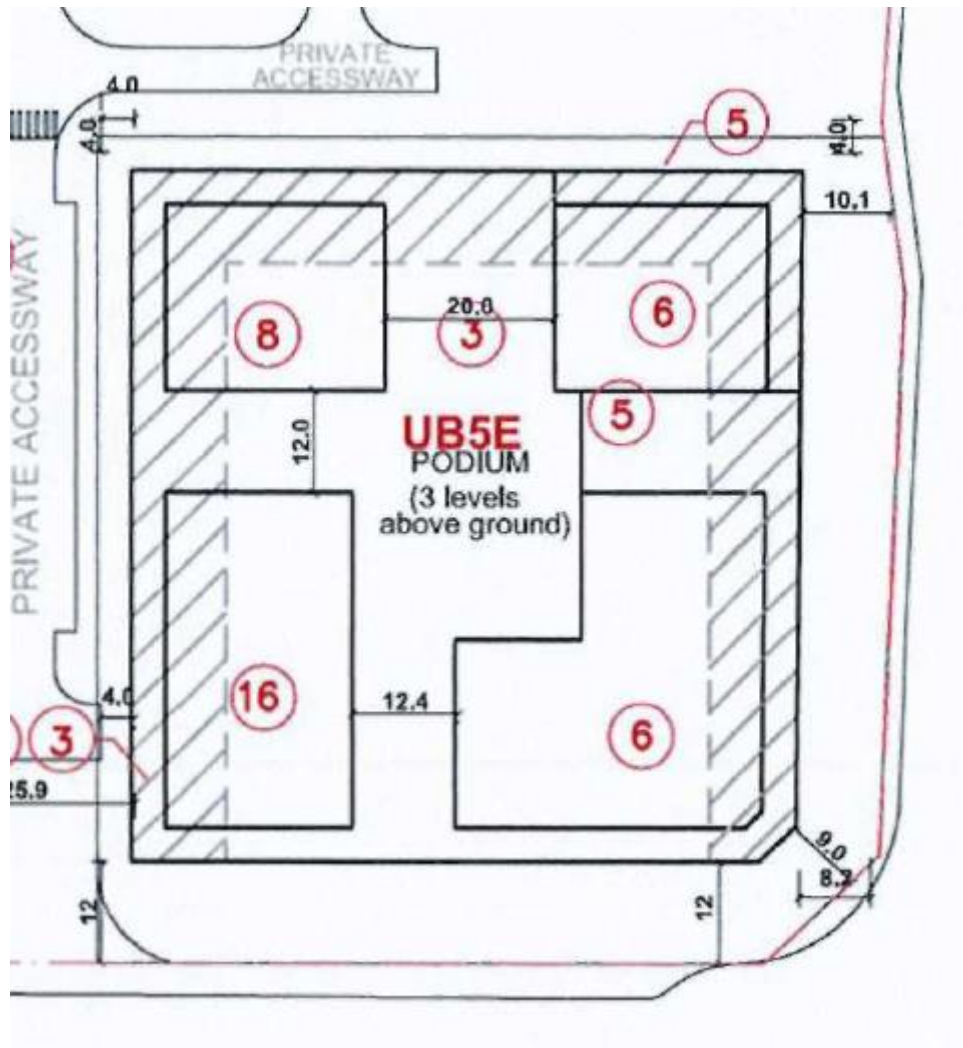


Figure 21: Approved Stage 1 Building Separation DWG No. A007

The Stage 1 consent approved a separation distance of 12 metres between Tower A and Tower B, 12.4 metres between Tower B and Tower C and 20 metres between Tower A and Tower D. The proposed development is generally consistent with the approved building separation distances. However, the proposal does not comply with the building separation between Tower B and Tower C (rear towers). The required separation distance is 12.4 metres while the development proposes a separation of 12 metres. The non-compliance is a variance of 400mm and is contained to a small portion of the building between a bedroom within B-504 and C-409 (and each respective level above in both towers). Figure 22 below demonstrates the non-compliance:

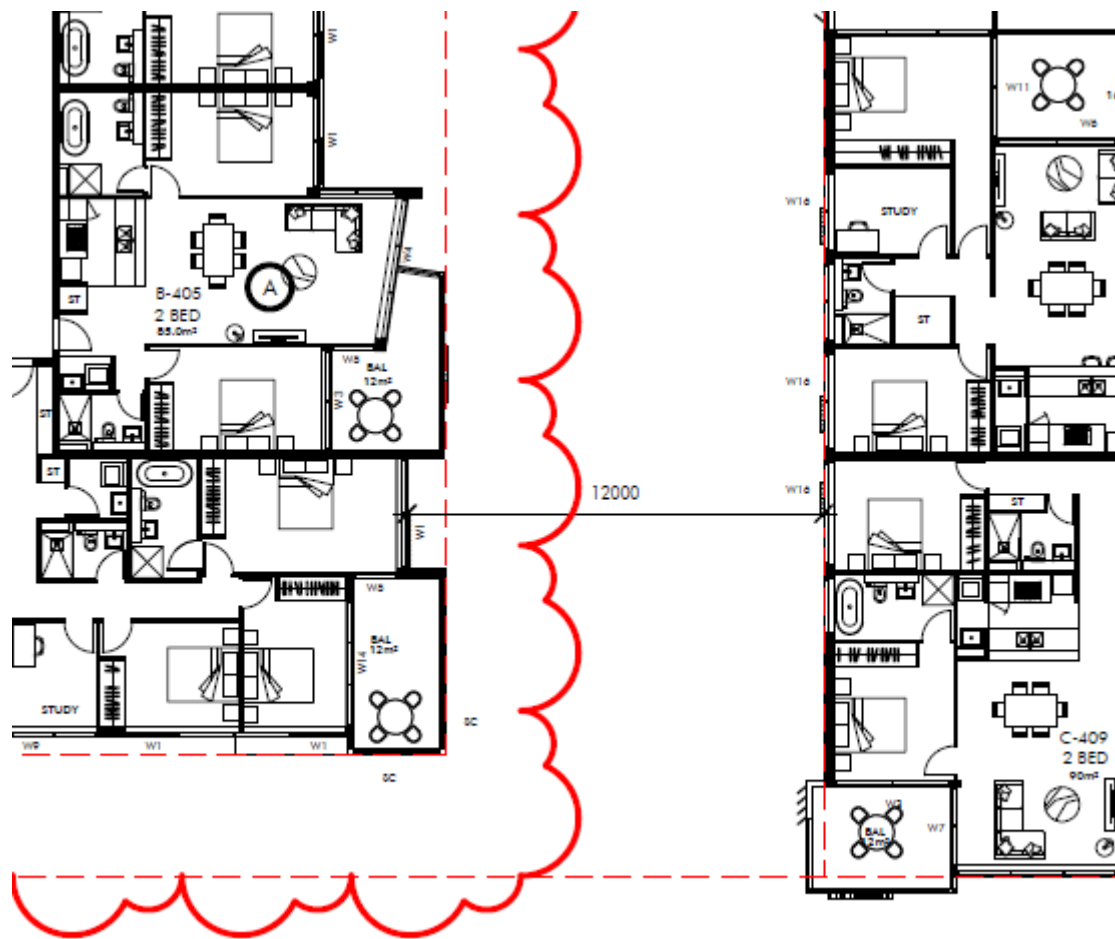


Figure 22: Proposed Internal Building Separation between Towers B and C

The applicant has justified the non-compliance by stating *‘that the 12 metre separation is contained within the subject bedrooms only. The additional 40cm separation would not be noticeable in built form or in terms of any privacy impacts. There is no additional GFA from the Stage 1 DA. The Masterplan GFA is 22,412sqm and is the same for the Stage 2 DA.’*

It is noted that the non-compliance is only contained in one small area of the building and measures an additional 400mm within both bedrooms. Council requested that the applicant provide a privacy treatment plan to demonstrate what measures are in place to mitigate any overlooking between the two towers. Sliding screens are proposed over the floor to ceiling windows to reduce the impact between the two units and redirect view lines from the bedrooms. This is demonstrated in the privacy plan in Figure 23 below.

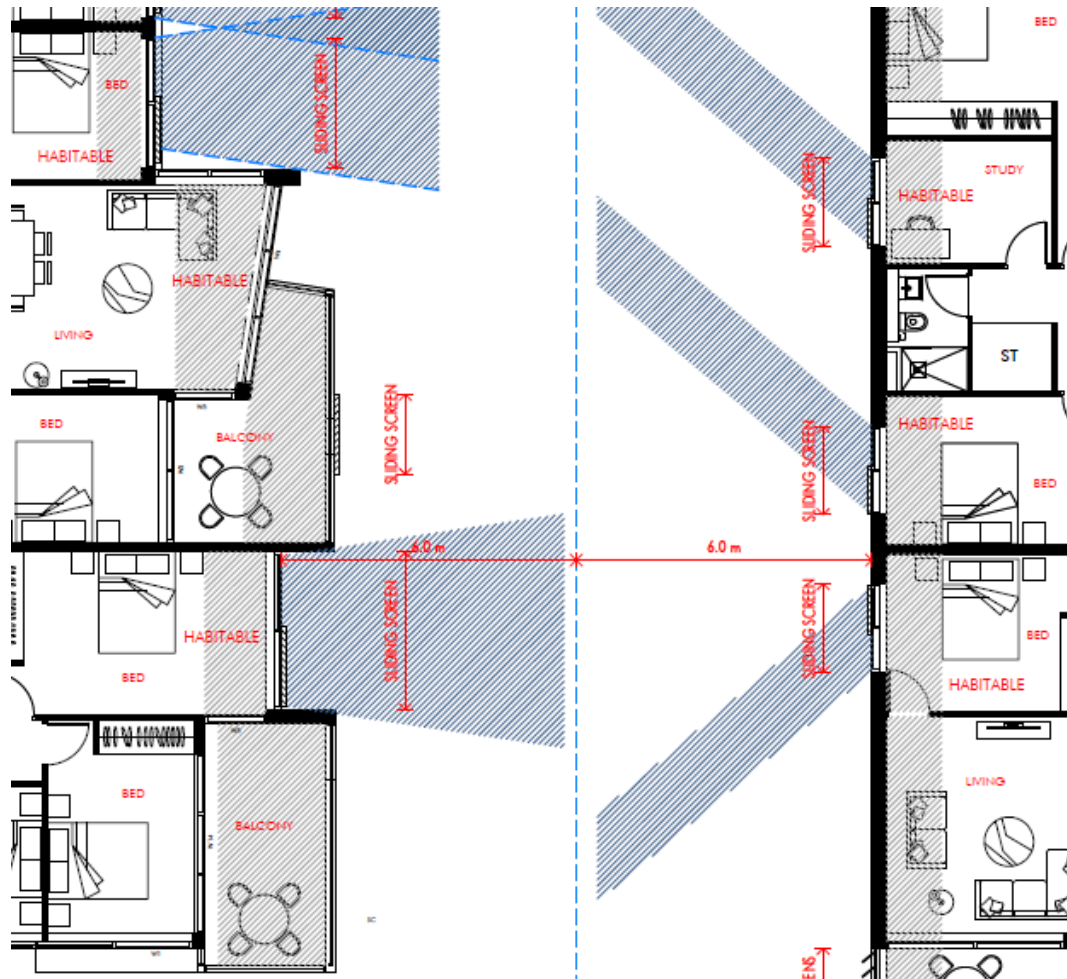


Figure 23: Privacy plan demonstrating the area of non-compliance

Although the site does not comply with the Stage 1 consent, the non-compliance allows for greater amenity within these bedrooms and greater circulation spaces within the area. Therefore, for the justification provided above, the minor non-compliance in this case is acceptable as it is limited to a small portion of the building and privacy measures have been proposed to mitigate any adverse visual privacy concerns.

In addition to the Stage 1 consent, the proposal does not meet the ADG minimum building separation distances at the podium level between the front to rear towers and the rear to rear towers as they provide a 10 metre separation when a 12 metre separation is necessary. The proposal does not comply with the 18 metre building separation for storeys between 5 to 8 storeys in height as it proposes 12 metres. The controls are acceptable as the non-compliances are a result of the approved building envelope approved in Stage 1 and demonstrated within A007.

Note 2 – Tower and Podium Articulation (Condition 24 and 25)

Condition Nos 24 and 25 of the Stage 1 Masterplan are worded as follows:

“24. A maximum protrusion of 500mm of balconies, blades, louvers and screening elements may protrude from the building envelope for the towers shown in Drawing No. A006 dated 29 April 2015. This is permitted for a maximum of 50% of each façade. This should be balanced by façade elements that setback from the envelope line as well, to ensure that the façade is not completely flush with building envelope and that there is substantial articulation.

25. A maximum protrusion of 500mm of balconies, blades, louvers and screening elements may protrude from the building envelope for the podiums shown in Drawing No. A007 dated 29/04/2015. This is permitted for a maximum of 20% of each façade. This should be balanced by façade elements that setback from the envelope line as well, to ensure that the façade is not completely flush with building envelope and that there is substantial articulation.”

The applicant has provided a building articulation plan (Figure 24) to demonstrate the areas of protrusion and recessive zones. The areas highlighted in red are the protrusion zones and the areas highlighted in green are the proposed recessive zones for both the towers and the podium. As demonstrated in the plan, the areas of recession are greater than the areas of protrusion. It is clear that Tower B proposes greater articulation on each façade which is contributed to the balconies extending over the setback envelope approved in Stage 1.

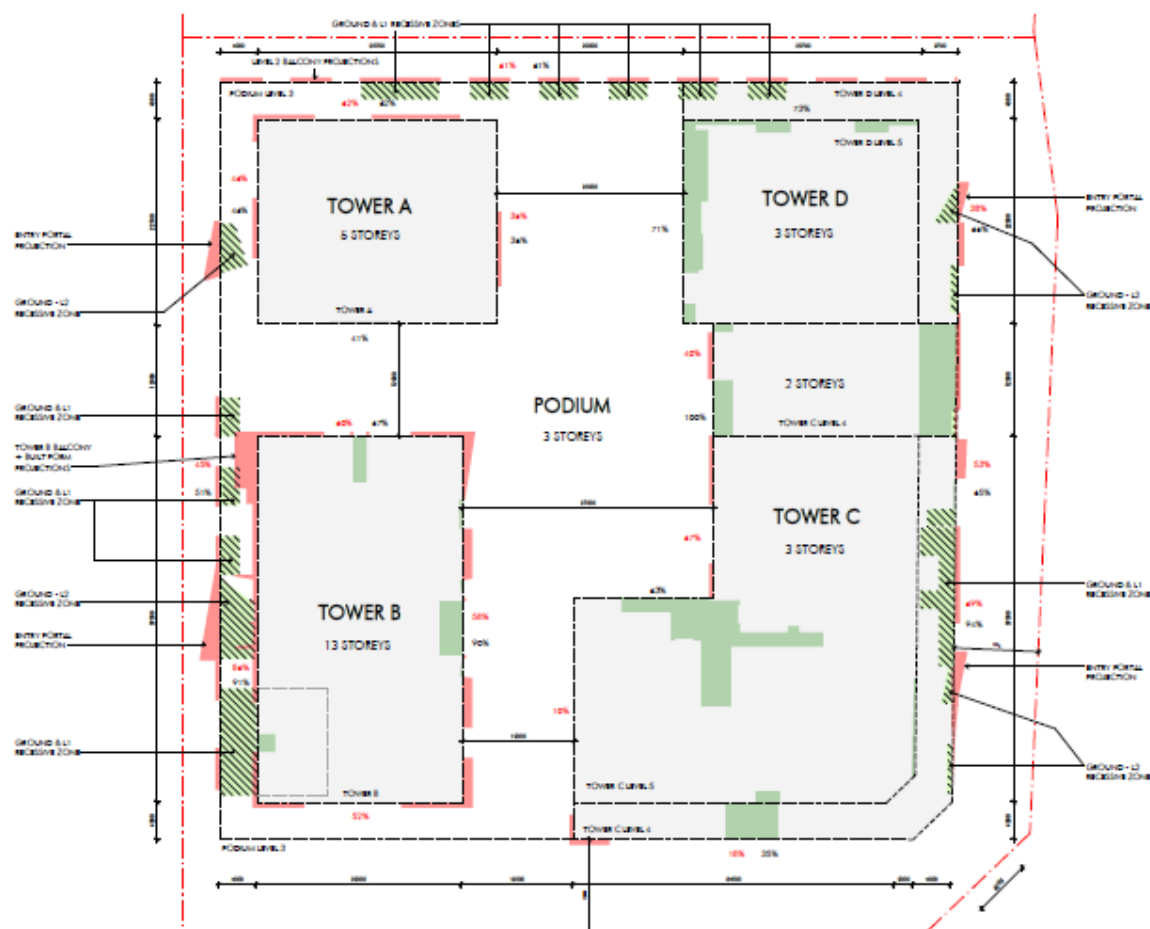


Figure 24: Building Articulation Plan

The proposal provides the following average articulation breakdown for the towers and the podium:

Podium: 41% average articulation
 Tower A: 35.8% average articulation
 Tower B: 66.3% average articulation
 Tower C: 22.9% average articulation
 Tower D: 0% average articulation

Overall: 46.12% average articulation

The proposal meets the objective of the conditions to provide articulation and the meaning of 'façade' in the condition could be interpreted as meaning the combination of the 4 faces of each tower. Using this meaning for 'façade' the proposal achieve the maximum 50% articulation outside the approved envelope for the entire site. This is acceptable in this case.

Part 4 Division 5 – Special procedures for integrated development

The relevant requirements under Division 5 of the EP&A Act and Part 6, Division 3 of the EP&A Regulations have been considered in the assessment of the Development Application.

The Development Application was considered Integrated Development in accordance with the Water Management Act 2000 as the development is deemed to be an Aquifer Interference Activity.

In this regard, the Development Application was referred to Water NSW. In a letter dated 2 September 2016, Water NSW provided comments stating the following:

"It is understood that the current application includes a single basement level and that the probable bulk excavation required for that proposed substructure is not likely to intersect groundwater based on the information provided. Council is advised that, apart from requiring development consent, the project as it has been presented does not require a specific authorisation under water management legislation."

Therefore, the proposal is acceptable.

SECTION 79(C) CONSIDERATIONS

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

(a) Provisions of any Environmental Planning Instrument (EPI), draft EPI and Development Control Plan (DCP)

State Environmental Planning Policy (Infrastructure) 2007

The provisions of State Environmental Planning Policy (Infrastructure) 2007 have been considered in the assessment of the Development Application.

As per Schedule 3 of State Environmental Planning Policy (Infrastructure) 2007, the proposed development is 'traffic generating development' as it includes 75 dwellings or more and has access to a road that connects to a classified road. Accordingly, Clause 104 'Traffic Generating Development' applies to the DA which requires the RMS be notified. In a letter dated 24 August 2016, the RMS was notified of the DA.

Council received a response in a letter dated 23 September 2016, that raised no objection to the proposed development, subject to comments for Council to consider in the assessment. These comments were that the development shall comply with the Masterplan and the Botany Bay DCP 2013 and that all buildings and structures shall be wholly within the freehold property. These comments have been considered in the assessment.

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

The provisions of SEPP 55 have been considered in the assessment of the Development Application, along with the requirements of Part 3K of the Botany Bay Development Control Plan 2013 relating to Contaminated Land. Clause 7 of SEPP No. 55 requires Council to be certain that the site is or can be made suitable for its intended use at the time of determination of an application.

The Stage 1 consent included the following documents relating to site contamination:

- Detailed Site Investigation Report ref: 71631.11 Revision O dated 4 September 2013 prepared by Douglas Partners; and
- Updated Remedial Action Plan ref: 71631.12 Revision O dated 4 September 2013 prepared by Douglas Partners.

As part of the subject Development Application, a Site Validation Assessment and Site Audit Statement were submitted in relation to UB5E. The site validation assessment and remedial action plan is consistent with the assessment under Stage 1 consent. Both reports demonstrate that the site is suitable for residential development.

Council's Environmental Scientist has reviewed the application and raised no objection subject to appropriate conditions which have been included in the consent.

Given the above, Council is certain the site is suitable for its intended use at the time of the determination of this application. Therefore, the proposed development satisfies the relevant provisions of SEPP No. 55.

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

The provisions of State Environmental Planning Policy No. 65 'Design Quality of Residential Apartment Development' have been considered in the assessment of the Development Application.

Clause 28 – Determination of development applications

Architectural Design Competition

Clause 28(5) stipulates that a consent authority is not required to obtain advice of a Design Review Panel if an architectural design competition has been held in relation to the proposed development.

In accordance with the Stage 1 consent, the subject application underwent an architectural design competition that was consistent with the Design Excellence Guidelines. The winning architect was Nettleton Tribe. The design competition incorporated both UB5E as well as UB4 immediately to the north. The proposed development as lodged with the development application was not consistent with the winning scheme from the competition. Council did not support these changes and requested the applicant to amend the plans reverting back to the winning design. The unsupported changes that were proposed modifying the winning scheme related to the following elements:

- Building cut/indentation on the northern façade deleted;
- Building cut/indentation on the western façade deleted;
- Ground Floor apartments replaced 2 storey town house apartments;
- Materials on the main tower and podium were removed and modified;
- Materials along the Bunnerong Road street wall were removed.

Amended plans were provided on 9 November 2016 and 4 January 2017 demonstrating that the amended proposal has reverted back to the winning design. As the amended design is generally consistent with the winning scheme from the competition, Council has not obtained advice from a Design Review Panel for this application.

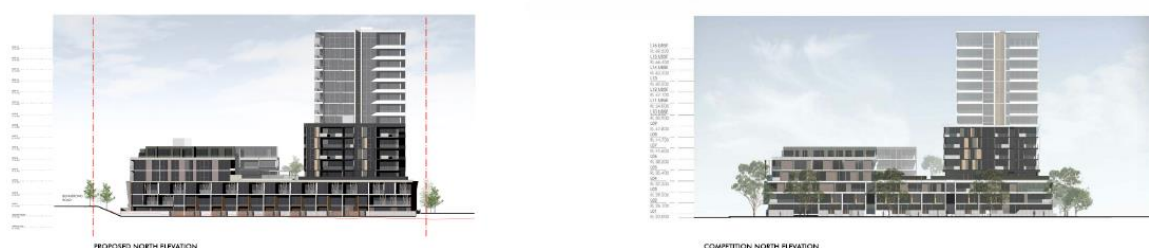


Figure 25: Northern Elevation of the proposal (left) and the winning scheme (right)

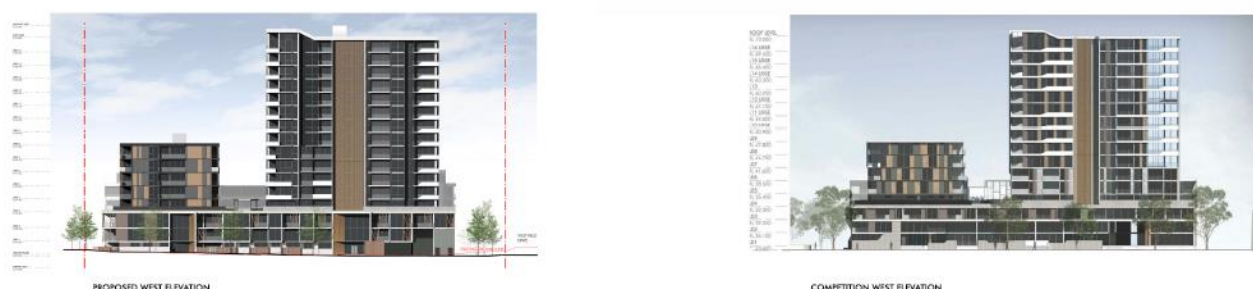


Figure 26: Western Elevation of the proposal (left) and the winning scheme (right)

Below are the key juror's comments to the winning design and how these comments have been addressed in the proposed development:

Table 3: Assessment of Architectural Design Competition Juror's comments

Key Jurors Comments (Opportunities for refinement)	Proposal
The potential additional height is outside of the conditions of consent and is not permissible.	The proposal does not comply with the jurors comments as the proposal exceeds the maximum building height stipulated within the Stage 1 consent. A Clause 4.6 variation has been provided to justify the variance to the development standard.
Attention should be given to minimising the number of 'no sun' units (15% maximum).	The number of apartments that do not receive any sunlight is no more than 15%.

Key Jurors Comments (Opportunities for refinement)	Proposal
Waste collection within the basement layouts needs to be considered in greater detail.	Details have been provided in relation to the waste collection. Service bays are located on the ground car parking level near the entrance to the car park. Holding rooms are adjacent to the service bay.
Additional thought could be given to solar control for the towers, with a simple and elegant solution that can be adapted to the specific conditions of each apartment through further modelling.	Modelling was provided with the Stage 1 assessment. The towers in particular Tower B allows for compliance with the solar requirement. Other mechanisms of solar control have not been proposed.
It is advised that the applicant investigate the possibility of roof top communal open spaces on the lower parts of the towers to UB5E and UB4.	There is a rooftop garden on small portion between Building C and D. The rooftop garden is inaccessible. The rooftop of the towers does not contain communal open space as adequate amount of space has been provided on the podium level.
Typical apartment layouts have been provided, however it would have been ideal to see the entire arrangement of typical and atypical layouts located together on a floor plan, to adequately address any issues which may come from wide and deep apartment layouts.	Apartment layouts have been provided with the proposal.
Cross Ventilation and Solar Access are to comply with the conditions of consent.	Cross ventilation and solar amenity comply with the requirements within Stage 1 consent.
Attention is to be given to the townhouse layouts to increase amenity to the study desk at the top of the staircase, which currently does not receive any natural light or air.	There is no townhouse developments proposed as part of the proposal.
There is potential to	The proposal contains windows within the corridors to

Key Jurors Comments (Opportunities for refinement)	Proposal
investigate the opportunity for light wells/atria to pierce through the podium corridors to provide increased amenity to residents.	allow for natural light and ventilation. There are no light wells or atriums proposed as part of the development.
Consideration should be given to a screen element to address the Westfields elevation of the car park podium.	The proposal provides screening along the rear podium level facing Westfield Drive. This is considered acceptable.

Design Quality Principles and Apartment Design Guide

Clause 28(2) stipulates that development consent must not be granted if, in the opinion of the consent authority, the development does not demonstrate that adequate regard has been given to the design quality principles and the objectives specified in the Apartment Design Guide for the relevant design criteria.

The applicant has submitted an assessment against Part 3 and 4 of the ADG and has demonstrated that adequate regard has been given to the design quality principles and objectives specified in the ADG for the relevant design criteria. An assessment against Part 3 and 4 of the ADG has been provided in Annexure A. An assessment of any significant non-compliance is provided in detail below.

Clause 30(1) of SEPP 65 states that if a Development Application satisfies the following design criteria, the consent authority cannot refuse an application because of those matters. These are car parking, internal area of each apartment and ceiling heights.

The proposed development complies with the car parking rates as stipulated in the Stage 1 consent and far exceeds the minimum internal apartment sizes. The proposed development meets the minimum ceiling height provisions with the exception of the floor-to-ceiling heights at the ground floor for mixed use developments.

The non-compliances with the proposal are detailed below:

Note 3 – Ceiling Heights

Part 4C of the ADG relates to the design criteria for ceiling heights. The proposal complies with the minimum ceiling height for habitable and non-habitable rooms however does not comply with the minimum 3.3 metres ceiling height for ground and first floor levels to promote the flexibility of use due to the site being located within the B4 Mixed use zone.

Similar to what was approved at Urban Block 5W, the ground and first floor apartments of the development provide a floor to ceiling height of 2.7 metres. The Stage 1 consent approved plans includes Section drawing (Section H-H) of UB5E which demonstrate a 3.1 metre floor to floor distance for both the ground and first floor levels. This equates to approximately 2.7 metres floor to ceiling height which the current proposal provides. The Stage 1 consent establishes the prescribed height for the site and the developments. Given that compliance with the minimum ceiling height control would increase the height limit approved in Stage 1, it is not possible to provide increased ceiling heights to the ground and first floor.

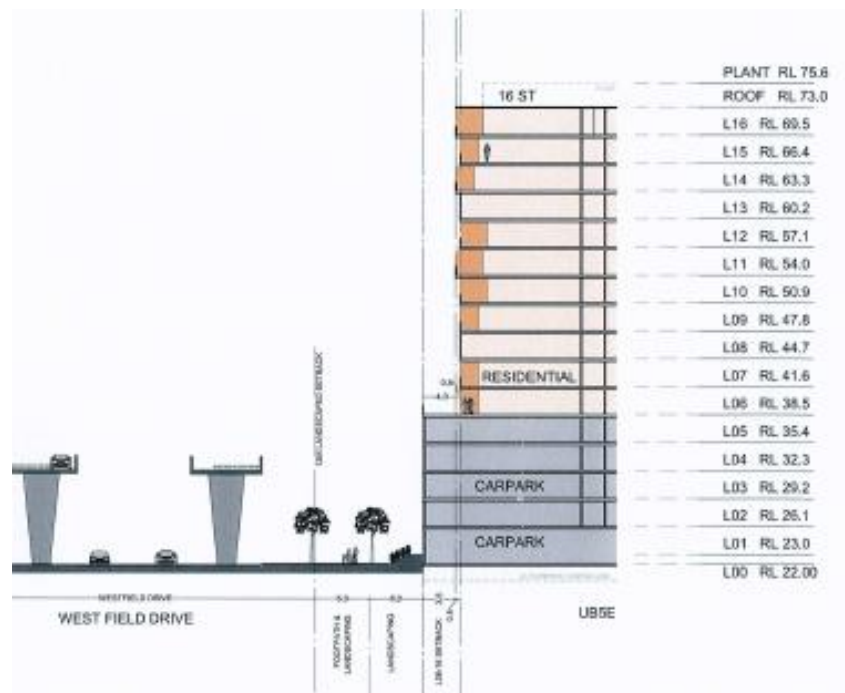


Figure 27: Stage 1 approved floor to floor heights (Section H-H)

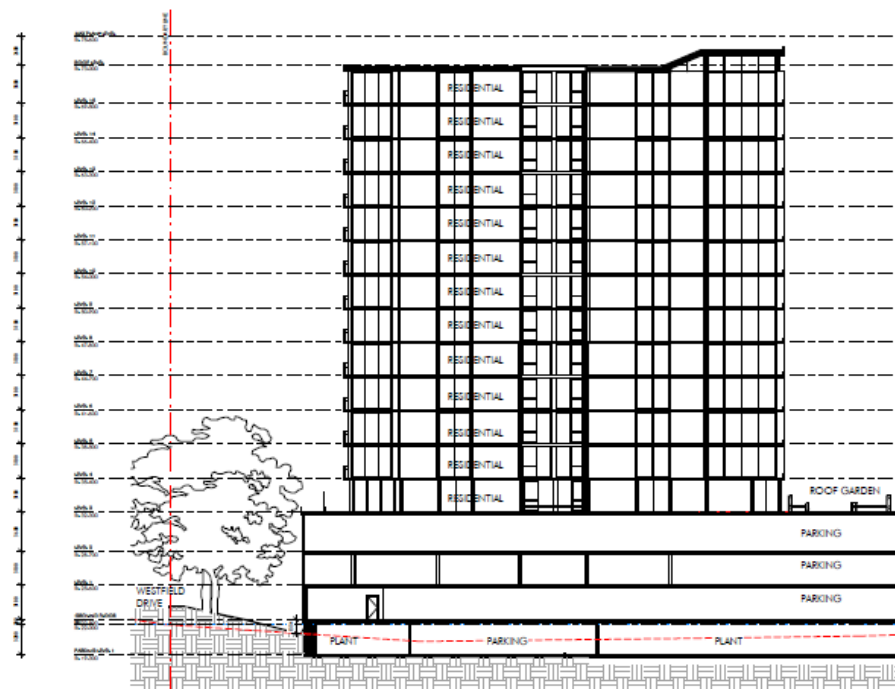


Figure 28: Proposed Section of floor to floor heights

It is key to note that the Stage 1 consent has only approved retail in UB5C up to a maximum of 5,000sqm. The subject site did not approve any retail within the building envelope and the development is wholly residential. Therefore it is not anticipated that the ground and first floor of the development will be converted to retail. Given the above justification, the proposed non-compliant ceiling heights are acceptable.

Note 4 – Study rooms without a window

Part 4D – Apartment size and layout of the ADG requires every habitable room to have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. The proposal is generally consistent in this control however four of the apartments contain separate study rooms that do not contain windows. The non-compliances are located in the north-eastern ground floor apartment and within Apartment C-307, C-407 and C-507. The below figures demonstrate the non-compliance to this design criteria. Given that the non-compliance is quite minor and the external wall could accommodate windows within each of the rooms, a condition has been recommended to provide at least one window with a size at least 10% of the floor area of the room, to satisfy this requirement.

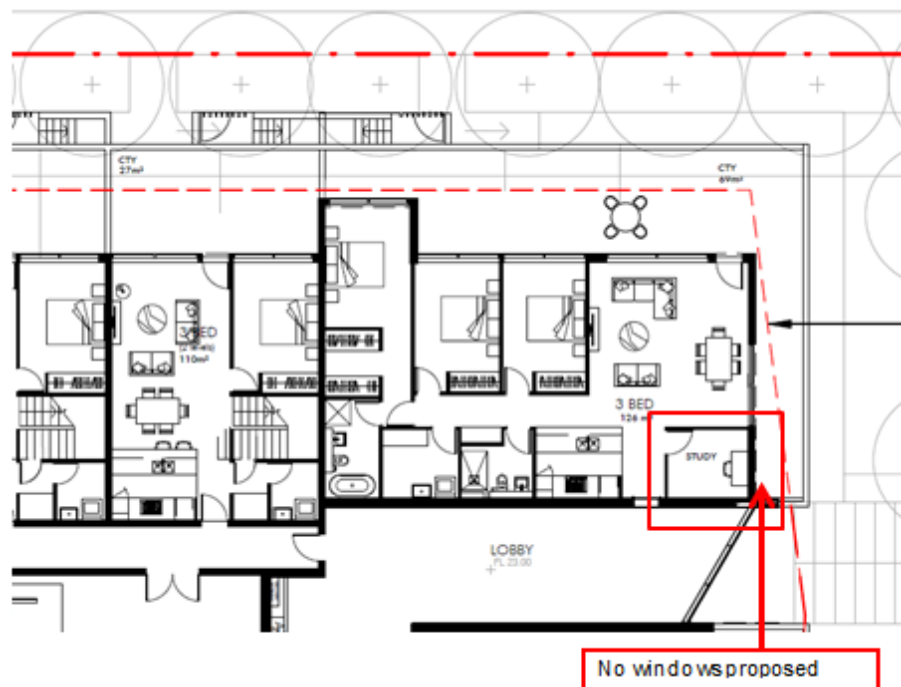


Figure 29: Ground floor north-eastern apartment with study

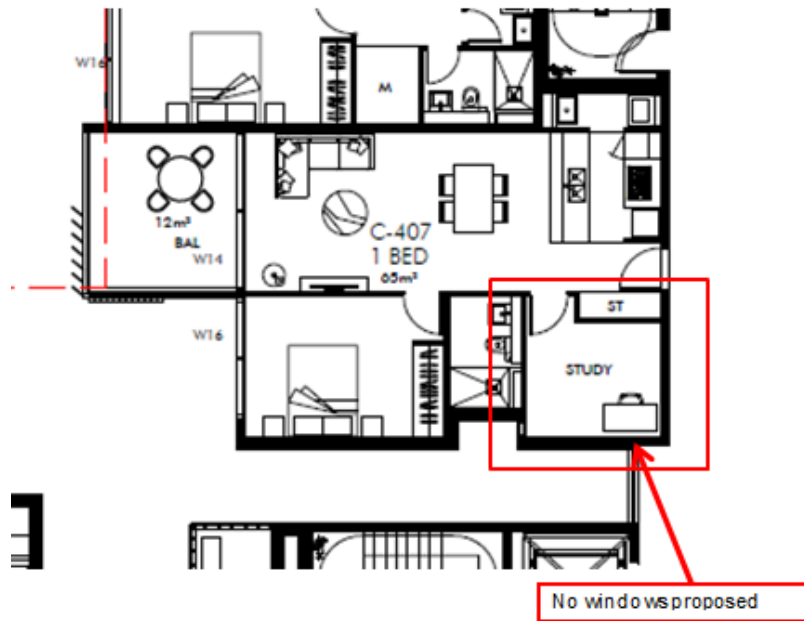


Figure 30: Apartment C-407 with no window in study, similar in C-307 and C-507

Note 5 – Lift Cores

The Design Criteria to Objective 4F-1 requires that for buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40. The proposal is one lift short of the requirement for Tower B. A breakdown of the number of units that are accessed by each lift core is detailed as follows:

- Tower A – 18 apartments in podium, 20 apartments in tower = Total 38 apartments / 1 lift proposed, 1 lift required.
- Tower B – 6 apartments in podium, 82 apartments in tower = Total 88 apartments / 2 lifts proposed, 3 lifts required.
- Tower C – 13 apartments in podium, 31 apartments in tower = Total 44 apartments / 2 lifts proposed, 2 lifts required.
- Tower D – 15 apartments in podium, 17 apartments in tower = Total 26 apartments / 1 lift proposed, 1 lift required.

The non-compliance relates to Tower B which exceeds the maximum number of units for two lift cores by 8 units. On Level 1 and 2, the internal corridors link Tower A and B. Tower A currently proposes 38 apartments therefore it is currently under capacity and can be utilised in addition to the two lift cores in Tower B. As the number of additional units is only slightly over the lift core requirement, it is not considered that the lift quality for each tower will be impeded. Therefore, the non-compliance with the maximum number of apartments sharing a single lift is acceptable.

Note 6 – Storage

The Design Criteria for Objective 4G requires that at least 50% of storage for each apartment is to be accommodated within the apartment. There are a number of units that contain storage in close proximity to the entrance however do not meet the 50%

requirement. Additionally, a number of units in Level, Unit B-301, Unit B-401, Unit B-501 and Units B-601 and B-701 do not comprise of any storage within the apartment. This is not acceptable.

The size of the apartments has been approved under Stage 1 to be larger than the minimum requirements under the ADG. Therefore, there is space within the unit to accommodate for storage to satisfy the requirement. A condition has been recommended in the consent requiring all units to comply with the design criteria for storage within the apartment. The basement car park level plan demonstrates that there is ample amount of space for the remaining storage facilities.

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

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies to the proposed development. The Development Application was accompanied by BASIX Certificate No. 739841M prepared by Efficient Living Pty Ltd committing to environmental sustainable measures.

Botany Bay Local Environmental Plan 2013

The provisions of the Botany Bay Local Environmental Plan 2013 (BBLEP 2013) have been considered in the assessment of this Development Application and the following information is provided:

Table 4: BBLEP 2013 Compliance

Principal Provisions of BBLEP 2013	Complies Yes/No	Comment
Land use Zone	N/A	The site is zoned B4 Mixed Use under the BBLEP 2013.
Is the proposed use/works permitted with development consent?	Yes	The proposed residential flat building is permitted with consent in the B4 zone.
Does the proposed use/works meet the objectives of the zone?	Yes	The proposed development is consistent with the following objectives in the BBLEP 2013: <ul style="list-style-type: none"> <i>To provide a mixture of compatible land uses.</i> <i>To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.</i>
Does Clause 2.5 and Schedule 1 – Additional Permitted Uses apply to the site?	N/A	Clause 2.5 does not apply to the subject site.
What is the height of the building?	No - Refer to	Variable maximum height limit of 28 metres, 31 metres and 44 metres

Principal Provisions of BBLEP 2013	Complies Yes/No	Comment
	Note 7	<p>across UB5E.</p> <p>Does not comply as follows:</p> <p><u>Tower A</u> Roof – RL 48.2m roof level minus lowest EGL below RL 21.3m = 26.9m Plant – RL 50.8m plant minus lowest EGL below RL 21.5m = 29.3m Tower A complies</p> <p><u>Tower B</u> Roof – RL 74.7m roof level minus lowest EGL below RL 22.1m = 52.6m Plant – RL 75.6m plant minus lowest EGL below RL 22m = 53.6m Tower B does not comply</p> <p><u>Tower C</u> Roof – RL 42m roof level minus lowest EGL below RL 20.8m = 21.2m Plant – RL 44.6m plant minus lowest EGL below RL 21.5m = 23.1m Tower C complies</p> <p><u>Tower D</u> Roof – RL 42m roof level minus lowest EGL below RL 21.3m = 20.7m Plant – RL44.6 plant minus lowest EGL below RL21.5 = 23.1m Tower D complies</p>
What is the proposed FSR?	Yes	Maximum FSR is 3:1 (27,033sqm). Proposed FSR is 2.49:1 (22,403sqm) which complies.
Is the land affected by road widening?	N/A	The subject site is not identified as being 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 identified as a Heritage Item or within a Heritage Conservation Area.
The following provisions in Part 6 of the LEP apply to the development:		
6.1 – Acid sulfate soils (ASS)	Yes	The site is not identified as being affected by ASS. Regardless, the

Principal Provisions of BBLEP 2013	Complies Yes/No	Comment
6.2 – Earthworks	Yes	<p>Stage 1 consent includes a condition which requires that every Stage 2 application include an ASS Management Plan.</p> <p>In accordance with the Stage 1 consent, an ASS Management Plan prepared by Consulting Earth Scientists was submitted with the application. Council's Environmental Scientist has reviewed the plan and raised no objection subject to conditions which have been included in the consent.</p> <p>The proposed development proposes one basement level. Proposed excavation is approximately 2 metres below the existing ground level. The amount of excavation is acceptable.</p> <p>The application has been referred to the Water NSW who has advised that the development will not encounter ground water. In the event that ground water is encountered, a dewatering application is required.</p>
6.3 – Stormwater management	Yes	<p>The Development Application involves an underground On Site Detention system located within the basement car park towards the south western side of the site. The proposal has been reviewed by Council's Development Engineer who raised no objection subject to conditions which have been included on the consent.</p>
6.8 - Airspace operations	Yes	<p>The subject site lies within an area defined in the schedules of the Civil Aviation (Buildings Control) Regulations that limit the height of structures to 50 feet (15.24 metres) above existing ground height without prior approval of the Civil Aviation Safety Authority. The application proposed buildings above this maximum height and was therefore referred to Sydney Airports Corporation Limited (SACL) for</p>

Principal Provisions of BBLEP 2013	Complies Yes/No	Comment
6.9 – Development in areas subject to aircraft noise	Yes	<p>consideration.</p> <p>CASA provided comments dated 23 January 2017 stating that they have no objection to the development providing it does not exceed RL 91.0m. The development falls beneath this height.</p> <p>The subject site is not affected by Aircraft Noise. Regardless, the Stage 1 consent includes a condition which requires that every Stage 2 application include an Acoustic Report addressing AS2021-2000 and BBDCP 2013 Part 9D.</p> <p>In accordance with the Stage 1 consent, an Acoustic Report prepared by SLR was submitted with the application. Council's Environmental Health Officer has reviewed the report and raised no objection subject to conditions which have been included in the consent.</p>
6.16 – Design excellence	Yes	<p>The proposed design has been the subject of an Architectural Design Competition. This is discussed further in the report.</p> <p>The Applicant has adequately addressed the Jurors comments of the winning scheme and the proposed development other than the height issue.</p>

Note 7 – Clause 4.6 Variation to Height of Buildings

The site contains four towers with three of the towers compliant with the BBLEP 2013 requirement. The maximum building height of Tower B exceeds the development standard. The proposal will adopt a maximum building height of RL 74.7 metres.

A breakdown of the heights for Tower B proposed is as follows:

- Podium height: 7.3 metres (RL 32.7m)
- Top of the building: 52.6 metres (RL 74.7m)
- Top of the plant cores: 53.6 metres (RL 75.6m)

Clause 4.3 of BBLEP 2013 specifies that the height of a building may not exceed the maximum height specified on the relevant Height of Buildings Map. The site is subject to a variable height limit of 32-44 metres. The proposed development

exceeds the maximum height allowance when measured in accordance with the BBLEP definition of building height.

Clause 4.6 provides flexibility to vary the development standards specified within the LEP where it can be demonstrated that the development standard is unreasonable or unnecessary in the circumstances of the case and where there are sufficient environmental grounds to justify the departure. Clause 4.6 states the following:

(2) Consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument...

(3) Consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

(a) That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and

(b) That there are sufficient environmental planning grounds to justify contravening the development standard.

The Applicant has provided a Clause 4.6 variation to justify contravening the height standard. Their justification is provided below:

'The proposed development exceeds the maximum height allowance when measured in accordance with the BBLEP definition of building height, primarily from the outcome of the winning design from the required design competition and the approved masterplan applying to the site.

Pursuant to Clause 4.3 of the BBLEP 2013 and the accompanying height map, a maximum height "standard" of 44 metres applies to the site. The BBLEP 2013 defines height as:

Building height (or height of building) means:

a) In relation to the height of a building in metres – the vertical distance from ground level (existing) to the highest point of the building, or

b) In relation to the RL of a building – the vertical distance from the Australian Height Datum to the highest point of the building,

including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.

The proposed development involves the construction of a mixed use development involving part 3 storey and part 5 storey podium building, with four towers above, being Buildings A-D. The towers range in height from 6 to 16 storeys. While the podium and Towers A, C and D sit within the 44 metre height standard, Tower B has a maximum height of 52.6 metres.

The original potential to exceed the nominated LEP building heights for the Bunnerong Road site was thoroughly explored in the consideration of the Stage 1 masterplan proposal. As part of that assessment, it was accepted that the southern part of Urban Block 5E is suitable for a taller building, exceeding the height limit.

In addition to this, the conditions of the masterplan required a design competition to be held so that buildings were not all the same. A design competition was held with Council having a representative on the judging panel and Council staff at the

presentation of each entry. The winning design incorporated a roof element to break up the heights by elevating a corner element. It is this corner element that exceeds the height limit by 1 metre as shown.



Architectural Cross Section



Design Competition Height

Importantly, there is no increase in floor area from the architectural feature.

Other than the height variation for the design competition, the proposed building heights are entirely consistent with the Stage 1 development consent, as detailed in Table 12 below:

Table 12: Building Height:

Building	Stage 1 Storeys Approved	Stage 1 Maximum Approved RL	Proposed Storeys	Proposed Maximum RL	Compliance with Stage 1

A	8	28.8m	8	27m	Yes
B	16	53.6m	16	52.6m	No
C	6	22.6m	6	21m	Yes
D	6	22.6m	6	21m	Yes
Podium	3/5	10.7m/16.9m	3/5	10.7m/16.9m	Yes

Is compliance necessary and reasonable

The minor variation for the design competition provides a significant improvement for the built form. Proposed heights for the remainder of the buildings have been developed through an extensive master planning process and have already been approved as part of a Stage 1 Development Consent, which involved extensive shadow analysis and built form assessment. In respect of the design competition that had Council heavily involved with, and there being no public or private amenity, it is deemed unnecessary and unreasonable change the height on this occasion.

Are there sufficient environmental planning grounds for the variation?

The justification for the breach in the height limit is based on two key principles as follows:

Preferred Urban Design outcome for the Bunnerong Road site

In terms of the masterplan approval heights, the consideration of a comprehensive site analysis and review of the site attributes and surrounding context were undertaken by Council and their external consultants to arrive at this design outcome. The southern part of the site was identified as the least sensitive part of Bunnerong Road being physically and visually separated from existing low density residential development to add extra height. Adjoining uses of the Westfield Eastgardens shopping centre to the south required an elevated position to improve residential amenity in the towers on top above ground parking, which is a very unique situation.

With respect to the design competition, the smaller roof element that exceeds the height was considered suitable by the design jury members that also included Council representation.

Above ground car parking to address the interface with the Westfield Eastgardens Loading Area

Building heights have been raised above the specified LEP height limits in this portion of the site to allow for above ground car parking. The southern part of the Bunnerong Road site is situated opposite the Westfield Eastgardens Shopping Centre. Loading and servicing facilities are provided at this side. Podium level car parking is proposed to the south of the proposed development to address Westfield's loading / servicing area. This part of the site is undesirable for low level apartment buildings given potential land use conflicts between future residential uses and loading activities. All proposed south facing apartments are elevated above the proposed car parking levels with the tower elements of the development. The added height from the design competition winning entry provides a roof element other than a flat roof.

The additional height allows for the floorspace envisaged by the LEP to be realised on the site (3:1). This could not otherwise be achieved given the incorporation of above ground car parking as proposed.

Clause 4.3 Objectives

Clause 4.3 sets out the objectives of the maximum building height development standard. The consistency of the proposed development with these objectives is set out in Table 13 below.

Table 13: Height Objectives

Objectives – Height of Buildings	Proposal
(a) To ensure that the built form of Botany Bay develops in a coordinated and cohesive manner.	The height of the buildings in this Development Application are consistent with the masterplan and the design competition outcomes. Both were outcomes of intensive analysis to ensure Botany Bay continues to develop in a coordinated and cohesive manner. Above ground parking is proposed to address the interface with the Westfield Eastgardens loading area.
(b) To ensure the taller buildings are appropriately located.	<p>The tallest height of all buildings approved under the Masterplan were located against the Westfield Shopping Centre to have consistent bulk, scale and height. Regarding Urban Block 5E, building height is much less than that found in Blocks 5C and 5W. Within Block 5E there is a further tapering of building height from the western boundary to Bunnerong Road to address overshadowing of neighbouring development along the eastern side of Bunnerong Road. In this instance, the building heights are consistent with the masterplan approval.</p> <p>The design competition height is an element to provide interest to one part of a building and was considered acceptable to the jury which Council was represented on.</p> <p>Consistent with the Stage 1 masterplan consent for the Bunnerong Road site, the proposal will facilitate the development of the tallest buildings within the southern portion of the site adjacent to Westfield Eastgardens, allowing for the gradual transition in height down to the north where the Bunnerong Road site interfaces with residential uses.</p>
(c) To ensure that building height is consistent with the desired future character of an area.	The approved masterplan establishes the building heights as being the desired future character. Building heights are consistent

	<i>with the masterplan, as is the design winning entrant consistent with the building height for that component creating visual interest to the area.</i>
<i>(d) To minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development.</i>	<p><i>The building heights and that component for the design competition continues to allow for a high level of residential amenity and complies with the requirements of the Stage 1 masterplan consent and the ADG with respect to solar access and cross ventilation.</i></p> <p><i>Given the extensive 70m width between the buildings on the podium and the building line of dwelling houses along the eastern side of Bunnerong Road, no additional overshadowing or loss of privacy, views will take place than that already considered when the masterplan was approved.</i></p>
<i>(e) To ensure that buildings do not adversely affect the streetscape, skyline or landscape when viewed from adjoining roads and other public places such as parks, and community facilities.</i>	<p><i>Building heights were analysed intensively during the masterplan approval. Buildings remain consistent with the masterplan as does the winning entry of the design competition.</i></p> <p><i>The proposed development will make a positive contribution to the streetscape. Buildings have been designed to a high standard and comprise good quality materials and finishes.</i></p>

As illustrated in the table above, the proposed development does not conflict with the objectives of clause 4.3 of the LEP.

Summary

The proposal is considered appropriate and consistent with the objectives and intent of Clause 4.3 of the LEP. Strict compliance with the LEP in this case is considered to be unreasonable and unnecessary as follows:

- Through the Stage 1 masterplan application, the Bunnerong Road site has been assessed as being suitable for more intensive development than would normally be achievable under the LEP, noting the building height limits that apply.*
- The proposal is entirely consistent with the maximum building height limits allowable by the approved masterplan consent and the winning entry of the design competition required by the masterplan.*
- The bulk and scale of the proposed development is consistent with the adjoining large scale regional retail centre (Westfield Eastgardens).*
- The proposed development is consistent with the intent of Clause 4.3 of the LEP which is to minimise adverse amenity impacts and satisfies all relevant amenity criteria of the ADG, including access to sunlight, natural ventilation and privacy."*

Officers Comment:

The Clause 4.6 variation to the building height development standard has been assessed in accordance with the BBLEP 2013.

The site was subject to a design competition and the winning scheme did demonstrate that Tower B exceeded the maximum building height. A review of the Panels comments exhibit that they thought that the additional height was outside of the conditions of consent and was not permissible and that further refinement was required. The Panels comments are addressed within the report above.

The additional building height is located to the northern side of the tower and it is not considered that the additional height will create greater overshadowing onto the remaining towers and onto the residential properties on the eastern side of Bunnerong Road. As stated above and in agreeance with the applicant, the roof form adds visual interest to the building and the site rather than having all four towers with a flat roof.

The proposal is consistent with the objectives of the standard and the applicant has satisfactorily established that the proposed variation is appropriate in maintaining and enforcing the development standard in this case would be unreasonable and unnecessary and would not allow the orderly and economic development of this site.

The Clause 4.6 request is considered to be well-founded and the departure to the development standards is not contrary to the public interest. On this basis, it is recommended that the development standard relating to the building height for the site be varied in the circumstances as discussed above.

Botany Bay Development Control Plan (BBDCP) 2013

BBLEP 2013 is the comprehensive development guideline for the Mascot Branch of Bayside Council. The most relevant and applicable clauses of the DCP are considered in the assessment of this development proposal and are provided below.

Table 5: BBDCP 2013 Compliance Table – General Provisions

Control	Proposed	Complies (yes/no)
3A Parking and Access		
3A.2. Parking Provisions of Specific Uses <u>Residential</u> 1 space / studio or 1 bedroom dwelling (42 req) 2 space / 2 or more bedroom dwelling (320 req) 1 visitors space / 5 dwellings (41 req) Total required: 403 spaces Note: No requirement for car wash bays	<u>Residential</u> In accordance with Stage 1 consent conditions: 1 space provided per 1 bedroom apartment (42) 1.5 spaces provided per 2 bedroom apartment (143) 2 spaces provided per 3 bedroom apartment (130) 4 residential spaces have not been allocated to specific units 21 Visitors 1 car share Total 341 provided	No – Acceptable as consistent with Stage 1 Consent

Control	Proposed	Complies (yes/no)
	<u>Service Bays</u> Service vehicle: 1 MRV vehicle space provided <u>Car Wash Bay</u> 1 car wash bay provided	
3A.3.1 Car Park Design C1-C39 General; Location; Access; Basement parking; Residential; Accessible parking	Waste collection and servicing is located within the ground level car park. Pedestrian access is easily identifiable and pedestrian entrances and exits are separated from vehicular access paths. There is only one vehicle access point on the western side of the site. This off a private road. Swept path diagrams have been provided for assessment. The diagrams demonstrated that service vehicles enter in a forward direction and exit in a reverse direction. The road leading to the car parking levels is a private road therefore service vehicles enter and leave the site in a forward direction. The proposal incorporates a total of 40 accessible car spaces. This amount complies and exceeds the number of adaptable spaces required for 22 adaptable units (11 required). A traffic report was submitted with the development application and was considered in the assessment of the proposal.	Yes
C40 The waste collection point shall be designed to: (i) Allow waste loading operations to occur on a level surface away from parking areas, turning areas, aisles, internal roadways and ramps; and (ii) Provide sufficient side and vertical clearance to allow	The waste/recycling/bulk waste room (to be serviced by the garbage truck) is located within the ground level car park directly adjacent to the loading bay. A 4.5m clearance has been provided in accordance with the BBDCP 2013.	Yes

Control	Proposed	Complies (yes/no)
the lifting arc for automated bin lifters to remain clear of any walls or ceilings and all service ducts, pipes and the like.		
3A.3.2 Bicycle Parking In every new building, where the floor space exceeds 600m ² GFA, bicycle parking equivalent to 10% of the required car spaces or part therefore as required in Table 1 shall be provided. Total required: 40.3 (403 car spaces required by DCP)	The proposal comprises of 341 car parking spaces therefore a total of 34 spaces is required on this basis. However within the SEE, the applicant has proposed a total of 41 bicycle spaces within the ground car parking level. This has been conditioned in the consent.	Yes-Conditioned
3A.3.3 Traffic and Transport Plans and Report C1 A traffic and parking impact assessment report shall be provided for development listed in Schedule 3 of the Infrastructure SEPP 2007.	A traffic and transport report prepared by ARUP was provided with the development application.	Yes
3A.3.4 On-site loading and unloading facilities C2 The number of service bays for residential flat buildings with over 200 units is: <ul style="list-style-type: none"> • 4 service bays; plus • 1 service bay (for MRV or larger)/100 dwellings or units. Total required: 6 service bays	The development proposes one service bay to accommodate an MRV vehicle. There is a shortfall of 5 service bays.	No – Refer to Note 8
3G.2 Stormwater Management		
C1-C6 Comply with Stormwater Management Technical Guidelines; Part 3G.5 Stormwater Quality.	A stormwater report prepared by at&I and civil work plans were submitted and reviewed by Council's Development Engineer. Conditions of consent have been recommended.	Yes
3H Sustainable Design		
C1-C6 BASIX; Solar hot water	BASIX Certificate No. 739841M	Yes

Control	Proposed	Complies (yes/no)
encouraged.	prepared by Efficient Living Pty Ltd was provided.	
3I Crime Prevention Safety & Security		
Site layout, design & uses; Building design; Landscaping & lighting; Public domain, open space & pathways; Car parking areas; Public Facilities.	A Crime Risk and Security Report was submitted with the application which is considered to satisfy the requirements of Part 3I.	Yes
3J Aircraft Noise & OLS		
ANEF; Aircraft height limits in prescribed zones.	The site falls outside of the aircraft noise exposure forecast zone. Due to the height exceeding the OLS, the application was referred to SACL and CASA. CASA provided a response dated 23 January 2017 which states that they have no objections subject to the development not exceeding RL 91.0m. The proposal falls below this height.	Yes
3K Contamination		
Consider SEPP 55 & Contaminated Land Management Act 1997.	SEPP No. 55 has been addressed in the report above. The proposal has satisfied this requirement.	Yes
3L Landscaping and Tree Management		
General Requirements; Planting design & species; Landscaping in car parks; Green roofs.	Amended landscape plans were provided to Council for consideration. They were reviewed by Council's Landscape Architect who was not satisfied with their preliminary response as the amended plans had not addressed the issue of tree retention/removal and public domain.	No – Refer to Note 9
3N Waste Minimisation & Management		
General Requirements; Residential Development; Mixed Use Development.	A Waste Management Plan prepared by Elephants Foot has been submitted for ongoing management of waste generated from the site.	Yes

Note 8 – On-site loading and unloading facilities

Part 3A.3.4-*On-site loading and unloading facilities* of the BBDCP 2013 states that the minimum rates for service bays are:

- 4 service bays for the development that has greater than 200 units plus 1 service bay (for MRV or larger) per 100 units

The proposal provides 1 service bay for a MRV vehicle. This is a shortfall of 5 service bays. The applicant's traffic report provides the following justification for the non-compliance:

"It is interpreted that a total of four (4) MRV spaces and three (3) courier spaces is required for the development. However, the RTA Guide to Traffic Generating Development for high density housing states that :

The provision of at least one loading dock for residential use is desirable, although a dock intended for commercial uses may be sufficient.

Therefore, the development proposes to provide one (1) MRV space for Council garbage collection and any loading purposes and shared visitor/service vehicle spaces. A minimum height clearance of 4.6 metres is required for the MRV loading area and approach as per Council's DCP."

The RTA Guidelines for Traffic Generating Development requires one loading dock for residential use. The shortfall in service bays to cater for MRVs is accepted in this case. In regards to courier vehicles, the applicant has not demonstrated shared visitor/service areas within their plans. On the plans, there is an excess of four car spaces for the residential component which can be utilised for loading spaces for courier/SRVs. A condition has been recommended in the consent addressing this issue.

Note 9 – Landscaping, Tree Management and Public Domain Works

The applicant has provided at numerous times throughout the assessment of the proposal, amended plans, an amended arborist report and plans showing the shoring and excavation around the trees that are to remain.

This information was provided between 30 January and 1 February 2017. Council's Landscape Architect has reviewed the amended documentation and has provided the following commentary:

"Existing trees on this site have been thoroughly investigated and unfortunately due to current health and condition none of the trees in the Bunnerong Road setback should be retained. These trees will be replaced by large canopy, advanced species.

*The following issues still remain with the development proposal for Urban Block 5E and a deferred commencement approval is recommended to ensure these issues which have been raised on numerous occasions are addressed prior to issue of Operational Consent. **Please note** the scale of the latest drawing is incorrect which has compounded tree impact calculations. It is not acceptable for the Applicant to provide this sort of incorrect information.*

The Applicant was required to provide an amended comprehensive Arborist report. The amended report dated 31/1/17 fails to provide the following information despite it being stated in the Aims & Objectives of the same report:

- Discussion of the effects the proposed building works may have on the trees to be retained;
- Recommendations for remedial or other works to the trees;
- Description of measures to ameliorate the impact upon trees to be retained.

Further, the Applicant was advised that the revised Arborist report had to address the following:

- evidence that the trees to be retained can be retained without detrimental impact;
- a Management Plan/Impact Assessment to address how the trees to be retained are to be managed during the construction process and methods to negate impacts to these trees.

The plan indicating the proposed line of shoring and piling rig (clearance line) to enable basement construction has been reviewed against the SRZ and TPZ values provided in the revised Arborist report. This clearance line is 2 metres outside the basement and impacts ALL of the trees to be retained in the Westfield Drive setback. The clearance line impacts the TPZ of every tree (11 trees) and will necessitate canopy pruning. The clearance line also, and more importantly, impacts the SRZ of most of the trees in this area by intrusion of up to 1 metre, which will mean pruning or major roots which is more than likely to impact the stability and/or health of the trees. Intrusion into the SRZ is not permitted under the Australian Standard.

The retention of these trees is of high importance and significance to this gateway site.

The detailed sections provided recently are also unsatisfactory in that one section depicts an increase in soil levels in the Westfield Drive setback by 1-1.3 metres. This will be absolutely detrimental to the trees' health. The natural ground line/soil levels must be maintained around tree root zones. Revised sections 1 and 2 are required to indicate this and the landscape plan updated accordingly.

Additionally, there are no public domain details for Bunnerong Road and Westfield Drive. A condition has been included."

As stated above, Council's Landscaping Department are not satisfied with the amended documentation provided to Council for assessment. Therefore, they have recommended a number of deferred commencement conditions that need to be satisfied within 6 months of the issue of the deferred commencement consent.

Part 4C – Residential Flat Buildings

An assessment against Part 4C relating to Residential Flat Buildings has been provided below in so far as they relate to the proposed development.

Table 6: BBDCP 2013 Compliance Table – Part 4C Residential Flat Buildings

Control	Proposed	Complies
4C.2.2 Streetscape Presentation		
C1 New development must be	The development was subject to a	Yes

Control	Proposed	Complies
compatible in building bulk and scale with adjoining residential developments and reflect the patterns of buildings in the streetscape. It must respond to building setbacks, building height and treatment of the building facades.	masterplan and a design competition. The masterplan set out the controls regarding to the envelope of the site. The development subject to this application is consistent with the winning scheme with some minor alterations. The streetscape presentation is compatible with the desired future character for UB5E. The eastern side of Bunnerong Road is predominantly low density residential. The interface between the two was assessed as part of the Stage 1 masterplan and winning design competition scheme.	
C2 Development must comply with the following: (i) The maximum length of any building is 24 metres; (ii) All building facades must be articulated.	(i) The length of the building exceeds 24m. This was approved in concept in the Stage 1 and the development is consistent with this and the winning Architectural Design. Accordingly, the non-compliance is acceptable. (ii) The building facades are modulated and articulated with balconies, courtyards, and building indentations for the entrances and on the façade of Tower B.	No- Acceptable as it is consistent with Stage 1 and winning design Yes
4C.2.4 Landscaped Area and Deep Soil Planting		
C1 A residential flat development must have a minimum landscaped area of 35% and a maximum un-built upon area of 20%.	Soft landscaping = 2,991.5sqm (33%) Hard landscaping = 987.3sqm (11%) Deep soil = 1,560sqm (17%)	No – Refer to Note 10
4C.2.5 Open Space		
C3 Open space will be designed to: (i) Encourage positive outlook, respite and attractive internal views; (ii) Provide building separation and achieve a balance between open space and built form; (iii) Provide visual and acoustic privacy and an area of good solar access for recreational	The proposed development has 3 separate communal open space (COS) areas. These are listed below including the amount of solar access between 9am and 3pm in mid-winter: 1. Podium COS: At least 2 hours to 50% of the area; 2. Ground Level COS: 2 hours to 50% of the area; 3. Indoor swimming pool and	Yes

Control	Proposed	Complies
<p>purposes; and</p> <p>(iv) Through location, arrangement and design provide functional, usable and liveable spaces for a mix of recreational pursuits</p>	<p>gym;</p> <p>The primary communal open space area at the podium exceeds the minimum required amount of solar access during mid-winter. The range of COS areas allow for the use for different activities and user groups within the development.</p>	
4C.2.6 Setbacks		
<p>C2 All front, side and rear setbacks are to provide deep soil zones to allow unencumbered planting areas.</p>	<p>Deep soil zones are within the Westfield Drive and Bunnerong Road setbacks. There are small pockets of landscaping on the north western corner of the site at ground level which is acceptable.</p>	Yes
<p>Front Setbacks</p> <p>C1 Building setbacks from the existing front boundary must match the setback of adjoining properties, but must be a minimum of 3 metres or 4 metres if fronting a classified road.</p>	<p>Setbacks are consistent with the Stage 1 consent being 4m to the west and north, 12m to the south, and 8m to the east.</p>	Yes
4C.2.7 Through Site Links & View Corridors		
<p>C1 Building footprints are to take into account the requirement for consolidated open space as well as for view corridors.</p>	<p>There are no existing significant views.</p>	N/A
4C.4.1 Dwelling Mix and Layout		
<p>Apartment Size and Mix</p> <p>C1 Developments of ten or more apartments are to provide a range of apartment sizes, including studio, 1, 2, and 3+ apartments so as to meet the needs of residents and accommodate a range of household types.</p>	<p>The proposed apartment size and mix is consistent with the requirements of the Stage 1 consent as discussed above.</p>	Yes
<p>C2 For development with ten or more apartments, the following unit mix control will apply:</p> <p>(i) A maximum of 25% of apartments are to be Studio and 1 Bedroom;</p> <p>(ii) All 2 Bedroom apartments are to satisfy the amenity controls for Family Apartments; and</p> <p>(iii) All 3+ Bedroom apartments are to satisfy the amenity</p>	<p>The proposal provides the following:</p> <p>1 bed – 20.8%</p> <p>2 bed – 47%</p> <p>3 bed – 32.1%</p> <p>The number of 1 bedroom apartments does not exceed 25%.</p> <p>For a response to the family friendly controls, please refer to Note 11.</p>	<p>Yes</p> <p>No - Refer to Note 11</p>

Control	Proposed	Complies
controls for Family Apartments.		
Apartment Layout C1 Dwellings with 3 or more bedrooms are to have two (2) separate and appropriately sized living spaces. A study alcove may be located within the second living space. Should a freestanding study alcove be provided the height of the walls enclosing the study are to be a maximum of 1500mm	Most 3 bedroom apartments do not have 2 separate living spaces.	No - Refer to Note 12
C2 Studies not to be enclosed with a door	Separate studies all include doors.	No - Refer to Note 12
C3 Studies to be less than 9sqm to be considered studies.	All studies are 9sqm or less.	Yes
C4 Saddleback bedroom designs are not acceptable.	Saddleback bedroom design has not been proposed.	Yes
4C.4.2 Family Friendly Apartment Buildings		
C1 Family apartments are apartments with two or more bedrooms designed so as to accommodate the living needs of families with children.	The two and three bedroom apartments have generally been designed in accordance with the Family Friendly controls.	Yes
C2 Family apartments are to include a study to meet the needs of couple families with dependents households. The design of the study should allow for a parent to easily work from home whilst supervising a child	42 apartments of the 202 apartments (21%) have a separate study room or nook. Condition included requiring all 2 and 3 bedroom apartments to include a fixed study desk or nook.	Yes - Refer to Note 11
C3 Other than the master bedroom, each bedroom is to be large enough to accommodate a single bed, a desk or table, and floor space for playing, to be illustrated on a standard apartment layout plan	Given the large size of the apartments far in excess of ADG minimum sizes, there is considered to be sufficient space in all second bedrooms for a bed and desk.	Yes
C4 The floor surface of the entry, dining room and kitchen floor and internal storage area are to be water-resistant and easy to be cleaned and maintained, not carpet	Condition to this effect included.	Yes - Condition
C5 Two bathrooms are required. One bathroom is to be a shared bathroom which is accessible off a common corridor. This shared bathroom is to have a bathtub, and is to be large enough to allow	All 2 and 3 bedroom apartments include two bathrooms with one easily accessible off the primary corridor. At least one bathroom in all apartments includes a bathtub.	Yes

Control	Proposed	Complies
for parental supervision		
C6 The private outdoor space is to be clearly visible from the kitchen	All apartments have POS clearly visible from the kitchen.	Yes
C7 The entry areas and main corridors within apartments are to be generous in proportion to permit room for toys and sporting equipment, and for drying of wet shoes, boots and clothing	Given the large size of the apartments far in excess of ADG minimum sizes, there is considered to be sufficient space in entry areas for storage. The plans demonstrate that a number of units do not comply with the minimum amount within the unit. This is discussed in SEPP 65 above.	Yes
C8 The Apartment Design Guide sets out storage space requirements. The storage room is to be located near the entry, and be of adequate proportions to accommodate large household items including strollers, wheeled toys, suitcases, and sporting equipment	Storage rates comply with ADG and have been provided in easily accessible areas and have adequate proportions for a range of family items.	Yes
4C.4.3 Internal Circulation		
C1 Development will provide multiple cores within the building.	At least one core has been provided to access each tower.	Yes
C2 In buildings of more than four storeys served by elevators, ensure that alternative access to another elevator is available in the event that any elevator is out-of-service due to breakdown or routine servicing.	Stair access is provided to each core with Tower B and C comprising of a 2nd lift core.	Yes
4C.5.1 Adaptable Housing		
Table 1 of Part 3C Access and Mobility: <u>Adaptable Housing</u> In developments containing 10 or more dwellings, a minimum of 20% of the dwellings are to be adaptable dwellings designed in accordance with Adaptable Housing Australian Standard 4299 Class B.	22 adaptable apartments have been provided. This is in excess of the rates required under Stage 1 which is 11.	No - Acceptable as consistent with Stage 1
<u>Accessible Parking</u> In developments containing 10 or more dwellings, accessible resident parking is required at 10% to be allocated to adaptable dwellings.	All 22 adaptable apartments provided with an accessible parking space which is consistent with the Stage 1 consent.	Yes

Control	Proposed	Complies
4C.5.2 Access		
C1 All applications are to include a statement on how the development will comply with the provisions of the Disability Discrimination Act and comply with Part 3C - Access and Mobility.	An Access Report, prepared by Wall to Wall Design & Consulting, has been submitted with the application. The architectural design in terms of the prescriptive provisions of each 'Essential feature' and 'Desirable feature' within AS4299 – 1995 (Adaptable Housing) have been complied with.	Yes

Note 10 – Landscaped Area

Control C1 of Part 4C.2.4 of the BBDCP 2013 requires a residential flat development to have a minimum landscaped area of 35% and a maximum un-built upon area of 20%. The development proposes a total landscaped area of 2991.5sqm or 33%. This is a shortfall of 162.35sqm. The proposal was referred to Council's Landscape Architect who did not raise the non-compliance with the amount of landscaping provided on the site as an issue. The amount of landscaped area on the podium and within the setbacks demonstrates that a quality landscaped setting for the proposed development is provided with significant level of amenity for future occupants and site users. The amount of landscaped area is appropriate as it breaks up the built form of the buildings and the podium when viewed from Bunnerong Road and Westfield Drive and softens the edges around the building frontages. In regards to hardscape area, the development provides a total of 987.3sqm which is equal to 11% and complies with the maximum 20% requirement. Further detail relating to landscaped area and tree retention/removal is provided in the report above.

Note 11 – Family Friendly Apartments

The applicant provided the following response in regards to the above issue:

'There are many 1, 2 and 3 bedroom units that contain a study, and all units contain a combined shower/bath in addition to a second toilet room for families. To provide market variety, not all 2 and 3 bedroom units have studies and under SEPP 65, study rooms now require a window and therefore cannot be provided to every unit.'

The two and three bedroom apartments generally meet the design requirements of the Family Friendly controls. The following provides additional detail regarding some of these controls.

Control C2 requires a study in all family apartments – 42 apartments of the 202 2 and 3 bedroom apartments (44%) have a separate study room or nook. 100% are a required to.

Notwithstanding the above, this does not imply that there is not sufficient space within the open-plan living area or in bedrooms to provide a desk so that parents can monitor children while working from home. All 2 bedroom apartments exceed the ADG minimum apartment size by 15 to 29sqm. Additionally, all of the 3 bedroom apartments exceed the ADG minimum apartment size by 20 to 36sqm. This indicates that there is sufficient size within the apartment to accommodate a desk within the open plan living area and that there is sufficient size to support the separation of

conflicting activities within the living spaces. This satisfies Objective O2 and O3 which state:

O2 To ensure that apartments are designed with appropriate amenity and space so that apartments can support the separation of conflicting activities within the living spaces.

O3 To encourage applicants to consider the varying needs of families and to design apartments accordingly.

While it is considered that there is sufficient size for the location of a nook or desk within the open-plan living area, a condition has been recommended that amended plans be submitted showing compliance with this requirement by indicating that within each 2 and 3 bedroom apartment, there is either a study nook/space or indicate that a desk can adequately be accommodated within the open-plan living area.

Control C5 requires two bathrooms – Two bathrooms have been provided for all of the 2 and 3 bedroom apartments, however the ensuite has been provided with a bath tub and shower and the shared bathroom provided with a shower only. This is considered acceptable as the ensuite is generally the larger bathroom of the two and flexibility has been provided across both bathrooms to accommodate the needs of families with children.

Note 12 – Apartment Layout

The apartment layouts generally meet the design requirements of the Dwelling Mix and Layout controls. The following provides additional detail regarding some of these controls.

Control C1 (Apartment Layout) states that dwellings with 3 or more bedrooms need to have two separate living areas. The development proposes 65 x 3 bedroom apartments.

The intent of the control is not to result in two physically separate rooms, but rather two separate areas/zones that can support the separation of conflicting activities within the living space. All 3 bedroom apartments propose one large open plan living space which is separated into two areas/zones through the placement of furniture. This satisfies the intent of the control.

The 'Dwelling Mix and Layout' objectives are centred around providing a high standard of internal amenity for residents. As outlined below, the proposed development achieves the relevant objectives.

Objective O2 states *to ensure that apartments are flexible to suit the occupant's requirements*. The 3 bedroom apartments satisfy Objective 2 as the two zones facilitate flexibility for families as several separate activities can be undertaken within the open-plan living area. For example, children can be playing in the lounge room while a parent is either at the dining table, kitchen or study nook/desk. As the living area is open-plan, parents are able to monitor the children from all areas.

The 3 bedroom apartments range in size from 110sqm – 126sqm, all of which are between 20 to 36sqm in excess of the minimum requirement of 90sqm (as per the ADG). As such, the open-plan living areas provide a high standard of internal amenity as the separate living areas are spacious and are of an adequate size to comfortably accommodate separate areas/zones. The open-plan living areas are located adjacent

to the balcony, thus providing natural light and ventilation and extending the internal living space. This satisfies Objectives O1 and O5 which state:

O1 to ensure that dwellings are efficient, have high standards of amenity for residents and satisfy environmental performance criteria, such as ventilation and access to natural light.

O5 To provide adequate amenity for building occupants in terms of access to sunlight and natural ventilation.

Both points above also satisfy Objective O4 which states: *to ensure adequate provision, design and location of internal facilities.*

Control C2 (Apartment Layout) states that to avoid a secondary living space, study or the like being used as a bedroom, it will only be regarded as such if it has no door or enclosure. All the proposed separate study rooms in the development include a door.

The intent of the control is clearly stated to avoid studies being used as a bedroom. Since all studies are 9sqm or less, below the ADG minimum size requirement for bedrooms and none include wardrobes it is considered that they will not be used as bedrooms. Studies typically require a degree of privacy for quiet study which is facilitated with a door enclosure. Additionally, having a door allows for greater flexibility in terms of the future use of the space, residents may wish to use these spaces as media rooms or music rooms.

To ensure the studies are not used as bedrooms, a condition of consent has been included that requires that studies are not to be used as bedrooms.

It is considered that the development addresses the family friendly requirements under the BBDCP 2013.

Part 9D – 130-150 Bunnerong Road, Pagewood

It is noted that Part 9D of the BBDCP 2013 specifically relates to the redevelopment of the subject site, 130-150 Bunnerong Road, Pagewood, and guided the Stage 1 consent. The Stage 1 consent includes conceptual details of the proposed buildings which have been altered from the provisions of Part 9D. Accordingly, the Stage 1 consent now contains the relevant provisions for the subject Stage 2 application for UB5E which has been assessed in this report.

(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 likely impacts of the development in the locality have been considered in this report and are considered to be acceptable.

(c) The suitability of the site for the development

Adequate information has been submitted to demonstrate that the site is suitable for the proposed development. Council's Environment Scientist has reviewed the proposal and raised no objection subject to conditions.

The proposed development was approved in concept under the Stage 1 consent DA-14/96, is permissible in the zone, and achieves the zone objectives.

Accordingly, the site is considered suitable for the proposed development being for a residential apartment development.

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

In accordance with Part 2 Notification & Advertising of the BBDCP 2013, the proposed development was notified to surrounding property owners and advertised in the local newspaper from 31 August to 30 September 2016. Nine (9) submissions and one petition with 36 signatures were received. The key issues raised in the objections are as follows:

- *Vibration and structural damage to properties*

Comment: Appropriate conditions have been recommended in the consent addressing the frequency of vibration from construction and this will be limited to any works carried out on site. If appropriate, dilapidation reports can be prepared by the developer onto surrounding properties to assess the damage carried out during construction.

- *Loss of afternoon sunlight*

Comment: Concerns were raised regarding to the overshadowing impact on the surrounding low density residential development. Additionally, some of the objections raised concerns that no shadow diagrams were provided with the notification package. Shadow diagrams are not provided with the notification package sent to neighbouring properties and objectors have the opportunity to view the plans at Council or at the libraries. In regards to the overshadowing, a majority of the objectors who raised this issue live to the north-east of the site therefore will not be impacted by the development. However, solar diagrams shown in Figure 31 demonstrate that the proposal will overshadow properties along the eastern side of Bunnerong Road from 3pm onwards. The building envelope was approved under Stage 1 and the overshadowing impact was considered in that assessment. The proposal provides reasonable overshadowing and the low density residential properties will continue to receive the minimum 2 hours of sunlight throughout the day. This is considered a minimal impact and was anticipated by the approved building envelopes under the Stage 1 consent.



Figure 31: Aerial solar diagrams between 12pm and 3pm

- *Overlooking and visual privacy*

Comment: Concerns relate to overlooking into the properties and rear yards of the low density residential properties on the eastern side of Bunnerong Road. The proposal has a separation distance of approximately 40 metres and Tower B which has a maximum height of 16 storeys is setback from the residential dwellings by 90 metres. It was anticipated that the taller towers would be located away from the street frontage to prevent direct sightlines into neighbouring properties. It is considered the Stage 1 approved envelopes as being satisfactory.

- *Lack of off-street car parking*

Comment: Concerns were raised in regards to the limited amount of car parking for residents and guests. The proposal complies with the car parking requirement set in the car parking rates in the Stage 1 masterplan.

- *Overdevelopment*

Comment: The urban blocks and building envelopes were established and approved as part of Stage 1. Stage 1 went through a rigorous notification process and was approved by the LEC. The Stage 1 consent establishes the parameters for the site and the indicative number of units and car spaces. The proposal complies with the parameters of Stage 1 by providing less than the indicative units for the site and the car parking requirements.

- *Bulk and scale of development to neighbouring low density residential and the character with the surrounding area*

Comment: The bulk and scale of the development and the remaining urban blocks was considered in the Stage 1 masterplan. The proposed development complies with the density related controls that apply. In particular, the development complies with the maximum FSR, setbacks, building envelopes, and indicative apartment numbers as specified in the court approved Stage 1 DA-14/96. The site has been earmarked by Council for medium to high density development with open space, replacing a previous industrial use located on the

site. The surrounding areas are predominantly low density however the Westfield Eastgardens shopping centre to the south is of a similar bulk to the proposed site.

- *Height is excessive in this particular area (will create eyesore), limit height of towers, does not facilitate an orderly transition between low rise streetscape and the site*

Comment: Concerns were raised that the height is excessive in the area and does not facilitate an orderly transition between low rise streetscape and the site. The variance in the height limits and the transition between the two zones was considered in the Stage 1 Masterplan. The consent established heights for each urban block to reflect the desired future character of the site. The proposed development has a maximum 16 storey tower which is located away from Bunnerong Road to reduce the impact on the street and surrounding properties. A Clause 4.6 request has been submitted in regards to height and height variation from the BBLEP 2013 and is supported primarily due to consistency with the number of storeys under the court approved Stage 1 DA-14/96. Accordingly, the proposed density is considered acceptable.

- *Wind impact from the development onto low density residential development*

Comment: A wind assessment report has been provided with the development application and has found that the proposal is acceptable.

- *Not in keeping with the height restrictions adhered to in the Randwick Council area*

Comment: The site has been zoned for medium to high density including mixed use development. The eastern side of Bunnerong Road is zoned for low density residential. The height in both zones is commensurate with development permissible in each respective zone. The heights proposed are generally consistent with the heights established in the Stage 1 masterplan.

- *Lack of infrastructure and public transport around the site*

Comment: Infrastructure within and surrounding the site would have been considered and assessed as part of the Stage 1 consent in DA-14/96. There are available public transport modes in close proximity. Infrastructure impacting on the traffic system has been considered in the traffic report and has found the proposed development as acceptable. Upgrades to the surrounding infrastructure networks could be considered at a later stage.

- *Traffic congestion, generation and noise*

Comment: The proposed development complies with all traffic and parking related controls that apply. In particular, the development complies with the car parking rates as specified in the court approved Stage 1 DA-14/96. Furthermore, a Traffic and Parking Report has been submitted which indicates that the proposal will not have unacceptable impacts in the locality. Accordingly, the proposed traffic and parking implications of the proposed development are considered acceptable and consistent with the approved Stage 1 DA-14/96.

- *Pedestrian safety*

Comment: Pedestrian safety has been considered as part of the development application and the entire site. The impacts from traffic generation are expressed within the traffic report and appropriate conditions have been recommended to mitigate any impact to pedestrian safety and the general public.

- *Visually unappealing design of the proposal*

Comment: The proposal and any subsequent development application for the remaining urban blocks are subject to a design competition as required as part of the Stage 1 consent. The proposal is consistent with the winning design scheme by Nettleton Tribe. The design, building materials and articulation was considered at the design competition and within the development application. The result of the design competition is provided in the report above.

- *Lack of schools to cater for growing number of families*

Comment: This issue is outside the scope of the current development application.

- *Sewage management (can the existing system cope?)*

Comment: The application was referred to Sydney Water. This issue has not been considered as part of the subject proposal. It is thought that this issue would have been considered and assessed upon as part of the Stage 1 masterplan.

- *Location of tall towers should be along Banks Ave*

Comment: The Stage 1 Masterplan has envisaged for larger towers to be located along Westfield Drive which would brunt the majority of the shadow impact. The urban block envelopes along Banks Avenue have been approved under Stage 1 and will be considered in separate development applications.

- *Noise and pollution creates health hazards*

Comment: Appropriate conditions have been recommended in the consent to reduce the noise and hazard impacts during the construction stages. Noise resulting from the development and traffic generation has been considered in the traffic report.

- *Request for developer to clean/repair homes or pay the cost of temporary accommodation while restoration of their homes*

Comment: This is outside the scope of the assessment and should be negotiated between residents and the developer. Appropriate measures have been conditioned limiting vibration and damage onto the neighbouring properties.

- *Light rail should be paid by the developer and not by the taxpayers*

Comment: There is currently no proposal for a light rail to run down Bunnerong Road therefore this is outside the scope of the development application.

Randwick Council was notified of the development application as Bunnerong Road borders both Randwick Council and Bayside Council. The key issues that were raised in their comments are as follows:

- *Extent of work and relationship to other stages*

Comment: Concerns were raised relating to the lack of information that was provided addressing the relationship between the subject development application and the public domain and the Stage 1 Masterplan. The applicant has provided information relating to the relationship with Stage 1 however this was not made public on the DA tracker. Council has requested that the applicant provide a concept public domain plan and other materials relating to the public domain will be conditioned. Council currently has a DA relating to the parks and public domain which is under assessment. Further information relating to landscaping is provided above for comment.

- *Built form/envelopes*

Comment: Concerns were raised relating to the height of the development over the 44 metre LEP requirement and how the development has not addressed the necessary criteria for varying the standard. The height variation was approved as part of the Stage 1 Development and a thorough assessment was carried out as part of that process. The current application does exceed the building height on Tower B for a small portion however remains compliant with the Stage 1 consent for overall height for the Urban Block. Further discussion relating to the height of the development is discussed in greater detail in the report above.

- *Amenity Impacts*

Comment: Lack of shadow diagrams provided with the notification process have rendered assessment of this issue not being provided. As discussed above, the shadow impact will be minimal and will only impact the neighbouring properties to the east at 3pm. The majority of the shadow will fall upon the Westfield Shopping Centre Car Park. Privacy plans have been provided internally for the towers which demonstrate that there will not be any direct overlooking into the units. The towers are located a good distance away from the neighbouring low density residential. It is expected that there will be some overlooking into the neighbouring yards due to the height of the towers however, the design of the proposal has positioned the highest Tower B away from Bunnerong Road to minimise direct overlooking.

- *Traffic, transport and parking*

Comment: Concerns were raised relating to the allocation of visitor car parking spaces within the DCP. The objection relates to Council's controls and how they are calculated and not with the development application.

- *Public Domain*

Comment: Concern was raised relating to the timing of public domain works on the site specifically in regards to the local street construction and Central Park, and upgrades to the Heffron Road, Maroubra Road and Bunnerong Road intersection and signalised upgrade of the Banks Avenue/Heffron Road intersection as part of UB5W and how they have not been notified of these stages. These works are outside of the scope of the current development application and will be dealt with at different stages as required. Any future applications are subject to the notification process.

Other issues that Randwick Council are in support with were the undergrounding of power and lightning upgrades along Bunnerong Road. Consultation regarding this matter between the two Councils will be carried after the determination of the development application.

(e) The public interest

It is considered that the proposed development is in the public interest.

OTHER MATTERS

The Development Application was referred to Council's internal and external departments for comment. Appropriate conditions have been recommended to address the relevant issues raised. The following table is a brief summary of the comments raised by each referral department.

Table 9: Internal and external referrals

Referral Agency	Response Date	Comments
External Referrals		
Civil Aviation Safety Authority (CASA)	23 January 2017	No objections to the proposal. Conditions have been provided.
Sydney Water	19 September 2016	The conditions have been included in the Schedule of Consent Conditions.
Water NSW	2 September 2016	No objections. No conditions required.
NSW Police	N/A	No comment received.
NSW Fire and Rescue	N/A	No comment received.
RMS	23 September 2016	No objections subject to conditions included in the Schedule of Consent Conditions.
Ausgrid	1 September 2016	The conditions have been included in the Schedule of Consent Conditions.
Randwick City Council	30 September 2016	General comments provided for consideration. These are considered to have been addressed throughout this report.
Internal Referrals		
Landscape Architect	2 February 2017	Deferred Commencement conditions have been proposed as the applicant has not addressed previously raised comments.
Development Engineer	14 December 2016	Conditions have been incorporated into the Schedule of Consent Conditions.
Environmental Scientist	27 September 2016	Conditions have been incorporated into the Schedule of Consent Conditions.
Environmental Health Officer	21 September 2016	Conditions have been incorporated into the Schedule of Consent Conditions.

Section 94 Contributions

In accordance with the *Botany Bay Section 94 Development Contributions Plan 2016*, the Section 94 Contributions for the proposed development are calculated as follows:

Residential

One Bedroom – 42 x \$8,029.65 = \$337,245.30

Two Bedrooms -95 x \$13,211.47 = \$1,255,089.65

Three Bedrooms – 65 x \$17,265.80 = \$1,122,277.00

Total Contribution = \$2,714,611.95

The above is broken down as follows:

i)	Community Facilities	\$466,913.255
ii)	Recreation Facilities	\$2,022,385.90
iii)	Transport Management	\$190,022.836
iv)	Administration	\$35,289.955

The consent will be conditioned to require payment of the Section 94 Contribution prior to the issue of any Construction Certificate, as specified in the Plan.

CONCLUSION

In accordance with Clause 3 of Schedule 4A of the Environmental Planning and Assessment Act, the Application is referred to the the Sydney Central Planning Panel (SCPP) for determination.

The proposed development underwent an Architectural Design Competition and the majority of the Juror's comments have been appropriately addressed in the proposal.

The proposal as amended is generally consistent with the Stage 1 consent restricting the envelopes of the urban blocks. There is a non-compliance with the maximum building height of Tower B which requires an RL 73.0m and proposes a maximum building height of RL 74.7m. A Clause 4.6 variation has been provided and the justification for the variance in the height is accepted. Additionally, there is a minor non-compliance in the building separation between Towers B and C at 4 storeys and above. The non-compliance is 400mm and is located between two bedrooms in either tower. The applicant has provided a justification of the non-compliance and privacy schemes showing privacy mechanisms in place to mitigate direct sightlines into the buildings. The departure is acceptable. Also, Tower B protrudes greater than 50% of the building at each external façade. This does not comply with Condition No. 24 of the Stage 1 Consent. As discussed above, the departure is a result of compliance with the ADG balcony sizes. It is considered that the average articulation zone and the amount of recessive zones proposed are acceptable.

The non-compliances with ADG separation, ceiling heights and landscaping are considered to have been anticipated by the Stage 1 consent and given the relevant objectives have been achieved, the non-compliances are acceptable. Likewise, the development exceeds the BBLEP 2013 height control which is the result of the Stage 1 consent providing for additional height and a Clause 4.6 request has been submitted in this regard. Issues relating to storage, study rooms with doors and family friendly apartments have been resolved by conditions in the consent.

The application was the subject of nine (9) submissions and one petition with 36 signatures which generally raised concerns to the height, bulk and scale, overshadowing, visual privacy, traffic generation and lack of infrastructure supporting the site and the proposal. These submissions have been addressed above in the report.

The proposal has been assessed in accordance with Section 79C of the *Environmental Planning and Assessment Act 1979*. The proposal is permissible within the B4 – Mixed Use zone and is considered to result in a development which is suitable in the context. However, issues relating to landscaping and tree management had not been resolved at the time of compiling the report. It is recommended that the application be recommended for deferred commencement, in order to enable the applicant to satisfy the remaining outstanding issues.

SCHEDULE OF CONSENT CONDITIONS

DEFERRED COMMENCEMENT CONDITIONS

The Consent given does not operate until the following conditions are satisfied:

DC1 A correctly scaled Tree Retention Plan shall be submitted which clearly indicates the 13 trees to be retained in the Westfield Drive setback and references the Arborist report. These trees are:

- a) 27 to 29 – 3 x 17 metre high *E. microcorys*
- b) 30 – 18m high *E. punctata*
- c) 47 and 50 – 2 x 15 metre high *E.botryoides*
- d) 51 and 52 – 2 x 17 metre high *E. microcorys*
- e) 54 to 58 – 5 x 16m high *E. microcorys*

DC2 The Applicant shall provide a Tree Impact Assessment and Management Plan for approval by Council's Tree Management Officer and is required to address the following as a minimum:

- a) Discussion of the impacts that the proposed building works and piling/shoring Clearance Line may have on the trees to be retained in the Westfield Drive setback and evidence that the trees can be retained without detrimental impact;
- b) Demonstrate how the proposal complies with AS4970-2009 – Protection of Trees on Development Sites for trees to be retained and AS4373-2007 - Pruning of Amenity Trees in respect to canopy pruning;
- c) Description of measures to ameliorate potential impacts to trees to be retained;
- d) Address how the trees are to be managed during construction to negate any impacts to the trees;
- e) Recommendations for remedial or other works to the trees during or post construction including watering regime, fertilising etc;
- f) Supporting evidence such as photographs

DC3 The detailed sections through the Westfield Drive setback are to be revised to delete the 1-1.3 metre increase in soil levels throughout which is not supportive of tree retention. The natural ground line/soil levels must be maintained throughout the setback. Revised sections 1 and 2 are required to indicate this and the landscape plan, construction management plan and any other detailed plan updated accordingly.

DC4 The period of the “Deferred Commencement” consent is to be limited to 6 months.

Note: that once the “deferred commencement” conditions are satisfied, that certain draft conditions may need to change when the amended drawings required by the “deferred commencement” conditions are submitted.

GENERAL CONDITIONS

- 1 The development is to be carried in accordance with the following plans and endorsed with Council's stamp, except where amended by other conditions of this consent. Reference documentation is also listed.

Plans	Author	Dated / Received by Council
DA-000 Rev C- Cover page	Nettleton Tribe	Dated 2 November 2016 Received 4 January 2017
DA-001 Rev B- Context Plan- Site Plan	Nettleton Tribe	Dated 2 November 2016 Received 4 January 2017
DA-002 Rev B- Building Articulation Plan	Nettleton Tribe	Dated 2 November 2016 Received 4 January 2017
DA-100 Rev E- Parking Level	Nettleton Tribe	Dated 21 December 2016 Received 4 January 2017
DA-101 Rev E- Ground Floor Plan	Nettleton Tribe	Dated 21 December 2016 Received 4 January 2017
DA-102 Rev E- Level 1 Plan	Nettleton Tribe	Dated 21 December 2016 Received 4 January 2017
DA-103 Rev E- Level 2 Plan	Nettleton Tribe	Dated 21 December 2016 Received 4 January 2017
DA-104 Rev C- Level 3 Plan	Nettleton Tribe	Dated 2 November 2016 Received 4 January 2017
DA-105 Rev C- Level 4 Plan	Nettleton Tribe	Dated 2 November 2016 Received 4 January 2017
DA-106 Rev C- Level 6 Plan	Nettleton Tribe	Dated 2 November 2016 Received 4 January 2017
DA-107 Rev C- Level 6-7 Plan	Nettleton Tribe	Dated 2 November 2016 Received 4 January 2017
DA-108 Rev C- Level 8-14	Nettleton Tribe	Dated 2 November 2016 Received 4 January 2017
DA-109 Rev A- Level 15 Plan	Nettleton Tribe	Dated 2 November 2016 Received 4 January 2017
DA-110 Rev B- Roof Plan	Nettleton Tribe	Dated 2 November 2016 Received 4 January 2017
DA-201 Rev D- North Elevation	Nettleton Tribe	Dated 19 December 2016 Received 4 January 2017
DA-202 Rev D- South Elevation	Nettleton Tribe	Dated 19 December 2016 Received 4 January 2017
DA-203 Rev D- East Elevation	Nettleton Tribe	Dated 19 December 2016 Received 4 January 2017
DA-204 Rev D- West Elevation	Nettleton Tribe	Dated 19 December 2016 Received 4 January 2017
DA-301 Rev D- Sections 01	Nettleton Tribe	Dated 30 January 2017 Received 31 January 2017
DA-302 Rev B- Sections 02	Nettleton Tribe	Dated 2 November 2016 Received 4 January 2017
DA-430 Rev D- GFA Area Plans	Nettleton Tribe	Dated 6 January 2017 Received 7 January 2016
DA-501 Rev A- Ventilation Analysis Plan	Nettleton Tribe	Dated 2 November 2016 Received 4 January 2017

DA-506 Rev A- East and West Elevation Comparison Plan	Nettleton Tribe	Dated 2 November 2016 Received 4 January 2017
DA-507 Rev A- North Elevation Comparison Plan	Nettleton Tribe	Dated 2 November 2016 Received 4 January 2017
DA-601 Rev B- Shadow Analysis- Winter	Nettleton Tribe	Dated 2 November 2016 Received 4 January 2017
DA-602 Rev A- Solar Point Perspective Plan	Nettleton Tribe	Dated 2 November 2016 Received 4 January 2017
DA-603 Rev A- Solar Analysis Plan	Nettleton Tribe	Dated 2 November 2016 Received 4 January 2017
DA-604 Rev A- Solar Analysis- Communal Open Space	Nettleton Tribe	Dated 2 November 2016 Received 4 January 2017
DA-609 Rev B- External Finishes	Nettleton Tribe	Dated 2 November 2016 Received 4 January 2017
DA-801 Rev B- Survey Plan	Nettleton Tribe	Dated 2 November 2016 Received 4 January 2017
DA-1001 Rev A- Deep Soil Calculation	Nettleton Tribe	Dated 2 November 2016 Received 4 January 2017
DA-1101 Rev A- Privacy and Screening	Nettleton Tribe	Dated 2 November 2016 Received 4 January 2017
L-000-CS Rev D- Cover sheet, drawing register and legend	Urbis	Dated 21 December 2016 Received 4 January 2017
L-500-PL Rev D- Ground Floor Planting Plan	Urbis	Dated 21 December 2016 Received 4 January 2017
L-501-PL Rev D- Ground Floor Planting Plan	Urbis	Dated 21 December 2016 Received 4 January 2017
L-502- PL Rev D- Ground Floor Planting Plan	Urbis	Dated 21 December 2016 Received 4 January 2017
L-503-PL Rev D- Ground Floor Planting Plan	Urbis	Dated 21 December 2016 Received 4 January 2017
L-504-PL Rev D- Ground Floor Planting Plan	Urbis	Dated 21 December 2016 Received 4 January 2017
L-505-PL Rev B- Level 3 Planting Plan	Urbis	Dated 14 December 2016 Received 4 January 2017
L-506-PL Rev B- Level 3 Planting Plan	Urbis	Dated 14 December 2016 Received 4 January 2017
L-507-PL Rev B- Level 3 Planting Plan	Urbis	Dated 14 December 2016 Received 4 January 2017
L-508-PL Rev B- Level 5 Planting Plan	Urbis	Dated 14 December 2016 Received 4 January 2017
L-509-PL Rev A- Planting Schedule	Urbis	Dated 14 December 2016 Received 4 January 2017
L-SK01 Rev B- Tree Retention Study (including shoring and piling)	Urbis	Dated 23 January 2017 Received 25 January 2017
L-SK01 Rev B- Tree Retention Study (basement level)	Urbis	Dated 23 January 2017 Received 23 January 2017

Reference Document(s)	Author	Dated / Received by
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		Council
DA Access Report Ref: MTN-011 Rev 2	Wall to Wall	Dated 8 August 2016; Received 17 August 2016
Acid Sulfate Soils Management Plan Ref: CES130805-MG-AD	Consulting Earth Scientists	Dated 21 January 2016; Received 17 August 2016
Noise Impact Assessment Report Ref: 610.13932-R1	SLR	Dated 15 July 2016; Received 17 August 2016
Architectural Design Statement	Nettleton Tribe	Dated 2 November 2016; Received 9 November 2016
ADG Compliance Table Ref: 4574	Nettleton Tribe	Dated 15 July 2015; Received 17 August 2016
Aeronautical Impact Assessment Ref: J0469 V1.0	The Ambidji Group Pty Ltd	Dated 8 August 2016; Received 17 August 2016
Arboricultural Assessment Report	TALC (Tree and Landscape Consultants)	Dated 31 January 2017; Received 1 February 2017
Thermal Comfort and BASIX Assessment Ref: 9941 Rev A	Efficient Living	Dated 22 July 2016; Received 17 August 2016
Building Code of Australia Compliance Assessment Report Ref: 1423.88 Rev 00	AED Group	Dated July 2016; Received 17 August 2016
Construction Management Plan	Meriton Property Services Pty Ltd	Dated April 2016; Received 17 August 2016
Crime Risk and Security Report	Meriton Property Services Pty Ltd	Dated 9 August 2016 Received 17 August 2016
Geotechnical Investigation Report Ref: GEOTLCOV24928AB-AF	Coffey Geotechnics Pty Ltd	Dated 8 August 2014; Received 17 August 2016
Landscape Report Ref: ND1501	Urbis	Dated 21 December 2016 Received 4 January 2017
Quantity Surveying Cost Report	Steven Wehbe	Dated 11 July 2016; Received 17 August 2016
Updated Remediation Action Plan Ref: 71631.12	Douglas Partners	Dated September 2013; Received 17 August 2016
Proposed Remediation Action Plan Amendment – Revision 1 Ref: 85009 Rev 1	Douglas Partners	Dated 2 September 2015; Received 17 August 2016
Site Audit Report and Site Audit Statement Ref: 6019040414_SAR_JC_NSW05	AECOM	Dated 31 March 2014; Received 17 August 2016
Reflectivity and Glare Assessment Ref: 610.13932-R6	SLR	Dated 14 July 2016; Received 17 August 2016
Stage 1 Masterplan Consent Compliance Table	Meriton Property Services Pty Ltd	Received 17 August 2016
Statement of Environmental Effects	Meriton Property Services Pty Ltd	Dated 11 August 2016; Received 17 August 2016
Stormwater Report Ref: 13-155-5400 Rev 01	At&I	Dated July 2016; Received 17 August 2016
Stage 2 Traffic and Transport Report Ref: 237575	ARUP	Dated 19 July 2016; Received 17 August 2016
Waste Management Plan Rev C	Elephants Foot	Dated 4 August 2016; Received 17 August 2016

Qualitative Wind Assessment Ref: 610.13932.R5	SLR	Dated 14 July 2016; Received 17 August 2016
Response Matrix and Cover letter to additional information issues	Meriton Property Services Pty Ltd	Received 9 November 2016 and 4 January 2017
Clause 4.6 variation to vary height development standard	Merton Property Services Pty Ltd	Dated 7 December 2017; Received 7 December 2016
Solar Perspective diagrams approved at Stage 1	-	Dated 16 December 2014; Received 4 January 2017
Solar Access Assessment- Stage 1 consent	SLR	Dated 7 December 2014; Received 4 January 2017

- 2 This Consent relates to land in Lot 2 in DP 1187426 and, as such, building works must not encroach on to adjoining lands or the adjoining public place.
- 3 The consent given does not imply that works can commence until such time that:
 - (a) Detailed plans and specifications of the building have been endorsed with a Construction Certificate by:
 - (i) The consent authority; or,
 - (ii) An accredited certifier; and,
 - (b) The person having the benefit of the development consent:
 - (i) Has appointed a principal certifying authority; and
 - (ii) Has notified the consent authority and the Council (if the Council is not the consent authority) of the appointment; and,
 - (iii) The person having the benefit of the development consent has given at least 2 days notice to the council of the persons intention to commence the erection of the building.
- 4 All building work must be carried out in accordance with the provisions of the Building Code of Australia.
- 5 This development is a Stage 2 consent. The development must comply with all conditions of the Stage 1 consent DA-14/96 unless modified and agreed upon by Council within this consent.
- 6 Pursuant to clause 97A(3) of the Environmental Planning & Assessment Regulation 2000, it is a condition of this development consent that all the commitments listed in each relevant BASIX Certificate for each building in the development are fulfilled.
 - (a) Note:

Relevant BASIX Certificate means:

 - (i) A BASIX Certificate that was applicable to the development when this development consent was granted (or, if the development

consent is modified under Section 96 of the Act, a BASIX Certificate that is applicable to the development when this development consent is modified); or

- (ii) If a replacement BASIX Certificate accompanies any subsequent application for a construction certificate, the replacement BASIX Certificate.
- (iii) BASIX Certificate has the meaning given to that term in the Environmental Planning and Assessment Regulation 2000.

CONDITIONS IMPOSED BY AN EXTERNAL AUTHORITY

Where relevant, the following external authority conditions apply:

The following conditions are imposed by **Ausgrid**:

- 7 Ausgrid requires kiosk substation housings to be separated from building ventilation system air intake and exhaust duct openings, by not less than 6 metres. This applies irrespective of whether the building ducted ventilation system is mechanical or natural and irrespective of whether or not fire dampers are installed in the ducts. Any portion of a building other than a BCA class 10a structure constructed from non-combustible materials, which is not sheltered by a non-ignitable blast-resisting barrier and is within 3 metres in any direction from the housing of a kiosk substation, is required to have a Fire Resistance Level (FRL) of not less than 120/120/120. Openable or fixed windows or glass blockwork or similar, irrespective of their fire rating, are not permitted within 3 metres in any direction from the housing of a kiosk substation, unless they are sheltered by a non-ignitable blast resisting barrier. For further details on fire segregation requirements refer to Ausgrid's Network Standard141.
- 8 Ausgrid requires the following conditions with respect to Chamber substations. For a chamber station within the property or within 6m of the development, the substation ventilation openings, including substation duct openings and louvered panels, must be separated from building air intake and exhaust openings, natural ventilation openings and boundaries of adjacent allotments, by separation distances which meet the requirements of all relevant authorities, building regulations, BCA and Australian Standards including AS 1668.2: The use of ventilation and air-conditioning in buildings - Mechanical ventilation in buildings. In addition to above, Ausgrid requires the substation ventilation openings, including duct openings and louvered panels, to be separated from building ventilation system air intake and exhaust openings, including those on buildings on adjacent allotments, by not less than 6 metres. Exterior parts of buildings within 3 metres in any direction from substation ventilation openings, including duct openings and louvered panels, must have a fire rating level (FRL) of not less than 180/180/180 where the substation contains oil-filled equipment. For further details on fire segregation requirements refer to Ausgrid's Network Standard 113.
- 9 Any work undertaken near Overhead Power lines needs to be carried out in accordance with:
 - (a) WorkCover Document ISSC 23 "Working Near Overhead Power Lines"
 - (b) Ausgrid Network Standards

(c) Ausgrid Electrical Safety Rules

- 10 The location of underground cables by using Dial Before You Dig and comply with the requirements of Ausgrid's Network Standard 156: Working Near or Around Underground Cables before any excavation works are undertaken.
- 11 Existing Ausgrid easements, leases and/or right of ways must be maintained at all times to ensure 24 hour access. No temporary or permanent alterations to this property tenure can occur without written approval from Ausgrid. For further details refer to Ausgrid's Network Standard 143.
- 12 The developer is required to make a formal submission to Ausgrid by means of a duly completed Preliminary Enquiry and/ or Connection Application form, to allow Ausgrid to assess any impacts on its infrastructure and determine the electrical supply requirements for the development (eg. whether a substation is required on site). The developer is to ensure that the proposed works do not contravene Ausgrid's technical standards and statutory requirements, in regards to the safe and reliable operation of Ausgrid's network.

The following conditions are imposed by **Civil Aviation Safety Authority (CASA)**:

- 13 The building must not exceed a maximum height of 91 metres AHD, inclusive of all lift over-runs, vents, chimneys, aerials, antennas, lightning rods, any roof top garden plantings, exhaust flues etc.
- 14 The proponent must ensure obstacle lighting arrangements have a remote monitoring capability, in lieu of observation every 24 hours, to alert SACL reporting staff of any outage. For detailed requirements for obstacle monitoring within the OLS of an aerodrome, refer to subsection 9.4.10 of the MOS Part 139.
- 15 The proponent must ensure obstacle lighting is maintained in serviceable condition and any outage immediately reported to SACL.
- 16 Separate approval must be sought under the Regulations for any cranes required to construct the buildings. 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 Regulations. Therefore it is advisable that approval to operate construction equipment (i.e. cranes) should be obtained prior to any commitment to construct.
- 17 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.

The following conditions are imposed by the **NSW Roads and Maritime Services (RMS)**:

- 18 Roads and Maritime raises no objection to the development proposal on property grounds provided all buildings and structure, together with any improvements integral to the future use of the site is wholly within the freehold property (unlimited in height or depth), along the Bunnerong Road boundary.
- 19 All demolition and construction vehicles are to be contained wholly within the site as a construction zone and will not be permitted on Bunnerong Road.

- 20 A Road Occupancy Licence should be obtained from Transport Management Centre for any works that may impact on traffic flows on Bunnerong Road during construction activities.
- 21 The developer is to submit design drawings and documents relating to the excavation of the site and support structures to Roads and Maritime for assessment, in accordance with Technical Direction GTD2012/001. The developer is to submit all documentation at least six (6) weeks prior to commencement of construction and is to meet the full cost of the assessment of Roads and Maritime.

The report and any enquiries should be forwarded to:
Project Engineer, External Works
Sydney Asset Management
Roads and Maritime Services
PO Box 973 Parramatta CBD 2124
Telephone 88492114 Fax 88492766

If it is necessary to excavate below the level of the base of the footings of the adjoining roadways, the person acting on the consent shall ensure that the owners of the roadway is/are given at least seven (7) days' notice of the intention to excavate below the base of the footings. The notice is to include complete details of the work.

- 22 A Construction Traffic Management detailing construction vehicle routes, number of trucks, hours of operation, access arrangements and traffic control should be submitted to Council prior to the issue of a Construction Certificate.

The following conditions are imposed by **Sydney Water**:

Sydney Water does not object to the proposed development, subject to the following:

23 Stormwater

Sydney Water requires the removal of Sydney Water stormwater assets within the development site and the construction of a new chamber over Sydney Water's stormwater culvert at Westfield Drive. Sydney Water would not be prepared to take ownership of any drainage works within the development site. Detailed requirements will be provided in the *Asset Creation Process*, as part of the Section 73 application phase.

For further information regarding stormwater requirements for this development application, please contact Jeya Jeyadevan of Land and Waterways on 02 8849 6118 or email jeya.jeyadevan@sydneywater.com.au.

24 Water

- The existing water mains along the eastern boundary of this site are the 375mm and 250mm, cross connected by a 100mm main in Bunnerong Road.
- The existing network will have sufficient capacity to provide water supply to the development area by connecting to the existing 250mm main in Bunnerong Road, with a new cross connection between both 250mm and 375mm mains. This point is shown overleaf.

- Water reticulation within the site need to be extended from the connection point in Bunnerong Road and to be sized & configured according to the Water Supply Code of Australia WSA 03-2011-3.1 (Sydney Water Edition - 2012).
- Detailed drinking water requirements will be assessed at the Section 73 application phase.

25 Wastewater

- The proposed development will be serviced by the 375mm main intersecting the development site.
- Detailed wastewater requirements will be provided at the Section 73 application phase.

26 Sydney Water E-Planning

Sydney Water has an email address for planning authorities to submit statutory or strategic planning documents for review. This email address is urbangrowth@sydneywater.com.au

CONDITIONS WHICH MUST BE SATISFIED PRIOR TO THE COMMENCEMENT OF ANY WORKS

27 Prior to commencement of any works, application(s) shall be made to Council's Customer Services Counter and obtained the following approvals and permits on Council's property/road reserve under Road Act 1993 and Local Government Act 1993: - (It should be noted that any works shown within Council's road reserve or other Council Lands on the development approval plans are indicative only and no approval for these works is given until this condition is satisfied.)

- Permit to erect hoarding on or over a public place, including Council's property/road reserve,
- Permit to construction works, place and/or storage building materials on footpaths, nature strips,
- Permit to install temporary ground anchors in public land,
- Permit to discharge ground water to Council's stormwater drainage system,
- Permit for roads and footways occupancy (long term/ short term),
- Permit to construct vehicular crossings, footpaths, kerbs and gutters over road reserve,
- Permit to open road reserve area, including roads, footpaths, nature strip, vehicular crossing or for any purpose whatsoever, such as relocation / re-adjustments of utility services,
- Permit to place skip/waste bin on footpath and/or nature strip, and
- Permit to use any part of Council's road reserve or other Council lands.

- 28 Erosion and sediment control devices shall be installed and in function prior to the commencement of any demolition, excavation or construction works upon the site in order to prevent sediment and silt from site works (including demolition and/or excavation) being conveyed by stormwater into public stormwater drainage system, natural watercourses, bushland, trees and neighbouring properties. In this regard, all stormwater discharge from the site shall meet the legislative requirements and guidelines. These devices shall be maintained in a serviceable condition AT ALL TIMES throughout the entire demolition, excavation and construction phases of the development and for a minimum one (1) month period after the completion of the development, where necessary.
- 29 Prior to the commencement of demolition work a licensed demolisher who is registered with WorkCover NSW must prepared a Work Method Statement to the satisfaction of the Principal Certifying Authority (Council or an accredited certifier) and a copy shall be sent to Council (if it is not the PCA). A copy of the Statement shall also be submitted to WorkCover NSW.

The statement must be in compliance with AS2601:1991 – ‘Demolition of Structures’, the requirements of WorkCover NSW and conditions of the Development Approval, and shall include provisions for:

- a) Enclosing and making the site safe, any temporary protective structures must comply with the “Guidelines for Temporary Protective Structures (April 2001)”;
- b) Induction training for on-site personnel;
- c) Inspection and removal of asbestos, contamination and other hazardous materials (by appropriately licensed contractors);
- d) Dust control – Dust emission must be minimised for the full height of the building. A minimum requirement is that perimeter scaffolding, combined with chain wire and shade cloth must be used, together with continuous water spray during the demolition process. Compressed air must not be used to blow dust from the building site;
- e) Disconnection of Gas and Electrical Supply;
- f) Fire Fighting – Fire fighting services on site are to be maintained at all times during demolition work. Access to fire services in the street must not be obstructed;
- g) Access and Egress – No demolition activity shall cause damage to or adversely affect the safe access and egress of this building;
- h) Waterproofing of any exposed surfaces of adjoining buildings;
- i) Control of water pollution and leachate and cleaning of vehicles tyres – Proposals shall be in accordance with the “Protection of the Environmental Operations Act 1997”;
- j) Working hours, in accordance with this Development Consent;
- k) Confinement of demolished materials in transit;
- l) Proposed truck routes, in accordance with this Development Consent;
- m) Location and method of waste disposal and recycling in accordance with the “Waste Minimisation and Management Act 1995”.
- n) Sewer – common sewerage system ad08.

- 30 A sufficient area shall be provided onsite to enable separate stockpiling of excavated materials for sampling and analysis prior to removal or re-use on site. Details of this area shall be provided in the Soil and Water Management Plan (SWMP). This plan shall incorporate and reference the construction environmental management plan and address site limitations.
- 31 Toilet facilities are to be provided at or in the vicinity of the work site on which work involves:
- (a) demolition and construction of a building is being carried out, at the rate of one toilet for every 20 persons or part of 20 persons employed at the site;
 - (b) Each toilet provided:
 - (i) must be standard flushing toilet; and,
 - (ii) must be connected:
 - to a public sewer; or
 - if connection to a public sewer is not practicable to an accredited sewerage management facility approved by the Council; or,
 - if connection to a public sewer or an accredited sewerage management facility is not practicable to some other sewerage management facility approved by the Council.
 - (c) The provisions of toilet facilities in accordance with this condition must be in place before work commences.
- 32 This Consent shall not preclude the demolisher from giving notice to other statutory authorities, such as Sydney Water Corporation, WorkCover, etc.
- 33 Prior to the commencement of any works, the site to which this approval relates must be adequately fenced or other suitable measures employed that are acceptable to the Principal Certifying Authority to restrict public access to the site and building works. Such fencing or other measures must be in place before the approved activity commences.
- 34 A Soil and Water Management Plan (SWMP) shall be prepared in accordance with the Landcom *Managing Urban Stormwater – Soils and Construction* 4th Edition (2004). All management measures recommended and contained within the Soil and Water Management Plan (SWMP) shall be implemented in accordance with the *Landcom Managing Urban Stormwater – Soils and Construction* 4th Edition (2004). This plan shall be implemented prior to commencement of any site works or activities. All controls in the plan shall be maintained at all times. A copy of the SWMP shall be kept on-site at all times and made available to Council Officers on request.
- 35 To ensure that relevant engineering and water quality provisions are met during the period of dewatering for construction, prior to any water from site dewatering to be permitted to go to stormwater a permit to discharge to the stormwater shall be obtained from Council. Dewatering shall not commence until this is issued by Council.

- 36 In accordance with the Contaminated Land Management Act 1997, notification of all category 2 remediation work to Council is required at least 30 days prior to commencement of works.
- 37 In order to ensure that the trees listed in the arborist report in Condition 1 above are protected during all stages of construction, and their health and structural stability ensured, the following is required:
- a) Engage an Arborist to undertake any necessary tree root pruning and canopy pruning to trees to be retained.
 - b) Trees required to be retrained are to be tagged with clearly visible marking tape at a height of approx. 2 metres from ground and numbered with the corresponding number in the Arboirst Report/Landscape Plan.
 - c) Prior to commencing any works the trees shall be physically protected by fencing underneath **the canopy dripline** using 1.8 metre high chainwire fence to form the Tree Protection Zone (TPZ). The fence shall remain in place until all construction is complete and not altered without the consent of Council's Tree Officer.
 - d) The TPZ is to be mulched with leaf mulch to a depth of 100mm and a temporary automatic drip irrigation system installed for the entire construction delivery twice weekly deep watering. Drippers to be installed at 300mm intervals to the entire root zone of all trees.
 - e) If there is insufficient space to erect fencing in a particular area during construction, and as approved by Council, wrap the trunk with hessian or similar to a height of 2.5 metres or to the tree's first lateral branch, whichever is greater, and affix timber palings with strapping or wire (not nails).
 - f) **Before any works commence on site,** the Applicant is required to contact Council for an inspection of the TPZ's. Council approval is required prior commencement of any work.
 - g) **All** Construction Certificate plans, specifications and CMP shall show the trees required to be retained and the TPZ.

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

- 38 **Prior to the issue of the relevant Construction Certificate,** construction plans are to show for all two and three bedroom apartments the floor surface of the entry, kitchen floor and internal storage areas to be of readily maintainable and water-resistant material (not carpet).
- 39 **Prior to the issue of the relevant Construction Certificate,** construction plans are to show all two and three bedroom apartments to include a fixed study desk or study nook where a separate study room has not been provided.
- 40 **Prior to the issue of the relevant Construction Certificate,** construction plans are to show that all study rooms are to have a window in accordance with the requirements under SEPP 65 and the ADG.

41 Prior to the issue of the relevant Construction Certificate, construction plans to show that compliance with the Apartment Design Guide minimum storage rates has been achieved as follows:

- (a) 1 Bedroom apartments 6m³
- (b) 2 Bedroom apartments 8m³
- (c) 3 Bedroom apartments 10m³

At least 50% of the required storage is to be located within the apartment.

42 Prior to the issue of any Construction Certificate, the following fees are to be paid:-

- | | | |
|-----|--------------------------|----------------------------|
| (a) | Development Control | \$12,900.00 |
| (b) | Damage Deposit | \$314,700.00 (See below) |
| (c) | Section 94 Contributions | \$2,714,611.95 (See below) |
| (d) | Long Service Levy | See below |

43 Prior to the issue of any Construction Certificate, the payment of a monetary contribution of \$2,714,611.95 in accordance with Council's Section 94 Contributions Plan 2016 which is broken down as follows:

- | | | |
|----|-----------------------|----------------|
| a) | Community Facilities | \$466,913.255 |
| b) | Recreation Facilities | \$2,022,385.90 |
| c) | Transport Management | \$190,022.836 |
| d) | Administration | \$35,289.955 |

The Section 94 Contribution fees are subject to annual review and the current rates are applicable for the financial year in which the consent is granted. If the contribution is paid in a later financial year the fee applicable at the time will be required to be paid.

44 Prior to the issue of any Construction Certificate, the required Long Service Levy payable under Section 34 of the Building and Construction Industry Long Service payments Act 1986 must be paid. The Long Service Levy is payable at 0.35% of the total cost of the development, however, this is a State Government fee and can change without notice.

45 Prior to the issue of any Construction Certificate, the applicant shall lodge a Damage Deposit of \$314,700.00 (GST Exempt) by way of cash deposit or unconditional bank guarantee to Council against possible damage to Council's asset during the course of the building works. The deposit will be refunded subject to inspection by Council 12 months after the completion of all works relating to the proposed development and Final Occupational Certificate has been issued.

46 Prior to the lodgement of any Construction Certificate, the applicant shall provide to Council detailed evidence and any associated amended plans to confirm compliance with the approved maximum FSR for Lot 3 allowed in Condition 12 of the Master Plan development consent. Council should review these details and issue any associated amendments to conditions that nominate plan numbers.

- 47 Prior to the issue of any Construction Certificate, at the proposed point of construction site entry, photographic survey showing the existing conditions of Council's and RMS infrastructure shall be submitted to Council and Principal Certifying Authority. The survey shall detail the physical conditions and identify any existing damages to the roads, kerbs, gutters, footpaths, driveways, street trees, street signs and any other Council assets fronting the property and extending to a distance of 50m from the development. Failure to do so may result in the applicant/developer being liable for any construction related damages to these assets. Any damage to Council's infrastructure during the course of this development shall be restored at the applicant's cost.
- 48 Prior to the issue of any Construction Certificate, a Construction Management Program shall be submitted to, and approved by Council and submitted to the Principal Certifying Authority prior to the issue of a Construction Certificate. The program shall detail:
- (a) The proposed method of access to and egress from the site for construction vehicles, including access routes through the Council area and the location and type of temporary vehicular crossing for the purpose of minimising traffic congestion and noise in the area, with no access across public parks or public reserves being allowed,
 - (b) The proposed phases of construction works on the site and the expected duration of each construction phase,
 - (c) The proposed order in which works on the site will be undertaken, and the method statements on how various stages of construction will be undertaken,
 - (d) The proposed manner in which adjoining property owners will be kept advised of the timeframes for completion of each phase of development/construction process,
 - (e) The proposed method of loading and unloading excavation and construction machinery, excavation and building materials, formwork and the erection of any part of the structure within the site. Wherever possible mobile cranes should be located wholly within the site,
 - (f) The proposed areas within the site to be used for the storage of excavated materials, construction materials and waste containers during the construction period,
 - (g) The proposed method/device to remove loose material from all vehicles and/or machinery before entering the road reserve, any run-off from the washing down of vehicles shall be directed to the sediment control system within the site,
 - (h) The proposed method of support to any excavation adjacent to adjoining properties, or the road reserve. The proposed method of support is to be designed and certified by an Accredited Certifier (Structural Engineering), or equivalent,
 - (i) Proposed protection for Council and adjoining properties, and

- (j) The location and operation of any on site crane. Please note that a crane may require prior approval from Sydney Airports Corporation.
 - (k) The location of any Construction Zone (if required) approved by Council's Traffic Committee, including a copy of that approval.
 - (l) The methodology to control dust on site.
- 49 Prior to the issue of any Construction Certificate, a detailed Traffic Management Plan for the pedestrian and traffic management of the site during construction shall be prepared and submitted to the relevant road authority (Council or Roads and Maritime Services). The plan shall:
- (a) be prepared by a RMS accredited consultant,
 - (b) nominate a contact person who is to have authority without reference to other persons to comply with instructions issued by Council's Traffic Engineer or the Police, and
 - (c) if required, implement a public information campaign to inform any road changes well in advance of each change. The campaign may be required to be approved by the Traffic Committee.
- Note: Any temporary road closure shall be confined to weekends and off-peak hour times and is subject to Council's Traffic Engineer's approval. Prior to implementation of any road closure during construction, Council shall be advised of these changes and Traffic Control Plans shall be submitted to Council for approval. This Plan shall include times and dates of changes, measures, signage, road markings and any temporary traffic control measures.
- 50 Prior to the issue of the relevant Construction Certificate, the following required section(s) are to be submitted to and approved by the Principal Certifying Authority:
- (a) All driveways/access ramps/vehicular crossings shall conform with Australian Standards AS 2890.1 and Council requirements including but not limited to Section 8(v) of the DCP Stormwater Management Technical Guidelines, and
 - (b) For commercial developments, the applicant shall provide longitudinal sections along the extremities and the centre line of each internal driveway/access ramp at a scale of 1:25. These long sections shall extend from the horizontal parking area within the property to the centre line of the roadway. The sections shall also show the clear height from the ramp to any overhead structure.
- 51 Prior to the issue of the relevant Construction Certificate, the following required section(s) are to be submitted to and approved by the Principal Certifying Authority:
- (a) All driveways/access ramps/vehicular crossings shall conform with Australian Standards AS 2890.2 and Council requirements including but not limited to Section 8(v) of the DCP Stormwater Management Technical Guidelines,
 - (b) All service vehicles shall enter the property front in front out,

- (c) Demonstrate safe headroom clearance of 4.5m is achieved in the driveway entrance and along the along the travel path, parking and manoeuvring areas of a Medium Rigid Vehicle (MRV), including Council's Garbage Truck,
 - (d) Swept path analysis shall be provided for manoeuvring of commercial vehicles, and
 - (e) A longitudinal section plotting headroom clearance above driveway access is to be provided for assessment.
- 52 Prior to the issue of the relevant Construction Certificate, the following required section(s) are to be submitted to and approved by the Principal Certifying Authority:
- (a) Disabled car parking spaces shall be provided and clearly marked as per the Stage 2 Traffic and Transport Report by ARUP Group, dated 19 July 2016, Australian Standards AS 2890.6, SEPP 65 Design Code and Council requirements, and
 - (b) All off street disabled parking shall have access to the adjacent road(s) and to the communal open space as per Australian Standards AS 2890.6 and Council requirements.
- 53 Prior to the issue of any Construction Certificate, the applicant shall contact "Dial Before You Dig" to obtain a utility service diagram for, and adjacent to the property. The sequence number obtained from "Dial Before You Dig" shall be forwarded to Principal Certifying Authority. All utilities within the work zone shall be protected during construction. Any adjustments or damage to public utilities/services as a consequence of the development and associated construction works shall be restored or repaired at the applicant's expense.
- 54 Prior to the issue of the relevant Construction Certificate, to ensure that utility authorities and Council are advised of any effects to their infrastructure by the development, the applicant shall:
- (a) Carry out a survey of all utility and Council services within the site including relevant information from utility authorities and excavation if necessary to determine the position and level of services,
 - (b) Negotiate with the utility authorities (eg AusGrid, Sydney Water, Telecommunications Carriers and Council in connection with:
 - (i) The additional load on the system, and
 - (ii) The relocation and/or adjustment of the services affected by the construction.
 - (c) The Ausgrid lighting poles along Banks Avenue, will need to be decommissioned and new lighting poles shall be constructed satisfying V2 lighting requirements any other requirements as specified by Council, RMS and any other service provider,
 - (d) All above ground utilities shall be relocated underground in accordance with Ausgrid and any other affected and relevant service provider, and

- (e) All underground and above ground infrastructure shall be constructed as specified by Ausgrid, RMS, Council and any other affected service provider. The location of the new electrical pillars, new lighting poles, any new pits and trenches for utilities shall be confirmed with Council prior to the commencement of these works.

Any costs in the relocation, adjustment, and provision of land or support of services as requested by the service authorities and Council are to be the responsibility of the developer.

- 55 Prior to the issue of the relevant Construction Certificate, detail design and construction plans in relation to stormwater management and disposal system for the development shall be submitted to the Principal Certifying Authority or Council for approval. (The detail drawings and specifications shall be prepared by a suitably qualified and experienced civil engineer and to be in accordance with Council's Development Control Plan 'Stormwater Management Technical Guidelines', AS/NSZ 3500 – Plumbing and Drainage Code and the BCA. All drawings shall correspond with the approved architectural plans.)

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

- (a) An On-Site Detention System (OSD) shall be designed according to Part 6 of the SMTG. It should be noted that OSD systems shall be designed to detain the stormwater runoff from the site for all storm events up to and including 1 in 100 year ARI storm and permissible site discharge (PSD) shall be based on 1 in 5 year ARI peak flow generated from the site under the "State of Nature" condition (i.e. the site is totally grassed/turfed), rather than pre-development condition,
- (b) Incorporate a Stormwater Quality Improvement system to ensure compliance with Section 16 of Botany Bay's SMTG,
- (c) The water quality improvement system and WSUD strategy proposal shall be designed to capture and treat at least 85% flows generated from the site.
- (d) A WSUD Strategy and MUSIC model must be prepared and submitted to Council for the development. The MUSIC model must be prepared in line with the Draft NSW MUSIC Modelling Guidelines (Sydney Metro CMA). Sydney's Water's requirements are that the water quality improvement should meet or exceed the target as described in the "Botany Bay & Catchment Water Quality Improvement Plan" which was prepared by the Sydney Metropolitan Catchment Management Authority in April 2011, and
- (e) The submission of detailed calculations including computer modelling where required supporting the proposal.

- 56 Prior to the issue of the relevant Construction Certificate, the recommendations of the Qualitative Wind Assessment Report from SLR referred to in this consent are to be incorporated into the design in order to ensure compliance with the Councils maximum wind criteria (as set out at Part 9A.4.5.4 Wind Mitigation, Control C1 of the DCP 2013) as follows:

- (a) 10 metres/second along commercial/retail streets;
- (b) 13 metres/second along main pedestrian streets, parks and public places; and

(c) 16 metres/second in all other streets.

- 57 The building shall be designed in accordance with the Office of Environment and Heritage (Department of Environment, Climate Change and Water) 'NSW Road Noise Policy', and shall also meet the criteria recommended in Table 1 of Australian Standard AS 2107-2000. Suitably endorsed construction plans and specifications addressing these criteria's shall be submitted to the Principal Certifying Authority for approval prior to the release of the Construction Certificate.
- 58 Prior to the issue of the relevant Construction Certificate, details on the mechanical plant and equipment to be submitted to the Principal Certifying Authority. The report must:
- (a) identify each item of plant and equipment;
 - (b) the following additional criteria adopted by Bayside Council:
 - (i) The operation of all plant and equipment shall not give rise to an equivalent continuous (LAeq) sound pressure level at any point on any residential property greater than 5dB(A) above the existing background LA90 level (in the absence of the noise under consideration).
 - (ii) The operation of all plant and equipment when assessed on any residential property shall not give rise to a sound pressure level that exceeds LAeq 50dB(A) day time and LAeq 40 dB(A) night time.
 - (iii) The operation of all plant and equipment when assessed on any neighbouring commercial/industrial premises shall not give rise to a sound pressure level that exceeds LAeq 65dB(A) day time/night time.
 - (iv) For assessment purposes, the above LAeq sound levels shall be assessed over a period of 10-15 minutes and adjusted in accordance with EPA guidelines for tonality, frequency weighting, impulsive characteristics, fluctuations and temporal content where necessary.

Note "sensitive" positions should be selected to reflect the typical use of a property (i.e. any outdoor areas for day and evening but closer to the façade at night time), unless other positions can be shown to be more relevant.

- 59 Prior to the issue of the relevant Construction Certificate, plans and specifications for the storage room for waste and recyclable materials shall be submitted to the Principal Certification Authority. The garbage and recycling storage area shall be adequately ventilated, roofed and screened from public view. The floor shall be made of an impervious surface, drained to sewer and include a dry arrestor pit with a removable basket. Washing facilities shall be provided within close proximity to the garbage and recycling storage area.
- 60 Prior to the issue of the relevant Construction Certificate, the electrical kiosk and fire booster assembly (and similar utilities) must be located in an unobtrusive location away from vehicle and pedestrian entrances to the property and not within the landscaped setbacks. The utilities must be housed within the external face of the building structure and screened from view from the public domain area.

- 61 Prior to the issue of the relevant Construction Certificate, an independent review by an appropriately qualified person demonstrating consistency of the development with the Crime Prevention Through Environmental Design (CPTED) principles and strategies to be submitted to the Principal Certifying Authority.
- 62 Evidence of a Sydney Water permit or consent for discharge of wastewater to the sewer shall be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate. Where a permit or consent may not be required from Sydney Water certification shall be provided verifying that any discharges to the sewer will meet specific standards imposed by Sydney Water.
- 63 A Site Audit Statement will be required for this site prior to the issue of any Occupation Certificate. To ensure the necessary assessment and remediation is completed a NSW Environment Authority (EPA) Accredited Site Auditor shall be appointed to the site prior to the commencement of any remediation works, excavation or commencement of works at the site. The Site Auditor shall review and endorse any additional investigation and remediation proposed prior to the commencement of any works. Evidence of this appointment shall be provided to council prior to the issue of any construction certificate.
- 64 The landscape areas shown on the plans by Urbis, Issue D, shall be the subject of detailed construction level documentation to be submitted to and approved by the City of Botany Bay Council's Landscape Architect prior to the issue of the Construction Certificate. The plans shall address the following:
- i) Thirteen (13) existing significant canopy trees in the Westfield Drive setback shall be retained and protected. These trees are as follows:
 - 27 to 29 – 3 x 17 metre high *E. microcorys*
 - 30 – 18m high *E. punctate*
 - 47 and 50 – 2 x 15 metre high *E. botryoides*
 - 51 and 52 – 2 x 17 metre high *E. microcorys*
 - 54 to 58 – 5 x 16m high *E. microcorys*
 - ii) The above trees shall be clearly transposed to the landscape plan and numbered to correspond with the Arborist report.
 - iii) Existing ground levels are to be maintained in the Westfield Drive setback. Levels shall not be altered.
 - iv) The landscape plan shall indicate all proposed utility lines within the setbacks to ensure there is no conflict with retained trees or proposed trees. If a proposed utility line conflicts with an existing tree the utility will be required to be relocated.
 - v) A planting/landscape design that includes not only tree retention but new significant, large canopy tree plantings on all frontages of the site, and in particular the Banks Avenue setback and through to the Westfield Drive setback. There shall be a variety of tree heights in all setbacks inclusive of small, medium and large canopy trees with the majority (80-90%) being evergreen species. Species should be shade tolerant where appropriate. All trees must be of an appropriate scale to complement and ameliorate the built form and massing and to pedestrianise setbacks and entries and make use of feature or specimen trees. Feature/specimen trees are favoured suitable to the residential setting and to visually enhance the Bunnerong Road setback and soften buildings as a component of the streetscape and public domain.

- vi) Replacement large canopy trees are required in the Banks Avenue setback, minimum pot size 1000 litre. Ex-ground stock may be required. *E. punctata* is not to be specified.
- vii) Shrubs of varying height shall be used throughout all setbacks including at the base of buildings to visually ground buildings and screen edges and facades. Lawn shall be minimized in favour of extensive mass planted areas using shrubs of varying heights and shade tolerant species as suitable. Feature/specimen architectural type planting is favoured and plants suitable to the residential setting and the visually enhance the Bunnerong Road building setback as a significant component of the streetscape and public domain.
- viii) A planting plan to depict all plant locations, groupings and centres/spacings. There is to be a dense, layered planting of trees and shrubs of varying height and feature in all landscaped areas.
- ix) Landscape specifications detailing soil and mulch finishes, root barriers, irrigation, edge treatments and other landscape hardworks/materials such as retaining walls and paving as well as maintenance periods. Sectional construction details.
- x) Details for all fencing, retaining walls or structures visible within the public domain of all frontages – sectional details and materials. NOTE : the use of retaining walls and pavements in the Bunnerong Road setback shall be minimized to allow ample lateral space for root establishment or large trees without confinement by barriers. Details of other landscape elements such as furniture and pedestrian amenity/security lighting within street setbacks.
- xi) All setbacks are to be under common ownership to allow survival and maintenance of the landscape scheme long term. Private terraces are outside the landscape setbacks.
- xii) All setbacks are to be automatically irrigated.

Landscaping shall be installed in accordance with the Council approved landscape plan only, prior to the issue of an Occupation Certificate. The landscaped areas on the property shall be maintained at all times in accordance with the final Council approved landscape documentation, the conditions of consent and Council's Landscape Technical Guidelines at all times.

- 65 Prior to the issue of the Construction Certificate, a public domain improvements plan shall be submitted for approval by City of Botany Bay Council's Landscape Architect for Bunnerong Road and Westfield Drive, inclusive of the landscaped island at the base of the Westfield exit ramp. The plan shall also include the internal roads public domain details to the west and north of the site. The plan shall include but not be limited to street tree planting (in accordance with the STMP), footpath paving, street tree pit treatments and tree guards, street furniture such as seats, bollards and bike racks and ground level shrub landscaping. The plan shall be in accordance with any Council public domain detail. specification or requirement. NOTE : Minimum pot size for street trees is 400 litre. Civil drawings shall include levels and detailed footpath construction sections.
- 66 The Applicant is to submit payment for a Tree Preservation Bond of \$170,000.00 to ensure protection of the trees listed in the arborist report in Condition No. 1 above from damage during construction. The duration of the Bond shall be for a period of 24 months after issue of the Occupation Certificate. At the completion of the 24 month period the Tree Preservation Bond shall be refunded pending a satisfactory inspection of retained trees by Council. If a tree was found to be in decline, damaged (including roots), dead, excessively pruned or removed without Council

permission or, if tree protection measures were not satisfied at any time during construction, then all or part thereof of the bond shall be forfeited.

- 67 The Applicant is to enter into an agreement with Council, to be prepared by Council's solicitors, at the applicant's expense, providing for the lodgement of a bond in the sum of \$40,000.00, for a period of five (5) years after practical completion of landscape works, to ensure establishment and maintenance of the landscaping in accordance with the plan. The lodgement of the bond shall not preclude the Council from initiating legal proceedings, should the landscaping not be established and maintained in accordance with this Consent, and is not intended to limit the period of compliance with the landscaping requirements to five (5) years.

The bond may be applied by Council to the establishment and maintenance of the landscaping in accordance with the plan and Council should be entitled to recover any monies expended in excess of the bond in establishing, re-establishing, or maintaining the landscape in accordance with the plan.

The applicant is to note that the bond specified under this condition must be remitted to Council, either in the form of monies held in trust, or as a certified banker's guarantee, together with a sum of \$550 (cash or cheque) for disbursements associated with the preparation of the agreement, prior to the issue of an Occupation Certificate by the Principal Certifying Authority.

CONDITIONS WHICH MUST BE SATISFIED DURING WORKS

- 68 Construction operations shall comply with the following:

- (a) The applicant shall conduct all construction works and any related deliveries/activities wholly within the site. If any use of Council's road reserve is required, approval and permits shall be obtained from Council.
- (b) Construction operations such as brick cutting, washing tools or brushes and mixing mortar shall not be carried out on park/road reserve or in any other locations which could lead to the discharge of materials into the stormwater drainage system or onto Council's lands.
- (c) Hosing down or hosing/washing out of any truck (concrete truck), plant (eg concrete pumps) or equipment (eg wheelbarrows) on Council's road reserve or other property is strictly prohibited. Fines and cleaning costs will apply to any breach of this condition.
- (d) Pavement surfaces adjacent to the ingress and egress points are to be swept and kept clear of earth, mud and other materials at all times and in particular at the end of each working day or as directed by Council's Engineer.
- (e) Concrete trucks and trucks used for the transportation of building materials or similar, shall not traffic soil cement or other materials onto the road reserve. Hosing down of vehicle tyres shall be conducted in a suitable off-street area where wash waters do not enter the stormwater system or enter Council's land.
- (f) The vehicular entry/exits to the site must be protected from erosion and laid with a surface material which will not wash into the street drainage system or watercourse.

- (g) All vehicles transporting soil, sand or similar materials to or from the site shall cover their loads at all times.
- 69 Vibration levels induced by the demolition activities shall not exceed levels listed in Standard DIN 4150-3 (1999-02), *Structural vibration Part 3 – Effects of vibration on structures Table 12-7*. The operation of plant and equipment must not give rise to the transmission of vibration nuisance or damage to other premises. Prior to commencement a specific vibration monitor shall be set up to monitor and record the vibration levels affecting surrounding buildings.
- 70 Vibration caused by excavation and construction at any residence or structure outside the site must be limited to: a) for structural damage vibration, German Standard DIN 4150 Part 3 Structural Vibration in Buildings. Effects on Structures; and b) for human exposure to vibration, the evaluation criteria set out in the Environmental Noise Management Assessing Vibration: a Technical Guideline (Department of Environment and Conservation, 2006).
- 71 During demolition, excavation and construction, care must be taken to protect Council's infrastructure, including street signs, footpath, kerb, gutter and drainage pits etc. Protecting measures shall be maintained in a state of good and safe condition throughout the course of demolition, excavation and construction. The area fronting the site and in the vicinity of the development shall also be made safe for pedestrian and vehicular traffic at all times. Any damage to Council's infrastructure (including damage caused by, but not limited to, delivery vehicles, waste collection, contractors, sub-contractors, concrete delivery vehicles) shall be fully repaired in accordance with Council's specification and AUS-SPEC at no cost to Council.
- 72 During demolition, excavation, construction and deliveries, access to the site shall be available in all weather conditions. The area shall be stabilised and protected from erosion to prevent any vehicles (including deliveries) tracking soil materials onto street drainage system/watercourse, Council's lands, public roads and road-related areas. Hosing down of vehicle tyres shall only be conducted in a suitable off-street area where wash waters do not enter the stormwater system or Council's land.
- 73 During construction, the applicant shall ensure that all works and measures have been implemented in accordance with approved Traffic Management Plan and Construction Management Plan at all times.
- 74 Any material containing asbestos found on site during the demolition process shall be removed and disposed of in accordance with:
- a) SafeWork NSW requirements. An appropriately licensed asbestos removalist must complete all asbestos works if they consist of the removal of more than 10m² of bonded asbestos and/or any friable asbestos.
 - b) Protection of the Environment Operations Act 1997.
 - c) Protection of the Environment Operations (Waste) Regulation 2014.
 - d) NSW Environment Protection Authority Waste Classification Guidelines 2014.
- 75 The development is to be constructed to meet the following construction noise requirements:

- a) Construction Noise
 - i) Noise from construction activities associated with the development shall comply with the NSW Environment Protection Authority's Interim Construction Noise Guideline and the Protection of the Environment Operations Act 1997.
- b) Level Restrictions
 - i) Construction period of 4 weeks and under:
 - 1 The L10 sound pressure level measured over a period of not less than 15 minutes when the construction site is in operating must not exceed the background level by more than 10dB(A).
 - ii) Construction period greater than 4 weeks and not exceeding 26 weeks:
 - 1 The L10 sound pressure level measured over a period of not less than 15 minutes when the construction site is in operating must not exceed the background level by more than 10 dB(A).
- c) Time Restrictions
 - i) Monday to Friday 07:00am to 06:00pm;
 - ii) Saturday 08:00am to 04:00pm
 - iii) No Construction to take place on Sundays or Public Holidays.
- d) Silencing
 - i) All possible steps should be taken to silence construction site equipment.

76 Noise from construction activities associated with the development shall comply with the NSW Environment Protection Authority's Interim Construction Noise Guideline and the Protection of the Environment Operations Act 1997.

(a) Level Restrictions

Construction period of 4 weeks and under:

the L10 sound pressure level measured over a period of not less than 15 minutes when the construction site is in operating must not exceed the background level by more than 20 dB(A).

Construction period greater than 4 weeks and not exceeding 26 weeks:

the L10 sound pressure level measured over a period of not less than 15 minutes when the construction site is in operating must not exceed the background level by more than 10 dB(A).

(b) Time Restrictions

Construction/demolition work shall be limited to the following hours:

Monday to Friday: 07:00 am to 05:00 pm

Saturday: 08:00 am to 01:00 pm

No Construction to take place on Sundays or Public Holidays.

- (c) Silencing

All possible steps should be taken to silence construction site equipment.
- 77 The principal contractor or owner builder must install and maintain water pollution, erosion and sedimentation controls in accordance with:
 - (a) The Soil and Water Management Plan if required under this consent;
 - (b) "Managing Urban Stormwater - Soils and Construction" (2004) ('The Blue Book'); and
 - (c) Protection of the Environment Operations Act 1997.
- 78 Any new information that comes to light during demolition or construction which has the potential to alter previous conclusions about site contamination and remediation must be notified to Council and the accredited certifier immediately. All work on site shall cease until the council is notified and appropriate measures to assess and manage the contamination in accordance with any relevant NSW EPA adopted guidelines is completed by an appropriately qualified and experienced environmental consultant.
- 79 All remediation work must be carried out in accordance with:
 - e) NSW Office of Environment and Heritage (OEH) 'Contaminated Sites – Guidelines for Consultants Reporting on Contaminated Sites';
 - f) NSW Environment Protection Authority (NSW EPA) guidelines under the Contaminated Land Management Act 1997;
 - g) State Environmental Planning Policy 55 (SEPP55) – Remediation of Land; and
 - h) The Remedial Action Plan '*Updated Remediation Action Plan - Proposed Mixed Use / Medium Density Residential Zone, Part Lot 1 in D.P. 776089, Westfield Drive, Eastgardens, NSW*' prepared by Douglas Partners, Project 71631.12, dated September 2013 and
 - i) The '*Proposed Remediation Action Plan Amendment – Revision 1 Part 130 - 150 Bunnerong Road, Pagewood*' prepared by Douglas Partners, Project 85009 Rev 1 dated 2 September 2015.
- 80 The management of potential and actual acid sulfate soils shall be conducted in accordance with all recommendations within the '*Acid Sulfate Soils Management Plan – 130-150 Bunnerong Road, Pagewood, NSW*', Reference CES130805-MG-AD by Consulting Earth Scientists dated 21 January 2016.
- 81 For any water from site dewatering to be permitted to go to stormwater, the water must meet ANZECC 2000 Water Quality Guidelines for Fresh and Marine Water for the 95% protection trigger values for Marine Water. All testing must be completed by a NATA accredited laboratory. All laboratory results must be accompanied by a report prepared by a suitably qualified and experienced person indicating the water is acceptable to be released into Councils stormwater system. If the groundwater does not meet these guideline levels a Trade Waste permit from Sydney Water must be sought to put the groundwater to sewer.

- 82 All materials excavated from the site (fill or natural) shall be classified in accordance with the NSW Environment Protection Authority (EPA) Waste Classification Guidelines (2014) prior to being disposed of to a NSW approved landfill or to a recipient site.
- 83 To prevent contaminated soil being used onsite and to ensure that it is suitable for the proposed land use, all imported fill shall be appropriately certified material and shall be validated in accordance with the:
- a) Office of Environment and Heritage (OEH) approved guidelines; and
 - b) Protection of the Environment Operations Act 1997; and
 - c) Protection of the Environment Operations (Waste) Regulation 2014.
 - d) All imported fill shall be accompanied by documentation from the supplier which certifies that the material has been analysed and is suitable for the proposed land use.
- 84 During demolition, excavation, construction and any associated delivery activities, access to the site shall be available in all weather conditions. The area shall be stabilised and protected from erosion to prevent any construction-related vehicles (including deliveries) tracking soil materials onto street drainage system/watercourse, Council's lands, public roads and road-related areas. Hosing down of vehicle tyres shall only be conducted in a suitable off-street area where wash waters do not enter the stormwater system or Council's lands.
- 85 Results of the monitoring of any field parameters such as soil, groundwater, surface water, dust or noise measurements shall be made available to Council Officers on request throughout the remediation and construction works.
- 86 An experienced Landscape Contractor shall be engaged to undertake the landscape installation and shall be provided with a copy of both the final approved landscape drawing and conditions of approval to satisfactorily construct the landscape to Council requirement.
- 87 To ensure satisfactory growth and maintenance of the landscaping, a fully automatic drip irrigation system is required in all landscape areas, including setbacks, installed by a qualified landscape contractor. The system shall provide full coverage of all planted areas with no more than 300mm between drippers, automatic controller and backflow prevention device and shall be connected to a recycled water source, where provided. Irrigation shall comply with both Sydney Water and Council requirements as well as Australian Standards, and be maintained in effective working order at all times.
- 88 In order to ensure that the trees listed in the arborist report in Condition No. 1 above are protected during all stages of construction, and their health and structural stability ensured, the following is required:
- a) All TPZ's are a "No-Go" zone. There shall be no access, no stockpiling, storage or sorting of waste or building materials, no construction work, no concrete mixing, no washing down of concrete mixers or tools, no chemicals mixed/disposed of, no excavation or filling, no service trenching. Any unavoidable work within the fenced zone shall be under the direction of Council's Tree Officer.

- b) Where unavoidable foot access is required in the TPZ, provide temporary access with timber sheets to minimise soil compaction, spillage or root damage.
- c) Comply with all recommendations of the Tree Management Plan to be submitted as a condition of approval and any other Council requirement.
- d) Excavation within the TPZ and within 3 metres outward of the canopy dripline of any tree to be retained shall be carried out **manually** using hand tools to minimise root damage or disturbance.
- e) Tree roots 35mm in diameter or greater that require pruning shall be done only under the direction of Council's Tree Officer after a site inspection.
- f) It is the Applicant's responsibility to ensure that there is no damage to the canopy, trunk or root system (including the surrounding soil) of any tree to be retained. There shall be no canopy or root pruning unless approval has been granted by Council's Tree Officer under separate application. Approved pruning shall be undertaken by a qualified Arborist in accordance with AS 4373.
- g) Masonry boundary fencing/walls or built structures shall not be located within the setback. If unavoidable they are to be to Council approval and be of piered or bridged construction to minimise damage to major or structural tree roots. Trench or strip footings are not permitted. If a tree root 35mm diameter or greater is in the location of a pier and the root cannot be cut without compromising the tree (after Council inspection and advice), the pier will need to be relocated and the root bridged.
- h) There shall be no pavements or change in levels in the Westfield Drive setback.
- i) There shall be **no trenching for new subsurface utilities** or the location of new overhead services within the primary root zone or canopy of any of the trees to be retained in the Westfield Drive setback. Any utilities close proximity to trees must accommodate tree roots without damage or pruning.
- j) The Applicant shall undertake any tree maintenance/remedial pruning as required by Council at any time during or at the completion of construction.

If there is any contravention of these tree preservation conditions, or a tree was found to be damaged (including roots), in decline, dead or pruned without permission, then Council may claim all or part of the lodged security bond prior to its release as well as require remedial pruning work. Epicormic growth is evidence of root damage.

CONDITIONS WHICH MUST BE SATISFIED PRIOR TO THE ISSUE OF AN OCCUPATION CERTIFICATE

- 89 Prior to the issue of the relevant Occupation Certificate, the floor surface of the entry, dining room and kitchen floor and internal storage areas are to be water-resist for all two and three bedroom apartments.
- 90 Prior to the issue of the relevant Occupation Certificate, car parking is to be allocated as follows:
 - (a) 319 residential spaces

- (b) 21 visitors spaces
 - (c) 1 car share space within the car park
- 91 Prior to the issue of the relevant Occupation Certificate, at least 41 bicycle spaces are to be provided in the car park.
- 92 Any damage not shown in the photographic survey submitted to Council before site works have commenced will be assumed to have been caused by the site works (unless evidence to prove otherwise). All damages as a result from site works shall be rectified at the applicant's expense to Council's satisfaction, prior to occupancy of the development and release of the damage deposit.
- 93 Prior to the issue of the relevant Occupation Certificate, documentation from a practising civil engineer shall be submitted to the Principal Certifying Authority certifying that the stormwater drainage system has been constructed generally in accordance with the approved stormwater management construction plan(s) and all relevant standards.
- 94 Prior to the issue of the relevant Occupation Certificate, the applicant shall carry out the following works:
- a) On Bunnerong Road, adjacent to development, reconstruct existing kerb and gutter for the full length of the property in accordance with Council's Infrastructure Specifications, and
 - b) On Bunnerong Road, adjacent to development, demolish existing concrete footpath and construct new footpath as per Council's Infrastructure and Landscape Architect specifications,
 - c) On Bunnerong Road, adjacent to development, demolish existing Stormwater Inlet Pit and construct new Stormwater Inlet Pit with a 2.4metre Lintel and a Steel Galvanised Grate, as per Council's Infrastructure specifications, and
 - d) On Bunnerong Road, adjacent to development, demolish existing road pavement and reconstruct road pavement full width as per Council's Infrastructure and Pavement Engineer's specifications.
- 95 Prior to the issue of the relevant Occupation Certificate, inspection reports (formwork and final) for the works on the road reserve shall be obtained from Council's engineer and submitted to the Principal Certifying Authority attesting that this condition has been appropriately satisfied.
- 96 Prior to the issue of the relevant Occupation Certificate, a restriction on Use of Land and Positive Covenant(s) shall be imposed on the development. The following covenants shall be imposed under Section 88(E) of the Conveyancing Act 1919 and lodged with the NSW Land and Property Information:
- (a) Restriction on Use of Land for On-Site Detention System. Refer to Appendix B of the SMTG for suggested wording, and
 - (b) Restriction on Use of Land for Stormwater Quality Improvement Device. Refer to Appendix E of the SMTG for suggested wording.

The terms of the 88E instruments are to be submitted to Council for review and approval and Proof of registration at the Lands and Property Information Office shall be submitted to the Principal Certifying Authority and Council prior to occupation.

- 97 A report prepared by a qualified air quality/mechanical engineer certifying that the mechanical ventilation/exhaust system as installed complies in all respects with the design and operation standards of AS 1668 – Mechanical Ventilation and Air Conditioning Codes, and the relevant provisions of the Protection of the Environment Operations Act 1997 shall be submitted to Council within 21 days of the installation of the system and prior to the occupation of the premises.
- 98 At the completion of landscaping on the site, the Applicant is required to obtain a Certificate of Compliance from the Landscape Consultant/Contractor to certify that the landscaping has been installed in accordance with the Council approved landscape plan. The Certificate is to be submitted to the City of Botany Bay Council prior to the issue of the Occupation Certificate. The contractor shall be engaged weekly for a minimum period of 52 weeks from final completion of landscaping for maintenance and defects liability, replacing plants in the event of death, damage, theft or poor performance. After that time regular and ongoing maintenance is required.
- 99 The Applicant is to submit payment of a New Street Tree Maintenance Bond of \$25,000.00. The duration of the Bond shall be limited to a period of 12 months after final Council approval of planting of the new street trees. At the completion of the Bond period the Bond shall be refunded pending an inspection of the trees by Council. If a tree is found to be dead, pruned or dying and will not recover Council will forfeit all or part of the bond to replace or maintain the tree/s, unless the Applicant undertakes this work under instruction from Council.

New street trees shall be sourced from a reputable supplier that grows to NATSPEC/Australian Standard and located and installed in accordance with the Council approved public domain plan. Two hold point inspections by Council's Tree Officer is required:

- a) prior planting trees to ensure plant stock is suitable and
 - b) post planting prior to the maintenance and bond period commencing.
- 100 The condition to be inserted under the heading of prior to Issue of Occupation Certificate is to read:
- i) That before entering a purchase/lease/occupancy agreement, or individual units are on-sold, all tenants and occupiers of the development are to be advised by the owner of the building that residents are not eligible to participate in on-street resident parking schemes.
 - ii) Prior to the issue of the occupation certificate, a sign to this effect shall be located in a prominent place, to Council's satisfaction, such as a directory board or notice board, where it can easily be observed and read by persons entering the building.
 - iii) Where a building is to be Strata Subdivided, a condition should be placed in the by-laws advising residents that they are not eligible to participate in on-street resident parking schemes.

- 101 A Stage 4 – Site Validation Report (SVR) shall be prepared by a suitably qualified contaminated land consultant and shall be in accordance with:
- a) NSW Office of Environment and Heritage (OEH) ‘Contaminated Sites – Guidelines for Consultants Reporting on Contaminated Sites’;
 - b) NSW Environment Protection Authority (NSW EPA) approved guidelines under the Contaminated Land Management Act 1997; and
 - c) State Environmental Planning Policy 55 (SEPP55) – Remediation of Land.

The site validation report shall provide a notice of completion of remediation works, whether there are any ongoing site management requirements and a clear statement on the suitability of the likely proposed site use. The report shall be submitted to the Principal Certifying Authority (and the Council if the Council is not the Principal Certifying Authority). The report is to be submitted after completion of remediation works and prior to the issue of any occupation certificate.

- 102 To ensure that the site is suitable for the proposed use, a Site Audit Statement (SAS) completed by an accredited site auditor under the *Contaminated Land Management Act 1997* shall be submitted to Council for clearly demonstrating that the site is suitable for the proposed development.

Any conditions imposed on the SAS shall form part of this consent. The accredited site auditor shall provide Council with a copy any Site Audit Report (SAR) and Site Audit Statement (SAS) prior to the release of any applicable Occupation Certificate. In circumstances where the SAS conditions (if applicable) are not consistent with the consent, a Section 96 application pursuant to the *Environmental Planning & Assessment Act 1979* shall be submitted to ensure that they form part of the consent conditions.

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

- 103 The use of studies as bedrooms is prohibited.
- 104 The stormwater drainage system (including all pits, pipes, absorption, detention structures, treatment devices, infiltration systems and rainwater tanks) shall be regularly cleaned, maintained and repaired to ensure the efficient operation of the system from time to time and at all times. The system shall be inspected after every rainfall event to remove any blockage, silt, debris, sludge and the like in the system. All solid and liquid waste that is collected during maintenance shall be disposed of in a manner that complies with the appropriate Environmental Guidelines.
- 105 New street trees shall be maintained by the Applicant/Owner/Strata Corporation for a 12 month defects period after final Council approval of planting. Maintenance includes twice weekly watering to sustain adequate growth, bi-annual fertilising, mulch replenishment every 3 months minimum and weekly weed removal around the base but does not include trimming or pruning the trees under any circumstances.
- 106 Ongoing maintenance of grass nature strips shall be undertaken by the occupier, strata or owner. Maintenance includes mowing, watering and maintaining an even coverage of grass. Maintenance **does not include** pruning, trimming or any work to Council’s street tree assets located on the Council nature strip under any

circumstances at any time, including new street trees. All pruning is undertaken by Council only.

- 107 The operation of the premises shall be conducted in such a manner as not to interfere with or materially affect the amenity of the neighbourhood by reason of noise, vibration, odour, fumes, vapour, steam, soot, ash, dust, waste water, waste products, grit, oil, or otherwise.
- 108 The use of the premises shall not give rise to air impurities in contravention of the Protection of the Environment Operations Act 1997. Waste gases released from the premises shall not cause a public nuisance nor be hazardous or harmful to human health or the environment.
- 109 All intruder alarms shall be fitted with a timing device in accordance with the requirements of Regulation 12A of the Noise Control Act, 1975, and AS2201, Parts 1 and 2 - 1978 Intruder alarm systems.
- 110 A person must not cause or permit an air conditioner to be used on residential premises in such a manner that it emits noise that can be heard within a habitable room in any other residential premises (regardless of whether any door or window to that room is open):
- (a) Before 8 am or after 10 pm on any Saturday, Sunday or public holiday, or
 - (b) Before 7 am or after 10 pm on any other day.
- 111 The use of the premises shall not give rise to any of the following when measured or assessed at “sensitive” positions within any other property. These “sensitive” positions should be selected to reflect the typical use of a property (ie any outdoor areas for day and evening but closer to the façade at night time), unless other positions can be shown to be more relevant.
- The operation of all plant and equipment when assessed on any residential property shall not give rise to a sound pressure level that exceeds LAeq 50dB(A) day time and LAeq 40 dB(A) night time.
- The operation of all plant and equipment when assessed on any neighbouring commercial/industrial premises shall not give rise to a sound pressure level that exceeds LAeq 65dB(A) day time/night time.
- For assessment purposes, the above LAeq sound levels shall be assessed over a period of 10-15 minutes and adjusted in accordance with EPA guidelines for tonality, frequency weighting, impulsive characteristics, fluctuations and temporal content where necessary.
- 112 The applicant being informed that this approval shall be regarded as being otherwise in accordance with the information and particulars set out and described in the Development Application registered in Council’s records as Development Application No. 16/143 dated as 17 August 2016 and that any alteration, variation, or extension to the use, for which approval has been given, would require further approval from Council.

