

BAYSIDE COUNCIL

Planning Assessment Report

Panel Reference	2018SCL003
DA Number	DA-2017/1236
LGA	Bayside Council
Proposed Development	Integrated Development for the demolition of three existing buildings, construction and use of the site for two residential flat buildings six (6) and eight (8) storeys comprising of ground floor retail tenancy fronting Gardeners Road, with 109 apartments, rooftop communal open spaces to each tower, two level of basement car parking to accommodate 123 spaces and associated landscaping and diversion of the Sydney Water Sewer Main.
Street Address	551,553,555-559 Gardeners Road, Mascot
Applicant/Owner	Applicant: Bravo Global Pty Ltd C/-Urbis Pty Ltd Owner: Bravo Global Pty Ltd
Date of DA lodgement	7 December 2017
Number of Submissions	First notification period: 8 Second notification period: 10 Third notification period 3
Recommendation	It is RECOMMENDED: <ol style="list-style-type: none"> 1. THAT the Sydney Eastern City Planning Panel considers the Clause 4.6 request to vary the height development standard in Clause 4.3 of Botany Bay Local Environmental Plan 2013 and can be satisfied that the variation will result in consistency with the objectives of the height standard and the objectives of the B4 – Mixed Use zone and is therefore in the public interest. 2. THAT the Sydney Eastern City Planning Panel approves DA-2017/1236 at 551,553,555-559 Gardeners Road, Mascot pursuant to Section 4.16(1)(a) of the Environmental Planning and Assessment Act 1979 subject to the conditions of consent attached to this report.
Regional Development Criteria (Schedule 7 of the SEPP (State and Regional Development) 2011)	Development with a CIV >\$20M and lodged before 1 March 2018.
List of all relevant s4.15(1)(a) matters	<ul style="list-style-type: none"> • Environmental Planning & Assessment Act 1979 • Environmental Planning & Assessment Regulation 2000 • State Environmental Planning Policy (Infrastructure) 2007 • State Environmental Planning Policy No.55 – Contaminated Land • State Environmental Planning Policy No.65 – Design Quality of Residential Apartment Development and the Apartment Design Guide • Botany Bay Local Environmental Plan 2013

	<ul style="list-style-type: none"> • Botany Bay Development Control Plan 2013
List all documents submitted with this report for the Panel's consideration	<ul style="list-style-type: none"> • Architectural Plans • Landscape Plans • Survey Plan • Clause 4.6 – Building Height
Report prepared by	Patrick Nash, Bayside Council
Report date	10 July 2019

Summary of s4.15 matters

Have all recommendations in relation to relevant s4.15 matters been summarised in the Executive Summary of the assessment report? **Yes**

Legislative clauses requiring consent authority satisfaction

Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarized, in the Executive Summary of the assessment report? **Yes**

e.g. Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP

Clause 4.6 Exceptions to development standards

If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report? **Yes**

Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions (S7.24)? **No**

Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions

Conditions

Have draft conditions been provided to the applicant for comment? **Yes**

Note: in order to reduce delays in determinations, the Panel prefer that draft conditions, notwithstanding Council's recommendation, be provided to the applicant to enable any comments to be considered as part of the assessment report

Executive Summary

Bayside Council received Development Application No. 2017/1236 on 7 December 2017 seeking consent for an Integrated Development for demolition of three existing buildings, construction and use of the site for two residential flat buildings six (6) and eight (8) storeys comprising of ground floor retail tenancy fronting Gardeners Road, with 109 apartments, rooftop communal open spaces to each tower, two level of basement car parking to accommodate 123 spaces and associated landscaping and diversion of the Sydney Water Sewer Main at 551,553,555-559 Gardeners Road, Mascot.

The Development Application is required to be referred to the Sydney Eastern City Planning Panel (SECPP) 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 \$30,000,000. Since lodgement, the plans have been amended on a number of occasions to address matters associated with: building separation/setbacks, bulk and scale, car parking, waste management, privacy and overshadowing.

The proposed development does not comply with the building height development standard contained within Clause 4.3 of Botany Bay Local Environmental Plan 2013. The submitted Clause 4.6 variation has been assessed by Council and is supported, noting that the height of the approved development on the neighbouring site at 563-567 Gardeners Road also does not comply with the building height development standard to a similar extent.

A number of submissions have been received from the adjoining residential development to the south and east. In summary, the key concerns raised relate to visual bulk and scale, privacy and loss of sunlight. These matters have been considered in the assessment of the application and in this report.

In summary, the proposed development has been assessed against the relevant controls and on balance, Council is generally supportive of the proposal. The development application is therefore recommended for approval, subject to the attached conditions of consent.

Background

17 September 2015 – A Pre-DA meeting was held with the former Botany Bay Council.

7 December 2017 – The subject development application was lodged with Council

8 January 2018 to 12 February 2018 – The development application was publicly notified in accordance with the requirements of Botany Bay DCP 2013. A total of eight (8) submissions were received.

20 February 2018 – A briefing meeting/site visit was held with Council and the Sydney Eastern City Planning Panel. The matters discussed included the history of the site, the height non-compliance, building separation and concerns raised within the submissions.

14 March 2018 – Following a preliminary review of the application, Council provided correspondence to the applicant. In summary, the following issues were raised:

- Non-conformity to the drainage/stormwater requirements within Botany Bay DCP.
- Legal implications associated with intensifying the use of the Right of Way.
- The building setbacks proposed to the rear (southern) boundary need to be increased by 3m due to the adjoining R3 – Medium Density Residential zone at the rear in Miles Street.
- Privacy and overshadowing impacts to the rear are required to be better addressed.
- The DA would need to be reviewed by the Design Review Panel.

28 May 2018 – Council advised the application that a Stage 2 – Detailed Site Investigation is required to satisfactorily address the requirements of SEPP 55 concerning land contamination.

26 June 2018 – The applicant requested Council to support the requirement for a Stage 2 DSI to be imposed by way of condition of consent.

17 July 2018 – Council advised the applicant that it is of the view that a Stage 2 DSI would be required before development consent can be issued.

9 August 2018 – The applicant submitted legal advice regarding the ownership of the Right of Way on the eastern side of the site.

25 October 2018 – The applicant submitted amended plans to Council. In summary, the following changes were made to the design of the development:

- Increased rear setback (9m) for both towers.
- Reconfiguration of Tower A to include six (6) additional apartments relocated on the southern section of the building.
- Relocation of driveway entrance to the basement levels.
- Relocation of the rooftop communal open space to Level 7 rooftop on the northern section of Tower A, along Gardeners Road.
- Revised landscape plan to respond to the built form changes.

9 November 2018 – The applicant submitted a Stage 2 DSI addressing contamination.

14 November 2018 to 21 December 2018 – The amended development application was re-notified in accordance with the requirements of Botany Bay DCP 2013. A total of ten (10) submissions were received.

13 December 2018 – The application was reviewed by the Bayside Design Review Panel (DRP). The comments made by the DRP are discussed in greater detail later in this report.

15 February 2019 – The applicant submitted further amended plans in response to concerns raised by the Design Review Panel. In summary, the following changes were made to the design of the development:

- Removal of rooftop communal open space in Tower A. The communal open space was re-located to Level 07 and reduced in size.
- Removal of two (2) apartments in Tower A on Level 07. These were substituted with communal open space as identified above.
- Additional storey proposed to Tower B to compensate for the removal of two (2) apartments in Tower A.
- Reduction to the height of the lift overrun from RL39.70 to RL38.85.
- Increased ceiling height of the commercial tenancy to ensure ADG compliance.
- Changes to the landscape design.

27 February 2019 to 8 April 2019 – The amended development application was re-notified in accordance with the requirements of Botany Bay DCP 2013. A total of three (3) submissions were received.

7 May 2019 – A meeting was held with the applicant to discuss further modifications to the design of Tower B with respect to the building separation to the north.

14 June 2019 – The applicant provided a final set of amended plans. In summary, the following changes were made to the design of the development:

- Increased setbacks of Tower B to the northern boundary;
- Relocation of two (2) apartments from Tower B to Level 7 on Tower A;
- Minor internal changes to apartment layouts;
- Additional information regarding stormwater;
- Relocation of Tower A communal open space to the rooftop; and
- Amended clause 4.6 exception (building height) to reflect the amended proposal.

These plans were not required to be re-notified in accordance with BBLEP 2013 because the proposal would have a similar level of impact to the design that was notified and advertised from 14 November 2018 to 21 December 2018.

Proposal

The development application, in its amended form, seeks consent for Integrated Development - for demolition of three existing buildings, construction and use of the site for two residential flat buildings six (6) and eight (8) storeys comprising of ground floor retail tenancy fronting Gardeners Road, with 109 apartments, rooftop communal open spaces to each tower, two level of basement car parking to accommodate 123 spaces and associated landscaping and diversion of the Sydney Water Sewer Main.

The proposed development is further summarised as follows:

Basement Level 2

- 66 car parking spaces, storage facilities, multiple lifts and services.

Basement Level

- 57 car parking spaces, storage facilities, multiple lifts, services and bin rooms.

Ground Floor

- Vehicular access on the eastern side of the site via existing shared access easement Right of Way;
- Retail tenancy addressing Gardeners Road;
- Separate residential pedestrian entries off Gardeners Road;
- Garbage truck loading dock, plant room, bicycle parking and services;
- Communal open space;
- 8 apartments (1 x 1 bed, 4 x 2 bed and 3 x 3 bed); and
- New landscaping works throughout the site, including deep soil zones adjacent to the allotment boundaries.

Level 1

- 15 apartments (3 x 1 bed and 12 x 2 bed).

Levels 2 and 3

- 34 apartments (10 x 1 bed and 24 x 2 bed).

Levels 4 and 5

- 28 apartments (6 x 1 bed, 18 x 2 bed and 4 x 3 bed).

Level 6

- 13 apartments (4 x 1 bed, 8 x 2 bed and 1 x 3 bed);
- Communal open space (Tower B).

Level 7 (Tower A)

- 11 apartments (3 x 1 bed, 7 x 2 bed and 1 x 3 bed)

Roof Plan (Tower A)

- Communal open space (Tower A); and
- Lift overrun, services and associated screening.

The proposed development contains a total of 109 apartments. The proposed dwelling mix is 27 x 1 bedroom, 73 x 2 bedroom and 9 x 3 bedroom apartment. Externally, the proposed building has a flat roof form and is contemporary in its appearance. The proposed finishes include a combination of dark and light render, face brick, aluminium louvres, glass balustrades and vertical planting. The application does not seek any consent for subdivision.

The photomontage submitted with the development application is re-produced below for reference:



Figure 1: Photomontage of the proposed development

Site Description

The subject site is located at 551, 553, 557-559 Gardeners Road, Mascot, five (5) kilometres south of the Sydney CBD and is legally described as Lot 51 in DP 1037780, Lot 2 in DP 587991 and Lot 1 in DP 337082. The site has a total area of 3,687m² with a 47m frontage to Gardeners Road. The site currently accommodates two (2) existing commercial buildings fronting Gardeners Road and a large warehouse building at the rear of the site. There is an existing 9.14m wide Right of Way adjacent to the eastern side boundary. This Right of Way provides vehicular access to the rear of the allotment at No.690 Botany Road. There are a few trees scattered throughout the site.

Immediately adjoining the site to the east are buildings which address Botany Road, including a newly completed mixed use development located at 694-698 Botany Road. To the south, at the rear of the site, are low density dwellings which face Miles Street. The northern side of Miles Street is zoned R3 – Medium Density Residential in accordance with BBLEP 2013. To the west, the subject site adjoins 563 Gardeners Road and 571 Gardeners Road which both accommodate two (2) storey commercial buildings. It is noted that there is an approval for an eight (8) storey apartment building on the site at 563 Gardeners Road. To the north of the site, on the opposite side of Gardeners Road is the City of Sydney LGA. Alexandria industrial area

characterises this area. However, a mixed use development directly opposite the site has been recently completed.

Mascot Railway Station is located in close proximity to the site to the west. The immediate area has experienced a significant increase in developments over the past few years as a result of planning strategies for increased residential and employment growth within this precinct.



Figure 2: Aerial of the subject site



Figure 3: Surrounding Context drawing

Statutory Considerations

An assessment of the application has been undertaken pursuant to the provisions of the *Environmental Planning and Assessment Act, 1979*.

Part 4 Division 5 – Special procedures for integrated development

The relevant requirements under Division 4.8 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 is 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. On 28 February 2018, Water NSW provided its General Terms of Approval which have been incorporated into the recommended conditions of consent. No further concerns are raised in this regard.

S.4.15(1) - Matters for Consideration – General

S.4.15(1)(a)(i) - Provisions of Environmental Planning Instruments

The following Environmental Planning Instruments are relevant to this application:

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

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 ("BASIX") applies to the proposed development. The development application was accompanied by a compliant BASIX Certificate which is acceptable.

State Environmental Planning Policy (Infrastructure) 2007

Clause 101 – Development with frontage to classified road

The site has a frontage to a classified road (Gardeners Road). The existing vehicular access point to the site from Gardeners Road is proposed to be retained. The proposed development will not adversely affect the safety, efficiency and ongoing operation of the classified road. The development, being residential, is sensitive to traffic noise. An acoustic report was submitted demonstrating that the development can be acoustically treated to comply with the applicable noise criteria. The proposal satisfies the requirements of this clause.

Clause 102 – Impact of road noise or vibration on non-road development

An acoustic report was submitted demonstrating that the development can be acoustically treated to comply with the applicable noise criteria stipulated in clause 102(3). The proposal satisfies the requirements of this clause.

Clause 104 – Traffic generating development

The proposal constitutes traffic generating development because it includes more than 75 dwellings and the site has access to a classified road (Gardeners Road). The application was referred to the RMS for comment in accordance with clause 104(3). The RMS provided correspondence to Council dated 18 January 2018. No objection was raised subject to the imposition of various conditions of consent which have been incorporated into the recommendation. No further concerns are raised in this regard.

State Environmental Planning Policy No. 55 – Remediation of Land

The provisions of SEPP No. 55 have been considered in the assessment of the development application, as the proposed development involves excavation below ground level to accommodate two levels of basement car park.

A Preliminary Site Investigation, Detailed Site Investigation Report and a Geotechnical Investigation have been submitted in support of the development application. The DSI notes the following:

EIS have previously undertaken a Stage 1 ESA at the site, when soil samples were collected from six boreholes and groundwater samples were collected from two monitoring wells. The primary aims of the additional ESA were to attempt to address data gaps identified during the Stage 1 ESA.

At the time of the assessment the site contained three one- to two-storey buildings surrounded by concrete and asphaltic concrete pavements. The buildings were used for a variety of commercial/industrial purposes.

Potential contamination sources/areas of environmental concern (AEC) include imported fill material, commercial use, a mechanics workshop located off-site to the east and hazardous building materials. For the additional assessment, soil samples were collected from six additional boreholes. Two new groundwater monitoring wells were installed and groundwater samples were collected from the four on-site wells. Subsurface conditions encountered during fieldwork included pavements underlain by silty sand fill material to depths ranging from 0.6m to 2.8m, underlain by natural sandy soil.

Groundwater was encountered at depths ranging from 2.2m to 3.6m. Selected soil and groundwater samples were analysed for contaminants of potential concern (CoPC). The results indicated that concentrations of cadmium and asbestos were present within soil at some locations that present a risk to potential human receptors.

Based on the findings of the assessment, EIS are of the opinion that the site can be made suitable for the proposed development following remedial works to reduce the risk to potential human receptors.

EIS recommend the following actions to be undertaken at the site:

- 1. Additional sampling should be undertaken beneath the existing buildings when access is available. We consider that the additional sampling beneath the buildings could be undertaken following demolition;*
- 2. A Remedial Action Plan (RAP) should be prepared for the site;*
- 3. A Hazardous Materials survey should be undertaken prior to demolition of the existing buildings;*
- 4. Further waste classification assessment will be required when greater detail is known regarding the areas from which soil will be excavated and disposed off-site, or following excavation and on-site stockpiling of the material; and*
- 5. A Validation Assessment report should be prepared on completion of remediation.*

Clause 7 of State Environmental Planning Policy 55 requires Council to be certain that the site is or can be made suitable for its intended use at the time of determination of an application. The ESA concludes that the site can be made suitable for the proposed high density redevelopment subject to the implementation of a Remedial Action Plan (RAP). Therefore the applicant has adequately demonstrated that the site can be made suitable to accommodate the intended use and satisfy the provisions of SEPP No. 55.

Council's Environmental Scientist has reviewed the development proposal and raises no objection subject to the imposition of conditions of consent.

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

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

During the development application process, the application was reviewed by Council's Design Review Panel on 13 December 2018. The DRP raised relatively minor design concerns and overall, supported the proposed development. Resubmission to the Panel was not required as most recommendations were addressed in the revised design submitted to Council.

The specific recommendations of the Panel made at the meeting are detailed below with Council's comment on how these have been addressed.

DRP recommendation	Comment
Landscape design along the southern boundary should be improve to provide high quality tiered layering to provide an effective screen and to assist in managing the interface and scale transition.	The landscape plans have been amended to ensure that this outcome is achieved. This was reviewed by Council's Landscape Architect who is supportive of the design.
Planter boxes supporting the climbing plants on the front elevation should be suitably sized.	The planter boxes on the front wall have been increased in size and the climber species has been specified in the planting strategy.
Additional planting should be provided along the eastern boundary within the shared access easement and Right of Way.	The potential for removable planter boxes has been considered, however as the access provides a right of way for vehicles it needs to remain clear of obstruction, meaning that additional planting in this location is not feasible.
Poor amenity of apartments AG01 and AG02 on the ground floor.	<p>It is noted that apartment AGO1 does not receive the minimum of 2 hours of direct sunlight during the winter solstice, however the unit benefits from a number of positive embellishments including a large courtyard and extensive landscaping along the boundary, ensuring adequate privacy for future residents. The apartment also meets the ADG natural ventilation requirement.</p> <p>Apartment AGO2 receives the minimum of 2 hours of direct sunlight during the winter solstice and is also naturally ventilated. Given these points, it is not considered necessary to reconfigure these apartments. Furthermore, any amendment to the retail units at this level would result in a compromised layout for the residential lobby.</p>
Insufficient ceiling heights within the commercial	The ceiling heights have been increased to comply (3.5m).

tenancies which do not achieve the ADG guidelines.	
Attempts should be made to re-locate the substation to provide a better ground floor resolution.	This comment has been considered, however it is not feasible to relocate the substation. On balance, the overall frontage treatment on the ground floor is acceptable.

Apartment Design Guide

A Design Verification Statement has been prepared by DKO Architecture and was submitted with the development application.

The applicant has submitted an assessment against Part 3 and 4 of the ADG and has demonstrated adequate regard has been given to the design quality principles and objectives specified in the ADG for the relevant design criteria. An assessment against a condensed version of Part 3 and 4 of the ADG has been provided in table form 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 key matters within the ADG are considered below:

SEPP 65 – ADG			
Control	Requirement	Proposed	Complies
Car Parking	0.6 per 1 bed 0.9 per 2 bed 1.4 per 3 bed 1 per 5 visitor A total of 95 resident spaces and 22 visitor spaces are required. Therefore, 117.	123 car parking spaces (inclusive of 6 parking associated with non-residential component and required by the DCP)	Yes
Dwelling Size	Minimum internal areas as follows: 1 bed unit: 50sqm 2 bed unit: 70sqm 2 bed unit with 2 nd bathroom: 75sqm 3 bed unit: 90sqm 3 bed unit with 2 nd bathroom: 95sqm	1 bed units: 51-60sqm 2 bed units: 75-86sqm 3 bed unit: 96-126sqm	Yes Yes Yes
Ceiling Height	Habitable Rooms: 2.7m Non-habitable: 2.4m Mixed Use: 3.3m for ground and first floor	Floor to floor height for residential levels: 3.1 metres which enables a compliant floor to ceiling height to be achieved. 3.8m floor to floor	Yes

		height within the retail tenancies is compliant.	
Deep Soil	Objective 3E-1 requires 7% of the site as deep soil area (requires 258sqm) min.6m wide	431sqm (11.7%) – less than 6m wide 458sqm (12.4%)- 6m wide	Yes
Communal Open Space	25% of the site area (921sqm)	1355sqm (37%). It is noted that this incorporates some parts on the ground floor which are not considered suitable as communal open space. However, the proposal would still exceed the 25% requirement.	Yes
Solar Access	50% direct sunlight to the principal usable part of the COS for a minimum of 2 hours during mid-winter Note: Part 4C requires that COS receives 3 hours in winter.	More than 50% of COS on the roof top areas of each tower receives greater than 2 hours of sun due to its location.	Yes
	Living rooms and POS for at least 70% of apartments (and in neighbouring development) to achieve 2 hours between 9am and 3pm	71.6% (78/109) of apartments will receive at least two hours of sunlight during June 21 st .	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	Refer to Note 1 discussion for assessment comments	Refer to Note 1
Balcony Sizes	1 bed: 8sqm 2 bed: 10sqm 3 bed: 12sqm Ground Floor: 15sqm	1 bed: 8sqm 2 bed: 10sqm-12sqm 3 bed: 14sqm Ground floor: All courtyards exceed 15sqm	Yes Yes Yes
Cross Ventilation	60%	75 % (15/20 units).	

			Yes
Storage	1 bed: 6m ³ 2 bed: 8m ³ 3 bed: 10m ³	Storage spaces within the units and in the basement area have been provided.	Yes

Note 1 – Building Separation

The following comments are noted with regards to the separation/setbacks of the proposed development:

Eastern boundary

The proposed setbacks to the eastern side boundary range between 6m – 9m and comply with the ADG requirements with the exception of the north-eastern portion of the development at the front of the site. This building element (shown below) is proposed to be setback 6m on all levels. The ADG requires a 9m setback for 5-8 storeys.

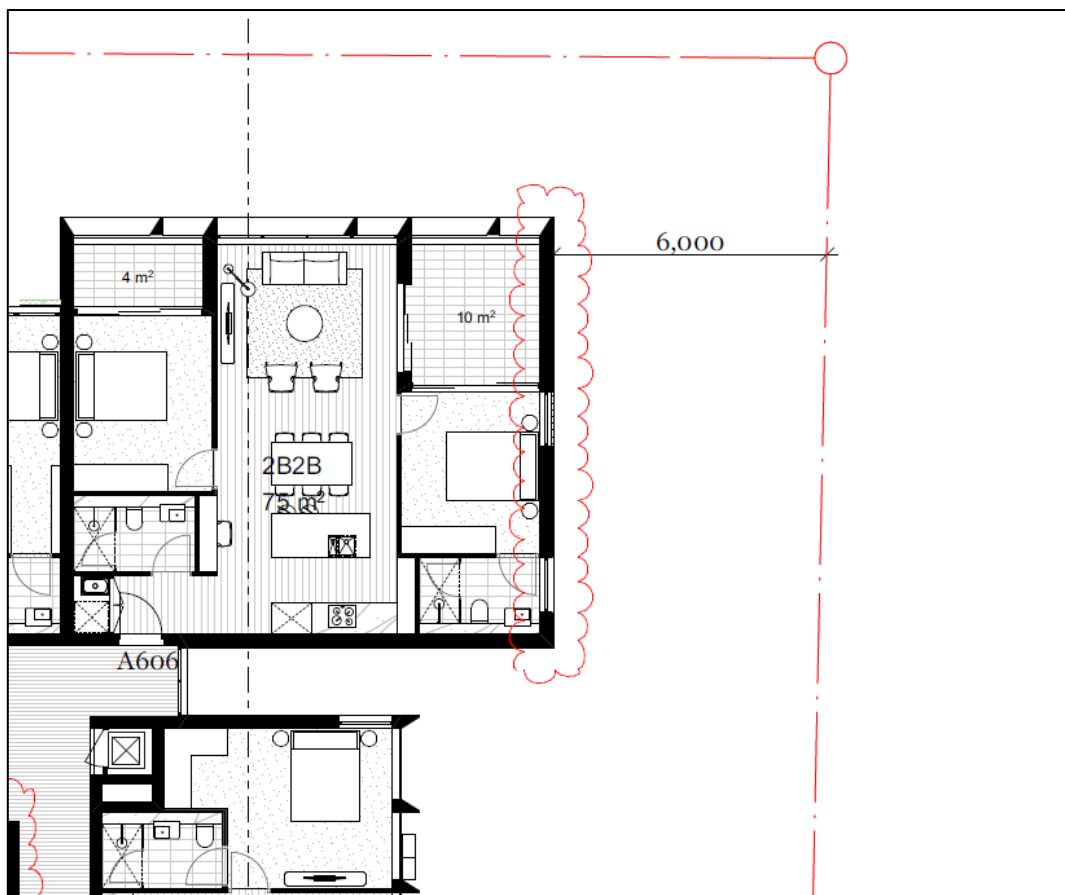


Figure 4: Plan extract (Level 06)

This non-compliance is supported for the following reasons:

- The setback proposed provides for some modulation/cantilevering of the building on the front elevation;
- The setback does not preclude the reasonable re-development of the neighbouring property to the east (686 Botany Road) which is a listed heritage item in BBLEP 2013; and
- Visual privacy has been well resolved with the inclusion of privacy screen devices and solid walls adjacent to the balconies. It is noted that the window openings proposed relate to non-active rooms (bedroom and bathroom).

There have been a number of submissions received from the newly constructed residential flat building to the east at No.694-698 Botany Road (see images below).



Figure 6: 696-698 Botany Road as viewed from the subject site



Figure 7: 696-698 Botany Road as viewed from the subject site

Some of the concerns raised relate to building separation, visual bulk and scale and privacy impacts. The proposal exceeds the ADG building separation controls, as it relates to the building at 694 Botany Road. The proposed development accommodates a 16m+ separation at the first 4 levels and 24.5m separation for levels 5 and above. The applicant has prepared a section drawing (re-produced below) which demonstrates the relationship between the two buildings:

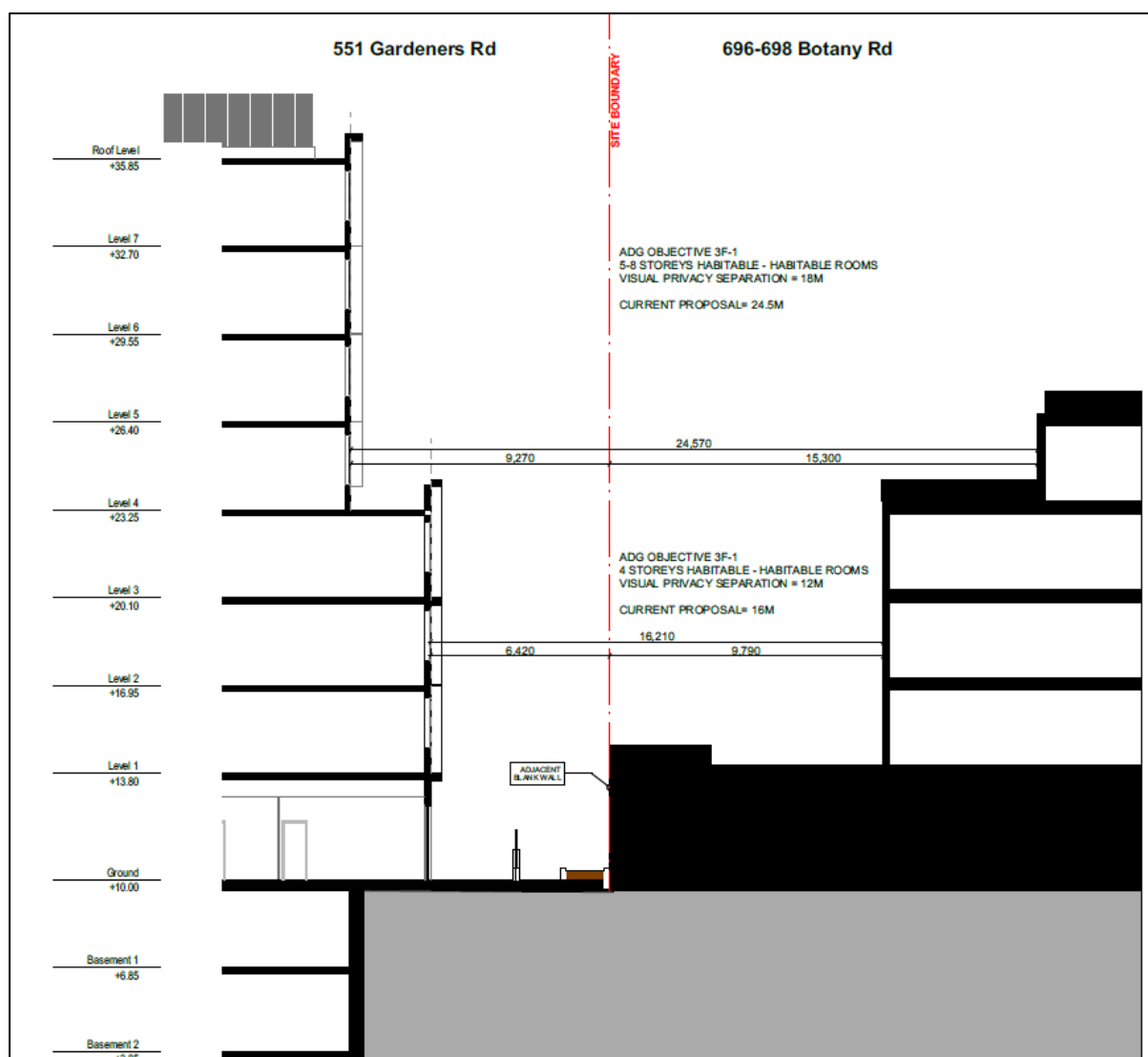


Figure 7: Section drawing showing separation distances

Western boundary (Tower A)

The western side setback of Tower A is proposed to be 3.5m. This non-compliance is supported for the following reasons:

- Flexibility was granted by Council for the proposed setbacks of the adjoining approved development at 563 Gardeners Road. The eastern elevation of that approved building is generally blank as windows/balconies have been restricted on the upper levels. Further, the western elevation of the subject development is considered to be a relatively defensive façade, limited to bedroom windows with external privacy screen devices;
- The presence of a 9m wide Right of Way along the eastern boundary restricts the ability to develop in that area. Hence the building shifting to the west; and
- There are no adverse amenity impacts attributable to the setback as proposed.

Western boundary (Tower B)

Tower B has been setback 6m from the western side boundary. This setback is satisfactory as the setbacks enables the provision of a consolidated landscaped buffer on the ground floor

and the external façade along the western elevation is relatively blank. This elevation is restricted to a single window only that is covered with external louvres. Lastly, this component of the building does not cause any noteworthy overshadowing impacts to neighbouring properties.

Northern boundary (Tower B)

Tower B is proposed to be setback 6m from the northern boundary (i.e. – the rear boundary of the approved development at 563-567 Gardeners Road) for the first 4 storeys. Storeys 5 and 6 are proposed to be setback 7.8m.

The ADG requires 18m separation as there are balconies and windows of habitable rooms. The original plans provided for a setback of 6m for storeys 5, 6 and 7 in Tower B which was considered to be insufficient. This concern was raised by Council with the applicant. Consequently, the plans were amended to improve the separation distances provided (i.e. – to 7.8m so as to match the adjacent building).

The approved rear setbacks at 563 Gardeners Road are approximately 7.75m (storeys 5 and 6 measured to the edge of the balconies) and 11m (storey 7 measured to the edge of the balcony). The rear treatment of storey 5 at 563 Gardeners Road contains balconies with full length sliding louvres and the windows proposed are very narrow slit windows which restricts the available outlook. At storey 6, fixed enclosing louvres have included on the balcony edge.

In view of the above, the building setbacks of Tower B to the northern boundary are satisfactory.

Rear (southern) boundary

During the assessment of the application, Council requested the applicant to amend the plans so as to provide additional building separation from the rear boundary due to the change in zoning to the south. Adjacent dwellings at the rear in Miles Street are zoned R3 – Medium Density Residential, have an 11m height limit and FSR of 0.9:1. The proposed building setback is 9m for all storeys. This setback therefore incorporates an additional 3m for the first 4 storeys (i.e. – the setback requirement would ordinarily be 6m). The 7th storey in Tower B is proposed to be setback 14m from the rear boundary, with the exception of the lift core/fire stairs/edge of the communal open space area.

It is noted that recently completed buildings further to the west (assessed against the previous RFDC, not the ADG) appear to have been constructed far closer to the rear boundary than the 9m proposed for the subject development.

The design of the development incorporates a 6m wide deep soil zone along the rear boundary which provides opportunities for significant landscape screening. Additionally, there is an existing high wall along a portion of the rear boundary which is visually intrusive and proposed to be removed.

The applicant has undertaken a detailed overshadowing analysis of the private open space areas at the rear of affected properties in Miles Street. The results of this are shown below:

Address	Solar Access (to 6x4m area within rear yard between 9am and 3pm on 22 June)
2 Miles St	5 hours
4 Miles St	1.5 hours
6 Miles St	3 hours
8 Miles St	2.5 hours
10 Miles St	4 hours

Figure 8: Solar access study

The amount of solar access retained for the adjoining dwellings at the rear is considered to be satisfactory. Only one property (4 Miles Street) would not achieve the DCP guideline (Part 4A.4.3 – Solar Access) to retain 2 hours solar access. However, that variation is minor, being 30 minutes.

The Design Review Panel has reviewed the development and provided the following commentary with respect to the rear boundary setbacks:

For the boundary to the R3 zone to the south the proposal provides a 9m setback. For the first four levels of the building this is consistent with the ADG consideration (for setting building separation controls). For levels 5 and above this separation could be increased to 12m however the Panel considers that this is not warranted for reasons including:

- *the large rear setbacks of buildings on the R3 zone*
- *that reasonable solar access to existing buildings is maintained at 9m setback*
- *the height of Tower B, well below the permissible height*
- *the large separation of Tower A from Tower B which is not required by the controls but which provides a far more significant variation in built form and relief to any scale interface impacts that would be achieved by an additional 3m setback at the upper levels.*

In view of the above, the separation distances proposed to the rear southern boundary is considered to be acceptable.

Separation within the development

The separation distances within the development itself have been considered and generally compliant with the ADG requirements with the exception of the following:

- On levels 4 and 5 Apartment B403/503 (Tower B) has a 12.29m separation distance from apartments A409/509 and A410/510 in Tower A which are to the east. This is non-compliant with the ADG 18m minimum. The treatment of the external eastern wall of B403/503 is relatively blank to minimise any visual privacy impacts; and
- On levels 4 and 5 Apartment B403/503 (Tower B) has a 15.55m separation distance to A402/502 in Tower A to the north. The balconies between these apartments have however been offset.

The non-compliances are considered to be minor to the extent that only a few apartments are affected out of a total of 109 dwellings. The minor variations are satisfactory in the circumstances.

SEPP 65 Design Principles

The assessment of the proposal has had regard to the SEPP 65 Design Principles. The following summary against each of those principles is provided:

Context and Neighbourhood Character

The character of this area of Mascot is evolving and it is considered that the proposal responds well to the future character, including the adjacent court approval on the neighbouring site, new development in the adjacent B2 zone to the east whilst mediating with existing buildings in the R3 zone to the south.

Built Form and Scale

The built form and scale of the development is generally appropriate for the site and its surroundings. The proposal is compliant with the FSR development standard and achieves a high degree of compliance with the ADG separation distance requirements.

Density

The density is acceptable, noting that the extent of gross floor area proposed is compliant with the floor space ratio development standard within BBLEP 2013.

Sustainability

The BASIX Certificate provided is relied upon as a sustainability measure.

Landscape

The landscaping outcomes proposed are generally satisfactory. Deep soil zones have been retained around the perimeter of the building footprint as much as practically possible. This includes a 6m wide area adjacent to the rear boundary which results in the provision of significant landscaping to improve the interface with the adjacent R3 zone.

Amenity

The proposal is compliant with the solar access, natural ventilation and apartment layout guidelines set out in the Apartment Design Guide.

Safety

The development provides an acceptable activation of the ground floor facing Gardeners Road which enables additional casual surveillance opportunities. The building entries are legible. Overall, a positive relationship between public and private spaces is achieved.

Housing Diversity and Social Interaction

The proposal provides an appropriate mix of 1, 2 and 3 bedroom dwellings. There are social interaction opportunities by virtue of the communal open space areas.

Aesthetics

The design achieves an acceptable aesthetic quality.

Botany Bay Local Environmental Plan 2013

Botany Bay Local Environmental Plan 2013 has been considered in the assessment of the Development Application and the following information is provided:

Relevant Clauses Principal Provisions of Botany Bay Local Environmental Plan 2013	Compliance Yes/No	Comment
Land use Zone	Yes	The site is zoned B4 Mixed Use zone under the Botany Bay Local Environmental Plan 2013.
Is the proposed use/works permitted with development consent?	Yes	Residential flat buildings and commercial premises are permissible with Council's consent under the Botany Bay Local Environmental Plan 2013.
Does the proposed use/works meet the objectives of the zone?	Yes	The proposed development is acceptable with respect of the objectives of the B4 Mixed Use zone.
What is the height of the building? Does the height of the building comply with the maximum building height?	No – Refer to Note 1 below	A maximum height of 26 metres applies to the subject site. The maximum height of the development does not comply with Council's requirements under the Botany Bay Local Environmental Plan 2013. Tower A has a maximum height of 30.86m when measured to the top of the lift overrun. A Clause 4.6 variation was provided with the application and is discussed in greater detail in the report below.
What is the proposed Floor Space Ratio? Does the Floor Space Ratio of the building comply with the maximum Floor Space Ratio?	Yes	The maximum allowable Floor Space Ratio requirement is 2.5:1 (9217m ²). The proposed FSR is 2.5:1 (9217m ²).

Relevant Clauses Principal Provisions of Botany Bay Local Environmental Plan 2013	Compliance Yes/No	Comment
<p>Is the site within land marked "Area 3" on the Floor Space Ratio Map?</p> <p>If so, does it comply with the sliding scale for Floor Space Ratio in Clause 4.4A?</p>	N/A	The site is not located in an Area 3 zone.
Is the land affected by road widening?	N/A	The subject site is not affected by road widening.
Is the site listed in Schedule 5 as a heritage item or within a Heritage Conservation Area?	Yes	The site is located in close proximity to heritage items at 686 Botany Road (I26 – Former bank building) and 10 Miles Street (I152 – House). It is also noted that there are some listed heritage items on the opposite side of Gardeners Road within the City of Sydney LGA. Refer to map extract below:

Relevant Clauses Principal Provisions of Botany Bay Local Environmental Plan 2013	Compliance Yes/No	Comment
<ul style="list-style-type: none"> 6.3 – Stormwater Management 6.9 – Development in areas subject to aircraft noise 6.15 – Active Street frontage 6.16 – Design Excellence 	<p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p>	<p>reports to address excavation. The proposal was referred to Council's Environmental Scientist who does not object to the proposal on this basis, subject to conditions of consent.</p> <p>Council's Development Engineer has reviewed the proposal and raises no objection to the proposed method(s) of stormwater management. Conditions of consent have been imposed.</p> <p>The site falls within the 20-25 ANEF contour. The development provided an acoustic report which is acceptable.</p> <p>The subject site is identified as being subject to the provisions of this clause in accordance with the Active Street Frontages Map which accompanies BBLEP 2013. The proposed development satisfies this clause as the design provides an active street frontage on the ground floor of the building facing Gardeners Road.</p> <p>Council is satisfied that the proposal exhibits design excellence and thus satisfies the provisions of this clause. In this regard, the matters identified in clause 6.16(4) have been considered:</p> <ul style="list-style-type: none"> (a) The architectural design and external materials are contemporary and of a high quality appropriate to the proposed building type and site location. (b) The form and external appearance of the development will improve the quality and amenity of the public

Relevant Clauses Principal Provisions of Botany Bay Local Environmental Plan 2013	Compliance Yes/No	Comment
		<p>domain through the provision of a new building form, replacing the existing structures which do not add to the quality of the streetscape.</p> <p>(c) The proposal will not detrimentally impact on any view corridors.</p> <p>(d) The principles of ecologically sustainable development have been achieved. A compliant BASIX Certificate has been provided, generous deep soil areas are incorporated into the design and natural light is maximised to the apartments as far as practically possible.</p>

Note 1: Non-compliance with Clause 4.3 – Building Height

The proposed development does not comply with the building height development standard of 26 metres under BBLEP 2013. The highest part of the proposed development is 30.86m when measured to the top of the lift overrun in Tower A. The extent of the breach is therefore 4.86 m or 18.6%.

The following plan extracts illustrate the non-compliant portions of the building:

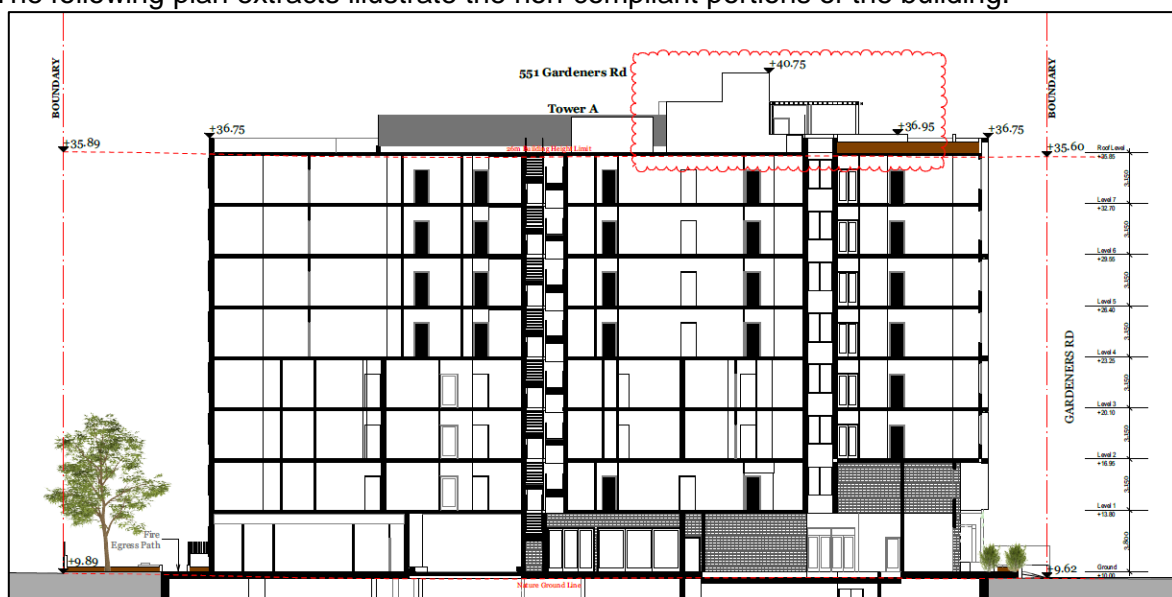


Figure 9: Section-A extract

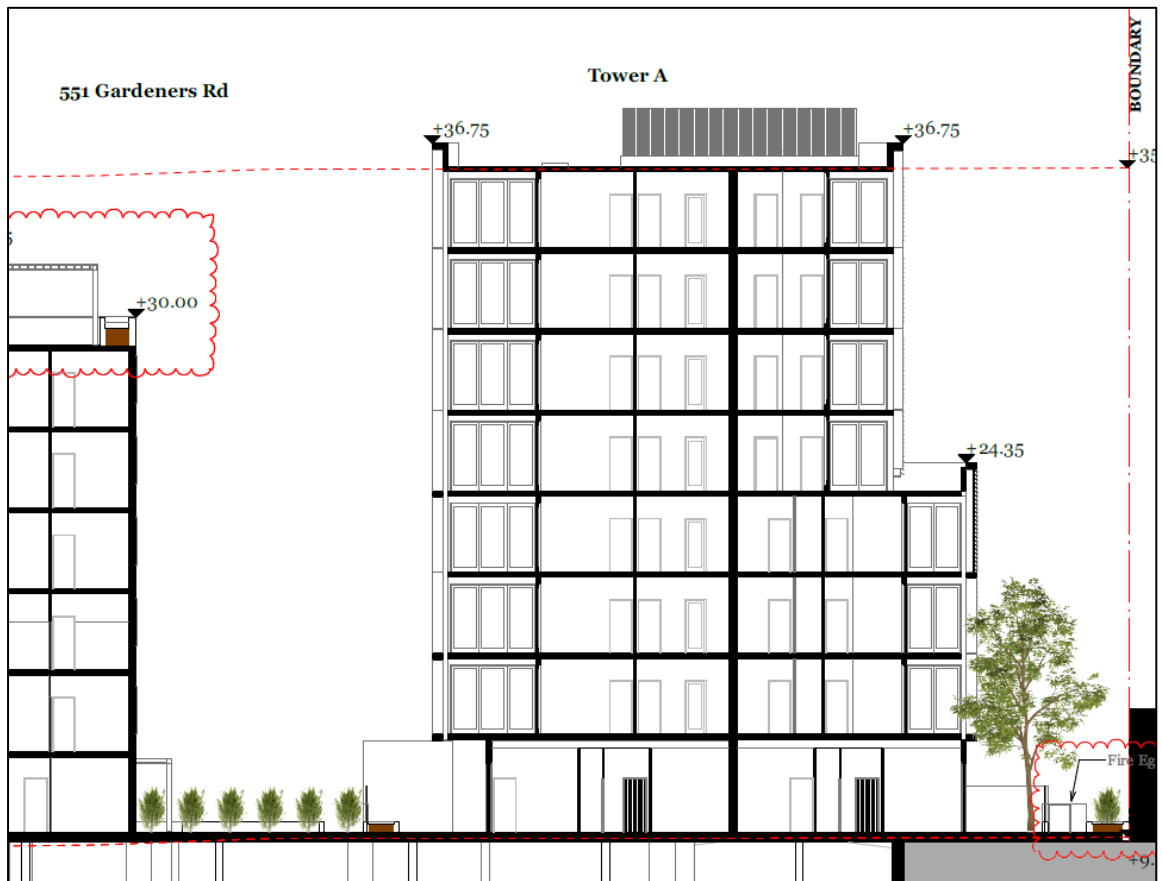


Figure 10: Section C extract

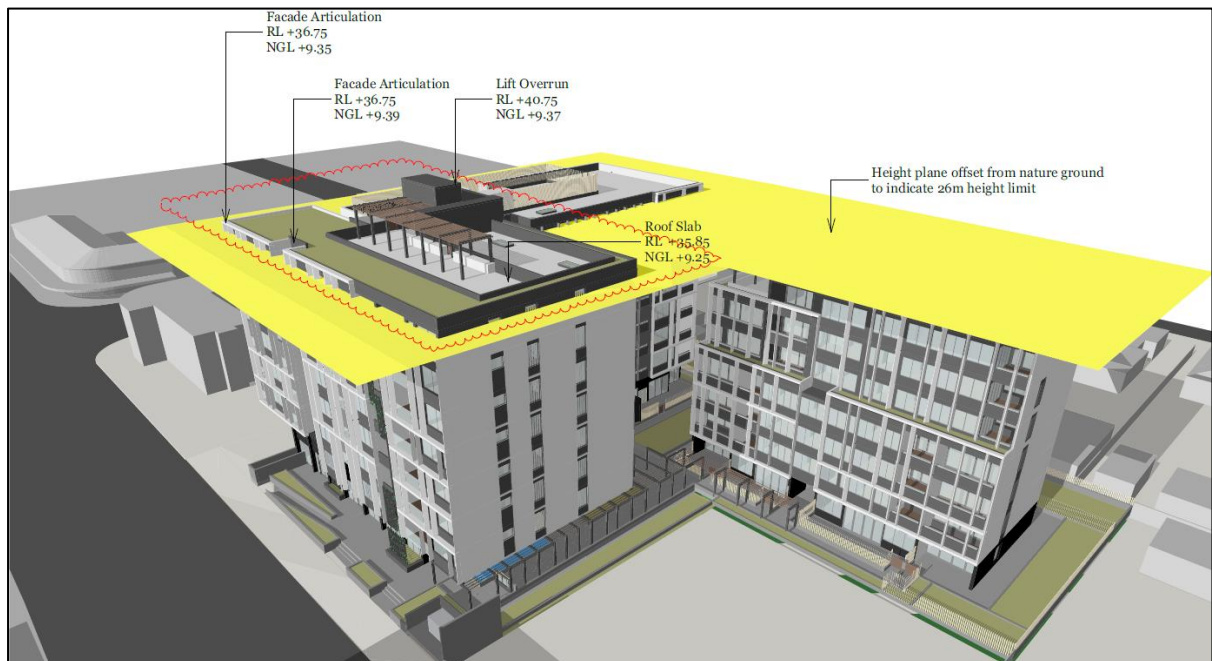


Figure 11: Height Plane diagram

As can be seen from Figures 9 - 11 above, the non-compliant building elements relate to the rooftop communal area, lift overrun/fire stairs, some portions of the top building parapets, rooftop plan/services area and the screens which surround it.

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.

The applicant provided a clause 4.6 variation addressing the building height non-compliance which has been included as an attachment to this report. The relevant provisions of clause 4.6 of BBLEP 2013 have been addressed as follows:

Clause 4.6(3)(a) – compliance with the development standard is unreasonable or unnecessary in the circumstances of the case; and

Clause 4.6(3)(b) – Are there sufficient environmental planning grounds to justify contravening the development standard?

Compliance with the building height development standard is unreasonable or unnecessary because the proposal is consistent with the objectives of the height development standard contained in clause 4.3 of BBLEP 2013. Refer to table provided by the applicant below:

Objective	Comments/assessment
Clause 4.3 (1) (a) - To ensure that the built form of Botany Bay develops in a coordinated and cohesive manner.	<p>The additional height is considered appropriate for the condition of the site given its topography and to improve the amenity of the building for future occupiers.</p> <p>In relation to the surrounding area, the development is consistent with the surrounding area and the envisaged future character.</p>
Clause 4.3 (1) (b) - To ensure that taller buildings are appropriately located.	<p>The proposed development is located adjacent to a heritage listed item, however is separated by a Right of Way of 9m width, which assists in minimising any impacts on the heritage item.</p> <p>As mentioned within the Heritage Impact Statement, the surrounding area has seen an increase in the number of approved residential flat buildings in the locality. As such, the lower density heritage items will increasingly be situated in the context of the greater scale development that is being developed.</p>
Clause 4.3 (1) (c) - To ensure that building height is consistent with the desired future character of an area.	<p>The proposal is consistent with the changing character of the area, and recent development approvals.</p> <p>The amended proposal does not seek to introduce additional GFA above the height control, rather the limited breaches of the height control are from façade articulation, rooftop communal space and the lift overrun which provides access to this level.</p>
Clause 4.3 (1) (d) - To minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development.	The proposed development will not create visual impacts on the surrounding area nor will it result

	<p>in unreasonable loss of views from existing developments.</p> <p>The amended proposal does not create any additional shadow impacts beyond the originally proposed scheme, as the elements above the height control merely result in self-shadowing effects for the remainder of the rooftop at the site.</p>
<p>Clause 4.3 (1) (e) - To ensure that buildings do not adversely affect the streetscape, skyline or landscape when viewed from adjoining roads and other public places such as parks, and community facilities.</p>	<p>Due to the neighbouring developments which have been developed or in the pipeline along Gardeners Road, the proposal is considered to have a positive impact on the streetscape and will help transform the area to the desired future character.</p> <p>The site is not located within close proximity to any parks or community facilities where it could have a major impact in terms of view loss or overshadowing.</p>

With an FSR of 2.5:1, the proposal is fully compliant with the FSR development standard that applies to the site. Therefore, the height variation does not seek to provide any gross floor area above the existing maximum building height.

The predominant building height is 26m, with the rooftop communal open space, lift overrun and façade articulation being a very minor exception to this, 4.86m exceedance at the highest point.

The height variation is attributed to building design fronting Gardeners Road, along with rooftop elements such as the lift overrun, façade articulation and landscape structures. These do not cause additional overshadowing on neighbouring sites to the rear. It is noted that the neighbouring site at No.563 Gardeners Road has a DA approval for a scheme which breaches this height limit, which provides a precedent for the area.

The site is constrained in that it adjoins a lower density zone at the rear, resulting in a requirement for a larger rear setback. Further, there is a 9m wide Right of Way on the eastern side of the site which restricts the ability to provide any gross floor area in this location. On balance, the overall development has been cited in a satisfactory manner having regard to the context, neighbouring buildings and the need to comply with a number of other planning controls.

The building height breach facilitates equitable access to a rooftop communal open space area. Whilst there are other communal open space areas proposed (on the ground floor plan and on the rooftop of Tower B), the area above Tower A is north facing, is likely to have significant view availability and provides a high level of amenity for future users. As identified in the applicant's clause 4.6 exception, a similar height non-compliance has been approved on the neighbouring site to the west at No.563 – 567 Gardeners Road. The top portion of the building/parapet, rooftop communal terrace, fire stairs and lift were approved above the 26m building height. Refer to plan extract below:

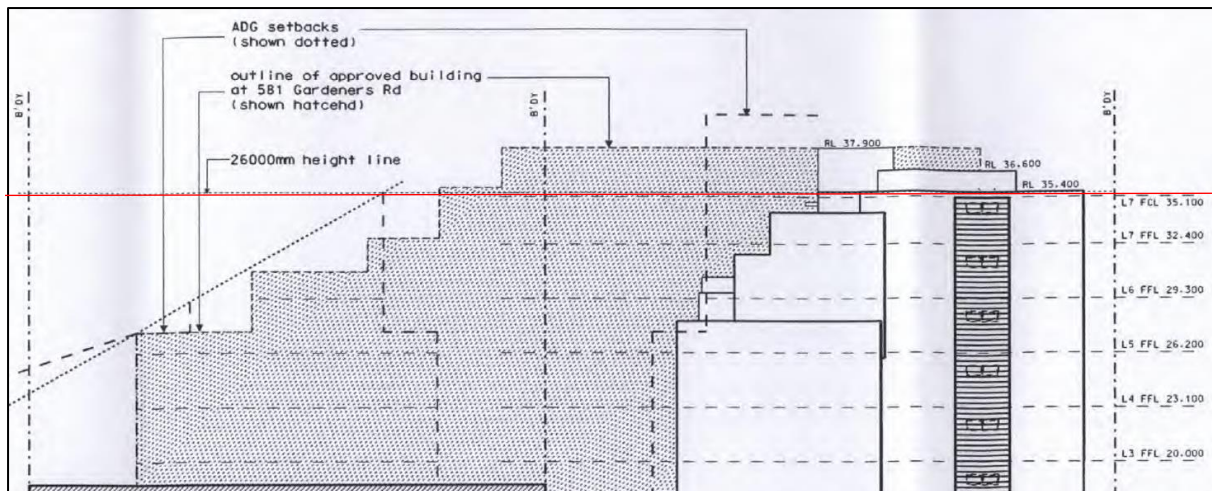


Figure 12: East elevation extract of No.563 Gardeners Road with height line shown in red

Having regard to the above, it is evident that Council has not strictly enforced the maximum allowable building height control in past decisions.

The applicant has provided a sight line diagram which demonstrates that the building elements in breach of the maximum allowable height would not be readily visible from the public domain at the front of the site (i.e. – from Gardeners Road). Refer to plan extract below:

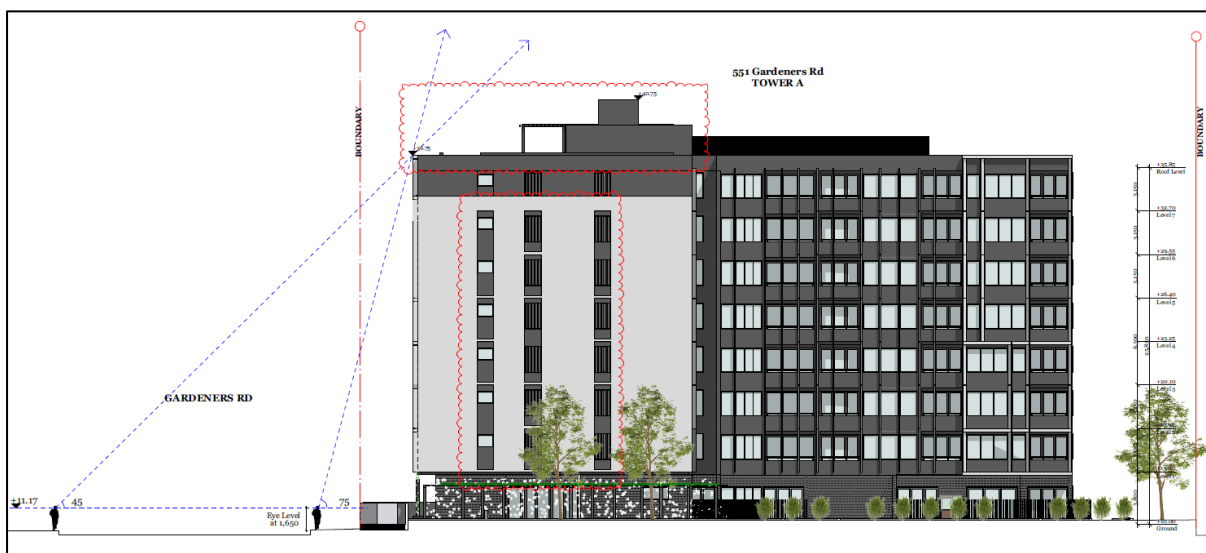


Figure 13: Site Line diagram

It is noted that the height of screening around the rooftop services in Tower A appears to cause very marginal additional overshadowing impacts to bedroom windows on the uppermost level in the development at No.696-698 Botany Road. As a result of this, a condition of consent is recommended to reduce the height of the screening from approximately 2.3m to 1.6m.

Clause 4.6(4)(a)(i) – the applicant’s written request has adequately addressed the matters required to be demonstrated by subclause (3)

The applicant’s written request is considered to adequately address the matters required to be demonstrated by clause 4.6(3) of BBLEP 2013.

Clause 4.6(4)(a)(ii) - the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out

It is considered that the proposal is consistent with the objectives of the building height development standard within clause 4.3 of BBLEP 2013 for reasons previously identified. The proposed development would also be consistent with the objectives of the B4 – Mixed Use zone as demonstrated below:

B4 – Mixed Use zone objective	Comments/assessment
To provide a mixture of compatible land uses.	The proposed development provides a retail tenancy and residential flat building. These land uses are considered to be compatible with one another and can be found on a range of other recently completed developments in the Mascot area.
To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.	The proposed development provides retail/residential land uses. The site is located in an accessible location because there are a number of bus stops along Gardeners Road/Botany Road and Mascot Station is located in close proximity to the site to the west. Bicycle storage facilities have been provided on the Basement 1 plan.

Concluding remarks

The request to vary the building height development standard has been assessed in accordance with the provisions of Clause 4.6 and relevant case law, being the principles of *Wehbe v Pittwater Council* [2007] NSW LEC 827 and *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009 & NSW LEC 90 (*Four2Five*). The proposal is consistent with the underlying objectives of the standard identified and is consistent with the objectives of the B4 – Mixed Use zone. The proposal and Council’s assessment has concluded that compliance with the building height development standard is unreasonable or unnecessary in the circumstances of the case, and that there are sufficient environmental planning grounds to justify contravening the development standard.

The proposed development will be in the public interest because it is consistent with the objectives of the building height development standard and the objectives of the B4 – Mixed Use zone.

In view of the above, the provisions of clause 4.6(4) of BBLEP 2013 are satisfied.

S.4.15(1)(a)(ii) - Provisions of any Draft EPI's

There are no current Draft EPIs applicable to this development.

S4.15(1)(a)(iii) - Provisions of any Development Control Plan

Botany Bay Development Control Plan 2013

The development proposal has been assessed against the controls contained in the Botany Bay Development Control Plan 2013 as follows:

Part 3A – Parking and Access

The car parking for the retail component has been provided in accordance with the provisions of Part 3A of BBDCP 2013. On the basis of 1/25m² for retail, a total of six (6) car parking spaces would be required. There are a sufficient number of car parking spaces provided within the basement to comply with this requirement.

Part 3B – Heritage

Refer to BBLEP 2013 discussion.

Part 3C – Access and Mobility

The proposal provides for 22 accessible units, accessible car parking spaces as well as appropriate lift access and ramp access throughout the building. The proposed development is compliant with this part of BBDCP 2013.

Part 3G- Stormwater Management

Council's Development Engineer has reviewed the amended stormwater plans and raises no concerns subject to conditions of consent.

Part H – Sustainable Design

A BASIX Certificate accompanies the proposal and demonstrates a commitment to sustainability measures.

Part I – Crime Prevention, Safety & Security

The proposal has been designed to have casual surveillance over Gardeners Road to the north. Internally, the proposed development includes secure pedestrian and vehicle access, whilst the internal orientation of units provides for passive surveillance over the internal communal areas of the subject site.

Part 3J – Aircraft Noise and OLS

The site is located within the 20-25 ANEF Contour. The application was supported by an acoustic assessment report which demonstrates that the development is capable of complying with the applicable noise criteria.

Part 3K – Contamination

Refer to SEPP 55 section above which discusses the contamination of the site.

Part 3L – Landscaping and Tree Management

The proposal was reviewed by Council's Landscape Architect who has indicated that the proposed landscaping outcomes are generally acceptable subject to conditions of consent. No further concerns are raised in this regard.

Part 3N – Waste Minimisation and Management

The proposal incorporates suitable waste management facilities. There is a bulk storage area and bin room on the Basement 1 plan. Waste chutes are provided on each residential level in accordance with the BBDCP 2013 requirements. A dedicated on-site garbage truck loading dock has been incorporated into the design of the ground floor and is directly behind the retail tenancy.

Part 4C – High Density Residential

The development application has been assessed against the controls contained in *Part 4C of the DCP – Residential Flat Buildings*. The following table compares the proposed development with the key, relevant provisions of this policy.

Part	Control	Proposed	Complies
4C.2.2 Streetscape Presentation	New development must be compatible in bulk and scale with adjoining residential developments and reflect the patterns of buildings in the streetscape.	The predominant character of approved development and development under assessment in Gardeners Road are eight storey buildings along the street frontage. The proposed development is considered to be in context with the changing streetscape of Gardeners Road and the surrounding Mascot area.	Yes
4C.2.3 Height	The maximum number of storeys must not exceed that identified in the relevant character statement for each precinct as set out in Part 8 - Character Precincts. If the maximum number of storeys is not identified in Part 8, the maximum number of storeys must be consistent with the existing characteristic	The Mascot Character Precinct controls in BBDCP 2013 do not specify a maximum number of storeys for this site. The BBLEP 2013 height limit (measured in metres) is relied upon, alongside the existing character set by recently constructed apartment buildings in the locality.	No – cl 4.6 is relied upon

	building height set by the immediately surrounding apartment buildings.		
4C.2.4 Landscaped Area and Deep Soil Planting	<p>Min Landscaped Area: 35%</p> <p>Max hard landscaped area: 20%</p> <p>Planter beds are a minimum of 1 metre in width.</p>	<p>Proposed Landscaped Area = 35%</p> <p>Proposed hard landscaped area = 19%</p> <p>The planter beds proposed generally achieve the 1m minimum width requirement to ensure they are capable of supporting an appropriate soil depth and plant selection.</p>	Yes
4C.2.6 Setbacks	<p>All front, side and rear setbacks are to provide deep soil zones to allow unencumbered planting areas.</p> <p>Front setback must match the setback of adjoining properties, but must be a minimum of 3m or 4m if fronting a classified road.</p>	<p>The building setbacks proposed enable the provision of deep soil zones adjacent to the allotment boundaries. It is noted that the existing access easement adjacent to the eastern boundary precludes new landscaping in this location.</p> <p>The proposed front setback is 4.16m which will be consistent with the approved neighbouring development to the west at No.563-567 Gardeners Road.</p>	<p>Yes</p> <p>Yes</p>
4C.3.1 Building Entries	A main pedestrian entry is to be provided. The entry is to be separate from car parks or car entries. Disabled access through the primary entrance to the building must be provided.	A legible entrance is provided at the front of the site which is separated from the vehicular access point. A ramp has been incorporated into the primary entrance to ensure that disabled access can be achieved.	Yes
4C.3.3 Materials and Finishes	A Schedule of Finishes and a detailed Colour	A colours and finishes schedule was submitted	Yes

	Scheme for the building facade will accompany all Development Applications involving building works.	with the application. The proposal incorporates dark and light render, glass balustrades, vertical creep planting, light weight fin structures, aluminium louvres and face brick. The materials and finishes proposed are acceptable as they create a contemporary form which complements the streetscape.	
4C.4.1 Dwelling Mix & layout	<p>C1 Developments with 10 or more apartments to provide a range of sizes including studio, 1, 2, 3 bedrooms</p> <p>C2 Developments with more than 10 apartments, 25% max no. of combined studio and 1 bed units</p>	The proposed development incorporates a mixture of 1, 2 and 3 bedroom apartments. The total number of 1 bedroom apartments is restricted to 24.8% of the development, complying with the 25% maximum.	Yes
4C.4.2 Family Friendly Apartment Buildings	<p>C1 Family apartments are apartments with 2 or more bedrooms.</p> <p>C2 Family apartments are to include a study.</p> <p>C3 Bedrooms are to be large enough for a single bed, desk, and space for playing.</p> <p>C4 Floor surface of entry, dining and kitchen are to be water-resistant. No carpet.</p> <p>C5 Two bathrooms required. Bathtub to be provided in one bathroom.</p> <p>C6 Private open space to be visible from kitchen.</p> <p>C7 Entry and corridors to permit room for toys etc.</p>	<p>Despite the DCP stating that 'Family Apartments' and two separate living spaces are required, this requirement is beyond the provisions of the ADG.</p> <p>Clause 6A of SEPP65 states that "<i>if a development control plan contains provisions that specify requirements, standards or controls in relation to a matter to which this clause applies (including apartment size and layout), those provisions are of no effect</i>". Accordingly, these provisions are not required to be satisfied and guidance should be taken from the ADG.</p>	N/A

	C8 ADG sets out storage rates. Storage room is to be located near the entry.		
4C.4.4 Views	View sharing – Tenacity Consulting v Warringah (2004) NSWLEC 140	The proposed development would not cause any adverse view loss impacts for surrounding properties.	Yes
4C.4.5 Acoustic Privacy	To ensure that all residents are provided with a reasonable level of acoustic privacy.	The application was accompanied by an Acoustic report which examines the likely noise impacts generated by the proposed development. The dwellings will be constructed to comply with the applicable noise criteria. Council's standard conditions have been imposed in respect of noise impacts for surrounding properties.	Yes
4C.4.8 Safety and Security	Applications must comply with Part 3I - Crime Prevention, Safety and Security. Note: Applications will be referred to the NSW Police Service for comment.	Refer to previous discussion under Part 3I – Crime Prevention, Safety and Security.	Yes
4C.5.1 Adaptable Housing & 4C.5.2 Access	A statement from the architect or builder must be submitted with the development application certifying that the adaptable dwelling has been designed in accordance with the provisions of the Australian Standards AS 4299-1995 Adaptable Housing.	The application was accompanied by an access report which demonstrates compliance with the access requirements. Adaptable dwellings have been provided in accordance with Part 3C of BBDCP 2013.	Yes
4C.6.2 Large Development Sites (in excess of 2000m ²) Design and Siting	The design and layout of development on sites in excess of 2000m ² must be appropriate to the bulk and scale of surrounding developments.	Although the proposed development is adjacent to low density residential dwellings, the proposal is consistent with the desired future character of the immediate area. This has been seen with the recent approvals of several residential flat buildings up	Yes

		to 8 storeys in height on sites adjacent to the subject site, as well as several sites along Gardeners and Botany Roads.	
4C.7 Mixed Use	Any retail or commercial component must be located at ground level. Adequate storage space is to be provided for the use of the commercial or retail premises.	The proposed commercial area will be located on the ground level with storage options provided.	Yes

Part 8.7 Mascot Character Precinct

The proposed development is consistent with the requirements of the Mascot Character Precinct. The following comments are provided with respect to the relevant headings within Part 8.7:

Function and Diversity

The proposed development will ensure that the precinct is retained as a residential area with a dominance of high rise. The proposed building design and front setbacks would be consistent with new development (existing and approved) in the locality.

Form, Massing, Scale and Streetscape

The form, massing, scale and streetscape presentation is consistent with the development outcomes anticipated for this locality.

Setbacks

The building setbacks proposed are acceptable for reasons specified within the previous ADG discussion. Additionally, it is noted that the proposed setback from Gardeners Road would be generally consistent with approved/constructed development to the west.

Landscaping

Deep soil landscaping has been provided around the perimeter of the site adjacent to the site boundaries. This outcome promotes an appropriate softening of the development and improves privacy and amenity for the ground floor apartments.

Heritage

The site is located in close proximity to heritage items at 686 Botany Road (I26 – Former bank building) and 10 Miles Street (I152 – House). The proposed development would not detract from the heritage significance of these items.

Fencing

The application does not seek consent for any boundary fencing.

Noise

An acoustic report was submitted demonstrating that the development can be acoustically treated to comply with the applicable noise criteria stipulated in clause 102(3) of SEPP (Infrastructure) 2007 and AS2021 concerning aircraft noise.

Subdivision

The application does not seek consent for any subdivision.

Public Domain and Environment

The design of the development presents an acceptable relationship with the public domain at the front of the site along Gardeners Road.

Solar Access

The controls in this part of BBDCP 2013 state the following:

- *Encourage buildings to maximise solar access to surrounding residential properties and to public and private open spaces.*
- *Preserve solar access to adjoining properties.*

The proposed development would cause additional solar access impacts to a number of adjoining properties. This has been considered below:

Miles Street residential dwellings

The applicant has undertaken a detailed overshadowing analysis of the private open space areas at the rear of affected properties in Miles Street. The results of this are shown below:

Address	Solar Access (to 6x4m area within rear yard between 9am and 3pm on 22 June)
2 Miles St	5 hours
4 Miles St	1.5 hours
6 Miles St	3 hours
8 Miles St	2.5 hours
10 Miles St	4 hours

The amount of solar access retained for the adjoining dwellings at the rear is considered to be satisfactory. Only one property (4 Miles Street) would not achieve the DCP guideline (Part 4A.4.3 – Solar Access) to retain 2 hours solar access. However, that variation is minor, being 30 minutes.

696 – 698 Botany Road – mixed use development

The above development is located to the east of the subject site. It contains ground floor commercial tenancies and 20 residential units above. Residential units and the communal

open space within this development currently rely upon solar access from the north and from the west.

The communal open space area at the rear of the development (on the first floor plan) would retain solar access, to varying extents, between 10am and 12pm on June 21st. This is generally in accordance with the solar access requirements in Part 3D – Communal and public space in the ADG.

The proposed development would cause a loss of sunlight to the west facing residential units (balconies and living room windows). The impact starts to occur at 1pm on June 21st and gets progressively worse until 3pm. The balconies and windows to main internal living areas within a total of nine (9) units would be impacted.

The applicant's eye of the sun diagrams demonstrate that these 9 units would be left with less than 2 hours solar access on June 21st.

The building setbacks to the east are compliant with the relevant requirements. The provision of additional solar access to the 9 units in question (i.e. – after 1pm on June 21st), would necessitate the deletion of a number of storeys in the proposed development. This would result in a building that is well below the height limit, inconsistent with the desired future character of the area and inconsistent with the scale and visual appearance of other approved/constructed development to the west along Gardeners Road.

It is noted that the height of screening around the rooftop services in Tower A causes very marginal additional overshadowing impacts to bedroom windows on the uppermost level in the development at No.696-698 Botany Road. As a result of this, a condition of consent is recommended to reduce the height of the screening.

Traffic and Access

The application has been reviewed by Council's Development engineer and the RMS who raised no concerns with the proposed development subject to conditions of consent.

Views

The proposed development is unlikely to lead to any unreasonable view loss.

S.4.15(1)(a)(iv) - Provisions of regulations

Clauses 92-94 of the Regulations outline the matters to be considered in the assessment of a development application. Clause 92 requires the consent authority to consider the provisions of AS2601:1991 Demolition of Structures when demolition of a building is involved. In this regard a condition of development consent can be imposed to ensure compliance with the standard. All relevant provisions of the Regulations have been taken into account in the assessment of this proposal.

S.4.15(1)(b) - Likely Impacts of Development

The likely impacts of the development have been outlined through the report and the proposal is found to be acceptable in its current form.

S.4.15(1)(c) - Suitability of the site

The proposed development is considered to be suitable for the site.

S.4.15(1)(d) - Public Submissions

Since lodgement, the application has been notified in accordance with the requirements of Botany Bay DCP 2013 on three separate occasions as follows:

- 8 January 2018 to 12 February 2018;
- 14 November 2018 to 21 December 2018; and
- 27 February 2019 to 8 April 2019

In total, 21 submissions were received objecting to the proposed development. The key concerns raised in the submissions have been addressed below:

Concern: Adverse overshadowing impacts

Comment: The overshadowing impacts of the proposal have been assessed in the main body of the report.

Concern: Construction hours

Comment: Council's standard construction hours have been imposed as a condition of consent.

Concern: Privacy impacts to properties at the rear in Miles Street. Building scale presented to Miles Street.

Comment: The proposal provides additional separation to the rear southern boundary as it adjoins a lower density area (R3 – Medium Density Residential). There is a 6m wide deep soil area provided which affords opportunity for significant landscaping planting/canopy trees to be established. The southern elevation of the proposed development has been designed such that:

- There are no balconies with a direct line of sight to the adjoining southern dwellings in Miles Street. The balconies proposed at the rear of site in Tower A contain external louvres on the southern elevation. The primary outlook of these balconies is to the west;
- Window openings are restricted to bedrooms which are considered low-use rooms. In addition, the bedroom windows are proposed to contain external louvres to minimise overlooking; and
- There is a rooftop communal area proposed on Tower B level 6. The trafficable area of this space is setback a minimum distance of approximately 10m with landscaped planter boxes proposed around the perimeter.

On balance, and in view of the aforementioned reasons, the privacy outcomes are considered to be satisfactory.

Concern: Privacy impacts towards existing units at 696-698 Botany Road, Mascot

Comment: The design of the development contains a number of units which have a primary outlook/orientation to the east. Some of these units are directly adjacent to windows and balconies of existing units at No.696-698 Botany Road (refer to previous **Figures 6 and 7**).

The separation distances between the habitable windows/balconies between the two developments exceeds the ADG guidelines for visual privacy separation. The 4 storey elements have a 16.2m separation, whilst the 5th storeys have a 24.5m separation. In addition, the balustrades along Tower A East elevation are proposed to be solid masonry (i.e. – as opposed to clear glazing) to improve the privacy outcomes between the two developments. The area of Mascot is a relatively dense urban environment and it is considered reasonable for the proposed development to present habitable windows and balconies along the eastern façade so as to maximise solar availability.

Concern: Impact of demolition work

Comment: Council's standard conditions have been included in this respect.

Concern: Visual bulk and scale impacts towards existing units at 696-698 Botany Road, Mascot

Comment: The planning controls applicable to the site anticipate a significant increase in the intensity of development. Whilst the proposal would no doubt increase the visual bulk and scale impacts for the neighbouring residential building to the east, the building setbacks provided are in accordance with the ADG requirements.

Concern: Insufficient building setbacks to 563 Gardeners Road

Comment: This has been addressed in the ADG discussion within the main body of the report.

Concern: Building height non-compliance

Comment: This has been addressed within the main body of the report.

Concern: Traffic management in the area

Comment: The proposed development constitutes traffic generating development in accordance with SEPP (Infrastructure) 2007. The application was reviewed by RMS who support the proposal subject to various conditions that have been incorporated into the recommendation.

S.4.15(1)(e) - Public interest

It is considered that granting approval to the proposed development would not conflict with the public interest.

Section 7.11 Contributions

A Section 7.11 contribution of \$2,180,000 shall be paid to Council. The contribution is calculated according to the provisions contained within Council's adopted Former City of Botany Bay s7.11 Development Contributions Plan 2016 (Amendment 1).

Conclusion

Development Application No. 2017/1236 was lodged on 7 December 2017 seeking consent for an Integrated Development for demolition of three existing buildings, construction and use of the site for two residential flat buildings six (6) and eight (8) storeys comprising of ground floor retail tenancy fronting Gardeners Road, with 109 apartments, rooftop communal open spaces to each tower, two level of basement car parking to accommodate 123 spaces and associated landscaping and diversion of the Sydney Water Sewer Main at 551,553,55-559 Gardeners Road, Mascot.

The amended development application has been assessed in accordance with the relevant requirements of the *Environmental Planning and Assessment Act 1979* and is recommended for approval, subject to the conditions of consent attached.

Attachment

Conditions of consent

Premises: 551,553,555-559 Gardeners Road, Mascot

DA No: DA-2017/1236

GENERAL CONDITIONS

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

Drawing N°	Author	Dated Received
Demolition Plan DA105 Revision A Dated 14/06/2019	DKO Architecture	14/06/2019
Site Plan DA106 Revision F Dated 14/06/2019	DKO Architecture	14/06/2019
Basement 2 DA201 Revision C Dated 14/06/2019	DKO Architecture	14/06/2019
Basement 1 DA202 Revision B Dated 14/06/2019	DKO Architecture	14/06/2019
Ground Floor Plan DA203 Revision F Dated 14/06/2019	DKO Architecture	14/06/2019
Level 01 DA204 Revision D Dated 14/06/2019	DKO Architecture	14/06/2019
Level 02-03 DA205 Revision D Dated 14/06/2019	DKO Architecture	14/06/2019
Level 04-05 DA206 Revision D Dated 14/06/2019	DKO Architecture	14/06/2019
Level 06 DA207 Revision F Dated 14/06/2019	DKO Architecture	14/06/2019

Level 07 DA208 Revision F Dated 14/06/2019	DKO Architecture	14/06/2019
Roof Plan DA209 Revision D Dated 14/06/2019	DKO Architecture	14/06/2019
Street Elevation DA300 Revision D Dated 14/06/2019	DKO Architecture	14/06/2019
Tower A North Elevation DA301 Revision D Dated 14/06/2019	DKO Architecture	14/06/2019
Tower A East Elevation DA302 Revision F Dated 14/06/2019	DKO Architecture	14/06/2019
Tower A South Elevation DA303 Revision E Dated 14/06/2019	DKO Architecture	14/06/2019
Tower A West Elevation DA304 Revision D Dated 14/06/2019	DKO Architecture	14/06/2019
Tower B North Elevation DA305 Revision F Dated 14/06/2019	DKO Architecture	14/06/2019
Tower B East and West Elevation DA306 Revision F Dated 14/06/2019	DKO Architecture	14/06/2019
Tower B South Elevation DA307 Revision F Dated 14/06/2019	DKO Architecture	14/06/2019
Section A DA308 Revision E Dated 14/06/2019	DKO Architecture	14/06/2019
Section B DA309 Revision D Dated 14/06/2019	DKO Architecture	14/06/2019
Section C DA310 Revision F Dated 14/06/2019	DKO Architecture	14/06/2019
Adaptable Apartment	DKO Architecture	14/06/2019

DA412 Revision F Dated 14/06/2019		
Adaptable Apartment Layout DA413 Revision A Dated 14/06/2019	DKO Architecture	14/06/2019
Ground Level Landscape Plan Page 10	Urbis	01/07/2019
Level 6 Program Page 15	Urbis	01/07/2019
Level 4 and 6 Program Page 16	Urbis	01/07/2019
Roof Plan Program Page 19	Urbis	01/07/2019
Roof Plan Page 20	Urbis	01/07/2019
Landscape Sections Page 22	Urbis	01/07/2019
Landscape Details Page 23	Urbis	01/07/2019
Planting Strategy Page 24	Urbis	01/07/2019
Material Strategy + Palette Page 25	Urbis	01/07/2019

Reference Document(s)	Author	Date Received
Waste Management Plan Dated 30/04/2019	Elephants Foot	01/07/2019
Environmental Site Assessment Stage 2 Dated 28/09/2018	Environmental Investigations Australia	09/11/2018
Preliminary State 1 Environmental Site Assessment Dated 27/10/2017	Environmental Investigations Australia	07/12/2017
Geotechnical Investigation Dated 25/09/2017	JK Geotechnics	07/12/2017
Arboricultural Impact Assessment Report Dated September 2017	Earthscape Horticultural Services	07/12/2017
Acoustic Assessment Dated 20 July 2017	Renzo Tonin & Associates	07/12/2017

2. This consent relates to land in Lot 51 in DP 1037780, Lot 2 in DP 587991 and Lot 1 in DP 337082 and, as such, building works must not encroach on to adjoining lands or the adjoining public place.
3. The materials and façade details approved under condition 1 and any other relevant condition of this consent shall not be altered or amended at the construction certificate stage without a prior S4.55 application and approval under the EP&A Act.
4. In order to ensure the design quality excellence of the development is retained:
 - i. A registered architect is to have direct involvement in the design documentation, contract documentation and construction stages of the project;
 - ii. The design architect is to have full access to the site and is to be authorised by the applicant to respond directly to the consent authority where information or clarification is required in the resolution of design issues throughout the life of the project;
 - iii. Evidence of the design architect's commission is to be provided to Bayside Council prior to issue of the Construction Certificate.

The design architect of the project is not to be changed without prior notice and approval of Bayside Council.

5. The external walls of the building including attachments must comply with the relevant requirements of the National Construction Code (NCC). Prior to the issue of a Construction Certificate and Occupation Certificate the Certifying Authority and Principal Certifying Authority must:
 - a) Be satisfied that suitable evidence is provided to demonstrate that the products and systems (including installation) proposed for use or used in the construction of external walls, including finishes and claddings such as synthetic or aluminium composite panels, comply with the relevant requirements of the NCC; and
 - b) Ensure that the documentation relied upon in the approval processes include an appropriate level of detail to demonstrate compliance with the NCC as proposed and as built.
6. The following shall be complied with:
 - a) All building work must be carried out in accordance with the provisions of the Building Code of Australia;
 - b) All air conditioning units shall be appropriately treated to ensure that they are concealed from view and compliant with Australian Standard AS1668.2. If they are located on balconies or in public, they are to be appropriately screened;
 - c) The provision of disabled access throughout the development is required and shall be in compliance with the Building Code of Australia Part D3 "Access for People with Disabilities" and Australian Standard AS1428.1 (2001) – Design for Access and Mobility – Part 1 General Requirements for Access – Buildings. This requirement shall be reflected on the Construction Certificate plans;
 - d) The off-street parking areas associated with the subject development shall be designed strictly in accordance with AS2890.1:2004;
 - e) Bicycle parking facilities shall be designed in accordance with AS2890.3:1993; and

- f) Internal height clearance shall be designed throughout the car park and access driveway in accordance with AS2890.1:2004.
- 7. The recommendations within Environmental Site Assessment dated 28/09/2018 prepared by Environmental Investigations Australia shall be adhered to at all times.
- 8. The recommendations within Geotechnical Investigations report dated 25 September 2017 prepared by JK Geotechnics shall be adhered to at all times.
- 9. 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 the relevant BASIX Certificates (as referenced at Condition No. 1) for the development are fulfilled.
Note:
 - a) 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.
 - b) BASIX Certificate has the meaning given to that term in the *Environmental Planning and Assessment Regulation 2000*.
- 10. 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.

CONDITIONS IMPOSED BY EXTERNAL AUTHORITIES

- 11. The following conditions imposed by **Sydney Airport (SACL)** are as follows:
 - a) This location lies within an area defined in schedules of the Civil Aviation (Buildings Control) Regulations which limit the height of structures to 15.24 metres above existing ground height (AEGH) without prior approval of the Civil Aviation Safety Authority.
 - b) No objection has been raised to the erection of this development to a maximum height of 40.75 metres AHD.
 - c) The approved height is inclusive of all lift over-runs, vents, chimneys, aerials, TV antennae, construction cranes etc.
 - d) Should you wish to exceed this height a new application must be submitted.
 - e) Should the height of any temporary structure and/or equipment be greater than 15.24 metres AEGH, a new approval must be sought in accordance with the Civil Aviation (Buildings Control) Regulations Statutory Rules 1988 No. 161.

- f) Construction cranes may be required to operate at a height significantly higher than that of the proposed development and consequently, may not be approved under the Airports (Protection of Airspace) Regulations.
- g) Sydney Airport advises that approval to operate construction equipment (ie cranes) should be obtained prior to any commitment to construct.
- h) "Prescribed airspace" includes "the airspace above any part of either an Obstacle Limitation Surface (OLS) or Procedures for Air Navigation Services – Aircraft Operations (PANS-OPS) surface for the airport (Regulation 6(1)).
- i) The height of the prescribed airspace at this location is 51 metres above AHD.

12. The following conditions imposed by **Sydney Water** are as follows:

- a) In regards to the following lots; Lot 1 DP 337082, Lot 2 DP 587991 and Lot 51 DP 1037780. Where proposed works are in close proximity to Sydney Water easements, the developer may be required to carry out additional works to facilitate their development in order to not encroach within the Sydney Water easement. Proposed development shows multiple lots being affected in future by the 450 Wide Sewer Main traversing all lots above.

The above lots are burdened by the following:

- 1. Easement to Sewerage 6.095
- 2. Right of Way 9.14 Affecting the Land

These Easements are not to be built over or encroached in without the consent of Sydney Water.

If there is a requirement to construct a new main or deviate an existing main to get a Section 73 Certificate and the mains are not in a dedicated public road or pathway, you have to pay to create or release an easement in favour of Sydney Water.

You will **not** be given a Section 73 Certificate until:

- a. the main(s) have been constructed
 - b. you have paid to have a survey and the survey has been completed, before the trenches are backfilled, to define the centreline of each water main
 - c. all plans and documents relating to easements have been approved by Sydney Water
 - d. you have paid our related costs
 - e. you have paid the property security we require for easements until registered.
- b) The approved plans must be submitted to the Sydney Water [Tap in™](#) online service to determine whether the development will affect any Sydney Water sewer or water main, stormwater drains and/or easement, and if further requirements need to be met.
 - c) The Sydney Water Tap in™ online self-service replaces our Quick Check Agents as of 30 November 2015.
The [Tap in™](#) service provides 24/7 access to a range of services, including:
 - i) building plan approvals
 - ii) connection and disconnection approvals
 - iii) diagrams
 - iv) trade waste approvals
 - v) pressure information
 - vi) water meter installations
 - vii) pressure boosting and pump approvals

- viii) changes to an existing service or asset, e.g. relocating or moving an asset.
- d) A Section 73 Compliance Certificate under the *Sydney Water Act 1994* must be obtained from Sydney Water. It is recommended that applicants apply early for the certificate, as there may be water and sewer pipes to be built and this can take some time. This can also impact on other services and building, driveway or landscape design. Application must be made through an authorised Water Servicing Coordinator. For help either visit www.sydneywater.com.au > Plumbing, building and developing > Developing > Land development or telephone 13 20 92.

13. The following conditions are imposed by **Roads and Maritime Services** are as follows:

- a) All buildings and structures, together with any improvements integral to the future use of the site are to be wholly within the freehold property (unlimited in height or depth), along the Gardeners Road boundary.
- b) Detailed design plans and hydraulic calculations of any changes to the stormwater drainage system are to be submitted to Roads and Maritime for approval, prior to the commencement of any works.

Details should be forwarded to:

The Sydney Asset Management
Roads and Maritime Services
PO Box 973 Parramatta CBD 2124.

A plan checking fee will be payable and a performance bond may be required before Roads and Maritime approval is issued. With regard to the Civil Works requirement please contact the Roads and Maritime Project Engineer, External Works Ph: 8849 2114 or Fax: 8849 2766.

- c) 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 by 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 8849 2114
Fax 8849 2766

- d) Gardeners Road is identified in the NSW Governments 2013 Sydney Clearways Strategy for a possible future clearway. Full time No Stopping restrictions are to be implemented along the full Gardeners Road frontage of the development site. This restriction should be implemented prior to the commencement of any demolition works relating to the proposed development. Prior to the installation of the parking restrictions the applicant is to contact Roads and Maritime CBD & East

Network and Safety Unit by email development.sydney@rms.nsw.gov.au for a works instruction. Roads and Maritime may, in the future, supplement the No Stopping restriction with Clearways.

Parking for all vehicles associated with the proposed development should be fully contained within the development site and must not encroach onto any state road. Council should be satisfied that the parking provision for the proposed development is adequate to cater for all current and future demand.

All service vehicles (including garbage collection, building maintenance vehicles and removalists), must service this property from within the development or from the local road network.

- e) All vehicles are to enter and exit the site in a forward direction.
- f) All vehicles are to be wholly contained on site before being required to stop.

14. The following conditions imposed by **Water NSW** are as follows:

General Terms of Agreement

- a) A Water Supply Work Approval from WaterNSW must be obtained prior to commencing dewatering activity on the proposed site. Please complete an Application for approval for water supply works, and/or water use.
- b) An application for a Water Supply Works Approval will only be accepted upon receipt of supporting documentation, and payment of the applicable fee (see Application fees for New or amended Works and/or Use Approvals). The information required for the processing of the water supply work application may include preparation of a dewatering management plan. Please refer to checklist attached.
- c) If approved, the Approval will be issued for a period of up to 24 months to cover the dewatering requirements during the construction phase. It will include conditions to ensure that impacts are acceptable and that adequate monitoring and reporting procedures are carried out. The Approval will be issued subject to the proponent meeting requirements of other agencies and consent authorities. For example, an authorisation by either Sydney Water or the local Council, depending where the water will be discharged. If contaminants are likely, or are found to be present in groundwater, and are being discharged to stormwater, including high salinities, a discharge licence under the Protection of the Environment Operations Act 1997 (NSW) may also be required.
- d) WaterNSW prefers “tanking” (ie. total water proofing below the seasonal high water table) of basement excavations, and avoids the ongoing extraction of groundwater after the initial construction phase. It is also advised to adopt measures to facilitate movement of groundwater post construction (eg. a drainage blanket behind the water-proof membrane).
- e) If the basement is not “tanked”, the proponent will require a Water Access Licence (WAL) and need to acquire groundwater entitlements equivalent to the yearly ongoing take of groundwater. Please note: Acquiring groundwater entitlements could be difficult, and may cause delay in project completion. If a WAL is required, please complete an Application for a new water access license with a zero share component.

CONDITIONS WHICH MUST BE SATISFIED PRIOR TO THE COMMENCEMENT OF ANY DEVELOPMENT OR WORK

15. A Road Occupancy Licence (ROL) should be obtained from Transport Management Centre for any works that may impact on traffic flows on Gardeners Road during construction activities. A ROL can be obtained through <https://myrta.com/oplinc2/pages/security/oplincLogin.jsf>.
16. 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.
17. 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) prior to the commencement of any development or work. This plan shall incorporate and reference the construction environmental management plan and address site limitations.
18. Erosion and sediment control devices shall be installed and functioning 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 and neighbouring properties. In this regard, all stormwater discharge from the site shall meet the legislative requirements and guidelines including the *Protection of the Environment Operations Act 1997*.

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.
19. 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.
20. For any water from site dewatering to be permitted to go to the stormwater, the water must meet ANZECC 2000 Water Quality Guidelines for Fresh and Marine Water for the 95% protection trigger values for marine water. The results of all testing must be completed by a NATA accredited laboratory.

All laboratory results must be accompanied by a report prepared by a suitably qualified person indicating the water meets these guidelines and is acceptable to be released into council's stormwater system. If it is not acceptable, details of treatment measures to ensure that the water is suitable for discharge to council's stormwater shall be provided in this report.

Reports shall be provided to council prior to discharge of any groundwater to the stormwater system.

21. 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 council's stormwater system a permit to discharge to the stormwater shall be obtained from Council. Dewatering shall not commence until this is issued by Council.
22. Prior to the commencement of works, the applicant must inform Council, in writing, of:
 - a) The name of the contractor, and licence number of the licensee who has contracted to do, or intends to do, the work: or
 - b) The name and permit number of the owner-builder who intends to do the work;
 - c) The Council also must be informed if: -
 - i) A contract is entered into for the work to be done by a different licensee; or
 - ii) Arrangements for the doing of the work are otherwise changed.
23. Prior to the commencement of works, a dilapidation survey shall be undertaken of all surrounding properties likely to be affected by excavation works (as determined by the consulting engineer) and Council infrastructure, including but not limited to all footpaths, kerb and gutter, stormwater inlet pits, and road carriageway pavements, in the vicinity which could be potentially affected by the construction of this development. Any damage caused to other properties during construction shall be rectified. A copy of the dilapidation survey and an insurance policy that covers the cost of any rectification works shall be submitted to the Accredited Certifier (AC) or Council prior to Commencement of Works. The insurance cover shall be a minimum of \$10 million.
24. Prior to the commencement of works, separate permits are required to be obtained and approved by Council for all works including but not limited to road opening, road and footpath closure, stand and operate a registered vehicle or plant, occupy road with unregistered item, work zone, hoarding, shoring support (anchoring), tower crane operation, public land access, temporary dewatering, and any excavation and works proposed to be undertaken on public land.
25. 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.
26. This Consent shall not preclude the demolisher from giving notice to other statutory authorities, such as Sydney Water Corporation, WorkCover, etc.
27. If the land to which the application relates is served by a common sewerage system that is also used by others, then measures must be placed in effect and prior to the commencement of work to ensure the operation of the sewerage system is without disruption to other joint users.
28. If an excavation associated with the proposal extends below the level of the base of the footings of a building on an adjoining allotment of land or the common boundary fence the person causing the excavation to be made:
 - a) Must preserve and protect the building/ fence from damage; and,
 - b) If necessary, underpin and support such building in an approved manner;
 - c) Must at least be 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of the intention to do so to the owner of the adjoining allotment of land and, furnish particulars of the excavation to the owner of the building being erected or demolished;

- d) Existing structures and or services on this and adjoining properties are not endangered during any demolition excavation or construction work associated with the above project. The applicant is to provide details of any shoring, piling, or underpinning prior to the commencement of any work. The construction shall not undermine, endanger or destabilise any adjacent structures.
 - e) If the soil conditions required it:
 - i. Retaining walls associated with the erection of a building (swimming pool) or other approved methods of preventing movement or other approved methods of preventing movement of the soil must be provided and:-
 - ii. Adequate provision must be made for drainage.
29. Prior to commencement of any works, application(s) shall be made to Council's Customer Services Counter for the following approvals and permits on Council's property/road reserve under Road Act 1993 and Local Government Act 1993 as appropriate: -
- (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).
- a) Permit to erect hoarding on or over a public place, including Council's property/road reserve
 - b) Permit to construction works, place and/or storage building materials on footpaths, nature strips
 - c) Permit for roads and footways occupancy (long term/ short term)
 - d) Permit to construct vehicular crossings, footpath, kerb and gutter over road reserve
 - e) Permit to open road reserve area, including roads, footpaths, nature strip, vehicular crossing or for any purpose whatsoever
 - f) Permit to place skip/waste bin on footpath and/or nature strip
 - g) Permit to use any part of Council's road reserve or other Council lands
30. 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.

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

- 31. Prior to the issue of a Construction Certificate, a detailed stormwater drainage management plan for the disposal of all roof-water, surface water from the site shall be submitted and approved by the Principal Certifier. The drainage management plan for the Construction Certificate shall comply with the requirements as detailed in the Botany Bay Development Control Plan Stormwater Technical guidelines and Sydney Water where relevant. The development application concept stormwater report and stormwater plans prepared by Woolacotts Consulting Engineers, Project number 16-185, Revision B, dated 11 June 2019.
- 32. Prior to the issue of a Construction Certificate, a car wash bay is to be provided. A visitor car space can be utilised for this purpose. A tap shall be provided along with a sign fixed to the wall saying 'Visitor Car Space and Car Wash Bay'. The car wash bay must be bunded in accordance with AS1940 – 1993 and AS/NZS 4452 – 1997 with a direct connection to the sewer in accordance with a Sydney Water trade waste agreement.
- 33. Prior to the issue of a Construction Certificate, all surface runoff from parking facilities and access ways shall be directed through a propriety oil and sediment filtration system prior to discharge. Details of the pit type, location, performance and manufacturer's maintenance and cleaning requirements shall be submitted to the Principal Certifier.
- 34. Prior to the issue of a Construction Certificate, no structures including but not limited to stairs, planters or other building components shall be located in the existing right of way easement affecting the subject site.
- 35. Prior to the issue of a Construction Certificate, A Flood Risk Management Plan, prepared by a qualified practicing Civil Engineer must be provided, The flood impacts on the site shall be assessed for the 100 year ARI and Probable Maximum Flood (PMF) storm events. The Plan must make provision for the following:
 - Recommendations on all precautions to minimise risk to personal safety of occupants and the risk of property damage for the total development.
 - Types of materials to be used to ensure the structural integrity of the building to immersion and impact of velocity and debris.
 - Flood warning signs/depth indicators for areas that may be inundated.
 - A flood evacuation strategy.

- On site response plan to minimise flood damage, demonstrating that adequate storage areas are available for hazardous materials and valuable goods above the flood level.
 - Specify the architectural and structural plans upon which the above recommendations have been incorporated.
36. The underground basement and substructures, access stairs, lift entry, windows etc. shall be flood proofed and protected to a minimum of 500mm above the 1% AEP flood level. The levels shall be certified by a registered surveyor or a suitably qualified engineer prior to construction of the driveway or other openings.
37. Prior to the issue of a Construction Certificate, the existing Sydney Water easement affecting the site shall be extinguished.
38. Prior to the issue of a Construction Certificate, the design and construction of the off-street car & bicycle parking facilities shall comply with Australian Standard AS 2890 parking series, product specifications and shall be certified accordingly by a suitably qualified engineer.
- The ramp signaling system shall be designed to the relevant Australian standard and product specifications.
 - Parking spaces must not be enclosed without further approval of the Council. The enclosure of car spaces is not permitted unless the enclosure complies with the design requirements of AS2890.1:2004.
 - The longitudinal profile of the access and any ramps within the parking facilities must comply with the Ground Clearance requirements of the Standard.
 - The car parking facilities must be appropriately line marked and signposted in accordance with the requirements of Section 4 of AS/NZS2890.1:2004.
39. Prior to the issue of a Construction Certificate, a Construction Traffic Management Plan (CTMP) must be submitted to and approved by the Principal Certifier. The CTMP shall include, but not limited to the following: vehicle routes, number of construction vehicles, hours of operation, access arrangements, pedestrian management, construction vehicle turning templates and parking management for workers. The CTMP shall be certified by an appropriately accredited person and/or Roads and Traffic Authority Traffic Controller. The CTMP shall be supported by a traffic control plan prepared by a suitably qualified and RTA accredited Work Site Traffic Controller, designed in accordance with the requirements of the Roads and Traffic Authority's Manual, Traffic Control at Work Sites current version, and the current Australian Standards, Manual of Uniform Traffic Control Devices Part 3, 'Traffic Control Devices for Works on Roads'.
40. Prior to the issue of a Construction Certificate, the subsurface structures shall be designed with a waterproof retention system (ie tanking and waterproofing) with adequate provision for future fluctuation of the water table. The subsurface structure is required to be designed with consideration of uplift due to water pressure and "flotation" (buoyancy) effects. Subsoil drainage around the subsurface structure must allow free movement of groundwater around the structure, but must not be connected to the internal drainage system. The design of the subsurface structure, tanking and waterproofing, and subsoil drainage shall be undertaken by a suitably qualified engineer. Design details and construction specifications shall be included in the documentation accompanying the Construction Certificate.
41. Prior to the issue of a Construction Certificate, if neighbouring properties or roadway are to be utilised for excavation support, the legal rights of any adjoining properties must be

respected including for permanent and temporary excavation supports. In this regard, the written permission of the affected property owners must be obtained and a copy of the owner's consent for excavation support or other material in adjacent lands must be lodged to the principal certifier. Where excavation support materials are proposed to be used in public land, an application must be made to Council for approval under Section 138 of the Roads Act 1993, via a permit application. The submission would need to be supported by an engineering report prepared by a suitably qualified engineer, with supporting details addressing the following issues:

Demonstrate that any structures will not adversely affect public infrastructure, and the proposed supports within the road reserve are of an adequate depth to ensure no adverse impact on existing or potential future service utilities in the road reserve.

All existing services must be shown on a plan and included on cross-sectional details where appropriate.

The report must be supported by suitable geotechnical investigations to demonstrate the efficacy of all design assumptions.

42. A Stage 3 – Remedial Action Plan (RAP) shall be prepared by a suitably qualified and experienced contaminated land consultant and 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 RAP shall incorporate all findings and recommendations in all Preliminary Site Assessments, Detailed Site Assessments and any additional sampling and validation reports for the site, it shall clearly state proposed clean-up objectives, and demonstrate how the site will be made suitable for the proposed use.

The RAP shall be submitted to Bayside Council for written concurrence prior to the issue of a Construction Certificate.

43. 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 a Construction Certificate.
44. The Remedial Action Plan (RAP) shall avoid the use containment and contaminants should be treated onsite or removed from the site whenever possible. Any remediation that utilises a containment strategy for contaminants must be accompanied by a Long-term Environmental Management Plan (LTEMP). This LTEMP must be added to the title of the site.
45. Prior to the issue of a Construction Certificate, if neighbouring properties or roadway are to be utilised for excavation support, the legal rights of any adjoining properties must be respected including for permanent and temporary excavation supports. In this regard, the written permission of the affected property owners must be obtained and a copy of the owner's consent for excavation support or other material in adjacent lands must be

lodged to the principal certifier.

46. Where excavation support materials are proposed to be used in public land, an application must be made to Council for approval under Section 138 of the Roads Act 1993, via a permit application. The submission would need to be supported by an engineering report prepared by a suitably qualified engineer, with supporting details addressing the following issues:

Demonstrate that any structures will not adversely affect public infrastructure, and the proposed supports within the road reserve are of an adequate depth to ensure no adverse impact on existing or potential future service utilities in the road reserve. All existing services must be shown on a plan and included on cross-sectional details where appropriate.

The report must be supported by suitable geotechnical investigations to demonstrate the efficacy of all design assumptions.

47. All landscape area, including planter boxes, shall be fully automatic irrigated. Construction details and sections shall be provided to the satisfaction of the Certifying Authority. The planter boxes on the roof top terrace shall have a minimum depth of 800mm.
48. A Public Domain Frontage Works application shall be submitted separately to Council, with Civil and Landscape works plans. Bay Street verge strip shall be planted with one (1) *Lophostemon confertus* (brush Box), supplied at a minimum pot size of 200 Litres.
49. Prior to the issue of a Construction Certificate, a design verification statement shall be submitted to the PCA from a qualified designer certifying that the development achieves or improves the design quality of the development as shown in the plans and specifications in respect of which the construction certificate was issued, having regard to Schedule 1 of *State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development*.
50. An Acid Sulfate Soils Management Plan, that has been prepared by a suitably qualified and experienced environmental/geotechnical consultant, shall be submitted to the Principal Certifying Authority (and the Council if the Council is not the Principal Certifying Authority) prior to the issue of a Construction Certificate. This plan shall include any site specific procedures and mitigation measures required and shall include a site analysis from a NATA registered laboratory. The plan shall provide details of the following:
- a) Site specific mitigation measures to both minimise the disturbance of acid sulfate soils as well as any measures relating to acid generation and acid neutralisation of the soil;
 - b) Management of acid sulfate affected excavated material;
 - c) Measures taken to neutralise the acidity of any acid sulfate affected material; and
 - d) Run-off control measures for the acid sulfate affected soil.

This report shall be provided prior to the issue of a Construction Certificate and all recommendations of the report shall be implemented during works on site.

51. The management of potential and actual acid sulfate soils shall be conducted in accordance with all recommendations within the Acid Sulfate Soil Management Plan required to be submitted prior to the issue of a Construction Certificate including:

- a) Site specific mitigation measures to both minimise the disturbance of acid sulfate soils as well as any measures relating to acid generation and acid neutralisation of the soil; and
 - b) Management of acid sulfate affected excavated material;
 - c) Measures taken to neutralise the acidity of any acid sulfate affected material; and
 - d) Run-off control measures for the acid sulfate affected soil.
- 52. Prior to the issue of a Construction Certificate the required Long Service Levy payable under Section 34 of the Building and Construction Industry Long Service Payments Act 1986 has to 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.
- 53. The applicant must prior to the obtainment of the approved plans and specifications pay the following fees:-
 - a) Footpath Crossing Deposit \$16,062.20
 - b) Development Control \$3,174.00
 - c) Section 7.11 Contributions \$2,180,000.00
- 54. A Section 7.11 contribution of \$2,180,000.00 shall be paid to Council. The contribution is calculated according to the provisions contained within Council's adopted Former City of Botany Bay s7.11 Development Contributions Plan 2016 (Amendment 1) and having regard to the Ministerial Directive of 21 August 2012. The amount to be paid is to be adjusted at the time of payment, in accordance with the review process contained in the Contributions Plan. The contribution is to be paid prior to the issue of a Construction Certificate. The contributions are only used towards the provision or improvement of the amenities and services identified below:
 - a) Community Facilities: \$178,450.48
 - b) Recreation and Open Space: \$1,841,100.90
 - c) Transport Facilities: \$144,575.62
 - d) Administration: \$15,873.00

Total in 2018/9	\$2,180,000.00
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- 55. Prior to the issue of a Construction Certificate, the applicant shall lodge a Footpath Crossing Deposit of \$16,062.20 (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.
- 56. Prior to the issue of a Construction Certificate, the applicant shall contact "Dial Before You Dig on 1100" to obtain a Service Diagram for, and adjacent to, the property. The sequence number obtained from "Dial Before You Dig" shall be forwarded to Principal Certifying Authority. Any damage to utilities/services will be repaired at the applicant's expense.
- 57. Prior to the issue of a Construction Certificate, a plan (written and/or diagrammatic) shall be submitted and approved by the Principal Certifying Authority, showing the storage location of construction building materials and plants and the method of access to the property. No storage of construction materials and plants to be allowed in road reserve area.

58. Construction Management Program shall be submitted to, and approved in writing by the Council 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 onsite 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) A plan (written and/or diagrammatic) showing the method of access of building materials and plant to the property, and storage location on the property during construction and shall include all existing structures.
59. 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),
 - c) All above ground utilities shall be relocated underground in accordance with Ausgrid and any other affected and relevant service provider, and
 - d) 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, any new pits and trenches for utilities shall be confirmed with Council prior to the issue of a Construction Certificate.

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.

60. The building shall be constructed in accordance with *AS2021- 2000: Acoustics, Aircraft Noise Intrusion, Building Siting and Construction* and clause 101 of SEPP (Infrastructure) 2007. All recommendations within the submitted Acoustic report shall be implemented. Details demonstrating compliance with this requirement shall be provided to the satisfaction of the Certifying Authority prior to the issue of a Construction Certificate.
61. The height of the screening around the Services on the Roof Plan (Tower A) shall be reduced to a maximum height of 1.6m.
62. Construction details of installation of proposed green façade/wall on North Elevation prepared by a wall garden specialist. Also include Irrigation system and maintenance Schedule with requirements to ensure long term of green wall. Maintenance schedule shall comprise installation period and ongoing maintenance requirements.
63. Prior to the issue of a Construction certificate, the applicant shall submit a Frontage Works Application. Public domain landscape improvements plan shall be submitted for approval by Council. The Plan shall be undertaken by a suitably experienced Landscape Architect and shall include but not be limited to new street tree planting, footpath paving (segmental/other), street tree pit treatments and tree guards, street furniture, in ground landscaping, irrigation, lighting. The Plan shall be in accordance with Council's City Identity Program, Landscape DCP and any other Council specification or requirement. Civil drawings shall be included detailing levels and detailed footpath construction sections in accordance with Council's Engineering Services requirements. Contact Council's Landscape Architect for further details of specific requirements in preparation of the plan.
64. The approved Landscape Concept Plans prepared by Urbis, dated 11th January 2019 shall incorporate detailed landscape documentation to be submitted to and approved by Bayside Council Landscape Architect prior to issue of Construction Certificate. The landscape documentation is to be prepared by a suitably qualified Landscape Architect, in accordance with Council Landscape Technical Specifications and include the following amendments:
 - a) Five (5) Magnolia Little Gem proposed on frontage setback shall be replaced with five (5) native tree, to be *Waterhousia floribunda*, or similar native to be approved by Bayside Council landscape Architect.
 - b) Southern edge of roof terrace common open space on level 6 of tower B shall include a perimeter built in planter box to ensure privacy. Planter box shall allow a minimum soil width of 1000 mm , and a minimum depth of 800mm. Shall include screen shrubs of small leaves to ensure wind break and shall be able to reach a minimum mature height of 1.2 meters.
 - c) A planting plan at 1:100 showing all plant locations/groupings and plant centres/species. There is to be a dense layered planting scheme consisting of trees, shrubs and groundcovers in all of these areas.
 - d) Elevated planter box sectional details and drainage details. All planter box depths and dimensions shall be in accordance with Council's DCP and capable of supporting medium and large trees.
 - e) Rear and side boundaries shall add medium and small trees the complement the proposed canopy trees to ameliorate the development and add amenity and screening to the site and adjoining boundary where possible.
 - f) Gardeners Road setback trees are to be native and supplied at a minimum 200 litres pot size. The minimum pot size of proposed large trees along the rest of the setbacks shall be 100 litres (proposed *Angophora cosata*, *Tristanopsis laurina*, *Lophostemon confertus* in natural ground levels)

- g) Indicate the location of all basement structures relative to the landscape areas.
- h) Areas of paving, schedule of materials, edge treatments, tactile and sectional construction details. Details of all fencing, privacy screening, arbors and the like-elevations and materials, impacting or visible to public domain areas. Details of all other hardscape landscape elements such as street furniture, pedestrian amenity lighting, bins, bollards. Location to be clearly identified on plan. Provide sectional construction details and elevations.

DURING WORKS

- 65. 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, the appointed Site Auditor (Contaminated Land) 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 and reviewed and approved by the Site Auditor (Contaminated Land).
- 66. All remediation work must be carried out 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) guidelines under the Contaminated Land Management Act 1997;
 - c) State Environmental Planning Policy 55 (SEPP55) – Remediation of Land; and
 - d) The Remedial Action Plan (RAP) required to be submitted prior to the issue of the Construction Certificate.
- 67. For any water from site dewatering to be permitted to go to the stormwater system, 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 it is not acceptable, details of treatment measures to ensure that the water is suitable for discharge to council's stormwater shall be provided in this report. Reports shall be provided to council prior to discharge of any groundwater to the stormwater system.
- 68. 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 councils stormwater system a permit to discharge to the stormwater shall be obtained from Council. Dewatering shall not commence until this is issued by Council.
- 69. 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.
- 70. 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.

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.

- 71. 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.
- 72. 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;
 - b) "Managing Urban Stormwater - Soils and Construction" (2004) Landcom ('The Blue Book'); and
 - c) Protection of the Environment Operations Act 1997.
- 73. All contractors shall comply with the following during all stages of demolition and construction:
 - A Waste Container on Public Road Reserve Permit must be obtained prior to the placement of any waste container or skip bin in the road reserve (i.e. road or footpath or nature strip). Where a waste container or skip bin is placed in the road reserve without first obtaining a permit, the Council's fees and penalties will be deducted from the Footpath Reserve Restoration Deposit. Permits can be obtained from Council's Customer Service Centre.
 - A Road Opening Permit must be obtained prior to any excavation in the road reserve (i.e. road or footpath or nature strip). Where excavation is carried out on the road reserve without first obtaining a permit, the Council's fees and penalties will be deducted from the Footpath Reserve Restoration Deposit. Permits can be obtained from Council's Customer Service Centre.
 - A Hoarding Permit must be obtained prior to the erection of any hoarding (Class A or Class B) in the road reserve (i.e. road or footpath or nature strip). Where a hoarding is erected in the road reserve without first obtaining a permit, the Council's fees and penalties will be deducted from the Footpath Reserve Restoration Deposit. Permits can be obtained from Council's Customer Service Centre.
 - A Crane Permit must be obtained from Council prior to the operation of any activity involving the swinging or hoisting of goods across or over any part of a public road by means of a lift, hoist or tackle projecting over the footway. Permits can be obtained from Council's Customer Service Centre.
 - A Permit to Dewater or Pump Out a site must be obtained prior to the discharge of pumped water into the road reserve, which includes Council stormwater pits and the kerb and gutter. Permits can be obtained from Council's Customer Service Centre.
- 74. Stockpiles are not permitted to be stored on Council property (including nature strip) unless prior approval has been granted. In addition stockpiles of topsoil, sand, aggregate, soil or other material shall be stored clear of any drainage line or easement, natural watercourse, kerb or road surface.
- 75. Building and demolition operations such as brickcutting, washing tools or paint brushes, and mixing mortar shall not be performed on the roadway or public footway or any other

locations which could lead to the discharge of materials into the stormwater drainage system.

76. All disturbed areas shall be stabilised against erosion within 14 days of completion, and prior to removal of sediment controls.
77. Building, demolition and construction works not to cause stormwater pollution and being carried out in accordance with Section 2.8 of Council's Stormwater Pollution Control Code 1993. Pollutants such as concrete slurry, clay and soil shall not be washed from vehicles onto roadways, footways or into the stormwater system. Drains, gutters, roadways and access ways shall be maintained free of sediment. Where required, gutters and roadways shall be swept regularly to maintain them free from sediment.
Note: The Applicant may be liable to prosecution under the Environmental Planning and Assessment Act 1979 for a breach of an approval condition, or under the Protection of the Environment Operations Act 1997, if its employees, agents or sub-contractors allow sediment, including soil, excavated material, building materials, or other materials to be pumped, drained or allowed to flow to the street, stormwater pipes or waterways. The Applicant shall ensure that its employees, agents or sub-contractors understand and maintain sediment control measures.
78. Temporary and permanent dewatering is not permitted on this site without NSW-EPA approval.
79. 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.
80. The proposed development shall comply with the following:
 - a) A sign must be erected in a prominent position on any work site on which work involved in the erection or demolition of a building is being carried out:
 - i) Stating that unauthorised entry to the work site is prohibited;
 - ii) Showing the name of the person in charge of the work site and a telephone number at which that person may be contacted outside working hours;
 - iii) The Development Approval number; and
 - iv) The name of the Principal Certifying Authority including an afterhour's contact telephone number.
 - b) Any such sign is to be removed when the work has been completed.
81. The demolisher shall comply with Australian Standard 2601 - 2001 "Demolition of Structures".
82. Precautions to be taken shall include compliance with the requirements of the WorkCover Authority of New South Wales, including but not limited to:
 - a) Protection of site workers and the general public.
 - b) Erection of hoardings where appropriate.
 - c) Asbestos handling and disposal where applicable.
 - d) Any disused service connections shall be capped off.
 - e) The disposal of refuse is to be to an approved waste disposal depot.

83. Hazardous or Special Wastes arising from the demolition process shall be removed and disposed of in accordance with the requirements of WorkCover NSW and the Department of Environment, Climate Change and Water and with the provisions of the:
- a) Occupational Health and Safety Act, 2000;
 - b) Occupational Health and Safety Regulation 2001;
 - c) Protection Of the Environment Operations Act 1997 (NSW); and
 - d) NSW Department of Environment and Climate Change Waste Classification Guidelines (2008).
84. Any material containing asbestos found on site during the demolition process the shall be removed and disposed of in accordance with:
- a) WorkCover 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 Operation (Waste) Regulation;
 - d) DECC Waste Classification Guidelines 2008.
 - e) No demolition materials shall be burnt or buried on the site.
85. The demolition and disposal of materials incorporating lead such as lead paint and dust shall be conducted in accordance with:
- a) AS2601-2001 - Demolition of structure.
 - b) AS4361.2-1998 – Guide to Lead Paint Management-Residential and Commercial Buildings
86. In order to ensure safe handling of asbestos materials, the re-use or sale of asbestos building materials is strictly prohibited.
87. 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.
88. No demolition materials shall be burnt or buried on the site.
- 89.
- a) To ensure that utility authorities and Council are advised of any effects to their infrastructure by the development, the applicant shall: -
 - i) 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.
 - ii) Negotiate with the utility authorities (eg Ausgrid, Sydney Water and Telecommunications Carriers) and Council in connection with: -
 - 1 The additional load on the system; and
 - 2 The relocation and/or adjustment of the services affected by the construction.
 - b) 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.
90. Should the demolition process require a building waste container(s) (builders' skip), then such container must not be placed or left upon the public road, footpath, reserve or the

like without the prior approval of the Council. The use of any part of Council's road reserve must also have prior approval of Council.

91. Throughout the construction period, Council's warning sign for soil and water management shall be displayed on the most prominent point of the building site, visible to both the street and site workers. A copy of the sign is available from Council's Customer Service Counter.
92. All possible and practicable steps shall be taken to prevent nuisance to the inhabitants of the surrounding neighbourhood from wind-blown dust, debris, noise and the like.
93.
 - a) All excavations and backfilling shall be executed safely and in accordance with appropriate professional standards; and all excavations shall be properly guarded and protected to prevent them from being dangerous to life or property;
 - b) Existing structures and or services on this and adjoining properties are not endangered during any demolition excavation or construction work associated with the above project. The applicant is to provide details of any shoring, piercing, or underpinning prior to the commencement of any work. The construction shall not undermine, endanger or destabilise any adjacent structures.
 - c) As the development involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
 - i) Protect and support the adjoining premises from possible damage from the excavation, and
 - ii) Where necessary, underpin the adjoining premises to prevent any such damage.
94. The following shall be complied with during construction and demolition:
 - a) Construction Noise
Noise from construction activities associated with the development shall comply with the NSW Environment Protection Authority's Environmental Noise Manual – Chapter 171 and the Protection of the Environment Operations Act 1997.
 - b) Level Restrictions
 - i) 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 20dB(A).
 - ii) 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).
 - c) Time Restrictions
 - i) Monday to Friday 07:00am to 05:00pm
 - ii) Saturday 08:00am to 01:00pm
 - iii) No Construction to take place on Sundays or Public Holidays.
 - d) Silencing
All possible steps should be taken to silence construction site equipment.
95. The applicant shall conduct all construction and related deliveries wholly on site. If any use of Council's road reserve is required then separate applications are to be made at Council's Customer Services Department.

96.

- a) In order to prevent vehicles tracking soil or other materials onto public roads and washing of materials into the street drainage system or watercourse, during Excavation, Construction and Deliveries, access to the site shall be available in all weather conditions. The area shall be stabilised and protected from erosion; and,
 - b) In addition, concrete trucks and any other trucks that 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 only be conducted in a suitable off-street area where wash waters do not enter the stormwater system or enter Council's land.
 - 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) Building operations such as brick cutting, washing tools or brushes and mixing mortar shall not be carried out on public roadways or footways or in any other locations which could lead to the discharge of materials into the stormwater drainage system or onto Council's lands.
97. 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 construction. The area fronting the site and in the vicinity of the development shall also be 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.
98. Vibration monitoring equipment must be installed and maintained, under the supervision of a professional engineer with expertise and experience in geotechnical engineering, between any potential source of vibration and any building identified by the professional engineer as being potentially at risk of movement or damage from settlement and/or vibration during the excavation and during the removal of any excavated material from the land being developed.

If vibration monitoring equipment detects any vibration at the level of the footings of any adjacent building exceeding the peak particle velocity adopted by the professional engineer as the maximum acceptable peak particle velocity an audible alarm must activate such that the principal contractor and any sub-contractor are easily alerted to the event.

Where any such alarm triggers all excavation works must cease immediately. Prior to the vibration monitoring equipment being reset by the professional engineer and any further work recommencing the event must be recorded and the cause of the event identified and documented by the professional engineer.

Where the event requires, in the opinion of the professional engineer, any change in work practices to ensure that vibration at the level of the footings of any adjacent building does not exceed the peak particle velocity adopted by the professional engineer as the maximum acceptable peak particle velocity these changes in work practices must be documented and a written direction given by the professional engineer to the principal contractor and any sub-contractor clearly setting out required work practice.

A copy of any written direction required by this condition must be provided to the Principal Certifier within 24 hours of any event.

Where there is any movement in foundations such that damaged is occasioned to any adjoining building or such that there is any removal of support to supported land the professional engineer, principal contractor and any sub-contractor responsible for such work must immediately cease all work, inform the owner of that supported land and take immediate action under the direction of the professional engineer to prevent any further damage and restore support to the supported land.

99. Construction Operations:

- 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.

100. 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.

101. Planter boxes constructed over a concrete slab shall be built in accordance with the following requirements:

- a) Ensure soil depths in accordance with Council's Landscape DCP. The base of the planter must be screeded to ensure drainage to a piped internal drainage outlet of minimum diameter 90mm, with no low points elsewhere in the planter. There are to be no external weep holes.
- b) A concrete hob or haunch shall be constructed at the internal join between the sides and base of the planter to contain drainage to within the planter.
- c) Planters are to be fully waterproofed and sealed internally with a proprietary sealing agent and applied by a qualified and experienced tradesman to eliminate water seepage and staining of the external face of the planter. All internal sealed finishes are to be sound and installed to manufacturer's directions prior to backfilling with soil. An inspection of the waterproofing and sealing of edges is required by the Certifier prior to backfilling with soil.
- d) Drainage cell must be supplied to the base and sides of the planter to minimize damage to the waterproof seal during backfilling and facilitate drainage. Apply a proprietary brand filter fabric and backfill with an imported lightweight soil suitable for planter boxes compliant with AS 4419 and AS 3743. Install drip irrigation including to lawns.
- e) Finish externally with a suitable paint, render or tile to co-ordinate with the colour schemes and finishes of the building.
- f) All planter boxes shall be irrigated, and shall have the required depth to sustain the proposed planting. A minimum soil/ planter box mix depth of 800mm is

required for planted areas (other than turf) and planter boxes on podiums or roof-tops or any other concrete slab.

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

102. The following conditions must be complied with prior to the issue of any Occupation Certificate:

- i) All landscape works are to be carried out in accordance with the approved landscape plans prior to the issue of an Occupation Certificate for the approved development. The landscaping is to be maintained to the approved standard at all times.
- ii) A Landscape Architect shall provide a report to the certifying authority (with a copy provided to Council, if Council is not the principal certifying authority) stating that the landscape works have been carried out in accordance with the approved plans and documentation.

103. A Landscape Maintenance Schedule shall be submitted that covers a 12 month period to provide a guide to the landowner or occupier on how to best maintain the constructed landscaped areas; and include the following information: shrub pruning/trimming (frequency, plant requirements); Fertilising and pest control (soil testing, types, rate, frequency); Mulching, weeding and soil improvement (frequency, materials); Irrigation (checks, adjustments); tree maintenance (fertilising, mulching, tree stakes adjustments, special tree requirements); Maintenance of hard landscape elements (paving, edges, walls, pergolas, seats, and planter box walls); and planter boxes/roof gardens/green wall (specialised maintenance requirements).

104. To ensure satisfactory growth and maintenance of the landscaping, a fully automatic drip irrigation system is required in all landscaped areas. The system shall be installed by a qualified landscape contractor and provide full coverage of planted areas with no more than 300mm between drippers, automatic controllers and backflow prevention devices, and should be connected to a recycled water source. 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.

105. Prior to the issue of any Occupation Certificate, the undergrounding of all electricity cables in Gardeners Road fronting the site and extending to the nearest power pole including all associated services and the installation of underground supplied street lighting columns, shall be carried out at the applicant's expense. The works shall be completed in accordance with Ausgrid's requirements and approved electrical design.

106. 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.

107. 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 clearly demonstrating that the site is suitable for the proposed development. This shall be provided prior to the issue of any Occupation Certificate.

Any conditions imposed on the SAS shall form part of this consent. The accredited site auditor shall provide Council with a copy of the Site Audit Report (SAR) and Site Audit Statement (SAS) prior to the issue of any 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.

108. Prior to the issue of any Occupation Certificate, the applicant shall carry out the following works:

- The redundant driveways and layback shall be removed and replaced with kerb and gutter, footpath/ grass verge to suit existing adjacent footpath reserve
- Reconstruction of footpath along the street frontage.
- Reconstruction of kerb and gutter along the street frontage
- Construction of a trunk drainage pipe from the subject site to Sydney Water culvert fronting 581-587 Gardeners Road.

109. Prior to the issue of any Occupation Certificate, a Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained from Sydney Water Corporation.

Application must be made through an authorised Water Servicing Coordinator. Please refer to the Building Developing and Plumbing section of the web site www.sydneywater.com.au then refer to "Water Servicing Coordinator" under "Developing Your Land" or telephone 13 20 92 for assistance.

Following application a "Notice of Requirements" will advise of water and sewer infrastructure to be built and charges to be paid. Please make early contact with the Coordinator, since building of water/sewer infrastructure can be time consuming and may impact on other services and building, driveway or landscape design. The Section 73 Certificate must be submitted to the Principal Certifier prior to release of the Subdivision/Strata Certificate.

110. Prior to the issue of any Occupation Certificate, the constructed stormwater drainage system shall be inspected and certified by a suitably qualified engineer. The certification shall demonstrate compliance with the approved plans, relevant Australian Standards, Council Specifications.

111. Prior to the issue of any Occupation Certificate, an appropriate instrument in accordance with Council Specification must be registered on the title of the property, concerning the presence and ongoing operation of the On-Site Detention System and stormwater quality improvement device/s. A Works-as-Executed plan must be submitted Council at the completion of the works, the plan must clearly illustrate dimensions and details of the site drainage and the On-Site Detention System stormwater quality improvement device/s. The plan shall be prepared by a registered surveyor or an engineer. A

construction compliance certification must be provided to verify, that the constructed stormwater system and associated works have been carried out in accordance with the approved plan(s), relevant codes and standards.

A Section 88B Instrument and four copies shall be lodged with the Subdivision/Strata Certificate.

112. Prior to the issue of any Occupation Certificate, a positive Covenant prepared by a suitably qualified professional shall be prepared and registered on the title of the property, concerning the presence and ongoing operation and maintenance of the traffic light system, the traffic Turn table and the car parking stacker system. A certificate by a suitably qualified engineer shall be provided to demonstrate that the installed devices are operational and comply with the relevant Australian standards and manufacturer specifications.
113. Prior to the issue of any Occupation Certificate for occupation or use of residential flat development, a design verification statement shall be submitted to the PCA from a qualified designer certifying that the development achieves the design quality of the development as shown in the plans and specifications in respect of which the construction certificate was issued, having regard to Schedule 1 of *State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development*.
114. Prior to issue of any Occupation Certificate the developer must submit to the Principal Certification Authority an acoustic report to verify that the measures stated in the approved acoustic report have been carried out and certify that the construction meets the above requirements. The report must be prepared by a qualified practicing acoustic engineer (who is a member of either the Australian Acoustical Society or the Association of Australian Acoustical Consultants).
115. 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 the issue of any Occupation Certificate of the development and release of damage deposit.
116. Prior to the issue of any 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.
117. All works within the road reserve, which are subject to approval pursuant to Section 138 of the Roads Act 1993, shall be completed and accepted by council and RMS where appropriate.
118. Construction related activities must not take place on the roadway without Council approval. Short-term activities (including operating plant, materials delivery) that reduce parking spaces, affect access to a particular route or prevent or restrict the passage of vehicles along the road must not occur without a valid Temporary Roadside Closure Permit. Activities involving occupation of the parking lane for durations longer than allowed under a Temporary Roadside Closure Permit require a Construction Zone Permit and must not occur prior to the erection of Construction Zone signs by the RTA. Permit application forms should be lodged at Council's Customer Service Centre allowing sufficient time for evaluation. An information package is available on request.

119. All footpath, or road and drainage modification and/or improvement works to be undertaken in the road reserve shall be undertaken by Council, or by a Private Licensed Contractor subject to the submission and approval of a Private Contractor Permit, together with payment of all inspection fees. An estimate of the cost to have these works constructed by Council may be obtained by contacting Council on 9562 1670. The cost of conducting these works will be deducted from the Footpath Reserve Restoration Deposit, or if this is insufficient the balance of the cost will be due for payment to Council upon completion of the work.
120. Any driveway works to be undertaken in the footpath reserve by a private contractor requires an "Application for Consideration by a Private Contractor" to be submitted to Council together with payment of the application fee. Works within the footpath reserve must not start until the application has been approved by Council.
121. A total of 123 car parking spaces shall be provided in accordance with the approved plans and allocated as follows:
- 6 car parking spaces allocated to the retail tenancy;
 - 95 car parking spaces allocated to the residential units; and
 - 22 residential visitor spaces.
122. The street address and dwellings numbers shall be approved by Council prior to the issue of any Occupation Certificate.
123. A by-law shall be registered and maintained for the life of the development, which requires that :
- (a) balconies are not to be used as clothes drying areas, storage of household goods and air-conditioning units that would be visible from the public domain.
- Proof of registration of the By Law shall be submitted to Council prior to the issue of any Occupation Certificate.

CONDITIONS WHICH MUST BE SATISFIED FOR THE ONGOING USE

124. The existing and future owners (Registered Proprietor) of the property will be responsible for the efficient operation and maintenance of the pump system.
- The Registered Proprietor will:
- a) permit stormwater to be temporarily detained and pumped by the system;
 - b) keep the system clean and free of silt, rubbish and debris;
 - c) maintain, renew and repair the whole or parts of the system so that it functions in a safe and efficient manner; and in doing so complete the same within the time and in the manner specified in written notice issued by the Council;
 - d) carry out the matters referred to in paragraphs (b) and (c) at the proprietor's expense;
 - e) not make alterations to the system or elements thereof without prior consent in writing of the Council.
 - f) permit the Council or its authorised agents from time to time upon giving reasonable notice (but at any time and without notice in the case of emergency) to enter and inspect the land for compliance with the requirement of this clause;
 - g) comply with the terms of any written notice issued by the Council in respect to the requirements of this clause within the time stated in the notice.

125. The existing and future owners (Registered Proprietor) of the property will be responsible for the operation and maintenance of the detention system.

The Registered Proprietor will:

- i) permit stormwater to be temporarily detained by the system;
 - ii) keep the system clean and free of silt, rubbish and debris;
 - iii) maintain, renew and repair the whole or parts of the system so that it functions in a safe and efficient manner; and in doing so complete the same within the time and in the manner specified in written notice issued by the Council;
 - iv) carry out the matters referred to in paragraphs (ii) and (iii) at the proprietor's expense;
 - v) not make alterations to the system or elements thereof without prior consent in writing of the Council.
 - vi) permit the Council or its authorised agents from time to time upon giving reasonable notice (but at any time and without notice in the case of emergency) to enter and inspect the land for compliance with the requirement of this clause;
 - viii) comply with the terms of any written notice issued by the Council in respect to the requirements of this clause within the time stated in the notice.
126. All wastewater and stormwater treatment devices (including drainage systems, sumps and traps) shall be regularly maintained in order to remain effective. All solid and liquid wastes collected from the device shall be disposed of in accordance with the Protection of the Environment Operations Act, 1997.
- 127.
- a) Each residential dwelling (apartment) is approved as a single dwelling. They shall not be used for separate residential occupation or as separate residential flats. No plumbing fixtures, fittings, walls shall be deleted or added, doorways enclosed or any other changes made from the approved plans in Condition No. 1 of this Consent without the prior Consent of the Council;
 - b) The adaptable apartments approved under this development consent is to remain unaltered at all times; and
 - c) The storage areas located within the basement shall be allocated to the relevant residential dwelling in any future subdivision of the site. In addition, any isolated storage areas and other spaces shall be monitored by CCTV cameras at all times.
128. 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.
129. 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).

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.