

SYDNEY EASTERN CITY PLANNING PANEL PANEL DETERMINATION MEETING

SECPP No	2018SCL019
DA Number	DA-2018/1013
Local Government Area	Bayside Council
Proposed Development	Integrated Development construction of a thirteen storey flat Integrated development for the construction of a thirteen storey residential flat building with a total of 105 apartments and two levels of basement car parking
Street Address	141 O'riordan Street, Mascot
Applicant	Karimbla Construction Services (NSW) Pty Ltd
Owner	Karimbla Properties (No. 39) Pty Ltd
Number of Submissions	Five (5) objections
Regional Development Criteria (Schedule 7 of the SEPP)	Development with a CIV of \$28,490,359.00
List of All Relevant s4.15(1)(a) Matters (previously Section 79C)	<ul style="list-style-type: none"> ○ Environmental Planning & Assessment Act 1979, Part 4 – Development Assessment & Schedule 7 of the SEPP- State and Regional Development 2011 which regional panels may be authorised to exercise consent authority functions of councils ○ Environmental Planning & Assessment Regulation 2000, Part 6 – Procedures relating to Development Applications ○ State Environmental Planning Policy (Infrastructure) 2007 ○ State Environmental Planning Policy No. 55 – Remediation of Land ○ State Environmental Planning Policy 2004 (BASIX); ○ State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development ○ Botany Bay Local Environmental Plan 2013 ○ Botany Development Control Plan 2013
List all documents submitted with this report for the panel's consideration	<ul style="list-style-type: none"> • Architectural Plans- DKO Architecture • Landscape Plans- Site Image • Design Review Panel

RECOMMENDATION

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

- a) Grant consent to the Clause 4.6 variation request under Botany Bay Local Environmental Plan 2013 to permit a maximum floor space ratio (FSR) of 3.86:1; and
- b) Grant approval of Development Application No. 2018/1013 for the construction of a thirteen storey residential flat building with a total of 104 apartments and two levels of basement car parking, subject to the conditions of consent in the attached Schedule.

EXECUTIVE SUMMARY

Council received Development Application No. DA-2018/1013 on 9 February 2018 for the construction of a of a thirteen storey residential flat building with a total of 105 apartments and two levels of basement car parking 141 O’Riordan Street, Mascot.

The Development Application is required to be referred to the Sydney Eastern City Planning Panel (SECPP) pursuant to Schedule 7 of the State Environmental Planning Policy (State and Regional Development) 2011 as the Capital Investment Value of the proposal is greater than \$20,000,000 and can be considered under the transitional arrangements in the relevant EPI.

The Development Application is Integrated Development under Section 90 of the Water Management Act 2000 as the development is deemed to be an aquifer interference activity as part of the development intercepts or extracts groundwater. Water NSW provided concurrence to the development application on 22 February 2018.

During the assessment process the application was referred to Council’s Design Review Panel on 5 April 2018. The applicant has amended the application to address the concerns of the Panel.

The proposal was amended in response to Council’s Additional information letter of 9 May 2018 with amended plans and documentation being provided to Council on 23 July 2018.

The Development Application was advertised from 21 February 2018 to 30 March 2018. Five (5) submissions were received which have been addressed within the report.

The key issues in the assessment of the development application include non-compliances with the solar access requirements and exceedance in floor space ratio development standards.

With regard to the ADG, the proposal does not comply with the 70% solar access requirements as 55% is provided, however this is an improvement to the existing approval which only achieved 43%. The communal open space, given its orientation will not receive two hours of solar access.

Circulation also does not comply as the ADG requires three lifts for the building with only two being proposed.

In regards to the building separation, at the internal corner as detailed within the report, the development provides a 4.15 metre building separation, bedroom to bedroom.

This is inconsistent with the ADG controls however this separation is acceptable as privacy measures have been included in the design to allow for privacy to be attained. The applicant has provided privacy and screening plans which demonstrate visual privacy mechanisms to prevent overlooking. This is supported. Finally, in regards to common circulation, the ADG requires 3 lifts to be provided as part of this development. The total number of lifts provided is 2. There is a shortfall of 1 lifts. The applicant has provided to Council on other applications lift studies which demonstrates that performance of the lifts based on the number of units is inconsistent with the ADG requirements. The study demonstrated that the lifts would continue to have excellent performances and could accommodate the number of residents within the development. Therefore, the ADG non-compliances have been resolved.

The development proposes a maximum building height of 44.5m (RL 52.9 m) at its highest point. This complies with the maximum building height of 44m under the BBLEP 2013. This is similar to the FSR requirements under the BBLEP 2013 which is 3.2:1. The proposal has a FSR of 3.86:1. The proposal is significantly less than the approved FSR on the site of 4.09:1. Therefore both the FSR and heights of building is acceptable.

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

In summary, the proposed DA has been assessed against the relevant controls and on balance, Council is generally supportive of the proposal. It is recommended that the application be issued with an approval.

SITE DESCRIPTION

The site is legally described as Lot 1 in DP 739565 and the site is known at 141 O'Riordan Street, Mascot and as 1-3 Haran Street Mascot. The site is located on the south western corner of the intersection of O'Riordan Street and Haran Street. The intersection of O'Riordan Street, Carinya Ave sites to the north east of the subject site.

The site is irregular in shape with the side boundaries provided with a northeast-southwest orientation. The site has an area of 2324 sqm. The northern boundary of the site, adjoining Haran Street, has a length of 53.95 metres, the eastern boundary adjoining O'Riordan Street has a length of approximately 42.965 metres, the western boundary a length of 44.635 metres and the southern boundary has a length of 54.155 metres. The site has a minor fall of approximately 1 metres from the north-western corner to both the east and the south.

The site is currently subject to excavation as the applicant has chosen to undertake the basement construction in accordance with an existing approval for the site for a similar residential flat building. Three trees on the north east corner of the site are retained.

The site lies within the Mascot Station Town Centre Precinct. The precinct is located in close proximity to major regional road networks, Sydney Airport and Port Botany.

Shallow Groundwater is present in this locality.



Figure 1. Locality map of the subject site



Figure 2. Aerial photograph of the subject site dated 2016

Description of the locality

Adjacent to the west of the subject site is 5 Haran Street, which is a residential flat building of 9 storeys containing 30 units and 47 underground car spaces. This development was approved on appeal. Further to the west is linear park, which benefits from an approval relating to its upgrade to include park facilities for the local population. To the north of the site is a thirteen storey residential flat building containing 125 apartments and four levels of basement car parking.

Immediately adjacent to the south are two narrow lots with a frontage to O'Riordan Street known at 143 and 145 O'Riordan Street. This contains a dwelling. The site further to the south, at the corner of John Street, contains a part single part double storey commercial buildings. Opposite the site to the north east across O'Riordan Street is an existing low density neighborhood characterized by single and two storey dwellings, whilst the recent Meriton Suites at 200 Coward Street is located to the south east across O'Riordan Street.

Outside of the Mascot Station Town Centre there is a mixture of land uses. To the north of the precinct is the southern end of the City of Sydney local government area. This area primarily consists of industrial/commercial land uses and large scale buildings. Further west of the precinct are industrial lands that are intersected by Alexandria Canal, which runs in a north to south direction and defined the boundary between the Bayside and City of Sydney local government areas,



Figure 3. Photomontage of the proposed building from Haran Street



**Figure 5. Photomontage of proposed development from
BACKGROUND**

Previous approval Development Application 2015/88

On 25 October 2016, the former Joint Regional Planning Panel Recommend approval of an Integrated Development Application for the demolition of existing structures and construction of a residential flat building comprising 99 apartments over 13 storeys with 4 levels of basement parking for 177 car parking spaces.

The height proposed for the building was compliant at 44m. The floor space ratio that was approved was that of 4.09:1. This approved an additional 2,064sqm of floor space than the control allowed. The result solar access that was afforded to the scheme was below the 70% threshold with 43% of the apartments receiving a minimum of 2 hours of solar access between the hours of 9am and 3pm on June 21.

DEVELOPMENT APPLICATION HISTORY

- 9 February 2018 – Application lodged with Council with FSR of 4:1 and solar access of 43%
- 5 April 2018 – Design Review Panel
- 9 May 2018 – Additional information letter sent by Council in regards to the issues of Floor Space Ratio, Height variation and Obstacle Limitation Surface, Solar Access, Land Amalgamation and Built form, Building Setbacks, Design Review Panel
- 10 May 2018 – Briefing with the SCPP
- 6 June 2018 – Traffic Advisory Committee Meeting
- 23 July 2018 – Amended plans with reduced floor space and improved solar access and Clause 4.6 Received

PROPOSED DEVELOPMENT

The proposed development as amended includes the detailed design of one 13-storey residential flat building containing a total of 104 residential units, basement parking for 118 cars and 8999sqm of gross floor area and associated excavation, earthworks and landscaping.

Built Form

The development is broken up as follows:

Basement Levels

The proposal has two basement levels, with the lowest level being at RL 2.7. The basement levels, combined, provide for a total of 106 car parking spaces. The basement areas will also provide for plant and storage facilities. Vehicle access to the basement will be via the vehicle crossing at Haran Street.

Ground Floor Level

The proposed Ground Floor Level will provide for a total of five residential apartments. Various areas of plant are also proposed at this level, along with the waste storage and collection Space.

Level 1 - 9 residential apartments are included for this level, some with private courtyards adjacent to communal open space
Communal open space is also proposed at this level, which will be accessible to all residents.

Levels 2 - 9 residential apartments are included in this level following the same layout as Level 1

Level 3 -11- 9 residential apartments are included in this level with a slight modification in the apartment layouts on the floor plate.

Level 12 – 7 residential apartments all with access to the next level

Rooftop Terraces

Each of the top floor units will have direct access to a private rooftop garden space. These areas will accommodate additional private open space to those top floor units. These areas are to incorporate BBQ facilities and storage rooms.

Apartment Mix

A breakdown of the apartment mix is as follows:

41 x 1 bedroom units - 39%
31 x 2 bedroom units - 30%
32 x 3 bedroom units - 31%

Car Parking and Servicing

The development includes two levels of car park. Details of the car parking are as follows:

Total number of car parking spaces associated with the site: **118 spaces**

This is further broken up as follows:

Ground

- 12 visitor spaces at grade (including 2 shared service vehicle spaces.)

Basement 1 –

- 9 visitor spaces
- 31 residential spaces
- 7 Accessible spaces

Basement 2

- 1 Visitor space
- 53 Residential spaces
- 4 Accessible spaces

Service Vehicles: 2 service space shared with visitor

Loading dock at grade

Car Wash Bay: 1 space (Conditioned)

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979 CONSIDERATIONS

SECTION 4.15 CONSIDERATIONS

In considering the Development Application, the matters listed in Section 4.15 of the *Environmental Planning and Assessment Act 1979* have been taken into consideration in the preparation of this report and are as follows:

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

State Environmental Planning Policy (Infrastructure) 2007 Clause 102(3) - Impact of road noise or vibration on non-road development

This clause applies to development for any of the following purposes that is on land in or adjacent to the road corridor for a freeway, a tollway or a transitway or any other road with an annual average daily traffic volume of more than 40,000 vehicles. An acoustic report has been submitted which demonstrates that subject to recommendations, the proposal is able to meet the relevant noise requirements.

State Environmental Planning Policy (Infrastructure) 2007

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

As per Schedule 3 of State Environmental Planning Policy (Infrastructure) 2007, the proposed development is 'traffic generating development' as it includes 75 dwellings or more and has access to a road that connects to a classified road. Accordingly, Clause 104 'Traffic Generating Development' applies to the DA which requires the RMS be notified. In a letter dated 8 March 2018, the RMS was notified of the DA.

Council received a response in a letter dated 11 April 2018, that raised no objection to the proposed development, subject to comments for Council to consider in the assessment and conditions to be imposed in the consent. These comments included for Council to consider a no right turn from O'Riordan into Haran Street.

Additionally, the car parking areas are to comply with the Australian Standards, and that vegetation is not to hinder sightlines. These comments have been considered in the assessment.

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

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

As part of the existing approval on the site DA-15/88 the applicant submitted a Phase 2 Detailed Site Investigation.

That report concluded that the site is suitable for the proposed land use as a multi storey residential building with minimal access to soil. The report recommends that an Acid Sulfate Soils Management Plan be developed for the site prior to construction or excavation works, to assess the potential acid sulfate soils and determine handling and disposal techniques; and that a Hazardous Materials Survey be undertaken prior to demolition of the current structure to identify any asbestos, polychlorinated biphenyls (PCBs), lead-based paints, lead based dust and synthetic mineral fibres (SMF) present within the existing building materials.

Appropriate conditions of consent were included in the consent notice of that application. The applicant has chosen to enact the excavation of the basements under that approval and as such the requirements for site contamination are satisfied. Appropriate conditions may apply to ensure that the validation reporting is followed through onto this application.

Council's Environmental Scientist has reviewed the application and requested that an updated Phase 2 investigation be provided but not realising that works had commenced under the original approval.

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

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

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

Clause 28 – Determination of development applications

Design Review Panel

The development application was presented to a Design Review Panel on 5 April 2018 who assessed each SEPP 65 principle and provided comments which are attached to the report. The Panel considered that the design demonstrates a degree of design excellence in relation to SEPP 65.

Design Quality Principles and Apartment Design Guide

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

The applicant has submitted an assessment against Part 3 and 4 of the ADG and has demonstrated that adequate regard has been given to the design quality principles and objectives specified in the ADG for the relevant design criteria. The key design criteria has been provided in the table below. Any non-compliances with the ADG have been discussed in the report 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.

Table 1: SEPP/ADG Compliance Table

SEPP 65 – ADG			
Control	Requirement	Proposed	Complies
Car Parking	Located within 800m of a train station. Accordingly, RMS reduced rates for car parking apply.	41 x 1 bed @ 0.6/unit = 24 31 x 2 bed @ 0.9/unit = 28 32 x 3 bed @ 1.4/unit = 45	Yes
Dwelling Size	Minimum internal areas as follows: 1 bed unit: 50sqm 2 bed unit: 70sqm	1 bed units: 50-53sqm 2 bed units: 75 - 83sqm 3 bed units: 101-107sqm	Yes Yes Yes

	3 bed unit: 90sqm		
Ceiling Height	Habitable Rooms: 2.7m Non-habitable: 2.4m	Habitable rooms: 2.7m Non-habitable rooms: 2.4m	Yes Yes
Deep Soil	Objective 3E-1 requires 7% of the site (for sites over 1,500sqm) as deep soil area with min. dimensions of 6m.	Based on a site area of 2324sqm: 316sqm (13.6%)	Yes
Communal Open Space	25% of site.	Based on a site area of 2324sqm: 581sqm (25%)	Yes
Solar Access	50% direct sunlight to the principal usable part of the COS for a minimum of 2 hours during mid-winter.	0% of central COS area receives greater than 2 hours of sun.	No Refer to Note 1
	Living rooms and POS for at least 70% of apartments (and in neighbouring development) to achieve 2 hours between 9am and 3pm.	55% achieved (57 out of 104 apartments)	No – Refer to Note 1
	A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid winter	22 % or 23 apartments receive no solar access in mid winter	No – Refer to Note 1
Cross Ventilation	60% required for first 9 storeys.	44 out of 74 apartments are cross ventilated (60%).	Yes
Building Depth	Use a range of appropriate maximum apartment depths of 12-18 metres.	Apartment depths are less than 18 metres.	Yes
Building Separation - External	<u>Up to 4 storeys (approx. 12m):</u> • 6m between habitable rooms/balconies • 3m between non-habitable rooms	<u>Up to 4 storeys: 6m required (podium)</u> • Maintains a 6m non-habitable setback from ground to level 12	Yes
	<u>Five to eight storeys (25m):</u> • 9m between habitable rooms/balconies • 4.5m between non-habitable rooms	<u>5-8 Storeys: 18m required</u> • Maintains a 6m non-habitable setback from ground to level 12	Yes
	<u>Nine storeys and above (greater than 25m):</u> • 12m between habitable rooms/balconies	<u>9 and greater storeys: 6m required</u> • Maintains a 6m non-habitable setback	Yes

	<ul style="list-style-type: none"> • 6 m between non-habitable rooms 	from ground to level 12	
Building Separation - Internal	<p><u>Up to four storeys (approx. 12m):</u></p> <ul style="list-style-type: none"> • 12m between habitable rooms/balconies • 9m between habitable and non-habitable rooms • 6m between non-habitable rooms <p><u>Five to eight storeys (approx. 25m):</u></p> <ul style="list-style-type: none"> • 18m between habitable/balconies • 12m between habitable and non-habitable rooms • 9m between non-habitable rooms <p><u>Nine storeys and above (over 25m):</u></p> <ul style="list-style-type: none"> • 24m between habitable rooms/balconies • 18m between habitable and non-habitable rooms • 12m between non-habitable rooms 	As demonstrated in the figure below at the internal corner, two apartments are closer than the minimum distances specified by the ADG, with a minimum distance of 4.15m provided bedroom to bedroom. Privacy measures have been implemented to afford additional privacy. As outlined below.	No – Refer Note 2
Balcony Sizes	1 bed: 8sqm 2 bed: 10sqm 3+ bed: 12sqm Ground Floor: 15sqm	1 bed: 8sqm - 15sqm 2 bed: 10sqm – 94.6sqm 3 bed: 12.2sqm – 136.6sqm Ground Floor: 12.2sqm - 62.3sqm	Yes
Storage	1 bed: 6m ³ 2 bed: 8m ³ 3+ bed: 10m ³	1 bed: Min 6sqm 2 bed: Min 8sqm 3 bed: Min 10sqm Majority of storage area located in basement.	Condition

Common circulation	1 lift/ 40 units (3 req)	two lifts have been provided. Departure of 1 lift.	No – Refer to Note 3
---------------------------	--------------------------	--	-----------------------------

Note 1 Solar access

Communal Open Space

The principal communal open space located at the first level within the southwestern corner of the site is provided in a suitable location, given the constraints requiring street presentation to the remaining frontages. In addition, much of the northern and eastern part of the site is overshadowed by the development at 2-4 Haran Street at ground level. The BBDCP 2013 also requires communal private open space to be provided approximately in this location, albeit across a wider area, which would include part of the sites to the south.

The provision of solar access to the communal open space areas is difficult to achieve in this location, given the approved development at the adjacent site to the west, No.5 Haran Street. This development currently overshadows the majority of the principal private open space of the subject site from 1:00pm onwards. The proposal will overshadow this private open space area at other times of the day.

The design achieves the objectives the control as it provides an adequate accessible, functional, usable and liveable communal open space areas for residents. In addition the proposal is provided with generous lobby areas within the development to enable indoor social interaction.

It is noted that the subject site is also within walking distance of Mascot Oval to the South and is approximately 25 metres from the future Linear Park to the west. In this regard the proposal is considered acceptable with respect to solar access to communal areas.

Neighbouring Development sites to the south.

Due to an approved departure of the building form control as discussed in detail later, concern was raised in regards to overshadowing

The applicant was informed of this issue and has provided the following justification to the overshadowing issue:

“Part 3B-02 of the SEPP 65 Apartment Design Guide contains the following control in respect of overshadowing of neighbouring properties during mid-winter:

Where an adjoining property does not currently receive the required hours of solar access, the proposed building ensures solar access to neighbouring properties is not reduced by more than 20%.

The applicant has undertaken a bulk and scale analysis of a potential built form for the development sites (once amalgamated to the south. A generic floor plate has been used to demonstrate a potential yield for the site. From here eye of sun diagrams have been submitted with the amended application, with detailed floor plate analysis indicating that 72 %of the future apartments would receive a minimum of 2 hours of solar access.



① Sun angle at 9AM



④ Sun angle at 12PM



⑦ Sun angle at 3PM

Figure 5: Solar access at Midwinter

Residential Apartments

Objective 4A-1 of the ADG requires living rooms and private open space areas of at least 70% of apartments in a building to receive a minimum of 2 hours of direct sunlight between 9am to 3pm mid-winter.

The solar access plans and the perspective shadow diagrams ads lodged with the original application indicate that 43% of the apartments received representing that over half (59 apartments) do not receive the required solar access at mid winter. It is noted that the former Joint Regional Planning Panel approved 40.4% solar access to the approval that has been activated.

It should also be noted that the approved development to the north at 2-4 Haran Street overshadows the majority of the northern façade such that solar access is not available to a large component of the northern oriented dwellings on the subject site.

The applicant has also demonstrated that if the development Control Plan envelopes were adhered to in this instance, then significantly less apartments would receive the required solar access amount. This has been done through an analysis of the façade that receives solar access with an average of 27% of the façade received solar access between the hours of 9am and 3pm mid-winter with the proposed scheme versus an average of 20% of the façade of the DCP envelope.

The applicant, through amended plans have demonstrated that the proposed development will receive sunlight to 57 of the apartments for a minimum of 2 hours in June. This equates to 54% of the proposed apartments and does not comply with the ADG requirement.

Additionally, 23 of the 104 apartments have no direct sunlight which results in a total of 22% thereby not complying with the maximum number of apartments with no direct sunlight of 15%.

Again it is reiterated that the existing approval on the site for 99 apartments only provides sufficient solar access to 40 of the apartments, or 40.4% solar access.

Consideration has been given to the Land & Environment Court planning principle on the impact on solar access of neighbours (Parsonage vs Ku-ring-gai (2004) NSWLEC 347) and as amended by (The Benevolent Society vs Waverley Council (2010) NSWLEC 1082) is addressed as follows:

- *The ease with which sunlight access can be protected is inversely proportional to the density of development. At low densities there is a reasonable expectation that a dwelling and some of its open space will retain its existing sunlight. (However, even at low densities there are sites and buildings that are highly vulnerable to being overshadowed). At higher densities sunlight is harder to protect and the claim to retain it is not as strong.*

Comment: The site is located in a high density residential and mixed use area which is currently undergoing redevelopment. The proposal involves construction of one towers with a height of 13 storeys. The proposal is consistent with the height of surrounding developments in the area which is discussed in the report above under the height. The site currently contains an excavation which is for the approved basement. Due to the location of the site and the building envelopes approved within the Mascot Station Town Centre Masterplan, the departure from the building envelopes control to achieve a better solar access given the existing context (as described above), it is expected that a high density built form will be achieved as a result of the proposal..

- *The amount of sunlight lost should be taken into account, as well as the amount of sunlight retained.*

Comment: The proposed solar access for the development, at 55% is a significant improvement to that already approved for the site. As discussed earlier in the note, the proposed development will overshadow the northern side of the development site to the south but it has been demonstrated that this will not affect the ability of the development sites to the south to achieve a compliant solar access rate.

- *Overshadowing arising out of poor design is not acceptable, even if it satisfies numerical guidelines. The poor quality of a proposal's design may be demonstrated by a more sensitive design that achieves the same amenity without substantial additional cost, while reducing the impact on neighbours.*

Comment: It is acknowledged that the proposed development does exceed the maximum FSR control under the BBLEP 2013. However, as it is considered that the communal open space of the neighbouring properties and development potential complies with the minimum 2 hours in mid-winter, the plans do not require amendment to reduce the FSR and height. The subject site allows adequate building separation between the buildings on the site and the surrounding buildings. The building envelopes in terms of their location and orientation were set within Part 9A of the BBDCP 2013, and the applicant generally complies with the footprint with departures in regards to building heights to achieve an improved solar access result. As discussed above, the subject development proposal does not comply with the minimum solar requirement in mid-winter to the apartments and communal open space, however given the existing context, the orientation of the site and the improvement achieved from the existing and activated approval for the site, the overall design of the buildings does not contribute unreasonable overshadowing and is supported by Council.

- *For private open space to be assessed as receiving adequate sunlight, regard should be had of the size of the open space and the amount of it receiving sunlight. Self-evidently, the smaller the open space, the greater the proportion of it requiring sunlight for it to have adequate solar amenity. A useable strip adjoining the living area in sunlight usually provides better solar amenity, depending on the size of the space. The amount of sunlight on private open space should ordinarily be measured at ground level but regard should be had to the size of the open space as, in a smaller private open space, sunlight falling on seated residents may be adequate.*

Comment: The private open space areas for the subject site are defined as balcony spaces. Similar to the 55% of units that receive the minimum 2 hours of sunlight, the balconies have been orientated to gain the most exposure of sunlight. Therefore, the amount of achievable sunlight to the private areas is acceptable in the context of the site.

The communal open area of the neighbouring development site to the south can achieve either rooftop or podium level communal open space in a complaint scheme.

- *Overshadowing by fences, roof overhangs and changes in level should be taken into consideration. Overshadowing by vegetation should be ignored, except that*

vegetation may be taken into account in a qualitative way, in particular dense hedges that appear like a solid fence.

Comment: Overshadowing is not proposed by fences, roof overhangs or by vegetation. The overshadowing is caused by the built form.

- *In areas undergoing change, the impact on what is likely to be built on adjoining sites should be considered as well as existing development.*

Comment: This particular discussion point has been addressed throughout the assessment of solar access within the entirety of Note 1 area. The area has and is undergoing redevelopment from industrial/commercial warehouses/ residential to mixed use and residential development. The subject site is one of the last few sites within Mascot Station that is undeveloped. It is expected that the site would be developed for the purposes of a mixed use development with a height of approximately 13 storeys. The proposed height of 13 storeys is similar to approved and constructed residential flat building immediately to the north and within the visual catchment of the site. It is anticipated that any development on the site will overshadow the southern neighbouring properties and the overshadowing cast by the proposal is discussed above.

Considering the above discussion, the solar amenity of the proposed development in comparison to the existing approved development and that of development sites to the immediate south of the site is acceptable.

Note 2 – Building Separation (Internal)

The proposal does not meet the ADG minimum building separation distances due to bedrooms being in closed than 12 metres on all levels, as demonstrated in the figure below. The design guideline for Objective 2F of the ADG requires the following separation to be provided for the development:

Up to four storeys (approx. 12m):

- 12m between habitable rooms/balconies
- 9m between habitable and non-habitable rooms
- 6m between non-habitable rooms

Five to eight storeys (approx. 25m):

- 18m between habitable/balconies
- 12m between habitable and non-habitable rooms
- 9m between non-habitable rooms

Nine storeys and above (over 25m):

- 24m between habitable rooms/balconies
- 18m between habitable and non-habitable rooms
- 12m between non-habitable rooms

The proposal provides a 12 metre internal building separation between the eastern and the western buildings for their entire height. Therefore, at all levels, the development does not comply with the minimum building separation required under the ADG. Due

to the minimised building separation, the application has provided a privacy and screening plan. The units that are generally the most impacted by overlooking are the units located in the internal corners. Figure 6 below demonstrates the measures imposed on preserving the visual privacy of these units.



Figure 6. Privacy screens or sliding glazed windows within the internal corner units

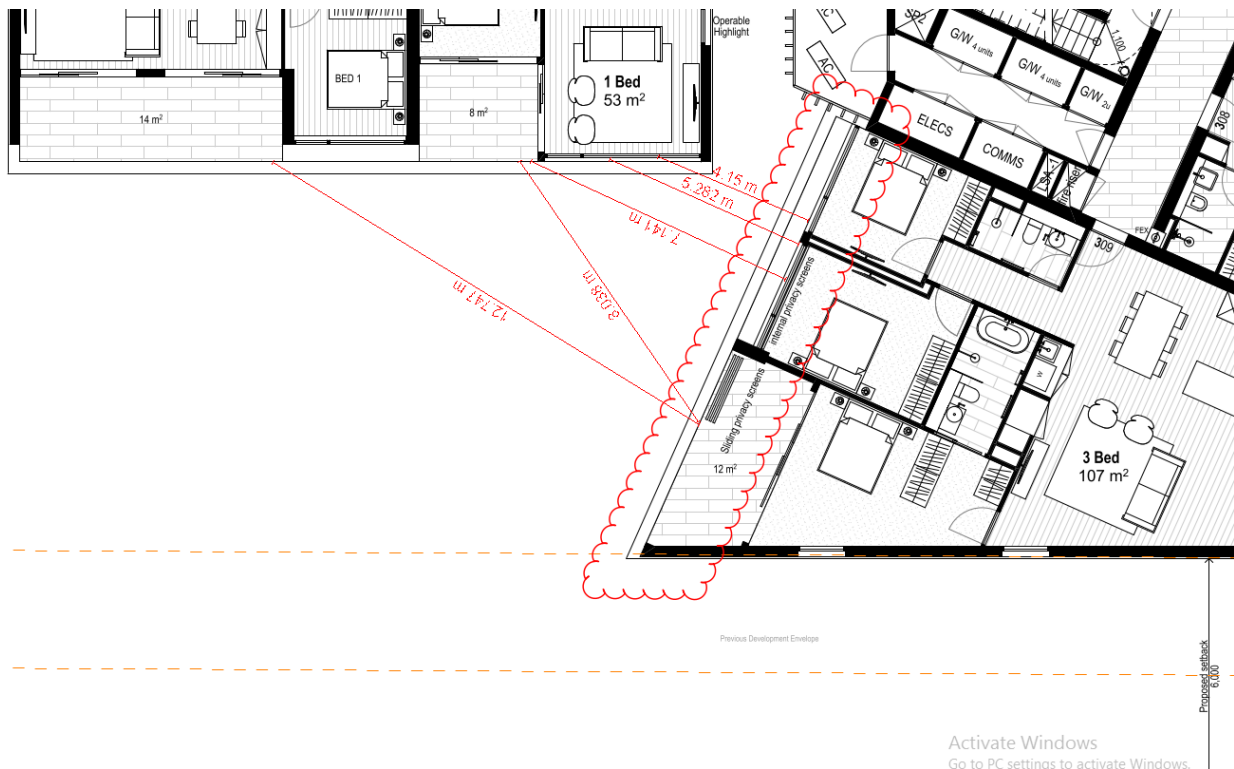


Figure 7. Separation distances to internal corner

The screening over the windows towards the centre of the site are located over bedrooms which are more sensitive than the principal living areas. Balcony treatments in the form of louvered screens have been proposed to the relevant units that are directly impacted. Given the proposed mitigation measures, the proposed building separation is acceptable.

Note 3- Common Circulation

The design criteria for Part 4F of the ADG requires buildings that are 10 storeys and over to have one lift per 40 units. The development proposes a total of 104 units therefore the total number of lifts required is 3. The development proposes a total of 2 lifts within the core. This is a shortfall of 1 lift within the development.

Council has required the applicant to justify the departure in the lift numbers in a number of their developments. The applicant has provided Council with lift traffic analysis for their developments which assessed peak waiting times and two way traffic waiting times. The results of the analysis reveals that the performance of the lifts is excellent and that the proposed number of lifts within the development is more than adequate to provide for the residents of that development. In this instance, the shortfall in lifts is supported.

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

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies to the proposed development. The Development Application was accompanied

by BASIX Certificate No. 895976M_02 prepared by Efficient Living Pty Ltd and dated 31 January 2018 committing to environmental sustainable measures.

Botany Bay Local Environmental Plan 2013

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

Table 2: BBLEP 2013 Compliance

Principal Provisions of BBLEP 2013	Complies Yes/No	Comment
Land use Zone	N/A	The site is zoned B4 Mixed Use under the BBLEP 2013.
Is the proposed use/works permitted with development consent?	Yes	The proposed residential flat building is permitted with consent in the B4 zone.
Does the proposed use/works meet the objectives of the zone?	Yes	<p>The proposed development is consistent with the following objectives in the BBLEP 2013:</p> <p>B4- Mixed Use Zone</p> <ul style="list-style-type: none"> <i>To provide a mixture of compatible land uses.</i> <i>To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.</i>
What is the height of the building?	Yes	<p>Maximum height limit of 44 metres.</p> <ul style="list-style-type: none"> 43.85 metres is maximum proposed <p>Lowest Ground RL is 8.45 Top Of building RL52.3</p>
What is the proposed FSR?	No – Refer to Note 4	<p>Maximum FSR is 3.2:1 (7,436.8sqm) under the BBLEP 2013.</p> <p>Proposed FSR is 3.87:1 (8992sqm) which does not comply within the 3.2:1 FSR.</p>
Is the land affected by road widening?	N/A	The subject site is not identified as being affected by road widening.
Is the site listed in Schedule 5 as a heritage item or within a Heritage Conservation Area?	N/A	The subject site is not identified as a Heritage Item or within a Heritage Conservation Area.

Principal Provisions of BBLEP 2013	Complies Yes/No	Comment
The following provisions in Part 6 of the LEP apply to the development:		
6.1 – Acid sulfate soils (ASS)	Yes	<p>The subject site is affected by both Class 2 and Class 4 Acid Sulfate Soils.</p> <p>This clause is able to addressed by a condition of consent requiring an Acid Sulphate Management Report to be submitted prior to the issue of a Construction Certificate.</p>
6.2 – Earthworks	Yes	<p>The proposed development proposes two basement levels. Excavation for the basement levels was approved under DA-2015/88 therefore there is no significant excavation proposed as part of this application.</p> <p>The application was originally referred to the Water NSW as well as part of the subject development application and they have provided conditions of consent. In the event that ground water is encountered, a dewatering application is required.</p>
6.3 – Stormwater management	Yes	<p>The Development Application involves an underground On Site Detention system and rainwater tank located within the level 1 basement car park towards the south-eastern side of the site. The proposal has been reviewed by Council's Development Engineer who raised no objection subject to conditions which have been included on the consent.</p>
6.8 - Airspace operations	Yes	<p>The subject site lies within an area defined in the schedules of the Civil Aviation (Buildings Control) Regulations that limit the height of structures to 50 feet (15.24 metres) above existing ground height without prior approval of the Civil Aviation Safety Authority. The application proposed buildings above this maximum height and was therefore</p>

Principal Provisions of BBLEP 2013	Complies Yes/No	Comment
6.9 – Development in areas subject to aircraft noise	Yes	referred to Sydney Airports Corporation Limited (SACL) for consideration. CASA provided comments dated 5 July 2018 that apply to the entire site stating that they have no objection to the development providing it does not exceed the overall RL 52.9m for the entire site. The development falls beneath this height. The subject site lies between the 20-25 ANEF contours. An acoustic report has been submitted with the development application, which indicates that the development has been designed to comply with the requirements of AS2021-2000. The development is consistent with Clause 6.9 of BBLEP 2013.
6.16 – Design excellence	Yes	The proposed design has been the subject of consideration by Council's Design Review Panel and is considered to be generally satisfactory with respect to the matters contained within Clause 6.16. However, further discussion is provided on design excellence in relation to SEPP 65.

The objectives and provisions of BBLEP 2013 have been considered in relation to the subject development application. The proposal is considered satisfactory in terms of the BBLEP 2013. The FSR variation, which is addressed below is acceptable in this instance and the additional FSR does not result in any undue adverse impacts on the locality.

Note 4 – Variation to the Floor Space Ratio Development Standard

The development proposes an overall GFA of 8,992sqm or 3.86:1. This is inconsistent with the maximum FSR of 3.2:1 (7,436.8sqm) under the BBLEP 2013. This results in a variation of 1555.2sqm or 20% variation.

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

Clause 4.6 of BBLEP 2013 states:-

1) The objectives of this clause are as follows:

- a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
 - b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*
- 2) *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*
- 3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
 - a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
 - b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*
- 4) *Development consent must not be granted for development that contravenes a development standard unless:*
 - a) *the consent authority is satisfied that:*
 - (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - (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, and*
 - b) *the concurrence of the Director-General has been obtained.*
- 5) *In deciding whether to grant concurrence, the Director-General must consider:*
 - a) *whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
 - b) *the public benefit of maintaining the development standard, and*
 - c) *any other matters required to be taken into consideration by the Director General before granting concurrence.*
- 6) *Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if: a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard. Note. When this Plan was made it did not include Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E3 Environmental Management or Zone E4 Environmental Living.*
- 7) *After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).*
- 8) *This clause does not allow development consent to be granted for development that would contravene any of the following:*
 - a) *a development standard for complying development,*
 - b) *a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,*
 - c) *clause 5.4.*

Consent may be granted for the proposal subject to Clause 4.6, notwithstanding that the proposal would contravene this development standard, as the FSR development standard is not expressly excluded from this Clause (CI 4.6(2)). The applicant has provided a written request justifying the contravention of the development standard pursuant to Clause 4.6(3) of BBLEP 2013, which is considered below. The matters for consideration pursuant to Clause 4.6(4) and (5) are also considered below. Clause 4.6 (6), (7) and (8) are not relevant to the current proposal.

In assessing the proposed departure, consideration has been given to the objectives of the standard, the objectives of the zone, and the objectives of BBLEP 2013 (including Clause 4.6(1)) as outlined below. The following justification for this proposed departure from the FSR development standard has been provided by the applicant:

The proposed FSR variation is considered to be justified on the following basis:

1. Consistency with the objectives of the Floor Space Ratio standard in the LEP
LEP FSR objectives: 4.4 Floor space ratio [relevant clauses quoted]

(1) The objectives of this clause are as follows:

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

(2) The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map.

Applicant's justification:

(a) to establish standards for the maximum development density and intensity of land use,

Recent approvals have contributed to a standard of development density in the area. The proposal seeks approval for a development that has the same gross floor area as the existing approved development on the site. In addition, there are various other examples of previously approved developments in the Mascot Station area that exceed the 3.2:1 FSR control. These are shown in the table below.

Site	Approved FSR
39 Kent Road, Mascot	4.26:1
214 Coward Street, Mascot	4.24:1
208-210 Coward Street, Mascot	4.00:1
246 Coward Street, Mascot	3.88:1
8 Bourke Road & 37 Church Avenue	3.82:1
2-4 Haran Street, Mascot	3.79:1
7-9 Kent Road, Mascot	3.78:1
7 Bourke Street & 30-32 John Street, Mascot	3.75:1
19-33 Kent Road, Mascot	3.72:1
230 Coward Street, Mascot (25 John Street)	3.60:1
671-683 Gardeners Road	3.43:1

The table above demonstrates that the development standard has been previously exceeded in various instances, which contributes to a standard of density in the area of the same scale as that proposed. Historically, it is clearly evident that the Council has abandoned its floor space ratio control in the Mascot Town Centre and the proposed floor space ratio is well within the range of past approvals outlined above.

(b) to ensure that buildings are compatible with the bulk and scale of the existing and desired future character of the locality,

The proposal has been designed in response to the scale and siting of recent and emerging development in the immediate vicinity. The recent development on the northern side of Haran Street has 13-storeys and the recent development on the adjoining site to the west has 9-storeys. Both these buildings have more storeys (and non-compliant street setbacks) than was anticipated by the DCP and, therefore, the proposal has been designed to relate to the scale of these recent buildings to ensure consistency of scale in the area.

The proposed building will have a visual dynamic that reduces bulk and scale. This has been created by providing highly articulated streetscape elevations that include building breaks and indentations. There is also a clearly evident podium element below the tower to break up the building form. A comparison has been provided between the DCP anticipated building footprint and the proposed building footprint. It is clearly evident that the proposal will provide more playful elevations and allow lines of sight through the site. This is considered to provide a significant public benefit by way of an enhanced streetscape and public domain interface.

(c) to maintain an appropriate visual relationship between new development and the existing character of areas or locations that are not undergoing, and are not likely to undergo, a substantial transformation,

The site is located within a precinct undergoing transition from a predominantly industrial area, to a mixed-use area. There are a number of developments proposed or under construction surrounding the site, in addition to some recently completed developments. As stated above, there are buildings in the immediate vicinity that have a greater number of floors than was anticipated by the DCP. To ensure consistency of scale and relationship to the public domain it has been proposed to design a development that relates to these buildings.

(d) to ensure that buildings do not adversely affect the streetscape, skyline or landscape when viewed from adjoining roads and other public places such as parks, and community facilities,

The subject site is located on a very busy part of O’Riordan Street that is becoming increasingly characterised by high density development. Recent developments in the area are setting the standard for this level of density. The proposal has been designed to relate to this scale and ensure consistency of the streetscape. There are no community gathering spaces around the site from which the development and its immediate streetscape can be viewed. The development is most prominently part of a highly trafficked and thoroughfare with high density buildings. This ‘opens up’ beyond the site – about 150 metres to the south - adjacent to Lionel Bowen Park. However, the subject site cannot be seen from that public space.

(e) to minimise adverse environmental effects on the use or enjoyment of adjoining properties and the public domain,

The proposal has been designed with setbacks that are fully compliant with the DCP. More generous setbacks are proposed at Ground Floor Level to Level 3 to allow for more generous and substantial landscape. This will provide a streetscape setting and public domain interface that is superior to that anticipated by the DCP. These generous setbacks will be further complemented by the articulated facades and building breaks. The building breaks and more generous setbacks will also offer greater daylight and solar access to any future development on the site to the south. In this respect, drawings DA 403; 404; 405; and 406 have been prepared and accompany the application to council which show that a future development on the site to the south will achieve 2 or more hours of solar access for 72% of apartments (refer to Annexure 1 to this report). A further 5% of apartments will receive up to 2 hours solar access. This high level of solar access is a direct result of the built form that allows for greater solar penetration through the subject site.

(f) to provide an appropriate correlation between the size of a site and the extent of any development on that site,

The design of the proposal is a response to the surrounding built form. The scale of the proposal will relate to the neighbouring buildings. The proposed setbacks (which are more generous than the DCP requires), façade variation and breaks in the building will give the development a less bulky appearance. This will ensure that the development draws a correlation with the size of the site it occupies.

(g) to facilitate development that contributes to the economic growth of Botany Bay.

The proposed development will create numerous construction jobs and ongoing employment for the maintenance and servicing of the building and the needs of its occupants.

2. Consistency with the objectives of the B4 Mixed Use Zone

Objective of zone •

- To provide a mixture of compatible land uses.
- To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling

Council’s Assessment:

It is noted that the applicant is not required to address this specific clause. The development is for a residential flat building in a locality within the Mascot Town Centre that is characterised by residential flat buildings as is on the shoulder of the precinct and is considered acceptable as it provides an appropriate interface the Street network

and is cognitive of the change in the existing and desired future character and corresponding development standards that exist for the development on the eastern side of O’Riordan Street.

Linear Park provides a natural break from the remainder of the Mascot town centre which further enhances this area for residential whilst concentrating a range of business uses closer to the centre. The whole precinct is walkable and is well served by public transport. The combination of this with car parking rates aligned with the Apartment Design guide will facilitate this being an accessible location where public transport patronage is maximised.

3. Consistency with State and Regional planning policies

Applicant’s justification

The proposed variation to the FSR development standard does not conflict with any matters of State or regional environmental planning significance, nor does it conflict with any State Planning Policies or Ministerial Directions. The significance of the non-compliance is acceptable in the context of the overall development of the Mascot area and the broader Bayside Council area.

The proposal is consistent with key objectives of A Metropolis of Three Cities - The Greater Sydney Region Plan, which is the first to be prepared concurrently with Future Transport 2056 and the State Infrastructure Strategy, aligning land use, transport and infrastructure planning to reshape Greater Sydney as three unique but connected cities.

The Region Plan housing opportunity is consistent with the subject site:

Opportunities for urban renewal need to be considered by location and by capacity of existing and proposed infrastructure. In older more established parts of Greater Sydney, urban renewal opportunities may exist around regional transport and strategic centres where links for walking and cycling promote a healthy lifestyle and contribute to liveability.

The proposal also will assist in reaching the target of 46,550 dwelling for the Plans’ Eastern City District (where the site is located) by 2021.

4. The variation allows for a better planning outcome

The proposal represents a significant improvement from the existing approved form and condition of the site. The proposal will introduce a contemporary building to the locality which is of high architectural merit and will be a positive contribution to O’Riordan Street.

The variation to Council’s FSR control will introduce residential accommodation which has high internal amenity with sufficient solar access and ventilation. The residential accommodation is suitably located within close proximity to the Sydney Airport, public transport facilities and various services and uses at Mascot town centre which is a preferred planning outcome.

The landscaping to the scheme will soften the built form and make improvements to the public domain, improve pedestrian amenity and allow for natural drainage.

The proposal allows for adequate car parking whilst meeting the objectives of the zone by reinforcing other modes of transport – public transport, walking and cycling.

Overall the variation with the FSR control allows for a better planning outcome while there are minimal impacts to the surrounding properties.

5. There are sufficient environmental grounds to permit the variation

Applicant's justification

The variation to the FSR development standard is considered well founded and reasonable for the following reasons:

- *The proposed development is consistent with the underlying objectives and purpose of the development standard, as demonstrated in section 4C of this report;*
- *The proposed development fully complies with – and indeed exceeds - the setback requirements of the DCP and contains articulation within the nominated articulation zone as demonstrated in section 4C of this report;*
- *The proposed non-compliance relates to the LEP 2013 provisions for FSR will not have any adverse impact on the bulk and scale of the development when viewed from surrounding properties; and*
- *Despite the non-compliance with the FSR control, the proposal is consistent with the scale of development anticipated, approved and constructed in the locality,*

6. The variation is in the public interest

Applicant's justification: *The proposal is consistent with the objectives of the FSR development standard and objectives of the B4 zone. This demonstrates that the proposal is in the public interest.*

The existing development consent that applies to the site allows for construction of a residential flat building that achieves 2-hour midwinter solar access to only 43% of apartments. Through more thoughtful and successful design, the proposed development by DKO manages to achieve ADG solar access to 55% of apartments. This is a substantial improvement to resident amenity and will result in a superior built form on the site.

The public interest is favourably served when a superior development is proposed to replace a previously approved one with lesser amenity.

Applying Preston's CJ decision in Randwick City Council v Micaul, the proposed development is able to demonstrate that strict compliance with the numerical FSR development standard is unnecessary in the particular circumstances of the proposal, as the development is able to:

- *Meet the objectives of the development standard and of that of the B4 Mixed use zone;*
- *Meet other built form development standards,;*
- *Satisfactorily address all relevant planning considerations as detailed throughout this and the applicants submission; and*
- *There are various other examples of previously approved developments in the Mascot Station area that exceed the 3.2:1 FSR control, as outlined above*

These additional matters are considered below.

1. The applicant must satisfy the consent authority that "the objection is well founded", and compliance with the development standard is unreasonable or unnecessary in the circumstances of the case;
2. The consent authority must be of the opinion that granting consent to the development application would be consistent with the policy's aim of providing

flexibility in the application of planning controls where strict compliance with those controls would, in any particular case, be unreasonable or unnecessary or tend to hinder the attainment of the objects specified in s 5(a)(i) and (ii) of the Environmental Planning & Assessment Act 1979; and

3. It is also important to consider: 1. whether non-compliance with the development standard raises any matter of significance for State or regional planning; and 2. the public benefit of maintaining the planning controls adopted by the environmental planning instrument.

The Chief Justice then expressed the view that there are 5 different ways in which an objection may be well founded and that approval of the objection may be consistent with the aims of the policy:

These matters are considered below.

A. Objection well founded and compliance with the development standard is unreasonable or unnecessary in the circumstance of the case (CI 4.6(3)(a))

The Land and Environment Court have set out a five part test for consent authorities to consider when assessing an application to vary a standard to determine whether the objection to the development standards is well founded. This test is outlined below for the variation to FSR.

1) The objectives of the standard are achieved notwithstanding noncompliance with the standard

The objectives of Clause 4.4 Floor Space Ratio of the Botany Bay LEP 2013 are:

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

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

- The proposed development is compatible with the bulk and scale of the existing development in the area and the future desired character of the locality, given the mixed use nature of the site and locality;
- The proposal has improved solar access for the inhabitants when compared to the existing approval and has sufficiently demonstrate that the development site to the south can achieve the required solar access.

- It is not likely that there will be significant adverse impacts from the additional floor space proposed on the amenity of adjoining properties in terms of increased traffic and the lack of on street car parking as the proposal complies with the requirements of the Apartment Design guide

2) The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary

The underlying objective and purpose of the floor space ratio control has been achieved as stated above, therefore the standard is relevant even though strict compliance with the numerical requirement of 3.2:1 is not achieved which is not considered necessary in this instance as the proposal does meet all the objectives of Clause 4.4. The proposed development is compatible with the existing and desired future character of the area.

3) The underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable

The underlying objectives and purposes of the FSR control remain relevant to the proposed development. The proposed development is consistent with the objectives of the FSR control in the BBLEP 2013 as detailed above.

4) The development standard has been virtually abandoned or destroyed by the council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable

While the FSR control has been varied previously for this site, the development standard has not been abandoned. This development standard remains generally relevant in the area, and a variation to the standard is warranted as discussed above.

5) The compliance with development standard is unreasonable or inappropriate due to existing use of land and current environmental character of the particular parcel of land. That is, the particular parcel of land should not have been included in the zone

It has been established that the proposed development is appropriate and strict adherence to the development standard in this instance is considered unreasonable and unnecessary. Furthermore, the additional floor space does not result in adverse impact to adjoining properties in terms of residential amenity. A compliant building in terms of building envelope would create a larger impact in terms of solar access for internal amenity and impacts from the development.

The proposed development provides a high quality residential accommodation, which facilitates the orderly and economic development of the land in a manner that is appropriate in this area as it provides appropriate level of car parking and is within the height limit and provides a better internal solar amenity for future inhabitants compared to the existing approval on the site. The development is consistent with the streetscape presentation already approved at the site.

Accordingly, since the proposal does satisfy all the objectives of the FSR development standard pursuant to Clause 4.4 of BBLEP 2013, the proposed development is considered to be appropriate and strict adherence to the development standard in this instance is unreasonable and unnecessary.

It is considered that the applicant's Clause 4.6 is well-founded and the departure is in the public interest given an appropriate level of car parking is provided.

B. Consistent with the policy's aim of providing flexibility in the application of planning controls where strict compliance with those controls would, in any particular case, be unreasonable or unnecessary or tend to hinder the attainment of the objects specified in s 5(a)(i) and (ii) of the Environmental Planning & Assessment Act 1979; and

The Policy referred to in this instance is SEPP 1 which is not relevant in this case since Clause 4.6 is the applicable instrument, however, the objectives of both are similar in that flexibility in applying certain development standards to particular development and to achieve better outcomes for and from development by allowing flexibility in particular circumstances is desirable.

The objects specified in section 5 (a) (i) and (ii) of the Act are:-

- a) *to encourage:*
 - (i) *the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment,*
 - (ii) *the promotion and co-ordination of the orderly and economic use and development of land.*

It is considered that in this instance, non-compliance with the FSR standard is acceptable in this instance as the proposal does achieve the objectives of the development standard and in this instance will allow for the co-ordination of the orderly and economic use and development of land.

Further the applicant, although not specifically required to has also identified *Object G - to promote good design and amenity of the built environment*

Object (g) is of particular relevance to the proposed variation, The following paragraphs consider the proposed development and its consistency with that Object.

A considerable amount of work has been done on the design of the proposed building to ensure it not only responds to its surroundings, but also offers a superior design outcome on the site.

Solar Access

The site is constrained in that its solar access is restricted by existing developments - to the north (2-4 Haran Street); and west (5 Haran Street) – and the angle of its O'Riordan Street frontage - which means that the eastern façade of the proposed building receives only 15 minutes of solar access at midwinter.

No.2-4 Haran Street blocks solar access to northern facade of the proposed building below Level 7 from 10am - 2pm in midwinter. It should be noted that the building on 2-4 Haran Street has a 3 metre setback that is inconsistent with the DCP. No.5 Haran Street has a zero lot setback to its western boundary (shared with the subject site) and

blocks solar access to western façade of the proposed development from 1-3pm in midwinter. It should be noted that the setback to the building on 5 Haran Street is also inconsistent with the DCP. Drawing No. DA 409 has been included with the submitted drawing set that illustrates these constraints, and an extract is provided at Figure 8 below.

The result of these existing site constraints means that only an average of 27% of the façade on the subject site has the potential for receiving 2 hours of solar access at midwinter. In spite of these constraints, the proposed design manages to achieve 2 hours of midwinter solar access to 55% of apartments (which compares very favourably to 43% under the approved development on the site). This is achieved by maximising the number of units - and the area of façade - facing north and west.

To further demonstrate the success of the solar access achievement on the site with the proposed design, DKO Architects have prepared diagrams that compare solar coverage to the facades for a DCP compliant scheme (Drawing No. DA 407 – extract at Figure 9) and the proposed scheme (Drawing No. DA 408 – extract at Figure 10). On average, the facades of a DCP compliant scheme will have 20% solar coverage, and the facades of the proposed scheme will have 27% solar coverage.

The above demonstrates that any development on the subject site will be somewhat challenged where compliance with the ADG is concerned. The construction of previously approved buildings – with setback and height non-compliances – to the north and west means that additional shadow (unanticipated by the DCP) is cast over the subject site and makes compliance challenging. Due consideration needs to be given to this fact, and merit should be given to the architects for managing to design a building that yields a 12% increase in the number of ADG solar access complaint units that can be built on the site.

C. Sufficient Environmental Planning Grounds (CI 4.6(3)(b))

It is considered that there are sufficient environmental planning grounds arising from the proposal to support of this variation to the FSR development standard given:-

- The development will not adversely impact on the solar amenity on the remaining development sites to the south and the internal solar access is an improvement from the approved and activated consent for the site; and the acceptable level of car parking will not impact on the availability of on-street car parking;
- The proposal is under the height limit for this particular site and is of a smaller bulk in terms of the existing Floor space approved on the site.
- Other residential development approved by both Council and the former JRPP have varied the FSR standard to a larger extent to what is currently proposed.

Therefore, it is considered that there are sufficient planning grounds for a variation to the FSR and the variation is not in the public interest.

D. Other Matters For Consideration (CI 4.6(1), (4) & (5))

The following matters pursuant to Clause 4.6 also need to be considered:-

- Objectives of Clause 4.6;
- Public interest and public benefit of maintaining the development standard CI 4.6(4)(a)(ii) and (5)(b) of BBLEP 2013; and
- Any matters of state or regional importance (CI 4.6(5)(a) of BBLEP 2013)

Objectives of Clause 4.6

The objectives of Clause 4.6 (pursuant to CI 4.6(1) of BBLEP 2013) are:

a) to provide an appropriate degree of flexibility in applying certain development standards to particular development, b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

It is considered that the proposed development will achieve a suitable outcome for the site in that the proposal will adversely impact on the visual amenity, and adjoining road network of the area. This is addressed further in this assessment. Therefore, for the reasons outlined in this assessment, it is considered that flexibility can be applied to this development, in this instance as it does achieve a better outcome for the site, in that it provides for a development with better internal solar access and maintains an appropriate solar access level for the development sites to the south.

Public Interest and Public Benefit

In terms of public benefit, the proposal will provide for a public benefit. The proposed development is compatible with the existing development and the approved development surrounding the site. The enhanced setbacks and public domain improvements will be of a benefit to the community.

Preston CJ noted that there is a public benefit in maintaining planning controls and a SEPP 1 objection should not be used in an attempt to effect general planning changes throughout the area. It is considered that in the current case, the planning control should not be varied as it will affect the general planning change in the area, as it will not be consistent with other tourist development already approved and construction in the area. The proposed development will not impact on the solar access for remaining development sites.

Matters of State or Regional Importance

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

Summary

The Clause 4.6 Exception to the FSR control has been assessed in accordance with relevant case law, being the principles of *Wehbe v Pittwater Council* [2007] NSW LEC 827. It is considered that the proposal is consistent with the underlying objectives of the standard identified:

- The impacts associated with a residential flat building that complies with the DCP Building envelopes, in the context of the site does not receive adequate solar access for future inhabitants and would have significantly greater impacts for the existing residential development to the south.
- The proposed non-compliance is less than what has already been approved on the site and is consistent with the surrounding approvals of residential development within the Mascot town centre.
- The overshadowing created by the development still maintains at least three hours of sunlight to neighbouring properties on June 21.
- The buildings address the desired future character of the area and the site is located in an area that has been subject to a significant amount of development

It is considered that the Applicant has addressed the requirements of Clause 4.6(4) and the granting of consent is consistent with the aims and objectives of Clause 4.6 of BBLEP 2013 further the applicant's Clause 4.6 is well-founded. On this basis of, it is recommended that the development standard relating to the maximum FSR for the site pursuant to Clause 4.4 of the BBLEP 2013 should be varied in the circumstances as discussed above.

Botany Bay Development Control Plan (BBDCP) 2013

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

Table 3: BBDCP 2013 Compliance Table – General Provisions

Control	Proposed	Complies (yes/no)
3A Parking and Access		
3A.2. Parking Provisions of Specific Uses <u>Residential</u> 41x 1 bed @ 0.6/unit = 25 31 x 2 bed @ 0.9/unit = 28 32 x 3 bed @ 1.4/unit = 45 <u>Total spaces</u> 98 car spaces Note: No requirement for car wash bays	<u>Residential</u> 86 space plus 11 accessible spaces. One visitor space is to be allocated to residential so compliance is achieved. This equates to one visitor space shortfall, given its proximity to the train station and other public transport routes this is considered acceptable. 21 Visitor spaces provided <ul style="list-style-type: none"> • 2 service vehicle space • 1 car wash bay Total car spaces: 118 car spaces	Yes – Conditioned

Control	Proposed	Complies (yes/no)
	A condition of consent has been included to use one visitor space beside the service vehicles spaces as a car wash bay on the site.	
3A.3.1 Car Park Design C1-C39 General; Location; Access; Basement parking; Residential; Accessible parking	<p>Waste collection and servicing is located at grade.</p> <p>All vehicle access will be carried out from a double width driveway that connects off Haran Street.</p> <p>Pedestrian access is easily identifiable and pedestrian entrances and exits are separated from vehicular access paths. There is only one vehicle access point on the eastern side of the site.</p> <p>In regard to waste disposal, garbage collection will be carried out from the designated loading dock at grade and off street.</p> <p>Swept path diagrams have been provided for assessment. The diagrams demonstrated that service vehicles enter and exit in a forward direction.</p> <p>The proposal incorporates a total of 11 accessible car spaces. This amount complies.</p> <p>A traffic report was submitted with the development application and was considered in the assessment of the proposal.</p>	Yes
C40 The waste collection point shall be designed to: (i) Allow waste loading operations to occur on a level surface away from parking areas, turning areas, aisles, internal roadways and ramps; and (ii) Provide sufficient side and vertical clearance to allow the lifting arc for automated bin lifters to remain clear of	<p>As stated above, waste collection will be carried out from the dedicated waste holding rooms that are at grade within the loading and visitor's car park area.</p> <p>The size of the waste holding room is acceptable.</p> <p>Appropriate clearance has been provided for garbage vehicles to</p>	Yes

Control	Proposed	Complies (yes/no)
any walls or ceilings and all service ducts, pipes and the like.	access the bins as a void area is provided above the loading dock.	
3A.3.2 Bicycle Parking In every new building, where the floor space exceeds 600m ² GFA, bicycle parking equivalent to 10% of the required car spaces or part therefore as required in Table 1 shall be provided. Total required: (11)	The plans do not demonstrate any bicycle parking however the SEE has stated that car parking will be provided. Appropriate conditions have been imposed within the consent.	Conditioned
3A.3.3 Traffic and Transport Plans and Report C1 A traffic and parking impact assessment report shall be provided for development listed in Schedule 3 of the Infrastructure SEPP 2007.	A traffic and transport report and swept/turning path report prepared by ARUP was provided with the development application.	Yes
3A.3.4 On-site loading and unloading facilities C2 The number of service bays for residential flat buildings with less than 100 units is: <ul style="list-style-type: none"> • 1 service bays/50 dwellings; plus • 50% of service bay for MRV Total required: 2 service bays	The development proposes one service bay to accommodate an MRV vehicle shared with garbage collection. Two shared service bays for an SRV has been provided as well.	Yes
3G.2 Stormwater Management		
C1-C6 Comply with Stormwater Management Technical Guidelines; Part 3G.5 Stormwater Quality.	A stormwater report prepared by at&I and civil work plans were submitted and reviewed by Council's Development Engineer. Conditions of consent have been recommended.	Yes
3H Sustainable Design		
C1-C6 BASIX; Solar hot water encouraged.	BASIX Certificate No. 895976M_02 prepared by Efficient Living Pty Ltd and dated 31 January 2018 was provided.	Yes
3I Crime Prevention Safety & Security		
Site layout, design & uses; Building design; Landscaping & lighting; Public domain, open space & pathways; Car parking areas; Public Facilities.	A Crime Risk and Security Report was submitted with the application which is considered to satisfy the requirements of Part 3I. The original application was	Yes

Control	Proposed	Complies (yes/no)
	referred to NSW Police who had no objections to the proposal	
3J Aircraft Noise & OLS		
ANEF; Aircraft height limits in prescribed zones.	Refer to BBLEP 2013 Discussion	Yes
3K Contamination		
Consider SEPP 55 & Contaminated Land Management Act 1997.	SEPP No. 55 has been addressed in the report above. The proposal has satisfied this requirement.	Yes
3L Landscaping and Tree Management		
General Requirements; Planting design & species; Landscaping in car parks; Green roofs.	Landscape plans were provided with the development application for consideration. They were reviewed by Council's Landscape Architect who has had no objection to the proposal subject to conditions recommended in the consent relating to amended landscape construction plans, bonds, public domain works, tree species and planting and tree retention.	Yes
3N Waste Minimisation & Management		
General Requirements; Residential Development; Mixed Use Development.	A Waste Management Plan prepared by Elephants Foot has been submitted for ongoing management of waste generated from the site.	Yes

Part 4C – Residential Flat Buildings

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

Table 5: BBDCP 2013 Compliance Table – Part 4C Residential Flat Buildings

Control	Proposed	Complies
4C.2.2 Streetscape Presentation		
C1 New development must be compatible in building bulk and scale with adjoining residential developments and reflect the patterns of buildings in the streetscape. It must respond to building setbacks, building height and treatment of the building facades.	The development is consistent with the existing residential developments in this locality/. The development complies with the required building setbacks and is similar in height and bulk to those recent approvals and constructed buildings within the Mascot Station Town Centre.	Yes
C2 Development must comply with the following:	(i) The length of the building exceeds 24m. This is consistent with the building	No- Acceptable as it is

Control	Proposed	Complies
(i) The maximum length of any building is 24 metres; (ii) All building facades must be articulated.	envelope control within Part 9A. This is largely due to the corner allotment and the building turning the corner. (ii) The building facades are modulated and articulated with balconies, courtyards, and building indentations for the entrances and the tower above.	consistent with the building envelope Yes
4C.2.4 Landscaped Area and Deep Soil Planting		
C1 A residential flat development must have a minimum landscaped area of 35% and a maximum un-built upon area of 20%.	Based on a site area of 2,324sqm: Soft landscaping: 954sqm (41%) Deep soil: 316sqm (13.6%)	No - Refer to Note 5
4C.2.5 Open Space		
C3 Open space will be designed to: (i) Encourage positive outlook, respite and attractive internal views; (ii) Provide building separation and achieve a balance between open space and built form; (iii) Provide visual and acoustic privacy and an area of good solar access for recreational purposes; and (iv) Through location, arrangement and design provide functional, usable and liveable spaces for a mix of recreational pursuits	The proposed development has 1 communal open space (COS) areas in addition to private open spaces on balconies courtyards and Rooftop Terraces. The open space located to the south west encourages a positive outlook and promotes building separation and balance between the natural and built design responses. The design allows for a usable space although its use during the middle of winter will be limited due to the lack of direct solar access,	Yes
4C.2.6 Setbacks		
C2 All front, side and rear setbacks are to provide deep soil zones to allow unencumbered planting areas.	Due to the basement, deep soil is provided along the northern and eastern sides of the site. This will allow for appropriate large tree planting and retention of existing mature trees. Appropriate setbacks are proposed on all four boundaries.	Yes
Front Setbacks	The Haran and O'Riordan Streets have a 3 metres setback to the	Yes

Control	Proposed	Complies
C1 Building setbacks from the existing front boundary must match the setback of adjoining properties, but must be a minimum of 3 metres or 4 metres if fronting a classified road.	courtyards and approximately a 5.5m setback to the building. This is increased by another 650mm on the levels above ground.	
4C.2.7 Through Site Links & View Corridors		
C1 Building footprints are to take into account the requirement for consolidated open space as well as for view corridors.	There are no existing significant views.	N/A
4C.4.1 Dwelling Mix and Layout		
Apartment Size and Mix C1 Developments of ten or more apartments are to provide a range of apartment sizes, including studio, 1, 2, and 3+ apartments so as to meet the needs of residents and accommodate a range of household types.	The proposed apartment size and mix is varied to accommodate a range of household types.	Yes
C2 For development with ten or more apartments, the following unit mix control will apply: (i) A maximum of 25% of apartments are to be Studio and 1 Bedroom; (ii) All 2 Bedroom apartments are to satisfy the amenity controls for Family Apartments; and (iii) All 3+ Bedroom apartments are to satisfy the amenity controls for Family Apartments.	The proposal provides the following: 1 bed – 39% 2 bed – 30% 3 bed – 31% The number of 1 bedroom apartments does not exceed 25%. For a response to the family friendly controls, please refer to below.	Yes No - Refer to Note 6
Apartment Layout C1 Dwellings with 3 or more bedrooms are to have two (2) separate and appropriately sized living spaces. A study alcove may be located within the second living space. Should a freestanding study alcove be provided the height of the walls enclosing the study are to be a maximum of 1500mm	Most 3 bedroom apartments do not have 2 separate living spaces.	No - Refer to Note 7
C2 Studies not to be enclosed with a door	Separate studies all include doors.	No - Refer to Note 7
C3 Studies to be less than 9sqm to be considered studies.	All studies are 9sqm or less.	Yes
C4 Saddleback bedroom designs are not acceptable.	Saddleback bedroom design has not been proposed.	Yes
4C.4.2 Family Friendly Apartment Buildings		

Control	Proposed	Complies
C1 Family apartments are apartments with two or more bedrooms designed so as to accommodate the living needs of families with children.	The two and three bedroom apartments have generally been designed in accordance with the Family Friendly controls.	Yes
C2 Family apartments are to include a study to meet the needs of couple families with dependents households. The design of the study should allow for a parent to easily work from home whilst supervising a child	Not all 2 and 3 bedroom apartments have a separate study area or study nook.	Refer to Note 8
C3 Other than the master bedroom, each bedroom is to be large enough to accommodate a single bed, a desk or table, and floor space for playing, to be illustrated on a standard apartment layout plan	Given the large size of a majority of the apartments far in excess of ADG minimum sizes, there is considered to be sufficient space in all second bedrooms for a bed and desk.	Yes
C4 The floor surface of the entry, dining room and kitchen floor and internal storage area are to be water-resistant and easy to be cleaned and maintained, not carpet	Condition to this effect included.	Yes - Condition
C5 Two bathrooms are required. One bathroom is to be a shared bathroom which is accessible off a common corridor. This shared bathroom is to have a bathtub, and is to be large enough to allow for parental supervision	All 2 and 3 bedroom apartments include two bathrooms with one easily accessible off the primary corridor. At least one bathroom in all apartments includes a bathtub.	Yes
C6 The private outdoor space is to be clearly visible from the kitchen	All apartments have POS clearly visible from the kitchen.	Yes
C7 The entry areas and main corridors within apartments are to be generous in proportion to permit room for toys and sporting equipment, and for drying of wet shoes, boots and clothing	Given the large size of the apartments far in excess of ADG minimum sizes, there is considered to be sufficient space in entry areas for storage. The apartment schedule demonstrates that a number of units do not comply with the minimum amount within the unit however this has been conditioned to comply.	Conditioned
C8 The Apartment Design Guide sets out storage space requirements. The storage room is to be located near the entry, and be of adequate proportions to accommodate large household items including strollers, wheeled	Storage rates comply with ADG and have been provided in easily accessible areas and have adequate proportions for a range of family items.	Yes

Control	Proposed	Complies
toys, suitcases, and sporting equipment		
4C.4.3 Internal Circulation		
C1 Development will provide multiple cores within the building.	At least one core has been provided to the building with two elevators. This is considered sufficient.	Yes
C2 In buildings of more than four storeys served by elevators, ensure that alternative access to another elevator is available in the event that any elevator is out-of-service due to breakdown or routine servicing.	Stair access is provided to each core.	Yes
4C.5.1 Adaptable Housing		
Table 1 of Part 3C Access and Mobility: <u>Adaptable Housing</u> In developments containing 10 or more dwellings, a minimum of 20% of the dwellings are to be adaptable dwellings designed in accordance with Adaptable Housing Australian Standard 4299 Class B.	21 adaptable apartments have been provided. This complies with the rates within the DCP,	Yes
<u>Accessible Parking</u> In developments containing 10 or more dwellings, accessible resident parking is required at 10% to be allocated to adaptable dwellings.	11 accessible parking spaces have been provided within the development.	Yes
4C.5.2 Access		
C1 All applications are to include a statement on how the development will comply with the provisions of the Disability Discrimination Act and comply with Part 3C - Access and Mobility.	An Access Report, prepared by Wall to Wall Design & Consulting, has been submitted with the application. The architectural design in terms of the prescriptive provisions of each 'Essential feature' and 'Desirable feature' within AS4299 – 1995 (Adaptable Housing) have been complied with.	Yes

Note 5 – Landscaped Area

Control C1 of Part 4C.2.4 of the BBDCP 2013 requires a residential flat development to have a minimum landscaped area of 35% and a maximum un-built upon area of 20%.

The proposal provides a total of 954sqm (41%) based on a site area of 2324sqm. The unbuilt upon area equates to the deep soil area for the site. The proposal provides 316sqm of unbuilt upon area equating to 13.6 % of the site area where 464.8sqm is required to be compliant with this control.

This is a departure of 148.8sqm on the overall site. This departure is considered acceptable particularly the large landscaped area on the first floor. The intent of the control is revealed through the objectives which is to increase and landscape coverage, ameliorate the development, enhance open spaces on the site and enhance the public domain, increase natural stormwater filtration. In this instance it is considered that the proposed landscaping and deep soil planting meet the objectives of the control and as such the non-compliance is considered appropriate in this instance.

Note 6 – Unit Mix

In accordance with Part 4C.5.1 of the BBDCP 2013, the total number of studio and one bedroom apartments must not exceed 25% of the total apartments within the development. The development proposes 39% 1 bedroom apartments including 1 bedroom plus studies, 30% x 2 bedroom apartments and 31% 3 bedroom apartments. The departure equates to an additional 15 x 1 bedroom apartments.

The ADG recommends that an appropriate unit mix should take into consideration the distance to public transport, employment, and education centres, the current market demands and projected future demographic trends and the demand for social and affordable housing.

The subject site is located within the Mascot Station Precinct, in close proximity to services, employment opportunities and public transport. The control is there to allow for dwelling choice where it would not ordinarily be provided by the market. The non-compliance is supported as the 1 bedroom unit mix is minor and the development provides an even proportion of 3 bedroom apartments to reflect market demand. It should be further noted that unit sizes comply with the Council's minimum unit sizes in the ADG and are expected to provide a good level of internal amenity to future occupants.

Note 7 – Apartment Layout

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

Control C1 (Apartment Layout) states that dwellings with 3 or more bedrooms need to have two separate living areas. The development proposes 60 x 3 bedroom apartments.

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

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

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

The 3 bedroom apartments range in size from 101-108sqm, all of which are between 11sqm to 18 sqm in excess of the minimum requirement of 90sqm (as per the ADG). As such, the open-plan living areas provide a high standard of internal amenity as the separate living areas are spacious and are of an adequate size to comfortably accommodate separate areas/zones. The open-plan living areas are located adjacent to the balcony, thus providing natural light and ventilation and extending the internal living space. This satisfies Objectives O1 and O5 which state:

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

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

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

Control C2 (Apartment Layout) states that to avoid a secondary living space, study or the like being used as a bedroom, it will only be regarded as such if it has no door or enclosure. There are no separate study rooms in the 3 bedroom units. The only separate study room is within a 1 bedroom unit where the size of the study is below 9sqm.

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

Note 8 – Family Friendly Apartments

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

Control C2 requires a study in all family apartments – None of the two or three bedroom apartments have separate study rooms.

Notwithstanding the above, this does not imply that there is not sufficient space within the open-plan living area or in bedrooms to provide a desk so that parents can monitor children while working from home. All 2 bedroom apartments exceed the ADG minimum apartment size by 16 to 36sqm. Additionally, all of the 3 bedroom apartments exceed the ADG minimum apartment size by 9.4sqm to 28.4sqm. This indicates that there is sufficient size within the apartment to accommodate a desk within the open plan living area and that there is sufficient size to support the separation of conflicting activities within the living spaces. This satisfies Objective O2 and O3 which state:

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

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

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

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

Part 9A – Mascot Station Town Centre

An assessment against Part 9A relating to development within the Mascot Station Precinct has been provided below insofar as they relate to the proposed development.

Table 4: BBDCP 2013 Compliance Table – Part 9A Mascot Station Town Centre

Control	Proposed	Complies (Yes/No)
9A.3.2 Desired Future Character – Urban Block 4		
Land Uses, Street Character and Built Form The existing character of predominantly apartment buildings on O’Riordan Street is generally appropriate although proposed public domain improvements within the road reserves will further consolidate and improve the streetscape; and Remaining potential redevelopment sites will provide for apartment buildings up to 13 storeys in height.	This site is consistent with the apartments along O’Riordan Street. A public domain plan will be required through a condition of consent. This site is identified as a redevelopment site and is consistent as a 13 storey building is proposed.	Yes
Public Domain Permission has been gained for the use of the Southern Western Suburbs Ocean Outfall Sewer land (SWSOOS), owned by Sydney Water as public space. This will provide useful landscaped open space in the eastern part of the Town Centre, adjacent to many recently built and recently approved residential	The SWSOOS and associated Linear Park redevelopment is a Council initiative over which private developers have no control	Not Applicable

Control	Proposed	Complies (Yes/No)
developments. The SWSOOS will also provide a pedestrian link between Gardeners Road and Coward Street.		
Road Widening Road widening is required along the southern side of Gardeners Road within No 639 Gardeners Road, Mascot. Further information can be obtained from Transport NSW and Roads and Maritime Services. The road widening was identified by the Mascot TMAP prepared by SMEC Australia; Additional road widening within Urban Block 4 has been identified on BBEP 2013 Land Reservation Map – Sheet LRA_001; and Road widening is required along the southern and northern sides of Church Avenue and John Street (applies to sites that have not been redeveloped to date). For Church Avenue the land to be dedicated is calculated by measuring the appropriate distance from the centre line of the existing road. The road reserve is to be 12 metres from each side of this centre line. For John Street, the land to be dedicated is to be calculated by measuring from the centre line of the existing road. The new road reserve is to be 10 metres each side of this centre line.	The site is not affected by Road Widening	Yes
9A.4.3.4 Setbacks		
C1 All development within Urban Block 4 must comply with the street setbacks identified in Figures 34 and 35 which is: <u>Level 1-4</u> <ul style="list-style-type: none"> Haran Street: 3m O’Riordan Street: 3m <u>Levels 5-13</u> <ul style="list-style-type: none"> Haran Street: Average 6m, Minimum 5 O’Riordan Street: Average 6m, Minimum 5 	<u>Level 1-4</u> <ul style="list-style-type: none"> Haran Street: 3m O’Riordan Street: 3m <u>Levels 5-13</u> <ul style="list-style-type: none"> Haran Street: Generally, 6m with exception of the corner element, however on average the setback would meet the control O’Riordan Street: 6m 	Yes
9A.4.3.5 Building Envelopes		

Control	Proposed	Complies (Yes/No)
Figure 47 Provides indicate building envelopes for the site includes a 6 storey building fronting Haran Street, with a 4 metre podium along O’Riordan Street and a 13 storey building fronting Church Ave. This indicative envelope relies on site amalgamation	The existing approval on the site and that for the site to north have already deviated from the building envelope. It is not noted this is indicative only.	No – Indicative only
9A.4.4.6 Building Articulation		
C1 – Corner Buildings must address both street frontages	The building addresses both street frontages	Yes
9A.4.5.4 Wind Mitigation		
C1 All new buildings are to meet the following maximum wind criteria: (i) 10 metres/second along commercial/retail streets; (ii) 13 metres/second along main pedestrian streets, parks and public places; and (iii) 16 metres/second in all other streets	<p>A Qualitative Environmental Wind Impact Assessment, prepared by SLR, has been submitted with the application.</p> <p>The Qualitative Wind Impact Assessment has considered the maximum wind criteria as identified at Part 9A.4.5.4 of the BBDCP 2013. The maximum criteria within the Qualitative Wind Impact Assessment for street have been identified as 10m/s which is consistent with the BBDCP 2013.</p> <p>A condition has been recommended that the development comply with the recommendations raised in the Qualitative Wind Impact Assessment and that these recommendations be incorporated into the design of the building.</p>	Able to comply subject to Condition
9A.4.5.5 Reflectivity		
C3 Visible light reflectivity from building materials use on new building facades must not exceed 20%.	A reflectivity report has not been submitted with the development application. One shall be commissioned and the recommendations raised are to be carried out through conditions of consent.	Condition
9A.5.1 Public Domain Works		

Control	Proposed	Complies (Yes/No)
Public Domain Works are to be provided in accordance Figure 60 OF Part 9A BBDCP 2013 and in accordance with the principles in the Public Domain Strategy and Appendix A of the Mascot Town Centre Precinct Masterplan.	A public Domain Plan has not been included as part of the application material, however this can be achieved through a condition of consent that a plan be provided to the satisfaction of Council's Landscape Architect and Public Domain team	Able to comply - Condition

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

The likely impacts of the development in the locality have been considered in this report and are considered to be acceptable. The proposal is consistent with the controls for this redevelopment site within the Mascot Town Centre. The impacts in regards to built form, envelopes, car parking and traffic, overshadowing and orientation of the site and buildings have been considered in this application and on balance the impacts are considered acceptable as outlined in the body of this report.

(c) The suitability of the site for the development

Adequate information has been submitted to demonstrate that the site is suitable for the proposed development. The proposed development is similar to that which has been approved for the site with the approval being activated. This proposal provides an improved solar access for the future inhabitants whilst protecting the solar access to the redevelopment sites to the site.

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

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

In accordance with Part 2 Notification & Advertising of the BBDCP 2013, the proposed development was notified to surrounding property owners and advertised in the local newspaper from 18 December 2017 to 31 January 2018. Five (5) submissions were received. The key issues raised in the objections are as follows:

- *Traffic Congestion in locality and traffic from existing development in Haran Street.*

Officer Comment: The site has been zoned for high density including mixed use development. The original approved for the site approved 177 car parking spaces. This has been reduced through the reduced rates applicable through the Apartment Design Guide which recognises that this site is well connected for public transport and is within walking distance to the Mascot train station. The proposed development complies with all traffic and parking related controls that apply.

- *Population intensification and congestion at Train Station*

Officer Comment: The site has been zoned for this type of development and is one of the few remaining sites that is undeveloped in this locality. The population has

intensified in this locality and the train services are outside the control of Council. However, it is noted that Sydney Trains, *"In response to recent growth in demand on the T4 Illawarra and T8 Airport lines the More Trains More Service program will initially investigate the potential More services for the T8 Airport Line, including a potential 80 per cent increase at the International, Domestic, Mascot and Green Square stations during the morning peak, meaning trains at least on average every four minutes instead of every six minutes today."*

- *Too much construction in the area, dust noise etc*

Officer Comment: As previously discussed this one few remaining development sites within the town centre. Any approval is issued with conditions to protect the inhabitants of the area during the construction period.

- *we are all grossly overlooked in Carinya Avenue and this is ANOTHER building having a direct impact on privacy, traffic, the streetscape including a number of gumtrees that were marked as trees of significance have been ripped down*

Officer Comment: The eastern side of Carinya Ave is rezoned to be B4 – Mixed use zone. However there are smaller height and FSR development controls on that side of the road. The development complies with the height limit setting the expectation of the height of a compliant building. Trees have been removed, however the requirement for a public domain plan will form part of any conditions of consent should the application be granted.

- *Why wasn't the whole O'Riordan Street Corridor rezoned as part of this process?*

Officer Comment: The eastern side (opposite) of O'Riordan Street is also zoned B4. This area has a smaller height limit and FSR requirement than the subject site. This will allow for a more appropriate transition to the Nearby R2 – Low Density residential further along Carinya Ave and the like.

- *No less than once a month is O'Riordan Street being ripped up for Water or Cable services and this happens between the hours of 8pm and 6am and this has been happening for almost 2 years. There has never been alternative accommodation arranged or sound barriers in place. This construction should have a local resident management plan.*

Officer Comment: This is unrelated to the application. Infrastructure provisions is done by the utility providers who would have to comply with relevant standards for noise and so forth.

- *O'Riordan Street is almost impossible to turn into now, what is the traffic management plan, what is the construction parking plan and will there be enough spaces allocated.*

Officer Comment: The proposed development if approved will be required to provide a construction traffic management plan. In regards to traffic generated from the development, Council's Strategic team considered traffic generation when setting Floor space and uses for this area in Council's TMAP traffic study. Given the change in policy through the introduction of the ADG car parking rates and this proposal providing additional FSR, it is still considered that the traffic generated from the proposal would be less than that considered in Council's TMAP study and as such is still considered

acceptable. Construction parking is a temporary impact during the construction period. It is noted that this site is well served by Public Transport.

- *I am on the north side of level 6 of 5 Haran Street. I have a long planter bed along the full length of the east side of my balcony which covers the whole length of the eastern side of my unit. In this planter I am growing many vegetables for personal consumption. The proposed development will take away significant sun from this area up until after mid-morning and this area mainly only gets sun in the morning. I will therefore lose significant plant-growing ability for most of the year.*

Officer Comment: The shadow impacts from the proposed development are not cast westwards and onto the submitters balcony from just before midday in midwinter.

- *My second concern is the traffic flow along Haran Street if parking is still allowed on both sides of the street as there will be many more occasions where vehicles would be unable to pass each other along Haran Street and vehicles traveling in both directions would need to wait for considerable time. I would like to propose that parking only be allowed on one side of Haran Street.*

Officer Comment: The application has been assessed by Council's Traffic committee who have supported the proposal and have not determined to remove car parking to allow for an improved carriage width.

- *It is going to create a shadow for the buildings on the south side of this development (John St Mascot) for the days that don't have daylight savings i.e April-September. We live on 149-161 O'Riordan St, Mascot and we face North and have no windows on the West side. We receive all our sun during the cooler months from across that way and a 13 storey building will take that away and it will affect our health.*

Officer Comment: The proposed development due to its departure from the building envelope control actually provides a better retention of solar access to the building at 149 O'Riordan Street. Further it is noted that there are redevelopment sites immediately south of the site

- *There is a family that lives in the cottage next door, on O'Riordan St, to this development site and the impact will be huge on them until that site is developed eventually.*

Officer Comment: The proposed development due to its departure from the building envelope control actually provides a better retention of solar access to the building at 149 O'Riordan Street. Further it is noted that there are redevelopment sites immediately south of the site and no objections have been received in relation to that site.

- *the residents in the building directly next door, at 5 Haran St, who face South, they will never have any light with 13 storeys beside them.*

Officer Comment: The owners and occupiers of 5 Haran have been notified of the application and have chosen not to put in a submission.

- *Why does Council not demand better Access standards for these buildings being built now? The minimum standards are useless when we have an ageing population and people with disability. Set a precedent by imposing higher standards for our community because these buildings will still remain in 20 years*

time and the current minimum in accessibility is going to be outdated and disgustingly discriminatory and insufficient.

Officer Comment: The application has been supported by an access report which has detailed compliance with the relevant access standards.

- *The traffic impact report is useless. Haran St is a nightmare since the two buildings 4 & 5 Haran St were built. There is never a car spot, cars double parking & cars parked illegally close to the end of the street kerb. There is always a lot of beeping of cars from Haran St because of this congestion and having another building there is just going to be overwhelming more so.*

Officer Comment: The application complies with the relevant car parking controls. The site has been zoned to allow for this type of development to occur.

- *Why is Council allowing homes to be built so close to a petrol station? Isn't this a huge health concern with regards to fumes and in case of an accident?*

Officer Comment: the site is zoned for this type of development. The petrol station has to operate in accordance with the conditions of consent relevant to their approval. The petrol station approval will require the operator to have an emergency management plan.

- *The first few houses in Carinya St, north side, will not have any sun in the afternoon during the warmer months.*

Officer Comment: The proposed development will maintain at least 2 hours of solar access to those sites in Carinya Ave due to their orientation. They will still receive morning and midday sun.

- *Can you please not have a building that has the foyer/elevator corridors facing on the street so that each foyer from the lift is not lit up like a Christmas tree, like 4 Haran St does?*

Officer Comment: Urban Design Principles dictate that the entrance to a building should face the street and given its use it should be appropriately lit to ensure safe ingress and egress.

- *Height of development will obscure what is left of our easterly views & sunlight.*

Officer Comment: The height of the development is compliant with the height standard of the Botany Bay LEP 2013. Any views to the east will be through a side boundary and in accordance with the planning principle no view can be owned. Given the context of the site, it is not unreasonable in the case that a building to the height of 44m could be built on the site.

- *Loss of privacy*

Officer Comment: The proposed development does not provide opportunities for any breach of privacy to the neighbours to the east.

- *Shadows cast over the proposed linear park*

Officer Comment: The shadows from the development are cast westwards in the morning but by midday the shadows are cast away from proposed Linear Park.

- *Unacceptable noise levels & lack of wide open public spaces*

Officer Comment: The construction of the development will be conditioned to comply with the relevant noise standards. The plant and equipment will be conditioned to comply with operational noise standards.

(e) The public interest

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

OTHER MATTERS

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

Table 6: Internal and external referrals

Referral Agency	Response Date	Comments
External Referrals		
Civil Aviation Safety Authority (CASA)	5 July 2018	No objections to the proposal. Conditions have been provided.
Sydney Water	Same Conditions as existing approval	The conditions have been included in the Schedule of Consent Conditions.
Water NSW	26 April 2018	No objections. Conditions have been included in the Schedule of Consent Conditions.
NSW Police	Same Conditions as existing approval	No objections. Advisory Conditions have been provided.
RMS	11 April 2018	No objections subject to conditions included in the Schedule of Consent Conditions.
Ausgrid	30 January 2018	No objections subject to conditions included in the Schedule of Consent Conditions.
Internal Referrals		
Landscape Architect	9 August 2018	Conditions have been incorporated into the Schedule of Consent Conditions.
Development Engineer	7 August 2018	Conditions have been incorporated into the Schedule of Consent Conditions.

Section 7.11 Contributions (formerly s.94)

The applicant has paid development contributions under the existing approval DA-2015/88 of \$1,331,334.42 for 99 apartments. As this was paid in a later financial year, the amount paid was \$1,432,847.53. Council has agreed that even though no credit is required for this application, that the credit of \$1,432,847.53 can be applied in this instance. It is noted that the applicant has confirmed this in their email of 9 August 2018..

The contributions under DA15/88 is as follows:

PROPOSED	Proposed	Contribution per dwelling	Total payable
Studio	7	\$8,390.08	\$58,731
1 bed	20	\$8,962.09	\$179,242
2 bed	65	\$14,745.64	\$958,467
3 bed	7	\$19,270.78	\$134,895
TOTAL	99	N/A	\$1,331,334.42

In accordance with the amended *Botany Bay Section 94 Development Contributions Plan 2016*, the Section 7.11 Contributions for the proposed development are calculated as follows:

Residential

Number of apartments/type	Cost/apartment	Total	Total with \$20,000. Ministerial Cap applied.
41 x 1 bedrooms	\$26,569.69	\$1,089,357.29	\$820,000.00
31 x 2 bedrooms	\$43,650.21	\$1,353,156.20	\$620,000.00
32 x 3 bedrooms	\$56,935.05	\$1,821,921.60	\$640,000.00
Total		\$4,263,435.09	\$2,080,000.00

The additional demand generated from the development in accordance with the adopted policy is \$2,080,000.00 - \$1,432,847.53 (Credit of DA-15/88) =

Total additional Contribution: \$647,152.47

The consent will be conditioned to require payment of the additional Section 7.11 Contribution prior to the issue of any Construction Certificate for above ground works, as specified in the Plan and as indexed.

CONCLUSION

The proposed FSR does not comply with the BBLEP 2013 FSR requirements. The applicant has submitted a Clause 4.6 variation to justify the departure from the standard and this has been accepted.

The non-compliances with the building separation and solar access are well founded particularly as appropriate visual privacy mechanisms have been proposed to prevent any direct overlooking into the neighbouring and subject units.

In regards to the landscaped area and deep soil area, on balance the landscaped outcome for the site is considered acceptable.

Issues relating to unit layout and family friendly apartments have been resolved by conditions in the consent.

The application was the subject of five (5) submissions which generally raised concerns relating to the overdevelopment of the precinct, height, privacy, overshadowing and traffic, lack of infrastructure supporting the site and the proposal. These submissions have been addressed above in the report.

The proposal has been assessed in accordance with Section 4.15 of the Environmental Planning and Assessment Act 1979. The proposal is permissible within the B4 – Mixed Use zone and is considered to result in a development which is suitable in the context of the site. Therefore, the proposed development is recommended for approval, subject to the conditions of consent.

Attached Schedule

141 – O’Riordan Street, 1-3 Haran Street, Mascot

SCHEDULE OF CONSENT CONDITIONS

GENERAL CONDITIONS

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

Plans	Author	Dated / Received by Council
DA001 – Cover Page Rev F	DKO Architecture	Dated 13 July 2018; Received 23 July 2018
DA102 – Site Plan Rev F	DKO Architecture	Dated 13 July 2018; Received 23 July 2018
DA 201 – Ground Floor Rev M	DKO Architecture	Dated 13 July 2018; Received 23 July 2018
DA 202 – Level 1 Rev H	DKO Architecture	Dated 13 July 2018; Received 23 July 2018
DA 203 Level 2 Rev K	DKO Architecture	Dated 13 July 2018; Received 23 July 2018
DA 204 Level 3 Rev F	DKO Architecture	Dated 13 July 2018; Received 23 July 2018
DA 205 Level 4 Rev K	DKO Architecture	Dated 13 July 2018; Received 23 July 2018
DA 206 Level 12 Rev K	DKO Architecture	Dated 13 July 2018; Received 23 July 2018
DA 207 Roof terraces Rev K	DKO Architecture	Dated 13 July 2018; Received 23 July 2018
DA 208 Roof Rev J	DKO Architecture	Dated 13 July 2018; Received 23 July 2018
DA 209 Basement 1 Rev K	DKO Architecture	Dated 13 July 2018; Received 23 July 2018
DA 210 Basement 2 Rev K	DKO Architecture	Dated 13 July 2018; Received 23 July 2018
DA 211 Level 5-11 Rev C	DKO Architecture	Dated 13 July 2018; Received 23 July 2018
DA 301 North Elevation Rev I	DKO Architecture	Dated 13 July 2018; Received 23 July 2018
DA 302 South Elevation Rev I	DKO Architecture	Dated 13 July 2018; Received 23 July 2018
DA 303 East Elevation Rev I	DKO Architecture	Dated 13 July 2018; Received 23 July 2018
DA 304 West Elevation Rev I	DKO Architecture	Dated 13 July 2018; Received 23 July 2018

DA 305 Section A, Rev G	DKO Architecture	Dated 13 July 2018; Received 23 July 2018
DA 306 Section B Rev G	DKO Architecture	Dated 13 July 2018; Received 23 July 2018

Reference Document(s)	Author	Dated / Received by Council
DA Access Report Ref: MTN-040	Wall to Wall	Dated 1 February 2018; Received 9 February 2018
Development Application Acoustic Report Ref: 20180028.1/1601A/R0/TA	Acoustic Logic	Dated 16 January 2018; Received 9 February 2018
Arboricultural Impact Assessment Report	Jacksons Nature Works	Dated 30 January 2018; Received 9 February 2018
Thermal Comfort and BASIX Assessment Ref: 18/0410 Rev B	Efficient Living	Dated 31 January 2018; Received 9 February 2018
Construction Management Plan- Rev 1	Meriton Property Services Pty Ltd	Dated January 2018; Received 9 February 2018
Crime Risk and Security Report	Meriton Property Services Pty Ltd	Dated 23 January 2018; Received 9 February 2018
SEPP 65 Design report	DKO Architecture	Dated 5 February 2018; Received 9 February 2018
SEPP 65 Design Verification Statement	DKO Architecture	Dated 25 January 2018 Received 9 February 2018
Geotechnical Investigation Report	Douglas Partners	Dated October 2014 Received 9 February 2018
Quantity Surveying Cost Report	Steven Wehbe	Dated 15 January 2018; Received 9 February 2018
Site Surveys Drawing 22308 Rev B	B and P Surveys	Dated 15 November 2017; Received 9 February 2018
Apartment Design Guide Report	DKO Architecture	Dated 25 January 2018 Received 9 February 2018
Statement of Environmental Effects	Meriton Property Services Pty Ltd	Dated 31 January 2018; Received 9 February 2018
Waste Management Plan Rev A	Elephants Foot Waste Compactors Pty Ltd	Dated 29/01/2018; Received 9 February 2018
Qualitative Wind Assessment Report Number 610.17846-R01	SLR	Dated 24 January 2018; Received 9 February 2018
Clause 4.6 variation to vary FSR development standard	Meriton Property Services Pty Ltd	Dated 18 July 2018; Received 23 July 2018
Stormwater Plans Drawings DAc015 and DAC020, Rev B	At&I	Dated 2 February 2018; Received 9 February 2018
Traffic and Transport Report Job No 258-00	ARUP	Dated 30 January 2018 Received 9 February 2018
DA 402 – Eye of the Sun Diagrams Rev F	DKO Architecture	Dated 13 July 2018; Received 23 July 2018
DA 403 – Overshadowing June 22 of -143-147 O’Riordan, Rev B	DKO Architecture	Dated 13 July 2018; Received 23 July 2018

DA405 Eye of the sun diagram June 22, -143-147 O'Riordan, Rev B	DKO Architecture	Dated 13 July 2018; Received 23 July 2018
DA501 – SEPP 65 Solar Access Rev G	DKO Architecture	Dated 13 July 2018; Received 23 July 2018
DA502 – SEPP 65 Compliance Rev F	DKO Architecture	Dated 13 July 2018; Received 23 July 2018
DA503 – SEPP 65 GFA Rev G	DKO Architecture	Dated 13 July 2018; Received 23 July 2018
DA504 – SEPP 65 Adaptable apartments Rev F	DKO Architecture	Dated 13 July 2018; Received 23 July 2018
DA506 – SEPP 65 Unit Mix Rev A	DKO Architecture	Dated 13 July 2018; Received 23 July 2018

- 2 This Consent relates to land in Lot 1 in DP 739565 and, as such, building works must not encroach on to adjoining lands or the adjoining public place.
- 3 The consent given does not imply that works can commence until such time that:
 - a) Detailed plans and specifications of the building have been endorsed with a Construction Certificate by:
 - i) The consent authority; or,
 - ii) An accredited certifier; and,
 - b) The person having the benefit of the development consent:
 - i) Has appointed a principal certifying authority; and
 - ii) Has notified the consent authority and the Council (if the Council is not the consent authority) of the appointment; and,
 - iii) The person having the benefit of the development consent has given at least 2 days notice to the council of the persons intention to commence the erection of the building.
- 4 All building work must be carried out in accordance with the provisions of the Building Code of Australia.
- 5 Pursuant to clause 97A(3) of the Environmental Planning & Assessment Regulation 2000, it is a condition of this development consent that all the commitments listed in each relevant BASIX Certificate for each building in the development are fulfilled.
 - a) Note:

Relevant BASIX Certificate means:

 - i) A BASIX Certificate that was applicable to the development when this development consent was granted (or, if the development consent is modified under Section 4.55 of the Act, a BASIX Certificate that is applicable to the development when this development consent is modified); or

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

6

- a) Service Alterations – All mains, services, poles, etc., which require alteration due to works associated with the development, shall be altered at the applicant's expense.
- b) In designing the street tree layout, the consultant shall check and ensure that all new street trees are positioned such that there are no conflicts with the proposed street lights, utilities and driveway accesses. The proposed street lights will have priority over the street trees. All costs associated with the removal of existing street trees, where required, will be borne by the Developer.
- c) All telecommunication and utility services are to be placed underground along the Street frontages. The extent of works required in order to achieve this outcome may involve works beyond the frontage of the development site. Plans are to be prepared and certified by a suitably qualified Electrical Design Consultant for decommissioning the existing network and constructing the new network; and are to be submitted to, and approved by Council and relevant utility authorities, prior to commencement of telecommunication and utility services works.
- d) Street trees are to be provided in accordance with the Botany Street Tree Master Plan 2014.
- e) In designing the street tree layout, the consultant shall check and ensure that all new street trees are positioned such that there are no conflicts with the proposed street lights, utilities and driveway accesses. The proposed street lights will have priority over the street trees. All costs associated with the removal of existing street trees, where required, will be borne by the Developer.
- f) An experienced Landscape Contractor shall be engaged to undertake all landscaping public domain work and shall be provided with a copy of both the approved landscape drawing and the conditions of approval to satisfactorily construct the landscape to Council requirements. The contractor shall be engaged weekly for a minimum period of 52 weeks from final completion of landscaping for maintenance and defects liability, replacing plants in the event of death, damage, theft or poor performance. After that time regular and ongoing maintenance is required.
- g) All telecommunication and utility services are to be placed underground along the flowing streets: The extent of works required in order to achieve this outcome may involve works beyond the frontage of the development site. Plans are to be prepared and certified by a suitably qualified Electrical Design Consultant for decommissioning the existing network and constructing

the new network; and are to be submitted to, and approved by Council and relevant utility authorities, prior to commencement of work.

CONDITIONS IMPOSED BY AN EXTERNAL AUTHORITY

Where relevant, the following external authority conditions apply:

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

- a) It is recommended for the nominated electrical consultant/contractor to provide a preliminary enquiry to Ausgrid to obtain advice for the connection of the proposed development to the adjacent electricity network infrastructure. An assessment will be carried out based on the enquiry which may include whether or not:
 - i) The existing network can support the expected electrical load of the development
 - ii) A substation may be required on-site, either a pad mount kiosk or chamber style and;
 - iii) site conditions or other issues that may impact on the method of supply.

Please direct the developer to Ausgrid's website, www.ausgrid.com.au about how to connect to Ausgrid's network.

- b) The need for additional electricity conduits in the footway adjacent to the development will be assessed and documented in Ausgrid's Design Information, used to prepare the connection project design.
- c) All proposed vegetation underneath overhead power lines and above underground cables must comply with the requirements of ISSC 3 Guideline For Managing Vegetation Near Power Lines.
- d) There are existing overhead electricity network assets in Banks Ave. Safework NSW Document – Work Near Overhead Powerlines: Code of Practice, outlines the minimum safety separation requirements between these mains/poles to structures within the development throughout the construction process. It is a statutory requirement that these distances be maintained throughout construction. Special consideration should be given to the positioning and operating of cranes and the location of any scaffolding.

The “as constructed” minimum clearances to the mains should also be considered. These distances are outlined in the Ausgrid Network Standard, NS220 Overhead Design Manual. This document can be sourced from Ausgrid's website, www.ausgrid.com.au

Based on the design of the development provided, it is expected that the “as constructed” minimum clearances will not be encroached by the building development. However it remains the responsibility of the developer and relevant contractors to verify and maintain these clearances onsite.

Should the existing overhead mains require relocating due to the minimum safety clearances being compromised in either of the above scenarios, this relocation work is generally at the developers cost.

It is also the responsibility of the developer to ensure that the existing overhead mains have sufficient clearance from all types of vehicles that are expected be entering and leaving the site.

- e) There are existing underground electricity network assets in Banks Ave. Special care should also be taken to ensure that driveways and any other construction activities within the footpath area do not interfere with the existing cables in the footpath. Ausgrid cannot guarantee the depth of cables due to possible changes in ground levels from previous activities after the cables were installed. Hence it is recommended that the developer locate and record the depth of all known underground services prior to any excavation in the area. Safework Australia – Excavation Code of Practice, and Ausgrid's Network Standard NS156 outlines the minimum requirements for working around Ausgrid's underground cables.

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

- a) The building must not exceed a maximum height of 52.9 metres AHD, inclusive of all lift over-runs, vents, chimneys, aerials, antennas, lightning rods, any roof top garden plantings, exhaust flues etc.
- b) The proponent must ensure obstacle lighting arrangements have a remote monitoring capability, in lieu of observation every 24 hours, to alert SACL reporting staff of any outage. For detailed requirements for obstacle monitoring within the OLS of an aerodrome, refer to subsection 9.4.10 of the MOS Part 139.
- c) Separate approval must be sought under the Regulations for any cranes required to construct the buildings. Construction cranes may be required to operate at a height significantly higher than that of the proposed controlled activity and consequently, may not be approved under the Regulations. Therefore it is advisable that approval to operate construction equipment (i.e. cranes) should be obtained prior to any commitment to construct.
- d) At the completion of the construction of the building, a certified surveyor is to notify (in writing) the airfield design manager of the finished height of the building.

9 The following conditions are imposed by **Water NSW**:

- 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) Water NSW 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 licence with a zero share component.
- 10 The following conditions are imposed by the **NSW Roads and Maritime Services (RMS)**:
- a) A Construction Traffic Management Plan detailing construction vehicle routes, number of trucks, hours of operation, access arrangements and traffic control should be submitted to Council prior to the issue of a Construction Certificate.
 - b) All demolition and construction vehicles are to be contained wholly within the site. All vehicles must enter the site before stopping as a construction zone will not be permitted on O’Riordan Street.
 - c) A Road Occupancy Licence should be obtained from Transport Management Centre for any works that may impact on traffic flows on O’Riordan Street during construction activities.
 - d) 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.

- e) The developer is to submit design drawings and documents relating to the excavation of the site and support structures to Roads and Maritime for assessment, in accordance with Technical Direction GTD2012/001. The developer is to submit all documentation at least six (6) weeks prior to commencement of construction and is to meet the full cost of the assessment of Roads and Maritime. Details should be submitted to Project Engineer, External Works, Sydney Asset Management, Roads and Maritime Services, P O Box 973, Paramatta CBD 2124 Telephone 8849 2114.

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

- f) All works and regulatory signposting associated with the proposed development are to be at no cost to Roads and Maritime.
- g) 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 O'Riordan Street boundary.

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

a) Sydney Water Servicing

A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained from Sydney Water. The proponent is advised to make an early application for the certificate, as there may be water and wastewater pipes to be built that can take some time. This can also impact on other services and buildings, driveways or landscape designs. Applications 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.

b) Building Plan Approval

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. 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:

- Building plan approvals
- Connection and disconnection approvals
- Diagrams
- Trade waste approvals

- Pressure information
- Water meter installations
- Pressure boosting and pump approvals
- Changes to an existing service or asset e.g. relocating or moving an asset

Sydney Waters Tap In online service is available at:

<http://sydneywater.com.au/SW/plumbing-building-developing/building/sydney-water-tap-in/index.htm>

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

- 12 A dilapidation report, including a photographic survey prepared by a Practising Structural Engineer, shall be undertaken of all properties and/or 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.
- 13 Prior to commencement of any works, application(s) shall be made to Council's Customer Services Counter and obtained the following approvals and permits on Council's property/road reserve under Road Act 1993 and Local Government Act 1993: - (It should be noted that any works shown within Council's road reserve or other Council Lands on the development approval plans are indicative only and no approval for these works is given until this condition is satisfied.)
 - 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 to install temporary ground anchors in public land,
 - d) Permit to discharge ground water to Council's stormwater drainage system,
 - e) Permit for roads and footways occupancy (long term/ short term),
 - f) Permit to construct vehicular crossings, footpaths, kerbs and gutters over road reserve,
 - g) Permit to open road reserve area, including roads, footpaths, nature strip, vehicular crossing or for any purpose whatsoever, such as relocation / re-adjustments of utility services,
 - h) Permit to place skip/waste bin on footpath and/or nature strip, and
 - i) Permit to use any part of Council's road reserve or other Council lands.

- 14 Erosion and sediment control devices shall be installed and in function prior to the commencement of any construction works upon the site in order to prevent sediment and silt from site works (including demolition and/or excavation) being conveyed by stormwater into public stormwater drainage system, natural watercourses, bushland, trees and neighbouring properties. In this regard, all stormwater discharge from the site shall meet the legislative requirements and guidelines. These devices shall be maintained in a serviceable condition AT ALL TIMES throughout the entire construction phases of the development and for a minimum one (1) month period after the completion of the development, where necessary.
- 15 Toilet facilities are to be provided at or in the vicinity of the work site on which work involves:
- a) demolition and construction of a building is being carried out, at the rate of one toilet for every 20 persons or part of 20 persons employed at the site;
 - b) Each toilet provided:
 - i) must be standard flushing toilet; and,
 - ii) must be connected:
 - to a public sewer; or
 - if connection to a public sewer is not practicable to an accredited sewerage management facility approved by the Council; or,
 - if connection to a public sewer or an accredited sewerage management facility is not practicable to some other sewerage management facility approved by the Council.
 - c) The provisions of toilet facilities in accordance with this condition must be in place before work commences.
- 16 This Consent shall not preclude the demolisher from giving notice to other statutory authorities, such as Sydney Water Corporation, WorkCover, etc.
- 17 Prior to the commencement of any works, the site to which this approval relates must be adequately fenced or other suitable measures employed that are acceptable to the Principal Certifying Authority to restrict public access to the site and building works. Such fencing or other measures must be in place before the approved activity commences.
- 18 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.
- 19 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.

- 20 To ensure that relevant engineering and water quality provisions are met during the period of dewatering for construction, prior to any water from site dewatering to be permitted to go to stormwater a permit to discharge to the stormwater shall be obtained from Council. Dewatering shall not commence until this is issued by Council.
- 21 A Traffic Management Plan shall be included as part of the Roads Act Approval for road and drainage works to be carried out within public road reserves in strict compliance with the requirements of current Australian Standard 1742.3 (Traffic Control Devices for Works on Roads) and current RMS Traffic Control at Work Sites manual. Any persons preparing such traffic control layout plans shall be RMS accredited.
- 22 If an excavation associated with the proposal extends below the level of the base of the footings of a building and/or structure and/or road 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, piercing, 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.

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

- 23 Prior to the issue of the relevant Construction Certificate, construction plans are to show that all study rooms are to have a window in accordance with the requirements under SEPP 65 and the ADG.
- 24 The building shall be constructed in accordance with *AS2021- 2000: Acoustics, Aircraft Noise Intrusion, Building Siting and Construction* and consideration of Road Noise from O'Riordan Street, the details of which must be prepared by a practicing

professional acoustical consultant. The report shall be submitted to Principal certifying authority prior to the release of the Construction Certificate and the building plans endorsed with the required acoustical measures.

The measures required in the acoustical assessment report prepared by Acoustic Logic, dated 16/01/2018, Report reference number 20180028.1/1601A/R0/TA shall be undertaken in accordance with the provisions of AS 2021 - 2000: Acoustics - Aircraft Noise Intrusion - Building Siting and Construction to establish components of construction to achieve indoor design sound levels in accordance with Table 3.3 of AS2021 - 2000 shall be incorporated into the construction of the building.

The work detailed in the report includes:

- Appropriate acoustic glazing to stated windows and doors,
- Detailed roof and ceiling construction,
- Wall and ceiling corner details and,
- External door specification,
- Acoustically treated mechanical ventilation.

Note: In many cases the applicant chooses to install air conditioning to meet mechanical ventilation requirements above. If they do it will require consideration of the noise from the air conditioner (advice concerning noise from air conditioners is attached below).

25 Prior to the issue of the construction certificate, a reflectivity report shall be submitted to and approved by the Principal Certifying Authority demonstrating the reflectivity from the building does not exceed 20%.

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

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

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

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

- | | | |
|----|----------------------------|---------------------------------|
| a) | Development Control | \$13,583.00 |
| b) | Footpath Crossing Deposit | \$295,200.00 (See below) |
| c) | Section 7.11 Contributions | \$647,152.47 (See below) |
| d) | Long Service Levy | See below |

28 Prior to the issue of any Construction Certificate related to DA 2018/1013, the payment of a monetary contribution of an additional **\$647,152.47** in accordance with Council's amended Section 94 Contributions Plan 2016. This consent generates a total contribution of \$2,080,000.00, however a credit has been applied of \$1,432,847.53.

The Section 7.11 Contribution fees are subject to annual review and the current rates are applicable for the financial year in which the consent is granted. If the contribution is paid in a later financial year the fee applicable at the time will be required to be paid.

- 29 Prior to the issue of any construction certificate, provide evidence that the following has been completed. Sampling and analysis of soil at the site for asbestos shall be undertaken and any exceedances managed and remediated in accordance with the National Environment Protection (Assessment of Site Contamination) Measure 2013 and all relevant NSW EPA Guidelines. This assessment and management shall be completed prior to any disturbance of soil or excavation on the site. Details of sampling and analysis and the proposed management of any exceedances shall be provided to Council.
- 30 Prior to the issue of any construction certificate Due to the time elapsed since the Phase 2 investigation, undertake additional site investigations for impacts from groundwater from the adjoining petrol station and asbestos in soils on the site. This shall be completed by a suitably qualified and experienced environmental consultant 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;
- and shall be provided to the Principal Certifying Authority and Bayside Council for written concurrence prior to the issue of any Construction Certificate.
- 31 If required, following completion of the additional assessment, a Remedial Action Plan shall be prepared and remediation of the site shall be carried out. Approvals from appropriate government departments where required shall be obtained and full details of the investigation and site remediation are to be submitted to Bayside Council in accordance with the Environmental Planning and Assessment Act 1979 prior to any Construction Certificate being issued for the proposed development.
- 32 Prior to the issue of any Construction Certificate, the required Long Service Levy payable under Section 34 of the Building and Construction Industry Long Service payments Act 1986 must be paid. The Long Service Levy is payable at 0.35% of the total cost of the development, however, this is a State Government fee and can change without notice.
- 33 Prior to the issue of any Construction Certificate, the applicant shall contact "Dial Before You Dig" to obtain a utility service diagram for, and adjacent to the property. The sequence number obtained from "Dial Before You Dig" shall be forwarded to Principal Certifying Authority. All utilities within the work zone shall be protected during construction.

Any adjustments or damage to public utilities/services as a consequence of the development and associated construction works shall be restored or repaired at the applicant's expense.

- 34 Prior to the issue of any Construction Certificate, the applicant shall lodge a Builder's Damage Deposit and Performance Bond of **\$295,200.00** (GST Exempt) by way of cash deposit or unconditional bank guarantee to Council against possible damage to Council's asset during the course of the building works. The deposit will be refunded subject to inspection by Council 12 months after the completion of all works relating to the proposed development and Final Occupational Certificate has been issued.
- 35 Prior to the issue of any Construction Certificate, at the proposed point of construction site entry, photographic survey showing the existing conditions of Council's and RMS infrastructure shall be submitted to Council and Principal Certifying Authority. The survey shall detail the physical conditions and identify any existing damages to the roads, kerbs, gutters, footpaths, driveways, street trees, street signs and any other Council assets fronting the property and extending to a distance of 50m from the development. Failure to do so may result in the applicant/developer being liable for any construction related damages to these assets. Any damage to Council's infrastructure during the course of this development shall be restored at the applicant's cost.
- 36 Prior to the issue of any Construction Certificate, a Construction Management Program shall be submitted to the Principal Certifying Authority prior to the issue of a Construction Certificate. The program shall detail:
- a) The proposed method of access to and egress from the site for construction vehicles, including access routes through the Council area and the location and type of temporary vehicular crossing for the purpose of minimising traffic congestion and noise in the area, with no access across public parks or public reserves being allowed,
 - b) The proposed phases of construction works on the site and the expected duration of each construction phase,
 - c) The proposed order in which works on the site will be undertaken, and the method statements on how various stages of construction will be undertaken,
 - d) The proposed manner in which adjoining property owners will be kept advised of the timeframes for completion of each phase of development/construction process,
 - e) The proposed method of loading and unloading excavation and construction machinery, excavation and building materials, formwork and the erection of any part of the structure within the site. Wherever possible mobile cranes should be located wholly within the site,
 - f) The proposed areas within the site to be used for the storage of excavated materials, construction materials and waste containers during the construction period,
 - g) The proposed method/device to remove loose material from all vehicles and/or machinery before entering the road reserve, any run-off from the washing down of vehicles shall be directed to the sediment control system within the site,
 - h) Proposed protection for Council and adjoining properties, and

- i) The location and operation of any on site crane. Please note that a crane may require prior approval from Sydney Airports Corporation.
- j) The location of any Construction Zone (if required) approved by Council's Traffic Committee, including a copy of that approval.
- k) The methodology to control dust on site.
- l) The location of any Construction Zone (if required) approved by Council's Traffic Committee, including a copy of that approval.
- m) Obtain Permits required under this consent.

37 Prior to the issue of any Construction Certificate, a detailed Traffic Management Plan for the pedestrian and traffic management of the site during construction shall be prepared and submitted to the relevant road authority (Council or Roads and Maritime Services). The plan shall:

- a) be prepared by a RMS accredited consultant,
- b) nominate a contact person who is to have authority without reference to other persons to comply with instructions issued by Council's Traffic Engineer or the Police, and
- c) if required, implement a public information campaign to inform any road changes well in advance of each change. The campaign may be required to be approved by the Traffic Committee.

Note: Any temporary road closure shall be confined to weekends and off-peak hour times and is subject to Council's Traffic Engineer's approval. Prior to implementation of any road closure during construction, Council shall be advised of these changes and Traffic Control Plans shall be submitted to Council for approval. This Plan shall include times and dates of changes, measures, signage, road markings and any temporary traffic control measures.

38 Prior to the issue of the relevant Construction Certificate, the following required section(s) are to be submitted to and approved by the Principal Certifying Authority:

- a) All driveways/access ramps/vehicular crossings shall conform with Australian Standards AS 2890.1 and Council requirements including but not limited to Section 8(v) of the DCP Stormwater Management Technical Guidelines, and
- b) For commercial developments, the applicant shall provide longitudinal sections along the extremities and the centre line of each internal driveway/access ramp at a scale of 1:25. These long sections shall extend from the horizontal parking area within the property to the centre line of the roadway. The sections shall also show the clear height from the ramp to any overhead structure.

39 Prior to the issue of the relevant Construction Certificate, the following required section(s) are to be submitted to and approved by the Principal Certifying Authority:

- a) All driveways/access ramps/vehicular crossings shall conform with Australian Standards AS 2890.1 and Council requirements including but not limited to Section 8(v) of the DCP Stormwater Management Technical Guidelines, and

- b) A suitably qualified engineer shall design and certify the driveway access from Haran Street to the development to ensure that stormwater from the road reserve is not directed into the basement structure, a suitable crest shall be provided to ensure flows are not directed into the basement structure, and
 - c) The applicant shall provide longitudinal sections along the extremities and the centre line of each internal driveway/access ramp at a scale of 1:25. These long sections shall extend from the horizontal parking area within the property to the centre line of the roadway. The sections shall also show the clear height from the ramp to any overhead structure.
- 40 Prior to the release of the relevant Construction Certificate, the following required section(s) are to be submitted to and approved by the Principal Certifying Authority:
- a) All driveways/access ramps/vehicular crossings shall conform with Australian Standards AS 2890.1 and Council requirements including but not limited to Section 8(v) of the DCP Stormwater Management Technical Guidelines,
 - b) All service vehicles shall enter the property front in front out,
 - c) Demonstrate safe headroom clearance of 4.5m is achieved in the driveway entrance and along the along the travel path, parking and manoeuvring areas of a Medium Rigid Vehicle (MRV), including Council's Garbage Truck,
 - d) Swept path analysis shall be provided for manoeuvring of commercial vehicles, and
 - e) A longitudinal section plotting headroom clearance above driveway access is to be provided for assessment.
- 41 Prior to the release of the Construction Certificate, the following required section(s) are to be submitted to and approved by the Principal Certifying Authority:
- a) At least eleven (11) accessible car parking spaces shall be provided and clearly marked as specified in Australian Standards AS 2890.6, SEPP 65 Design Code and Council requirements;
 - b) All off street accessible parking shall have access to the adjacent road(s) and to the communal open space as per Australian Standards AS 2890.6 and Council requirements, and
 - c) All Accessible parking spaces shall be located within close proximity and easy access to the lift systems proposed for the building as per AS2890.6 and AS4299.
- 42 Prior to the issue of the relevant Construction Certificate, to ensure that utility authorities and Council are advised of any effects to their infrastructure by the development, the applicant shall:
- a) Carry out a survey of all utility and Council services within the site including relevant information from utility authorities and excavation if necessary to determine the position and level of services,
 - b) Negotiate with the utility authorities (eg AusGrid, Sydney Water, Telecommunications Carriers and Council in connection with:

- i) The additional load on the system, and
 - ii) The relocation and/or adjustment of the services affected by the construction.
- c) As part of this development, all above ground utilities on O’Riordan Street and Haran Street, adjacent to development, shall be relocated underground in accordance with Ausgrid and any other affected and relevant service provider. This undergrounding includes the removal of at least the two Ausgrid poles numbered K001750 and K001751, and
 - d) At least two (2) new Ausgrid lighting poles shall be erected on the O’Riordan Street frontage, or as otherwise directly specified by Council/Ausgrid/RMS. All new lighting poles and associated underground infrastructure shall be constructed satisfying V2 lighting requirements any other requirements as specified by Council, RMS and any other affected service provider,
 - e) All underground and above ground infrastructure shall be constructed as specified by Ausgrid, RMS, Council and any other affected service provider. The location of the new electrical pillars, new lighting poles, any new pits and trenches for utilities shall be confirmed with Council prior to the issue of the 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.

43 Prior to the issue of any Construction Certificate, detail design and construction plans in relation to stormwater management and disposal system for the development shall be submitted to the Principal Certifying Authority and Council for approval. The detail drawings and specifications shall be prepared by a suitably qualified and experienced civil engineer and to be in accordance with Council’s Development Control Plan ‘Stormwater Management Technical Guidelines’ (SMTG), AS/NSZ 3500 – Plumbing and Drainage Code and the BCA. All drawings shall correspond with the approved architectural plans. The detailed design plans shall incorporate but not be limited to the following:

- a) An On-Site Detention System (OSD) shall be designed according to Part 6 of the SMTG. It should be noted that OSD systems shall be designed to detain the stormwater runoff from the site for all storm events up to and including **1 in 100 year ARI storm and permissible site discharge (PSD) shall be based on 1 in 5 year ARI peak flow generated from the site under the “State of Nature” condition (i.e. the site is totally grassed/turfed), rather than pre-development condition**,
- b) The OSD systems storage area shall be fully enclosed, with only grates available for maintenance access sized to be at least 900x900mm allowing entry to the detention area **or** the above ground OSD storage basin shall be surrounded by a 1.8m permanent fence (at least 50% transparent) designed not to allow unauthorised entry into the above ground OSD storage basin area and the maximum ponding for the above ground storage shall be designed to be limited to a maximum depth of 600mm,
- c) Incorporate a Stormwater Quality Improvement system to ensure compliance with Section 16 of Botany Bay’s SMTG,

- d) The water quality improvement system and WSUD strategy proposal shall be designed to capture and treat at least 85% flows generated from the site.
- e) A WSUD Strategy and MUSIC model must be prepared and submitted to Council for the development. The MUSIC model must be prepared in line with the Draft NSW MUSIC Modelling Guidelines (Sydney Metro CMA). Sydney's Water's requirements are that the water quality improvement should meet or exceed the target as described in the "Botany Bay & Catchment Water Quality Improvement Plan" which was prepared by the Sydney Metropolitan Catchment Management Authority in April 2011, and
- f) In accordance with Botany Bay DCP SMTG section 4, a minimum capacity 10000L of Rainwater Tank(s) shall be provided for the site with a combined catchment of at least 75% of the roof area of the development, only roof water shall be directed to the rainwater tank(s). In order to reduce pollutants entering the tank, a first flush device to divert minimum 1mm initial runoff from the roof area bypassing the tank shall be provided. Overflow from the rainwater tank shall be directed to the site drainage system. The rainwater tank(s) shall service the toilets, clothes washers and any outdoor irrigation/taps for landscaping within the development, and
- g) Basement drainage shall be provided for the collection and removal of stormwater from all basement levels. The design is to comply with Botany DCP Part 10 Section 7 and AS/NZS 3500.3:2015, details of the pump out system shall be shown on the stormwater management plans, and
- h) The pump out system from the basement carpark shall discharge to the on-site stormwater detention (OSD) system, and
- i) Detailed calculations including computer modelling supporting the proposal.

All plans and documentation shall be certified by a suitably qualified engineer as specified in Botany DCP Part 10 Section 2.1.

- 44 Prior to the issue of the relevant Construction Certificate, at least one (1) car wash bays are to be provided. The visitor space adjacent to the service bays 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 direct connection to the sewer in accordance with a Sydney Water trade waste agreement.
- 45 Prior to the issue of the relevant Construction Certificate, a civil design plan must be prepared by a suitably qualified engineer and be approved by Bayside Council's Public Domain department for all frontage works that are required to be constructed within the public domain. A Public Domain Frontage Works application shall be submitted to Council for the works to be assessed, approved and a design brief provided, the form details can be found on the Bayside Council website. The frontage works shall be in accordance with any Council town centre plans, standard design drawings and specifications. Preliminary consultation with Council public domain department is highly recommended.
- 46 Prior to the issue of the relevant construction certificate, A Public Domain Frontage Works application shall be submitted separately to Council, with Civil and Landscape works plans. Street trees are to be provided in accordance with the Botany Street Tree Master Plan 2014.

- a) O’Riordan Street verge strip shall be planted with three (3) Angophora Costata
 - b) Haran Street verge strip shall be planted with two (2) Lophostermon confertus (Box Brush)
 - c) Trees provided shall conform to NATSPEC guide. Tree planting specifications as follow:
 - i) Pot size supplied shall be not less than 200 Litre. P
 - ii) Planting distance approximately 8 meters, along strip between footpath and kerb. Three (3) meters away from driveways.
 - iii) Height above container 3.5meters, calliper at 300mm greater than 60mm, with a clear trunk height of 1.5 meters.
 - iv) Trees supplied shall be healthy and vigorous, free of pest and disease, free from injuries.
 - v) Root barriers shall be specified to be installed in all street trees along kerb. Root barriers shall be installed as far as possible of trees. Ensure 50mm of root barrier is left above finished ground height. Root barrier shall be minimum 2 meters long to each side. Root barriers shall be installed alongside the landscape element to be protected in accordance with manufacturer’s recommendations.
 - vi) Mulching- Mulched shall conform to AS4454 and free of deleterious extraneous matter such as soil, weeds, wood slivers, stones. Mulch shall be along all strip between kerb and footpath to a depth of 75mm, when plants are installed, clear of all plant stems, and rake to an even surface flush with the surrounding finished levels.
 - vii) Stakes and Ties- Three stakes (3) of 50 x 50 x 2500mm of durable hardwood, straight, free from knots or twists, pointed at one end. Provide ties fixed securely to the stakes, 50mm hessian webbing installed around the stakes and stem in a figure of eight pattern and stapled to the stakes.
 - viii) Two hold point inspections are required: prior planting trees to ensure plant stock is suitable and post planting.
- 47 If required, the subsurface structure shall be designed with a water proof retention system (i.e. tanking and waterproofing) to a level that provides adequate provision for the future fluctuation of the water table. This subsurface structure is required to be designed with consideration of uplift due to water pressure and “flotation” (buoyancy) effects. All subsoil drainage around this subsurface structure must allow free movement of groundwater around the structure, but must not be connected to the internal drainage system. The design of subsurface structure, tanking and waterproofing, and subsoil drainage shall be undertaken by a suitably experienced Chartered Professional Engineer(s). Design details and construction specifications shall be included in the documentation accompanying the Construction Certificate.
- 48 The construction methodology, parameters, and recommendations prepared by Douglas partners, project 84531, dated October 2014, shall be implemented and relied

upon during the preparation of the construction certificate documentation and the construction of the proposed development.

- 49 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, the Principal Certifying Authority and Principal Certifying Authority must:

- a) Be satisfied that suitable evidence is provided to demonstrate that the products and systems 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.

- 50 Prior to the issue of the relevant Construction Certificate, details on the mechanical plant and equipment to be submitted to the Principal Certifying Authority. The report must:

- a) identify each item of plant and equipment;
- b) the following additional criteria adopted by Bayside Council:
 - i) The operation of all plant and equipment shall not give rise to an equivalent continuous (LAeq) sound pressure level at any point on any residential property greater than 5dB(A) above the existing background LA90 level (in the absence of the noise under consideration).
 - ii) The operation of all plant and equipment when assessed on any residential property shall not give rise to a sound pressure level that exceeds LAeq 50dB(A) day time and LAeq 40 dB(A) night time.
 - iii) The operation of all plant and equipment when assessed on any neighbouring commercial/industrial premises shall not give rise to a sound pressure level that exceeds LAeq 65dB(A) day time/night time.
 - iv) For assessment purposes, the above LAeq sound levels shall be assessed over a period of 10-15 minutes and adjusted in accordance with EPA guidelines for tonality, frequency weighting, impulsive characteristics, fluctuations and temporal content where necessary.

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

- 51 Prior to the issue of the relevant Construction Certificate, plans and specifications for the storage room for waste and recyclable materials shall be submitted to the Principal Certification Authority. The garbage and recycling storage area shall be adequately ventilated, roofed and screened from public view. The floor shall be made of an impervious surface, drained to sewer and include a dry arrestor pit with a removable basket. Washing facilities shall be provided within close proximity to the garbage and recycling storage area.

- 52 Prior to the issue of the relevant Construction Certificate, any electrical kiosk, fire booster assembly or similar utilities must be located in an unobtrusive location away from vehicle and pedestrian entrances to the property and not within the landscaped street setback. The utilities must be screened by a built screen enclosure and/or landscaping so as not to reduce the visual amenity of the development or the streetscape and public domain. The location of, and screening treatment surrounding these utilities is to be approved by the Principal Certifying Authority prior to their installation. Fire booster assemblies should be housed within the external face of the building structure and screened from view from the public domain area.
- 53 Design verification is required to be submitted from a qualified designer to confirm the development is in accordance with the approved plans and details and continues to satisfy the design quality principles in State Environmental Planning Policy No. 65 Design Quality of Residential Apartment Development.
- 54 Design certification, prepared by a suitably qualified engineer shall be submitted to Principal Certifying Authority certifying the car parking area shown on the construction plans has been designed in accordance with AS 2890.1, AS2890.2, and AS2890.6.
- 55 A suitable intercom system linked to all units within the development shall be provided at the vehicle entrance to the development to ensure any visitors to the site can gain access to the visitor parking in the car parking area. The details of the intercom system shall be submitted to Principal Certifying Authority and its location and specifications endorsed on the construction drawings.
- 56 Prior to the issue of the construction certificate, Landscape documentation shall be submitted to council for approval including, but not be limited to the following information:
- a) A planting plan at 1:10 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.
 - b) 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.
 - c) Trees shall be used extensively throughout the site. Trees must be an appropriate species to ameliorate buildings and enhance open spaces.
 - d) Increase the quantity of medium-large canopy tree planting within the setbacks to ameliorate the development and add amenity and screening to the site and adjoining southern boundary. Street setback trees are to be evergreen and supplied at a minimum 200 litres pot size.
 - e) All deep areas to include canopy trees where feasible to mitigate the loss of existing mature trees on site and to provide a level of amelioration to the buildings.
 - f) Indicate the location of all basement structures relative to the landscape areas.
 - g) Specifications detailing soil and mulch finishes, root barriers, irrigation, edging and other landscape handworks such as retaining walls, steps, planter walls, feature walls, skateboard restrictions, tree pits, tree grates, tree guards, tree pit treatments, in accordance with council's Public Domain specifications.
 - h) Areas of paving, schedule of materials, edge treatments, tactile and sectional construction details.

- i) Details of all fencing, privacy screening, arbors and the like- elevations and materials, impacting or visible to public domain areas.
 - j) 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.
 - k) To ensure satisfactory growth and maintenance of the landscaping, a fully automatic drip irrigation system is required in all landscape areas, installed by a qualified landscape contractor. 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.
- 57 Trees shall be used extensively throughout the site – particularly in the setbacks. Trees must be of an appropriate scale to complement and scale with the building form and to pedestrianize landscaped open spaces. Trees to be predominantly native, evergreen species using open canopy evergreens or selected deciduous for solar penetration. Additional medium to small trees shall be provided along the setback at the corner of Haran St & O’Riordan Street.
- Common area shall include canopy trees on slab, depth of soil shall allow growth of canopy trees in some areas.
- 58 Prior to the issue of the construction certificate, amended plans shall be provided to the principal Certifying Authority indicating the OSD Basin being relocated to the communal open space and fire booster assembly and gas mains shall be relocated to be out of the dripline of the trees and located in a more discrete location to maintain a suitable streetscape.
- 59 Prior to the issue of a Construction Certificate, an application for Property Address Allocation and associated fee is required to be submitted to Council. Determination of address numbers are in accordance with AS/NZS 4819:2011 Rural and Urban Addressing Standard and Section 5.2 of the NSW Address Policy.
- The form is available for download at:
<https://www.bayside.nsw.gov.au/services/development-construction/building-or-altering-property/commonly-used-forms>
- The general principles of addressing in NSW are described in the NSW Addressing User Manual, Ch.6 Addressing Principles. The manual is available for download at:
[http://www.gnb.nsw.gov.au/data/assets/pdf_file/0007/199411/2018_NSW_Address ing User Manual.pdf](http://www.gnb.nsw.gov.au/data/assets/pdf_file/0007/199411/2018_NSW_Address_ing_User_Manual.pdf)
- The numbering (sub-addresses) of the individual units in multi-level sites should be consistent with Australian Standards AS/NZS 4819:2011 Rural and Urban Addressing Standard & NSW Addressing User Manual.
- Developers of multi-level buildings are required to submit their schedule of addresses to Council for addressing approval prior to registration of the subdivision plan.
- 60 Prior to the issue of the construction certificate, the architectural plans shall be amended to include gas (where available) and water tap connections to each balcony.

CONDITIONS WHICH MUST BE SATISFIED DURING WORKS

- 61 Construction operations shall comply with the following:

- a) The applicant shall conduct all construction works and any related deliveries/activities wholly within the site. If any use of Council's road reserve is required, approval and permits shall be obtained from Council.
 - b) Construction operations such as brick cutting, washing tools or brushes and mixing mortar shall not be carried out on park/road reserve or in any other locations which could lead to the discharge of materials into the stormwater drainage system or onto Council's lands.
 - c) Hosing down or hosing/washing out of any truck (concrete truck), plant (eg concrete pumps) or equipment (eg wheelbarrows) on Council's road reserve or other property is strictly prohibited. Fines and cleaning costs will apply to any breach of this condition.
 - d) Pavement surfaces adjacent to the ingress and egress points are to be swept and kept clear of earth, mud and other materials at all times and in particular at the end of each working day or as directed by Council's Engineer.
 - e) Concrete trucks and trucks used for the transportation of building materials or similar, shall not traffic soil cement or other materials onto the road reserve. Hosing down of vehicle tyres shall be conducted in a suitable off-street area where wash waters do not enter the stormwater system or enter Council's land.
 - f) The vehicular entry/exits to the site must be protected from erosion and laid with a surface material which will not wash into the street drainage system or watercourse.
 - g) All vehicles transporting soil, sand or similar materials to or from the site shall cover their loads at all times.
- 62 Vibration levels induced by the demolition activities shall not exceed levels listed in Standard DIN 4150-3 (1999-02), *Structural vibration Part 3 – Effects of vibration on structures Table 12-7*. The operation of plant and equipment must not give rise to the transmission of vibration nuisance or damage to other premises. Prior to commencement a specific vibration monitor shall be set up to monitor and record the vibration levels affecting surrounding buildings.
- 63 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.

- 64 Inspections must be conducted by Council's Engineer at the following occasions:
- a) Formwork inspection of driveway layback and adjacent kerb and gutter prior to laying of concrete,
 - b) Formwork inspection of Council's kerb and gutter prior to laying of concrete,
 - c) Formwork inspection of Council's footpath prior to laying of concrete,
 - d) Inspections of the Banks Avenue road reserve prior and during the construction of the new road pavement,
 - e) Final inspection of driveway layback and adjacent kerb and gutter,
 - f) Final inspection of Council's kerb and gutter,
 - g) Final inspection of Council's footpath,
 - h) Final Inspection of new road pavement on Haran Street.
- 65 During demolition, excavation and construction, care must be taken to protect Council's infrastructure and surrounding buildings, including street signs, footpath, kerb, gutter and drainage pits etc. Protecting measures shall be maintained in a state of good and safe condition throughout the course of demolition, excavation and construction. The area fronting the site and in the vicinity of the development shall also be make safe for pedestrian and vehicular traffic at all times. Any damage to Council's infrastructure and surrounding buildings (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.
- 66 During demolition, excavation, construction and deliveries, access to the site shall be available in all weather conditions. The area shall be stabilised and protected from erosion to prevent any vehicles (including deliveries) tracking soil materials onto street drainage system/watercourse, Council's lands, public roads and road-related areas.

Hosing down of vehicle tyres shall only be conducted in a suitable off-street area where wash waters do not enter the stormwater system or Council's land.

- 67 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.
- 68 Any material containing asbestos found on site during the demolition process shall be removed and disposed of in accordance with:
- a) SafeWork NSW requirements. An appropriately licensed asbestos removalist must complete all asbestos works if they consist of the removal of more than 10m² of bonded asbestos and/or any friable asbestos.
 - b) Protection of the Environment Operations Act 1997.
 - c) Protection of the Environment Operations (Waste) Regulation 2014.
 - d) NSW Environment Protection Authority Waste Classification Guidelines 2014.
- 69 The development is to be constructed to meet the following construction noise requirements:
- a) Construction Noise
 - i) Noise from construction activities associated with the development shall comply with the NSW Environment Protection Authority's Interim Construction Noise Guideline and the Protection of the Environment Operations Act 1997.
 - b) Level Restrictions
 - i) Construction period of 4 weeks and under:
 - 1 The L10 sound pressure level measured over a period of not less than 15 minutes when the construction site is in operating must not exceed the background level by more than 10dB(A).
 - ii) Construction period greater than 4 weeks and not exceeding 26 weeks:
 - 1 The L10 sound pressure level measured over a period of not less than 15 minutes when the construction site is in operating must not exceed the background level by more than 10 dB(A).
 - c) Time Restrictions
 - i) Monday to Friday 07:00am to 06:00pm;
 - ii) Saturday 07:00am to 03:00pm
 - iii) No Construction to take place on Sundays or Public Holidays.
 - d) Silencing
 - i) All possible steps should be taken to silence construction site equipment.
- 70 The principal contractor or owner builder must install and maintain water pollution, erosion and sedimentation controls in accordance with:

- a) The Soil and Water Management Plan if required under this consent;
 - b) “Managing Urban Stormwater - Soils and Construction” (2004) (‘The Blue Book’); and
 - c) Protection of the Environment Operations Act 1997.
- 71 Any new information that comes to light during demolition or construction which has the potential to alter previous conclusions about site contamination and remediation must be notified to Council and the accredited certifier immediately. All work on site shall cease until the council is notified and appropriate measures to assess and manage the contamination in accordance with any relevant NSW EPA adopted guidelines is completed by an appropriately qualified and experienced environmental consultant.
- 72 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 ‘Updated Remediation Action Plan - Proposed Mixed Use / Medium Density Residential Zone, *Part Lot 1 in D.P. 776089, Westfield Drive, Eastgardens, NSW*’ prepared by Douglas Partners, Project 71631.12, dated September 2013.
- 73 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.
- 74 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.
- 75 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.

- 76 Results of the monitoring of any field parameters such as soil, surface water, dust or noise measurements shall be made available to Council Officers on request throughout the remediation and construction works.
- 77 Landscape construction should be carried out by a qualified landscape contractor to ensure that adequate standards of workmanship are achieved. Landscape contractors who are members of the Landscape Contractors Association of NSW should be engaged.
- 78 Landscaping shall be installed in accordance with the approved Sturt Noble landscape plans only stamped by Council's Landscape Architect and dated prior to the issue of a Construction Certificate. (This amended plan supercedes the original landscape plan).
- 79 In accordance with councils DCP, the following activities are prohibited beneath the canopy drip line of any tree required to be retained and protected unless otherwise approved under the development consent/plans:
- a) Excavations and trenching (with exception of the approved foundations and underground services);
 - b) Ripping or cultivation of soil;
 - c) Mechanical removal of vegetation;
 - d) Soil disturbance or movement of natural rock;
 - e) Soil level changes including the placement of fill material (excluding and suspended floor slab);
 - f) Movement and storage of plant, equipment & vehicles;
 - g) Erection of site sheds;
 - h) Affixing of signage or hoardings to trees;
 - i) Storage of building materials, waste and waste receptacles;
 - j) Disposal of waste materials and chemicals including paint, solvents,

In accordance with AS 4970 – 2009, inspections shall be conducted by the Project Arborist in accordance with the following key milestones:

Prior to any work commencing on-site (including demolition, earthworks or site clearing) and following installation of tree protection fences, tags and trunk protection; During any excavations, building works and any other structure within the TPZ of the tree to be retained & protected, including any landscape works; A minimum of every month during the construction phase from Commencement to issue of the Occupation Certificate; and Following completion of the building works.

The Project Manager shall be responsible to notify the Project Arborist prior to any works within the Tree Protection Zones of protected tree within a minimum of 24 hours' notice.

- 80 If adjustment or connection to existing subsurface services or utilities within the road verge or the road carriageway is required, **all work** must be undertaken under the supervision and direction of Council's Tree Management Officer so as not to impact or harm the existing street tree. NOTE: Services may require re-routing at the Applicant's expense to ensure tree root protection. New overhead electrical property service wires shall located so that it is outside the tree canopy. No canopy pruning will be permitted for service wires.
- 81 The Council nature strip shall be repaired and/or replaced in accordance with Council Specification at the completion of all construction work at the Applicant's expense.

- a) An experienced Landscape Contractor shall be engaged to undertake the landscaping work and shall be provided with a copy of both the approved landscape drawing and the conditions of approval to satisfactorily construct the landscape to Council requirements.
 - b) The contractor shall be engaged weekly for a minimum period of 13 weeks from final completion of landscaping for maintenance and defects liability, replacing plants in the event of death, damage, theft or poor performance. After that time regular and ongoing maintenance is required.
- 83 For the purposes of irrigating the landscaped areas, a water tank, minimum 25,000 litres in size but ideally equivalent to the building roof area to be drained, shall be installed on the property for stormwater collection and re-use.
- 84 All new street trees shall be installed prior to completion of the staged development. All tree planting work is to be completed and protective fencing, being 1.8 metre chainlink fence, erected around the trees for protection prior to the commencement of construction.
- 85 All internal access driveways, parking areas and pedestrian walkways shall be unit paved (interlocking pavers). Large areas of asphalt.
- 86 A raised concrete edge shall be installed around the landscape areas to contain soil and mulch finishes from spilling out onto adjoining pavements. The edge shall be raised a minimum of 150mm above the adjoining pavement. Timber retaining edges are unsuitable.
- 87 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.

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

- 88 All applications associated with works on Council's land must be made at least 7-10 days prior to the programmed completion of works and all construction must be completed and approved by Council.
- 89 Prior to the issue of the relevant Occupation Certificate, the floor surface of the entry, dining room and kitchen floor and internal storage areas are to be water-resistant for all two and three bedroom apartments.
- 90 Prior to the issue of an 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*.
- 91 The public area of the residential parts of each building must be designed by a practicing Interior Designer or other appropriately qualified person and include (but not limited to) colour schemes, artwork surface finishes, timber mid rails/skirting boards etc.
- 92 Prior to the issue of the relevant Occupation Certificate, car parking is to be allocated as follows:
- a) Minimum 97 residential spaces
 - b) 21 residential visitor spaces
 - c) 1 car wash bay
 - d) 2 service bay and /or visitor
- 93 Prior to the issue of the relevant Occupation Certificate, at least 11 bicycle spaces are to be provided in the car park. Consideration on having bike racks close to the lobby entries is encouraged.
- 94 Any damage not shown in the photographic survey submitted to Council before site works have commenced will be assumed to have been caused by the site works (unless evidence to prove otherwise). All damages as a result from site works shall be rectified at the applicant's expense to Council's satisfaction, prior to occupancy of the development and release of damage deposit.
- 95 Prior to the issue of an Occupation Certificate, the underground placement of all low and/or high voltage street electrical mains in that section of the street/s adjacent to the development, and associated services and the installation of underground supplied street lighting columns, shall be carried out at the applicant's expense, to the satisfaction of the asset owner. The works shall be completed in accordance with Ausgrid's requirements and approved electrical design.
- 96 Prior to the issue of the relevant Occupation Certificate, documentation from a practising civil engineer shall be submitted to the Principal Certifying Authority certifying that the stormwater drainage system has been constructed generally in

accordance with the approved stormwater management construction plan(s) and all relevant standards.

- 97 Prior to the issue of the Occupation Certificate, 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.
- 98 Prior to the issue of any Occupation Certificate, the applicant shall carry out the following works, at no cost or expense to Council:
- a) On Haran Street and O’Riordan Street, adjacent to development, remove redundant driveway crossovers and replace with any required tree planting and public domain improvements as specified by Council in accordance with Council’s Infrastructure Specifications, and
 - b) On Haran Street and O’Riordan Street, adjacent to development, demolish existing concrete footpath and construct new footpath as per Council’s Infrastructure and Landscape Architect specifications. New paving shall be installed by the applicant and at the applicant’s expense, and
 - c) On Haran Street and O’Riordan Street, adjacent to development, reconstruct existing kerb and gutter for the full length of the property in accordance with Council’s and RMS Infrastructure Specifications, and
 - d) On O’Riordan Street, adjacent to development, construct new kerb inlet pit(s) and stormwater pipe(s), connecting to existing RMS stormwater infrastructure, to RMS and Council infrastructure specifications, and
 - e) On Haran Street, for full length, demolish existing road pavement and reconstruct road pavement full width as per Council’s Infrastructure and Pavement Engineer’s specifications. The road pavement is to be designed to traffic loading of N(E.S.A) 1x106, and
 - f) On Haran Street, adjacent to development, widen the vehicular carriageway in accordance with Council Specifications, relevant Australian Standards and AUS-SPEC. The carriageway shall be widened for a clear length (excluding splays) of 12 metres, generally in accordance with the approved sketch received by Council on 4 October 2016. The cover of any underground services below the new road pavement must be reinforced structurally to ensure that traffic loading will have no impact on any existing services. The widened vehicular carriageway shall be graded to ensure that stormwater from upstream Haran Street is able to effectively flow to downstream Haran Street and O’Riordan Street.

- 99 The work to Haran Street/ O’Riordan Street public footpath shall be constructed in accordance with approved Public Domain Plan and Council specifications. The footpath dimensions, location, paver type and construction methods shall be in accordance with this specification only. Pavers shall be ordered accounting for adequate lead time for manufacture.

Construction hold points and Council inspections are required at the following points:

- a) after formwork installation and to prior pouring the concrete blinding slab,
- b) at the commencement of paving works, and
- c) at final completion.

Council approval of public domain works is required prior issue of an Occupation Certificate.

- 100 All vehicular crossings are to be constructed prior to the issuing of an Occupation Certificate (or the completion of work or the use of the building), the applicant shall make a separate application to Council's Customer Service Counter to construct a new eleven (11) metre wide concrete layback to serve as the new driveway crossing facilitating the development. A minimum of one (1.0) metre of kerb and gutter either side of the driveway layback shall be replaced to enable the correct tie-in with the existing kerb and gutter. All vehicular crossings, which were shown on submitted plans, shall be in the correct location. All redundant vehicular crossings shall be removed and replaced to fit the main footpath cross-section. If any applicant wants to retain an existing vehicular crossing an application still has to be submitted with the matter highlighted. The footway area must be restored by turfing.
- 101 Prior to the issue of any Occupation Certificate(s), the following documentation shall be submitted to Council and Principal Certifying Authority attesting this condition has been appropriately satisfied:-
- a) Inspection reports (formwork and final) for the works on the public domain and the road reserve shall be obtained from RMS representative and Council's engineer; and
 - b) A copy of the approved engineering construction plans showing Work-as-Executed details (together with an electronic copy (DWG format)) for all the civil works on public domain and road reserve area. The plan shall be prepared by a registered surveyor.
- 102 Prior to the issue of an Occupation Certificate, the Principal Certifier must ensure that the vehicle access and off street parking facilities have been constructed in accordance with the approved construction plans, AS/NZS 2890.1, AS2890.2 and AS/NZS 2890.6, line marked and all signage relating to car parking erected. Certification must be provided by a suitably qualified engineer, certifying the design of the completed works. The car parking area is to be clearly and appropriately marked/signposted indicating all the vehicular movements on the site. The internal road network, pedestrian facilities and parking facilities (including visitor parking and parking for persons with disabilities) shall be clearly designated, sign posted and line marked prior to the issuing of an Occupation Certificate. Signage and line marking shall comply with Australian Standards, AS1742, Manual of Uniform Traffic Control Devices and NSW Road Transport (Safety and Traffic Management) Regulations 1999.
- 103 Prior to the issue of the Occupation Certificate, a positive covenant shall be registered on the Title of the development site which: -
- Acknowledges that:
- i) The land is within a 25 ANEF contour;
 - ii) The noise attenuation work does not extend to or include outdoor areas such as balconies, terraces and the like; and
 - iii) Requires the Owner to maintain the noise attenuation work in accordance with the recommendations within the approved acoustic report; and
 - iv) The terms of such positive covenant shall provide that it can only be varied by Bayside Council.
- 104 The applicant is responsible for the installation and protection of all regulatory/ parking / street signs fronting the property. Any damaged or missing street signs as a consequence of the development and associated construction works shall be replaced at full cost to the applicant prior to the issue of an Occupation Certificate.

- 105 All vehicles shall enter and exit the site in a forward direction at all times. A plaque with minimum dimensions 500mm x 400mm shall be permanently fixed to a prominent place near the primary vehicular entrance to the site, approved by the principal certifier, stating the following: "All vehicles shall enter and exit the site in a forward direction at all times. All waste collection for the site shall be wholly undertaken on the site and not within the Haran Street road reserve".
- 106 Prior to the issue of the Occupation Certificate, a restriction on Use of Land and Positive Covenant(s) shall be imposed on the development. The following covenants shall be imposed under Section 88(E) of the Conveyancing Act 1919 and lodged with the NSW Land and Property Information:
- a) Positive Covenant and Restriction on Use of Land for On-Site Detention System. Refer to Appendix B of the SMTG for suggested wording, and
 - b) Positive Covenant and Restriction on Use of Land for Pump-out System. Refer to Appendix B of the SMTG for suggested wording, and
 - c) Positive Covenant and Restriction on Use of Land for Stormwater Quality Improvement Device. Refer to Appendix C of the SMTG for suggested wording.
- The terms of the 88 E instruments are to be submitted to Council for review and approval and Proof of registration at the Lands and Property Information Office shall be submitted to the Principal Certifying Authority and Council prior to occupation.*
- 107 Prior to the issue of the Final Occupation Certificate, the Principal Certifying Authority is to ensure all units within the development are connected to an intercom system located at the vehicle entrance to the car parking area to ensure visitors to the site can access the visitor parking.
- 108 Street numbers shall be clearly displayed with such numbers being of contrasting colour and adequate size and location for viewing from the footway and roadway. Details of street numbering shall be submitted to Council for approval in accordance with the NSW Addressing Policy prior to the issue of the Occupation Certificate. Application fees apply.
- 109 A report prepared by a qualified air quality/mechanical engineer certifying that the mechanical ventilation/exhaust system as installed complies in all respects with the design and operation standards of AS 1668 – Mechanical Ventilation and Air Conditioning Codes, and the relevant provisions of the Protection of the Environment Operations Act 1997 shall be submitted to Council within 21 days of the installation of the system and prior to the occupation of the premises.
- 110 Evidence of a Sydney Water permit or consent for discharge of wastewater to the sewer shall be submitted to the Principal Certifying Authority prior to the issue of the interim Occupation Certificate. Where a permit or consent may not be required from Sydney Water certification shall be provided verifying that any discharges to the sewer will meet specific standards imposed by Sydney Water.
- 111 At the completion of landscaping on the site, the Applicant is required to obtain a Certificate of Compliance from the Landscape Consultant to certify that the landscaping has been installed in accordance with the Council approved landscape plan. The Certificate is to be submitted to Bayside Council prior to the Issue of an Occupation Certificate.

- 112 Prior to release of the 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).
- 113 The public domain and Council footpath area shall be upgraded with new paving, street furniture and street tree planting, to be installed by the applicant at the applicant's expense. All improvements shall be in accordance with the approved Public Domain plan and Council Landscaping and Engineering specifications and requirements, and shall be constructed and complete prior to the issue of an Occupation Certificate.
- 114 Prior to the issue of the Occupation Certificate, a site works review is required demonstrating:
- a) Extent and minimum dimensions of the site dedicated to landscaping comply with the Detailed landscaping plans
 - b) All detailed works comply with detailed schedules and specifications included in the detailed landscape plans
 - c) Any modifications to the design were an equivalent or better solutions to the requirements of the detailed landscape plans and do not affect the ability of the landscape treatment to achieve the design intent.
 - d) Site cultivation, quality and depth of soil and mulches as a minimum complies with Council specifications and standards.
 - e) Drainage of all open space and soft landscaping complies with detailed landscape plans and to Council standards
- 115 Prior to the issue of the Occupation Certificate, the following applies for landscape works specification for construction documents:
- a) The Specification is to be read in conjunction with the Landscape Drawing Set, all other Consultant's documentation and revisions. Discrepancies are to be noted and clarified through a 'Request For Information' prior to construction. Allowance is to be made for all specified products. Equivalent alternatives to be documented when required and updated on As-Builts. All Australian Standards nominated in this Specification are to be the current issue.
- 116 Prior to the Issue of Occupation Certificate is to read:
- i) That before entering a purchase/lease/occupancy agreement, or individual units are on-sold, all tenants and occupiers of the development are to be advised by the owner of the building that residents are not eligible to participate in on-street resident parking schemes.
 - ii) Prior to the issue of the occupation certificate, a sign to this effect shall be located in a prominent place, to Council's satisfaction, such as a directory board or notice board, where it can easily be observed and read by persons entering the building.

- iii) Where a building is to be Strata Subdivided, a condition should be placed in the by-laws advising residents that they are not eligible to participate in on-street resident parking schemes.
- 117 Prior to use and occupation of the building an Occupation Certificate must be obtained under Section 109C(1)(c) and 109M of the Environmental Planning and Assessment Act 1979.

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

- 118 The rooftop terraces are not to be enclosed as habitable space.
- 119 The operation of the development and movements of vehicles shall comply with the following requirements:
- a) All vehicles (including deliveries and garbage collection) shall enter and exit the site in a forward direction;
 - b) Loading and unloading activities associated with the delivery shall take place wholly within the dedicated loading areas;
 - c) All garbage collection activities shall take place and be wholly undertaken within the site in the dedicated garbage collection area;
 - d) All manoeuvring movements of vehicles shall be carried out wholly within the site and vehicle manoeuvring area shall be kept clear at all times;
 - e) The maximum size of vehicle accessing the service bay shall be limited to 8.8m long Medium Rigid Vehicle (MRV) (as denoted in AS2890.2).
- 120 The stormwater drainage system (including all pits, pipes, absorption, detention structures, treatment devices, infiltration systems and rainwater tanks) shall be regularly cleaned, maintained and repaired to ensure the efficient operation of the system from time to time and at all times. The system shall be inspected after every rainfall event to remove any blockage, silt, debris, sludge and the like in the system. All solid and liquid waste that is collected during maintenance shall be disposed of in a manner that complies with the appropriate Environmental Guidelines. The water from the rainwater tank should not be used for drinking, the rainwater tank shall be routinely de-sludged and all contents from the de-sludging process disposed:
- a) Solids shall be disposed to the waste disposal, and
 - b) De-sludged liquid shall be disposed to the sewer.
- 121 Council's footway (area between property boundary and street kerb) is to be kept clean, tidy, washed and maintained at the applicant's expense.
- 122 Any BBQ area shall be managed in a manner so as to not adversely impact the amenity of the surrounding residents.
- 123 The landscaped areas on the property shall be maintained in accordance with the approved landscape documentation, the conditions of development approval and Council's Landscape DCP at all times. The Landscape Contractor shall be engaged weekly for a minimum period of 26 weeks from completion of the landscape installation to maintain the landscaping. After that time regular maintenance is required.

- 124 The automatic drip irrigation system shall be repaired and maintained in working order and in accordance with the approved landscape plan at all times.
- 125 The landscaped areas on the property shall be maintained in a clean and tidy state and with a dense, even coverage of plants to Council's satisfaction, and in accordance with conditions of consent and Council's Landscape DCP, at all times.
- 126 New street trees shall be maintained by the Applicant for the duration of the landscape bond period after planting. Maintenance includes periodic watering at a frequency to sustain adequate growth, annual feeding and weed removal but does not include trimming or pruning of the trees under any circumstances.
- 127 Ongoing maintenance of grass nature strips shall be undertaken by the occupier, strata or owner. Maintenance includes mowing, watering and maintaining an even coverage of grass. Maintenance **does not include** pruning, trimming or any work to Council's street tree assets located on the Council nature strip under any circumstances at any time, including new street trees. All pruning is undertaken by Council only.
- 128 The operation of the premises shall be conducted in such a manner as not to interfere with or materially affect the amenity of the neighbourhood by reason of noise, vibration, odour, fumes, vapour, steam, soot, ash, dust, waste water, waste products, grit, oil, or otherwise.
- 129 The use of the premises shall not give rise to air impurities in contravention of the Protection of the Environment Operations Act 1997. Waste gases released from the premises shall not cause a public nuisance nor be hazardous or harmful to human health or the environment.
- 130 All intruder alarms shall be fitted with a timing device in accordance with the requirements of Regulation 12A of the Noise Control Act, 1975, and AS2201, Parts 1 and 2 - 1978 Intruder alarm systems.
- 131 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.
- 132 The use of the premises shall not give rise to any of the following when measured or assessed at "sensitive" positions within any other property. These "sensitive" positions should be selected to reflect the typical use of a property (ie any outdoor areas for day and evening but closer to the façade at night time), unless other positions can be shown to be more relevant.
- The operation of all plant and equipment when assessed on any residential property shall not give rise to a sound pressure level that exceeds LAeq 50dB(A) day time and LAeq 40 dB(A) night time.
- The operation of all plant and equipment when assessed on any neighbouring commercial/industrial premises shall not give rise to a sound pressure level that exceeds LAeq 65dB(A) day time/night time.

For assessment purposes, the above LAeq sound levels shall be assessed over a period of 10-15 minutes and adjusted in accordance with EPA guidelines for tonality, frequency weighting, impulsive characteristics, fluctuations and temporal content where necessary.