

SYDNEY EASTERN CITY PLANNING PANEL PANEL DETERMINATION MEETING

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|---|---|
| SECPP No | 2019ECI012 |
| DA Number | DA-2019/47 |
| Local Government Area | Bayside Council |
| Proposed Development | Demolition of existing structures, consolidation of the lots from two lots to one lot and construction of a twelve storey commercial development comprising retail, office space and associated car parking |
| Street Address | 1-5 Chalmers Crescent Mascot |
| Applicant | Sutherland and Associates Planning Pty Ltd |
| Owner | Schielang Pty Limited |
| Number of Submissions | Nil |
| Regional Development Criteria (Schedule 7 of the SEPP) | Development with a CIV of \$48,318,952.00 |
| List of All Relevant s4.15(1)(a) Matters | <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 (Vegetation in Non-Rural Areas) 2017 ○ 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 – Rothelowman • Statement of Environmental Effects and Clause 4.6 variation – Sutherland and Associates Planning Pty Ltd |
| Report by | Angela Lazaridis – Senior Development Assessment Planner |

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 FSR of 3.495:1 (7,584sqm) for the building across 3-5 Chalmers Crescent Mascot. The overall FSR of 3.79:1 (11,967.5sqm) across both 1 Chalmers Crescent and 3-5 Chalmers Crescent is supported; and
- b) Grant approval of Development Application No. 2019/47 for the demolition of existing structures, consolidation of the lots from two lots to one lot and construction of a twelve storey commercial development comprising retail, office space and associated car parking at 1-5 Chalmers Crescent Mascot, subject to the conditions of consent in the attached Schedule.

The reasons for approval are as follows:

- a) The proposal is consistent and conforms with the objectives of the B5 Business Development zone and conforms with the desired future character of the precinct;
- b) The proposal will provide for an increase employment density on the site within the Mascot Business Development Precinct; and
- c) The proposal provides a considered built form response that will deliver a positive urban design outcome.

EXECUTIVE SUMMARY

Council received Development Application No. 2019/47 on 12 February 2019 for the demolition of existing structures, consolidation of the lots from two lots to one lot and construction of a twelve storey commercial development comprising retail, office space and associated car parking at 1-5 Chalmers Crescent, 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 \$30,000,000.

The Development Application was advertised for a period of fourteen (14) days between 27 February and 13 March 2019. No submissions were received during the notification period.

The key issues in the assessment of the development application include FSR, car parking and building setbacks. There is an anomaly on the FSR maps in the BBLEP 2013. 3-5 Chalmers Crescent has a maximum FSR of 3:1 while 1 Chalmers Crescent does not have an FSR over the site. After discussions with Council's Strategic Planning Team, it is acknowledged that there was a mapping error that has existed since the finalization of BBLEP 2013 by the Department of Planning. Council's strategic planning team is in the process of rectifying this error through a house keeping amendment however have been advised by the Department that a new planning proposal is to be sought for the correction and which would evidently not be resolved before the determination of the application.

The proposed GFA on 3-5 Chalmers Crescent is 7,584sqm, which equates to 3.495:1 FSR. This does not comply with the maximum FSR of 3:1 applicable to the site. The applicant has provided a Clause 4.6 variation on 3-5 Chalmers Crescent. As 1 Chalmers Crescent does not have an FSR applied to it, the Clause 4.6 variation has not included the built form on this site. Over the whole site, the GFA is 11,967.5sqm equating to an FSR of 3.79:1. Council is of the opinion that the Clause 4.6 variation demonstrates that the proposal is not unreasonable or unnecessary in this instance and should be supported.

The development has a car parking and loading bay departure. The development generates a total of 253 car spaces and seven loading spaces. The development provides 219 car spaces and three loading bays. The departure in car parking is acceptable in that the proposal is located within 800 metres from the station, encourages different methods of public transport and will result in less traffic generation within the area. This is further supported by Council's Development Engineer.

With regard to the building setback, the development requires a front building setback of 9 metres. The proposal provides a varied setback between 4.9 metres to 9 metres to the northern setback along Chalmers Crescent. The non-compliance is contained to small components of the front setback between ground level to Level 3. The areas of non-compliance are distinguished by a materiality variation with perforated screening proposed to extend outside the required building envelope to allow for a break in the built form and articulated façade and podium. Additionally the development provides greater side setbacks than required. The proposed non-compliance is supported.

In summary, the proposed development application 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, subject to the conditions of consent as attached in Schedule 1.

SITE DESCRIPTION

The subject site is legally known 1 and 3-5 Chalmers Crescent Mascot and forms two parcels of land described as Lot 100 in DP 580123 and Lot 1 in DP 1005951. The site is located on the southern side of Chalmers Crescent which is a cul-de-sac. Access to the street is off Kent Road which is located to the north-west of the site.

The site is generally flat and is rectangular in shape. The site has a total area of 3,154sqm which is further broken down in 983.97sqm for 1 Chalmers Crescent and 2,170.03sqm for 3-5 Chalmers Crescent. The site has a total street frontage of 60.945 metres along Chalmers Crescent, an eastern side boundary of 51.435 metres, a western side boundary of 51.88 metres and a southern rear boundary of 60.945 metres.



Figure 1. Locality Plan



Figure 2. Aerial Map of subject site

The site currently comprises two industrial warehouses which are part one/part two storey in scale and are constructed of brick and metal sheeting. The rear of 3-5 Chalmers Crescent contains an open courtyard area with a number of outbuildings. The buildings are built to the side and rear boundaries and are accessed by three vehicular crossings with one crossing located on 1 Chalmers Crescent and two crossings located at 3-5 Chalmers Crescent. The buildings are used for the manufacturing and distribution of patisserie products. The front of

the site contains small bushes and immature tree in front of 3-5 Chalmers Crescent as well as three large trees located along the western boundary of 1 Chalmers Crescent.



Figure 3. Subject Site at 3-5 Chalmers Crescent



Figure 4. Subject Site at 1 Chalmers Crescent

The site is located within 800 metres of Mascot Train Station. Additionally the site is located within the 25-30 ANEF Contour and is not flood affected.

SURROUNDING LOCALITY

The site is currently surrounded by industrial development predominantly related to Qantas operations. To the east of the site at 7-9 Chalmers Crescent there contains a two storey brick industrial buildings. Further east of the site are industrial warehouses. All sites within 7-9, 14-18 and 19-21 Chalmers Crescent is subject to a concept approval for four x eight storey commercial towers over a podium with lower floor retail space above a two storey parking podium, extensive landscaping and a pedestrian overpass linking the podium level on either side of the cul-de-sac at the end of Chalmers Crescent which was approved by the former SCPP Panel on 1 March 2017.

To the rear of the site comprises industrial warehouses owned by Qantas and utilized for their catering services. To the west of the site, 55 Kent Road contains two x two storey warehouse buildings with hardstand car parking and manoeuvring areas within the front setback.

To the north of the site on the opposite side of Chalmers Crescent at 4 Chalmers Crescent contains a part single part two storey warehouse building. At 6, 8 and 10 Chalmers Crescent, there are also part single part two storey warehouses with multiple business existing.

The site is located within 2 kilometres of Sydney Kingsford Smith Airport and is located to the south of the Mascot Train Station Precinct.

BACKGROUND

Site History

- **DA-2013/182-** Internal fit out of existing factories for food (cake) manufacture, storage and delivery with building works including site drainage and the installation of freezers, cool rooms and production areas was approved by Council on 26 August 2014.

Development Application History

The development application has been assessed as follows:

- 12 February 2019 – Development Application was lodged with Council;
- 27 February and 13 March 2019 – Development Application was put on public notification. No submissions were received;
- 4 April 2019 – Council sent the applicant a request for further information regarding further Stage 1 preliminary site assessment, landscape plans, greater detail to address the car parking shortfall and confirmation of access to the site;
- 1 May 2019 – Applicant submitted an addendum to the traffic report demonstrating further justification in the car parking shortfall;
- 13 May 2019 – Applicant submitted amended preliminary site investigation report;

- 16 May 2019 – Briefing report was presented to the Panel for consideration. Minutes were received on 20 May 2019;
- 22 May 2019 – Applicant submitted setback diagrams to justify the floor space ratio argument in addition to the building setback argument;
- 4 June 2019 – Meeting was held between Council and Applicant to discuss the additional information letter and further changes to the proposal;
- 20 June 2019 – Amended plans were provided demonstrating a reduction in the FSR on 3-5 Chalmers Crescent from 3.98:1 to 3.58:1. Council was not supportive of the FSR therefore required further reduction in the amount of gross floor area on 26 June 2019;
- 2 July 2019 – Amended plans and documents were provided to Council for consideration. The FSR for 3-5 Chalmers Crescent has been reduced from 3.58:1 to 3.495:1.

DESCRIPTION OF PROPOSED DEVELOPMENT

The proposed development, as amended, is for the demolition of existing structures, consolidation of the lots from two lots to one lot and construction of a twelve storey commercial development comprising retail, office space and associated car parking.

The proposal is further broken down as follows:

Ground Floor:

- Two retail tenancies along the northern frontage measuring 76.8sqm and 97.6sqm and associated male/female bathrooms;
- A central double height lobby accessed directly from Chalmers Crescent which provides pedestrian access to each level of the development;
- A combined ingress/egress driveway;
- 41 car parking spaces, loading dock, 30 bicycle parking spaces and associated end of trip facilities; and
- Sub-station and other plant.

Mezzanine/Levels 1-2:

- Car parking for 180 car spaces, managers office, storage and plant.

Levels 3 to 10:

- Seven levels of office space comprising a total of 139 office suites. Each level contains central communal facilities including breakout spaces and toilet facilities. A number of suites on each level have the benefit of a private balcony whilst a large communal terrace is provided on Level 10.

The below figures demonstrate the proposed development:



Figure 5. Proposed Site Plan

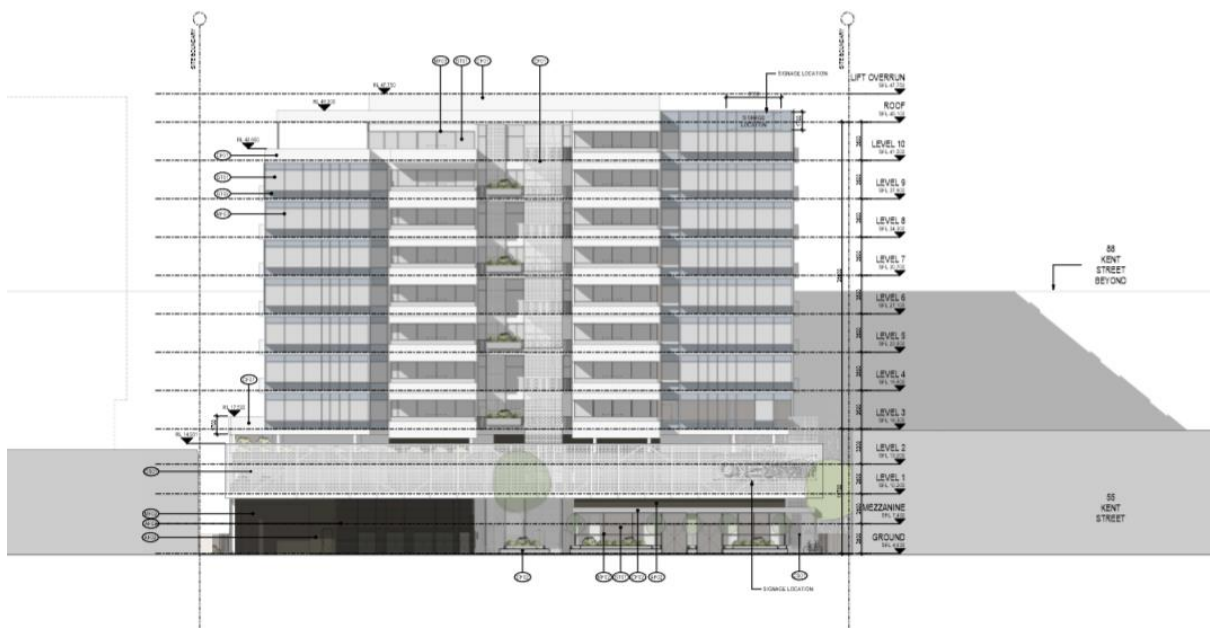


Figure 6. Proposed Northern Elevation

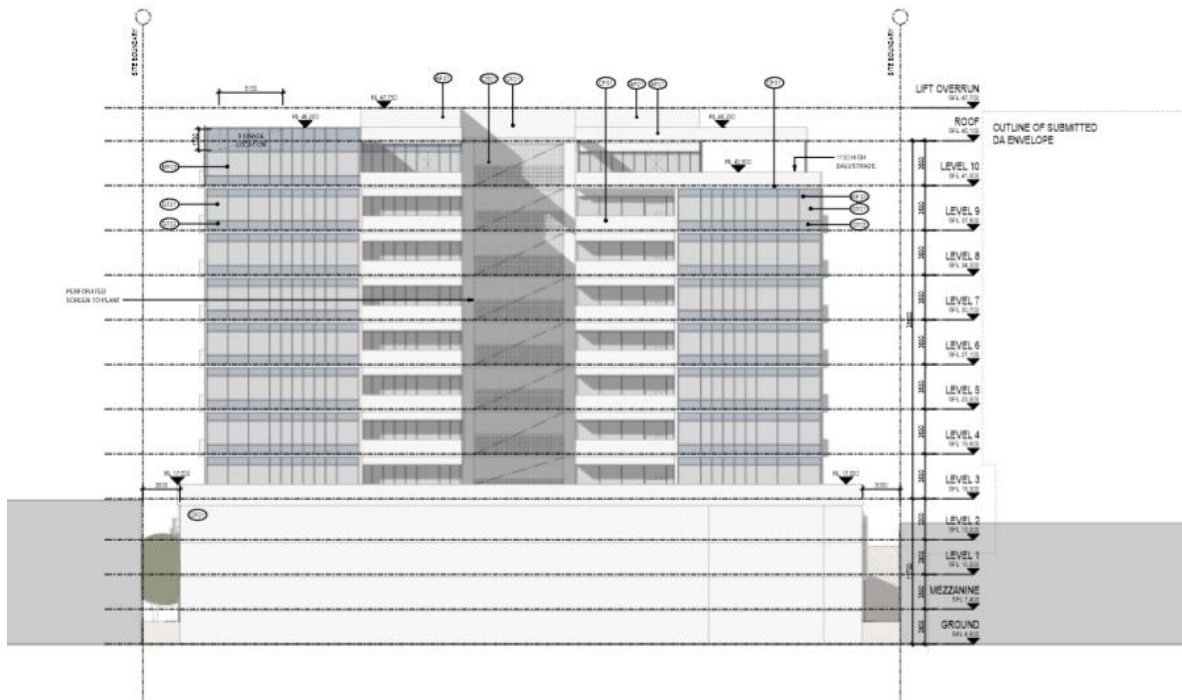


Figure 7. Proposed Southern Elevation

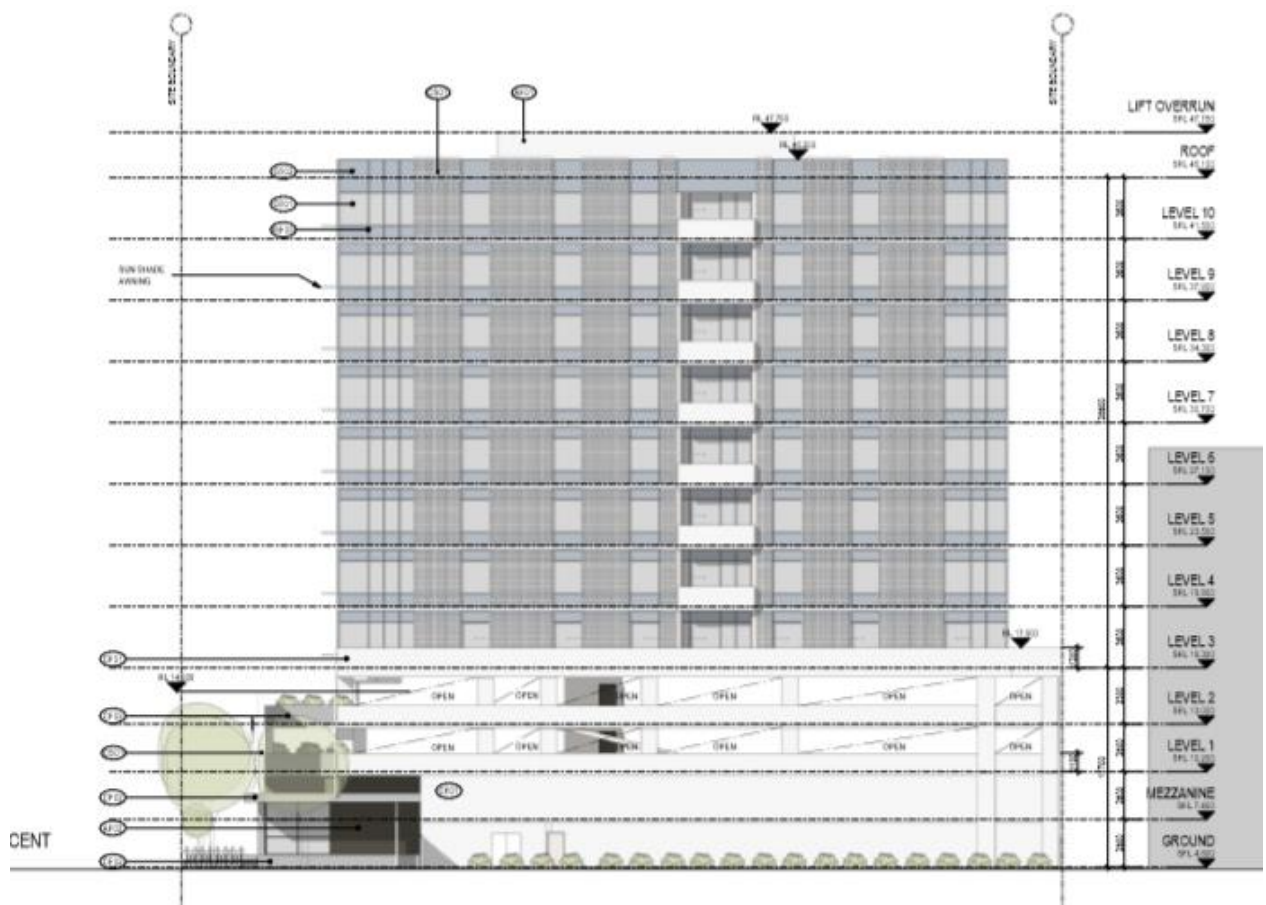


Figure 8. Proposed Western Elevation

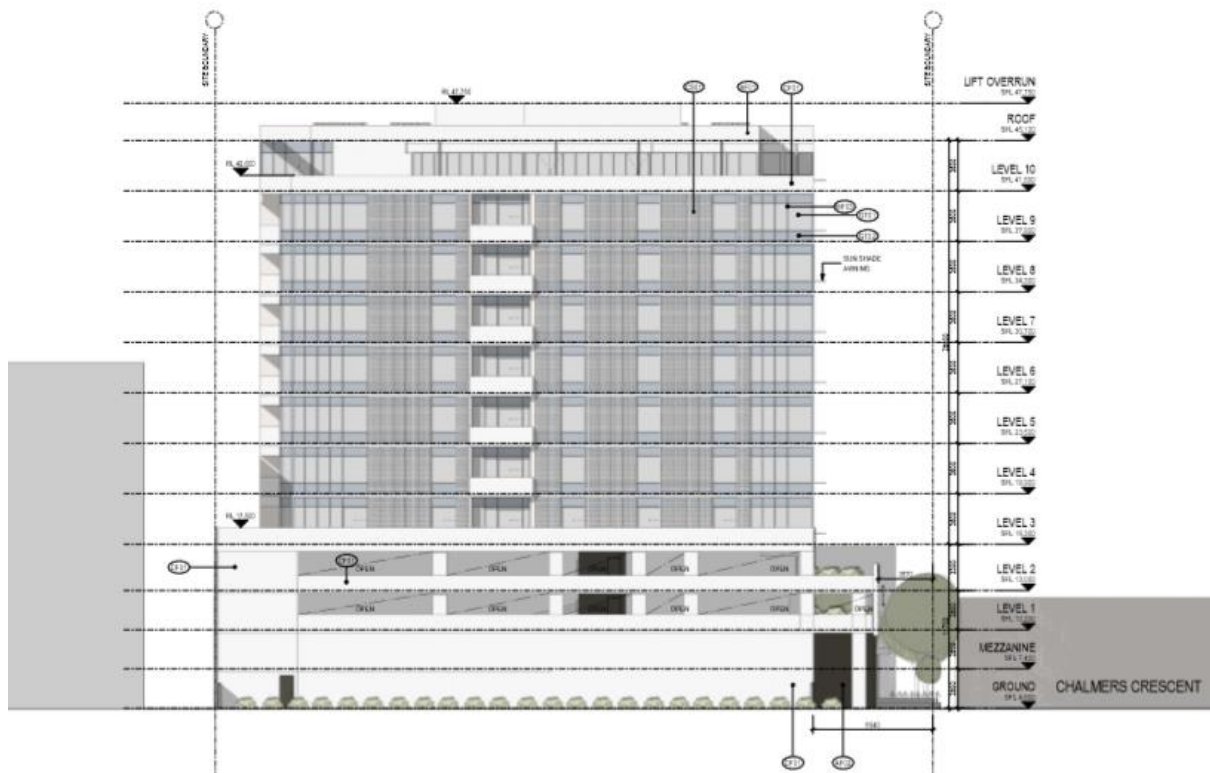


Figure 9. Proposed Eastern Elevation



Figure 10. Proposed Photomontage of Front Elevation



Figure 11. Proposed Photomontage of front elevation with approved building envelope to the east



Figure 12. Photomontage of the western elevation

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:

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

The following Environmental Planning Instruments are relevant to this application:

State Environmental Planning Policy No. 55 – Remediation of Land

The provisions of SEPP No. 55 have been considered in the assessment of the development application, as the proposed development involves excavation for a basement car park. Clause 7 of State Environmental Planning Policy 55 requires Council to be satisfied that the site is or can be made suitable for its intended use at the time of determination of an application.

The applicant provided a Phase 1 Preliminary Site Investigation Report and Geotechnical Assessment Report both prepared by EI Australia. The application was originally referred to Council's Environmental Scientist for review and comment. The following comments were provided as follows:

"The PSI was completed for commercial/industrial exposure. An industrial structure has been on the site since the 1950's, with surrounding land being developed for industrial uses around the same time. There was no dangerous goods licenses for the site, but the walkover showed evidence of an underground storage tank at the front of the property. The PSI did not undertake any limited sampling. There was no detailed site investigation completed due to buildings covering the site.

EI concluded that there is the potential for contamination to be present on site. While there is potential for contamination, EI consider that the site can be made suitable for the continued light industrial/commercial use provided that a soil and groundwater sampling program is undertaken to quantify any contamination risks, and to inform the selection and implementation of remedial risk mitigation/management and waste management measures (if required).

The PSI concluded that site contamination will not prevent the site from being redeveloped for the proposed commercial uses and the following works are therefore recommended:

- 1. A detailed targeted site investigation (DSI) is to be undertaken, comprising an intrusive site investigation and a program of soil and groundwater analysis. The DSI should be utilised to characterise any potential site contamination in the areas of development, and to ascertain any requirements for remediation or management should contamination be identified; and*
- 2. Should the findings of the DSI confirm the presence of contamination, subject to the degree and extent of impacts, it may be necessary to develop a remedial works strategy to mitigate any associated risks, in order to make the site suitable for the proposed land uses; and*

The conclusion is based on limited evidence and at a minimum delineation of the location of potential UST's, and the completion of limited sampling of soil and groundwater to support the conclusions made in the PSI are required.

Further information is required to be provided to satisfy SEPP No. 55 as follows:

- 1. An amended Stage 1 Preliminary Site Assessment or Addendum that supports the conclusions about site suitability and that includes some limited sampling of soil and groundwater that is reflective of the conceptual site model, including the delineation of suspected underground storage tanks. The assessment shall be reflective of the*

proposed at grade development. This must be completed by an appropriately qualified and experienced environmental consultant and be completed in accordance with the State Environmental Planning Policy 55 (SEPP55), appropriate NSW EPA Guidelines, and the National Environment Protection Measure (Assessment of Site Contamination) 1999 (revised 2013).

OR

2. *A Stage 2 Detailed Site Assessment that includes soil and groundwater assessment to address potential groundwater contamination and site suitability for the proposed use and current at-grade construction. This must be completed by an appropriately qualified and experienced environmental consultant and be completed in accordance with the State Environmental Planning Policy 55 (SEPP55), appropriate NSW EPA Guidelines, and the National Environment Protection Measure (Assessment of Site Contamination) 1999 (revised 2013). ”*

The applicant amended their Stage 1 Preliminary Site Investigation Report which was re-reviewed by Council's Environmental Scientist who had no objections to the proposal, subject to the imposition of appropriate conditions of consent. Therefore the site could be made suitable for the proposed development and the proposal satisfies SEPP No. 55.

State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017

The State Environmental Planning Policy (Vegetation in Non- Rural Areas) 2017 (Vegetation SEPP) regulates the clearing of native vegetation on urban land and land zoned for environmental conservation/management that does not require development consent and applies to the Sydney and Newcastle, metropolitan areas. The aims of the policy are (A) to protect the biodiversity values of trees and other vegetation in non-rules of the State and (b) to preserve the amenity of non-rural areas of the State through the preservation of trees and other vegetation.

The vegetation SEPP repeals clause 5.9 and 5.9AA of the Standard Instrument – Principal Local Environmental Plan and substantially reproduces the effect of these clauses in the Vegetation SEPP. Council will continue to regulate the clearing of vegetation (including native vegetation below the BOS thresholds through the DCP).

The site does not contain any significant vegetation other than three (3) *Callitris rhomboidei* (Port Jackson Pine) located adjacent to 1 Chalmers Crescent within the Public Domain that is to be retained and protected during the demolition and construction process.

The application was reviewed by Council's Tree Preservation Officer as well as Landscape Architect who have imposed appropriate conditions of consent in the attached Schedule relating to protection of trees and preservation bond.

The proposal is satisfactory in relation to SEPP (Vegetation in Non-Rural Areas) 2017 and Part 3L of the BBDCP 2013.

State Environmental Planning Policy (Infrastructure) 2007

The proposal is identified as a traffic generating development under Schedule 3 - Traffic generating development and is to be referred to RMS as the development exceeds 4,000sqm in commercial area. The development proposes a total of 12,849.4sqm of commercial and retail area and provides 221 car parking spaces. The application was referred to RMS for

comments and conditions. On 13 March 2019, RMS provided comments that there was no objection to the proposal subject to the appropriate conditions imposed within the consent in attached Schedule 1.

Clause 45 which relates to development likely to affect an electricity transmission or distribution applies to the development application. The application was referred to Ausgrid on 27 February 2019 however no response was received for the application. Appropriate conditions relating to contacting Ausgrid prior to the issue of the construction certificate and generalized substation conditions have been imposed. Additionally, in accordance with Part 6 of the DCP 2013, it is required that an above-ground powerline is undergrounded therefore conditions have been imposed in the consent regarding this. The relevant clauses of the Infrastructure SEPP have been satisfied.

Botany Bay Local Environmental Plan 2013 (BBLEP)

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

| Principal Provisions of BBLEP 2013 | Complies Yes/No | Comment |
|---|-----------------------------------|---|
| Land use Zone | - | The site is zoned B5 Business Development zone under the BBLEP 2013. |
| Is the proposed use/works permitted with development consent? | Yes | The proposed commercial offices, food/drink premises and car park are permissible within the B5 Business Development zone under the BBLEP 2013. |
| Does the proposed use/works meet the objectives of the zone? | Yes | The proposed development is consistent with the following objectives of the B5 zone: <ul style="list-style-type: none"> To enable a mix of business and warehouse uses, and specialised retail premises that require a large floor area, in locations that are close to, and that support the viability of, centres. |
| Does Clause 2.5 and Schedule 1 – Additional Permitted Uses apply to the site? | N/A | Clause 2.5 does not apply to the subject site. |
| What is the height of the building? | Yes | The maximum height allowed on the site is 44 metres. The proposed height is 44 metres. The proposed development complies with the requirements of the BBLEP 2013. |
| What is the proposed FSR? | No – Refer to Note 1 below | 1 Chalmers Crescent has not been identified within the FSR map and does not contain an FSR standard however 3-5 Chalmers Crescent does have an FSR. The maximum FSR allowed on the site is 3:1. |

| Principal Provisions of BBLEP 2013 | Complies Yes/No | Comment |
|---|-----------------|---|
| | | <p>The site has an overall GFA of 11,967.5sqm which is an FSR of 3.79:1 (based on an overall site area of 3,154sqm).</p> <p>However, as there is no FSR on 1 Chalmers Crescent, the applicant and Council has carried out an assessment on 3-5 Chalmers Crescent which has a site area of 2,170.03sqm and a proposed GFA of 7,584sqm which equals an FSR of 3.495:1.</p> <p>The applicant has provided a Clause 4.6 variation on the calculable FSR on the site. This is discussed in greater detail in Note 1 below.</p> |
| Is the site within land marked "Area 3" on the FSR Map | N/A | The subject site is not identified as being within "Area 3" on the FSR map. |
| Is the land affected by road widening? | Yes | The site is not impacted by road widening |
| Is the site listed in Schedule 5 as a heritage item or within a Heritage Conservation Area? | Yes | The site is not a heritage item, it not located within a heritage conservation area and is not in close proximity to other heritage items. |
| The following provisions in Part 6 of the LEP apply to the development: | | |
| 6.1 – Acid sulfate soils (ASS) | Yes | The site is identified as being affected by Class 2 ASS. The development proposes minimal excavation therefore an acid sulfate soil management plan prepared by EI Australia accompanies the application and is acceptable. |
| 6.2 – Earthworks | Yes | The proposal seeks to excavate for the purposes of an on-site stormwater detention system. There is no basement level proposed as part of the development. It is unlikely the development will disrupt or negatively impact the neighbouring properties or the groundwater. |
| 6.3 – Stormwater management | Yes | An on-site stormwater detention system is proposed and is demonstrated in detailed stormwater management and drainage plans. The application was reviewed by Council's Development Engineer who had no objections to the proposal subject to conditions of consent. |
| 6.8 – Airspace Operations | Yes | The site is subject to a maximum height of 51 metres AHD. The proposal provides a maximum OLS height of RL 47.750 which is below the provision. |
| 6.9 – Development in areas subject to aircraft noise | Yes | The subject site lies within the 25-30 ANEF contour. An Acoustic Report, prepared Pulse Acoustic Consultancy on 25 January 2019, has been submitted with the development |

| Principal Provisions of BBLEP 2013 | Complies Yes/No | Comment |
|------------------------------------|-----------------|---|
| | | application, which indicates that the development has been designed to comply with the requirements of AS2021-2000. The development is considered to be consistent with Clause 6.9 of BBLEP 2013. |

Note 1 – Variation to the Floor Space Ratio development standard

Clause 4.4 of the BBLEP 2013 requires the development to have a maximum FSR of 3:1.

There is an anomaly on the FSR maps in the BBLEP 2013. 1 Chalmers Crescent has not been identified within the FSR map and does not contain an FSR standard however 3-5 Chalmers Crescent does have a maximum FSR of 3:1. After discussions with Council's Strategic Planning Team, it is acknowledged that there was a mapping error that has existed since the finalization of BBLEP 2013 by the Department of Planning. Council's strategic planning team is in the process of rectifying this error through a house keeping amendment however have been advised by the Department that a new planning proposal is to be sought for the correction and which would evidently not be resolved before the determination of the application.

The site has an overall GFA of 11,967.5sqm which is an FSR of 3.79:1 (based on a combined site area of 3,154sqm).

However, as there is no FSR on 1 Chalmers Crescent, the applicant and Council has carried out an assessment on 3-5 Chalmers Crescent which has a site area of 2,170.03sqm and a proposed GFA of 7,584sqm which equals an FSR of 3.495:1.

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

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

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

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

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

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

"The Floor Space Ratio Map shows the eastern portion of the site (3 and 5 Chalmers Crescent) within area 'V1' with a floor space ratio of 3:1 applying to this portion of the site. There is no specified floor space ratio for the western portion of the site (1 Chalmers Crescent). An extract of the Floor Space Ratio Map is included as Figure 1.



Figure 1:

Extract from
the BBLEP
FSR Map

Extent of Variation to the Development Standard

A gross floor area of 7,584 square metres is proposed on the eastern portion of the site (3 and 5 Chalmers Crescent) which equates to a floor space ratio of 3.495:1. The proposal therefore seeks to vary the floor space ratio development standard by 1,049.8 square metres or 16%.

Clause 4.6(3)(a) Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?

*Historically the most commonly invoked way to establish that a development standard was unreasonable or unnecessary was satisfaction of the first test of the five set out in *Wehbe v Pittwater Council* [2007] NSWLEC 827 which requires that the objectives of the standard are achieved notwithstanding the non-compliance with the standard.*

*In addition, in the matter of *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSWLEC 7 [34] the Chief Justice held that “establishing that the development would not cause environmental harm and is consistent with the objectives of the development standards is an established means of demonstrating that compliance with the development standard is unreasonable or unnecessary”.*

*This request addresses the five part test described in *Wehbe v Pittwater Council* [2007] NSWLEC 827, followed by a concluding position which demonstrates that compliance with the development standard is unreasonable and unnecessary in the circumstances of the case:*

1. the objectives of the standard are achieved notwithstanding non-compliance with the standard;

The specific objectives of the floor space ratio development standard, as specified in clause 4.4(1) of the Botany Bay Local Environmental Plan 2013 are identified below. A comment on the proposal’s consistency with each objective is also provided.

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

Whilst a floor space ratio standard is adopted for part of the site, Council has consistently varied this standard within the suburb of Mascot where a considered site analysis and careful spatial arrangement of built and landscape elements has demonstrated that an alternative floor space ratio is appropriate. Council has consistently accepted that there are certain circumstances where the established standard does not properly reflect the environmental capacity of a particular site and in these instances it has been appropriate to support an alternative FSR. By way of reference, it has been established that with a 44 metre height, an FSR of up to around 4:1 has consistently been demonstrated to represent an appropriate density within the suburb of Mascot. Examples of where an alternative FSR has been considered acceptable include:

| Site | FSR Control | Approved FSR | Approval Date |
|-------------------------|-------------|--------------|---------------|
| 19-33 Kent Road | 3.2:1 | 3.72:1 | 30/3/2014 |
| 13A Church Avenue | 3.2:1 | 3.6:1 | 11/6/2014 |
| 2-8 Sarah Crescent | 3:1 | 3.19:1 | 22/7/2014 |
| 246 Cowards Crescent | 3.2:1 | 3.88:1 | 11/9/2014 |
| 141 O'Riordan Crescent | 3.2:1 | 3.86:1 | 19/10/2016 |
| 256-280 Coward Crescent | 3.2:1 | 4.42:1 | 12/2/2015 |
| 7-9 Kent Road | 3.2:1 | 3.78:1 | Unknown |
| 42 Church Avenue | 3.2:1 | 3.32:1 | 20/7/2017 |
| 671-683 Gardeners Road | 3.2:1 | 3.43:1 | 19/1/2017 |
| 40 Ricketty Street | 3:1 | 3.78:1 | 12/6/2018 |

The proposed FSR is consistent with the pattern of variation to the FSR development standard and is therefore considered satisfactory with respect to objective (a) of the standard.

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

The envisaged scale of development within the area is established by the 44 metre height under the BBLEP 2013. The proposal is compliant with this height and so presents an appropriate scale of development.

The bulk of the development is mitigated through careful design which involves the commercial tower being setback and located above the podium and appearing as a lightweight and contemporary element to the building.

The setbacks of the tower comply with the front 9 metre setback and also exceed the minimum 2 metre side and rear boundary setback control.

Whilst the front setback for the ground and podium are less than the 9 metre setback suggested by the DCP, Council has recently varied this setback for the immediately adjacent development and the proposed development provides a correspondingly reduced

It has been demonstrated that the proposal provides an appropriate bulk and scale which is compatible with the emerging context of development within Mascot. Accordingly, the proposal satisfies objective (b) of the standard in that it provides an appropriate bulk and also scale and will be consistent with the desired future character of the locality.

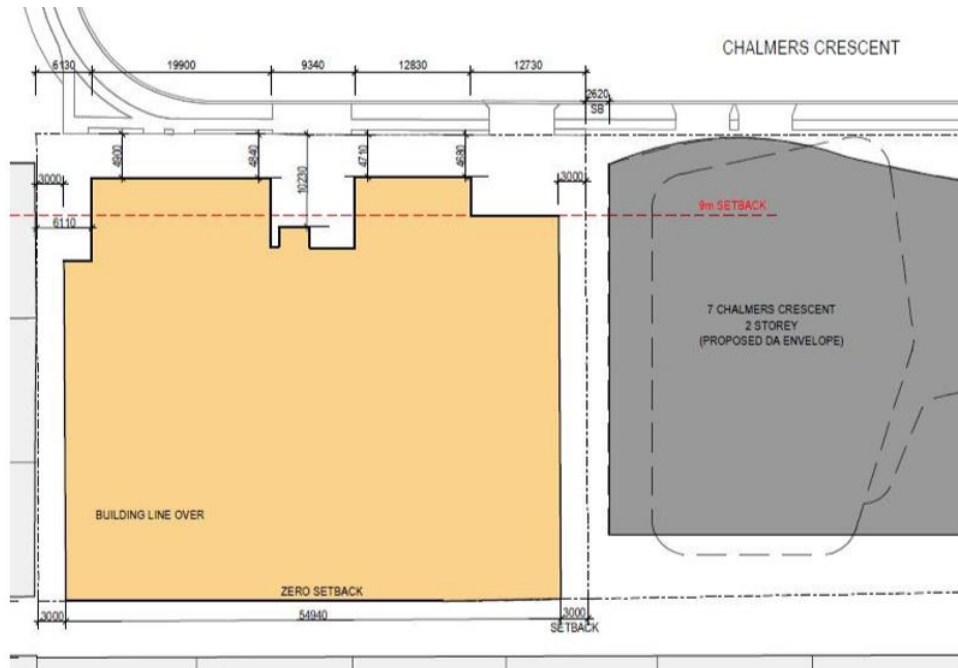


Figure 2: Comparison of ground level setbacks with adjacent approved building envelope

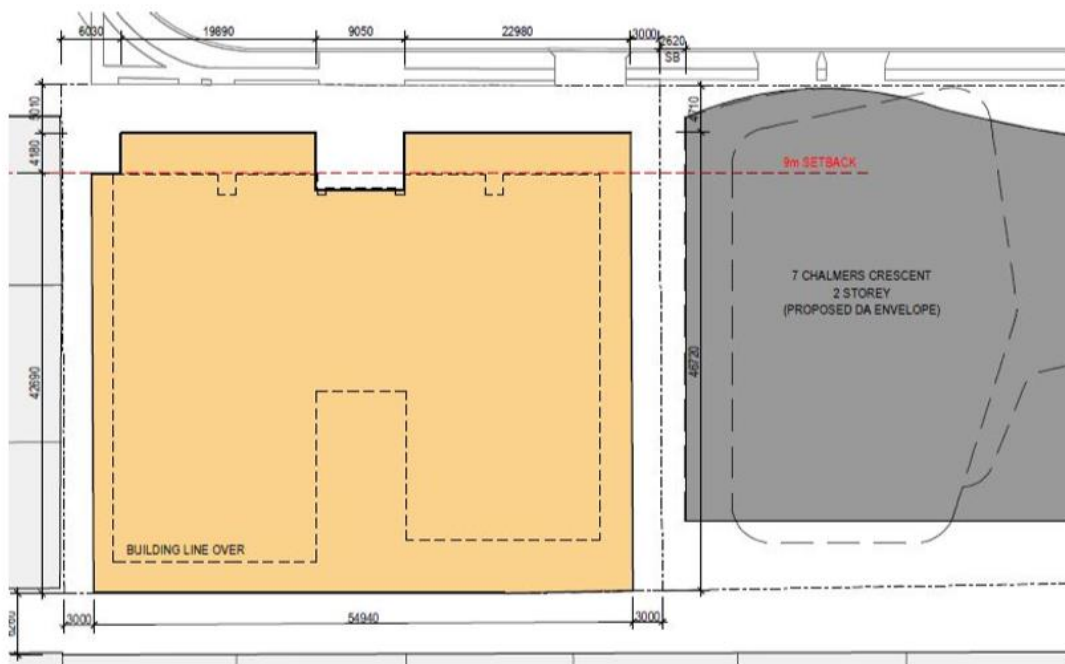


Figure 3: Comparison of podium level setbacks with adjacent approved building envelope

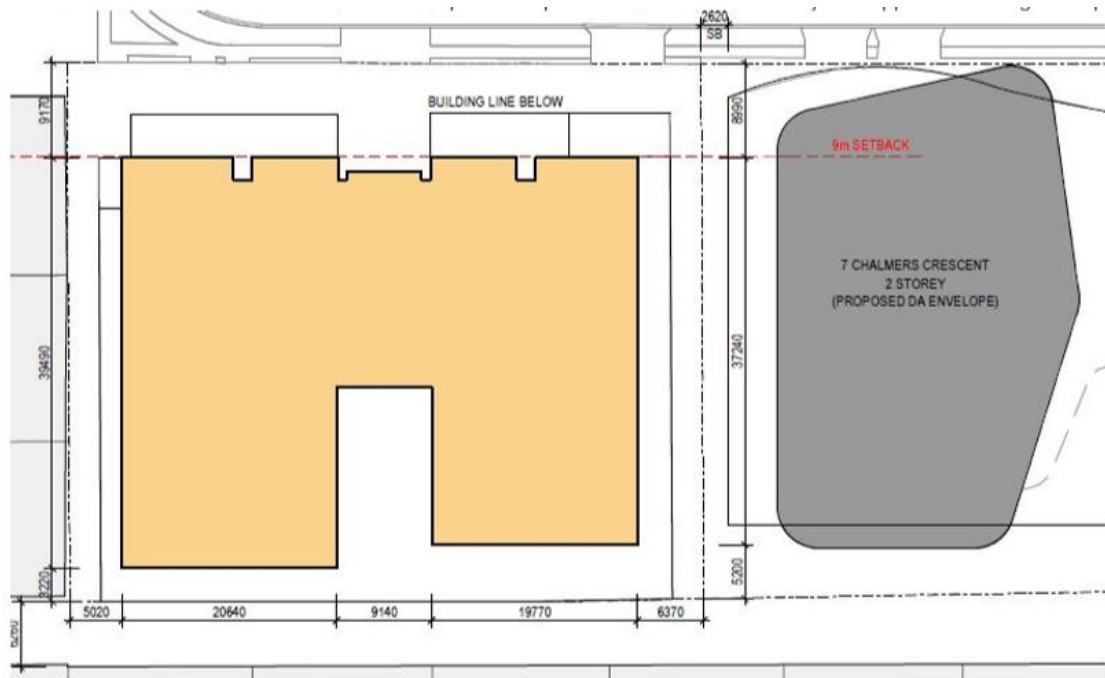


Figure 4: Comparison of ground level setbacks with adjacent approved building envelope

(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,

Land surrounding the subject site to the north, east and west generally contains older style industrial development and has been zoned to allow for substantial transformation through increased densities and building height. This is evidenced by the recent approval of Development Application DA15/191 that was approved by the Sydney Central Planning Panel on 1 March 2017 which provided Stage 1 concept approval for consolidation of 16 allotments known as 7-9, 14-18, and 19-21 Chalmers Crescent and the construction of four eight storey towers comprising primarily commercial uses with lower floor retail space above a single two-storey parking podium. Notwithstanding, the proposal will provide an appropriate visual relationship for existing development.

Accordingly, the proposal satisfies objective (c) of the standard.

(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 proposal is compliant with the maximum 44 metre height control and provides an appropriate bulk and scale which is commensurate with other new and approved buildings within the area. The proposed development will represent a high quality architectural outcome for the site that will positively contribute to the character of the Mascot Business Development Precinct. A varied palette and materiality are used to provide a clear identity for the development as well as to define the differing components of the building. The varied architectural language generates a high level of visual interest and will positively influence the ground floor plane to Chalmers Crescent by introducing an active frontage and landscaped character to the site that will significantly increase vegetation within the front building line to Chalmers Crescent. Accordingly, the proposal satisfies objective (d) of the standard.

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

The increased floor space beyond the control does not result in any additional adverse impact on the adjoining properties or the public domain and satisfies objective (e) of the standard.

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

The subject site is a large land holding which is demonstrated to have the environmental capacity to accommodate the proposed gross floor area without generating adverse impact. The density is similar to that of nearby approved development and in fact less than some recently approved developments including 40 Ricketty Street which has an FSR of 3.78:1. It has been demonstrated on many sites within Mascot that with a height of 44 metres it is possible to comfortably accommodate an FSR of up to 4:1 whilst meeting the various design criteria in Council's DCP to achieve a high level of internal amenity. Accordingly, it has been demonstrated that the subject site has the environmental capacity to absorb the proposed density, objective (f) of the standard is satisfied.

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

The proposal will provide for an increased employment density on the site. The increased floor space beyond the control will be used as office premises and will directly contribute to the economic growth of the area and satisfies objective (g) of the standard.

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

The underlying objectives and purpose of the floor space ratio control are relevant to the proposed development. However, the proposed development is consistent with those objectives on the basis that the proposed floor space ratio still results in a development which is consistent with the desired future character for the subject site and the Mascot precinct generally and sits comfortably within the context of the site with no significant adverse impacts to adjacent properties.

3. the underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;

The underlying objective of the floor space ratio control is to achieve an appropriate density on the site which is compatible with the context of the site. Due to the design, location and configuration of the proposed development, the proposal successfully achieves these objectives and will provide a considered built form response that will deliver a positive urban design outcome. However, strict compliance with the floor space ratio control would likely lead to a less satisfactory outcome as it would result a development which fails to fulfil the environmental capacity of the site and would result in an inferior built form that would be contextually inappropriate because it would result in inconsistent setbacks and height with the recently approved adjacent Stage 1 concept plan. Accordingly, it is considered that strict compliance would likely defeat the underlying objective or purpose of the floor space ratio control because it would encourage a less desirable outcome for the site.

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;

Council has historically consistently varied the floor space ratio development standard in circumstances where the objectives of the control are achieved and in doing so has consistently accepted that there are certain circumstances where the established standard does not properly reflect the environmental capacity of a particular site and in these instances it has been appropriate to support an alternative FSR.

Examples of where an alternative FSR has been considered acceptable include:

| Site | FSR Control | Approved FSR | Approval Date |
|-------------------------|-------------|--------------|---------------|
| 19-33 Kent Road | 3.2:1 | 3.72:1 | 30/3/2014 |
| 13A Church Avenue | 3.2:1 | 3.6:1 | 11/6/2014 |
| 2-8 Sarah Crescent | 3:1 | 3.19:1 | 22/7/2014 |
| 246 Cowards Crescent | 3.2:1 | 3.88:1 | 11/9/2014 |
| 141 O'Riordan Crescent | 3.2:1 | 3.86:1 | 19/10/2016 |
| 256-280 Coward Crescent | 3.2:1 | 4.42:1 | 12/2/2015 |
| 7-9 Kent Road | 3.2:1 | 3.78:1 | Unknown |
| 42 Church Avenue | 3.2:1 | 3.32:1 | 20/7/2017 |
| 671-683 Gardeners Road | 3.2:1 | 3.43:1 | 19/1/2017 |
| 40 Ricketty Street | 3:1 | 3.78:1 | 12/6/2018 |

5. the zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.

The proposed zoning of the land is considered to be reasonable and appropriate.

Strict compliance with the floor space ratio development standard is unreasonable and unnecessary in the circumstances of the case in that:

- The proposal has been designed to respond properly to opportunities and constraints of the site and is considered to provide an appropriate outcome having regard to the context of the site. A reduction in the floor space ratio of the development would not result in any meaningful difference in relation to the impact of the proposal however would diminish its fit within the context of the other approved towers with Chalmers Crescent. Furthermore, a reduction in floor space would unnecessarily reduce employment opportunities on an ideally located site, to the detriment of achieving the vision for the Mascot Business Development Precinct.*
- The height of the development complies with the 44 metre height limit under the BBLEP 2013 and so any reduction in density would not require a reduction to the overall height and scale of the development.*
- The proposed development provides both retail and office uses which will support the viability of the centre and provide much needed employment floor space in a location which is close Sydney Airport and various transport nodes.*
- The availability and capacity of local infrastructure and public transport supports the additional floor space proposed. The site is located in close proximity to Mascot Train Station and a range of bus services.*

- *The density proposed does not give rise to any unreasonable impacts on the adjoining properties in terms of overshadowing, loss of privacy or visual impact.*
- *The location of the subject site and restriction on car parking for the building is such that the proposed additional floor space does not generate any additional traffic beyond that which would be generated by a complying development on the site which would involve the same car parking provision.*
- *A high level of amenity is provided for occupants of the development.*
- *There is a sustained history over many years, including before the BBLEP 2013 came into effect, of Council supporting variations to the FSR control for many sites within Mascot where a considered site analysis and careful spatial arrangement of built and landscape elements has demonstrated that an alternative floor space ratio is appropriate, as is the case for the proposed development.*
- *Having regard to the planning principle established in the matter of Project Venture Developments v Pittwater Council [2005] NSWLEC 191 most observers would not find the proposed development offensive, jarring or unsympathetic to its location and the proposed development will be compatible with its context.*

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

The Land & Environment Court matter of Initial Action Pty Ltd v Woollahra Council [2018] NSWLEC 2018, provides assistance in relation to the consideration of sufficient environmental planning grounds whereby Preston J observed that:

- *in order for there to be 'sufficient' environmental planning grounds to justify a written request under clause 4.6, the focus must be on the aspect or element of the development that contravenes the development standard and the environmental planning grounds advanced in the written request must justify contravening the development standard, not simply promote the benefits of carrying out the development as a whole; and*
- *there is no basis in Clause 4.6 to establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant development*

There variation to the development standard in this instance is for FSR and unlike a variation to a height control for example, where there is a specific area of encroachment, there is not necessarily one specific area responsible for the FSR control. Notwithstanding, the proposed variation to the FSR control of 1,242.8 square metres could correlate with GFA on Level 10 and part of the GFA on Level 9. Alternatively, this area could also correlate with an office area of 155.5 square metres on each of the 8 office floor levels, which is equivalent of several office suites on each floor.

The environmental planning grounds that justify the component of the development which results in the FSR variation are:

- *The above identification of areas within the building which are equivalent to the additional 1,242.8 square metres is particularly useful in considering the environmental planning grounds associated with the proposed variation. The office tower is completely compliant in relation to height, front, side and rear setbacks and the removal of floor space either at the top of the building or from part of each level to simply achieve numerical compliance would not result in any improved outcome for the development and the adjacent properties. (In any event, even if several levels were removed from the top of the building, the floor to ceiling heights of the remaining levels could in theory be increased to compensate, resulting in an identical height for the building). The proposed tower has a scale and proportions as anticipated by the*

planning controls such that the proposed variation does not result in any detrimental impact or a built form outcome which differs from that which is expected on the site. Therefore, the appropriate contextual fit and compliance of the tower with the relevant planning controls provides an environmental planning ground to support the proposed variation.

- It is noted that Preston J provides that the development is not required to demonstrate a beneficial effect relative to a compliant development, however, in this instance it is considered that strict compliance would not achieve any improved outcome for the development and would in fact simply result in less employment floor space than that which is capable of being provided on the site within the environmental capacity of the site.*
- The proposed variation to the FSR control does not result in any adverse impacts to adjacent properties when compared to a compliant FSR.*
- The proposed variation to the FSR control does not result in any increased traffic impact when compared to a compliant FSR because the car parking provision is reduced on the site and the development in fact provides less car parking, and therefore less traffic, than that which could be provided under a compliant scheme. Specifically, the proposal provides 219 car parking spaces whereas an FSR compliant proposal could provide 227 car spaces.*
- The proposed FSR variation will provide for additional employment floor space which is an environmental benefit particularly in this location where Council is trying to encourage employment floor space to balance the significant delivery of residential floor space over recent years in the area. The additional employment floor space will support the viability of the centre and provide much needed employment floor space in a location which is close Sydney Airport and various transport nodes.*

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

‘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...’*

The proposed development is consistent with the aims of the Policy and the objects of the EP&A Act in that:

- Strict compliance with the development standard would result in an inflexible application of the control that would not deliver any additional benefits to the owners or occupants of the surrounding properties or the general public.*
- Strict compliance with the FSR standard in this particular instance would represent a departure from the manner in which the issue of FSR has been considered in recent times in Mascot to the significant detriment of the employment floor space on the site and with no measurable benefit for the public or surrounding properties. Accordingly, strict compliance would simply prevent the attainment of employment floor space which is within the demonstrated environmental capacity of the site.*
- The proposed variation allows for the most efficient and economic use of the land.*

On the basis of the above, it has been demonstrated that there are sufficient environmental planning grounds to justify the proposed FSR non-compliance in this instance.

Clause 4.6(4)(a)(i) consent authority satisfied that this written request has adequately addressed the matters required to be demonstrated by Clause 4.6(3)

Clause 4.6(4)(a)(i) states that development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3).

These matters are comprehensively addressed above in this written request with reference to the five part test described in *Wehbe v Pittwater Council* [2007] NSWLEC 827 for consideration of whether compliance with a development standard is unreasonable or unnecessary in the circumstances of the case. In addition, the establishment of environmental planning grounds is provided, with reference to the matters specific to the proposal and site, sufficient to justify contravening the development standard.

Clause 4.6(4)(a)(ii) consent authority satisfied that the proposal is in the public interest because it is consistent with the zone and development standard objectives

Clause 4.6(4)(a)(ii) states that development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied that 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.

Objective of the Development Standard

The proposal's consistency with the objectives of the development standard have been addressed in detail in this clause 4.6 request.

Objectives of the Zone

Clause 4.6(4) also requires consideration of the relevant zone objectives. The site is located within the B5 Business Development zone which has the following objective

- To enable a mix of business and warehouse uses, and bulky goods premises that require a large floor area, in locations that are close to, and that support the viability of, centres.

The proposal will provide for an increased employment density on the site compared to the maximum capacity available within the existing building. The proposed development provides retail and office uses which will support the viability of the centre and provide much needed modern employment floor space in a location which is in close proximity to Sydney Airport and various transport nodes including Mascot train station and is also well sited to encourage walking and cycling. For these reasons the proposal is considered to be consistent with the objective of the B5 zone.

Clause 4.6(5) Secretary Considerations

The matters for consideration under Clause 4.6(5) are addressed below:

(5) In deciding whether to grant concurrence, the Secretary must consider:

(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning,

The contravention of the standard does not raise any matters of significance for state or regional environmental planning. The development does not impact upon or have implications for any state policies in the locality or impacts which would be considered to be of state or regional significance.

(5) In deciding whether to grant concurrence, the Secretary must consider:

(b) the public benefit of maintaining the development standard,

This Clause 4.6 request has demonstrated there are significant environmental planning benefits associated with the contravention of the standard. There is no material impact or benefit associated with strict adherence to the development standard and in my view, there is no compelling reason or public benefit derived from maintenance of the standard.

Objectives of Clause 4.6

The specific objectives of Clause 4.6 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.

As demonstrated above the proposal is consistent with the objectives of the zone and the objectives of Clause 4.4 notwithstanding the proposed variation to the maximum FSR development standard.

Requiring strict compliance with the FSR development standard on the subject site would result in an outcome that would contextually be essentially no different from the proposed development and would not result in any meaningful benefit to the streetscape or the amenity of adjoining properties. Strict compliance would simply result in a loss of employment floor space below the demonstrated environmental capacity of the site.

Allowing the flexible application of the floor space ratio development standard in this instance is not only reasonable but also desirable given the context of the site and that the site has the environmental capacity to absorb the proposed density.

Accordingly, it is considered that the consent authority can be satisfied that the proposal meets objective 1(a) of Clause 4.6 in that allowing flexibility in relation to the floor space ratio development standard will achieve a better urban design outcome in this instance in accordance with objective 1(b)."

Council Officers' Comment:

The Clause 4.6 variation to the floor space ratio development standard has been assessed in accordance with the BBLEP 2013.

The applicant makes worthwhile points regarding to the non-compliance. The applicant has satisfied at least one of the tests outlined within *Wehbe v Pittwater Council* in that it is considered that the non-compliance has achieved the objectives of the standard therefore compliance is unnecessary. The applicant has also demonstrated that there are sufficient environmental grounds to support varying the standard.

It is supported that the proposal will successfully achieve the objectives of the clause and zone and provide a considered built form response that will deliver a positive urban design outcome. It is acknowledged that strict compliance with the floor space ratio control would likely lead to a less satisfactory outcome as it would result in a development which fails to fulfil the environmental capacity of the site and would result in an inferior built form that would be contextually inappropriate as it would result in inconsistent setbacks and height with the recently approved adjacent Stage 1 concept plan on the adjoining site to the east.

Additionally, the varied architectural language generates a high level of visual interest and will positively influence the ground floor plane to Chalmers Crescent by introducing an active frontage and landscaped character to the site that will significantly increase vegetation within the front building line to Chalmers Crescent. The argument that the proposal will provide for an increase employment density on the site is valid particularly as the objective of the zone requires any future development to allow for a mix of business and warehouses uses in locations that are close to, and that support the viability of, centres. A reduction in floor space would unnecessarily reduce employment opportunities on an ideally located site, to the detriment of achieving the vision for the Mascot Business Development Precinct.

Regarding whether the standard has been virtually abandoned or destroyed, Council maintains that the standard has not been abandoned or destroyed within the area. The argument that the standard has been abandoned within the Mascot Station Precinct is true, particularly in relation to floor space ratio, however the subject site does not fall within the catchment of the mixed use zone of this precinct but rather within a different zone and context to the centre. The developments that have been approved with a departure to FSR in the precinct cannot be relied upon to argue this case.

It is considered that both the LEP and DCP controls set the standard building envelope for the site. The proposal requires a maximum height of 44 metres and setbacks of 9 metres for the front setback, 2 metres for the side setbacks and a nil to 3 metre setback at the rear. The proposal is compliant in height, provides greater side setbacks, compliant rear setback and a slight departure to the front setback at the lower podium levels. The FSR control does not speak to the remaining controls with regard to the building form and general modelling of building envelopes for a site with an area greater than 3,000sqm results in a higher FSR and yield provided than if the site required setbacks greater than 6 metres and a lower height.

The proposal is consistent with the objectives of the standard and the applicant has satisfactorily established that the proposed variation is appropriate in maintaining and enforcing the development standard in these cases would be unreasonable and unnecessary and would not allow the orderly and economic development of this site. It is considered that the Clause 4.6 variation is well founded and has addressed the matters that are stated within Clause 4.6(3) and should be supported.

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

There are no current Draft EPIs applicable to this development

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

Botany Bay Development Control Plan (BBDCP) 2013

The most relevant and applicable clauses of the BBDCP 2013 are considered in the assessment of this development proposal and are provided below.

Part 3A – Parking and Access

| Part | Control | Proposed | Complies |
|--|---|---|-----------------------------------|
| 3A.2. Parking Provisions of Specific Uses | <p><u>Office premises:</u> 1 space/40sqm (req. 236 spaces)</p> <p><u>Café/Food and drink premises <100sqm:</u> 1 space/ 2 employees 1 space/3 seats 1 space/10sqm (req. 14 spaces)</p> <p><u>Commercial (shop):</u> 1 space/25sqm (req. 3 spaces)</p> <p>Total car parking spaces: 253 car spaces</p> <p><u>Loading spaces:</u></p> <p><u>Office premises (between 8,000sqm to 9,999sqm)</u> req. 4 courier spaces, one SRV space and 1 MRV space</p> <p><u>Retail premises (between 0-199sqm):</u></p> <p>Req. 1 SRV space</p> <p>Total: 7 loading bay spaces</p> | <p>The proposal provides a total of 219 car parking spaces within four levels of car parking podium. The car parking levels have not separated the car parking for the different uses however it is assumed that the café and retail space will have patrons from the office premises above. A traffic report and addendum letter prepared by Varga Traffic has been provided with the development application.</p> | No – Refer to Note 2 below |
| 3A.3.1 - Car Park Design | <p>C1 – All off-street parking facilities shall be designed in accordance with current Australian Standards AS2890.1 and AS2890.6. The design of off-street commercial vehicle facilities shall be in accordance with AS2890.2.</p> <p>C10 – Off street parking facilities are not permitted within the front setbacks</p> <p>C12 – Off street parking facilities must not dominate the streetscape and are to be located away from the primary frontages of the site.</p> | <p>All car parking spaces are in accordance with the Australian Standards. No car parking spaces are located within the front setback with all spaces encased within the building envelope. The car parking within the podium is obstructed by perforated screening along the Chalmers Crescent frontage and provides an attractive feature at podium level.</p> | Yes |
| 3A.3.2 – Bicycle Park Design | <p>C1 Bicycle parking areas shall be designed in accordance with Australian Standards AS2890.3 and</p> | <p>The development provides a total of 39 bicycle spaces. The proposal provides secure bicycle parking within the ground floor that is easily accessible from the</p> | Yes |

| Part | Control | Proposed | Complies |
|--|---|--|-----------------------------------|
| | <p>AUSTROADS Guide to Traffic Engineering Practice, Part 14, Bicycles.</p> <p>C2 Bicycle parking and access shall be designed to ensure that potential conflicts with vehicles are minimised.</p> <p>C3 Bicycle parking is to be secure (lockers, compounds or racks) and located undercover with easy access from the street and building entries.</p> <p>C4 End of trip facilities accessible to staff (including at least 1 shower and change room) are to be provided for all commercial, industrial and retail development.</p> | <p>street and building entries which will be designed to comply with the relevant Australian Standards. End of trip facilities are provided that include separate male and female showers and change rooms.</p> | |
| 3A.3.4 – On-Site loading and unloading facilities | <p>C2 The number of service bays shall be provided in accordance with Table 2. Where calculated provision of servicing bays numbers results in a fraction, the requirements shall be rounded up to the nearest whole number.</p> | <p>The proposal provides 1 loading bay capable of accommodating an SRV as well as 2 courier spaces/service bays.</p> <p>Whilst not strictly meeting the minimum requirement, having regard to the proposed use of predominantly small tenancy offices with minimum deliveries, adequate provision for parking of services vehicles is provided.</p> <p>Servicing of the development is addressed further within the Traffic and Parking Report prepared by Varga that accompanies the application.</p> | No – Refer to Note 2 below |

Note 2 – Departure in Car Parking and Loading and Unloading Spaces

Table 1 of Part 3A.2 – *Parking Provisions of Specific Uses* of the BBDCP 2013 provides the car parking rates for certain types of development and uses. In this case, the proposal requires 1 car space per 40sqm of office floor area, 1 space per 25sqm for a shop and 1 space per 2 employees, 1 space/3 seats and 1 spaces per 10sqm for a cafe. The proposal contains a total of 9,441sqm of office space, a total retail space of 76.8sqm and a café area of 97.6sqm. Therefore the proposal requires a total of 236 office car spaces, 3 retail spaces and approximately 14 spaces for the café. This results in a total of 253 car spaces required for the site. The proposal provides a total of 219 car spaces for the three separate uses. The car parking is contained within the podium which extends from ground level to Level 4.

The application was accompanied by a Traffic and Parking Impact Report prepared by Varga Traffic Parking Pty Ltd. The report goes into detail on the traffic generation impact and the provides justification for the car parking departure.

The applicant has proposed the following justification for the non-compliance in car parking within their SEE which has incorporated the comments made within the traffic and car parking report:

“Whilst Part 3A.2 of the DCP applies to the entire local government area of the former Botany Bay Council, Part 9A of the DCP applies to the Mascot Station Town Centre Precinct which is approximately 160 metres to the north of the subject site and Part 9A.4.4.9 Car Parking Rates of the DCP provides a significantly reduced car parking rate of 1 space per 80 square metres of gross floor area for new office development, which would require a parking provision of 118 parking spaces for the office component of the proposal. When combined with the 17 spaces required for the retail component, a total of 135 car parking spaces would be required.

Whilst this part of the DCP does not technically apply to the subject site, the reduced parking rate is derived from the Mascot Town Centre Precinct Transport Management and Accessibility Plan (Mascot TMAP) and the subject site is located within the study area to which the Mascot TMAP applies. The car parking rates and traffic analysis within the TMAP have therefore assumed an office car parking rate of 1 space per 80 square metres for the subject site and so it is considered that a reduced provision of office parking below the 1 space per 40 square metre rate is appropriate in this instance.

The proposal provides 202 car parking spaces for the office component which translates to a car parking rate of 1 space per 47 square metres for the office component which is only marginally less than the current DCP control of 1 space per 40 square metres. This car parking provision for the office component is considered appropriate in the circumstance of the site for the following reasons:

- The reduced car parking provision for the office component satisfies the first objective under Part 3A. 1.2 of the DCP to minimise car parking in areas which have good access to public transport to promote sustainable transport.*
- The DCP provides a pathway for considering a reduction in car parking in certain circumstances, including where a site is located adjacent to high-frequency public transport services and/or urban services. The subject site is located in close proximity to Mascot train station and a range of bus services. Pedestrian access to the train station has recently been significantly improved with the completion of nearby large scale mixed use developments which incorporate publicly accessible through-site links to provide a particularly pleasant pedestrian route to the train station.*
- Council has recently allowed substantial variation to the car parking provisions applicable to the site in its determination of the adjacent development which has a car parking provision of 1 space per 40 square metres of office space.*
- The proposed development encourages alternative transport options to the building with the provision of bicycle spaces and end-of-journey facilities within the ground floor.*
- The reduction in car parking provision on the site will achieve a positive outcome as it will serve to minimise traffic impacts associated with the proposed development which is of critical importance in this location, and will serve to encourage higher public transport patronage and well as walking and cycling.*

- *The Traffic and Parking Report prepared by Varga that accompanies the application also addresses the compliance with the car parking requirements and standards relating to the car park design and finds the proposal to be acceptable in terms of the provision of car parking for the demand created.*

The proposed provision of car parking is therefore appropriate for the site in the circumstances.”

The above justification has been considered and is found acceptable. The application was referred to both Council’s Development Engineer as well as RMS. RMS had no objections to the proposal subject to conditions incorporated within the consent. With regard to Council’s Development Engineer, the following comments were made:

“The applicant is short 34 spaces from the required amount in Part 3A of the Botany Bay DCP. Considering the condition of workplace travel plan and TAGs, the provision of 12 motorcycle parking spaces, 38 bicycle spaces, end of trip facilities and the close proximity of the development to Mascot Train Station which is less than 800 metres away, this is considered very supportable. A variety of transport options are available to staff in the development. Furthermore the Mascot Station redevelopment area only applies a rate of 1 space per 40sqm for office developments. This site is within close proximity and provides more parking than this rate. The site lacks a better pedestrian public domain connectivity to Mascot Station Precinct as the public domain and footpath connections are in poor condition. However, this area is in the process of being rejuvenated in the near future as this area is redeveloped.”

Based on both Council’s Development Engineers comments and the justification provided by the applicant, the departure in car parking is supported.

With regard to the proposed loading and unloading recommended in the proposal, the development generates a total of four courier van spaces, two SRV spaces and one MRV space. This results in a total of seven loading/unloading spaces to be provided. The development provides two courier spaces and one loading bay for SRV and MRV vehicles.

It is considered that there is adequate access provided for an MRV vehicle to be accommodated within the dedicated loading bay which is locating directly adjoining the entry driveway within the building envelope at ground level. Should the loading bay be used for garbage collection, the size of Councils’ garbage truck is similar to an MRV sized vehicle so this is considered acceptable and can handle the requirements for loading/unloading of the retail premises. Overall, the loading requirement is short as stipulated within Part 3A of the BBDCP however the amount of spaces provided is considered acceptable.

Both non-compliances in car parking and loading spaces is acceptable and supported in this instance.

Part 3C – Access and Mobility

An Access Report prepared by ABE Consulting accompanied the development application. The plans demonstrate that the proposal provides levelled access into the common areas and the commercial tenancies at ground level. Additionally, lift access is provided to the office spaces above in addition to eight (8) accessible car parking spaces are provided within the car parking levels. The development satisfies the provisions and controls of the DCP.

Part 3E – Subdivision and Amalgamation

The proposal seeks to consolidate 1 Chalmers Crescent and 3-5 Chalmers Crescent. It is not considered that the proposed consolidation will detract from the existing or prevailing subdivision pattern on the street which is generally varied. The proposed consolidation will allow for economic development of the site and represents a high quality architectural outcome for the site and the meets the desired future character of the Mascot area.

Part 3G – Stormwater Management

An on-site stormwater detention system is proposed for the site and this is demonstrated in detailed stormwater management and drainage plans prepared by Van Der Meer. The applicant has stated that the stormwater management system has been designed to provide measures regarding to water sensitive urban design and achieve consistency with regard to Part 10 – Stormwater Management Technical Guidelines of the BBDCP 2013.

The development proposal was referred to Council's Development Engineer who provided the following comments:

"Adjacent site DA- 15/191 included provision of new stormwater system connecting to existing infrastructure in Chalmers Crescent. This DA however was a concept DA, which created a masterplan for those sites and no subsequent detailed DA has been submitted for either of those sites. Nor does it appear that the masterplan DA consent has even been activated. The applicant has also argued that by splitting the outlets into two separate outs, halving the PSD to the kerb and gutter at those locations to 20 l/s. However, the site discharge still remains at 40 l/s. Furthermore, in areas which are relatively flat within such as the Mascot Station redevelopment and other areas of the Botany Bay Council, also due to the aging infrastructure, discharge that exceeded 10 l/s was conditioned by previous engineers to connect to underground stormwater drainage systems, with no connection provided to the kerb and gutter.

Furthermore, section 3.2(iii) states :if the site discharge is greater than 20 l/s, connection shall be made to Councils underground stormwater drainage system". It does not state "if the site discharge is greater than 20 l/s to the kerb and gutter, connection shall be made to Council's underground stormwater drainage system. Therefore splitting the outlets as proposed is not a supported method and neither is the argument regarding the development being over the two allotments and what the applicants engineer considers to be two different "sites" in regards to this point. The site discharge in the design storm event is 40 l/a with the implementation of the OSD so therefore connection shall be made to Council's underground stormwater infrastructure. The nearest pit is located at the intersection of Chalmers Crescent and Kent Road, approximately 100 metres away along the road reserve."

Therefore to address the above, Council's Development Engineer has imposed appropriate conditions of consent to amend the stormwater plan prior to the issue of a construction certificate which are included within the attached Schedule below.

Part 3H – Sustainable Design

The applicant has stated that the design of the building takes advantage of the sites northerly aspect and will receive excellent levels of solar access and natural ventilation. The proposed design and construction methodology reduce heat loss and gain in winter and summer to provide for natural ventilation, incorporating fittings and fixtures to minimize energy use, insulated roofing to limit heat gain and heat loss to the environment, and construction comprises high thermal mass components such as on-ground concrete slab flooring and concrete wall panels.

The proposal incorporates the use of glazing along the north, western and eastern building alignment. Apart from encouraging a sense of security and passive surveillance (see below), these windows will provide for a degree of solar heating for building users. The building would need to comply with Part J Energy Efficiency within the BCA which was prepared by Certified Energy.

Part 3I – Crime Prevention, Safety and Security

The proposed development provides opportunities for natural surveillance to Chalmers Crescent through the use of balconies and floor to ceiling windows. The applicant has stated that the entries to the development will be appropriately lit at night to enhance safety, visibility and legibility. Additionally, effective access control has been proposed through the provision of physical barriers to attract, channel and/or restrict the movement of people within the development. The internal areas within the development have been designed well to allow for passive surveillance through its frequent usage.

The application was referred to NSW Police who provided advisory conditions relating to surveillance and fencing. The proposal is considered to satisfy the provisions of the DCP.

Part 3J – Aircraft Noise and OLS

The provisions of Australian Standard AS2021-2000 have been considered in the assessment of the development application, as the subject site is located within the 25-30 ANEF contour. Commercial and office development in these areas is considered acceptable under Table 2.1 of Australian Standard AS2021-2000 unless an acoustic report is submitted to Council, which demonstrates that the proposed dwelling can achieve the requirements under Table 3.3 of AS2021-2000.

An acoustic report prepared by Pulse Acoustic Consultancy and dated 25 January 2019 has been prepared to accompany the development application.

The report demonstrates that the proposed development (when complete) will conform with the relevant requirements of AS2021-2000 provided the recommendations contained in the acoustic report are undertaken.

The standard requires that the external environment to the dwelling be considered for aircraft noise impacts. This process has taken the following into account:

1. There are existing industrial warehouses on site and the development proposes commercial development on the site;
2. The degree the land is affected by aircraft noise is related to the use and operation of the airport as it affects the subject commercial development;
3. Development in the immediate surrounding environment is commercial and industrial development; and
4. The outdoor environment, given the curfew and current operating patterns, are such that in daylight hours there will be sufficient opportunity to utilise the common terrace without the presence of aircraft noise.

The development consent will be conditioned to comply with the recommendations outlined in the acoustic report and the requirements of AS2021-2000.

Part 3K – Contamination

Refer to the discussion above in State Environmental Planning Policy (SEPP) No. 55 – Remediation of Land section of the report addressing contamination.

Part 3L – Landscaping and Tree Management

The development application was accompanied by a landscape plan prepared by Ground Ink. The proposal demonstrates landscaping along the street frontage of Chalmers Crescent at ground level and within the eastern and western boundary setbacks. Planters are proposed at ground level, Levels 1 to 3 and very small planters at Levels 5, 7 and 9. New trees (*Elaeocarpus eumundi*) are proposed along the western boundary of the site. Additionally the existing street tree in front of 3-5 Chalmers Crescent and the three *Callitris rhomboidei* (Port Jackson Pine) trees adjacent to 1 Chalmers Crescent are to be retained and protected during demolition and construction phases. Appropriate conditions have been imposed in the consent for their protection. As stated above in the Vegetation SEPP section of the report, the application was referred to Council's Tree Management Officer who recommended appropriate conditions.

The application was also reviewed by Council's Landscape Architect who provided the following commentary:

"In order to comply with the Botany Bay DCP, the landscape area shall represent a minimum of 10% site area which equates to 315sqm. In total the proposal provides 368.07sqm landscaping at ground level which represents 11.67%. Considering the total deep soil landscape treatment provided with high dense planting and the provision of high quality landscape treatment on slab to allow for appropriate privacy and amenity, the landscape area provided is sufficient subject to landscape plant species and minor amendments to the plan which will be addressed through conditions of consent. The Landscape Plan submitted is a very conceptual approach which will need to provide further details after approval and before the issue of the Construction Certificate."

It is acknowledged that the podium and office levels provide landscaping through planters. Therefore the total amount of landscaping provided is 26%. As stated above, appropriate conditions of consent have been imposed and are demonstrated within Schedule 1 below.

Part 3N – Waste Minimisation and Management

A Waste Minimisation Management Plan (WMMP) prepared by Waste Audit was submitted with the application. The plans demonstrate a common garbage storage room provided for the development at ground level. The plan demonstrates that the development will generate approximately 12,561 litres of waste per week which includes general waste, paper and cardboard waste and commingled recycling. It is also indicated that the building manager will present the bins from the waste storage rooms where a private contractor will pick up twice a week. The application was referred to Council's Waste Officer who supported the proposal. Appropriate conditions of consent regarding to waste disposal, management and minimisation have been incorporated within Schedule 1.

Part 6 – Employment Zones

The site is located within the Mascot Business Development Precinct which is bound by Coward Street to the north, Joyce Drive to the south and development on either side of O'Riordan Street. Relevant controls relating to the precinct and general employment zone are assessed below.

| Part 6 – Employment Zone | | |
|---|---|-----------------------|
| Control | Proposed | Complies |
| 6.2.4 Mascot Business Development Precinct | | |
| C1 Development is to encourage a higher public transport (including walking and cycling) use and include strategies to encourage and promote car sharing and car pooling strategies. In this respect a Workplace Travel Plan is to be lodged with the development application. | The site is located within 800 metres of Mascot Train Station which is to the north-east of the site. Additionally, the proposal provides ample bicycle and motorbike parking spaces within its car parking levels to accommodate and promote higher public transport. In addition to the above, a Workplace Travel Plan has been conditioned to be provided with regards to the development. | Yes |
| C2 Developments, including alterations and additions must: (i) Improve the appearance of buildings, particularly along the roads which serve a gateway function to Sydney Airport and the Sydney CBD; and (ii) Comply with Sydney Airport's regulations in regard to safety, lighting and height of buildings. | <p>The site is not considered to be on a primary road that would function as a gateway within the area and city but rather located on a cul-de-sac. Regardless, the development has been designed as a modern contemporary office/commercial building with high level of architectural merit with the front and rear elevations articulated and the incorporation of a variety of materials that will positively contribute to the character of the Mascot Business Development Precinct.</p> <p>The application was referred to SACL and appropriate conditions of consent have been provided.</p> | <p>Yes</p> <p>Yes</p> |
| C3 Development which seeks the maximum building height under the Botany Bay Local Environmental Plan 2013 and is within land bounded by Coward Street, O'Riordan Street and Bourke Road; development along eastern side of O'Riordan Street; and development within land bounded by Baxter Road, O'Riordan Street, Joyce Drive and Botany Road, will penetrate the Obstacle Limitation Surface (OLS) and would need to be assessed by CASA, Airservices Australia & the Airlines before an application could be submitted to the Department of Infrastructure & Transport for their determination. | The site does not fall within the stated areas. Regardless, the proposal complies with the OLS. | N/A |
| C4 Redevelopment of property must take into account any road widening affectation. | The site is not impacted by road widening. | N/A |

| Part 6 – Employment Zone | | |
|---|--|-----------------|
| Control | Proposed | Complies |
| C5 Development must not adversely affect the operation of duplication of the Sydenham-Botany Good Railway Line. | The site is not located in close proximity to the Sydenham-Botany Good Railway Line and will not adversely impact it. | N/A |
| C6 Development within 25 metres of either side of the centre line of the Airport Line Tunnel is to be referred to RailCorp. | The site is outside of the Airport Line Tunnel zone of influence. | N/A |
| C7 Development shall be designed and constructed in accordance with Australian Standard AS 2021 (Acoustic Aircraft Noise Intrusion-Building siting and Construction). | The site is located within the 25-30 ANEF Contour. An acoustic report has been provided with the application and appropriate recommendations have been imposed in the consent. | Yes |
| C8 The introduction of noise abatement measure to achieve compliance with current AS 2021 must be done in a manner that does not compromise the architectural design of a building or impact on the character of an existing streetscape. | Noise abatement measures have been included in the acoustic report as referenced above. | Yes |
| C9 All development that is in, or immediately adjacent to, the rail corridor or a busy road must be designed in accordance with NSW Department of Planning 'Development Near Rail Corridors and Busy Roads - Interim Guidelines, December 2008'. | The site is not in close proximity to a rail corridor or busy road. | N/A |
| C11 Any new development proposals (regardless of scale) which are located along O'Riordan Street or Robey Street (within the area defined within Figure 4 – Mascot Business Development Precinct) must be referred to Roads and Maritime for consultation at the Pre-DA stage. | The site is not located along O'Riordan Street or Robey Street. | N/A |
| 6.3.1 Amalgamation and Subdivision | | |
| C3 Where development or use of a number of existing lots is proposed, the lots shall be consolidated into one parcel, and the plan of consolidation lodged with the Land and | The site is currently two sites and will be consolidated into one site. The proposal will not detract from the existing or prevailing subdivision pattern which is currently varied. | Yes |

| Part 6 – Employment Zone | | |
|--|--|----------------|
| Control | Proposed | Complies |
| Property Information NSW Office prior to release of the Construction Certificate. Written notification as to the registration of the Consolidation Plan at the Land Titles Office is to be received by Council prior to the occupation of the premises or use of the site. | | |
| 6.3.2 Building and Site Layout | | |
| C1 A site analysis plan is to be lodged with the Development Application in accordance with the Council's Development Application Guide . | A site analysis plan has been provided with the development application. | Yes |
| C2 Through careful site arrangements new building works must : (i) Address the street and highlight any non-industrial aspects (ie office section) of the development; (ii) Avoid long blank walls of warehouse units facing the street and long continuous roof lines; and (iii) Provide regular modulation to the façade or division of massing. | The configuration of the ground floor plane provides for a fine grain active frontage with the buildings architecture combined with the public domain improvements, ground level commercial and café use and pedestrian entry that will serve to activate and enliven the street frontage of the site. The design provides differing architectural typologies for the upper and lower components of the building each with considerable articulation with the commercial tower appearing as a lightweight and contemporary element to the building. | Yes Yes |
| C3 Floor space is to be distributed on the site to ensure the scale of the building reinforces the role of the street and buildings are arranged and aligned to create a pleasant working environment. | No blank walls are proposed facing the street. The FSR has been distributed over the two sites and provides a prominent street frontage with articulated facade. The proposal has been designed to respond to opportunities and constraints on the site and is considered to provide an appropriate outcome having regards to the context of the site. | Yes Yes |
| C4 Setbacks are to be deep soil zones (refer to Part 3L - Landscaping for Definition). No part of the building or structure (including basement car parks, driveways, or OSD/infiltration system are to encroach into the setbacks. | Deep soil has been provided along the eastern and western setbacks with a small amount provided along the northern setback. | Yes |
| C5 Setbacks are to maximise the retention of existing trees and their root systems and may need to be variable to achieve this (includes trees on adjoining properties). | The existing trees located within the public domain along Chalmers Crescent are appropriately distanced from the development and will be protected during the demolition and construction stage. | Yes |

| Part 6 – Employment Zone | | |
|---|---|----------|
| Control | Proposed | Complies |
| C6 Internal spaces are to be designed to satisfy the operational requirements of the particular land use whilst providing a safe and convenient work environment. | The internal floor plates and the common areas are appropriately designed and operational. | Yes |
| C9 Adequate waste removal handling and minimisation facilities are to be provided on site for all development to ensure these facilities are not utilising car parking areas. | Waste storage rooms are proposed at ground level. Refer to Part 3N of the BBDCP 2013 section above. | Yes |
| C10 For new development (excluding multi-unit industrial development) all loading and unloading facilities and the majority of car parking required for the development is to be provided at the rear or at the side of any buildings. It is not to be provided at the front of buildings. Visitor car parking may be provided at the front of buildings behind the setback required in Part 6.3.5 - Setbacks. | The proposal provides a loading bay within the development directly adjacent to the ingress/egress point. This is further discussed in Note 2 above. All parking is located within the building with no hardstand spaces within the front setback. | Yes |
| C13 For sites in excess of 1,000m ² , an outdoor staff recreation area is to be provided. | Terraces are provided throughout the development that will exceed the minimum size and dimensions and will provide high quality break out spaces that will deliver considerable amenity for building occupants. A 511sqm rooftop terrace is provided which will receive adequate solar access and protection from the summer sun. | Yes |
| C15 Building entrances are to be clearly defined and located so that visitors can readily distinguish the public entrance to each building. Access to each entrance is to be provided by a safe direct route, avoiding potential conflict with vehicles manoeuvring on site. | The building entrances along Chalmers Crescent will be clearly defined and identifiable from the street. Vehicular access is separate to pedestrian access. | Yes |
| C16 Site planning is to allow for the retention of significant trees and vegetation, particularly near the street frontage. | Existing trees within the public domain are to be retained. There is no significant vegetation on the site. | Yes |
| 6.3.4 Building Design and Appearance | | |
| C7 All development applications involving external building works must be accompanied by a | The design report provided by the applicant contains a material palette demonstrating that the | Yes |

| Part 6 – Employment Zone | | |
|---|---|---|
| Control | Proposed | Complies |
| <p>schedule of finishes and a detailed colour scheme for all external walls.</p> <p>C8 External finishes must be robust and graffiti resistant. An anti-graffiti coating may be required where buildings adjoins a public place or accessible from an open area that is not secured by fences.</p> <p>C10 Walls of new development must make use of non reflective colours and materials to avoid glare. The maximum reflectivity of any glazing is not to exceed 20% to avoid nuisance in the form of glare to occupants of nearby buildings, pedestrians and motorists.</p> <p>C11 All elevations of a building fronting a public place, or visible from a rail line, public place or proposed road, must be constructed of face brickwork or other decorative facade treatment to Council's satisfaction. Consideration must be given to installing windows or false windows in the facade to enable surveillance of the adjoining area or to engender a feeling that it is being overlooked.</p> <p>C12 Buildings should be of a contemporary and innovative design. All public frontages should be specially articulated with the use of brick, stone, concrete, glass (non-reflective), and like materials, but not concrete render.</p> <p>C13 Open style or transparent materials are encouraged on doors and/or walls of lifts and stairwells, where fire safety requirements allow.</p> <p>C14 Building height, mass, and scale should complement and be in keeping with the character of</p> | <p>building will be constructed of concrete (light and dark), perforated screening and glazing.</p> <p>The design intention of the new development is to create a building which references the commercial use whilst providing differing architectural typologies for the upper and lower components of the building.</p> <p>Conditioned</p> <p>The proposed materials will not lead to hazardous, undesirable or uncomfortable glare to pedestrians, motorists or occupants of surrounding developments.</p> <p>A varied palette and materiality are used to provide a clear identity for the development as well as to define the differing components of the building.</p> <p>The proposal will deliver a modern commercial building of high architectural quality that is generally consistent with the design controls relevant to new development.</p> <p>The proposal utilises a large quantity of glass and perforated screening for the building.</p> <p>The building mass is appropriate and complements the approved concept bulk of the development to</p> | <p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p> |

| Part 6 – Employment Zone | | |
|---|--|------------|
| Control | Proposed | Complies |
| <p>surrounding and adjacent development.</p> <p>C15 New buildings must be designed to:</p> <p>(i) Address the street and highlight any non-industrial aspects (such as the office section) of the development;</p> <p>(ii) The administration office or showroom must be located at the front of the building;</p> <p>(iii) The front door to a building is to face the street;</p> <p>(iv) Building entrances should be clearly defined and well articulated through form, materials and colour and provide level or ramped access;</p> <p>(v) Waiting areas and entries to lifts and stairwells are to be close to areas of active use and be visible from building entrances;</p> <p>(vi) Windows on the upper floors of a building must, where possible, overlook the street;</p> <p>(vii) Avoid long blank walls of warehouse units facing the street and long continuous roof lines;</p> <p>(viii) New construction is to achieve both functional and visually attractive buildings;</p> <p>(ix) Provide regular modulation to the facade or division of massing;</p> <p>(x) Architecturally express the structure of the building by variation and minimal use of reflective glass;</p> <p>(xi) Visually reinforce entrances, office components and stair wells of units to create rhythm on long facades and reduce perceived scale;</p> <p>(xii) Introduce variation in unit design within building works;</p> <p>(xiii) Introduce solid surfaces, preferably masonry, and incorporate horizontal and</p> | <p>the east. The proposal is one of the first developments proposed for the street and will set a strong architectural outcome which should set a standard for the street.</p> <p>The varied architectural language generates a high level of visual interest and will positively influence the ground floor plane through the provision of active uses along the frontage and by introducing a landscaped character to the site.</p> <p>The commercial tower is setback and located above the podium and will appear as a lightweight and contemporary element to the building. The façade of the podium will give the podium a modern appearance with a high level of modulation within the façade treatment.</p> <p>The development has an excellent outlook to Chalmers Crescent with the primary lobby off the street and highly visible. Passive surveillance is provided from the floor to ceiling windows in the upper levels. No blank walls are proposed within the development. The materiality proposed is appropriate for the context of the site and the surrounding development and provides an architecturally pleasing development.</p> | <p>Yes</p> |

| Part 6 – Employment Zone | | | | | | | | | | | | | | | | | | | | |
|---|--|--|---------------------------------------|---|----------|-------------------------------|---|----------|-------------------------------|--|----------|--|---|----------|--|---------------------------|-----------------|-----------------|---|---|
| Control | Proposed | Complies | | | | | | | | | | | | | | | | | | |
| <p>vertical modulation including windows in appropriate proportions and configurations;</p> <p>(xiv) New development on corner sites must address both street frontages in terms of facade treatment and articulation of elevations; and</p> <p>(xv) Avoid bulky roof forms or extensive blank facades in a single material or colour.</p> <p>C28 For new development and substantial alterations to existing premises provision must be made for connection to future underground distribution mains. In such developments the following must be installed: (i) An underground service line to a suitable existing street pole; or (ii) Sheathed underground consumer mains to a customer pole erected near the front property boundary (within 1 metre).</p> <p>C34 Service areas including waste, recycling areas and external storage areas are to be located away from principal street frontages and screened from view</p> | <p>Appropriate conditions of consent are imposed requiring any powerlines to be undergrounded.</p> <p>All waste collection is to be carried out within the premises.</p> | <p>Yes</p> <p>Yes</p> | | | | | | | | | | | | | | | | | | |
| 6.3.5 Setbacks | | | | | | | | | | | | | | | | | | | | |
| <p>C1 Setbacks are to be in accordance with the following Table 1.</p> <p style="text-align: center;">Table 1 - Setbacks</p> <table border="1"> <thead> <tr> <th>Boundary</th><th>Landscaping Setback (Refer to Note 4)</th><th>Building Setback (Refer to Note 1)</th></tr> </thead> <tbody> <tr> <td>Front - to a non-classified road (Refer to Note 2)</td><td>3 metres</td><td>9 metres (Refer to Note 5)</td></tr> <tr> <td>Front - to a classified road (Refer to Note 2)</td><td>4 metres</td><td>9 metres (Refer to Note 5)</td></tr> <tr> <td>Side - adjoining a non-residential use/zone including lanes</td><td>2 metres</td><td>2 metres (Refer to Note 6 for corner sites)</td></tr> <tr> <td>Side - adjoining a residential use/zone or in the Council's opinion the building impacts on the streetscape</td><td>3 metres</td><td>3 metres (Refer to Note 6 for corner sites)</td></tr> <tr> <td>Rear (Refer to Note 3)</td><td>Nil to 3 metres</td><td>Nil to 3 metres</td></tr> </tbody> </table> <p>C4 Setbacks are to be deep soil zones</p> | Boundary | Landscaping Setback (Refer to Note 4) | Building Setback (Refer to Note 1) | Front - to a non-classified road (Refer to Note 2) | 3 metres | 9 metres (Refer to Note 5) | Front - to a classified road (Refer to Note 2) | 4 metres | 9 metres (Refer to Note 5) | Side - adjoining a non-residential use/zone including lanes | 2 metres | 2 metres (Refer to Note 6 for corner sites) | Side - adjoining a residential use/zone or in the Council's opinion the building impacts on the streetscape | 3 metres | 3 metres (Refer to Note 6 for corner sites) | Rear (Refer to Note 3) | Nil to 3 metres | Nil to 3 metres | <p>The development proposes the following setbacks:</p> <p><u>Northern (street) Setback:</u> 4.9 metres to 9 metres</p> <p><u>Eastern (side) Setback:</u> 3 metres</p> <p><u>Western (side) Setback:</u> 3 metres</p> <p><u>Southern (rear) Setback:</u> Nil setback</p> <p>The eastern, western and a small portion of the front setback is deep soil.</p> | <p>No – Refer to Note 3 below</p> <p>Yes</p> |
| Boundary | Landscaping Setback (Refer to Note 4) | Building Setback (Refer to Note 1) | | | | | | | | | | | | | | | | | | |
| Front - to a non-classified road (Refer to Note 2) | 3 metres | 9 metres (Refer to Note 5) | | | | | | | | | | | | | | | | | | |
| Front - to a classified road (Refer to Note 2) | 4 metres | 9 metres (Refer to Note 5) | | | | | | | | | | | | | | | | | | |
| Side - adjoining a non-residential use/zone including lanes | 2 metres | 2 metres (Refer to Note 6 for corner sites) | | | | | | | | | | | | | | | | | | |
| Side - adjoining a residential use/zone or in the Council's opinion the building impacts on the streetscape | 3 metres | 3 metres (Refer to Note 6 for corner sites) | | | | | | | | | | | | | | | | | | |
| Rear (Refer to Note 3) | Nil to 3 metres | Nil to 3 metres | | | | | | | | | | | | | | | | | | |
| 6.3.6 Parking and Vehicular Access | | | | | | | | | | | | | | | | | | | | |

| Part 6 – Employment Zone | | |
|--|---|----------|
| Control | Proposed | Complies |
| C1 All vehicles (including deliveries) are to enter and leave the site in a forward direction with no vehicles permitted to reverse from or onto public road. A Swept Path Analysis may be required for the largest vehicle accessing the site. | Vehicles enter and exit in a forward direction. Swept path diagrams have been provided with the development. | Yes |
| C5 All internal circulation roads, turning areas, parking aisles, parking bays, service areas and service bays are required to be sealed with hard standing all weather materials. Any alternative materials require Council approval. | Conditional. | Yes |
| C6 Separation of service areas (loading/unloading) and parking areas is required. | The development proposes a separate loading dock away from the car parking spaces associated with the commercial development. | Yes |
| C7 All loading and unloading operations shall only be carried out wholly within the dedicated service bays at all times and shall not be made direct from public places, public streets or any road related areas. | A dedicated loading bay is provided. | Yes |
| 6.3.7 Signage | | |
| C1 Signage shall comply with Part 3D - Signage. | There is no signage proposed. | N/A |
| 6.3.8 Site Facilities | | |
| C1 New site facilities such as mail boxes and electricity sub-stations shall be designed and/or sited so that they enhance the development. | No mailboxes are demonstrated on plans. This will be conditioned. | Yes |
| C3 The existing above ground electricity and telecommunication cables within the road reserve and within the site shall be replaced, at the applicant's expense, by underground cable and appropriate street light standards, in accordance with the Energy Providers guidelines. The applicant shall bear the cost of the new installation and the first 12 months of additional street light charges. | A condition of consent is imposed requiring undergrounding of powerlines and cables. The development proposes a substation. Appropriate conditions have been imposed. | Yes |

| Part 6 – Employment Zone | | |
|--|---|-----------------------|
| Control | Proposed | Complies |
| 6.3.9 Landscape | | |
| <p>C9 Not less than 10% of the development site shall be landscaped. On sites over 2000m² the front landscaped setbacks are additional to the 10% requirement. The majority of landscaping shall front the street/s to which the development has frontage and include side and rear landscaped areas.</p> <p>C14 Landscaped setbacks shall be in accordance with Part 6.3.5 - Setbacks are to be landscaped to provide an effective, purposeful and site responsive planting design to enhance the visual amenity of the development, particularly at the interface with residential development and the public domain.</p> | <p>The development will provide at least 368.07sqm which represents 11.67% of landscaped area. The majority of the landscaped area is within the side setbacks however the front setback allows for a larger area of deep soil for canopy trees. The development also proposes 14% landscaping through planter beds. Therefore the total amount of landscaping is 26%.</p> <p>The development provides an effective and site responsive planting design and provides appropriate amenity when viewed from the street.</p> | <p>Yes</p> <p>Yes</p> |
| 6.3.10 Fences | | |
| <p>C1 Fences are to be located behind the street frontage landscaped area or incorporated within the landscapes setback. All fencing along the street frontage is required to be permeable metal palisade or picket powdercoated in a suitable colour, dark colours are preferable. Maximum height is 1.8 metres on street frontages.</p> | <p>The development does not propose any fencing along the street frontage.</p> | <p>N/A</p> |
| 6.3.12 Noise and Hours of Operation | | |
| <p>C4 All applications for noise generating uses are to be accompanied by documentation from a qualified acoustic engineer certifying that the acoustic standards can be met.</p> <p>C9 Hours of operation for the use of a site are to be restricted by Council if it is at all likely that the use will cause an impact on any adjoining or adjacent residential development. Uses that operate outside of normal hours of operation (ie Monday to Friday 8am to 5pm and Saturdays 8am to 4pm) are required to submit a Plan of Management (POM).</p> | <p>An acoustic report was submitted with the development application.</p> <p>The proposal does not specify hours of operation however as the development is predominantly an office building, it is not considered to be a noise generating development. In regards to the café space at ground level, a separate application is to be sought for the use.</p> | <p>Yes</p> <p>Yes</p> |

| Part 6 – Employment Zone | | |
|--|--|----------|
| Control | Proposed | Complies |
| 6.3.13 Waste | | |
| C1 Development must comply with Part 3N – Waste Management and Minimisation. | A waste management plan prepared by Waste Audit accompanies the application which addresses waste management during demolition, construction and ongoing use. | Yes |
| 6.3.21 Business Premises and Office Premises in the B5 Business Development and B7 Business Park Zones | | |
| C1 Building expression through façade modulation, roof silhouette and the use of a variety of contemporary materials and finishes is required to achieve buildings that are of architectural merit, innovation, variety and attractiveness. There is to be a balance between the solid walls and openings and between horizontal and vertical planes. A Schedule of Finishes is required for new buildings. | <p>The proposal represents a new modern commercial building of high architectural quality. The design intention of the new development is to create a building which references the commercial use whilst providing differing architectural typologies for the upper and lower components.</p> <p>The proposed materials and finishes detailed in the architectural plan by Rothelowman architects which demonstrate that a valid palettes and materiality are used to provide a clear identity for the development as well as to define the differing components of the building.</p> | Yes |
| C2 Buildings are to have a clearly delineated entranceway to address its main frontage. Buildings on corner allotments shall include an accentuated form on the corner. Minor modulation in the height of buildings is required to reduce visual bulk and scale. | The front entry and common areas are appropriately positioned. The ground floor lobby is located central to the building and adjoins the proposed café space. The development is not considered to be bulky and is appropriate for the site. | Yes |
| C3 Signage is to be kept to a minimum to reduce visual clutter and confusion. All proposed signage must be shown in the building elevations and plans (refer to Part 3D - Signage). | No signage is proposed. | N/A |
| C4 Vehicle manoeuvring, circulation, access and parking shall be arranged on site to maximise the area available for landscaping. Excess hardstand areas should be minimised whilst designing manoeuvring, circulation, access and parking in accordance with Australian and Council standards. | Vehicle manoeuvring, parking access has been arranged to allow the front and side setbacks deep soil zones. No basement is proposed. Car parking spaces and access are compliant with the Australian Standards. | Yes |
| C5 Stormwater absorption basins are to be planted with trees (where concrete storage tanks do not exist underneath), groundcovers and native grasses instead of lawn. Species are to be tolerant of periodic inundation and waterlogging and | An on-site detention system is proposed. Appropriate conditions of consent are proposed. | Yes |

| Part 6 – Employment Zone | | |
|--|---|----------|
| Control | Proposed | Complies |
| not reduce the storage capacity of the basin. | | |
| C6 Hard paved areas shall be finished with unit pavers. Use contrasting finishes to break up large sections of paving and to delineate pedestrian areas, entries, car parks, special use areas or at transition zones between different uses. Porous paving should be utilised wherever possible. | Conditional | Yes |
| C7 There should be a balance between building footprint, parking/circulation and landscaping/open space. The majority of landscaping shall front the street/s to which the development has frontage and returning along the side boundaries of the setback. | <p>The development incorporates soft landscaping within the front and side building lines with the extent of hard paving minimized to that necessary to provide appropriate vehicular and pedestrian access to the development.</p> <p>The landscaping proposed within the front building line will complement the existing minimally landscaped character of Chalmers Crescent, but will provide some softening of the proposed development from the street.</p> | Yes |
| C8 Underground parking shall be situated underneath the building footprint so that the majority of landscaping will be on natural ground to allow for deep root planting. As a minimum, landscaping along the frontage/s and abutting residential land uses shall be on natural ground. Deep root planting is planting that is not on a suspended concrete slab and not over an underground car park (refer to Part 3L - Landscaping and Part 6.3.9 - Landscape). | There is no basement car park proposed. | N/A |
| C9 Underground OSD (stormwater) detention tanks are not to be located underneath areas to be landscaped or planted. An alternative location ie. underneath driveways, car parks or pavements is required. No stormwater inlet pits or piping are to be located within the drip line of existing trees. | The OSD has been appropriately been located under the building. | Yes |
| C11 Landscaping is to be designed to reduce the bulk, scale and size of buildings, to shade and soften hard paved areas, to create a comfortably scaled environment for pedestrians in the public domain or from within the site and to | The proposal provides 11.67% landscaping at ground level along the front and side boundary setback areas however the proposal provides a further 14% equivalent site area as landscaping in planters throughout the building with a total landscaping provision of 26% site area. | Yes |

| Part 6 – Employment Zone | | |
|--|---|-------------|
| Control | Proposed | Complies |
| screen unsightly areas. Emphasis is to be placed on leafy internal road corridors and a landscaped setback designed for softening of buildings. | | |
| C13 Landscaping in the public domain is to reinforce existing streetscape planting themes and patterns. Council may require street tree planting, grassing, shrub and accent planting or any combination of these. Streetscape beautification may also include re-paving the public footway with pavers. | The proposed landscaping will provide an improved landscaped setting in relation to the existing site circumstance and the overall development will provide a significant improvement to the Chalmers Crescent Streetscape. | Yes |
| C14 There shall be a minimum landscaped setback of 3 metres on all street frontages, and 4 metres on classified roads. The landscaped setback may be varied by Council to enable landscaping to be in proportion to the height of the building, on large development sites or to be consistent with setbacks in the street. For example, buildings greater than 4 storeys in height will usually require a larger landscaped setback. | Landscaped setback has been discussed in greater detail above and in Note 3 below. | Appropriate |
| C15 Not less than 10% of the site area shall be landscaped. New commercial development shall allocate landscaping in accordance with the following ratios: Site Area Minimum Landscape Proportion 0- 2000m ² 10% 2000 m ² -5000m ² 20% >5000m ² 30% | The site proposes a total of 26% landscaping with 11.67% located at the ground level and 14% located on the podium and upper levels. | Yes |

Note 3 – Building and Landscape Setbacks

Control C1 of Part 6.3.5 – Setbacks of the BBDCP 2013 require new developments to have a 9 metre building setback (3 metre landscape setback), side setbacks of 2 metres and rear setbacks between nil to 3 metres. The proposed development provides the following setbacks:

- Front Setback – 4.9 metres to 9 metres
- Side Setbacks – 3 metres
- Rear Setback – Nil

As demonstrated above, the side and rear setbacks comply however the front setback does not. The point of non-compliance is contained at the ground level and podium level. The tower levels above Level 3 have a setback of 9 metres which is compliant. The applicant provided a justification for the non-compliance as follows:

“The proposal is provided with a variable front setback from the Chalmers Crescent frontage of 4.9-9m on the ground level, 3m on the podium levels, and 9m for the tower levels.

The proposed setbacks have been designed to be generally consistent with the recently approved development at 7-9 Chalmers Crescent where it adjoins the subject site, and the general character of other development in the vicinity of the site that is typically provided with nil or minimal setback from Chalmers Crescent. The proposal provides for increased setbacks in locations at the ground floor to provide meaningful landscape pockets and recesses, and variable setbacks on the upper levels to achieve a high level of façade modulation which results in the development having an acceptable visual bulk impact when viewed from surrounding properties and the public domain with the development sitting comfortably within the streetscape of Chalmers Crescent.

The proposal is provided with a 3 metre setback from both side boundaries with exceeds the minimum required 2 metres. The proposal provides a nil setback from the southern rear boundary for the podium levels which is appropriate having regard for the character of surrounding development, however, introduces variable setbacks for the office levels above of between 3.2 metres to 5.2 metres.”

Council has considered the applicants justification and while cannot support the front setback based on the existing front setbacks found on the street, it is acknowledged that the non-compliance does not extend along the whole façade but contained to a small portion of the development. The areas of non-compliance are distinguished by a materiality variation with perforated screening proposed to extend outside the required building envelope to allow for a break in the built form and articulated façade and podium. Consideration of the concept development application approved to the east of the site, which had a front setback less than 3 metres, is a factor in allowing a minor variance to the setback for the subject proposal. Additionally, the amended development has significantly pulled back the building from its original scheme which had components of the towers protruding within the 9 metre setback zone. With the towers now compliant, Council supports the minor non-compliance which is acceptable considering the minimal impact onto the surrounding developments.

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

The proposed development is inconsistent with the relevant provisions of the *Environmental Planning and Assessment Regulation 2000*.

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

As outlined in the assessment above, the proposed development will have significant adverse environmental, social or economic impacts in the locality.

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

The site is affected by aircraft noise being situated within a 25-30 ANEF Contour. The proposal was accompanied by acoustic report which has been reviewed and is acceptable subject to conditions imposed in the consent for the development to comply.

Adequate information has been submitted to demonstrate that the site can be made suitable for the proposed development. Further discussion relating to this issue has been carried out

within SEPP No. 55 section of the report above. Appropriate conditions have been recommended in the attached Schedule.

Regarding the traffic generated from the development, the departure in car parking is acceptable as the development is within close proximity to Mascot Train Station. Additionally the development encourages the use of public transport or cycling to the site. Traffic impacts have been considered and are satisfactory. RMS raised no objection to the proposal and has not requested any additional information.

The plans do not surpass the overall height to comply with the OLS limit of 51m AHD. SACL have raised no objection to the height of the proposed development.

The proposed use as commercial offices, food and drink premises and car park is permissible within the B5 - Business Development zone as identified within the BBLEP 2013 and achieves the objectives and controls of both the BBLEP and BBDCP 2013. It is considered that the development is suitable for the site.

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

In accordance with Part 2 of the Botany Bay DCP 2013 – Notification and Advertising, the application was placed on public exhibition for a fourteen (14) day period from 27 February and 13 March 2019. No objections were received as part of the notification period.

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

It is considered that granting approval to the proposed development will have significant adverse impact on 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.

| Referral Agency | Response Date | Comments |
|---------------------------|----------------------|---|
| External Referrals | | |
| SACL | 4 March 2019 | No objections. The conditions have been included in the Schedule of Consent Conditions. |
| Sydney Water | 4 April 2019 | No objections. The conditions have been included in the Schedule of Consent Conditions. |
| NSW Police | 4 April 2019 | No objections. Advisory Conditions have been provided. |
| RMS | 13 March 2019 | No objections. The conditions have been included in the Schedule of Consent Conditions. |
| Telstra | 1 March 2019 | No objections. The conditions have been included in the Schedule of Consent Conditions. |
| Ausgrid | - | No response has been provided yet. |

| Referral Agency | Response Date | Comments |
|---------------------------|---------------|--|
| Internal Referrals | | |
| Landscape Architect | 8 July 2019 | Conditions have been incorporated into the Schedule of Consent Conditions. |
| Development Engineer | 5 July 2019 | Conditions have been incorporated into the Schedule of Consent Conditions. |
| Environmental Scientist | 15 July 2019 | Conditions have been incorporated into the Schedule of Consent Conditions. |
| Tree Management Officer | 1 March 2019 | Conditions have been incorporated into the Schedule of Consent Conditions. |
| Waste Officer | 2 April 2019 | Conditions have been incorporated into the Schedule of Consent Conditions. |

Section 7.11 Contributions

It is considered that the proposed development will increase the demand for public amenities within the area, and in accordance with Council's Section 7.11 Contribution Plan 2016. The site is located within the Mascot Station Precinct Area therefore contributions are based on the number of workers generated by the use.

The number of workers that are generated from 9,639.6sqm of office floor space is 544.6 workers. The number of workers that are generated from the café/shop (based on a GFA of 174.4sqm) is 7.8 workers. This is a total of 552.4 workers.

The existing development on the site has 49 existing workers therefore a credit for these workers has been applied.

Therefore the total amount of workers that the development generates is 503.4 workers. The rate per worker in 2019/2020 year is \$5,060.77. The total amount of contributions that is generated by the development is **\$2,547,747.48**. This is indexed at July 2019.

The contributions are broken down as follows:

Community Facilities – \$208,553.56

Recreation and Open Space – \$2,151,678.98

Transport Facilities – \$168,964.30

Administration - \$18,550.64

Conclusion

In accordance with Schedule 7 of the State Environmental Planning Policy (State and Regional Development) 2011, the Application is referred to the Sydney Eastern City Planning Panel (SECPP) for determination.

The non-compliance in the floor space ratio has been considered as part of the Clause 4.6 variation submitted by the applicant. Council is of the opinion that the Clause 4.6 variation demonstrates that the proposal is not unreasonable or unnecessary in this instance and should be supported. The departure in the car parking numbers is supported as the

developments' proximity to Mascot Train Station lends itself to the opportunity for less traffic generation onto the surrounding road network as well as encourages the use of public transport.

The property's presentation in a streetscape context will be enhanced as a consequence of the proposed development given its high quality form. The non-compliance in the front building setback controls allows the built form to provide an articulated form which provides differing architectural typologies for the upper and lower components.

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 B5 Business Development zone and is considered to result in a development which is suitable in the context. This is further emphasised as the proposal did not receive any objections during the public notification period. Therefore, the proposal is recommended for approval subject to the conditions of consent in the attached Schedule.

Attachment

Schedule 1 – Conditions of Consent

Premises: 1-5 Chalmers Crescent, Mascot

Da No.: DA-2019/47

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 |
|----------------------------------|--------|---|
| TP00.003 – Site Plan- Rev A | | Dated 19 June 2019; Received 2 July 2019 |
| TP00.05 – Demolition Plan- Rev A | | Dated 19 June 2019; Received 2 July 2019 |
| TP01.01 – Ground Level- Rev A | | Dated 19 June 2019; Received 2 July 2019 |
| TP01.02 – Mezzanine- Rev A | | Dated 19 June 2019; Received 2 July 2019 |
| TP01.03 – Level 1- Rev A | | Dated 19 June 2019; Received 2 July 2019 |
| TP01.04 – Level 2- Rev A | | Dated 19 June 2019; Received 2 July 2019 |
| TP.01.05 – Level 3- Rev A | | Dated 19 June 2019; Received 2 July 2019 |
| TP.01.06 – Level 4, 6, 8- Rev A | | Dated 19 June 2019; Received 2 July 2019 |

| | | |
|---|---------------------------------|---|
| TP01.07 – Level 5, 7, 9- Rev A | Rothelowman | Dated 19 June 2019; Received 2 July 2019 |
| TP01. - Rev A 08 – Level 10- Rev A | | Dated 19 June 2019; Received 2 July 2019 |
| TP01.09 – Roof- Rev A | | Dated 19 June 2019; Received 2 July 2019 |
| TP02.01 – North Elevation- Rev A | | Dated 19 June 2019; Received 2 July 2019 |
| TP02.02 – South Elevation- Rev A | | Dated 19 June 2019; Received 2 July 2019 |
| TP02.03 – West Elevation- Rev A | | Dated 19 June 2019; Received 2 July 2019 |
| TP02.04 – East Elevation- Rev A | | Dated 19 June 2019; Received 2 July 2019 |
| TP03.01 – Section A- Rev A | | Dated 19 June 2019; Received 2 July 2019 |
| T- Rev A P03.02 – Section B- Rev A | | Dated 19 June 2019; Received 2 July 2019 |
| TP06.01 - Rev A – Area Compliance Diagrams- Rev A | | Dated 19 June 2019; Received 2 July 2019 |
| TP06.02 – Setback Diagram- Rev A | | Dated 19 June 2019; Received 2 July 2019 |
| Material Palette | Rothelowman | Dated February 2019; Received 12 February 2019 |
| LDA-01 – GF Landscape Plan- Rev C | Ground Ink Landscape Architects | Dated 4 February 2019; Received 12 February 2019 |
| LDA-02 – Podium Planting Plan- Rev C | | Dated 4 February 2019; Received 12 February 2019 |
| LDA-03 – Podium Plant Palette- Rev C | | Dated 4 February 2019; Received 12 February 2019 |
| LDA-04 – Landscape Details- Rev C | | Dated 4 February 2019; Received 12 February 2019 |

| Reference Document(s) | Author | Dated / Received by Council |
|---|------------------------------------|---|
| Design Report | Rothelowman | Dated February 2019; Received 20 June 2019 |
| Amended Statement of Environmental Effects and Clause 4.6 variation | Sutherland and Associates Planning | Dated June 2019; Received 2 July 2019 |
| Accessibility Review Report | ABE Consulting | Dated 5 February 2019; Received 12 February 2019 |
| Acid Sulfate Soil Management Plan | EI Australia | Dated 23 October 2018; Received 12 February 2019 |
| Acoustic Assessment Report | Pulse Acoustic Consultancy | Dated 25 January 2019; Received 12 February 2019 |
| Addendum to Traffic Report | Varga Traffic Planning Pty Ltd | Dated 18 April 2019; Received 1 May 2019 |
| BCA and Access 2016 A1 – Indicative Compliance Report | Building Innovations Australia | Dated 8 February 2019; Received 12 February 2019 |
| Construction Management Plan | Platform Project Services Pty Ltd | Dated February 2019; Received 12 February 2019 |

| | | |
|---------------------------------------|--------------------------------|---|
| Flood Impact Report | ACOR Consultants | Dated 16 October 2018; Received 12 February 2019 |
| Geotechnical Assessment Report | EI Australia | Dated 13 September 2018; Received 12 February 2019 |
| Preliminary Site Investigation | EI Australia | Dated 10 May 2019; Received 13 May 2019 |
| Section J Energy Efficiency Report | Certified Energy | Dated 18 January 2019; Received 12 February 2019 |
| Stormwater Management Report | Van der Meer | Dated September 2018; Received 12 February 2019 |
| Traffic and Parking Assessment Report | Varga Traffic Planning Pty Ltd | Dated 7 February 2019; Received 12 February 2019 |
| Waste Management Plan | Waste Audit | Dated January 2019; Received 12 February 2019 |
| Pedestrian Wind Environment Statement | WindTech | Dated 4 February 2019; Received 12 February 2019 |

No construction works (including excavation) shall be undertaken prior to the issue to the Construction Certificate.

- 2 This Consent relates to land in Lot 100 in DP 580123 and Lot 1 in DP 1005951, 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.

CONDITIONS IMPOSED BY AN EXTERNAL AUTHORITY

Where relevant, the following external authority conditions apply:

- 5 The following conditions are imposed by **Sydney Airport Corporation Limited (SACL)**:

- a) This location lies within an area defined in schedules of the Civil Aviation (Buildings Control) Regulations which limit the height of structures to 15.24 metres above existing ground height (AEGH) without prior approval of the Civil Aviation Safety Authority.
- b) The application sought approval for the PROPERTY DEVELOPMENT to a height of 47.8 metres Australian Height Datum (AHD).
- c) In the capacity as Airfield Design Manager and an authorised person of the Civil Aviation Safety Authority (CASA) under Instrument Number: CASA 229/11, in this instance, the Airfield Manager has no objection to the erection of this development to a maximum height of 47.8.0 metres AHD.
- d) The approved height is inclusive of all lift over-runs, vents, chimneys, aerials, TV antennae, construction cranes etc.
- e) Should you wish to exceed this height a new application must be submitted.
- f) Should the height of any temporary structure and/or equipment be greater than 15.24 metres AEGH, a new approval must be sought in accordance with the Civil Aviation (Buildings Control) Regulations Statutory Rules 1988 No. 161.
- g) Construction cranes may be required to operate at a height significantly higher than that of the proposed development and consequently, may not be approved under the Airports (Protection of Airspace) Regulations.
- h) Sydney Airport advises that approval to operate construction equipment (ie cranes) should be obtained prior to any commitment to construct.
- i) "Prescribed airspace" includes "the airspace above any part of either an Obstacle Limitation Surface (OLS) or Procedures for Air Navigation Services – Aircraft Operations (PANS-OPS) surface for the airport (Regulation 6(1)).
- j) The height of the prescribed airspace at this location is 51 metres above AHD.

Planning for Aircraft Noise and Public Safety Zones

- k) Current planning provisions (s.117 Direction 3.5 NSW Environmental Planning and Assessment Act 1979) for the assessment of aircraft noise for certain land uses are based on the Australian Noise Exposure Forecast (ANEF). The current ANEF for which Council may use as the land use planning tool for Sydney Airport was endorsed by Airservices in December 2012 (Sydney Airport 2033 ANEF).
- l) Whilst there are currently no national aviation standards relating to defining public safety areas beyond the airport boundary, it is recommended that proposed land uses which have high population densities should be avoided.

6 The following conditions are imposed by **Telstra**:

- a) The applicant shall contact "Dial Before You Dig" to obtain a utility service diagram for, and adjacent to the property as Telstra and NBN have network in this location. 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.

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

- a) The layout of the proposed car parking areas associated with the subject development (including, driveways, grades, turn paths, sight distance requirements in relation to landscaping and/or fencing, aisle widths, aisle lengths, and parking bay dimensions) should be in accordance with AS 2890.1-2004, AS2890.6-2009 and AS 2890.2-2018 for heavy vehicle usage. Parking Restrictions may be required to maintain the required sight distances at the driveway.
- b) The swept path of the longest vehicle (including garbage trucks, building maintenance vehicles and removalists) entering and exiting the subject site, as well as manoeuvrability through the site, shall be in accordance with AUSTROADS. In this regard, a plan shall be submitted to Council for approval, which shows that the proposed development complies with this requirement.
- c) A Construction Pedestrian Traffic Management Plan (CPTMP) should be submitted in consultation with Roads and Maritime and Bayside Council, prior to the issue of a Construction Certificate. The CPTMP needs to include, but not be limited to, the following: construction vehicle routes, number of trucks, hours of operation, access arrangements and traffic control, taking into consideration the cumulative traffic impacts of other developments in the area.

8 The following advisory conditions are imposed by **NSW Police**:

- a) CCTV and adequate lighting should be installed and operational outside of premise focusing significantly at entry / exit points of building.
- b) CCTV and adequate lighting should be installed and operational throughout carpark.
- c) Cash on premises should be secured at all times.
- d) Once construction completed, secure fencing is recommended to surround the premise, to deter undesirable persons entering the grounds and opportunistic crime from occurring.

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

- a) 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 TM online self-service replaces our Quick Check Agents as of 30 November 2015.

The Tap in™ service provides 24/7 access to a range of services, including:

- (i) building plan approvals

- (ii) connection and disconnection approvals
- (iii) diagrams
- (iv) trade waste approvals
- (v) pressure information
- (vi) water meter installations
- (vii) pressure boosting and pump approvals
- (viii) changes to an existing service or asset, e.g. relocating or moving an asset.

Sydney Water's Tap in™ online service is available at:
<https://www.sydneywater.com.au/SW/plumbing-building-developing/building/sydney-water-tap-in/index.htm>

- b) A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained from Sydney Water prior to development commencement. It is recommended that the Council includes this term as a Condition of the DA approval.

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.

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

10 The proposed development shall comply with the following:

- (a) A sign must be erected in a prominent position on any work site on which work involved in the erection or demolition of a building is being carried out:
 - (i) Stating that unauthorised entry to the work site is prohibited;
 - (ii) Showing the name of the person in charge of the work site and a telephone number at which that person may be contacted outside working hours;
 - (iii) The Development Approval number; and
 - (iv) The name of the Principal Certifying Authority including an afterhours contact telephone number.
- (b) Any such sign is to be removed when the work has been completed.

- 11 If the land to which the application relates is served by a common sewerage system that is also used by others, then measures must be placed in effect and prior to the commencement of work to ensure the operation of the sewerage system is without disruption to other joint users.
- 12 Prior to the commencement of any demolition, excavation or remediation works, the applicant must inform Council, in writing, of:
- (a) The name of the contractor, and licence number of the licensee who has contracted to do, or intends to do, the work: or
 - (b) The name and permit number of the owner-builder who intends to do the work;
 - (c) The Council also must be informed if: -
 - (i) A contract is entered into for the work to be done by a different licensee; or
 - (ii) Arrangements for the doing of the work are otherwise changed.
- 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 Prior to the commencement of demolition work a licensed demolisher who is registered with WorkCover NSW must prepared a Work Method Statement to the satisfaction of the Principal Certifying Authority (Council or an accredited certifier) and a copy shall be sent to Council (if it is not the PCA). A copy of the Statement shall also be submitted to WorkCover NSW.

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

- a) Enclosing and making the site safe, any temporary protective structures must comply with the “Guidelines for Temporary Protective Structures (April 2001)”;
 - b) Induction training for on-site personnel;
 - c) Inspection and removal of asbestos, contamination and other hazardous materials (by appropriately licensed contractors);
 - d) Dust control – Dust emission must be minimised for the full height of the building. A minimum requirement is that perimeter scaffolding, combined with chain wire and shade cloth must be used, together with continuous water spray during the demolition process. Compressed air must not be used to blow dust from the building site;
 - e) Disconnection of Gas and Electrical Supply;
 - f) Fire Fighting – Fire fighting services on site are to be maintained at all times during demolition work. Access to fire services in the street must not be obstructed;
 - g) Access and Egress – No demolition activity shall cause damage to or adversely affect the safe access and egress of this building;
 - h) Waterproofing of any exposed surfaces of adjoining buildings;
 - i) Control of water pollution and leachate and cleaning of vehicles tyres – Proposals shall be in accordance with the “Protection of the Environmental Operations Act 1997”;
 - j) Working hours, in accordance with this Development Consent;
 - k) Confinement of demolished materials in transit;
 - l) Proposed truck routes, in accordance with this Development Consent;
 - m) Location and method of waste disposal and recycling in accordance with the “Waste Minimisation and Management Act 1995”.
 - n) Sewer – common sewerage system ad08.
- 15 A sufficient area shall be provided onsite to enable separate stockpiling of excavated materials for sampling and analysis prior to removal or re-use on site. Details of this area shall be provided in the Soil and Water Management Plan (SWMP). This plan shall incorporate and reference the construction environmental management plan and address site limitations.
- 16 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.
- 17 This Consent shall not preclude the demolisher from giving notice to other statutory authorities, such as Sydney Water Corporation, WorkCover, etc.
- 18 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.
- 19 Erosion and sediment control devices shall be installed and in function prior to the commencement of any demolition, excavation or construction works upon the site in order to prevent sediment and silt from site works (including demolition and/or excavation) being conveyed by stormwater into public stormwater drainage system, natural watercourses, bushland, trees and neighbouring properties. In this regard, all stormwater discharge from the site shall meet the legislative requirements and guidelines. These devices shall be maintained in a serviceable condition AT ALL TIMES throughout the entire demolition, excavation and construction phases of the development and for a minimum one (1) month period after the completion of the development, where necessary.
- 20 A Soil and Water Management Plan shall be prepared in accordance with Soil and Water Management for Urban Development Guidelines produced by the Southern Sydney Region Organisation of Councils. A copy of the plan must be submitted to Council. The Plan must include details of the proposed erosion and sediment controls to be installed on the building site. A copy of the Soil and Water Management Plan must be kept on-site at all times and made available on request. Sediment control devices shall not be located beneath the driplines of trees, which are to be retained.
- 21 Soil and sedimentation controls are to be put in place prior to commencement of any work on site. The controls are to be maintained in effective working order during construction. The controls are to be designed and installed in accordance with the Soil and Water Management for Urban Development Guidelines produced by the Southern Sydney Regional Organisation of Council. Copies of the guidelines are available from Council.
- 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, piling, or underpinning prior to the commencement of any work. The construction shall not undermine, endanger or destabilise any adjacent structures.
 - e) If the soil conditions required it:
 - (i) Retaining walls associated with the erection of a building 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.
- 23 A Tree Protection Zone TPZ shall be erected to protect the root zone of the trees of the three (3) *Callitris rhomboidea* (Port Jackson Pine) located adjacent to 1 Chalmers Crescent.
- a) Prior to commencing demolition/any works on site, in order to ensure that the tree is protected during demolition and construction, and the health and structural stability is ensured a Tree Protection Zone shall be established as follows.
 - b) In accordance with AS4970-2009 protective fences consisting of chain wire mesh temporary fence panels with a height 1.8m shall be erected outside the drip line. The fence panels must be securely mounted and braced to prevent movement. The area within the fenced area is to be mulched with leaf mulch to a depth of 100mm and a weekly deep watering program undertaken.
 - c) The protective fence shall consist of para-webbing or chain wire mesh mounted on star pickets or similar metal posts, shall be placed prior to the commencement of any work on site and shall remain until the completion of all building and hard landscape construction.
 - d) If there is insufficient space to erect fencing, then the tree is to be physically protected by wrapping the trunk with hessian or carpet underlay to a height of 2.5 meters or to the tree's first lateral branch, whichever is greater, and affix timber palings around the tree with strapping or wire (not nails).
 - e) The Prior to the commencement of any work the applicant is to submit payment for a Tree Preservation Bond of \$3,000.00 to ensure protection of Council's street tree assets. The duration of the Bond shall be limited to a period of 12 months after the occupation certificate is issued. At completion of the bond period of twelve months (12 months) the Bond shall be refunded pending an inspection of the trees by council. If a tree is found to be dead, pruned or dying and will not recover the applicant will forfeit all or part of the bond to replace or maintain the tree/s.

- f) Before any works commence on site, the Applicant is required to contact Council for an inspection and/or provide photographic evidence of the fenced TPZ's.
- 24 Where any shoring is to be located on or is supporting Council's property, or any adjoining private property, engineering drawings certified as being adequate for their intended purpose by an appropriately qualified and practicing engineer, showing all details, including the extent of encroachment and the method of removal (or any other method) and de-stressing of shoring elements, shall be submitted with the Construction Certificate to the Principle Certifying Authority along with Council's (or other) consent if the works intrude on Council's (or other) property.

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

- 25 The applicant must prior to the issue of any Construction Certificate, pay the following fees:
- | | | |
|-----|----------------------------|----------------------------|
| (a) | Development Control | \$3,174.00 |
| (b) | Footpath Crossing Deposit | \$198,315.03 (See below) |
| (c) | Section 7.11 Contributions | \$3,460,068.69 (See below) |
- 26 Prior to the issue of the Construction Certificate, the required Long Service Levy payable under Section 34 of the Building and Construction Industry Long Service Payments Act 1986 has to be paid. The Long Service Levy is payable at 0.35% of the total cost of the development, however this is a State Government Fee and can change without notice.
- 27 Prior to the issue of any Construction Certificate, the applicant shall lodge a Footpath Crossing Deposit of **\$198,315.03** (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.
- 28 Bayside Council being satisfied that the proposed development will increase the demand for public amenities within the area, and in accordance with Council's Section 94 Contributions Plans, a contribution of **\$2,547,747.48** is payable as calculated below:

City of Botany Bay Section 7.11 Contributions Plan 2016

The 7.11 contributions for the development is as follows:

| | | |
|----|---------------------------|----------------|
| a) | Community Facilities | \$208,553.56 |
| b) | Recreation and Open Space | \$2,151,678.98 |
| c) | Transport Facilities | \$168,964.30 |
| d) | Administration | \$18,550.64 |

The total Section 7.11 Contribution of **\$2,547,747.48** is to be paid to Council prior to the issue of any Construction Certificate.

Note: The Section 7.11 Contributions are subject to annual review and the current rates are applicable for the financial year in which your consent is granted. If you pay the contribution in a later financial year you will be required to pay the fee applicable at the time.

- 29 Prior to the issue of the Construction Certificate, a dilapidation survey 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 Principal Certifying Authority prior to issue of the Construction Certificate. The insurance cover shall be a minimum of \$10 million.
- 30 A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained. Application must be made through an authorised Water Servicing Coordinator. Please refer to “Your Business” section of Sydney Water’s web site at www.sydneywater.com.au then the “e-developer” icon or telephone 13 20 92.
- i) Following application a “Notice of Requirements” will detail water and sewer extensions to be built and charges to be paid. Please make early contact with the Co-ordinator, since building of water/sewer extensions can be timed consuming and may impact on other services and building, driveway or landscape design. The Section 73 Notice of Requirements must be submitted to the Principal Certifying Authority prior to the issue of any Construction Certificate.
- 31 Plans and cross sections showing the compliance of the recommendations of Part J BCA assessment report issued by Certified Energy on 18 January 2019 to be submitted with the application for the issue of the Construction Certificate.
- 32 Prior to the issue of any Construction Certificate, detailed drainage design plans for the management of stormwater are to be submitted to Council or the Principal Accredited Certifier for assessment and approval. Design certification and drainage design calculations are to be submitted with the plans. Botany Bay DCP Part 10— Stormwater Management Technical Guidelines (SMTG) sets out the minimum documentation requirements for detailed design plans. Stormwater management requirements for the site, including the final discharge/end connection point, must comply with Botany Bay DCP Part 10 — Stormwater Management Technical Guidelines. All drawings shall correspond with the approved architectural plans.

The detailed design plans must incorporate, but not be limited to, the following:

- a) Incorporate the provisions generally made in the stormwater management report & plans prepared by Van Der Meer Consulting, Job No: SY182-060, revision 2, dated 10 February 2019 however, the discharge design to Chalmers Crescent must be revised. As the discharge from the entire development site is greater than 20 l/s, in accordance with BB DCP Part 10 section 3.2 (iii), the OSD stormwater system is to discharge to a new grated kerb inlet pit lintel in the Chalmers Street frontage adjacent to the development. This necessitates the construction of new pipe & kerb inlet pit stormwater infrastructure, connecting to existing Council stormwater infrastructure located in the intersection between Chalmers Crescent and Kent Road. Hydraulic grade line analysis of the new stormwater infrastructure will

be required. The detailed design (pit & pipe sizing, location(s) etc.) must be in accordance with the requirements of Botany Bay DCP Part 10 - Stormwater Management Technical Guidelines Section 13. All new stormwater infrastructure must be designed to the satisfaction of Bayside Council prior to construction, and

- b) The 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, and
- c) Piped emergency overflow to cater for storm events greater than the 1% AEP shall be provided within the OSD design, and
- d) In accordance with Botany Bay DCP SMTG section 4, a minimum capacity 10000L of Rainwater Tank(s) shall be provided for the site. 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. Only roof water shall be directed to the rainwater tank. Overflow from the rainwater tank shall be directed to the site drainage system. The rainwater tank(s) shall service all toilets and any outdoor irrigation/taps for landscaping within the development, and
- e) Incorporate a Stormwater Quality Improvement system to ensure compliance with Section 16 of Botany Bay's SMTG, and
- f) The water quality improvement system and WSUD strategy proposal shall be designed to capture and treat at least 85% flows generated from the site, and
- g) A WSUD Strategy and MUSIC model must be prepared and submitted 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
- h) Detailed calculations including computer modelling supporting the proposal.

33 To ensure that utility authorities and Council are advised of any effects to their infrastructure by the development, the applicant shall:

- a) Carry out a survey of all utility and Council services within the site including relevant information from utility authorities and excavation if necessary to determine the position and level of services,
- b) Negotiate with the utility authorities (eg AusGrid, Sydney Water, Telecommunications Carriers) and Council in connection with:
 - (i) The additional load on the system, and

- (ii) The relocation and/or adjustment of the services affected by the construction.
- c) The Ausgrid lighting poles will need to be decommissioned and new lighting poles shall be constructed satisfying V2 lighting requirements any other requirements as specified by Council and any other service provider,
- d) All above ground utilities shall be relocated underground in accordance with Ausgrid and any other affected and relevant service provider, and
- e) All underground and above ground infrastructure shall be constructed as specified by Ausgrid, 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 Council and service authorities are to be the responsibility of the developer.

- 34 A Public Domain Frontage Design must be prepared by suitably qualified professionals for assessment and approval by Council's Public Domain Team for all frontage works that are required to be constructed within the public domain and which are subject to approval pursuant to Section 138 of the Roads Act 1993. All frontage works shall be in accordance with Council technical manuals, master plans, town centre plans, Australian standards and standard design drawings and specifications.

Public domain frontage works shall include, but not be limited to, civil, drainage, landscaping, undergrounding of services, lighting, traffic signage, line marking, parking and traffic devices.

A 'public domain frontage works application' shall be submitted to Bayside Council's Customer Service Centre for assessment of all required works within the road reserve, upon payment of the relevant fee, prior to the issue of any Construction Certificate.

- 35 Prior to the issue of any Construction Certificate, a Construction Management Program shall be submitted to, and approved by the Principal Certifying Authority prior to the issue of a Construction Certificate. The program shall detail:

- a) The proposed method of access to and egress from the site for construction vehicles, including access routes through the Council area and the location and type of temporary vehicular crossing for the purpose of minimising traffic congestion and noise in the area, with no access across public parks or public reserves being allowed,
- b) The proposed phases of construction works on the site and the expected duration of each construction phase,
- c) The proposed order in which works on the site will be undertaken, and the method statements on how various stages of construction will be undertaken,
- d) The proposed manner in which adjoining property owners will be kept advised of the timeframes for completion of each phase of development/construction process,

- e) The proposed method of loading and unloading excavation and construction machinery, excavation and building materials, formwork and the erection of any part of the structure within the site. Wherever possible mobile cranes should be located wholly within the site,
- f) The proposed areas within the site to be used for the storage of excavated materials, construction materials and waste containers during the construction period,
- g) The proposed method/device to remove loose material from all vehicles and/or machinery before entering the road reserve, any run-off from the washing down of vehicles shall be directed to the sediment control system within the site,
- h) The proposed method of support to any excavation adjacent to adjoining properties, or the road reserve. The proposed method of support is to be designed and certified by an Accredited Certifier (Structural Engineering), or equivalent,
- i) Proposed protection for Council and adjoining properties, and
- j) The location and operation of any on site crane. Please note that a crane may require prior approval from Sydney Airports Corporation.
- k) The location of any Construction Work Zone (if required) approved by Council's Traffic Committee, including a copy of that approval.
- l) Obtain Permits required under this consent.

36 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 Principal Accredited Certifier for assessment and approval. The plan shall:

- a) be prepared by a RMS accredited consultant,
- b) address, but not be limited to, the following matters:
 - (i) ingress and egress of vehicles to the site;
 - (ii) loading and unloading, including construction zones;
 - (iii) predicted traffic volumes, types and routes; and
 - (iv) pedestrian and traffic management methods.
- c) 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
- d) 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.

37 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) All driveways/access ramps/vehicular crossings shall conform with Australian Standards AS 2890.1 and Council requirements,
- b) 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.
- c) Internal height clearance shall be designed throughout the car park at minimum in accordance with AS2890.1:2004.
- d) A minimum of 38 bicycle parking spaces are to be provided for the development and designed in accordance with AS2890.3:2015 on the ground floor. Adequate end of trip facilities must be provided on the ground floor (toilets, showers, change room, lockers).
- e) The design of the car parking facility is to be certified by a suitably qualified traffic engineer as being in accordance with Australian Standard 2890 parking series.

38 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) All driveways/access ramps/vehicular crossings shall conform with Australian Standards AS 2890.2 and Council requirements along the travel path of the service vehicle,
- 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, and
- d) Swept path analysis shall be provided for manoeuvring of MRV commercial vehicles, depicting a forward entry and forward exit manoeuvre from the ground floor loading dock of the site, and
- e) A longitudinal section plotting headroom clearance above driveway access is to be provided for assessment.

39 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 eight (8) accessible car parking spaces shall be provided and designed as specified in Australian Standard 2890.6, SEPP 65 Design Code and Council requirements, and

- 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.
- 40 Prior to the release of the Construction Certificate, details shall be submitted to the Principal Certifying Authority on the proposed method of any exhaust ventilation from the car park. The exhaust ventilation needs to be ventilated away from the property boundaries of the adjoining buildings, and in accordance with the provisions of AS1668.1 and AS1668.2.
- 41 Prior to the issue of any Construction Certificate, the construction methodology, parameters, and recommendations prepared by EI Australia PTY LTD, report number E23953.G02, dated 13 September 2018, shall be implemented and relied upon during the preparation of the construction certificate documentation and the construction of the proposed development.
- 42 Prior to the issue of any Construction Certificate, the approved plans must be submitted to Sydney Water Tap inTM 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.
- Sydney Water's Tap inTM online service is available at: <https://www.sydneypwater.com.au/SW/plumbing-building-developing/building/sydney-water-tap-in/index.htm>
- 43 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.
- 44 A Stage 3 – Remedial Action Plan (RAP) shall be prepared by a suitably qualified and experienced contaminated land consultant and in accordance with:
- a) NSW Office of Environment and Heritage (OEH) 'Contaminated Sites – Guidelines for Consultants Reporting on Contaminated Sites';
 - b) NSW Environment Protection Authority (NSW EPA) approved guidelines under the Contaminated Land Management Act 1997; and
 - c) State Environmental Planning Policy 55 (SEPP55) – Remediation of Land.

The RAP shall incorporate all findings and recommendations in the Phase1 Preliminary Site Assessment and Phase 2 Detailed Site Assessment for the site, it shall clearly state proposed clean-up objectives, and demonstrate how the site will be made suitable for the proposed use.

The RAP shall be submitted to Council for review and concurrence prior to the commencement of any remedial action and prior to the issue of any construction certificate.

45 The Remedial Action Plan (RAP) shall avoid the use containment and contaminants should be treated onsite or removed from the site whenever possible. Any remediation that utilises a containment strategy for contaminants must be accompanied by a Long-term Environmental Management Plan (LTEMP). This LTEMP must be added to the title of the site.

46 A Site Audit Statement will be required for this site prior to the issue of any Occupation Certificate. To ensure the necessary assessment and remediation is completed, a NSW Environment Authority (EPA) Accredited Site Auditor must be appointed to the site prior to the commencement of any remediation works, excavation or commencement of works at the site. The Site Auditor must review and endorse any additional investigation and remediation proposed prior to the commencement of any works.

Evidence of this appointment must be provided to council prior to the issue of any construction certificate.

47 The Final Landscape Plan shall be generally in accordance with the approved Landscape Plan by Ground Ink, revision C, dated 4th February 2019 (Refer to Condition 1) and comprise detailed landscape construction documentation (plans and specifications) to be submitted to, and approved by Bayside Council's Landscape Architect prior to the issue of the Construction Certificate. The landscape documentation shall include, but not be limited to:

- a) A planting plan at 1:100 showing all plant locations/groupings and plant centres/species. There is to be a dense layered planting scheme consisting of trees, shrubs and groundcovers in all of landscaped areas. Indicative plant schedule indicating botanical name, pot sizes, spacing, staking and quantity.
- b) Landscape plans shall include all existing trees in public domain, as shown in survey plan. All existing trees in public domain shall be retained and protected.
- c) 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.
- d) Frontage landscape setback shall include the following;
 - (i) Eastern planter bed shall include two (2) *Corymbia maculata* (Spotted Gum) with a minimum root ball size supplied at 100 litre, with understorey planting.
 - (ii) Central planter bed in the middle of pedestrian entry, shall measure minimum 3.5 meters by 3.5 metres and shall include minimum of one (1) Australian native tree to be able to reach a minimum mature height of 12 meters in local conditions, minimum root ball size to be supplied and planted shall be 100 Litres. Planter may be raised from natural ground level but shall be in deep soil.
 - (iii) Western planter beds with seating areas adjacent to café shall increase planter beds width to include a minimum of four (4) small to medium trees native or deciduous, to reach a minimum mature height of four (4) meters in local conditions. To be supplied and planted at a minimum container size of 45 litres. Recommended species to be included in the seating area is *Lagerstroemia indica* (Crepe Myrtle), to

ensure sun access in winter months and shade in summer. Planter may be raised from natural ground level to allow seating around but shall be in deep soil.

- (iv) All planter beds raised from natural ground level shall include an irrigation system to be connected to rainwater tank.
 - (v) All landscape proposed in the interface with the public domain shall follow CPTED principles.
- e) Side landscape setbacks planting provided along eastern and western setbacks shall be treated with native trees and shrubs, no paved areas shall be included. If pedestrian circulation is required stepping stones within the planter bed shall be installed with groundcovers in between pavers to maximise the deep root planting in deep soil area. The recommended species to be use in the sides buffer planting are: *Waterhousia floribunda*, *Syzygium "cascade"*, *Syzygium Aussie Southern*, *Syzygium Resilience*, *Banksia integrifolia*, *Tristanopsis laurina*, *Acmena smithii*, *Elaeocarpus reticulatus*, *Backhousia citriodora*, *Dicksonia antarctica*, plant selection shall be depending on the amount of sun access of the area.
 - f) 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 treat, areas of paving, schedule of materials, edge treatments, tactile and sectional construction details.
 - g) 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.
- 48 Prior to the Issue of the Construction Certificate, a Landscape Maintenance Schedule shall be submitted that covers a 12 month period to provide a guide to the landowner or occupier on how to best maintain the constructed landscaped areas; and include the following information: shrub pruning/trimming (frequency, plant requirements); Fertilising and pest control (soil testing, types, rate, frequency); Mulching, weeding and soil improvement (frequency, materials); Irrigation (checks, adjustments); tree maintenance (fertilising, mulching, tree stakes adjustments, special tree requirements); Maintenance of hard landscape elements (paving, edges, walls, pergolas, seats, and planter box walls); and planter boxes/roof gardens/green wall (specialised maintenance requirements).
- 49 To ensure satisfactory growth and maintenance of the landscaping, a fully automatic drip irrigation system is required in all landscaped areas. The system shall be installed by a qualified landscape contractor and provide full coverage of planted areas with no more than 300mm between drippers, automatic controllers and backflow prevention devices, and should be connected to a recycled water source. Irrigation shall comply with both Sydney Water and Council requirements as well as Australian Standards, and be maintained in effective working order at all times.
- 50 Prior to the issue of a Construction certificate, the applicant shall submit a Frontage Works Application. Public domain landscape improvements plan shall be submitted for approval by Council. The Plan shall be undertaken by a suitably experienced Landscape Architect and shall include but not be limited to new street tree planting,

footpath paving (segmental/other), street tree pit treatments and tree guards, street furniture, in ground landscaping, irrigation, lighting. The Plan shall be in accordance with Council's City Identity Program, Landscape DCP and any other Council specification or requirement. Civil drawings shall be included detailing levels and detailed footpath construction sections in accordance with Council's Engineering Services requirements. Contact Council's Landscape Architect for further details of specific requirements in preparation of the plan.

- 51 The applicant shall confer with Ausgrid to determine if an electricity distribution substation is required. Written confirmation of Ausgrid's requirements shall be obtained prior to issue Construction Certificate.
- 52 The applicant shall confer with Ausgrid to determine if installation of electricity conduits in the footway is required. Written confirmation of Ausgrid's requirements shall be obtained prior to issue Construction Certificate.
- 53 The applicant shall confer with Ausgrid to determine if satisfactory clearances to any existing overhead High Voltage mains will be affected. Written confirmation of Ausgrid's requirements shall be obtained prior to issue Construction Certificate.

All low voltage street mains in that section of the street/s adjacent to the development shall be placed underground. This shall include any associated services and the installation of underground supplied street lighting columns where necessary. The applicant shall confer with Ausgrid to determine Ausgrid requirements. Written confirmation of Ausgrid's requirements shall be obtained prior to issue Construction Certificate.

The relocation of the existing electricity supply pole in the road reserve at (specify location if required) to (specify location if required), is required to avoid conflict with the new driveway. The relocation works shall be undertaken in accordance with the requirements of Ausgrid. The applicant shall enter into a contract with Ausgrid for the relocation works prior to the issue of the Construction Certificate, and the works must be completed prior to the commencement of the driveway works and issue of the Occupation Certificate. The applicant is responsible for all relocation costs, including costs associated with other cabling such as telecommunications cables.

- 54 Prior to the issue of any Construction Certificate, the Development is to be constructed to meet all recommendations and requirements that have been detailed in the acoustic report provided by Pulse Acoustic Consultancy dated 25 January 2019. The measures as detailed in the acoustic assessment report prepared by Acoustic Logic, 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.

The work detailed in the report includes:

- a) The roof/ceiling must be constructed as per Table 3 of the report,
- b) All external walls need to be constructed as per Table 4 of the report,
- c) Glazing to all windows and glazed door systems are to be as per Table 5 of the report.

- d) Acoustically treated mechanical ventilation must be provided to this premise for it to comply with current guidelines.

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).

DURING WORKS

- 55 The land to which this Consent relates must be fenced and enclosed to protect the entry or access to the land and site by lawful persons. The fencing must be in place before demolition works commence.
- 56 During demolition and construction works, the applicant/builder is required to ensure the protection and preservation of all boundary fencing or boundary walls between the subject site and adjoining properties. Any damage caused as a result of such works will be at the full cost of the applicant/builder.
- 57 The Applicant shall conduct all demolition, construction and related deliveries wholly on site. If any use of Council's road reserve is required then separate applications are to be made at Council's Customer Services Department.
- 58 The approved Waste Management Plan shall be complied with at all times during demolition, construction and on-going use of the site.
- 59 All possible and practicable steps shall be taken to prevent nuisance to the inhabitants of the surrounding neighbourhood from wind-blown dust, debris, noise and the like.
- 60 All vehicles transporting soil, sand or similar materials to or from the site shall cover their loads at all times.
- 61 In order to ensure the design quality excellence of the development is retained:
 - a) A registered architect is to have direct involvement in the design documentation, contract documentation and construction stages of the project;
 - b) The design architect is to have full access to the site and is to be authorised by the applicant to respond directly to the consent authority where information or clarification is required in the resolution of design issues throughout the life of the project;
 - c) Evidence of the design architect's commission is to be provided to Bayside Council prior to the issue of the Construction Certificate.
 - d) The design architect of the project is not to be changed without prior notice and approval of Bayside Council.
- 62 During demolition, excavation and construction, care must be taken to protect Council's infrastructure, including street signs, footpath, kerb, gutter and drainage pits etc. Protecting measures shall be maintained in a state of good and safe condition throughout the course of demolition, excavation and construction. The area fronting the site and in the vicinity of the development shall also be made safe for pedestrian and vehicular traffic at all times. Any damage to Council's infrastructure (including

damage caused by, but not limited to, delivery vehicles, waste collection, contractors, sub-contractors, concrete delivery vehicles) shall be fully repaired in accordance with Council's specification and AUS-SPEC at no cost to Council.

- 63 Construction related activities must not take place on the roadway without Council approval.

Short-term activities (including operating plant, materials delivery) that reduce parking spaces, affect access to a particular route or prevent or restrict the passage of vehicles along the road must not occur without a valid Temporary Roadside Closure Permit.

Activities involving occupation of the parking lane for durations longer than allowed under a Temporary Roadside Closure Permit require a Construction Zone Permit and must not occur prior to the erection of Construction Zone signs by the RTA.

Permit application forms should be lodged at Council's Customer Service Centre allowing sufficient time for evaluation. An information package is available on request.

- 64 Building, demolition and construction works not to cause stormwater pollution and being carried out in accordance with Section 2.8 of Council's Stormwater Pollution Control Code 1993. Pollutants such as concrete slurry, clay and soil shall not be washed from vehicles onto roadways, footways or into the stormwater system. Drains, gutters, roadways and access ways shall be maintained free of sediment. Where required, gutters and roadways shall be swept regularly to maintain them free from sediment.

Note: The Applicant may be liable to prosecution under the Environmental Planning and Assessment Act 1979 for a breach of an approval condition, or under the Protection of the Environment Operations Act 1997, if its employees, agents or sub-contractors allow sediment, including soil, excavated material, building materials, or other materials to be pumped, drained or allowed to flow to the street, stormwater pipes or waterways. The Applicant shall ensure that its employees, agents or sub-contractors understand and maintain sediment control measures.

- 65 As the development involves an excavation that extends below the level of the base of the footings of a building or road on adjoining land, the person having the benefit of the development consent must, at the person's own expense:

- i) Protect and support the adjoining premises from possible damage from the excavation, and
- ii) Where necessary, underpin the adjoining premises to prevent any such damage.
- iii) Must at least 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 his 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.

- 66 If the land to which the application relates is served by a common sewerage system that is also used by others, then measures must be placed in effect and prior to the commencement of work to ensure the operation of the sewerage system is without disruption to other joint users.

- 67 During excavation and construction work the Council nature strip shall be maintained in a clean and tidy state at all times. The nature strip shall be suitably replaced where damaged due to construction work in accordance with Council Specification at the completion of construction, and at the Applicant's expense.
- 68 Fire booster assemblies and electrical kiosks and the like are to be housed within the building structure or 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.
- 69 There shall be no encroachment of paths, fencing or other improvements onto the drainage easements without Council approval.
- 70
- 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) 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 Council prior to the Issue of an Occupation Certificate.
- 71 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 screened 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.
- 72 If the work involved in the construction of a building:

- a) likely to cause pedestrians or vehicular traffic in a public place to be obstructed or rendered inconvenient; or,
- b) involves the enclosure of a public place:
 - (i) a hoarding or fence must be erected between the work site and the public place.
 - (ii) If necessary an awning is to be erected sufficient to prevent any substance from or in connection with the work falling into the public place.
 - (iii) The work site must be kept lit between sunset and sunrise if it is likely to be hazardous to person(s) in the public place.
 - (iv) Any such hoarding, fence or awning is to be removed when the work has been completed.
- c) Suitable consent shall be obtained from Council prior to the erection of any hoarding at the property.

73

- 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.

74 During Demolition, Excavation and Construction, care must be taken to protect Council's infrastructure, including street signs, footpath, kerb, gutter and drainage pits etc. Protecting measures shall be maintained in a state of good and safe condition throughout the course of demolition, excavation and construction. The area fronting the site and in the vicinity of the development shall also be made safe for pedestrian and vehicular traffic at all times. Any damage to Council's infrastructure (including damage caused by, but not limited to, delivery vehicles, waste collection, contractors, sub-contractors, concrete delivery vehicles) shall be fully repaired in accordance with Council's specification and AUS-SPEC at no cost to Council.

75 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.

- 76 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.
- 77 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.

Note: Professional engineer has the same mean as in Clause A1.1 of the BCA.

Note: Building has the same meaning as in section 4 of the Act i.e. "building includes part of a building and any structure or part of a structure".

Note: Supported land has the same meaning as in section 88K of the Conveyancing Act 1919.

- 78 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 Chalmers Crescent road reserve prior and during the construction of the new road pavement,
- e) Final inspection of Council stormwater infrastructure before & after backfill,
- f) Final inspection of driveway layback and adjacent kerb and gutter,
- g) Final inspection of Council's kerb and gutter,
- h) Final inspection of Council's footpath,
- i) Final Inspection of new road pavement on Chalmers Crescent.

79 Noise from construction activities associated with the development shall comply with the NSW Environment Protection Authority's Environmental Noise Manual – Chapter 171 and the *Protection of the Environment Operations Act 1997*.

a) Level Restrictions

Construction period of 4 weeks and under:

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

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

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

b) Time Restrictions

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

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

Saturday: 08:00 am to 01:00 pm

No Construction to take place on Sundays or Public Holidays.

c) Silencing

All possible steps should be taken to silence construction site equipment.

80 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.

81 All remediation work must be carried out in accordance with:

- a) NSW Office of Environment and Heritage (OEH) 'Contaminated Sites – Guidelines for Consultants Reporting on Contaminated Sites';
- b) NSW Environment Protection Authority (NSW EPA) guidelines under the Contaminated Land Management Act 1997;

- c) State Environmental Planning Policy 55 (SEPP55) – Remediation of Land; and
 - d) The Remedial Action Plan (RAP) required to be submitted prior to the issue of the Construction Certificate.
- 82 All materials excavated from the site (fill or natural) must 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. Appropriate records must be retained to support this.
- 83 To prevent contaminated soil being used onsite and to ensure that it is suitable for the proposed land use, all imported fill must be appropriately certified material and must 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 must be accompanied by documentation from the supplier which certifies that the material has been analysed and is suitable for the proposed land use.
- 84 Stockpiles are not permitted to be stored on Council property (including nature strip) unless prior approval has been granted. In addition stockpiles of topsoil, sand, aggregate, soil or other material shall be stored clear of any drainage line or easement, natural watercourse, kerb or road surface.
- 85 All disturbed areas shall be stabilised against erosion within 14 days of completion, and prior to removal of sediment controls.
- 86 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.

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

- 87 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.
- 88 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.
- 89 Prior to release of the any Occupation Certificate the developer must submit to the Principal Certifying Authority an acoustic report to verify that the measures stated in the 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).

- 90 Prior to the issue of an Occupation Certificate, the underground placement of all low and/or high voltage street electrical mains in 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.
- 91 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 Chalmers Crescent, 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 Chalmers Crescent, adjacent to development, demolish existing concrete footpath and construct new footpath as per Council's Infrastructure and Landscape Architect specifications, and
 - c) On Chalmers Crescent, adjacent to development, reconstruct existing kerb and gutter for the full length of the property in accordance with Council's Infrastructure Specifications, and
 - d) On Chalmers Crescent, construct new kerb inlet pit(s) and stormwater pipe(s), connecting to existing stormwater infrastructure located within the intersection of Chalmers Crescent and Kent Road (which may also need to be upgraded to suit the design), to Council infrastructure specifications. The design shall be in accordance with Botany Bay DCP Part 10 - Stormwater Management Technical Guidelines Section 13, and
 - e) On Chalmers Crescent, adjacent to development, demolish existing road pavement and reconstruct road pavement full width and re-sheet the damaged sections adjacent to new road pavement as per Council's Infrastructure and Pavement Engineer's specifications.
- All works within the road reserve, which are subject to approval pursuant to Section 138 of the Roads Act 1993, shall be constructed to the satisfaction of Bayside Council.
- 92 The public footpaths on Chalmers Crescent shall be constructed in accordance with the approved Public Domain Plan and Council specifications. The footpath dimensions, location, paver type and construction methods shall be in accordance with these specifications. Hold points and Council inspections are required after formwork setback and to prior pouring the concrete blinding slab, at the commencement of paving works and at final completion as a minimum. Pavers shall be ordered allowing for adequate lead time for manufacture (10-12 weeks).
- 93 Prior to completion of the building works, a full width vehicular entry is to be constructed to service the property. All obsolete vehicular entries are to be removed and reconstructed with kerb and gutter.
- 94 Prior to the issue of any Occupation Certificate(s), inspection reports (formwork and final) for the works on the road reserve shall be obtained from Council's engineer and submitted to the Principal Certifying Authority attesting that this condition has been appropriately satisfied.

- 95 Prior to the issue of any 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. 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. Certification must be provided by a suitably qualified traffic engineer, certifying the design of the completed works.
- 96 All vehicles shall enter and exit the site in a forward direction at all times. A plaque with minimum dimensions 300mm x 200mm 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".
- 97 Prior to the issue of any Occupation Certificate, a Chartered Professional Engineer shall certify that the stormwater system has been constructed in accordance with the approved plans and as required by Botany Bay DCP Part 10 Stormwater Management Technical Guidelines. The certificate shall include an evaluation of the completed drainage works. A works-as-executed drainage plan shall be prepared by a registered surveyor based on a survey of the completed works. A copy of the certificate and works-as-executed plan(s) shall be supplied to the Principal Certifying Authority. A copy shall be provided to Council if Council is not the Principal Certifying Authority.
- 98 On completion of the development construction and prior to the issue of the Occupation Certificate, CCTV survey and report shall be submitted to Council in accordance with Section 17 of Botany Bay DCP Part 10 Stormwater Management Technical Guidelines to ascertain if any damage has occurred to the newly laid stormwater infrastructure. Any damage shall be repaired by the applicant to Council's requirements and satisfaction. Once any damage has been repaired to Council requirements, a further CCTV survey and report shall be submitted to Council for further consideration. The CCTV survey and report shall also be used to view any rubbish and sediment in the conduits for cleaning by the applicant. Work-As-Executed (WAE) plans and design certification shall be submitted to Council for consideration. These plans shall be prepared by a registered surveyor and shall indicate the as-constructed pit and conduit sizes and conduit invert RL's at each pit.

Furthermore, the following details resulting from the construction of new Council infrastructure assets within the road reserve shall be submitted to Bayside Council, in GIS/Shape file format:

For each pit

- a) Pit code as per the work-as-executed plan.
- b) Pit type and lintel size.
- c) Total value to the nearest \$1,000. -
- d) Construction date — month and year.

- e) Built by (contractor's name).
- f) Street name where applicable.
- g) Grate RL/Top of Pit RL (AHD).
- h) Invert RL (AHD).

For each conduit/pipe

- a) Line code as per the work-as-executed plan.
- b) Description — type, eg RCP, FRC, RRJ, box culvert, open channel, etc.
- c) Size (mm).
- d) Length (m).
- e) Total value to the nearest \$1,000.
- f) Construction date — month and year.
- g) Built by (contractor's name).
- h) Street name where applicable.

99 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 Stormwater Quality Improvement Device. Refer to Appendix E 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.

100 Prior to the issue of Occupation Certificate, A Workplace Travel Plan shall be developed and submitted to Council in order to encourage staff to make good use of public transport, cycling, walking and car sharing for commuting work related journeys and reduce car based travel demand by staff. The Workplace Travel Plan shall be generally in accordance with NSW Premier's Council for Active Living's "Workplace Travel Plan Guidelines - Final Report (April 2010)". The plan shall include, but not be limited to, the following:

- a) Encourage staff to cycle and/or walk to the workplace;
- b) Encourage staff to use public transport to travel to workplace by providing financial incentive or shuttle bus services;
- c) Adopt car sharing and /or car pool scheme;

- d) Provide priority parking for staff with car pool;
- e) Provide bike storage area and end-of-trip facilities in the convenient locations;
- f) Develop Transport Access Guides (TAGs) to Roads and Maritime Services (RMS) requirements for staff and visitors about information on how to reach the site via public transport, walking or cycling.

The workplace travel plan and TAGs must be prominently displayed within the development.

101 A Stage 4 – Site Validation Report (SVR) must be prepared by a suitably qualified contaminated land consultant and must be in accordance with:

- a) NSW Office of Environment and Heritage (OEH) 'Contaminated Sites – Guidelines for Consultants Reporting on Contaminated Sites';
- b) NSW Environment Protection Authority (NSW EPA) approved guidelines under the Contaminated Land Management Act 1997; and
- c) State Environmental Planning Policy 55 (SEPP55) – Remediation of Land.

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

102 To ensure that the site is suitable for the proposed use, a Site Audit Statement (SAS) completed by an accredited site auditor under the *Contaminated Land Management Act 1997* must be submitted to Council clearly demonstrating that the site is suitable for the proposed development. This must be provided prior to the release of any Occupation Certificate.

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

103

- a) A notice of requirement shall be obtained from the Water Board;
- b) A Certificate under Section 73 of the Water Board (Corporation) Act 1994 shall be obtained and submitted to Council for each stage of construction to ensure that the developer has complied with all relevant Sydney Water requirements, including appropriate connections, correctly sized amplifications, procurement of trade waste agreements, where necessary, and the payment of developer charges.

Note: Immediate application should be made to Sydney Water for this Certificate to avoid problems in servicing the development.

- 104 Prior to the Issue of the Occupation Certificate, all planter boxes constructed over a concrete slab shall be built in accordance with the following requirements:
- a) Ensure soil depths in accordance with Council's Landscape DCP. The base of the planter must be screeded to ensure drainage to a piped internal drainage outlet of minimum diameter 90mm, with no low points elsewhere in the planter. There are to be no external weep holes.
 - b) A concrete hob or haunch shall be constructed at the internal join between the sides and base of the planter to contain drainage to within the planter.
 - c) Planters are to be fully waterproofed and sealed internally with a proprietary sealing agent and applied by a qualified and experienced tradesman to eliminate water seepage and staining of the external face of the planter. All internal sealed finishes are to be sound and installed to manufacturer's directions prior to backfilling with soil. An inspection of the waterproofing and sealing of edges is required by the Certifier prior to backfilling with soil.
 - d) Drainage cell must be supplied to the base and sides of the planter to minimize damage to the waterproof seal during backfilling and facilitate drainage. Apply a proprietary brand filter fabric and backfill with an imported lightweight soil suitable for planter boxes compliant with AS 4419 and AS 3743. Install drip irrigation including to lawns.
 - e) Finish externally with a suitable paint, render or tile to co-ordinate with the colour schemes and finishes of the building.
 - f) All planter boxes shall be irrigated, and shall have the required depth to sustain the proposed planting,
- 105 Prior to issue of any Occupation Certificate, the following must be complied with:
- a) All landscape works are to be carried out in accordance with the approved landscape plans (refer to Condition 1) for the approved development. The landscaping is to be maintained to the approved standard at all times.
 - b) A Landscape Architect shall provide a report to the certifying authority (with a copy provided to Council, if Council is not the principal certifier) stating that the landscape works have been carried out in accordance with the approved plans and documentation.
- 106 219 off-street car spaces and 2 courier spaces shall be provided in accordance with the submitted plan and shall be sealed and linemarked to Council's satisfaction. The pavement of all car parking spaces, manoeuvring areas and internal driveways shall comply with Australian Standards.
- 107 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.
- 108 Prior to the issue of the Occupation Certificate, at least 39 bicycle spaces are to be provided in the car park.

- 109 Prior to occupation or use of the premises, a qualified mechanical engineer shall certify that the mechanical ventilation/air conditioning system complies in all respects with the requirements of Australian Standard 1668, Part 1 & 2.
- 110 A separate application must be made for a subdivision certificate to consolidate Lot 100 in DP 580123 and Lot 1 in DP 1005951. The application is to be accompanied by:
- a) Linen plans with six (6) copies and appropriate fees. The linen plans must include details of any easement or encroachments and include a Section 88B Instrument under the Conveyancing Act, 1919.
 - b) Documentary evidence demonstrating full compliance with all conditions of this Development Consent No.2019/47 and all pertinent Development Consent(s) and Section 4.55 Application(s) related to the subject allotment.
- 111 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.
- 112 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

- 113 The commercial tenancy on ground floor is approved for the use as commercial premises and/or food and drink premises in accordance with the definition in the Standard Instrument.
- 114 The use of the commercial premises and/or food and drink premises is subject to a separate approval (DA or complying development certificate).
- 115 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: Solids shall be disposed to the waste disposal and de-sludged liquid shall be disposed to the sewer.
- 116 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 service bay;

- c) All garbage collection activities shall take place and be wholly undertaken within the site in the dedicated loading areas service bay;
 - 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).
- 117 In order to ensure the certainty to implement workplace travel plan for all future tenants of the site, preparation and implementation of workplace travel plan shall be part of the lease agreement for all tenants. The Workplace Travel Plan shall be monitored and reviewed annually in order to revise and improve the plan to achieve the targets on the number of staff travel to work by Public transport, cycling and walking.
- 118 Ongoing maintenance of the road verges and footpaths on Chalmers Crescent shall be undertaken by the owner/body corporate/Strata Corporation. Maintenance includes mowing, watering and maintaining the landscaping in these areas at all times. Maintenance does not include pruning, trimming, shaping or any work to street trees at any time.
- 119 All parking bays shown on the approved architectural plans shall be set aside for parking purpose only and shall not be used for other purposes, e.g. storage of goods. Vehicle turning areas shall be kept clear at all times and no vehicles are permitted to park in these areas.
- 120 All loading, unloading and transfer of goods to and from the loading bay and premises shall take place wholly within the property.
- 121 The existing and future owners (Registered Proprietor) of the property will be responsible for the operation and maintenance of the detention system.
- 122 Council's footway (area between property boundary and street kerb) is to be kept clean, tidy, washed and maintained at the applicant's expense.
- 123 No garbage collection associated with the retail premises is permitted between 10pm and 6am.
- 124 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.
- 125 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*.
- 126 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.
- (a) 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).

- (b) 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.
- (c) 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.
- (d) For assessment purposes, the above L_{Aeq} 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.