

SYDNEY EASTERN CITY PLANNING PANEL PANEL DETERMINATION MEETING

Panel Reference	PPSSEC-80
DA Number	DA-2018/1003/C
LGA	Bayside Council
Proposed Development	Section 4.55(2) Application to modify Development Consent No. 2018/1003 to amend the approved mixed use development, to convert serviced apartments approved under DA-2019/235 to residential apartments in Urban Block 5C approved under DA-2019/235; changes to unit numbers and mix; delete porte cochere, and changes to conditions.
Street Address	5 Oscar Place, Eastgardens (previously known as 130-150 Bunnerong Road, Eastgardens)
Applicant/Owner	Applicant: Karimbla Construction Services (NSW) Pty Ltd Owner: Karimbla Properties (No. 39) Pty Ltd
Date of DA lodgement	4 May 2020
Number of Submissions	Three (3) Submissions
Recommendation	Approval
Regional Development Criteria (Schedule 7 of the SEPP (State and Regional Development) 2011)	Section 4.55(2) Modification Application that exceeds the Botany Bay LEP 2013 FSR development standard by more than 10% as required by Clause 123BA(2) of the Environmental Planning and Assessment Regulation 2000 (Regulation).
List of all relevant s4.15(1)(a) matters	<ul style="list-style-type: none"> • List all of the relevant environmental planning instruments: s4.15(1)(a)(i) <ul style="list-style-type: none"> ○ State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development; ○ State Environmental Planning Policy (Infrastructure) 2007; ○ State Environmental Planning Policy No. 55 – Remediation of Land; ○ State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004; and ○ Botany Bay Local Environmental Plan 2013. • List any proposed instrument that is or has been the subject of public consultation under the Act and that has been notified to the consent authority: s4.15(1)(a)(ii); <ul style="list-style-type: none"> ○ Bayside Draft Local Environmental Plan 2020. • List any relevant development control plan: s4.15(1)(a)(iii); <ul style="list-style-type: none"> ○ Botany Bay Development Control Plan 2013. • List any relevant planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4: s4.15(1)(a)(iiia); <ul style="list-style-type: none"> ○ Nil • List any coastal zone management plan: s4.15(1)(a)(v) <ul style="list-style-type: none"> ○ Nil • List any relevant regulations: s4.15(1)(a)(iv) eg. Regs 92, 93, 94, 94A, 288 <ul style="list-style-type: none"> ○ Environmental Planning and Assessment Regulation 2000, Regs 115

List all documents submitted with this report for the Panel's consideration	<ul style="list-style-type: none"> • Architectural Plans • Site Plan • Statement of Environmental Effects • Design Verification Letter
Summary of key submissions	<ul style="list-style-type: none"> • Loss of Employment Opportunities • Increased Traffic & Road Hazards
Report prepared by	Ana Trifunovska – Development Assessment Planner
Report date	9 September 2020

Summary of s4.15 matters

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

Legislative clauses requiring consent authority satisfaction

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

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

Clause 4.6 Exceptions to development standards

If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report? **Not Applicable**

Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions (S7.24)? **Not Applicable**

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

Conditions

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

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

RECOMMENDATION

It is RECOMMENDED that the Sydney Eastern City Planning Panel resolve pursuant to Section 4.55(2) of the *Environmental Planning and Assessment Act 1979*, to modify Development Consent No. 2018/1003 to amend the approved mixed use development to convert serviced apartments to residential apartments in Urban Block 5C approved under DA-2019/235; changes to unit numbers and mix; delete porte cochere; and changes to conditions at 5 Oscar Place, Eastgardens (previously known as 130-150 Bunnerong Road, Eastgardens) as follows:

a) By amending Condition No. 1 to reflect the amended plans;

b) Add Condition No. 23A as follows:

23A *Prior to the issue of the amended Construction Certificate, an additional Section 7.11 Contribution of \$80,000.00 is to be paid to Council.*

This amount comprises the difference between the total amount required to be paid for the entire approved development, and the amount already paid to Council under both DA-2018/1003 (as previously modified) and DA-2019/235.

c) Amend Condition No. 25(b) to increase the number of adaptable units from 19 to 20.

The conditions are imposed and modified for the following reasons:

- a) To ensure compliance with the terms of the Environmental Planning and Assessment Act, the Building Code of Australia, and Council's codes, policies and specifications;
- b) To protect the environment;
- c) To ensure that there is no unacceptable impact on the amenity of the area, or to private and public property;
- d) To ensure it is in the public interest;

EXECUTIVE SUMMARY

Development Application No. 2018/1003 was approved by the Sydney Eastern City Planning Panel on 29 November 2018 for the integrated development application for the construction of a mixed use development comprising of four (4) residential towers ranging between 13 and 21 storeys, ground floor retail tenancies, associated landscaping and site works at 5 Oscar Place, Eastgardens (formerly known as 130-150 Bunnerong Road Eastgardens).

Bayside Council received the subject Section 4.55(2) Application No. 2018/1003/C on 4 May 2020 to modify Development Consent No. 2018/1003 to convert serviced apartments to residential apartments in Urban Block 5C approved under DA-2019/235; changes to unit numbers and mix; delete porte cochere; and changes to conditions. The development proposes a total of 530 residential apartments.

The application is a modification to a Stage 2 application. The Stage 1 application (DA-14/96) was received by Council on 5 May 2014, and the applicant filed a Class 1 Appeal. The application was considered at a series of Section 34 conferences, whereby a series of amended plans were considered. Council and the applicant reached a Section 34 agreement and the appeal was upheld with court orders issued on 7 August 2015.

The Stage 1 consent is a concept approval for the overall site including an indicative 2,221 apartments across 7 urban blocks. A recent modification was approved by the Panel which modified the Stage 1 consent to remove all reference to serviced apartments in the consent; increase the maximum allowable GFA and FSR; and amend car parking allocation. This was approved by the Panel on 31 August 2020.

This application seeks to replace the Porte cochere area approved under DA-2019/235, with residential units as the amendment to the master plan under DA-2014/10096/I approved the deletion of the serviced apartment aspects of the proposal to revert them back to their original residential use. The Porte cochere was ancillary to the serviced apartments use and no other use in the development. Therefore, this warranted the placement of residential units in its place and the reconfiguration of other serviced apartment storage or service areas to residential uses.

In accordance with Part 2 of the BBDCP2013, the application was notified for a fourteen (14) day period from 14 May 2020 to 28 May 2020. Three (3) submission were received raising concern regarding traffic hazards and loss of employment opportunities. The concerns are addressed in this report and are found to be of minimal adverse impact.

Additional information was also requested on 29 May 2020 as the initial submission of the application proposed 533 apartments and GFA in excess of the maximum allowable by the master plan conditions. On the 21 July 2020, the proposal was amended to comply with the conditions of the master plan consent which allows no more than 530 units and a maximum GFA of 50,556 sqm.

The key issues in the assessment of the modification involves the changes to unit mix which in turn amend the Section 7.11 Contribution fees. All numerical units have been adjusted accordingly and are discussed further in this report.

Issues were also raised regarding a need to increase the number of adaptable units as the total number of apartments across the development is proposed to increase to 530 units. Therefore, Condition No. 25(b) is recommended to be amended to account for the increase in adaptable units to be provided.

The modification was also referred to Council's Development Engineer who raises no objection to the amendment.

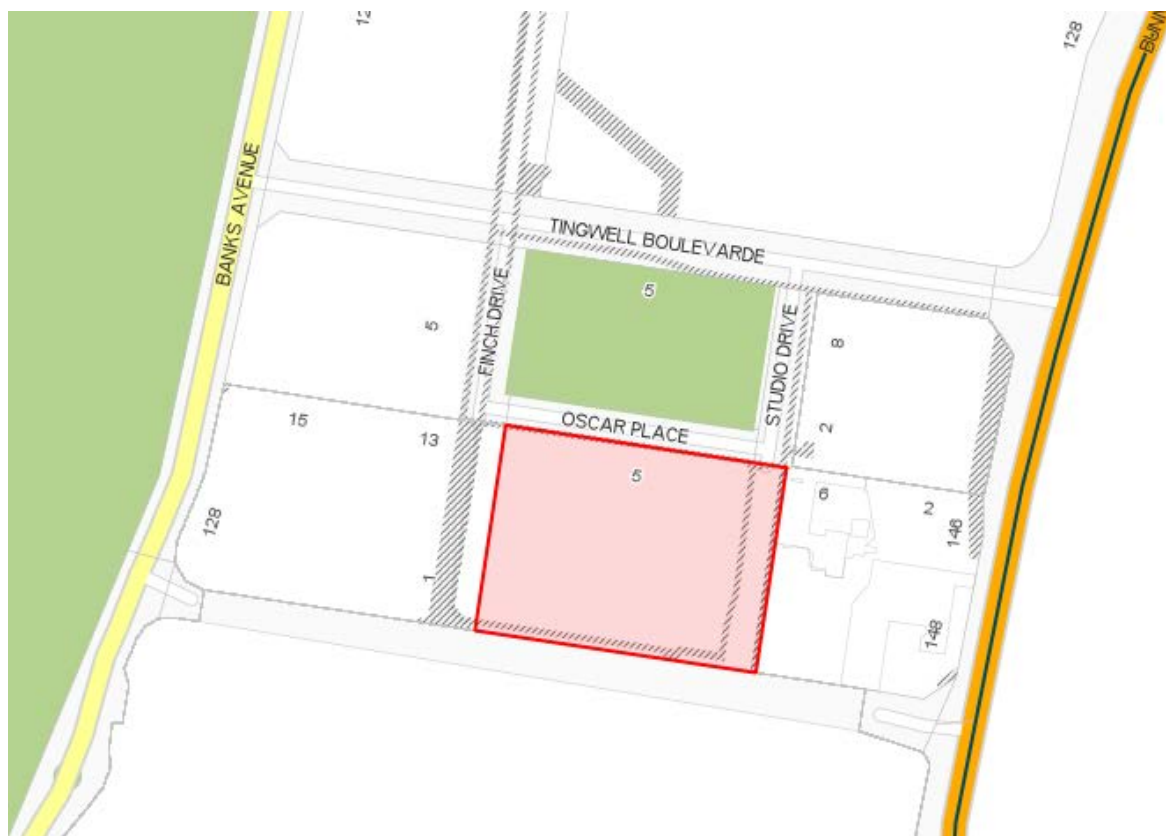
The Section 4.55(2) Application has been assessed in accordance with the relevant requirements of the *Environmental Planning and Assessment Act 1979* and is recommended for approval, subject to the modifications to the conditions of consent.

SITE DESCRIPTION

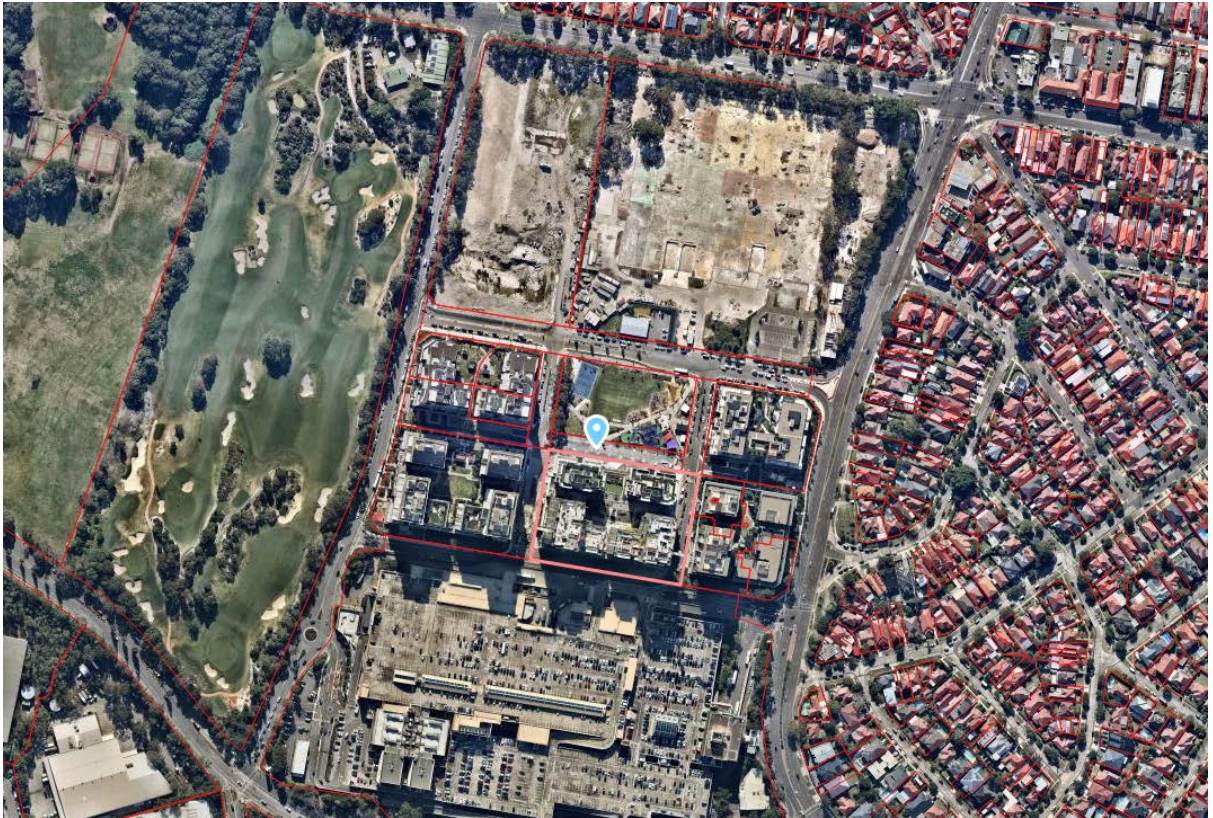
The overall Stage 1 Master plan site is contained within the block bound by Bunnerong Road to the east, Banks Avenue to the west, Heffron Road to the north, and Westfield Drive to the south. The north eastern portion of this block is the consolidated British American Tobacco Australia (BATA) operations which does not form part of the subject site.

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

The portion of the overall site relevant to this application is known as Urban Block 5 Central (UB5C) in the Stage 1 consent. The development at 5 Oscar Place (UB5C) is currently under construction. UB5C is located on the southern side of the site between Oscar Place to the north, Westfield Drive to the south, Bunnerong Road to the east and Banks Avenue to the west. The lot is generally rectangular in shape with a frontage to Oscar Place and Westfield Drive and site area of 13,095sqm.



Subject site highlighted in red



Aerial imagery of subject site pinpointed in blue (Nearmap: 1 June 2020)



BATA 1 nearing completion. Note the tower with scaffolding in the background (Tower D of UB5C) is the location of the subject site.



UB5C currently under construction. Note the porte cochere area proposed to be filled with apartments, has been left hollow

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

The approved development is currently in the final stages of construction and a construction certificate has been issued. However, the Porte cochere area where the additional units have been proposed, has been left hollow.

Approved Development

Integrated Development Application No. 14/96 was received by Council on 5 May 2014 for the redevelopment of the site for a staged mixed use development involving subdivision and concept approval for the location of public road network, private access ways through the site, on-site stormwater detention including water sensitive urban design (WSUD), Building Envelopes and Building Heights facilitating approximately 2,733 dwellings on site, parking spaces in above ground and basement facilities, and provision of 8,000sqm of public open space.

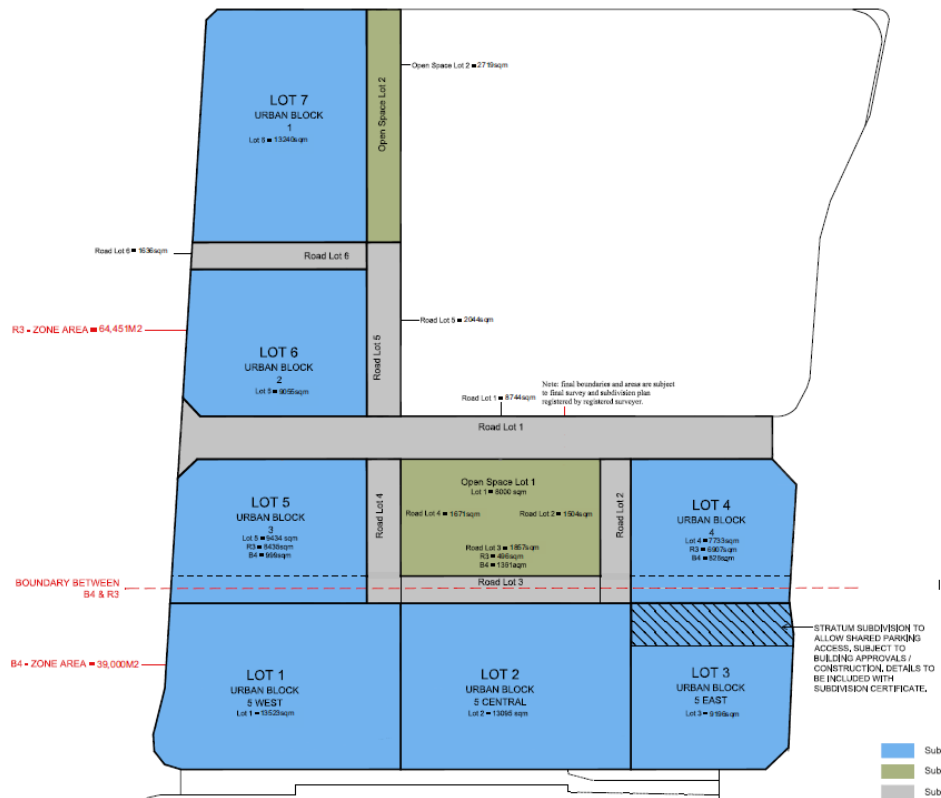
The Capital Investment Value CIV for these works was \$128,431,190.00, therefore the former Joint Regional Planning Panel (JRPP) was the consent authority. On 28 August 2014, this application was referred to the JRPP in accordance with Schedule 4A of the Environmental Planning & Assessment Act 1979 (EP&A Act) as it has a CIV in excess of \$20 million (Reference No. 2014/SYE/105).

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

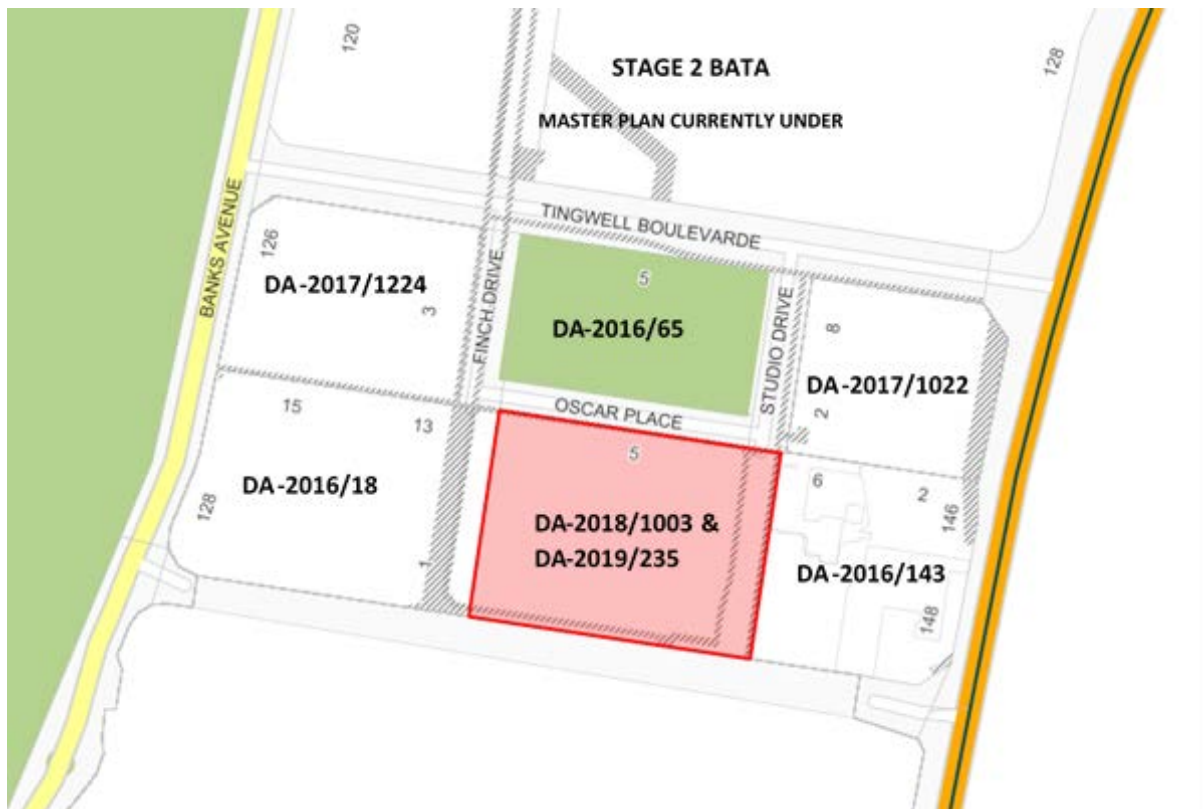
The Stage 1 Masterplan consent is a concept approval and does not grant consent for any demolition, remediation, excavation or building works. The approval is limited to the massing, modulation, overall siting and setbacks, maximum height of buildings, maximum GFA, uses, maximum FSR, public domain provisions, unit mix, minimum unit sizes, indicative unit numbers, and minimum car parking provisions.

The key details of the approved Masterplan are as follows:

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



Approved Master Plan concept subdivision plan DA-14/96



The following modifications have been approved and are relevant to the Stage 1 consent and the subject application:

- **DA-14/96/02-** Modifications included reduction in the ground floor retail component, relocation of the civic retail square and extension of the five storey podium, additional residential units, deletion of two childcare centres, reduction in podium height and provision of an additional residential level within the 6 tower forms in response to the reduced podium height and modifications to conditions. This was approved by the Sydney Eastern City Planning Panel on 24 July 2018.
- **DA-14/96/03-** Modification for a minor boundary realignment of the lots and provision for a stratum subdivision to allow shared parking access between UB4 and UB5E. Approved on 23 November 2017 under delegated authority.
- **DA-14/96/04-** Modification to modify the Masterplan layout of UB4 to reduce the building setbacks from 6 metres to 4 metres along the northern and western elevations. Approved on 5 October 2017 under delegated authority.
- **DA-14/96/06-** Modification to modify the Masterplan to amend Condition Nos. 10 and 11 to vary the timing for the delivery of public infrastructure. Approved under delegated authority on 25 January 2018.
- **DA-14/96/07-** Modifications to the approved unit mix, unit sizes and private open space relating to Urban Blocks 3 and 5C and amendments to the setback requirements for Urban Block 3. This was approved by the Sydney Eastern City Planning Panel on 24 July 2018.
- **DA-2018/1003** - On the 29 November 2018 the Sydney Eastern City Planning Panel approved DA-2018/1003 for the construction of a mixed use development comprising of four (4) residential towers ranging between 13 and 21 storeys, ground floor retail tenancies, associated landscaping and site works. The development proposed a total of 515 apartments.
- **DA-2018/1003/A** - On the 19 June 2019, Council received DA-2018/1003/A, a Section 4.55(2) modification application seeking a number of amendments that will support a future development application for the change of use from residential apartments to hotel suites in the approved Building D at UB5C (the subject development). The proposed use of the development was determined as not being substantially the same as the approved residential and retail premises and therefore, the application was withdrawn on 3 July 2019. Furthermore, the master plan application did not take into account the use of the development for hotel/serviced apartments, therefore the Master plan application was required to be amended if the applicant sought to propose this use.
- **DA-2014/10096/H** – On 21 November 2019, the Sydney Eastern City Planning Panel approved the modification application to permit amendments to the ground floor use, typical road plan, unit mix and parking rates and to allow for a hotel/serviced apartment use.
- **DA-2019/235** – On the 3 July 2019, Council received the Development Application for the modifications to the building envelope as approved under DA-2018/1003, internal reconfiguration and conversion of approved Building D from residential apartments to serviced apartments. The application was approved by the Bayside Planning Panel on the 11 February 2020. This development application was surrendered on 2 September 2020 as the master plan was amended to revert serviced apartment use back to residential use (DA-2014/10096/I).

- **DA-2018/1003/B** - Modification to amend the approved unit mix in Buildings A, B, and C on Levels 13 and 21 by including penthouse units and associated modifications to roof terraces on Levels 14 and 22. The application was approved by delegated authority on 23 April 2020. This application approved a total of 526 units, and approved plans incorporate the serviced apartments approved under DA-2019/235.
- **DA-2019/235/A** – Modification to amend the approved unit mix in buildings A, B and C on Level 13 and 21 by including penthouses, including changes and reduction to roof terraces and one additional retail tenancy. Withdrawn on 28 April 2020 as the proposal resulted in excess GFA.
- **DA-2014/10096/I** – On 31 August 2020, the Sydney Eastern City Planning Panel approved the modification application to the master plan to convert service apartments to residential apartments in Urban Block 5C; changes to unit numbers and mix; delete porte cochere and changes to conditions. This master plan modification application informs the amendments discussed in this report.

The following key amendments were made to the master plan to inform the changes in this application:

- Change the serviced apartment (hotel) use, back to residential use in Building D of 5 Oscar Place;
- Increase to GFA and FSR from 50,306 sqm to 50,556 sqm and 3.84:1 to 3.86:1 respectively;
- Increase in number of residential units from 330 units to 530 units and deletion of serviced apartments;
- Deletion of serviced apartment unit mix table; and
- Increase in the indicative minimum car parking spaces.

DESCRIPTION OF PROPOSED MODIFICATIONS

The proposal relates to Urban Block 5C (UB5C) and seeks to convert the serviced apartments approved under DA-2019/235 in Building D back to residential apartments, increase unit numbers and change unit mix, delete the porte cochere and replace with apartments and other minor changes. The proposed amendments are expanded upon below:

- ***Converting Serviced Apartments approved under DA-2019/235 to residential apartments***

As discussed above, the subject site, 5 Oscar Place, involved Development Consent No. DA-2018/1003 and Development Consent No. DA-2019/235, concurrently operating to provide both residential and serviced apartment uses. Initially, DA-2018/1003 approved the use of the site as a mixed use development with commercial tenancies at ground floor and residential units above. Subsequently DA-2019/235 approved the use of Building D at UB5C as serviced apartments, with the rest of the development to continue the use approved under DA-2018/1003.

The Stage 1 master plan application which requires for the abovementioned applications (DA-2018/1003 and DA-2019/235) to be consistent with the requirements of the Stage 1 consent (Section 4.42 of the *Environmental Planning and Assessment Act*), was modified on the 31 August 2020 to delete all reference to the serviced apartment use, increase the maximum allowable GFA and FSR, delete the porte cochere, amend car parking allocation, and other related changes to conditions (DA-2014/10096/I).

As all reference to serviced apartments has been deleted from the Stage 1 master plan consent, DA-2019/235 was surrendered on 2 September 2020. All reference to serviced apartments in DA-2018/1003 is also required to be deleted and amended, hence the lodgment of this proposed modification which seeks to replace the porte cochere with residential units. Therefore, this modification seeks to confirm the use of the site as a mixed use development that encompasses **only** commercial tenancies and residential units.

The conversion of the serviced apartments and ancillary spaces (porte cochere, housekeeping rooms, etc) to residential uses will result in changes to GFA and FSR, unit mix, and car parking allocation, to reflect the amended Stage 1 master plan conditions.

The following unit mix proportions are proposed:

Unit Mix

One Bedroom: 210 units / 39.6%

Two Bedroom: 238 units / 44.9%

Three Bedroom: 82 units / 15%

Total: 530 Units

As the unit mix proportion of the development is altered, this will in turn also impact upon the number of residential car spaces required. The following car parking rates are proposed:

Car Parking Allocation

One Bedroom: 210 spaces

Two Bedroom: 357 spaces

Three/Four Bedroom: 164 spaces

Visitor: 53 spaces

Total Residential: 784 spaces

The proposed amendments were referred to Council's Development Engineer who finds no issues with the changes. The car spaces have been rearranged to comply within the approved car parking area from the Basement to Level 5.

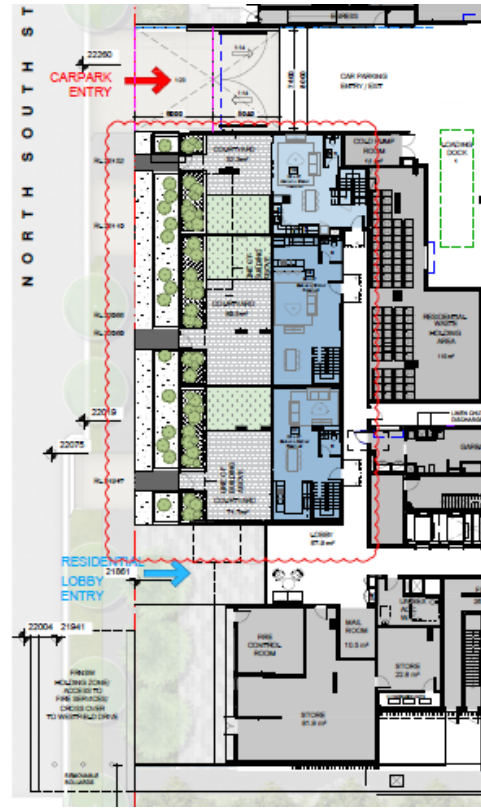
- ***Increase to GFA and FSR***

The proposed amendment seeks to infill the Porte cochere area with residential apartments which will increase the GFA of the overall development as space that was originally a void (and therefore excluded from GFA) is proposed to be converted to residential trafficable floor area. There have also been other increases in floor area to upper floors, contained within existing spaces originally dedicated to services.

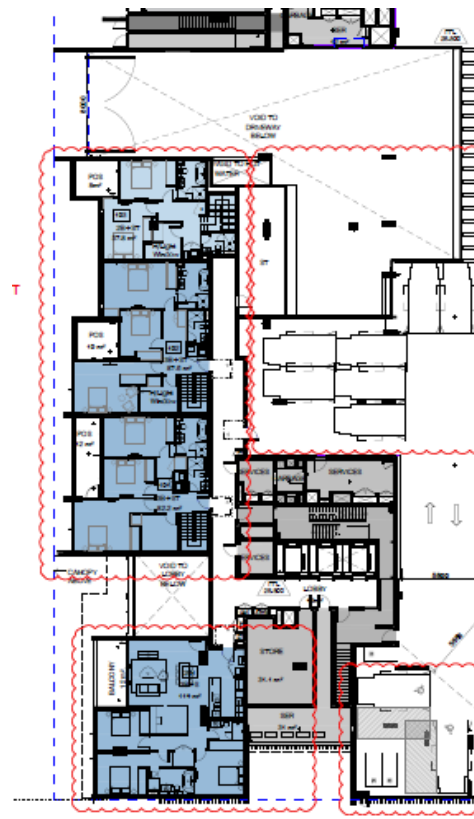
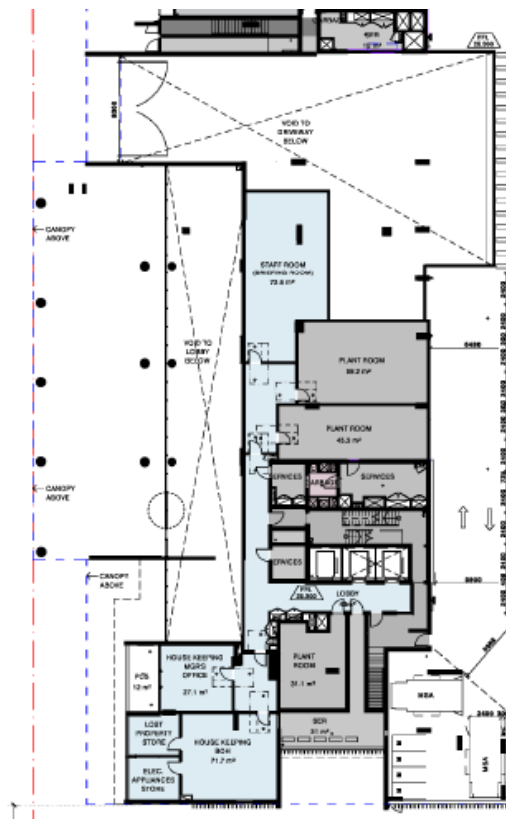
There are three x two storey height residential units proposed in the location of the Porte cochere area. Another residential unit is also proposed on Level 1 to replace serviced apartment housekeeping rooms.

This will result in an increase in the number of units from 526 units to 530 units. As stated above, the proposal will result in an increase in GFA and FSR from 50,306 sqm to 50,556 sqm, and 3.84:1 to 3.86:1 respectively.

The additional proposed units will be located within the constraints of the approved lobby/Porte cochere and building envelope and the proposed GFA and FSR comply with the maximum allowable by Condition 12 of the Stage 1 master plan consent.



Left: Level 1 - Approved Porte cochere lobby area
Right: Level 1 - Proposed Modification with double storey residential units



Left: Level 2 - Approved Porte cochere lobby area
Right: Level 2 - Proposed Modification with double storey residential units & serviced apartment storage areas converted to unit

- **Changes to Section 7.11 Contribution fees**

The original contribution was calculated under DA-2018/1003 for the entire development which amounted to **\$10,300,000.00** for 515 apartments (\$20,000 per apartment).

The development application DA-2019/235 resulted in an increase in units in the form of serviced apartments. As the same contribution rate of \$20,000 per unit applies to both residential and serviced apartment units, the rate was applied to the additional serviced apartment units and imposed in the conditions of consent. The application resulted in an additional 15 units, therefore, the applicant was required to pay 15 units x \$20,000 = **\$300,000.00**.

Both sets of contributions were paid by the applicant amounting to a total of **\$10,600,000.00**.

However, the modification application DA-2018/1003/B approved a reduction of four (4) residential units, therefore the contribution fees were readjusted to **\$10,220,000.00** for 511 residential apartments. The contribution fees required to be paid under DA-2019/235 remained. A total of **\$80,000.00** was refunded to the applicant to reflect the decrease in residential units. Therefore, Council is currently in receipt of **\$10,520,000.00** to reflect contributions paid under DA-2018/1003/B and DA-2019/235 for a total of 526 units.

This modification application takes into account that the serviced apartment application (DA-2019/235) has been surrendered, and that the contributions must be readjusted to reflect the new total number of residential units which have increased to 530 units.

This modification application results in an increase of four (4) residential units, therefore only an additional \$20,000 x 4 = **\$80,000.00** must be paid to Council.

Therefore, the Section 7.11 Contribution fees (formerly Section 94 Contributions) will increase as follows:

Community	8.19%	\$867,695.01
Open Space	84.45%	\$8,952,142.00
Transport	6.63%	\$702,982.37
Administration	0.73%	\$77,180.62
Total in 2019/20		\$10,600,000.00

However, as the Construction Certificate has already been issued, and the earlier contributions approved under DA-2018/1003 and DA-2019/235 have already been paid (**\$10,520,000.00**), only \$80,000.00 of Section 7.11 Contributions are required to be paid by the applicant. A condition is to be imposed in the consent to reflect the payment of only the additional Section 7.11 Contribution of **\$80,000.00** prior to the issue of the amended Construction Certificate. This is reflected in Condition No. 23A as follows:

23A Prior to the issue of the amended Construction Certificate, an additional Section 7.11 Contribution of \$80,000.00 is to be paid to Council.

This amount comprises the difference between the total amount required to be paid for the entire approved development, and the amount already paid to Council under both DA-2018/1003 (as previously modified) and DA-2019/235.

Statutory Considerations

SECTION 4.55(2) CONSIDERATIONS

In considering the Section 4.55(2) Application, the matters listed in Section 4.55(2) of the *Environmental Planning and Assessment Act 1979* have been taken into consideration in the preparation of this report and are as follows:

- a) ***it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and***

The Section 4.55(2) modification application will not alter the approved use which is a mixed use development. The DA-2018/1003 application relates to the residential component of the design. As discussed in the 'Approved Development' section of this report, the DA-2019/235 application relates to the serviced apartment component of the design which has been surrendered. Therefore, the residential use and commercial use of the development, approved under DA-2018/1003, will remain unaltered. The development will remain substantially the same as the development to which the consent was originally granted.

- b) ***it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 4.8) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and***

Division 4.8 of the Act does not apply to this application.

- c) ***It has notified the application in accordance with (i) the regulations, if the regulations so require, and (ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and***

In accordance with Part 2 – Advertising & Notification of the Botany Bay Development Control Plan (BBDCP) 2013, the modification application was notified for a fourteen (14) day period from 14 May 2020 to 28 May 2020.

- d) ***It has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.***

The following issues were raised within the submissions and have been addressed as follows:

Loss of Employment Opportunities

Submitter's Comment: Changing the serviced apartments to residential apartments will reduce job opportunities generated from the serviced apartments. The community needs employment opportunities to recover economically.

Planner's Comment: The modification responds to market changes. The modification is reverting back to the originally approved use of the site for only residential and retail purposes, therefore employment opportunities would have been considered in the assessment prior to the assessment of the serviced apartment consent. The development will also continue to provide employment opportunities through the nine (9) retail tenancies on the northern side of UB5C.

Increased Traffic & Road Hazards

Submitter's Comment: Increasing the number of units will add traffic pressure to the existing congested network. The road and traffic conditions, particularly from Heffron Road, will be hazardous for Bonnie Doon Golf Club employees, pedestrians, cyclists and vehicles. Concern is raised that the additional housing density will add pressure to the road network and create a hazardous and potentially fatal situation. The Bonnie Doon Golf Club seeks the construction of an underpass to mitigate the risk.

Planner's Comment: The modification does not alter the approved traffic and accessibility conditions. The bulk and scale of the development will remain as existing, with changes to FSR contained within the approved building envelope. Furthermore, the number of units will not exceed the maximum allowable in the current consent and proposed off-street car parking complies with the approved rates in Condition No. 29 of the master plan. The impact of traffic and pressure on the road network has been considered in previous applications and as established above, approval of this application is unlikely to increase traffic or cause hazardous risk.

In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in Section 4.15(1) as are of relevance to the development of the subject application.

The original development application was determined by the Sydney Eastern City Planning Panel. The reasons for support of the application are as follows:

"The subject site has been historically rezoned to allow increased density. A Concept Approval, which established the heights, location and form of the buildings was approved by a conciliation process between the previous Botany Council and the applicant through the Land & Environment Court in 2015.

The Panel has since dealt with several detailed development applications under the Concept Approval, of which this application forms another.

The key test the Panel needs to consider is whether the development application is consistent with the Concept Approval granted by the Court.

The development application complies with the maximum GFA under the concept plan although it is noted that a clause 4.6 variation is submitted to vary the FSR from 3:1 under the Botany Local Environmental Plan to 3.84:1. The Panel is unclear as to whether a clause 4.6 variation is required for this development application since such a variation has already been granted under the Concept Approval. Nevertheless

should it be required the Panel considers there are sufficient environmental planning grounds to grant such variation.

In respect of height, the Panel notes there is also a clause 4.6 variation, but different from the clause 4.6 variation for FSR, the development application does seek to increase the height of the buildings by 600mm to accommodate a raising of the ground floor level to address flood levels. In the circumstances of this case, the Panel considers there are sufficient environmental planning grounds to allow the variation in height.

The Panel heard from objectors who were concerned about the overall density of the development, the lack of public benefit and the congestion of on street parking in the vicinity.

In this respect, the Panel is bound by the approved Concept Plan with which this proposal is consistent. Likewise, the Concept Approval defined the VPA which defined the public benefits and the Panel is not able to change the provision. The concern in relation to on street parking is understandable but is likely to be a result of trade's persons parking in the public streets. This Panel is not able to effect any change to this. However, the Panel strongly recommends to the relevant local councils that resident only parking or time limited parking be provided in the street in the vicinity of major developments, even if this is a temporary restriction during the construction period."

Having reviewed the reasons for the decision of the development application, the proposed modification is considered substantially the same development and will not have any adverse impacts to neighbouring properties. The proposed modification satisfies the provisions of Section 4.55(2) of the *Environmental Planning and Assessment Act 1979*.

SECTION 4.42- STATUS OF CONCEPT APPLICATIONS AND CONSENT CONSIDERATIONS

The Stage 1 Master plan consent DA-14/96 is the first of a Staged Development Application as per Section 4.42 of the Environmental Planning and Assessment Act. The subject application is a modification application to a Stage 2 Development Application and as per the Section 4.42 it cannot be inconsistent with the Stage 1 consent. Below is an assessment of the proposed development against the relevant requirements of the Stage 1 consent.

Condition Control	Required	Proposal	Consistent
GFA and FSR (Condition 12)	GFA: 50,556 sqm FSR 3.86:1 Indicative Units: 530	GFA: 50,556 sqm FSR: 3.86:1 No. of Units: 530	Yes
Heights (Condition 15)	N/A – No changes to the approved heights	No changes to the approved heights.	N/A
FFL Ground floor (Condition 17)	FFL of GF apartments no greater than 1 metre above EGL	The apartments with access from the ground floor do not exceed 1 metre above NGL.	Yes

Condition Control	Required	Proposal	Consistent
Separation (Condition 18)	In accordance with building envelope detail and building separation plans. (12m-25.3m between the buildings)	No changes to the building envelope proposed. Building separation will remain as approved.	N/A
Podium height (Condition 19)	UB5C- 5 storey podium for all tower components	The five storey podium for all towers will remain as approved.	N/A
Floor to ceiling height (Condition 20)	Minimum 4 metres for retail, minimum 3.5 metres for commercial and comply with ADG for residential.	The floor to floor heights of the proposed units in the former porte cochere area, demonstrate that compliance with the floor to ceiling heights can be achieved.	Yes
Street wall height (Condition 21)	5 storeys along Westfield Drive	The 5 storey podium along Westfield Drive will remain as approved.	N/A
Building elements (Condition 22)	All building elements including balconies, louvres, and screening is to be contained within the building envelope.	Building elements will remain within the approved building envelope.	Yes
Tower setbacks (Condition 23)	Min 4m setback for towers above a podium.	The positioning of the towers will remain as approved.	N/A
Podium Articulation (Condition 25)	Max protrusion of 500mm from building envelopes for the podiums for a maximum of 20% of each façade.	The podium will remain entirely contained within the approved building envelope.	N/A
Setbacks (Condition 26)	Podium and building setbacks to comply with setback hierarchy plan – minimum 12 metres (Westfield Drive)	The 12m setback from Westfield Drive will remain as approved.	N/A
Corridor lengths (Condition 27)	Maximum of 10 units are to be serviced by each lift core	There will be no more than 10 units serviced by one lift core.	Yes
Car Parking (Condition 29)	Required Residential Rates: <ul style="list-style-type: none"> 1 space / 1 bed req. <i>Required: 210 spaces</i> 1.5 spaces / 2 bed req. <i>Required: 357 spaces</i> 	Proposed Residential Rates: <ul style="list-style-type: none"> 1 Bedroom: 210 spaces 2 Bedroom: 357 spaces 	Yes

Condition Control	Required	Proposal	Consistent
	<ul style="list-style-type: none"> 2 spaces / 3+ bed req. (there are no specific controls for 4 bed units so the rate for 3 bed units is imposed) <i>Required: 164 spaces</i> 1 x car wash space required 1 x visitor / 10 units <i>53 Required</i> <p>Total: 785 spaces</p>	<ul style="list-style-type: none"> 3+ Bedroom: 164 spaces Car Wash: 1 space Visitor: 53 spaces <p>Total: 785 spaces</p> <p>Complies.</p> <p>Retail car parking rates and loading areas to remain as previously approved.</p>	
Dwelling Sizes (Condition 33)	<p>One bedroom: <u>Internal Area:</u> 50sqm <u>External Area:</u> 8sqm</p> <p>Two bedroom: <u>Internal Area:</u> 75sqm <u>External Area:</u> 10sqm</p> <p>Three bedroom: <u>Internal Area:</u> 95sqm <u>External Area:</u> 12sqm</p>	<p>The dwelling sizes of the proposed units on Level 1 and 2 will exceed the minimum required as stipulated by the Stage 1 Master plan consent and the ADG.</p> <p>All other units will remain as previously approved.</p>	Yes
Unit Mix (Condition 34)	<p><u>Residential Required Proportions</u></p> <p>One bedroom: 30%</p> <p>Two bedroom: 55%</p> <p>Three bedroom: 15%</p> <p>Indicative maximum number of units deleted from Master Plan Consent, however proportions remain. May comply with a tolerance of 10%.</p>	<p><u>Proposed Proportions:</u></p> <p>One Bedroom: 39.6% / 210 units (tolerance of 10%)</p> <p>Two Bedroom: 44.9% / 238 units (tolerance of 10%)</p> <p>Three Bedroom: 15% / 82 units</p> <p>Complies.</p>	Yes
Adaptable Units (Condition 35)	Minimum number of adaptable units:	The shortfall in adaptable units was conditioned to comply in the original application under Condition No. 25(b).	Conditioned to comply

Condition Control	Required	Proposal	Consistent
	51 plus units = 2 units, plus an additional 1 unit for each 30 units (req. 18 units) Total required: 20 units	The increase in unit numbers will result in the shortfall of another (1) adaptable unit. The sizes of the units are large enough for an additional unit to become an adaptable unit. Therefore, Condition No. 25(b) is to be amended in the consent to require an additional three (3) adaptable units to provide a total of twenty (20) units.	
Solar Access (Condition 36)	70% solar access to living rooms and private open space for minimum of 2 hours between 9am – 3pm in mid-winter	A total of 376 units will receive a minimum of 2 hours of sunlight between 9am – 3pm in mid-winter. This amounts to 71% of the total development which complies with the minimum requirement.	Yes
Active street frontage (Condition 39)	Active street frontage is to occupy the entire ground floor northern building frontage of UB5C	The entire street frontage facing Oscar Place (civic avenue) other than the residential lobbies will remain as retail.	N/A

S.4.15(1) – MATTERS FOR CONSIDERATION – GENERAL

An assessment of the application has been carried out under the provisions of Section 4.15 of the Environmental Planning and Assessment Act, 1979. The matters of relevance to this application have been considered as follows:

S.4.15(1)(a)(i)-(iii) – Provisions of Environmental Planning Instruments (EPI's)

The following instruments were considered in the assessment of the original application but will not be adversely impacted by the changes:

- State Environmental Planning Policy (Infrastructure) 2007;
- State Environmental Planning Policy No. 55 – Remediation of Land; and
- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

An assessment of the application has been carried out below with regards to amendments against the relevant EPI's:

State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Buildings

The provisions of State Environmental Planning Policy No. 65 - 'Design Quality of Residential Apartment Building' (SEPP65) were considered in the assessment of the original

Development Application. The proposed modifications are predominately encased within the built form approved under DA-2018/1003, therefore the modification application was not required to be presented to the Design Review Panel. The applicant has submitted a Design Verification Statement which confirms that the proposed amendments meet the objectives and intent of the Design Quality Principles set out in Part 2 (Clauses 7-18) of SEPP65.

Design Quality Principles and Apartment Design Guide

The applicant has demonstrated that adequate regard has been given to the design quality principles and objectives specified in the ADG for the relevant design criteria with regards to the proposed amendments. The key design criteria has been provided in the table below.

SEPP 65 – ADG			
Control	Requirement	Proposed	Complies
Car Parking	Not located within 800m of a train station. Accordingly, BBDCP 2013 car parking rates apply.	N/A – Consistent with Stage 1 Consent.	N/A
Dwelling Size	Minimum internal areas as follows: 1 bed unit: 50sqm 2 bed unit: 70sqm 3 bed unit: 90sqm Min. internal areas include only one bathroom. Additional bathrooms increase min. internal area by 5sqm. A fourth bedroom and further additional bedrooms increase min. internal area by 12sqm.	The proposed dwelling sizes for the new additional units on the ground and first floors, exceed the minimum requirements.	Yes
Ceiling Height	Habitable Rooms: 2.7m Non-habitable: 2.4m	The units will have a floor to floor distance of 3.1m, therefore there is capacity for compliance with the minimum requirements.	Yes
Deep Soil	Objective 3E-1 requires 7% of the site (for sites over 1,500sqm) as deep soil area with min. dimensions of 6m.	To remain as approved.	N/A
Communal Open Space	25% of site.	To remain as approved.	N/A
Solar Access	50% direct sunlight to the principal usable part of the COS for a minimum of 2 hours during mid-winter.	To remain as approved.	N/A

	Living rooms and POS for at least 70% of apartments (and in neighbouring development) to achieve 2 hours between 9am and 3pm.	The requirements of the ADG are the same as the requirements of the Master plan conditions. As discussed above, the amendments will meet the minimum requirement.	Yes
Cross Ventilation	60% required for first 9 storeys. 10+ storeys deemed to be cross ventilated if any enclosure of balconies allows adequate natural ventilation and cannot be fully enclosed.	141 of 233 apartments from the first 9 storeys will be cross ventilated. This amounts to 60% which complies with the minimum requirement.	Yes
Building Depth	Use a range of appropriate maximum apartment depths of 12-18 metres.	Apartment depths are less than 18 metres.	Yes
Building Separation	<p><u>Up to 4 storeys (approx. 12m):</u></p> <ul style="list-style-type: none"> • 12m between habitable rooms/balconies • 9m between habitable and non-habitable rooms • 6m between non-habitable rooms <p><u>Five to eight storeys (25m):</u></p> <ul style="list-style-type: none"> • 18m between habitable rooms/balconies • 12m between habitable and non-habitable rooms • 9m between non-habitable rooms <p><u>Nine storeys and above (greater than 25m):</u></p> <ul style="list-style-type: none"> • 24m between habitable rooms/balconies • 18m between habitable and non-habitable rooms • 12m between non-habitable rooms 	To remain as approved.	N/A
Balcony Sizes	1 bed: 8sqm 2 bed: 10sqm 3+ bed: 12sqm	The new ground floor additional units are provided with screened courtyards that exceed the minimum requirements.	Yes

		<p>The additional first floor 3 bedroom unit also provides a 12 sqm balcony which meets the minimum requirement.</p> <p>The balcony sizes of all other units will remain as approved.</p>	
Storage	<p>1 bed: 6m³</p> <p>2 bed: 8m³</p> <p>3+ bed: 10m³</p>	The majority of storage is provided in the apartments and conditioned in the original consent.	Yes
Common circulation	1 lift/ 40 units (13 req)	To remain as approved.	N/A

Botany Bay Local Environmental Plan 2013

The provisions of the Botany Bay Local Environmental Plan 2013 (BBLEP 2013) have been considered in the assessment of this modification:

Principal Provisions of BBLEP 2013	Complies Yes/No	Comment
Land use Zone	N/A	The site is zoned B4 Mixed Use under the BBLEP 2013.
Is the proposed use/works permitted with development consent?	Yes	The residential flat building is permitted with consent in the B4 zone.
Does the proposed use/works meet the objectives of the zone?	Yes	<p>The proposed development is consistent with the following objectives in the BBLEP 2013:</p> <p>B4- Mixed Use Zone</p> <ul style="list-style-type: none"> <i>To provide a mixture of compatible land uses.</i> <i>To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.</i>
What is the height of the building?	N/A	No changes to the approved height.
What is the proposed FSR?	No – Refer to Note 1	<p>Maximum allowable FSR: 3:1</p> <p>Proposed GFA: 50,556 sqm</p> <p>Proposed FSR: 3.86:1</p> <p>Does not comply. Refer to Note 1 for further discussion.</p>
Is the land affected by road widening?	N/A	The subject site is not identified as being affected by road widening.

Principal Provisions of BBLEP 2013	Complies Yes/No	Comment
Is the site listed in Schedule 5 as a heritage item or within a Heritage Conservation Area?	N/A	The subject site is not identified as a Heritage Item or within a Heritage Conservation Area.
The following provisions in Part 6 of the LEP apply to the development:		
6.1 – Acid sulfate soils (ASS)	Yes	The site is not identified as being affected by ASS. Regardless, relevant conditions regarding ASS management will remain in the consent.
6.2 – Earthworks	N/A	The modification will not alter the boundaries of the approved basement. Appropriate conditions will remain in the consent.
6.3 – Stormwater management	Yes	The proposal was referred to Council's Development Engineer who finds no issue with the stormwater management of the development.
6.8 - Airspace operations	N/A	The amendments will not result in any changes to the approved building height.
6.9 – Development in areas subject to aircraft noise	Yes	The conditions relating to acoustics that were imposed in the original consent will remain unchanged.
6.16 – Design excellence	N/A	The original design was subject to an Architectural Design Competition. This modification was not required to be presented to a Design Review Panel as discussed above. However, a Design Verification Statement, dated 22 April 2020, has been provided by the applicant.

Note 1 – Variation to FSR Development Standard

The development proposes an overall GFA of 50,556sqm or 3.86:1. This is inconsistent with the maximum FSR of 3:1 (39,285 sqm) under the BBLEP 2013. The proposal involves a 28.7% (11,271 sqm) variation from the maximum allowable FSR and a 0.5% (250 sqm) variation from the last approved application.

The Applicant has provided justification for the contravention of the FSR development standard. Their justification is provided below:

In Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC118, 5 matters were listed to demonstrate whether compliance of a development standard was unreasonable or unnecessary, as established in Wehbe v Pittwater Council (2007) NSWLEC 827. This case also stipulated that all 5 methods may not need demonstrate compliance is necessary where relevant. Each of the matters are addressed below.

1. Compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard: Wehbe v Pittwater Council at [42] and [43].

Compliance with the development standard is unreasonable and unnecessary as the objectives of the development standard are achieved. Clause 4.4 of the Botany Bay LEP 2013 outlines the objectives of the FSR standard to which the development continues to satisfy. A response to the objectives is outlined below.

a) to establish a maximum floor space ratio to enable appropriate development density to be achieved,

The additional FSR continues to enable an appropriate development density as the additional floor space has been created by reinstating floor space that was originally envisaged in the approved masterplan in lieu of the serviced apartment porte-cochere.

b) to ensure that development intensity reflects its locality.

Reinstatement of the 3 units is consistent with the development intensity of the locality that has transformed into a high density mixed use precinct.

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

The proposed modification will continue to maintain an appropriate visual relationship between the existing character of areas and locations that are not undergoing a substantial transformation. The reinstatement of 3 units in the porte-cochere does not face any of the existing lower residential areas.

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 reinstatement of the 3 units on the podium levels face an internal private driveway and neighbouring residential towers to the west. The reinstated units are consistent with the original design of the masterplan which will continue to improve the streetscape and is not visually seen from adjoining roads or parks.

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

The proposed modification to reinstate the 3 units in the podium levels will improve the amenity of adjoining properties in Urban Block 5W, by not retaining a drop off zone for vehicles.

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

The site has been assessed to be suitable for the proposed density and intensity through the consideration of the Stage 1 masterplan application and original DA consent. Reinstatement of the 3 units makes Block D more consistent with the size of the site compared to the porte cochere which has a two-storey element. The 3 units breaks up this scale in proportion to the size of the site and extent of existing development on the site.

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

The modification adopts the serviced apartment unit layout and reinstates 3 of the 6 units at ground level and level 1 along the western façade.

The changes to the residential approval will continue the economic growth of Botany Bay.

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

In Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC118, the written request under Clause 4.6 must be “environmental planning grounds” by their nature established under Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [26]. The adjectival phrase “environmental planning” is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA as found under the objectives of the EPA. This is demonstrated below.

a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State’s natural and other resources,

The modification to increase the FSR complies with the masterplan approval as amended, albeit not the numerical compliance with the BLEP 2013. Reinstating the 3 units along the western façade will fill a large chasm in the building that will improve the security of the locality by filling an empty high space that otherwise would provide a risk to safety for existing and future residents. Filling this empty space with units removes the safety/security risk and thereby satisfies the social aspect of this objective.

The three additional units and unit mix change adds more economic stimulus to the existing shops from future residents to satisfy the economic aspect of this objective.

b) To facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,

The proposed 3 units continues to facilitate ecological sustainable development and relevant economic and social considerations that were a consideration under the original masterplan approval. The return of the 3 units will continue to satisfy the environmental sustainable development principles that were envisaged under the masterplan.

c) To promote the orderly and economic use and development of land,

The additional FSR when compared against the BLEP2013 continues to promote the orderly and economic use of the land. The residential use continues under this modification.

d) To promote the delivery and maintenance of affordable housing,

Not relevant to the application.

e) To protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,

The proposed modification will have no impacts in respect of threats to native animals and plants, ecological communities and their habitat then previously considered in the original residential consent.

f) To promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),

Not relevant to the proposed modification as Urban Block 5C buildings have already been constructed.

g) To promote good design and amenity of the built environment,

The proposed modifications will continue to promote good design and amenity of the built environment. The changes proposed will facilitate a residential design along the western façade where there currently exists an empty chasm where the Porte-cohere was to go.

Without the variation to the FSR development standard, there can be no reinstatement of units into the porte-cohere area which will leave a vacuum of space, which will be detrimental in terms of community safety, and therefore to improve residential amenity, the space must be filled.

h) To promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,

Proper construction, maintenance and protection of health and safety continue under the current conditions of consent with the 3 units along the western façade.

i) To promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,

The proposal will have no impacts on the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State.

Planer's Comments

Council is satisfied that the written justification request provided by the applicant is adequate in demonstrating the matters required by subclause (3).

As discussed by the applicant above, the development standard is unreasonable and unnecessary as the objectives of the development standard are achieved notwithstanding non-compliance with the standard.

Furthermore, the development will meet the objectives of the B4 – Mixed Use zone as a mixture of compatible land uses (including retail and residential) in an accessible location will continue to be provided.

The proposed FSR is consistent with Condition No. 12 of the Stage 1 consent which outlines the maximum FSR for UB5C as 3.86:1. The bulk and scale of the proposal is consistent with the approved bulk and scale of the Stage 1 masterplan which approved building envelopes that have been adopted within this development application. The bulk and scale of the proposal is similar to the other urban blocks that have been approved with 16 and 20 storeys (i.e. UB5E and UB5W) elsewhere on the site. The proposal is also consistent with the adjoining Westfield Eastgardens which is located to the south of the site. The bulk of the development does not contribute to any unreasonable overshadowing, privacy impacts or reduced building separation as these items were considered in the Stage 1 consent and adopted in this development application.

The applicant's justification is considered to be well-founded and the departure to the development standards is not contrary to the public interest. On this basis, it is recommended that the development standard relating to the FSR for the site be varied in the circumstances as discussed above.

Bayside Draft Local Environmental Plan 2020

The Bayside draft LEP 2020 was on public exhibition from 8 April to 1 June 2020 and applies to the subject site.

The draft LEP reviews the current planning controls under three existing LEPs into one consolidated LEP. The draft LEP generally harmonises and updates planning controls for the Bayside Local Government Area.

The proposal is generally consistent with the objectives and requirements of the draft LEP.

Botany Bay Development Control Plan 2013 (BBDP2013)

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

Control	Proposed	Complies (Yes/No)
3A Parking and Access		
3A.2. Parking Provisions of Specific Uses		
<u>Residential</u> <ul style="list-style-type: none"> 1 space / 1 bedroom 210 spaces required 2 space / 2/3 bedroom 640 spaces required 	<i>Residential: 731 spaces</i> <i>Retail: 47 spaces</i> <i>Visitor: 53 spaces</i> N/A – Consistent with Stage 1 Consent	No – Acceptable as consistent with Stage 1 Consent

Control	Proposed	Complies (Yes/No)
<ul style="list-style-type: none"> 1 visitor space /5 106 spaces required <p>Total: 956 spaces</p> <p><u>Retail</u></p> <ul style="list-style-type: none"> 1 space per 25sqm 47 spaces required <p><u>Total spaces</u></p> <p>car spaces required</p> <p>Note: No requirement for car wash bays</p>		
3G.2 Stormwater Management		
C1-C6 Comply with Stormwater Management Technical Guidelines; Part 3G.5 Stormwater Quality.	The proposal was referred to Council's Development Engineer. The scheme is supported and existing conditions will remain in the consent.	Yes
3H Sustainable Design		
C1-C6 BASIX; Solar hot water encouraged.	To remain as approved.	N/A
3I Crime Prevention Safety & Security		
Site layout, design & uses; Building design; Landscaping & lighting; Public domain, open space & pathways; Car parking areas; Public Facilities.	To remain as approved.	N/A
3J Aircraft Noise & OLS		
ANEF; Aircraft height limits in prescribed zones.	To remain as approved.	N/A
3L Landscaping and Tree Management		
General Requirements; Planting design & species; Landscaping in car parks; Green roofs.	The provisions for landscaping will improve as sections of the Porte cochere area will be converted to courtyard gardens. Therefore, the proposed modifications are acceptable for approval.	Yes
3N Waste Minimisation & Management		
General Requirements; Residential Development; Mixed Use Development.	To remain as approved.	N/A
Part 4C – Residential Flat Buildings		
4C.2.2 Streetscape Presentation		
C1 New development must be compatible in building bulk and scale with adjoining residential developments and reflect the patterns of buildings in the streetscape. It must respond to	The modification has been designed to fall in line with the features of the approved western façade. The same glazing style, materials and colours will be incorporated in the external	Yes

Control	Proposed	Complies (Yes/No)
building setbacks, building height and treatment of the building facades.	design of the additional apartments and the new ground floor courtyard entries are landscaped to provide appropriate articulation and streetscape presentation.	
4C.2.4 Landscaped Area and Deep Soil Planting		
C1 A residential flat development must have a minimum landscaped area of 35% and a maximum un-built upon area of 20%.	The modification will improve upon the approved landscaping provisions as the section of the former hard paved Porte cochere area will be converted to landscaped courtyards.	Yes
4C.2.6 Setbacks		
C2 All front, side and rear setbacks are to provide deep soil zones to allow unencumbered planting areas.	The new ground floor courtyard spaces will provide additional deep soil areas to replace the approved hard paved Porte cochere area.	Yes
Front Setbacks C1 Building setbacks from the existing front boundary must match the setback of adjoining properties, but must be a minimum of 3 metres or 4 metres if fronting a classified road.	The western setback will continue to be consistent with the Stage 1 consent.	Yes
4C.4.1 Dwelling Mix and Layout		
Apartment Size and Mix C1 Developments of ten or more apartments are to provide a range of apartment sizes, including studio, 1, 2, and 3+ apartments so as to meet the needs of residents and accommodate a range of household types.	The proposed apartment size and mix is consistent with the requirements of the modified Stage 1 consent as discussed above.	Yes
C2 For development with ten or more apartments, the following unit mix control will apply: (i) A maximum of 25% of apartments are to be Studio and 1 Bedroom; (ii) All 2 Bedroom apartments are to satisfy the amenity controls for Family Apartments; and (iii) All 3+ Bedroom apartments are to satisfy the amenity controls for Family Apartments.	<p>The proposal provides the following:</p> <p>1 bed – 39.4% 2 bed – 44.9% 3 bed – 15%</p> <p>The number of 1 bedroom apartments does exceed 25% however this is generally consistent with the Stage 1 consent. Modifications to the Stage 1 consent are discussed in the report above.</p> <p>For a response to the family friendly controls, please refer to below.</p>	No – Consistent with Stage 1 Consent

Control	Proposed	Complies (Yes/No)
Apartment Layout C1 Dwellings with 3 or more bedrooms are to have two (2) separate and appropriately sized living spaces. A study alcove may be located within the second living space. Should a freestanding study alcove be provided the height of the walls enclosing the study are to be a maximum of 1500mm.	The new 3 bedroom apartments do not have 2 separate living spaces however the spaces are separated into zones through the placement of furniture to support the separation of conflicting activities which satisfies the intent of the control.	No - Accepted
C2 Studies not to be enclosed with a door C3 Studies to be less than 9sqm to be considered studies.	The intent of the control is stated to avoid studies being used as a bedroom. Since all studies are 9sqm or less, below the ADG minimum size requirement for bedrooms, and none include wardrobes it is considered that they will not be used as bedrooms. Studies typically require a degree of privacy for quiet study which is facilitated with a door enclosure. Additionally, having a door allows for greater flexibility in terms of the future use of the space, residents may wish to use these spaces as media rooms or music rooms.	No - Accepted
C4 Saddleback bedroom designs are not acceptable.	Saddleback bedroom designs are not proposed.	Yes
4C.4.2 Family Friendly Apartment Buildings		
C1 Family apartments are apartments with two or more bedrooms designed so as to accommodate the living needs of families with children.	The new 3 bedroom apartments have generally been designed in accordance with the Family Friendly controls.	Yes
C2 Family apartments are to include a study to meet the needs of couple families with dependents households. The design of the study should allow for a parent to easily work from home whilst supervising a child	Each new 3 bedroom apartment has a study.	Yes
C3 Other than the master bedroom, each bedroom is to be large enough to accommodate a single bed, a desk or table, and floor space for playing, to be illustrated on a standard apartment layout plan	Given the large size of the new additional apartments which are far in excess of ADG minimum sizes, there is considered to be sufficient space in all second bedrooms for a bed and desk.	Yes
C4 The floor surface of the entry, dining room and kitchen floor and internal storage area are to be water-resistant and easy to be cleaned and maintained, not carpet	Condition to remain in the consent.	Conditioned

Control	Proposed	Complies (Yes/No)
C5 Two bathrooms are required. One bathroom is to be a shared bathroom which is accessible off a common corridor. This shared bathroom is to have a bathtub, and is to be large enough to allow for parental supervision	All new additional 3 bedroom apartments include at least two bathrooms with one easily accessible off the primary corridor. At least one bathroom in all apartments includes a bathtub.	Yes
C6 The private outdoor space is to be clearly visible from the kitchen	The private courtyards of the additional units are clearly visible from the kitchen windows.	Yes
C7 The entry areas and main corridors within apartments are to be generous in proportion to permit room for toys and sporting equipment, and for drying of wet shoes, boots and clothing	There will be sufficient space in the entry areas of the additional units for storage.	Yes
C8 The Apartment Design Guide sets out storage space requirements. The storage room is to be located near the entry, and be of adequate proportions to accommodate large household items including strollers, wheeled toys, suitcases, and sporting equipment	Complies with ADG requirements conditioned to comply will remain in the consent.	Yes – Conditioned
4C.4.3 Internal Circulation		
C1 Development will provide multiple cores within the building.	Approved cores will remain.	Yes
4C.5.1 Adaptable Housing		
Table 1 of Part 3C Access and Mobility: <u>Adaptable Housing</u> In developments containing 10 or more dwellings, a minimum of 20% of the dwellings are to be adaptable dwellings designed in accordance with Adaptable Housing Australian Standard 4299 Class B. (103 req.)	17 adaptable apartments have been provided. This does not comply with the rates within the DCP or the Stage 1 consent therefore Condition No. 25 must be amended to require an additional 3 adaptable units to be provided.	Conditioned to comply
<u>Accessible Parking</u> In developments containing 10 or more dwellings, accessible resident parking is required at 10% to be allocated to adaptable dwellings.	23 accessible parking spaces have been provided within the development which complies with the minimum requirement.	Yes
4C.5.2 Access		
C1 All applications are to include a statement on how the development will comply with the provisions of the Disability Discrimination Act and comply with Part 3C - Access and Mobility.	Condition requiring compliance with Access report to remain in the consent.	Yes
Part 9D – 130-150 Bunnerong Road, Eastgardens		
C1 Compliance with the Desired Future Character of Mixed Use Urban Block 5.	It is noted that Part 9D of the BBDCP 2013 specifically relates to the redevelopment of the subject site, 130-150 Bunnerong Road, Eastgardens, and guided	Yes

Control	Proposed	Complies (Yes/No)
	the Stage 1 consent. The Stage 1 consent includes conceptual details of the proposed buildings which have been altered from the provisions of Part 9D. Accordingly, the Stage 1 consent now contains the relevant provisions for the subject Stage 2 application for UB5C which has been assessed in this report.	

Environmental Planning and Assessment Regulation 2000

Clause 115(3) of the Environmental Planning and Assessment Regulation 2000 states the following:

(3) In addition, if an application for the modification of a development consent under section 4.55(2) or section 4.56(1) of the Act relates to residential apartment development and the development application was required to be accompanied by a design verification from a qualified designer under clause 50(1A), the application must be accompanied by a statement by a qualified designer.

A Design Verification Statement prepared by Mona Chao (dated 9 September 2020) which verifies the matters prescribed under Clause 115(3A)(b) has been submitted with the application. The Statement confirms that the development satisfies the matters required as per Section 115(3A)(b)(i) and (ii) which are the Design Quality Principles set out in Schedule 1 of SEPP No. 65, and the objectives of the Apartment Design Guidelines.

Furthermore, in accordance with Section 115(3A)(c), the Statement confirms that the modification will not diminish or detract from the design quality, or compromise the design intent, of the development for which the development consent was granted.

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

The proposed development is not inconsistent with the relevant provisions of the *Environmental Planning and Assessment Regulation 2000*.

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

It is considered that the modification will have no significant adverse environmental, social or economic impacts in the locality. The impacts with regards to FSR, car parking and unit mix has been considered in the assessment above.

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

The suitability of the site was considered as part of the assessment of the initial application. The proposed modification does not detract from the suitability of the site for the development.

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

In accordance with Part 2 – Advertising & Notification of the Botany Bay Development Control Plan (BBDGP) 2013, the development application was notified for a period of fourteen (14) days from 14 May 2020 to 28 May 2020. Three (3) submissions were received which are addressed at the beginning of this report.

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

The proposed amendments will have no significant adverse impact upon the public interest.

CONCLUSION

Section 4.55(2) Application No. 2018/1003/C lodged on 4 May 2020 seeking to modify the approved mixed use development to convert service apartments to residential apartments in Urban Block 5C approved under DA-2019/235; changes to unit numbers and mix; delete Porte cochere and changes to conditions at 5 Oscar Place, Eastgardens.

The proposed modifications are considered to be minor in nature and appropriate in allowing flexibility with the assessment being carried out in DA-2018/1003/C relating to minor changes to the approved development. The proposal is considered to be substantially the same development to what was approved by the Panel as well as subsequent modification applications approved by the Panel.

The application has been assessed in accordance with the relevant requirements of the *Environmental Planning and Assessment Act 1979* and is recommended for approval. Any potential issues associated with the amendments are appropriately covered through conditions of consent.

SCHEDULE OF CONSENT CONDITIONS

Premises: 5 Oscar Place Eastgardens

DA-2018/1003/C

GENERAL CONDITIONS

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

Plans	Author	Dated / Received by Council
DA-01-0200 Rev A- Site Plan	PTW Architects	Dated 22 December 2017; Received 11 January 2018
DA-05-0010 Rev A- Site Analysis Plan		Dated 22 December 2017; Received 11 January 2018
DA-09-100 Rev A- Basement Plan		Dated 12 September 2018; Received 28 September 2018
DA-09-1100 Rev C- Level 01 Plan		Dated 12 September 2018; Received 28 September 2018
DA-09-1200 Rev B- Level 02 Plan		Dated 12 September 2018; Received 28 September 2018
DA-09-1300 Rev C- Level 03 Plan		Dated 12 September 2018; Received 28 September 2018
DA-09-1400 Rev C- Level 04 Plan		Dated 12 September 2018; Received 28 September 2018
DA-09-1500 Rev C- Level 05 Plan		Dated 12 September 2018; Received 28 September 2018
<i>DA-09-1600 Rev C- Level 06 Plan</i>		<i>Dated 12 September 2018; Received 28 September 2018</i>
<i>DA-09-1700 Rev C- Level 07-12 Plan</i>		<i>Dated 12 September 2018; Received 28 September 2018</i>
DA-09-2300 Rev B- Level 13 Plan		Dated 12 September 2018; Received 28 September 2018
DA-09-2400 Rev B- Level 14 Plan		Dated 12 September 2018; Received 28 September 2018
<i>DA-09-2500 Rev B- Level 15-17 Plan</i>		<i>Dated 12 September 2018; Received 28 September 2018</i>
<i>DA-09-2800 Rev B- Level 18-20 Plan</i>		<i>Dated 12 September 2018; Received 28 September 2018</i>
DA-09-3100 Rev B- Level 21 Plan		Dated 12 September 2018; Received 28 September 2018
DA-09-3200 Rev B- Level 22 Plan		Dated 12 November 2018; Received 15 November 2018
<i>DA-09-3300 Rev B- Level 23 Plan</i>		<i>Dated 12 November 2018; Received 15 November 2018</i>
DA-20-0100 Rev C- Building Elevation- North		Dated 12 November 2018; Received 15 November 2018

DA-20-0200 Rev C- Building Elevation- South	PTW Architects	Dated 12 November 2018; Received 15 November 2018
DA-20-0300 Rev C- Building Elevation- East		Dated 12 November 2018; Received 15 November 2018
DA-20-0400 Rev C- Building Elevation- West		Dated 12 November 2018; Received 15 November 2018
DA-30-0100 Rev B- Section- North Internal		Dated 12 November 2018; Received 15 November 2018
DA-30-0200 Rev B- Section- South Internal		Dated 12 November 2018; Received 15 November 2018
DA-30-0300 Rev B- Section- West Internal		Dated 12 November 2018; Received 15 November 2018
DA-42-0500 Rev A- External Finishes- Material Board		Dated 22 December 2017; Received 11 January 2018
DA-91-0100 Rev B- GFA Diagrams Level 00-09- Sheet 1		Dated 12 September 2018; Received 28 September 2018
DA-91-0110 Rev B- GFA Diagrams Level 10-21- Sheet 2		Dated 12 September 2018; Received 28 September 2018
DA-50-0100 Rev A- Façade Materials- Tower Facades- Sheet 1		Dated 22 December 2017; Received 11 January 2018
DA-50-0200 Rev A- Façade Materials- Tower Facades- Sheet 2		Dated 22 December 2017; Received 11 January 2018
DA-50-0300 Rev A- Façade Materials- Tower Facades- Sheet 3		Dated 22 December 2017; Received 11 January 2018
DA-50-0400 Rev A- Façade Materials- Podium Facades- Sheet 4		Dated 22 December 2017; Received 11 January 2018
DA-50-0500 Rev A- Façade Materials- Car park Screen- Sheet 5		Dated 22 December 2017; Received 11 January 2018
DA-70-0100 Rev A- Adaptable Apartments		Dated 22 December 2017; Received 11 January 2018
DA-95-0300 Rev A- Landscape Plan- Streetscape + Public Domain		Dated 22 December 2017; Received 11 January 2018
DA-95-0400 Rev B- Communal Open Space		Dated 12 September 2018; Received 28 September 2018
DA-90-1310 Rev A- Level 03 Privacy Screen Plan		Dated 12 September 2018; Received 28 September 2018
DA-50-1200 Rev A- Carpark Ramp Plan and Section		Dated 12 September 2018; Received 28 September 2018
DA-00-0000, Revision D – Development Data Sheet	Meriton	Dated 17 July 2020 Received 21 July 2020
DA-01-0200, Revision A B – Site Plan	Meriton	Dated 5 March 2020; Received 13 March 2020 Dated 20 April 2020

		<i>Received 4 May 2020</i>
DA-09-1000, Revision E G – Basement Plan	Meriton	<i>Dated 23 December 2019;</i> <i>Received 13 March 2020</i> <i>Dated 17 July 2020</i> <i>Received 21 July 2020</i>
DA-09-1100, Revision G D – Level 01 Plan	Meriton	<i>Dated 10 February 2020;</i> <i>Received 13 March 2020</i> <i>Dated 17 July 2020</i> <i>Received 21 July 2020</i>
DA-09-1200, Revision F I – Level 02 Plan	Meriton	<i>Dated 23 December 2019;</i> <i>Received 13 March 2020</i> <i>Dated 17 July 2020</i> <i>Received 21 July 2020</i>
DA-09-1300, Revision F H – Level 03 Plan	Meriton	<i>Dated 8 November 2019;</i> <i>Received 13 March 2020</i> <i>Dated 17 July 2020</i> <i>Received 21 July 2020</i>
DA-09-1400, Revision F H – Level 04 Plan	Meriton	<i>Dated 8 November 2019;</i> <i>Received 13 March 2020</i> <i>Dated 17 July 2020</i> <i>Received 21 July 2020</i>
DA-09-1500, Revision A I – Level 05 Plan	Meriton	<i>Dated 7 April 2020;</i> <i>Received 9 April 2020</i> <i>Dated 17 July 2020</i> <i>Received 21 July 2020</i>
<i>DA-09-1600, Revision H – Level 06 Plan</i>	<i>Meriton</i>	<i>Dated 17 July 2020</i> <i>Received 21 July 2020</i>
<i>DA-09-1700, Revision H – Level 07-12 Plan</i>	<i>Meriton</i>	<i>Dated 17 July 2020</i> <i>Received 21 July 2020</i>
DA-09-2300, Revision A C – Level 13 Plan	Meriton	<i>Dated 6 December 2019;</i> <i>Received 13 December 2019</i> <i>Dated 17 July 2020</i> <i>Received 21 July 2020</i>
DA-09-2400, Revision A C – Level 14 Plan	Meriton	<i>Dated 13 February 2020;</i> <i>Received 13 March 2020</i> <i>Dated 17 July 2020</i> <i>Received 21 July 2020</i>
<i>DA-09-2500, Revision G – Level 15-17 Plan</i>	<i>Meriton</i>	<i>Dated 17 July 2020</i> <i>Received 21 July 2020</i>
<i>DA-09-2800, Revision G – Level 18-20 Plan</i>	<i>Meriton</i>	<i>Dated 17 July 2020</i> <i>Received 21 July 2020</i>
DA-09-3100, Revision A C – Level 21 Plan	Meriton	<i>Dated 6 December 2019;</i> <i>Received 13 December 2019</i> <i>Dated 17 July 2020</i> <i>Received 21 July 2020</i>
DA-09-3200, Revision A – Level 22 Plan	Meriton	Dated 6 December 2019; Received 13 December 2019
DA-20-0300, Revision A – Building Elevation – East	Meriton	Dated 6 December 2019; Received 13 December 2019
DA-20-0100, Revision A – Building Elevation – North	Meriton	Dated 6 December 2019; Received 13 December 2019
DA-20-0200, Revision A – Building Elevation – South	Meriton	Dated 6 December 2019; Received 13 December 2019

DA-20-0400, Revision- A D – Building Elevation – West	Meriton	Dated 6 December 2019; Received 13 December 2019 Dated 17 July 2020 Received 21 July 2020
DA-91-0100, Revision- A D – GFA Diagrams Level 01-10 – Sheet 1	Meriton	Dated 6 December 2019; Received 13 December 2019 Dated 17 July 2020 Received 21 July 2020
DA-91-0110, Revision- A D – GFA Diagrams Level 11-22 – Sheet 2	Meriton	Dated 6 December 2019; Received 13 December 2019 Dated 17 July 2020 Received 21 July 2020
SK-30-001- Rev A- Sections Architectural Frame Sections	-	Dated 12 November 2018; Received 13 November 2018
Reference Document(s)	Author	Dated / Received by Council
Landscape Report	Urbis	Dated 10 September 2018; Received 28 September 2018
DA Access Report	Wall to Wall Design and Consulting	Dated 9 January 2018; Received 11 January 2018
Acoustic Report	Acoustic Logic	Dated 8 December 2017; Received 11 January 2018
Arboricultural Impact	Jacksons Nature Works	Dated 18 December 2017; Received 11 January 2018
Thermal Comfort and BAIX Assessment Rev A	Efficient Living	Dated 20 December 2017; Received 11 January 2018
Section J Report	Efficient Living	Dated 20 December 2017; Received 11 January 2018
Construction Management Plan	Karimbla Constructions Services (NSW) Pty Limited	Dated 18 December 2017; Received 11 January 2018
Updated Remediation Action Plan	Douglas Partners	Dated September 2013; Received 11 January 2018
SEPP 55 letter	Consulting Earth Scientists	Dated 10 April 2014; Received 11 January 2018
Site Audit Report and Site Audit Statement	AECOM	Dated 31 March 2014; Received 11 January 2018
Crime Risk and Security Report	Meriton Property Services Pty Ltd	Dated 4 January 2018; Received 11 January 2018
Geotechnical Investigation Report	Coffey	Dated 5 February 2016; Received 11 January 2018
UB5C- Reflectivity Assessment	SLR	Dated 9 January 2018; Received 11 January 2018
Waste Management Plan	Elephants Foot recycling solutions	Received 11 January 2018
UB5C Qualitative Wind Assessment	SLR	Dated 9 January 2018; Received 11 January 2018
DCP Assessment Table	-	Received 11 January 2018
Stage 1 Masterplan Consent Compliance Table	-	Received 11 January 2018

Acid Sulfate Soils Management Plan	Consulting Earth Scientists	Dated 21 January 2016; Received 11 January 2018
BCA Report	AED Group	Dated 22 December 2017; Received 11 January 2018
Statement of Environmental Effects	Meriton Property Services Pty Ltd	Dated 13 November 2018; Received 15 November 2018
Amended Traffic Report	ARUP	Dated 27 September 2018; Received 28 September 2018
Storage Plan	-	Received 28 September 2018
Traffic Analysis Report	Kone	Dated 13 July 2018; Received 28 September 2018
Civil DA Report	At&I	Dated 22 January 2018; Received 28 September 2018
Response to RFI Letter	Karimbla Constructions Services (NSW) Pty Limited	Dated 28 September 2018; Received 28 September 2018
Clause 4.6 Variation	-	Received 15 November 2018
DA-00-0000, Revision A – Development Data Sheet	Meriton	Dated 7 April 2020; Received 9 April 2020
DA-93-0200, Revision A D – Solar Access Diagrams Level 01-12 – Sheet 1	Meriton	Dated 6 December 2019; Received 13 December 2019 Dated 17 July 2020 Received 21 July 2020
DA-93-0210, Revision A D – Solar Access Diagrams Level 13-21 – Sheet 2	Meriton	Dated 6 December 2019; Received 13 December 2019 Dated 17 July 2020 Received 21 July 2020
DA-94-0100, Revision G – Cross – Ventilation Diagrams Level 01-09	Meriton	Dated 17 July 2020 Received 21 July 2020
Design Verification Statement	Meriton	Dated 11 December 2019; Received 13 December 2019
Design Verification Statement	Meriton	Dated 22 April 2020 Received 4 May 2020
Amended Statement of Environmental Effects – Section 4.55(1A) Application	Meriton	Dated 9 March 2020; Received 13 March 2020
Amended Statement of Environmental Effects – Section 4.55(1A) Application	Meriton	Dated 22 July 2020 Received 23 July 2020

[Amendment C – Section 4.55(1A) – amended on 17 September 2020]

- 2 This Consent relates to land in Lot 22 in DP 1242288 and, as such, building works must not encroach on to adjoining lands or the adjoining public place.
- 3 The consent given does not imply that works can commence until such time that:
 - a) Detailed plans and specifications of the building have been endorsed with a Construction Certificate by:

- (i) The consent authority; or,
 - (ii) An accredited certifier; and,
- b) The person having the benefit of the development consent:
 - (i) Has appointed a principal certifying authority; and
 - (ii) Has notified the consent authority and the Council (if the Council is not the consent authority) of the appointment; and,
 - (iii) The person having the benefit of the development consent has given at least 2 days notice to the council of the persons intention to commence the erection of the building.
- 4 All building work must be carried out in accordance with the provisions of the Building Code of Australia.
- 5 This development is a Stage 2 consent. The development must comply with all conditions of the Stage 1 consent DA-14/96 unless modified and agreed upon by Council within this consent.
- 6 Pursuant to clause 97A(3) of the Environmental Planning & Assessment Regulation 2000, it is a condition of this development consent that all the commitments listed in each relevant BASIX Certificate for each building in the development are fulfilled.
 - a) Note:

Relevant BASIX Certificate means:

 - (i) A BASIX Certificate that was applicable to the development when this development consent was granted (or, if the development consent is modified under Section 96 of the Act, a BASIX Certificate that is applicable to the development when this development consent is modified); or
 - (ii) If a replacement BASIX Certificate accompanies any subsequent application for a construction certificate, the replacement BASIX Certificate.
 - (iii) BASIX Certificate has the meaning given to that term in the Environmental Planning and Assessment Regulation 2000.

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- a) Bicycle parking facilities shall be designed in accordance with AS2890.3:1993
- b) The off-street parking areas associated with the subject development shall be designed strictly in accordance with AS2890.1 and AS2890.6.
- c) Internal height clearance shall be designed throughout the car park and access driveway in accordance with AS2890.1 and AS2890.6.
- d) Commercial vehicle facilities shall be designed strictly in accordance with AS2890.2:2002.

- a) All telecommunications and utility services are to be placed underground along the Street frontages within the site. The extent of works required in order to achieve this outcome may involve works beyond the frontage of the development site. Plans are to be prepared and certified by a suitably qualified Electrical Design Consultant for decommissioning the existing network and constructing the new network; and are to be submitted to, and approved by Council and relevant utility authorities, prior to commencement of telecommunication and utility services works.
- b) Service Alterations – All mains, services, poles, etc., which require alteration due to works associated with the development, shall be altered at the applicant's expense.

CONDITIONS IMPOSED BY AN EXTERNAL AUTHORITY

Where relevant, the following external authority conditions apply:

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

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

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

- b) The need for additional electricity conduits in the footway adjacent to the development will be assessed and documented in Ausgrid's Design Information, used to prepare the connection project design.
- c) All proposed vegetation underneath overhead power lines and above underground cables must comply with the requirements of ISSC 3 Guideline For Managing Vegetation Near Power Lines.
- d) There are existing overhead electricity network assets in Westfield Drive. Special care should also be taken to ensure that driveways and any other construction activities within the footpath area do not interfere with the existing cables in the footpath. Ausgrid cannot guarantee the depth of cables due to possible changes in ground levels from previous activities after the cables were installed. Hence it is recommended that the developer locate and record the depth of all known underground services prior to any excavation in the area. Safework Australia – Excavation Code of Practice, and Ausgrid's

Network Standard NS156 outlines the minimum requirements for working around Ausgrid's underground cables

- 10 The following conditions are imposed by **Civil Aviation Safety Authority (CASA)**:
- a) The building must not exceed a maximum height of 91 metres AHD, inclusive of all lift over-runs, vents, chimneys, aerials, antennas, lightning rods, any roof top garden plantings, exhaust flues etc.
 - b) The proponent must ensure obstacle lighting arrangements have a remote monitoring capability, in lieu of observation every 24 hours, to alert SACL reporting staff of any outage. For detailed requirements for obstacle monitoring within the OLS of an aerodrome, refer to subsection 9.4.10 of the MOS Part 139.
 - c) Separate approval must be sought under the Regulations for any cranes required to construct the buildings. Construction cranes may be required to operate at a height significantly higher than that of the proposed controlled activity and consequently, may not be approved under the Regulations. Therefore it is advisable that approval to operate construction equipment (i.e. cranes) should be obtained prior to any commitment to construct.
 - d) At the completion of the construction of the building, a certified surveyor is to notify (in writing) the airfield design manager of the finished height of the building.
- 11 The following conditions are imposed by the **NSW Roads and Maritime Services (RMS)**:
- a) All buildings and structures, together with any improvements integral to the future use of the site shall be wholly within the freehold property (unlimited in height or depth), along the Bunnerong Road boundary.
 - b) A Construction Traffic Management Plan detailing construction vehicle routes, number of trucks, hours of operation, access arrangements and traffic control should be submitted to Council prior to the issue of a Construction Certificate.
 - c) All demolition and construction vehicles are to be contained wholly within the site. All vehicles must enter the site before stopping as a construction zone will not be permitted on Bunnerong Road.
 - d) A Road Occupancy Licence should be obtained from Transport Management Centre for any works that may impact on traffic flows on Bunnerong Road during construction activities. A ROL can be obtained through <http://myrta.com/oplinc2/pages/security/oplincLogin.jsf>
 - e) Should the post development storm water discharge from the subject site into the Roads and Maritime system exceed the pre-development discharge, detailed design plans and hydraulic calculations of any charges are to be submitted to Roads and Maritime for approval, prior to the commencement of works on site. Details should be submitted to:

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

A plan checking fee will be payable and a performance bond may be required before Roads and Maritime approval is issued. With regard to the Civil Works requirement please contact the Roads and Maritime Project Engineer, External Works: Ph: 88492114 or Fax: 8849 2766.

- f) The developer is to submit design drawings and documents relating to the excavation of the site and support structures to Roads and Maritime for assessment, in accordance with Technical Direction GTD2012/001. The developer is to submit all documentation at least six (6) weeks prior to commencement of construction and is to meet the full cost of the assessment of Roads and Maritime.

The report and any enquiries should be forwarded to:

Project Engineer, External Works
Sydney Asset Management
Roads and Maritime Services
PO Box 973 Parramatta CBD 2124
Telephone 8849 2114
Fax 8849 2766

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

- g) The road upgrade works required to support the development must be completed in accordance with the conditions of consent for the Master Plan (and subsequent modifications), and must reach practical completion, under the Works Authorisation Deed (WAD) with Roads and Maritime in relation to the road upgrade works, as evidenced by a practical completion certificate issued by Roads and Maritime under the WAD, prior to the issues of an Occupation Certificate to UB5C.
- h) All works and regulatory signposting associated with the proposed development are to be at no cost to Roads and Maritime.

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

a) Sydney Water Servicing

Sydney Waters' servicing investigation shows that the trunk drinking water system has adequate capacity to service the proposed development.

b) Wastewater

- i. Sydney Waters' servicing investigation shows that the trunk wastewater system has adequate capacity to service the proposed development.
- ii. If the developer is extending the wastewater network, they will need to design an extension in keeping with the Sewerage Code requirements. The limit of gravity servicing is estimated at a level of approximately 17

metres, meaning development below this level (e.g. basements) cannot be connected to the system by gravity.

c) Group Property

Where proposed works are in close proximity to Sydney Water land or easements, the developer may be required to carry out additional works to facilitate their development in order to not encroach within the Sydney Water land parcel or easement. Proposed subdivision DP 1236250 shows multiple lots being affected by wastewater mains and disused assets which will require a release of easements in future. Lot 2 in DP 1187426 is burdened by the following:

- i. Easement for Water Supply Purposes 3 Wide
- ii. Easement for Access and Drainage Variable Width
- iii. Positive Covenant
- iv. Easement for Stormwater Drainage Purposes 7.5 Wide

These easements are not to be built over or encroached in without the consent of Sydney Water. If there is a requirement to construct a new main or deviate an existing main to get a Section 73 Certificate and the mains are not in a dedicated public road or pathway, the developer will have to pay to create or release an easement in favour of Sydney Water.

The developer will not be given a Section 73 Certificate until:

- a) The main(s) have been constructed;
- b) You have paid to have a survey and the survey has been completed, before the trenches are backfilled, to define the centreline of each water main
- c) All plans and documents relating to easements have been approved by Sydney Water
- d) You have paid our related costs
- e) You have paid the property security we require for easements until registered.

This advice is not a formal approval of our servicing requirements. Formal requirements for servicing the development will be determined as part of the Section 73 application. More information about the Section 73 application process is available on Sydney Waters' web page in the Land Development Manual.

d) Sydney Water E-Planning

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

e) Sydney Water Servicing

A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained from Sydney Water. The proponent is advised to make an early application for the certificate, as there may be water and wastewater pipes to be built that can take some time. This can also impact on other services and buildings, driveways or landscape designs. Applications must be made through an authorised Water Servicing Coordinator. For help either visit www.sydneywater.com.au > Plumbing, building and developing > Developing > Land development or telephone 13 20 92.

f) Building Plan Approval

The approved plans must be submitted to the Sydney Water Tap in online service to determine whether the development will affect any Sydney Water sewer or water main, stormwater drains and/or easement, and if further requirements need to be met. The Sydney Water Tap in online self-service replaces our Quick Check Agents as of 30 November 2015.

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

- Building plan approvals
- Connection and disconnection approvals
- Diagrams
- Trade waste approvals
- Pressure information
- Water meter installations
- Pressure boosting and pump approvals
- Changes to an existing service or asset e.g. relocating or moving an asset

Sydney Waters Tap In online service is available at:

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

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

- 13 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 Accredited Certifier (AC) or Council prior to Commencement of Works. The insurance cover shall be a minimum of \$10 million.
- 14 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.

- 15 A Soil and Water Management Plan shall be prepared. 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.

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.

Council's warning sign for soil and water management must be displayed on the most prominent point on the building site, visible to both the street and site workers. The sign shall be erected prior to commencement of works and shall be displayed throughout construction.

- 16 Erosion and sediment control devices shall be installed and in function prior to the commencement of any construction works upon the site in order to prevent sediment and silt from site works (including demolition and/or excavation) being conveyed by stormwater into public stormwater drainage system, natural watercourses, bushland, trees and neighbouring properties. In this regard, all stormwater discharge from the site shall meet the legislative requirements and guidelines. These devices shall be maintained in a serviceable condition AT ALL TIMES throughout the entire construction phases of the development and for a minimum one (1) month period after the completion of the development, where necessary.

- 17 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.
- 18 This Consent shall not preclude the demolisher from giving notice to other statutory authorities, such as Sydney Water Corporation, WorkCover, etc.
- 19 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.
- 20 Underground assets may exist in the area that is subject to your application. In the interests of health and safety and in order to protect damage to third party assets, please contact Dial before You Dig at www.1100.com.au or telephone on 1100 before excavating or erecting structures (This is the law in NSW). If alterations are required to the configuration, size, form or design of the development upon contacting the Dial before You Dig service, an amendment to the development consent (or a new development application) may be necessary. Individuals owe asset owners a duty of care that must be observed when working in the vicinity of plant or assets. It is the individual's responsibility to anticipate and request the nominal location of plant or assets on the relevant property via contacting the Dial before You Dig service in advance of any construction or planning activities
- 21 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.

The principal contractor and any sub-contractor must comply with all work directions, verbal or written, given by the professional engineer.

A copy of any written direction required by this condition must be provided to the Principal Certifying Authority 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.

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

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

a)	Development Control	\$13,583.00	
b)	Section 7.11 Contributions (s.94) (See below)	\$10,300,000.00	\$10,220,000.00
c)	Long Service Levy	See below	
d)	Tree Preservation Bond	\$4,450.00	(See below)

23 Prior to the issue of any **amended** Construction Certificate, the payment of a monetary contribution of ~~\$10,300,000.00~~ **\$10,220,000.00** in accordance with Council's Section 7.11 Contributions Plan 2016 which is broken down as follows:

a)	Community Facilities	\$824,000.00	\$836,588.96
b)	Recreation Facilities	\$8,652,000.00	\$8,631,216.16
c)	Transport Management	\$721,000.00	\$677,781.11

- d) Administration \$103,000.00 \$74,413.77

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

23A Prior to the issue of the amended Construction Certificate, an additional Section 7.11 Contribution of \$80,000.00 is to be paid to Council.

This amount comprises the difference between the total amount required to be paid for the entire approved development, and the amount already paid to Council under both DA-2018/1003 (as previously modified) and DA-2019/235.

[Amendment C – Section 4.55(1A) – amended on 17 September 2020]

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

- 25 Prior to the issue of the relevant Construction Certificate, revised plans are to be provided to the principal certifying authority to be approved as follows:

- a) Amended car parking level to demonstrate 47 retail car parking spaces to comply with the Stage 1 consent requirement;
- b) An additional ~~two~~ **three (3)** apartments are to be converted to adaptable apartments to result in a total of ~~nineteen (19)~~ **twenty (20)**;
- c) A loading dock management plan of the ground floor loading dock is to be prepared demonstrating the management of the loading dock during operations. This is to be provided to the Council and the Principal Certifying Authority prior to the issue of the Occupation Certificate;
- d) Front entries of the apartments, dining rooms, kitchen floors and internal storage areas are to be finished with materials that are water resistant and easy to clean;
- e) The location mailboxes within the lobby of each building is to be identified on the amended plans. The mailroom within the basement is not supported;
- f) Study nooks are to be provided to two and three bedroom units that do not have a separate study and are not be enclosed in cupboard areas that do not have access to ventilation and sunlight. It is recommended that study nooks are located within the open planned area of the apartments;
- g) Include gas (where available) and water tap connections to each balcony;
- h) The courtyards on the ground floor apartments along the eastern and western elevations are to be setback a further 500mm so that they are encompassed within the 4 metres setback zone; and
- i) Windows within the corridors and hallways are to be operable and comply with the requirements of the BCA.

[Amendment C – Section 4.55(1A) – amended on 17 September 2020]

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

- k) The methodology to control dust on site.
- 28 Prior to the issue of any Construction Certificate, a detailed Traffic Management Plan for the pedestrian and traffic management of the site during construction shall be prepared and submitted to the relevant road authority (Council or Roads and Maritime Services). The plan shall:
- a) be prepared by a RMS accredited consultant,
 - b) nominate a contact person who is to have authority without reference to other persons to comply with instructions issued by Council's Traffic Engineer or the Police, and
 - c) if required, implement a public information campaign to inform any road changes well in advance of each change. The campaign may be required to be approved by the Traffic Committee.
- Note: Any temporary road closure shall be confined to weekends and off-peak hour times and is subject to Council's Traffic Engineer's approval. Prior to implementation of any road closure during construction, Council shall be advised of these changes and Traffic Control Plans shall be submitted to Council for approval. This Plan shall include times and dates of changes, measures, signage, road markings and any temporary traffic control measures.
- 29 Prior to the issue of the relevant Construction Certificate, access in accordance with the relevant Australian Standards and compliance with Part 3C of the Botany Bay Development Control Plan 2013 must be provided. The allocated parking space will be located in close proximity to the access points of the building. Please note that compliance with this condition requires the relevant unit(s) to be constructed to comply with all the essential (Type C) requirements of the relevant Australian Standards.
- Note:** Compliance with Botany Development Control Plan Part 3C – Access and Mobility and the Building Code of Australia does not necessarily guarantee that the development meets the full requirements of the Disability Discrimination Act (DDA) 1992. It is the responsibility of the applicant to make the necessary enquiries to ensure that all aspects of the DDA legislation are met.
- 30 Prior to the issue of the Construction Certificate, the approved plans must be submitted to 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. 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>
- 31 Prior to issue of the Construction Certificate, a longitudinal driveway profile shall be submitted to Principal Certifying Authority for assessment and approval. The profile shall start in the centre of the road and be along the critical edge (worst case) of the driveway. Gradients and transitions shall be in accordance with Council's Code. The profile shall be drawn to a scale of 1 to 25 and shall include all relevant levels, grades (%) and lengths.
- 32 Prior to the issue of the relevant Construction Certificate, a dedicated car wash bay with associated tap and fixed sign stating 'Car Wash Bay' is required to be demonstrated/detailed in revised plans. The runoff shall be directed and treated as per Botany DCP Part 10 - Stormwater Management Technical Guidelines.

- 33 Prior to the issue of the Construction Certificate, detailed drainage design plans for the management of stormwater are to be submitted to Council or an Accredited Certifier for assessment and approval. Design certification and drainage design calculations are to be submitted with the plans. Botany DCP Part 10 – Stormwater Management Technical guidelines sets out the minimum documentation requirements for detailed design plans.
- 34 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 nineteen (19) accessible car parking spaces shall be provided and clearly marked as specified in Australian Standards AS 2890.6, SEPP 65 Design Code and Council requirements, and
 - b) 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.
- 35 Prior to the issue of the relevant Construction Certificate, to ensure that utility authorities and Council are advised of any effects to their infrastructure by the development, the applicant shall:
- a) Carry out a survey of all utility and Council services within the site including relevant information from utility authorities and excavation if necessary to determine the position and level of services,
 - b) Negotiate with the utility authorities (eg AusGrid, Sydney Water, Telecommunications Carriers and Council in connection with:
 - (i) The additional load on the system, and
 - (ii) The relocation and/or adjustment of the services affected by the construction.
- Any costs in the relocation, adjustment, and provision of land or support of services as requested by the service authorities and Council are to be the responsibility of the developer.
- 36 The external walls of the building including attachments must comply with the relevant requirements of the National Construction Code (NCC). Prior to the issue of a Construction Certificate, the Principal Certifying Authority and Principal Certifying Authority must:
- a) Be satisfied that suitable evidence is provided to demonstrate that the products and systems proposed for use or used in the construction of external walls including finishes and claddings such as synthetic or aluminium composite panels comply with the relevant requirements of the NCC; and
 - b) Ensure that the documentation relied upon in the approval processes include an appropriate level of detail to demonstrate compliance with the NCC as proposed and as built.
- 37 Prior to the issue of the relevant Construction Certificate, details on the mechanical plant and equipment to be submitted to the Principal Certifying Authority. The report must:

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

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

- 38 Prior to the issue of the relevant Construction Certificate, plans and specifications for the storage room for waste and recyclable materials shall be submitted to the Principal Certification Authority. The garbage and recycling storage area shall be adequately ventilated, roofed and screened from public view. The floor shall be made of an impervious surface, drained to sewer and include a dry arrestor pit with a removable basket. Washing facilities shall be provided within close proximity to the garbage and recycling storage area.
- 39 Prior to the issue of the relevant Construction Certificate, any electrical kiosk, fire booster assembly or similar utilities must be located in an unobtrusive location away from vehicle and pedestrian entrances to the property and not within the landscaped street setback. The utilities must be screened by a built screen enclosure and/or landscaping so as not to reduce the visual amenity of the development or the streetscape and public domain. The location of, and screening treatment surrounding these utilities is to be approved by the Principal Certifying Authority prior to their installation.
- 40 Design certification, prepared by a suitably qualified engineer shall be submitted to Principal Certifying Authority certifying the car parking area shown on the construction plans has been designed in accordance with AS 2890.1, AS2890.2, and AS2890.6.
- 41 A suitable intercom system linked to all units within the development shall be provided at the vehicle entrance to the development to ensure any visitors to the site can gain access to the visitor parking in the car parking area. The details of the intercom system shall be submitted to Principal Certifying Authority and its location and specifications endorsed on the construction drawings.

- 42 Prior to the issue of the relevant Construction Certificate, an application for Property Address Allocation and associated fee is required to be submitted to Council. Determination of address numbers are in accordance with AS/NZS 4819:2011 Rural and Urban Addressing Standard and Section 5.2 of the NSW Address Policy.

The form is available for download at:

<https://www.bayside.nsw.gov.au/services/development-construction/building-or-altering-property/commonly-used-forms>

The general principles of addressing in NSW are described in the NSW Addressing User Manual, Ch.6 Addressing Principles. The manual is available for download at:

[http://www.gnb.nsw.gov.au/_data/assets/pdf_file/0007/199411/2018_NSW_Address ing_User_Manual.pdf](http://www.gnb.nsw.gov.au/_data/assets/pdf_file/0007/199411/2018_NSW_Address_ing_User_Manual.pdf)

The numbering (sub-addresses) of the individual units in multi-level sites should be consistent with Australian Standards AS/NZS 4819:2011 Rural and Urban Addressing Standard & NSW Addressing User Manual.

Developers of multi-level buildings are required to submit their schedule of addresses to Council for addressing approval prior to registration of the subdivision plan.

- 43 The applicant is to submit payment of a Tree Preservation Bond of \$4,450.00 to ensure protection of the seven (7) trees listed in the arborist report in Condition No. 1 above from damage during construction. The duration of the Bond shall be limited to a period of 12 months after the issue of the Occupation Certificate. At the completion of the Bond period the Tree Preservation Bond shall be refunded pending a satisfactory inspection of retained trees by Council. If a tree was found to be in decline, damaged (including roots), dead, excessively pruned or removed without Council permission or, if tree protection measures were not satisfied at any time during construction, then all or part thereof of the bond shall be forfeited.

- 44 Prior to the issue of the relevant Construction Certificate, the landscape areas shown on Urbis Landscape plans dated 19th September 2018, shall be the subject of detailed landscape construction level documentation (plans and specification) to be submitted to and approved by the Bayside Council's Landscape architect. The landscape documentation is to be prepared by a suitably qualified Landscape Architect, in accordance with Council's Landscape DCP. The detailed (construction level) plan shall include, but not be limited to:

- a) Seven (7) existing trees outside development work (Trees Number 13, 15, 16, 18 & 19, *Callistemon salignus*, tree 14 *Casuarina glauca* and tree 17 *Banksia integrifolia*) are to be retained and protected, as specified in the Arborist report prepared by Jacksons Nature Works, dated 18th December 2017, and shall be demonstrated on the landscape plan.

- b) Ground level Setbacks:

- i) The 12 meters southern setback area provided along Westfield Drive, is to be densely planted with a 3-tier of advanced trees, shrubs and groundcovers. To replace the eleven (11) *Corymbia citriodora* trees which are proposed to be removed, a minimum of eighteen (18) canopy trees of 200 Litres minimum container size each are to be planted. The provision of large canopy trees shall be maximised within this setback with the species of trees provided but not limited to the following: *Corymbia citriodora* (Lemon Scented Gum), *Eucalyptus microcorys* (Tallowood), *Eucalyptus saligna* (Sydney Blue Gum), *Angophora costata*, *Melaleuca quinquenervia* (Broad Leaved Paperbark), *Eucalyptus piperita* (Sydney Peppermint).

- ii) The 4 metre northern setback along Oscar place is to maximise the deep soil planting with advanced canopy trees. Planter beds shall be generous in space to allow groundcovers and feature plants below the proposed canopy trees. Design along this setback shall be integrated with Oscar Place (Civic Avenue) design, and all relevant elements of Oscar Place shall be included in the Construction Certificate Landscape Plan.
- iii) The 4 metre setback deep soil area along Finch Drive and Studio Drive shall be planted with a mix of canopy trees, and undercover planting. Paved areas shall be limited to access links.
- c) Flue pipes and carpark exhaust within the communal open space area on Level 06 must be screened to enhance its visual appearance within the open space and the outlook for residents. Turf open areas, circulation and access areas shall minimise the visibility of these service elements/structures.
- d) Landscape planting and vegetation shall not impede the views to the communal areas or public street and spaces, landscape design shall follow CPTED principle.
- e) Landscape plans shall include/display all proposed and retained levels, top of walls and all stormwater relevant information: location of underground stormwater, pits and rainwater tanks, ensuring deep soil availability for landscaping and tree planting is maximised.
- f) Landscape specifications detailing soil and mulch finishes, root barriers, irrigation, edge treatments and other landscape handworks/materials such as retaining walls and paving are to be provided.
- g) Provide details, sections and materials of fences, privacy screening, pergolas and walls visible from the public domain of both external roads and public open space.
- h) Indicate the location of deep soil and all basement structures relative to the landscape areas on the landscape plan.
- i) Synthetic turf is not supported in non-shaded areas. Timber deck is recommended instead to avoid raised of temperature produced by synthetic turf, overuse of water to control temperature in summer, and related environmental issues.
- j) Planter boxes will be fully automatic irrigated. Construction details, sections and external finishes shall be provided demonstrating proposed irrigation treatment. Planter box depths and construction specifications to be in accordance with Apartment Design Guide, NSW Planning and Environment, July 2015.
- k) Maintenance schedule for all soft and hardscape works to cover a 12 months period and provide a guide on how to best maintain all proposed landscaped areas.
- l) Landscape plan shall include street planting, footpaths, paving, street tree pit treatments, tree guards and soft landscaping treatment. Street trees shall be supplied all at 400 litres on the following:
 - (i) Studio Drive (North-South Street N2) shall be planted with *Corymbia maculata* (Spotted Gum)

- (ii) Finch Drive (North-South Street N1) shall be planted with *Eucalyptus botryoides* (Bangalay)

45 Prior to the issue of the relevant Construction Certificate, a Public Domain frontage landscape plan and landscape improvements plan shall be submitted and approved by Bayside Council's landscape architect. The plans shall include street planting, footpath paving, street tree pit treatments and tree guards, street furniture such as seats, bollards, bins, bike racks, and ground level soft landscaping treatment. The public domain landscape plans shall include the following:

- a) Street trees shall be supplied all at 400 litres minimum, as follow:
 - i. Studio Drive (North-South Street N2) shall be planted with *Corymbia maculata* (Spotted Gum).
 - ii. Westfield Drive shall be planted in the private domain area.
 - iii. Finch Drive (North-South Street N1) shall be planted with *Eucalyptus botryoides*, (Bangalay)
 - iv. Trees shall be sourced from a reputable supplier that grows to NATSPEC.
 - v. A Dial-Before-You-Dig enquiry is required prior to all tree planting.
- b) Tree pits shall be backfilled with imported soil/compost, water holding additive and fertiliser, and mulched with leaf mulch to a depth of 100mm. The trees are to be staked in accordance with Council's Landscape DCP, and have installed a RootRain Civic for an effective tree watering.
- c) Tree guards shall be constructed for each tree with four (4) posts as per Bayside Council Specifications.
- d) All street verges will be treated with groundcovers, no turf unless approved by Council.
- e) As a minimum, shrubs shall be planted across the front boundary and down both side boundaries to the building alignment. Plants shall be predominantly native, have low water requirements and be suited to the local soils.

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 shall be appointed to the site prior to the commencement of any remediation works, excavation or commencement of works at the site. The Site Auditor shall review and endorse any additional investigation and remediation proposed prior to the commencement of any works.

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

47 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.

CONDITIONS WHICH MUST BE SATISFIED DURING WORKS

- 48 Construction operations shall comply with the following:
- a) The applicant shall conduct all construction works and any related deliveries/activities wholly within the site. If any use of Council's road reserve is required, approval and permits shall be obtained from Council.
 - b) Construction operations such as brick cutting, washing tools or brushes and mixing mortar shall not be carried out on park/road reserve or in any other locations which could lead to the discharge of materials into the stormwater drainage system or onto Council's lands.
 - c) Hosing down or hosing/washing out of any truck (concrete truck), plant (eg concrete pumps) or equipment (eg wheelbarrows) on Council's road reserve or other property is strictly prohibited. Fines and cleaning costs will apply to any breach of this condition.
 - d) Pavement surfaces adjacent to the ingress and egress points are to be swept and kept clear of earth, mud and other materials at all times and in particular at the end of each working day or as directed by Council's Engineer.
 - e) Concrete trucks and trucks used for the transportation of building materials or similar, shall not traffic soil cement or other materials onto the road reserve. Hosing down of vehicle tyres shall be conducted in a suitable off-street area where wash waters do not enter the stormwater system or enter Council's land.
 - f) The vehicular entry/exits to the site must be protected from erosion and laid with a surface material which will not wash into the street drainage system or watercourse.
 - g) All vehicles transporting soil, sand or similar materials to or from the site shall cover their loads at all times.
- 49 Vibration levels induced by the demolition activities shall not exceed levels listed in Standard DIN 4150-3 (1999-02), *Structural vibration Part 3 – Effects of vibration on structures Table 12-7*. The operation of plant and equipment must not give rise to the transmission of vibration nuisance or damage to other premises. Prior to commencement a specific vibration monitor shall be set up to monitor and record the vibration levels affecting surrounding buildings.
- 50 During demolition, excavation and construction, care must be taken to protect Council's infrastructure and surrounding buildings, including street signs, footpath, kerb, gutter and drainage pits etc. Protecting measures shall be maintained in a state of good and safe condition throughout the course of demolition, excavation and construction. The area fronting the site and in the vicinity of the development shall also be made safe for pedestrian and vehicular traffic at all times. Any damage to Council's infrastructure and surrounding buildings (including damage caused by, but not limited to, delivery vehicles, waste collection, contractors, sub-contractors, concrete delivery vehicles) shall be fully repaired in accordance with Council's specification and AUS-SPEC at no cost to Council.
- 51 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.

- 52 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.
- 53 Any material containing asbestos found on site during the demolition process shall be removed and disposed of in accordance with:
- a) SafeWork NSW requirements. An appropriately licensed asbestos removalist must complete all asbestos works if they consist of the removal of more than 10m² of bonded asbestos and/or any friable asbestos.
 - b) Protection of the Environment Operations Act 1997.
 - c) Protection of the Environment Operations (Waste) Regulation 2014.
 - d) NSW Environment Protection Authority Waste Classification Guidelines 2014.
- 54 The development is to be constructed to meet the following construction noise requirements:
- a) Construction Noise
 - i) Noise from construction activities associated with the development shall comply with the NSW Environment Protection Authority's Interim Construction Noise Guideline and the Protection of the Environment Operations Act 1997.
 - b) Level Restrictions
 - i) Construction period of 4 weeks and under:
 - 1 The L10 sound pressure level measured over a period of not less than 15 minutes when the construction site is in operating must not exceed the background level by more than 10dB(A).
 - ii) Construction period greater than 4 weeks and not exceeding 26 weeks:
 - 1 The L10 sound pressure level measured over a period of not less than 15 minutes when the construction site is in operating must not exceed the background level by more than 10 dB(A).
 - c) Time Restrictions
 - i) Monday to Friday 07:00am to 06:00pm;
 - ii) Saturday 07:00am to 03:00pm
 - iii) No Construction to take place on Sundays or Public Holidays.
 - d) Silencing
 - i) All possible steps should be taken to silence construction site equipment.

- 55 The principal contractor or owner builder must install and maintain water pollution, erosion and sedimentation controls in accordance with:
- a) The Soil and Water Management Plan if required under this consent;
 - b) “Managing Urban Stormwater - Soils and Construction” (2004) (‘The Blue Book’); and
 - c) Protection of the Environment Operations Act 1997.
- 56 Any new information that comes to light during demolition or construction which has the potential to alter previous conclusions about site contamination and remediation must be notified to Council and the accredited certifier immediately. All work on site shall cease until the council is notified and appropriate measures to assess and manage the contamination in accordance with any relevant NSW EPA adopted guidelines is completed by an appropriately qualified and experienced environmental consultant.
- 57 All materials excavated from the site (fill or natural) shall be classified in accordance with the NSW Environment Protection Authority (EPA) Waste Classification Guidelines (2014) prior to being disposed of to a NSW approved landfill or to a recipient site.
- 58 All remediation work must be carried out in accordance with:
- a) NSW Office of Environment and Heritage (OEH) ‘Contaminated Sites – Guidelines for Consultants Reporting on Contaminated Sites’;
 - b) NSW Environment Protection Authority (NSW EPA) guidelines under the Contaminated Land Management Act 1997;
 - c) State Environmental Planning Policy 55 (SEPP55) – Remediation of Land; and
 - d) the Remedial Action Plan ‘Updated Remediation Action Plan - Proposed Mixed Use / Medium Density Residential Zone, *Part Lot 1 in D.P. 776089, Westfield Drive, Eastgardens, NSW*’ prepared by Douglas Partners, Project 71631.12, dated September 2013.
- 59 The management of potential and actual acid sulfate soils shall be conducted in accordance with all recommendations within the ‘*Acid Sulfate Soils Management Plan – 130-150 Bunnerong Road, Pagewood, NSW*’, Reference CES130805-MG-AD by Consulting Earth Scientists dated 21 January 2016.
- 60 Ground water shall only be pumped or drained to Council’s stormwater system if the water is clean and unpolluted. The standard used to determine the acceptability of the quality of the water is the ‘Australian and New Zealand Environment and Conservation Council - Australian Water Quality Guidelines for Fresh and Marine Waters 1992’.

Note: Prior treatment and/or filtration of the water may be necessary to achieve acceptable quality, including a non-filterable residue not exceeding 50 milligrams/litre or small quantities may be removed by the services of a Licenced Liquid Waste Transporter. It is an offence under the provisions of the Protection of the Environment Operations Act 1997 to pollute the stormwater system.

- 61 All excavation and backfilling associated with the erection or demolition of a building must be executed safely and in accordance with appropriate professional standards and guarded and protected to prevent them from being dangerous to life or property.

When excavation associated with the erection or demolition of a building extends below the level of the base of the footings of a building or an adjoining allotment of land, you shall:

- a) preserve and protect the building from damage and
- b) underpin and support the building in an approved manner, if necessary and
- c) give notice of intention to excavate below the level of the base of the footings of a building on an adjoining allotment of land to the owner at least 7 days prior to excavation and furnish particulars of the excavation to the owner of the building being erected or demolished.

Note: The owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

In this conditions allotment of land includes a public road and any other public place.

Works shall not encroach onto or over adjoining properties, including retaining walls, fill material or other similar works. Soil shall not be lost from adjoining sites due to construction techniques employed on the subject site.

- 62 All contractors shall comply with the following during all stages of demolition and construction:

- a) A Waste Container on Public Road Reserve Permit must be obtained prior to the placement of any waste container or skip bin in the road reserve (i.e. road or footpath or nature strip). Where a waste container or skip bin is placed in the road reserve without first obtaining a permit, the Council's fees and penalties will be deducted from the Footpath Reserve Restoration Deposit. Permits can be obtained from Council's Customer Service Centre.
- b) A Road Opening Permit must be obtained prior to any excavation in the road reserve (i.e. road or footpath or nature strip). Where excavation is carried out on the road reserve without first obtaining a permit, the Council's fees and penalties will be deducted from the Footpath Reserve Restoration Deposit. Permits can be obtained from Council's Customer Service Centre.
- c) A Hoarding Permit must be obtained prior to the erection of any hoarding (Class A or Class B) in the road reserve (i.e. road or footpath or nature strip). Where a hoarding is erected in the road reserve without first obtaining a permit, the Council's fees and penalties will be deducted from the Footpath Reserve Restoration Deposit. Permits can be obtained from Council's Customer Service Centre.
- d) A Crane Permit must be obtained from Council prior to the operation of any activity involving the swinging or hoisting of goods across or over any part of a public road by means of a lift, hoist or tackle projecting over the footway. Permits can be obtained from Council's Customer Service Centre.

- e) A current Permit to Dewater or Pump Out a site must be obtained prior to the discharge of pumped water into the road reserve, which includes Council stormwater pits and the kerb and gutter. Permits can be obtained from Council's Customer Service Centre.

63 The following conditions are necessary to ensure minimal impacts during construction:

- a) 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.
- b) Stormwater from roof areas shall be linked via a temporary downpipe to an approved stormwater disposal system immediately after completion of the roof area.
- c) All disturbed areas shall be stabilised against erosion within 14 days of completion, and prior to removal of sediment controls.
- d) Building and demolition operations such as brickcutting, washing tools or paint brushes, and mixing mortar shall not be performed on the roadway or public footway or any other locations which could lead to the discharge of materials into the stormwater drainage system.
- e) 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.
- f) Wind blown dust from stockpile and construction activities shall be minimised by one or more of the following methods:
 - i. spraying water in dry windy weather
 - ii. cover stockpiles
 - iii. fabric fences
- g) Access to the site shall be restricted to no more than two 3m driveways. Council's footpath shall be protected at all times. Within the site, provision of a minimum of 100mm coarse crushed rock is to be provided for a minimum length of 2 metres to remove mud from the tyres of construction vehicles.

An all weather drive system or a vehicle wheel wash, cattle grid, wheel shaker or other appropriate device, shall be installed prior to commencement of any site works or activities, to prevent mud and dirt leaving the site and being deposited on the street. Vehicular access is to be controlled so as to prevent tracking of sediment onto adjoining roadways, particularly during wet weather or when the site is muddy. Where any sediment is deposited on roadways it is to be removed by means other than washing and disposed of appropriately.

In addition builders / demolishers are required to erect a 1.5m high fence along the

whole of the street alignment other than at the two openings. Such protection work, including fences, is to be constructed, positioned and maintained in a safe condition to the satisfaction of the Principal Certifying Authority, prior to the demolition of the existing structures and commencement of building operations.

- h) Any noise generated during construction of the development shall not exceed limits specified in any relevant noise management policy prepared pursuant to the Protection of the Environment Operations Act, 1997 or exceed approved noise limits for the site.

- 64 The drainage system shall be constructed in accordance with the approved drainage plans and any amendments in red. All stormwater drainage plumbing work shall comply with the NSW Code of Practice: Plumbing and Drainage and Australian Standard AS3500.

Drainage grates shall be provided at the boundary. Width of the drainage grates shall be in accordance with Botany DCP Part 10 - Stormwater Management Technical Guidelines.

A silt/litter arrestor pit as detailed in Botany DCP Part 10 - Stormwater Management Technical Guidelines shall be provided prior to discharge of stormwater from the site.

- 65 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, 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.

- 66 To prevent contaminated soil being used onsite and to ensure that it is suitable for the proposed land use, all imported fill shall be appropriately certified material and shall be validated in accordance with the:

- a) Office of Environment and Heritage (OEH) approved guidelines; and
- b) Protection of the Environment Operations Act 1997; and
- c) Protection of the Environment Operations (Waste) Regulation 2014.

All imported fill shall be accompanied by documentation from the supplier which certifies that the material has been analysed and is suitable for the proposed land use.

- 67 Results of the monitoring of any field parameters such as soil, surface water, dust or noise measurements shall be made available to Council Officers on request throughout the remediation and construction works.

- 68 Landscape construction should be carried out by a qualified landscape contractor to ensure that adequate standards of workmanship are achieved. Landscape contractors who are members of the Landscape Contractors Association of NSW should be engaged.

- 69 Landscaping shall be installed in accordance with the approved Urbis landscape plans only stamped by Council's Landscape Architect and dated prior to the issue of a Construction Certificate. (This amended plan supercedes the original landscape plan).

- 70 The Council nature strip shall be repaired and/or replaced in accordance with Council Specification at the completion of all construction work at the Applicant's expense.
- a) An experienced Landscape Contractor shall be engaged to undertake the landscaping work and shall be provided with a copy of both the approved landscape drawing and the conditions of approval to satisfactorily construct the landscape to Council requirements.
 - b) The contractor shall be engaged weekly for a minimum period of 13 weeks from final completion of landscaping for maintenance and defects liability, replacing plants in the event of death, damage, theft or poor performance. After that time regular and ongoing maintenance is required.

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

- 71 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.
- 72 Prior to the issue of the relevant Occupation Certificate, the floor surface of the entry, dining room and kitchen floor and internal storage areas are to be water-resist for all two and three bedroom apartments.
- 73 Prior to the issue of an Occupation Certificate for occupation or use of residential flat development, a design verification statement shall be submitted to the PCA from a qualified designer certifying that the development achieves the design quality of the development as shown in the plans and specifications in respect of which the construction certificate was issued, having regard to Schedule 1 of *State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development*.
- 74 The public area of the residential parts of each building must be designed by a practicing Interior Designer or other appropriately qualified person and include (but not limited to) colour schemes, artwork surface finishes, timber mid rails/skirting boards etc.
- 75 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).
- 76 Prior to the issue of the relevant Occupation Certificate, car parking is to be allocated as follows:
- a) Minimum 729 residential spaces
 - b) 53 residential visitor spaces
 - c) 47 retail spaces
 - d) 2 car share spaces within the site;

- e) 1 car wash bay
 - f) 2 service bay
- 77 Prior to the issue of the relevant Occupation Certificate, at least 61 bicycle spaces are to be provided in the car park. Consideration on having bike racks close to the lobby entries is encouraged.
- 78 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.
- 79 Prior to the issue of the relevant Occupation Certificate, documentation from a practising civil engineer shall be submitted to the Principal Certifying Authority certifying that the stormwater drainage system has been constructed generally in accordance with the approved stormwater management construction plan(s) and all relevant standards.
- 80 Where Council's park/reserve is damaged as a result of building work or vehicular building traffic, this area shall be restored by Council at the applicant's expense. Repairs shall be completed prior to the issue of the Occupation Certificate.
- 81 All works within the road reserve, which are subject to approval pursuant to Section 138 of the Roads Act 1993, shall be completed and accepted by council.
- 82 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 the inside skin of the front fence, or where there is no front fence a prominent place approved by the Principal Certifying Authority, stating the following: "Vehicle shall enter and exit the site in a forward direction at all times" prior to the issue of the relevant Occupation Certificate.
- 83 Prior to the issue of the Final Occupation Certificate, a Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained from Sydney Water.
- It is recommended that applicants apply early for the certificate, as there may be water and sewer pipes to be built and this can take some time. This can also impact on other services and building, driveway or landscape design.
- Application must be made through an authorised Water Servicing Coordinator. For help either visit www.sydneywater.com.au > Plumbing, building and developing > Developing > Land development or telephone 13 20 92.
- 84 Prior to the issue of the relevant Occupation Certificate, a registered surveyor shall certify that the driveway(s) over the footpath and within the property have been constructed in accordance with the approved driveway profile(s). The certification shall be based on a survey of the completed works. A copy of the certificate and a works-as-executed driveway profile shall be provided to Council if Council is not the Principal Certifying Authority.
- 85 Prior to the issue of the relevant 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 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.

- 86 A positive covenant pursuant to the Conveyancing Act 1919 shall be created on the title of the lots that contain the stormwater detention facility to provide for the maintenance of the detention facility.
- 87 The pump system, including all associated electrical and control systems, shall be tested and inspected by a suitably qualified and experienced person. Records of testing shall be retained and provided to the certifying hydraulic engineer and/or PCA upon request.
- 88 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 Works Zone signs by Council's Traffic and Road Safety Section.

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

- 89 Prior to the issue of an Occupation Certificate, the Principal Certifier must ensure that the vehicle access and off street parking facilities have been constructed in accordance with the approved construction plans, AS/NZS 2890.1, AS2890.2 and AS/NZS 2890.6, line marked and all signage relating to car parking erected. Certification must be provided by a suitably qualified engineer, certifying the design of the completed works.
- 90 Prior to the issue of the Occupation Certificate, a restriction on Use of Land and Positive Covenant(s) shall be imposed on the development. The following covenants shall be imposed under Section 88(E) of the Conveyancing Act 1919 and lodged with the NSW Land and Property Information:
- a) Positive Covenant and Restriction on Use of Land for On-Site Detention System. Refer to Appendix B of the SMTG for suggested wording, and
 - b) Positive Covenant and Restriction on Use of Land for Pump-out System. Refer to Appendix B of the SMTG for suggested wording, and
 - c) Positive Covenant and Restriction on Use of Land for Stormwater Quality Improvement Device. Refer to Appendix C of the SMTG for suggested wording.

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

- 91 Prior to the issue of the Final Occupation Certificate, the Principal Certifying Authority is to ensure all units within the development are connected to an intercom system located at the vehicle entrance to the car parking area to ensure visitors to the site can access the visitor parking.
- 92 Street numbers shall be clearly displayed with such numbers being of contrasting colour and adequate size and location for viewing from the footway and roadway. Details of street numbering shall be submitted to Council for approval in accordance with the NSW Addressing Policy prior to the issue of the Occupation Certificate. Application fees apply.
- 93 A report prepared by a qualified air quality/mechanical engineer certifying that the mechanical ventilation/exhaust system as installed complies in all respects with the design and operation standards of AS 1668 – Mechanical Ventilation and Air Conditioning Codes, and the relevant provisions of the Protection of the Environment Operations Act 1997 shall be submitted to Council within 21 days of the installation of the system and prior to the occupation of the premises.
- 94 Prior issue of an Occupation Certificate the Council footpath in front of the property is to be suitably repaired and made good after completion of construction works to Council specification and at the Applicant's expense. If existing pavers are damaged, subject to Council inspection and instruction, the Applicant is to source and purchase new pavers to match existing pavers in the street. If a significant number of new pavers are required Council may require that the entire frontage be replaced to allow for a uniform appearance. The footpath shall be maintained in a clean and tidy state at all times by the occupiers. Maintenance includes the removal of weeds and rubbish and periodic cleaning.
- 95 At the completion of landscaping on the site, the Applicant is required to obtain a Certificate of Compliance from the Landscape Consultant to certify that the landscaping has been installed in accordance with the Council approved landscape plan. The Certificate is to be submitted to Bayside Council prior to the Issue of an Occupation Certificate.
- 96 Prior to the issue of the Occupation Certificate, a site works review is required demonstrating:
 - a) Extent and minimum dimensions of the site dedicated to landscaping comply with the Detailed landscaping plans
 - b) All detailed works comply with detailed schedules and specifications included in the detailed landscape plans
 - c) Any modifications to the design were an equivalent or better solutions to the requirements of the detailed landscape plans and do not affect the ability of the landscape treatment to achieve the design intent.
 - d) Site cultivation, quality and depth of soil and mulches as a minimum complies with Council specifications and standards.

- e) Drainage of all open space and soft landscaping complies with detailed landscape plans and to Council standards
- 97 Prior to the issue of the Occupation Certificate, the following applies for landscape works specification for construction documents:
- a) The Specification is to be read in conjunction with the Landscape Drawing Set, all other Consultant's documentation and revisions. Discrepancies are to be noted and clarified through a 'Request For Information' prior to construction. Allowance is to be made for all specified products. Equivalent alternatives to be documented when required and updated on As-Built. All Australian Standards nominated in this Specification are to be the current issue.
- 98 The condition to be inserted under the heading of prior to Issue of the relevant Occupation Certificate is to read:
- a) That before entering a purchase/lease/occupancy agreement, or individual units are on-sold, all tenants and occupiers of the development are to be advised by the owner of the building that residents are not eligible to participate in on-street resident parking schemes.
 - b) Prior to the issue of the occupation certificate, a sign to this effect shall be located in a prominent place, to Council's satisfaction, such as a directory board or notice board, where it can easily be observed and read by persons entering the building.
 - c) Where a building is to be Strata Subdivided, a condition should be placed in the by-laws advising residents that they are not eligible to participate in on-street resident parking schemes.
- 99 A Stage 4 – Site Validation Report (SVR) shall be prepared by a suitably qualified contaminated land consultant and shall be in accordance with:
- a) NSW Office of Environment and Heritage (OEH) 'Contaminated Sites – Guidelines for Consultants Reporting on Contaminated Sites';
 - b) NSW Environment Protection Authority (NSW EPA) approved guidelines under the Contaminated Land Management Act 1997; and
 - c) State Environmental Planning Policy 55 (SEPP55) – Remediation of Land.

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

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

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

where the SAS conditions (if applicable) are not consistent with the consent, a Section 96 application pursuant to the Environmental Planning & Assessment Act 1979 shall be submitted to ensure that they form part of the consent conditions.

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

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

- 101 The rooftop terraces are not to be enclosed as habitable space.
- 102 The stormwater drainage system (including all pits, pipes, absorption, detention structures, treatment devices, infiltration systems and rainwater tanks) shall be regularly cleaned, maintained and repaired to ensure the efficient operation of the system from time to time and at all times. The system shall be inspected after every rainfall event to remove any blockage, silt, debris, sludge and the like in the system. All solid and liquid waste that is collected during maintenance shall be disposed of in a manner that complies with the appropriate Environmental Guidelines. The water from the rainwater tank should not be used for drinking, the rainwater tank shall be routinely de-sludged and all contents from the de-sludging process disposed:
 - a) Solids shall be disposed to the waste disposal, and
 - b) De-sludged liquid shall be disposed to the sewer.
- 103 Council's footway (area between property boundary and street kerb) is to be kept clean, tidy, washed and maintained at the applicant's expense.
- 104 Any BBQ area shall be managed in a manner so as to not adversely impact the amenity of the surrounding residents.
- 105 The landscaped areas on the property shall be maintained in accordance with the approved landscape documentation, the conditions of development approval and Council's Landscape DCP at all times. The Landscape Contractor shall be engaged weekly for a minimum period of 52 weeks from completion of the landscape installation to maintain the landscaping. After that time regular maintenance is required.
- 106 The automatic drip irrigation system shall be repaired and maintained in working order and in accordance with the approved landscape plan at all times.
- 107 The landscaped areas on the property shall be maintained in a clean and tidy state and with a dense, even coverage of plants to Council's satisfaction, and in accordance with conditions of consent and Council's Landscape DCP, at all times.
- 108 New street trees shall be maintained by the owner/strata management for the duration of the landscape bond period after planting. Maintenance includes periodic watering at a frequency to sustain adequate growth, annual feeding and weed removal but does not include trimming or pruning of the trees under any circumstances.

- 109 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.
- 110 The use of the premises shall not give rise to air impurities in contravention of the Protection of the Environment Operations Act 1997. Waste gases released from the premises shall not cause a public nuisance nor be hazardous or harmful to human health or the environment.
- 111 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.
- 112 A person must not cause or permit an air conditioner to be used on residential premises in such a manner that it emits noise that can be heard within a habitable room in any other residential premises (regardless of whether any door or window to that room is open):
- a) Before 8 am or after 10 pm on any Saturday, Sunday or public holiday, or
 - b) Before 7 am or after 10 pm on any other day.
- 113 The use of the premises shall not give rise to any of the following when measured or assessed at “sensitive” positions within any other property. These “sensitive” positions should be selected to reflect the typical use of a property (ie any outdoor areas for day and evening but closer to the façade at night time), unless other positions can be shown to be more relevant.
- The operation of all plant and equipment when assessed on any residential property shall not give rise to a sound pressure level that exceeds LAeq 50dB(A) day time and LAeq 40 dB(A) night time.
- The operation of all plant and equipment when assessed on any neighbouring commercial/industrial premises shall not give rise to a sound pressure level that exceeds LAeq 65dB(A) day time/night time.
- For assessment purposes, the above LAeq sound levels shall be assessed over a period of 10-15 minutes and adjusted in accordance with EPA guidelines for tonality, frequency weighting, impulsive characteristics, fluctuations and temporal content where necessary.
- 114 The gate for the basement shall be located in order to permit the queuing of two (2) vehicles when waiting to enter the basement garage. The control mechanism for the gate shall be arranged such that access to the basement garage for registered proprietors of the commercial units, and their visitors, does not require security clearance or assisted entrance between the hours of 7:30am to 6:00pm Monday to Saturday and 7:30am to 1:00pm on Sunday. Where the hours of operation of the commercial units are approved outside of these hours, the access arrangements shall match the approved hours of operation.
- 115 All loading, unloading and transfer of goods to and from the loading bay and premises shall take place wholly within the property. Loading areas are to be used only for the loading and unloading of goods, materials etc. not for any other purpose.

- 116 Loading and unloading within the site shall be restricted to commercial vehicles not exceeding the size and mass description of the MRV from AS2890.2:2002. Commercial vehicles greater in size and mass than the MRV are not permitted to enter the site.
- 117 The existing and future owners (Registered Proprietor) of the property will be responsible for the operation and maintenance of the detention system. The registered proprietor will:
- a) permit stormwater to be temporarily detained by the system;
 - b) keep the system clean and free of silt, rubbish and debris;
 - c) maintain, renew and repair the whole or parts of the system so that it functions in a safe and efficient manner, and in doing so complete the same within the time and in the manner specified in written notice issued by the Council;
 - d) carry out the matters referred to in paragraphs (ii) and (iii) at the proprietor's expense;
 - e) not make any alterations to the system or elements thereof without prior consent in writing of the Council;
 - f) permit the Council or its authorised agents from time to time upon giving reasonable notice (but at any time and without notice in the case of emergency) to enter and inspect the land for compliance with the requirements of this clause;
 - g) comply with the terms of any written notice issued by the Council in respect to the requirements of this clause within the time stated in the notice.
- 118 The existing and future owners (Registered Proprietor) of the property will be responsible for the efficient operation and maintenance of the pump system. The Registered Proprietor will:
- a) permit stormwater to be temporarily detained and pumped by the system;
 - b) keep the system clean and free of silt, rubbish and debris;
 - c) maintain, renew and repair the whole or parts of the system so that it functions in a safe and efficient manner; and in doing so complete the same within the time and in the manner specified in written notice issued by the Council;
 - d) carry out the matters referred to in paragraphs (ii) and (iii) at the proprietor's expense;
 - e) not make alterations to the system or elements thereof without prior consent in writing of the Council.
 - f) permit the Council or its authorised agents from time to time upon giving reasonable notice (but at any time and without notice in the case of emergency) to enter and inspect the land for compliance with the requirement of this clause;

- g) comply with the terms of any written notice issued by the Council in respect to the requirements of this clause within the time stated in the notice.

119 All wastewater and stormwater treatment devices (including drainage systems, sumps and traps) shall be regularly maintained in order to remain effective. All solid and liquid wastes collected from the device shall be disposed of in accordance with the Protection of the Environment Operations Act, 1997.

The operation of the premises shall be conducted in a manner which does not pollute waters as defined by the Protection of the Environment Operations Act 1997.