

**Item 4.****Development Application: 658-660 Botany Road, Alexandria - D/2018/871****File No.:** D/2018/871**Summary**

<b>Date of Submission:</b>	30 July 2018, various amendments submitted up until 10 October 2019
<b>Applicant:</b>	Tone Wheeler - Environa Studio
<b>Architect:</b>	Environa Studio
<b>Owner:</b>	Ozimex International Pty Ltd & Marina Royal Pty Ltd
<b>Cost of Works:</b>	\$9,934,246
<b>Zoning:</b>	B7 Business Park Zone
<b>Proposal Summary:</b>	<p>The subject application is for a 6 storey shop-top housing development comprising:</p> <ul style="list-style-type: none"><li>• demolition of existing structures;</li><li>• excavation and construction of two basement levels;</li><li>• vehicular access off Birmingham Street;</li><li>• a retail tenancy fronting Birmingham Street;</li><li>• the 'House of Indonesia' business premises fronting Botany Road;</li><li>• 30 residential apartments;</li><li>• 25 car parking spaces within the basement levels and;</li><li>• associated landscaping.</li></ul> <p>House of Indonesia comprises a business use that is an Indonesian government supported initiative to grow business relations between Australia and Indonesia.</p>

This application is for Integrated Development requiring the approval of Water NSW under the Water Management Act 2000.

As Integrated Development the subject application was notified and advertised for 30 days between 14 August and 17 September 2018. Twelve (12) submissions were received, raising the following matters:

- overshadowing of neighbouring properties;
- blocking of sky views;
- demolition and construction noise;
- excessive height;
- demands on local infrastructure;
- increased on-street parking demand;
- increased population to be accommodated within the site;
- inadequate documentation;
- adverse privacy impacts on neighbouring properties;
- items being dropped from upper level balconies;
- leaf litter from rooftop plantings;
- stormwater management; and
- wind effects.

There have been several iterations of substantially amended plans and additional information submitted over the course of the assessment of the application to address concerns raised relating to remediation, height and FSR non-compliances, overshadowing, visual and acoustic privacy and natural ventilation, communal open space, basement design and landscape design. Each iteration of amended plans have reduced the height, bulk, scale and density of the development and any associated impacts and as such have not triggered the requirement for re-notification of the application.

The site is located within the area subject to clause 1AA of Schedule 1 of the Sydney Local Environmental Plan 2012 (the LEP), which together with Clause 2.5 specifies development for the purposes of shop-top housing as being permitted with consent. The proposed development complies with the 22m height of buildings control pursuant to clause 4.3 of the LEP and complies with the 2:1 floor space ratio control pursuant to clause 4.4 of the LEP. The proposed development provides an appropriate contribution that is suitable in terms of its context, scale and built form that is consistent with the desired future character of the area, as expressed in the applicable planning policies. As such it is considered to exhibit design excellence.

The acoustic report submitted by the applicant shows that the site's Botany Road frontage is affected by noise from road traffic and its Birmingham Street frontage is affected by noise from aircraft and from nearby commercial and industrial uses. As a result the application relies on the application of acoustically attenuated ventilation plenums to naturally ventilate apartments and to provide acceptable internal noise levels to satisfy the relevant objectives of the Apartment Design Guide. As this is the key design challenge for the development of the site, a deferred commencement condition is recommended for further refinement of the acoustically attenuated ventilation plenums to be carried out prior to the consent becoming operative.

The owner of the site has made a formal offer to enter into a voluntary planning agreement (VPA) with Council for dedication of a 1.4 metre wide strip of land along the Botany Road frontage of the site for footpath widening. It is noted that this public benefit is not to be eligible for any commensurate development uplift, but to satisfy DCP requirements for public domain setbacks along Botany Road.

As the application includes a VPA and is for development that is subject to SEPP 65 Design Quality of Residential Apartment Development, it is to be determined by the Local Planning Panel.

Water NSW have issued General Terms of Approval for the development pursuant to section 4.47 of the Environmental Planning and Assessment Act 1979.

**Summary Recommendation:** The development application is recommended for deferred commencement approval.

**Development Controls:**

- (i) State Environmental Planning Policy No 55 - Remediation of Land
- (ii) State Environmental Planning Policy No 65 - Design Quality of Residential Apartment Development
- (iii) State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
- (iv) State Environmental Planning Policy (Infrastructure) 2007
- (v) State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017
- (vi) Sydney Local Environmental Plan 2012
- (vii) Sydney Development Control Plan 2012

**Attachments:**

- A. Recommended Conditions of Consent
- B. Selected Drawings
- C. Photomontages

## Recommendation

It is resolved that pursuant to Section 4.16(3) of the Environmental Planning and Assessment Act 1979, a deferred commencement consent be granted to Development Application No. D/2018/871 subject to the conditions set out in Attachment A to the subject report.

## Reasons for Recommendation

The application is recommended for approval for the following reasons:

- (A) The proposed development is for shop-top housing comprising apartment dwellings above ground floor retail and business premises. The site is located within the area subject to clause 1AA of Schedule 1 of the Sydney Local Environmental Plan 2012 (the LEP), which specifies development for the purposes of shop-top housing as being permitted with consent.
- (B) The proposed development complies with the 22m height of buildings control pursuant to clause 4.3 of the LEP and complies with the 2:1 floor space ratio control pursuant to clause 4.4 of the LEP. The proposed development satisfies the relevant objectives of Sydney Development Control Plan 2012 (the DCP).
- (C) The proposed development provides an appropriate architectural contribution that is suitable in terms of its context, scale and built form that is consistent with the desired future character of the area, as expressed in the applicable planning policies. As such it is considered to exhibit design excellence and satisfies the relevant requirements of clause 6.21 of the LEP.
- (D) The proposed development will not result in unacceptable adverse impacts upon the amenity of surrounding residential properties, subject to the recommended conditions.

## Background

### The Site and Surrounding Development

1. The site is rectangular, with an area of 1,442sqm. It has a primary street frontage with an existing vehicle crossover to Botany Road and a secondary street frontage with an existing vehicle crossover to Birmingham Street.
2. The site is located 58m south-west of the intersection of Gillespie Avenue and Botany Road. The north-western portion of the site fronting Birmingham Street is occupied by a 1 to 2 storey warehouse building. The south-eastern portion of the site contains a hard-stand car parking area fronting Botany Road.
3. The site does not contain a heritage item and is not located within a heritage conservation area, however it is in the vicinity of several locally listed heritage items, including:
  - (a) the former warehouse 'Boltons Trading Co.' (I7) immediately adjacent to the south-west at 662-674 Botany Road;
  - (b) Electricity Substation No 375 (I2226), further to the south-west at 27 Birmingham Street;
  - (c) further to the south-west beyond the substation is the former HG Whittle & Sons factory (I2227) at 29-33 Birmingham Street;
  - (d) the former Sil-Ora Dental Products factory (I2225) on the western side of the street at 22-30 Birmingham Street;
  - (e) the former Walter Barr Pty Ltd factory (I2224) on the western side of the street and to the north at 2-6 Birmingham Street; and
  - (f) Gardeners Road Public School (I1373) which is located directly opposite the site on the south-eastern side of Botany Road.
4. Adjacent to the south-west at 662-674 Botany Road is a 4 to 5 storey shop-top housing development comprising 70 apartments, 7 ground level commercial tenancies and a through site link connecting Botany Road to Birmingham Street.
5. Adjacent to the north-east at 654-656 Botany Road is a four storey shop-top housing building comprising 29 apartments and 2 ground floor commercial tenancies.
6. Further to the north-east at 648, 650 and 652 Botany Road are three lots accommodating commercial uses within single storey former warehouse buildings and associated hard-stand parking areas.
7. Opposite the site on the north-western side of Birmingham Street are 1 to 2 storey former warehouse buildings accommodating commercial and light industrial uses.
8. Opposite the site on the south-eastern side of Botany Road is Gardeners Road Public School.
9. Council officers attended the site on 23 August 2018 and 7 June 2019. Photos of the site and surrounds are provided below.



Figure 1: Aerial image of subject site and surrounding area.



Figure 2: Site viewed from Botany Road.



**Figure 3:** Four storey shop-top housing adjacent to the north-east of the site at 654-656 Botany Rd.



**Figure 4:** Streetscape view looking north-east along Botany Road.



**Figure 5:** Four storey shop-top housing adjacent to the south-west of the site at 662-674 Botany Rd.



**Figure 6:** Streetscape view looking south-west along Botany Road.



Figure 7: Heritage listed Gardener's Road school on the opposite, eastern side of Botany Road.



Figure 8: Birmingham street frontage of subject site viewed from the intersection of Birmingham and Bradford Streets.



**Figure 9:** Birmingham Street frontage of development adjacent to the north-east of the site at 654-656 Botany Road.



**Figure 10:** Birmingham Street frontage of development adjacent to the south-west of the site at 662-674 Botany Road.



**Figure 11:** View along pedestrian link through property at 662-674 Botany Road to Birmingham St.



**Figure 12:** View to the northeast towards the subject site from through-site link at 662-674 Botany Rd.



**Figure 13:** Birmingham Street frontage of heritage listed former warehouse 'Boltons Trading Co.' at 662-674 Botany Road.



**Figure 14:** Heritage listed HG Whittle & Sons factory at 29-33 Birmingham St.



**Figure 15:** Existing warehouses at 10-12 and 14 Birmingham Street opposite and to the northwest.

### History of the Subject Site

10. The following development consents pertain only to the part of the site fronting Botany Road, formerly known as 658-660 Botany Road:
  - (a) U93/00326 – On 2 July 1993, development consent was granted for alterations and additions to fire damaged buildings;
  - (b) U02/01305 – On 13 February 2003, development consent was granted for proposed re-roofing of the existing warehouse to stabilise perimeter walls and addition of office space and utilities on ground floor;
  - (c) D/2009/1244 – On 1 December 2009, development consent was granted for construction of a two storey commercial building comprising a café, a commercial trade hall and ancillary offices and facilities;
11. It appears none of the consents listed above were ever activated.
12. That part of the site fronting Birmingham Street and formerly known as 11 Birmingham Street contains a 1 to 2 storey warehouse building. Council's heritage specialist has advised that the exact date of construction of this building is unclear, however Council's aerial photos of the area show it was constructed some time during the period 1959-1975.

## History of Adjacent Development

### 654-656 Botany Road, Alexandria

13. U03/00342 - On 29 July 2003, development consent was granted for erection of a four storey mixed-use development containing 135sqm of commercial/retail floor space at ground level with 29 residential apartments above and 27 car spaces at basement level and to strata subdivide the premises into 31 lots.

### 662-674 Botany Road, Alexandria

14. U01/00598 - On 5 December 2001, deferred commencement consent was granted for construction of a mixed use development comprising 70 strata apartments, 1007sqm of commercial / retail space, basement car parking and associated open space.

## History of the Subject Development Application

15. The subject application was lodged on 30 July 2018.
16. There have been two meetings between Council officers and the applicant's project team during the assessment period:
  - (a) 9 October 2018 - issues discussed included height and FSR non-compliances, overshadowing, acoustic privacy and natural ventilation, communal open space and basement design;
  - (b) 26 August 2019 - to discuss outstanding issues including acoustic privacy and natural ventilation, communal open space and landscape design.
17. There have been several iterations of substantially amended plans and additional information submitted over the course of the assessment of the application in response to the various concerns raised by Council officers. The most recent and final iteration of amended plans and supporting documentation was submitted 10 October 2019.
18. An assessment of this final amended proposal is the subject of this report.

## Proposal

19. Demolition of existing structures, excavation, remediation and construction of a 5 to 6 storey shop-top housing development comprising:
  - (a) **Basement Levels 1 and 2:**
    - (i) 25 car parking spaces;
    - (ii) bicycle parking;
    - (iii) residential storage;
    - (iv) waste and service areas; and
    - (v) a loading dock.

**(b) Ground Floor (Level 1):**

- (i) 1 x 304.43sqm commercial tenancy for the 'House of Indonesia' fronting Botany Road and external garden;
- (ii) 1 x 128.98sqm retail premises (in two parts 35.51sqm and 93.47sqm in area) and external garden;
- (iii) residential entry foyers; and
- (iv) residential communal open space.

**(c) Levels 2 - 6**

- (i) 30 residential apartments [3 x studio, 7 x one bed, 15 x two bed (including 5 x dual-key apartments) and 5 x three bed]; and
- (ii) roof top communal open space and non-trafficable green roof.

- 20. This application is for Integrated Development requiring the approval of Water NSW under the Water Management Act 2000.
- 21. It is noted that House of Indonesia comprises a business use that is an Indonesian government supported initiative to grow business relations between Australia and Indonesia.
- 22. Drawings of the proposed development are provided below.



**Figure 16:** Photomontage of proposed development from Botany Road.



Figure 17: Photomontage of proposed development from Birmingham Street.

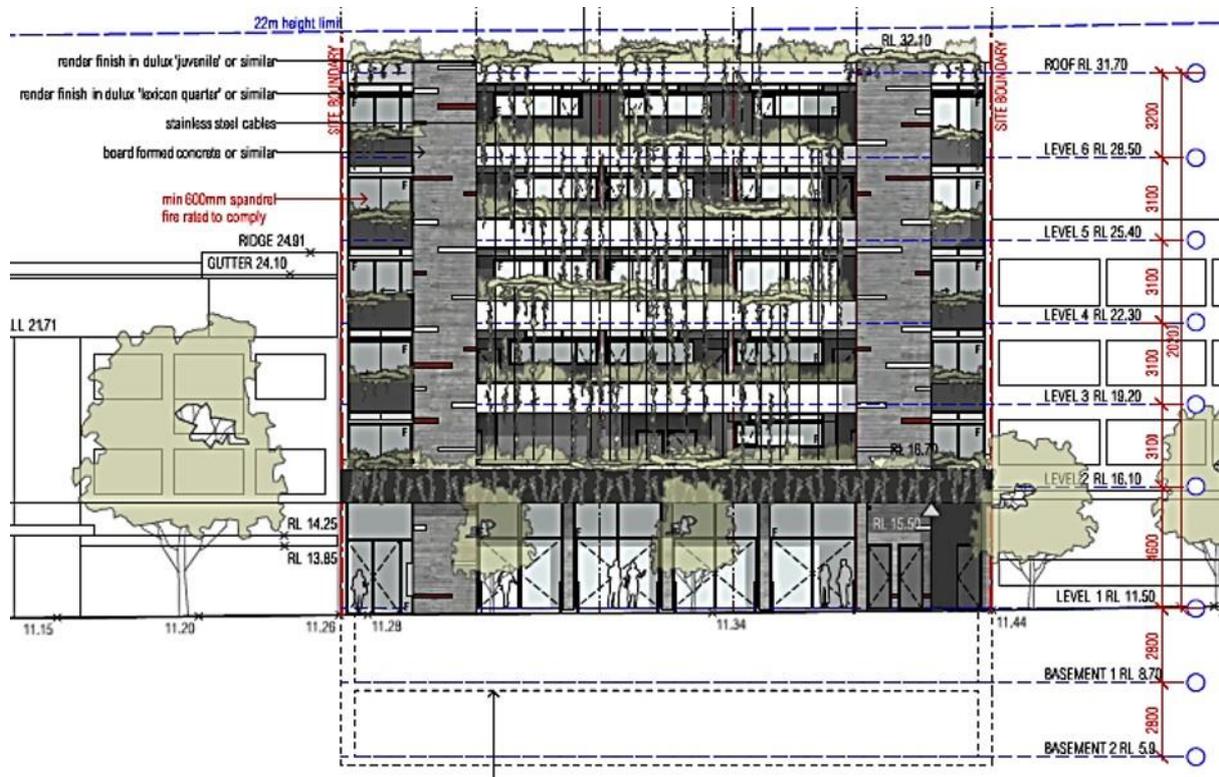


Figure 18: Botany Road elevation.



Figure 19: Birmingham Street elevation.



Figure 20: Internal north-west elevation.

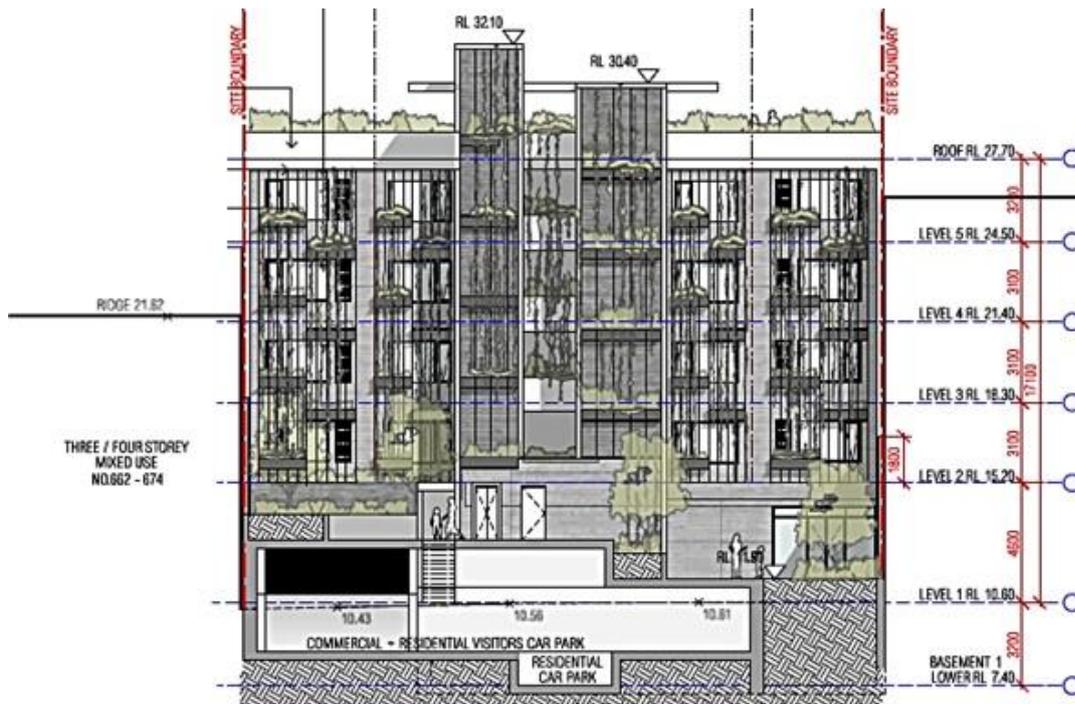


Figure 21: Internal south-east elevation.

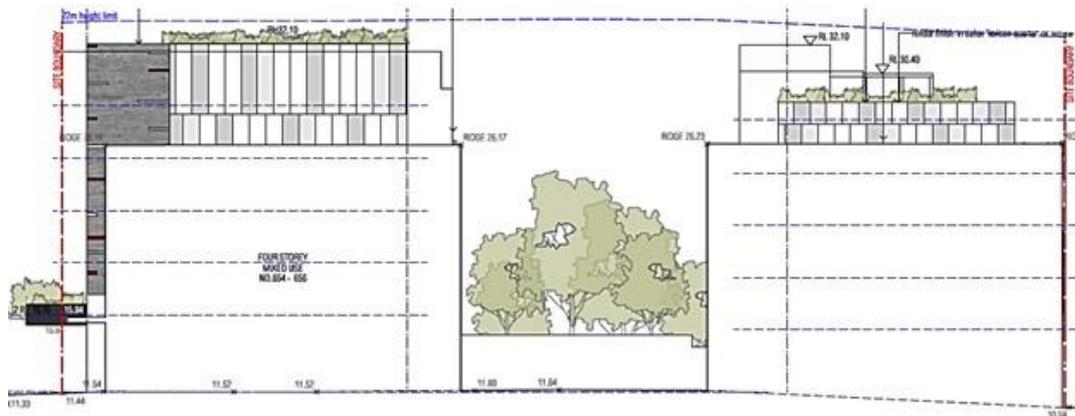


Figure 22: North-east elevation.

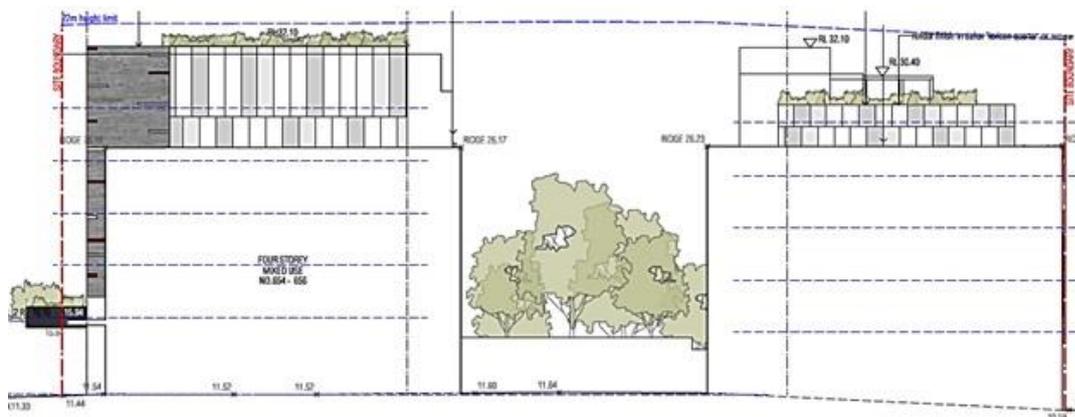


Figure 23: South-west elevation.



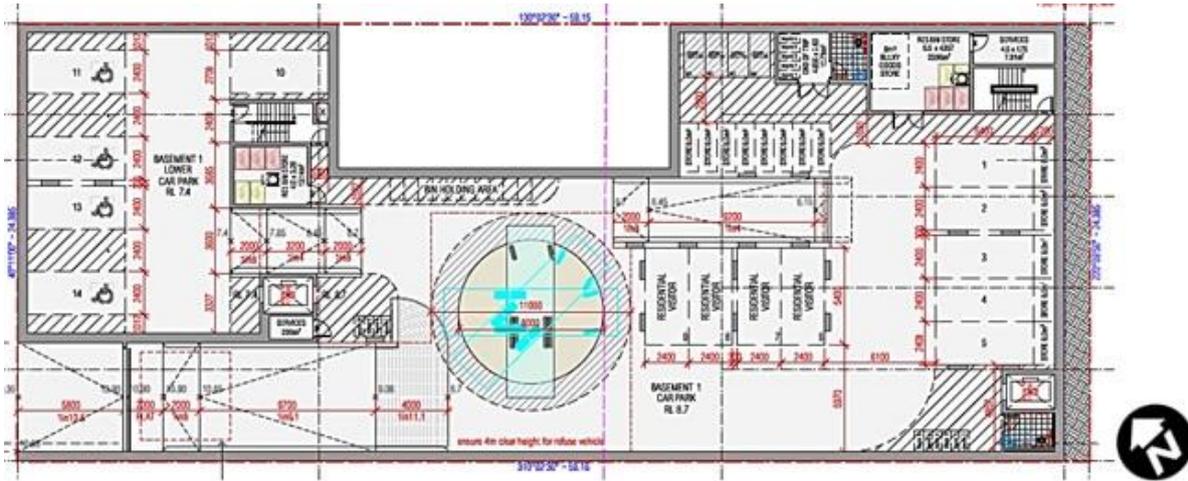


Figure 27: Basement 1.

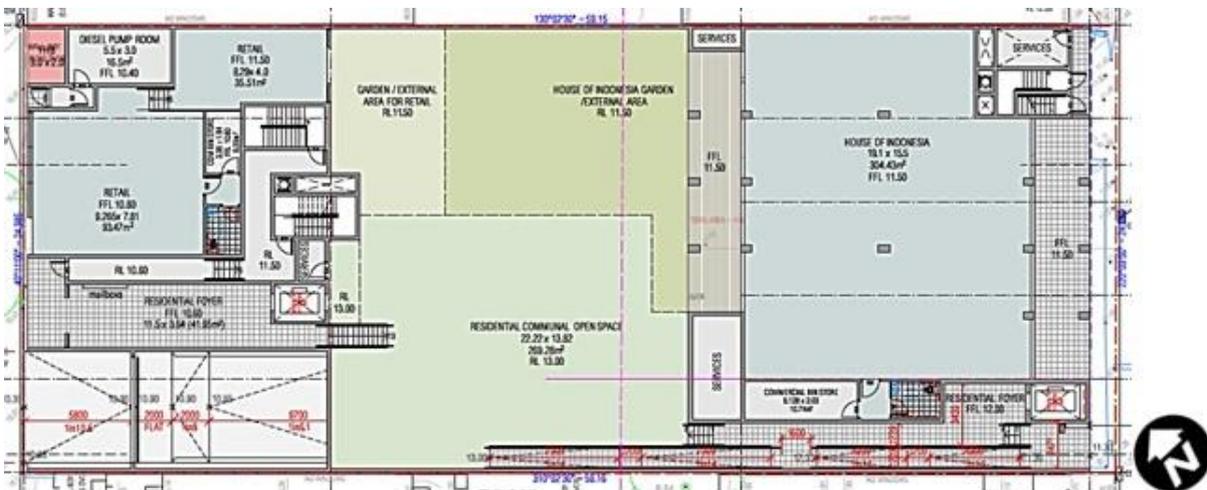


Figure 28: Ground level (level 1).

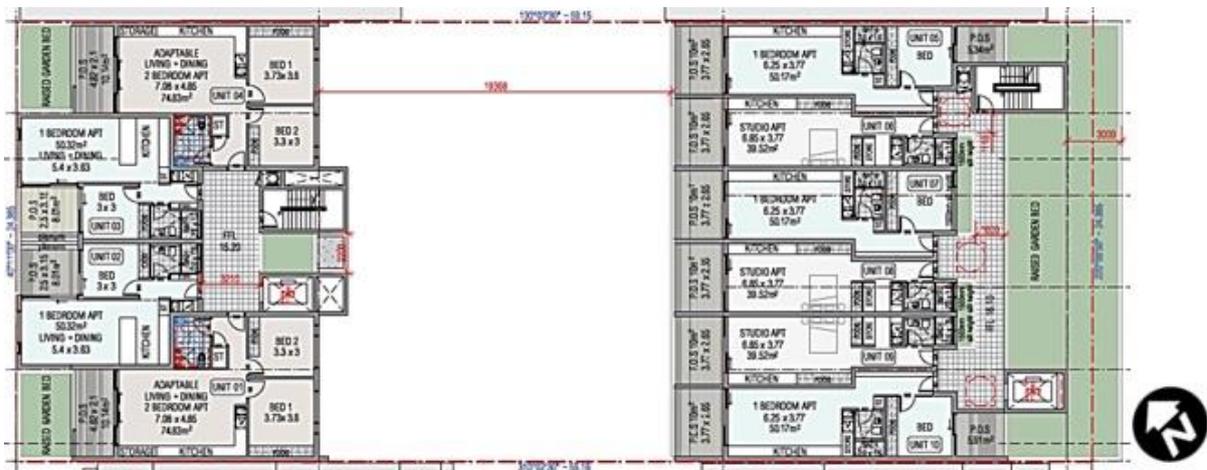


Figure 29: Level 2.

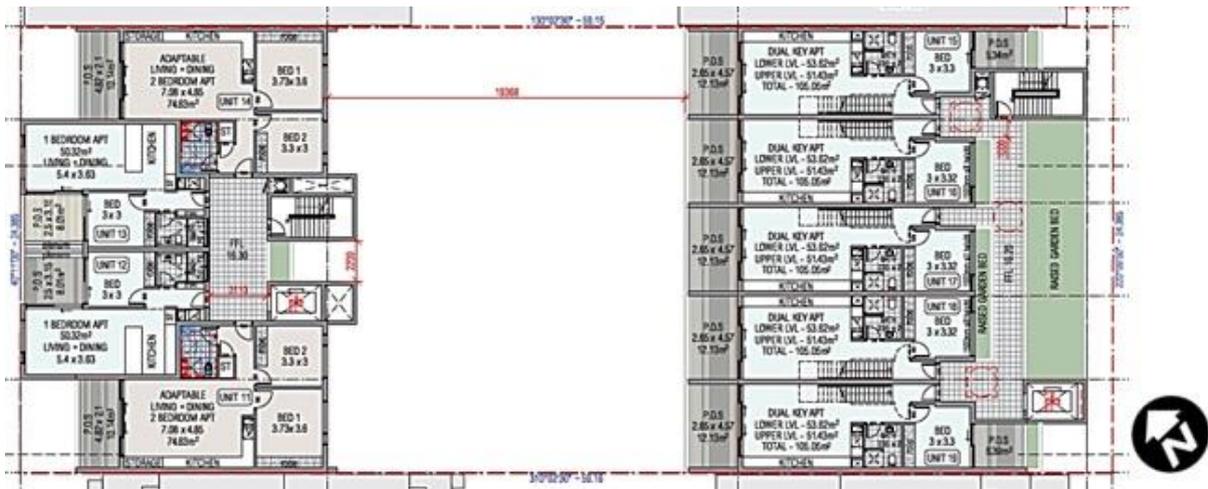


Figure 30: Level 3.

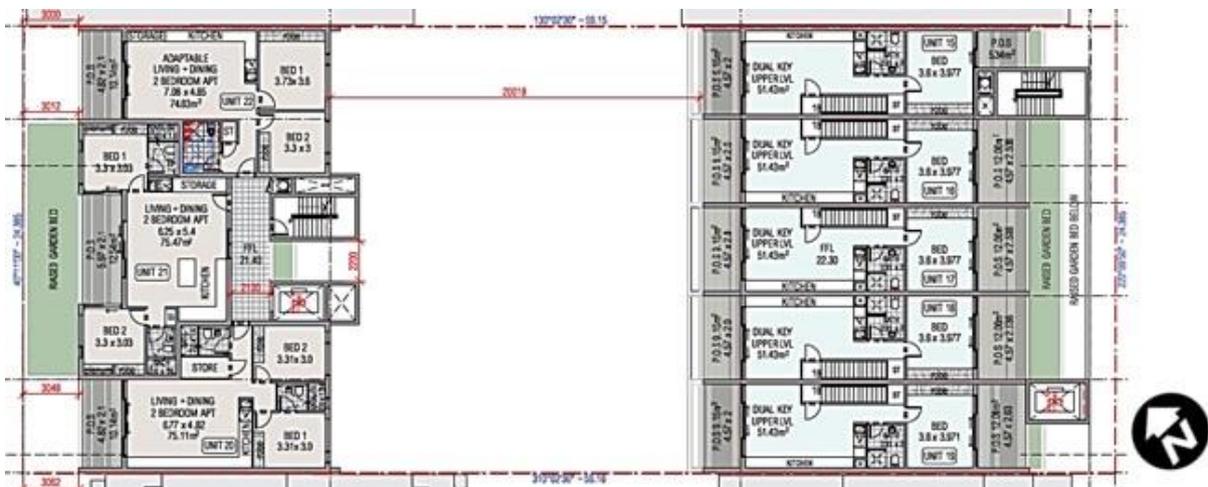


Figure 31: Level 4.

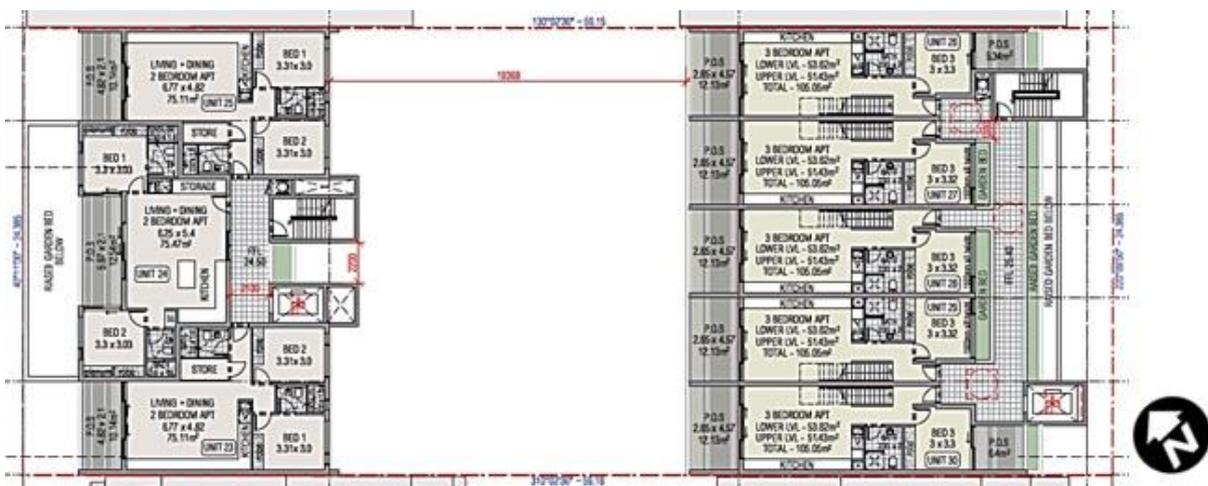


Figure 32: Level 5.

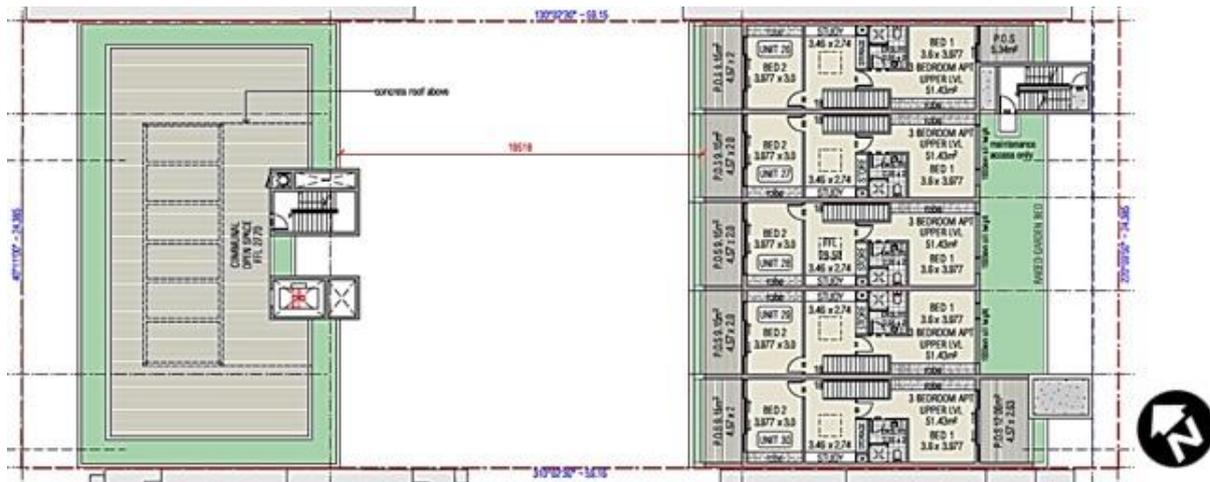


Figure 33: Level 6.

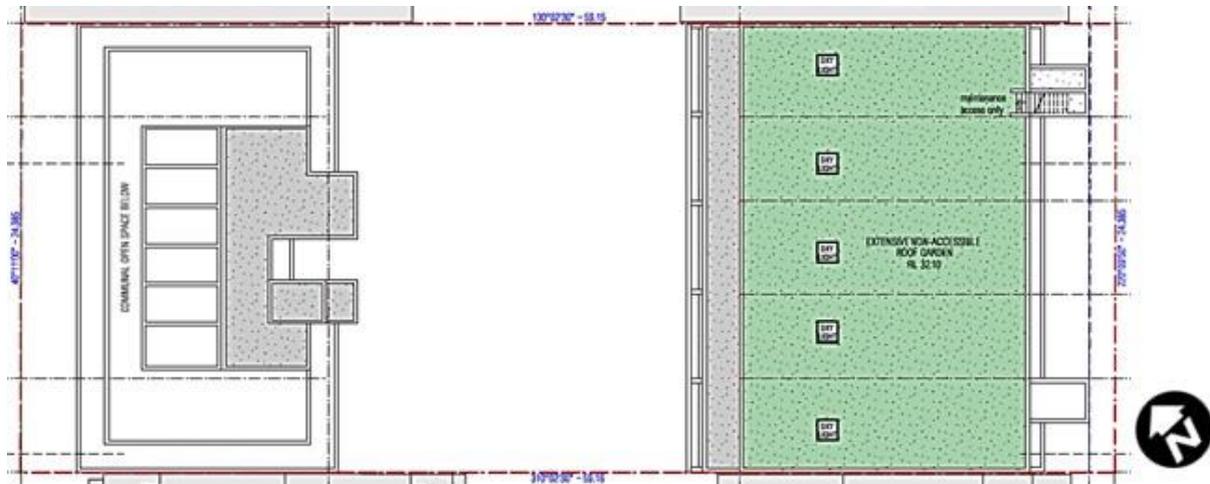


Figure 34: Roof plan.

### Economic/Social/Environmental Impacts

23. The application has been assessed under Section 4.15 of the Environmental Planning and Assessment Act 1979, including consideration of the following matters:
  - (a) Environmental Planning Instruments and DCPs.

### State Environmental Planning Policy No 55—Remediation of Land

24. The aim of SEPP 55 is to ensure that a change of land use will not increase the risk to health, particularly in circumstances where a more sensitive land use is proposed.
25. The submitted Detailed Environmental Site Investigation concluded that no remediation works were required. A Letter of Interim Advice from a Site Auditor confirmed that no remediation was required. Council’s Environmental Health Specialist has reviewed the submitted documentation and has advised that they are satisfied that subject to conditions, the site can be made suitable for the proposed use.

**State Environmental Planning Policy No 65 - Design Quality of Residential Flat Development**

26. In accordance with the requirements of SEPP 65 and the Environmental Planning and Assessment Regulation 2000, a design verification statement has been prepared and submitted by Tone Wheeler, registered architect (no. 6239) of Environa Studio.
27. SEPP 65 provides that in determining an application for a residential apartment development of three or more storeys and containing four or more apartments, that the consent authority take into consideration a number of matters relating to design quality, including 9 design quality principles, being:

(a) **Principles 1 and 2:** Context, Neighbourhood Character, Built Form and Scale

The proposal complies with the LEP building height control of 22m and the 6 storey height limit control required by the Sydney Development Control Plan 2012 (the DCP).

The street frontage height of the proposed development responds to the varying heights of buildings either side through modulation of massing and variation to facade depths.

The proposed development provides varied setbacks above ground level to both its Botany Road and Birmingham Street frontages to respond to the staggered upper storey setbacks of the development adjacent to the south at 662-674 Botany Road.

The site is located within the locality of Rosebery West. The proposed development is considered to be in accordance with the design principles for Rosebery West in that it incorporates non-residential uses at ground level and is designed to ameliorate the impacts of traffic noise upon the proposed residential uses to be accommodated within the site.

By massing buildings adjacent to the site's street frontages and aligning the central open space with that of the development to the south, the proposed development demonstrably minimises overshadowing of neighbouring properties in the development at 662-674 Botany Road.

In all, the proposed development provides an architectural contribution that is suitable in terms of its context, character, scale and built form that is consistent with these design quality principles.

(b) **Principle 3:** Density

Considering the applicable floor space ratio (FSR) provisions contained in the Sydney LEP 2012 (the LEP), the maximum permissible FSR for the development is 2:1 (2,884sqm GFA). The proposal has a gross floor area of 2,883.95sqm, and which equates to a FSR of 2:1.

Therefore the proposed density of development is consistent with that envisaged under the relevant planning controls and is considered to be appropriate given the context of the site.

The proposal is consistent with this design quality principle.

(c) **Principle 4: Sustainability**

The proposed development provides natural ventilation and a high level of solar access to residential apartments to reduce demands for artificial lighting, heating and cooling. Appropriate conditions are recommended to ensure sustainability measures included in the BASIX certificate are implemented at construction.

The proposal is consistent with this design quality principle.

(d) **Principle 5: Landscape**

The proposed development provides a common open space of approximately 487sqm, equal to 34% of site area in the form of a central garden area at ground level and a rooftop open space atop the Birmingham Street building.

The proposed development provides 9.5% (137.7sqm) of the site area as deep soil and which has a minimum dimension in excess of 3m and which satisfies the relevant requirements of the Apartment Design Guide (the ADG).

The design intent for verdant green facades, roofs and common open spaces is supported in principle. However the landscape design must be developed and fully integrated to ensure this intent is realised, as is discussed further in the Issues section of this report.

The proposed landscape design is consistent with this design quality principle.

(e) **Principle 6: Amenity**

Eighty percent (80%) or 24 of 30 apartments receive a minimum of 2 hours of sunlight to living rooms and private open spaces in midwinter.

All apartments achieve the minimum size requirements. In excess of the minimum 2.7m floor to ceiling heights are proposed to improve solar access and to provide a sense of spaciousness within apartments.

Adequate private open space, communal open space and deep soil are provided, alongside verdant green facades, roofs and common open spaces.

The design has overcome the site's greatest constraint of traffic noise by incorporating acoustically attenuated plenums to provide natural ventilation and suitable internal noise levels for the amenity of future residents.

In combination these design outcomes are considered to provide a good level of amenity for residents and neighbours as is consistent with this design quality principle.

(f) **Principle 7: Safety**

The proposed development is able to provide appropriate levels of safety and security within the development and the public domain.

It is considered that the proposed development has been designed in accordance with the SEPP's safety principle and the principles of Crime Prevention through Environmental Design (CPTED).

(g) **Principle 8:** Housing Diversity and Social Interaction

The proposed development provides a mix of dwelling types, adaptable apartments and accessible facilities in accordance with DCP requirements.

The proposal is consistent with this design quality principle.

(h) **Principle 9:** Aesthetics

The use of robust materials such as painted rendered masonry and board finished off-form concrete is supported and are suitable to the environmental conditions of Botany Road and Birmingham Street.

Conditions are recommended to provide certainty that the proposed materials will be used at construction and not substituted for less appropriate materials. Refer to the Issues section in this report.

The proposal is consistent with this design quality principle.

28. The development is considered to be acceptable when assessed against the design quality principles and the SEPP generally, the requirements of which are replicated in part within Council's planning controls.

## Apartment Design Guide

2E Building Depth	Compliance	Comment
12-18m (glass to glass)	Yes	Both the Botany Road and Birmingham Street building elements have depths that do not exceed the recommended maximums of 12-18m.

2F Building Separation	Compliance	Comment
Up to four storeys (approximately 12 metres): <ul style="list-style-type: none"> <li>• 12m between habitable rooms / balconies</li> <li>• 9m between habitable and non-habitable rooms</li> <li>• 6m between non-habitable rooms</li> </ul>	Yes	No windows or balconies are oriented toward side boundaries.  The proposed development provides 25.8m separation to the property located on the opposite south-eastern side of Botany Road and 20m to the property located on the opposite north-western side of Birmingham Street.  Within the site, the Botany Road and Birmingham Street building elements are separated by more than the minimum 12m, up to 4 storeys.

<b>2F Building Separation</b>	<b>Compliance</b>	<b>Comment</b>
<p>Five to eight storeys (approximately 25 metres):</p> <ul style="list-style-type: none"> <li>• 18m between habitable rooms / balconies</li> <li>• 12m between habitable and non-habitable rooms</li> <li>• 9m between non-habitable rooms</li> </ul>	Yes	<p>No windows or balconies are oriented toward side boundaries.</p> <p>As noted above, adequate separation is provided from buildings across Botany Road and Birmingham Street.</p> <p>Within the site the Botany Road and Birmingham Street building elements are separated by more than the minimum 18m required for the fifth and sixth storeys.</p>

<b>3D Communal and Public Open Space</b>	<b>Compliance</b>	<b>Comment</b>
Communal open space has a minimum area equal to 25% of the site.	Yes	The proposed development provides a common open space of approximately 487sqm, equal to 34% of site area in the form of a central garden area at ground level and a rooftop open space atop the Birmingham Street building.
Developments achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of two (2) hours between 9am and 3pm on 21 June (midwinter).	Yes	Proposed common open space areas, particularly that located on the rooftop will receive sunlight throughout the day and satisfy this requirement.

<b>3E Deep Soil Zones</b>	<b>Compliance</b>	<b>Comment</b>
Deep soil zones are to have a minimum area equivalent to 7% of the site and have a minimum dimension of 3m	Yes	The proposed development provides 9.5% (137.7sqm) of the site area as deep soil and which has a minimum dimension in excess of 3m.

Separation between windows and balconies is required to ensure visual privacy is achieved. Minimum separation distances from buildings to the side and rear boundaries are outlined below.

3F Visual Privacy	Compliance	Comment
Up to four storeys (12 metres): <ul style="list-style-type: none"> <li>• 6m between habitable rooms / balconies</li> <li>• 3m between non-habitable rooms</li> </ul>	Yes	As noted in the assessment against objective 2F above, adequate separation for visual privacy is achieved.
Five to eight storeys (25 metres): <ul style="list-style-type: none"> <li>• 9m between habitable rooms / balconies</li> <li>• 4.5m between non-habitable rooms</li> </ul>	Yes	As noted in the assessment against objective 2F above, adequate separation for visual privacy is achieved.
Bedrooms, living spaces and other habitable rooms should be separated from gallery access and other open circulation space by the apartment's service areas.	No, but acceptable	South-east facing bedroom windows in the Botany Road building are separated from common circulation areas by 1m wide planters.  Conditions have been recommended to address visual privacy concerns and are discussed in the Issues section in this report.

4A Solar and Daylight Access	Compliance	Comment
70% of units to receive a minimum of 2 hours of direct sunlight in midwinter to living rooms and private open spaces.	Yes	Eighty percent (80%) or 24 of 30 apartments receive a minimum of 2 hours of sunlight to living rooms and private open spaces in midwinter.
Maximum of 15% of apartments in a building receive no direct sunlight between 9am and 3pm at midwinter.	Yes	No apartments receive no direct sunlight.

4B Natural Ventilation	Compliance	Comment
All habitable rooms are naturally ventilated.	Yes	<p>The proposed development incorporates acoustically attenuated ventilation devices to all habitable rooms facing Botany Road and to bedrooms facing Birmingham Street.</p> <p>Refer to the Issues section in this report.</p>
Minimum 60% of apartments in the first nine (9) storeys of the building are naturally cross ventilated.	No, but acceptable	<p>Requisite internal noise levels cannot be achieved with windows open to the site's noise affected street frontages. Subsequently, these windows cannot be relied upon for natural cross ventilation of apartments during noisy periods.</p> <p>In accordance with ADG objective 4J-1, failure to achieve this design criterion is acceptable where an alternative solution can be applied</p> <p>As noted above and at objective 4J-1 below, all noise affected habitable rooms are naturally ventilated by the application of noise attenuated plenums and which is considered to be an acceptable alternative solution in this instance.</p>
Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line.	Yes	Depths of apartments do not exceed 18m.

Measured from finished floor level to finished ceiling level, minimum ceiling heights are as follows in the table below.

<b>4C Ceiling Heights</b>	<b>Compliance</b>	<b>Comment</b>
Habitable rooms: 2.7m Non-habitable rooms: 2.4m	Yes	Sufficient floor to floor heights are provided to achieve in excess of 2.7m floor to ceiling heights to residential floors.
Two-storey apartments: 2.7m for main living area floor, 2.4m for second floor, where it does not exceed 50% of the apartment area.	Yes	Sufficient floor to floor heights are provided to achieve 2.7m floor to ceiling heights to both upper and lower levels of two storey apartments.
In mixed use buildings – 3.3m for ground and first floor commercial uses.	Yes	Four metre floor to ceiling heights are provided at ground level to accommodate proposed retail and commercial uses and which exceeds the 3.3m minimum requirement.

<b>4D Apartment Size and Layout</b>	<b>Compliance</b>	<b>Comment</b>
<p>Minimum unit sizes:</p> <ul style="list-style-type: none"> <li>• Studio: 35m<sup>2</sup></li> <li>• 1 bed: 50m<sup>2</sup></li> <li>• 2 bed: 70m<sup>2</sup></li> <li>• 3 bed: 90m<sup>2</sup></li> </ul> <p>The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m<sup>2</sup> each.</p> <p>A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m<sup>2</sup> each.</p>	Yes	All apartments achieve the minimum size requirements.

4D Apartment Size and Layout	Compliance	Comment
<p>Every habitable room is to have a window in an external wall with a minimum glass area of 10% of the floor area of the room.</p>	<p>Able to comply</p>	<p>Apartments on level 6 of the Botany Road building contain a study without a window in an external wall.</p> <p>Council's Urban Design Specialist has recommended conditions to:</p> <ul style="list-style-type: none"> <li>• delete the study and allocate the space to bedroom 2 within each apartment (apartments 26 to 30) and</li> <li>• to ensure bed areas within studio apartments are not enclosed with any structure including stud walls, glazing, screens or any other barrier to natural ventilation as has been suggested on previous iterations of plans.</li> </ul>
<p>Habitable room depths are to be no more than 2.5 x the ceiling height.</p>	<p>Yes</p>	<p>Habitable room depths do not exceed 2.5m x 2.8m (ceiling height).</p>
<p>8m maximum depth for open plan layouts.</p>	<p>Yes</p>	<p>All apartments have a maximum depth of 8m or less.</p>
<p>Minimum area for bedrooms (excluding wardrobes):</p> <ul style="list-style-type: none"> <li>• master bedroom: 10m<sup>2</sup></li> <li>• all other bedrooms: 9m<sup>2</sup></li> </ul> <p>Minimum dimension of any bedroom is 3m (excluding wardrobes).</p>	<p>Partial compliance</p>	<p>The proposed apartments provide master bedrooms with an area of at least 10sqm, with the exception of one bedroom apartments 02, 03, 05, 07, 10, 12 and 13 which provide master bedrooms with a minimum area of 9.9sqm. It is noted that all of these apartments with the exception of apartment 07 provide oversized private open space.</p> <p>These apartments will otherwise provide a good level of amenity and as such a minor non-compliance with the design criteria is supported in this instance.</p> <p>All 2 and 3 bedroom apartments provide secondary bedrooms with a minimum area of at least 9sqm and a minimum dimension of at least 3m.</p>

<b>4D Apartment Size and Layout</b>	<b>Compliance</b>	<b>Comment</b>
<p>Living and living/dining rooms minimum widths:</p> <ul style="list-style-type: none"> <li>• Studio and one-bedroom: 3.6m</li> <li>• Two-bedroom or more: 4m</li> </ul>	Yes	All apartments satisfy minimum width requirements.
4m minimum width for cross over and cross through apartments.	Yes	All cross over and cross through apartments satisfy minimum width requirements.

<b>4E Private Open Space and Balconies</b>	<b>Compliance</b>	<b>Comment</b>
<p>Studio apartments are to have a minimum balcony area of 4m<sup>2</sup> with a minimum depth of 1m.</p> <p>One bed apartments are to have a minimum balcony area of 8m<sup>2</sup> with a minimum depth of 2m.</p> <p>Two bed apartments are to have a minimum balcony area of 10m<sup>2</sup> with a minimum depth of 2m.</p> <p>Three bed apartments are to have a minimum balcony area of 12m<sup>2</sup> with a minimum depth of 2.4m.</p>	Yes	<p>All apartments satisfy minimum balcony size requirements.</p> <p>Dual-key apartments satisfy minimum balcony size requirements both when considered as 2 bedroom apartments or as 2 x 1 bedroom apartments.</p>

<b>4F Common Circulation and Spaces</b>	<b>Compliance</b>	<b>Comment</b>
The maximum number of apartments off a circulation core on a single level is eight (8).	Yes	The proposed maximum number of apartments off a circulation core is six (6).
Primary living room or bedroom windows should not open directly onto common circulation spaces, whether open or enclosed. Visual and acoustic privacy from common circulation spaces to any other rooms should be carefully controlled.	Partial compliance	South-east facing bedroom windows in the Botany Road building are separated from common circulation areas by 1m wide planters.

4F Common Circulation and Spaces	Compliance	Comment
		<p>Conditions have been recommended to address visual privacy concerns and are discussed in the Issues section in this report.</p> <p>These windows cannot be relied upon for natural ventilation (due to noise). Acceptable internal noise levels to bedrooms with windows to common circulation spaces can only be achieved with windows closed and with the application of acoustically attenuated ventilation plenums.</p>
Daylight and natural ventilation are provided to all common circulation spaces.	Yes	Common circulation spaces in both the Botany Road and Birmingham Street building elements are partly open to their respective south-eastern elevations.

4G Storage	Compliance	Comment
<p>Minimum storage provision facilities:</p> <ul style="list-style-type: none"> <li>• Studio: 4m<sup>3</sup></li> <li>• 1 bed: 6m<sup>3</sup></li> <li>• 2 bed: 8m<sup>3</sup></li> <li>• 3 bed: 10m<sup>3</sup></li> </ul> <p>(Minimum 50% storage area located within unit)</p>	Yes	<p>All apartments achieve minimum storage allocation requirements with the exception of 2 bedroom apartments 14 and 20, which have 7 cubic metres of storage space each.</p> <p>As the submitted storage schedule and diagram (drawing no. 984, F) show that some apartments are provided with more than the minimum storage space allocation, a condition is recommended for a reconfiguration of storage space so apartments 14 and 20 are provided with 8 cubic metres of storage space in accordance with ADG requirements.</p>

4J Noise and Pollution	Compliance	Comment
Have noise and pollution been adequately considered and addressed through careful siting and layout of buildings?	Yes	<p>As noted elsewhere in this report, both the Botany Road and Birmingham Street frontages are noise affected.</p> <p>Apartments within the Botany Road building have been oriented away from the noise source. Non-residential uses have been located at the ground level and provided with generous floor to ceiling heights to maximise the distance between the proposed apartments and the road.</p> <p>Apart from these siting and layout moves, the design incorporates acoustically attenuated ventilation plenums to ventilate apartments without compromising acoustic amenity.</p>

#### State Environmental Planning Policy (Infrastructure) 2007

29. The provisions of SEPP (Infrastructure) 2007 have been considered in the assessment of the development application.

Clause 44 and 45 - Development likely to affect an electricity transmission or distribution network

30. The development is in the vicinity of electricity power lines and may require a substation as a result of increased demand for electricity arising from the development.
31. In accordance with SEPP clauses 44 and 45 the application was notified to Ausgrid on 14 August 2018. No objection was raised.

Clause 101 - Development with frontage to classified road

32. The site has frontage to Botany Road, which is a classified road. In accordance with SEPP clause 101 the application was notified to Roads and Maritime Services (RMS) on 14 August 2018.
33. RMS provided referral comments on 29 August 2018 and raise no objection subject to the recommended conditions.
34. The application is considered to satisfy the requirements of the SEPP as the development does not provide vehicular access to the site from Botany Road and is subject to conditions which require the incorporation of measures to address the impacts of traffic noise upon future occupants of the development.

Clause 102 - Impact of road noise on non-road development

35. The subject site is located on a part of Botany Road that has an average daily traffic volume of more than 20,000 vehicles.
36. An Acoustic Report has been submitted as part of the application and addresses the relevant RMS guidelines. As noted above, conditions are recommended that require the incorporation of measures to ameliorate the impacts of traffic noise and so that the development can achieve the stated internal noise criteria.

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

37. A BASIX Certificate has been submitted with the development application and which lists measures to satisfy BASIX requirements which have been incorporated into the proposal.
38. A condition is recommended which requires the measures detailed in the BASIX Certificate to be implemented in the development.

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

39. The aim of the SEPP is to preserve the amenity of non-rural areas through the preservation of trees and other vegetation. Refer to the assessment against provision 3.5 Urban Ecology, of the Sydney Development Control Plan 2012 (the DCP) in the DCP compliance table elsewhere in this report.

**Sydney Local Environmental Plan 2012**

40. The site is located within the B7 Business Park Zone. The proposed development is for shop-top housing comprising apartment dwellings above ground floor retail and business premises and which are prohibited uses in the zone.
41. The site is located within the area subject to clause 1AA of Schedule 1 of the Sydney Local Environmental Plan 2012 (the LEP), which together with Clause 2.5 specifies development for the purposes of shop-top housing as being permitted with consent.
42. For this reason, the proposed development is permitted with consent notwithstanding the proposed development being prohibited in the B7 Business Park Zone.
43. Other relevant matters to be considered under the LEP are outlined below.

## Compliance Tables

<b>Development Control</b>	<b>Compliance</b>	<b>Comment</b>
4.3 Height of Buildings	Yes	A maximum height of 22m is permitted. A height of 21.1m is proposed.
4.4 Floor Space Ratio	Yes	A maximum FSR of 2:1 is permitted. A FSR of 2:1 is proposed.
5.10 Heritage conservation	Yes	The site does not contain a heritage item and is not located within a heritage conservation area, however it is in the vicinity of several locally listed heritage items.  Council's Heritage Specialist has reviewed the proposal and raises no objection.  A condition is recommended for photographic archival recording of the site and the existing warehouse building contained therein.

<b>Part 6 Local Provisions - Height and Floor Space</b>	<b>Compliance</b>	<b>Comment</b>
6.21 Design excellence	Yes	The proposed development addresses the challenging environmental conditions of Botany Road and Birmingham Street. It provides a suitable height, scale and massing in response to its context and an appropriate ground level interface with the public domain.  The proposal satisfies the requirements of this provision.  Council's Urban Design Specialist has recommended conditions for minor design modifications to correct drafting errors and discrepancies in DA documentation. Refer to the Issues section in this report.

Part 7 Local Provisions - General	Compliance	Comment
7.5-7.7 Car parking ancillary to other development	Yes	<p>A maximum of 37 car parking spaces are permitted.</p> <p>Twenty-five (25) car parking spaces are proposed.</p>
7.13 Contribution for the purpose of affordable housing	Yes	<p>The development is subject to an affordable housing contribution levy of \$1,469,798.63 calculated as follows:</p> <ul style="list-style-type: none"> <li>• \$98.82/sqm x 94.2sqm total non-residential floor area;</li> <li>• \$296.47/sqm x 4,926.3sqm total residential floor area.</li> </ul>
7.14 Acid Sulphate Soils	Able to comply	<p>The site is located within a Class 3 Acid Sulphate Soil zone. The Acid Sulphate Soils Assessment Report submitted with the application concludes that an Acid Sulphate Soils Management Plan (ASSMP) is required.</p> <p>In accordance with advice from Council's Environmental Health Specialist, a condition is recommended for an ASSMP to be submitted prior to the commencement of any below ground works.</p>
7.15 Flood planning	Able to comply	<p>The site is flood affected. A site specific flood assessment (the Flood Report) has been provided as part of the application.</p> <p>The proposed development generally incorporates the flood planning levels (FPLs) recommended in the Flood Report. However, the entry point to the basement stair access to the Botany Road frontage is below the recommended FPL of 12.0m AHD.</p> <p>Conditions are recommended to ensure FPLs are incorporated into the design, prior to issue of a Construction Certificate.</p>

Part 7 Local Provisions - General	Compliance	Comment
7.17 Development in areas subject to airport noise	Yes	<p>The proposed development incorporates residential development and is located within the ANEF Contour 20 Zone.</p> <p>The Acoustic Report submitted as part of the application has recommended acoustic treatments to achieve the Indoor Design Sound Levels for Determination of Aircraft Noise Reduction as specified in AS 2021—2000.</p> <p>A condition is recommended for the development to incorporate the acoustic treatments specified in the submitted Acoustic Report.</p>
7.19 Demolition must not result in long term adverse visual impact	Yes	The proposed development satisfies the requirements of this provision.
7.23 Large retail development near Green Square Town Centre	Yes	The proposed development does not incorporate shops or markets in excess of 1,000sqm of gross floor area.
7.25 Sustainable transport on southern transport land	Yes	<p>Council's Transport Planner has reviewed the proposed development and has advised that it is acceptable.</p> <p>Conditions have been recommended pertaining to the allocation of car and bicycle parking, vehicle access and servicing of the site.</p>

### Sydney Development Control Plan 2012

44. The relevant matters to be considered under Sydney Development Control Plan 2012 (the DCP) for the proposed development are outlined below.

#### 2.10.5 Locality Statements – Rosebery West

The subject site is in the locality of Rosebery West. The proposed development is considered to be in keeping with the unique character of the area and design principles in that it incorporates non-residential uses at ground level and is designed to ameliorate the impacts of traffic noise upon the proposed residential uses to be accommodated within the site.

3. General Provisions	Compliance	Comment
3.1.2.2 Public Domain Elements - Through Site Links	No, but acceptable.	<p>The DCP through site links map identifies the site as being required to provide a through site link (TSL).</p> <p>Council's Strategic Planning Officer has confirmed that the TSL map contains a mapping error.</p> <p>A TSL connecting Botany Road and Birmingham Street exists at the site adjacent to the south at 662-674 Botany Road. This existing TSL is mapped on the Southern Employment Lands Urban Strategy at section 5.8 of the DCP and is considered to provide a suitable pedestrian connection in this location.</p> <p>For these reasons a variation to DCP requirements is supported in this instance.</p>
3.1.5 Public Domain Elements - Public Art	N/A	<p>The proposed cost of works is less than \$10 million dollars and as such it is not required to provide public art under the City of Sydney Public Art Guidelines.</p>
3.2.2 Defining the Public Domain - Addressing the Street and the Public Domain	Yes	<p>The proposed development will provide active ground level uses to both of its frontages.</p> <p>Amended plans have incorporated a more generously proportioned residential foyer entry to Botany Road than that which was originally proposed and a loggia to the ground level House of Indonesia tenancy to provide a suitable address and some small respite from the harsh environment of Botany Road.</p> <p>The proposal satisfies the requirements of this provision.</p>

3. General Provisions	Compliance	Comment
3.2.3 Active Frontages	Yes	<p>The site's Botany Road frontage is identified as an active frontage on the DCP active frontages map.</p> <p>Fifty-eight percent (58%) of the Botany Road frontage is activated by the House of Indonesia business use and is considered to satisfy the requirements of this provision.</p>
3.2.4 Footpath Awnings	Yes	<p>The site's Botany Road frontage is identified as requiring a continuous footpath awning on the DCP awnings and colonnades map.</p> <p>The proposed development incorporates a continuous footpath awning for the full extent of its Botany Road frontage.</p> <p>The proposed footpath awning is setback 2.13m from the kerb to allow for street trees and power poles and the like. It is 4m above the footpath and is within the permissible 3.2m-4.2m height range specified in the DCP.</p>
3.2.5 Colonnades	Partial compliance	<p>The proposed development incorporates a loggia to its ground level frontage to Botany Road and which forms a colonnade.</p> <p>While the DCP discourages colonnades provision 3.2.5(2) allows them where good visual and physical access is provided to the shopfront, as is the case here. For this reason the proposed colonnade is supported in this instance.</p>
3.2.7 Reflectivity	Able to comply	<p>A condition is recommended that requires that visible light reflectivity from building facade materials must not exceed 20%.</p>

3. General Provisions	Compliance	Comment
3.5 Urban Ecology	Yes	<p>The proposed development provides large areas of green roof including atop the Botany Road building and the footpath awning over Botany Road. Significant tree plantings are to be planted within the proposed deep soil areas.</p> <p>Council's Landscape and Tree Management Specialists have reviewed the proposal and raise no objections subject to recommended conditions for protection of trees on the streets and within the adjacent property adjacent to the south-west at 662-674 Botany Road.</p>
3.6 Ecologically Sustainable Development	Yes	Council's ESD Specialist has reviewed the proposal and has confirmed that it satisfies BASIX requirements.
3.7 Water and Flood Management	Able to comply	Refer to the assessment against LEP clause 7.15 in the LEP compliance table above.
3.8 Subdivision, Strata Subdivision and Consolidation	Yes	Council's Specialist Surveyor has reviewed the proposed development and recommended appropriate conditions including those requiring lot consolidation and prohibiting encroachments onto adjacent properties.
3.11.3 Transport and Parking - Bike Parking and Associated Facilities	Yes	<p>A minimum of 39 bicycle parking spaces are required.</p> <p>Forty-five bicycle parking spaces are proposed.</p> <p>Council's Transport Planner has recommended a condition for allocation of bicycle parking and design requirements for the proposed end of trip facilities.</p>

3. General Provisions	Compliance	Comment
3.11.6-9 Transport and Parking - Service Vehicle, Motorbike and Accessible Parking	Partly complies	<p>The DCP requires provision of a single service vehicle parking space within the development. No service vehicle parking space is proposed.</p> <p>Council's Transport Planner has advised non-provision of a dedicated service vehicle parking space is acceptable as any service vehicles will be able to use one of the 4 visitor parking spaces provided.</p> <p>Conditions are recommended for allocation of motorbike and accessible parking.</p>
3.11.11 Transport and Parking - Vehicle Access and Footpaths	No, but acceptable	<p>The proposal has a driveway 6.1m wide and a roller door opening 5.8m wide and which exceed the 3.6m driveway and 4m roller door opening widths permitted under the DCP.</p> <p>Council's Transport Planner and Urban Design Specialist have reviewed the proposal and raised no objection to the sizes of the driveway and vehicle entry.</p> <p>The sizes of the driveway and vehicle entry are considered to provide appropriate on-site waste collection vehicle access and are supported.</p>
3.11.13 Transport and Parking - Design and Location of Waste Collection Points	Able to comply	Council's Transport Planner has reviewed the proposed turntable and waste collection areas and raises no objection subject to the recommended condition requiring submission of a loading dock management plan.
3.11.14 Transport and Parking - Parking Area Design	Able to comply	Council's Transport Planner has reviewed the proposal and has recommended conditions for parking areas to be designed in accordance with the relevant Australian standards.

<b>3. General Provisions</b>	<b>Compliance</b>	<b>Comment</b>
3.12.1 Accessible Design	Able to comply	A condition has been recommended for the proposed development to provide appropriate access and facilities for persons with disabilities in accordance with the DCP and the BCA.
3.12.2 Adaptable Dwelling Mix	Yes	Five of 30 or 17% of apartments are adaptable and satisfy the requirements of this provision.
3.13 Social and Environmental Responsibilities	Yes	The proposed development provides adequate passive surveillance and is generally designed in accordance with the CPTED principles.
3.14 Waste	Able to comply	Conditions have been recommended for the proposed development to comply with the relevant provisions of the City of Sydney Guidelines for Waste Management in New Development.
3.15 Late Night Trading Management	N/A	The applicant has not specified the proposed hours of operation of the House of Indonesia and retail tenancies.  Refer to the Issues section of this report.

45. Note: Some relevant DCP provisions that would otherwise be listed in the table below have not been addressed as they are matters to which clause (6A) of SEPP 65 applies and which renders those provisions to be of no effect.

<b>4. Development Types</b>	<b>Compliance</b>	<b>Comment</b>
<b>4.2 Residential flat, commercial and mixed use developments</b>		
4.2.1.1 Building height - building height in storeys	Yes	A maximum height of 6 storeys is permitted.  The proposed development is 6 storeys in height.

4. Development Types  4.2 Residential flat, commercial and mixed use developments	Compliance	Comment
4.2.1.1 Building height - street frontage height	Yes	<p>The street frontage height of the proposed development responds to the varying heights of buildings either side through modulation of massing and varying the depths of facades.</p> <p>The proposal satisfies the requirements of this provision.</p>
4.2.2.2 Setbacks above street frontage height	Yes	<p>The proposed development provides varied setbacks above ground level to both its Botany Road and Birmingham Street frontages to respond to the staggered upper storey setbacks of the development adjacent to the south at 662-674 Botany Road.</p>
4.2.3.5 Amenity - landscaping	Yes	<p>A landscape design has been submitted as part of the final iteration of plans and supporting documents.</p> <p>Council's Landscape Design Specialist has reviewed the proposal and raises no objection subject to the recommended conditions.</p> <p>Refer to the Issues section in this report.</p>
4.2.3.8 Amenity - common open space	Yes	<p>The proposed development provides a common open space of approximately 487sqm, equal to 34% of site area in the form of a central garden area at ground level and a rooftop open space atop the Birmingham Street building.</p> <p>These areas, particularly the rooftop common open space, will receive sunlight throughout the day and satisfy the solar access requirements of this provision.</p>

4. Development Types	Compliance	Comment
4.2 Residential flat, commercial and mixed use developments		Subject to the recommended conditions to regulate the use of the outdoor areas associated with the ground floor commercial uses it is considered that these uses can operate without detriment to residential units above.
4.2.3.11 Amenity - acoustic privacy	No, but acceptable	<p>Both the Botany Road and Birmingham Street frontages are noise effected.</p> <p>The Botany Road frontage cannot achieve internal noise criteria with windows open.</p> <p>The Birmingham Street frontage cannot achieve internal noise criteria for bedrooms with windows open.</p> <p>The submitted Acoustic Report recommends measures for internal noise criteria to be achieved with windows closed and which are supported. However, this has implications for natural ventilation of apartments.</p> <p>Refer to the Issues section in this report.</p>
4.2.3.12 Amenity - flexible housing and dwelling mix	Yes	<p>The proposed development comprises the following dwelling mix:</p> <ul style="list-style-type: none"> <li>• 10% (3) studios - complies;</li> <li>• 23% (7) 1 bed - complies;</li> <li>• 50% (15) 2 bed - complies;</li> <li>• 17% (5) 3 bed - complies.</li> </ul>

<b>4. Development Types</b>	<b>Compliance</b>	<b>Comment</b>
<b>4.2 Residential flat, commercial and mixed use developments</b>		
4.2.5.3 Types of development - developments on busy roads and active frontages	Yes	The subject site is located on a part of Botany Road that carries between 20,000 and 40,000 annual average daily traffic movements.  In accordance with the requirements of this provision non-residential uses are located on the ground floor.
4.2.6 Waste and Recycling Management	Able to comply	Conditions have been recommended for the proposed development to comply with the relevant provisions of the City of Sydney Guidelines for Waste Management in New Development.
4.2.7 Heating and Cooling Infrastructure	Yes	Adequate heating and cooling infrastructure is provided.
4.2.8 Letterboxes	Able to comply	A condition has been recommended for letterboxes provided at the Botany Road frontage are to be located within the Botany Road residential entry foyer.

<b>5. Specific Areas</b>	<b>Compliance</b>	<b>Comment</b>
5.8.1 Southern Employment Lands Strategy	Yes	The subject site is identified as being required to provide an 'active edge' to its Botany Road frontage.  As noted in the assessment against provisions 3.2.2 and 3.2.3 above, the proposal does provide adequate activation to the nominated frontage.
5.8.2.1 Subdivision	Yes	Council's Specialist Surveyor has reviewed the proposed development and recommended appropriate conditions including those requiring lot consolidation and prohibiting encroachments onto adjacent properties.

5. Specific Areas	Compliance	Comment
5.8.2.2 Setbacks	Yes	<p>In accordance with the DCP Public Domain Setbacks Map, a 1.4m setback for footpath widening along the site's Botany Road frontage is to be dedicated to Council through a Voluntary Planning Agreement (VPA).</p> <p>Refer to the Issues section in this report.</p>
5.8.2.3 Building Height	Yes	<p>As noted elsewhere in this report, the proposal complies with the permitted LEP height limit, the DCP height in storeys limit of 6 storeys and provides suitable upper level setbacks in response to adjacent buildings.</p>
5.8.2.4 Building Layout and Design	Able to comply	<p>In accordance with the requirements of this provision the proposed development provides active uses to its Botany Road frontage and the vehicle entry is located to its secondary frontage to Birmingham Street.</p> <p>Council's Urban Design Specialist has recommended conditions pertaining to materials and finishes discussed in the Issues section of this report below.</p>
5.8.2.5.1 Landscaping	No, but acceptable	<p>The DCP requires that 10% of the site area is to be provided as deep soil with a minimum dimension of 3m.</p> <p>The proposed development provides 9.5% (137.7sqm) of the site area as deep soil and which has a minimum dimension in excess of 3m.</p> <p>While the proposed deep soil provision satisfies the 7% of site area required by the ADG, it is a minor variation from the requirements of this provision and which is considered to be acceptable in this instance.</p>
5.8.2.5.2 Fences	Able to comply	<p>The maximum height of side and rear fences is 1.8m.</p>

5. Specific Areas	Compliance	Comment
		<p>The proposed height of the side fence to the north-eastern boundary is 3.2m. The proposed height of the side fence to the south-western boundary is 3.5m.</p> <p>A condition is recommended for side fences to adjacent properties to be no higher than 1.8m above the adjacent finished floor level within the site.</p>
5.8.2.6 Parking, Access and Loading	Yes	Refer to the assessment against DCP provision 3.11 in the DCP compliance table above.
5.8.3.2 Proposed Streets and Through Links	Yes	<p>In accordance with the DCP Public Domain Setbacks Map, a 1.4m setback for footpath widening along the site's Botany Road frontage is to be dedicated to Council through a Voluntary Planning Agreement (VPA).</p> <p>Refer to the Issues section in this report.</p>
5.8.5 Managing Transport Demand	Yes	The proposed development provides less car parking than that permitted by the LEP and more bicycle parking than that required by the DCP.
5.8.6 Land Use Interface and Building Design	Yes	<p>As discussed elsewhere in this report, the proposed development incorporates acoustically attenuated ventilation devices to allow for natural ventilation while ameliorating acoustic impacts from traffic noise.</p> <p>The proposal will not undermine the viability of the area as an employment zone.</p>
5.8.7.1 Storm Water Management and Waterways	Able to comply	Refer to the assessment against LEP clause 7.15 in the LEP compliance table above.

5. Specific Areas	Compliance	Comment
5.8.7.4 Green Roofs and Walls	Yes	The proposed development incorporates an expansive non-trafficable green roofs atop the Botany Road building and the Botany Road footpath awning. Substantial planters are incorporated atop the Birmingham Street building and on all upper levels to its Botany Road elevation to achieve a verdant landscape design.

## Issues

### Natural Ventilation

46. All habitable rooms facing Botany Road are affected by road and traffic noise and are unable to satisfy the relevant internal noise criteria. The proponent has addressed this by applying horizontally proportioned acoustically attenuated plenums that are ducted from the external face of the building, under the soffit of the open corridors and into the adjacent apartments.
47. The proponent's submitted acoustic report has also identified that bedrooms facing the Birmingham Street frontage are affected by noise from aircraft and noise generated by nearby commercial and industrial uses (bedrooms are subject to a lower noise criteria than living rooms). Again, the proponent has addressed this by applying acoustically attenuated plenums that are ducted from the external face of the building across balconies and into the adjacent bedrooms. However, a vertical plenum design has been determined to be a more efficient configuration to provide natural ventilation to bedrooms facing the site's Birmingham Street frontage.
48. This alternative ventilation solution has been reviewed by an external consultant specialised in such devices and who has advised Council officers that these plenums are able to satisfy ADG objective 4B-1 for natural ventilation of habitable rooms, subject to the recommended condition for further refinement of the plenum design.

### Voluntary Planning Agreement

49. In correspondence dated 6 November 2018 the owner of the site made a written offer to Council to enter into a Voluntary Planning Agreement (VPA) to provide the public domain setbacks as required under DCP provision 5.8.2.2(1).
50. The draft VPA that has been prepared in association with the subject development application provides for the following public benefits:
  - (a) dedication of a 1.4 metre wide strip of land along the Botany Road frontage of the development site (with an area of 34sqm) to allow for a widened pedestrian footpath; and
  - (b) construction of a new concrete footpath over the dedicated land in accordance with Council's technical specifications.

51. The draft VPA will undergo 28 day publicly exhibition period in accordance with the requirements of section 7.5 of the Environmental Planning and Assessment Act 1979. The public exhibition period commenced on 15 October 2019. At the time of preparing this report, no submissions had been received.
52. Subject to there being no unresolvable objection to the draft VPA, the application is recommended for deferred commencement consent to require the owner of the site to execute this planning agreement and register it on title before activation of the consent. This will ensure that the consent cannot be acted upon without assurance that the public benefits will be delivered in accordance with the provisions of this agreement.

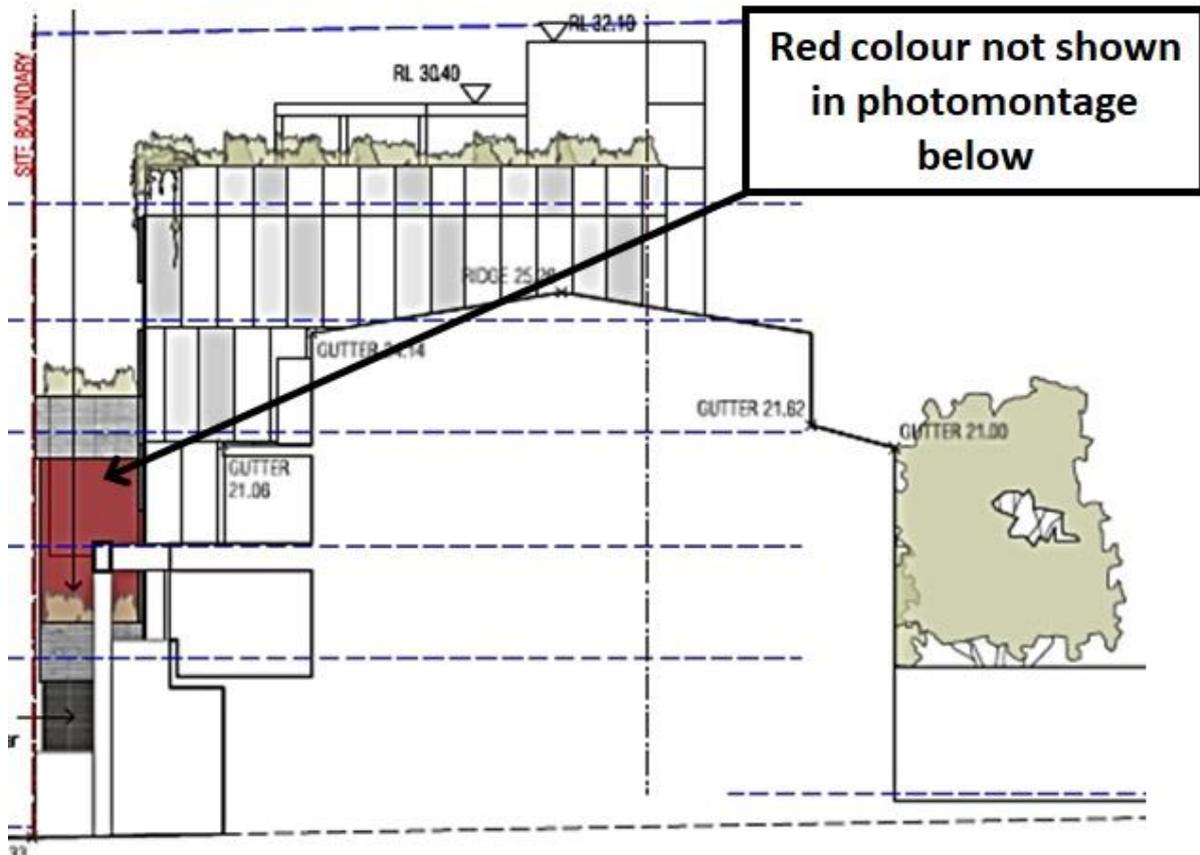
### **Landscape Design**

53. The design intent for verdant green facades, roofs and common open spaces is supported in principle. However, Council's Landscape Design Specialist has reviewed the proposed Landscape Design and has identified several matters that need to be addressed so that the design intent is developed, integrated and realised in the development. Those matters that are to be addressed include:
  - (a) inconsistencies between the landscape design and architectural drawings;
  - (b) lack of design details for proposed water features, OSD and rainwater tanks, access ramps and stairs;
  - (c) structural capacity and design of the Botany Road awning to accommodate a green roof; and
  - (d) maintenance and access strategies to green roofs and planters.
54. Council's Landscape Design Specialist has recommended conditions requiring design modifications, landscape management details, design details of accessible and inaccessible green roofs and green walls, to be submitted to and approved by Council officers.

### **Materials and Finishes**

55. The proposed materials are detailed on drawing no. 210, Rev. D and in many instances are captioned with a notation stating 'or similar'. This undermines the certainty of the final outcome.
56. In accordance with LEP clause 6.21(4) that requires consideration be given to the standard of materials and detailing of the building, Council's Urban Design Specialist has recommended a condition requiring submission of a physical materials sample board and the following conditions pertaining to the materials and finishes to be used in the development:
  - (a) The board finish off-form concrete is notated 'or similar', which may result in the use of an inferior material. Off-form concrete is supported for design quality and longevity (it does not require re-finishing). A condition is recommended that requires all surfaces notated as off-form concrete to be constructed as notated (from board finish off-form concrete) to remove any doubt about future substitution for a less appropriate material; and

- (b) The use of the 'Lady in Red' colour on the south west elevation does not correspond to the submitted photomontages, as shown in the Figures below. A condition is recommended to delete the application of this colour to the external wall.



**Figure 35:** South-west elevation showing application of 'Lady In Red' to facade.



**Figure 36:** Photomontage showing application of white painted render to south-western facade.

### Other Design Refinements

#### Visual Privacy

57. The open communal walkways adjacent to south-west facing bedroom windows to levels 2, 3 and 5 of the Botany Road building, shown in the Figure below, will diminish the level of visual privacy provided for residents of these apartments.

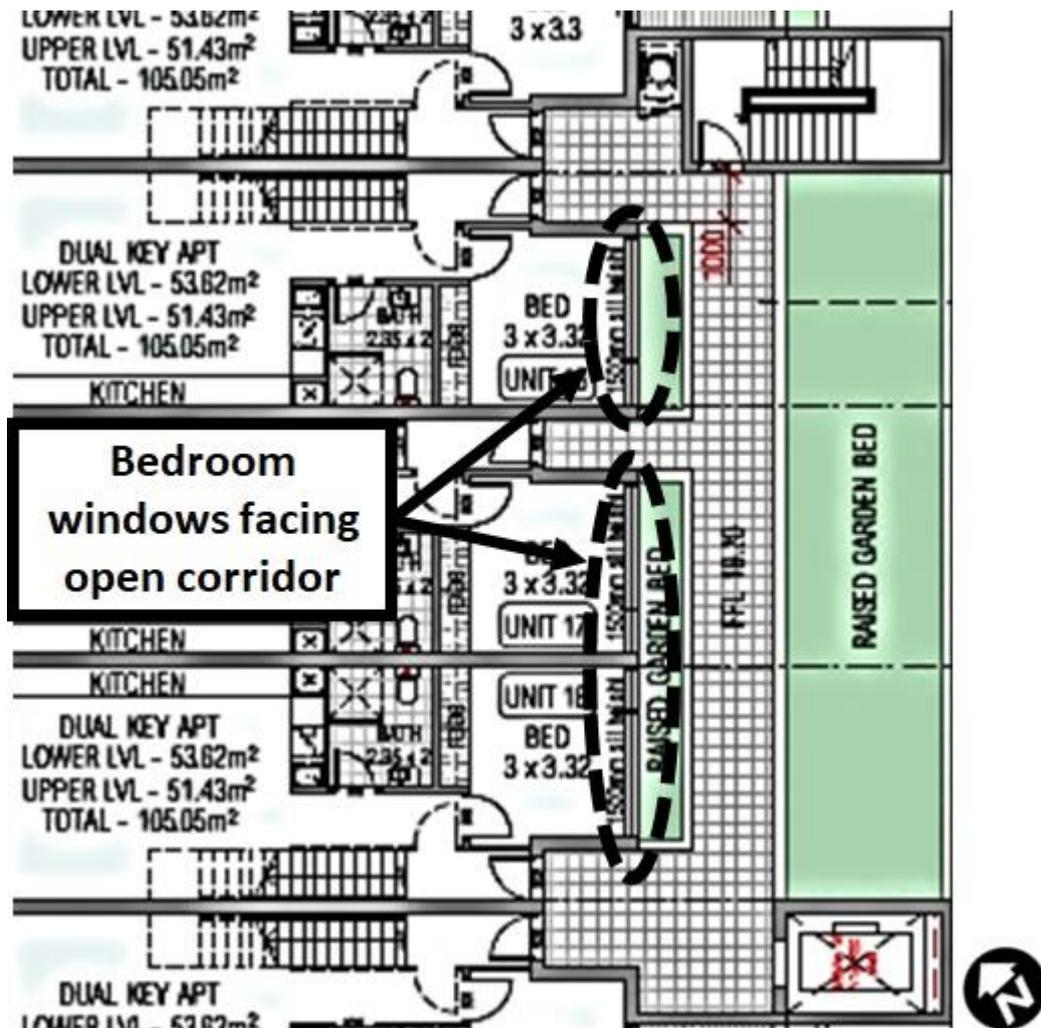
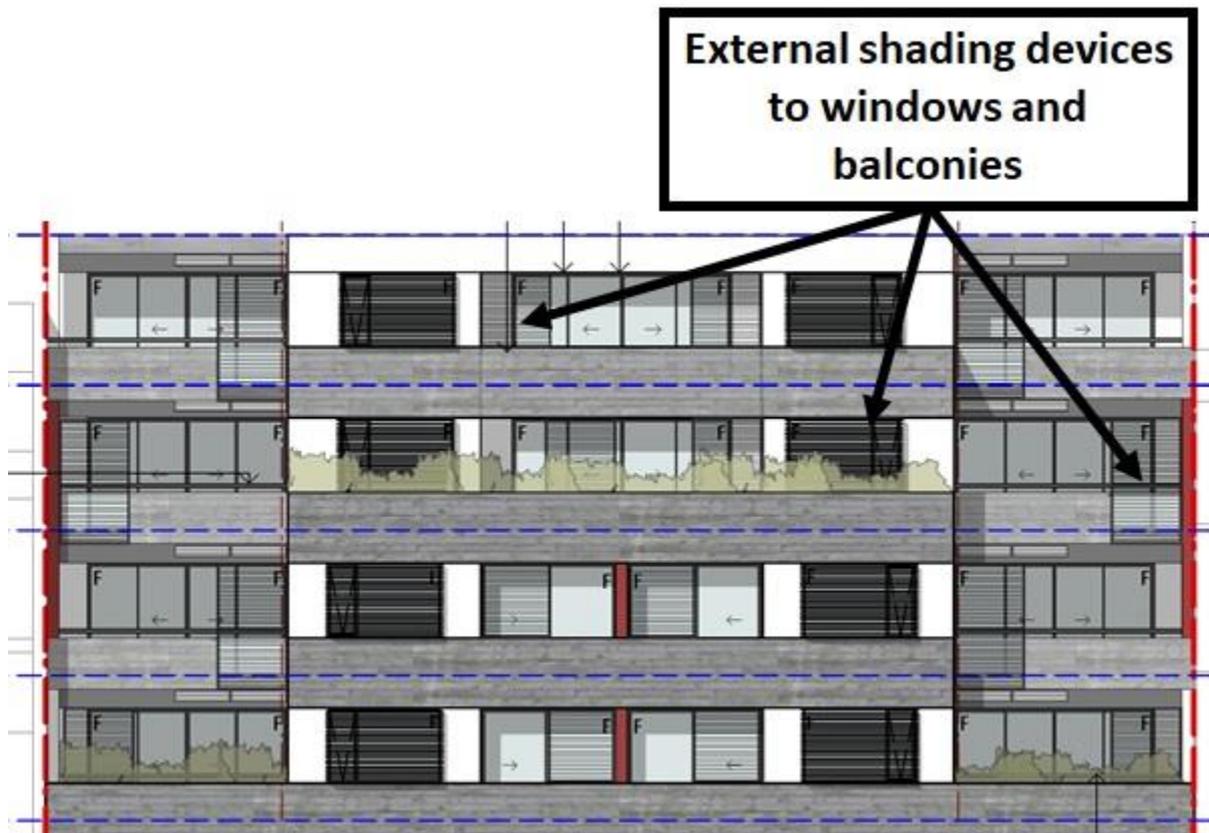


Figure 37: Typical layout of levels 2, 3 and 5 with windows facing gallery spaces.

58. South-west facing bedroom windows to levels 2, 3 and 5 of the Botany Road building will rely on acoustically attenuated ventilation plenums and suitably thick glazing, to achieve the requisite internal noise levels within these bedrooms. As such any noise generated by those using the adjacent open walkways will be ameliorated by these acoustic treatments.
59. In satisfying ADG acoustic privacy and natural ventilation requirements, the result has been a variation from the ADG objective 3F-2 design guidance, which is to separate habitable rooms from gallery access and open circulation space by apartments' service areas.
60. Council's Urban Design Specialist has recommended a condition for external louvres to be applied to these windows to improve the level of visual privacy provided to these bedrooms.

#### External Shading

61. The north-west (Birmingham Street) elevation shows horizontal louvres to provide sun-shading to windows in this elevation, as shown in the Figure below.

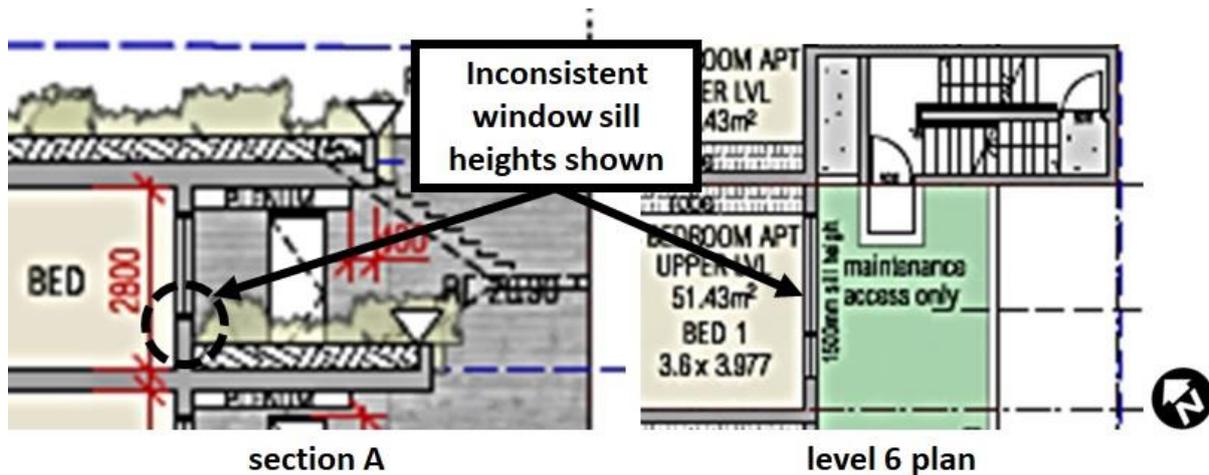


**Figure 38:** Proposed sun-shading to north-west (Birmingham Street) elevation.

62. While this is supported in principle, inadequate information has been provided about operability of the louvres themselves and whether they are adjustable to cope with low altitude summer sun or retractable to allow more sunlight into apartments during winter.
63. Council's Urban Design Specialist has recommended conditions for:
- (a) horizontal louvres to windows in the north-west (Birmingham Street) elevation to be adjustable, retractable louvres with manufacturer's details to be submitted to and approved by Council officers; and
  - (b) adjustable, retractable shading to be applied to the internal north-west elevation to provide adequate sun-shading to these windows also.

#### Windows to Level 6 Planters

64. Level 6 bedrooms with a south-east facing window to Botany Road are notated as having a 1.5m high sill height and which is inconsistent with the lower sill height (approximately 0.8m) shown in section in the Figure below.

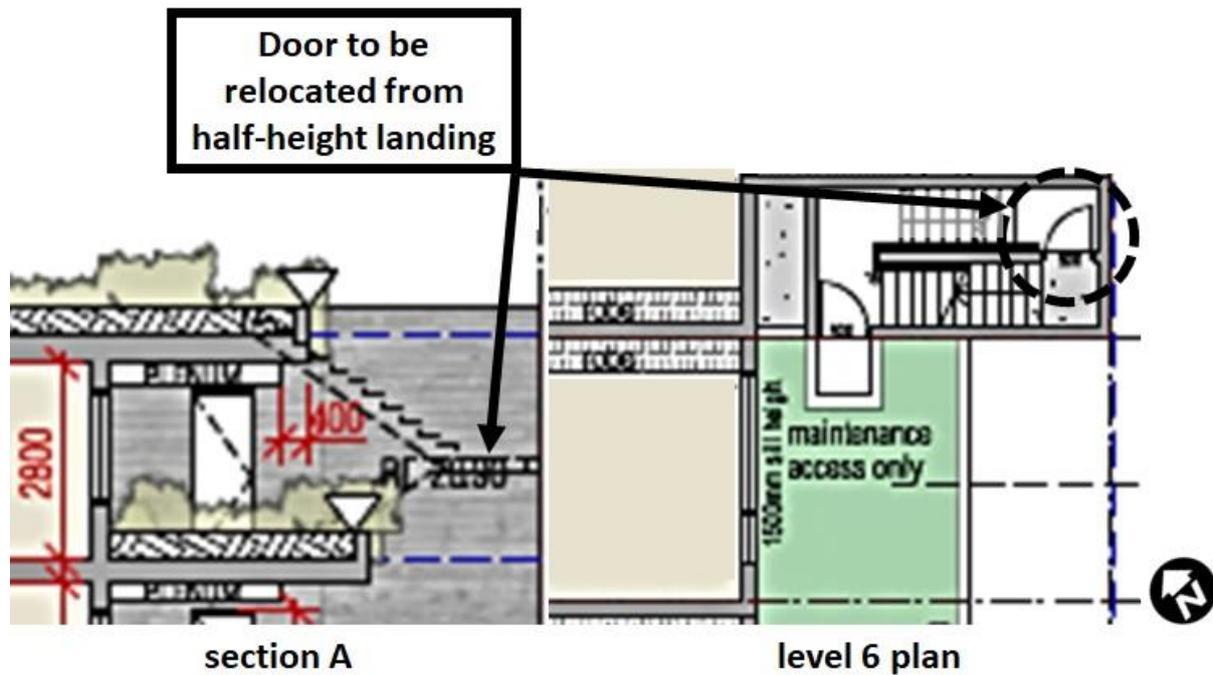


**Figure 39:** Section and level 6 plan show inconsistent sill heights.

65. The sill heights of the Level 6 bedroom windows to Botany Road create a potential safety problem, if they were not designed to prevent access to the garden planter. The garden planter does not have a BCA compliant balustrade to its outer edge. Also a potential security problem in that the windows could allow access from the maintenance access door from the north-western stairwell. It is also noted that the level 6 plan is inconsistent with the level 6 landscape plan.
66. Council's Urban Design and Landscape Design Specialists have recommended conditions for:
- (a) the Level 6 bedroom windows to Botany Road to be designed to prevent access to the adjacent garden planter; and
  - (b) for design modifications to address consistency of design details of Level 6 bedroom windows to Botany Road to be consistent across all relevant architectural and landscape design drawings.

#### Relocation of Half-Height Landing

67. To improve the safety of maintenance access to the non-accessible roof garden atop the Botany Road building, Council's Urban Design Specialist has recommended a condition to relocate the secure door from the half height landing above level 6 (shown in the Figure below) to level 6.



**Figure 40:** Design modifications to be provided to relocate door at half-height landing above level 6 to level 6.

#### Hours of Operation of Commercial Tenancies

68. Using the permissible hours of operation for commercial uses specified in the SEPP (Exempt and Complying Development Codes) 2008 and in the late night trading provisions of the DCP as a guide, hours of operation for the retail and House of Indonesia tenancies are recommended as follows:
- (a) Indoor operations - 7.00am to 10.00pm Monday to Saturday and 7.00am to 8.00pm on a Sunday or a public holiday; and
  - (b) Outdoor operations (within the central open space areas or within the loggia to Botany Road) - 7.00am to 8.00pm, Monday to Sunday.

#### Other Impacts of the Development

69. The proposed development is capable of complying with the BCA.
70. It is considered that the proposal will have no significant detrimental effect relating to environmental, social or economic impacts on the locality, subject to appropriate conditions being imposed.

#### Suitability of the site for the Development

71. The proposal is suitable for the site.

## Internal Referrals

72. The assessment process has been informed by advice from Council's Specialist Surveyor, Environmental Health Specialist, Safe City Unit, Heritage Specialist, Urban Design Specialist, Public Domain Specialist, Landscape Design Specialist, Transport Planner, Strategic Planner, Tree Management Specialist, ESD Specialist, Natural Ventilation Expert, Waste Management Specialist and the Design Advisory Panel (DAP).
73. DAP considered an initial iteration of the design scheme. Concerns raised by DAP included height and FSR non-compliances, natural ventilation of noise affected apartments and the size of the Botany Road residential entry foyer. The design has since been amended to address the concerns raised by DAP.
74. Where appropriate, conditions recommended by these referrals have been included for imposition on any consent given.

## External Referrals

### Integrated Development

75. On 30 July 2018, the subject application was referred to Water NSW in accordance with section 4.47 of the Environmental Planning and Assessment Act 1979 (the Act).
76. On 26 September 2018, submissions received during the exhibition period were forwarded to Water NSW in accordance with clause 69 of the Environmental Planning and Assessment Regulation 2000.
77. On 28 September 2018, Water NSW issued General Terms of Approval for the development.
78. On 28 November 2018, amended plans which increased the depth of the basement were sent to Water NSW and re-sent on 16 January 2019.
79. On 17 January 2019, Water NSW confirmed that the previously issued General Terms of Approval still apply to the amended scheme.

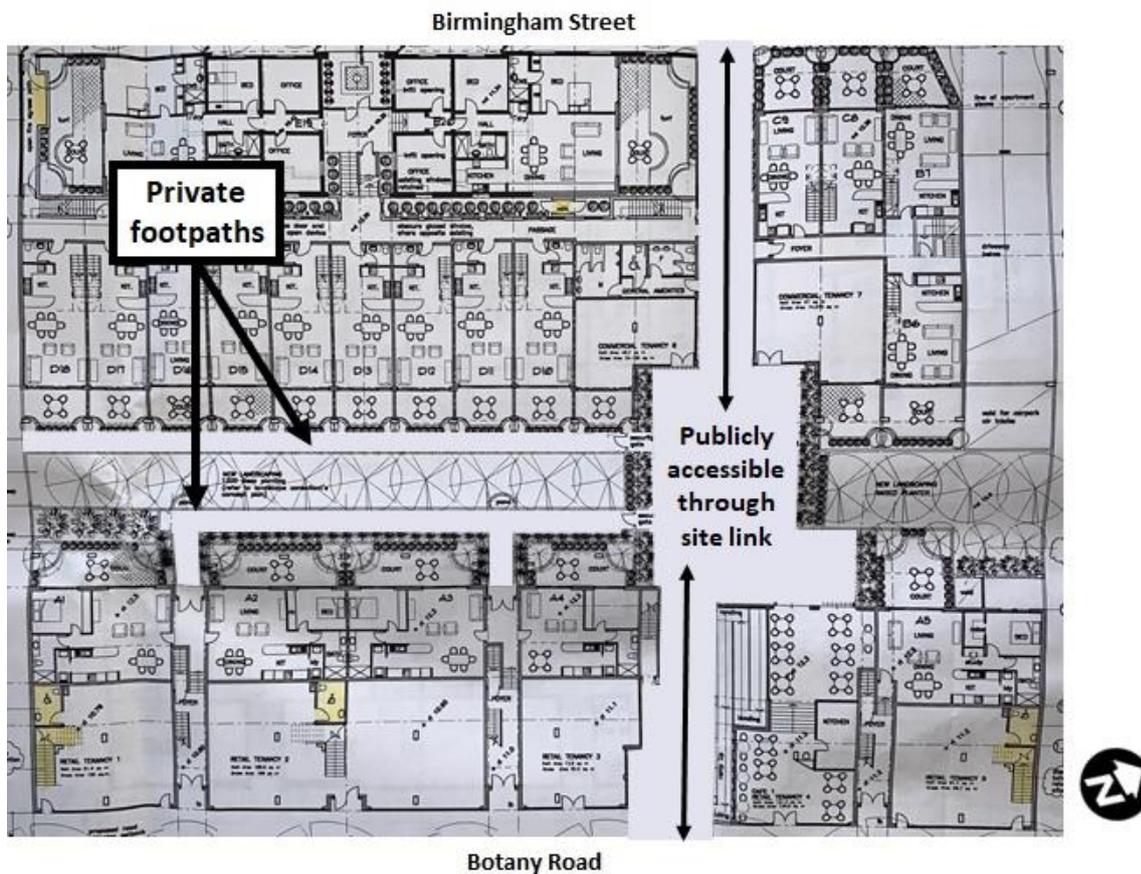
### Notification, Advertising and Delegation

80. The application constitutes integrated development and as such the application was notified and advertised for 30 days between 14 August 2018 and 17 September 2018 in accordance with the provisions of Environmental Planning and Assessment Regulations 2000. As a result of this notification 12 submissions were received. Issues raised in submissions are summarised and responded to as below. It is noted that each iteration of amended plans have reduced the height, bulk, scale and density of the development and any associated impacts and as such have not triggered the requirement for re-notification of the application.

- (a) Objection is raised to overshadowing of adjacent apartments, common open spaces, and subsequent stunting of trees in common open space areas.

**Response** - At present the neighbouring development at 662-674 Botany Road receives 2 hours of direct sun to living rooms and private open space of 38.6% (27) of 70 apartments and no direct sun to 28% (20) of 70 apartments. It is Council's planning officer's assessment that the proposed development will reduce the number of apartments receiving 2 hours of direct sun to living rooms and private open space by one apartment, down to 37.1% (26) of 70 apartments. It will also reduce the number of apartments that receive no direct sun (i.e. increase the number of apartments that do receive direct sunlight) by two, down to 25.7% (18) of 70 apartments. On balance, this is considered to be a minor net improvement in solar access to the neighbouring properties adjacent to the south at 662-674 Botany Road.

As shown in the Figure below, the neighbouring development at 662-674 Botany Road does not have common open space as it is defined in the ADG and DCP. Rather it has a publicly accessible through site link and secure gates to footpaths that provide access for residents to the courtyards of ground floor apartments.



**Figure 41:** Ground floor plan of neighbouring development at 662-674 Botany Road.



**Figure 42:** Private footpaths connecting to through site link at 662-674 Botany Road.

Submitted shadow diagrams demonstrate that there is minor additional shadowing over the publicly accessible through site link between 10.45am and 12.15pm.

It is considered that by massing buildings adjacent to the site's street frontages and aligning the central open space with that of the development to the south, the proposed development demonstrably minimises overshadowing of the neighbouring development at 662-674 Botany Road and is acceptable.

- (b) Objection is raised to blocking of views to the sky from adjacent apartments.

**Response** - The proposed development complies with the relevant height and density controls. It will provide development of a suitable height, bulk and scale that is consistent with the desired future character of the area and the design quality principles set out in the relevant planning policies. As such, any reduction in sky views is considered to be acceptable.

- (c) Objection is raised to demolition and construction noise associated with the development.

**Response** - Council's Environmental Health Specialist has reviewed the proposal and has recommended appropriate conditions for the management of noise and vibrations from demolition, excavation and construction phases of the development.

- (d) Objection is raised to a 6 storey building of excessive height being proposed adjacent to the 1 to 4 storey buildings that characterise the streetscape. Previously consent (D/2009/1244) was granted for a 2 storey commercial building and which is far more appropriate to the site.

**Response** - As detailed elsewhere in this report the proposed development complies with the 22m LEP building height control and the 6 storey DCP height in storeys control. Development consent D/2009/1244 was determined prior to the commencement of these currently applicable planning controls, which came into effect in December 2012. As such, the proposed development is considered to be consistent with the desired future character of the area, as expressed in the current suite of applicable planning policies and is supported on these grounds.

- (e) Objection is raised to the additional demands on local infrastructure, including sewers, drains, roads, parking and transport, associated with the proposed development.

**Response** - Council's Transport Planner and Public Domain officers have reviewed the proposal and raise no objection subject to the recommended conditions being imposed and which are discussed elsewhere in this report.

- (f) Objection is raised due to the proposal's impacts in terms of reduction in available on-street parking for residents. Time-limited or paid parking should be introduced in surrounding streets. A speed bump should be introduced on surrounding streets to reduce the speed of drivers and to improve safety in the area.

**Response** - The proposed development complies with the relevant LEP and DCP parking requirements which take into account the accessibility of the area by public and active transport modes. Council's Transport Planner has considered the proposed level of car parking provision and has not raised any objection in this regard. The suggested introduction of time limited parking, paid parking and speed bumps in surrounding streets is otherwise beyond the scope of the subject DA and this assessment.

- (g) Objection is raised to the additional population to be accommodated on the site and associated amenity impacts upon neighbouring residents, businesses and the school located opposite the site.

**Response** - As discussed elsewhere in this report, any amenity impacts arising from the proposed development are within the bounds specified within the relevant planning controls. Any such impacts are considered to be acceptable on this basis.

- (h) Objection is raised to the inadequate documentation submitted as part of the DA as it does not allow for an assessment of its impacts upon adjacent residences. Inadequacies include: lack of shadow diagrams showing existing solar access to adjacent apartments, no elevational shadow diagrams have been provided, the SEE does not address ADG objective 3B-2 regarding overshadowing of adjacent buildings, elevations are unclear, the roof plan does not show adjacent properties, the notification site plan does not indicate adjacent properties.

**Response** - As discussed elsewhere in this report there have been seven iterations of substantially amended plans and additional information submitted over the course of the assessment of the application in response to the various concerns raised by Council officers. These submissions have included shadow diagrams, sun's eye view diagrams to adjacent apartments, elevations and roof plans. These submissions have allowed for the proper assessment of the application, including against the relevant requirements of ADG objective 3B-2. A summary of Council's planning officer's assessment against ADG objective 3B-2 is provided at sub-paragraph (a) above.

- (i) Objection is raised to adverse impacts upon the privacy of adjacent residences.

**Response** - The proposed development provides adequate separation from adjacent residential buildings to achieve acceptable levels of privacy to neighbouring dwellings, in accordance with the requirements of the ADG, as detailed elsewhere in this report.

- (j) Objection is raised to the possibility of items being dropped from the upper level balconies and falling onto the roof and balconies of the adjacent buildings.

**Response** - The proposed development does not encroach upon or project over adjacent properties so as to reasonably prevent any dropped items landing on the roof or balconies of adjacent buildings.

- (k) Objection is raised to the proposed rooftop plantings as these will shed leaf litter that may fall onto the roofs and balconies of the lower adjacent buildings, blocking drains and gutters.

**Response** - DCP provision 5.8.7.4 Green roofs and walls, states that on all buildings, green roofs, walls and facades are encouraged. In accordance with this DCP requirement the proposed development has incorporated green roofs, walls and facades and which are supported.

- (l) Objection is raised to rainwater being shed from the roofs of the proposed buildings onto the roofs of lower adjacent buildings.

**Response** - Conditions are recommended for all stormwater to be managed within the site and for drainage and connections to the City's stormwater system.

- (m) Objection is raised to the wind tunnel effect that will be created by the alignment of the central courtyards of the proposed development with those adjacent.

**Response** - DCP provision 3.2.6 requires DAs for tall buildings (over 45m) to submit a report providing an assessment of the wind effects of the development. As a building less than 22m tall, the proposed development is not subject to this DCP requirement as it is considered to have minimal effects on wind conditions within and around the site.

## Police

81. On 14 August 2018, the application was referred to Redfern Local Police for comment. No response was received.

**Sydney Water**

82. On 14 August 2018, the application was referred to Sydney Water in accordance with section 78 of the Water Act 1912.
83. On 21 September 2018, Sydney Water provided comments to advise that no objection was raised subject to the recommended conditions being imposed on any consent granted.
84. In accordance with Sydney Water's referral comments, Sydney Water Certificate (Tap-in) and Sydney Water Certificate conditions have been recommended for imposition on any consent granted.

**Sydney Airport Referral Act 1996**

85. Section 182 of the Commonwealth Airports Act 1996 specifies that, amongst other things, constructing a building or other structure that intrudes into a prescribed airspace is a controlled activity.
86. Schedules 2 and 5 of the Civil Aviation (Building Control) Regulations 1988 identify the subject site is subject to a prohibition of the construction of buildings more than 50 feet in height (15.24m) above existing ground height.
87. Section 183 of the Commonwealth Airports Act 1996 specifies that controlled activities may not be carried out in relation to prescribed airspace unless an approval has been granted. The relevant approval body is the Civil Aviation Safety Authority (CASA).
88. The Sydney Airport Airfield Design Manager, as an authorised person of the CASA, provided approval for the controlled activity on 16 August 2018.

**Public Interest**

89. It is considered that the proposal will have no detrimental effect on the public interest, subject to appropriate conditions being proposed.

**S7.11 Contribution**

90. The development is subject of a S7.11 contribution under the provisions of the City of Sydney Development Contributions Plan 2015. This contribution is calculated on the basis of the development's net increase in resident, worker and/or visitor populations.
91. Credits have been applied for existing working population accommodated on the site and calculated as follows:
  - (a) 696sqm of warehouse uses at the rate of 1 worker per 61sqm and which is equal to a credit of 11.4 workers; and
  - (b) 462sqm of office uses at the rate of 1 worker per 33sqm and which is equal to a credit of 14 workers.

92. Applying a credit for the existing working population calculated above, the following monetary contribution is required towards the cost of public amenities:

(a) Open Space	\$339,574.17
(b) Community Facilities	\$68,629.17
(c) Traffic and Transport	\$62,367.16
(d) Stormwater Drainage	\$24,668.62
Total	\$495,239.13

### Relevant Legislation

93. The Environmental Planning and Assessment Act 1979.

### Conclusion

94. The proposed development complies with the 22m height of buildings control pursuant to clause 4.3 of the LEP and complies with the 2:1 floor space ratio control pursuant to clause 4.4 of the LEP.

95. The acoustic report submitted by the applicant shows that the site's Botany Road frontage is affected by noise from road traffic and its Birmingham Street frontage is affected by noise from aircraft and from nearby commercial and industrial uses. As a result the application relies on the application of acoustically attenuated ventilation plenums to naturally ventilate apartments and to provide acceptable internal noise levels to satisfy the relevant objectives of the Apartment Design Guide. As this is the key design challenge for the development of the site, a deferred commencement condition is recommended for further refinement of the acoustically attenuated ventilation plenums to be carried out prior to the consent becoming operative.

96. The proposed development provides an appropriate contribution that is suitable in terms of its context, scale and built form that is consistent with the desired future character of the area, as expressed in the applicable planning policies.

### GRAHAM JAHN, AM

Director City Planning, Development and Transport

Ben Chamie, Senior Planner