

<b>JRPP No;</b>	2009SYE010
<b>File No:</b>	DA 10/092
<b>Responsible Officer:</b>	Mr Rodger Dowsett - Director Planning & Development
<b>Date of Preparation:</b>	1 April 2010
<hr/>	
<b>Application No:</b>	10/092
<b>Lodgement Date:</b>	29 September 2009
<b>Statutory Days:</b>	Not Applicable
<b>Property:</b>	639 Gardeners Road, Mascot
<b>DP/SP No:</b>	Lots 1-3 SP 38125 on Lot 10 DP 707290
<b>Application is for (details):</b>	Development Application for the construction of a three level plus mezzanine and roof level commercial building for use as an internet exchange centre, together with associated car parking and landscaping.
<b>Applicant:</b>	Planning Strategies
<b>Applicant Address:</b>	PO Box 778 Darlinghurst, NSW 1300
<b>Owner:</b>	Lend Lease Real Estate Investments Ltd
<b>Builder:</b>	To be advised
<b>Principal Certifying Authority:</b>	To be advised
<b>Property Location:</b>	South eastern corner of Gardeners Road and Bourke Street
<b>Land Zoning:</b>	Mixed Uses Commercial/Residential 10(a) Botany Local Environmental Plan 1995
<b>ANEF Contour</b>	20-25 ANEF Contour
<b>Current Use of development:</b>	Vacant Building. Previously a commercial premises.
<b>Classification of Building:</b>	Class 5 - commercial building
<b>Value of Development:</b>	\$27,217,000.00
<b>Capital Investment Value:</b>	\$27,217,000.00

**Drawing No:**

Refer to Condition No.1

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## **SUMMARY OF REPORT**

<b>Recommendation:</b>	Conditional Consent
<b>Special Issues:</b>	Nil
<b>Public Objection:</b>	Yes - 4 objections
<b>Permissible:</b>	Yes – legal advice provided

## **THE DIRECTOR OF PLANNING AND DEVELOPMENT REPORTS:-**

### **Executive Summary**

The application has been referred to the Joint Regional Planning Panel pursuant to Clause 13B(1)(a) of the State Environmental Planning Policy - Major Development as the capital investment exceeds \$10 million and the proposal is not a Part 3A development under the Environmental Planning and Assessment Act.

The development application seeks approval for the construction of a three level plus mezzanine and roof level commercial building for use as an internet exchange centre, together with associated car parking and landscaping. The proposed building is a novel commercial building design required to accommodate the significant amounts of plant and machinery necessary to power and maintain the computer systems.

The site is zoned 10(a) Mixed Uses – Commercial / Residential pursuant to Botany Local Environmental Planning Policy 1995. The proposal falls within the definition of “commercial premises” and is permissible in this zone with development consent.

Groundwater was encountered across the site at depths varying from 1.8m to 2.4m below ground level. The proposal penetrates the watertable and the application was referred to the NSW Office of Water, Department of Environment Climate Change and Water (DECCW), in accordance with the Integrated Development provisions in the EP&A Act. The NSW Office of Water determined that a Licence under Part 5 (section 112) of the *Water Act 1912* (for temporary construction dewatering) or an approval under Part 3 (section 91) of the *Water Management Act 2000* (for a controlled activity) is not required in relation to this development as it is currently proposed.

The proposed development is located in a prominent gateway position to the Mascot Station Precinct and was referred to Council’s Design Review Panel on 21 May 2009 for pre-application advice and on two (2) occasions during the assessment process. The proposal has been amended, and further information provided, to satisfactorily address the recommendations of the Design Review Panel.

The application was notified for a 30 day period from 6 October 2009 to 6 November 2009 in accordance with Council’s Notification Development Control Plan No.24 and the Integrated Development Provisions under the *Environmental Planning and Assessment Act 1979*. Four (4) submissions objecting to the proposal were received. The issues raised in the objections include the building height, loss of views, decreased quality of life, loss of property value, loss of sunlight, noise, traffic and parking impacts and ‘steam’ from the premises. These matters have been considered in the assessment and subject to amendments made together with imposition of conditions of consent as recommended, impacts on adjoining properties are considered to be minimised and satisfactory in terms of policy requirements.

The application requests the removal of 35 of the 36 site trees located within the site and all seven (7) street trees in the Gardeners Road frontage, followed by extensive re-planting in accordance with the submitted landscape plan. The removal of all street trees and some site trees is supported, however proposed conditions require the retention of select mature site trees.

The applicant has agreed to the provision of public art to the corner of Bourke Street and Gardeners Roads as recommended by Council’s Design Review Panel. This is the subject of proposed condition to be satisfied prior to the issue of the Occupation Certificate.

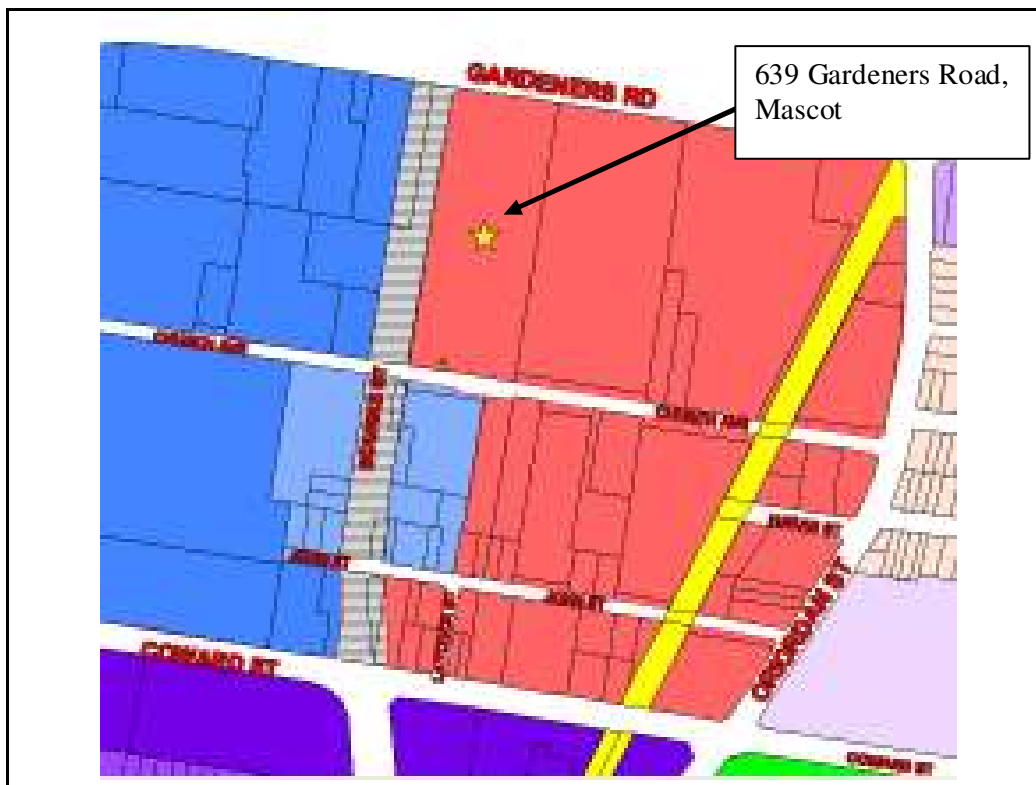
Demolition of the existing building (Unit A) is the subject of a separate Development Application No.10/083, approved by Council on 18 December 2009.

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

## Site Description

The subject site is registered as Lots 1-3 SP 38125 on Lot 10 in DP 707290. The site is bounded by Gardeners Road to the north, Bourke Street to the west and Church Avenue to the south. The site has a total area of 16,610m<sup>2</sup>, and frontages of 70.11 metres to Gardeners Road, 198.7 metres to Bourke Road and 76.53 metres to Church Avenue. Vehicular access to the site is from Church Avenue and Gardeners Road, with on-site parking for 110 vehicles. Mature trees are located along all boundaries and an existing hedge is located along all street frontages. A difference in levels of approximately 1 metre exists between the subject site and the adjacent premises at No.635 Gardeners Road. The level change is contained within existing landscaped setbacks or by existing retaining walls.

The site contains two buildings which are part single and part two storey in height. Unit A, located at the Gardeners Road frontage and most recently occupied by Skilled Engineering, is located to the north-eastern corner of the site. This building is currently vacant and is built to the eastern side boundary of the site. This building has approval to be demolished (DA10/083). Units B, C1 and C2 are contained within a single building located towards the southern part of the site with frontage to Church Avenue to the south and Bourke Street to the west. This building has been previously modified and the units are also known as SY1 (Unit B) and SY2 (Units C1 & C2). Units B, C1 and C2 currently benefit from development consent to operate 24 hours as an internet exchange centre, the same use as the proposed development.



*Site Location Map - 639 Gardeners Road, Mascot*

### **Description of Immediate Neighbourhood**

The site is located at the northern boundary of Council's Mascot Station Precinct, at the boundary with City of Sydney local government area. The site is surrounded by a mix of commercial, residential and industrial premises. The area is undergoing rapid change given the proximity to Mascot Station.

Located to the north of the site on the opposite side of Gardeners Road is a car park area associated with a large retail/warehouse hardware store (Bunnings). Other industrial and commercial developments of one to three levels in height are also located on the opposite side of Gardeners Road and further to the north.

Immediately to the east of the site at No.635 Gardeners Road is a mixed residential and commercial development comprising six buildings containing 319 residential apartments and 8 commercial units located above basement and above ground car parking for 647 vehicles. Further to the east, but one door, is a large industrial premises of one to three storeys in height, currently vacant.

To the west of the proposed building, and on the opposite side of Bourke Street, is a vehicle rental business (Maui & Britz) with associated single storey showroom and office space (No.653 Gardeners Road). Development Application No. 04/347 requests Masterplan approval for construction of a seven to eight storey commercial building with a height of 34.8 metres comprising showroom, offices, and parking for 381 vehicles on that site. The application remains without a determination subject to resolution of outstanding matters with the RTA.

Also to the west, and to the south of the abovementioned site, is a two storey commercial and industrial building currently occupied by three separate tenancies, one currently vacant (42 Church Avenue). This site benefits from development approval, yet to be activated, for the erection of 3 x 7 storey commercial buildings, comprising ground level retail and showroom uses with 6 storey of strata offices above, and the erection of a 10 level above ground car parking structure for 740 vehicles (DA 2003/310). The maximum height of the buildings is 31.5 metres. Further to the west are one and two storey industrial/commercial developments.

The existing building containing Units B, C1 and C2 (also known as SY1 and SY2) are located immediately to the south of the proposed building and within the subject site. Further to the south at 1-5 Bourke Street, Mascot, is a mixed residential and commercial development comprised of two buildings containing 141 residential and commercial tenancies. Further to the south is Mascot railway station and other mixed residential and commercial buildings of varying heights, three of which are in the course of construction.



*Subject site (photo taken from north-western corner of Bourke Street and Gardeners Road)*



*Looking north along Bourke Street, with Unit B, No.639 Gardeners Road, in the foreground and Gardeners Road beyond.*



*Looking east across the site. Unit A (Skilled Engineering Building) is located in the foreground and No.635 Gardeners Road (mixed residential/commercial development) beyond.*



*Site boundary with No.635 Gardeners Road, Mascot - Gardeners Road frontage (residential development to left of picture and subject site on right of photo).*

## **Development and Site History**

The subject site was previously zoned 4(a) Industrial and was utilised for industrial and warehouse and distribution uses. On 4 October 2003, Botany LEP – Amendment No. 11 was gazetted. The LEP rezoned the subject site to its current zoning - 10(a) – Mixed Uses Commercial/Residential.

The development and site history are discussed below using the historical unit references, being Units A, B, C1 & C2.

### Unit A

Development Application No.00/008 for the use of Unit A for the storage of telecommunications tools and equipment and associated office administration (for Skilled Engineering) was approved by Council on 2 September 1999. The consent for a warehouse use was limited to a period of 2 years, with the office use required to be incidental to the principal use of the land.

Development Application No.06/159 was lodged on 7 November 2005 for occupation of the commercial component of the building by Skilled Engineering. The application was lodged in response to a Draft Order dated 23 February 2005 requiring that the occupants cease using the premises. The application was initially refused on 20 December 2005, however it was subsequently approved on 24 April 2006 following a Section 82A Review of Determination.

Development Application No.10/083 for demolition of Unit A was approved by Council on 18 December 2009.

The subject application No.10/092 (if approved) will be constructed in place of Unit A and will be known as SY3.

### Unit B

Development Application No.01/113 for the use of Unit B as an Internet Exchange Centre was granted 'deferred commencement' consent by Council on 19 December 2000. The deferred commencement conditions were satisfied on 16 January 2001, and Development Application No.01/301 granted consent to the partial demolition in respect of Unit B, 639 Gardeners Road, in association with DA 01/113 on 11 January 2001.

Development Application No.01/113 was modified by Section 96(1A) Application No.01/113/01 to reduce the approved car parking from 58 to 52 spaces and was approved on 20 July 2001. Section 96(1A) Application No. 01/113/02 modifying the approved hours of operation was approved on 19 December 2002.

The current approved hours of operation for Unit B are 24 hours a day seven days a week in accordance with the following schedule:

- (a) daylight hours 6:00am to 7:00pm Monday to Friday with normal staff compliment as described in the Statement of Environmental Effects; and,
- (b) night time hours 7:00pm to 6:00am the day following providing for up to 10 staff, comprising security personnel, engineering staff, specialist engineering staff and the like, being on the premises during this span of hours.



The application granted consent to a maximum of 25 employees and requires the provision of 52 car spaces. Deliveries are restricted to between 6:00am and 7:00pm Monday to Friday.

A Notice of Intention to Give an Order was served on the owner on 2 July 2007 to comply with Condition No.4 relating to the prevention of objectionable noise from the facility. The matter was not satisfactorily resolved and the Order was issued on 7 May 2008 to comply with the noise requirements contained in Condition 4. The matter is ongoing, with recent additional acoustic testing and improvements made to the building and equipment to reduce noise to comply with Condition No.4.

#### Unit C1 and C2

Development Application No.01/379 granted development consent for the use of Unit C2 for food manufacturing. The application was approved on 2 May 2001.

Development Application No.08/035 for partial demolition of Units C1 and C2 being the administration service wing, was approved on 25 September 2007.

Development Application No.08/071 for the change of use of Units C1 and C2 from industrial to commercial for use as a 24 hour Internet Exchange centre was approved on 10 January 2008. Section 96(1A) Application No.08/071/01 to modify Development Consent No.08/071 to amend Condition No.22(e)(ii) relating to noise was subsequently approved on 10 September 2008.

Development Application No.08/166 for the fitout of Units C1 and C2, revised entry between Units B and C1, alterations to elevations of Units C1 and C2 and security fencing and boom gates, was approved on 1 April 2008. Section 96(1A) Application DA 08/166/01 to modify condition 8 and 32 of DA 08/166 was approved on 22 October 2008. The modification allowed a reduction in the number of on-site car spaces and removed Condition 32 which had been added in error. Section 96(1A) was lodged with Council on 23 December 2008 requesting consent to modify DA 08/166 to alter the terms of condition 4(b)(i) regarding the required road widening to Church Avenue. The Section 96 application was lodged to resolve a deviation from the approved plans which resulted in the building being constructed closer to the property boundary thus conflicting with the road reserve required under the Mascot Station DCP and the terms of DA 08/166. Council does not agree with the proposed modifications and the application is still pending, accompanied with separate negotiations with the applicant.

The use of Units C1 and C2 was approved subject to the following conditions:

- 24 hour operation, Monday to Sunday.
- deliveries to the site restricted to between 7:00am to 7:00pm Monday to Friday
- the maximum size of vehicles making deliveries to the premises limited to Class 3 Vehicles or smaller as defined by the AustRoads 94 Classification Scheme.
- the maximum number of employees approved for Units C1 and C2 is 22
- car parking spaces are required to be allocated to each unit in accordance with DA 08/166 as modified:
  - Unit A = 31 spaces

- Unit B = 38 spaces
- Units C1 and C2 = 36 spaces

## **Proposal**

The proposal is for the construction of a three level plus mezzanine and roof level commercial building for use as an internet exchange centre, and associated car parking and landscaping. The proposed building is a novel commercial building design required to house the significant amounts of plant and machinery necessary to power and cool the computer hardware located on the ground floor level of the building. The proposed building will be known to the applicant as SY3, and it will complete the development of the entire site for internet / data exchange purposes under the operation of Equinix (the occupier).

The building will have a maximum height of 20.5 metres above existing ground level, the equivalent height of a six storey commercial office building, and comprise a total gross floor area of 2,878m<sup>2</sup>. Based on the gross floor area calculations, the proposal represents an additional floor space ratio (FSR) of 0.17:1 across the whole site and a total FSR of 0.75:1 for the entire site (including SY1 and SY2). The gross floor area calculations do not include the plant rooms or machinery rooms which represent a significant proportion of the building but are excluded in accordance with the definition of “*gross floor area*” contained in Council’s Local Environmental Plan. If the floor area for the whole building, including plant and machinery rooms, were included the proposal would have an FSR of 1.1:1 across the whole site. This FSR is nonetheless below the maximum 2.5:1 FSR permitted for the site under Clause 12a of the Botany Local Environmental Plan 1995.

The proposed development accommodates the following:

### Ground Floor:

- Wind lock
- Reception & waiting room
- Security office
- Meeting room
- Substations and switch rooms
- Equipment co-location area
- Toilets
- Loading dock
- Fuel pump room

### Mezzanine Floor

- Customer work area
- Customer lounge area
- Control room
- Void to co-location area below

### First Floor:

- Uninterrupted Power Supply (UPS) rooms – electronic equipment used to take the initial load during power failure.

- Chiller plant room – refrigeration equipment for the air-conditioning system
- Battery rooms

#### Second Floor

- Diesel Generators – for use during power failure
- Plant room
- Void to main plant room below

The materials proposed to be used include concrete floors, insulated metal roof panels, and a combination of precast concrete panels, light and dark coloured Vitrapanel, concrete, weathered steel panels and metal louvers for the façade treatment as shown in the submitted plans and the building elevations. The applicant has agreed to the provision of public art to the value of \$50,000 to be provided at the corner of Gardeners Road and Bourke Street. This will be the subject of a condition of consent.

Vehicular and pedestrian access to the site will be via a single entry point from Church Avenue, with emergency access only from Bourke Street. Loading and unloading will take place from within the proposed loading dock, and car parking for the facility will be provided between the proposed building, and alongside the existing building (Unit B / SY1). Car parking for 61 vehicles is proposed to be shared between all staff and visitors to all units located at the site. One (1) space is allocated for persons with disabilities.

Limited external communal open space areas are provided on site, however internal staff rooms and facilities are available for staff and visitor use.

The proposal requests consent to remove of 35 of the 36 trees located within the site and in the vicinity of the proposed development, and all seven (7) street trees located along Gardeners Road. Deep soil areas for re-planting are provided to all boundary line setbacks.

#### **External Referrals**

The following table provides a list of Integrated Development, Concurrence and other referrals to external authorities:

Referrals/Notice	Advice/Response/Conditions
NSW Office of Water – Department of Environment, Climate Change, and Water (DECCW)	Groundwater was encountered at depths varying from 1.8 and 2.4 metres below ground level. The proposed building is near ground water level and the proposal penetrates the ground water for construction of the Underground Storage Tank (UST) which has a pit depth of 3.9 metres below ground level. The application was referred to the NSW Office of Water, DECCW, in accordance with the Integrated Development provision in Section 91 of the EP&A Act 1979 as it may require temporary dewatering during construction.  The NSW Office of Water has determined by letter dated

Referrals/Notice	Advice/Response/Conditions
	<p>17 November 2009 that:-</p> <ul style="list-style-type: none"> <li>• “A Licence under Part 5 (section 112) of the <i>Water Act 1912</i> (for temporary construction dewatering) is not required in relation to this development as it is currently proposed.</li> <li>• An Approval under Part 3 (section 91) of the <i>Water Management Act 2000</i> (for a controlled activity) is not required in relation to this development as it is currently proposed”.</li> </ul> <p>A condition is proposed restricting works to a maximum depth of 1.8 metres or where groundwater is encountered.</p>
<p>Rail Corporation of New South Wales (RailCorp)</p>	<p>The site is located within 25 metres of the Airport Rail Tunnel and was referred to RailCorp in accordance with the provisions of State Environmental Planning Policy (Infrastructure) 2007.</p> <p>RailCorp granted concurrence to the proposed development on 21 January 2010 subject to Council imposing the conditions provided in the attachment to that letter.</p>
<p>Sydney Corporation Airports Limited (SACL)</p>	<p>The site lies within an area defined in schedules of the Civil Aviation (Buildings Control) Regulations which limit the height of structures to 50 feet (15.24 metres) above existing ground height (EAGH) without prior approval of the Civil Aviation Safety Authority (CASA).</p> <p>Sydney Airports Corporation Limited (SACL) has raised no objection to the structure to a height of 27.0 metres above Australian Height Datum (AHD).</p> <p>A condition is proposed restricting the height of the building to 27.0 metres AHD, including any construction cranes or temporary structures, unless further approval is obtained from SACL.</p>
<p>NSW Police Force (Botany Bay Local Area Command)</p>	<p>The application was referred to the NSW Police for a ‘Safer by Design’ Assessment in accordance with the Draft Protocol established between Botany Bay City Council and the NSW Police Force.</p> <p>In a letter dated 14 November 2009 the NSW Police stated that a moderate crime risk rating was identified for the proposed development on a sliding scale of low, moderate, high, extreme crime risk.</p>

Referrals/Notice	Advice/Response/Conditions
	<p>The key recommendations from the assessment include:</p> <ul style="list-style-type: none"> <li>• Installation of CCTV Cameras within and around the development;</li> <li>• Improved lighting around the development and surrounding footpaths.</li> </ul> <p>Other recommendations relate to the external design, materials, surveillance, lighting, territorial reinforcement, landscaping, signage, space/activity management and access control.</p> <p>A meeting was held with the applicant, NSW Police and Council on 23 December 2009 to clarify the recommendations. The applicant has submitted a detailed response to the NSW Police Force Safer By Design assessment.</p> <p>A comprehensive condition is proposed on the consent requiring compliance with the requirements of the NSW Police Safer by Design assessment.</p>
Roads and Traffic Authority (RTA)	<p>The site is located on a classified road and was referred to the RTA in accordance with Section 104 of SEPP (Infrastructure) 2007.</p> <p>The RTA on 5 November 2009 confirmed that they have “no objection in principle” to the development application subject to the recommended conditions being imposed on the development consent. Their conditions restricted access to Church Avenue only. The applicant emailed the RTA on 12 November 2009 to request approval for construction access from Gardeners Road.</p> <p>The RTA on 1 December 2009 confirmed they will grant concurrence to temporary construction access via the existing layback on Gardeners Road, subject to requirements being met (to RTA satisfaction).</p> <p>The recommended conditions are proposed in the consent.</p>
Energy Australia	Energy Australia confirmed on 3 May 2010 that they have no objection to the proposed development.
Design Review Panel (DRP)	The Botany Design Review Panel commenced operations before such panels were mandated by SEPP 65. Referral to the panel is required for all major residential,

Referrals/Notice	Advice/Response/Conditions
	<p>commercial and industrial development in accordance with Council policy.</p> <p>The application was therefore referred to the Design Review Panel (DRP) at pre-DA stage in May 2009. At that stage the design was “<i>supported in general</i>”, with advice that a number of issues should be considered and the design revised accordingly.</p> <p>The development application was lodged with Council on 29 September 2009, and was referred to the DRP on two (2) occasions following lodgement, on 10 December 2009 and 15 February 2010. The Panel was asked to consider the proposed development, with specific focus on the impacts to views currently obtained from adjacent residential units (which is discussed in more detail in assessment of Clause 18(j) of the Council’s LEP).</p> <p>The Panel concluded that the subject site is “<i>located at a prominent corner and will serve to mark the ‘gateway’ to the Mascot Station Precinct when approaching along Bourke Street</i>”, and agreed that “<i>in general the design is considered acceptable, with the strongly articulated horizontal and vertical blade elements appropriately addressing the corner</i>”.</p> <p>The Panel recommended that the eastern side setback be increased by 2 metres, that the height of the screen wall ‘façade’ at the south-east corner should be reduced for reasons of both visual bulk and amenity of the adjoining residential units, that street-level frontages be activated, that energy and water efficiency be improved, increased building setback to the eastern boundary be provided to allow additional planting, that additional planting be provided at the corner of Bourke and Gardeners Road, that artwork be incorporated into the built form, provision of a 1 metre wide planting strip with a substantial high masonry wall on the eastern boundary adjacent to the proposed car spaces, that the ‘bland and over-assertive’ eastern façade be improved, and that safety and security issues be addressed.</p> <p>Amendments were made to the proposal to address the above issues, including a 2.5 – 5 metre landscaped setback and solid masonry wall to the eastern boundary adjacent to the proposed car spaces, a 3 metre reduction to the height of the building at the south-eastern corner (with the exception of a non-structural box screening some roof top equipment), improvements to the design and appearance of the eastern façade, provision of further information about energy and water efficiency, increased</p>

Referrals/Notice	Advice/Response/Conditions
	<p>amount of planting, and agreement to provision of public artwork to the value of \$50,000. The applicant did not agree to an increased side setback nor further activate the building façade as recommended by the Panel.</p> <p>The Panel welcomed the modifications, noted the applicant's position that street-level activation for use as a café or similar is not commercially viable, and confirmed their view that <i>"some additional setback is desirable having in mind the non-compliance with the extent of landscaped area which it is understood now approximates 15%, still short of the code requirement"</i>.</p> <p><u>Comment:</u> The applicant has demonstrated satisfactory compliance with the landscape control, and asserts that the proposed setback complies with Council's DCP requirements and is satisfactory in this case.</p> <p>While an increased setback is desirable, refusal of the application based on the proposed setback is not warranted.</p> <p>The proposed development in its amended form is considered to satisfactorily address the matters raised by the Design Review Panel.</p>

## SECTION 79C CONSIDERATIONS

In considering the Development Application, the matters listed in Section 79C of the Environmental Planning and Assessment Act 1979 have been taken into consideration in the preparation of this report and are as follows:

- (a) **The provisions of any EPI and DCP and any other matters prescribed by the Regulations.**

***S79C(a)(i): The provisions of any environmental planning instrument (EPI)***

The applicable environmental planning instruments (EPI's) have been identified below. Refer to "Assessment – Key Issues" section of this report for discussion.

State Environmental Planning Policy (Major Projects) 2005

The application is being reported to the Joint Regional Planning Panel for determination in accordance with Clause 13B(1)(a) of the SEPP as the capital investment value exceeds \$10 million and the proposal is not a Part 3A development under the *Environmental Planning and Assessment Act 1979*.

State Environmental Planning Policy (Infrastructure) 2007

The proposed development is located within 25 metres of the airport rail tunnel and was referred to RailCorp for concurrence in accordance with the requirements of Clause 86(4) of the SEPP. RailCorp granted its concurrence to the proposal on 20 October 2009, subject to imposition of conditions provided in the attachment to their letter.

The proposed development has a floor area in excess of 10,000m<sup>2</sup> and was referred to the RTA in accordance with Clause 104 of SEPP (Infrastructure) 2007. The RTA in their letters dated 5 November 2009 and 1 December 2009 raised no objection to the proposed development and provided concurrence to temporary construction access via the existing layback on Gardeners Road, subject to requirements being met (to RTA satisfaction) and imposition of recommended conditions of consent. The recommended conditions are proposed in the consent.

Consideration has also been given to Clause 101 of SEPP (Infrastructure) 2007 “*Development with Frontage to Classified Road*”. The proposed development provides all access, with the exception of construction access to Gardeners Road and emergency access to Bourke Street, from Church Avenue. The proposal is not considered to impact on the safety, efficiency and ongoing operation of the classified road, also confirmed by the RTA’s responses, and the use is not a sensitive use that may be impacted by potential traffic noise or vehicle emissions.

As such, the proposal is considered satisfactory in relation to SEPP (Infrastructure) 2007.

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

The provisions of SEPP 55 have been considered in the assessment of the development application, along with the requirements of DCP No. 34, relating to Contaminated Land.

The applicant has submitted the following documentation with regards to site contamination and the remediation of land:

- *Combined Phase I and II Investigation report, prepared by Golder Associates, dated 7 September 2009.*

The report identified the following matters:

- that the site has been used for commercial/industrial land uses for approximately 50 years, including a use selling engineers supplies materials, including sales of metal working equipment and steel;
- the site is located within Zone 2 of the Botany groundwater management area;
- subsurface conditions can be described as a large 200 mm thick concrete slab underlain by silty sand fill with sandstone and igneous gravel and including some debris to a depth of 1.0 metre; and,
- that groundwater was encountered across the site.

The report considered that the presence of certain specific chemicals above adopted assessment criteria will not prevent the proposed land use, and



concluded that *“based on the analytical results obtained by the investigations performed, it is concluded that the study area is suitable for continued ongoing commercial land use as the location of the proposed Equinix SY3 Building”*.

Council’s Environmental Scientist has assessed the submitted report and provided conditions of consent. Based on the information provided, and subject to the imposition of the recommended conditions of consent, the proposal is considered to satisfy the requirements of SEPP 55.

#### Botany Local Environmental Plan 1995

##### *Clause 5 – Objectives of the LEP*

The objectives contained within Clause 5 have been considered in the assessment of this application. It is considered that the proposed commercial use is compatible with adjoining residential and other non-residential activities, will revitalise the site, will provide employment within the area, reduces energy and water consumption, and capitalises on its location nearby Mascot Railway Station. As such, the proposal is considered to be consistent with this Clause.

##### *Clause 10 – Zoning*

The subject site is zoned 10(a) – Mixed Uses Commercial/Residential in accordance with clause 10 of the LEP.

Legal advice prepared by Pikes Lawyers, dated 19 November 2009, was submitted to demonstrate that the proposed use is defined as a “commercial premises” which is a permissible use in the zone.

Commercial premises are defined in the *Environmental Planning and Assessment Model Provisions 1980*, which definition is incorporated into Council’s LEP by Clause 6, and means:

*“A building or place use as an office or for other business or commercial purposes, but does not mean a building or place elsewhere specifically defined in this clause or a building or place used for a purpose elsewhere specifically defined in this clause”*

The legal advice summarised the business operations, which includes the leasing of space for customers to install and store electronics and computer equipment, and the provision of a series of add on services including temperature control, uninterrupted power supply and high level smoke detection and security. The advice concludes that:

*“It is clear from the above description that Equinix are engaged in a commercial enterprise in that they provide a service in exchange for payment. Furthermore, the service that Equinix provide is provided predominantly to commercial users so as to enable those users, commercial enterprise, to continue to operate. That is to say that the use constitutes an integral part of an ordinary commercial operation albeit that that subject part of those operations is conducted at 639 Gardners Road rather than within the commercial offices of Equinix’s clients”.*

The definition of “Commercial Premises” does not include “*a building or place elsewhere specifically defined*” and the applicant’s legal advice concludes that the proposal could not be considered to be another use.

Consideration is now given to the primary and secondary objectives of the 10(a) zone. The primary objective of the 10(a) zone is as follows:

*The primary objectives are to permit a mixture of compatible residential and non-residential activities and promote development that enhances the revitalisation of the locality.*

The secondary objectives of the zone are as follows:

- (a) *to permit non residential development of a type that is unlikely to impact adversely on the amenity of residents in the zone, and*
- (b) *to encourage a range of compatible employment-generating uses in the zone, and*
- (c) *to encourage development that provides a positive contribution to the streetscape and public domain, and*
- (d) *to encourage energy efficiency in all forms of development in the zone, and*
- (e) *to encourage best practice stormwater management in the zone, and*
- (f) *to capitalise on the location of transport facilities in or near the zone.*

The application proposes an expansion of the existing internet / data exchange uses at the site. This will result in the entire site being used for a commercial operation. The primary objective of the zone requires a ‘*mixture of compatible residential and non-residential activities*’. Council has previously obtained legal opinion for use of the existing Skilled Engineering Building (Unit A) at No.639 Gardeners Road as a commercial premises. The legal advice confirmed that, “*so long as Council is satisfied that this type of development is compatible with residential and non-residential activities in the zone then it is permissible as it would then meet the primary objective of the zone*”. Consideration was also given to the secondary component to the primary objective which requires the promotion of “*development that enhances the revitalization of the locality*’. This part can, according to the legal opinion, be satisfied by a new office development.

With regards to the above, the applicant has submitted an acoustic report, a wind study, a traffic impact study and a Plan of Management to demonstrate how the potential impacts to the amenity of adjacent residents will be minimised and that the proposal will be compatible with the adjoining residential and non-residential activities in the vicinity. This has been discussed in more detail in response to Clause 18 of the LEP, in assessment of the Mascot Station Precinct DCP, and in response to the objections received later in the report. The proposal also provides employment within easy walking distance of Mascot Station, provides a building that will positively contribute to the streetscape, reduces energy consumption, provides rainwater re-use within the site and utilises the existing public transport system. It is

therefore considered that the proposed development is consistent with the primary and secondary objectives of the zone.

*Clause 12A - Floor Space Ratio – Mascot Station Precinct*

Council may consent to the erection of a building on land in the Mascot Station Precinct only if the floor space ratio (FSR) of the proposed building does not exceed the ratio specified for the land as identified in the map marked “*Mascot Station Precinct Floor Space Ratios-Map 1 for Clause 12A*” in Council’s Mascot Station Precinct DCP. The maximum floor space ratio permitted for the subject site is 2.5:1. The proposed development has a Gross Floor Area of 2,878 square metres when calculated in accordance with the definition in Council’s LEP, being:

*“Gross floor area means the sum of the areas of each floor of a building where the area of each floor is taken to be the area within the outer face of the external enclosing walls as measured at a height of 1,400 millimetres above each floor level excluding the following:*

- (a) columns, fin walls, sun control devices and any other elements, projections or works outside the general line of the outer face of the external walls,*
- (b) lift towers, cooling towers, machinery and plant rooms and ancillary storage space and vertical air-conditioning ducts,*
- (c) car parking at basement and at grade (ground level) and 50% of the car parking area provided at first floor level (and any internal access to that car parking), being car parking that is needed to meet any requirements of the Council,*
- (d) space for the loading and unloading of goods,*
- (e) designated storage spaces (if any) designated for personal items associated with multi unit housing, residential flat buildings and mixed development”.*

This results in an additional FSR of 0.17:1 calculated across the entire site, and a total FSR of 0.75:1 for the whole site including SY1, SY2 and the proposed development (SY3). This ratio (as calculated) is within the maximum FSR requirement.

The FSR control should not be taken in isolation in this case as it does not include the substantial areas required for plant and machinery associated with the use, nor does it include the significant voids and floor to ceiling heights for the development. The plant and machinery required for the operation of this development includes an extensive and sizable air-conditioning system (including ducting and refrigeration equipment) to keep the computer hardware “cool”, as well as the battery rooms, electricity substation rooms, “Uninterrupted Power Supply” (UPS) rooms used to house electronic equipment used to take the initial draw load in case of power failure and diesel plant room for back-up power supply.

It should be noted, however, that if the entire floor area of the building, including all plant and equipment rooms, were included in the gross floor area

calculations the proposal would result in an FSR of 1.1:1 across the whole site. This is still well below the maximum 2.5:1 FSR permitted for the site.

*Clause 13 – Aircraft Noise*

The provisions of *AS2021:2000* have been considered in the assessment of the development application, as the subject site is located within the 20-25 ANEF zone.

The proposed development is a commercial premises and is acceptable in areas with an ANEF below 25 in accordance with Table 2.1 contained in Council's Aircraft Noise DCP.

*Clause 13A – Noise or Vibration*

The requirements of this Clause have been considered in the assessment of the development application. The proposal does not require noise attenuation for aircraft noise, as discussed in relation to Clause 13. The site is located on a Classified Road, Gardeners Road, and consideration has been given to potential impacts from noise. Given the proposed solid façade, the location of the rainwater re-use tanks above ground, and the location of work areas toward the southern side of the building away from the road, conditions relating to noise attenuation from road traffic noise are not considered necessary in this case.

*Clause 13B – Development and Obstacle Limitation Surfaces (OLS)*

The subject site lies within an area defined in schedules of the Civil Aviation (Buildings Control) Regulations which limit the height of structures to 50 feet (15.24 metres) above existing ground height without prior approval of the Civil Aviation Safety Authority. The application requests approval for the erection of a building with a maximum height of 20.5 metres above the existing ground level and the application was referred to Sydney Airports Corporation Limited (SACL) for consideration. SACL raises no objection to the erection of the building to a maximum height of 27.0 metres AHD. A condition is proposed on the consent requiring further approval to be obtained should the structure, or any equipment required in the construction process, exceed this height restriction.

*Clause 18A – Development in mixed use zones – Mascot Station Precinct*

Clause 18A does not allow Council to grant consent to the carrying out of development within the 10(a) zone unless it is satisfied that a number of criteria have been suitably met as follows:

*(a) the development provides adequate off-street parking;*

The proposed development is considered to provide adequate off-street parking for the proposed use. This matter has been addressed in consideration of Council's Mascot Station Precinct DCP below. The proposal is therefore considered to be satisfactory in relation to clause 18(a) of the LEP.

*(b) the development provides an efficient and safe system for the manoeuvring, loading and unloading of vehicles;*

The proposed development is considered to provide an efficient and safe system for the manoeuvring, loading and unloading of vehicles for the proposed use, as discussed in relation to the Mascot Station Precinct DCP below. As such, the proposal is considered to be satisfactory in relation to clause 18(b) of the LEP.

- (c) *any goods, plant, equipment or other material will be stored in a building or wholly within the site and will be suitably screened from public view;*

All goods, plant and equipment will be stored wholly within the building and the site, away from public view. Plant associated with the functioning of the building has been designed to appear as an integral element of the building. As such, the proposal is considered to be satisfactory in relation to clause 18(c) of the LEP.

- (d) *the development will not have an adverse impact on the surrounding road network;*

The Traffic Impact Assessment Report prepared by ARUP Pty Ltd, dated November 2009 (Rev B), concludes that the traffic generation resultant from the development is not considered significant on the surrounding road network, and the loading/unloading area and truck movements are satisfactory for developments of this size. As such, the proposal is considered to be satisfactory in relation to clause 18(d) of the LEP.

- (e) *the development will not have an adverse impact on the locality generally as a result of traffic movement, discharge of pollutants, other emissions, waste storage, hours of operation or the like.*

Detailed consideration has been given to the potential impacts on the locality from the proposed development, being a commercial development requesting approval for 24 hour operation located adjacent to an existing mixed commercial and residential development containing 319 residential units. Four (4) objections were received in response to notification of the proposal and the matters raised have been addressed in the “Public Participation” section of the report below. Subject to proposed conditions and operation in accordance with the submitted Plan of Management, impacts are considered to be minimised and are not anticipated to result in unreasonable impacts to the adjacent residents and the locality generally. As such, the proposal is considered to be satisfactory in relation to clause 18(e) of the LEP.

- (f) *the levels of noise generated from vehicles or operations associated with the development are compatible with the use to which adjoining land is put.*

The subject premises is located adjacent to a mixed residential and commercial development containing 319 residential units. The proposal requests approval for 24 hour operation, and an acoustic report has been submitted with the application. The acoustic report was assessed independently by Atkins Acoustics on behalf of Council and the following conclusion was provided:

*“From our review of the existing facility we are satisfied that with appropriate engineering and detail design it is feasible that the target noise goals can be achieved”*

It is proposed that this consent be conditioned to ensure that the operation of any plant and equipment installed on the site does not give rise to an equivalent continuous (LAeq) sound pressure level at any point on any residential property greater than 38dBA or 5dBA (day/evening/night) above the background (LA90) noise level. Council’s adopted noise standard restricts noise to L<sub>Aeq 15min</sub>40dBA at night time, and the proposed facility independently will satisfy this requirement. The proposed conditions also satisfy the Department of Environment and Climate Change’s Industrial Noise Policy which allows developments to achieve a maximum noise level of 5dBA above the background (LA90) noise level and the proposal is considered to be acceptable.

While the noise conditions will satisfy Council’s policy it is expected that the conditions will restrict the cumulative effects from all three buildings (SY1, SY2 and proposed SY3) to an equivalent continuous (LAeq) sound pressure level at any point on any residential property to a maximum of 48 dBA (day/evening/night). This is in accordance with the conditions of consent for SY 02 (DA 08/071/01).

The 24 hour operation of the premises will be restricted and will allow equipment to be maintained and monitored internally. Deliveries will be restricted to day time hours except in case of emergency. A Plan of Management (PoM) has been submitted to Council that provides a 24 hour contact number for adjacent residents in case of noise and disturbance outside of Council business hours. The PoM will be provided to all staff and contractors, and placed in the staff room, reception and security guard rooms of the premises.

Based on the information received, and subject to the proposed conditions of consent, the proposal is considered to be satisfactory in relation to clause 18(f) of the LEP.

- (g) *the landscaping of the site is integral to the design and function of any building resulting from the development and will improve its appearance, enhance the streetscape and add to the amenity of the adjoining locality.*

A detailed landscape plan and preliminary arboricultural report dated August 2009 have been submitted to accompany the development application. The application requests approval to remove 35 of the 36 trees located within the site and in the vicinity of the proposed building. The plans have been amended to provide additional planting along the eastern boundary and within the car parking area, and additional mature site trees are required to be retained by recommended conditions. The site will be landscaped to a high standard and in such a way as to complement the proposed

development and enhance the locality generally. As such, the proposal is considered to be satisfactory in relation to clause 18(g) of the LEP

- (h) *the building height, scale and design are sympathetic with and complementary to the built form, the streetscape and the public domain in the vicinity.*

The height of the development satisfies the controls contained in Council's Mascot Station Development Control Plan, which allows for developments with a maximum height of 7 storeys, or 8 storeys for certain development types at the corner gateway section to the Mascot Station Precinct. The application, in accordance with the policy considerations of this Council, was submitted to the Design Review Panel and was generally found to be a suitable response to the streetscape character and public domain. The development is similar in height to the adjacent residential flat development at No.635 Gardeners Road, and is considered to be consistent with the desired future character of the locality. As such, the proposal is considered to be satisfactory in relation to clause 18(h) of the LEP.

- (i) *the building design and finishes will not have an adverse impact on the amenity of the locality because of wind generation, overshadowing, reflections and the like.*

The submitted "*Pedestrian Wind Environment Statement*" prepared by Windtech, dated 13 November 2009, concludes that "*the proposed development is not expected to cause any adverse wind effects to the local surrounding area*". The proposed use of materials include light and dark coloured vitrapanel and weathered steel for the wall cladding and metal for the roofing. Given the height of the building, the existing and proposed vegetation along the boundaries and the matt nature of the finishes, glare and reflection to adjacent residential units are anticipated to be minimal. Overshadowing has been discussed previously in relation to Control 44 of the Mascot Station Precinct DCP and was found to be satisfactory. As such, the proposal is considered to be satisfactory in relation to clause 18(i) of the LEP.

- (j) *the development will protect the visual and aural amenity of the non-industrial uses to which adjoining land is put.*

The proposed development is not anticipated to result in any additional privacy impacts to adjacent premises. Noise impacts will be minimised, as discussed above, and are considered to be suitable for the site. The proposed development will block views gained from some adjacent residential units and objections were received on these grounds from residents/owners of two (2) residential units within adjoining residential developments at No.635 Gardeners Road and No.1-5 Bourke Street, Mascot.

The applicant submitted a 'view sharing assessment' using the Planning Principles developed by the Land and Environment Court in *Tenacity Consulting v Warringah Council* [2004] NSWLEC 140. The assessment includes photo montages showing the expected views from

the two (2) units following construction of the building, and addressed the four steps in the Planning Principles, being:

- (i) assess views to be affected,
- (ii) consider from what part of the property the views are obtained,
- (iii) assess the extent of the impact, and
- (iv) assess the reasonableness of the proposal that is causing the impact.

The assessment concluded that the loss of views to the unit located directly to the south within No.1-5 Bourke Street would be “*negligible from any room within the dwelling as there is no loss of the highly valued view of the city skyline although there will be a loss of foreground outlook*”. The assessment concluded that the impacts to the unit located to the south east at No.635 Gardeners Road would be “*minor or negligible as the views lost are of a pleasant outlook only, the views of part of the Anzac Bridge are at a very considerable distance from the property and are in the background; the views of the chimneys at Sydney Park are in the middle ground*”. They also noted that the proposed development complies with the height and floor space ratio controls for the site, that the proposed building is lower in height than the front building of the adjacent residential flat development at No.635 Gardeners Road, and that any building on this site may be built to a similar height as permitted by Council’s Mascot Station Precinct DCP which allows development up to seven storeys, and eight storeys for the north west corner part of the site. The applicant, for purpose of equivalence in development type, also submitted draft plans for a residential development on the site with a footprint similar to the adjacent residential property No.635 Gardeners Road, which shows that another proposal at the site could have similar, or even greater, adverse impacts than the current proposal.

The applicant’s ‘view sharing assessment’ was submitted to Council’s Design Review Panel on 10 December 2009 for their consideration, and the following comment was received:

*“The development will have negative amenity impacts on some of the residential units in the adjoining development at No.635 Gardeners Road, primarily in relation to view loss and overshadowing. The applicants have provided documentation addressing both these issues. Both go to the question of whether the new building is unacceptably high or unreasonably close to the common boundary. As to the height itself it is considered that the proposal is not unreasonable given that it is compliant with the DCP control and that a commercial/residential development could be constructed to this or a greater height. As to location of the new building, it is considered that some increase in the setback from the boundary should be required, -for a number of reasons. Firstly the development as proposed is set back only 3.375 metres from the eastern boundary, and this in combination with the height would cause winter overshadowing on some of the units. Secondly the*



*visual impact of the development on the adjoining property would be significant. Thirdly the development does fortuitously benefit from the large setbacks of the neighbouring buildings, but it is proposes an even smaller setback to the boundary than the setback of the one unit block which is near the boundary, -the third of the blocks from the Gardeners Road entrance. Fourthly the development does not comply with the not unreasonable requirement for 20% of common open space, -providing only 14.83% (see p.9 S.E.E. Addendum).*

*...In summary although the height is generally acceptable, there should be an increase in the setback from the common boundary and reduction in height at the south-east corner, - which in combination would reduce overshadowing of the residential units, and marginally reduce impact on views from a number of units. In addition attention is needed to screening of the parking area”.*

The modified proposal, including a minimum 2 metre landscape screening of the parking spaces and a reduction in the height of the building at the south-east corner by 3 metres for a length of 14.5 metres in a northerly direction and a width of 6.8 metres in a westerly direction, was returned to the Design Review Panel on 15 February 2010. The applicant stated that increasing the setback was unnecessary to achieve the objectives outlined by the Panel and that this was not possible given the internal technical specifications of the development. They requested that the Panel reconsider their recommended 2 metre building setback to the eastern side boundary. The Panel noted the applicants’ response however held to their view that some additional setback is “*desirable*”, specifically to improve the amount of landscaped area on the site. The Panel also advised that it “*is not in a position to assess the validity of the claim that this extent of site cover is necessary because of ‘...the highly technical requirements and layout of the data centre.’*”

The Panel’s comments are noted. The applicant has since demonstrated that satisfactory landscape area has been provided on the site. The proposal is also compliant with the side setback, height, building separation, and floor space ratio controls contained within Council’s LEP 1995 and Mascot Station Precinct DCP.

Based on the evidence provided above, it is considered that there will be minimal impacts to the views currently enjoyed from the residential unit at No. 1-5 Bourke Road, Mascot. This unit, located on level 4 of the building, benefits from city views – an iconic view, albeit at a distance. While the views of the foreground will be reduced, the view of the city skyline will, according to information submitted to Council, be retained. In addition to the applicant’s assessment, it should be noted that the views gained from this unit are already partially obstructed by the building known as SY2 (Units C1 and C2) at 639 Gardeners Road. It is therefore considered that there will be minimal impacts to views gained from this unit.

With reference to the residential unit located within the mixed residential and commercial development at No.635 Gardeners Road, Mascot, it is considered that the proposal will result in a loss of views from the living room, secondary bedroom/office, balcony and northern part of the kitchen, from both sitting and standing positions. Some of the views from this unit are already blocked by the existing residential building located immediately to the north (within the same site), however the unit benefits from district views from these rooms to the north-west over the existing Building A at No.639 Gardeners Road. Additional views to the west and south-west are gained from the balcony. These views will be retained as there is no change to the built form in this direction.

The applicant, in their assessment, distinguishes between a view and an outlook, being a lesser quality view. It is considered that the resident benefits from district ‘views’, and these views will be lost in their entirety from all rooms identified above at both sitting and standing position. The Planning Principles now require consideration as to the reasonableness of the proposal causing the impact. The Court said:

*“A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable”.*

As noted previously, the proposed development complies with the height, setback, building separation and floor space ratio controls within Council’s LEP and DCP. The applicant has modified the development at the south-east corner at roof top level, agreed to improve the aesthetic appearance of the eastern and southern façades, and provided additional landscaping along the eastern boundary of the site adjacent to the proposed car spaces. The applicant has been requested to increase the side setback of the development to improve the amenity of the adjacent residences on a number of occasions, however they have been unwilling to amend this part of the proposal. They state that *“given the highly technical requirements and layout of the data centre it is not feasible to move the building”*. The proposed internal layout plans have been viewed and appear complex and to capacity. As with the Design Review Panel, Council is not in a position to determine the validity of the applicant’s claim that modifications are not possible because of the technical requirements of the facility. Furthermore, the Council is required to consider whether the proposal is compliant with the relevant LEP and DCP provisions, and the requirements of the EP&A Act.

In this case, the proposed development is compliant with the relevant controls, and the applicant has also submitted a concept proposal for a residential development on the site that may result in similar, or greater, impacts to the adjacent residential premises. It is considered that a more skilful design could not resolve the view loss impacts to this unit and other residential units within the mixed residential and commercial development at No.635 Gardeners Road without limiting the development potential below what is permitted by the Council's LEP and DCP. The applicant has improved the screening of the proposal through the provision of additional trees located along the boundary and within the development site, and this will improve the appearance of the building.

Based on the above assessment, the view loss impacts of the amended development are considered reasonable and satisfactory with regard to the Planning Principles contained within *Tenacity Consulting v Warringah Council* [\[2004\] NSWLEC 140](#) and refusal of the proposal on this matter is not warranted.

As such, the proposal is considered to be satisfactory in relation to clause 18(j) of the LEP.

- (k) *the land can be remediated in accordance with the provisions of the relevant environmental planning instruments.*

The information submitted is satisfactory in relation to SEPP 55 and Council's Contaminated Land DCP 47. The submitted contamination report found that *"based on the analytical results obtained by the investigations performed, it is concluded that the study area is suitable for continued ongoing commercial land use as the location of the proposed Equinix SY3 Building"*. As such, the proposal is considered to be satisfactory in relation to clause 18(k) of the LEP.

#### *Clause 22 – Greenhouse Gases, Energy Efficiency, etc.*

The applicant has submitted an Energy Efficiency Report prepared by Arup, dated January 2010, in accordance with Clause 22 of the LEP. The report provided the following summary of measures to be incorporated into the proposal to reduce energy and water consumption:

- *"Airside economy cycle cooling system reduces the usage of the data centre's chilled water cooling system and increases overall energy efficiency of the system compared to traditional data centres;*
- *Fans and pumps will be installed with variable speed drives to increase energy efficiency and reduce electrical consumption;*
- *High efficiency water cooled centrifugal type chillers to increase energy efficiency and reduce electrical consumption;*
- *The air emissions and liquid discharges during the normal operation of the data centre are not considered pollutants as no chemicals or toxic gases are being emitted;*
- *Provision of 150,000 Litres of combined On Site Detention (OSD) and rainwater harvesting storage. 70,000 Litres will be dedicated to serve*

*the data centre cooling towers and reduce the cooling tower water consumption by 8.9% per annum;*

- *Waterless urinals and dual flush W.C.s to further reduce water consumption;*
- *Intelligent lighting control systems to reduce electrical consumption of the lighting system”.*

The applicant considered the introduction of Combined Heat and Power (CHP) technologies and the use of solar power, however both measures were considered to be unviable for the proposal. It is noted that the building structure has been designed to accommodate the weight of photovoltaic cells if the building use were changed in the future.

The measures proposed are considered to reduce energy and water consumption and the proposal is considered to satisfactorily address the requirements of Clause 22 of the LEP.

#### *Clause 28 – Excavation and filling of land*

The site seeks consent for minor excavation works associated with footings for the building and construction of the underground storage tank (UST) for diesel fuel. The UST will be constructed using jet grouting techniques, a technique specifically used in areas with groundwater. The proposal was referred to NSW Office of Water at the Department of Environment, Climate Change and Water (DECCW), and no objections were raised. Appropriate conditions are proposed on the consent to minimise impacts upon drainage patterns, soil stability or the development of adjoining sites in the locality to ensure compliance with clause 28.

#### *Clause 30 – Tree Preservation Order*

The proposed development was accompanied by a landscape plan, and a preliminary arboricultural report dated August 2009, requesting removal of 35 of the 36 site trees located in the vicinity of the building and all seven (7) street trees located along Gardeners Road. The removal of the street trees and some of the site trees is supported by Council’s Landscape Officer and Tree Preservation Officer, subject to re-planting, however conditions require the retention of additional mature and healthy trees located in the proposed setback area to Gardeners Road.

#### *Clause 30A – Development on land identified on Acid Sulfate Soil Planning Map*

The site is located within a Class 2 Acid Sulfate Soil Area as identified in the David Lane Associates report dated September 2005. As such under Clause 30A of the Botany LEP 1995 any works that are below ground surface and works by which the watertable is to be lowered require the submission of an Acid Sulfate Soils Management Plan.

An “*Acid Sulfate Soils Assessment and Management Plan*” dated 19 November 2009 prepared by Golder Associates was submitted to Council on 17 November 2009. Compliance with the Acid Sulfate Soils Assessment and Management Plan will be a condition of consent as recommended by

Council's Environmental Scientist. As such, the proposed development is considered satisfactory with regards to Clause 30A of the LEP.

*Clause 38 – Water, Wastewater & Stormwater systems*

Subject to appropriate conditions of consent requiring a Section 73 Certificate be obtained from Sydney Water prior to construction, the application is considered to address the requirements of Clause 38 of the LEP.

***S79C(a)(ii): The provisions of any draft environmental planning instrument (draft EPI)***

There are no draft EPI's applicable to the site.

***S79C(a)(iii): Any Development Control Plan (DCP)***

Mascot Station Precinct (MSP) Development Control Plan (DCP)

The subject site is located within Sub-Precinct No. 6 under the DCP. In accordance with the future character of the sub-precinct (refer Section 4 of the DCP), the application accentuates the major intersection at Bourke Street and Gardeners Road to act as gateway feature to the Mascot Station Precinct.

The proposed development proposes a commercial development and many of the controls contained within the DCP focus on residential or mixed commercial and residential developments.

An assessment of the primary development controls contained in Section 6.0 of the DCP has been provided in table form below:

<b>Applicable Clauses</b>	<b>Comment</b>	<b>Compliance with Clause</b>
C11 – Consolidation	The site conforms to the consolidated site shown in the DCP.	Satisfactory
C13 - Demonstrate no potential sterilisation of land	The proposed development will not hinder the appropriate development of adjoining sites.	Satisfactory
C14 - Floor Space Ratio Max – 2.5:1	0.75:1 (for the whole site)	Satisfactory
C18 - Airport related building heights – buildings over 15.24 metres in height shall be referred to FAC	Sydney Airports Corporation have raised no objection to the height of the proposed development to 27.0 metres AHD subject to conditions of consent.	Satisfactory
C21 - Maximum Building Height = 7 storeys (8 storeys permitted on the corner part of the site under Control C21	The maximum building height of 20.5m, being the equivalent of 6-7 storeys, is proposed.	Satisfactory

Applicable Clauses	Comment	Compliance with Clause
for a hotel development).		
C23 - Maximum site coverage = 55%	Application proposes 65.12% site coverage as calculated for the entire site - 639 Gardeners Road. This exceeds the maximum permitted, however the site is a large site and the proposal demonstrates compliance with the objectives of the control. Refer to 'Assessment – Key Issues' section of the report for discussion.	<b>No – Note 1</b>
C26 - Building Separation  - 18m between habitable rooms/balconies;  - 13m between habitable rooms/balconies and non habitable rooms  - 9 metres between non-habitable rooms	Applicant has submitted plans showing a 14.5m rising to 31.770m separation to the adjacent residential buildings at No.635 Gardeners Road, Mascot. This exceeds the minimum 13m between habitable rooms and non-habitable rooms.	Satisfactory
C27 – C31 - submission of concept landscape plans, landscaping requirements, paving, trees and street trees.	Subject to the proposed conditions the submitted landscape plans and documentation are satisfactory.	Satisfactory
C32 - 20% site communal open space, and 25% of the communal space to be available for deep soil planting.	The proposal does not provide 20% communal open space. The applicant has demonstrated compliance with the objectives of the control. Refer to 'Assessment – Key Issues' section of the report for discussion.	<b>No – Note 2</b>
C34 – Landscaped Setbacks:  • Front Landscaped Setback = 6 metres (min)  • Side Landscaped Setback = 3 metres	Front Setback (Gardeners Road) = 9.1m, with 1.2m encroachment for feature blade elements  East Side Setback – 3.375m. West Side Setback (Bourke Street) -	Satisfactory  Satisfactory

Applicable Clauses	Comment	Compliance with Clause
(min).	minimum 3 metres to the wall of the building. The feature blade elements provide articulation and are setback to 2 metres.	
C34B – Deep Soil Zones - Stormwater tanks not to be located within landscaped areas	The stormwater will be directed to rainwater retention tanks, with overflow connected to the stormwater system. Rainwater tanks are located above ground level and incorporated into the front façade of the building. They will not conflict with deep soil landscape areas in street setbacks.	Satisfactory
C35 – Landscape setback to Gardeners Road to comprise 50% lawn and 50% plantings	The Bourke Street setback to the development will comprise an appropriate combination of lawn, plantings and private courtyard areas.	Satisfactory
C39 – Road widening	The site is subject to road widening to Church Avenue. This is dealt with separately under Development Application No.08/166.	Satisfactory
C44 – Solar Access, Overshadowing, Energy Efficiency – Compliance with Council’s Energy Efficiency DCP	<p>An Energy Efficiency Report has been submitted to accompany the development application which satisfactorily address the requirements of Council’s LEP 1995 and objectives of Council’s Energy Efficiency DCP.</p> <p>With regards to solar access, submitted overshadowing diagrams demonstrate that a maximum of 8 units located within the residential complex at No.635 Gardeners Road will be affected by the proposed development between 12pm and 3pm at mid-winter, and that all units will continue to receive in excess of the 3 hours solar access between 9am and 3pm at mid-winter (21 June). This satisfies the solar access requirements contained in the State Government’s Residential Flat Design Code and is considered satisfactory with regard to Council’s Energy Efficiency DCP.</p> <p>Refer to ‘Assessment – Key Issues’ section of the report for discussion.</p>	Satisfactory
C47 - Wind control	A Wind Environment Assessment prepared by Windtech, dated 13 November 2009, has been submitted to	Satisfactory

Applicable Clauses	Comment	Compliance with Clause
	accompany the development application and is considered satisfactory	
C48 - Aircraft Noise	The development site is located within the 20 – 25 ANEF contour. An Aircraft Noise Assessment is not required for commercial developments located on sites with an ANEF below 25.	Satisfactory
C49 – Road Traffic Noise	The proposed development is located on Gardeners Road, a classified road. The premises is a commercial operation that accommodates plant and machinery to the northern side of the building. Specific noise attenuation is not considered necessary for the subject building.	Satisfactory
C51 - Contamination	The applicant has submitted a combined Phase I and Phase II Investigation Report prepared by Golder Associates, dated 7 September 2009. The report concludes that <i>“the Study Area is suitable for continued ongoing commercial land use as the location of the proposed Equinix SY3 Building”</i> . Subject to imposition of conditions provided by Council’s Environmental Scientist, the site is considered to be suitable for the proposed development in accordance with DCP 34, SEPP 55 and the Managing Land Contamination Planning Guidelines (1998).	Satisfactory
C54 - Acid Sulfate Soils	The site is located within a Class 2 Acid Sulfate Soil Area. Compliance with the submitted Acid Sulfate Soils Assessment and Management Plan dated 13 November 2010 prepared by Golder Associates will be a condition of consent.	Satisfactory
C55 Groundwater requirements	Groundwater was encountered at depths varying from 1.8 and 2.4 metres below ground level as noted in the Combined Phase I and Phase II Investigation Report, prepared by Golder Associates and dated 7 September 2009. The application requests approval for the installation of an underground fuel storage tank (UST) and footings for the building. The NSW Office of Water, DECCW, has determined that <i>“A Licence under Part 5 (section 112) of the Water Act 1912 (for temporary construction dewatering) is not</i>	Satisfactory



Applicable Clauses	Comment	Compliance with Clause
	<p><i>required” and that “An Approval under Part 3 (section 91) of the Water Management Act 2000 (for a controlled activity) is not required” for the development as currently proposed.</i></p> <p>Based on the above, on the construction methods proposed for the UST and footings, and subject to appropriate conditions, the proposal is considered to have minimal impacts on the ground water table and is satisfactory.</p>	
<p>C56/57/58/C62</p> <p>Carparking:</p> <p>1 space/60m<sup>2</sup> commercial (minimum).</p> <p>Traffic study may be required.</p>	<p>The proposed development does not provide 1 car space per 60 m<sup>2</sup> as required by the DCP. The proposed use is specialised in nature and the applicant has submitted a Transport Impact Assessment Report, prepared by ARUP (November 2009) which demonstrates that a reduced parking provision of 61 car spaces across the entire site (for SY1, SY2 and SY3) is satisfactory. Refer to “Assessment – Key Issues” section of the report.</p>	<b>No – Note 3</b>
<p>C63/C64/65</p> <p>Internal vehicular access/design of parking areas</p>	<p>The proposed development provides adequate holding area for vehicles, provides separate entrance for vehicles and pedestrians, locates parking spaces away from the street, screens parking spaces by buildings and landscaping, provides parking spaces with minimum dimensions of 2.5m x 5.5m, provides visitors spaces toward the front of the site, includes one (1) car space for people with disabilities in accordance with Council’s Access DCP, and landscaping has been provided to soften the appearance of the parking area. Subject to conditions recommended by Council’s Development Engineer, the proposed development is considered to satisfactorily address this requirement.</p>	Satisfactory
<p>C69-72</p> <p>Loading/Unloading facilities, location/aesthetics, open storage areas.</p>	<p>The proposed loading and unloading will not be visible from the public domain, with access via Church Avenue. The proposed loading area will ensure that loading and unloading will take place wholly within the site.</p>	Satisfactory
C76	<p>The facades within the development make use of appropriate urban design principles</p>	Satisfactory

Applicable Clauses	Comment	Compliance with Clause
Facade composition	as outlined within the DCP. The application has been considered by the Botany Design Review Panel and, subject to amendments made, the design was generally supported.	
C78 Materials	Details of proposed materials have been provided on the plans. The design of the development is such that it incorporates a combination of contrasting materials and elements so to provide visual interest to the buildings. The Design Review Panel agreed that “In general the design is considered to be acceptable”, subject to improvements to the eastern elevation. Modifications were made and the Panel support the proposal subject to detailed development ensuring that “the façade is unassertive”. The proposed use of materials is therefore satisfactory.	Satisfactory
C79 Entries	All pedestrian and vehicular access will be from the existing Church Avenue entrance, with the exception of emergency access/egress from Bourke Road. No change proposed to the existing entrance.	Satisfactory
C80 Integration of rooftop elements	Roof plant/equipment has been designed to appear as part of the overall development.	Satisfactory
C82-C88 Crime prevention	Appropriate crime prevention design elements and measures have been included as part of the overall development proposal in accordance with the requirements from NSW Police Force Safer by Design Assessment. The consent will also be conditioned accordingly as to these matters.	Satisfactory
C92 - 97 Accessibility- Separation of uses/active street fronts	All access, except emergency access, is proposed via Church Avenue for security purposes. A condition is proposed requiring submission of an Access Report to ensure the proposal conforms with Council’s <i>Access Development Control Plan</i> .	Satisfactory
C98 - 104 Services	Underground Cabling – the consent will be conditioned to require that all cabling	Satisfactory

Applicable Clauses	Comment	Compliance with Clause
	<p>in the Gardeners Road and Church Avenue frontages be provided underground. There are no above ground cables in Bourke Street.</p> <p>Electricity – adequate provisions for electricity supply provided on site in accordance with Energy Australia requirements.</p> <p>Water and sewerage – proposed development satisfactory subject to conditions of consent.</p> <p>Stormwater – Council’s Engineering Services have reviewed the proposal and raise no objection subject to conditions.</p> <p>Fire Hydrants – shall be provided and the development shall be appropriately conditioned.</p> <p>Waste Management – Garbage collection areas are proposed from Church Avenue. Consent will be conditioned to provide a plan of Management for Waste.</p>	
<p>C105- C107</p> <p>Other controls</p>	<p>Fencing – Minor areas of fencing proposed are setback from the building.</p> <p>Signage – No signage is proposed and the development shall be appropriately conditioned to ensure a comprehensive signage strategy is proposed separately for the development.</p> <p>Storage – Appropriate storage areas have been provided within the building.</p>	Satisfactory

The non-compliances with the DCP, as identified in the table above, are discussed below:

***Note 1 - Site Coverage***

The application proposes 65% site coverage as calculated for the entire site - 639 Gardeners Road. This exceeds maximum 55% permitted by Section 6.3.4, Control C23.

The proposal completes the development of a large allotment and results in an FSR of 0.75:1, provides 2,270 square metres of deep soil planting and satisfies

the building setback requirements. The existing site coverage is 54%, not including hard paved surfaces used for car parking, and the proposal results in a proportionally minor increase to the built upon area. The proposal also ensures that the site provide adequate open area for visual and practical open space purposes. The proposed development is therefore considered to satisfy the objectives of the requirement and the variation is supported in this case, particularly given that a good percentage of the site is already built upon.

***Note 2 - Communal Open Space / Deep Soil Planting***

The proposed development does not provide 20% of the site area for communal open space as required by Control 32 of the DCP. The proposed development is a commercial development and the communal open space requirement is primarily focused on residential developments. In this case, the subject business will employ approximately 50 staff and communal open space areas, including staff lounge areas, are generally provided internal to the building. The applicant asserts that the commercial development typology and the low number of staff do not require the communal open space area required by the DCP, and that due to the high security requirements of the business staff and visitors to the site will not be permitted to wander around the external areas of the site for recreation purposes. It is their opinion that the proposal satisfies the objectives of the requirement as follows:

- *“The open space setbacks and deep soil planting areas will soften the visual impact of the proposed built environment from both the public and private domain;*
- *the proposed landscaped open spaces will enhance the existing streetscapes for both Gardeners Road and Bourke Roads as well as the general amenity and appearance of the locality;*
- *an existing open car park at the corner of Gardeners Road is to be removed to create the new built form and this will provide further benefit to the landscaped built form quality of the locality”.*

The applicant’s justification is generally agreed with in this case and the variation to the communal open space requirement is supported.

The control also requires that 25% of the communal open space be kept free for deep soil planting, being an area of 830 square metres. The applicant has demonstrated that 2,770 square metres of the site will be provided for deep soil planting. This area is generally located around the perimeter of the site in the setback areas. The proposed planting will soften the visual impact of the built environment, enhance the streetscape of the locality and screen the building. The proposed development provides 17% deep soil planting across the site that benefits the public domain and adjacent residential premises and is considered to satisfy the objectives of the requirement. The variation to this requirement is therefore considered satisfactory in this case.

***Note 3 - Parking Provision***

The proposed development does not provide 1 car space per 60 m<sup>2</sup> as required by the DCP. Given the specialised nature of the use, the applicant has submitted a Transport Impact Assessment Report, prepared by ARUP

(November 2009), as amended by the statement received from Planning Strategies (18 May 2010).

The reports provide the following observations based on current and proposed operations:

- *The existing Equinix (site SY1 and SY2) employs approximately 25-30 staff who generally arrive in the AM peak hour, with an estimated 80% arriving by car and 20% by public transport;*
- *An estimated 10 visitors to SY1 and SY2 arrive at the site by car, with arrival times dispersed across the whole day;*
- *SY3 will result in an estimated maximum of 10 permanent staff and 5 visitors in peak hour;*
- *The site is located nearby good public transport - Mascot Railway Station;*
- *Equinix staff work on a shift basis with a maximum of 30 staff parking their vehicles at the site at any one time;*
- *Based on the above, a maximum of 31 car spaces will be available for visitors to the site which is sufficient to provide for forecast demand.*

The information submitted to Council is considered to adequately demonstrate that a reduced parking provision of 61 car spaces is satisfactory for the whole site based on the operations of the premises, staff and visitor numbers to the site, the sites proximity to public transport, and the recommended conditions requiring the provision of bicycle parking and a workplace travel plan to be completed prior to Occupation. The proposed parking layout provided in Plan SK-100(04) dated 19 March 2010 is considered to be satisfactory in this case.

#### Off-Street Parking Development Control Plan

Parking and loading requirements are primarily contained within Council's Mascot Station Precinct DCP. The applicant has confirmed that loading usually occurs using a Small Rigid Vehicle. As such, a condition is proposed restricting the size of vehicles to a maximum of Class 3 in accordance with the AustRoads Classification System. This accords with the conditions for the use of Units C1 and C2 (SY2). The proposal is considered to adequately address other matters contained within Council's Off-Street Parking DCP.

#### Energy Efficiency DCP

The proposed development has an estimated cost in excess of \$250,000 and the requirements of Council's Energy Efficiency DCP apply.

An amended Energy Efficiency Report prepared by Arup Pty Ltd, dated January 2010, has been submitted which demonstrates how water and energy consumption on the site will be reduced. This includes measures such as airside economy cycles (which make use of outside air conditions to cool the data centre instead of using the chillers), installation of fans and pumps with variable speed drives, high energy efficient water cooling chillers, building insulation, and intelligent lighting control systems. This is considered to

satisfactorily address the requirements contained within Council's LEP and the objectives of Council's Energy Efficiency DCP.

The applicant has also demonstrated that the proposed development satisfactorily addresses the solar access requirements contained within Section 3.0 of the DCP, being that *"The siting and orientation of the building shall also ensure that the proposed building does not materially increase overshadowing to adjoining properties and reduce the level of solar access to these buildings"*. This has been discussed previously in assessment of Mascot Station Precinct DCP No.30.

Subject to a condition requiring that the plans and documentation submitted with the Construction Certificate demonstrate compliance with the Energy Efficiency DCP, and that a report be submitted within 6 months of issue of an Occupation Certificate to demonstrate that the measures have been implemented, the application is considered to satisfactorily address the requirements of the DCP.

#### Aircraft Noise Development Control Plan

The provisions of *AS2021:2000* have been considered in the assessment of the development application, as the subject site is located within the 20-25 ANEF zone.

The proposed development is a commercial premises and is acceptable in areas with an ANEF below 25 in accordance with Table 2.1 contained in Council's Aircraft Noise DCP.

#### Access Development Control Plan

An Access Report, dated 11 September 2009 and prepared by Mark Relf, was submitted with the application. It concludes that *"Overall, access to and within the development is consistent with Council's Access DCP and relevant provision of the BCA"*. It confirms the following outcomes:

- "There will be appropriate access to the principal building entrance, from an adjoining road/public footpath to comply with part D3.2 of the BCA;
- The development proposes appropriate number and design of Accessible Parking to satisfy Part D3.5 of the BCA and AS2890.1;
- The design of walkways, lifts and width of internal corridors demonstrates the development can provide appropriate internal and vertical access to enable access to all areas required to be accessible to people with disabilities to satisfy the accessibility requirements of Parts D3, EP3.4 of the BCA; and,
- The provision of accessible toilet also illustrates compliance with Part F2.4 of the BCA".

The proposal is considered satisfactory with regards to the DCP subject to a condition requiring detailed information to be submitted with the Construction Certificate.

#### Waste Minimisation and Management Guidelines DCP

Subject to imposition of appropriate conditions requiring the preparation of a waste management plan, including the preparation of an ongoing waste management plan that addresses recycling of site waste, the proposed development is considered to satisfactorily address Council's Waste Minimisation and Management Guidelines DCP.

#### Contaminated Land Development Control Plan No.34

The applicant has submitted a Phase I and Phase II Contamination Investigation report prepared by Golder Associates, dated 7 September 2009. Subject to recommended conditions of consent, the application is considered to satisfactorily address the requirements of Council's Contaminated Land DCP 34.

#### ***S79C(a)(iv): Any matters prescribed by the regulations***

*The EP&A Regulations add further detail by prescribing matters that must be considered including, where relevant:*

- *Standards for demolition;*
- *Fire safety considerations for changes of building use where either no building work or building work is proposed; and*
- *Provisions for rebuilding, alteration, enlargement or extension of an existing use.*

Comment: The proposed development is considered to be satisfactory with regards to these matters as demolition has been approved separately, and the proposal does not involve a change of use or alterations to an existing premises. As such, there are no matters relevant to this application apart from the prescribed conditions.

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

These matters have been considered in the assessment of the Development Application. It is considered that the proposed development will have no significant adverse environmental, social or economic impacts on the locality. The primary matters are addressed in table below:

<b>Likely Impact</b>	<b>Response</b>
Urban form and Building design	The proposed development is of a similar height and scale to the adjacent residential flat development at No.635 Gardeners Road, and to other recent residential developments within the Mascot Station Precinct. The proposal is setback further from the front boundary to the adjacent residential flat building which, in combination with proposed planting, articulation and use of materials, will reduce the buildings bulk when viewed

Likely Impact	Response
	<p>from the street. The corner blade elements are intentionally more dominant than surrounding development and rise to the corner to mark the entrance to the Mascot Station Precinct. The proposed development is considered to suitably address the existing and future site context intended by Council's Mascot Station Precinct. The proposal is also considered to address the public domain through use of planting and public art.</p> <p>In addition to the above, the proposal is considered to provide an appropriate site layout and design. The applicant has reduced the height of the south eastern corner to improve solar access to, and improve the appearance from, the residential development at No.635 Gardeners Road. The Council's Design Review Panel recommended further activation of the street frontage with, for example, provision of a café. The applicant considered the proposal to be unviable in the location and the Panel noted their response.</p> <p>The proposed urban form and building design is considered to be satisfactory.</p>
Environmental Impacts	<p>The proposed development reduces water consumption through on-site rainwater reuse, proposes only minimal excavation works, minimises energy consumption as detailed in the Energy Efficiency Report submitted, and will recycle waste. The proposal replaces an existing development and hard-stand area, and proposed trees to be removed will be replaced in accordance with the submitted landscape plans and recommended conditions of consent. There are no known endangered species on the site, and the proposal is considered to minimise environmental impacts.</p>
<p>Hazards</p> <ul style="list-style-type: none"> <li>Noise and vibration</li> <li>Safety, security and crime prevention</li> </ul>	<p>Satisfactory - refer to discussion in response to Clause 18 of the Botany LEP 1995 in "Assessment – Key Issues" section below.</p> <p>Satisfactory – the NSW Police Force undertook a Safer by Design Assessment of</p>



Likely Impact	Response
<p>(CPTED)</p> <ul style="list-style-type: none"> <li>Technological Hazards</li> </ul>	<p>the proposed development. The applicant has provided measures to address the recommendations, and appropriate conditions are proposed.</p> <p>Satisfactory - The diesel fuel pump room does not contain storage of diesel fuel and is used as a method of transferring fuel from the underground bulk fuel tanks to the diesel generators located at Level 2. The underground storage tanks are required to be installed and maintained in accordance with the NSW Dangerous Goods on Premises Guide GDG01 2006. The site has satisfactorily addressed the requirements of the NSW Police Safer by Design Assessment.</p>
<p>Social and economic impacts</p> <ul style="list-style-type: none"> <li>Social impact in the locality</li> <li>Economic impact in the locality</li> </ul>	<p>The applicant advises that the proposed development will provide social and economic benefits by providing a high quality data exchange centre accessing international markets 24 hours a day.</p> <p>The applicant's response is generally agreed with. In addition, the proposal provides employment opportunities within the local community, is located near to good public transport facilities, provides on-site surveillance and is designed to minimise crime. The proposal does not directly engage the community, and the site is not accessible to the general public due to security requirements, however the proposal is of a high quality design and the site has been landscaped to all boundaries to respect the environmental amenity of the area. The applicant has also agreed to provide public art at corner of Gardeners Road and Bourke Street that reflects the history of the area. This will provide some direct social benefit to the locality. The increased number of staff and visitors to the area will also encourage use of local retail premises. The proposal is therefore satisfactory in terms of social and economic impacts.</p>
<p>Cumulative Impacts</p>	<p>Consideration has been given to potential cumulative impacts , including the operation of additional plant and machinery at the site</p>

Likely Impact	Response
	and the potential for ‘noise creep’ to result. Subject to proposed conditions, the proposal is considered to result in minimal impacts to adjacent premises. Refer to discussion in response to Clause 18 of the Botany LEP 1995 in “Assessment – Key Issues” section below for more detail.

**(c) The suitability of the site for the development.**

These matters have been considered in the assessment of the development application. The site is not known to be affected by any site constraints or other natural hazards likely to have a significant adverse impact on the proposed development. Groundwater issues have been addressed in the development application submission and the Department of Environment, Climate Change and Water have raised no objection to the development in this respect. The site is located near good public transport providing good alternatives for staff and visitors to travel to and from the premises. The proposal does not impact on the Airport Rail Tunnel, and contamination issues have also been addressed in the development application submission.

The proposed development, being for construction of a new internet exchange centre to a site located within the 10(a) Mixed Uses Commercial/Residential Zone, minimises impacts to adjacent properties and is considered a suitable development in the context of the site and locality.

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

The application was notified to a total of 438 surrounding property owners / occupiers, advertised in the local newspaper, and a sign placed on site for a thirty (30) day period from 6 October 2009 to 6 November 2009 in accordance with *Development Control Plan No. 24 – Notification of Development Applications* and the Integrated Development Provisions under the *Environmental Planning and Assessment Act 1979*.

Four (4) submissions were received in response to the notification of the development application. Two objections were received from No.255/635 Gardeners Road, being one (1) from each of the owners. Objections were received from the following properties:

- 255 / 635 Gardeners Road, Mascot (2 objections received from this property – one from each owner)
- 118 / 1-5 Bourke Street, Mascot
- 91 / 18-26 Church Avenue, Mascot (rear part of No.635 Gardeners Road development)

The objections raised the following concerns:

- *Building Height – The proposed height of the commercial development is inconsistent with the height of other commercial and industrial (non-residential) development in the area and therefore inappropriate in the context. It was requested that Council require a reduction in the height of the development to be similar in height to the current building (Skilled Engineering) on 639 Gardeners Road.*

Officer comment: This matter has been discussed previously in the report. The proposed development has a maximum height of 20.5 metres, commensurate with the height of a 6 to 7 storey building. Council's Mascot Station Precinct DCP allows for the erection of a building with a maximum height of 7 storeys on the site, with 8 storeys permitted at the northern part of the site for certain development types to accentuate the entrances to the Mascot Station Precinct. While the proposed commercial development may provide less articulation and stepping when compared to a residential flat development, the DCP envisages a building of similar, or greater, height at this location. The application was also referred to Council's Design Review Panel (DRP) for consideration. The Panel agreed that the height is "generally acceptable" subject to minor modifications that have generally been adopted.

The objections to the proposed height of the building also relate to the loss of views and loss of sunlight issues discussed below.

- *View Loss - Three (3) of the objections raised concern with a loss of views resulting from the proposed development. Two (2) objections were received from tenants of the same unit located within the adjacent residential flat building at No.635 Gardeners Road, Mascot. One (1) objection was received from residents within the residential flat building located to the south of the site at No.1-5 Bourke Street, Mascot. One quote:*

*"If proposal 10/092 goes ahead, we...would now find ourselves living in a claustrophobic environment – which was the one thing we would not compromise on when looking for an apartment".*

Officer comment: This matter has been considered previously in the report (refer to consideration of Clause 18(j) of the Botany LEP 1995). The view loss impacts of the amended development are considered reasonable and satisfactory with regard to the Planning Principles contained within *Tenacity Consulting v Warringah Council [2004] NSWLEC 140*.

- *Noise – Concern has been raised with additional noise impacts to adjacent residential units. The noise impacts include early morning collections of rubbish and recycling from the premises, early morning use of the leaf blower, the use of roller doors which are 'squeaky and very loud' at early hours and on the weekend, deliveries being made to the premises outside of the approved hours (including use of the roller shutter doors), and noise from normal use of the facility.*

Officer comment: These matters have been considered previously in the report. The occupant, Equinix, is currently undertaking works and changes to business operations to reduce noise impacts from the existing facility.

This includes modifications to the mechanical components of the water tank and leaf blowing and yard cleaning later in the day. The applicant has submitted a Plan of Management and acoustic report with this application which demonstrate how noise impacts will be minimised. Relevant conditions include noise monitoring, restricted hours of operation, restrictions on the collection of rubbish from the premises to between 8am to 5pm Monday to Friday, and maximum noise levels at adjacent property boundaries.

- *Loss of sunlight – “Serious concern” is raised with a loss of sunlight resulting from the proposed development as “studies have shown that reduced sunlight has significant negative impacts on mental health”.*

*Officer comment:* The applicant has provided overshadowing diagrams to demonstrate that the proposed development will create additional overshadowing to a maximum of 8 residential units within the adjacent development at No.635 Gardeners Road, Mascot. The impacts have been reduced by the 3 metre reduction in the height of the building at the south-eastern corner, and the residential units will all receive at least 3 hours of direct solar access between 9am and 3pm at mid-winter. This satisfies the minimum required for a residential dwelling at mid-winter in accordance with the NSW State Governments’ Residential Flat Design Code and is considered satisfactory in accordance with Council’s Mascot Station Precinct DCP.

- *Construction Noise – One (1) objection raised concern with construction noise. The resident had experienced problems with the construction works associated with SY2. They advise that works commenced at 6am, with work also being carried out early on Saturdays, Sundays and on Public Holidays, and in the evenings.*

*Officer comment:* The Council has recommended that a condition be imposed on the consent restricting the hours of construction to between 7am – 6pm Monday to Friday, 7am – 4pm Saturdays and no work to be undertaken on Sundays and Public Holidays. This is standard and in accordance with the NSW Environment Protection Authority’s Environmental Noise Manual – Chapter 171 and the *Protection of the Environment Operations Act 1997*. Other conditions are proposed restricting noise from construction operations, and the applicant has committed to providing neighbours with a 24 hour telephone number for use if when noise impacts occur out of hours. Residents can also contact Council with complaints about breaches to the conditions. Council can not be present at site during all times during construction and subject to conditions the matter is considered to be satisfactory.

- *Quality of Life – Concern has been raised with a loss in the quality of life for residents within the adjacent residential developments.*

*Officer comment:* This issue is inherently related to objections to building height, view loss, noise, overshadowing and other matters raised in the objections. The impacts from the proposed development are considered to be minimised as discussed above and previously in the report. Potential noise impacts have been addressed, the building design has been altered to

improve solar access and allow an improved appearance from adjacent residential units, and additional trees are proposed to be planted in the side and southern setbacks to improve screening of the development. The proposed development reduces the number of parking spaces on site, thus reducing potential traffic movements, and a Plan of Management has been prepared for the operation of the whole site. Subject to these modifications and proposed conditions of consent, the proposal is considered to satisfy the policy requirements and impacts on quality of life are minimised and satisfactory.

- *Loss of property value – It is asserted that the proposed development will result in a loss of property values for the surrounding residential units, primarily attributed to the loss of views, the loss of sunlight, and the reduction in the overall quality of life in the unit. One objection was accompanied by a copy of the marketing material used by the real estate agent to sell their property. The marketing material relied heavily on the open aspect obtained from the unit. In their assessment the loss in value could be between \$50,000 and \$100,000*

*Officer comment:* The proposed development is a permitted use in the zone. It satisfies the height, floor space ratio, setback and other relevant controls for the site as discussed previously in the report. The extent of the development is considered satisfactory in the planning framework, and the proposal is considered to result in a well designed building following consideration by the Design Review Panel on three occasions. In addition, it is considered that another complying development may have raised similar concerns for residents of adjacent residential premises. The loss of property values is also not a head of consideration under Section 79C of the Environmental Planning and Assessment Act 1979.

- *Traffic – Concern is raised with the impacts from increased traffic into the residential area which will place strain on the current infrastructure.*

*Officer comment:* The proposed development is of a specialised nature and the additional building will require minimal additional staff and visitors to the site. The proposed development has a lower traffic demand than most other commercial or residential developments of a similar size. A traffic study has been submitted that demonstrates that there will be minimal increase in traffic generation from the proposed development. As such, the proposal is considered to result in minimal traffic impacts to the area.

- *Steam – According to one objection steam from the facility frequently blows straight onto the balconies closest to the facility, and concern is raised that the steam may cause health problems.*

*Officer comment:* The ‘steam’ is not considered to be harmful. The following comments were provided by Council’s Environmental Health Officer:

*“In regard to the steam/vapour complaint that has council has previously received in relation to Equinix, 639 Gardener's Rd, Mascot, the following advice is provided. I concur with advice that has been provided and is nominated on file. An investigation was*

*conducted in regard to this in August 2008 and no issues of concern were found. The smoke/steam is water vapour being extracted from the building cooling towers. The vapour is particularly noticeable in winter, less so in Summer. Equinix operate an effective treatment program in regard to Legionella control and the systems are being maintained in line with AS/NZS 3666 Part 3 - Legionella Control Australia. I concur with previous comments that as long as the system is being maintained as required then the water vapour should not be harmful”.*

**(e) The public interest.**

These matters have been considered in the assessment of the proposed development. The proposed development supports the aims of the Metropolitan Strategy by providing employment close to where people live and by strengthening Sydney’s economic competitiveness, while minimising impacts to adjoining residential premises.

The proposed development also satisfies the requirements and objectives contained in the Botany LEP 1995 and the Mascot Station Development Control Plan, being Council’s strategic direction for the future of the area.

No detrimental impacts to the interests of any level of government are known, and the proposal reduces energy consumption as detailed in the Energy Efficiency Report submitted with the application.

Consideration has been given to crime prevention in the design and operations of the facility, and public consultation has been undertaken in accordance with relevant policy requirements.

The proposed development will enhance the appearance of the corner position on which it is located and provide a development of high quality materials and finishes.

It is considered that approval of the proposed development will have no significant adverse impacts on the public interest.

**Internal Referrals**

The application was referred to the Council’s Design Review Panel and the following internal specialist assessment officers:

Acoustic Consultant:

Atkins Acoustics Pty Ltd was engaged by Council to independently and critically assess the acoustic report submitted to Council. Atkins Acoustic’s provided recommended conditions and concluded in their response dated 28 October 2009 that:

*“From our review of the existing facility we are satisfied that with appropriate engineering and detail design it is feasible that the target noise goals can be achieved.”*

**Recommendations:** The following condition recommended by Atkins Acoustics Pty Ltd be imposed on the consent, subject to a minor modification restricting to the times

that the diesel generator may be tested to between 10:00am and 5:00pm Monday to Friday only:

- (a) *“The operation of any plant and equipment installed on the site shall not give rise to an equivalent continuous (LAeq) sound pressure level at any point on any residential property greater than 5dBA (day/evening/night) above the background (LA90) noise level.*
- (b) *The operation of all plant and equipment installed on the SY3 development shall not give rise to an equivalent continuous (LAeq) sound pressure level at any point on any residential property greater than 38dBA (day/evening/night)*
- (c) *The operation of all plant and equipment installed on the site shall not give rise to a cumulative equivalent continuous (LAeq) sound pressure level at any point on any residential property greater than 48dBA (day/evening/night).*
- (d) *Operational noise from the emergency diesel generators shall not give rise to an equivalent continuous (LAeq) sound pressure level at any point on any residential property greater than 55dBA (day/evening/night).*
- (e) *Testing of the diesel generators shall be scheduled and restricted to between Monday to Friday and daytime hours only.*

Development Engineer:

Council’s Development Engineer has assessed the proposed development and provided recommended conditions of consent on 17 December 2009.

*Recommendations:* The conditions recommended by Council’s Development Engineer be imposed on the consent.

Environmental Scientist:

Council’s Environmental Scientist provided comments and recommended conditions on 14 April 2010 in response to the submitted *Phase I and II Contamination Investigation Report* prepared by Golder Associates dated 7 September 2009, and the *Energy Efficiency Report* prepared by Arup dated January 2010.

*Recommendations:* The conditions recommended by Council’s Environmental Scientist be imposed on the consent.

Landscape Officer:

Council’s Landscape Officer provided conditions of consent accompanied by the following response:

*“There are a total of 36, mostly native, trees on the abovementioned property, of which the Applicant proposed to retain 1 – a large Eucalyptus in the Gardeners Road setback. After a number of site inspections, discussions and additional investigations between myself, Council’s Tree Preservation Officer and the Applicant, Council now wish to see seven (7) trees on the property*

*retained. These trees are located in the existing Gardeners Road setback and include a large Eucalyptus, several mature Tuckeroos and some Casuarinas. The trees provide significant visual amenity to the site and streetscape and would provide an instant screen to the new building. As the existing setback width is to be retained there is no reason why, without some re-routing of services, the trees cannot be retained. Additional tree planting when construction is complete will enhance this existing tree asset.*

*The remaining 29 trees on the site are to be removed for a number of reasons, namely : the trees fall within the footprint of the building, are within close proximity to the building envelope necessitating removal of more than 40% of the root plate, were in poor condition or were within the driveway/parking area footprint. These trees are mostly Eucalyptus species.*

*Retention of more of these trees was sought however modifications to the building envelope and parking/driveway areas were not entered into. It is proposed to replace the trees removed with new advanced tree plantings in the Bourke and Gardeners Road setbacks, eastern boundary setback, rear parking area and street trees.*

*The current landscape plans do not reflect earlier discussions in that tall canopy trees were to be planted in the Gardeners Road setback. The plans now show the smaller Tuckeroo tree in a single line only and fairly widely spread apart. This is unsatisfactory, particularly considering the setback is already well planted out with semi-mature/mature Tuckeroos that are in excellent condition and there is ample space (particularly width) for large canopy trees and/or 2 rows of trees.*

*Therefore I have conditioned this area be planted with additional tall canopy trees as well as additional Tuckeroos. This new planting does not preclude the preservation of 7 of the existing trees in the Gardeners Road setback, not 1 tree, as proposed by the developer. I have allowed 3 Casuarinas to be removed due to tree structure and potential development impacts”.*

**Recommendations:** The conditions recommended by Council’s Landscape Officer be imposed in the terms of the consent.

**Tree Preservation Officer:**

The application was referred to Council’s Tree Preservation Officer and the following response was received:

*“Council’s Tree Preservation Officer (TPO) has assessed the ‘Preliminary Arborist Report’ prepared by Stuart Pittendrigh dated August 2009. An onsite visual tree inspection was undertaken by myself in conjunction with Council’s Landscape Architect, on the 23 November 2009 between 11:00am and 12:00pm.*

*A thorough summary of the Council Onsite Tree Assessment has been provided by Council’s Landscape Officer in memorandum dated, 23rd November 2009.*

*Collectively the mature trees along the Gardeners Road frontage are highly visible from 300m from either direction along Gardeners Road, therefore considered streetscape amenity significant. The ‘Preliminary Arborist Report’*



*acknowledges that the greater majority of the trees onsite are worthy of retention. Under the provisions of Council's Tree Preservation Order, trees on private and public land are considered community assets and contribute to the landscape amenity of the area. In general, it is accepted that trees should only be removed if they are assessed to be dying, diseased, dangerous or if they are adversely impacting on the surrounding infrastructure (i.e. inappropriately planted).*

*Further to the details and findings contained in the 'Preliminary Arborist Report', Council approval for the following trees, as identified on Plan L101 (Issue 9), is recommended regardless of the pending development:-*

*Consent for Removal*

- *Tree No. 10, 11 (River She Oaks) – removal due to previous poor pruning management. Past lopping/topping has resulted in epicormic re-branching structure of the upper crown (weak unions). Both structural defective;*
- *Tree No. 13 (Ironbark) – removal due to Poor overall condition and extensive crown dieback, which will not recover;*
- *Tree No. 25 (Willow Gum) – removal due to recent primary limb failure, plus basal decay in root flare (southern side);*
- *Tree No. 26 (Ironbark) – removal due to poor branching structure (crossing and rubbing branches), and poor structural condition resulting from lopped branches (epicormic regrowth/ weak union);*
- *Tree No. 33 (River She Oak) – removal due to asymmetrical crown distribution / poor form and habit; and,*
- *Trees No. 37, 38, 39, 40, 41, 42, 43 (Council trees on nature strip) – all have been lopped and topped due to overhead power-lines (poor species selection). Each trees form and habit is altered and many defective branch unions are present.*

*The following trees, as identified in Plan L101 (issue 9), are recommended for retention (in accordance with Tree Preservation Order)*

- *Tree No. 1, 2, 3, 5, 6, 7, 8, 9, 12, 14, 18, 19, 20, 21, 22, 23, 27, 28, 29, 30, 31, 32, 35, 36; and,*
- *Tree No 34 appear to be in good-fair structural condition from a ground level assessment. The applicant is required to provide Council will a more detailed (AQF level 5 qualified) arborist report to quantify the removal of this tree. Otherwise they are to be retained.*

*The trees located in the open car parking area are currently early-mature species and likely to cause basal heaving/ and concrete lifting problem in the short-medium term. Furthermore, a balance of tree retention and the site development potential was considered to reach a compromise by Council's TPO and Landscape Architect. A determination to remove the following trees is provided on the basis they are of lesser visual amenity value, shielded by outer tree plantings, and located in the middle of the existing car parking area (restricting reasonable potential development opportunity).*

*Removal for site development potential*

- *Tree No. 4, 15, 16, 17, 24 - (total of 5 Spotted Gums in parking area).*

*A development meeting was subsequently held between Council staff and the Applicants at the Council Administration building, in which the development proposal was discussed as non-flexible due to its specialty usage status as an internet exchange centre. It was claimed that the building footprint layout could not be altered, reduced or modified. Given this position, the development would adversely impact on the following trees:*

*Trees adversely impacted by Development proposal, as identified in Plan L101 (issue 9),*

- *Tree No. 14, 18, 19, 20, 21, 22, 23 – upper canopy loss and root plate damage due to building's western footprint. Resulting in unbalanced crown and high potential tree failure from root severance.*
- *Tree No. 1-12 – all located within potential hardstand area.*
- *Tree No. 4, 15, 16, 17, 24 – all fall within the building footprint.*
- *Tree No. 33-36 – due to proposed underground services. \*Note – there should be no reason as to why the services cannot be either redirected or installed without consideration to retaining the trees. Air-spading around the root zone can be carried out to underlay the services where most appropriate with damaging structural tree roots.*

*To retain the above trees, alterations to the building footprint needs to be necessary. I am of the opinion that the loss of all the trees along this site will impact greatly on the immediate streetscape and further 'industrialise' the appearance of the overall landscape.*

*I acknowledge the position and comments outlined in the Landscape Architect's memorandums dated, 26 February 2010 and 30 April 2010. Replacement trees and shrubs should be planted to compensate the removal of any trees onsite, as determined by Council's Landscape Architect".*

**Recommendations:** That the above comments be noted and that the conditions recommended by Council's Landscape Officer recommending removal and replacement of trees be imposed in the terms of the consent.

**Environmental Health Officer:**

Council's Environmental Health Officer has considered the proposed development and provided recommended conditions of consent.

**Recommendations:** The conditions recommended by Council's Environmental Health Officer be imposed on the consent.

**Other Matters**

**Section 94 Contributions**

A total of \$284,827.80 in Section 94 Contributions are to be levied in accordance with the following Section 94 Contributions Plans:

*(a) Mascot Station Precinct Section 94 Contributions Plan*

(i) Public Road Land Dedications      \$164,016

*(b) City of Botany Bay Section 94 Contributions Plan 2005-2010*

(i) Community Facilities      \$42,113.40

(ii) Administration      \$6,829.20

(iii) Shopping Centre Improvements      \$30,568.80

(iv) Open Space / Recreation      \$41,300.40

**Conclusion**

Development Application No. 10/092 for the construction of a three level plus mezzanine and roof level commercial building for use as an internet exchange centre, and associated car parking and landscaping at 639 Gardeners Road, Mascot, has been assessed in accordance with Section 79C of the *Environmental Planning and Assessment Act 1979* and the *Botany Local Environmental Plan 1995* and it is recommended that the application be granted consent.

**RECOMMENDATION**

In view of the preceding report, it is RECOMMENDED that the Joint Regional Planning Panel, as the Consent Authority, resolve to Approve Development Application No. 10/092 to construct a three level plus mezzanine and roof level commercial building for use as an internet exchange centre, and associated car parking and landscaping at 639 Gardeners Road, Mascot, subject to the Conditions imposed in the attached schedule.

**Premises: 639 Gardeners Road, Mascot**

**DA No: 10/092**

**SCHEDULE OF CONSENT CONDITIONS**

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

<b>Project No. / Drawing No</b>	<b>Author</b>	<b>Date Received by Council</b>
Site Plan Job No.09026, Drawing No.001 (Issue 12)	Drew Dickson Architects	20 April 2010
Ground Floor Plan	Drew Dickson Architects	20 April 2010

<b>Project No. / Drawing No</b>	<b>Author</b>	<b>Date Received by Council</b>
Job No.09026, Drawing No.100 (Issue 12)		
Mezzanine Floor Plan Job No.09026, Drawing No.101 (Issue 11)	Drew Dickson Architects	20 April 2010
First Floor Plan Job No.09026, Drawing No.102 (Issue 11)	Drew Dickson Architects	20 April 2010
Second Floor Plan Job No.09026, Drawing No.103 (Issue 11)	Drew Dickson Architects	20 April 2010
Roof Plan Job No.09026, Drawing No.104 (Issue 11)	Drew Dickson Architects	20 April 2010
East & West Elevations Job No.09026, Drawing No.200 (Issue 11)	Drew Dickson Architects	20 April 2010
North & South Elevations Job No.09026, Drawing No.201 (Issue 11)	Drew Dickson Architects	20 April 2010
Streetscape Elevations Job No.09026, Drawing No.202 (Issue 12)	Drew Dickson Architects	20 April 2010
A & B Sections Job No.09026, Drawing No.300 (Issue 11)	Drew Dickson Architects	20 April 2010
C Section Job No.09026, Drawing No.301 (Issue 11)	Drew Dickson Architects	20 April 2010
A Perspectives Job No.09026, Drawing No.400 (Issue 11)	Drew Dickson Architects	20 April 2010
B Perspectives Job No.09026, Drawing No.401 (Issue 11)	Drew Dickson Architects	20 April 2010
C Perspectives	Drew Dickson Architects	20 April 2010

<b>Project No. / Drawing No</b>	<b>Author</b>	<b>Date Received by Council</b>
Job No.09026, Drawing No.402 (Issue 11)		
Photomontage Perspective Job No.09026, Drawing No.410 (Issue 11)	Drew Dickson Architects	20 April 2010
Shadow Diagrams Job No.09026, Drawing No.600 (Issue 11)	Drew Dickson Architects	20 April 2010
Detail Shadow Diagrams Job No.09026, Drawing No.601 (Issue 2)	Drew Dickson Architects	20 April 2010
Detail Shadow Plans Job No.09026, Drawing No.602 (Issue 1)	Drew Dickson Architects	20 April 2010
Stormwater Plan, Job No.206522, Drawing No.C002 (Issue 1)	Arup	29 September 2009
Hydraulic Services Water Schematic, Job No.260522, Drawing No.H401, Issue P1	Arup	23 October 2009
Hydraulic Services Water Services Ground Floor Job No. 260553, Drawing H101, Issue 2	Arup	18 November 2009
Hydraulic Services Drainage Services Ground Floor Job No. 260552, Drawing H102, Issue 2	Arup	18 November 2009
Hydraulic Services Drainage Services Second Floor Job No.260552, Drawing No.H131, Issue 2	Arup	18 November 2009
Hydraulic Services, Detail Sheet Job No.260522, Drawing No.H201, Issue 1	Arup	18 November 2009
Diesel Tank	Arup	10 November 2009

<b>Project No. / Drawing No</b>	<b>Author</b>	<b>Date Received by Council</b>
Job No.206522, Drawing No.C100, Issue 01		
Landscape Elevations and Details Project No.09503265.01, Drawing No.L201, Issue 9	AECOM	16 April 2010
Hardworks Plan Project No.09503265.01, Drawing No.L101, Issue 9	AECOM	16 April 2010
Site Works Masterplan Project No.09026, Drawing No.A004, Revision 7	Drew Dickson Architects	16 April 2010
Deep Soil Calculations Plan SK100-04, dated 19.03/2010	Drew Dickson Architects	19 March 2010
Deep Soil Calculations (Detail Plan) SK100.1-04, dated 19.03/2010	Drew Dickson Architects	19 March 2010

<b>Document(s)</b>	<b>Author</b>	<b>Date Received by Council</b>
Statement of Environmental Effects	Planning Strategies	11 November 2009
Addendum to Statement of Environmental Effects	Planning Strategies	18 December 2009
Supplementary to Addendum to Statement of Environmental Effects	Planning Strategies	1 March 2010
Site Context Analysis, dated September 2009	Planning Strategies	29 September 2009
Response to Design Review Panel Comments Dated January 2010	Planning Strategies	3 February 2010
Response to Design Review Panel Comments dated February 2010	Planning Strategies	19 March 2010
Combined Phase I and II Investigation (Contaminated	Golder Associates	29 September 2009

<b>Document(s)</b>	<b>Author</b>	<b>Date Received by Council</b>
Land), dated 7 September 2009		
Geotechnical Report, dated 7 September 2009	Golder Associates	29 September 2009
Access Report, dated 11 September 2009	Mark Relf	29 September 2009
Preliminary Arboricultural Report, dated August 2009	Stuart Pittendrigh	29 September 2009
Building Code of Australia Assessment Report	Blackett, Maguire & Goldsmith	29 September 2009
Acoustic Assessment Report dated September 2009 (Revision A)	Arup Acoustics	9 October 2009
Pedestrian Wind Environment Statement, dated 13 November 2009	WindTech	13 November 2009
Transport Impact Assessment, Revision B, dated November 2009	Arup	13 November 2009
Adendum to Transport Impact Statement	James Nangle	20 May 2010
Greenhouse effect, global warming, air and water pollution and energy efficiency report, dated January 2010	Arup	3 February 2010
Acid Sulfate Soil Management Plan	Golder Associates	17 November 2009
Plan of Management dated December 2009	Planning Strategies	4 December 2009

2

- (a) The applicant must prior to the obtainment of the approved plans and specifications pay the following fees:-
  - (i) Builders Security Deposit ..... \$21,800.00
  - (ii) Development Control..... \$1,655.00
- (b) The applicant must prior to the issue of the Construction Certificate pay \$284,827.80 in Section 94 Contributions as follow:-

- (i) Mascot Station Precinct Section 94 Contributions Plan – a contribution of \$164,016; and
- (ii) City of Botany Bay Section 94 Contributions Plan 2005-2010 a contribution consisting of:
  - (1) Community: ..... \$42,113.40
  - (2) Administration: ..... \$6,829.20
  - (3) Shopping Centre Improvements: ..... \$30,568.80
  - (4) Open Space / Recreation: ..... \$41,300.40

3 Prior to the release of the 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.

4

- (a) This consent relates to land on Lots 1, 2 and 3 in SP 38125 on Lot 10 DP 707290 and, as such, building works must not encroach on to adjoining lands or the adjoining public place; and
- (b) Condition 4(a) does not apply to public domain works and service relocations and service adjustments required by this consent.

5 Compliance with the following RailCorp requirements which are as follows:

- (a) All excavation and construction works are to be undertaken in accordance with the methodology and recommendations detailed in the Geotechnical Report prepared by Douglas Partners, dated 17 November, CFA Pile Design dated 5 November 2009 and in accordance with the submitted development application plans.
- (b) A Construction Certificate shall not be issued until the measures detailed in the above Douglas Partners report and CFA Pile Design have been incorporated into the construction drawings and specifications. Prior to the commencement of works the Principal Certifying Authority shall provide verification to RailCorp that this condition has been complied with.
- (c) Prior to the commencement of works and prior to the issue of the Occupation Certificate, a joint inspection of the rail infrastructure and property in the vicinity of the project is to be carried out by representatives from RailCorp and the Applicant. These dilapidation surveys will establish the extent of any existing damage and enable any deterioration during construction to be observed. The submission of a detailed dilapidation report will be required unless otherwise notified by RailCorp.



- (d) An acoustic assessment is to be submitted to Council prior to the issue of a Construction Certificate demonstrating how the proposed development will comply with the Department of Planning's document titled *"Development Near Rail Corridors and Busy Roads – Interim Guidelines"*.
- (e) Prior to the issuing of a Construction Certificate the Applicant is to procure a report on the Electrolysis Risk to the development from stray currents, and the measures that will be taken to control that risk. The Applicant is advised to consult an Electrolysis expert. A Construction Certificate must not be issued until the measures recommended in the Electrolysis report have been incorporated into the design.
- (f) A Risk Assessment/Management Plan and detailed Safe Work Method Statements (SWMS) for the proposed works are to be submitted to RailCorp for review and comment prior to the works commencing on site. It should be noted that RailCorp's representative may impose conditions on the methods to be used and require the provision of on-site Safe Working supervision for certain aspects of works.
- (g) The Applicant may be required to put in place a vibration monitoring system to monitor vibration levels on the adjoining rail tunnel for the duration of the works. In this regard the Applicant should contact RailCorp's Rail Corridor Management Group (RCMG) for further details.
- (h) The Developer appears to need track possessions (the stopping of trains running on adjacent tracks) and/or power outages (shutting of power to RailCorp's facilities) to be able to undertake the proposed construction and installation work. This will require the Developer to enter into a Deed with RailCorp, enabling his work to be planned and to proceed in a safe and controlled manner. In this regard the Applicant should contact RailCorp's Rail Corridor Management Group (RCMG) for further details.
- (i) Prior to the issue of a Construction Certificate the Applicant must hold current public liability insurance cover for a sum to be determined by RailCorp. This insurance shall not contain any exclusion in relation to works on or near the rail corridor. The Applicant is to contact RailCorp's Rail Corridor Management Group (RCMG) to obtain the level of insurance required for this particular proposal. Prior to issuing the Construction Certificate the Principal Certifying Authority must witness proof of this insurance in conjunction with RailCorp's written advice to the Applicant on the level of insurance required.
- (j) Where a condition of consent requires RailCorp's endorsement the Principal Certifying Authority shall not issue a Construction Certificate or Occupancy Certificate, as the case may be, until written confirmation has been received from RailCorp that the particular condition has been complied with.

- 6 The subject unit (Unit A / SY3) located on Lot 1-3 in SP 38125 on Lot 10 in DP 707290, shall be used solely for the approved use. At no time is the unit to

be sublet or otherwise divided into separate sections and used for additional purposes.

- 7 This consent shall operate in conjunction with Development Consent Nos.2001/113 (use of Unit B), 2008/071 (use of Units C1 and C2), and 2008/166 (fitout and alterations to Units C1, C2 and B) being approved for use as an internet exchange centre.
- 8 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,
    - (iii) has notified the consent authority and the Council (if the Council is not the consent authority) of the appointment; and,
  - (c) 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.
- 9
- (a) All building work must be carried out in accordance with the provisions of the Building Code of Australia; and
  - (b) Perimeter fire brigade access to Units B & C (SY1 and SY2) is to be maintained and to a standard required by the BCA – SectionC2 thereof.
- 10 A sign must be erected in a prominent position on any work site on which work involved in the erection or demolition of a building is being carried out:-
- (a) stating that unauthorised entry to the work site is prohibited;
  - (b) showing the name of the person in charge of the work site and a telephone number at which that person may be contacted outside working hours;
  - (c) the Development Approval number; and
  - (d) the name of the Principal Certifying Authority including an after hours contact telephone number.
- Any such sign is to be removed when the work has been completed.

- 11 A Construction Management Program shall be submitted to, and approved in writing by the Council prior to the issue of a Construction Certificate. The program shall be in accordance with the Roads and Traffic Authority (RTA) requirements and detail:-
- (a) Details on how the use of the site and the construction works will operate together.
  - (b) 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 reserves being allowed.
  - (c) The proposed phases of construction works on the site and the expected duration of each construction phase.
  - (d) The proposed chronological order in which works on the site will be undertaken, and the method statements on how various stages of construction will be undertaken.
  - (e) The proposed manner in which adjoining property owners will be kept advised of the timeframes for completion of each phase of development/construction process.
  - (f) 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.
  - (g) The proposed areas within the site to be used for the storage of excavated materials, construction materials and waste containers during the construction period.
  - (h) 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.
  - (i) The proposed method of support to any excavation adjacent to adjoining properties, or the road reserve. The proposed method of support is to be designed and certified by an Accredited Certifier (Structural Engineering), or equivalent.
  - (j) Proposed protection for Council and adjoining properties.
  - (k) The location and operation of any on site crane.
  - (l) The location of any Work Zone (if required) approved by Council's Engineering Section, including a copy of that approval.
  - (m) The proposed method for ensuring that all vehicles transporting soil, sand or similar materials to or from the site shall cover their loads at all times.
  - (n) Obtain Permits required under this consent.

12

- (a) The hours of operation of the approved facility SY3 shall be 24 hours a day seven days a week, subject to the following requirements:
  - (i) a maximum of 15 staff, comprising security personnel, engineering staff, specialist engineering staff and the like, shall be permitted to work at the premises during night time hours between 7:00pm one day to 7:00am the day following.
- (b) Deliveries to the site are restricted to any time between 7:00am to 7:00pm Monday to Friday, with the exception of genuine emergency deliveries which shall be permitted 24 hours, 7 days;
- (c) Collection of waste from the premises shall be restricted to between 8:00am and 5:00pm Monday to Friday only;
- (d) The diesel generators shall be operated between 10:00am and 5:00pm Monday to Friday, or outside these hours in emergency situations only.

13

- (a) The Plan of Management dated December 2009 applies to the whole site, No.639 Gardeners Road. The Plan shall be updated to satisfy all relevant conditions of consent, and shall be submitted to, and approved by, Council prior to the issue of the Construction Certificate;
- (b) An up to date copy of the Plan of Management shall be displayed in a prominent position in all staff rooms, at the reception desk(s) and security room(s) at all times;
- (c) A copy of the Plan of Management shall be provided to all staff, contractors, sub-contractors and visitors to the site; and,
- (d) The Plan of Management shall be reviewed within the first year of consent being issued, and then updated at least every two (2) years from this time. The review should take into account any complaint(s) received, and a copy of the amended Plan provided to all staff, contractors, sub-contractors and visitors to the site within 1 month of completion of any modification.

14

- (a) A 24 hour contact number for the site security office shall be made available for use by all adjacent residents in accordance with the Plan of Management submitted to Council; and,
- (b) The 24 hour contact number referred to in condition 14(a) above shall be provided to the strata management companies and strata body corporate's for all surrounding residential buildings, including No.635 Gardeners Road and No.1-5 Bourke Street, prior to issue of the Occupation Certificate.

15

- (a) The Access Report prepared by Mark Relf dated 11 September 2009 shall be complied with; and
  - (b) In accordance with the submitted Access Report, a further Report shall be submitted with the Construction Certificate Application. The report and construction documentation shall:
    - (i) provide internal design of accessible toilet facilities, evaluation of slip resistant floor materials, lift specification, door schedule, tactile ground surface indicators, lighting levels, signage and the like; and
    - (ii) confirm compliance with Council's Access Development Control Plan and the provisions of the BCA.
- 16 No signs, other than those permissible under Council's *Exempt and Complying Development Control Plan*, shall be installed or displayed at the premises without a development application being lodged with Council and consent thereto being given by Council in accordance with Council's guidelines.
- 17 A Workplace Travel Plan (WTP) shall be prepared prior to issue of the Occupation Certificate. The WTP shall include a package of measures to encourage staff to use alternatives to car use, and shall also demonstrate how the approved development reduces the need for travel, and supports more sustainable travel options such as walking, cycling, public transport, car sharing and car clubs where relevant.
- The WTP shall be displayed in a prominent position within the foyers and staff rooms of the building at all times, shall be provided to all staff, and shall be updated on an annual basis.
- 18
- (a) The development shall be constructed in accordance with the Energy Efficiency Report prepared by ARUP dated January 2010 and in accordance with Council's Energy Efficiency Development Control Plan.
  - (b) Details submitted with the Construction Certificate shall include all energy saving devices that will be incorporated into the development to satisfy condition 18(a) above.
  - (c)
    - (i) An Energy Efficiency Compliance Report shall be submitted to Council within 6 months of the issuing of an Occupation Certificate, either interim or final. The report shall certify that the stated energy efficiency measures have been installed as outlined in the submitted Energy Efficiency Report and that the proposed development satisfies the requirements of Council's Energy Efficiency Development Control Plan.

- (ii) If the compliance report required by Condition 18(c)(i) above demonstrates that the development when in use and occupation fails to meet in all respects the criteria of the specified condition of consent and that of the Energy Efficiency Report, then measures formulated by an Energy Efficiency consultant, and approved by Council, must be introduced into the development to effect compliance in full with the terms of conditions 18(a) and 18(b) of this consent..

19 The following conditions are imposed by Sydney Airport Corporation Limited and must be complied with:

- (a) The development is approved to a maximum height of 27.0 metres above Australian Height Datum (AHD)
- (b) The approved height is inclusive of all lift over-runs, vents, chimneys, aerials, TV antennae, construction cranes, etc.
- (c) Should the proposal exceed the height in (a) above, a new application must be submitted.
- (d) Should the height of any temporary structure and / or equipment be greater than 50 feet (15.24 metres) above existing ground height (AEGH), a new approval must be sought in accordance with the Civil Aviation (Buildings Control) Regulations Statutory Rules 1988 No. 161.
- (e) 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 Airports (Protection of Airspace) Regulations.
- (f) SACL advises that approval to operate construction equipment (i.e. Cranes) should be obtained prior to any commitment to construct.
- (g) Information required by SACL prior to any approval is to include: -
  - (i) The location of any temporary structure or equipment, i.e. Construction cranes, planned to be used during construction relative to Mapping Grid of Australia 1994 (MGA94);
  - (ii) The swing circle of any temporary structure / equipment used during construction;
  - (iii) The maximum height, relative to Australian Height Datum (AHD), of any temporary structure or equipment i.e. Construction cranes, intended to be used in the erection of the proposed structure / activity;
  - (iv) The period of the proposed operation (i.e. Construction cranes) and desired operating hours for any temporary structures.
- (h) Any application for approval containing the above information, should be submitted to this Corporation at least 35 days prior to commencement of works in accordance with the Airports (Protection

of Airspace) Regulations Statutory Rules 1996 No. 293, which now apply to this airport

- (i) Under Section 186 of the Airports Act 1996, it is an offence not to give information to the Airport Operator that is relevant to a proposed “controlled activity” and is punishable by a fine of up to 50 penalty units.
- (ii) The height of the prescribed airspace at the site is 51.0 metres above Australian Height Datum (AHD). In accordance with Regulation 9 of the Airports (Protection of Airspace) Regulations Statutory Rules 1996 No. 293, “a thing to be used in erecting the building, structure or thing would, during the erection of the building, structure or thing, intrude into PANS OPS airspace for the Airport, cannot be approved.

(i) Bird and Obstacle Hazard Management

The area in which the proposed development is located is immediately adjacent to Runway 16L/34R. To minimise the potential for bird habitation and roosting, the Proponent must ensure that the following plans are prepared prior to construction commencing:

- (i) Landscape Plan which only includes non-bird attracting plant species;
- (ii) Site Management Plan which minimises the attractiveness for foraging birds, i.e. site is kept clean regularly, refuse bins are covered, and detention ponds are netted;
- (iii) The proposed development incorporates anti-bird roosting measures to discourage bird habitation.

The proponent must consult with Sydney Airport Corporation Limited on the preparation of each plan.

All trees to be planted shall not be capable of intruding into the Obstacle Limitation Surface when mature.

20

- (a) Where existing retaining walls located on the boundary with No.635 Gardeners Road are replaced, details shall be submitted with the Construction Certificate; and,
- (b) New retaining walls in excess of 600mm require the prior approval of the Council.

21 If the work involved in the construction works:-

- (a) is likely to cause pedestrians or vehicular traffic in a public place to be obstructed or rendered inconvenient; or,
- (b) building works involves the enclosure of a public place:

- (i) a hoarding or fence must be erected between the work site and the public place.
- (ii) If necessary an awning is to be erected sufficient to prevent any substance from or in connection with the work falling into the public place.
- (iii) The work site must be kept lit between sunset and sunrise if it is likely to be hazardous to person(s) in the public place.
- (iv) Any such hoarding, fence or awning is to be removed when the work has been completed.

22 A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained. Application must be made through an authorised Water Servicing Coordinator. Please refer to “Your Business” section of Sydney Water’s web site at [www.sydneywater.com.au](http://www.sydneywater.com.au) then the “e-developer” icon or telephone 13 20 92.

Following application a “Notice of Requirements” will detail water and sewer extensions to be built and charges to be paid. Please make early contact with the Co-ordinator, since building of water/sewer extensions can be timed consuming and may impact on other services and building, driveway or landscape design. The Section 73 Certificate must be submitted to the Principle Certifying Authority prior to the Construction Certificate being issued.

23

- (a) All existing aboveground service cables, including power lines, telecommunications cables and other similar services (“overhead service cables”) in the streets adjacent to and within the confines of the development site shall be placed underground at no cost to the Council in the following manner:
  - (i) Overhead service cables on the Gardeners Road frontage to be undergrounded, starting from the existing pole “A”, located near the corner of Gardeners Road and Bourke Street, to existing pole “C” as shown in red on Drawing No. SK-100(04), dated 19/03/2010.
  - (ii) Overhead service cables on the Church Avenue frontage to be undergrounded, starting from the existing pole “D” located near the corner of Church Avenue and Bourke Street to existing pole “G” as shown in red on Drawing No. SK100(04), dated 19/03/2010.
- (b) Existing street lights located within the footpath reserve along the entire Gardeners Road frontage of the development site, being street lights identified as being located on poles “A”, “B” and “C” as shown in red on Drawing No.001 (Issue 12) shall be replaced with new street lights in accordance with the requirements of Australian/New Zealand



Standard AS/NZS 1158-1997 “Public Lighting Code” and the requirements of the Roads and Traffic Authority.

- (c) All of the works required by this condition must be completed prior to the issue of any Occupation Certificate, either interim or final.

- 24 Prior to the issue of the Construction Certificate, the applicant shall submit to Council a full photographic survey of the existing conditions of the road reserve (including footpath, grass, kerb and gutter and roadway), and other Council properties which are adjacent to the property.
- 25 Prior to the issue of an Occupation Certificate, a Certificate of Survey from a Registered Surveyor shall be submitted to the Principal Certifying Authority to the effect that all reduced levels shown upon the plans approved under the Development Application, with relation to building site, the position of the building in relation to other buildings and the boundary lines, drainage, car parking areas, boundary and road reserve levels, have been strictly adhered to.
- 26 The proposed traffic movements and parking arrangements within and adjoining the development shall conform with the current versions of Council’s off-street parking DCP; Australian Standard AS2890-1, Australian Road Rules; and the NSW Road Transport (Safety and Traffic Management) Regulation (and any other relevant legislation) unless otherwise stipulated by another condition of this Consent.
- 27 The applicant shall conduct all construction and related deliveries wholly on site. If any use of Council’s road reserve is required then separate applications are to be made at Council’s Customer Services Department.
- 28 Prior to the issue of the Occupation Certificate, the internal road network, pedestrian facilities and parking facilities (including visitor parking and parking for persons with disabilities) shall be clearly designated, sign posted and line marked. Signage and line marking shall comply with the current version of Australian Standards, AS1742, and Manual of Uniform Traffic Control Devices and NSW Road Transport (Safety and Traffic Management) Regulations.
- 29 All vehicles shall enter and exit the premises in a forward direction.
- 30 No deliveries to the premises shall be made direct from a public place or street inclusive of footpaths, nature strip, roadway and car parks.

31

- (a) The maximum size of vehicles making deliveries to the premises shall be restricted to Class 3 of the AustRoads Classification System; and,
  - (b) Loading and unloading operations shall take place within loading dock which is wholly within the building.
- 32 The occupier shall ensure that any person employed on the premises shall park their vehicles, in the employee parking area provided.
- 33
  - (a) Prior to the issue of the Construction Certificate, the applicant shall contact “Dial Before You Dig on 1100” to obtain a Service Diagram for and adjacent to the property. The sequence number obtained from “Dial Before You Dig” shall be forwarded to Council for our records. Any damage to utilities/services will be repaired at the applicant’s expense.
  - (b) The applicant to arrange with the relevant public utility the alteration or removal of any affected services in conjunction with the development. Any such work being carried out at the applicant’s cost.
- 34 Any costs in the relocation, adjustment, provision of land or support of services as requested by the service authorities and Council are to be the responsibility of the developer.
- 35 If the existing boundary levels are in accordance with +2% crossfall from the top of the closest adjacent kerb ( $\pm 5\text{mm}$ ) (or the new kerb if required by these development conditions), then this level can be used as the proposed design level. Otherwise, plans have to be submitted to Council showing the existing and proposed levels at the boundary; in the footpath area (between roadway and boundary); at the kerb and gutter; and in the roadway, inclusive of a long section at the boundary showing existing and proposed levels.
- 36 All works completed by the applicant on Council’s Road Reserve or other Council lands are subject to a 6 months defect liability period from the date of final completion, the date of final completion will be determined by Council’s Team Leader Assets.
- 37 Care must be taken to protect Council’s roads, including the made footway, kerbs, etc and where plant and vehicles enter the site. Protecting constructions shall be maintained in a state of good repair and condition throughout the course of construction and kept in a safe condition. The area must be safe for pedestrian traffic at all times. Any damage to Council’s road reserve will be repaired and the full cost shall be borne by the applicant.

- 38 The use of any part of Council's road reserve or other Council lands must have prior approval of Council. For example, should the development require a building waste container(s) (building skip), then such container shall not be placed or left on a public road or road related area (eg footpath, nature strip, shoulder, road reserves, public carparks, service stations, etc) without the prior approval of Council's Engineering and Regulatory Services Department.
- 39 Building operations such as brick cutting, washing tools or brushes and mixing mortar shall not be carried out on public roadways or footways or in any other locations which could lead to the discharge of materials into the stormwater drainage system or onto Council's lands.
- 40 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.
- 41 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.
- 42
- (a) The vehicular crossing off Bourke Street shall be constructed to Council's requirements. Separate approval from the Roads Authority must be obtained under the Roads Act 1993 prior to the issue of a Construction Certificate for any works within a Council road reserve. Design plans must be submitted to and approved by the Roads Authority prior to issue of the Construction Certificate
  - (b) Prior to the issuing of an Occupation Certificate the vehicular crossing off Bourke Street shall be constructed (either using Council or own forces) to the emergency vehicle entry point on the site. All vehicular crossings, which were shown on submitted plans, shall be in the correct location. All redundant vehicular crossings shall be removed and replaced to fit the main footpath cross-section.
  - (c) The vehicular access off Bourke Street is to be line marked with distinctive yellow chevron line marking paint. Reversible "Emergency Access Only" signs are to be erected on either side of the vehicular crossing at the property boundary.
- 43 Prior to the issuing of the Occupation Certificate, 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.

- 44 All driveways associated with the development shall be 90° to the property line. Constructed between property line and kerb and guttering.
- 45 Stormwater and Drainage requirements for the proposed development shall satisfy the following:
- (a) The proposed pipeline, running from the carpark area to the south of the proposed building, and running under the building, shall be laid between the locations of the foundation piles. This pipeline shall be laid and backfilled after the construction of foundation piles and structural pile caps, but before commencement of work on the floor slab. The builder shall ensure that no load bearing activities or structures affect the pipeline as laid.
  - (b) Prior to issue of the Construction Certificate a plan shall be submitted to Council showing the method of connection to the new stormwater system of any remaining stormwater inlets in existing driveway and parking areas on the southern side of the new building.
  - (c) Prior to issue of the Occupation Certificate, the applicant shall submit to Council certification from a suitably qualified hydraulics engineer that the stormwater line (referred to in (a) above) is operating freely and is without defect.
  - (d) The rainwater harvesting tanks shall provide for landscape watering.
  - (e) All wastewater and the stormwater system (including all pits, pipes, absorption, detention structures, treatment devices and rainwater tanks) shall be regularly maintained (at least once per year) in order to ensure that they remain effective. All solid and liquid waste that is collected during maintenance shall be disposed of in a manner that complies with the appropriate Environmental Guidelines.
- 46 Prior to the issue of the Construction Certificate, plans shall be submitted to and approved by Council showing details of a permanent retaining structure on the Bourke Street boundary near Gardeners Road, such that landscaping within the property is adequately supported because of the level difference between the footpath and internal levels.
- 47
- (a) Parking shall be provided prior to the issue of the Occupation Certificate in accordance with the Transport Impact Assessment for Site SY3 (Rev B) prepared by ARUP and dated November 2009, as amended by the Statement submitted by James Nangle dated 18 May 2010, as follows:-
    - (i) 61 vehicle parking spaces shall be provided for the whole site, No. 639 Gardeners Road, for use by staff and visitors to units SY1, SY2 and SY3 (Units A, B, C1 and C2);

- (ii) Provision shall be made for a minimum of 15 dedicated visitors parking spaces;
- (iii) A minimum of one (1) car space shall be provided for people with disabilities in accordance with Council's Access Development Control Plan.

48 Compliance with the following Roads and Traffic Authority (RTA) requirements:

- (a) The Roads and Traffic Authority (RTA) will only give consideration to permitting construction access to the subject site via the existing layback on Gardeners Road, subject to the following requirements being met (to RTA satisfaction):
  - (i) A Traffic Management Plan (TMP) shall be undertaken in accordance with the relevant sections of the RTA's QA specifications and shall also include a thorough road safety risk assessment. A Traffic Control Plan (TCP) should also be provided and undertaken in accordance with the RTA's Traffic Control at Worksites Manual. The author of the TMP and TCP shall be certified.
  - (ii) The temporary construction access will require the developer to enter into a Works Authorisation Deed with the RTA.
  - (iii) Security (100%) for the reinstatement of kerb and gutter on Gardeners Road.
  - (iv) Prior to the issue of the Occupation Certificate for the proposed development, the kerb and gutter shall be reinstated on Gardeners Road to RTA satisfaction. If this is not done, the RTA will use the security to construct the kerb and gutter.
  - (v) All works associated with the temporary construction access shall be at full cost to the developer.
- (b) Detailed design plans and hydraulic calculations of any changes to the stormwater drainage system connecting to the Roads and Traffic Authority (RTA) stormwater system in Gardeners Road shall be submitted to the RTA for approval, prior to the commencement of any works.

The plans shall demonstrate that the post development stormwater discharge from the subject site into the RTA drainage system does not exceed the pre-development discharge.

Details shall be forwarded to:

The Sydney Asset Management  
Roads and Traffic Authority  
PO Box 973 Parramatta CBD 2124

A plan checking fee will be payable and a performance bond may be required before the RTA's approval is issued. With regard to the Civil

Works requirement please contact the RTA's Project Engineer, External Works Ph: 8849 2114 or Fax: 8849 2766.

- (c) The redundant driveway on Gardeners Road shall be removed and replaced with kerb and gutter to match existing.
- (d) The design and construction of the reinstated kerb and gutter on Gardeners Road shall be in accordance with RTA requirements. Details of these requirements should be obtained from RTA's Project Services Manager, Traffic Projects Section, Parramatta.
- (e) Detailed design plans of the reinstated kerb and gutter are to be submitted to the RTA for approval prior to the commencement of any road works.
- (f) It should be noted that a plan checking fee (amount to be advised) and lodgement of a performance bond may be required from the applicant prior to the release of the approved road design plans by the RTA.
- (g) All works/regulatory signposting associated with the proposed development are to be at no cost to the RTA.
- (h) The swept path of the longest vehicle (including garbage trucks) entering and existing the subject site, as well as manoeuvrability through the site, shall be in accordance with AUSTROADS. In this regard, a plan shall be submitted to Council for approval, prior to the issue of the Construction Certificate, which shows that the proposed development complies with this requirement.

49 The provision of covered parking for a minimum of 5 bicycles shall be provided to the proposed development prior to issue of the Occupation Certificate.

50 The construction of the premises shall not give rise to transmission of vibration at any affected premises that exceeds the vibration in buildings criteria outlined in the NSW Department of Environment and Conservation publication "*Assessing vibration; a technical guideline*" February 2006.

51

- (a) Results of the monitoring of any field parameters such as soil, groundwater, surface water, dust or noise measurements shall be made available to Council Officers on request throughout the remediation and construction works.
- (b) Any soil disposed of offsite shall be classified in accordance with the procedures in the NSW Department of Environment and Climate Change: Waste Classification Guidelines (2008).
- (c) All imported fill shall be validated in accordance with Council's Contaminated Land Development Control Plan to ensure that is suitable for the proposed land use from a contamination perspective.

- (d) This Consent does not permit onsite groundwater treatment or remediation. If this is required a separate development application is to be lodged with Council for consideration.
- (e) 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.
- (f) Council requires an application to discharge water to a Council Road or stormwater system. Application must be made in writing to Council estimating volume and number of days involved and must be accompanied by a current dewatering license from New South Wales Department of Water. For water to be permitted to go to stormwater the water must meet ANZECC 2000 Water quality Guidelines for Fresh and Marine Water for 95% protection trigger values for Freshwater. If the groundwater does not meet these guideline levels a Trade Waste permit from Sydney Water must be sought to put the groundwater to sewer.

52 The operation shall not give rise to offensive odour or other air impurities in contravention of the *Protection of the Environment Operations Act 1997*, including:.

- (a) The Principal contractor shall ensure that all practical means are applied to minimise dust and odour from the site. This includes:
  - (i) Covering excavated areas and stockpiles,
  - (ii) The use of fine mists of hydrocarbon mitigating agents on impacted stockpiles or excavation areas,
  - (iii) Maintenance of equipment and plant to minimise vehicle exhaust emissions,
  - (iv) Erection of dust screens on the boundary of the property and/or closer to potential dust sources,
  - (v) All loads entering or leaving the site are to be covered,
  - (vi) The use of water sprays to maintain dust suppression,
  - (vii) Keeping excavated surfaces moist.
- (b) Waste gases released from the premises shall not cause a public nuisance nor be hazardous or harmful to human health or the environment.

53

- (a) A Waste Management Plan prepared in accordance with Council's Waste Management and Minimisation Guidelines Development Control Plan shall be submitted to the Council for approval prior to the release of the Construction Certificate. The Waste Management Plan

shall include the size and storage of bins, the collection point for the waste contractor & recycling contractor, and maintenance of the bins;

- (b) The Waste Management Plan shall include the provision of recycling facilities, including recycling of electronic equipment where possible;
- (c) Prior to the issue of any Occupation Certificate signs shall be erected within the operational areas to encourage staff to recycle and not place recyclables into waste bins. The sign shall be a minimum of A3. Details of an acceptable wording for the sign are available from Council's Internet site at <http://www.botanybay.nsw.gov.au>.
- (d) The approved Waste Management Plan shall be complied with at all times during demolition works and construction works;

54

- (a) Prior to the issue of the occupation certificate the operator shall enter into a commercial contract for the collection of trade waste and recyclables arising from the premises. A copy of all contracts and receipts shall be kept on the premises and made available to Council Officers on request.
- (b) The contract documents must comply with the terms of Condition 12(c).

55 No waste or waste containers (including skip bins) shall be placed outside of the existing property boundary at any time.

56 The proposed underground Petroleum Storage Tank must be installed and operated in accordance with the following:

- (a) Construction/Installation using "Jet Grouting" techniques in accordance with information submitted to Council on 10 November 2009;

*Note:* Alternative methods of construction may require further development consent and approval from the Department of Energy, Climate Change and Water (DECCW).

- (b) NSW Department of Environment and Climate Change: Guidelines for Implementing the Protection of the environment Operations (Underground Petroleum Storage Systems) Regulation 2008.
- (c) NSW Department of Environment and Climate Change: Environmental Actions for Service Stations.
- (d) Protection of the Environment Operations Act (1997), with particular note of the Protection of the Environment Operations (Underground Petroleum Storage Systems) Regulation 2008.
- (e) Protection of Environment and Operations Act 1997.
- (f) WorkCover: NSW Code of Practice for Storage and Handling of Dangerous Goods.



- (g) Australian Standard AS 1940 – 2004: The Storage and Handling of Combustible Liquids.

57

- (a) A Soil and Water Management Plan (also known as an Erosion and Sediment Control Plan) shall be prepared and submitted to the Principal Certifying Authority prior to release of the Construction Certificate.
- (b) Erosion and sediment control devices are to be installed prior to the commencement of any demolition, excavation or construction works upon the site. These devices are to be maintained throughout the entire demolition, excavation and construction phases of the development and for a minimum three (3) month period after the completion of the project, where necessary.
- (c) A copy of the Soil and Water Management Plan shall be kept on-site at all times and made available to Council Officers on request.

58 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) “*Do it Right On Site, Soil and Water Management for the Construction Industry*” published by the Southern Sydney Regional Organisation of Councils, 2001; and
- (c) “*Managing Urban Stormwater - Soils and Construction*” published by the NSW Department of Housing 4th Edition” (‘The Blue Book’).

Where there is any conflict The Blue Book takes precedence.

#### Notes

- (a) The International Erosion Control Association – Australasia (<http://www.austieca.com.au/>) lists consultant experts who can assist in ensuring compliance with this condition. Where Soil and Water Management Plan is required for larger projects it is recommended that this be produced by a member of the International Erosion Control Association – Australasia.
- (b) The “Do it Right On Site,” can be down loaded free of charge from Council’s website at <http://www.botanybay.nsw.gov.au/council/services/planning/factsheets.htm> further information on sediment control can be obtained from [www.ssroc.nsw.gov.au](http://www.ssroc.nsw.gov.au).
- (c) A failure to comply with this condition may result in penalty infringement notices, prosecution, notices and orders under the Act and/or the Protection of the Environment Operations Act 1997 without any further warning. It is a criminal offence to cause, permit or allow pollution.

- (d) Section 257 of the Protection of the Environment Operations Act 1997 provides inter alia that “the occupier of premises at or from which any pollution occurs is taken to have caused the pollution”

**Warning**, irrespective of this condition any person occupying the site may be subject to proceedings under the *Protection of the Environment Operations Act 1997* where pollution is caused, permitted or allowed as the result of their occupation of the land being developed.

- 59 Throughout the construction period, Council’s warning sign for soil and water management shall be displayed on the most prominent point of the building site, visible to both the street and site workers. A free copy of the sign is available from Council’s Customer Service Counter.

60

- (a) All soil used to construct garden beds shall be meet the provisional phytotoxicity based investigation levels specified in the NSW EPA Guidelines for the NSW Site Auditor Scheme.
- (b) This can be achieved by importing soil suitable for garden bed construction or validating soil remaining on site to demonstrate it is suitable for garden beds construction.

- 61 Sufficient supplies of appropriate absorbent materials shall be kept on site to recover any liquid fuel spillage. Liquid fuel spills shall be cleaned up using dry methods, by placing absorbent material on the spill, and sweeping or shovelling the material into a secure bin. Absorbent materials used to clean up spills shall be disposed of to an appropriately licensed waste facility.

- 62 Liquid and solid wastes generated on the site shall be collected, transported and disposed of in accordance with the Protection of the Environment Operation Act 1997. Records shall be kept of all liquid and solid waste disposals from the site, and be made available to Council Officers on request.

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

- 64 Excavation associated with this development shall:

- (a) Be undertaken to a maximum depth of 1.8 metres; and
- (b) Shall cease immediately should groundwater be encountered, with
- (i) Groundwater then being tested by a laboratory accredited by the National Association of Testing Laboratories (NATA) to NSW Department of Natural Resources Suite of Analytes; and

- (ii) No de-watering from the site will occur until (i) above has taken place.
  - (c) A separate development application is required for dewatering works.
- 65 The storage and handling of flammable and combustible liquids shall be in accordance with Australian Standard AS1940-2004 The Storage and Handling of Flammable and Combustible Liquids.
- 66 The operations 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, particulate matter, waste water, waste products or other impurities which are a nuisance or injurious to health.
- 67 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:
- (a) ‘Offensive noise’ as defined in the *Protection of the Environment Operations Act 1997*;
  - (b) Transmission of vibration to any place of different occupancy above the requirements of AS2670,
  - (c) A sound pressure LAeq,period at any noise sensitive position of any other premises or occupancy greater than the recommended amenity noise criteria detailed in the Department of Environment and Conservation, New South Wales (EPA) Industrial Noise Policy;
  - (d) A sound pressure LAeq,15min at any noise sensitive position greater than the intrusiveness criteria determined in accordance with the Department of Environment and Conservation, New South Wales (EPA) Industrial Noise Policy table 4.1; and
  - (e) The additional following criteria:
    - (i) The operation of any plant and equipment installed on the site shall not give rise to an equivalent continuous (LAeq) sound pressure level at any point on any residential property greater than 5dBA (day/evening/night) above the background (LA90) noise level.
    - (ii) The operation of all plant and equipment installed on the SY3 development shall not give rise to an equivalent continuous (LAeq) sound pressure level at any point on any residential property greater than 38dBA (day/evening/night)
    - (iii) The operation of all plant and equipment installed on the site shall not give rise to a cumulative equivalent continuous (LAeq) sound pressure level at any point on any residential property greater than 48dBA (day/evening/night).

- (iv) Operational noise from the emergency diesel generators shall not give rise to an equivalent continuous (LAeq) sound pressure level at any point on any residential property greater than 55dBA (day/evening/night).
- (v) Testing of the diesel generators shall be scheduled and restricted to between 10:00am and 5:00pm Monday to Friday.

For assessment purposes, the above LAeq sound level shall be assessed over a period of 10-15 minutes and adjusted in accordance with DECCW (formerly DECC) INP 'moding factor' adjustments for tonality, low frequency, impulsiveness, intermittency and duration.

- (f) After completion of the works a report prepared by a qualified practicing acoustic engineer (who is a member of either the Australian Acoustical Society or the Association of Australian Acoustical Consultants) is required to be submitted to the principal certifying authority and Council, certifying that the works have been undertaken to meet the above design criteria.

68

- (a) Within six (6) months of issuing any Occupation Certificate, either interim or final, the premises, a noise compliance report shall be submitted to Council. The report shall confirm that the noise abatement measures detailed in **the Acoustic Report** prepared by **Arup Acoustics (Dated 30/09/09)** have been implemented, and confirm that the noise emissions from the premises comply with the noise criteria specified in this consent.
- (b) If the compliance report required by Condition 68(a)(i) above demonstrates that the development when in use and occupation fails to meet in all respects the criteria of the specified condition of consent and that of the Acoustic Report, as listed under Condition 1 of this consent, then measures formulated by an Acoustic Engineer and approved by Council must be introduced into the development to effect compliance in full with the terms of condition 68(a) of this consent.

69 Toilet facilities are to be provided at or in the vicinity of the work site on which work involves:

- (a) erection of public infrastructure being carried out, at the rate of one toilet for every 20 persons or part of 20 persons employed at the site;
  - (i) Each toilet provided:
    - (1) must be standard flushing toilet; and,
    - (2) must be connected:-
      - a) to a public sewer; or
      - b) if connection to a public sewer is not practicable to an accredited sewerage management facility approved by the Council; or,

- c) 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.
  - (ii) The provisions of toilet facilities in accordance with this clause must be completed before any other work is commenced.
- 70 Any lighting on the site shall be designed so as not to cause nuisance to other residences in the area or to motorists on nearby roads, and to ensure no adverse impact on the amenity of the surrounding area by light overspill. All lighting shall comply with *AS4282-1997 Control of the obtrusive effects of outdoor lighting*.
- 71 The visible light reflectivity from building materials used on the facade of the building should not exceed 20% and must be otherwise designed so as not to result in glare that causes discomfort or threatens safety of pedestrians or drivers.
- 72 Compliance with the following conditions prior to issue of the Occupation Certificate to satisfy the requirements of the NSW Police Safer by Design Assessment:
  - (a) Installation of Closed Circuit Surveillance System (CCTV):
    - (i) The CCTV system shall comply with the Australian Standard – Closed Circuit Television System (CCTV) AS:4806:2006. The system will need to comply with Federal and State Privacy and Surveillance Legislation. Staff will need to be trained in the operation of the system;
    - (ii) The CCTV system shall consist of surveillance cameras strategically located in and around the development to provide maximum surveillance coverage of the area, particularly areas which are difficult to supervise, including areas outside the development buildings and within the car parking areas. One or more cameras should be strategically mounted at entry and exit points to monitor activities around these areas;
    - (iii) Digital or analogue technology should be used to receive, store and process data. Recording equipment should be secured away from public access areas to restrict tampering with the equipment and data. This equipment needs to be checked and maintained on a regular basis;
  - (b) A monitored intruder alarm system shall be installed within the premises:
    - (i) compliant with Australian Standard – Systems Installed within Clients Premises, AS:2201:1998. The system should be checked and tested on a regular (at least monthly) basis to

- ensure that it is operating effectively. Staff should be trained in the correct use of the system;
- (ii) Any light emitting diodes (LEDs red lights) within the detectors shall be deactivated to avoid offenders being able to test the range of the system; and
  - (iii) Consideration should be given to incorporating duress facility into the system to enable staff to activate the system manually in the event of an emergency, such as robbery. N.B. Duress facilities should only be used when it is safe to do so.
- (c) Fire egress inlet walls shall be angled at 45 degrees or more to reduce opportunities for entrapment, loitering and vandalism;
  - (d) Lighting to be provided at the exits of buildings at night time to ensure that reflections/mirroring on the interior of the glass is reduced and that people can see outside;
  - (e) Bicycle parking areas to be provided within view of capable guardians. The provision of covered lockable racks to secure bicycles increases the effort required to commit crime;
  - (f) Lighting:
    - (i) Lighting (lux) levels for this development must be commensurate with a moderate crime risk identified in this evaluation. The emphasis should be on installing low glare/high uniformity lighting levels in line with Australian Standard AS:1158;
    - (ii) Lighting sources should be compatible with requirements of any surveillance system installed within the development;
    - (iii) The luminaries (light covers) should be designed to reduce opportunities for malicious damage;
    - (iv) Lighting within the development needs to be checked and maintained on a regular basis;
    - (v) Limited amounts of lighting are to be left on at night time to enable patrolling police and security guards to monitor activities within the business;
  - (g) Landscaping – concealment opportunities are to be minimized.
  - (h) Street numbering to be prominently displayed at the front of the business to comply with the Local Government Act, 1993 Section 124(8). Failure to comply with an y such order is an offence under Section 628 of the Act. Offences committed under Section 628 of the Act attract a maximum penalty of 50 penalty units (currently \$5,500) for an individual and 100 penalty units (currently \$11,000) for a corporation. The number should be in contrasting colours to building materials and be a minimum height of 120mm.
  - (i) Warning signs should be strategically posted around the premises to warn intruders of what security treatments have been implemented to reduce opportunities for crime. E.g.:

- (i) Warning, trespasser will be prosecuted;
- (ii) Warning, These premises are under electronic surveillance;
- (j) Directional signage shall be posted at decision making points (e.g. entry/egress points) to provide guidance to uses of the development.
- (k) A Fire Safety Statement must be prominently displayed within the development to comply with the Environmental Planning and Assessment Regulations (1994) Clause 80GB.
- (l) Signage needs to be provided at (fire) exits to assist occupants to identify exits during emergency situations;
- (m) Under the NSW Occupational Health and Safety Laws, employers have a duty of care to ensure the health, safety and welfare of all employees and clients. That duty extends (without limiting) to the following:
  - (i) Ensuring that any premises controlled by the employer where the employees work (and the means of access to or exit from the premises) are safe and without risk to health;
  - (ii) Ensuring that systems of work and the working environment of employees are safe and without risks to health;
  - (iii) Providing such information, instruction, training and supervision as may be necessary to ensure the employee's health and safety at work;
  - (iv) An Emergency Control and Evacuation Plan shall be prepared and maintained in accordance with Australian Standard, Emergency Control Organisation and Procedures for Buildings, Structures and Workplace., AS:3745:2002.
- (n) Doors and door frames to the premises shall be of solid construction;
- (o) Doors shall be fitted with locks that comply with Australian Standard, Mechanical Locksets for doors in Buildings, AS:4145:1993.
- (p) The main entry/exit doors to the building shall be fitted with an electronically operated lock which can be locked after hours to control access to the development. Staff can release this lock electronically from the safety of the reception area once a customer has been identified. The locking mechanism shall be activated during hours of darkness.

### 73 Tree Preservation and Removal

- (a) The Applicant has permission under this consent to remove the following trees only:
  - (i) Site trees numbered in accordance with the landscape plan No.L101 prepared by Aecom (Issue 9). These trees are :
    - (1) No.1-26 (on site)

- (2) No. 29, 33, 34 (3 of the 5 Casuarinas in the Gardeners Road setback)
- (3) No. 37-43 (Garderners Road street trees);
- (iv) All street trees on the Gardeners Road frontage may be removed at the applicant's expense. A qualified Arborist with their own public liability insurance must be engaged. All work is to take place on the Council road reserve with the appropriate safety and directional signage implemented to ensure public safety and access. Partial road and footpath closures require Council approval. Trunks shall be stump ground to a depth of 150mm without damage to Council infrastructure or underground services. Council shall take no responsibility for any damage incurred to persons, property or services during the tree removal works;
- (b) All other existing trees on site (total 7 trees), numbered in accordance with the landscape plan No.L101 prepared by Aecom (Issue 9), shall be retained and protected in accordance with the City of Botany Bay Tree Preservation Order. These trees are numbered 27, 28, 30, 31, 32, 35, 36 (Gardeners Road setback).

**Note:** This will require re-routing underground service cabling in the Gardeners Road setback to facilitate tree protection;

- (c) All trees located within the adjoining property to the east shall be protection and preserved throughout all stages of demolition and construction. These trees are located in close proximity to the eastern property boundaries and consist of Cupressus sp. and Eucalyptus;
- (d) In order to ensure that the existing trees to be retained (27, 28, 30, 31, 32, 35, 36 as shown on plan L101 - issue 9) are protected during construction, and their health and structural stability ensured, the following is required:
  - (i) The tree preservation bond required under condition 63 of Development Consent No.08/166 (Units C1 and C2) shall be extended to cover this proposal, such bond being in place prior to issue of the Construction Certificate. If there is any contravention of the tree preservation conditions contained in this consent, or if a tree is found to be damaged or pruned without permission, then Council will claim all or part of the lodged security bond prior to its release. Damage includes stress/epicormic growth arising from root damage.
  - (ii) Engage a Consultant Arborist for all tree root and canopy pruning (as approved by Council).
  - (iii) Trees to be retained are to be tagged with clearly visible marking tape at a height of approx. 2 metres from ground and numbered with the corresponding number in the Tree Report/Landscape Plan.
  - (iv) Prior to commencing any work (including demolition) trees to be retained must be physically protected by fencing underneath



the canopy dripline using 1.8 metre high chainlink fence to form the Tree Protection Zone (TPZ). The fence shall remain in place until construction is complete. If there is insufficient space to erect fencing in a particular area, wrap the trunk with hessian/carpet underlay to a height of 2.5 metres or to the tree's first lateral branch, whichever is greater, and affix hardwood palings with strapping or wire (not nails).

- (v) Prior to the removal of approved trees and before any works commence on site, Council shall inspect all trees to be retained and the TPZ.
- (vi) All detailed Construction Certificate plans shall show the trees to be protected and the TPZ.
- (vii) Within the TPZ there shall be no construction work, no concrete mixing, strictly no washing down of concrete mixers or tools, no chemicals mixed/disposed of, no excavation or filling and no stockpiling, storage or sorting of waste or building materials. Any work necessary within the fenced zone shall be under the direction of Council's Tree Officer or Consultant Arborist.
- (viii) Where unavoidable foot access is required in the TPZ, install timber sheeting over the ground to minimise soil compaction, spillage or root damage.
- (ix) Excavation within the TPZ and 2 metres out from the dripline shall be carried out manually to minimise root damage or disturbance.
- (x) Tree roots greater than 40mm in diameter that require pruning shall be done only under the direction of Council's Tree Officer or consulting Arborist.
- (xi) Ensure no damage to the trunk or canopy of any tree to be retained. There shall be no canopy pruning unless approval has been granted by Council's Tree Officer under separate application. Pruning shall be undertaken by a qualified Arborist in accordance with AS 4373.
- (xii) Footings for the acoustic wall located along the eastern boundary adjacent to the carpark shall be constructed in a manner that will ensure there is no damage to the root system of trees on the adjoining property. Point (h and i) above applies.
- (xiii) There shall be no new underground services/cablings within 3 metres of any existing tree to be retained.
- (xiv) All excess/waste concrete and debris shall be removed from areas to be landscaped to a nominal depth of 200mm, not buried, to minimise soil contamination.
- (xv) The Applicant shall undertake any tree maintenance/remedial pruning recommended by Council or the Consultant Arborist at the completion of construction.

- (xvi) If there is any contravention of these tree preservation conditions, or a tree was found to be damaged (including roots), in decline, dead, removed or pruned without permission, then the Applicant will be required to undertake tree maintenance/replacement work, as specified by Council.

74 Landscaping shall be installed generally in accordance with the landscape plan No.L101 (Issue 9) prepared by Aecom, except for Council amendments as shown in red ink, as detailed below, and as required by Condition 72(g), prior to the issue of an Occupation Certificate.

(a) Amendments to the plan are as follows :

- (i) Retention of trees numbered 27, 28, 30, 31, 32, 35, 36 as shown on plan L101 (issue 9). This requirement supercedes tree retention indicated on the landscape plan.
- (ii) Tuckeroos in the Gardeners Road setback shall be substituted for a taller growing native canopy tree such as Eucalyptus citriodora, Eucalyptus microcorys, Corymbia maculata, Angophora costata or Brachychiton acerifolius. Trees are to be spaced at 8-10 metre centres. A double row of trees with staggered centres shall be investigated to efficiently utilise setback width and deep soil area. Tuckeroos may be used in combination with the above tall canopy tree species. All trees to be min. 200 litre or 4 metres high in size. Trees should be sourced with sufficient time to allow supply.
- (v) Understorey planting in the Gardeners Road setback is to incorporate other decorative/specimen grass species such as Pennisetum, Poa or Doryanthes.
- (vi) Syzygium pot sizes for the eastern and western setbacks shall be increased to 200 litre or 3 metres in height.
- (vii) Syzygium are to be continued along the western boundary in northerly direction to end at the building corner.
- (viii) A suitable hedge shall be provided adjoining the west facing building facade to provide a tiered landscape treatment within this setback area.
- (ix) The existing landscaped areas associated with the Stage 1 development off Church Avenue shall be upgraded in accordance with L106 Issue 7 by Aecom.

(b) Provision of additional trees as follows:

- (i) A minimum of ten (10) Elaeocarpus reticulatus of minimum height 4 metres, shall be installed in the Gardeners Road nature strip at 6 metre centres by a qualified landscape contractor. The trees shall be sourced from a reputable supplier that grows to NATSPEC.

- (ii) The trees shall be planted in an area measuring 1 metre square, 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 NATSPEC recommendations.
- (iii) The trees shall be planted in an area measuring 1 metre square, backfilled with imported soil/compost, water holding additive and fertiliser, and mulched with leaf mulch to a depth of 100mm. Install "Arboregreen Roottrain" watering system. Stake trees in accordance with NATSPEC recommendations.
- (iv) The Applicant is required to obtain a Council inspection of new trees prior to the issue of the Occupation Certificate, maintenance period commencing.
- (v) New street trees shall be maintained by the Owner/Occupier for a period of 12 months the duration of the landscape bond period. Maintenance includes periodic watering, feeding, weed removal and mulch top up but does not include pruning the trees under any circumstances.
- (c) The Landscape tender documentation shall be amended to reflect the above requirements.
- (d) Landscaped areas on the property shall be installed and maintained in accordance with this condition and Council's Landscape DCP at all times. Landscaped areas on the property shall be maintained in a tidy state with a dense, even coverage of plants to Council's satisfaction at all times.

75 An experienced Landscape Contractor shall be engaged to install the landscaping and shall be given a copy of the landscape plans and conditions of approval to satisfactorily construct the landscape to Council requirements. 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 monthly maintenance is required.

76 To ensure satisfactory growth and maintenance of the landscaping, a fully automatic drip irrigation system shall be installed throughout all landscape areas by a suitably qualified landscape contractor, prior to the issue of the Occupation Certificate. Irrigation shall provide full coverage of planted areas with no more than 300mm between drippers, zoning, controllers, automatic timer and backflow prevention device. Irrigation shall be connected to a recycled water source where provided. Irrigation shall comply with Sydney Water and Council requirements and Australian Standards, and be maintained in working order at all times.

- 77 A raised concrete edge shall be installed around the landscape areas to contain soil and mulch finishes from spilling out onto adjoining pavements. The edge shall be raised a minimum of 150mm above the adjoining pavement. Timber retaining edges are unsuitable.
- 78 Concrete wheel stops shall be installed in all car spaces adjoining garden beds in accordance with Council specifications and Australian Standard AS/NZS 2890.1:2004 prior to the issue of an Occupation Certificate to prevent overhang and damage to garden beds.
- 79 The fire booster valve assemblies to Bourke Street as shown on Plan A004 (Revision 7) shall be screened to improve their appearance in the streetscape. The utilities shall be housed within a masonry structure attached to the building with decorative accessible gates/doors. Some landscaping shall be retained in front of the assembly to provide screening, allowing only the minimum required curtilage for access in front of the utility.
- 80
- (a) During construction work the Council nature strip shall be maintained in a clean and tidy state at all times and shall be suitably replaced in accordance with Council Specifications at the completion of construction work and prior to the issue of an Occupation Certificate, at the Applicant's expense.
  - (b) Ongoing maintenance of the nature strip shall be undertaken by the occupier/owner. Maintenance includes mowing, watering, the removal of weeds and rubbish and maintaining a good, even coverage of grass at all times.
- 81 The landscaped open space corner of Bourke and Gardeners Roads is to be generally a hard paved urban space with pockets of suitable low level landscaping eg. hedging/feature planting. The public artwork/sculpture is to be located in this area. Paving finishes shall co-ordinate and fully integrate with public domain pavements on site frontages (refer Council specification), and shall include appropriate landscape/focal lighting to illuminate the landscaping, artwork, the building and to enhance public safety and surveillance. Seating shall be provided and be appropriate to the function of the area, using materials sympathetic to the paving, architecture and artwork.
- 82 All Council footpaths in Gardeners Road, Bourke Road and Church Avenue shall be replaced with exposed aggregate concrete unit paving in accordance with the Draft Mascot Station Public Domain Manual, and Specifications, to be installed by the Applicant at the Applicant's expense. All improvements shall be in accordance with Council's Landscape and Engineers specifications and requirements, and shall be constructed prior to the issue of an Occupation Certificate. Footpath alignment and width shall be adjusted in accordance with

Council specifications and re-aligned to commence at the property boundary in Gardeners Road and the kerblin in Bourke Road.

83

- (a) The Applicant shall engage a suitably qualified public artist, with experience in designing within an urban setting, to progress the conceptual interpretation, detailed design and construction of the public art element/significant sculpture piece for the site, which shall be located on the corner of Gardeners Road and Bourke Road. The artwork shall be in proportion to the space so as to ensure visual impact and so that its presence is not diminished by the built element, and shall be erected prior to the issue of an Occupation Certificate, either interim or final.

The artwork shall have conceptual grounding and meaning within the context of the locality and should draw on the past and present industrial history of the area as well as consider the changing nature of land use in the precinct.

The artwork should be interactive, allowing the public to engage with the piece. It may be partially connected to the built form for integration. Appropriate materials would be Coreten steel, other metal types used in various forms, perforated/punched metal, powdercoated steel, metal cables/wire, concrete. Timber, sandstone and brick would not be suitable. The element shall be of robust, vandal resistant materials and finishes. The artwork/sculpture is to be illuminated to enhance its setting and impact in the public domain.

- (b) The following matters shall be complied with to ensure that the artwork is satisfactory and in accordance with the requirements of Condition 83(a) above:
- (i) A site plan shall be provided to, and approved by, Council showing the location of the artwork;
  - (ii) The size and location of the artwork shall be determined in conjunction with the Architect and Landscape Consultant and Council's Landscape Officer, to ensure that its scale is appropriate within the landscape and built context.
  - (iii) The concept design shall be submitted to, and approved by, Council;
  - (iv) The artwork shall be maintained in good order and appearance at all times, this includes removal of graffiti, repairs and refreshing surfaces.

- 84 Solid boundary fencing to a maximum height of 1.8 metres shall be provided along the boundary with No. 635 Gardners Road, Mascot, adjacent to the proposed car spaces shown on plan with Job No.09026, Drawing No.001, Issue 12. Such fencing shall be erected prior to issue of the Occupation Certificate.

- 85 The installation, operation and maintenance of any regulated systems within the development must comply with relevant Australian Standards, the Public Health Act 1991 and associated Regulations. Any such regulated system installed within the building shall be registered with Council prior to the issue of an Occupation Certificate.
- 86 Should the external fabric of the building(s), walls to landscaped areas and like constructions be subject to graffiti or like vandalism, then within seven (7) days of this occurrence, the graffiti must be removed and the affected surface(s) returned to a condition it was in before defilement.
- 87 Any intruder alarm at the premises shall be fitted with a timing device in accordance with the requirements of section 53 of the Protection of the Environment Operations (Noise Control) Regulation 2000.
- 88
- (a) Prior to use and occupation of the building an Occupation Certificate must be obtained under Section 109C(1)(c) and 109M of the Environmental Planning and Assessment Act 1979. Specific forms are obtainable from Council for this purpose.
  - (b) Conditions 5, 14, 17, 23, 25, 28, 42, 43, 45, 47, 48, 49, 53, 54, 72, 74, 76, 78, 80, 83, 84 and 85 are all pre-conditions to the issue of the Occupation Certificate.
- 89 The applicant being informed that this approval shall be regarded as being otherwise in accordance with the information and particulars set out and described in the Development Application registered in Council's records as Development Application No. 10/092 dated as 29 September 2009 and that any alteration, variation, or extension to the use, for which approval has been given, would require further Approval from Council.

Certified Mr Rodger Dowsett.....  
Director - Planning and Development