

**JOINT REGIONAL PLANNING PANEL**  
**(East Region)**

<b>JRPP No</b>	<b>2010SYE053 &amp; 2010SYE054</b>
<b>DA Number</b>	<b>DA10/324 and DA10/325</b>
<b>Local Government Area</b>	<b>City of Botany Bay</b>
<b>Proposed Development</b>	<p><u>DA10/324 (North)</u> Redevelopment of the northern part of the site fronting Gardeners Road for residential and commercial development, incorporating the following:</p> <ul style="list-style-type: none"> <li>- construction of four (4) residential towers (Buildings A, B, C &amp; D), of between 6-11 storeys in height (including basement car park levels), comprising of 297 residential apartments; and convenience shop/ refreshment room/ commercial premise uses fronting Gardeners Road;</li> <li>- two (2) levels of basement car parking, accommodating 587 car parking spaces with direct access off Gardeners Road via an 84 metre long deceleration lane; and</li> <li>- associated landscaping, stormwater and public domain works.</li> </ul> <p><u>DA10/325 (South)</u> Redevelopment of the southern part site fronting Church Avenue for residential and commercial development, incorporating the following:</p> <ul style="list-style-type: none"> <li>- construction of three (3) residential towers Buildings E, F and G), of between 6-13 storeys in height (including basement car park levels), comprising of 203 residential apartments; and convenience shop/refreshment room/commercial premise uses fronting Church Avenue;</li> <li>- two (2) car parking levels, accommodating 327 car parking spaces with direct access off Church Avenue;</li> <li>- provision, and embellishment of land for a proposed public reserve fronting Church Avenue;</li> <li>- provision, and embellishment, of land for proposed road widening of Church Avenue;</li> <li>- associated landscaping, stormwater and public domain works; and</li> </ul> <p>subdivision of the land to (a) consolidate three (3) existing allotments, and (b) provide three (3) new allotments of land, one being for the proposed redevelopment scheme; one for the proposed public reserve and the third for the proposed road widening.</p>
<b>Street Address</b>	619 - 629 Gardeners Road and 12 - 14 Church Avenue, Mascot
<b>Applicant/Owner</b>	Atlas Construction Group Pty Ltd/ Fitz Jersey Pty Ltd,

<b>Number of Submissions</b>	<b>18</b>
<b>Recommendation</b>	<b>Deferred Commencement</b>
<b>Report by</b>	<b>Rodger Dowsett, Director Planning and Development</b>

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**ASSESSMENT REPORT AND RECOMMENDATION****619- 629 GARDENERS ROAD AND 12 14 CHURCH AVENUE, MASCOT –  
INTEGRATED DEVELOPMENT - TWO STAGED MIXED DEVELOPMENT**

**File No:** 10/324 and 10/325  
**Responsible Officer:** Rodger Dowsett, Director of Planning and Development  
**Date of Preparation:** 27 July 2011

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**DA No:** 10/324 and 10/325  
**Application Date:** 12 July 2010 and as amended on 19 April 2011  
**Property:** 619 - 629 Gardeners Road and 12 - 14 Church Avenue, Mascot  
**Lot & DP No:** Lot 1 DP 303282, Lot 1 DP923787 and Lot 2 DP 224757  
**Details:** DA10/324 (North)  
Redevelopment of the northern part of the site fronting Gardeners Road for residential and commercial development, incorporating the following:

- construction of four (4) residential towers (Buildings A, B, C & D), of between 6-11 storeys in height (including basement car park levels), comprising of 297 residential apartments; and convenience shop/ refreshment room/ commercial premise uses fronting Gardeners Road;
- two (2) levels of basement car parking, accommodating 587 car parking spaces with direct access off Gardeners Road via an 84 metre long deceleration lane; and
- associated landscaping, stormwater and public domain works.

DA10/325 (South)

Redevelopment of the southern part site fronting Church Avenue for residential and commercial development, incorporating the following:

- construction of three (3) residential towers Buildings E, F and G), of between 6-13 storeys in height (including basement car park levels), comprising of 203 residential apartments; and convenience shop/refreshment room/commercial premise uses fronting Church Avenue;
  - two (2) car parking levels, accommodating 327 car parking spaces with direct access off Church Avenue;
  - provision, and embellishment of land for a proposed public reserve fronting Church Avenue;
  - provision, and embellishment, of land for proposed road widening of Church Avenue;
  - associated landscaping, stormwater and public domain
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	works; and
	- subdivision of the land to (a) consolidate three (3) existing allotments, and (b) provide three (3) new allotments of land, one being for the proposed redevelopment scheme; one for the proposed public reserve and the third for the proposed road widening.
<b>Applicant:</b>	Atlas Construction Group Pty Ltd
<b>Applicant Address:</b>	Unit 32/69 O’Riordan Street, Alexandria NSW
<b>Owner:</b>	Fitz Jersey Pty Ltd,
<b>Builder:</b>	Atlas Construction Group Pty Ltd
<b>Principal Certifying Authority:</b>	City of Botany Bay
<b>Property Location:</b>	Between Gardeners Road to the north, Church Avenue to the south, O’Riordan Street to the east and directly west of the Sydney Water Corporation drainage reserve
<b>Zoning:</b>	Mixed Uses Commercial/Residential 10(a)  Botany Local Environmental Plan, 1995
<b>Present Use:</b>	Existing buildings partially demolished, remediation works commenced
<b>Classification of Building:</b>	Class 2 - residential flat building Class 5 - commercial building Class 6 - retail shop Class 7a – car park
<b>Value:</b>	\$88,984,690.00 (DA10/324-North)  \$59,742,345.00 (DA10/325-South)
<b>Drawing Nos.:</b>	Refer to Condition No. 1

## **SUMMARY OF REPORT**

<b>Recommendation:</b>	Grant “Deferred Commencement Consent”
<b>Special Issues:</b>	Integrated Development, Residents Consultative Committee, Traffic, Floor Space Ratio, Building Height, Built Form, Voluntary Planning Agreement, Land Dedication, Public Domain Works and Site Audit Statement
<b>Public Objection:</b>	<b>First Round of Notification:</b> 160 Submissions and Petition.

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**Second Round of Notification: 18 Submissions.**

**Permissible:** Yes

**THE DIRECTOR OF PLANNING AND DEVELOPMENT REPORTS:****Executive Summary**

Council received two Integrated Development Applications being 10/324 and 10/325 on the 12 July 2010 seeking consent for the redevelopment of the land in two stages, (North) and (South). The initial applications sought approval for redevelopment of the land in the following manner:

**DA10/324 (North)**

Redevelopment of the northern part of the site fronting Gardeners Road for residential and commercial development, incorporating the following:

- construction of three (3) residential towers (Buildings A, B & C), of between 9-14 storeys in height (including basement car park levels), comprising of 233 residential apartments; and convenience shop/ refreshment room/ commercial premise uses fronting Gardeners Road;
- three (3) car parking levels, accommodating 637 car parking spaces; and
- associated landscaping, stormwater and public domain works.

**DA10/325 (South)**

Redevelopment of the southern part of the site fronting Church Avenue for residential and commercial development, incorporating the following:

- construction of three (3) residential towers (Buildings D, E & F), of between 7-12 storeys in height (including basement car park levels), comprising of 282 residential apartments; and convenience shop/refreshment room/commercial premise uses fronting Church Avenue;
- two (2) car parking levels, accommodating 312 car parking spaces;
- provision, and embellishment, of land for a proposed public reserve;
- provision, and embellishment, of land for proposed road widening of Church Avenue;
- associated landscaping, stormwater and public domain works; and
- subdivision of the land to (a) consolidate three (3) existing allotments, and (b) provide three (3) new allotments of land, one being for the proposed redevelopment scheme; one for the proposed public reserve and the third for the proposed road widening.

The proposed development is integrated development under the provisions of Section 91 of the Environmental Planning and Assessment Act. The Development requires the concurrence of the NSW Office of Water and the NSW Roads Traffic Authority as the development involves temporary construction dewatering activity to accommodate basement car parking facilities and also involves the construction of a required deceleration lane adjacent to Gardeners Road. Both Agencies have been granted concurrence subject to conditions.

The applications were initially publicly exhibited for a period of thirty (30) days from 3 August 2010 to the 3 September 2010.

A total of one hundred and sixty (160) submissions and a petition objecting to the initial development were received following the first public exhibition process in August 2010. The Council as the Planning Authority resolved to form a Residents Consultative Committee in relation to the applications and the subject site. Subsequent meetings between the applicant, residents and Council officers have taken place and it was at the second of the Consultative Committee meeting in 18 January 2011 the Applicant produced design amendments to the proposal to reduce the impact of the development on the adjoining land and building as well as the locality generally.

Council's Design Review Panel (DRP) has considered the proposed development prior to the lodgment of the initial applications in May 2010 and again in March 2011, prior to submission of the amended development scheme now before Joint Regional Planning Panel (JRPP). The second meeting of the Consultative Committee introduced the amended plans, which resolved a good percentage of the concerns raised by residents at the first Consultative Committee regarding floor space ratio (FSR), building heights and built form of the development and in part alleviates the impact of the original development on the loss of view and overshadowing affect on adjoining developments.

The amended plans that are the subject of this assessment have addressed the concerns raised by the DRP and are addressed further in this report.

The Applicant submitted a formal amended design on the 19 April 2011 for the site (north and south components) in the following manner.

#### DA10/324 (North)

Redevelopment of the northern part of the site fronting Gardeners Road for residential and commercial development, incorporating the following:

- construction of four (4) residential towers (Buildings A, B, C & D), of between 6-11 storeys in height (including basement car park levels), comprising of 297 residential apartments; and convenience shop/ refreshment room/ commercial premise uses fronting Gardeners Road;
- two (2) levels of basement car parking, accommodating 587 car parking spaces with direct access off Gardeners Road; and
- associated landscaping, stormwater and public domain works.

#### DA10/325 (South)

Redevelopment of the southern part of the site fronting Church Avenue for residential and commercial development, incorporating the following:

- construction of three (3) residential towers Buildings E, F and G), of between 6-13 storeys in height (including basement car park levels), comprising of 203 residential apartments; and convenience shop/refreshment room/commercial premise uses fronting Church Avenue;
- two (2) car parking levels, accommodating 327 car parking spaces with direct access off Church Avenue;
- provision, and embellishment of land for a proposed public reserve fronting Church Avenue;
- provision, and embellishment, of land for proposed road widening of Church Avenue;
- associated landscaping, stormwater and public domain works; and

- subdivision of the land to (a) consolidate three (3) existing allotments, and (b) provide three (3) new allotments of land, one being for the proposed redevelopment scheme; one for the proposed public reserve and the third for the road widening to Church Ave.

The development in its amended form will result in the dedication of approximately 581sqm of land for the purpose of road widening required for Church Avenue, approximately 181sqm of land for a deceleration lane on Gardeners Road and approximately 1140sqm of land for a public reserve fronting Church Avenue as required under the Mascot Station Precinct Development Control Plan (DCP30).

The amended scheme was then placed on public exhibition for a thirty (30) day period from 27 April 2011 to the 26 May 2011. A total of eighteen (18) submissions were received as a result of the public exhibition of the revised development scheme.

Council convened a Resident Consultative Meeting on 25 July 2011, to discuss the remaining issues raised during the last notification period, together with matters that arose from the previous meeting. As a result of the meeting, a good percentage were not necessarily opposed to the redevelopment, however their concerns were with the noise, dust, parking access to the site during construction, however the owners of three units with the Rina development were concerned with the height of the development and its impacts on views and the final issue related to traffic movement, when the development is complete. Another unit owner in the Aero development was concerned with the loss of sunlight and natural light.

In response to these issues, the applicant accepted that part of the 9 storey component to Building G (fronting Church Ave) be removed to improve the view aspect, and conducted an analysis of the traffic, which discussed further in the report. Standard conditions have been imposed in relation to the construction activities. The amendments to the southern end of the nine storey component of Building G fronting Church Avenue, will be subject to a “deferred commencement” condition.

The development applications were accompanied by an objection under State Environmental Planning Policy No. 1 – Development Standards (SEPP 1). The SEPP 1 Objection makes a case for the variation to Clause 12A of Botany Local Environmental Plan 1995 in relation to the permitted floor space ratio (FSR). The SEPP 1 Objection has been assessed in detail further within this report. Clause 12A is reproduced as follows:

- 12A Floor space ratios—Mascot Station Precinct*
- (1) The Council may consent to the erection of a building on land in the Mascot Station Precinct only if the floor space ratio of the proposed building does not exceed the ratio specified for the land concerned on Sheet B of the map marked “Botany Local Environmental Plan 1995 (Amendment No 28)” which sheet is also titled “Mascot Station Precinct Floor Space Ratios—Map 1 for clause 12A”.*
  - (2) For the purpose of calculating the floor space ratio of a building proposed to be erected on land in the Mascot Station Precinct:*
    - (a) the Council is to include as part of the site area such part of the land as is required, by a condition of the relevant development consent, to be dedicated free of cost for the provision, extension or augmentation of public amenities or public services (as referred to in section 94 of the Act).*

Additional information was received from the Applicant on the 1 November 2010, 4 November 2010, 19 April 2011, 6 June 2011, 14 July 2011, 19 July 2011, 20 July 2011, 21 July 2011, 22 July 2011, 23 July 2011, 25 July 2011 and 26 July 2011 relating to an Electromagnetic Field Survey required by Ausgrid, View Analysis Assessment, response to the submissions, existing easement details and matters that arose from earlier meetings of the Consultative Committee.

Council on 19 July 2011 received a letter from the Site Auditor advising that the site can be made suitable for residential and recreational purposes, however as the final site audit statement is for both development applications is still outstanding, it recommended that a “deferred commencement” consent be granted to both applications subject to the submission of a site audit statement.

As this proposal has a Capital Investment Value of greater than \$10 million the Joint Regional Planning Panel, Sydney East Region (JRPP) is the consent authority for both development applications.

The development applications in their amended form have been assessed in accordance with the relevant requirements of the Environmental Planning and Assessment Act and it is recommended to grant the development “deferred commencement” consent subject to conditions.

## **1. Site Description**

The subject site is located between Gardeners Road to the north, Church Avenue to the south, west of O’Riordan Street and east of Bourke Street. The Sydney Water Corporation drainage reserve lies directly east of the site. The site is formed by the following three allotments that make up a total site area of 22,537m<sup>2</sup>.

The legal description of the land is as follows:

- Lot 2 in DP 224757 being 619-629 Gardeners Road, Mascot; (Major Allotment)
- Lot 1 in DP 303282 being 12 Church Avenue, Mascot; and (Subsidiary Allotment)
- Lot 1 in DP 923787 being 14 Church Avenue, Mascot (Subsidiary Allotment)

The site is generally trapezoidal in shape with a total frontage to Gardeners Road of 101m and 82.7 metres to Church Avenue. The depth of the site between both street frontages is approximately 210metres. There is a fall of approximately 1.7 metres from east to west across the site.

The majority of the site known as 619-629 Gardeners Road previously accommodated a vacant warehouse fronting Gardeners Road that contained asbestos building elements which is now all but demolished. There were two other small industrial buildings fronting Church Avenue, being 12 and 14 Church Avenue each with hardstand areas in the front setbacks. The major site is entirely hardstand, except for perimeter garden beds containing established trees.

The area is currently undergoing significant change to become a higher density residential and commercial area focused around the Mascot Station Precinct. Development surrounding the site consists of mixed residential and commercial development.



The properties surrounding the site are 3-9 Church Avenue to the south, which accommodates three residential apartment towers of eight storeys in height. Directly to the west at 635 Gardeners Road is another residential complex comprising of six (6) separate apartment buildings of six storeys in height. These buildings of 635 Gardeners Rd are located within three metres from the adjoining boundary of the subject site. Immediately to the east is the Sydney Water Corporation drainage reserve and at the north-eastern corner of the site is an Energy Australia electrical power substation. To the north, on the opposite side of Gardeners Road within the Sydney City Council area are bulky goods retail sites, with some sites currently under redevelopment.

There is an existing easement (Right of Way) in favour of Lot 1 DP 224757, being the Ausgrid (Energy Australia) substation. The right of way is of variable widths and traverses Lot 2 in DP 224757 in a north /south direction, approximately fifteen (15) metres west of the eastern boundary of Lot 2. It also runs north/south along the boundary between Lot 1 and Lot 2. The Applicant has advised that a Notice of extinguishment of the easement (lease) has been served on the owner of Lot 1 by the owner of Lot 2. The lease ceased on the 10 June 2011.

## **2. Description of Development**

The development applications in their amended form seek consent for the redevelopment of the site in two stages, being integrated development in the following manner:

### DA10/324 (North)

Redevelopment of the northern part of the site fronting Gardeners Road for residential and commercial development, incorporating the following:

- construction of four (4) residential towers (Buildings A, B, C & D), of between 6-11 storeys in height (including basement car park levels), comprising of 297 residential apartments; and convenience shop/ refreshment room/ commercial premise uses fronting Gardeners Road;
- two (2) levels of basement car parking, accommodating 587 car parking spaces with direct access off Gardeners Road; and
- associated landscaping, stormwater and public domain works.

### DA10/325 (South)

Redevelopment of the southern part of the site fronting Church Avenue for residential and commercial development, incorporating the following:

- construction of three (3) residential towers (Buildings E, F and G), of between 6-13 storeys in height (including basement car park levels), comprising of 203 residential apartments; and convenience shop/refreshment room/commercial premise uses fronting Church Avenue;
- two (2) car parking levels, accommodating 327 car parking spaces with direct access off Church Avenue;
- provision, and embellishment of land for a proposed public reserve fronting Church Avenue;
- provision, and embellishment, of land for proposed road widening of Church Avenue; associated landscaping, stormwater and public domain works; and
- subdivision of the land to (a) consolidate three (3) existing allotments, and (b) provide three (3) new allotments of land, one being for the proposed redevelopment scheme; one for the proposed public reserve and the third for the proposed road widening.

The particulars of each building both North and South developments are as follows:

<b>Building No.</b>	<b>No. of Storeys</b>	<b>Net Leasable Floor Space (sqm)</b>	<b>Dwelling Nos.</b>	<b>Building Height (RL)</b>
A	6	823	74	29.95
B	6	-	50	29.95
C	6	-	61	29.95
D	13	-	112	51.00
E	6	-	35	29.95
F	6	-	30	29.15
G	3/6/9/12*	260	138	50.90
Basement 1	-	-	-	6.75
Basement 2	-	-	-	4.50
<b>TOTAL</b>	<b>-</b>	<b>-</b>	<b>500</b>	<b>-</b>

\* Variable height planes.

The proposed unit mix is as follows:

<b>Building</b>	<b>Studio</b>	<b>1 bedroom</b>	<b>2 bedrooms</b>	<b>3 bedrooms</b>	<b>Total</b>
A	35	0	39	0	74
B	6	0	44	0	50
C	18	10	33	0	61
D	43	0	60	9	112
E	6	0	29	0	35
F	0	3	27	0	30
G	53	4	72	9	138
<b>Total</b>	<b>161</b>	<b>17</b>	<b>304</b>	<b>18</b>	<b>500</b>

The parking is allocated as following:

<b>Level</b>	<b>Type</b>	<b>DA North</b>	<b>DA South</b>	<b>Total</b>
Basement 1 & 2	Resident Spaces	531	292	823
	Residents Visitor	41	31	72
	Commercial	15	4	19
	<b>Total</b>	<b>587</b>	<b>327</b>	<b>914</b>

The amended changes to the development from that originally lodged with Council include the following:

- Reduction in both density;
- Redistribution of building height
- Buildings have been lowered into the ground so that the overall height of the development is largely six storeys, other than Buildings D and G as detailed in the table above;
- Two levels of basement car parking across the site are below the ground surface, as opposed to only one level under the original scheme;

- Common integrated car parking facility between the two stages is now provided and will not physically separated;
- Vehicular access to the site is from two points, a deceleration lane from Gardeners Road and a relocated driveway off Church Avenue;
- Where the car parking levels can be seen from a public place, the applicant has screened the car parking facility. The screening provided is incorporated within the design of the building and landscape setting that has been the subject of an extensive design review process;
- The podium level above the basements has been reduced to RL10.15 across both stages to ensure integration of communal open space areas into the public reserve, together with view enhancements;
- Pedestrian access to the site will be via the landscaped areas from Church Avenue and Gardeners Road;
- Separation between the individual buildings above podium level, creating an amenable communal open space area;
- Building mass has been reconfigured across the site to alleviate the concerns of residents to the south of the site, where view loss and overshadowing arose as issues during the assessment of the initial application;
- Buildings D & E were separated and replaced with Building E and F. Building F is now setback 38 metres from the new boundary of Church Avenue;
- Building D is now one building running north/south along the eastern boundary, appearing as Buildings D and G in the revised scheme and then running east west fronting Church Avenue, setback 4 metres from the new boundary to Church Avenue;
- The public reserve has been relocated to the south-western part of the site fronting Church Avenue;
- The gross floor area has been reduced by 4,080m<sup>2</sup> to 56,791m<sup>2</sup> (excluding car parking) and now incorporates 500 apartments and 914 car parking spaces. The application initially proposed a gross floor area of 60,871m<sup>2</sup> (excluding areas of car parking), including 515 apartments and 950 on-site car parking spaces; and
- The commercial floor space fronting Church Avenue has been reduced as a result of the redesign. The floor space ratio (FSR) of the proposed development is now represented as 2.52:1. The development application is accompanied by a revised objection under State Environmental Planning Policy No. 1 – Development Standards (SEPP1) in relation to the proposed floor space ratio variation.

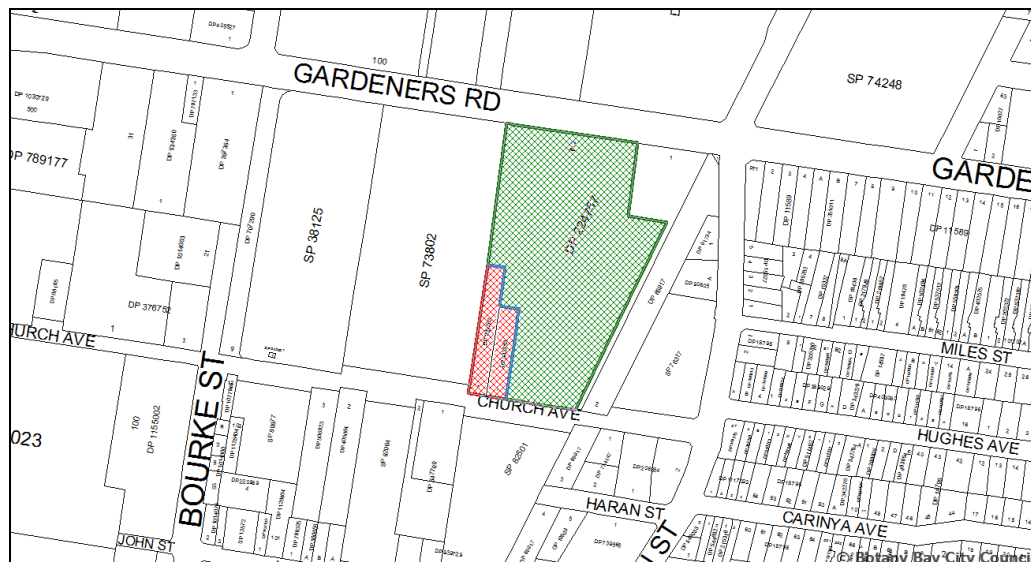
The applicant has submitted a design statement in support of the development applications, which is discussed below under SEPP 65 Considerations. It is stated that the proposal has been designed to sensitively and imaginatively interact with the contextual, aesthetic, environmental, and commercial criteria.

The design of the buildings are aimed at providing a positive contribution to the existing street streetscape, being the main objective of the Sub-precinct 2 within Mascot Station Precinct DCP. The façade design utilises a restrained and simply framed curtain glass wall. The northern facades include external sunshades, and the spandrels and glazing that will match and will have low reflectivity and tone.

### 3. Site Photos



### 4. Locality Plan



### 5. Site and Development History

Council approved Development Application No. 1009 on the 19 September 1985 for the *alterations to the existing loading access and car parking arrangements on the subject land.*

Council approved Development Application No. 1788 on the 5 August 1988 for the *use of the premises for the warehousing of electrical equipment and automotive accessories.*

Council approved Development Application No. 2024 on the 9 May 1989 for the *use of part of the existing premise for the packing of meat for delivery to airport for export by tourists.*

Council approved Development Application No. 2761 on the 5 June 1992 for the *use of the warehouse premises and related offices for distribution.*

Council resolved to approve Development Application No. 2463 on the 7 November 1990 for the *industrial alterations and additions - new amenities and offices for existing warehouse.*

Council approved Development Application No. 02/476 on 22 August 2002 for the *warehousing/storage and distribution of alcoholic goods* at 619 Gardeners Road, Mascot. A condition of consent was imposed limiting the period of the consent to two years. This period was extended by way of a modification application to allow it to operate until 31 January 2007. Council considered a further application for modification in October 2006 allowing the consent to operate until 31 January 2008.

At the time the consent was issued for the warehousing/storage and distribution of alcoholic goods in August 2002, the subject site was zoned Industrial General 4(a) under Botany Local Environmental Plan 1995 and the use of the premises for warehousing and distribution was permissible with Council consent.

In October 2002 the site was rezoned to Mixed Uses 10(a) Commercial/Residential and the use of the premises for warehousing and distribution then became a prohibited use.

Council refused Development Application No. 07/370 on the 2 October 2008 for the *use of the building for general warehouse purposes*.

Council approved Development Application 10/345 on 9 February 2011 for the *demolition of all existing buildings/structures on site and site remediation*. Demolition and remediation works have commenced on site without unique impact on the adjoining or adjacent residents.

## **6. SECTION 79C CONSIDERATIONS**

In considering the Development Applications, 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:

### **6.1 The provisions of any EPI and DCP and any other matters prescribed by the Regulations.**

#### **6.1.1 Environmental Planning and Assessment Act 1979 – Part 4, Division 5 – Special Procedures for Integrated Development and Environmental Planning and Assessment Regulations 2000 – Part 6, Division 3 – Integrated Development**

The relevant requirements under Division 5 of the EP&A Act and Part 6, Division 3 of the EP&A Regulations have been considered in the assessment of the development applications.

The subject applications are Integrated Development in accordance with the *Water Act 1912* as the development involves a temporary construction dewatering activity and the *Roads Act 1993* as a deceleration lane is proposed to be constructed adjacent to Gardeners Road, a classified road.

Before granting development consent to an application, the consent authority must, in accordance with the regulations, obtain from each relevant approval body the general terms of any approval proposed to be granted by the approval body in relation to the development.

In this regard, the applications were referred to the NSW RTA and NSW Office of Water. In a letter dated 30 May 2011, the RTA has given concurrence to the proposed revised development scheme, subject to conditions. The NSW Office of Water issued

their General Terms of Approval on 19 July 2011. The General Terms of Approval are attached to the schedule of consent conditions.

### **6.1.2 State Environmental Planning Policy No 1 – Development Standards**

The provisions of SEPP No. 1 have been considered in the assessment of the application. The policy aims to introduce flexibility in the application of development standards where it can be shown that strict compliance is unreasonable or unnecessary in the circumstances of the case.

Under the provisions of the Botany LEP 1995 the site is zoned 10(a) Mixed Use Commercial/Residential and Council may only consent to the erection of a building if the floor space ratio (FSR) does not exceed 2:1 or 45,074sqm in accordance with Clause 12A of the Botany LEP 1995.

The proposal seeks an FSR as indicated under Column 2 of the table below:

<b>Requirement under Clause 12A of Botany LEP 1995</b>	<b>Proposed FSR</b>
2:1 (45,074sqm)	2.52:1 (56,791sqm)

Accordingly, the applicant has submitted an objection to Clause 12A of the Botany LEP 1995 pursuant to State Environmental Planning Policy No 1 – Development Standards. The objection to the FSR control has been assessed in accordance with relevant case law and the rationale of the applicant as outlined below is generally agreed with:

#### ***1. Is the requirement a development standard?***

The subject floor space ratio requirement is a development standard contained in the Botany Local Environmental Plan 1995.

#### ***2. What is the underlying object or purpose of the standard (if there is no stated objective of the standard)?***

The Botany LEP 1995 does not contain specific objectives in respect of FSR.

However the Mascot Station Precinct DCP provides objectives relating to floor space ratios. These objectives have been identified by the applicant and addressed in detail below:

*“The objectives of the development are addressed in turn:*

- (a) To ensure that the floor space ratios allocated to each sub-precinct provide sufficient incentive to encourage redevelopment within the MSP, within a reasonable time frame.*

*The site is located within Sub-precinct 2 ('SP2') of the Mascot Station Precinct ('MSP'), with the sub-precinct comprising a visual gateway at the NE corner of the MSP. The Sub-precinct is to be characterised by a pleasant pedestrian environment, with a strong visual corridor to be achieved by building design, building setbacks and landscaping. Further, the sub-precinct is to establish unity with a clear relationship to the built form abutting the precinct.*

*The proposed development has been designed to make efficient use of well serviced land in close proximity to Mascot Railway Station, and contribute to the ongoing redevelopment of the locality in the form of residential, retail and commercial uses, accommodated within contemporary building forms. Further, the proposed development will encourage the use of existing infrastructure, contribute to the gateway function of the locality, with a pleasant pedestrian environment and a strong visual presence, and provide appropriate incentives to stimulate the redevelopment of surrounding land.*

- (b) *To allocate floor space ratios to each sub-precinct which are commensurate with the permitted building heights within the MSP.*

*In general terms, the primary factors influencing the design solution include the need to achieve consolidation of all of the lots within SP2, so enduring additional cost for the best practice outcome for Council's master planning within the MSP. The accentuating height along the eastern side of the site acknowledges the lower scale built form of structures on the western side of the site, in the Aero Development; and the higher building forms south of the site, in the Rina development. The additional floor space maximises the number of single level apartments, and introduces public open space that will visually integrate with the green spine that separates the development from that as existing to the west. The height of the development, at the edge of the reserve land, defines the edge of the view-aspect from the intersection of Gardeners Road and O'Riordan Street, defining this corner of the MSP in the streetscape.*

*In terms of built form, the Minutes of the Urban Design Review Panel confirm that the height of the development is appropriate for the subject land.*

- (c) *To ensure equity amongst potential redevelopment sites within the MSP by allowing those property owners, that are affected by the public facility dedication provisions within this development control plan, to utilise their original site area for the purposes of determining their maximum permitted floor space ratios.*

*The Mascot Station Precinct Development Control Plan (DCP) depicts the widening of Church Avenue across the frontage of the site to achieve a road reservation width of 20 metres. The proposed development makes provision for the widening of Church Avenue across the frontage of the site to contribute to a road reservation width of 20 metres.*

*Similarly, the development provides for the public open space required by the DCP to front Church Avenue. This land, and the road widening, are areas of the site that will not be available for use by the development. The proposed development includes those portions of the site area for its floor space calculations.*

- (d) *To provide sufficient development incentives to compensate for the dedication of land for public facilities on identified development sites.*

*The floor space of the DCP makes provision for the dedication of land for public facilities, as discussed below. However, the DCP provisions do not provide incentive for property owners to consolidate their properties with those of neighbouring lots to achieve the urban development objectives of the MSP. Without the efforts of the Applicant, the two smaller lots fronting Church Avenue would have remained operating for prohibited industrial purposes. The Applicant endured time delay in the preparation of the application; and additional cost in securing those lots at rates above premium, in order to facilitate the urban consolidation objectives of the Council.*

*As occurred in the case of redevelopment of the Rina site, additional floor space allocation is warranted to compensate for that cost and effort, resulting in additional height. The proposed floor space is considered adequate compensation to achieve the necessary site consolidation for all remaining lots within SP2 of the MSP.*

*The Mascot Station Precinct Development Control Plan (DCP) depicts the widening of Church Avenue across the frontage of the site to achieve a road reservation width of 20 metres. The proposed development makes provision for the widening of Church Avenue across the frontage of the site to contribute to a road reservation width of 20 metres. Similarly, the development provides for the public open space required by the DCP to front Church Avenue. This land, and the road widening, are areas of the site that will not be available for use by the development. The proposed development includes those portions of the site area for its floor space calculations.*

Even though there is no specific objectives for FSR for the subject site is located in the area specific DCP, the Mascot Station Precinct DCP which contains the objectives and desired character for the redevelopment of the area. The comments made above by the applicant in the SEPP 1 Submission are consistent with objectives of the DCP, that is to establish controls that encourages good quality urban design, a high level of residential amenity and environmental sustainability.

**3. *Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?***

***This may be found if:***

- (a) The proposal meets the objectives of the development standard notwithstanding its non-compliance with the standard. In this instance one must determine the objectives of the standard and if not expressly stated in the LEP what are the inferred objectives?***
- (b) The underlying objective or purpose is not relevant to the development;***
- (c) The underlying objective or purpose would be defeated or thwarted if compliance was required with the standard;***
- (d) The development standard has been virtually abandoned or destroyed by Council's own actions.***

The Applicant claims that compliance with the maximum FSR development standard is unreasonable and unnecessary in the circumstances of the case on the following grounds:



*“The application of the development standard is unnecessary and unreasonable, in this instance, as variance from the floor space provision does not affect the potential of the site to achieve the concise and clear objectives of the standard.*

*The minor impact derived from the additional floor space is outweighed by the strategic benefits associated with the consolidation of Nos.12 and 14 Church Avenue into the subject site. The acquisition of those lands was neither necessary nor essential to the redevelopment of the larger lot. At the Council's request, the Applicant acquired those lots at above market price, to achieve the MSP planning objective for achieving zone development on all lots. The benefits of these lots not being isolated, or retained in use for industrial development, are significant, facilitating the masterplan objectives for the MSP.*

*The modified proposal demonstrates that the floor space achieved will not alter the intended development form encouraged by the controls, as is evident within the scale, height and location of similar high density mixed use development forms on nearby lands and throughout the MSP.*

*The modified proposal satisfies all other objectives of the Council's controls in relation to this site. The development provides a generous allocation of amenity space with the provision of the public reserve, and its embellishment as a public park. The scale of the development accords with the form of development envisaged for the area, reflected in the spatial arrangement of structures within the MSP, and the height of development proximate to core routes and the perimeter of the precinct.*

*The quantum of additional floor space will not be generally discernible from any external location. To reduce the floor space would, in this instance, result in a development form that is less desirable than that proposed, particularly given the favourable comments provided by the Council's DRP, acknowledging its appropriateness to the site and the MSP generally despite its additional floor space.*

*To strictly apply the standard, in the absence of any tangible impact, would be unreasonable and without basis. It is reasonable to permit the additional floor space as it will not be viewed in a manner that will affect any neighbouring amenity, the setting of the site; nor will it compromise development expectations for the site and locality.*

*To merely pursue compliance in this instance would not provide any benefit to the locality. The floor space created is a product of the spatial arrangement of built elements across the podium, and the identification of key landmark elements within the towers, to reflect the importance of the strategic importance of the site within the MSP.*

*The additional floor space will not be out of scale or character with the locality, but will complement the setting of the site from surrounding vantage points.*

*The amenity standards of the modified development, comprising generous sized accommodation; open spaces between buildings, with well-sited balconies to dwellings' private courtyards; large communal open space areas; and natural open spaces areas, supported by internal recreational facilities, are of a high standard. The scale of the development responds to the generous proportions of the site, and its location fronting an arterial road and alongside the potential linear park on the SWC reserve.*

*Any alternative scheme prepared by the applicant, such that it would remove accommodation, would not provide any additional planning benefit. As there are no identified impacts arising from the development attributable to its floor space, there would be no increase in amenity to neighbouring land that would be addressed by a reduction in its total.*

*The floor space proposed is a product of the purposeful intention to present a development form that will be visually striking at the boundary of the LGA, as viewed from the arterial road network, and also within the heart of the MSP. That it has resulted in additional floor space is a product of the design without demonstrable impact. Thus, to apply the development standard strictly would be unreasonable, in this instance, as it provides no additional planning benefit.*

*Likewise, its application in this instance would be unnecessary as it does not result in a scale of development that would undermine future planning outcomes for the MSP. The site, in excess of 2.2ha, is strategically located in a manner that enables this development form to be accommodated without undermining the urban intention for the MSP (as conveyed in the comments of the Council's DRP), and is the largest remaining site in the MSP, such that the development fill this missing piece of the MSP jigsaw in an exciting and dynamic manner, providing additional focus to the MSP from vantage points beyond its confines.*

*Thus, strict application of the development standard in this instance is both unreasonable and unnecessary, and would restrict the objects of the Act to achieve the highest and best economic development of the land."*

As discussed under point 2, the applicant has established three objectives to a floor space ratio control. These objectives are consistent with the objectives of MSP DCP. The development as proposed is considered acceptable for this site. Compliance with the FSR development standard is unnecessary and unreasonable in the circumstances of the case and refusal of the development application on this basis is not warranted.

#### ***4. Is the objection well founded?***

It is considered that the proposal is generally consistent with the underlying objectives identified in point (2) above. The SEPP 1 objection contends that compliance with the 2:1 FSR development standard is unreasonable and unnecessary in the circumstances of the case with respect of the aims and objectives of SEPP 1 and the relevant matters of consideration. The rationale and argument presented in the SEPP 1 submission is generally agreed with and it is recommended that the development standard relating to

the maximum FSR for the site as contained within Clause 12A of the Botany LEP 1995 should be varied in the circumstances to allow the development to attain a floor space ratio of 2:52:1.

In arriving at a view the objection was reasonable, it is necessary to consider the strategic implications of the floor space ratio provision with respect of recent studies and recommendations for the Mascot Station Precinct area.

The Strategic matters are as follows:-

The Mascot Station Precinct DCP was adopted in December 2001. It was prepared to guide the redevelopment of Mascot Station Precinct (which is bounded by Gardeners Road, O'Riordan Street, Coward Street and Kent Road). At the centre of this precinct is the passenger railway station, which provided the impetus for new forms of mixed development to be introduced into this locality.

The area since 2001 has seen substantially redeveloped. It should be noted that the Mascot Station Precinct has been identified as a future town centre on Page 52 of the Draft East Subregional Strategy.

Neustein Urban together with David Lock Associates and Taylor Brammer Landscape Architects were commissioned by the City of Botany Bay in February 2010 (under Planning Reform Funding from the Department of Planning) to inform the development of the City of Botany Bay's LEP 2011. The purpose of this study was to translate recommendations of the Botany Bay Planning Strategy 2031 (BBPS), prepared by SGS Economics and Planning in 2009, into LEP Standards (FSR, height and zoning) and urban design controls for five study areas within the Botany Bay Local Government Area. These five areas were identified in order to develop LEP and urban design controls that will assist the City of Botany Bay to meet its subregional targets for housing and employment. One of the areas was the Mascot Station Precinct and its surrounds.

Neustein Urban found that there are significant opportunities for redevelopment and intensification in the Mascot Station Precinct. The Precinct is situated at the gateway to Sydney's Global Economic Corridor and is well served by public transport, providing significant opportunities for Transit Oriented Development (TOD). The principles of TOD encourage the intensification of residential and employment uses around public transport interchanges in order to increase public transport use.

In recent years development around the Mascot Station has been of a high quality, high density residential/mixed use character. The Neustein Urban Study has indicated that there is further potential for redevelopment particularly given the larger lot sizes, and the large areas of common ownership that can support higher levels of consolidation. Given that the 2029 ANEF Contour Map has increased the area of land suitable for residential development within Precinct, subject to the S117 direction requiring compliance with AS 2021, Neustein Urban has recommended aligning the zoning with the ANEF 25 contour to maximise the residential use.

The Neustein Urban Study also examined the means by which the BBPS sought to provide for the housing and employment targets and subsequently determined that alternative means of reaching these targets needed to be devised. Like the BBPS, the Neustein Urban study found that the housing and employment targets will be substantially satisfied by development in the Mascot Town Centre. Development elsewhere will provide a useful addition to the number of dwellings and jobs in the Mascot Town Centre but these numbers will only ever be subsidiary to the Town Centre. The Neustein Urban Study found that in the long term, with 50% of sites

redeveloped within the Mascot Station Precinct, this will result in an employment capacity yield of 16,926 to 21,484 jobs and a dwelling capacity of 3,300 dwellings.

Neustein Urban has recommended that detailed master planning be undertaken as the DCP adopted in 2001 is out of date and does not reflect its role as a Future Town Centre. Neustein Urban recommended a FSR of 3:1 and a height of 44m (approximately 12 storeys) for the Precinct

Therefore, based on the above assessment, together with related strategic matters the SEPP 1 objection is well founded and it is recommended that the variation to the Floor Space Ratio (FSR) be supported in the circumstances of the case.

**5. *Is the granting of consent consistent with the aims of the SEPP 1 policy, namely:***

- (a) to provide flexibility in the application of planning controls operating by virtue of development standards in circumstances where strict compliance in any particular case would be unreasonable or unnecessary.***
- (b) Will strict compliance with the development standard tend to hinder the objects of the Act, namely:***
  - (i) the proper management development and conservation of natural and artificial resources, including agricultural land, natural forest, forest, minerals, water, cities, towns and villages for the purposes of promoting the social and economic welfare of the community and a better environment; and***
  - (ii) the promotion and coordination of the orderly and economic use and development of land.***

This Policy provides flexibility in the application of planning controls operating by virtue of development standards in circumstances where strict compliance with those standards would, in any particular case, be unreasonable or unnecessary or tend to hinder the attainment of the objects specified in section 5 (a) (i) and (ii) of the Act.

The Applicant in the an objection submitted pursuant to State Environmental Planning Policy No 1 - Development Standards, states as follows:

*“The objects of the Act, to ensure the economic and orderly development of the land, are not compromised by permitting the additional accommodation, to all intents, either (a) been located in a manner that (a) assists the strategic needs for the LGA; is appropriately designed given the site's context within the MSP; and (b) will not impact upon the amenity of neighbouring dwellings; and will not impact upon the character of the locality. The scale of the development dwelling is appropriate to the context of the MSP.*

*At the Council's request, the Applicant undertook to acquire the only two remaining allotments on the same side of Church Avenue for incorporation into the Subject site. The acquisition took a period of some 6 months, during which the development process for the larger lot was stalled, adding costs to the Applicant. Upon acquisition, a rate pro rata with the larger lot of some*

*45% above market price, to achieve the planning objective for consolidation desired by the Council.*

*The strategic needs of the Council were directed at the economic and orderly development of the MSP. The MSP does not allow for the redevelopment of small lots in isolation. There was every likelihood that such an outcome would have prevailed, as the larger lot could have been developed independently. By acquiring the two lots, the Applicant facilitated the inclusion of these lots into the redevelopment of the MSP. It also addressed the risk of former industrial uses remaining within the MSP, in conflict with new uses recently introduced to the locality; and also facilitated the broader intentions for compatible uses to be encouraged. There was no benefit to the Applicant by taking this course.*

*As occurred with the Rina development, where additional height and floor space was justified as an incentive to pursuing a consolidation outcome, so the same justification and outcome is warranted in this instance. The Council identified the two lots in question prior to lodgement of the application and required their consolidation. That consolidation has been at a significant cost to the Applicant.*

*The development assists the strategic needs of the MSP. The development of the site, as part of the MSP, has been identified as key location for meeting the State Government residential target for the LGA. The MSP is the only area within the LGA as being the location for meeting the target of 6500 dwellings to 2031. Whilst it is not clear whether this naturally translates to a need to revisit the 2002 projection of 1300 dwellings for the MSP, it is evident from the increased density of development currently under construction and/ or completed in the MSP has been greater than initially projected for the precinct.*

*This (it can be assumed) has resulted in an increase in the dwelling outcome for the MSP. This approach will have assisted the Council in meeting the required target in a suitable location of the LGA. The MSP is accessible to a mix of employment uses; good arterial road links; a commuter rail link between the airport and the City; and is supported by a wide range of recreational facilities in the surrounding hinterland within the LGA.*

*The subject site, with the development of both proposals, would provide 500 dwellings, comprising nearly 8% of the LGA's residential target to 2031, and nearly 40% of that originally envisaged for the whole of MSP in 2002. It is clearly a key development site, its size of 2,2ha being most unusual for the LGA, with its development being critical to the strategic success of the MSP.*

*The resultant population will provide significant investment potential to new business establishing within the area, and will support existing infrastructure such as the rail-link that is dependant upon customer patronage to remain viable and safe.*

*The supporting documentation demonstrates that the density of the development will not impact upon surrounding infrastructure, with all parking*

*demands satisfied on site; with easy and direct access to the road network; and with the provision of an enlarged public reserve to provide a park to meet the needs of existing and proposed residents.*

*The dedication, without charge, of 1,140m<sup>2</sup> of the site, about 5% of the total site area, to accommodate the proposed park, as well as the dedication of construction work associated with the embellishment of the reserve to become a usable park, should more than offset any additional demand for open space generated by residents within the development. The embellishment of the park is work identified in the existing S.94 plan, such that those resources could thereafter be directed to additional open space opportunities. Equally, the s94 rates pertinent to the development only factor in provision of that portion of the park identified by the DCP to be dedicated.*

*The achievement of additional dwellings on the site, with an appropriate level of internal amenity, and considered suitable from an external perspective to the context of the MSP, demonstrates that the site's development is economical and orderly, responding to the increased demand for residential dwellings placed upon the Council by the State Government, in a manner suitable to the Council's general planning approach for the MSP (as contained within its planning controls, and as reflected in the comments of the Council's DRP)."*

The SEPP 1 objection contends that compliance with the 2:1 FSR development standard is unreasonable and unnecessary in the circumstances of the case with reference to the objectives of SEPP 1 and floor space controls. The aims of MSP DCP are to establish controls that encourage good quality urban design, and high level of residential amenity and environmental sustainability. In addition to this the DCP aims to ensure that development does not unduly prejudice the future planning and development of the surrounding employment area to the west of the precinct. It is considered the proposed development has addressed the aims of the DCP and that it has considered the potential redevelopment of the locality.

Furthermore the proposed exceedance in FSR of any proposed development on this site is not inconsistent with the adjoining developments approved surrounding Church Avenue in terms of height, and scale. It would be considered inappropriate for development on this particular site to be held to strict compliance with this FSR standard, as it would not complement the surrounding development. In addition the proposed development includes the dedication of a public park, which will contribute to the amenity of the area.

The proposal represents a high quality orderly and economic use and development of the subject land that will achieve an appropriate development of the site in accordance with the current and envisaged redevelopment of the Mascot Station Precinct. In this regard, variation of the development standard is necessary in order to attain the objectives specified in Section 5 (a) (i) and (ii) of the Act.

- (a) *Whether or not non-compliance with the development standard raises any matter of significance for State or Regional environmental planning;*
- (b) *The public benefit of maintaining the planning controls adopted by the environmental planning instrument.*

Where Council is to support a departure in FSR, Council is to ensure that the departure from the standard will raise no matters that will have State or Regional significance. The SEPP 1 addresses questions as follows:-

*“The strategic needs of the Council were directed at the economic and orderly development of the MSP. The MSP does not allow for the redevelopment of small lots in isolation. There was every likelihood that such an outcome would have prevailed, as the larger lot could have been developed independently. By acquiring the two lots, the Applicant facilitated the inclusion of these lots into the redevelopment of the MSP. It also addressed the risk of former industrial uses remaining within the MSP, in conflict with new uses recently introduced to the locality; and also facilitated the broader intentions for compatible uses to be encouraged. There was no benefit to the Applicant by taking this course.*

*As occurred with the Rina development, where additional height and floor space was justified as an incentive to pursuing a consolidation outcome, so the same justification and outcome is warranted in this instance. The Council identified the two lots in question prior to lodgement of the application and required their consolidation. That consolidation has been at a significant cost to the Applicant.*

*The development assists the strategic needs of the MSP. The development of the site, as part of the MSP, has been identified as key location for meeting the State Government residential target for the LGA. The MSP is the only area within the LGA as being the location for meeting the target of 6500 dwellings to 2031. Whilst it is not clear whether this naturally translates to a need to revisit the 2002 projection of 1300 dwellings for the MSP, it is evident from the increased density of development currently under construction and/ or completed in the MSP has been greater than initially projected for the precinct.*

*This (it can be assumed) has resulted in an increase in the dwelling outcome for the MSP. This approach will have assisted the Council in meeting the required target in a suitable location of the LGA. The MSP is accessible to a mix of employment uses; good arterial road links; a commuter rail link between the airport and the City; and is supported by a wide range of recreational facilities in the surrounding hinterland within the LGA.*

*The subject site, with the development of both proposals, would provide 500 dwellings, comprising nearly 8% of the LGA's residential target to 2031, and nearly 40% of that originally envisaged for the whole of MSP in 2002. It is clearly a key development site, its size of 2,2ha being most unusual for the LGA, with its development being critical to the strategic success of the MSP.*

*The resultant population will provide significant investment potential to new business establishing within the area, and will support existing infrastructure such as the rail-link that is dependant upon customer patronage to remain viable and safe.*

*The supporting documentation demonstrates that the density of the development will not impact upon surrounding infrastructure, with all parking demands satisfied on site; with easy and direct access to the road network; and with the provision of an enlarged public reserve to provide a park to meet the needs of existing and proposed residents."*

Based on the above, and which is not disputed, the departure from the FSR will provide a public benefit being public open space provision and road widening construction, (construction and dedication in both circumstances). It should be noted and as previously indicated, the *LEP Standards and Design Study* dated October 2010 and prepared for Council by Neustein Urban, recommends for this site to be zoned B4, to have a maximum floor space ratio of 3:1 and a height control of 44 metres.

The Neustein Urban Study has indicated that there is further potential for redevelopment particularly given the larger lot sizes, and the large areas of common ownership that can support higher levels of consolidation. The attainment of a FSR of 3:1 and a height of 44 metres will be based on whether or not the proposed development demonstrates a high quality of urban design in all elements of the built environment and public domain. Neustein Urban has recommended that detailed master planning be undertaken as the DCP adopted in 2001 is out of date and does not reflect its role as a Future Town Centre. This work is currently underway.

The proposed development seeks an FSR 2.52:1 and a height varying between 6 storeys to 13 storeys. The proposed design of the development has been supported by the Design Review Panel, and the proposed development is consistent with the LEP Standards and Design Study.

Accordingly, it is considered that the development standard relating to the maximum FSR development for the site as contained within Clause 12A of the Botany LEP, should be varied in the circumstances to allow the development to attain a floor space ratio of 2.52:1.

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

In accordance with the requirements of the SEPP, a BASIX Certificate has been submitted for each building pursuant to the provisions of the State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004.

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

The site was last used for the storage of alcoholic products and industry. A Remedial Action Plan (RAP) was then prepared by Environmental Investigations in July 2010 and remediation works have commenced on site in accordance with this RAP pursuant to Development Consent No. 10/345 (the demolition consent). A condition was imposed on this consent that the site is to be remediated to ensure that the site is



suitable to accommodate the future residential use of the land along with recreational open space use for the future public park. A Validation Report prepared by a suitably qualified contamination consultant will be required to be submitted to Council within 6 months of completion of remediation and site audit statement.

The revised application has been accompanied by a further contamination report that details the extent of contamination on the land to be dedicated to Council for a public park. This was initially included in previous report, however was not assessed against specific criteria for the use of land for recreational purposes that is different criteria for residential use without direct contact with soil. The report concludes that the land does not contain contaminants exceeding health based criteria for recreational land with direct soil contact. The Applicant has submitted a letter from the Site Auditor dated 21 July 2011 stating that the land can be made suitable for residential and recreational purposes; however, Council has not received a final site audit statement, and as such it is recommended that a “Deferred Commencement “ consent be issued against the two development applications.

Clause 7 of State Environmental Planning Policy 55 requires Council to be certain that the site is or can be made suitable for its intended use at the time of determination of an application. Therefore it is considered that the applicant Atlas Constructions Group Pty Ltd has adequately demonstrated that the site can be made suitable to accommodate the intended use and it satisfies the provisions of SEPP No. 55.

In addition to this appropriate conditions have been imposed on the operational consent issued that the land to be dedicated to Council for a public park is included in the Site Validation Report required under Development Consent No.10/325, and furnished to Council prior to any Occupation Certificate for either stage of development and prior to dedication to Council. The standard of remediation for land dedication for park purposes is recreational.

#### **6.1.5 State Environmental Planning Policy (SEPP) No. 65 – Design Quality of Residential Flat Buildings**

State Environmental Planning Policy No. 65 aims to improve the design quality of residential flat development in New South Wales. *Part 1, Clause 2, Sub-clause 3* of the SEPP stipulates the aims through which the policy seeks to improve the design quality of residential flat development:

*(a) to ensure that it contributes to the sustainable development of New South Wales:*

*(i) by providing sustainable housing in social and environmental terms, and*

*(ii) by being a long-term asset to its neighbourhood, and*

*(iii) by achieving the urban planning policies for its regional and local contexts, and*

*(b) to achieve better built form and aesthetics of buildings and of the streetscapes and the public spaces they define, and*

*(c) to better satisfy the increasing demand, the changing social and demographic profile of the community, and the needs of the widest range of people from childhood to old age, including those with disabilities, and*

- (d) to maximise amenity, safety and security for the benefit of its occupants and the wider community, and*
- (e) to minimise the consumption of energy from non-renewable resources, to conserve the environment and to reduce greenhouse gas emissions.*

The provisions of SEPP No. 65 have been considered in the assessment of the development applications. The applicant has submitted a SEPP 65 assessment of the proposed development along with a design verification statement prepared by Turner & Associates Architects, dated 15 April 2011, to verify that the plans submitted were drawn by a Registered Architect and achieve the design quality principles set out in Part 2 of SEPP No. 65.

Council's Design Review Panel has considered the proposed development prior to the lodgment of the application on two occasions, in 5 May 2010 as a pre-DA and 14 March 2011 as an amended DA. The current plans which are the subject of this assessment have addressed the concerns raised by the Design Review Panel through reduction of FSR from 2.7:1 down to 2.52:1, along with other significant design changes to accommodate the concerns of the nearby residents.

In performing a detailed assessment, it is considered that the proposed development is consistent with the aims and objectives of the policy as the proposal responds to the urban context in terms of scale, bulk, materials, setbacks, security and amenity.

The ten design principles are addressed as follows:

#### **Principle 1: Context**

The site falls within the Mascot Station Precinct that has been identified for significant re-development in accordance with the Mascot Station Precinct Development Control Plan (DCP 30).

The surrounding built form context consists of mixed residential and commercial development of similar height and density to that of the subject proposal. Recently constructed mixed use developments range from 6 to 13 storey heights with podium level commercial premises upon which is erected residential towers. Effectively, the proposal will occupy the currently vacant land with a built form that is more contextually appropriate, adding to the active and appropriate setting for the site with the establishment and dedication of a public reserve in accordance with the requirements of the DCP. On this basis, it is considered that the proposed use of the subject site for the purposes of a mixed development is consistent with its context.

#### **Principle 2: Scale**

The scale of the proposed development is similar to several of the approved mixed developments located in close proximity to the site, particularly on Bourke Street, Church Avenue and Coward Street (some of these are yet to be constructed or are under construction). Recently constructed mixed use developments range from 6 to 13 storey heights with podium level commercial premises upon which is erected residential towers. Adjoining the subject site to the west is the mixed use development known as 635 Gardeners Road and 18-26 Church Avenue, consisting of 6 storey buildings.

To the east of the site beyond the adjoining Sydney Water drainage reserve is the "Sublime" development located at the corner of Gardeners Road and O'Riordan Street. It is a mixed development comprising of two buildings 6-7 storeys high. Its separation

from the eastern portion of the proposed development is approximately 30 metres and this provides an adequate buffer to reduce overshadowing impact.

To the south, the Rina complex at 3-9 Church Avenue comprises of three separate towers to 8 storeys in height. It is located approximately 36 metres from the face of Building G, which is the southern most building on the development site.

Council's Design Review Panel has considered the proposed development that is now before the Panel prior to the lodgment of the application and provided the following comment in relation to scale:

*“the bulk and height of the amended building envelopes are generally appropriate for the scale of the streets and adjoining and surrounding development”.*

The Architect has redistributed the taller buildings (buildings D and G to the east of the site to minimise the impact on development to the south in relation to overshadowing and view loss.

The Architectural Statement that accompanied the amended plans states that the scale of buildings has been addressed through massing and façade detail and by incorporating architectural elements that are commensurate to the scale of the overall development, taking into consideration the size of the land and its surrounding context. The particular location of façade elements assists in understanding the height in relation to the public domain (where the audience of the building are located). In this regard, the height of the tallest components of the building are along the Sydney Water drainage easement land to the east and this is positioned an appropriate distance from the foreseeable public domain areas of Church Avenue, Gardeners Road and the proposed public park.

The height and scale as perceived from Church Ave is appropriate for this particular part of the site as it relates to the proposed public park. The 9 storey component of Building G is at Church Ave has a height of 6 storeys, then in the return plan rises to 9 storeys and then rises again to 12 storeys 3-9 Church Avenue, with the 12 storey component being further setback. The scale of the building to Church Avenue is articulated at various angles and this assists pedestrian in relating to the building.

### **Principle 3: Built Form**

The development form will comprise of a defined podium element from Church Avenue through to Gardeners Road accommodating the ground floor commercial spaces. Above podium level will be seven (7) distinct tower buildings ranging in height from 6 storeys to 13 storeys vertically above. The podium and tower elements have been shaped and positioned to provide internal separation between apartments and adjoining buildings.

Buildings A, B, C, E & F stand east/west and Buildings D and G stand along the eastern boundary with Building G then turning to stand east/west along part of the frontage to Church Avenue. The site will be embellished with communal landscaped areas between each building accessible at the ground floor level.

The buildings are delineated in scale providing modulated surfaces and forms that give articulation and comprise a built form that is described as a contemporary painted masonry style with external elements providing visual interest. The overall built form is compatible with the adjacent mixed developments and the emerging character of the area as it undergoes redevelopment. The proposed modern architectural form will contribute to the public domain.

**Principle 4: Density**

Council's Design Review Panel has considered the proposed development prior to the lodgment of the application. The Design Review Panel sought amendments, notably a reduction in floor space ratio of 2.7:1. The current plans that are the subject of this assessment have addressed the concerns raised by the Design Review Panel through reduction of FSR from 2.7:1 to 2.52:1.

The Applicant has been required to consolidate the subject three allotments to facilitate the mixed use development of the land. This is a requirement of Councils Mascot Station Precinct DCP (DCP 30). As such, the proposed development exceeds the permissible FSR by 11,717sqm, represented as 2.52:1. A total of 500 apartments are now proposed, being a reduction from 515 apartments initially proposed. This will comprise of 161 studio apartments, 17 x 1 bedroom apartment, 304 x 2 bedroom apartments, and 18 x 3 bedroom apartments. The number of units provided within the building is appropriate given that sufficient landscaping, car parking, private open space, appropriate internal layouts, and setbacks are integrated into the design.

**Principle 5: Resource, energy and water efficiency.**

The location, orientation and design of the development provides for adequate solar access and cross ventilation to the majority of apartments in accordance with SEPP 65. The Residential Flat Design Code (RFDC) recommends that at least 60% of the proposed units shall achieve flow through ventilation with the proposal indicating 62.6% of proposed units able to achieve cross flow ventilation. The applicant has confirmed that all habitable spaces are adequately ventilated.

The RFDC recommends that at least 70% of all proposed units and balconies shall achieve 2 hours of direct sunlight during the period 9.00am and 3.00pm at mid-winter in dense urban areas. The proposal indicates that 65% of proposed units will receive at least 2 hours sunlight during mid-winter to balconies. This is considered acceptable given that the development can meet the requirements of BASIX.

It is noted that all units within the development are designed with open layouts and private balconies. BASIX Certificates have been submitted with the applications that demonstrate the development is capable of meeting thermal, energy, and water efficiency targets. Further, rainwater tanks will be constructed for the retention of stormwater to be re-used for irrigation of communal landscape areas and car wash bays.

**Principle 6: Landscape**

There are three distinct types of landscape open space provided to the development. This includes private open space balconies, communal open space courtyards on title at podium level and deep soil zones at the sites perimeter. A landscape plan has been submitted with the applications which demonstrates that a quality landscaped setting for the proposed development will provide a significant level of amenity for future occupants and the adjoining properties, with street planting to enhance the streetscape.

The public domain is to be enhanced permanently with the establishment of a new public park fronting Church Avenue. This is a requirement of the Mascot Station Precinct DCP (DCP 30). The area of land to be dedicated is in excess of that required by the DCP. This will be dedicated in addition to land proposed to be dedicated for road widening of Church Avenue and other significant public domain works including the replacement of street trees and footpaths to both street frontages.

Council's Landscape Officer has reviewed the proposal and provided conditions requiring additional planting on the site. The proposed plantings consist of native species and varying sizes to provide visual interest to enhance the setting of the site. The proposed landscape planting is commensurate with the building size and bulk; hence it is considered that the proposal is consistent with this design quality principle.

**Principle 7: Amenity**

All units within the building achieve a satisfactory level of amenity with regards to privacy, ventilation, and access to sunlight. The proposed design provides high levels of internal amenity to future residents, with the units ranging in size and number of bedrooms. The room dimensions and layouts are appropriate for residential use and the maximum separation distance possible for the site has been achieved for visual outlook and privacy.

Private recreational areas are provided in the form of balconies off the living areas and are supplemented by communal landscaped areas to ensure an overall quality of living for future occupants. Approximately 42% of the development site shall be provided with communal open space areas (which excludes land required for road widening and public reserve dedication).

The proposal complies with disability access requirements and incorporates sufficient service areas as required. It is considered that the development satisfies the provisions with respect to layout and amenity, and therefore the development is consistent with this principle.

**Principle 8: Safety and Security**

The development provides for safe direct pedestrian access from Church Avenue and Gardeners Road. Casual surveillance to the public domain area fronting Church Avenue is available from the street and from apartments surrounding the development both at this site and to the east and south. Pedestrian and vehicular entries are clearly separated and well defined with active street frontages incorporating retail/commercial uses to Gardeners Road and Church Avenue. Safe internal access is available from the basement car park directly into the building and the public/private domain is clearly distinguished. The proposal satisfies the requirements of Crime Prevention Through Environmental Design (CPTED) as assessed by NSW Police (Mascot Local Area Command), and conditions have been provided in this regard.

**Principle 9: Social Dimensions**

The development provides a range of apartment style accommodation that is located within close proximity to public transport, recreation facilities, and shopping facilities. The subject site is located in an area identified for higher density mixed development. The applicant proposes a moderate mix of unit types, both in terms of layout and number of bedrooms that are likely to provide an appropriate style of dwelling for a variety of demographics. On this basis, the proposed development is considered to contribute to the social mix of the locality and provide housing that will enhance and provide for the local population.

**Principle 10: Aesthetics**

Aesthetically and functionally, the development proposes quality internal and external design, having regard to built form, landscaping, setbacks, internal layouts and provision of underground parking. Particular emphasis has been placed on external appearance to enhance the streetscape and create visual interest in the architecture of the building for all elevations, along with a selection of appropriate finishes. The

contemporary design of the building is compatible with the design and scale of the urban form for the Mascot Station Precinct. It is considered that the proposed painted precast panels masonry, brickwork, glazed finishes, and articulation contribute to the overall contemporary style. Therefore the proposed development is considered to be consistent with this design quality principle.

The proposal is thus considered satisfactory in addressing the matters for consideration and is consistent with the aims and objectives of the SEPP. The proposed development satisfies with the ten design principles that provide a basis for evaluation of residential buildings within the SEPP.

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

The proposed development falls within the provisions of Schedule 3 of the SEPP – Traffic Generating Development that is required to be referred to the NSW RTA. The application was accompanied by a Traffic Impact Assessment Report prepared by Traffix Traffic & Transport Planners, Ref No. 11 059v4 dated 15 April 2011.

Plans and documentation were referred to the RTA's Sydney Regional Development Advisory Committee (SRDAC) for consideration and comment. In a letter dated 24 May 2011, the SRDAC provided its concurrence and conditions/comments in relation to the application.

Council also engaged an external Traffic Consultant to assess the amended development. In a report dated 18 May 2011, Transport and Traffic Planning Associates stated to Council they were satisfied with the amended development in terms of traffic, access, loading and unloading, car parking and pedestrian safety.

#### **6.1.7 Botany Local Environmental Plan (LEP) 1995**

##### *Clause 10 – Zoning*

The subject site is zoned 10(a) – Mixed Uses Commercial/Residential in accordance with clause 10 of the LEP. The proposed development, being for commercial premises and residential flats, is permissible in the 10(a) zone with the appropriate consent of Council. 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.*

It is considered that the proposed development, being for a mixture of residential and commercial activities is not inconsistent with this primary objective.

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.*

It is considered that the proposed development is consistent with these secondary objectives. The proposal incorporates a mixed-use commercial/residential development and is considered to be suitable so as not to adversely impact on the amenity of residents within the area.

The design of the proposal contributes positively to the streetscape and public domain through a design incorporating appropriate massing, built form and landscaping to the street frontages and site boundaries. The development has been designed to achieve comply with BASIXs and will incorporate a number of energy conservation measures and suitable stormwater management. The location of the site is such that it is also easily accessed via road, rail and bus transport links. As stated previously the Mascot Station Precinct is well served by public transport providing significant support for Transit Oriented Development (TOD).

*Clause 12A – Floor space ratios – Mascot Station Precinct*

The requirements of Clause 12A have been considered in the assessment of the development application. The maximum FSR permitted for the subject site is 2:1. The development is proposed with an FSR of 2.52:1. The applicant has submitted a SEPP 1 Objection, as discussed earlier in the report, which demonstrates that the development standard is unreasonable and unnecessary in the circumstances of this case and it is recommended that this Objection be supported.

*Clause 13 & 13A – Aircraft Noise / Noise and Vibration*

The site is located within the 20-25 contour on the Aircraft Noise Exposure Forecast (ANEF) chart, and is located along Gardeners Road which is identified by the Roads and Traffic Authority (RTA) as a classified road. As such, Clause 13 and 13A of the LEP have been considered in the assessment of the Development Application.

A Noise Impact Assessment Report submitted by the Applicant and prepared by Acoustic Logic Consultancy, dated 29 March 2011, and has been submitted with the application. Council's Health and Environmental Services Department has confirmed that compliance with the aircraft noise requirements contained in AS2021-2000, and the relevant acoustic requirements for traffic noise, can be achieved with the installation of acoustic treatment devices within the development as detailed in the report. Compliance with the measures contained in the Noise Impact Assessment Report together with AS 2021-2000 will be required as conditions of the development consent.

Council also engaged an Acoustic Specialist to review the Noise Impact Assessment Report submitted with the application. In a report dated 19 July 2011, Council's Acoustic Consultant, The Acoustic Group advised that Acoustic Logic require to amend the Report to address the correct level for internal traffic and aircraft noise as prescribed by AS 3671-1989 for Traffic Noise and AS 2021-2000 for aircraft noise. In letter dated 19 July 2011, the Applicant has agreed that the development be condition to reflect the recommendations made by Council's Consultant. A condition has been imposed in the recommendation that the development comply with AS2021-2000 and AS3671-1989

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

The subject site lies within an area defined in the schedules of the Civil Aviation (Buildings Control) Regulations that limit the height of structures to 50 feet (15.24 metres) above existing ground height without prior approval of the Civil Aviation

Safety Authority. The application proposed buildings to this maximum height and was therefore referred to Sydney Airports Corporation Limited (SACL) for consideration. SACL raised no objections to the proposed maximum height of 51 metres AHD, subject to conditions to be imposed on any consent.

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

Clause 18A requires Council not to grant consent to the carrying out of any development on land in Zone 10(a) 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 provides 914 off-street parking spaces in accordance with the Mascot Station Precinct DCP requirements and this is considered adequate to cater for the proposed development.

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

The design of the car park is such that appropriate Australian Standards are met and all vehicles can enter and exit the site in a forward direction. Vehicle access to the site is proposed via a deceleration lane from Gardeners Road and from Church Avenue and this is considered to be the most suitable locations for vehicular access to and from the development. The Traffic Impact Assessment prepared by Traffix – Traffic & Transport Planners dated 15 April 2011 has concluded that the provision for servicing, including loading/unloading is satisfactory for the nature of the development.

- (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;*

The waste storage areas for the development are within the basement car park area and are therefore away from public view. All waste collection vehicles will be required to enter onto common property to collect waste from the designated waste storage rooms. The basement has been designed to accommodate service vehicles. Plant associated with the functioning of the building has been designed to be contained in the basement car park.

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

The Traffic Impact Assessment prepared by the Applicant's Consultant, Traffix – Traffic and Transport Planners dated 15 April 2011 has been submitted to accompany the development applications and this concludes that the traffic generation resultant from the development is not considered to have a significant impact on the surrounding road network, and the provision for servicing, and loading/unloading are satisfactory for the nature of the development. Council has engaged a traffic consultant to undertake an independent review of the submitted Traffix and Transport Planners Report. This is discussed further in this report, but it generally supports the proposed development subject to the submission of a Loading Dock Management Plan as a condition on any consent issued.

- (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.*

As discussed above, traffic movements and waste storage associated with the development are considered acceptable and given the essentially residential nature of



the proposed development, it is unlikely to result in significant adverse impact as to pollutant discharge, other emissions or hours of operation.

- (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.*

It is considered that the essential residential nature of the proposed development will ensure that there are no adverse impacts in the locality with respect of noise generation.

- (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 landscape plan has been submitted with the applications demonstrating that a distinctive landscape setting for the proposed development will provide a high level of amenity for future occupants and adjoining properties, with street planting to enhance the streetscape. Council's Landscape Architect has reviewed the proposal and provided conditions requiring additional planting on the site to further enhance the streetscape. A separate Development Application will be required for the public works including street tree replacement and establishment of the public park fronting Church Avenue and dedication of land.

- (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 scale of the proposed development is similar to several of the mixed developments located in close proximity to the site, particularly along Coward Street and Church Avenue. It is considered that the proposal will complement the future character of the locality and is specifically designed to have a strong link to the Mascot Station Precinct.

- (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.*

A Wind Environment Statement prepared by Windtech Consultants dated 23 March 2011 and further amended on 20 July 2011 has been submitted to demonstrate that the development in its amended form will not result in adverse impact on the amenity of the locality with respect of wind generation.

Shadow diagrams have been submitted with the application that demonstrate overshadowing arising from the development is not considered to result in an adverse impact to the immediate locality or on adjoining land or buildings.

A detailed finishes schedule has been provided to accompany the development application and this is considered to offer an acceptable result with respect of the amenity of the locality and reflection.

The Applicant's Acoustic Consultant, Acoustic Logic in a report dated 19 July 2011 reviewed the potential of noise reflection from aircraft and traffic from the amended development and it was found that the amended development will not increase noise reflection onto the adjoining development from either aircraft or traffic. The buildings have been designed with articulation, and in keeping with the adjoining development, which reduces any reflection that could possibly occur.

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

The development, being essentially for residential purposes has been designed to ensure an adequate level of visual and acoustic privacy both within and beyond the site.

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

As stated above, remediation works have commenced on site in accordance with the conditions of Development Consent No. 10/345(for building demolition) and the submitted Remedial Action Plan (RAP). The Applicant is required to provide Council with a Validation Report within 6 months of completion of the works.

This Development Application has been accompanied by a further report on soil samples for the proposed public park area. This is due to the specific criterion that applies to areas where direct contact with the soil is likely to occur such as children's play pits etc. Council's Environmental Scientist has reviewed the documentation and raised no objection to the proposed development with respect of contamination and remediation, however as Council has not received a Site Audit Statement, a "deferred commencement" consent will be issued. The operational consent is subject to the submission of this document.

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

Clause 22 of the LEP and the requirements of Council's Development Control Plan for Energy Efficiency have been considered in the assessment of the development application.

BASIX Certificates and associated thermal comfort certificates dated April 2011 have been submitted with the application indicating that the proposal meets the water saving target of 40%, energy saving target of 20%, and the thermal comfort requirements of the SEPP (BASIX) 2004. As such, the proposal is considered to adequately address the requirements of this clause.

*Clause 28 – Excavation and filling of land*

Clause 28 of the LEP has been considered in the assessment of the development applications as the site seeks consent for excavation to a depth of approximately 3.95 metres AHD.

As the development involves works to the basement level that may (during construction) transect the watertable, the proposal was referred to the NSW Office of Water as Integrated Development in accordance with the *Water Management Act 2000*. The NSW Office of Water issued their General Terms of Approval on 19 July 2011. Appropriate conditions, including the General Terms of Approval, are proposed on the consent to ensure that the excavation involved in the development will not detrimentally impact upon drainage patterns, soil stability or the development of adjoining sites in the locality to ensure compliance with clause 28.

*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 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 below 2 metres AHD require the submission of an acid sulfate soils management plan.

The Development Applications have been accompanied by an amended statement prepared by Environmental Investigations and dated 19 July 2011 that states:

*“The Botany Bay Acid Sulfate Soil Risk Map (1:25,000 scale; Murphy, 1997), was supplied by the Sydney South Coast, Geographical Information Systems Unit of the NSW Department of Land and Water Conservation. Review of this map, in conjunction with the Guidelines for the Use of Acid Sulfate Soil Risk Maps (Naylor et al., 1998), indicated that the above site lies within the Class Description of No Known Occurrence. Areas classified as No Known Occurrence are those for which ASSs are not known or expected to occur and “land management activities are not likely to be affected by ASS materials”.*

*Furthermore subsurface drilling and soil sampling during previous investigations demonstrated none of the field indicators for actual or potential ASSs.*

*It was considered that the potential for generation of ASS conditions within the site is low, and that the preparation of an ASS management plan is considered unwarranted.”*

The development does not involve excavation below 2 levels at 3.95 metres AHD.

*Clause 38 – Water, wastewater and stormwater systems*

The provisions of clause 38 have been considered in the assessment of the development application. Council must not grant consent to the carrying out of development as follows;

- (i) *on land or subdivision of land to which this plan applies for the purpose of a habitable building unless it is satisfied that adequate water and sewerage services will be available to the land it is proposed to develop;*
- (ii) *on land or subdivision of land to which this plan applies for the purpose of a habitable building unless it is satisfied that adequate provision has been made for the disposal of stormwater from the land it is proposed to develop.*

The applications were referred to Sydney Water with regard to water supply and wastewater. In a letter dated 30 September 2010, Sydney Water raised no objection to the proposed development, subject to conditions one of which is the upgrade the water and waste mains.

Concept stormwater plans were submitted with the application, which have been reviewed by Council’s Development Engineer. Council’s Engineer has provided conditions of consent with regard to the provision of stormwater drainage for the development.

#### **6.1.8 Mascot Station Precinct Development Control Plan (DCP)**

##### **Background**

The Mascot Station Precinct DCP was originally adopted by Council on 19 December 2001 and became effective on 2 July 2002. It was amended in June 2004.

In 2005 a review of the Mascot Station Precinct DCP was undertaken by Sutherland Koshy on behalf of Council. It was completed in May 2005. The Review Report was prepared for City of Botany Bay with the following objectives:

1. To conduct a desktop review of the Mascot Station Precinct DCP and the Public Domain Manual (PDM) documents.
2. To workshop the issues with Council staff.

3. To identify the shortcomings in the Development Control Plan (DCP) and the Public Domain Manual (PDM).
4. To prepare design schemes for 6 nominated sites in the precinct, based on current DCP controls, illustrating the possible outcome of the current controls, and to recommend changes to the DCP and the PDM.
5. To explore the relationship between the precinct and its surrounds, and recommend strategies for change.
6. To prepare a review report recommending amendments to the DCP and the PDM, and any other related instruments.

The review recommended a number of changes to the DCP, including that new maximum floor areas be calculated for all sites in the Precinct and be included in the DCP to reflect desired outcomes for different sites.

However, Section 74C(2) of the EP&A Act requires that only one DCP made by the relevant planning authority may apply in respect of the same land (ie: one DCP per site). If this provision is not complied with, then all DCP's that apply to the same land will be rendered invalid. This provision took effect from 30 September 2005, and so any subsequent DCP that does not comply with this provision will have no effect. Therefore the recommendations of the review could not be implemented through an amendment to the Mascot Station Precinct DCP.

On 19 July 2006, Council resolved to commence preparation of a (draft) comprehensive Local Environmental Plan and to notify the Department of Planning (DoP) of its intentions to do so. In response the DoP notified Council by letter dated 24 November 2006 that it may proceed with the preparation of the draft Botany Bay Local Environmental Plan 2011 (draft BBLEP 2011). The Department has placed Council on a priority list for the preparation of the new comprehensive LEP. Council is required to submit the Draft BBLEP 2011 to the Department of Planning for gazettal under Section 68 of the EP&A Act 1979 by December 2011.

One of the requirements from the DoPI was the preparation of a Planning Strategy. Council subsequently appointed SGS Economics and Planning to carry out the Botany Bay Planning Strategy 2031 which was completed on 13 March 2009. One of the recommendations of the Strategy is Action 5.3.1 Develop a retail core and town centre around the Mascot Station. The Strategy recommended a FSR of 3:1 as well as a reduction of parking rates to lower costs for commercial development; facilitate podium and shared parking arrangements.

The draft East Subregional Strategy indicates that the City of Botany Bay has a dwelling target of 6,500 new dwellings for the period 2001-2031. With respect to the housing target the Strategy indicates that it is only practical to include a target of 3800 new dwellings in the pending LEP review (Council's Comprehensive LEP) with the remaining to be assessed at the time of the next LEP review. The Strategy concludes that to realise the State Government target it will be necessary to restructure strata subdivision, improve public transport to the centres within the LGA and improve public domain.

Neustein Urban together with David Lock Associates and Taylor Brammer Landscape Architects were subsequently commissioned by the City of Botany Bay under Planning Reform Funding from the Department of Planning to translate recommendations of the

Botany Bay Planning Strategy 2031, prepared by SGS Economics and Planning in 2009, into LEP Standards (FSR, height and zone) and urban design controls for five study areas within the Botany Bay Local Government Area which were identified by Council with the aim to develop LEP and urban design controls that will assist the City of Botany Bay to meet its subregional targets for housing and employment.

The Neustein Urban Study examined the means by which the BBPS sought to provide for the housing and employment targets. Like the BBPS, the Neustein Urban Study found that the housing and employment targets will be substantially satisfied by development in the Mascot Town Centre. Development elsewhere will provide a useful addition to the number of dwellings and jobs in the Mascot Town Centre but these numbers will only ever be subsidiary to the Mascot Town Centre. The Neustein Urban study recommended a FSR of 3:1 and a height of 44 metres (approximately 44 metres).

However, an increase in the residential and employment capacity of the Mascot Station Town Centre Precinct (west) will only be possible if traffic and transport issues are resolved. The Neustein Urban Study therefore recommended the next step in the LEP and DCP making process be a Transport Management and Accessibility Plan (TMAP); and the preparation of a Master Plan and a Public Realm Plan of the Precinct, to identify suitable provision for open space, an appropriate pedestrian network, lively and creative open spaces and streets. Both of these studies are underway.

It is acknowledged that the DA does not comply with the provisions of the DCP. The DCP is in need of review and revision and hence the work done to date by Council under the Botany Bay Planning Strategy and the LEP Standards & Urban Design Study. Both studies recommended higher FSRs given that the public transport system being the New Southern Railway that runs under the Precinct and the location of the Mascot Station entrance in the centre of the Precinct.

The current DCP requirements require lot consolidation (Control C4), land dedication in terms of road widening (Control C39) and open space (Control C42) for this site. Council also requires the construction/embellishment of the road widening and the public open space as conditions of consent for development within the Precinct. The DA complies with these controls (as well as Council's policy on road & open space construction/embellishment) which have a great public benefit to the overall Precinct.

The location of the public open space does not comply with the DCP – the DCP requires that the public open space be provided adjacent to “Linear Park” along Church Avenue. The DA indicates the park's location at the western side of the site fronting Church Avenue. The concept of “Linear Park” is under review by Council. “Linear Park” is the Sydney Water land containing the Southern Sewer Outfall. At the time of writing the DCP in 2001 it was envisaged that Sydney Water would allow the use of their land as a major open space area for the Precinct; with the existing size being increased by the purchase/dedication of land in the locality. The subject site under Control C42 was to dedicate an area of approximately 1,140m<sup>2</sup> fronting Church Avenue adjacent to the Sydney Water land.

Council has been advised that the use of the Sydney Water land, as parkland is unlikely given the fragile state of the Southern Sewer Outfall and the extensive works that will be carried out by Sydney Water to duplicate the pipeline. Therefore the

reference to “Linear Park” in the Council’s comprehensive DCP under preparation will in all likelihood be deleted and additional public open space planned for in the western part of the Mascot Town Centre Precinct

Groundwater is a major issue within the Precinct. The original DCP adopted in 2001 indicated that basement parking was possible but that the following factors create a number of redevelopment constraints:

- *The required stormwater drainage and absorption may be difficult to achieve.*
- *Basement parking may be difficult to implement due to the location of the water table on any particular site.*
- *Waterproof membranes may be required for any basement parking areas to prevent seepage into these structures due to groundwater movements over time.*
- *There is a high possibility that groundwater may be exposed during building excavations, particularly after high rainfall events, which may necessitate dewatering of the site.*
- *Checks of water quality may be necessary to determine whether the ground waters at each site are contaminated or not.*
- *There is the potential for structural damage to buildings, and geotechnical and flooding issues associated with rising water tables. There may also be groundwater issues related to the importation of fill. This fill may be required to raise ground levels to achieve desired gradients for stormwater drainage.*

The 2004 amendment to the DCP included advice from the then Department of Infrastructure, Planning and Natural Resources that the Department will not permit permanent de-watering for a development because it does not consider permanent de-watering to be in accordance with the principles of Ecologically Sustainable Development (ESD). The Department further advised that before proceeding with any temporary dewatering on the site, the legal occupier/owner of the site must apply for and obtain a bore licence under the provisions of the Water Management Act (2000). If a technical consultant is retained to assist with the development by the legal occupier/owner of the subject land then the consultant may apply for the licence on behalf of the owner. The Department, in principle, may approve temporary dewatering on the development site during construction. However, this will require that the final design of basement areas be 'waterproofed' or 'fully tanked' to prevent ingress of groundwater. Such preventative design precludes the need for permanent dewatering systems and complies with the aforementioned ESD principles.

This has increased the costs of development in the Precinct, a consideration which was not taken into account by Council when setting the 2001 FSRs. The DA seeks to construct two levels of basement car parking in the ground. This has added to the costs of the development and impacts on the viability of the development.

Control C25 – Minimum Apartment Sizes requires developments containing apartments within a development shall achieve the following minimum apartment sizes:

*Studio - 60 sqm*

- 1 bedroom - 75 sqm*  
*2 bedrooms - 100 sqm*  
*3 bedrooms - 130 sqm*

It should be noted that Clause 30A of SEPP 65 (Design Quality of Residential Flat Development) applies and prevails over the minimum unit size requirements contained in the above control.

Control C58 Residential Car parking Requirements requires the following minimum residential parking requirements:

Studio or 1-bedroom apartments – 1 space.

2 or more bedroom apartments – 2 spaces.

Visitor parking - 1 car space per seven (7) dwellings – consideration will be given to a reduction in visitor parking for developments containing greater than a total of 55 dwellings.

Compliance with these two (2) controls increases the floor area. With respect to apartment sizes, compliance with the Council's minimum unit sizes adds an extra 20% to the floor area when compared to a development complying with Clause 30A of SEPP 65 (Design Quality of Residential Flat Development).

#### **Compliance with DCP Controls**

The subject site is contained within Sub-precinct No. 2 under the DCP. The following is an assessment of the applications against the provisions of the DCP:

<b>Requirement</b>	<b>Comment</b>	<b>Complies</b>
C13 Demonstrate no potential sterilisation of land	The location and nature of the proposed development site is that it will still permit the appropriate development of adjoining sites.	Yes
C14 Floor Space Ratio Max – 2:1	The applications propose a total FSR of 2.52:1 across the entire site. This exceeds the maximum permitted and the applicant has submitted an objection to the development standard in accordance with SEPP 1. The variation is supported in this instance, as discussed in detail in the sections above.	<b>No – Refer to SEPP 1 Objection to Clause 12A of Botany LEP within this report.</b>
C15 Public Facility Dedications	As the site is affected by public facility dedication, the original site area (inclusive of the land required for the Church Avenue widening) has been utilised for the purposes of determining floor space ratio.	Yes
C16 Maximum Building Height = 6 storeys	A building height of 13 storeys is proposed adjacent to the Sydney Water drainage easement (eastern boundary) being Buildings D and G. All other buildings are 6 storey, except for 9 storey components of Buildings D & G.	<b>No – See Note 1 below</b>

Requirement	Comment	Complies
C18 Airport related building heights – buildings over 15.24 metres in height shall be referred to FAC	Sydney Airports have provided approval for the building to a maximum height of 51 metres AHD, subject to conditions of consent.	Yes
C23 Maximum site coverage = 55%	The development proposes a site coverage of 58%.	<b>No – See Note 2 below</b>
C25  Minimum apartment sizes:  Studios 60m <sup>2</sup> 1 bedroom 75 m <sup>2</sup> 2 bedrooms 100m <sup>2</sup> 3 bedrooms 130m <sup>2</sup>	All units within development comply with, or exceed, the specified minimum unit sizes.  Proposed minimum apartment sizes are as follows: Studios 60-66.75m <sup>2</sup> 1 bedroom 75-78.5m <sup>2</sup> 2 bedrooms 101.25-103.0m <sup>2</sup> 3 bedrooms 130m <sup>2</sup>	Yes
C26 Unit mix - maximum 25% studio/one bedroom apartments	Studio/One bedroom = 178 units (35.6%) Two bedrooms = 304 units (60.8%) Three bedrooms = 18 units (3.6%)	<b>No – See Note 3 below</b>
C26A The minimum internal widths are as follows: Cross over units: 4m (excluding garage) Single level unit/dwelling: 6m excluding garage	The minimum width of the single level units are 4.3 – 10 metres respectively.	Yes
C26B Facilities to be provided in a convenient location within the apartment and built appropriate to the function and use of the apartment	Laundry, food preparation, and sanitary facilities have been designed so that they are in a convenient location	Yes
C26C and D Floor to ceiling tiles	Will be conditioned to comply.	Yes
C26E and F Building Separation <u>Up to 4 storeys:</u> • 12 metres between habitable rooms/balconies; • 9 metres between	<u>Up to 4 storeys:</u> Building D & G appears as one long building; however there is a 3 storey component in the mid section of the building with a separation distance of 18	Yes



Requirement	Comment	Complies
habitable/balconies and non-habitable rooms; and <ul style="list-style-type: none"> <li>• 6 metres between non-habitable rooms.</li> </ul> <u>5 – 8 storeys:</u> <ul style="list-style-type: none"> <li>• 18 metres between habitable rooms/balconies;</li> <li>• 13 metres between habitable rooms/balconies and non-habitable rooms; and</li> <li>• 9 metres between non-habitable rooms.</li> </ul>	metres from Building E, which is at right angles to it.          <u>5 – 8 storeys:</u> Minimum 18 metres (habitable room to habitable room) separation is provided between all buildings within the development and between the proposed building and buildings to the west.	
C27 – C31 Submission of concept landscape plans, landscaping requirements, paving, trees and street trees	A concept landscape plan has been submitted to accompany the development applications and this has been reviewed by Council's Landscape Architect and is considered acceptable, subject to relevant conditions.	Yes
C32 Communal open space = 20% of development site and 25% of this area shall be deep soil planting.	The proposal incorporates 9505m <sup>2</sup> of communal open space at ground floor level and 270m <sup>2</sup> of communal open space at roof top level of Building G.  Altogether, communal open space will comprise of 42.2% of the development site, which exceeds the requirements of this control.  Approximately 3,714sqm shall be provided as deep soil planting, which equates to 39% of the communal open space area.	Yes
C33 Private open space= 12m <sup>2</sup> /unit with minimum 3 metre width	All proposed units are provided with a balcony/terrace exceeding the minimum 12m <sup>2</sup> requirement and have a minimum depth of 3 metres.	Yes
C34 Landscaped Setback Gardeners Road - 6m Church Avenue - 3m	The proposed setbacks to the walls of the development are: Gardeners Road – 6 metres Church Avenue – 3 metres	Yes
C34A – underground parking is to be configured to allow for deep soil zones –	The basement level car parking has been configured to allow for 3,714m <sup>2</sup> for the provision of deep soil zones to both street frontages.	Yes

Requirement	Comment	Complies
parking to be provided under the building footprint only		
C34B – underground stormwater tanks not to be located within landscaped areas	The stormwater detention basin is located below the building footprint along the Gardeners Road and Church Avenue frontages behind the deep soil planting zones and within the basement car parking areas.	Yes
C35 Landscape setback to Gardeners Road design to comprise 50% lawn and 50% plantings	The Church Ave and Gardeners Rd setbacks to the development will comprise an appropriate combination of lawn, plantings and paved area with street trees proposed to the adjacent road reserve.	Yes
C38 Compliance with Landscape DCP	Construction landscape plans have been submitted to accompany the development applications and these have been reviewed by Council's Landscape Architect and are considered to be acceptable.	Yes
C39 Road widening	The development has been designed to incorporate the required road widening to Gardeners Road to incorporate a deceleration lane and to Church Avenue. The consent will be conditioned to require the road widening works to form the subject of a further development application to Council.	Yes
C40 Finished ground levels	Council's Engineering Services Department have raised no objection to the finished ground levels proposed within the development. Relevant conditions are proposed to ensure that the road reserve and internal site levels are built in accordance with Council's road design levels.	Yes
C44 Compliance with Energy Efficiency DCP	BASIX Certificates and associated thermal comfort certificates have been submitted with the applications. The development satisfies the solar amenity controls with respect of solar access to adjoining properties.	Yes – See Note 4
C45 Maximum building depth -18 metres	The proposed buildings have a maximum habitable depth of 8-13 metres (exclusive of any balcony space) with the exception of commercial floor space to the ground floor that has a depth of 16 metres	Yes
C46	The DCP requires for 25% of the floor	Yes

Requirement	Comment	Complies
Cross ventilation	areas of the development to achieve cross ventilation. The Residential Flat Design Code recommends that at least 60% of the proposed units shall achieve flow through ventilation. The proposal indicates 62.6% of proposed units are able to achieve cross flow ventilation. The applicant has confirmed that all habitable spaces are adequately ventilated, as such the 2% non-compliance is reasonable, and the provision maintains compliance with the Mascot DCP.	
C47 Wind control	A Wind Environment Assessment prepared by Windtech dated 23 March 2011 is considered satisfactory.	Yes
C48 Aircraft Noise	The development site is located within the 20 – 25 ANEF contour. A Noise Impact Assessment has been submitted to accompany the development applications and it is recommended that the consent be conditioned to require compliance with the recommendations made within this assessment.	Yes
C49 Road traffic noise	An acoustic report has been submitted to accompany the development applications in relation to aircraft and road traffic noise. It is recommended that the consent be conditioned to require compliance with the recommendation within this report to ensure noise impacts in accordance with relevant standards.	Yes
C50 Internal noise transmission to comply with BCA	The consent is proposed to be conditioned to require compliance with the BCA.	Yes
C51 Contamination	The applicant has submitted an RAP with Development Application 10/345 approved by Council in February 2011.  Council's Environmental Scientist has reviewed the documentation and raised no objection to the proposed development, subject to the site audit statement being submitted ahead of issue of the operational consent.	Yes
C54 Acid Sulfate Soils	The site is located within the Class 2 Acid Sulfate Soil Area and an Acid Sulfate Soils Assessment or Management Plan is not warranted in this instance, as the depth of	Yes

Requirement	Comment	Complies
	excavation does not extend below 2 metres AHD.	
C55 Groundwater requirements	The NSW Office of Water has granted concurrence to the proposed development subject to General Terms of Agreement issued to Council on 19 July 2011.	Yes
C56/57/58/C62 Carparking: 1 space – studios/1 bed 2 space – 2 bed/3 bed 1 visitor space/7 units 1 space/60m <sup>2</sup> commercial Traffic study may be required.	<p>In accordance with the DCP, car parking is required at the following rates for the proposed development:</p> <ul style="list-style-type: none"> <li>• 1 space per studio / 1 bedroom units = 178 spaces required</li> <li>• 2 spaces per 2 and 3 bedroom units = 644 spaces required</li> <li>• 1 space / 60sqm commercial floor space = 19 spaces required</li> <li>• 2 car wash bays per development site</li> <li>• 1 visitor space per 7 dwellings = 72 spaces required</li> </ul> <p>The development thus requires a total of 913 car parking spaces.</p> <p>The proposed development provides car parking for a total of 914 vehicles over two basement levels inclusive of 56 accessible car spaces, which will be allocated to 50 adaptable units, have been provided.</p> <p>The Traffic Impact Assessment prepared by Traffix and dated 15 April 2011 has been submitted to accompany the development application and this concludes that the concludes that the car parking provision is acceptable</p> <p>Council's Engineers have raised no objection to the proposal subject to conditions.</p>	Yes
C63/C64/65 Internal vehicular access/design of parking areas	Off street parking will be accessible from a left in left out only access via the proposed deceleration lane off Gardeners Road. A 12 metre wide ramp is proposed from the Gardeners Road and Church Avenue down to the basement car park levels. Off-street car parking is located within basement levels B1 and B2 and will not be visible	Yes

Requirement	Comment	Complies
	from a public place. Council's Engineers have raised no objection to the proposed development with respect to vehicular access arrangements and parking module design.	
C69-72 Loading/Unloading facilities, location/aesthetics	Loading / unloading is expected to be undertaken by waste contractors, courier/passenger vehicles/vans, that are to utilise the visitor car parking spaces or allocated commercial car parking spaces located with the basement car parking.	Yes
C76 Facade composition	The facades within the development make use of appropriate urban design principles as outlined within the DCP.	Yes
C77 Balcony design	Balconies within the development are functional for their intended purposes and are capable of providing appropriate table/chair settings. Balconies to the primary frontages are presented with solid balustrades varying in length and depth to articulate building facades, whilst internal balconies feature varying depths to provide articulation and off-set private open space areas.	Yes
C78 Materials	A materials sample board has been submitted to accompany the development application. 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.	Yes
C79 Entries	The entrance into the development has been designed so to be clearly identifiable from the street yet integrated into the overall appearance of the development.	Yes
C80 Integration of rooftop elements	No rooftop plant/equipment is proposed.	Yes
C81 Rooftop recreation areas	A communal open space area to the rooftop of Building G is proposed with landscaping and appropriate shelter to encourage their usage.	Yes
C82-C88 Crime prevention	Appropriate crime prevention design elements have been included as part of the overall development, which include natural surveillance opportunities, lighting, defined public/private spaces, and space management / maintenance.  The proposed development has been	Yes

Requirement	Comment	Complies
	referred to Mascot Police Local Command Area for detailed assessment against Crime Prevention Through Environmental Design (CPTED) principles, with their comments and recommendations to be incorporated into the consent.	
C92 - 97 Accessibility- Separation of uses/active street fronts	<p>Separate entrances are proposed to residential and non-residential uses located at ground floor level.</p> <p>Pedestrians enter the site from both Church Avenue and Gardeners Road via paths that are separate from the vehicle entry point.</p> <p>Vehicular access is provided solely from both Gardeners Road and Church Avenue and pedestrian access is separated from the vehicular access points.</p>	Yes
C98 - 104 Services	<p><b>Underground Cabling</b> – the consent will be conditioned to require that cabling be provided underground in accordance with relevant energy providers.</p> <p><b>Electricity</b> – An electrical substation is proposed at the north-eastern corner of Gardeners Road. Energy Australia (Ausgrid) have made a formal submission opposing the proposed development, however this is unrelated to the provision of electricity to the site.</p> <p><b>Water and sewerage</b> – Sydney Water raised no objection to the proposed development, and has requested an upsized drinking water main, and construction of a wastewater main. This will be required as a condition of consent.</p> <p><b>Stormwater</b> – Councils Development Engineer has reviewed the proposal and raise no objection subject to conditions.</p> <p><b>Fire Hydrants</b> – shall be provided and the development shall be appropriately conditioned for concealment.</p> <p><b>Waste Management</b> – Garbage collection areas are proposed from within the basement car parking areas. These have</p>	Yes

Requirement	Comment	Complies
	been designed so that they are accessible to serve vehicles. The consent will be conditioned to provide a plan of Management for Waste.	
C105- C107 Other controls	<p><b>Fencing</b> – No fencing is proposed along either frontage to Church Avenue or Gardeners Road.</p> <p><b>Signage</b> – No signage is proposed and the development shall be appropriately conditioned to ensure a comprehensive signage strategy is proposed separately for the development, including commercial use signage.</p> <p><b>Storage</b> – Appropriate storage areas have been provided for all units within the development, both within the units themselves and in the basement areas of the development</p>	Yes

### **Non-Compliances**

#### *Note 1: Maximum Building Height*

The maximum building height as required under the DCP for the subject site is 6 storeys. Buildings D and G will comprise of a combination of 6, 9 and 13 storeys along the eastern boundary running in a north/south direction.

The applicant has provided the following justification for the height variation:

*“The additional height proposed is achieved through an established planning mechanism also employed for the Rina development site, associated with the above market price acquisition of smaller lots required for consolidation. The public benefit of including the two smaller allotments and for removing industrial uses from the precinct is significant. This facilitates the Masterplan objectives of the Council in its implementation of the MSP DCP. These benefits will be achieved at significant cost to the developer.*

*The modified proposal relocates the bulk and height of the development and has opened up the views across the top of the development for residents in the upper levels of the Rina development.*

The development applications have been referred to the Sydney Airport Corporation Limited (SACL) and the Panel is asked to note that SACL is not a planning body but a referral body for matters of a technical nature.

Council’s Design Review Panel has considered the proposed development prior to the lodgment of the applications and provided the following comments in relation to scale and built form:

*“the bulk and height of the amended envelopes are generally appropriate for the scale of the streets and the adjoining and surrounding development.*

The development form will comprise of a 12 storey building along the eastern boundary consisting of a defined podium element accommodating vehicular entrance, community rooms/lobbies and apartments and a residential tower element extending vertically above. The height of Building G progressively increases as the building extends into the site from Church Avenue from 6 to 9 and then 12 storeys. Building D is 9 storeys adjacent to the Ausgrid substation and increases to 12 storeys as it extends south into the site. It was considered to relocate the highest buildings along the boundary of the site to the Sydney Water easement as this would be on the perimeter of the Precinct and would have no adverse impact on the adjoining development along O’Riordan Street due to the separation distance provided by the easement.

The height of the 12 storey component is RL51.00. The building height has been designed to provide an appropriate visual relationship and transition in line with the existing developments along the streetscape. Directly to the south, the “Rina” development has a maximum height of RL38.7 metres.

The non-compliance to the building height is confined to the site frontage to the Sydney Water drainage easement land adjoining to the east, with the remainder of the site proposing a height of 6 storeys that is compliant with the height requirement. The proposed design seeks to maintain an appropriate scale to the street level through the ground level podium structure accommodating the commercial space being the predominant visual element, with the residential tower presenting as a continuation of the prevalent built form within the Mascot Station Precinct DCP.

Mascot DCP part 3.11 states that *‘the existing low scale development of the MSP... suggests that the area is underdeveloped in terms of the opportunities presented by the recent completion of the Mascot Station.’* The DCP further outlines the overall objectives and urban strategy under Part 4, with the future character of the Sub-Precinct 2 – Gardeners Rd/O’Riordan Street, identified as follows:

*Development is to address both Gardeners Road and Church Avenue and have a relationship with the planned open space along the southern sewer outfall land.*

It is important to note that future development of the adjacent planned open space area identified as the Linear Park in the DCP is not imminent and despite strong efforts on the Councils part to encourage Sydney Water to ameliorate the site as public space, it is unlikely that this will occur in the short to medium term if at all. As such, the development has been designed with a 3 metre wide setback from the adjoining Sydney Water land and apartments in Buildings D and G have a relationship with the land and overlook the land. Once the land is established in the future as public domain space, significant casual surveillance will be available to the park. Further, the proposed development will fulfill the underlying objective and urban strategy of the DCP by virtue of its height, scale and improved streetscape amenity.

The podium and tower elements have been shaped and positioned to provide internal separation between apartments and adjoining buildings to ensure amenity is achieved. The proposed height and overall built form is compatible with the adjacent mixed developments and the emerging character of the area as it undergoes redevelopment.

Furthermore, the amended proposal reduces the view loss impact that resulted from the original design with one apartment within the “Rina” development now subjected to a partial view loss as a result of the re-designed scheme. Land and Environment Court Principles in relation to view sharing is addressed further in Note 5 below.



Accordingly, it is recommended to the JRPP that the proposed building height in the stepped configuration be supported in this instance.

*Note 2: Site Coverage*

The maximum site coverage as required under the DCP for the subject site is 55% of the total site area. The development proposes a site coverage of 58%, which represents a non-compliance of 3%, represented as 676.1m<sup>2</sup>.

The applicant has provided the following justification for the site coverage variation:

*“The proposed development has a site coverage of approximately 58% of the site area (excluding the basement level car parking), and provision has been made for an appropriate quantum of communal open space that being 42 % of the site area (includes deep soil zones and excludes the public park). The communal open space comprises of landscaping and paving, with additional landscaping provided along the street frontages. As the developer has been required to consolidate smaller industrial allotments and provide land for the purpose of road widening and a public reserve, the minor non compliance with Control C23 is considered acceptable.”*

The proposed site coverage variation is considered minor in nature by comparison against the site area and does not detract from the sites ability to maintain adequate open spaces and consistent setbacks to adjoining properties. The development will result in ample communal open space to be consolidated, appropriately configured and sited to achieve the primary function of providing amenity in the form of landscape design, daylight and ventilation access to apartments, and opportunities for recreation and social activities. The rationale of the applicant is generally agreed with, and the variation is considered appropriate in this context.

*Note 3: Unit Mix*

Control C26 of Section 6.3.5 – *Apartment Sizes and Mix* of DCP 30 states that the combined total of studio units and one bedroom apartments shall not exceed 25% of the total number of apartments within any single development. The total number of studio and one bedroom apartments proposed within the development is 36% of all apartments, being 178 apartments out of 500 proposed apartments. It is noted that some of the studio and one bedroom apartments also contain a study.

The applicant has provided the following justification for the non –compliance with the proposed unit mix:

*“All of the proposed apartments comply with the minimum size requirements and minimum width requirements. Further, the majority of apartments comply with the private open space dimensions, sizes and with cross ventilation and solar access requirements. The application of the 25% control is therefore less important in this situation as the overall scale of the development warrants flexibility and requires market support”.*

As indicated above, whilst the proposal does not meet all of the DCP requirements, the development does in fact comply with SEPP 65 in all other respects. The proposal is therefore considered satisfactory in this regard.

*Note 4: Solar Amenity*

In accordance with Council's Energy Efficiency DCP, the minimum amount of direct solar access to the solar collectors of adjoining property shall not be less than 2 hours between 9am to 3pm on 21 June. The submitted shadow diagrams demonstrate that the proposal complies with relation to adjoining properties solar access.

Detailed assessment is provided against the Land and Environment Court planning principle on the impact on solar access of neighbours (Parsonage V Ku-ring-gai (2004) NSWLEC 347) and (The Benevolent Society V Waverly Council (2010) NSWLEC 1082) as follows:

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

Comment: The site is located within the Mascot Station Precinct, identified as a high density mixed use commercial/residential area and accordingly, it is unreasonable to expect that adjoining properties will retain existing sunlight. To the west of the subject site at No. 635 Gardeners Road is an 6 storey mixed development, and to the east of the subject site, is Sydney Water land and further east at No. 109 O'Riordan Street (Sublime) is a 7 storey residential development. Opposite the site at No 3-9 Church Avenue, is 3 by 8 storey residential flat buildings, opposite on Gardeners Road is industrial/commercial development located within the Sydney City Council area. Shadow diagrams have been submitted which indicate that the adjoining developments will continue to receive a minimum of 3 hours sunlight during winter solstice.

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

Comment: The proposal is of quality design and is appropriate in context given the primary location within the Mascot Station Precinct. The design is optimal for the subject site, as demonstrated by the similar design previously approved development along Church Avenue, in which a similar level of solar access and amenity is achieved.

- *For a window, door or glass wall to be assessed as being in sunlight, regard should be had not only to the proportion of the glazed area in sunlight but also to the size of the glazed area itself. Strict mathematical formulae are not always an appropriate measure of solar amenity. For larger glazed areas, adequate solar amenity in the built space behind may be achieved by the sun falling on comparatively modest portions of the glazed area.*

Comment: As submitted on the aerial perspective shadow analysis, the east facing openings to adjoining property No. 109 O'Riordan Street will achieve a minimum of 2 hours sunlight between 9am-3pm during winter solstice. The level of solar access to these areas is considered proportionate to the level of glazed area.

- *For private open space to be assessed as receiving adequate sunlight, regard should be had of the size of the open space and the amount of it receiving sunlight. Self-evidently, the smaller the open space, the greater the*

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

Comment: The private open space areas to the adjoining properties are limited to balconies and private courtyards. As submitted on the aerial perspective shadow analysis, the east facing openings to adjoining property No. 109 O’Riordan Street will achieve a minimum of 2 hours sunlight between 9am-1pm during winter solstice. However it is noted the ground levels to No. 109 O’Riordan Street are currently affected by its own overshadow, and this is not exacerbated by the proposed development.

- *Overshadowing by fences, roof overhangs and changes in level should be taken into consideration. Overshadowing by vegetation should be ignored, except that vegetation may be taken into account in a qualitative way, in particular dense hedges that appear like a solid fence.*

Comment: Overshadowing from fencing, roof overhang, and vegetation have been taken into consideration. Given the high density locality and large nature of the developments, impacts from fencing and the like are minimal.

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

Comment: The area is a high-density locality currently undergoing significant re-development centred on Mascot train station. The adjoining properties to the east, west, and south have been recently redeveloped residential development in accordance with the current zoning 10(a) mixed use commercial/residential under the Botany LEP 1995.

#### *Note 5: View Analysis*

As the proposed development exceeds the height limits in parts of the development the Applicant has conducted a view analysis for several of the units located in the Rina Development are located on the far side of the Church Ave to that the development site. The view seen from these units, in particular to levels 7 and 8.



The View Analysis Report prepared by the Applicant dated 21 July 2011, assesses the reasonableness of views loss to these properties as a result of the proposed

development. The report has had regard to the case law established by *Tenacity Consulting v Warringah [2004] NSWLEC 140* (pars 23-33) which has established a four-step assessment of view sharing. The Report carried out view analysis for Units 176, 181, 185, 371 381, 175 and 383 of the Rina development at No 3-9 Church Ave. The Report has found the following: (for assistance in respect of the apartments location in the development the unit number is configured as follows:- Building Number/Floor Level/Apartment Number);ie, Building:1; Level 8; Apartment No. 1.

**“Unit 176**

*Step 1: The first step is the assessment of views to be affected. The outlook from No.176 is currently to the district horizon, over a distance of about 6.1km. Though the city is visible on the horizon, it is a distant feature on the skyline. The city skyline occupies a minor percentage of the available panorama. The majority of the view is distant, of a general nature. Whilst a feature in the panorama, the city skyline does not have the same iconic weight as a single point of focus of significance, comparable to, say, the Harbour Bridge, water views; or the Opera House. Due to the distance, there are no specific features within this panorama, with the city skyline being a very small, distant, component to the outlook of the unit.*

*Step 2: The second step is to consider from what part of the property the views are obtained.*

*The panorama is available from various points on the external balcony though its design includes a perimeter screen wall that contains a portion of the space, restricting outward viewing. From a sitting position, there are also views to the horizon. Internally, the outlook to the city is more across the central and eastern edge of the subject site from a standing location in the dining area, though again the perimeter screen contains and restricts the scope of this panorama. The full width of the panoramic aspect is not available from the interior.*

*Step 3: The third step is to assess the extent of the impact. The development would occupy about 10-15% of the available panorama. There remains a generally open outlook, and the City skyline vista remains unaffected. The reduction in aspect relates to a portion of the regional district outlook, looking eastward, east of the city skyline. Views to the north-west (including the City skyline) and to the north-east, towards the golf courses and wider district are all retained.*

*Step 4: The fourth step is to assess the reasonableness of the proposal that is causing the impact. The interrupted panorama is not a view that could be expected to be retained, given the expectation of redevelopment of the MSP in a like manner to that which has occurred on surrounding land (including the Rina development, itself being 8 storeys). The modified development represents alterations to address the former impact identified, though it has had some impact upon the Applicant (contrary to the intent of this step in the evaluation).*

*A development of comparable height to the Rina development would be above the horizon line. The modified development has relocated the additional building bulk above 6 storeys to the east, into a single axis as viewed from dwellings in the upper storeys of the Rina Development. The effect has been*

*that the proportion of view loss has been reduced. A commercial development of 6 storeys, permissible on the land, would have an equivalent height to that of the Rina Development and would obscure all views from this unit.*

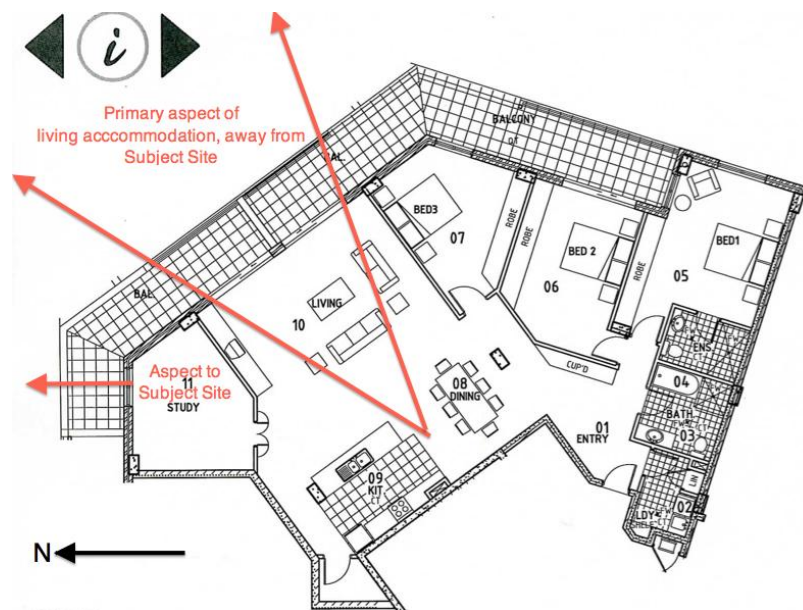
*The view impact of the current 2011 scheme will be negligible-minor.*

*In line with the expressed principle of the Court for such circumstances (para.29 of the appeal judgement), the extent of view sharing is reasonable, and the impact is considered acceptable.*

### **Unit 181**

*The analysis from this property is based on the photographic images provided by the Architect. I have not visited this property. The unit is adjacent to Unit 185, but primarily with a north eastern aspect. It occupies the same corner of Building 1 as Unit 176, being a dwelling that I have visited. The balcony has the same north-east orientation to the balcony of No.176 below, though its does not have the same brickwork containment, such that its outlook is more open.*

*The layout of the dwelling differs from that of Unit 176. The orientation of the unit, to the northeast, results in the main living/ dining and kitchen not having an aspect over the subject site. The bedrooms face east, also away from the subject site. The study has a north-facing window. The main balcony on the north-eastern façade wraps around in front of the study window (Image 1).*



*Image 1: Layout of Unit 181 in the Rina Development*

*Step 1: The first step is the assessment of views to be affected. The primary outlook from the main living areas of No.181 are to the district horizon to the north-east and the Sublime Development on the opposite site of the street. The majority of the view is distant, of a general nature . Whilst a feature in the panorama available to the study, the city skyline is not considered to have the same iconic weight as a single point of focus of significance, comparable to, say, the Harbour Bridge, water views; or the Opera House. Due to the*



*distance, there are no specific features within this panorama, with the city skyline being a very small, distant, component to the outlook of the unit.*

*Step 2: The second step is to consider from what part of the property the views are obtained. The main living areas, kitchen and bedrooms, and the main balcony of the unit are oriented away from the subject site (Image 2).*

*From a sitting position in the main living area, there are views to the horizon to the north-east away from the subject site. Internally, the outlook is more contained than to those experienced from the balcony. The view is panoramic from the living areas, with the city skyline peripheral to the view outlook when standing in the centre of the balcony.*



*Image 2: Primary outlook from the main living area, and over the main balcony of Unit 181 towards the north-east (the Sublime development is visible), and away from the Subject Land. The study is to the left of the image.*

*The study, served by a single off-set window, has a north-facing window that permits an outlook over the subject site. The city skyline is visible as a distant feature, some 6.1km distant (Image 3).*



*Image 3: North-facing aspect from the study, via an off-set window, with the city skyline distant on the skyline.*

*The balcony has a north-eastern outlook, except for the wrap-around portion in front of the study window. There is no direct access available from the study. In addition, there is a secondary aspect towards the subject site, when looking sideward from the main balcony.*

*Step 3: The third step is to assess the extent of the impact. The 6 storey element of the subject development is below the horizontal view plane of the outlook. The higher storeys occupy about 10-15% of the available panorama, being that part most visible from the study and northern end of the balcony. The primary outlook of the living accommodation and bedrooms, and the main balcony, will be wholly unaffected. There will be some impact upon the peripheral aspect from the balcony derived from Buildings D and G. The development will obscure the city skyline element. There remains an open outlook vista to all other vantage points.*

*Step 4: The fourth step is to assess the reasonableness of the proposal that is causing the impact. The interrupted panorama is not a view that could be expected to be retained, given the expectation of redevelopment of the MSP in a like manner to that which has occurred on surrounding land (including the Rina development, itself being 8 storeys). The modified development represents alterations to address the former impact identified, though it has had some impact upon the Applicant (contrary to the intent of this step in the evaluation).*

*A development of comparable height to the Rina development would be above the horizon line. The modified development has relocated the additional building bulk above 6 storeys to the east, into a single axis as viewed from dwellings in the upper storeys of the Rina Development.*

*The effect has been that the proportion of view loss has been reduced.*

*The view impact of the current 2011 scheme will be negligible-minor.*

*In line with the expressed principle of the Court for such circumstances (para.29 of the appeal judgement), the extent of view sharing is reasonable, and the impact is considered acceptable.*

### **Unit 185**

*The analysis from this property is based on the photographic images provided by the Architect. I have not visited this property. However, it is located above No.176, on the same corner of Building 1, being a dwelling that I have visited. The balcony is in the same location, though it does not have the same brickwork containment, such that views are more open over the site.*

*Step 1: The first step is the assessment of views to be affected. The outlook from No.185 is currently to the district horizon, over a distance of about 6.1km. Though the city is visible on the horizon, it is a distant feature on the skyline. The city skyline occupies a minor percentage of the available panorama. The majority of the view is distant, of a general nature. Whilst a feature in the panorama, the city skyline is not considered to have the same iconic weight as a single point of focus of significance, comparable to, say, the Harbour Bridge, water views; or the Opera House. Due to the distance, there are no specific features within this panorama, with the city skyline being a very small, distant, component to the outlook of the unit.*

*Step 2: The second step is to consider from what part of the property the views are obtained.*

*The panorama is available from various points on the external balcony. From a sitting position, there are also views to the horizon. Internally, the outlook is similar to those experienced from the balcony. The view is panoramic, with the city skyline central to the view outlook.*

*Step 3: The third step is to assess the extent of the impact.* The 6-storey element of the development is below the horizontal view plane of the outlook. The higher storeys occupy about 10-15% of the available panorama. The loss of aspect is part of a regional district outlook east of the city skyline. Views to the north-west (including the City skyline) and to the northeast, towards the golf courses and wider district are all retained.

*Step 4: The fourth step is to assess the reasonableness of the proposal that is causing the impact.* The interrupted panorama is not a view that could be expected to be retained, given the expectation of redevelopment of the MSP in a like manner to that which has occurred on surrounding land (including the Rina development, itself being 8 storeys). The modified development represents alterations to address the former impact identified, though it has had some impact upon the Applicant (contrary to the intent of this step in the evaluation).

*A development of comparable height to the Rina development would be above the horizon line. The modified development has relocated the additional building bulk above 6 storeys to the east, into a single axis as viewed from dwellings in the upper storeys of the Rina Development. The effect has been that the proportion of view loss has been reduced.*

*The view impact derived from Buildings D and G will be limited, for there remains an open outlook and the City skyline vista remains unaffected. The view impact of the current 2011 scheme will be negligible-minor.*

*In line with the expressed principle of the Court for such circumstances (para.29 of the appeal judgement), the extent of view sharing is reasonable, and the impact is considered acceptable.*

### **Unit 371**

*The analysis from this property is based on the photographic images provided by the Architect.*

*I have not visited this property at 371. However, it is located below No.381, on the same corner of Building 3, being a dwelling that I have visited. The balcony is in the same location, though it does have a brickwork containment, such that views from its interior are comparatively more restricted.*

*Step 1: The first step is the assessment of views to be affected.* The outlook from No.371 is currently to the district horizon, over a distance of about 6.1km. Though the city is visible on the horizon, it is a minor feature on the skyline. The city skyline occupies a minor percentage of the available panorama, being visible just to the right of the alignment of the western



*boundary of the subject site at the centre of the view. The majority of the view is distant, of a general nature. With the city skyline at such a distance, it is not considered to have the weight of a single point of focus of significance comparable to, say, the Harbour Bridge, water views; or the Opera House. There are no specific features within this panorama.*

*Step 2: The second step is to consider from what part of the property the views are obtained.*

*The panorama is available from various points on the external balcony though its design includes a perimeter screen wall that contains a portion of the space, restricting outward viewing. From a sitting position, there are also views to the horizon. Internally, the outlook to the city is more across the central and eastern edge of the subject site from a standing location in the dining area, though again the perimeter screen contains and restricts the scope of this panorama. The full width of the panorama aspect is not available from the interior.*

*Step 3: The third step is to assess the extent of the impact. The main focus to the north will be unrestricted. The development provides a new northern aspect for this dwelling, over the public park and the resident park, both to be on the western side of the subject site. Whilst the upper storeys of Buildings D and G reduce the panorama view by about 15% of the available panorama, the creation of the landscaped axis along the western boundary of the subject site provides greater focus by comparison. The upper storeys of Buildings D and G are to the right of the main outlook from the balcony and internal space. The north-facing sitting and standing views internally and on the balcony will be less obscured as the main focus is over the western setback of the subject site rather than to the new building.*

*Step 4: The fourth step is to assess the reasonableness of the proposal that is causing the impact. The interrupted panorama is not a view that could be expected to be retained, given the expectation of redevelopment of the MSP in a like manner to that which has occurred on surrounding land (including the Rina development, itself being 8 storeys). The modified development represents alterations to address the former impact identified, though it has had some impact upon the Applicant (contrary to the intent of this step in the evaluation).*

*A development of comparable height to the Rina development would be above the horizon line. The modified development has relocated the additional building bulk above 6 storeys to the east, into a single axis as viewed from dwellings in the upper storeys of the Rina Development. The effect has been that the proportion of view loss has been reduced.*

*On balance the view impact of proposed Buildings D and G will be off-set by this improvement, such that there would be a limited impact only, depending upon the room affected. The view impact of the current 2011 scheme will be negligible.*

*In line with the expressed principle of the Court for such circumstances (para.29 of the appeal judgement), the extent of view sharing is reasonable, and the impact is considered acceptable.*

**Unit 381**

*Step 1: The first step is the assessment of views to be affected. The outlook from No.381 is currently to the district horizon, over a distance of about 6.1km. Though the city is visible on the horizon, it is a minor feature on the skyline. The city skyline occupies a minor percentage of the available panorama. The majority of the view is distant, of a general nature. With the city skyline at such a distance, it is not considered to have the weight of a single point of focus of significance comparable to, say, the Harbour Bridge, water views; or the Opera House. There are no specific features within this panorama.*

*Step 2: The second step is to consider from what part of the property the views are obtained. The panorama is available from various points on the external balcony. From a sitting position, there are also views to the horizon. Internally, the outlook to the city is more across the central and eastern edge of the subject site from a standing and sitting location in the dining area. The full width of the panorama aspect is not available from the interior.*

*Step 3: The third step is to assess the extent of the impact. The view line is above the height of the lower portions of the proposed development. The main focus to the north is unrestricted. The development provides a new northern aspect for this dwelling, over the public park and the resident park, both to be on the western side of the subject site. Whilst the upper storeys of Buildings D and G reduce the panorama view by about 15% of the available panorama, the creation of the landscaped axis along the western boundary of the subject site provides greater focus by comparison. The upper storeys of Buildings D and G are to the right of the main outlook from the balcony and internal space.*

*Step 4: The fourth step is to assess the reasonableness of the proposal that is causing the impact. The interrupted panorama is not a view that could be expected to be retained, given the expectation of redevelopment of the MSP in a like manner to that which has occurred on surrounding land (including the Rina development, itself being 8 storeys). The modified development represents alterations to address the former impact identified, though it has had some impact upon the Applicant (contrary to the intent of this step in the evaluation).*

*A development of comparable height to the Rina development would be above the horizon line. The modified development has relocated the additional building bulk above 6 storeys to the east, into a single axis as viewed from dwellings in the upper storeys of the Rina Development.*

*The effect has been that the proportion of view loss has been reduced. On balance, it is considered that the view impact of proposed Buildings D and G will be off-set by this improvement. The view impact of the current 2011 scheme will be neutral.*

*In line with the expressed principle of the Court for such circumstances (para.29 of the appeal judgement), the extent of view sharing is reasonable, and the impact is considered acceptable.*

### **Unit 175**

*The analysis from this property is based on the photographic images provided by the Architect. I have not visited this property. However, it is located below the western portion of No.185, on the same corner of Building 1, being a dwelling that I have visited. The balcony is in the same location as that of No.185 from which a view analysis has been prepared.*

*Step 1: The first step is the assessment of views to be affected. The outlook from No.175 is currently to the district horizon, over a distance of about 6.1km. Though the city is visible on the horizon, it is a distant feature on the skyline. The city skyline occupies a minor percentage of the available panorama. The majority of the view is distant, of a general nature. Whilst a feature in the panorama, the city skyline is not considered to have the same iconic weight as a single point of focus of significance, comparable to, say, the Harbour Bridge, water views; or the Opera House. Due to the distance, there are no specific features within this panorama, with the city skyline being a very small, distant, component to the outlook of the unit.*

*Step 2: The second step is to consider from what part of the property the views are obtained. The aspect from the main living room is via a north-facing window only. The room is narrow in proportion, with the kitchen at the rear. The outlook is constrained by the width of the window, focused particularly to the north rather than to a panorama. From a sitting position, the outlook is more limited. Side door access is available to a corner balcony that provides a wider panorama. The balcony mainly serves Bedroom 2 of the dwelling, a room that has direct double width door access and outlook to the north. The balcony outlook is panoramic, with the city skyline central within this aspect. The primary outlook of the dwelling is via the north-facing living room window. The physical segregation between of the balcony and the living space reduces the potential for its use for general purposes. As a balcony mainly serving a bedroom it has, by comparison, reduced amenity benefit to the dwelling.*

*Step 3: The third step is to assess the extent of the impact. The 6-storey element of the Development is similar to horizontal view plane of the outlook. From the main living room, the outlook from within to the north will not be altered. The taller element of the development will be to the right of this outlook, and not be visible (unless a person stands at the glass-line). The reduction in aspect from the corner balcony serving the bedroom is limited to a part of the regional district outlook east of the city skyline and is to the right of the main outlook of a viewer on the balcony, not in front of the viewer. The aspect to the north-west and north to the city skyline is unaffected. If a sideward north-easterly orientation of the viewer (further to the right) were also considered, the aspect towards the golf courses and wider district are also retained. The development is generally to the right of the main outlook from this dwelling. There will be negligible impact upon the amenity of this dwelling arising from the development.*

*Step 4: The fourth step is to assess the reasonableness of the proposal that is causing the impact. That the development does not affect the outlook from the main living area demonstrates that it is reasonable. The interrupted panorama*

*is not a view that could be expected to be retained, given the expectation of redevelopment of the MSP in a like manner to that which has occurred on surrounding land (including the Rina development, itself being 8 storeys) that has achieved consolidation of industrial lots that warrants additional height opportunity similar to the Rina development. The primary outlook of the balcony is generally retained. The modified development represents alterations to address the former impact identified, though it has had some impact upon the Applicant (contrary to the intent of this step in the evaluation).*

*A development of comparable height to the Rina development would be above the horizon line. The modified development has relocated the additional building bulk above 6 storeys to the east, into a single axis as viewed from dwellings in the upper storeys of the Rina Development. This would have removed all views from this dwelling. The effect of the development, by comparison, is that the proportion of potential view impact has been significantly reduced.*

*The view impact derived from Buildings D and G will be limited, for there remains an open outlook and the City skyline vista remains unaffected. The view impact of the current 2011 scheme will be negligible.*

*In line with the expressed principle of the Court for such circumstances (para.29 of the appeal judgement), the extent of view sharing is reasonable, and the impact is considered acceptable.*

### **Unit 383**

*The analysis from this property is based on the plan and montage images provided by the Architect. I have not visited this property.*

*Step 1: The first step is the assessment of views to be affected. The outlook from No.381 is away from the subject site, to the south-east, south and south-west. Those views are towards Botany Bay and the airport. They are not over the Subject Land.*

*Step 2: The second step is to consider from what part of the property the views are obtained. The outlook from the main living area is to the south, and from bedrooms, to the south-east. There is a balcony that extends around the perimeter of the dwelling that affords an external aspect to the south and south-east.*

*Step 3: The third step is to assess the extent of the impact. There is no impact as the Subject Land is not visible to this dwelling, either internally from the living area or bedrooms; or externally from the balcony.*

*Step 4: The fourth step is to assess the reasonableness of the proposal that is causing the impact. Given the absence of impact upon this unit, the development is considered be reasonable.*

*The view impact of the current 2011 scheme will be nil.*

*In line with the expressed principle of the Court for such circumstances (para.29 of the appeal judgement), the extent of view sharing is reasonable, and in the absence of any impact, it must be considered acceptable.*

Based on the above assessment, which is not disputed, the view loss impacts attributable to the amended development are considered both within reason and satisfactory with regard to the Planning Principles contained within *Tenacity Consulting v Warringah Council* [2004] NSWLEC 140 in the case of the level 7 and 8 of the Rina development and found to be acceptable, retaining a good percentage of the skyline view to the north. The proposed development is considered reasonable and has been designed to provide a fair share of view retention and should be supported in this instance.

#### **6.1.9 Off Street Car Parking DCP**

In accordance with the DCP, car parking is required at the following rates for the proposed development:

<b>Car Parking Rates</b>	<b>Required</b>	<b>Proposed</b>
1 space per studio and 1 bedroom units	178 spaces	179 spaces
2 spaces per 2 and 3 bedroom units	644 spaces	644 spaces
1 space / 60sqm commercial floor space	19 spaces	19 spaces
1 visitor space per 7 dwellings	72 spaces	72 spaces
<b>TOTAL</b>	<b>913</b>	<b>914</b>
	+ 2 car wash bays	+ 2 car wash bays

A Traffic Impact Assessment prepared by Traffix dated April 2011 has been submitted to accompany the development application, and provides the following assessment:

*“The proposed parking provision of 914 car parking spaces satisfies Council’s nominal requirement for a total of 913 car parking spaces. This assumes a reduced parking rate of 1 space per 60sqm for the commercial/retail floor area that is considered appropriate for the subject development and is indeed envisaged under Council’s DCP. The reduced retail car parking is considered appropriate having regard to the localized catchment that the tenancies will service”.*

The rationale of the Traffic Engineer is generally agreed with. The proposed development complies with the requirements of the Off Street Car Parking DCP.

#### **6.1.10 Aircraft Noise Development Control Plan**

The requirements of the Aircraft Noise DCP have been considered in the assessment of the Development Applications as the site is located within the 20-25 contour on the Aircraft Noise Exposure Forecast (ANEF) chart.

A Noise Impact Assessment Report prepared by Acoustic Logic Consultancy, dated 28 March 2011 has been submitted with the applications. Council's Health and Environmental Services Department has confirmed that compliance with the aircraft noise requirements contained in AS2021-2000 can be achieved with the installation of acoustic treatment devices within the development as detailed in the report. Compliance with the measures contained in the Noise Impact Assessment Report will be required as conditions of the development consent.

#### **6.1.11 Access Development Control Plan Premises Code**

Accessible car parking has been provided at a rate of 1 space per 100 spaces in accordance with the DCP requirements. A Disability Access Report prepared by Lindsay Perry dated 22 July 2010, has been submitted with the development which provides an assessment against the Building Code of Australia 2010, the Disability Discrimination Act 1992, and Council's Access Development Control Plan. Compliance with the recommendations outlined in the report will be required as a condition of consent through compliance with the provisions of the BCA and Council's Access DCP.

### **6.2 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 Applications. It is considered that the proposed development will have no significant adverse environmental, social or economic impacts on the locality.

### **6.3 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 submissions and the NSW Office of Water in a letter dated 19 July 2011 have raised no objection to the development in this respect, subject to conditions. Contamination issues have also been addressed in the development application submission. Accordingly, the site is considered suitable to accommodate the proposed development subject to "deferred commencement" consent for the submission of a Site Audit Statement.

The proposed development, being for construction of a new mixed-use multi-unit residential/commercial development to a site located within the 10(a) Mixed Uses Commercial/Residential zone, is considered a suitable development in the context of the site and locality.

### **6.4 Any submission made in accordance with the Act or Regulations.**

These matters have been considered in the assessment of the development applications. In accordance with Council's Notification Policy (Development Control Plan No. 24), the original development applications (First Round) were notified to surrounding property owners and occupants, advertised in the local newspaper and a notice erected upon the subject site from the 30 July 2010 to 3 September 2010. A total of one hundred and sixty (160) submissions and a petition objecting to the initial proposed

development were received. One objection has since been withdrawn in writing on the 8 March 2011.

### First Notification Period

The following is a summary of the issues raised in the submissions:

#### Overshadowing

- *The building adjacent to Church Avenue is twice as wide as a large size apartment building and has an astonishing 12 storey height. It will block sunlight to 26 Church Avenue, afternoon sun of the Linear Park and the entire days sun to the Rina development.*
- *The 12 storey building will bring significant overshadowing to the adjacent Rina apartments at 3-9 Church Avenue, mascot for several hours of the day. Overshadowing becomes a problem to neighbouring properties at approximately 6 storeys and above and is not in keeping with existing developments in the area.*
- *The shadow diagrams submitted with the DA indicate that a high proportion of the north facing units will not maintain 3 hours of solar access between the core hours of 9am to 3pm mid winter. These units currently enjoy full solar access.*

#### Height of buildings and scale of development

- *The Mascot Station Precinct DCP indicates in Section 6.3.3 on page 78 and in Figure 25 on page 79 that building heights on the northern side of Church Avenue within sub-precinct 2 are to be limited to no more than six (6) storeys above ground level. The building within the development proposal fall into this category of buildings to be a maximum of 6 storeys.*
- *The height of the proposed buildings will be out of character for the area and the form of the public domain.*
- *The proposed FSR is excessive and exceeds that permitted by the LEP. This should not be supported as existing infrastructure and services will be exhausted.*

#### Non-compliance with DCP No. 30

- *There is evident non-compliance with the controls outlined in Mascot Station Precinct DCP (DCP 30). Specifically, Section 6.3.6 (Building Separation) and the height controls for sub-precinct 2.*
- *Section 6.3.3 states that the maximum height of buildings across this site is 6 storeys.*

- *There are already thousands of residents around the Church Avenue area and the approval of this application will increase this significantly. There are no public facilities such as parks or green areas.*

#### Residential Amenity impacts

- *Due to the excessive scale and height, there will be significant overshadowing of adjoining development during the winter months and also of the proposed public domain area.*
- *Traffic impacts associated with the development will be excessive and will adversely impact upon the function of the local road network.*
- *Privacy impacts will be created between residents of existing buildings and those new proposed apartments.*

#### Construction impacts

- *Construction will affect nearby and adjacent residents by way of dust noise, appropriate hours, asbestos and traffic disturbance.*

#### Demolition and Asbestos removal

- *There is strong concern that asbestos on site will impact on the health and wellbeing of existing residents. There is a strong expectation that removal of asbestos is inevitable and that all precautions must be taken when this does occur to protect the health and wellbeing of residents.*

#### Traffic & Parking

- *The proposed increase of residents will require at least 1000 new car space as is proposed. This is very significant and will impact on the amenity of the urban environment.*
- *Church Avenue and Bourke Street already experience traffic congestion during peak evening times. The proposed development will intensify this.*
- *On a typical working day morning peak hour (ie. 7:30am to 8:30am), traffic delays with vehicle backing up to 50 metres is experienced on a daily basis.*
- *There is concern that whilst the proposed spaces on site will comply with the DCP requirements, there will still be additional cars parked on Church Avenue and this is unacceptable.*

#### Social Impact

- *The increase in population will create social issues as there will be a very high concentration of people in the one area without sufficient private open space.*

#### Iconic View Loss



- *Existing iconic views of the city skyline from within existing residential apartments, particularly at 3-9 Church Avenue will be lost. This will have a significant impact on the value of properties and the enjoyment of those properties. The buildings at 3-9 Church Avenue comprise of three (3) buildings with 8 storeys directly opposite the subject site. At present, apartments from Level 2 upwards and including the penthouse achieve expansive views of the district and the city.*
- *The existing views are iconic and the proposed development should be redesigned to take these views into consideration.*
- *The onus should be on the Applicant to demonstrate that the view sharing is achieved to all north facing apartments in the Rina development.*

#### Visual Impact

- *The proposed development provides excessively large buildings which dominate and dwarf the surrounding buildings.*
- *The visual amenity of all north facing units at 3-9 Church Avenue will be lost. The units would be faced with a wall in excess of 38 metres high across the length of the site. A building of this scale is out of character and out of context with the surrounding area.*

#### Wind Tunnel Effect

- *The layout and design of the proposed buildings will create a wind tunnel effect that is extremely undesirable for residents as it will create an unnatural effect and will affect the amenity of residents. In particular, a wind tunnel effect will be created along the Church Avenue, Linear Park and O'Riordan Street.*
- *The submitted wind report provided no wind tunnel testing. Given the size of buildings, such an assessment is necessary.*

#### Reflective Noise from Aircraft

- *There is potential due to the design of the proposed buildings and their orientation for noise from passing aircraft to be reflected back into existing apartments of nearby and adjacent buildings.*
- *The DA appears to be lacking information in relation to the reflective noise by passing aircraft. An acoustic report addressing such should be submitted to Council addressing this issue.*

#### Property Values

- *There is concern that the value of properties near the site will be reduced as a result of the impacts of the development, in particular overshadowing, privacy, view loss and traffic impacts.*

### Privacy Loss

- *The excessive number of apartments and the orientation/separation between existing buildings will create privacy issues for existing residents.*

### Existing Use Rights

- *The Mascot Station Precinct DCP (DCP 30) is not an environmental planning instrument (EPI) and thus applies to the site. Compliance should be sought.*
- *Notwithstanding the applicability of the DCP, the proposed development is an unsatisfactory form of development which is excessive in bulk and scale and will significantly impact upon the amenity of adjoining properties.*

### Site Suitability

- *The development provides buildings ranging in height from 6-13 storeys which are completely out of context.*
- *The site is not a gateway site. The concentration of increased building heights should be along Bourke Street that incorporates “gateway sites” at the intersection of Gardeners Road and Coward Street. This form of development is not suitable at this site.*
- *The proximity of the site to the adjoining electricity substation is of significant concern. An Electromagnetic Field Survey is necessary to determine the level of impact from the adjoining infrastructure, including potential operational, health and amenity impacts on any future occupants of the site.*

### Public Interest

- *It is in the public interest that development proceeds in a manner that is appropriate for the site, meets the reasonable expectations of the community.*
- *The community has a reasonable expectation that development on this site will be to a maximum height of six (6) storeys. Such form would be consistent with surrounding developments and facilitate appropriate view sharing, minimise overshadowing and reduce congestion.*
- *This development is not consistent with the character and predominant building form of the Mascot Station Precinct.*

In light of the above issues being raised, Council furnished the Applicant with the above summary of issues and formed a Residents Consultative Committee.

### Residents Consultative Committee

The first meeting was held on the 6 December 2010. The Applicants Architect was invited to attend and gave a detailed introductory presentation to the project. This was valuable to concerned residents as it enabled them to view shadow modelling from the proposed development and a View Analysis. This provided residents with examples of

view perspectives from the adjoining development to the south at 3-9 Church Avenue, following an inspection and assessment of several apartments in the complex.

At the conclusion of the meeting the residents were advised that the Applicant would be asking to give due consideration to reconfigure the bulk and scale of the development in an effort to protect the amenity of residents in the immediate vicinity of the site and that residents would be advised in writing once Council was furnished with an alternative design concept for consideration by residents. Further, Council advised that it would engage independent consultants to review the submitted acoustic report and traffic impact assessment once the plans were amended.

A Second Consultative Committee meeting was held on the 18 January 2011 to discuss the amended plans. The general consensus at this meeting was that the amended scheme was favoured over the original scheme. On this basis the Applicant then submitted the revised development scheme for consideration by Councils Design Review Panel on the 3 March 2011. Further amendments were made to the scheme and a final revised scheme was then submitted to Council on the 19 April 2011 as an amendment to the development applications.

The revised scheme was placed on public exhibition for a thirty (30) day period from 27 April 2011 to the 26 May 2011.

#### Second Notification Period

A total of eighteen (18) submissions were received as a result of the exhibition of the amended development scheme (Second Round) which raises the following issues:

- ***Floor Space Ratio: The proposed FSR is excessive and should be limited to 2:1 and not the 2.52:1 now proposed.***
- ***Excessive proposed floor space ratio (being well in excess of that allowed by the DCP), with the resulting excessive number of dwellings and car spaces associated there with significantly exacerbating existing, major traffic congestion problems at the corner of Church Avenue and O’Riordan Street, particularly during peak hour periods.***

#### Comment

As discussed Section 6.1.2 under SEPP 1, the SEPP 1 objection contends that compliance with the 2:1 FSR development standard is unreasonable and unnecessary in the circumstances of the case with reference to the objectives of SEPP 1 and floor space controls. The aims of MSP DCP are to establish controls that encourage good quality urban design, a high level of residential amenity and environmental sustainability. In addition to this the DCPs aims to ensure that development does not unduly prejudice the future planning and development of the surrounding employment area to the west of the precinct. It is considered the proposed development has addressed the aims of the DCP and that it has considered the potential redevelopment of the locality.

In addition to this the proposed exceedance in FSR of any proposed development on this site is not inconsistent with the adjoining developments approved surrounding Church Avenue in terms of height, and scale. It would be considered inappropriate for development on this particular site to be held to strict compliance with this FSR standard, as it would not complement the surrounding development. In addition the

proposed development includes the dedication of a public park, which will contribute to the amenity of the area. An assessment of the traffic and car parking provided in the development has been supported by the RTA and Council's External Traffic Consultant.

The proposal represents a high quality orderly and economic use and development of the subject land that will achieve an appropriate development of the site in accordance with the current and envisaged redevelopment of the Mascot Station Precinct.

- ***Height of the Development -The proposed height of the buildings is excessive and exceeds the six storey height limit of the DCP.***
- ***Inappropriate relocation of the proposed public area to the opposite side of the development site (in direct contradiction of the required location of the area for the same in the DCP) and its replacement with a massive 12 storey building with all the resulting, significant increased negative impact on the Rina Building 1 in respect in respect of such problems as severe wind effects, traffic noise from the car park entrance, overshadowing, loss of park views and obstruction of other significant views, loss of privacy, and overall loss of the amenity and aesthetics of the area directly in front of my property.***

#### Comment

As discussed in Section 6.1.8 the non-compliance to the building height is confined to the site frontage to the Sydney Water drainage easement land adjoining to the east, with the remainder of the site proposing a height of 6 storeys being compliant with the height requirement. The proposed design seeks to maintain an appropriate scale to the street level through the ground level podium structure accommodating the commercial space being the predominant visual element, with the residential tower presenting as a continuation of the prevalent built form within the Mascot Station Precinct DCP.

Mascot DCP part 3.11 states that '*the existing low scale development of the MSP... suggests that the area is underdeveloped in terms of the opportunities presented by the recent completion of the Mascot Station.*' The DCP further outlines the overall objectives and urban strategy under Part 4, with the future character of the Sub-Precinct 2 – Gardeners Rd/O'Riordan Street, identified as follows:

*Development is to address both Gardeners Road and Church Avenue and have a relationship with the planned open space along the southern sewer outfall land.*

It is important to note that future development of the adjacent planned open space area identified as the Linear Park in the DCP is not imminent and despite strong efforts on the Councils part to encourage Sydney Water to ameliorate the site as public space, it is unlikely that this will occur in the short to medium term. As such, the development has been designed with a 3 metre wide setback from the adjoining Sydney Water land and apartments in Buildings D and G have a relationship with the land and overlook the land. Once the land is established in the future as public domain space, significant casual surveillance will be available. Further, the proposed development will fulfill the

underlying objective and urban strategy of the DCP by virtue of its height, scale and improved streetscape amenity.

Based on the Planning Principles and the amended development, the view loss affected by the proposal has been assessed under the Planning Principles for view sharing and is found to be acceptable, retaining the majority the distant skyline view and a good percentage of landscape views to the north. The proposed development is considered reasonable and has been designed to provide a fair and reasonable share of view retention.

In relation to overshadowing, the amended development overshadows the Rina development between 9am and 10:30am, for a period short of 2 hours of the day. In relation the Aero, some overshadowing will occur to the building fronting Church Ave at 9am, and no further impact during the day. The development therefore complies with Council's solar access requirements.

In relation to the loss of privacy, the Building G in the amended proposal is located 36 metres from Buildings 1 and 3 of the Rina Development. This is well in compliance with the separation distances required by the MSP DCP and SEPP 65.

In relation to the matter of loss of views, this has been addressed below, and it is considered that the development has satisfied the view sharing principles provided by the Court.

In relation to wind affects from the development, the Applicants Wind Consultant submitted an Addendum Wind Statement dated 20 July 2011 to the Report submitted to Council on 23 March 2011 to address this matter which, which concluded:

*"A report presenting the expected impact of the subject development onto the pedestrian wind environment within and around the site was prepared by Windtech Consultants Pty Ltd (reference WA845-03F02 (rev3), dated March 23, 2011). Within that report, any critical wind effects pertaining to the subject development, which are identifiable by visual inspection of the architectural drawings and from our experience in the field of wind engineering, have been outlined and discussed. It should be noted that only the potentially critical wind effects due to the three predominant prevailing wind directions for the Sydney region (north-easterly, southerly and westerly) have been discussed within the report.*

*Our report highlights the potentially adverse wind effects for pedestrians, and provides details for mitigation strategies to ensure adequate wind conditions are achieved for all outdoor trafficable areas within and around the development site.*

*It is claimed that the north-easterly winds will have a significant impact on ground level wind conditions, as well as on the balconies of the Rina Apartments. It is our opinion that north-easterly winds are not likely to generate such wind effects due to the fact that the north-easterly winds are relatively weak and generally occur during the summer months, when winds are more tolerable and indeed desirable in some cases.*

*The flow path diagram for the north-easterly winds that has been prepared by a resident of the Rina Apartments (Building 1) is somewhat exaggerated. The gap between the two 12 storey buildings of the subject development has not been*

*considered (which will reduce the effect of side-streaming), and the shielding/interference effect of the existing 6/7 storey apartment building located on the north-western side of the intersection of Church Avenue and O'Riordan Street has also not been accounted for."*

The mitigation strategies outlined Wind Report dated 23 March 2011 recommends that tree planting occur along Church Ave and Gardeners Rd, dense foliage to be provided between buildings F and C, the provision of impermeable balustrades, and screening to level 2 terraces. Based on the above the amended development has ensure the amenity to the adjoining development.

- ***Linear Park- Failure to integrate proposed public reserve with the Linear Park land.***
- ***General failure of the proposal to properly integrate the development into the proposed Linear Park, with no building setbacks or landscaping along the eastern border of the development.***

#### Comment

As discussed in Section 6.1.8 the concept of "Linear Park" is under review by Council. "Linear Park" is the Sydney Water land containing the Southern Sewer Outfall. At the time of writing the DCP in 2001 it was envisaged that Sydney Water would allow the use of their land as a major open space area for the Precinct; with the existing size being increased by the purchase/dedication of land in the locality. The subject site under Control C42 was to dedicate an area of approximately 1,140m<sup>2</sup> fronting Church Avenue adjacent to the Sydney Water land.

Council has been advised that the use of the Sydney Water land, as parkland is unlikely given the fragile state of the Southern Sewer Outfall and the extensive works that will be carried out by Sydney Water to duplicate the pipeline. Therefore the reference to "Linear Park" in the Council's comprehensive DCP under preparation will in all likelihood be deleted and additional public open space planned for in the western part of the Mascot Town Centre Precinct

It should also be noted that the amended development is setback 3.5m from the Sydney Water easement, which is considered acceptable.

- ***Loss of Iconic Views – The proposed development will result in the loss if iconic views from apartments in the "Rina" building.***
- ***Total loss of iconic views of the Sydney CBD skyline due to buildings in the proposed development that are more than twice the allowed under the current DCP.***
- ***Significant loss of current expansive, uninterrupted area views as a result of the same buildings.***

#### Comment

As discussed Section 6.1.8 in Note 5 the View Loss Principles established under Tenacity Consulting v Warringah [2004] NSWLEC 140 there are four-steps in

assessing of view sharing. Commissioner Roseth states that “*water views are valued more highly than land view. Iconic views (eg of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons. Whole views are valued more highly than partial views, eg a water view in which the interface between land and water is visible is more valuable than one in which is obscured.*” It was found that view from Buildings 1 and 3 of No 3-9 Church Avenue, are district and distant views of the city skyline (approximately 6.1km away). The amended design has reduced the height of the development and improved the views experienced by the units on the upper levels (levels 7 and 8) of Building 3 in 3-9 Church Avenue. However, the amended design has slightly reduced the view of the upper level apartments of Building 1, 3-9 Church Avenue by Buildings D and G, but has maintained the view to the majority of the distant district and city skyline view. It should also be noted that the original height limit to “Rina” development was approved at 6 storeys. The owner of the site at the time acquired the additional land to the rear fronting John Street, and as a result of this, the owner at the time requested additional 2 levels to each buildings to cover the acquisition of this lot. The units on levels 7 and 8 of Buildings 1 and 3 of the Rina development are benefiting from a view which would not have existed, and which are a non-compliance with the height control under MSP DCP, if the development was built as originally approved.

- ***Road congestion/On Street Parking – Peak times already unacceptable on Church Ave, O’Riordan St and Gardeners Road. There is limited street parking in the vicinity of the site.***
- ***Traffic associated with the North DA should not have access to the Church Avenue vehicular access driveway for DA South and vice versa. Traffic for the two DA’s should be kept separate.***

#### Comment

These matters have been discussed previously in Sections 6.1.6, 6.1.7 and 6.1.8 of this report. The Application was referred to the RTA for comment, and the RTA raised no objection to the application. Council further engaged an External Traffic Consultant to review the Reports submitted with the amended application, and the Consultant was satisfied that the traffic generated from the development, will not have an adverse impact on the traffic network in the area. The amended proposal complies with Council parking requirements. It should also be noted that Church Ave has been identified for road widening, and the subject application will be required to widened the frontage to Church Ave in accordance with the DCP. Once all the widening has been completed Church Ave will become two way and will improve the circulation through the area.

- ***Location of Driveway: The relocation of the driveway to opposite Apartment 126 of Rina Apartments is inappropriate and should be re-located to opposite the driveway of the Rina building, which is between the two Rina buildings.***
- ***Relocation of the proposed car park entrance from the south-western corner of the development site to near the crest of the hill on the south-eastern corner creates significant additional noise for the residents of Rina***

*Apartments Building 1 as well as being a more dangerous point of egress for vehicles from the site (particularly heading west) when Church Avenue eventually becomes two-way in the future.*

Comment

The development is required to obtain access along the Church Ave frontage. The current location of the driveway is more practical than previously proposed, which was located in close proximity to opposite the driveway of No 3-9 Church Ave. It is noted that Apartment 126 is located on level 2 of Building 1, and it is considered the driveway will have no adverse impact on the amenity of this apartment. Comments prepared by the Applicants Traffic Consultant in response are as follows:

- *“The proposed driveway includes visual splays at the property boundary in accordance with AS2890.1 (2004) and is therefore not considered to compromise pedestrian safety along the Church Avenue frontage, including pedestrians accessing the proposed Linear Park to the east of the site.*
- *The proposed development will result in a reduced number of heavy vehicle movements along Church Avenue compared to operation of the site under its historic use as an industrial warehouse. This is considered beneficial for the safety and amenity of pedestrian (and vehicular) traffic in Church Avenue, and*
- *The incline/crest in Church Avenue referred to in Council's letter is moderate and will not compromise the visibility and/or safety associated with the proposed access operation.*

*In summary, the proposed access to Church Avenue is considered satisfactory and will operate safely and efficiently.*

Based on the above the location of the proposed driveway will have no adverse impacts on the amenity of the Rina development.

In respect of noise, the Applicants Acoustical Consultant responded as follows:-

*7. Noise associated with vehicle movements from the entry and exit of the proposed car park entry located in the south east of the site will be treated to ensure noise levels comply with the minimum requirements of the DECCW's Industrial Noise Policy and Noise Control Guidelines. The proposed location of the drive way in the south east of the site can be acoustically treated such that compliance with the required noise level criteria can be achieved.*

Based the above the vehicular movements associated with the development will have no adverse impact on the apartments located within the Rina development, however the level of Acoustic treatment must come before the issue of a construction certificate.

- **Amenity/ Loss of Privacy - to residents in Aero building directly to the south and to apartments at 635 Gardeners Road, Mascot.**

Comment



The MSP DCP requires a minimum of 13m between balconies and non habitable rooms. The amended development has provided a setback from No 635 Gardeners Road between 18m, where between the balconies of No 635 Gardeners Rd and the non-habitable rooms of the subject site. The setback at Building A, is 15m to the ground floor, which is a blank wall to the balconies of No 635 Gardeners Rd and on the upper levels the setback is between 15m to 20m, which again is a blank wall with one opening to the corridor to the balconies at No 635 Gardeners Rd. The amended proposal has heavily landscaped this area to further ensure the privacy and amenity of No 635 Gardeners Road.

- ***Location of Taller Building- Taller buildings should be setback further from Church Avenue, adjoining development has only five storey high buildings whereas those proposed are 12 storey.***

#### Comment

Building G along Church Ave has a height of 6 storeys, then in the return plane rises to 9 storeys and then rises again to 12 storeys. The 12 storey component of the building is setback between 16m to 26m from the new Church Ave boundary. The prominent height of Building A to Church Ave is 6 storeys. It should be noted that “Aero” development at No 635 Gardeners Road adjoining the site to the west is 6 storeys, the “Sublime” development at No 109 O’Riordan Street which is located east to the site is 7 Storeys, with the seventh level not occupying the full extent of the footprint of the storey below, and at the “Rina” development at No 3-9 Church Ave, opposite the subject site, the buildings are 8 storeys. It is considered that the amended development has provided a consistent height along Church Ave in comparison to the adjoining development.

- ***Waste Collection: Waste collection on Church Avenue is not possible as the collection of waste by Council trucks for adjoining development already causes problems on Church Avenue with many bins lined up on the street.***

#### Comment

Waste collection for the amended development is to be conducted internal to the development. The garbage trucks will enter the site to remove garbage from Gardeners Rd.

- ***Reflective Aircraft Noise/Vehicle Noise - Increased noise from re-located car park off Church Avenue – now closer to apartments in Building 1 of Rina.***
- ***The submitted Acoustic Report does not address reflective aircraft noise where noise generated by aircraft is redirected and reflected into adjoining buildings of adjacent buildings.***
- ***Substantial acoustic reflection of aircraft noise from existing flight paths located on either of these buildings, made worse by the straight, flat design of the building surfaces of those buildings over 6 storeys.***

### Comment

The Applicants Acoustical Consultant responded to the above concerns as follows:

*“The potential for additional noise impacting on the residential properties opposite the proposed development from noise reflections from the proposed development associated with aircraft passbys has been investigated. The investigation revealed that noise will not increase at these residences by the development for the following reasons:*

- 1. Reflections from the proposed development will be deflected as the proposed building facades are 'broken' with balconies and the like. There will be no strong reflections to neighbouring receivers from aircraft noise due to the proposed construction of the development. The proposed design of the facade is therefore presents conditions which will defuse noise to surrounding receivers, rather than reflect noise.*
- 2. Similarly to the discussions detailed in the point above for aircraft noise traffic noise will not be reflected (or channelled) through the development as suggested. The building design will result in traffic noise being defused to surrounding receivers.*
- 3. The additional distance required for any reflected traffic noise off the proposed development to potentially affected receivers will result in significant noise attenuation. The additional distance will result in any potential traffic noise reflections being below noise levels currently experience from direct noise from the roadway.*
- 4. The proposed construction of the Gardeners Road development is similar to other multi story residential developments within the area, including the neighbouring residential development to the west of the site and would currently be reflecting aircraft noise to surrounding receivers.*
- 5. The majority of aircraft noise impacting on existing residence will result from direct noise generated by a passby, which will not change. Any noise reflecting from the proposed development would be required to travel a greater distance than the direct noise source and hence be attenuated such that existing noise levels will not significantly increased.*
- 6. There is no Australian Standard or code requirement for the assessment of reflective noise impact to surrounding receivers.*
- 7. Noise associated with vehicle movements from the entry and exit of the proposed car park entry located in the south east of the site will be treated to ensure noise levels comply with the minimum requirements of the DECCW's Industrial Noise Policy and Noise Control Guidelines. The proposed location of the drive way in the south east of the site can be acoustically treated such that compliance with the required noise level criteria can be achieved.*

Based on the above it is considered that the amended development will not increase noise reflection to adjoining development from either aircraft or traffic. The buildings have been designed with articulation, and in keeping with the adjoining development, which reduces any reflection that could possible occur. The development itself will be acoustically treated for aircraft and traffic noise, which will improve the external amenity to adjoining development and the internal amenity of the proposed units.

- ***Wind Effects*** – *Severe wind effects resulting from the massive flat, straight, parallel surfaces of the proposed so call 12 storey buildings located along the eastern boundary of the development site resulting in major redirection of prevailing winds (from any direction north of the building surface perpendicular) to the south along the building surface directly towards Building 1 of the Rina Apartments.*

#### Comment

As discussed above an Amended Wind Statement addressed this matter was submitted to Council on 20 July 2011, which concluded:

*“A report presenting the expected impact of the subject development onto the pedestrian wind environment within and around the site was prepared by Windtech Consultants Pty Ltd (reference WA845-03F02(rev3), dated March 23, 2011). Within that report, any critical wind effects pertaining to the subject development, which are identifiable by visual inspection of the architectural drawings and from our experience in the field of wind engineering, have been outlined and discussed. It should be noted that only the potentially critical wind effects due to the three predominant prevailing wind directions for the Sydney region (north-easterly, southerly and westerly) have been discussed within the report.*

*Our report highlights the potentially adverse wind effects for pedestrians, and provides details for mitigation strategies to ensure adequate wind conditions are achieved for all outdoor trafficable areas within and around the development site.*

*It is claimed that the north-easterly winds will have a significant impact on ground level wind conditions, as well as on the balconies of the Rina Apartments. It is our opinion that north-easterly winds are not likely to generate such wind effects due to the fact that the north-easterly winds are relatively weak and generally occur during the summer months, when winds are more tolerable and indeed desirable in some cases.*

*The flow path diagram for the north-easterly winds that has been prepared by a resident of the Rina Apartments (Building 1) is somewhat exaggerated. The gap between the two 12 storey buildings of the subject development has not been considered (which will reduce the effect of side-streaming), and the shielding/interference effect of the existing 6/7 storey apartment building located on the north-western side of the intersection of Church Avenue and O’Riordan Street has also not been accounted for.”*

Based on the above, the submission has not taken into account the gap in the upper levels of the building and the fenestration of the building, the building has been designed to ensure that it does not impact on the prevailing wind in the area.

- ***Notification of the Application:*** *Failure to properly ensure that all potentially affected residents and owners of property in the neighbouring area were properly notified of the development by direct mail and adequate and appropriate advertising, resulting in substantially fewer objectors than would have otherwise been the case.*

Comment

The original application and the amended application were notified in accordance with Council Development Control Plan No 24 – Notification of Development Applications, Local Environmental Plans, Development Control Plans and Other Applications. Section 5.2(iii) of DCP 24 states “Where the landowner is under a strata plan, notice will be given to the Secretary of the Owners Corporation only.” The Application was notified in accordance with this DCP.

As a result, the above matters were addressed and put back to a third Residents Consultative Committee meeting on the 25 July 2011. The residents were in support to the development of the site, had raised the following concerns:

- ***Height and View Loss***

Comment:

Height and view loss have been addressed in full in Sections 6.1.8 notes 1 and 5. These issues remained a concern with three (3) owners in the Rina development remained as to view loss from Building G, which is part 6 storey, then on the return rises to 9 storey and rises again to 12 storeys. It was suggested at the meeting of the Residents Consultant Committee, that the 9 storey component to be tapered to further improve the view. The Applicant following analysis of this suggested design modification, found the views for Units 176 and 181 improved in respect of the visibility of the cluster of city buildings in the vicinity of Centre Point Tower – Sydney CBD, however no change occurs for Unit 171, which has a north-eastern aspect, with the outlook to the north-east, east and south east.

The applicant has in Council’s view addressed the view sharing principles above, and have attempted to maintain the view for majority of the units located in the Rina development.

Based on the view sharing principles this is considered acceptable.

It is pointed out to the Panel that view loss by occupants of the adjoining residential development and the contestability to respond to view loss through assessment under the Principles of the Land and Environment Court was the main reason behind the development and its design being revised. Whilst the yardstick of the DCP in respect of the height became a factor of consideration it is fair to state that where view was based upon design orientation of the dwellings of the adjoining developments, the view sharing principles have been employed and satisfied.

It is also pointed out to the Panel that in the resident consultation process, a number of residents who occupy adjoining development indicated that prior to purchase of their dwellings, inquiries had been made of the Council as to DCP controls in respect of building height which is 6 storeys to 9 storeys, depending on location. Whilst, their claims are not debated it is evident that within the precinct height controls have been varied and as indicated earlier in this report there were sound reasons to do so. Therefore a “walk around” the precinct would have indicated this and any advice given as to compliance with height controls should have at least been questioned.

As far as be can be ascertained this was not the case.

- ***Construction Noise, Dust, Parking and Access to the site***

Comment:

Council has imposed standards conditions to ensure that the proposed construction of the development does not have an adverse impact on the amenity of the area. It was also recommended that the Applicant provide resident residents notice as to when they intend on accessing the site outside of construction hours, for concrete pour and equipment delivery.

- ***Collection of Garbage***

Comment:

As discussed above the collection of waste will be on site.

- ***Quantify the amount of traffic from the development that would use Gardeners Rd and Church Avenue, when the development is complete.***

Comment:

The Applicants Traffic Consultant in a letter dated 26 July 2011 advised the following:

*“Reference should be made to the traffic distribution included in Attachment 1, as modelled, which indicates the assumed increase to intersection turning movements associated with the development and the overall proportion of traffic oriented to the north, south, east and west respectively.*

- *It is evident that the development will result in an increase of 72 veh/hr and 79 veh/hr along Church Avenue during the weekday AM and PM peak periods, respectively.*
- *The overall distribution of traffic to the north, south, east and west is based on review of 2006 Journey-to-Work data with additional distribution of traffic to the east in relation to more localised shopping and school trips during peak periods.*
- *A similar analysis of the existing approved use of the site would result in an increased traffic volume of up to 65 passenger car units which includes a number of truck movements. As such, the proposed development will result in a moderate increase above the ‘approved scenario’ of only 7 and 14 vehicles per hour during the AM and PM peak periods, respectively.*

*In summary, the relative change to traffic volumes using Church Avenue is considered moderate and can be accommodated by the road network. It should also be noted that traffic will have the ability to redistribute internally within the site, in the event that the use of Church Avenue and the southern approach of O’Riordan Street to Gardeners Road were to form a less desirable route for residents and visitors due to inherent delays on these lengths of road. Indeed traffic to/from the site, particularly associated with the north (the primary direction of traffic flow) has the ability to arrive from O’Riordan Street and depart via Bourke Road utilising the Gardeners Road access and therefore further reducing traffic volumes on Church Avenue.”*

The Attachment 1 is a plan shows the direction that traffic would flow from the site, which includes left in and out of Gardeners Road, and right in and left out of Church Ave and the number of vehicles per hour as discussed above. Based on the above it is considered that the traffic generation from the development is acceptable. The proposed development will not add any further strain to the existing road network.

- ***The complete widening of Church Ave to Kent Rd***

Comment:

Council advised the residents as a site redevelops along Church Ave it acquires the land for the widening of Church Ave.

- ***Retention of trees until the Road widening occurs along Church Ave***

Comment:

Condition is imposed that the trees along Church Ave are to be retained until the road widening is to occur.

**(e) The public interest.**

These matters have been considered in the assessment of the development applications. It is considered that approval of the proposed development will have no significant adverse impacts on the public interest.

## **7. Other Matters**

### **7.1 External Referrals**

*NSW Office of Water*

The applications are Integrated Development in accordance with Part 5 of the *Water Management Act* as the development involves a temporary construction dewatering activity. As such the applications were referred to the NSW Office of Water. The applications were notified and advertised for a 30 day period from 10 August 2010 to 10 September 2010 in accordance with the legislative requirements for Integrated Development. The Department issued their amended General Terms of Approval on 19 July 2011.

*Sydney Airports Corporation Limited (SACL)*

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.

Correspondence received from Sydney Airports Corporation Limited (SACL) dated 30 May 2011 approved the maximum height of the building to 51 metres AHD. A condition is proposed on the consents providing the height restrictions.

*Ausgrid (formerly Energy Australia)*

The Applicant has prior to lodgement of the applications, applied to Energy Australia for service connection to 500 residential units. In a letter to the Applicant dated 25 May 2010,

Energy Australia advises that power will be available subject to written notice 2 years in advance of the requirement for power and subject to normal service levies.

Energy Australia was notified as adjoining landowners and as a service authority. Energy Australia also made a formal submission objecting to the original development in relation to its proximity to its infrastructure, namely the adjoining Electrical substation. The amended proposal was referred to Energy Australia and in a letter dated 7 June 2011, raised no objection to the application, subject to the development complying with BCA.

#### *Sydney Water*

Correspondence received from Sydney Water dated 30 September 2010 raised no objection to the proposed development, and has requested an upsized drinking water main, and construction of a wastewater main. This will be required as a condition of consent.

#### *Roads & Traffic Authority*

Correspondence received from Roads & Traffic Authority dated 30 May 2011 and raises no objection to the proposed development, subject to recommendations, which will be required as conditions of consent.

#### *Mascot Police Local Area Command*

Correspondence received from Mascot Police Local Area Command dated 27 September 2010 raised no objection to the proposed development, subject to recommendations, which will be required as conditions of consent.

### **7.2 Internal Referrals**

The development application was referred to relevant internal departments within Council, including the Traffic Engineer, Development Engineer, Landscape Officer, Environmental Officer, and Health Officer for comment and relevant conditions, following assessment by the nominated officer of this Council, have been inserted into the recommendation of the operational consent.

### **7.3 Independent Reviews**

*Acoustic Report* – Council engaged the services of a suitably qualified acoustic consultant to undertake an independent review of the submitted Acoustic Logic Noise Impact Assessment Report. Concerns were raised in relation the Report submitted with the application.

In a report dated 19 July 2011, The Acoustic Group advised that Acoustic Logic be required to amend the Report to address the correct level for internal traffic and aircraft noise as prescribed by AS 3671-1989 for Traffic Noise and AS 2021-2000 for aircraft noise mitigation. In letter dated 19 July 2011, the Applicant has agreed that the development be condition to reflect the recommendations made by Council's Consultant. A condition has been imposed in the recommendation that the development comply with AS2021-2000 and AS3671-1989.

*Traffic and Parking Report* – Council engaged the services of Transport & Traffic Planning Associates Pty Ltd, a suitably qualified traffic and transport consultant to undertake a review of the submitted Traffic and Parking Impact Report prepared by Traffix Pty Ltd. In a letter dated 18 May 2011, Council received comments from its independent review advising that it had no objection to the proposed development, being compliant with the car parking requirements of the Council. The consultant advises that the level of traffic generation is appropriate however, outlines that there is no graphics that accompany the report and therefore

the assessment of the existing traffic conditions would not be as significant as indicated in the report. The Applicant has been requested to address this issue. The consultant also recommends that a Loading Dock Management Plan be submitted for assessment. This be required as a condition of consent.

#### Design Review Panel (DRP)

A revised preliminary design concept resembling that scheme currently before Council was referred to the DRP, which met on 3 March 2011. The Panel made the following recommendations:

*The Panel generally supports the amended design concept and Pre-DA subject to the suggested modifications being incorporated at DA stage.*

The following is a response to each suggestion made by the DRP:

	<b>Issue</b>	<b>Applicants Response</b>
1	Define the lower 2-3 storeys (particularly the 12 storey blocks)	A base is prevalent on most faces of each of the buildings up to a height of 3 storeys. This is not a strict measure so as to provide interest within the large scale development and avoid monotony. In particular, this has not been adopted where Building D provides other methods of definition of the separate tiers of the building. A variety of composition is used at the lower levels to differentiate it from the uniformity of the upper tower and this is considered acceptable.
2	Block A facing Gardeners Rd requires a substantial visual break in its length a (92m) and be clearly expressed as 2 buildings	Building A has been modified so that whilst it remains as one building it has two distinct faces and these are separated by an alcove in its face. It now has the appearance of two separate buildings.
3	The commercial and retail components facing the street frontages should have a maximum activation and be visually permeable where appropriate	Both commercial space areas are designed to accommodate single depth tenancies with full length glazing. Landscape planting in the front setback will comprise of low shrubs and provides significant casual surveillance of public domain areas.
4	Further define the Church Avenue lobby	The entry lobby to Building G will be located between the pedestrian entrance to the communal open space area (and mid section Buildings) and the vehicular access ramp along the eastern part of the site. It is proposed to present to the street as a double height void. The lobby will be clearly identifiable from the street.
5	Minimise the intrusion of the adjacent car park	The entry ramp to the car parking facility is located at the eastern end of the Church Avenue frontage adjacent to the adjoining



	Issue	Applicants Response
	ramp to Church Avenue	Sydney Water land. The physical entrance to the ramp is setback behind the lobby area and approximately 10 metres from the nature strip of Church Avenue. Landscaping within the front setback in the form of raised planter beds will also assist in concealing the driveway entrance without jeopardising the safety of pedestrians or motorists.
6	Improve solar access to common areas and north facing units at the lower levels of Blocks B, C, D and E	The parapets of the east/west units have been remodelled to provide a setback from the face of the lower levels. This has increased solar access to common areas and north facing lower level units.
7	Widen the space between the 12 storey façades of Block E and F	The distance has been increased from 10m (concept plan provided to DRP) to 11-16 metres in the current scheme before JRPP.
8	Provide a high quality appearance of the mainly blank side walls and exposed walls of the car parking podium and refine the east/west façades of the towers	<p>The east west facades do not appear as blank walls and contribute to the articulation of the building through corner balconies, windows and protruding stairwell balustrades.</p> <p>The walls of the car park podium are integrated into the perimeter landscaping and do not extend above the ground level to a great extent. Landscaping will assist in screening any discernible elevations.</p>
9	Incorporate best practice environmental principles	The amenity of the development is assured through adequate cross ventilation, solar access, water re-use, soft landscaping and deep soil planting, internal orientation of living areas and private open space etc.
10	Provide some natural light and ventilation to the upper level basement car park	Four (4) light wells have been incorporated into the design of the development to provide natural light to the upper level basement car park from the podium level. As a result of the lowering of the revised scheme further into the ground, the opportunity to provide natural air intake to the basement car park levels is impractical.
11	Examine retention of the Gardeners Road street trees	This cannot be accommodated as the NSW RTA have required the design of a deceleration land into the site along Gardeners Road. Further the condition of the existing

	Issue	Applicants Response
		trees is very poor as a result of trimming to accommodate overhead power lines and therefore the establishment of new street trees along this development site is desirable along with the underground cabling of existing power lines to significantly improve the streetscape amenity of Gardeners Road.
12	Demonstrate that WSUD principles adopted into the landscape design –	The permitter of the site has a deep soil zone and water is directed into these zones where possible. Landscaping incorporates leaf mulch and groundcover planting to maximise infiltration and reduce stormwater runoff. A water infiltration system is incorporated into the development.
13	Ensure compliance with SEPP65 RFDC regarding winter sunlight to internal living areas and achievement of cross ventilation	The development concept has been modified to maximise solar access to all residential units and the proposal complies with the “Rules of Thumb” regarding cross ventilation, discussed further in this report
14	Provide natural light to both ends of corridors	Full height windows are provided to all corridors where corridors extend to end walls. Some building corridors are located on the outside of the building therefore maximising natural light
15	Provide storage areas in the car park levels; each dwelling unit; recycling and garbage storage and disposal and bicycle storage areas	All studio/1 bedroom units are provided with 2sqm of storage area in the car park levels and all 2 and 3 bedroom units with 4sqm of storage area internally. Waste storage rooms are proposed to the basement car park levels and car park levels also accommodate bicycle storage areas.
16	Provide disabled access in accordance with SEPP 65 RFDC	Disabled access is provided to the entire development, as required by the BCA.
17	Demonstrate details of safety, security and passive surveillance, with pedestrian access points secure at street frontages	Unauthorised access to the communal areas of the site cannot occur past the pedestrian entry points to Gardeners Road and Church Avenue.
18	Provide a north facing common open space on the top storey of each	Only one roof top communal open space area is proposed and this will be located on Building G. It is not considered that any

	Issue	Applicants Response
	building	additional roof top open space areas would be necessary considering that 42% of the site is designed as communal open space and that private open space areas are fully compliant with the DCP requirements. Further the proposed public park fronting Church Avenue will contribute to recreational opens space for future and nearby residents.
19	Ensure building blocks have individual identities through graphics	Each of the proposed buildings in the modified scheme has significant individual articulation of facades and form. The buildings have differing arrangement of balustrades window sizes, windows, use of fin walls, balconies and structural elements as well as colour treatment that it is not necessary to incorporate graphics into the design, that could prematurely age the buildings.
20	Differentiate communal internal courtyards from each other and from primary site link	The landscape architect has adopted a common theme for the communal courtyards reflecting the ancient sand dune history of the surrounding area. Each of the courtyards is individually designed but with some common elements
21	Demonstrate high quality of external materials and ensure they are integrated with the overall design of the facades and their composition suits their context	Significant effort has gone into the design of the external facades to ensure that individuality is achieved whilst deconstructing the scale of the development without adversely impacting the on the streetscape or residential amenity of the area. The arrangement of individual building elements is complemented by a range of high quality external finishes and colours.

It is considered that the Applicant has addressed the concerns of the Design Review Panel in the revised development scheme currently before the Panel, the comments of the Applicant as expressed in column 3 of the above table are generally agreed with.

#### 7.4 Voluntary Planning Agreement (VPA)

The development applications involve the dedication of land for road widening to Church Avenue, the dedication of land for a public reserve fronting Church Avenue and the dedication of land fronting Gardeners Road for a proposed deceleration lane.

As the development has benefited from additional a floor space and height, in a letter dated 15 June 2011 the applicant has requested to enter into a Voluntary Planning Agreement pursuant to Section 93F of the Act, the details of this have not been initiated at this stage. On this basis,

such details will be the subject of a separate Development Applications to Council for the public domain works and land dedication, establishment of the public park to be lodged with Council prior to the issue of any Occupation Certificates for either Stage 1 or Stage 2, whichever occurs first. In this regard, any required Contributions calculated under these subject applications is only required to be paid to Council prior to the issue of an Occupation Certificates for either of the respective consents.

As the VPA process is outside the jurisdiction of the JRPP, this aspect of the development is to be dealt with at a subsequent meeting of the Council.

#### 7.5 Section 94 Contributions

At Council Development Committee on 6 May 2009, Council was advised of the changes made to the Section 94 Contributions imposed by the State Government. The Minister for Planning issued a Section 94E Direction on 23 January 2009, which capped levies for residential development and residential subdivision to \$20,000.00. Council responded to the Direction by passing a resolution on the 18 March 2009 to comply with the cap. Therefore based on the cap the Section 94 Contributions may be applied to the proposed 500 residential units. As such, the calculations are as follows:

- DA10/324 (North) 297 units @ \$20,000.00 each = \$5,940,000.00
- DA10/325 (South) 203 units @ \$20,000.00 each = \$4,060,000.00

The Section 94 Contributions for the commercial component (1083m<sup>2</sup>) of the proposed development is not included in the above Directive and as such is subject to Council's Section 94 Contributions Plan 2005-2010 and Section 94 Contributions Plan – Mascot Station Precinct.

As such, the calculations for each development application are as follows:

DA10/324 (North) = 823sqm

*Section 94 Contributions Plan 2005-2010:*

- |                                |             |
|--------------------------------|-------------|
| • Community Facilities         | \$9,583.00  |
| • Administration               | \$1,554.00  |
| • Shopping Centre Improvements | \$6,956.00  |
| • Open Space & Recreation      | \$9,398.00  |
| • Drainage                     | \$17,431.14 |

Total    \$44,922.14

*Section 94 Contributions Plan – Mascot Station Precinct:*

- |                                |             |
|--------------------------------|-------------|
| • Public Road Land Dedications | \$31,436.00 |
|--------------------------------|-------------|

**Credit:** The Application is entitled to a Section 94 credit based on historic industrial use of the land. This is calculated based on the number of employees that would occupy the site area based on the rates within the Section 94 Contributions Plan 2005-2010. On this basis a total of \$333,760.24 can be deducted from the total contribution for DA10/324 (North).

Therefore a total Section 94 Contribution of **\$5,682,597.90** is required to be paid to Council in accordance with the draft schedule of Conditions attached to this report.

DA10/325 (South) = 260sqm

*Section 94 Contributions Plan 2005-2010:*

- |                                |            |
|--------------------------------|------------|
| • Community Facilities         | \$3,108.00 |
| • Administration               | \$504.00   |
| • Shopping Centre Improvements | \$2,256.00 |
| • Open Space & Recreation      | \$3,048.00 |
| • Drainage                     | \$5,506.80 |

Total \$14,442.80

*Section 94 Contributions Plan – Mascot Station Precinct:*

- |                                |             |
|--------------------------------|-------------|
| • Public Road Land Dedications | \$41,004.00 |
|--------------------------------|-------------|

**Credit:** The Application is entitled to a Section 94 credit based on historic industrial use of the land. This is calculated based on the number of employees that would occupy the site area based on the rates within the Section 94 Contributions Plan 2005-2010. On this basis a total of \$333,760.24 can be deducted from the total contribution for DA10/325 (South).

Therefore a total Section 94 Contribution of **\$3,781,686.60** is required to be paid to Council in accordance with the draft schedule of Conditions attached to this report.

## 8 Conclusion

The Applicant has submitted an amended design of the proposed Development Application Nos. 10/324 and 10/325 on the 19 April 2011 for the site in the following manner:

### DA10/324 (North)

Redevelopment of the northern part of the site fronting Gardeners Road for residential and commercial development, incorporating the following:

- construction of four (4) residential towers (Buildings A, B, C & D), of between 6-11 storeys in height (including basement car park levels), comprising of 297 residential apartments; and convenience shop/ refreshment room/ commercial premise uses fronting Gardeners Road;
- two (2) levels of basement car parking, accommodating 587 car parking spaces with direct access off Gardeners Road; and
- associated landscaping, stormwater and public domain works.

### DA10/325 (South)

Redevelopment of the southern part of the site fronting Church Avenue for residential and commercial development, incorporating the following:

- construction of three (3) residential towers (Buildings E, F and G), of between 6-13 storeys in height (including basement car park levels), comprising of 203 residential

- apartments; and convenience shop/refreshment room/commercial premise uses fronting Church Avenue;
- two (2) car parking levels, accommodating 327 car parking spaces with direct access off Church Avenue;
- provision, and embellishment of land for a proposed public reserve fronting Church Avenue;
- provision, and embellishment, of land for proposed road widening of Church Avenue; associated landscaping, stormwater and public domain works; and
- subdivision of the land to (a) consolidate three (3) existing allotments, and (b) provide three (3) new allotments of land, one being for the proposed redevelopment scheme; one for the proposed public reserve and the third for the proposed road widening.

The Joint Regional Planning Panel, Sydney East Region (JRPP) is the consent authority for the development applications. A total of eighteen (18) submissions were received as a result of the public exhibition process. The design currently before the Panel has been the subject an extensive design review process and Residents Consultative Committee input. It is the opinion of the Council as the planning body that the current design has addressed the concerns of local residents and on this basis the proposed development in its amended format is supported.

The applications have 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 the Panel that the applications be “deferred commencement” consent, subject to the submission of a Site Audit Statement which confirms that the site is suitable for the development as proposed both in terms of residential use and land dedication for recreational use and the amendments to the southern end of the nine storey component of Building G fronting Church Avenue.

## **RECOMMENDATION**

In view of the preceding comments, it is RECOMMENDED that the Joint Regional Planning Panel (JRPP) for the Sydney East Region, as the Consent Authority, resolve to:

- (a) Grant consent to the objection submitted under the provisions of State Environmental Planning Policy No. 1 – Development Standards to vary the provisions of Clause 12A of Botany Local Environmental Plan 1995 relating to maximum floor space ratio of 2:52:1 aggregate of the North and South Parts of the development (being DA Nos. 10/324 & 10/325) applied under this clause on the basis that:
  - i. Clause 12A of Botany Local Environmental Plan 1995 is a development standard; and
  - ii. The objection lodged by the applicant is well founded; and
- (b) Grant the Development Applications Nos. 10/324 and 10/325 a “Deferred Commencement for:

### **DA10/324 (North)**

Redevelopment of the northern part of the site fronting Gardeners Road for residential and commercial development, incorporating the following:

- construction of four (4) residential towers (Buildings A, B, C & D), of between 6-11 storeys in height (including basement car park levels),

- comprising of 297 residential apartments; and convenience shop/refreshment room/ commercial premise uses fronting Gardeners Road;
- two (2) levels of basement car parking, accommodating 587 car parking spaces with direct access off Gardeners Road via an 84 metre long deceleration lane; and
- associated landscaping, stormwater and public domain works.

#### DA10/325 (South)

Redevelopment of the southern part site fronting Church Avenue for residential and commercial development, incorporating the following:

- construction of three (3) residential towers Buildings E, F and G), of between 6-13 storeys in height (including basement car park levels), comprising of 203 residential apartments; and convenience shop/refreshment room/commercial premise uses fronting Church Avenue;
- two (2) car parking levels, accommodating 327 car parking spaces with direct access off Church Avenue;
- provision, and embellishment of land for a proposed public reserve fronting Church Avenue;
- provision, and embellishment, of land for proposed road widening of Church Avenue;
- associated landscaping, stormwater and public domain works; and
- subdivision of the land to (a) consolidate three (3) existing allotments, and (b) provide three (3) new allotments of land, one being for the proposed redevelopment scheme; one for the proposed public reserve and the third for the proposed road widening;

Under Section 80(3) of the Environmental Planning and Assessment Act 1979 with such consent not to operate until the following conditions are satisfied:

#### CONDITIONS

DC1 The submission to the Council of the City of Botany Bay a Site Audit Statement prepared and endorsed by an Accredited Site Auditor that the site being Lot 1 DP 303282, Lot 1 DP923787 and Lot 2 DP 224757 are collectively suitable for residential use and that that part of the site that will be dedicated to Council as public park is suitable for recreational use; and

DC2 The southern end of the nine storey component of Building G fronting Church Avenue, is to be amended in accordance with *Proposed Plan Change L06-L08 Drawing No DA2467 dated 26 July 2011 prepared by Turner and Associates*.

- (c) That the deferred commencement consent be limited to a period of 12 months;

**Premises: 619 – 629 Gardeners Road, Mascot**

**DA No: 10/324**

#### **SCHEDULE OF CONSENT CONDITIONS TO STAGE 1 - NORTH**

#### **GENERAL 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>Drawing No.</b>	<b>Author</b>	<b>Dated Received by Council</b>
Architectural Plans, Elevations and Sections with Project No. 10008 and Drawing No.:	Turner & Associates	19 April 2011
DA01 1001 (Issue G)		
DA01 1002 (Issue G)		
DA01 1003(Issue G)		
DA01 1110 (Issue S),		
DA01 1111 (Issue S)		
DA01 1112 (Issue Z)		
DA01 1113 (Issue O)		
DA01 1114 (Issue M)		
DA01 1115 (Issue M)		
DA01 1116 (Issue M)		
DA01 1117 (Issue M)		
DA01 1118 (Issue M)		
DA01 1119 (Issue M)		
DA01 1120 (Issue M)		
DA01 1121 (Issue M)		
DA01 1122 (Issue M)		
DA01 1123 (Issue M)		
DA01 1124 (Issue M)		
DA01 1150 (Issue C)		
DA01 1151 (Issue C)		
DA01 1200 (Issue K)		
DA01 1201 (Issue F)		
DA01 1202 (Issue I)		
DA01 1300 (Issue I)		
DA01 1301 (Issue E)		
DA01 1302 (Issue I)		



<b>Drawing No.</b>	<b>Author</b>	<b>Dated Received by Council</b>
DA01 1303 (Issue H) DA01 1304 (Issue I) DA01 1305 (Issue I) DA01 1306 (Issue I) DA01 1307 (Issue J) DA01 1410 (Issue D) DA01 1411 (Issue D) DA01 1418 (Issue D) DA01 1419 (Issue D) DA01 1501 (Issue E) DA01 1502 (Issue E) DA01 1505 (Issue B)		
Landscape Masterplan LDA1-2 (Issue A) LDA1-3 (Issue A) LDA1-4 (Issue A) LDA1-5 (Issue A) LDA1-6 (Issue A) LDA1-7 (Issue A) LDA1-8 (Issue A) LDA1-9 (Issue A) LDA1-10 (Issue A) LDA1-11 (Issue A)	Turf	19 April 2011
Survey Details Reference No. 6486 and Sheets 1-7	CMS Surveyors Pty Limited	19 April 2011
Subdivision Plan, Reference No. 6486A (Issue E)	CMS Surveyors Pty Limited	19 April 2011
Stormwater Management Plan (Reference No. 1110/JE/110325/A), Drawing Nos.: SW00 (Issue A) SW01 (Issue A) SW02 (Issue A)	Emerson Associates Pty Ltd	19 April 2011

<b>Drawing No.</b>	<b>Author</b>	<b>Dated Received by Council</b>
SW03 (Issue A) SW04 (Issue A)		
Concept Plan for Deceleration Lane	Traffix Traffic and Transport Planners	19 April 2011

<b>Document(s)</b>	<b>Author</b>	<b>Date received by Council</b>
Statement of Environmental Effects	Anthony Rowan P/L	19 April 2011
Architectural Design Statement – DA 1 North	Turner & Associates Pty Ltd	19 April 2011
Waste Management Plan	Atlas Construction Group Pty Ltd	19 April 2011
Pedestrian Wind Environment Statement, Reference No. WA845-03F02 (Issue 3)	Wintech Pty Ltd	23 April 2011
SEPP 1 Objection	Anthony Rowan P/L	21 June 2011
Arboricultural Assessment Report Review	Tree & Landscape Consultants	19 April 2011
Additional Site Investigation, Reference No. E1294.1AA – (Issue A)	Environmental Investigations	19 April 2011
Electromagnetic Field Survey, Reference No.	EMC Services Pty Ltd	19 April 2011
Quantity Surveyors Estimate, Reference No. 3768-DA1 (Issue A)	Washington Brown	19 April 2011
Hydrogeology & Dewatering Report, Reference No. 31026-H2	DF Dickson & Associates Pty Ltd	19 April 2011
Structural Report into the Proposed Shoring and Foundations, Reference No. 10081-001	ABC Consultant Structural Engineers	19 April 2011
Noise Impact Assessment Report, Reference No. 2010468/0605A/R1/JG	Acoustic Logic Consultancy	19 April 2011
Utilities Investigation, Reference No. NS03151-5001	Hyder Consulting Pty Ltd	19 April 2011

<b>Document(s)</b>	<b>Author</b>	<b>Date received by Council</b>
(Issue B)		
Traffic Impact Assessment, Reference No. 11 059 (Issue v4)	Traffix Traffic and Transport Planners	19 April 2011
Geotechnical Investigation	Douglas Partners	19 April 2011
BCA Compliance Statement	Blackett Maguire Goldsmith	19 April 2011
Section J BCA Assessment, Reference No. 20C-11-0038-PTQ-463455-2	VIPAC Engineers & Scientists Ltd	19 April 2011
BASIX Assessment. Reference No. 20C-11-0038-TPR-463486-1	VIPAC Engineers & Scientists Ltd	19 April 2011
BASIX Certificate No. 370717M, dated 15 April 2011	NSW Dept of Planning	19 April 2011
BASIX Certificate No. 370726M, dated 15 April 2011	NSW Dept of Planning	19 April 2011
BASIX Certificate No. 370731M, dated 15 April 2011	NSW Dept of Planning	19 April 2011
BASIX Certificate No. 370734M, dated 15 April 2011	NSW Dept of Planning	19 April 2011
BASIX Certificate No. 370717M, dated 15 April 2011	NSW Dept of Planning	19 April 2011
Interim Advice for Statutory Site Audit No 184 by Dr Ian Swane Review of a remediation action plan for a proposed high-rise residential development at 12 & 14 Church Ave & 619-629 Gardeners Road, Mascot	S & N Environmental Engineers & Contractors	22 July 2011
Amended Acoustic Response to Council Issues	Acoustic Logic	19 July 2011
Amended Acid Sulphate Statement	Environmental Investigations	19 July 2011
Dilapidation Report - Letter dated 19 July 2011	Atlas Construction Group	19 July 2011

Document(s)	Author	Date received by Council
Statement for Dilapidation Report – Letter dated 19 July 2011	ABC Consultants Structural Engineers	19 July 2011
Amended Wind Response to Council Issues	Windtech	20 July 2011
Amended Traffic Statement in response to Council Issues	Traffix – Traffic and Transport Planners	20 July 2011
VPA Letter	Fitz Jersey Pty Limited	15 June 2011
View Analysis & Plans	Atlas Construction Group <sup>22</sup> July 2011	25 July 2011 and 26 July 2011
Amended Traffic Statement in Response to Council to traffic flow	Traffix – Traffic and Transport Planners	27 July 2011

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

- 2 The applicant must prior to the commencement of works for Stage 1 pay the following fees:

- |     |                           |                |
|-----|---------------------------|----------------|
| (a) | Builders Security Deposit | \$50,000.00;   |
| (b) | Development Control       | \$11,011.00;   |
| (c) | Section 94 Contributions  | \$5,682,597.90 |
| (d) | Waste Contribution        | \$25,000.00    |

3

- (a) Developer Contributions are required to be made in accordance with the Voluntary Planning Agreement for the site, however should agreement not be reached, the Section 94 Contributions are required to be paid in accordance with Condition 3(b) below;
- (b) The City of Botany Bay being satisfied that the proposed development will increase the demand services facilities within the area, and in accordance with Council's Section 94 Contribution Plans 2005-2010 and Mascot Station Precinct Section 94 Contributions Plan a sum of \$5,682,597.90 towards the provision of services is to be paid to Council prior to the issuing of a Occupation Certificate either interim or final

- 4 This Consent relates to land in Lot 2 DP 224757 and as such, building works must not encroach on to adjoining lands or the adjoining public place, other than public works required by this consent.

- 5 A separate Development Application shall be submitted to Council for the dedication of land required for deceleration lane and footpath realignment to Gardeners Road. This application should encompass all public domain works associated with the dedication of land and reconstruction of Councils nature strip. The development application is required to be submitted to Council prior to the issue of the Occupation Certificate.
- 6 The consent given does not imply that works can commence until such time that:
- (a) Detailed plans and specifications of the building have been endorsed with a Construction Certificate by:
    - (i) The consent authority; or,
    - (ii) An accredited certifier; and,
  - (b) The person having the benefit of the development consent:
    - (i) Has appointed a principal certifying authority; and
    - (ii) Has notified the consent authority and the Council (if the Council is not the consent authority) of the appointment; and,
    - (iii) The person having the benefit of the development consent has given at least 2 days notice to the council of the persons intention to commence the erection of the building.
- 7
- (a) All building work must be carried out in accordance with the provisions of the Building Code of Australia; and
  - (b) The basement car park must be designed and built as a “fully tanked” structure.
- 8 Pursuant to clause 97A(3) of the Environmental Planning & Assessment Regulation 2000, it is a condition of this development consent that all the commitments listed in each relevant BASIX Certificate for the each building in the development are fulfilled.
- (a) Note:

Relevant BASIX Certificate means:

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

**CONDITIONS IMPOSED BY AN EXTERNAL AUTHORITY**

- 9 The following condition is imposed by Sydney Water and is to be complied with:

**Water**

- (a) The 100 mm drinking water main fronting the proposed development in Church Avenue does not comply with the Water Supply Code of Australia (Sydney Water Edition – WSA 03-2002) requirement for minimum sized mains for this scope of development.
- (b) The 100 mm drinking water main must be upsized to a 200 mm main from point 'A' to point 'B', O’Riordan Street to mid No 635 Gardeners Rd.

**Wastewater**

- (a) The three proposed residential towers (A, B and C) to the north fronting Gardeners Road can connect to the 300 mm wastewater main in Church Avenue.
- (b) The three proposed residential towers (D, E and F) can connect to the 225 mm wastewater main located at the western boundary of the property near Bourke Street.

**Trade Waste**

- (a) All customers discharging trade waste into Sydney Water's wastewater systems must have written permission from Sydney Water. The trade waste requirements help Sydney Water discharge or reuse wastewater while protecting the environment and meeting regulatory requirements.
- (b) Sydney Water will either issue the customer a trade waste permit or enter into a trade waste agreement. A trade waste permit must be obtained before any discharge can be made to the sewer system. The permit is also needed for site remediation purposes. Applications for a trade waste permit can be made to Sydney Water at the Section 73 Certificate application stage. For further information refer to the Sydney Water website.

**Sydney Water Servicing**

- (a) Sydney Water will further assess the impact of the developments when the proponent applies for a Section 73 Certificate. This assessment will enable Sydney Water to specify any works required as a result of the development and to assess if amplification and/or changes to the system are applicable. Sydney Water requests Council continue to instruct proponents to obtain a Section 73 Certificate from Sydney Water.
- (b) The proponent must fund any adjustments needed to Sydney Water infrastructure as a result of any development. The proponent should engage a Water Servicing Coordinator to get a Section 73 Certificate and manage the servicing aspects of the development. Details are available from any Sydney Water Customer Centre on 13 20 92 or Sydney Water's website at [www.sydneywater.com.au](http://www.sydneywater.com.au).

- 10 The following conditions are imposed by the NSW Roads and Traffic Authority (RTA).
- (a) Entry and exit movement to and from the site off Gardeners Road shall be restricted to left in and left out movements only. A raised concrete medium strip shall be provided at the entry point of access to Gardeners Road to separate entry and exit movements. The proposed median should extend an appropriate distance on either side of the driveway and be sufficient in width (minimum of 900mm) to accommodate the storage of pedestrians and safely accommodate the storage of a pram;
  - (b) The required raised concrete median on Gardeners Road shall be designed in accordance with the RTA's Road Design Guide and other Australian Codes of Practice and endorsed by a suitably qualified practitioner.
  - (c) Concerns are raised with regard to the adequacy of loading provision. The turning path analysis plan (DWG No. DA01 1111) shows that the manoeuvrability of the loading vehicles might block traffic entering and exiting the car parking area. Ideally the two functions should be segregated;
  - (d) The proposed deceleration lane shall be 60 metres in length with a width of 3.5 metres;
  - (e) To facilitate the provision of the proposed left turn deceleration lane on Gardeners Road, the Applicant shall provide a 3.5 metre wide land dedication from the subject site on Gardeners Road frontage of the site for the full length of the left turn deceleration lane into the site. This land shall be dedicated as public road at no cost the RTA or Council;
  - (f) This land dedication from the subject site as public road shall be executed prior to the release of any Construction Certificate by the Principal Certifying Authority for the proposed structure on the subject site;
  - (g) The proposed deceleration lane on Gardeners Road shall be designed in accordance with the RTA's Road Design Guide and other Australian Codes of Practice and endorsed by a suitably qualified practitioner.
  - (h) The certified copies of the civil design plans as well as swept paths analyses shall be submitted to the RTA for consideration and approval prior to the release of the Construction Certificate by the Principal Certifying Authority and the commencement of road works. The existing lane widths along Gardeners Road should not be compromised. The RTA fees for administration, plan checking and project management shall be paid by the developer prior to the commencement of works.
  - (i) The developer will be required to enter into a Works Authorisation Deed (WAD) with the RTA for the proposed deceleration lane and driveway off Gardeners Road and associated roadworks. The Works Authorisation Deed (WAD) will need to be executed prior to the RTA's assessment of the detailed civil plans. The Construction Certificate shall not be released by the Principal Certifying Authority until such time as the WAD is executed.
  - (j) The proposed deceleration lane off Gardeners Road shall be fully constructed and operational prior to the release of any Occupation certificate by the Principal Certifying Authority.

- (k) The swept path of the longest vehicle (including garbage trucks) entering and exiting the subject site as well as manoeuvrability through the site, shall be in accordance with AUSTROADS. In this regard, a plan shall be submitted to Council for approval which shows that the proposed development complies with this requirement;
- (l) The developer is to submit detailed design drawings and geotechnical reports relating to the excavation of the site and support structures to the RTA for assessment. The developer is to meet the full cost of the assessment by the RTA.
- (m) The report would need to address the following key issues:
  - (i) The impact of the excavation/rock anchors on the stability of Gardeners Road and detailing how the carriageway would be monitored for settlement.
  - (ii) The impact of the excavation on the structural stability of Gardeners Road.
  - (iii) Any other issue that may need to be addressed. (Contact Geotechnical Engineer Stanley Yuen on phone 8837 0246 or Graham Yip on phone 8837 0245 for details).
- (n) If it is necessary to excavate below the level of the base of the footings of the adjoining roadways, the person acting on the consent shall ensure that the owners of the roadway are given at least seven (7) days notice of the intention to excavate below the base of the footings. The notice is to include complete details of the work;
- (o) The developer shall be responsible for all public utility adjustment/relocation works necessitated by the above work and as required by the various public utility authorities and/or their agents;
- (p) All works/regulatory signposting associated with the proposed development are to be at no cost the RTA;
- (q) All vehicles are to enter and exit the site in a forward direction;
- (r) The driveways shall be designed and constructed in accordance with AS2890.1-2004;
- (s) In accordance with AS2890.1-2004 (Parking Facilities Part 1: Off Street Car Parking), the driveway shall be a minimum of 6.0 metres in width of a minimum distance of 6.0 metres within the site to allow for a two way simultaneous entry and exit. The proposed driveway shall have a minimum grade of 1:20 for a distance of 6.0 metres within the subject site. This is to ensure that vehicles exiting the subject site have adequate sight distance to pedestrians and cyclists on the footway;
- (t) Any redundant driveway on Gardeners Road shall be removed and replaced with kerb and gutter to match the existing. The proposed kerb and gutter shall also be designed and constructed to RTA requirements;
- (u) The design and construction of the gutter crossing and kerb and gutter works 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 (Ph. 8849 2144).



- (v) The layout of the proposed car parking areas associated with the subject development (including driveways, grades, turn paths, sight distance requirements, aisle widths, aisle lengths and parking bay dimensions) should be in accordance with AS 2890.1 – 2004 (Parking Facilities, Part 1 – Off Street Car Parking), and AS2890.2 – 2002 (Parking Facilities, Part 2 – Commercial Vehicle Facilities).
  - (w) Sight distances from the proposed access driveway to pedestrians and vehicles entering and exiting Gardeners Road are to be in accordance with AS2890.1 – 2004. Vegetation and proposed landscaping/fencing must not hinder sight lines to and from the access driveway to motorists, pedestrians and cyclists;
  - (x) All construction vehicles are to be contained wholly within the site and vehicles must enter the site before stopping.
- 11 The following conditions form the General Terms of Approval dated 19 July 2011 by the NSW Office of Water and must be complied with:

General and Administrative Issues.

- (a) Groundwater shall not be pumped or extracted for any purpose other than temporary construction dewatering.
- (b) Pumped water (tailwater) shall not be allowed to discharge off-site (eg adjoining roads, stormwater system, sewerage system, etc) without the controlling authorities approval and/or owners consent.
- (c) The licensee shall allow (subject to Occupational Health and Safety Provisions) the NSW Office of Water or any person authorised by it, full and free access to the works (excavation or bore/borefield), either during or after construction, for the purpose of carrying out inspection or test of the works and its fittings and shall carry out any work or alterations deemed necessary by the NSW Office of Water for the protection and proper maintenance of the works, or the control of the water extracted to prevent wastage and for the protection of the quality and prevention from pollution or contamination of the groundwater.
- (d) If a work is abandoned at any time the licensee shall notify the NSW Office of Water that the work has been abandoned and seal off the aquifer by such methods as agreed to or directed by the NSW Office of Water.
- (e) Suitable documents are to be supplied to the NSW Office of Water of the following:
  - (i) A report of prediction of the impacts of pumping on any licensed groundwater users or groundwater dependent ecosystems in the vicinity of the site. Any adverse impacts will not be allowed and the project will need to be modified.
  - (ii) A report of assessment of the potential for salt water intrusion to occur as a result of the dewatering. This report is only required for sites within 250m of any marine or estuarine foreshore area. The generation of conditions leading to salt water intrusion will not be allowed, and the proposal will need to be modified.
  - (iii) Descriptions of the methods used and actual volume of groundwater to be pumped (kilolitres/megalitres) from the dewatering works, the

works locations, the discharge rate (litres per second), duration of pumping (number of days/weeks), the amount of lowering of the water table and the anticipated quality of the pumped water.

- (iv) Descriptions of the actual volume of pumped water (tailwater) to be reinjected (kilolitres/megalitres), the reinjection locations, the disposal rate (litres per second), duration of operation (number of days/weeks) and anticipated quality of treated water to be reinjected.
- (v) Monitoring of groundwater levels (minimum of 3 weekly measurements of depth to water at a minimum of 3 locations broadly distributed across the site) beneath the proposed development site prior to construction. This requirement is only for sites where the proposed structure shall extend greater than one floor level into the existing ground level.

#### Specific Conditions

- (a) The design and construction of the structure must preclude the need for permanent dewatering.
- (b) The design and construction of the structure that may be impacted by any watertable must include a water proof retention system (i.e. a fully tanked structure) with adequate provision for future fluctuations of water table levels. (It is recommended that a minimum allowance for a water table variation of at least +/-1.0 metre beyond any expected fluctuation be provided). The actual water table fluctuation and fluctuation safety margin must be determined by a suitably qualified professional.
- (c) Construction methods and material used in and for construction are not to cause pollution of the groundwater.
- (d) Monitoring of groundwater levels is to be continued at least weekly during the construction stage and at least weekly over a period of at least 2 months following cessation of dewatering, with all records being provided to the NSW Office of Water on expiration of the licence. This requirement is only for sites where the proposed structure shall extend greater than one floor level into the existing ground level.
- (e) Groundwater quality testing must be conducted (and report supplied to the NSW Office of Water). Samples must be taken prior to the commencement of dewatering, (and ongoing to the satisfaction of the NSW Office of Water for any extraction and reinjection activities). Collection and testing and interpretation of results must be done by suitably qualified persons and NATA certified laboratory identifying the presence of any contaminants and comparison of the data against accepted water quality objectives or criteria.
- (f) Discharge of any contaminated pumped water (tailwater) that is not to be reinjected, must comply with the provisions of the Protection of the Environment Operations Act 1997 and any requirements of the relevant controlling authority. The method of disposal of pumped water (i.e. street drainage to the stormwater system or discharge to sewer) and written permission from the relevant controlling authority must be presented to the NSW Office of Water in support of the licence application.
- (g) Discharge of any contaminated pumped water (tailwater) that is to be reinjected, must comply with the provisions of the Protection of the

Environment Operations Act 1997. The quality of any pumped water (tailwater) that is to be reinjected must be compatible with, or improve the intrinsic or ambient groundwater in the vicinity of the reinjection site. Contaminated groundwater is not to be reinjected into any aquifer. The following must be demonstrated in writing:

- (i) The treatment to be applied to the pumped water (tailwater) to remove any contamination.
  - (ii) The measures to be adopted to prevent redistribution of any contamination in the groundwater system. Any reinjection proposal that is likely to further spread contamination within the groundwater system will not be allowed and the project will need to be modified.
  - (iii) The means to avoid degrading impacts on the identified beneficial use of the groundwater. Any reinjection proposal that is likely to lower the identified beneficial use of a groundwater system will not be allowed and the project will need to be modified.
- (h) Written advice be provided from the Certifying Authority to the NSW Office of Water to certify that the following ground settlement issues have been addressed in reports submitted by the proponent:
- (i) Assessment by a suitably qualified geotechnical professional that the proposed dewatering activity does not pose an unacceptable risk of off-site impacts such as damage to surrounding buildings or infrastructure as a result of differential sediment compaction and surface settlement during and following pumping of groundwater.
  - (ii) Settlement monitoring activities to be undertaken prior to, during and for the required period of time following the dewatering pumping to confirm the impact predictions.
  - (iii) Locations of settlement monitoring points, and schedules of measurement.

#### Formal Application Issues

- (a) An application must be completed on the prescribed form for the specific purpose of temporary construction dewatering and a licence obtained from the NSW Office of Water prior to the installation of the groundwater extraction works. A plan drawn to scale will be required with the application clearly identifying the location of the dewatering installations.
- (b) Upon receipt of a Development Consent from the City of Botany Bay, a fully completed licence application form, unambiguous documentation of the means by which the below-ground areas of the development will be designed and constructed to prevent any groundwater seepage inflows (and therefore preclude any need for permanent or semi-permanent pumping), together with all other required supporting information, the NSW Office of Water will issue a Water Licence under Water Management Act, 2000.
- (c) A licence application under Water Management Act, 2000 must be accompanied by a \$151.00 fee and must specify the proposed volume of groundwater to be pumped in total (megalitres). The licence is also

subject to administrative charges as determined from time to time by the Independent Pricing and Regulatory Tribunal (IPART).

12 The following conditions are imposed by the NSW Police Service:

- (a) As the proposed development may be exposed to Break and Enter Steals, Stealing, Steal from persons, Malicious Damage and Steal from Motor Vehicle offences, a closed circuit surveillance system (CCTV) which complies with the Australian Standard - Closed Circuit Television System (CCTV) AS:4806:2006 shall to be implemented to receive, hold or process data for the identification of people involved in anti-social behaviour prior to the issue of the Occupation Certificate. The system is obliged to conform with Federal, State or Territory Privacy and Surveillance Legislation;
- (b) The CCTV system should consist of surveillance cameras strategically located at the front and rear of the premises to provide maximum surveillance coverage of the area. Particularly areas that are difficult to supervise. Cameras should be strategically mounted outside the development buildings and within the car parking areas to monitor activity within these areas. One or more cameras should be strategically mounted at entry and exit points to monitor activities around these areas;
- (c) Digital 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;
- (d) It is crucial even in the development stage that these cameras are installed as soon as power is available to the site;
- (e) A monitor intruder alarm system which complies with the *Australian Standard – Systems Installed within Clients Premises, AS:2201:1998* shall be installed within the premises to enhance the physical security and assist in the detection of unauthorised entry to the premises. This standard specifies the minimum requirements for intruder alarm equipment and installed systems. It shall apply to intruder alarm systems in private premises, commercial premises and special installations. 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;
- (f) The light emitting diodes (LED's red lights) within the detectors should be deactivated, to avoid offenders being able to test the range of the system;
- (g) 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 a robbery. *NB. Duress devices should only be used when safe to do so*;
- (h) By angling fire egress inlet walls 45 degrees or more, opportunities for entrapment, loitering and vandalism can be reduced;
- (i) Care should be taken when using glazing in entry foyers. At night the vision of departing occupants can be affected by reflections on the interior of the glass (cant' see outside). Mirroring can be reduced by using appropriate external lighting;

- (j) The configuration of car park spaces can impact the risk of car thieves. Grid rows increase natural surveillance. Avoid dark spots, corners and isolated car spaces;
- (k) Public laundries, garbage disposal areas and other communal spaces should not be located in a buildings 'leftover space'. Poor supervision of communal facilities can greatly increase the risk of predatory crime, theft and vandalism. Areas that are unused or sporadically used after hours and unsupervised or, under supervised should not be accessible to the public;
- (l) Uneven building alignments, insert doorways and hidden entrances should be avoided. They can facilitate predatory crimes, theft, malicious damage and other crimes;
- (m) Bicycle parking areas should be located within view of capable guardians. The provision of covered lockable racks to secure bicycles increases the effort required to commit crime;
- (n) Prior to the issue of the Occupation Certificate, lighting shall be installed at the premises in accordance with the requirements of the *Australian Standard: Lighting AS:1158*. The emphasis shall be on the installation of low glare, high uniformity lighting levels in line with the standard;
- (o) Lighting sources should be compatible with and not interfere with the requirements of any surveillance system at the premises;
- (p) The luminaires (light covers) should be designed to reduce opportunities for malicious damage. Lighting within the development needs to be checked on a regular basis;
- (q) A limited amount of internal lighting should be left between the hours of sunset and sunrise, to enable patrolling police, security guards or passing people to monitor the activities within the business;
- (r) Improved lighting needs to extend from the development towards O'Riordan Street and Bourke Road. Consideration must be given to pedestrians walking from the development to surrounding streets for the purpose of catching public transport etc. Areas adjoining pathways should be illuminated to avoid opportunities for concealment and entrapment. Lighting in public places should cater for pedestrians as much as motor vehicles. Pedestrian scale lighting heels attract people into areas and increase night supervision.
- (s) Clear street number signs should be displayed and appropriately positioned at the front of the business to comply with Local Government Act, 1993 Section 124 (8). Failure to comply with any 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 \$5500) for an individual and 100 penalty units (currently \$11000) for the corporation. The numbers should be in contrasting colours to the building materials and be larger than 120mm.
- (t) Warning signs should be strategically posted around the buildings to warn intruders of what security treatments have been implemented to reduce opportunities for crime.
  - (i) Warning, trespasser will be prosecuted
  - (ii) Warning, these premises are under electronic surveillance

- (u) Directional signage should be posted at decision making points (eg. X Entry/egress points) to provide guidance to the uses of the development. This can also assist in access control and reduce excuse making opportunities by intruders.
- (v) A Fire Safety Statement must be prominently displayed within the development to comply with the Environmental Planning & Assessment Regulations (1994) Clause 80GB. The annual fire safety statement is a statement issued by the owner of a building.
- (w) Signage needs to be provided at fire exits to assist occupants to identify exits in emergency situations.
- (x) Signage needs to be provided to assist occupants to identify fire suppression equipment, eg extinguishers, fire hoses etc.
- (y) An Emergency control and evacuation plan which complies with the Australian Standard, Emergency Control Organisation and Procedures for Buildings, Structures and Workplace, AS:3745:2002 should be prepared and maintained by your development to assist management and staff in the event of an emergency. This standard sets out the requirements for the development of procedures for the controlled evacuation of the building, structures and workplaces during emergencies. Further information in relation to planning for emergencies can be obtained from Emergency NSW <http://www.emergency.nsw.gov.au> or Emergency Management Australia <http://www.ema.gov.au>.
- (z) Consider the large park space in the middle of the proposed buildings and ask what this space will be used for, who will use this space and when will this space be used.
- (aa) Encourage local community use of the park space (eg. Vegetable gardens, yoga classes, exercise classes etc).
- (bb) Consider children's play equipment, will it be used correctly or will it be subjected to vandalism and breed anti-social behaviour (eg underage drinking at night) Make an assessment based on the demographics of the area, whether it will be used by children for the appropriate reasons. Lighting will determine usage, will the community feel safe to make use of the park at night.
- (cc) The door and door frames to these premises should be of solid construction.
- (dd) Doors should be fitted with locks that comply with the Australian Standard – Mechanical Locksets for doors in buildings, AS:4145:1993, to restrict unauthorised access and the Building Code of Australia (fire regulations). This standard specifies the general design criteria, performance requirements and procedures for testing mechanical lock sets and latch sets for their resistance to forced entry and efficiency under conditions of light to heavy usage. The standard covers lock sets for typical doorways, such as wooden, glass or metal hinged swinging doors or sliding doors in residential premises. Requirements for both the lock and associated furniture are included. Certain areas may require higher level of locking devices not referred to in this standard (eg. Locking bars, electronic locking devices and detection devices) Dead locks are recommended for residential units.
- (ee) There are some doors within the premises which are designated as fire exits and must comply with the Building Code of Australia. This means that they

provide egress to a road or open space, an internal or external stairway, a ramp, a fire isolated passageway, a doorway opening to a road or open space. The doors in the required exits must be readily open-able without a key from the side that face the person seeking egress, by a single hand downward action or pushing action on a single device which is located between 900mm and 1.2m from the floor.

- (ff) The main access to the underground car park should have restricted access with a security pass. The opening/closing mechanism should be protected from vandalism and tampering. All exit doors from the car park should have striker plates installed to minimise chance of tampering.
  - (gg) The main entry/egress doors to the development should have an electronically operated lock which require security swipe pass for entry. The lifts operating in the building should have the same security swipe pass technology. When an occupant buzzes in a visitor the lift should recognise the floor the occupant resides and only allow the visitor access to that floor in the lift.
  - (hh) Entrance doors to commercial premises (convenient store etc.) should include an electronically operated lock, which can be locked after hours to control access to the development. Staff could release this lock electronically from the safety of the counter area once the customer has been identified. This locking mechanism should be activated during the hours of darkness.
- 13 The following conditions are imposed by the Sydney Airport Corporation Limited (SACL) and must be complied with:
- (a) The PROPERTY DEVELOPMENT at 619 – 629 GARDENERS ROAD MASCOT 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 (AEGH) without prior approval of this Corporation.
  - (b) The Civil Aviation Safety Authority (CASA) have no objection to the erection of the following structures:
    - (i) Building A to a height of 29.95 metres above Australian Height Datum (AHD).
    - (ii) Building B to a height of 29.95 metres above Australian Height Datum (AHD).
    - (iii) Building C to a height of 29.95 metres above Australian Height Datum (AHD).
    - (iv) Building D to a height of 51.00 metres above Australian Height Datum (AHD).
  - (c) The approved height is inclusive of all lift over-runs, vents, chimneys, aerials, TV antennae, construction cranes etc.
  - (d) Should you wish to exceed the above heights, a new application must be submitted. 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. 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. SACL advises that approval to operate construction equipment (ie cranes) should be obtained prior to any commitment to construct. Information required by SACL prior to any approval is to include:

- (i) the location of any temporary structure or equipment, ie. 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 ie. construction cranes, intended to be used in the erection of the proposed structure/activity;
  - (iv) the period of the proposed operation (ie. construction cranes) and desired operating hours for any temporary structures.
- (e) 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.
- (f) The development is to comply with the Civil Aviation Safety Authority (CASA) requirements as outlined in the Council's Development Application Guide for Multi-Unit Residential, Commercial and Industrial.

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

- 14 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 Principal Certifying Authority. Any damage to utilities/services will be repaired at the applicant's expense.
- 15 Prior to the issue of the Construction Certificate the required Long Service Levy payable under Section 34 of the Building and Construction Industry Long Service Payments Act 1986 has to be paid. The Long Service Levy is payable at 0.35% of the total cost of the development, however this is a State Government Fee and can change without notice.
- 16 Prior to the issue of the Construction Certificate design verification is required to be submitted from a qualified designer to confirm the development is in accordance with the approved plans and details and continues to satisfy the design quality principles in State Environmental Planning Policy No. 65 Design Quality of Residential Flat Development.
- 17 All plumbing stacks, vent pipes, stormwater downpipes and the like shall be kept within the building and suitably concealed from view. This condition does not apply to



the venting to atmosphere of the stack above roof level. Details shall be submitted to the Principal Certifying Authority prior to issue of the Construction Certificate.

18

- (a) Prior to the issue of the Construction Certificate, the measures required in the Noise Impact Assessment Report prepared by Acoustic Logic Consultancy dated 28 March 2011 shall be undertaken in accordance with the provisions of *AS2021-2000: Acoustics – Aircraft Noise Intrusion – Building Siting and Construction* to establish components of construction to achieve indoor design sound levels in accordance with Table 3.3 of AS2021-2000 shall be incorporated into the construction of the building;

The work detailed in the report includes:

- (i) Appropriate acoustic glazing to stated windows and doors of all apartments as described in the report;
  - (ii) External wall construction;
  - (iii) External door specification;
  - (iv) Acoustically treated mechanical ventilation.
- (b) Prior to the issue of the Construction Certificate, a compliance report from a suitably qualified acoustic consultant shall be submitted to Council indicating any required noise mitigation measures to the approved dwelling, as detailed in the NSW Road Noise Policy 2011 in accordance with AS 3671-1989 – Acoustic – Road Traffic Intrusion.
- (c) Prior to the issue of the Construction Certificate details are to be provided on acoustic treatment to the entry and exit roller door to driveway of the development to comply with the Office of Environment & Heritage's Industrial Noise Policy and Noise Control Guidelines.

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

- (a) Carry out a survey of all utility and Council services within the site including relevant information from utility authorities and excavation if necessary to determine the position and level of services.
- (b) Negotiate with the utility authorities (eg Energy Australia, Sydney Water and Telecommunications Carriers) and Council in connection with:
  - (i) The additional load on the system; and
  - (ii) The relocation and/or adjustment of the services affected by the construction.
- (c) Any costs in the relocation, adjustment, and provision of land or support of services as requested by the service authorities and Council are to be the responsibility of the developer.

20 The approved Waste Management Plan shall be complied with at all times during construction works, and during the ongoing use of the premises.

- (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 shall be installed prior to the commencement of any demolition, excavation or construction works to prevent sediment and silt from site works (including demolition and/or excavation) being conveyed by stormwater into Council's stormwater system, natural watercourses, bushland, trees and neighbouring properties;
- (c) The water pollution and sediment controls shall be designed and implemented in accordance with:
  - (i) The Soil and Water Management Plan;
  - (ii) "Do It Right On Site, Soil and Water Management for the Construction Industry" published by the Southern Sydney Regional Organisation of Councils 2001; and
  - (iii) the Protection of Environment Operations Act 1997 and the Department of Environment, Climate Change and Water guidelines.
  - (iv) "Managing Urban Stormwater – Soils and Construction" published by the NSW Department of Housing 4th Edition" (The Blue book).
  - (v) Where there is any conflict, The Blue Book takes precedence.

Notes:

- (1) 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.
- (2) 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).
- (3) 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.
- (4) 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.

- (d) These device shall be maintained in a serviceable condition AT ALL TIMES throughout the entire demolition, excavation and construction phases of the development and for a minimum three (3) month period after the completion of the development, where necessary.
  - (e) The vehicular entry/exit to the site must be protected from erosion and laid with a surface material that will not wash into the street drainage system.
  - (f) Shaker pads are to be installed at the entry/exit points to the site to prevent soil material leaving the site on the wheels of vehicles and other plant and equipment.
- 21 The landscape areas shown on the landscape concept plans submitted by Turf : *dwgs LDA2-4 through 7 (south) and LDA1-4 to 5 (north) Issue A* as well as Tree Strategy/Management Plans : *dwgs LDA2-13 (south) and LDA1-8 (north)* shall be the subject of detailed landscape construction documentation (plans and specifications) to be submitted to, and approved by, Council's Landscape Architect. The landscape documentation is to be prepared by a suitably qualified Landscape Architect, in accordance with all relevant Council DCP's. The detailed, construction level plan shall include, but not be limited to the following.
- (a) Council's tree replacement ratio is 2 for 1. As over 90 trees are to be removed from the site a minimum of 180 trees (canopy and clear trunk) are required within the new landscaping;
  - (b) A planting plan at 1:100 (min) showing all plant locations, numbers, groupings and centres. There is to be a dense 3-tier planting of trees, shrubs and groundcovers/perennials in all landscaped areas;
  - (c) A plant schedule listing all plants by botanical name, total plant numbers, plant spacings, pot sizes and staking;
  - (d) Specifications detailing soil and mulch finishes, root barriers, irrigation, garden bed edging and other landscape hardworks such as retaining and planter box walls and finishes, schedule of paving materials, fencing, privacy screening and pergolas (elevations, materials);
  - (e) Other landscape elements such as furniture, pedestrian/amenity lighting, sculpture/water features;
  - (f) Planter box on slab sectional details. Planter box volumes are to be in accordance with Council's Landscape DCP to ensure adequate root spread for trees;
  - (g) In communal open spaces, soft landscaping is to be maximised and accessways/dissecting pathways and impermeable surfaces minimised. Provide lawn as well as planted areas where possible for varied recreational usage and amenity;
  - (h) Trees to be used extensively throughout the site – in private ground level courtyards, communal areas and all setbacks. Trees must be of an appropriate size and scale to complement the built form as well as to provide comfort and amenity for residents and pedestrians in landscaped open spaces. Deep soil zones must include larger trees. Trees should to be hardy, fast growing, native, evergreen species using open/light canopied evergreens or selected deciduous for solar penetration. Suitable trees for growing on

- podiums/contained root environments must be selected. Shade tolerant plants to be selected where required;
- (i) Indicate method of screening to electricity kiosks and fire booster valve assemblies where applicable. Comply with conditions relating to their location and treatment;
  - (j) The Gardeners Road setback to 5 metres across the entire frontage. Indicate the selected tree species for these locations – trees must be of a size and scale to complement the built form, small narrow canopied trees are not suitable. Trees are to be provided around the car park entry driveways;
  - (k) Detail the landscape treatment to the eastern boundary setback, inclusive of appropriate tree species;
  - (l) Demonstrate and support the usage and application of indigenous native species to show how they will be successful in a constructed landscape setting rather than a natural setting in which these species would normally grow. The plants must be able to thrive with artificial drainage and irrigation in imported soils and within contained planters. The plant palette must be site responsive and capable of delivering the desired aims and purpose of communal open spaces and residential amenity with regard to shade, solar access, privacy/screening, comfort, visual respite and softening and scaling of the built form. Council supports a mixture of native species, both indigenous and non-indigenous, as well as some exotics, to ensure a successful and meaningful landscape outcome;
  - (m) Detail the proposed public footpath treatment finishes and width to the Gardeners Road frontage in accordance with Council's City Identity Program and Landscape DCP and any other Council specification or requirement. Segmental/unit paving will be required.
- 22 A Certificate under Section 73 of the Water Board (Corporation) Act 1994 shall be obtained and submitted to Council for each stage of construction to ensure that the developer has complied with all relevant Sydney Water requirements, including appropriate connections, correctly sized amplifications, procurement of trade waste agreements, where necessary, and the payment of developer charges.
- Note: Immediate application should be made to Sydney Water for this Certificate to avoid problems in servicing the development.
- 23 Plans and specifications for the storage room for waste and recyclable materials shall be submitted to the Principal Certification Authority with the application for the Construction Certificate. Storage of Waste and recycling shall meet the following requirements:
- (a) Waste and recycling for commercial users shall be in a separate room from the storage of waste and recycling for residential users.
  - (b) The rooms for the storage of garbage and recyclable materials shall be:
    - (i) fully enclosed;
    - (ii) adequately ventilated;

- (iii) Constructed with a concrete floor, concrete or cement rendered walls coved to the floor;
  - (iv) The floor shall be graded to an approved sewer connection incorporating a sump and galvanized grate cover or basket in accordance with the requirements of Sydney Water Corporation.
  - (v) Washing facilities shall be provided within close proximity to the garbage and recycling storage area.
- 24 Prior to issue of any Construction Certificate, the applicant shall lodge a further Development Application to Council for the civil works associated with the development to be carried out in public domain area (including proposed public reserve and road reserve area) on Gardeners Road and Church Avenue. Details of the civil works shall be submitted to Council as part of the documentation of Development Application and all costs associated with the design and construction shall be borne by the applicant. The civil works in public domain area shall include the following: -
- Gardeners Road Frontage
- (a) Design and construct the left turn deceleration lane on gardeners Road to RTA's requirements. This shall include the construction of road pavement and kerb and gutter.
  - (b) Design and construct new kerb and gutter for the full Gardeners Road frontage of the site, including transition works to adjacent sites. The final location of the kerb and gutter is subject to RTA's approval.
  - (c) Design and construct 1.2m wide footpath paving and landscaping (including street trees) in the public domain area for the full Gardeners Road frontage of the site in accordance with Council's requirements.
  - (d) Design and construct vehicular crossing to accommodate the turning movements of Heavy Rigid Vehicle (HRV). The minimum width of the vehicular crossing at the property boundary shall not be less than the width shown on the approved architectural plans. The vehicular crossing shall be at 90o to the property boundary line.
  - (e) Replace the existing above ground electricity and telecommunication cables in Gardeners Road with underground cables to relevant authorities guidelines and requirements.
  - (f) Design and provide appropriate street lighting to the full frontage of the site in accordance with the relevant authorities requirements.
  - (g) All the above works shall be designed and prepared by suitably qualified civil engineers and landscape architects with relevant qualification in civil engineering and landscape respectively. Documentary evidence of the lodgement of this Development Application shall be submitted to the Principal Certifying Authority.
  - (h) The driveway to Gardeners Road include an island area demarked between ingress and egress as a pedestrian refuge.
- 25 Prior to the issue of Construction Certificate, the existing State/Permanent Survey Mark (SSM/PSM) on Church Street shall be relocated and reinstated to the specification of the Land and Property Management Authority. A copy of the Location Sketch Plan of PM/SSM including reduced level (AHD) shall be prepared by

- a registered Surveyor and submitted to Council. The degree of horizontal and vertical accuracy shall be acceptable to the Land and Property Management Authority.
- 26 Prior to the issue of the Construction Certificate, the applicant shall submit documentary evidence to the Principal Certifying Authority that the required Section 138 Consent under the Roads Act, 1993 has been issued by the Roads and Traffic Authority (RTA).
- 27 A suitable intercom system linked to all units within the development shall be provided at the vehicle entrance to the development to ensure any visitors to the site can gain access to the visitor parking in the car parking area. The details of the intercom system shall be submitted to Principal Certifying Authority prior to the issue of a Construction Certificate and its location and specifications endorsed on the construction drawings.
- 28 Prior to the issue of any Construction Certificate, the following documentation shall be submitted to Principal Certifying Authority: -
- (a) Longitudinal sections along centreline of all the ramps between each basement parking levels
  - (b) Design certification, prepared by a suitably qualified engineer, showing the longitudinal sections shall be designed in accordance with AS2890.1 (including gradients and gradient transitions).
- 29 Prior to the issue of any Construction Certificate, detailed construction plans in relation to the development shall be revised and submitted to Council for approval. The plan shall be revised to include the following: -
- Entrance to car parking and truck turning area
- (a) The entrance to car parking and truck turning area shall be redesigned. As such, the area shall be designed to minimise conflicting movements and provide separate access and turning area between cars and trucks.
  - (b) Security roller door shall be installed to provide security to residents and separation of parking bays between residential and retail parking area.
  - (c) Queuing area shall also be provided between the vehicular control point and the property boundary in accordance with AS2890.1
  - (d) Any wall or fence or solid object on either side of the driveway/vehicular crossing where it meets the Council's road reserve at the boundary must comply with sight distances stipulated in AS 2890.2.
- 30 Prior to the issue of any Construction Certificate, detailed construction plans in relation to the stormwater management and disposal system for the development shall be submitted to the Council and Principal Certifying Authority for approval.

The detailed Stormwater Management Plans and specifications shall be prepared by a suitably qualified and experienced civil engineer and the design shall be generally in accordance with the stormwater report, prepared by Emerson Associates Pty Ltd, Ref

1110/JE/110325/A, dated 25 Mar 2011, Issue A. In addition, the following shall be incorporated into the plans: -

- (a) The design of the stormwater drainage system shall incorporate the stormwater drainage system proposed under DA10/325.
- (b) Grated boundary pit (minimum 600mm x 600mm) shall be provided to the stormwater drainage system prior to discharging stormwater into the existing Council's pit.
- (c) A new kerb inlet pit, including minimum 2.4m long lintel, shall be provided at the new kerb and gutter over the proposed stormwater outlet from the site.
- (d) All stormwater runoff from the site shall pass through a pollution control device capable of removing litter and sediment prior to entering the public stormwater system. Details of the pollution control device shall be shown on stormwater management plan.
- (e) The pump-out system shall be designed and provided to collect the stormwater runoff from the driveway ramp. Subsoil drainage lines shall not be provided to the basement area due to the groundwater table. The pump-out system shall be designed to comply with the following: -
  - (i) The volume of the pump-out storage tank shall be designed with a minimum storage capacity equivalent to the runoff volume generated from the area draining into the tank for the 1 in 100 year ARI 2-hours duration storm event.
  - (ii) Information of the selected pumps (eg brand, model numbers, performance curve and specifications) shall be submitted to Council to ensure the pump has adequate capacity. Each pump shall have a minimum capacity of 10L/s or shall be based on the flow rate generated from the 1 in 100 year ARI 5-minutes duration storm event of the area draining into the system, whichever is greater.
  - (iii) The pump-out system shall comprise with two (2) submersible type pumps. The two pumps shall be designed to work on an alternative basis to ensure both pumps receive equal use and neither remains continuously idle.
  - (iv) An alarm warning device (including signage and flashing strobe light) shall be provided for the pump-out system to advise the occupant of pump failure. The location of the signage and flashing strobe light shall be shown on the stormwater management plans
- (f) The On-Site Detention (OSD) systems shall be designed to comply with the following: -
  - (i) Submerged outlet conditions shall be considered.
  - (ii) The location of the OSD tanks shall not interfere the deep soil planting area.
  - (iii) In order to verify the input parameters and layout of the model, a copy of the DRAINS working file (\*.drn) of the OSD systems shall be submitted to Council for review.

- (iv) Emergency surface overland flow path shall be provided to the development in order to convey stormwater overflow from the OSD systems to the public roads. The extent of the overland flow path shall be kept shown on the stormwater management plans. Consideration shall be given to ensure stormwater in the emergency overland flow path will not overflow into the buildings.
- (v) In order to protect the buildings from stormwater inundation, the OSD tanks/roof basins shall be water-tight.
- (g) The infiltration system shall be designed to comply with the following:
  - 
  - (i) The infiltration system shall have a minimum clearance of one (1) metre from the boundary fronting public roads and two (2) metres from the side boundaries and building footings.
  - (ii) Overflow from the infiltration system shall discharge to the Council's kerb and gutter via a grated boundary pit (min. 600mm x 600mm).
  - (iii) The base of the infiltration system shall be 200 mm thickness of 14 mm crushed aggregate wrapped in a geotextile fabric.
  - (iv) Grated pits (min. 600mm x 600mm) shall be provided to the system in order to provide access for cleaning to the infiltration units. The pit shall be provided with a Lysaght Maximesh RH3030 litter screen and a 300mm silt sump.
- (h) The following information and details associated with the design of stormwater management system shall be shown on the stormwater management plans: -
  - (i) A drainage report showing stormwater drainage, pump-out system, infiltration system and OSD system calculations (including storage volumes, design top water levels, pit inlet capacity, pipes size, orifice sizes, overflow weirs, size of the overland flow paths)
  - (ii) Stormwater Drainage Plans showing: -
    - pits location and size
    - pipes location, grades, size and type
    - design surface and invert levels
    - hydraulic grade line for each pipeline
  - (iii) Details of the basement pump-out systems
  - (iv) Details of the infiltration systems
  - (v) Details of the On-Site Detention (OSD) systems showing: -
    - catchment plans
    - plan and section views
    - design top water levels
    - location and dimension of storage tanks, overflow weirs



- maximum heads, high early discharge heads and depths of storage
  - invert and surface levels of all drainage structures
  - centreline of the orifice
  - details of the discharge control pits
- 31 Prior to the issue of the Construction Certificate, design certification, prepared by a suitably qualified engineer shall be submitted to Principal Certifying Authority certifying the car parking area shown on the construction plans has been designed in accordance with AS 2890.1, AS2890.2 (for loading area) and AS2890.6.
- 32 Prior to the issue of the Construction Certificate, design certification, prepared by a suitably qualified engineer shall be submitted to Principal Certifying Authority certifying the stormwater drainage (including OSD and infiltration system) and basement pump-out system shown on the construction plans have been designed to comply with current Australian Standards and Council's requirements.
- 33 Council's property shall be supported at all times. Where any shoring is to be supporting (or located on) Council's property, certified engineering drawings showing all details including the extent of encroachment, the type of shoring and the method of removal, shall be submitted prior to the issue of the Construction Certificate. If the shoring cannot be removed, it shall be cut to 150mm below footpath level and the gap between the shoring and any buildings shall be filled with a 5Mpa lean concrete mix.
- 34 After the approval has been obtained from the responsible utility for street lighting, detailed street lighting design and construction plans, prepared by a suitably qualified person, shall be submitted to Council for approval. The design shall be in accordance with AS 1158 and to Energy Australia's requirements. Alterations/additions to street lighting shall be carried out by the responsible utility authority for lighting, or to the satisfaction of that authority, and all capital contributions associated with the installation of the lighting shall be borne by the applicant. The proposal shall include details of all fixtures being proposed and underground power reticulation shall be allowed for in the design.

**CONDITIONS WHICH MUST BE SATISFIED PRIOR TO THE COMMENCEMENT OF ANY DEVELOPMENT AT WORK**

- 35 To ensure that utility authorities and Council are advised of any effects to their infrastructure by the development, the applicant shall: -
- (a) Carry out a survey of all utility and Council services within the site including relevant information from utility authorities and excavation if necessary to determine the position and level of services.
  - (b) Negotiate with the utility authorities (eg Energy Australia, Sydney Water and Telecommunications Carriers) and Council in connection with: -

- The additional load on the system; and
- (i) The relocation and/or adjustment of the services affected by the construction.
  - (ii) Any costs in the relocation, adjustment, and provision of land or support of services as requested by the service authorities and Council are to be the responsibility of the developer.
- 36 There shall be no loss of support to the Council's nature strip area as a result of the construction within the site. Details prepared by a practicing Structural Engineer of how this support will be maintained during the demolition works shall be submitted to Council prior to the commencement of works.
- 37 Prior to commencement of works, the developer must submit to the Principal Certifying Authority an acoustic report covering the potential noise impacts from demolition and construction at the site. The report must be prepared by a qualified practicing acoustic engineer (who is a member of either the Australian Acoustical Society or the Association of Australian Acoustical Consultants), and shall address the following matters:
- (a) All potentially noisy activities are to be identified,
  - (b) The duration of all potentially noisy activities are to be identified,
  - (c) Detail noise mitigation measures to minimise community disturbance and to meet the following conditions,
  - (d) Recommendations to inform the community of the type and duration of essential noisy activities, and
  - (e) Compliance with other relevant conditions of this consent.
- 38 Prior to commencement of any works, application(s) shall be made to Council's Customer Services Counter for the following approvals and permits on Council's property/road reserve under Road Act 1993 and Local Government Act 1993 as appropriate:
- (a) Permit to erect hoarding on or over a public place, including Council's property/road reserve
  - (b) Permit to construction works, place and/or storage building materials on footpaths, nature strips
  - (c) Permit for roads and footways occupancy (long term/ short term)
  - (d) Permit to construct vehicular crossings, footpath, kerb and gutter over road reserve
  - (e) Permit to open road reserve area, including roads, footpaths, nature strip, vehicular crossing or for any purpose whatsoever
  - (f) Permit to place skip/waste bin on footpath and/or nature strip
  - (g) Permit to use any part of Council's road reserve or other Council lands

- (h) Permit to stand mobile cranes and/or other major plant on public roads and all road reserve area

(It should be noted that the issue of such permits may involve approval from RTA and NSW Police. In some cases, the above Permits may be refused and temporary road closures required instead which may lead to longer delays due to statutory advertisement requirements.)

- (i) Permit to establish “Works Zone” on public roads adjacent to the development site, including use of footpath area.

(Application(s) shall be submitted minimum one (1) month prior to the planned commencement of works on the development site. The application will be referred to the Council's Engineers for approval, which may impose special conditions that shall be strictly adhered to by the applicant(s))

39

- (a) A detailed Traffic Management Plan for the pedestrian and traffic management of the site during demolition, excavation and construction shall be prepared and submitted to the relevant road authority (Council or Roads and Traffic Authority) for approval prior to commencement of any works. The plan shall: -

- (i) be prepared by a RTA accredited consultant.
- (ii) nominate a contact person who is to have authority without reference to other persons to comply with instructions issued by Council's Traffic Engineer or the Police.
- (iii) if required, implement a public information campaign to inform any road changes well in advance of each change.

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

- (c) During construction, all works and measures shall be implemented in accordance with approved Traffic Management Plan at all times.

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

- (a) Erection of a building is being carried out, at the rate of one toilet for every 20 persons or part of 20 persons employed at the site;

- (b) Each toilet provided:

- (i) must be standard flushing toilet; and,
- (ii) must be connected:

(1) to a public sewer; or

- (2) if connection to a public sewer is not practicable to an accredited sewerage management facility approved by the Council; or,
    - (3) if connection to a public sewer or an accredited sewerage management facility is not practicable to some other sewerage management facility approved by the Council.
  - (c) The provisions of toilet facilities in accordance with this clause must be completed before any other work is commenced.
- 41 Prior to the commencement of works, the applicant must inform Council, in writing, of:
- (a) The name of the contractor, and licence number of the licensee who has contracted to do, or intends to do, the work: or
  - (b) The name and permit number of the owner-builder who intends to do the work;
  - (c) The Council also must be informed if:
    - (i) A contract is entered into for the work to be done by a different licensee; or
    - (ii) Arrangements for the doing of the work are otherwise changed.
- 42 A detailed Construction Management Plan (CMP) shall be submitted to Council and the Principal Certifying Authority for approval prior to the commencement of any works. The plan shall address:
- (a) Excavation and construction vehicles access to and egress from the site;
  - (b) Parking for demolition and construction vehicles. All construction-related vehicles shall be parked on-site and no parking of these vehicles shall be allowed on Gardeners Road.
  - (c) Locations of site office, accommodation and the storage of major materials related to the project
  - (d) Protection of adjoining properties, pedestrians, vehicles and public assets
  - (e) Location and extent of proposed builder's hoarding and Work Zones, if there is any
  - (f) Tree protection management measures for any protected and retained trees.
  - (g) Active measures to control and suppress dust, grit and the like that are associated with construction activity.
  - (h) Measures to control the arrival of plant and equipment associated with the construction process and the delivery of such plant and equipment during reasonable hours of the working day;
  - (i) Public Notification where working hours are extended for a particular construction activity;
  - (j) Provision of on-site car parking for employees, contractors and site personnel during the construction phase of the development; and

- (k) During construction, all works and measures shall be implemented in accordance with approved Construction Management Plan at all times.
- 43 A sign must be erected in a prominent position on any work site on which work involved in the erection 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;
  - (d) the name of the Principal Certifying Authority including an after hours contact telephone number; and
  - (e) any such sign is to be removed when the work has been completed.
- 44 The Applicant must indemnify Council against all loss of or damage to the property of others and injury or death to any persons which may arise out of or in consequence of the carrying out of the work and against all claims, demands, proceedings, costs, charges and expenses whatsoever in respect thereof or in relation thereto. In this regard, the Applicant shall take out a public liability policy during the currency of the works in the sum of not less than \$20,000,000 and to be endorsed with City of Botany Bay Council as principal, and keep such policy in force at the Applicant's own expense. A certificate from the Applicant's insurers to this effect is to be **LODGED WITH COUNCIL BEFORE ANY WORK IS COMMENCED**. The amount of Common Law liability shall be unlimited.
- 45 During construction, the applicant shall ensure that all works and measures have been implemented in accordance with following approved plans at all times: -
- (a) Soil and Water Management Plan, prepared by Emerson Associates Pty Ltd, Project no. 1110, Drawing no. SW03, Issue A
  - (b) Approved Traffic Management Plan and;
  - (c) Approved Construction Management Plan
- 46 All works carried out on the public roads shall be inspected and approved by Council's engineer. Documentary evidence of compliance with Council's requirements shall be obtained prior to proceeding to the subsequent stages of construction, encompassing not less than the following key stages: -
- (a) Initial pre-construction on-site meeting with Council's engineers to discuss concept and confirm construction details, traffic controls and site conditions/constraints prior to commencement of the construction of the civil works associated with the road widening;
  - (b) Prior to placement of concrete (kerb and gutter and footpath);
  - (c) Prior to construction and placement of road pavement materials; and
  - (d) Final inspection.

**Note:** Council's standard inspection fee will apply to each of the above set inspection key stages. Additional inspection fees may apply for additional inspections required to be undertaken by Council.

### **DURING WORKS**

- 47 If the work involved in the construction of a building:
- (a) likely to cause pedestrians or vehicular traffic in a public place to be obstructed or rendered inconvenient; or,
  - (b) involves the enclosure of a public place:
    - (i) a hoarding or fence must be erected between the work site and the public place.
    - (ii) If necessary an awning is to be erected sufficient to prevent any substance from or in connection with the work falling into the public place.
    - (iii) The work site must be kept lit between sunset and sunrise if it is likely to be hazardous to person(s) in the public place.
    - (iv) Any such hoarding, fence or awning is to be removed when the work has been completed.
  - (c) Suitable consent shall be obtained from Council prior to the erection of any hoarding at the property.
- 48 Any new information that comes to light during construction which has the potential to alter previous conclusions about site contamination and remediation must be notified to Council.
- 49 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 copy of the sign is available from Council's Customer Service Counter.
- 50 During construction works, the applicant / builder is required to ensure the protection and preservation of all boundary fencing or boundary walls between the subject site and adjoining properties. Any damage caused as a result of such works will be at the full cost of the applicant/builder.
- 51 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.

- 52 All vehicles transporting soil, sand or similar materials to or from the site shall cover their loads at all times.
- 53
- (a) Existing structures and or services on this and adjoining properties shall not be endangered during any demolition associated with the above project. The Applicant is to provide details of any stabilisation works required to adjacent developments to Council.
  - (b) As the development involves an excavation that extends below the level of the base of the footings of a building or road on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
    - (i) Protect and support the adjoining premises from possible damage from the excavation, and
    - (ii) Where necessary, underpin the adjoining premises to prevent any such damage.
    - (iii) Must at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of his intention to do so to the owner of the adjoining allotment of land and, furnish particulars of the excavation to the owner of the building being erected or demolished.
- 54
- (a) The operations of the site 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.
  - (b) All possible and practicable steps shall be taken to prevent nuisance to the inhabitants of the surrounding neighbourhood from wind-blown dust, debris, noise and the like.
- 55 The operation shall not give rise to offensive odour or other air impurities in contravention of the Protection of the Environment Operations Act 1997. The Principle contractor shall ensure that all practical means are applied to minimise dust and odour from the site. This includes:
- (a) Covering excavated areas and stockpiles,
  - (b) The use of fine mists of hydrocarbon mitigating agents on impacted stockpiles or excavation areas,
  - (c) Maintenance of equipment and plant to minimise vehicle exhaust emissions,
  - (d) Erection of dust screens on the boundary of the property and/or closer to potential dust sources,
  - (e) All loads entering or leaving the site are to be covered,
  - (f) The use of water sprays to maintain dust suppression,
  - (g) Keeping excavated surfaces moist.

- 56 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 Environmental Noise Control Manual.

57

- (a) In order to prevent vehicles tracking soil or other materials onto public roads and washing of materials into the street drainage system or watercourse, during Demolition, Excavation, Construction and Deliveries, access to the site shall be available in all weather conditions. The area shall be stabilised and protected from erosion;
- (b) Concrete trucks and any other trucks that 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 only be conducted in a suitable off-street area where wash waters do not enter the stormwater system or enter Council's land;
- (c) 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;
- (d) 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.

- 58 The Development is to be constructed to meet the requirements detailed in the approved acoustic report (Acoustic Logic Consultancy, dated November 2010), and the following construction noise requirements:

- (a) Construction Noise
  - (i) Noise from construction activities associated with the development shall comply with the NSW Environment Protection Authority's Environmental Noise Manual – Chapter 171 and the Protection of the Environment Operations Act 1997.
- (b) Level Restrictions
  - (i) Construction period of 4 weeks and under:
    - (1) The L10 sound pressure level measured over a period of not less than 15 minutes when the construction site is in operating must not exceed the background level by more than 10dB(A).
  - (ii) Construction period greater than 4 weeks and not exceeding 26 weeks:



- (1) The L10 sound pressure level measured over a period of not less than 15 minutes when the construction site is in operating must not exceed the background level by more than 10 dB(A).
- (c) Time Restrictions
- (i) Monday to Friday .07:00am to 06:00pm;
  - (ii) Saturday 08:00am to 01:00pm
  - (iii) No Construction to take place on Sundays or Public Holidays.
- (d) Silencing
- (i) All possible steps should be taken to silence construction site equipment.
- 59 During construction works the area in front of the premises and for the full width of the site, be maintained at all times and kept clean and tidy.
- 60 Building plans must be lodged at Sydney Water Quick Agent for approval prior to commencement of works.
- 61 During construction, care must be taken to protect Council's infrastructure, including street signs, footpath, kerb, gutter and drainage pits etc. Protecting measures shall be maintained in a state of good and safe condition throughout the course of construction. The area fronting the site and in the vicinity of the development shall also be safe for pedestrian and vehicular traffic at all times. Any damage to Council's infrastructure (including damage caused by, but not limited to, delivery vehicles, waste collection, contractors, sub-contractors, concrete delivery vehicles) shall be fully repaired in accordance with Council's specification and AUS-SPEC at no cost to Council.
- 62 The Applicant has permission to remove the Gardeners Road street trees at their own expense. A qualified Arborist with their own public liability insurance must be engaged and a Dial-Before-You-Dig enquiry is required. 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. The trunk is to 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.
- 63 An experienced Landscape Contractor shall be engaged to undertake the landscaping work on the site and shall be given a copy of both the approved landscape documentation and the conditions of approval to satisfactorily construct the landscape to Council requirements.
- 64 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. 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 and shall comply with Sydney Water and Council requirements and Australian Standards, and be maintained in working order at all times.

- (a) Planter boxes constructed over a podium shall be built so as to ensure soil volumes in accordance with Council's Landscape DCP or greater. The base of the planter must be screeded to ensure drainage to a piped internal drainage outlet of minimum diameter 90mm, with no low points elsewhere in the planter. External drainage outlets/weep holes are not permitted under any circumstances. Turf areas require a min. 5% cross fall and suitable sub-surface drainage;
- (b) A masonry hob or haunch shall be constructed internally of the planter to ensure no water seepage between the floor and walls of the planter;
- (c) Planters are to be fully waterproofed and sealed internally with a proprietary sealing agent to eliminate water seepage and staining of the external face of the planter, particularly at corner joints. All internal sealed finishes are to be sound and installed to manufacturer's directions prior to backfilling with soil. An inspection of the waterproofing and sealing of edges is required by the PCA prior to backfilling;
- (d) Drainage cell must be supplied to the base and sides of the planter (to minimize damage to the waterproof seal during backfilling). Apply a proprietary brand filter fabric and backfill with an imported lightweight soil suitable for planter boxes that complies with AS 4419 and AS 3743. Install drip irrigation. Pop-ups may be provided to lawn areas provided they use recycled water;
- (e) Planter boxes shall be finished externally with a suitable paint or render to co-ordinate with the colour schemes of the building.

65 All internal pedestrian areas and pathways shall be unit paved with segmental pavers or tiles. The driveway crossovers shall be constructed of plain concrete.

66 Any electrical kiosk shall be located in an unobtrusive location away from pedestrian entrances and toward a side boundary and/or setback into the site off the street boundary, and shall be softened by screening and/or landscaping so as not to reduce streetscape and public domain amenity. The ground level curtilages shall be finished with a large diameter decorative gravel. The location of and screening treatment surrounding the utility shall be approved by Council's Landscape Architect as a component of the detailed landscape documentation and prior installation.

67 The fire hydrant and booster assembly are required to be housed within an external façade/wall of the building or elsewhere within the building structure and shall be enclosed/screened with doors to Council approval.

68

- (a) All imported fill shall be validated in accordance with Department of Environment and Conservation approved guidelines to ensure that it is

suitable for the proposed development from a contamination perspective. Imported fill shall be accompanied by documentation from the supplier, which certifies that the material is suitable for the proposed residential/recreational land use and not contaminated based upon analyses of the material.

- (b) Any soil disposed of offsite shall be classified in accordance with the procedures in the Department of Environment and Climate Change Waste Classification Guidelines (2008).

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

69

- (a) Prior to the issue of the Occupation Certificate the applicant must submit to the Principal Certifying Authority an acoustic report to verify that the measures stated in the acoustical assessment report prepared by Acoustic Logic , dated 28 March 2011 have been carried out and certify that the construction meets AS2021-2000 and AS3671-1989 and specified indoor sound levels. The report must be prepared by a qualified practicing acoustic engineer (who is a member of either the Australian Acoustical Society or the Association of Australia Acoustical Consultants).
- (b) That Council appoint an accredited acoustic certifier at the applicants expense to certify condition 69(a) has been complied with.

70 It is a condition of this approval that the applicant shall, at no costs or expense to Council, comply with the following: -

- (a) Dedicate 3.5m wide of lands from the subject site to Council for the provision of left turn deceleration lane on Gardeners Road. The areas of land to be dedicated shall be the full length of left turn deceleration lane on Gardeners Road frontage of the site. The Plan of Dedication shall be lodged with Council prior to the issue of the Construction Certificate and registered with the Department of Lands prior to the issue of the Occupation Certificate. A copy of the registered document shall be submitted to Council for record purposes.
- (b)
  - (i) Construct the left turn deceleration lane on Gardeners Road to Road and Traffic Authority's (RTA) requirements. The left turn deceleration lane shall be 60 metres in length with a width of 3.5 metres.
  - (ii) Dedicate land up to 3.5m in width for the public footway alongside the deceleration lane required by sub-condition (b)(i) above.
- (c) Upgrade the public domain on Gardeners Road by construction and reconstruction of road pavement, kerb and gutter, footpath paving, vehicular crossing, stormwater drainage system, street trees, landscaping and any associated works for the full frontage of the site at the applicant's expense. All improvements shall be in accordance with specifications and requirements

from Council's landscape and engineering sections and the approved civil works construction plans and landscape plans. All the public domain works shall be constructed and completed to Council's satisfaction prior to the issue of an Occupation Certificate.

- (d) Replace all the existing above ground electricity and telecommunication cables fronting the site to underground cables in accordance with the guidelines and requirements of the relevant utility authorities. The applicant shall bear all the cost of the construction and installation of the cables and any other necessary adjustment works. These works and /or payments shall be completed prior to the issue of the Occupation Certificate.
- (e) Provide appropriate and suitable street lighting to a high decorative standard to the frontage of the site in order to provide safety and illumination for residents of the development and pedestrians in the area. All street lighting shall comply with relevant electricity authority guidelines and requirements.

71

- (a) The 587 car parking spaces shall be made available to residents, visitors & commercial tenants at all times, with such spaces being clearly marked and signposted prior to issue of the Occupation Certificate.
- (b) Allocation of the car parking shall be as follows:
  - (i) Each studio/one (1) bedroom unit shall be allocated 1 car parking space;
  - (ii) Each two (2) bedroom and three (3) bedroom unit shall be allocated 2 car spaces;
  - (iii) The commercial tenancies shall be allocated fifteen (15) parking spaces being located in close proximity to the commercial units. This shall be included in any future strata subdivision of the site;
  - (iv) One (1) car wash bay shall be provided in accordance with the Mascot Station DCP. Such space shall not to be allocated to any unit within the development and this shall be included in any future strata subdivision of the site.
  - (v) Forty one (41) visitors car spaces shall be provided. Such spaces being located nearby the entrance to the development.

72

- (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.
- (b) Existing street lights located within the footpath reserve along the entire **Gardeners Road** frontage of the development site, 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. All of the works required by this condition must be completed prior to the issue of any Occupation Certificate.

- 73 For the purpose of inhibiting or preventing the growth of micro organisms that are liable to cause Legionnaires' Disease, all cooling towers, evaporative condensers, evaporative coolers, and warm water systems shall be designed, installed and maintained in accordance with the requirements of Public Health Act 1991 Public Health (Microbial Control) Amendment (Miscellaneous) Regulation 2003 and AS3666 -2002 Air handling and water systems in building - microbial control. All waste water from the cooling tower/humidifier/evaporative cooler/warm water system shall be discharged to sewer under a Trade Waste Agreement from Sydney Water. Details to be submitted prior to the issue of the Construction Certificate.
- 74 All services (Utility, Council, etc) within the road reserve (including the footpath) shall be relocated/adjusted to match the proposed/existing levels as required by the development.
- 75 Prior to the issue 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.
- 76 Prior to the issue of any Occupation Certificate, documentation from a practising civil engineer shall be submitted to the Principal Certifying Authority certifying that the car parking area has been constructed generally in accordance with the approved construction plan(s) and comply with AS2890.1, AS2890.2 and AS2890.6 requirements. The internal parking facilities shall be clearly designated, sign posted and line marked. Signage and line marking shall comply with the current Australian Standards.
- 77
- (a) Prior to the issue of any Occupation Certificate, new vehicular crossing including layback and/or gutter and any associated road restoration shall be constructed in accordance with Council's requirements. The applicant shall make a separate application to Council's Customer Service Counter for the construction/ reconstruction of vehicular crossing (either by Council or own forces) to the vehicular entry point of the site as shown on the submitted approved plan.
  - (b) The crossing shall be able to accommodate the turning movement of Heavy Rigid Vehicle (HRV) entering and leaving the site and at 90° to the kerb and gutter in plain concrete. All adjustments to the nature strip, footpath and/or public utilities' mains and services as a consequence of the development and any associated construction works shall be carried out at the full cost to the Applicant.
- 78 Prior to the issue of Final Occupation Certificate, the redundant vehicular crossing, together with any necessary works shall be removed and the footpath, nature strip and kerb and gutter shall be reinstated in accordance with Council's specification.

- 79 Prior to issue of Final Occupation Certificate, all civil works in public domain area (including vehicular crossings, footpath paving, kerb and guttering, street lighting, landscaping, line marking and signage) shall be completed to Council's satisfaction. The following documentation shall be submitted to Principal Certifying Authority attesting this condition has been appropriately satisfied
- Written confirmation / completion certificate obtained from Council.
  - Inspection report (formwork and/or final) for the works on road reserve obtained from Council's engineer.
  - A copy of the approved public domain civil works plans showing Work-as-Executed details (together with an electronic copy) prepared by a registered surveyor.
- 80 Prior to the issue of Final 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 approved plans, with relation to drainage, boundary and road reserve levels, have been strictly adhered to.
- 81 The applicant is responsible for the installation and protection of all regulatory / parking / street signs fronting the property. Any damaged or missing street signs as a consequence of the development and associated construction works shall be replaced at full cost to the applicant.
- 82
- (a) In order to ensure that the required on-site detention, infiltration and rainwater reuse systems will be adequately maintained, Positive Covenant and Restriction on the Use of Land on the Title under Section 88B/88E(3) of the Conveyancing Act 1919 shall be created in favour of Council as the benefiting authority for the as-built on-site detention, infiltration and rainwater reuse systems. The standard wording of the terms of the Positive Covenant and Restriction on the Use of Land are available in Council. The relative location of the on-site detention, infiltration and rainwater reuse systems, in relation to the building footprint, shall be shown on a scale sketch, attached as an annexure to the plans/ forms. Proof of registration shall be submitted to the Principal Certifying Authority prior to occupation of the premises.
  - (b) In order to ensure that the required pump-out system will be adequately maintained, Positive Covenant and Restriction on the Use of Land on the Title under Section 88B/88E(3) of the Conveyancing Act 1919 shall be created in favour of Council as the benefiting authority for the as-built pump-out system. The standard wording of the terms of the Positive Covenant and Restriction on the Use of Land are available in Council. Proof of registration shall be submitted to the Principal Certifying Authority prior to occupation of the premises.
  - (c) That car parking for the residential part is not to be to sublet or used for any other purpose, this is to be included as positive covenant and restriction on the use of the land on the title for any strata subdivision.

- 83     Prior to the issue of the Occupation Certificate:
- (a)     the construction of the stormwater drainage system of the proposed development shall be generally in accordance with the approved stormwater management construction plan(s), Council's 'Guidelines for the Design of Stormwater Drainage Systems within City of Botany Bay', AS/NSZ 3500 – Plumbing and Drainage Code and the BCA. All downpipes shall be located within the property boundaries;
  - (b)     documentation from a qualified plumber/ practising civil engineer shall be submitted to the Principal Certifying Authority certifying that the stormwater drainage system has been constructed generally in accordance with the approved stormwater management construction plan(s) and accepted practice.
- 84
- (a)     Prior to issue of the Occupation Certificate, driveways and vehicular access paths shall be designed and constructed to comply with the minimum requirements (including changes of grade) of AS/NZS 2890.1.; and
  - (b)     Prior to issue of the Occupation Certificate, the applicant's Traffic Engineer must conduct a survey within one (1) month following the sale of at least 90% of the available apartments stock within the development, to validate the findings of the Traffic Movement Assessment prepared by Traffix dated 27 July 2011. If the Traffic Assessment cannot be validated, the Applicant must undertake measures to ensure the local road network achieves a satisfactory level of service
- 85     Any damage not shown in the photographic survey submitted to Council before site works have commenced, will be assumed to have been caused as a result of the site works undertaken and must be rectified at the applicant's expense, prior to the issue of the Occupation Certificate.
- 86     During the construction works the Council nature strip shall be maintained in a clean and tidy state at all times and shall be suitably repaired and/or replaced in accordance with Council Specifications at the completion of construction works and prior to the issue of an Occupation Certificate at the Applicant's expense.
- 87     Landscaping shall be installed in accordance with the Council approved detailed landscape documentation only prior to the issue of an Occupation Certificate. The landscaped areas on the property shall be maintained in accordance with the approved landscape documentation, the conditions of consent and Council's Landscape DCP at all times. All public domain/footpath improvements shall be installed in accordance with Council specifications by the Applicant and at the Applicant's expense. All improvements shall be completed prior to the issue of an Occupation Certificate.
- 88     At the completion of landscaping on the site, the Applicant is required to obtain a Certificate of Compliance from the Landscape Consultant to certify that the landscaping has been installed in accordance with the Council approved landscape

plan. The Certificate is to be submitted to the City of Botany Bay Council prior to the issue of the Occupation Certificate.

89 Prior to the issue of the Occupation Certificate:

- (c) Street trees shall be installed in both street frontages at the Applicant's expense and in accordance with approved landscape documentation and Council specifications. Trees shall be sourced from a reputable supplier that grows to NATSPEC. A Dial-Before-You-Dig enquiry is required prior to all tree planting;
- (d) 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. Trees are to be double staked. Tree pits to include the Arborgreen Roottrain system;
- (e) The Applicant is required to obtain a Council inspection of new street trees prior to the maintenance period commencing.

90 The Council nature strips shall be suitably replaced in accordance with Council Specification and the approved landscape documentation at the completion of construction work and at the Applicant's expense.

91

- (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.
- (b) Condition Numbers 69 to 91 of this consent are pre-conditions to the issue of the Occupation Certificate.

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

92 The stormwater drainage system (including all pits, pipes, absorption, detention structures, treatment devices, infiltration systems and rainwater tanks) shall be regularly cleaned, maintained and repaired to ensure the efficient operation of the system from time to time and at all times. The system shall be inspected after every rainfall event to remove any blockage, silt, debris, sludge and the like in the system. All solid and liquid waste that is collected during maintenance shall be disposed of in a manner that complies with the appropriate Environmental Guidelines.

93 Vehicles making deliveries (including goods, merchandise and the like) and accessing the site shall comply with the following requirements:

- (a) The maximum size of vehicles making deliveries and accessing to the site shall be limited to B99 vehicles (5.2m in length, as denoted by the current version of AS/NZS 2890.1) only.



- (b) All loading and unloading of vehicles shall be carried out wholly within the site. No deliveries to the premises shall be made direct from a public places, public streets or any road related areas (eg. footpath, nature strip, road shoulder, road reserve, public car park, service station etc).
- 94 Should the external fabric of the building(s), walls to landscaped areas and like constructions be subject to graffiti or similar 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.
- 95 The ongoing maintenance of the nature strip shall then be undertaken by the occupier/owner. Maintenance shall include mowing, the removal of weeds and rubbish and maintaining a good, even coverage of grass at all times.
- 96 The landscape contractor shall be engaged weekly for a minimum period of 52 weeks from final completion of landscaping for maintenance and defects liability, replacing plants in the event of death, damage, theft or poor performance. After that time monthly maintenance is required.
- 97 New street trees shall be maintained by the Applicant/Owner/Strata Corporation for the duration of the landscape bond period. Maintenance includes watering twice weekly for a period of 4-6 months (or until established) and after that at a frequency to sustain adequate growth, bi-annual feeding with a suitable fertilizer and replenishment of mulch and weed removal within the mulched base. It does not include trimming or pruning of trees under any circumstances.
- 98 The use of the premises shall not give rise to any of the following when measured or assessed at “sensitive” positions within any other property. These “sensitive” positions should be selected to reflect the typical use of a property (ie any outdoor areas for day and evening but closer to the façade at night time), unless other positions can be shown to be more relevant.
- (a) The operation of all plant and equipment shall not give rise to an equivalent continuous ( $L_{Aeq}$ ) sound pressure level at any point on any residential property greater than 5dB(A) above the existing background  $LA_{90}$  level (in the absence of the noise under consideration).
- (b) The operation of all plant and equipment when assessed on any residential property shall not give rise to a sound pressure level that exceeds  $L_{Aeq}$  50dB(A) day time and  $L_{Aeq}$  40 dB(A) night time.
- (c) The operation of all plant and equipment when assessed on any neighbouring commercial/industrial premises shall not give rise to a sound pressure level that exceeds  $L_{Aeq}$  65dB(A) day time/night time.
- (d) For assessment purposes, the above  $L_{Aeq}$  sound levels shall be assessed over a period of 10-15 minutes and adjusted in accordance with EPA guidelines for tonality, frequency weighting, impulsive characteristics, fluctuations and temporal content where necessary.

- 
- 99 All vehicles (including deliveries) shall enter and exit the premises to the public roads in a forward direction. All vehicles exiting to Gardeners Road shall be restricted to left in and left out movements only.
- 100 Vehicles making deliveries and/or or loading and unloading shall comply with the following requirements: -
- (a) Vehicles accessing the site shall be limited to B99 vehicles or smaller as defined by AS 2890.1, except with garage collection vehicle, which the size of vehicle shall not be larger than Heavy Rigid Vehicle (HRV) as defined in AS2890.1.
  - (b) All loading and unloading of vehicles in relation to the commercial/retail use of the premises shall take place wholly within the parking bays allocated to the tenancy.
  - (c) No deliveries to the premises shall be made direct from a public places, public streets or any road related areas (eg. footpath, nature strip, road shoulder, road reserve, public carpark, service station etc)
- 101 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. 10/324 dated as 12 July 2010 and that any alteration, variation, or extension to the use, for which approval has been given, would require further Approval from Council.

**Premises: 12-14 Church Ave, Mascot****DA No: 10/325**

**STAGE 2 - SOUTH**  
**SCHEDULE OF CONSENT CONDITIONS**

**GENERAL 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>Drawing No.</b>	<b>Author</b>	<b>Date received by Council</b>
Architectural Plans, Elevations and Sections with Project No. 10008 and Drawing Nos.:	Turner & Associates	19 April 2011
DA02 2001 (Issue I)		
DA02 2002 (Issue G)		
DA02 2003(Issue G)		
DA02 2110 (Issue V),		
DA02 2111 (Issue V)		
DA02 2112 (Issue U)		
DA02 2113 (Issue O)		
DA02 2114 (Issue M)		
DA02 2115 (Issue M)		
DA02 2116 (Issue M)		
DA02 2117 (Issue M)		
DA02 2118 (Issue M)		
DA02 2119 (Issue M)		
DA02 2120 (Issue M)		
DA02 2121 (Issue M)		
DA02 2122 (Issue M)		
DA02 2123 (Issue M)		
DA02 2124 (Issue M)		
DA02 2150 (Issue C)		
DA02 2151 (Issue C)		
DA02 2200 (Issue H)		

<b>Drawing No.</b>	<b>Author</b>	<b>Date received by Council</b>
DA02 2201 (Issue I) DA02 2202 (Issue J) DA02 2300 (Issue H) DA02 2301 (Issue H) DA02 2302 (Issue H) DA02 2303 (Issue I) DA02 2304 (Issue I) DA02 2305 (Issue B) DA02 2306 (Issue A) DA02 2307 (Issue A) DA02 2410 (Issue D) DA02 2411 (Issue D) DA02 2415 (Issue D) DA02 2416 (Issue D) DA02 2417 (Issue D) DA02 2418 (Issue D) DA02 2450 (Issue D) DA02 2451 (Issue D) DA02 2452 (Issue D) DA02 2453 (Issue D) DA02 2500 (Issue E) DA02 2501 (Issue E) DA02 2502 (Issue E) DA02 2505 (Issue B)		
Landscape Masterplan LDA2-2 (Issue A) LDA2-3 (Issue A) LDA2-4 (Issue A) LDA2-5 (Issue A) LDA2-6 (Issue A) LDA2-7 (Issue A) LDA2-8 (Issue A) LDA2-9 (Issue A)	Turf	19 April 2011

<b>Drawing No.</b>	<b>Author</b>	<b>Date received by Council</b>
LDA2-10 (Issue A) LDA2-11 (Issue A) LDA2-12 (Issue A) LDA2-13 (Issue A) LDA2-14 (Issue A) LDA2-15 (Issue A) LDA2-16 (Issue A)		
Survey Details Reference No. 6486 and Sheets 1-7	CMS Surveyors Pty Limited	19 April 2011
Subdivision Plan, Reference No. 6486A (Issue E)	CMS Surveyors Pty Limited	19 April 2011
Stormwater Management Plan (Reference No. 1110/JE/110325/A), Drawing Nos.: SW00 (Issue A) SW01 (Issue A) SW02 (Issue A) SW03 (Issue A) SW04 (Issue A)	Emerson Associates Pty Ltd	19 April 2011
Survey Details Reference No. 6486 and Sheets 1-7	CMS Surveyors Pty Limited	19 April 2011
Subdivision Plan, Reference No. 6486A (Issue E)	CMS Surveyors Pty Limited	19 April 2011
Stormwater Management Plan (Reference No. 1110/JE/110325/A), Drawing Nos.: SW00 (Issue A) SW01 (Issue A) SW02 (Issue A) SW03 (Issue A) SW04 (Issue A)	Emerson Associates Pty Ltd	19 April 2011
Concept Plan for Deceleration Lane	Traffix Traffic and Transport Planners	19 April 2011

<b>Document(s)</b>	<b>Author</b>	<b>Date received by Council</b>
Statement of Environmental Effects	Anthony Rowan P/L	19 April 2011
Architectural Design Statement – DA 2 South	Turner & Associates Pty Ltd	19 April 2011
Waste Management Plan	Atlas Construction Group Pty Ltd	19 April 2011
Pedestrian Wind Environment Statement, Reference No. WA845-03F02 (Issue 3)	Wintech Pty Ltd	19 April 2011
SEPP 1 Objection	Anthony Rowan P/L	21 June 2011
Arboricultural Assessment Report Review	Tree & Landscape Consultants	19 April 2011
Additional Site Investigation, Reference No. E1294.1AA – (Issue A)	Environmental Investigations	19 April 2011
Electromagnetic Field Survey, Reference No.	EMC Services Pty Ltd	19 April 2011
Quantity Surveyors Estimate, Reference No. 3768-DA2 (Issue A)	Washington Brown	19 April 2011
Hydrogeology & Dewatering Report, Reference No. 31026-H2	DF Dickson & Associates Pty Ltd	19 April 2011
Structural Report into the Proposed Shoring and Foundations, Reference No. 10081-001	ABC Consultant Structural Engineers	19 April 2011
Noise Impact Assessment Report, Reference No. 2010468/0605A/R1/JG	Acoustic Logic Consultancy	19 April 2011
Utilities Investigation, Reference No. NS03151-5001 (Issue B)	Hyder Consulting Pty Ltd	19 April 2011
Traffic Impact Assessment, Reference No. 11 059 (Issue v4)	Traffix Traffic and Transport Planners	19 April 2011
Geotechnical Investigation	Douglas Partners	19 April 2011
BCA Compliance Statement	Blackett Maguire Goldsmith	19 April 2011
Section J BCA Assessment DA2 South, Reference No. 20C-11-0038-TRP-463456-2	VIPAC Engineers & Scientists Ltd	19 April 2011

<b>Document(s)</b>	<b>Author</b>	<b>Date received by Council</b>
BASIX Assessment DA2 South, Reference No. 20C-11-0038-TPR-463488-1	VIPAC Engineers & Scientists Ltd	19 April 2011
BASIX Certificate No. 370738M, dated 15 April 2011	NSW Dept of Planning	19 April 2011
BASIX Certificate No. 370726M, dated 15 April 2011	NSW Dept of Planning	19 April 2011
BASIX Certificate No. 371660M, dated 15 April 2011	NSW Dept of Planning	19 April 2011
BASIX Certificate No. 371746M, dated 15 April 2011	NSW Dept of Planning	19 April 2011
Interim Advice for Statutory Site Audit No 184 by Dr Ian Swane Review of a remediation action plan for a proposed high-rise residential development at 12 & 14 Church Ave & 619-629 Gardeners Road, Mascot	S & N Environmental Engineers & Contractors	22 July 2011
Amended Acoustic Response to Council Issues	Acoustic Logic	19 July 2011
Amended Acid Sulphate Statement	Environmental Investigations	19 July 2011
Dilapidation Report - Letter dated 19 July 2011	Atlas Construction Group	19 July 2011
Statement for Dilapidation Report – Letter dated 19 July 2011	ABC Consultants Structural Engineers	19 July 2011
Amended Wind Response to Council Issues	Windtech	20 July 2011
Amended Traffic Statement in response to Council Issues	Traffix – Traffic and Transport Planners	20 July 2011
VPA Letter	Fitz Jersey Pty Limited	15 June 2011
View Analysis & Plans	Atlas Construction Group <sup>22</sup> July 2011	25 July 2011 and 26 July 2011
Amended Traffic Statement in Response to Council to traffic flow	Traffix – Traffic and Transport Planners	27 July 20011

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

- 2 The applicant must prior to the commencement of works for Stage 1 pay the following fees:

(a)	Builders Security Deposit	\$50,000.00;
(b)	Development Control	\$11,011.00;
(c)	Section 94 Contributions	\$3,781,686.60

3

- (a) Developer Contributions are required to be made in accordance with the Voluntary Planning Agreement for the site, however should agreement not be reached, the Section 94 Contributions are required to be paid in accordance with Condition 3(b) below;
- (b) The City of Botany Bay being satisfied that the proposed development will increase the demand services facilities within the area, and in accordance with Council's Section 94 Contribution Plans 2005-2010 and Mascot Station Precinct Section 94 Contributions Plan a sum of \$3,781,686.60 towards the provision of services is to be paid to Council prior to the issuing of a Subdivision Certificate by the Principal Certifying Authority for Development Consent No. 10/325 involving the dedication of land for a public reserve and road widening of Church Avenue.

- 4 This Consent relates to land in Lot 1 DP 303282, Lot 1 DP923787 and Lot 2 DP 224757 and as such, building works must not encroach on to adjoining lands or the adjoining public place.

5

- (a) The road widening and public domain to Church Avenue shall be the subject of a separate development application to be lodged with Council and shall include but not be limited to footpath treatments, service adjustments/access lids and street trees (as provided by the Landscape Consultant) (including the under-grounding of existing above ground electricity and telecommunication cables in Church Avenue, adjoining the site together with the provision of appropriate street light standards, drainage (if any), kerb and gutter, footway, bicycle paths, landscaping, traffic signs). The landscape component shall be in accordance with Council's City Identity Program and any other Council specification or requirement. All public domain/footpath improvements shall be installed in accordance with Council specifications by the Applicant and at the Applicant's expense. All improvements shall be completed prior to the issue of an final Occupation Certificate; The development application is required to be submitted to Council prior to the issue of the Construction Certificate;



- (b) The detailed landscape design of the public park area in the south-western corner of the site will be the same separate development application as detailed above to be lodged with Council and a Voluntary Planning Agreement. The Agreement shall also include timelines for construction of the public park and Applicant contribution to greening of the Sydney Water easement to the east of the site. The detailed design shall address the following: street furniture, amenity area lighting types and locations, level changes/treatments, drainage design (WSUD), irrigation, tree pit details, root barrier, pavement types, construction and slip ratings (paving samples supplied), public art/sculpture provision, elevations, sections and sketches provided.
- 6 The consent given does not imply that works can commence until such time that:
  - (a) Detailed plans and specifications of the building have been endorsed with a Construction Certificate by:
    - (i) The consent authority; or,
    - (ii) An accredited certifier; and,
  - (b) The person having the benefit of the development consent:
    - (i) Has appointed a principal certifying authority; and
    - (ii) Has notified the consent authority and the Council (if the Council is not the consent authority) of the appointment; and,
    - (iii) The person having the benefit of the development consent has given at least 2 days notice to the council of the persons intention to commence the erection of the building.
- 7
  - (a) All building work must be carried out in accordance with the provisions of the Building Code of Australia.
  - (b) The basement car park must be designed and built as a “fully tanked” structure.
- 8 Pursuant to clause 97A(3) of the Environmental Planning & Assessment Regulation 2000, it is a condition of this development consent that all the commitments listed in each relevant BASIX Certificate for the each building in the development are fulfilled.

Note:

  - (i) Relevant BASIX Certificate means:
  - (ii) A BASIX Certificate that was applicable to the development when this development consent was granted (or, if the development consent is modified under Section 96 of the Act, a BASIX Certificate that is applicable to the development when this development consent is modified); or
  - (iii) If a replacement BASIX Certificate accompanies any subsequent application for a construction certificate, the replacement BASIX Certificate.

- (iv) BASIX Certificate has the meaning given to that term in the Environmental Planning and Assessment Regulation 2000.

### **CONDITIONS IMPOSED BY AN EXTERNAL AUTHORITY**

- 9 The following condition is imposed by Sydney Water and is to be complied with:

#### **Water**

- (a) The 100 mm drinking water main fronting the proposed development in Church Avenue does not comply with the Water Supply Code of Australia (Sydney Water Edition – WSA 03-2002) requirement for minimum sized mains for this scope of development.
- (b) The 100 mm drinking water main must be upsized to a 200 mm main from point 'A' to point 'B', O'Riordan Street to mid No 635 Gardeners Rd.

#### **Wastewater**

- (a) The three proposed residential towers (A, B and C) to the north fronting Gardeners Road can connect to the 300 mm wastewater main in Church Avenue.
- (b) The three proposed residential towers (D, E and F) can connect to the 225 mm wastewater main located at the western boundary of the property near Bourke Street.

#### **Trade Waste**

- (a) All customers discharging trade waste into Sydney Water's wastewater systems must have written permission from Sydney Water. The trade waste requirements help Sydney Water discharge or reuse wastewater while protecting the environment and meeting regulatory requirements.
- (b) Sydney Water will either issue the customer a trade waste permit or enter into a trade waste agreement. A trade waste permit must be obtained before any discharge can be made to the sewer system. The permit is also needed for site remediation purposes. Applications for a trade waste permit can be made to Sydney Water at the Section 73 Certificate application stage. For further information refer to the Sydney Water website.

#### **Sydney Water Servicing**

- (a) Sydney Water will further assess the impact of the developments when the proponent applies for a Section 73 Certificate. This assessment will enable Sydney Water to specify any works required as a result of the development and to assess if amplification and/or changes to the system are applicable. Sydney Water requests Council continue to instruct proponents to obtain a Section 73 Certificate from Sydney Water.
- (b) The proponent must fund any adjustments needed to Sydney Water infrastructure as a result of any development. The proponent should engage a Water Servicing Coordinator to get a Section 73 Certificate and manage the servicing aspects of the development. Details are available from any Sydney Water Customer Centre on 13 20 92 or Sydney Water's website at [www.sydneywater.com.au](http://www.sydneywater.com.au).

- 10 The following conditions are imposed by the NSW Roads and Traffic Authority (RTA).
- (a) Concerns are raised with regard to the adequacy of loading provision. The turning path analysis plan (DWG No. DA01 1111) shows that the manoeuvrability of the loading vehicles might block traffic entering and exiting the car parking area. Ideally the two functions should be segregated;
  - (b) The certified copies of the civil design plans as well as swept paths analyses shall be submitted to the RTA for consideration and approval prior to the release of the Construction Certificate by the Principal Certifying Authority and the commencement of road works.
  - (c) The swept path of the longest vehicle (including garbage trucks) entering and exiting the subject site as well as manoeuvrability through the site, shall be in accordance with AUSTROADS. In this regard, a plan shall be submitted to Council for approval which shows that the proposed development complies with this requirement;
  - (d) The developer is to submit detailed design drawings and geotechnical reports relating to the excavation of the site and support structures to the RTA for assessment. The developer is to meet the full cost of the assessment by the RTA.
  - (e) If it is necessary to excavate below the level of the base of the footings of the adjoining roadways, the person acting on the consent shall ensure that the owners of the roadway are given at least seven (7) days notice of the intention to excavate below the base of the footings. The notice is to include complete details of the work;
  - (f) The developer shall be responsible for all public utility adjustment/relocation works necessitated by the above work and as required by the various public utility authorities and/or their agents;
  - (g) All works/regulatory signposting associated with the proposed development are to be at no cost the RTA;
  - (h) All vehicles are to enter and exit the site in a forward direction;
  - (i) The driveways shall be designed and constructed in accordance with AS2890.1-2004;
  - (j) In accordance with AS2890.1-2004 (Parking Facilities Part 1: Off Street Car Parking), the driveway shall be a minimum of 6.0 metres in width of a minimum distance of 6.0 metres within the site to allow for a two way simultaneous entry and exit. The proposed driveway shall have a minimum grade of 1:20 for a distance of 6.0 metres within the subject site. This is to ensure that vehicles exiting the subject site have adequate sight distance to pedestrians and cyclists on the footway;
  - (k) The layout of the proposed car parking areas associated with the subject development (including driveways, grades, turn paths, sight distance requirements, aisle widths, aisle lengths and parking bay dimensions) should be in accordance with AS2890.1 – 2004 (Parking Facilities, Part 1 – Off Street Car Parking), and AS2890.2 – 2002 (Parking Facilities, Part 2 – Commercial Vehicle Facilities).

- (l) All construction vehicles are to be contained wholly within the site and vehicles must enter the site before stopping.

11 The following conditions form the General Terms of Approval dated 19 July 2011 by the NSW Office of Water and must be complied with:

General and Administrative Issues.

- (a) Groundwater shall not be pumped or extracted for any purpose other than temporary construction dewatering.
- (b) Pumped water (tailwater) shall not be allowed to discharge off-site (eg adjoining roads, stormwater system, sewerage system, etc) without the controlling authorities approval and/or owners consent.
- (c) The licensee shall allow (subject to Occupational Health and Safety Provisions) the NSW Office of Water or any person authorised by it, full and free access to the works (excavation or bore/borefield), either during or after construction, for the purpose of carrying out inspection or test of the works and its fittings and shall carry out any work or alterations deemed necessary by the NSW Office of Water for the protection and proper maintenance of the works, or the control of the water extracted to prevent wastage and for the protection of the quality and prevention from pollution or contamination of the groundwater.
- (d) If a work is abandoned at any time the licensee shall notify the NSW Office of Water that the work has been abandoned and seal off the aquifer by such methods as agreed to or directed by the NSW Office of Water.
- (e) Suitable documents are to be supplied to the NSW Office of Water of the following:
  - (i) A report of prediction of the impacts of pumping on any licensed groundwater users or groundwater dependent ecosystems in the vicinity of the site. Any adverse impacts will not be allowed and the project will need to be modified.
  - (ii) A report of assessment of the potential for salt water intrusion to occur as a result of the dewatering. This report is only required for sites within 250m of any marine or estuarine foreshore area. The generation of conditions leading to salt water intrusion will not be allowed, and the proposal will need to be modified.
  - (iii) Descriptions of the methods used and actual volume of groundwater to be pumped (kilolitres/megalitres) from the dewatering works, the works locations, the discharge rate (litres per second), duration of pumping (number of days/weeks), the amount of lowering of the water table and the anticipated quality of the pumped water.
  - (iv) Descriptions of the actual volume of pumped water (tailwater) to be reinjected (kilolitres/megalitres), the reinjection locations, the disposal rate (litres per second), duration of operation (number of days/weeks) and anticipated quality of treated water to be reinjected.
  - (v) Monitoring of groundwater levels (minimum of 3 weekly measurements of depth to water at a minimum of 3 locations broadly distributed across the site) beneath the proposed development site

prior to construction. This requirement is only for sites where the proposed structure shall extend greater than one floor level into the existing ground level.

Specific Conditions.

- (a) The design and construction of the structure must preclude the need for permanent dewatering.
- (b) The design and construction of the structure that may be impacted by any watertable must include a water proof retention system (i.e. a fully tanked structure) with adequate provision for future fluctuations of water table levels. (It is recommended that a minimum allowance for a water table variation of at least +/-1.0 metre beyond any expected fluctuation be provided). The actual water table fluctuation and fluctuation safety margin must be determined by a suitably qualified professional.
- (c) Construction methods and material used in and for construction are not to cause pollution of the groundwater.
- (d) Monitoring of groundwater levels is to be continued at least weekly during the construction stage and at least weekly over a period of at least 2 months following cessation of dewatering, with all records being provided to the NSW Office of Water on expiration of the licence. This requirement is only for sites where the proposed structure shall extend greater than one floor level into the existing ground level.
- (e) Groundwater quality testing must be conducted (and report supplied to the NSW Office of Water). Samples must be taken prior to the commencement of dewatering, (and ongoing to the satisfaction of the NSW Office of Water for any extraction and reinjection activities). Collection and testing and interpretation of results must be done by suitably qualified persons and NATA certified laboratory identifying the presence of any contaminants and comparison of the data against accepted water quality objectives or criteria.
- (f) Discharge of any contaminated pumped water (tailwater) that is not to be reinjected, must comply with the provisions of the Protection of the Environment Operations Act 1997 and any requirements of the relevant controlling authority. The method of disposal of pumped water (i.e. street drainage to the stormwater system or discharge to sewer) and written permission from the relevant controlling authority must be presented to the NSW Office of Water in support of the licence application.
- (g) Discharge of any contaminated pumped water (tailwater) that is to be reinjected, must comply with the provisions of the Protection of the Environment Operations Act 1997. The quality of any pumped water (tailwater) that is to be reinjected must be compatible with, or improve the intrinsic or ambient groundwater in the vicinity of the reinjection site. Contaminated groundwater is not to be reinjected into any aquifer. The following must be demonstrated in writing:
  - (i) The treatment to be applied to the pumped water (tailwater) to remove any contamination.
  - (ii) The measures to be adopted to prevent redistribution of any contamination in the groundwater system. Any reinjection proposal

that is likely to further spread contamination within the groundwater system will not be allowed and the project will need to be modified.

- (iii) The means to avoid degrading impacts on the identified beneficial use of the groundwater. Any reinjection proposal that is likely to lower the identified beneficial use of a groundwater system will not be allowed and the project will need to be modified.
- (h) Written advice be provided from the Certifying Authority to the NSW Office of Water to certify that the following ground settlement issues have been addressed in reports submitted by the proponent:
  - (i) Assessment by a suitably qualified geotechnical professional that the proposed dewatering activity does not pose an unacceptable risk of off-site impacts such as damage to surrounding buildings or infrastructure as a result of differential sediment compaction and surface settlement during and following pumping of groundwater.
  - (ii) Settlement monitoring activities to be undertaken prior to, during and for the required period of time following the dewatering pumping to confirm the impact predictions.
  - (iii) Locations of settlement monitoring points, and schedules of measurement.

#### Formal Application Issues.

- (a) An application must be completed on the prescribed form for the specific purpose of temporary construction dewatering and a licence obtained from the NSW Office of Water prior to the installation of the groundwater extraction works. A plan drawn to scale will be required with the application clearly identifying the location of the dewatering installations.
- (b) Upon receipt of a Development Consent from the City of Botany Bay, a fully completed licence application form, unambiguous documentation of the means by which the below-ground areas of the development will be designed and constructed to prevent any groundwater seepage inflows (and therefore preclude any need for permanent or semi-permanent pumping), together with all other required supporting information, the NSW Office of Water will issue a Water Licence under Water Management Act, 2000.
- (c) A licence application under Water Management Act, 2000 must be accompanied by a \$151.00 fee and must specify the proposed volume of groundwater to be pumped in total (megalitres). The licence is also subject to administrative charges as determined from time to time by the Independent Pricing and Regulatory Tribunal (IPART).

12 The following conditions are imposed by the NSW Police Service:

- (a) As the proposed development may be exposed to Break and Enter Steals, Stealing, Steal from persons, Malicious Damage and Steal from Motor Vehicle offences, a closed circuit surveillance system (CCTV) which complies with the Australian Standard - Closed Circuit Television System (CCTV) AS:4806:2006 shall to be implemented to receive, hold or process

data for the identification of people involved in anti-social behaviour prior to the issue of the Occupation Certificate. The system is obliged to conform with Federal, State or Territory Privacy and Surveillance Legislation;

- (b) The CCTV system should consist of surveillance cameras strategically located at the front and rear of the premises to provide maximum surveillance coverage of the area. Particularly areas that are difficult to supervise. Cameras should be strategically mounted outside the development buildings and within the car parking areas to monitor activity within these areas. One or more cameras should be strategically mounted at entry and exit points to monitor activities around these areas;
- (c) Digital 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;
- (d) It is crucial even in the development stage that these cameras are installed as soon as power is available to the site;
- (e) A monitor intruder alarm system which complies with the *Australian Standard – Systems Installed within Clients Premises, AS:2201:1998* shall be installed within the premises to enhance the physical security and assist in the detection of unauthorised entry to the premises. This standard specifies the minimum requirements for intruder alarm equipment and installed systems. It shall apply to intruder alarm systems in private premises, commercial premises and special installations. 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;
- (f) The light emitting diodes (LED's red lights) within the detectors should be deactivated, to avoid offenders being able to test the range of the system;
- (g) 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 a robbery. *NB. Duress devices should only be used when safe to do so*;
- (h) By angling fire egress inlet walls 45 degrees or more, opportunities for entrapment, loitering and vandalism can be reduced;
- (i) Care should be taken when using glazing in entry foyers. At night the vision of departing occupants can be affected by reflections on the interior of the glass (cant' see outside). Mirroring can be reduced by using appropriate external lighting;
- (j) The configuration of car park spaces can impact the risk of car thieves. Grid rows increase natural surveillance. Avoid dark spots, corners and isolated car spaces;
- (k) Public laundries, garbage disposal areas and other communal spaces should not be located in a buildings 'leftover space'. Poor supervision of communal facilities can greatly increase the risk of predatory crime, theft and vandalism. Areas that are unused or sporadically used after hours and unsupervised or, under supervised should not be accessible to the public;

- (l) Uneven building alignments, insert doorways and hidden entrances should be avoided. They can facilitate predatory crimes, theft, malicious damage and other crimes;
- (m) Bicycle parking areas should be located within view of capable guardians. The provision of covered lockable racks to secure bicycles increases the effort required to commit crime;
- (n) Prior to the issue of the Occupation Certificate, lighting shall be installed at the premises in accordance with the requirements of the *Australian Standard: Lighting AS:1158*. The emphasis shall be on the installation of low glare, high uniformity lighting levels in line with the standard;
- (o) Lighting sources should be compatible with and not interfere with the requirements of any surveillance system at the premises;
- (p) The luminaires (light covers) should be designed to reduce opportunities for malicious damage. Lighting within the development needs to be checked on a regular basis;
- (q) A limited amount of internal lighting should be left between the hours of sunset and sunrise, to enable patrolling police, security guards or passing people to monitor the activities within the business;
- (r) Improved lighting needs to extend from the development towards O’Riordan Street and Bourke Road. Consideration must be given to pedestrians walking from the development to surrounding streets for the purpose of catching public transport etc. Areas adjoining pathways should be illuminated to avoid opportunities for concealment and entrapment. Lighting in public places should cater for pedestrians as much as motor vehicles. Pedestrian scale lighting heels attract people into areas and increase night supervision.
- (s) Clear street number signs should be displayed and appropriately positioned at the front of the business to comply with Local Government Act, 1993 Section 124 (8). Failure to comply with any 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 \$5500) for an individual and 100 penalty units (currently \$11000) for the corporation. The numbers should be in contrasting colours to the building materials and be larger than 120mm.
- (t) Warning signs should be strategically posted around the buildings to warn intruders of what security treatments have been implemented to reduce opportunities for crime.
  - (i) Warning, trespasser will be prosecuted
  - (ii) Warning, these premises are under electronic surveillance
- (u) Directional signage should be posted at decision making points (eg. X Entry/egress points) to provide guidance to the uses of the development. This can also assist in access control and reduce excuse making opportunities by intruders.
- (v) A Fire Safety Statement must be prominently displayed within the development to comply with the Environmental Planning & Assessment Regulations (1994) Clause 80GB. The annual fire safety statement is a statement issued by the owner of a building.



- (w) Signage needs to be provided at fire exits to assist occupants to identify exits in emergency situations.
- (x) Signage needs to be provided to assist occupants to identify fire suppression equipment, eg extinguishers, fire hoses etc.
- (y) An Emergency control and evacuation plan which complies with the Australian Standard, Emergency Control Organisation and Procedures for Buildings, Structures and Workplace, AS:3745:2002 should be prepared and maintained by your development to assist management and staff in the event of an emergency. This standard sets out the requirements for the development of procedures for the controlled evacuation of the building, structures and workplaces during emergencies. Further information in relation to planning for emergencies can be obtained from Emergency NSW <http://www.emergency.nsw.gov.au> or Emergency Management Australia <http://www.ema.gov.au>.
- (z) Consider the large park space in the middle of the proposed buildings and ask what this space will be used for, who will use this space and when will this space be used.
- (aa) Encourage local community use of the park space (eg. Vegetable gardens, yoga classes, exercise classes etc.
- (bb) Consider children's play equipment, will it be used correctly or will it be subjected to vandalism and breed anti-social behaviour (eg underage drinking at night) Make an assessment based on the demographics of the area, whether it will be used by children for the appropriate reasons. Lighting will determine usage, will the community feel safe to make use of the park at night.
- (cc) The door and door frames to these premises should be of solid construction.
- (dd) Doors should be fitted with locks that comply with the Australian Standard – Mechanical Locksets for doors in buildings, AS:4145:1993, to restrict unauthorised access and the Building Code of Australia (fire regulations). This standard specifies the general design criteria, performance requirements and procedures for testing mechanical lock sets and latch sets for their resistance to forced entry and efficiency under conditions of light to heavy usage. The standard covers lock sets for typical doorways, such as wooden, glass or metal hinged swinging doors or sliding doors in residential premises. Requirements for both the lock and associated furniture are included. Certain areas may require higher level of locking devices not referred to in this standard (eg. Locking bars, electronic locking devices and detection devices) Dead locks are recommended for residential units.
- (ee) There are some doors within the premises which are designated as fire exits and must comply with the Building Code of Australia. This means that they provide egress to a road or open space, an internal or external stairway, a ramp, a fire isolated passageway, a doorway opening to a road or open space. The doors in the required exits must be readily open-able without a key from the side that face the person seeking egress, by a single hand downward action or pushing action on a single device which is located between 900mm and 1.2m from the floor.
- (ff) The main access to the underground car park should have restricted access with a security pass. The opening/closing mechanism should be protected

from vandalism and tampering. All exit doors from the car park should have striker plates installed to minimise chance of tampering.

- (gg) The main entry/egress doors to the development should have an electronically operated lock which require security swipe pass for entry. The lifts operating in the building should have the same security swipe pass technology. When an occupant buzzes in a visitor the lift should recognise the floor the occupant resides and only allow the visitor access to that floor in the lift.
- (hh) Entrance doors to commercial premises (convenient store etc.) should include an electronically operated lock, which can be locked after hours to control access to the development. Staff could release this lock electronically from the safety of the counter area once the customer has been identified. This locking mechanism should be activated during the hours of darkness.

13 The following conditions are imposed by the Sydney Airport Corporation Limited (SACL) and must be complied with:

- (a) The PROPERTY DEVELOPMENT at 12-14 CHURCH AVENUE, MASCOT 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 (AEGH) without prior approval of this Corporation.
- (b) The Civil Aviation Safety Authority (CASA) have no objection to the erection of the following structures:
  - (i) Building E to a height of 29.55 metres above Australian Height Datum (AHD).
  - (ii) Building F to a height of 29.55 metres above Australian Height Datum (AHD).
  - (iii) Building G to a height of 51.00 metres above Australian Height Datum (AHD).
- (c) The approved height is inclusive of all lift over-runs, vents, chimneys, aerials, TV antennae, construction cranes etc.
- (d) Should you wish to exceed the above heights, a new application must be submitted. 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. 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. SACL advises that approval to operate construction equipment (ie cranes) should be obtained prior to any commitment to construct. Information required by SACL prior to any approval is to include:
  - (i) the location of any temporary structure or equipment, ie. 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 ie. construction cranes, intended to be used in the erection of the proposed structure/activity;
  - (iv) the period of the proposed operation (ie. construction cranes) and desired operating hours for any temporary structures.
- (e) 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.
- (f) The development is to comply with the Civil Aviation Safety Authority (CASA) requirements as outlined in the Council's Development Application Guide for Multi-Unit Residential, Commercial and Industrial.

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

- 14 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 Principal Certifying Authority. Any damage to utilities/services will be repaired at the applicant's expense.
- 15 Prior to the issue of the Construction Certificate the required Long Service Levy payable under Section 34 of the Building and Construction Industry Long Service Payments Act 1986 has to be paid. The Long Service Levy is payable at 0.35% of the total cost of the development, however this is a State Government Fee and can change without notice.
- 16 Prior to the issue of the Construction Certificate design verification is required to be submitted from a qualified designer to confirm the development is in accordance with the approved plans and details and continues to satisfy the design quality principles in State Environmental Planning Policy No. 65 Design Quality of Residential Flat Development.
- 17 All plumbing stacks, vent pipes, stormwater downpipes and the like shall be kept within the building and suitably concealed from view. This condition does not apply to the venting to atmosphere of the stack above roof level. Details shall be submitted to the Principal Certifying Authority prior to issue of the Construction Certificate.
- 18
  - (a) Prior to the issue of the Construction Certificate, the measures required in the Noise Impact Assessment Report prepared by Acoustic Logic Consultancy dated 28 March 2011 shall be undertaken in accordance with the provisions of *AS2021-2000: Acoustics – Aircraft Noise Intrusion – Building Siting and*

*Construction* to establish components of construction to achieve indoor design sound levels in accordance with Table 3.3 of AS2021-2000 shall be incorporated into the construction of the building;

The work detailed in the report includes:

- (i) Appropriate acoustic glazing to stated windows and doors of all apartments as described in the report;
  - (ii) External wall construction;
  - (iii) External door specification;
  - (iv) Acoustically treated mechanical ventilation.
- (b) Prior to the issue of the Construction Certificate, a compliance report from a suitably qualified acoustic consultant shall be submitted to Council indicating any required noise mitigation measures to the approved dwelling, as detailed in the NSW Road Noise Policy 2011 in accordance with AS 3671-1989 – Acoustic – Road Traffic Intrusion.
- (c) Prior to the issue of the Construction Certificate details are to be provided on acoustic treatment to the entry and exit roller door to driveway of the development to comply with the Office of Environment and Heritage's Industrial Noise Policy and Noise Control Guidelines.
- 19 To ensure that utility authorities and Council are advised of any effects to their infrastructure by the development, the applicant shall: -
- (a) Carry out a survey of all utility and Council services within the site including relevant information from utility authorities and excavation if necessary to determine the position and level of services.
  - (b) Negotiate with the utility authorities (eg Energy Australia, Sydney Water and Telecommunications Carriers) and Council in connection with:
    - (i) The additional load on the system; and
    - (ii) The relocation and/or adjustment of the services affected by the construction.
  - (c) Any costs in the relocation, adjustment, and provision of land or support of services as requested by the service authorities and Council are to be the responsibility of the developer.
- 20 Prior to issue of any Construction Certificate, the applicant shall lodge a further Development Application to Council for the civil works associated with the development to be carried out in public domain area (including proposed public reserve and road reserve area) on Church Avenue. Details of the civil works shall be submitted to Council as part of the documentation of Development Application and all costs associated with the design and construction shall be borne by the applicant. The civil works in public domain area shall include the following: -
- Church Avenue
- (a) Design and construct new kerb and gutter for the full Church Avenue frontage of the site, including transition works to adjacent sites. The face of the new

kerb shall be 6 metres from the new boundary and 6 metres from the centreline of Church Avenue.

- (b) Design and construct road pavement between the lip of the new kerb and gutter and the centreline of the Church Avenue.
  - (c) Design and construct 3m wide footpath/cycle path and landscaping (including street trees) in the public domain area for the full Church Avenue frontage of the site in accordance with the current Council's approved public domain landscape plans.
  - (d) Design and construct vehicular crossing with minimum width of 6m at the property boundary. The vehicular crossing shall be at 90o to the property boundary line.
  - (e) Design and provide line marking and all necessary regulatory / parking / street signs on Church Avenue to Council and RTA's requirements.
  - (f) Design and construct stormwater drainage system from the site to the existing Council's drainage pits. This work shall include reconstruction of the existing Council's pit and provision of a new additional kerb inlet grated pits with 2.4m long lintel in Church Avenue.
  - (g) Replace the existing above ground electricity and telecommunication cables in Church Avenue with underground cables to relevant authorities guidelines and requirements.
  - (h) Design and provide appropriate street lighting to the full frontage of the site in accordance with the relevant authorities requirements.
  - (i) All the above works shall be designed and prepared by suitably qualified civil engineers and landscape architects with relevant qualification in civil engineering and landscape respectively. Documentary evidence of the lodgement of this Development Application shall be submitted to the Principal Certifying Authority.
  - (j) Access driveway off Church Avenue to the car park must be 90 degree to the road aglinment.
- 21 Prior to the issue of Construction Certificate, the existing State/Permanent Survey Mark (SSM/PSM) on Church Avenue shall be relocated and reinstated to the specification of the Land and Property Management Authority. A copy of the Location Sketch Plan of PM/SSM including reduced level (AHD) shall be prepared by a registered Surveyor and submitted to Council. The degree of horizontal and vertical accuracy shall be acceptable to the Land and Property Management Authority.
- 22 A suitable intercom system linked to all units within the development shall be provided at the vehicle entrance to the development to ensure any visitors to the site can gain access to the visitor parking in the car parking area. The details of the intercom system shall be submitted to Principal Certifying Authority prior to the issue of a Construction Certificate and its location and specifications endorsed on the construction drawings.
- 23 Prior to the issue of any Construction Certificate, the following documentation shall be submitted to Principal Certifying Authority: -

- (a) Longitudinal sections along centreline of all the ramps between each basement parking levels
  - (b) Design certification, prepared by a suitably qualified engineer, showing the longitudinal sections shall be designed in accordance with AS2890.1 (including gradients and gradient transitions).
- 24 Prior to the issue of any Construction Certificate, detailed construction plans in relation to the development shall be revised and submitted to Council for approval. The plan shall be revised to include the following: -
- (a) The entrance to car parking are adjacent to the ramp access shall be redesigned. As such, the area shall be designed to minimise conflicting traffic movements between residential and retail/commercial developments. The location of the ramp access may require to be relocated.
  - (b) Security roller door shall be installed to provide security to residents and separation of parking bays between residential and retail/commercial parking area.
  - (c) Queuing area shall be provided between the vehicular control point and the property boundary in accordance with AS2890.1
  - (d) Any wall or fence or solid object on either side of the driveway/vehicular crossing where it meets the Council's road reserve at the boundary must comply with sight distances stipulated in AS 2890.2.
- 25 Prior to the issue of any Construction Certificate, detailed construction plans in relation to the stormwater management and disposal system for the development shall be submitted to the Council and Principal Certifying Authority for approval.
- The detailed Stormwater Management Plans and specifications shall be prepared by a suitably qualified and experienced civil engineer and the design shall be generally in accordance with the **stormwater report, prepared by Emerson Associates Pty Ltd, Ref 1110/JE/110325/A, dated 25 Mar 2011, Issue A**. In addition, the following shall be incorporated into the plans: -
- (a) The design of the stormwater drainage system shall incorporate the stormwater drainage system proposed under DA10/324.
  - (b) Grated boundary pit (minimum 600mm x 600mm) shall be provided to the stormwater drainage system prior to discharging stormwater into the existing Council's pit.
  - (c) A new kerb inlet pit, including minimum 2.4m long lintel, shall be provided at the new kerb and gutter over the proposed stormwater outlet from the site.
  - (d) All stormwater runoff from the site shall pass through a pollution control device capable of removing litter and sediment prior to entering the public stormwater system. Details of the pollution control device shall be shown on stormwater management plan.
  - (e) The pump-out system shall be designed and provided to collect the stormwater runoff from the driveway ramp. Subsoil drainage lines shall not be provided to

the basement area due to the groundwater table. The pump-out system shall be designed to comply with the following: -

- The volume of the pump-out storage tank shall be designed with a minimum storage capacity equivalent to the runoff volume generated from the area draining into the tank for the 1 in 100 year ARI 2-hours duration storm event.
- Information of the selected pumps (eg brand, model numbers, performance curve and specifications) shall be submitted to Council to ensure the pump has adequate capacity. Each pump shall have a minimum capacity of 10L/s or shall be based on the flow rate generated from the 1 in 100 year ARI 5-minutes duration storm event of the area draining into the system, whichever is greater.
- The pump-out system shall comprise with two (2) submersible type pumps. The two pumps shall be designed to work on an alternative basis to ensure both pumps receive equal use and neither remains continuously idle.
- An alarm warning device (including signage and flashing strobe light) shall be provided for the pump-out system to advise the occupant of pump failure. The location of the signage and flashing strobe light shall be shown on the stormwater management plans

(f) The On-Site Detention (OSD) systems shall be designed to comply with the following: -

- (i) Submerged outlet conditions shall be considered.
- (ii) The location of the OSD tanks shall not interfere the deep soil planting area.
- (iii) In order to verify the input parameters and layout of the model, a copy of the DRAINS working file (\*.drn) of the OSD systems shall be submitted to Council for review.
- (iv) All underground parking structures shall be tanked, so that there is no intrusion of waters into the structure.
- (v) Emergency surface overland flow path shall be provided to the development in order to convey stormwater overflow from the OSD systems to the public roads. The extent of the overland flow path shall be kept shown on the stormwater management plans. Consideration shall be given to ensure stormwater in the emergency overland flow path will not overflow into the buildings.
- (vi) In order to protect the buildings from stormwater inundation, the OSD tanks/roof basins shall be water-tight.

(g) The infiltration system shall be designed to comply with the following: -

- (vii) The infiltration system shall have a minimum clearance of one (1) metre from the boundary fronting public roads and two (2) metres from the side boundaries and building footings.

- (viii) Overflow from the infiltration system shall discharge to the Council's kerb and gutter via a grated boundary pit (min. 600mm x 600mm).
  - (ix) The base of the infiltration system shall be 200 mm thickness of 14 mm crushed aggregate wrapped in a geotextile fabric.
  - (x) Grated pits (min. 600mm x 600mm) shall be provided to the system in order to provide access for cleaning to the infiltration units. The pit shall be provided with a Lysaght Maximesh RH3030 litter screen and a 300mm silt sump.
- (h) The following information and details associated with the design of stormwater management system shall be shown on the stormwater management plans: -
- (i) A drainage report showing stormwater drainage, pump-out system, infiltration system and OSD system calculations (including storage volumes, design top water levels, pit inlet capacity, pipes size, orifice sizes, overflow weirs, size of the overland flow paths)
  - (ii) Stormwater Drainage Plans showing: -
    - pits location and size
    - pipes location, grades, size and type
    - design surface and invert levels
    - hydraulic grade line for each pipeline
  - (iii) Details of the basement pump-out systems
  - (iv) Details of the infiltration systems
  - (v) Details of the On-Site Detention (OSD) systems showing: -
    - catchment plans
    - plan and section views
    - design top water levels
    - location and dimension of storage tanks, overflow weirs
    - maximum heads, high early discharge heads and depths of storage
    - invert and surface levels of all drainage structures
    - centreline of the orifice
    - details of the discharge control pits
- 26 Prior to the issue of the Construction Certificate, design certification, prepared by a suitably qualified engineer shall be submitted to Principal Certifying Authority certifying the car parking area shown on the construction plans has been designed in accordance with AS 2890.1 and AS2890.6.



- 27 Prior to the issue of the Construction Certificate, design certification, prepared by a suitably qualified engineer shall be submitted to Principal Certifying Authority certifying the stormwater drainage (including OSD and infiltration system) and basement pump-out system shown on the construction plans have been designed to comply with current Australian Standards and Council's requirements.
- 28 Council's property shall be supported at all times. Where any shoring is to be supporting (or located on) Council's property, certified engineering drawings showing all details including the extent of encroachment, the type of shoring and the method of removal, shall be submitted prior to the issue of the Construction Certificate. If the shoring cannot be removed, it shall be cut to 150mm below footpath level and the gap between the shoring and any buildings shall be filled with a 5Mpa lean concrete mix.
- 29 After the approval has been obtained from the responsible utility for street lighting, detailed street lighting design and construction plans, prepared by a suitably qualified person, shall be submitted to Council for approval. The design shall be in accordance with AS 1158 and to Energy Australia's requirements. Alterations/additions to street lighting shall be carried out by the responsible utility authority for lighting, or to the satisfaction of that authority, and all capital contributions associated with the installation of the lighting shall be borne by the applicant. The proposal shall include details of all fixtures being proposed and underground power reticulation shall be allowed for in the design. The lighting design categories on Church Avenue shall be in **P2** design category.
- 30 The approved Waste Management Plan shall be complied with at all times during construction works, and during the ongoing use of the premises.
- (a) A Soil and Water Management Plan (also known as an Erosion and Sediment Control Plan) shall be prepared and submitted to the Principle Certifying Authority prior to release of the Construction Certificate;
  - (b) Erosion and sediment control devices shall be installed prior to the commencement of any demolition, excavation or construction works to prevent sediment and silt from site works (including demolition and/or excavation) being conveyed by stormwater into Council's stormwater system, natural watercourses, bushland, trees and neighbouring properties;
  - (c) The water pollution and sediment controls shall be designed and implemented in accordance with:
    - (i) The Soil and Water Management Plan;
    - (ii) "Do It Right On Site, Soil and Water Management for the Construction Industry" published by the Southern Sydney Regional Organisation of Councils 2001; and
    - (iii) the Protection of Environment Operations Act 1997 and the Department of Environment, Climate Change and Water guidelines.
    - (iv) "Managing Urban Stormwater – Soils and Construction" published by the NSW Department of Housing 4th Edition" (The Blue book).

- (v) Where there is any conflict, The Blue Book takes precedence.
  - (vi) Notes:
    - (1) 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.
    - (2) 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).
    - (3) 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.
    - (4) 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”.
    - (5) 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.
  - (d) These device shall be maintained in a serviceable condition AT ALL TIMES throughout the entire demolition, excavation and construction phases of the development and for a minimum three (3) month period after the completion of the development, where necessary.
  - (e) The vehicular entry/exit to the site must be protected from erosion and laid with a surface material that will not wash into the street drainage system.
  - (f) Shaker pads are to be installed at the entry/exit points to the site to prevent soil material leaving the site on the wheels of vehicles and other plant and equipment.
- 31 The landscape areas shown on the landscape concept plans submitted by Turf : *dwgs LDA2-4 through 7 (south) and LDA1-4 to 5 (north) Issue A* as well as Tree Strategy/Management Plans : *dwgs LDA2-13 (south) and LDA1-8 (north)* shall be the subject of detailed landscape construction documentation (plans and specifications) to be submitted to, and approved by, Council’s Landscape Architect. The landscape documentation is to be prepared by a suitably qualified Landscape Architect, in accordance with all relevant Council DCP’s. The detailed, construction level plan shall include, but not be limited to the following.
- (a) Further investigation into retention of existing trees. Explore all avenues for retention of trees 7, 8, 11, 13 and 21 (as a minimum) (*Earthscape*

*Horticultural Services June 2010*) within the existing Church Avenue setback. (The drop off/lay by area proposed for Church Avenue is to be deleted in this regard). Indicate clearly all trees to be retained on the detailed landscape plan;

- (b) Council's tree replacement ratio is 2 for 1. As over 90 trees are to be removed from the site a minimum of 180 trees (canopy and clear trunk) are required within the new landscaping;
- (c) A planting plan at 1:100 (min) showing all plant locations, numbers, groupings and centres. There is to be a dense 3-tier planting of trees, shrubs and groundcovers/perennials in all landscaped areas.;
- (d) A plant schedule listing all plants by botanical name, total plant numbers, plant spacings, pot sizes and staking;
- (e) Specifications detailing soil and mulch finishes, root barriers, irrigation, garden bed edging and other landscape hardworks such as retaining and planter box walls and finishes, schedule of paving materials, fencing, privacy screening and pergolas (elevations, materials);
- (f) Other landscape elements such as furniture, pedestrian/amenity lighting, sculpture/water features;
- (g) Planter box on slab sectional details. Planter box volumes are to be in accordance with Council's Landscape DCP to ensure adequate root spread for trees;
- (h) In communal open spaces, soft landscaping is to be maximised and accessways/dissecting pathways and impermeable surfaces minimised. Provide lawn as well as planted areas where possible for varied recreational usage and amenity;
- (i) Trees to be used extensively throughout the site – in private ground level courtyards, communal areas and all setbacks. Trees must be of an appropriate size and scale to complement the built form as well as to provide comfort and amenity for residents and pedestrians in landscaped open spaces. Deep soil zones must include larger trees. Trees should be hardy, fast growing, native, evergreen species using open/light canopied evergreens or selected deciduous for solar penetration. Suitable trees for growing on podiums/contained root environments must be selected. Shade tolerant plants to be selected where required;
- (j) Indicate method of screening to electricity kiosks and fire booster valve assemblies where applicable. Comply with conditions relating to their location and treatment;
- (k) The Church Avenue setback is to be increased to 3 metres minimum. Indicate the selected tree species for these locations – trees must be of a size and scale to complement the built form, small narrow canopied trees are not suitable. Trees are to be provided around the car park entry driveways;
- (l) Detail the landscape treatment to the eastern boundary setback, inclusive of appropriate tree species;
- (m) The drop-off bay in the Church Avenue frontage is to be deleted and a continuous street tree planting proposal provided. This includes preservation of existing trees. All new street trees are to be detailed in size, species and location, super-advanced (400 litre) specimens required;

- (n) Demonstrate and support the usage and application of indigenous native species to show how they will be successful in a constructed landscape setting rather than a natural setting in which these species would normally grow. The plants must be able to thrive with artificial drainage and irrigation in imported soils and within contained planters. The plant palette must be site responsive and capable of delivering the desired aims and purpose of communal open spaces and residential amenity with regard to shade, solar access, privacy/screening, comfort, visual respite and softening and scaling of the built form. Council supports a mixture of native species, both indigenous and non-indigenous, as well as some exotics, to ensure a successful and meaningful landscape outcome;
  - (o) Detail the proposed public footpath treatment finishes and width to the Gardeners Road frontage in accordance with Council's City Identity Program and Landscape DCP and any other Council specification or requirement. Segmental/unit paving will be required.
- 32 A Certificate under Section 73 of the Water Board (Corporation) Act 1994 shall be obtained and submitted to Council for each stage of construction to ensure that the developer has complied with all relevant Sydney Water requirements, including appropriate connections, correctly sized amplifications, procurement of trade waste agreements, where necessary, and the payment of developer charges.
- Note: Immediate application should be made to Sydney Water for this Certificate to avoid problems in servicing the development.
- 33 Plans and specifications for the storage room for waste and recyclable materials shall be submitted to the Principal Certification Authority with the application for the Construction Certificate. Storage of Waste and recycling shall meet the following requirements:
- (a) Waste and recycling for commercial users shall be in a separate room from the storage of waste and recycling for residential users.
  - (b) The rooms for the storage of garbage and recyclable materials shall be:
    - (i) fully enclosed;
    - (ii) adequately ventilated;
    - (iii) Constructed with a concrete floor, concrete or cement rendered walls coved to the floor;
    - (iv) The floor shall be graded to an approved sewer connection incorporating a sump and galvanized grate cover or basket in accordance with the requirements of Sydney Water Corporation.
    - (v) Washing facilities shall be provided within close proximity to the garbage and recycling storage area.

**CONDITIONS WHICH MUST BE SATISFIED PRIOR TO THE COMMENCEMENT OF ANY DEVELOPMENT AT WORK**

- 34 There shall be no loss of support to the Council's nature strip area as a result of the construction within the site. Details prepared by a practicing Structural Engineer of how this support will be maintained during the demolition works shall be submitted to Council prior to the commencement of works.
- 35 Prior to commencement of works, the developer must submit to the Principal Certifying Authority an acoustic report covering the potential noise impacts from demolition and construction at the site. The report must be prepared by a qualified practicing acoustic engineer (who is a member of either the Australian Acoustical Society or the Association of Australian Acoustical Consultants), and shall address the following matters:
- (a) All potentially noisy activities are to be identified,
  - (b) The duration of all potentially noisy activities are to be identified,
  - (c) Detail noise mitigation measures to minimise community disturbance and to meet the following conditions,
  - (d) Recommendations to inform the community of the type and duration of essential noisy activities, and
  - (e) Compliance with other relevant conditions of this consent.
- 36 Prior to commencement of any works, application(s) shall be made to Council's Customer Services Counter for the following approvals and permits on Council's property/road reserve under Road Act 1993 and Local Government Act 1993 as appropriate:
- (a) Permit to erect hoarding on or over a public place, including Council's property/road reserve
  - (b) Permit to construction works, place and/or storage building materials on footpaths, nature strips
  - (c) Permit for roads and footways occupancy (long term/ short term)
  - (d) Permit to construct vehicular crossings, footpath, kerb and gutter over road reserve
  - (e) Permit to open road reserve area, including roads, footpaths, nature strip, vehicular crossing or for any purpose whatsoever
  - (f) Permit to place skip/waste bin on footpath and/or nature strip
  - (g) Permit to use any part of Council's road reserve or other Council lands
  - (h) Permit to stand mobile cranes and/or other major plant on public roads and all road reserve area
- (It should be noted that the issue of such permits may involve approval from RTA and NSW Police. In some cases, the above Permits may be refused and temporary road closures required instead which may lead to longer delays due to statutory advertisement requirements.)

- (i) Permit to establish “Works Zone” on public roads adjacent to the development site, including use of footpath area.

(Application(s) shall be submitted minimum one (1) month prior to the planned commencement of works on the development site. The application will be referred to the Council's Engineers for approval, which may impose special conditions that shall be strictly adhered to by the applicant(s))

37

- (a) A detailed Traffic Management Plan for the pedestrian and traffic management of the site during demolition, excavation and construction shall be prepared and submitted to the relevant road authority (Council or Roads and Traffic Authority) for approval prior to commencement of any works. The plan shall: -
  - (i) be prepared by a RTA accredited consultant.
  - (ii) nominate a contact person who is to have authority without reference to other persons to comply with instructions issued by Council's Traffic Engineer or the Police.
  - (iii) if required, implement a public information campaign to inform any road changes well in advance of each change.
- (b) Note: Any temporary road closure shall be confined to weekends and off-peak hour times and is subject to Council's Traffic Engineer's approval. Prior to implementation of any road closure during construction, Council shall be advised of these changes and Traffic Control Plans shall be submitted to Council for approval. This Plan shall include times and dates of changes, measures, signage, road markings and any temporary traffic control measures.
- (c) During construction, all works and measures shall be implemented in accordance with approved Traffic Management Plan at all times.

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

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

- (c) The provisions of toilet facilities in accordance with this clause must be completed before any other work is commenced.
- 39 Prior to the commencement of works, the applicant must inform Council, in writing, of:
- (a) The name of the contractor, and licence number of the licensee who has contracted to do, or intends to do, the work: or
  - (b) The name and permit number of the owner-builder who intends to do the work;
  - (c) The Council also must be informed if:
    - (i) A contract is entered into for the work to be done by a different licensee; or
    - (ii) Arrangements for the doing of the work are otherwise changed.
- 40 A detailed Construction Management Plan (CMP) shall be submitted to Council and the Principal Certifying Authority for approval prior to the commencement of any works. The plan shall address:
- (a) Excavation and construction vehicles access to and egress from the site;
  - (b) Storage location of the demolition and construction building materials (to be wholly within the site)
  - (c) Locations of site office, accommodation and the storage of major materials related to the project
  - (d) Protection of adjoining properties, pedestrians, vehicles and public assets
  - (e) Location and extent of proposed builder's hoarding and Work Zones, if there is any
  - (f) Tree protection management measures for any protected and retained trees.
  - (g) Active measures to control and suppress dust, grit and the like that are associated with construction activity.
  - (h) Measures to control the arrival of plant and equipment associated with the construction process and the delivery of such plant and equipment during reasonable hours of the working day.
  - (i) Public Notification where working hours are extended for a particular construction activity
  - (j) Provision of on-site car parking for employees, contractors and site personnel during the construction phase of the development; and
  - (k) During construction, all works and measures shall be implemented in accordance with approved Construction Management Plan at all times.
- 41 A sign must be erected in a prominent position on any work site on which work involved in the erection 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;
  - (d) the name of the Principal Certifying Authority including an after hours contact telephone number; and
  - (e) any such sign is to be removed when the work has been completed.
- 42 The Applicant must indemnify Council against all loss of or damage to the property of others and injury or death to any persons which may arise out of or in consequence of the carrying out of the work and against all claims, demands, proceedings, costs, charges and expenses whatsoever in respect thereof or in relation thereto. In this regard, the Applicant shall take out a public liability policy during the currency of the works in the sum of not less than \$20,000,000 and to be endorsed with City of Botany Bay Council as principal, and keep such policy in force at the Applicant's own expense. A certificate from the Applicant's insurers to this effect is to be LODGED WITH COUNCIL BEFORE ANY WORK IS COMMENCED. The amount of Common Law liability shall be unlimited.

### **DURING WORKS**

- 43 If the work involved in the construction of a building:
- (a) likely to cause pedestrians or vehicular traffic in a public place to be obstructed or rendered inconvenient; or,
  - (b) involves the enclosure of a public place:
    - (i) a hoarding or fence must be erected between the work site and the public place.
    - (ii) If necessary an awning is to be erected sufficient to prevent any substance from or in connection with the work falling into the public place.
    - (iii) The work site must be kept lit between sunset and sunrise if it is likely to be hazardous to person(s) in the public place.
    - (iv) Any such hoarding, fence or awning is to be removed when the work has been completed.
  - (c) Suitable consent shall be obtained from Council prior to the erection of any hoarding at the property.
- 44 Any new information that comes to light during construction which has the potential to alter previous conclusions about site contamination and remediation must be notified to Council.
- 45 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 copy of the sign is available from Council's Customer Service Counter.

- 46 During construction works, the applicant / builder is required to ensure the protection and preservation of all boundary fencing or boundary walls between the subject site and adjoining properties. Any damage caused as a result of such works will be at the full cost of the applicant/builder.
- 47 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.
- 48 All vehicles transporting soil, sand or similar materials to or from the site shall cover their loads at all times.
- 49
- (a) Existing structures and or services on this and adjoining properties shall not be endangered during any demolition associated with the above project. The Applicant is to provide details of any stabilisation works required to adjacent developments to Council.
  - (b) As the development involves an excavation that extends below the level of the base of the footings of a building or road on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
    - (i) Protect and support the adjoining premises from possible damage from the excavation, and
    - (ii) Where necessary, underpin the adjoining premises to prevent any such damage.
    - (iii) Must at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of his intention to do so to the owner of the adjoining allotment of land and, furnish particulars of the excavation to the owner of the building being erected or demolished.
- 50
- (a) The operations of the site 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.
  - (b) All possible and practicable steps shall be taken to prevent nuisance to the inhabitants of the surrounding neighbourhood from wind-blown dust, debris, noise and the like.

- 51 The operation shall not give rise to offensive odour or other air impurities in contravention of the Protection of the Environment Operations Act 1997. The Principle contractor shall ensure that all practical means are applied to minimise dust and odour from the site. This includes:
- (a) Covering excavated areas and stockpiles,
  - (b) The use of fine mists of hydrocarbon mitigating agents on impacted stockpiles or excavation areas,
  - (c) Maintenance of equipment and plant to minimise vehicle exhaust emissions,
  - (d) Erection of dust screens on the boundary of the property and/or closer to potential dust sources,
  - (e) All loads entering or leaving the site are to be covered,
  - (f) The use of water sprays to maintain dust suppression,
  - (g) Keeping excavated surfaces moist.
- 52 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 Environmental Noise Control Manual
- 53
- (a) In order to prevent vehicles tracking soil or other materials onto public roads and washing of materials into the street drainage system or watercourse, during Demolition, Excavation, Construction and Deliveries, access to the site shall be available in all weather conditions. The area shall be stabilised and protected from erosion;
  - (b) Concrete trucks and any other trucks that 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 only be conducted in a suitable off-street area where wash waters do not enter the stormwater system or enter Council's land;
  - (c) 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;
  - (d) 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.
- 54 The Development is to be constructed to meet the requirements detailed in the approved acoustic report (Acoustic Logic Consultancy, dated November 2010), and the following construction noise requirements:
- (a) Construction Noise

- (a) Noise from construction activities associated with the development shall comply with the NSW Environment Protection Authority's Environmental Noise Manual – Chapter 171 and the Protection of the Environment Operations Act 1997.
  - (b) Level Restrictions
    - (a) Construction period of 4 weeks and under:
      - (1) The L10 sound pressure level measured over a period of not less than 15 minutes when the construction site is in operating must not exceed the background level by more than 10dB(A).
    - (b) Construction period greater than 4 weeks and not exceeding 26 weeks:
      - (1) The L10 sound pressure level measured over a period of not less than 15 minutes when the construction site is in operating must not exceed the background level by more than 10 dB(A).
  - (c) Time Restrictions
    - (a) Monday to Friday .07:00am to 06:00pm;
    - (b) Saturday 08:00am to 01:00pm
    - (c) No Construction to take place on Sundays or Public Holidays.
  - (d) Silencing

All possible steps should be taken to silence construction site equipment.
- 55 During construction works the area in front of the premises and for the full width of the site, be maintained at all times and kept clean and tidy.
- 56 Building plans must be lodged at Sydney Water Quick Agent for approval prior to commencement of works.
- 57 During construction, care must be taken to protect Council's infrastructure, including street signs, footpath, kerb, gutter and drainage pits etc. Protecting measures shall be maintained in a state of good and safe condition throughout the course of construction. The area fronting the site and in the vicinity of the development shall also be safe for pedestrian and vehicular traffic at all times. Any damage to Council's infrastructure (including damage caused by, but not limited to, delivery vehicles, waste collection, contractors, sub-contractors, concrete delivery vehicles) shall be fully repaired in accordance with Council's specification and AUS-SPEC at no cost to Council.
- 58 Any soil disposed of offsite shall be classified in accordance with the procedures in the Department of Environment and Climate Change Waste Classification Guidelines (2008).

- 59 The Applicant is required to protect existing trees currently within the Church Avenue frontage nominated as being retained in the detailed landscape design documentation. In order to ensure that these nominated trees are protected during construction, and their health and structural stability ensured, the following is required:

Undertake all tree protection measures as stipulated in the Arboricultural report by TALC consultants as well as the following Council requirements:

- (a) Engage the Consultant Arborist for all tree root and canopy work to trees;
- (b) 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;
- (c) Prior to commencing any works on the site the trees are to be physically protected by fencing underneath the canopy dripline using 1.8 metre high chainwire fence to form the Tree Protection Zone (TPZ). The area within the fencing is to be mulched with leaf mulch to a depth of 100mm and a weekly deep watering program undertaken during construction. The fence shall remain in place until construction is complete;
- (d) If there is insufficient space to erect fencing in a particular area, wrap the trunk with hessian or carpet underlay to a height of 2.5 metres or to the tree's first lateral branch, whichever is greater, and affix hardwood palings around the hessian, fixing with strapping or wire (not nails);
- (e) Before any works commence on the site, the Applicant is required to contact Council for an inspection of the trees to be retained and the TPZ;
- (f) All detailed Construction Certificate plans shall show trees to be protected and the TPZ;
- (g) Within the TPZ there shall be no access, construction work, no trenching for services, 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;
- (h) Where unavoidable foot access is required in the TPZ, provide temporary access with timber sheets to minimise soil compaction, spillage or root damage;
- (i) Excavation within the TPZ and within 5 metres of the tree canopy shall only be carried out after approval from Council's Tree Preservation Officer. Roots greater than 40mm in diameter that require pruning shall be undertaken by the Consulting Arborist;
- (j) Ensure no damage to the tree trunk or canopy of any tree to be retained. There shall be no canopy pruning or further tree removals 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;
- (k) There shall be no walls, paving or new underground services/trenching within the canopy dripline or within a 5 metre radius outside the canopy dripline of any tree to be retained;

- (l) 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;
  - (m) The Applicant shall undertake any tree maintenance/remedial pruning recommended by Council or the Consultant Arborist at the completion of construction;
  - (n) If there is any contravention of these tree preservation conditions, or a tree was found to be damaged (including roots), in decline, dead or pruned without permission, then Council may claim all or part of the lodged security bond prior to its release as well as require remedial pruning work. Epicormic growth is evidence of root damage.
- 60 An experienced Landscape Contractor shall be engaged to undertake the landscaping work on the site and shall be given a copy of both the approved landscape documentation and the conditions of approval to satisfactorily construct the landscape to Council requirements.
- 61 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. 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 and shall comply with Sydney Water and Council requirements and Australian Standards, and be maintained in working order at all times.
- (a) Planter boxes constructed over a podium shall be built so as to ensure soil volumes in accordance with Council's Landscape DCP or greater. The base of the planter must be screeded to ensure drainage to a piped internal drainage outlet of minimum diameter 90mm, with no low points elsewhere in the planter. External drainage outlets/weep holes are not permitted under any circumstances. Turf areas require a min. 5% cross fall and suitable sub-surface drainage.
  - (b) A masonry hob or haunch shall be constructed internally of the planter to ensure no water seepage between the floor and walls of the planter;
  - (c) Planters are to be fully waterproofed and sealed internally with a proprietary sealing agent to eliminate water seepage and staining of the external face of the planter, particularly at corner joints. All internal sealed finishes are to be sound and installed to manufacturer's directions prior to backfilling with soil. An inspection of the waterproofing and sealing of edges is required by the PCA prior to backfilling;
  - (d) drainage cell must be supplied to the base and sides of the planter (to minimize damage to the waterproof seal during backfilling). Apply a proprietary brand filter fabric and backfill with an imported lightweight soil suitable for planter boxes that complies with AS 4419 and AS 3743. Install drip irrigation. Pop-ups may be provided to lawn areas provided they use recycled water;

- (e) planter boxes shall be finished externally with a suitable paint or render to co-ordinate with the colour schemes of the building.
- 62 All internal pedestrian areas and pathways shall be unit paved with segmental pavers or tiles. The driveway crossovers shall be constructed of plain concrete.
- 63 Any electrical kiosk shall be located in an unobtrusive location away from pedestrian entrances and toward a side boundary and/or setback into the site off the street boundary, and shall be softened by screening and/or landscaping so as not to reduce streetscape and public domain amenity. The ground level curtilages shall be finished with a large diameter decorative gravel. The location of and screening treatment surrounding the utility shall be approved by Council's Landscape Architect as a component of the detailed landscape documentation and prior installation.
- 64 The fire hydrant and booster assembly are required to be housed within an external façade/wall of the building or elsewhere within the building structure and shall be enclosed/screened with doors to Council approval.
- 65 Rigid polyethylene sheet type tree root barriers shall be installed alongside the kerb and footpath edge for new street trees in Church Avenue at a depth of 900mm and for 3 metres each side of the tree and located 150mm inward of the footpath and kerb edges, or any other built element. Root deflectors/directors are not permissible. Trees planted within paved areas shall have the barriers installed around the inside edge of the pavement cut-out where required. The Applicant is required to contact Council's Landscape Architect for an inspection of root barriers located within the public domain and public park prior to backfilling and turfing.
- 66 An experienced Landscape Contractor shall be engaged to undertake the landscaping work and shall be given a copy of both the approved landscape drawing and the conditions of approval to satisfactorily construct the landscape to Council requirements.
- 67 All imported fill shall be validated in accordance with Department of Environment and Conservation approved guidelines to ensure that it is suitable for the proposed development from a contamination perspective. Imported fill shall be accompanied by documentation from the supplier, which certifies that the material is suitable for the proposed land use and not contaminated based upon analyses of the material.
- 68 During construction, the applicant shall ensure that all works and measures have been implemented in accordance with following approved plans at all times: -
  - (a) Soil and Water Management Plan, prepared by Emerson Associates Pty Ltd, Project no. 1110, Drawing no. SW03, Issue A
  - (b) Approved Traffic Management Plan and;
  - (c) Approved Construction Management Plan

69 All works carried out on the public roads shall be inspected and approved by Council's engineer. Documentary evidence of compliance with Council's requirements shall be obtained prior to proceeding to the subsequent stages of construction, encompassing not less than the following key stages: -

- (a) Initial pre-construction on-site meeting with Council's engineers to discuss concept and confirm construction details, traffic controls and site conditions/constraints prior to commencement of the construction of the civil works associated with the road widening
- (b) Prior to placement of concrete (kerb and gutter and footpath)
- (c) Prior to construction and placement of road pavement materials
- (d) Final inspection

**Note:** Council's standard inspection fee will apply to each of the above set inspection key stages. Additional inspection fees may apply for additional inspections required to be undertaken by Council.

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

70

- (a) Prior to the issue of the Occupation Certificate the applicant must submit to the Principal Certifying Authority an acoustic report to verify that the measures stated in the acoustical assessment report prepared by Acoustic Logic , dated 28 March 2011 have been carried out and certify that the construction meets AS2021-2000 and AS3671-1989 and specified indoor sound levels. The report must be prepared by a qualified practicing acoustic engineer (who is a member of either the Australian Acoustical Society or the Association of Australia Acoustical Consultants); and
- (b) That Council appoint an accredited acoustic certifier at the applicants expense to certify condition 70(a) has been complied with.

71 Prior to the issue of Occupation Certificate, either final, Certificate of Survey from a Registered Surveyor shall be submitted to the Principal Certifying Authority to the effect that the Floor Space Ratio (FSR) of 2.52:1 (calculated in accordance with the provisions of Botany LEP 1995) as approved under these Development Application Nos 10/324 and 10/325, has been strictly adhered to and any departures are to be rectified in order to issue the Occupation Certificate.

72

- (a) The 327 car parking spaces shall be made available to residents, visitors and commercial tenants at all times, with such spaces being clearly marked and signposted prior to issue of the Occupation Certificate.
- (b) Allocation of the car parking shall be as follows:

- (i) Each studio/one (1) bedroom unit shall be allocated 1 car parking space;
- (ii) Each two (2) bedroom and three (3) bedroom unit shall be allocated 2 car spaces;
- (iii) The commercial tenancies shall be allocated four (4) parking spaces being located in close proximity to the commercial units. This shall be included in any future strata subdivision of the site;
- (iv) One (1) car wash bay shall be provided in accordance with the Mascot Station DCP. Such space shall not to be allocated to any unit within the development and this shall be included in any future strata subdivision of the site.
- (v) Thirty -one (31) visitors car spaces shall be provided. Such spaces being located nearby the entrance to the development.

73 It is a condition of this approval that the applicant shall, at no costs or expense to Council, comply with the following: -

Church Avenue

- (a) Dedicate the portion of lands from the subject site to Council for the purpose of road widening on Church Avenue. The areas of land to be dedicated shall be the full length of Church Avenue frontage of the site and to any necessary width required to provide 12 meters wide road reserve measuring from the centerline of Church Avenue as detailed in the Mascot Station Precinct Development Control Plan. The Plan of Dedication shall be lodged with Council prior to the issue of the Construction Certificate and registered with the Department of Lands prior to the issue of the Occupation Certificate. A copy of the registered document shall be submitted to Council for record purposes.
- (b) Upgrade the public domain on Church Avenue by construction and reconstruction of road pavement, kerb and gutter, footpath paving, vehicular crossing, stormwater drainage system, street trees, landscaping and any associated works for the full frontage of the site at the applicant's expense. All improvements shall be in accordance with specifications and requirements from Council's landscape and engineering sections and the approved civil works construction plans and landscape plans. All the public domain works shall be constructed and completed to Council's satisfaction prior to the issue of Occupation Certificate.
- (c) Replace all the existing above ground electricity and telecommunication cables fronting the site to underground cables in accordance with the guidelines and requirements of the relevant utility authorities. The applicant shall bear all the cost of the construction and installation of the cables and any other necessary adjustment works. These works and /or payments shall be completed prior to the issue of Occupation Certificate.
- (d) Reconstruct the drainage system from the property to the existing Council's pits prior to the issue of Occupation Certificate. This include reconstruction of the existing Council's pits, provision of a new additional kerb inlet grated pit



in Church Avenue (with minimum 2.4m long lintel) and any associated works within the road reserve area

- (e) Provide appropriate and suitable street lighting to a high decorative standard to the frontage of the site in order to provide safety and illumination for residents of the development and pedestrians in the area prior to the issue of Occupation Certificate. All street lighting shall comply with relevant electricity authority guidelines and requirements.

74

- (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:
  - (ii) Overhead service cables on the **Church Avenue** frontage to be undergrounded, starting from the existing pole.
- (b) Existing street lights located within the footpath reserve along the entire **Church Avenue** frontage of the development site, 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. All of the works required by this condition must be completed prior to the issue of any Occupation Certificate.

- 75 Prior to the issue of any Occupation Certificate, new vehicular crossing including layback and/or gutter and any associated road restoration shall be constructed in accordance with Council’s requirements. The applicant shall make a separate application to Council’s Customer Service Counter for the construction/ reconstruction of vehicular crossing (either by Council or own forces) to the vehicular entry point of the site as shown on the submitted approved plan.

The crossing shall be minimum **6** metres wide at the property boundary and at 90° to the property boundary line in plain concrete. All adjustments to the nature strip, footpath and/or public utilities’ mains and services as a consequence of the development and any associated construction works shall be carried out at the full cost to the Applicant.

- 76 Prior to issue of Final Occupation Certificate, all civil works in public domain area (including vehicular crossings, footpath paving, kerb and guttering, street lighting, landscaping, line marking and signage) shall be completed to Council’s satisfaction. The following documentation shall be submitted to Principal Certifying Authority attesting this condition has been appropriately satisfied

- (a) Written confirmation / completion certificate obtained from Council.
- (b) Inspection report (formwork and/or final) for the works on road reserve obtained from Council’s engineer.

- (c) A copy of the approved public domain civil works plans showing Work-as-Executed details (together with an electronic copy) prepared by a registered surveyor.
- 77 Prior to the issue of Final 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 approved plans, with relation to drainage, boundary and road reserve levels, have been strictly adhered to.
- 78 The applicant is responsible for the installation and protection of all regulatory / parking / street signs fronting the property. Any damaged or missing street signs as a consequence of the development and associated construction works shall be replaced at full cost to the applicant.
- 79
- (a) In order to ensure that the required on-site detention, infiltration and rainwater reuse systems will be adequately maintained, Positive Covenant and Restriction on the Use of Land on the Title under Section 88B/88E(3) of the Conveyancing Act 1919 shall be created in favour of Council as the benefiting authority for the as-built on-site detention, infiltration and rainwater reuse systems. The standard wording of the terms of the Positive Covenant and Restriction on the Use of Land are available in Council. The relative location of the on-site detention, infiltration and rainwater reuse systems, in relation to the building footprint, shall be shown on a scale sketch, attached as an annexure to the plans/ forms. Proof of registration shall be submitted to the Principle Certifying Authority prior to occupation of the premises.
- (b) In order to ensure that the required pump-out system will be adequately maintained, Positive Covenant and Restriction on the Use of Land on the Title under Section 88B/88E(3) of the Conveyancing Act 1919 shall be created in favour of Council as the benefiting authority for the as-built pump-out system. The standard wording of the terms of the Positive Covenant and Restriction on the Use of Land are available in Council. Proof of registration shall be submitted to the Principle Certifying Authority prior to occupation of the premises.
- (a) That car parking for the residential part is not to be to sublet or used for any other purpose, this is to be included as positive covenant and restriction on the use of the land on the title for any strata subdivision.
- 80 For the purpose of inhibiting or preventing the growth of micro organisms that are liable to cause Legionnaires' Disease, all cooling towers, evaporative condensers, evaporative coolers, and warm water systems shall be designed, installed and maintained in accordance with the requirements of Public Health Act 1991 Public Health (Microbial Control) Amendment (Miscellaneous) Regulation 2003 and AS3666 -2002 Air handling and water systems in building - microbial control. All waste water from the cooling tower/humidifier/evaporative cooler/warm water system shall be discharged to sewer under a Trade Waste Agreement from Sydney Water. Details to be submitted prior to the issue of the Construction Certificate.

- 81 All services (Utility, Council, etc) within the road reserve (including the footpath) shall be relocated/adjusted to match the proposed/existing levels as required by the development.
- 82 Prior to the issue 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.
- 83 Prior to the issue of the Occupation Certificate:
- (a) the construction of the stormwater drainage system of the proposed development shall be generally in accordance with the approved stormwater management construction plan(s), Council's 'Guidelines for the Design of Stormwater Drainage Systems within City of Botany Bay', AS/NSZ 3500 – Plumbing and Drainage Code and the BCA. All downpipes shall be located within the property boundaries;
  - (b) documentation from a qualified plumber/ practising civil engineer shall be submitted to the Principal Certifying Authority certifying that the stormwater drainage system has been constructed generally in accordance with the approved stormwater management construction plan(s) and accepted practice.
- 84
- (a) Prior to issue of the Occupation Certificate, driveways and vehicular access paths shall be designed and constructed to comply with the minimum requirements (including changes of grade) of AS/NZS 2890.1.; and
  - (b) Prior to issue of the Occupation Certificate, the applicant's Traffic Engineer must conduct a survey within one (1) month following the sale of at least 90% of the available apartments stock within the development, to validate the findings of the Traffic Movement Assessment prepared by Traffix dated 27 July 2011. If the Traffic Assessment cannot be validated, the Applicant must undertake measures to ensure the local road network achieves a satisfactory level of service
- 85 Any damage not shown in the photographic survey submitted to Council before site works have commenced, will be assumed to have been caused as a result of the site works undertaken and must be rectified at the applicant's expense, prior to the issue of the Occupation Certificate.
- 86 During the construction works the Council nature strip shall be maintained in a clean and tidy state at all times and shall be suitably repaired and/or replaced in accordance with Council Specifications at the completion of construction works and prior to the issue of an Occupation Certificate at the Applicant's expense.

- 87 Landscaping shall be installed in accordance with the approved detailed landscape documentation only prior to the issue of an Occupation Certificate. The landscaped areas on the property shall be maintained in accordance with the approved landscape documentation, the conditions of consent and Council's Landscape DCP at all times. All public domain/footpath improvements shall be installed in accordance with Council specifications by the Applicant and at the Applicant's expense. All improvements shall be completed prior to the issue of an Occupation Certificate.
- 88 At the completion of landscaping on the site, the Applicant is required to obtain a Certificate of Compliance from the Landscape Consultant to certify that the landscaping has been installed in accordance with the Council approved landscape plan. The Certificate is to be submitted to the City of Botany Bay Council prior to the issue of the Occupation Certificate.
- 89 Prior to the issue of the Occupation Certificate:
- (a) Street trees shall be installed in both street frontages at the Applicant's expense and in accordance with approved landscape documentation and Council specifications. Trees shall be sourced from a reputable supplier that grows to NATSPEC. A Dial-Before-You-Dig enquiry is required prior to all tree planting;
  - (b) 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. Trees are to be double staked. Tree pits to include the Arborgreen Roottrain system;
  - (c) The Applicant is required to obtain a Council inspection of new street trees prior to the maintenance period commencing.
- 90 The Council nature strips shall be suitably replaced in accordance with Council Specification and the approved landscape documentation at the completion of construction work and at the Applicant's expense.
- 91
- (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.
  - (b) Condition Numbers 70 to 90 of this consent are pre-conditions to the issue of the Occupation Certificate.

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

- 92 The stormwater drainage system (including all pits, pipes, absorption, detention structures, treatment devices, infiltration systems and rainwater tanks) shall be regularly cleaned, maintained and repaired to ensure the efficient operation of the

system from time to time and at all times. The system shall be inspected after every rainfall event to remove any blockage, silt, debris, sludge and the like in the system. All solid and liquid waste that is collected during maintenance shall be disposed of in a manner that complies with the appropriate Environmental Guidelines.

- 93 Vehicles making deliveries (including goods, merchandise and the like) and accessing the site shall comply with the following requirements:
- (a) Vehicles accessing the site via Church Avenue entrance shall be limited to B99 vehicles or smaller as defined by AS2890.1;
  - (b) All loading and unloading of vehicles shall be carried out wholly within the site. No deliveries to the premises shall be made direct from a public places, public streets or any road related areas (eg. footpath, nature strip, road shoulder, road reserve, public carpark, service station etc).
  - (c) No deliveries to the premises shall be made direct from a public places, public streets or any road related areas (eg. footpath, nature strip, road shoulder, road reserve, public carpark, service station etc)
- 94 All parking bays shown on the approved architectural plans shall be set aside for parking purpose only and shall not be used for other purposes, e.g. storage of goods. Vehicle turning areas shall be kept clear at all times and no vehicles is permitted to park in these areas.
- 95 Should the external fabric of the building(s), walls to landscaped areas and like constructions be subject to graffiti or similar 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.
- 96 The ongoing maintenance of the nature strip shall then be undertaken by the occupier/owner. Maintenance shall include mowing, the removal of weeds and rubbish and maintaining a good, even coverage of grass at all times.
- 97 The landscape contractor shall be engaged weekly for a minimum period of 52 weeks from final completion of landscaping for maintenance and defects liability, replacing plants in the event of death, damage, theft or poor performance. After that time monthly maintenance is required.
- 98 New street trees shall be maintained by the Applicant/Owner/Strata Corporation for the duration of the landscape bond period. Maintenance includes watering twice weekly for a period of 4-6 months (or until established) and after that at a frequency to sustain adequate growth, bi-annual feeding with a suitable fertilizer and replenishment of mulch and weed removal within the mulched base. It does not include trimming or pruning of trees under any circumstances.

- 99 The use of the premises shall not give rise to any of the following when measured or assessed at “sensitive” positions within any other property. These “sensitive” positions should be selected to reflect the typical use of a property (ie any outdoor areas for day and evening but closer to the façade at night time), unless other positions can be shown to be more relevant.
- (a) The operation of all plant and equipment shall not give rise to an equivalent continuous (LAeq) sound pressure level at any point on any residential property greater than 5dB(A) above the existing background LA90 level (in the absence of the noise under consideration).
  - (b) The operation of all plant and equipment when assessed on any residential property shall not give rise to a sound pressure level that exceeds LAeq 50dB(A) day time and LAeq 40 dB(A) night time.
  - (c) The operation of all plant and equipment when assessed on any neighbouring commercial/industrial premises shall not give rise to a sound pressure level that exceeds LAeq 65dB(A) day time/night time.
  - (d) For assessment purposes, the above  $L_{Aeq}$  sound levels shall be assessed over a period of 10-15 minutes and adjusted in accordance with EPA guidelines for tonality, frequency weighting, impulsive characteristics, fluctuations and temporal content where necessary.
- 100 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. 10/325 dated as 12 July 2010 and that any alteration, variation, or extension to the use, for which approval has been given, would require further Approval from Council.