

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

<b>JRPP No</b>	<b>2011SYE094</b>
<b>DA Number</b>	<b>DA11/160</b>
<b>Local Government Area</b>	<b>City of Botany Bay</b>
<b>Proposed Development</b>	<p><b>Construction of a seven (7) storey building containing:</b></p> <ul style="list-style-type: none"> <li>▪ 151 serviced apartments;</li> <li>▪ ground floor café/bar and function facilities;</li> <li>▪ building identification sign and directional signage;</li> <li>▪ provision of 68 car parking spaces comprising 62 at basement level and 6 spaces at grade and removal of trees;</li> </ul> <p><b>Other Works to include:</b></p> <ul style="list-style-type: none"> <li>▪ associated access and landscaping, including the relocation of the existing sculpture;</li> <li>▪ dedication of land to Council along the Bourke Road frontage for a bus lay-by together with the construction of a bus lay-by and associated bus shelter;</li> <li>▪ use of the building as a serviced apartment complex.</li> </ul>
<b>Street Address</b>	<b>15 Bourke Road, Mascot</b>
<b>Applicant/Owner</b>	<b>Capital Corporation</b>
<b>Number of Submissions</b>	<b>2</b>
<b>Recommendation</b>	<b>“Deferred Commencement” Consent</b>
<b>Report by</b>	<b>Rodger Dowsett, Director Planning and Development</b>

## ASSESSMENT REPORT AND RECOMMENDATION

### **15 BOURKE ROAD, MASCOT – INTEGRATED DEVELOPMENT – SERVICED APARTMENTS**

**File No:** 11/160  
**Responsible Officer:** Rodger Dowsett, Director of Planning and Development  
**Date of Preparation:** 3 April 2012

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**DA No:** 11/160  
**Application Date:** 19 August 2011  
**Property:** 15 Bourke Road, Mascot  
**Lot & DP No:** Lot 13 in DP 853792  
**Details:** Construction of a seven (7) storey building containing:

- 151 serviced apartments;
- ground floor café/bar and function facilities;
- building identification sign and directional signage;
- provision of 68 car parking spaces comprising 62 at basement level and 6 spaces at grade and removal of trees;

Other Works to include:

- associated access and landscaping, including the relocation of the existing sculpture;
- dedication of land to Council along the Bourke Road frontage for a bus lay-by together with the construction of a bus lay-by and associated bus shelter;
- use of the building as a serviced apartment complex.

**Applicant:** Capital Corporation  
**Applicant Address:** 705/12 Century Circuit, Baulkham Hills NSW 2053  
**Owner:** Mascot Properties Pty Ltd  
**Builder:** To be advised  
**Principal Certifying Authority:** To be advised  
**Property Location:** Eastern side of Bourke Road between Coward Street to the north and O’Riordan Street to the south  
**Zoning:** Industrial Special – Airport Related – Restricted 4(c2)

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Botany Local Environmental Plan, 1995

<b>Present Use:</b>	Existing commercial building and part vacant land
<b>Classification of Building:</b>	Class 3 – Serviced Apartment Class 5 - commercial building Class 6 - retail shop Class 7a – car park
<b>Value:</b>	\$19,879,780.00
<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, Tree Removal, Traffic, Floor Space Ratio, Built Form, Land Dedication, Public Domain Works
<b>Public Objection:</b>	Yes – Two submissions
<b>Permissible:</b>	Yes

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

#### **Executive Summary**

Council received Integrated Development Application No. 11/160 on the 19 August 2011, seeking consent for the construction of a seven (7) storey building containing:

- 151 serviced apartments;
- ground floor café/bar and function facilities;
- building identification sign and directional signage;
- provision of 68 car parking spaces comprising 62 at basement level and 6 spaces at grade and removal of trees;

Other Works to include:

- associated access and landscaping, including the relocation of the existing sculpture;
- dedication of land to Council along the Bourke Road frontage for a bus lay-by together with the construction of a bus lay-by and associated bus shelter;
- use of the building as a serviced apartment complex.

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 Roads and Maritime Service (RMS) as the development involves the construction of a required bus lay by on Bourke Road.

The RMS has granted concurrence subject to conditions. The application was also referred to the State Transit Authority (STA) in relation to the proposed bus layby and STA have advised that further details of the final design be referred to them. Therefore, such a condition will be imposed within the 'Deferred Commencement' Consent.

The application was publicly exhibited for a period of thirty (30) days from 6 September 2011 to the 5 October 2011.

A total of two (2) submissions were received following the public exhibition process in 2011. The Applicant submitted a formal response to the issues raised in the submission on the 21 October 2011.

Council's Design Review Panel (DRP), prior to the lodgment of the application has considered the proposed development on 7 July 2011, which concluded that the development can be supported.

The Development Application was referred to RailCorp on the 1 September 2011, pursuant to State Environmental Planning Policy (Infrastructure) 2007, for its concurrence. In a letter dated 17 November 2011, RailCorp advised Council that it has no objection to the proposed development, subject to the granting of a 'Deferred Commencement' Consent, requiring the Applicant to prepare a final geotechnical and structural report, construction methodology, final cross sectional drawings.

The development application was 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 12(3) of Botany Local Environmental Plan 1995 in relation to the permitted floor space ratio (FSR). The SEPP 1 Objection is assessed in detail within this report.

Additional information was received from the Applicant on:

- 23 September 2011, being revised geotechnical reports; and
- 19 December 2011, relating to hydraulic services, tree removal, traffic issues raised by Council and view analysis perspectives of the proposed development.

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 the development application. This application was submitted to Council prior to the changes made to the Act on the 1 October 2011.

Following a detailed assessment of the proposed removal of the existing mature and significant Hills Figs on site, Council maintains concern with the number of trees to be removed from the site. Whilst it is acknowledged the site is suitable for redevelopment to a certain extent, Council considers that it is reasonable to retain more of these trees on site than that proposed by the Applicant. As such, it is recommended that the Applicant amend the design of the proposed underground on site detention tank by reconfiguration of its dimensions, to require an appropriate setback from the existing trees along the southern boundary, which are all required to be retained in situ. These are Tree Nos. 14, 15, 16, 17, 18, 19, 20 and 21. It is recommended the reconfiguration of the OSD tank be the subject of a consent condition, prior to the issue of the Construction Certificate.

The development application in its current form has been assessed in accordance with the relevant requirements of the Environmental Planning and Assessment Act and it is recommended that the Panel grant the development a “deferred commencement” consent subject to the Applicant meeting the requirements of RailCorp, the Applicant satisfying, Council and the State Transit Authority that the design of the bus layby is feasible and submitting Plan of Management incorporating a Workplace Travel Plan to Council.

## **1. Site Description**

The subject site is located on the eastern side of Bourke Road, between Coward Street to the north and O’Riordan Street to the south. The site is legally identified as lot 13 in DP 853792 with a total site area of 7,088m<sup>2</sup>.

The site is irregular in shape with a total frontage to Bourke Road of 76 metres. The depth of the site is approximately 127 metre along the northern boundary. The southern boundary is irregular. There is a fall of approximately 2.74 metres from north-east to south-west across the site.

An existing seven (7) storey commercial building is located on site, confined to the eastern part of the site, being setback approximately 65 metres from the sites Bourke Road frontage. Access to this building is via a private driveway from Bourke Road, which accommodates an internal cul-de-sac. Fronting Bourke Road, the western part of the site is currently vacant, being landscaped by garden beds, shrubs and established Fig trees, together with a sculpture.

The area is currently undergoing significant change to become a higher density commercial area which supports both Mascot Station Precinct, which lies to the north of the site and Sydney Airport to the south. Development surrounding the site consists of mixed residential and commercial development north of Coward Street, commercial development and warehousing/industrial uses to the east, west and a hotel directly south.

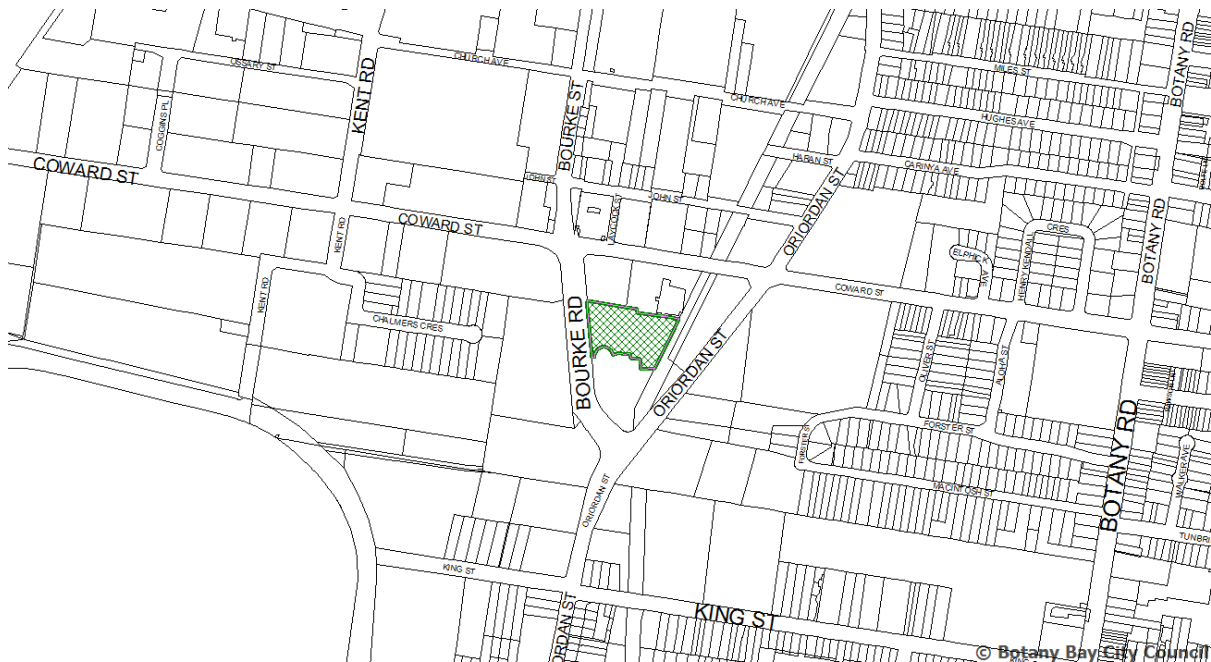
The properties surrounding the site are 197 Coward Street to the north, which accommodates two commercial towers A and B of nine (9) storeys in height. Directly to the west at 199-241 Coward Street is located another commercial complex comprising of several buildings from four (4) to six (6) storeys in height. Immediately to the east is the Sydney Water Corporation drainage reserve and at the south of the site at 19 Bourke Road is located the Holiday Inn Hotel of eleven (11) storeys in height with vehicular access from Bourke Road and the internal cul-de-sac located adjacent to the southern boundary of the subject site.

There is an existing Right of Carriageway of variable width which traverses over Lot 14 and back onto Lot 13, along the northern boundary of the subject site. This accommodates the existing access driveway and cul-de-sac and is a legal reciprocal right of way in favour of both Lot 13 and Lot 14, as the constructed cul-de-sac is one-way in direction.

## **2. Site Photos**



### 3. Locality Plan



#### 4. Site and Development History

Council approved Development Application No. 2053 on the 29 June 1989, for office space, health club, swimming pool together with airport – related associated retail for the existing commercial building on site.

There are multiple change of use applications relating to this building. Each level of the building is separately leased for commercial purposes, except for the retail component on the ground floor.

Council approved Development Application No. 08/013 on the 20 October 2008, for landscaping works in the forecourt of the existing commercial building including a feature wall, installation of a new sculpture within the landscaping resembling the frame of an aeroplanes fuselage, removal of the last remaining ‘wing’ sculpture and additional car parking on site. This part of the site, is that part upon which the proposed serviced apartment building is to be sited.

#### 5. Description of Development

The development application in its current form, which has changed, seeks consent for the construction of a seven (7) storey building containing:

- 151 serviced apartments;
- ground floor café/bar and function facilities;
- building identification sign and directional signage;
- provision of 68 car parking spaces comprising 62 at basement level and 6 spaces at grade and removal of trees;

Other Works to include:

- associated access and landscaping, including the relocation of the existing sculpture;
- dedication of land to Council along the Bourke Road frontage for a bus lay-by together with the construction of a bus lay-by and associated bus shelter;
- use of the building as a serviced apartment complex.

The applicant has submitted an architectural design statement in support of the development application. It is stated that the proposed serviced apartment building complements all characteristics of the current commercial precinct.

The design of the building is aimed at contributing to the streetscape amenity and improving the architectural quality of this precinct, which is currently dominated by mixed commercial and industrial development. The northern and western facades incorporate concrete and glazing elements in a horizontal theme, which are delineated by indented balconies with a vertical emphasis. Further articulation is provided through the differentiation between the ground floor and upper levels so that the building uses are separately defined.

## **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 application.

The subject application is Integrated Development in accordance with Roads Act 1993 as a bus lay by is proposed to be constructed on Bourke Road, which is 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 application was referred to the RMS and State Transit. In a letter dated 15 November 2011, the State Transit has given concurrence to the proposed development, subject to conditions. The RMS issued their conditions on the 29 September 2011, and are attached to the schedule of consent conditions.

The Application was required to be referred to Railcorp under Section 86(A) the Infrastructure SEPP, as the development is integrated and requires concurrence of Railcorp as the site front the airport rail tunnel. In letter dated 17 November 2011, Railcorp raised no objection to the proposed development, subject to a 'Deferred Commencement' consent as Railcorp requires a final geotechnical and structural report, construction methodology, final cross sectional drawings to be prepared.

#### **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 Industrial Special – Airport Related – Restricted 4(c2) and Council may only consent to the erection of a building if the floor space ratio (FSR) does not exceed 1:1 or 7,088sqm in accordance with Clause 12(1) of the Botany LEP 1995.

Clause 12(1) and (3) are reproduced as follows:

***12 Floor space ratios***

- (1) *The Council may only consent to the erection of a building if the ratio of the gross floor area of the building to the site area of the land on which the building is to be erected does not exceed:*  
(a) *0.5:1 within Zone No 2 (b),*  
(b) *1:1 within Zone No 3 (a), and*  
(c) *1:1 within Zone No 4 (a), 4 (b), 4 (b1), 4 (c1) and 4 (c2).*
- (2).....
- (3) *Notwithstanding the provisions of subclause (1), the Council may consent to the carrying out of commercial development (other than that referred to in subclause (4)) and airport related development, but not including industry, on land within Zone No 4 (c1) or 4 (c2) to a maximum floor space ratio of 1.5:1.*

The proposal seeks an FSR as indicated under Column 4 of the table below:

<b>FSR under Clause 12(3) of Botany LEP 1995</b>	<b>Existing FSR</b>	<b>Proposed Additional FSR</b>	<b>Total FSR</b>
1.5:1 (10,632sqm)	1.25:1 (8,868sqm)	1.21:1 (8,575sqm)	2.46:1 (17,443sqm)

**Table 1 – Floor Space Ratio**

Accordingly, the applicant has submitted an objection to Clause 12(3) 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.

The Applicant has relied on the over-arching objectives of Botany LEP 1995 and of the Floor Space Ratio objective outlined in Council's Industrial Development Control Plan, and provided the following comments:

- “(a) to recognise the importance of the local government area of Botany Bay City as a gateway to Sydney, given its proximity to Sydney (Kingsford-Smith) Airport and Port Botany,
- (b) to ensure, as far as practicable, that land uses are compatible with each other in terms of environmental and aesthetic amenity,
- (c) to make the local government area of Botany Bay City a more attractive and pleasant place in which to live, work and visit,
- (d) to improve the image of the local government area of Botany Bay City by ensuring that developments are of a good standard of design, form and function,
- (e) to protect areas from inappropriate development and to ensure that, in particular, residential amenity, health and safety is maintained or improved, where necessary, and
- (f) to provide for an appropriate balance and distribution of land for residential, commercial, retail, industrial, advanced technology enterprises, tourism, port-related and airport-related development and recreation, entertainment and community facilities.

*In addition to the above, the Industrial Development DCP (DCP) provides further clarity on the purpose and intent of the FSR development standard. The DCP, which is applicable in this instance given the site’s inclusion in Zone 4(c2) –Industrial Special – Airport Related – Restricted, also includes an FSR control that is relevant to the proposed development.*

*Policy B2 of the DCP states that “Council’s floor space ratio (FSR) controls aims to facilitate an acceptable bulk and scale of development that is in relationship with the streetscape and adjoining development.” Of particular relevance is objective O1 of Policy B2 which seeks ‘to ensure that new development results in a FSR that meets the existing zoning and is compatible with the character of the area.’*

*In light of the overarching objectives of BLEP 1995 together with the more prescriptive policy and objective of the Industrial DCP, it is considered that the underlying purpose of the FSR Development Standard is to ensure that the bulk, scale and intensity of new development is compatible with the surrounding built form and character of the streetscape, and does not result in inappropriate development or adverse impacts on existing adjacent buildings.*

*It is clear however that Clause 12 envisages different bulk and scale dependent on land use. Tourist accommodation in the form of hotels and motels have a minimum FSR of 2.5:1. It is unclear from Council’s planning policy documents and discussion with Council staff why tourist accommodation, in the form of serviced apartments, was not nominated in Clause 12(4). This appears to be an oversight.”*

The Applicants SEPP 1 has relied on the objectives of the LEP. The primary objective of the 4(c2) zone is to permit development of a wide range of uses, which have a relationship to the Sydney (Kingsford-Smith) Airport, while encouraging commercial premises on certain land. The proposed development is

for a serviced apartments, development which will have an identifiable relationship to Sydney Airport and therefore achieves the primary objective of the zone.

The secondary objectives are to encourage airport-related land uses; to permit commercial development; to provide for airport related industrial development; to improve the appearance of buildings and works in an endeavour to enhance the gateway function of this area; to prohibit some types of traffic generating development which would adversely affect the gateway function of the major roads; to permit advertising structures; and, to encourage energy efficiency and energy conservation. The proposed development has satisfied the secondary objectives of the zone.

It is noted that the Applicant contends that hotels and motels are considered as tourist accommodation and that serviced apartments also fits that criteria under the definition of tourist accommodation in the standard LEP definitions and the FSR of 2.5:1 should also apply to service apartments and it was an oversight of Council in not including this land use. At the time of the preparation of the Botany LEP 1995, serviced apartments were not a permissible land use. Amendment 28 of the LEP 1995 gazetted on 30 June 2006 added the land use of “service apartments” to this zone.

Given that the locality is predominately commercial containing a number of hotels and a mix businesses providing services and goods to the worker and tourist population and is within close proximity to public transport infrastructure and the airport, it is considered appropriate to encourage redevelopment of sites for greater FSR where such floor space will support and enhance the existing commercial/industrial function of the locality, which supports both Sydney Airport and Mascot Station.

In doing this, Council has considered the degree of variation and impacts of the resulting built form on the surrounding neighbourhood. The proposed built form in this instance is considered acceptable as there are no adverse impacts on the existing and adjoining commercial development and the scale of the proposed works is characteristic of adjoining development, without adversely impacting on the amenity of the surrounding neighbourhood or on the local road network.

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

*“BLEP 1995 through Clause 12(4) seeks to encourage a number of uses in 4(c2) zone by providing for a higher floor space ratio than for other uses. These uses are commercial offices and tourist accommodation, hotels and motels are nominated. It appears to be an oversight that tourist accommodation in the form of serviced apartments was not also nominated. In a planning sense such a use is no different from a hotel providing accommodation (see Section 1.2). The absence of ‘serviced apartments’ Clause 12(4) appears to be a drafting error in BLEP 1995.*

*The underlying object or purpose of the FSR development standard is to ensure that the bulk, scale and intensity of new development is compatible with the character of the streetscape and wider area, and does not result in inappropriate development or adverse impacts on the existing adjacent buildings. With a total site area of 7,088m<sup>2</sup>, strict application of the FSR development standard (i.e. 1.5:1) would allow for a maximum GFA of 10,632m<sup>2</sup> to be achieved. As the existing building on site has a GFA of 8,868m<sup>2</sup> any new development would be limited to a maximum floor area of 1,764m<sup>2</sup> under Clause 12(3) of BLEP 1995.*

*If the proposed development were restricted to 1,764m<sup>2</sup>, this would result in a one and a half storey building (i.e. ground plus half of level one). Alternatively to achieve a building height consistent with the existing built form whilst maintaining compliance with the FSR development standard, the building would only be able to achieve a maximum of 250m<sup>2</sup> floor area on each level. It is therefore apparent that strict application of Clause 12(3) of BLEP 1995 would only result in a built form that is inconsistent with the established character of the area (i.e. large scale building of 7 plus storeys) and the Bourke Road streetscape.*

*In light of the above it is considered that adoption of clause 12(3) in this instance would undermine, contradict and defeat the underlying objective and purpose of the FSR development standard.*

*As the proposed non-compliance with the FSR development standard will enable a development outcome that is compatible with the character of the area, and given strict compliance would undermine, contradict and defeat the underlying objective of the development standard, it is considered that Clause 12(3) of BLEP 1995 is unreasonable and unnecessary in the circumstances.”*

As discussed under point 2, the Applicant has established three objectives to a floor space ratio control. Namely:

- 1) to facilitate an acceptable bulk and scale of development that is in relationship with the streetscape and adjoining development;
- 2) to ensure that new development results in an FSR that meets the existing zoning and is compatible with the character of the area; and
- 3) to ensure that the bulk, scale and intensity of new development is compatible with the surrounding built form and character of the streetscape, and does not result in inappropriate development or adverse impacts on existing adjacent buildings.

These objectives are derived from both Botany LEP 1995 and Council's Industrial 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 1.5:1 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 12(3) of the Botany LEP 1995 should be varied in the circumstances to allow the development to attain a floor space ratio on site of 2:46:1.

In arriving at a view the objection was reasonable, it is necessary to consider the aims and objectives of the LEP and industrial DCP which seeks to encourage commercial development within the subject precinct to support Sydney Airport and Mascot Station without adversely impacting upon the existing commercial development.

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, the Applicant has provided the following response:

*"In the decision of Wehbe v Pittwater Council [2007] NSW LEC 827, Chief Justice Preston expressed the view that there are five different ways in which an objection to a development standard might be shown as unreasonable or unnecessary and is therefore well founded. The five ways include:*

- 1. The objectives of the standard are achieved notwithstanding non-compliance with the standard.*
- 2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary.*

3. *The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable.*
4. *The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable.*
5. *The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.*

*Of particular relevance in this instance is ways one (1), two (2) and (3). The following section discusses and demonstrates that:*

- *the proposed development will achieve the objectives of the standard notwithstanding the non-compliance with the standard;*
- *the underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary; and*
- *the underlying object or purpose would be defeated or thwarted if compliance was required.*

*In the absence of a specific objective relating to the FSR development standard, we have undertaken an analysis of the overarching objectives of BLEP 1995 relating to form and function, as well as DCP Policy B2 relating to FSR. It is however acknowledged that the DCP policy and objective is not a development standard.*

*Despite non compliance with the FSR development standard, the proposal will still contribute to the achievement of the overarching objectives of BLEP 1995 as it will:*

- a) *Facilitate the redevelopment of a vacant site for the purposes of a new serviced apartment building within a mixed use precinct comprising offices and hotel buildings.*
- b) *Result in the delivery of a new high quality building that exhibits a good standard of design, compliments the surrounding buildings, and enhances the environmental and aesthetic amenity of the area.*
- c) *Result in a new high profile tourism based business operation in the local area that will enhance the image of Botany Bay City, and contribute to the creation of a more attractive and pleasant place to work and visit.*

- d) *Not result in any adverse impacts on residential amenity or health, and which will improve the safety of the area by providing an active use that is designed in accordance with CPTED principles.*
- e) *Facilitate the delivery of a highly appropriate land use that is entirely compatible with the surrounding mixed use precinct, and is in close proximity to Kingsford Smith Airport and nearby transport services and facilities.*

*With regard to the Industrial Development DCP, Policy B2 states that "Council's floor space ratio (FSR) controls aims to facilitate an acceptable bulk and scale of development that is in relationship with the streetscape and adjoining development."*

*The stated objective of Policy B2 is "to ensure that new development results in a FSR that meets the existing zoning and is compatible with the character of the area". The proposed FSR of 2.46:1 will facilitate development of a prominent vacant site in an area dominated by large scale buildings of 7 plus storeys. Non compliance with the development standard will result in a building that is entirely compatible with this established character, and which will positively contribute to the aesthetic and environmental amenity of the Bourke Road streetscape. It is therefore apparent that despite non compliance with the FSR development standard, the proposed development is consistent with the overarching objectives of BLEP 1995 and Policy B2 of the Industrial Development DCP."*

Based on the findings of the Industrial DCP, it is considered that the proposed serviced apartment complex at the subject site would represent the orderly and economic use of the subject land that will achieve a high quality development in keeping with the desired built form, scale and context for the locality. 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.

Therefore, based on the above assessment, together with related strategic matters and the location of the site within the 20-25 ANEF contour, 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 objection submitted pursuant to State Environmental Planning Policy No 1 - Development Standards, states as follows:

*“Strict compliance with the FSR development standard will hinder the attainment of the objects specified in Section 5(a)(i) and (ii) of the EP&A Act 1979, as detailed below.*

- (i) *the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment,*

*Once complete, the proposed development will result in the delivery of a new high quality serviced apartment building that will raise the profile and image of Botany Bay, improve the quality of the overall environment, and provide numerous employment opportunities for the local community. Whilst providing short term accommodation in a strategic location close to Sydney Airport.*

*In its current form the proposed development is a seven storey building with a gross floor area of 8,575m<sup>2</sup>. A building of this size is fundamental to ensuring a commercially viable development which translates into a sustainable long term business opportunity for Medina. If strict adherence to the FSR development standard was required this would limit the size of the building to 1,764m<sup>2</sup>, unreasonably restricting the site’s development potential and rendering any future proposal unfeasible.*

*In light of the above it is considered that compliance with Clause 12(3) of BLEP1995 would significantly hinder the proper management and development of land which is suitable and highly appropriate for the development proposed, and in this regard is contradictory to Section 5(a)(i) of the EP&A Act 1979.*

- (ii) *the promotion and co-ordination of the orderly and economic use and development of land, Compliance with the FSR development standard (i.e. 1.5:1) would only allow for a maximum gross floor*



*area of 10,632m<sup>2</sup> to be achieved on site, with any new development limited to a maximum floor area of 1,764m<sup>2</sup> given the existing building on site.*

*Using the proposed building footprint and assuming strict compliance with the development standard, this would allow for a one and a half storey building (i.e. ground plus half of level one) in an area typified by development of 7 plus storeys. It is therefore apparent that strict application of Clause 12(3) in this instance would result in an inappropriate development outcome on the site. More specifically that it would unreasonably restrict a brownfield site from realizing its development potential.*

*In light of the above it is considered that Clause 12(3) in this instance fails to promote the orderly, economic and sustainable use of the land for purposes envisaged by BLEP 1995 as being appropriate in the area (i.e. short term accommodation), and in this regard hinder the achievement of 5(a)(ii) of the EP&A Act 1979."*

The SEPP 1 objection contends that compliance with the 1.5:1 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 Industrial DCP are to establish controls that encourage good quality urban design, and high level of commercial 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. It is considered the proposed development has addressed the aims of the DCP and that it has considered the potential redevelopment of the locality.

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 Industrial 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.

## 6

- (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:-

“(a)

*The development application is required to be referred to the Roads and Transport Authority, the State Transit Authority and RailCorp, accordingly the proposal is classified as integrated development. Whilst this is the case it is considered that the proposed development does not raise any specific matters of state or regional planning significance that are relevant to the FSR development standard.*

(b)

*Strict application of the FSR development standard would result in a development and design outcome that is inconsistent with the established character of the area, and would stifle the site's future development potential. Accordingly it is not considered that such an approach would result in any additional public benefit being realised. In contrast, non compliance with Clause 12(3) in this instance facilitates a development outcome that delivers far greater public benefits, including:*

- *Delivery of a new high quality building which compliments and enhances the character and appearance of the surrounding area and Bourke Road streetscape, and improves the image of Botany Bay City;*
- *Stimulation of further investment and tourism spend in the local area;*
- *Upgrade of the existing bus shelter along Bourke Road;*
- *Creation of numerous new temporary and permanent job opportunities for the local community; and*
- *Facilitation of the orderly, economic and sustainable use of a strategically located brownfield site."*

Based on the above, and which is not disputed, the departure from the FSR will provide a public benefit being the upgrade of the existing bus shelter and provision of a designated bus lay by on Bourke Road, together with the public domain and civil works associated with the dedication of this land to council.

The proposed development will create a total FSR on site of 2:46:1 and a height of 7 storeys. The proposed design of the development has been supported by the Design Review Panel.

Accordingly, it is considered that the development standard relating to the maximum FSR development for the site as contained within Clause 12(3) of the Botany LEP, should be varied in the circumstances to allow the development to attain a floor space ratio of 2.46:1.

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

The development application has been accompanied by a Waste Classification Report and Acid Sulphate Soils Assessment as the proposed development involves excavation above the water table. Council has engaged its own Independent Consultant to review these reports in relation contamination. In a letter dated 30 November 2011, the Independent Consultant has advised Council that the soil contains lead in excess of acceptable levels for low density residential and

polychlorinated biphenyl (PCB) levels in excess of acceptable levels for low density residential and open space land use. The Consultant recommends that conditions be imposed on any consent granted requiring a Phase 2 Detailed Site Investigation and if required a Stage 3 Remediation Action Plan prior to the issue of the Construction Certificate. Further, it is recommended that Council impose a condition requiring a Site Audit Statement be furnished to Council upon completion of any required remediation works, prior to the issue of the Occupation Certificate, which states that the site is suitable for the intended future use.

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. As stated above, a condition will be imposed on any consent granted to ensure that on site contamination is addressed and that a Site Audit Statement is issued prior to the issue of the Occupation Certificate that states that the site is suitable for the proposed development.

#### **6.1.4 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 RMS. The application was accompanied by a Traffic Impact Assessment Report prepared by Traffix Traffic & Transport Planners, Ref No. 11 185v2 dated 18 August 2011.

Plans and documentation were referred to the RMS's Sydney Regional Development Advisory Committee (SRDAC) for consideration and comment. In a letter dated 29 September 2011, the SRDAC provided its concurrence and conditions/comments in relation to the application.

The development application was referred to RailCorp in accordance with the requirements of the SEPP, due to the proximity of the subject site over the rail corridor. In a letter dated 2 September 2011, RailCorp advised Council that it had 'stopped the clock' as it sought further information from the Applicant in relation to a detailed geotechnical report, construction methodology details and cross sectional drawings.

Council wrote to the Applicant on the 7 September 2011, advising of the additional information request from RailCorp. No additional information has been received to date in relation to Council's letter, however, in a letter dated 17 November 2011, RailCorp advised that it had no objection to the proposed development, subject to Council granting a 'Deferred Commencement' consent, imposing conditions relating to the requested additional information.

#### **6.1.6 State Environmental Planning Policy No. 64 – Advertising and Signage (SEPP 64)**

The Applicant proposes to install building identification signage as follows:

<b>Content</b>	<b>Sign Description</b>	<b>Location</b>	<b>Dimension</b>	<b>Area</b>
One (1) Pylon Sign	N/A	Bourke Road setback	8000mm x 2500mm	20m <sup>2</sup>
One (1) High Elevation sign	"Medina"	North elevation of proposed building – Level 6	7500mm x 1560mm	11.7m <sup>2</sup>

One (1) High Elevation sign	“Medina”	South elevation of proposed building – Level 6	5500mm x 1160mm	6.38m2
One (1) Building Entry sign	“Medina”	Adjacent to main entrance	2000mm x 425mm	0.85m2

**Table 2 – Proposed Signage**

The proposed building identification signs are considered to be consistent with the aims and objectives of SEPP 64 and satisfies the assessment criteria of the policy, which seeks to ensure the signs are compatible with the character of the area, existing streetscape and buildings, and will not adversely affect the safety of motorists or pedestrians.

In accordance with SEPP 64,

*“building identification sign means a sign that identifies or names a building, and that may include the name of a business or building, the street number of a building, the nature of the business and a logo or other symbol that identifies the business, but that does not include general advertising of products, goods or services.”*

The proposal may be classified as building identification signage as the proposed structure intends on accommodating individual business identification signage relating to the future tenancies of the building located at the subject site, and identifies the proposed building as the “Medina” serviced apartments.

Accordingly, the proposal for building identification signage is assessed against Clause 8 of SEPP 64 which requires Council to determine consistency with the aims and objectives stipulated under Clause 3(1) (a) of the SEPP and to assess the proposal against the assessment criteria of Schedule 1.

Clause 3(1) (a) of the SEPP states the following:

- (1) *This Policy aims:*
  - (a) *to ensure that signage (including advertising):*
    - (i) *is compatible with the desired amenity and visual character of an area, and*
    - (ii) *provides effective communication in suitable locations, and*
    - (iii) *is of a high quality design and finish.*

The proposed building identification signage is considered to satisfy the aims and objectives of the policy by ensuring that the proposed building identification signage is compatible with the desired amenity and visual character of the locality, provides effective communication and is of high quality having regard to both design and finishes. The proposed use of the site for a serviced apartment complex is permissible in the subject zone and the proposed signage is of consequence to this use, without adversely impacting on the function of the local road network or the amenity of adjacent residential and commercial uses.

The matters of consideration contained in Schedule 1 are addressed in detail below:

<b>Matters for Consideration</b>	<b>Comment</b>	<b>Complies</b>
<b>1. Character of the area</b> Is the proposal compatible with the existing or desired future character of the area or locality in which it is proposed to be located?	The proposed business identification signage is compatible with the existing and desired future character of the locality and is consistent with the type of signage associated with commercial development in the vicinity of the subject site	YES
Is the proposal consistent with a particular theme for outdoor advertising in the area or locality?	The proposed business identification signage will be located in similar locations to existing business identification signage on adjoining and adjacent buildings, adopting the same style and size of these signs	YES
<b>2. Special areas</b> Does the proposal detract from the amenity or visual quality of any environmentally sensitive areas, heritage areas, natural or other conservation areas, open space areas, waterways, rural landscapes or residential areas?	The site is located within the Mascot industrial precinct, which supports Sydney Airport and is surrounded by a mix of commercial/warehouse uses to the west and south. Mixed residential/commercial uses are located within Mascot Station Precinct to the north. The proposed signage is of a high quality finish and design which will not detract from the visual quality of the area or on residential amenity.	YES
<b>3. Views and vistas</b> Does the proposal obscure or compromise important views?	The proposed signage is designed to be positioned on the proposed building as wall signage and will not obscure or compromise any important views.	YES
Does the proposal dominate the skyline and reduce the quality of vistas?	The signage will be positioned within the proposed built form and will not project beyond the building either horizontally or vertically and will therefore not dominate the skyline	YES
Does the proposal respect the viewing rights of other advertisers?	The proposed signage will not obscure any existing signage and respects the viewing rights of other advertisers	YES
<b>4. Streetscape, setting or landscape</b> Is the scale, proportion and form of the proposal appropriate for the streetscape, setting or landscape?	The proposed signage is not considered to adversely impact on the surrounding streetscape, setting or landscape. The proposed pylon sign will be positioned within the landscape gardens bed adjacent to the Bourke Road frontage and will provide a key identification point for visitors and guests accessing the serviced apartment complex.	YES
Does the proposal contribute to the visual interest of the streetscape, setting or landscape?	The signage will be incorporated into the existing landscape and that landscape will be embellished with additional plantings to enhance the streetscape appearance of the proposed development.	YES
Does the proposal reduce clutter by rationalising and simplifying existing advertising?	The proposed signage is of similar design and scale to existing and adjacent signage. It is considered that the proposed signage will be of an appropriate scale and design so as to not contribute to the proliferation of signage in this precinct.	YES
Does the proposal screen unsightliness?	The proposed signage is of a high quality that will enhance the appearance of the development	YES
Does the proposal protrude above buildings, structures or tree canopies in the area or locality?	The proposal will be positioned within the proposed building footprint and proposed tree canopy.	YES
<b>5. Site and building</b> Is the proposal compatible with the scale, proportion and other	The proposed sign is considered to be compatible with the scale, proportion and other characteristics of the site and building.	YES

<b>Matters for Consideration</b>	<b>Comment</b>	<b>Complies</b>
characteristics of the site or building, or both, on which the proposed signage is to be located?		
Does the proposal respect important features of the site or building, or both?	The proposed signage has been designed to be consistent with the proposed scale and built form and to that of surrounding development, as such the proposal is considered to respect the important features of the site and buildings.	YES
Does the proposal show innovation and imagination in its relationship to the site or building, or both?	The proposed signage demonstrates innovation in its contemporary design.	YES
<b>6. Associated devices and logos with advertisements and advertising structures</b> Have any safety devices, platforms, lighting devices or logos been designed as an integral part of the signage or structure on which it is to be displayed?	The proposed lettering 'Medina' wall signage will be fixed to the walls of the building. The proposed pylon sign will have footings within the landscape garden bed. No other safety devices or logos are warranted in this instance.	YES
<b>7. Illumination</b> Would illumination result in unacceptable glare, affect safety for pedestrians, vehicles or aircraft, detract from the amenity of any residence or other form of accommodation?	The Applicant does not propose to illuminate the signage and a condition will be imposed on any consent granted to ensure that any illumination ceases from 10:00pm to 7:00am each day.	Condition to comply
Can the intensity of the illumination be adjusted, if necessary?	Any illumination of the subject sign will be conditions to have a dimmer	Condition to comply
Is the illumination subject to a curfew?	A condition will be imposed to ensure that illumination ceases after 10pm each day.	YES
<b>8. Safety</b> Would the proposal reduce the safety for any public road, pedestrians or bicyclists?	The proposed signage is not considered to have any adverse impact upon the safety for any public road, pedestrians or bicyclists.	YES
Would the proposal reduce the safety for pedestrians, particularly children, by obscuring sightlines from public areas?	Due to the location of the proposed signage within the landscape setback of the proposed development and on the external walls, it will not disrupt sightlines from public areas.	YES

**Table 3 – SEPP64 Compliance**

The proposed is therefore considered to be consistent with the aims and objectives of SEPP 64 and satisfies the assessment criteria of the policy, which seeks to ensure the signage is compatible with the character of the area, existing streetscape and building, and will not adversely affect the safety of motorists or pedestrians.

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

##### *Clause 5 (3) (a) – Commercial development*

The provisions of Clause 5(3) have been considered in the assessment of the development application as follows:

- (a) *to enhance the convenience, viability, and general amenity of all commercial centres and encourage a greater diversity in the range of goods and services*

*offered to cater for the retail, commercial, entertainment, welfare and recreational need of residents, the workforce and visitors.*

- (b) *to encourage developments which will contribute to the economic growth and employment opportunities within the commercial and neighbourhood centres so that they remain commercially attractive and viable,*

The proposed development is for the construction of a seven storey building for use as a serviced apartment complex and is considered to satisfy the requirements of the above mentioned clauses as the nature of the proposal will have a positive contribution to the commercial viability of the precinct. The proximity of the site situated between Sydney Airport and Mascot Station will ensure that the proposed use contributes to the ongoing economic growth of the area and to employment generation.

The proposed development will occupy a site that is part vacant and add benefit to the area without causing adverse impact on the amenity of nearby and adjacent development. On this basis, the proposal is considered to be consistent with Clause 5(3)(a) and 5(3)(b) of the LEP.

- (d) *to ensure that new development in the commercial centres does not unduly affect the amenity of adjoining residential areas by virtue of the use, design, bulk and scale of the development and any traffic generation.*

The proposal involves the redevelopment of the site for a serviced apartment complex that is located outside of Mascot Station Precinct. It is not anticipated that the development will adversely impact on the amenity of the surrounding development. The proposal will result in the use of the land for commercial purposes, therefore eliminating potential use of the land for non-commercial uses permissible in the zone. This will be of public benefit as the amenity area will be maintained. The proposed development is therefore considered acceptable with regard to clause 5(3)(d) of the LEP.

In terms of noise impacting adjoining properties, the subject site is located within an existing commercial/industrial precinct and it is not considered that the proposed development will impact upon nearby residential development located near Mascot Station in terms of noise generation. The operation of the premises will not involve any noise generating machinery as distinct from building services and plant. Therefore, the noise generated from the premises will not significantly affect the adjoining properties. In this regard, the proposal is considered acceptable to clause 5(3)(d) of the LEP.

#### *Clause 10 – Zoning*

The subject site is zoned Industrial Special – Airport Related – Restricted 4(c2) in accordance with Clause 10 of the LEP. The proposed development, being for a serviced apartment complex is permissible in the zone with the appropriate consent of Council. Serviced apartments are defined within Schedule 1 of Botany LEP 1995 as follows:

***serviced apartment*** means a building containing 3 or more self-contained dwellings that are not under separate strata title and that:

- (a) *are cleaned or serviced by the owner or manager of the building (or the agent of the owner or manager), and*
- (b) *provide short-term accommodation for persons who have their principal place of residence elsewhere, but does not include a backpackers' hostel, boarding house, bed and breakfast accommodation or private hotel.*

The primary objective of the Industrial Special – Airport Related – Restricted 4(c2) zone is as follows:

*The primary objective is to provide for a wide range of development and land use activities that predominantly have a relationship with Sydney (Kingsford Smith) Airport, together with encouraging other non airport related uses.*

It is considered that the proposed development, being for a serviced apartment complex is not inconsistent with this primary objective.

The secondary objectives of the zone are as follows:

- (a) *to encourage airport related land uses;*
- (b) *to permit the development of commercial premises and non-airport related and uses;*
- (c) *to provide for industrial land uses which are related to airport related development;*
- (d) *to improve the appearance of buildings and works in an endeavour to enhance the gateway function of this area to Sydney (Kingsford Smith) Airport;*
- (e) *to prohibit some types of traffic generating development which would adversely affect the gateway function of those major roads;*
- (f) *to permit general advertising structures only when they significantly enhance the environment and do not create a clutter of signage in the locality; and*
- (g) *to encourage energy efficiency and energy conservation in all forms of development permissible within the zone.*

It is considered that the proposed development is consistent with these secondary objectives. The proposal is for a serviced apartment complex and is considered to be suitable so as not to adversely impact on the amenity of residents within Mascot Station Precinct, which are within 100 metres north of the subject site.

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 energy efficient standards 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, Mascot Station is within 200 metres of the subject site, which 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 1.5:1. The development is proposed with an FSR of 2.46:1. 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 Bourke Road which is identified by the Roads and Maritime Service (RMS) 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 28 June 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.

*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 a building in excess of this maximum height and was therefore referred to Sydney Airport Corporation Limited (SACL) for concurrence. In a letter dated 28 October 2011, SACL has advised that it has no objection to the proposed maximum height of 36.5 metres AHD, subject to conditions to be imposed on any consent granted.

*Clause 17(3) – Development in Industrial Zones*

Before granting consent to any development on land within Zone 4(c2), Council must be satisfied that the development complies with the following:

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

Comment: The development application proposes a total of sixty-eight (68) car parking spaces. The Applicant has submitted a Traffic Impact Assessment Report prepared by Traffix and dated 18 August 2011 that addresses Council's Car parking requirements for the proposed development. The proposed sixty-eight (68) car parking spaces comprise of sixty-two (62) spaces at basement level and six (6) spaces at grade, which comprise of four (4) disabled car parking spaces. The following table is reproduced from the Traffix Report:

<b>Development Use</b>	<b>Number/Area (m2)</b>	<b>Council DCP Parking requirement</b>	<b>Spaces required</b>	<b>Spaces provided</b>
Serviced Apartments	151	1/unit	151	
Employees	20	1/ 2 staff	10	
Resident Manager	1	1/ manager	1	
Cafe	384m2	1/50m2	8	

<b>Total</b>			<b>170</b>	<b>68</b>
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**Table 4 – Car Parking requirements**

As detailed in the above table, there is a shortfall of approximately one hundred and two (102) car parking spaces for the proposed development. In a letter dated 25 November 2011, the Applicant was requested by Council, to provide further details of its other facilities that were relied on by the Traffic Consultant to justify the proposed shortfall.

In a letter dated 16 December 2011, the Applicants Traffic Consultant states that the proposed shortfall should be supported as the parking rate proposed has been applied based on the history of the operators other serviced apartment complexes, and that consideration should be given to the proximity of the site to Mascot Station and public transport networks that area readily available. Further, the consultant argues that the parking rate proposed is consistent with the parking rates applied to residential development within the Mascot Station Precinct DCP and that nearby hotels have been approved with reduced parking rates that are consistent with the MSP DCP.

In consideration of the proposed shortfall in off street car parking for the proposed development, Council acknowledges that it has consistently allowed a reduction in off street car parking for similar developments within close proximity to the subject site. In particular, the Quest Hotel located at 108-114 Robey Street, Mascot has been approved with ninety-two (92) rooms and thirty-three (33) car spaces, being a shortfall of approximately sixty-six (66) spaces and the Ibis Hotel located at 205 O’Riordan Street, Mascot has been approved with one hundred and ninety four (194) rooms and seventy seven (77) car parking spaces. Therefore, both existing hotels comply with the consistently applied car parking ratio of 1 car space per 2.5 rooms, as indicated in Table 5. This car parking criteria was established on the basis that:

- the use is predominantly an airport related land use; and
- the occupants have access to a regular shuttle bus service to and from the airport.

In addition to the above, it is also noted that the site is within close proximity to Sydney Airport and Mascot Station. Therefore, a deferred commencement condition has been imposed in the recommendation requiring the Applicant to prepare a Travel Access Guide for conference guests and to require the serviced apartment operator to make available a shuttle service for both conference centre guests and apartment guests. Therefore, based on the above, it is considered that the proposed shortfall in off street car parking for the proposed development is acceptable, subject to the Applicant complying with these conditions.

Accordingly, the application (if amended) is considered acceptable in respect of Clause 17(3)(a) of the LEP.

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

Comment: The site is serviced by a private access driveway and cul-de-sac from Bourke Road. This is an existing Right of Carriageway of variable width along the northern boundary of Lot 13, providing vehicular access to the existing commercial building on site and to the proposed serviced apartment complex. The Applicants Traffic Report prepared by Traffix and dated 18 August 2011, states that the largest vehicle to access the site will be a garbage collection vehicle of 7.6 metres in length x

2.9 metres high x 2.4 metres width. The proposed development has been designed to accommodate this sized vehicle. Accordingly, the application (if amended) is considered acceptable in respect of Clause 17(3)(b) of the LEP.

*(c) the operations of the development will not have an adverse impact on the functions of the surrounding road network,*

Comment: The proposed serviced apartment complex will accommodate 151 apartments, a café and function rooms. The development application was referred to Council's Development Engineer and further clarification of parking and traffic modeling were sought. In a letter to the Applicant dated 25 November 2011, Council requested further clarification in relation to the predicted traffic movements, as there was an inconsistency in the peak periods adopted submitted Traffix report and further justification of the proposed shortfall in off street car parking was requested.

In a letter received by Council on 19 December 2011, the Applicant provided a response in relation to the peak period traffic modeling and shortfall in car parking, being a written response from Traffix, dated 16 December 2011. The Traffic Consultant states that the adjusted modeling would result in an increased traffic generation in the morning peak from 38 vehicles per hour (as originally calculated) to 43 vehicles per hour and that this would have minimal impact on the original modeling undertaken. Further, the Consultant clarifies that the modeling during the PM period was an error and that the actual generation would be 20 vehicles per hour, where the intersection would continue to operate with acceptable delays. The proposed (amended) traffic generation is therefore considered acceptable, subject to the conditions being imposed on any consent granted, limiting the number of people that can be accommodated within the function /conference facilities to 119 people and that Travel Access Guide be incorporated into a Plan of Management for the complex to be submitted to Council prior to the issue of the Occupation Certificate.

The proposed parking shortfall is discussed in 17(3) (a) above and it is considered that the proposed of street car parking is adequate for the proposed development. Accordingly, the application (if amended) is considered acceptable in respect of Clause 17(3)(c) of the LEP.

*(d) any goods, plant, equipment and other material resulting from the operations of the development will be stored within a building or wholly within the site and screened suitably from public view,*

Comment: The proposed rooftop plant room will accommodate a lift over run and the air conditioning system for the building, the design of which has been screened from public view and setback 6 metres from the edge of the building face so as to conceal plant from street level. Accordingly, the application (if amended) is considered acceptable in respect of Clause 17(3)(d).

*(e) the operation of the development will not have an adverse impact on the surrounding area as a result of traffic movement, the discharge of pollutants, emissions, waste storage, hours of operation and the like,*

Comment: As stated above, the proposed development is not expected to have any adverse impacts on the neighbourhood in terms of traffic movement. It is recommended that a Workplace Travel Plan be required to be submitted to Council prior to the issue of an operational consent, with such plan to be incorporated into a Plan of Management for the proposed complex. The site is adequately serviced by public transport and therefore traffic generation is not anticipated to have an adverse

impact on the surrounding area. It is not considered that the serviced apartment complex will discharge any pollutants or emissions, apart from waste such as general waste and waste water (sewer). The hours of operation have not been specified by the Applicant, however the ground floor accommodates a Managers office and reception area. Accordingly, the application (if amended) is considered acceptable in respect of Clause 17(3)(e) of the LEP.

*(f) the landscaping is integral to the design and function of the building and the site to improve the appearance of the development, enhance the streetscape and add to the amenity of the adjoining area,*

Comment: The application proposes the removal of fourteen (14) trees from the site being eleven (11) mature Hills Weeping Figs and three (3) Spotted Gums. The initial application to Council sought the removal of fifteen (15) trees, however the Applicant was requested to further assess the potential to retain more trees. On 19 December 2011, the Applicant submitted a letter to Council accompanied by correspondence from their Arborist stating that Tree No. 14 could be retained through rationalisation of the design below ground level with fire stair No. 3 being pulled back into the basement area to allow the on site detention tank and location to be re-configured.

The Arborists statement further states that whilst it is possible to transplant the remaining trees, this is not feasible as it is estimated to cost \$30,000 to \$50,000 per tree for transplanting off site, that considerable setback in condition would result as the current soil conditions are sandy and would not be maintained, the crowns would thin and therefore be subject to scalding and wounding and as a result the trees would need a specific location in a landscape setting as visual amenity would be reduced.

Following a detailed assessment of the proposed removal of the existing mature and significant Hills Figs on site, Council continues to have concerns with the number of trees to be removed from the site, despite the retention of Tree No. 14. Whilst it is acknowledged the site is suitable for redevelopment to a certain extent, it is reasonable and practicable to retain more of these trees on site. As such, it is recommended that the Applicant amend the design of the proposed underground on site detention tank by reconfiguring its dimensions, to require a suitable setback from the existing trees along the southern boundary, which are all required to be retained in situ. These are Tree Nos. 14, 15, 16, 17, 18, 19, 20 and 21. Further, that Tree Nos. 7, 10 and 13 be relocated on site to the landscaped podium planter bed north of the drop off zone or as an alternative to a select public place within Council's local government area. It is recommended that the tree relocation be the subject of a consent condition, which will require relocation prior to the issue of the Construction Certificate.

Furthermore, Council's Landscape Architect has assessed the proposed landscape concept plan and proposed tree removal and has recommended that as a result of the removal of the fourteen (14) trees, additional canopy tree planting should be incorporated into the landscape design of the proposed development. On this basis, it is recommended that the following conditions be imposed on the consent granted to require the following:

- Additional taller and large canopy tree planting in the Bourke Road deep soil setback, which would assist in softening the edges of the building;

- Provision of a raised planter box on the western podium edge of the proposed outdoor café seating area as an extension to the planter provided outside the conference room;
- An increase in the large planter bed behind the building, adjoining the drop off zone by one (1) metre in height/depth above grade to accommodate the planting of small - medium height flowering canopy trees to soften the parking and vehicular area.

Accordingly, the application (if amended) is considered acceptable in respect of Clause 17(3)(f) of the LEP.

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

Comment: The proposed development comprises of one building in an obtuse L-shape. It will have a height of RL36.5 which is compatible with the height of adjoining buildings, being less than the existing building on site which is RL 41.5 metres. The design incorporates architectural elements to provide interest to the façades fronting Bourke Road, through horizontal banding to the upper levels and indented recessed balconies with a vertical theme. Through further embellishment of the proposed landscape garden beds fronting Bourke Road, the development will contribute to the streetscape amenity of the area and will have a visual relationship with the public domain area with the ground level café terrace overlooking the Bourke Road frontage. Accordingly, the application (if amended) is considered acceptable in respect of Clause 17(3)(g) of the LEP.

*(h) the building design and finishes will not have an adverse impact on the amenity of the surrounding area as a result of wind generation, overshadowing, reflectivity and the like,*

Comment: The proposed development will have minimal overshadowing impact on the adjoining hotel building to the south (Holiday Inn) at 3pm on June 21 to a small portion of the ground floor, first and second floor to the north-eastern part of the building. There are no other overshadowing impacts. The proposed design and finishes of the building are considered acceptable and will not result in any adverse reflectivity or wind generation in the locality. Accordingly, the application (if amended) is considered acceptable in respect of Clause 17(3)(h) of the LEP.

*(i) the design and operation of the development will protect the visual and aural amenity of adjoining non-industrial uses,*

Comment: The proposed development will not operate in a manner that will be of detriment to the non-industrial uses surrounding the site. A condition will be imposed on any consent granted to require the submission of a Plan of Management in relation to the serviced apartment complex and a condition requiring a separate development for the internal fitout and occupation of the ground floor café. Accordingly, the application (if amended) is considered acceptable in respect of Clause 17(3)(i) of the LEP.

*(ia) the development is of a high standard of design, provides a high level of environmental amenity and is compatible with adjoining land uses and development,*

Comment: The proposed development is considered to be appropriate to the locality and reflects the orderly development of the land. The land is currently being considered for possible rezoning to the B5 – Business Development zone. As such, if

this proceeds, the land use will change from industrial to commercial in nature, supporting warehousing and commercial uses as well as tourist and visitor accommodation. The proposed development is considered to complement other surrounding development within the locality and accordingly, the application (if amended) is considered acceptable in respect of Clause 17(3)(ia) of the LEP.

*(j) the levels of noise generated from the operations or vehicles associated with the development are compatible with adjoining uses, and*

Comment: The proposed development will not involve any industrial equipment or vehicles larger than 7.6 metres in length. It is not anticipated that the serviced apartment complex will generate any mechanical or operational noise that would impact on adjoining and adjacent development. The application has been accompanied by an Acoustic Assessment Report prepared by Acoustic Logic Consultancy Pty Ltd dated 28 June 2011. The report concludes that whilst no specific system for air conditioning within the building has been selected at this stage, criteria have been specified and that any future system could reasonably meet these criteria. As such, it is recommended that a condition be imposed on any consent granted to ensure that a detailed acoustical assessment of mechanical noise emissions is provided to Council prior to the issue of the Construction Certificate and that any mechanical plant is not to exceed a noise emission level of background plus 5dB(A) Laeq, being 54 dB(A) Laeq between the evening period of 10:00pm one day to 7:00am the following day, when measured at the boundary. Accordingly, the application (if amended) is considered acceptable in respect of Clause 17(3)(j) of the LEP.

*(k) the provisions of [State Environmental Planning Policy No 55—Remediation of Land](#) will be complied with in relation to the land.*

Comment: The proposed development involves the construction of a building for use as a serviced apartment complex with basement car parking and associated landscaping. The application was not accompanied by any Contamination Assessment Reports, however Council sought an independent review of the submitted Preliminary Waste Classification and Acid Sulfate Soils Assessment Reports. In a letter dated 30 November 2011, Council received a response from its Independent Consultant advising that the site contains contaminated soil, being lead in excess of acceptable levels for low density residential and polychlorinated biphenyls (PCB) levels in excess of acceptable levels for low density residential and open space land use. The Independent Consultant recommends that conditions be imposed on any consent granted requiring a Phase 2 Detailed Site Investigation and if required a Stage 3 Remediation Action Plan prior to the issue of the Construction Certificate. Further, it is recommended that Council impose a condition requiring a Site Audit Statement be furnished to Council upon completion of any required remediation works, prior to the issue of the Occupation Certificate which states that the site is suitable for the proposed development. Accordingly, the application (if amended) is considered acceptable in respect of Clause 17(3)(k) of the LEP.

*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.

The Applicant has submitted with the application an Energy Efficiency Report prepared by Green Planning Australia and dated 17 August 2011. The report identifies

appropriate construction measures such as high performance glazing, roof, floor and wall construction with insulation where necessary. 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 application as the Applicant seeks consent for excavation to a depth of approximately RL7.6 metres. Some additional depth of 0.5 metres to RL7.1 is expected for trenching.

The Applicant has submitted a revised Geotechnical Investigation Report on the 28 September 2011, prepared by Douglass Partners and dated September 2011. The report indicates that groundwater was detected at RL5.2, RL5.8 and RL5.2. As such, there will be no penetration of groundwater as a result of the construction of the proposed building. A condition will be imposed on any consent granted stating that if during remediation work, it is necessary to remove contaminated soil at a depth where groundwater is present on site, that the Applicant obtain a 'Controlled Activity Approval' from the NSW Office of Water, for dewatering.

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

The site is located within both Class 2 and Class 4 Acid Sulfate Soil Areas. 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 Applicant has submitted to Council an amended Acid Sulfate Soils Assessment, on the 19 December 2011 that indicates the presence of 'Potential Acid Sulfate Soils'. This report has been assessed by Council's Independent Consultant. In a letter dated 30 November 2011, Council's Consultant has recommended that Council impose conditions on any consent granted that require the preparation of an Acid Sulfate Soils Management Plan to be submitted to Council prior to the issue of the Construction Certificate.

*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 site is serviced by water and sewer services. A condition will be imposed on any consent requiring the Applicant to obtain a Section 73 Certificate from Sydney Water.

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.

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

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

<b>Development Use</b>	<b>Number/Area (m2)</b>	<b>Council DCP Parking requirement</b>	<b>Spaces required</b>	<b>Spaces proposed</b>
Serviced Apartments	151	1/unit	151	
Employees	20	1/ 2 staff	10	
Resident Manager	1	1/ manager	1	
Cafe	384m2	1/50m2	8	
<b>Total</b>			<b>170</b>	<b>68</b>

**Table 5 – Car Parking Requirements**

A Traffic Impact Assessment prepared by Traffix dated August 2011 has been submitted to accompany the development application. As detailed in the above table, the Applicant proposes a shortfall of one hundred and two (102) car parking spaces on site.

In a letter dated 16 December 2011, the Applicants Traffic Consultant states that the proposed shortfall should be supported as the parking rate proposed has been applied based on the history of the operators other serviced apartment complexes, and that consideration should be given to the proximity of the site to Mascot Station and public transport networks that area readily available. Further, the consultant argues that the parking rate proposed is consistent with the parking rates applied to residential development within the Mascot Station Precinct DCP and that nearby hotels and serviced apartment complexes have been approved with reduced parking rates that are consistent with the MSP DCP.

In consideration of the proposed shortfall in off street car parking for the proposed development, Council acknowledges that it has consistently allowed a reduction in off street car parking for similar developments within close proximity to the subject site. In particular, the Quest Hotel located at 108-114 Robey Street, Mascot has been approved with ninety-two (92) rooms and thirty-three (33) car spaces, being a shortfall of approximately sixty-six (66) spaces and the Ibis Hotel located at 205 O’Riordan Street, Mascot has been approved with one hundred and ninety four (194) rooms and seventy seven (77) car parking spaces, which is also approximately one (1) space per two and half (2.5) rooms. The following table provides a comparison between the approved hotels and proposed serviced apartment complex.

<b>Facility</b>	<b>No. of Rooms</b>	<b>Car spaces provided</b>	<b>Parking Ratio</b>
<b>Quest Hotel</b>	92	33	1:2.5
<b>Ibis Hotel</b>	194	77	1:2.5
<b>Proposed Medina Serviced Apartments</b>	151	68	1:2.5

**Table 6 – Comparison with approved hotel uses**



In addition to the above, it is also noted that the site is within close proximity to Sydney Airport and Mascot Station. Therefore, it is recommended that a condition be imposed on any consent granted to require the Applicant to prepare a Travel Access Guide for conference guests and to require the serviced apartment operator to make available a shuttle service for both conference centre guests and apartment guests. Therefore, based on the above, it is considered that the proposed shortfall in off street car parking for the proposed development is acceptable, subject to the Applicant complying with these conditions.

The rationale of the Applicants Traffic Engineer is generally agreed with. The proposed shortfall in off street car parking is considered acceptable given the sites location in close proximity to Mascot Station, that the proposed development will have access to the private driveway for taxi and vehicle drop off, that bus services are available on Bourke Road and Coward Street and that the proposed bus lay by on Bourke Road will be sufficient to accommodate a mini bus for guests and function centre visitors. On this basis, it is acceptable for Council to maintain consistency and to support the proposed shortfall in off street car parking.

#### **6.1.10 Development Control Plan (DCP) No. 33 – Industrial Development**

The requirements of Sections 2 and 5.9 of DCP No. 33 have been considered in the assessment of the development application below.

##### **Section 2 – Design Quality Principles and Precinct Controls**

*P1 The contribution of Industrial/Commercial land use activity at the Local, Regional and State levels.*

Comment: The proposed development will contribute to the economic viability of the state and region through the provision of services supporting Sydney Airport. The site is situated within close proximity to the Airport and to Mascot Station, which promotes the use of the passenger rail line and local/state road network links.

*P2 The improvement to the built form / urban form and public domain of the industrial areas of the City*

Comment: The proposed building height, scale and design compliments the nearby and adjacent built form within the precinct. Interest to the building design is incorporated through the use of architectural elements and varied materials/finishes. The site is not a gateway site, however the scale of building is appropriate for its context within the precinct without affecting the visual and environmental amenity of adjoining and adjacent development.

*P3 The continuation of the landscaping theme in the public and private domain throughout the city.*

Comment: There are currently twenty-eight (28) trees on site. The initial application to Council proposed the removal of twelve (12) mature Hills Figs and three (3) Spotted Gums, being a total of fifteen (15) trees, however further consideration by the Applicant has resulted in the retention of one additional mature Hills Fig, being Tree No. 14, therefore a total of fourteen (14) existing trees are proposed to be removed.

However, following a detailed assessment of the proposed removal of the existing mature and significant Hills Figs on site, Council continues to have concerns with the number of trees to be removed from the site. Whilst it is acknowledged the site is suitable for redevelopment to a certain extent, it is reasonable to retain more of these trees on site. As such, it is recommended that the Applicant make further design amendments to the proposed underground on site detention tank, to require a suitable setback from the existing trees along the southern boundary, which are all required to be retained in situ. These are Tree Nos. 14, 15, 16, 17, 18, 19, 20 and 21. Further, that Tree Nos. 7, 10 and 13 be relocated on site to the landscaped podium planter bed north of the drop off zone or elsewhere. It is recommended this design amendment be the subject of a consent condition, which will require design amendment prior to the issue of the Construction Certificate.

Therefore, a total of seven (7) trees will be removed from site and twenty-one (21) trees on site will be retained.

Additional tree canopy planting will be required to the detailed landscape plan and this will be imposed as a condition on any consent granted by Council. The resulting development will provide a high quality landscape to the public domain to replace the loss of the existing landscape setting on site. The Applicant proposes to relocate the existing sculpture on site approved under Development Consent No. 08/013. The existing sculpture, which resembles the frame of an aeroplanes fuselage, will be relocated to the existing cul-de-sac bulb located on the subject land, and this is considered appropriate.

*P4 The efficient design, operation and function of industrial / commercial land uses.*

Comment: The proposed development will result in two (2) new substations within the front Bourke Road landscape setback, being one (1) electricity substation approximately 1600mm above finished ground level and one (1) gas meter regulator set approximately 2200mm above finished ground level. It is recommended that a condition be imposed on any consent granted to require further embellishment of the front landscape garden bed to further screen the substation, whilst allowing suitable access to them. Rooftop plant room is proposed with screen louvres to enhance the visual appearance of the building and this plant room is setback 6 metres from the Bourke Road face so that it is not visible from the public domain areas on Bourke Road. It is recommended that a condition be imposed on any consent granted to require further embellishment of the front landscape garden bed to soften the building and to screen the substation in part, whilst allowing access to it from Bourke Road. The development proposes adequate off street car parking and has an existing private access driveway for service vehicles and a drop off area. The proposed development has been designed to minimise any adverse environmental impact on adjoining and adjacent development.

*P5 The need for a compatible and workable relationship between industrial and non-industrial uses.*

Comment: As stated earlier in this report, the surrounding local and state road network will not be adversely impacted upon as a result of the proposed development. The likely traffic generation is considered acceptable. The extent of overshadowing on

the adjoining development to the south is restricted to the 3pm period on June 21 and this is also considered acceptable.

*P6 The promotion of developments that are sustainable and encourage the protection of the environment.*

Comment: The proposed development incorporates energy efficiency performance measures through the design and finishes of the building. An on site stormwater detention tank is proposed within the perimeter of the basement level below ground. It is considered that the final development will provide a comfortable level of amenity for future occupants of the building without creating any off –site environmental effects.

The subject site is located in the Mascot Industrial Precinct. The proposed development is considered to satisfy the objectives of the precinct and represents the orderly and appropriate development of the land.

#### *Section 5.9 – Development Controls*

Section 5.9 - Commercial Premises in the 4(c2) zone of DCP No. 33 – Industrial Development specifies controls in the following table:

Standard & Clause	Requirement	Proposed	Complies
<b>Section 5.9 – Commercial Premises in the 4(b) and 4(c) zones</b>			
<b>C1 – Landscape Setback</b>	Minimum of 4 metres landscape setback on Designated Roads	6 metres to the basement car park and ground floor	Yes
<b>C2- Site Landscaping Proportion</b>	30% = 2162sqm	15% = 1063sqm	<b>No – See Note 1 below</b>
<b>C3 – Underground Car parking</b>	Must be situated beneath the building footprint and not within any deep soil planting areas	Basement car park is setback 3 metres from site boundary	Yes
<b>C4 – Underground Stormwater Detention Tank</b>	OSD tank to be located outside of landscape area	OSD tank is located within the southern deep soil area, however this has been re-configured to ensure the retention of two (2) existing mature Hills Figs along the southern boundary.	Yes
<b>C5 – Landscape Buffer Strip</b>	A continuous landscape buffer strip shall be provided between the driveway and the side boundary.	Existing private road service this site	Yes
<b>C6 – Landscaping</b>	3 metre landscape setback	6 metre setback is achieved to Bourke Road	Yes
<b>C7 – Upper Level Landscaping</b>	Balconies, indented levels or rooftops may be required as additional softening	Ground level podium incorporates planter box along the Bourke Road frontage and the southern boundary to the Holiday Inn.	Yes
<b>C8 – Basement Car park</b>	Where the underground car parking structure protrudes above grade it shall be suitably treated	Basement car park extends above grade at the Bourke Road frontage, which is incorporated into the landscape garden bed and treated with a sandstone face	Yes

<b>Standard &amp; Clause</b>	<b>Requirement</b>	<b>Proposed</b>	<b>Complies</b>
<b>C9 – Planter Beds</b>	Planter beds shall be a minimum of 1 metre wide	Planter beds proposed are a minimum of 1 metre wide	Yes
<b>C10 – Landscaping</b>	Three tiers of landscaping are required in all mass planting areas being tall trees for canopy, shrubs for mid level screening and groundcovers	The proposed landscape plan incorporates each tier. Additional canopy species are recommended and will be imposed on any consent granted by Council	Yes
<b>C11 – Fencing and Masonry walls</b>	Details to be provided on the landscape plan	No fencing proposed. Basement protrusion to the Bourke Road frontage is adequately treated with a sandstone face	Yes
<b>C12 – Car parks</b>	Car parks shall be adequately landscaped	At grade car parking spaces are proposed to be landscaped	Yes
<b>C13 – Irrigation</b>	All landscape areas shall be supplied with a fully automated irrigation system	No details provided with the application. Condition to provide drip irrigation	Condition for irrigation
<b>C14 – Planter beds</b>	All planter beds shall be contained by a 150mm kerb	All planter beds are contained within 150mm kerb	Condition for kerbs
<b>C15 – Substations</b>	All fire hydrants, booster valves, water tanks and electrical substations must not be located in the landscape beds or in the front setback	Two substations are proposed within the proposed Bourke Road landscape setback	<b>No – See Note 2 below</b>
<b>C16 – Overhead electricity and telecommunications cables</b>	All existing above ground electricity and telecommunication cables within the road reserve shall be replaced at the applicants expense by underground cables.	No existing above ground cables	Condition for no new cables
<b>C17 - Retaining walls</b>	Retaining walls shall be masonry or concrete if over 500mm high	No retaining walls are proposed except to the proposed planter bed adjacent to the southern boundary	Yes
<b>C18 – trade Waste Agreement</b>	A trade waste agreement shall be obtained from Sydney Water in the event that waste water is generated	Condition for Applicant to obtain a Section 73 Certificate from Sydney Water	Yes

**Table 7 – DCP 33 Compliance Table**

**Note 1 – Landscape Proportion**

Control C2 of Section 5.9 - Commercial Premises in the 4(c) zones of DCP No. 33 – Industrial Development states that that not less than 10% of the site area shall be landscaped. On sites greater than 5000 sqm, 30% of the site area shall be landscaped.

The application relates to a site, where an existing commercial development is already sited with a basement car parking facility that extends beyond the podium level. The northern portion of the subject site is constrained by the existing private driveway and underground car park entrance. A minimum of 19% landscaping would be achieved as a result of the proposed development, equating to approximately 1370sqm, which includes the existing development. This is considered acceptable for the existing and proposed use of the land.

The proposed development provides a 6 metre wide landscape setback to Bourke Road and a 2 metre wide landscape setback to the southern boundary. A paved forecourt is proposed between the proposed development and existing building on site and this is considered appropriate for pedestrian circulation. The Applicant intends on dedicating land along the Bourke Road frontage to provide sufficient land for a bus lay by with the associated upgrade of the public domain area within the Bourke Road nature strip.

Giving consideration to the intended use as a serviced apartment complex and the existing use for commercial, the proposed landscape area is considered acceptable in this instance.

#### **Note 2 – Substations**

Control C15 of Section 5.9 - Commercial Premises in the 4(c) zones of DCP No. 33 – Industrial Development states that Fire hydrants, booster valves, water tanks, electrical substations and waste collection/handling/storage areas must not be located in landscaped areas or in the street setback. The application seeks consent to install two (2) new substations within the Bourke Road front landscape setback, being one (1) electricity substation approximately 1600mm above finished ground level and one (1) gas meter regulator set approximately 2200mm above finished ground level. It is recommended that a condition be imposed on any consent granted to require further embellishment of the front landscape garden bed to further screen the substation, whilst allowing suitable access to them. A further condition shall be imposed to ensure that the substations are not located on land required to be dedicated to Council for the required bus lay by and associated widening of the existing footpath.

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

The provisions of DCP 34 have been considered above in the assessment of the application as part of the assessment against the requirements of SEPP 55. A condition will be imposed on any consent granted requiring a Phase 2 Detailed Site Investigation and if required a Stage 3 Remediation Action Plan (RAP) prior to the issue of the Construction Certificate and a Site Audit Statement prior to the issue of the Occupation Certificate.

#### **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 June 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 grade with four (4) disabled car parking spaces, being in excess of the DCP requirements. A Disability Access Report prepared by Accessibility Solutions (NSW) Pty Ltd dated 17 August 2011, 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 at the Construction Certificate stage.

**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. 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 requiring the Applicant to meet the requirements of RailCorp.

The proposed development, being for construction of a seven (7) storey building for use as a serviced apartment complex with conference/function facility and cafe to a site located within the Industrial Special – Airport Related – Restricted 4(c)2 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 application. In accordance with Council's Notification Policy (Development Control Plan No. 24), the development application was notified to surrounding property owners and occupants, advertised in the local newspaper and a notice erected upon the subject site from the 6 September 2011 to 5 October 2011. Two (2) submissions objecting to the proposed development were received, which raise the following concerns:

- ***The building said to be seven (7) storeys will significantly overshadow and impinge upon natural light and amenity of that elevation of the Holiday Inn building. That (northern) side of the building currently enjoys extensive sunlight and the proposed building will severely limit the amount of sunlight the building receives later in the day.***

Comment:

The development application has been accompanied by shadow diagrams for the winter solstice (June 21), which indicate that there is overshadowing impact to the north-eastern portion of the adjoining building to the south from 2pm to 4pm.

In a letter dated 7 October 2011, Council sought a response from the Applicant in relation to the issues raised in the submissions. The Applicant provided Council with elevational shadow diagrams on the 19 December 2011. The elevational shadow diagram for the 3pm period on June 21 indicates that this shadow fall on the existing porte cochere, and the far eastern portion of the ground floor, first and second floor.

The Applicant argues that the extent of affectation is minor and would not create a significant impact on the amenity of the existing Holiday Inn.

The rationale of the Applicant is generally agreed with. Given that the Holiday Inn building is not used for long term residential accommodation, and that the level of affectation is minor and restricted to the far north-eastern part of the building from between 2pm to 3pm, the extent of overshadowing is considered acceptable in this instance.

- ***There is virtually no on street car parking in the area, the building is to be constructed on Bourke Road which is a major thoroughfare with no provision for on site car parking and the proposed car parking levels are not adequate for a building of this size.***

Comment:

Councils Off Street Car Parking DCP requires a total of 170 car parking spaces. The Applicant proposes to accommodate 68 car parking spaces, being 62 at basement level and a further six spaces at grade. This represents a shortfall of one hundred and two (102) car parking spaces.

The Applicant has submitted a Traffic Impact Assessment prepared by Traffic and dated August 2011. This report argues that the shortfall in off street car parking is acceptable given that the site is located in close proximity to Mascot Station, and public transport networks.

In a letter received by Council on 19 December 2011, the Applicant provided a response in relation to the peak period traffic modeling and shortfall in car parking, being a written response from Traffix, dated 16 December 2011. The Traffic Consultant states that the adjusted modeling would result in an increased traffic generation in the morning peak from 38 vehicles per hour (as originally calculated) to 43 vehicles per hour and that this would have minimal impact on the original modeling undertaken. Further, the Consultant clarifies that the modeling during the PM period was an error and that the actual generation would be 20 vehicles per hour, where the intersection would continue to operate with acceptable delays. The proposed (amended) traffic generation is therefore considered acceptable, subject to the conditions being imposed on any consent granted, limiting the number of people that can be accommodated within the function /conference facilities to 119 people and that Travel Access Guide be incorporated into a Plan of Management for the complex to be submitted to Council prior to the issue of the Occupation Certificate.

The rationale of the Applicant's Traffic Engineer is generally agreed with and consideration has been given to the consistent precedent for similar developments, where car parking has been approved at the ratio of 1 car space per 2.5 rooms. The proposed shortfall in off street car parking is considered acceptable given the sites location in close proximity to Mascot Station, that the proposed development will have access to the private driveway for taxi and vehicle drop off, that bus services are available on Bourke Road and Coward Street and that the proposed bus lay by on Bourke Road will be sufficient to accommodate a mini bus for guests and function centre visitors. Further, Council has consistently reduced car parking requirements for similar developments within close proximity to the subject site, including the Quest

Hotel at 108 Robey Street and the Ibis Hotel at 205 O’Riordan Street. On this basis, the proposed shortfall in off street car parking is considered acceptable.

- ***The proposal involves the removal fifteen (15) trees on site. The trees are beautiful mature specimens which create a distinct atmosphere and ambience to the area and their loss would be a tragedy both to the surrounding buildings and the local area.***

Comment:

The application involves the removal of fourteen (14) trees from the site being eleven (11) mature Hills Weeping Figs and three (3) Spotted Gums. The initial application to Council sought the removal of fifteen (15) trees, however the Applicant was requested to further assess the potential to retain more. On 19 December 2011, the Applicant submitted a letter to Council accompanied by correspondence from their Arborist stating that Tree No. 14 could be retained through rationalization of the design below ground level with fire stair No. 3 being pulled back into the basement area to allow the on site detention tank and location to be rationalised. The Arborists report further states that whilst it is possible to transplant the remaining trees, this is not feasible as it is estimated to cost \$30,000 to \$50,000 per tree for transplanting off site, that considerable setback in condition would result as the current soil conditions are sandy and would not be maintained, the crowns would thin and therefore be subject to scalding and wounding and as a result the trees would need a specific location in a landscape setting as visual amenity would be reduced.

Following a detailed assessment of the proposed removal of the existing mature and significant Hills Figs on site, Council continues to have concerns with the number of trees to be removed from the site. Whilst it is acknowledged the site is suitable for redevelopment to a certain extent, it is reasonable to retain more of these trees on site. As such, it is recommended that the Applicant make further design amendments in relation to the proposed underground on site detention tank, to require a suitable setback from the existing trees along the southern boundary, which are all required to be retained in situ. These are Tree Nos. 14, 15, 16, 17, 18, 19, 20 and 21. Further, that Tree Nos. 7, 10 and 13 be relocated on site or elsewhere. It is recommended this design amendment be the subject of a consent condition, which will require design amendment prior to the issue of the Construction Certificate.

Councils Landscape Architect has assessed the submitted Arborists report, proposed landscape concept plan and additional Arborists statement received on 19 December 2011, and has recommended that as a result of the removal of the fourteen (14) trees, additional canopy tree planting should be incorporated into the landscape design of the proposed development. On this basis, it is recommended that conditions be imposed on any consent granted to require the following:

- Additional taller and large canopy tree planting in the Bourke Road deep soil setback, which would assist in softening the edges of the building;
- Provision of a raised planter box on the western podium edge of the proposed outdoor café seating area as an extension to the planter provided outside the conference room;
- An increase in the large planter bed behind the building, adjoining the drop off zone by one (1) metre in height/depth above grade to accommodate the planting of small - medium height flowering canopy trees to soften the parking and vehicular area



- Three (3) street trees are to be planted in the nature strip along Bourke Road.
- ***The proposed development would take up the entirety of the block it is proposed to be built and there is no room for the replacement of the fifteen (15) mature trees to be removed.***

Comment:

As stated above, further information received by Council on 19 December 2011, has resulted in the retention of one more Mature Hills Fig on site, being Tree No. 14 along the southern boundary adjacent to the Holiday Inn. It is recommended that the Applicant reconfigure the dimensions of the proposed underground (on site detention tank), so as to provide sufficient setback in order to retain in situ, all mature Hills Figs along the southern boundary being Tree Nos. 15, 16, 17 and 18.

The proposed development will provide a deep soil planting area along the Bourke Road frontage to the site and this will allow for canopy trees to be planted, to replace the existing Fig trees to be removed. There is an existing commercial building located on site with an expansive basement car park which extends beyond the podium of that building. This Application seeks to provide access to its basement car park from the existing main underground access off the private driveway. The proposed basement car parking facility will not extend beyond the podium of the building, except that area below the drop off/pick up zone and for the underground stormwater detention tank along the southern boundary.

- ***The proposed use of the building as a serviced apartment complex would suggest that domestic travellers would use the apartments for short visit stays with two or more guests per room, which would have a large impact on traffic in the area.***
- ***We note in particular that the signals at the corner of O’Riordan Street and Bourke Road are less than satisfactory.***

Comment:

As stated elsewhere in this report, the proposed development is not expected to have any adverse impacts on the neighbourhood in terms of traffic movement. The Applicant has submitted a Traffic Impact Assessment Report and further clarification was sought by Council due to discrepancies in the AM and PM peak modeling. In a letter dated 19 December 2011, the Traffic Consultant states that the adjusted modeling would result in an increased traffic generation in the morning peak from 38 vehicles per hour (as originally calculated) to 43 vehicles per hour and that this would have minimal impact on the original modeling undertaken. Further, the consultant clarifies that the modeling during the PM period was an error and that the actual generation would be 20 vehicles per hour, where the intersection would continue to operate with acceptable delays. The proposed (amended) traffic generation is therefore considered acceptable, subject to certain conditions being imposed on any consent granted limiting the number of people that can be accommodated within the function /conference facilities to 119 people. It is also recommended that a “Deferred Commencement” condition be imposed to require the Applicant to provide Council with a Workplace Travel Plan to be incorporated into a Plan of Management for the complex.

- ***The proposed development will add to the short stay parking in the area and attract hire cars and taxis who will tend to circulate awaiting customers.***

Comment:

The proposed development has a private road access from Bourke Road. This will serve as the main vehicular access to the complex for basement car parking and as a drop off/pick up area. It is anticipated that should a guest need a taxi, that one would be contacted to pick up the guest from the main door at off the private driveway. A condition will be imposed on any consent, ensuring that this requirement is incorporated into the Plan of Management for the complex.

- ***The proposed use of the land as serviced apartments is in breach of the permissible uses of the land. The development is neither a hotel or a motel.***

Comment:

As stated under the LEP assessment of this report above, the proposed use can be defined as a *serviced apartment* pursuant to Schedule 1 of Botany LEP 1995, and this is a permissible use with the consent of Council under the Industrial Special – Airport Related – Restricted 4(c2) zone.

- ***Pursuant to Botany LEP 1995, the maximum allowable floor space ratio is 1.5:1. The proposed building will create an FSR of 2.46:1, that will create over-development of the area.***

Comment:

The Applicant proposes an FSR of 1.21:1, which when combined with the existing FSR of 1.25:1 will create a total FSR on site of 2.46:1. The Applicant has submitted a SEPP 1 Objection to Clause 12(3) of Botany LEP 1995. The Applicant argues that the permitted FSR for hotels and motels within the Industrial Special – Airport Related – Restricted 4(c2) zone is 2.5:1, and that give the proposed use as a serviced apartment is similar in nature to a hotel or motel, that consideration should be given to the requested variation.

The SEPP 1 Objection is generally agreed with and this report recommends that the Panel support the SEPP 1 Objection to permit an FSR of 2.46:1 at the subject site.

- ***The open space currently on site provides practical and visual amenity to surrounding development. Removal of this open space will reduce the amenity of the area. We see a reduction in open space as a contradiction in Councils own policies.***

Comment:

This subject land is privately owned and is not in public ownership as public open space. Therefore there is a reasonable expectation that the land could be developed, subject to Council consent, for a use that is permissible within the Industrial Special – Airport Related – Restricted 4(c2) zone. Council encourages the development of land for permissible uses within the Mascot Industrial Precinct that support Sydney Airport and existing public infrastructure such as Mascot Station. Furthermore, the development of the subject land will contribute to the economic viability of the precinct and will support surrounding employment land and the Mascot Station Precinct to the north of the site. Whilst not complying with the permitted floor space ratio for the particular zone, the proposed development is consistent with the aims and objectives of Botany LEP 1995 and of the specific objectives of the zone.

- ***The proposed development creates significant visual bulk in the area and hinders street level observation of Metrolink Corporate Park. This may in turn impact upon the value of any proposed building signage, particularly on Building B.***

Comment:

The subject Metrolink Corporate Park complex has its own direct frontages to Bourke Road and Coward Street, with visual exposure on the southward approach along Bourke Road and eastern approach along Coward Street. Vehicles and pedestrians travelling north along Bourke Road will still be capable of viewing the Metrolink buildings in part, once they approach the proposed building, where the private driveway opens to the Bourke Road intersection. It cannot be reasonably expected that sight lines to and from the nine (9) storey Metrolink buildings would be protected over time, when the subject site has only been developed in part and where the Metrolink site has significant site coverage.

- ***Whilst the proposed development does not directly overshadow the building, the southern side of our Metrolink Corporate Park does not receive significant amounts of sunlight and the proposed development through its scale, may increase this effect.***

Comment:

The southern side of the Metrolink building would not receive any direct sunlight during the winter solstice. The Applicants submitted shadow diagrams confirm this. The proposed building would not affect this current situation. Whilst there are no expanses of reflective glazing incorporated into the proposed design of the building, there may be some beneficial reflective light from the northern elevation of the proposed building back onto the Metrolinks southern face. This would be minimal.

- ***The open space allows for views from Metrolink Corporate Park to the south across the airport, Botany Bay and Kurnell. The tenants who are attracted to our building and the area in general find these views desirable.***

Comment:

In a letter dated 7 October 2011, Council sought a response from the Applicant in relation to the issues raised in the submissions. In response, the Applicant submitted a View Analysis on the 19 December 2011 with the following response:

*“Whilst the proposal may result in the loss of views from the Metrolink Corporate Park, this will have minimal impact on the amenity currently enjoyed by occupants of the commercial building. While views from the building may be ‘desirable’, the quality of these views is not significant to the point that they are a driving factor in tenants locating in the building.*

*The application site is presently vacant and is located in the Special Airport Related – Restricted 4(c2) zone, there must therefore be a reasonable expectation that the site would be developed in the future, and that this would involve a building/s of a scale and height similar to that proposed. It would be unreasonable to expect an adjacent site could not be developed due to the timing of development on other sites.*

*From a development control perspective, the proposed development accords with Policy B5 of the Industrial DCP which seeks to ensure that the height scale and mass of new development is similar to existing surrounding development. The proposed building is seven storeys in height while buildings immediately surrounding the site include the nine (9) storey Metrolink building to the north, the eleven storey Holiday Inn building to the south, the seven (7) storey commercial building to the east and the seven (7) storey Qantas building to the west.*

*With regards to future planning controls it is noted that the Draft Botany Bay LEP 2012, which is now available on Councils website and is expected to be formally exhibited in the near future, proposes to increase the maximum building height for the site to 44 metres. It is therefore clear that the proposal is consistent with the intended vision for Mascot and the proposed future development standards for the site.*

*Furthermore, we also highlight that the Design Review Panel reviewed the proposed development and stated that “the western wing facing Bourke Road could be increased in height (by 2 storeys). This would improve the massing relationship to the adjoining taller buildings when viewed from the street”.*

To assist Council in its assessment of the application, the Applicant has provided a series of view analysis perspectives, which indicate the extent of the subject view. These are considered to adequately reflect the proposed situation and are generally agreed with.

In respect of the view analysis provided by the Applicant, Council has given consideration to the Land and Environment Court planning principles on view sharing (*Tenacity Consulting v Warringah* (2004) NSWLEC 140). Whilst Council acknowledges that the proposed development will to a certain extent result in the loss of the (present) views from the Metrolink building towards the south-west across to Sydney Airport, Botany Bay and Kurnell, it is considered that the planning principles generally would not apply to a great extent when considering views from existing commercial premises.

There are no habitable residential components to the existing building at 197 Coward Street (Metrolink). The Metrolink building is nine (9) storeys in height and has excessive site coverage. Land on the western side of Bourke Road already accommodates buildings to a height of seven (7) storeys and to the south-west, Council has recently approved development at 185-189 O’Riordan Street for two (2) towers of ten (10) storeys and twelve (12) storeys in height respectively, which will eliminate the subject views. This development application involved extensive public notification and Council did not receive any submissions.

It is unlikely that the views of Sydney Airport (within 2.5 kilometres away), Port Botany (3 kilometres away) and Kurnell (beyond) are a driving factor in attracting tenants to the building, when the site is in such close proximity to Mascot Station Precinct, Sydney Airport and surrounding industrial/commercial land, providing a far greater attraction than views. The taking away of such views would not necessarily result in the loss of internal amenity of the Metrolink building. The buildings occupants would still maintain physical access to nearby networks and services and the loss of views would not result in any adverse social or economic impact upon the

existing commercial building or locality. In terms of view sharing, there is no adverse impact on the broader community and in fact the proposed development will result in the contribution of employment generation in the short term and will provide an ongoing service to commercial development in the vicinity of the site, including the Metrolink building.

In conclusion, it is not considered that the subject views or taking away of these views would result in any significant adverse impact on the Metrolink building or other nearby development within the locality.

**(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**

#### *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 28 October 2011, grants approval to a maximum height of the building to 36.5 metres AHD. A condition is proposed on the consent, specifying this height restriction.

#### *Ausgrid (formerly Energy Australia)*

Correspondence was received from Ausgrid dated 7 September 2011, and raises no objection to the proposed development, subject to a condition requiring an electricity substation within the premises. This will be required as a condition of consent.

#### *Roads & Maritime Service*

Correspondence received was from Roads & Maritime Service dated 27 September 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 10 November 2011, raised no objection to the proposed development, subject to recommendations, which will be required as conditions of consent.

#### *RailCorp*

Correspondence was received from RailCorp dated 17 November 2011, which raises no objection to the proposed development, subject to a 'Deferred Commencement' consent being granted detailing the Authorities conditions to be met.

#### *State Transit Authority*

Correspondence was received from STA on the 18 November 2011, advising that they have no objection to the proposal.

## 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

### Independent Contamination Consultant Review

Council has engaged its own Independent Consultant to review these reports in relation to contamination. In a letter dated 30 November 2011, the Independent Consultant has advised Council that the soil contains lead in excess of acceptable levels for low density residential and PCB levels in excess of acceptable levels for low density residential and open space land use. The Consultant recommends that conditions be imposed on any consent granted requiring a Phase 2 Detailed Site Investigation and if required a Stage 3 Remediation Action Plan prior to the issue of the Construction Certificate. Further, it is recommended that Council impose a condition requiring a Site Audit Statement be furnished to Council upon completion of any required remediation works, prior to the issue of the Occupation Certificate, which states that the site is suitable for the intended future use.

### Design Review Panel (DRP)

The design concept now forming part of this development application currently before the Panel was referred to the DRP, which met on 7 July 2011. The DRP made the following recommendations:

*The Panel generally supports the Pre-DA subject to the suggested modifications being incorporated in an amended design prior to the submission of a DA.*

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

	Issue	Response
1	Lower the eastern wing by 3 storeys and increase the western wing by 2 storeys to improve the massing relationship between the existing building on site and provide a roof top green communal open space area to the eastern wing.	The current design has not incorporated this recommendation. Both wings remain at seven (7) storeys each. The massing proposed is considered acceptable given that the building has no adverse overshadowing impact on the nearby and adjoining buildings. The design incorporates open space areas at grade and a café fronting Bourke Road to increase surveillance. Façade treatments assist in defining the separate uses of the building.
2	The main pedestrian entry could be provided with an integrated entry structure/canopy projecting towards Bourke Road to improve legibility and presentation.	The pedestrian entry to Bourke Road remains unaltered. This is not the main entrance to the serviced apartment complex, only access to the café. This entrance area incorporates a 1:14 disabled access ramp along the northern elevation of the building to gain access to the main entry. A stairwell to the café alfresco area at podium level above Bourke Road provides

	Issue	Response
		street access and contributes to the streetscape amenity being located within a strong landscape setting.
3	Ensure an effective foliage screen to the car park vents facing Bourke Road.	Additional canopy tree planting to assist in screening the Bourke Road frontage will be imposed as a condition on any consent. The submitted landscape plan incorporates screen shrubs to the basement protrusion along Bourke Road.
4	The heavy horizontal façade elements (including at the first floor and roof levels) need to be finer to give a visually lighter experience.	There are still a number of horizontal elements present in the design of the Bourke Road elevation. This could be further reduced by replacing the proposed horizontal sun shade devices as fixed vertical shades
5	The roof could be expressed as a light horizontal plane to provide a better 'top' to the building.	The face of the building is lightly staggered and therefore a uniform horizontal plane to the roof would be difficult to achieve.
6	Solar protection is required to the glazing facing east and west.	Horizontal sun shade devices are proposed to the eastern, northern and western elevation.
7	<p>Landscape areas to incorporate:</p> <ul style="list-style-type: none"> <li>▪ the retention of the existing fig trees to the east and south of the proposed building</li> <li>▪ allowance for deep soil pockets at the perimeter of the car park footprint especially near the entry/drop off zone.</li> <li>▪ provision of large canopy street tree plantings.</li> <li>▪ high quality hard and soft treatment to the drop off zone</li> </ul>	<p>One further tree has now been retained, a total of eleven (11) existing fig trees are proposed to be removed.</p> <p>The basement car park outline extends beyond this point, therefore no deep soil planting area could be accommodated near the drop off zone.</p> <p>Conditions will be imposed requiring additional canopy plantings</p> <p>A combination of soft and hard treatments are proposed to the drop off zone.</p>
8	<p>Amenity – further consideration of:</p> <ul style="list-style-type: none"> <li>▪ natural ventilation to the apartments via operable windows and external doors,</li> <li>▪ roof lights to provide natural light and ventilation to the internal bathrooms and kitchens on the top floor.</li> </ul>	<p>Apartments are provided with operable windows and balconies to all apartments except the studios, which are inter-connected.</p> <p>Roof lights or skylights to Level 6 are not indicated on the submitted architectural plans.</p>
9	High quality and preferably low maintenance external materials are suggested to suit the location and existing development. Ribbed	Pre-cast concrete panel with painted finish, glass balustrades to balconies, stone finish to the ground floor podium.

	Issue	Response
	concrete (to the north, east and south elevation) may not be suitable for this locality.	
10	Ensure that all detailing of building elements, services and attachments are integrated with the overall design of the facades and that composition of building elements, textures, materials and colours suit the existing building and the context.	All detailing, architectural elements, services and attachments are integrated into the overall design of the facades.

**Table 8 – Design Review Panel comments**

It is considered that the Applicant has addressed the concerns of the Design Review Panel in the design currently before the Panel. The current design will contribute to the commercial amenity of the precinct.

#### 7.4 Section 94 Contributions

It is considered that the proposed development will increase the demand for public amenities within the area, and in accordance with Council's Section 94 Contributions Plan 2005-2010, it is recommended that the consent be conditioned to require payment of a sum in the amount of **\$99,044.96** to paid prior to the issue of a Construction Certificate towards the provision and/or improvement of human services in the local government area. The contribution consists of the following;

(i)	Community Facilities	\$5,180.00
(ii)	Open Space & Recreation	\$34,900.00
(iii)	Administration	\$840.00
(iv)	Shopping Centre Improvements	\$3,760.00
(v)	Transport Management	\$54,363.96

## 8 **Conclusion**

Development Application No. 11/160 in its current form, which has changed, seeks consent for the construction of a seven (7) storey building containing:

- 151 serviced apartments;
- ground floor café/bar and function facilities;
- building identification sign and directional signage;
- provision of 68 car parking spaces comprising 62 at basement level and 6 spaces at grade and removal of trees;

Other Works to include:

- associated access and landscaping, including the relocation of the existing sculpture;
- dedication of land to Council along the Bourke Road frontage for a bus lay-by together with the construction of a bus lay-by and associated bus shelter;
- use of the building as a serviced apartment complex.



The Joint Regional Planning Panel, Sydney East Region (JRPP) is the consent authority for the development application. A total of two (2) 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. It is the opinion of the Council as the planning body that the current design has addressed the concerns of the submissions and on this basis the proposed development in its current form is supported, subject to further required amendments.

The application has been assessed in accordance with Section 79C of the *Environmental Planning and Assessment Act 1979* and the *Botany Local Environmental Plan 1995* and it is recommended to the Panel that the application be granted “deferred commencement” consent, subject to the Applicant meeting the requirements of RailCorp, the Applicant satisfying, Council and the State Transit Authority that the design of the bus lay by is feasible and submitting a Plan of Management incorporating a Workplace Travel Plan to Council.

### **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 12(3) of Botany Local Environmental Plan 1995 relating to maximum floor space ratio of 2:46:1 applied under this clause on the basis that:
  - i. Clause 12(3) 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 Application No. 11/160 a “Deferred Commencement” consent for:
  - Construction of a seven (7) storey building containing:
    - 151 serviced apartments;
    - ground floor café/bar and function facilities;
    - building identification sign and directional signage;
    - provision of 68 car parking spaces comprising 62 at basement level and 6 spaces at grade and removal of trees;
  - Other Works to include:
    - associated access and landscaping, including the relocation of the existing sculpture;
    - dedication of land to Council along the Bourke Road frontage for a bus lay-by together with the construction of a bus lay-by and associated bus shelter;
    - use of the building as a serviced apartment complex.
- (c) 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 Applicant shall prepare and provide to RailCorp for approval/certification the following items:

- (a) A final Geotechnical and Structural report that meets RailCorp's requirements as detailed in RailCorp's "Standard Brief".
- (b) Construction methodology with details pertaining to structural support during excavation;
- (c) Final cross sectional drawings showing ground surface, rail tracks, sub soil profile, proposed basement excavation and structural design of sub ground support adjacent to the Rail Corridor;
- (d) And if deemed necessary by RailCorp following the review of the above matters, the following:
  - (i) Track monitoring requirements (including instrumentation and the monitoring regime) during excavation and construction phases.
  - (ii) A rail safety plan; and
  - (iii) Any other matter in order to protect the rail corridor.

DC2 Concept plans and details to show the proposed indented bus bay on Bourke Road shall be submitted to State Transit Authority (STA), Road and Maritime Services (RMS) and Council for "in principle" approval to ensure the proposed indented bus bay is feasible. The concept plans shall be prepared by qualified and experienced road design engineer and in accordance with Ausroads and RMS's requirements. The plans shall also include the following details:

- (a) Layout of the bus bay;
- (b) Width of the bus bay and footpath;
- (c) Length of the bus bay;
- (d) Pedestrian access details;
- (e) Bus stop and bus shelter details;
- (f) Swept path diagrams showing the turning movements of the bus into and exit the indented bus bay; and
- (g) Extent of land dedication.

DC3 A Plan of Management is to be submitted to Council for approval demonstrating the co-ordination and management of guests to and from the site, the operation of the service apartment complex and conference facilities. The Plan of Management is to incorporate a shuttle bus service to operate in conjunction with the operating hours of Sydney Airport, seven (7) days per week. The conference facility must only accommodate up to one –hundred and

nineteen (119) guests. The following required Travel Access Guide must be incorporated into the Plan of Management:

- (a) A Workplace Travel Plan shall be developed, and submitted to Council in order to encourage staff to make good use of public transport, cycling, walking and car sharing for commuting work related journeys and reduce car based travel demand by staff. The plan shall generally include but not limited to the following:
  - (i) Prepare Transport Access Guides (TAGs) for staff and residents about information on how to reach the site via public transport, walking or cycling;
  - (ii) Encourage staff to cycle and/or walk to the workplace;
  - (iii) Encourage staff to use public transport to travel to workplace by providing financial incentive;
  - (iv) Adopt car sharing and /or car pool scheme;
  - (v) Provide priority parking for staff with car pool;
  - (vi) Establish measurable targets on the number of staff travel to work by public transport, cycling and walking.
- (d) That the deferred commencement consent be limited to a period of 12 months;
- (e) Note that once the “deferred commencement” conditions are satisfied, that certain draft conditions may need to change when the amended drawings required by the “deferred commencement” conditions are submitted.

**Premises: 15 Bourke Road, Mascot**

**DA No: 11/160**

### **DRAFT SCHEDULE OF CONSENT CONDITIONS**

#### **GENERAL CONDITIONS**

- 1 The development is to be carried in accordance with the following plans and reference 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 and Drawing No.: DA01 Location Plan (Issue B) DA02 Site Analysis (Issue B) DA03 Site Plan (Issue B) Dec 2011 DA04 3D Precinct Plan (Issue B) DA05 Basement Plan (Issue B) Dec 2011	Reid Campbell	19 August 2011

<b>Drawing No.</b>	<b>Author</b>	<b>Dated Received by Council</b>
DA06 Ground Floor Plan (Issue B) Dec 2011 DA07 Level 1 Plan (Issue B) DA08 Levels 2-5 Plan (Issue B) DA09 Level 6 Plan (Issue B) DA10 Roof Plan (Issue B) DA11 Section A (Issue B) DA12 Section B (Issue B) DA13 Perspective View 1 (Issue B) DA14 Perspective View 2 (Issue B) DA15 Streetscape View 1 (Issue B) DA16 Streetscape View 2 (Issue B) DA17 Elevations 1 & 2 (Issue B) DA18 Elevation 3 (Issue B) DA19 Elevations 4 & 5 (Issue B) DA20 Elevations 6 & 7 (Issue B) DA21 Streetscape Elevation (Issue B) DA22 Shadow Diagrams June 22 (Issue B) DA23 Shadow Diagrams Sept 22 (Issue B) DA24 Signage Details (Issue B) Winter Solstice Shadow Diagram 3pm - 1 Dec 2011 Winter Solstice Shadow Diagram – 9am 1 Dec 2011		
Amended Landscape Plan	Scott Carver	19 December 2011
Stormwater Drainage Plans, Drawing Nos.: H-000, Issue 03, dated 6 Dec 2011 H-001, Issue 03, dated 18 Nov 2011 H-004, Issue 01, dated 6 Dec 2011 H-005, Issue 01, dated 6 Dec 2011 H-100, Issue 02, dated 31 Oct 2011 H-101, Issue 05, dated 15 Dec 2011 H-102, Issue 03, dated 7 Dec 2011	SPP Group Pty Ltd	

<b>Drawing No.</b>	<b>Author</b>	<b>Dated Received by Council</b>
H-103, Issue 02, dated 31 Oct 2011 H-104, Issue 03, dated 31 Oct 2011 H-105, Issue 02, dated 31 Oct 2011 H-106, Issue 02, dated 31 Oct 2011 H-300, Issue 03, dated 31 Oct 2011 H-401, Issue 01, dated 31 Oct 2011		

<b>Document(s)</b>	<b>Author</b>	<b>Date received by Council</b>
Statement of Environmental Effects	JBA Planning Pty Ltd	19 August 2011
Architectural Design Statement	Reid Campbell (NSW) Pty Ltd	19 August 2011
SEPP 1 Objection	JBA Planning Pty Ltd	19 August 2011
Waste Management Plan	Capital Corporation	19 August 2011
Accessibility Report	Accessibility Solutions Pty Ltd	19 August 2011
Acoustic Assessment Report	Acoustic Logic Consultancy Pty Ltd	19 August 2011
National Construction Code Assessment	Dix Gardener Pty Ltd	19 August 2011
Traffic Impact Assessment	Traffix	19 August 2011
Amended Traffic Statement in response to Council Issues	Traffix	19 December 2011
Amended Preliminary Waste Classification & Acid Sulphate Soils Assessment	Douglas Partners Pty Ltd	23 September 2011
Report on Geotechnical Investigation	Douglas Partners Pty Ltd	23 September 2011
Arboricultural Impact Statement	Urban Tree Management	19 August 2011
Arborists comments in response to Council Issues	Urban Tree Management	19 December 2011
View Analysis Perspectives	Capital Corporation	19 December 2011
Hydraulic Services D & C Technical Specification	SPP Group Pty Ltd	19 December 2011

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

- 2 The applicant must prior to the release of the stamped plans, pay the following fees:
  - (a) Builders Security Deposit \$25,000.00;
  - (b) Development Control \$2,310.00;
  - (c) Engineering Plan Checking Fee \$1,000.00;
  - (d) Section 94 Contribution \$99,044.96.
  - (e) Note: The Section 94 Contribution is to be paid prior to the issue of the Occupation Certificate.
- 3 Section 94 Contributions are required to be paid in accordance with Condition 2(d) above, The City of Botany Bay being satisfied that the proposed development will increase demand for services and facilities within the area, and in accordance with Council's Section 94 Contribution Plans 2005-2010 a sum of \$99,044.97 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 13 DP 853792 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) The applicant shall, at no costs or expense to Council, dedicate the portion of land to Council for the purpose of road widening to construct the indented bus bay as well as repositioning the existing bus shelter on Bourke Road. The area of land to be dedicated is subject to the final design of the indented bus bay on Bourke Road. The Plan of Dedication shall be lodged with Council prior to the issue of the Construction Certificate and registered with the NSW Land and Property Information prior to the issue of the Occupation Certificate. A copy of the registered document shall be submitted to Council for record purposes;
  - (b) The substations approved by this consent within the Bourke Road landscape setback shall not encroach onto that land required to be dedicated to Council and must remain wholly on the subject allotment.
- 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.

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- (a) All building work must be carried out in accordance with the provisions of the Building Code of Australia; and
- (b)
  - (i) The basement car park must be designed and built as a “fully tanked” structure; and
  - (ii) The limitations of the BCA Performance Provision FP1.5 do not apply to the Class 7 part of the building.

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

- 8 The following conditions are imposed by the NSW Roads and Maritime Services (RMS).
  - (a) It is recommended that the State Transit Authority (STA) be consulted for the proposed bus bay in Bourke Road. With regards the bus bay requirements please contact Brian Mander from the STA on 02 9245 5750;
    - (i) Subject to satisfactory consultation with STA, the bus bay shall be design and constructed in accordance with Austroads and the RMS’s supplements;
  - (b) The proposed bus bay in Bourke Road shall be designed to meet RMS’s requirements, and endorsed by a suitably qualified practitioner. The design requirements shall be in accordance with Austroads and the RMS’s supplements. The certified copies of the civil design plans shall be submitted to the RMS for consideration and approval prior to the release of the Construction Certificate by Council and commencement of roadworks;
    - (i) The fees for administration, plan checking, civil works inspections and project management shall be paid by the developer prior to the commencement of works;
    - (ii) The developer may be required to enter into a Works Authorisation Deed (WAD) for the abovementioned works. Please note that the Works Authorisation Deed (WAD) will need to be executed prior to the RMS’s assessment of the detailed civil design plans;
  - (c) The layout of the proposed car parking areas associated with the subject development (including driveways, gardens, turn paths, sight distance

requirements, aisle widths, aisle lengths and parking bay dimension) should be in accordance with AS 2890.1-2004 and AS 2890.2-2002 for heavy vehicle usage;

- (d) Disabled car parking spaces are to conform to Australian Standards AS 2890.6-2009;
- (e) The swept path of the longest vehicle entering and exiting the subject site, as well as manoeuvrability through the site, shall be in accordance with AUSTROADS;
- (f) Vehicles larger than 8.8 metres in length are prohibited from entering the subject site;
- (g) A Construction Traffic Management Plan detailing construction vehicle routes, number of trucks, hours of operation, access arrangements and traffic control should be submitted to Council prior to the issue of the Construction Certificate;
- (h) Detailed design plans and hydraulic calculations of any changes to the stormwater drainage system are to be submitted to the RMS for approval, prior to the commencement of any works.
  - (i) Details shall be forwarded to:  
The Sydney Asset Management  
Roads and Maritime Services  
PO Box 973 Parramatta CBD 2124
- (i) The developer is to submit detailed design drawings and geotechnical reports relating to the excavation of the site and support structures to the RMS for assessment. The developer is to meet the full cost of the assessment by the RMS;  
The report would need to address the following key issues:
  - (i) The impact of the excavation/rock anchors on the stability of Bourke Road and detailing how the carriageway would be monitored for settlement.
  - (ii) The impact of the excavation on the structural stability of Bourke Road.
  - (iii) The report and any enquiries should be forwarded to:  
Project Engineer, External Works  
Sydney Asset Management  
Roads and Maritime Services  
PO Box 973 Parramatta CBD 2124
- (j) 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;



- (k) 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;
- (l) All vehicles are to enter and exit the site in a forward direction;
- (m) The proposed development should be designed such that the road traffic noise from Bourke Road is mitigated by durable materials, in accordance with EPA criteria for new land use developments (The Environmental Criteria for Road Traffic Noise, May 1999). The RMS's Environmental Noise Management Manual provides practical advice in selecting noise mitigation measures;
- (n) All traffic control during construction must be carried out by accredited RMS approved traffic controllers;
- (o) A Road Occupancy Licence should be obtained from the RMS for any works that may impact on traffic flows on Bourke Road during construction activities;
- (p) All works/regulatory signposting associated with the proposed development are to be at no cost the RMS.

9 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) As a number of business premises have had telephone lines cut to prevent alarms being reported to the security monitoring company, a supplementary system such as Global Satellite Mobile (GSM) or Radio Frequency (RF) should be used to transmit alarm signal by either mobile telephone or radio frequency;
- (h) 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*;
- (i) Any proposed landscaping and vegetation should adhere to the following principles: Shrubs, bushes, plants should remain under 900mm in height, and branches of large trees should start at a height of two (2) metres and higher. This will assist with natural surveillance and reduce hiding spots and dark areas for potential offenders.
- (j) By angling fire egress inlet walls 45 degrees or more, opportunities for entrapment, loitering and vandalism can be reduced.
- (k) Any proposed seating area, playground or grass area should be positioned somewhere which can be viewed easily by the community. Consider whether the area will be used enough to warrant its development. Areas which are isolated, unused and maintained poorly become a breeding ground for anti social behaviour.
- (l) 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 (can't see outside). Mirroring can be reduced by using appropriate external lighting;
- (m) 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;
- (n) Public laundries, garbage disposal areas and other communal spaces should not be located in a building's '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;
- (o) Uneven building alignments, inset doorways and hidden entrances should be avoided. They can facilitate predatory crimes, theft, malicious damage and other crimes;
- (p) 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;

- (q) 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;
- (r) Lighting sources should be compatible with and not interfere with the requirements of any surveillance system at the premises;
- (s) 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;
- (t) 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;
- (u) Improved lighting needs to extend from the development towards adjacent streets. 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.
- (v) 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.
- (w) 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;
- (x) 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.
- (y) 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.
- (z) Signage needs to be provided at fire exits to assist occupants to identify exits in emergency situations.
- (aa) Signage needs to be provided to assist occupants to identify fire suppression equipment, eg extinguishers, fire hoses etc.

- (bb) A graffiti management plan needs to be incorporated into the maintenance plan for the development. Research has shown that the most effective strategy for reducing graffiti attacks is the quick removal of such material generally within **24 hours**.
- (cc) **Graffiti resistant materials** and anti-graffiti coating should be utilised throughout the development.
- (dd) 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://vwww.emergency.nsw.gov.au> or Emergency Management Australia <http://www.ema.gov.au>.
- (ee) It is not advised to install storage cages or similar for the residents in the underground car park. If it is required, consider that they should NOT be constructed in an isolated area. The cages are easy targets when they have little supervision. CCTV cameras must cover this area if they are constructed. Suitable fencing and quality locks should be used to prevent access.
- (ff) The door and door frames to these premises should be of solid construction.
- (gg) 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.
- (hh) 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.
- (ii) Any sliding doors should be fitted with lockable bolts in the bottom and top of the door frame.
- (jj) The windows and window-frames to these premises should be of solid construction. These windows should be fitted with locks with comply with the **Australian Standard – Mechanical Locksets for windows in buildings**,

**AS:4145**<http://www.standards.org.au> to restrict unauthorised access. 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 windows, such a wooden, glass or metal hinged swinging windows or sliding windows in residential and business premises, including public buildings, warehouses and factories. 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. (e.g. locking bars, electronic locking devices, detection devices, alarms).

- (kk) 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.
- (ll) 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.
- (mm) Entrance doors to commercial premises 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.
- (nn) As your business deals in cash a **robbery prevention program** needs to be established to ensure that management and staff are aware of their responsibilities in the event of such an event taking place. Establish clear cash-handling procedures within your business to reduce opportunities for crime. Staff should be trained in cash handling procedures to reduce opportunities for crime. Limit the amount of money carried in the cash drawer at any time (\$200.00 float). Lock cash drawers when not in use and clear money from the cash drawer on a regular basis, e.g. to a safe. Avoid counting cash in view of public. Use a minimum of two staff, or security services, when transferring money to financial institutions, or consider using a reputable security company especially when transferring large amounts of money. Avoid wearing uniform or identification when transferring money. Don't use conspicuous bank-bags when transferring money, as this can be a clear indication to the thief.

- 10 The following conditions are imposed by the Sydney Airport Corporation Limited (SACL) and must be complied with:
- (a) The PROPERTY DEVELOPMENT at 15 BOURKE 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 proposed structure to a maximum height of 36.5 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 height, a new application must be submitted. 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) For further information on Height Restrictions please contact Ms Lynne Barrington on 02 9667 9217.
- (g) Under Section 186 of the Airports Act 1996, it is an offence not to give information to the Airport Operator that is relevant to a proposed “controlled activity” and is punishable by a fine of up to 50 penalty point.
- (h) The height of the prescribed airspace at the site is 51.0 metres above Australian Height Datum (AHD). In accordance with Regulation 9 of the Airports (Protection of Airspace) regulations Statutory Rules 1996 No 293, “a thing to be erected in erecting the building, structure or thing would, during the erection of the building, structure or thing, protrude into PANS OPS airspace for the Airport, cannot be approved.

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

- 11 Prior to the issue of the Construction Certificate, a Detailed Stage 2 Site Investigation shall be completed for areas of contaminated soil on site in accordance with the Contaminated Land Management Act 1997 and SEPP55. Following completion of the

Stage 2 Detailed Site Investigation, if required a Remedial Action Plan (RAP) shall be prepared and remediation of the site shall be carried out.

- 12 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.
- 13 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.
- 14 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.
- 15
  - (a) Prior to the issue of the Construction Certificate, the measures required in the Noise Impact Assessment Report prepared by Acoustic Logic Consultancy Pty Ltd dated 28 June 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;
    - (i) The work detailed in the report includes:
      - (i) Appropriate acoustic glazing to stated windows and doors, including all required acoustic seals – glazing must be of the thickness exactly specified in the report;
      - (ii) The proposed concrete wall and roof construction as proposed;
      - (iii) Mechanical ventilation as stated in the report.
  - (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, a detailed acoustical assessment of mechanical noise emissions shall be submitted Council indicating that any mechanical plant is not to exceed a noise emission level of background plus 5dB(A) Laeq, being 54 dB(A) Laeq between the evening

period of 10:00pm one day to 7:00am the following day, when measured at the boundary.

- 16 Prior to issue of the Construction Certificate, a Dilapidation Report of the immediate adjoining properties and public infrastructure (including Council and public utility infrastructure) shall be prepared by a suitably qualified person and submitted to Council. The report shall include records and photographs of the following area that will be impacted by the development;
- (a) Bourke Road;
  - (b) All buildings and structures immediately adjoining the site, including the basement area;
  - (c) Airport Link infrastructure; and
  - (d) The applicant shall bear the cost of all restoration works to buildings/structures and public infrastructure that been damaged during the course the demolition, site clearing and site remediation works. Any damage to buildings/structures, infrastructures, roads, lawns, trees, gardens and the like shall be fully rectified by the applicant/developer, at the applicant/developer's expense.
- 17 Prior to the issue of the Construction Certificate, detailed engineering construction plans of the proposed indented bus bay and associated works on Bourke Road shall be submitted to State Transit Authority (STA), Road and Maritime Services (RMS) and Council for approval. All costs associated with the design and construction of the indented bus bay and associated works shall be borne by the applicant.
- The construction plans shall include the following details:
- (a) Cross-section details of the indented bus bay;  
(The cross-section details shall be at minimum every 5m interval between the centreline of the road to the new kerb and gutter of the bus bay.)
  - (b) Longitudinal section profiles of the new kerb and gutter and/or dish drain;
  - (c) Construction details of kerb and gutter;
  - (d) Construction details of footpath (Refer to Council's landscape architect for design details);
  - (e) Road pavement construction details based upon soil tests performed by a registered N.A.T.A Soils Laboratory and to the relevant traffic loading criteria stated by RMS;
  - (f) Construction details of stormwater kerb inlet pit on Bourke Road if reconstruction of kerb inlet pit is required;  
(Refer to Council's standard drawing numbered E-09, Rev 2, dated Nov 2008. Minimum 3.6m lintel is required)
  - (g) Landscaping details on road reserve;  
(Refer to Council's landscape architect for details)



- (h) Any relocation of any Public Utility service, including street lighting if required;

All the above works shall be designed and prepared by suitably qualified civil engineers and landscape architects with relevant qualification in civil engineering and landscaping respectively. Documentary evidence showing approval of the drawings shall be obtained from Council and submitted to the Principal Certifying Authority. Concurrence approval shall also be obtained from NSW Road and Maritime Services (RMS) for the design of the proposed indented bus bay on Bourke Road.

- 18 Prior to the issue of the Construction Certificate, detailed construction plans in relation to the stormwater management and disposal system for the development shall be submitted to the Principal Certifying Authority for approval. The detailed Stormwater Management Plan shall be generally in accordance with:

- (a) Hydraulic Service Stormwater and Rainwater Report for commercial development at 15 Bourke Road, Mascot, prepared by SPP Group Pty Ltd, Rev C, dated 15 Dec 2011;
- (b) Hydraulic Service D & C Technical Specification at 15 Bourke Road, Mascot, prepared by SPP Group Pty Ltd, Rev D, dated 6 Dec 2011;
- (c) Following Stormwater drainage plans, prepared by SPP Group Pty Ltd, Job No. SY110015;
  - (i) Drawing No. H-000, Issue 03, dated 6 Dec 2011;
  - (ii) Drawing No. H-001, Issue 03, dated 18 Nov 2011;
  - (iii) Drawing No. H-004, Issue 01, dated 6 Dec 2011;
  - (iv) Drawing No. H-005, Issue 01, dated 6 Dec 2011;
  - (v) Drawing No. H-100, Issue 02, dated 31 Oct 2011;
  - (vi) Drawing No. H-101, Issue 05, dated 15 Dec 2011;
  - (vii) Drawing No. H-102, Issue 03, dated 7 Dec 2011;
  - (viii) Drawing No. H-103, Issue 02, dated 31 Oct 2011;
  - (ix) Drawing No. H-104, Issue 03, dated 31 Oct 2011;
  - (x) Drawing No. H-105, Issue 02, dated 31 Oct 2011;
  - (xi) Drawing No. H-106, Issue 02, dated 31 Oct 2011;
  - (xii) Drawing No. H-300, Issue 03, dated 31 Oct 2011 and;
  - (xiii) Drawing No. H-401, Issue 01, dated 31 Oct 2011;
- (d) In addition, the following issues shall be complied with:
  - (i) The top of weir from the rainwater component to the OSD absorption component of the tank shall be raised to ensure it is minimum 100mm above the surface level of the access grate of the tank to prevent water backflow into the rainwater component of the tank if the outlet pipe is blocked;
  - (ii) Structural details of the rainwater re-use and OSD absorption tank, together with design certification, shall be prepared by a qualified

structural engineer and submitted to the Principal Certifying Authority;

- (iii) Certification from a qualified structural engineer to ensure the construction of rainwater re-use and OSD absorption tank will not affect the structures on the adjacent lot;
- (iv) A grated boundary pit (minimum 600mm x 600mm) shall be provided to the stormwater drainage system prior to discharging stormwater into the existing Council's kerb inlet pit on Bourke Road;
- (v) All stormwater runoff from the site shall pass through a pollution control device (eg. Gross Pollutant Trap(s)) capable of removing litter and sediment prior to entering the public stormwater system. Details of the pollution control device shall be shown on the plans;
- (vi) For any underground structure that is below the ground water level, the structure shall be tanked and no sub-soil drainage system shall be provided. This is to ensure there is no intrusion of waters into the structure; and
- (vii) In order to ensure that existing trees adjacent to the southern boundary of the site are retained, the dimensions of the OSD tank shall be revised accordingly. Council's Landscape Architect shall be consulted in relation to the final location of the OSD system.

The detailed drawings and specifications shall be prepared by a suitably qualified and experienced civil engineer and to be in accordance with Council's 'Guidelines for the Design of Stormwater Drainage Systems within City of Botany Bay', AS/NZS 3500 and BCA requirements.

Concurrence approval shall also be obtained from NSW Road and Maritime Services (RMS) for the design of the stormwater drainage system.

- 19 Prior to the issue of the Construction Certificate, swept paths of the proposed largest vehicle accessing the site (7.6m truck, with height of 2.9 metres) shall be shown on the construction plans to demonstrate the existing and proposed driveway, turning area and loading dock of the development can accommodate the turning movements of this vehicle. The swept paths shall be certified by a qualified civil engineer and submitted to Principal Certifying Authority for approval.
- 20 Prior to the issue of the Construction Certificate, the construction plans shall show the following details:
  - (a) Dimension of parking bays;
  - (b) Width of driveways, ramps, aisles and turning area;
  - (c) Gradient of the access ramps and car parking area; and
  - (d) Dimension of the loading dock to accommodate the proposed largest vehicle accessing the site (7.6m truck, with height of 2.9 metres).

- 21 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.
- 22 A detailed Construction Traffic Management Plan for the pedestrian and traffic management of the site during construction shall be prepared and submitted to Principal Certifying Authority, Roads and Maritime Service (RMS) and Council for approval, prior to the issue of the Construction Certificate. The plan shall:
- (a) be prepared by an accredited qualified person;
  - (b) nominate a contact person who is to have authority without reference to other persons to comply with instructions issued by Council's Traffic Engineer or the Police;
  - (c) indicate;
    - (i) construction vehicle access points of the site;
    - (ii) the largest construction vehicle accessing the site;
    - (iii) the construction vehicles access routes from and to the site and;
    - (iv) frequency of construction vehicles movements;
  - (d) ensure no construction vehicles to travel on local streets;
  - (e) ensure the internal access road to the adjacent buildings and pedestrian and vehicular access fronting Bourke Road to be maintained at all times. No closure of any road reserve will be permitted without Council's approval.
- 23 Detailed Construction Management Plan (CMP) shall be submitted to Principal Certifying Authority, Roads and Maritime Service (RMS) and Council for approval, prior to the issue of the Construction Certificate. The CMP shall address the following:
- (a) All vehicles (including worker's vehicles) associated with construction activities shall enter and leave the site in a forward direction and park only within the site;
  - (b) Construction building materials shall be stored wholly within the site;
  - (c) Vehicle and pedestrian access on Bourke Road shall be kept clear at all times;
  - (d) Locations of site office, accommodation and the storage of major materials related to the project shall be within the site;
  - (e) Protection of adjoining properties, pedestrians, vehicles and public assets shall be implemented at all times;
  - (f) Location and extent of proposed builder's hoarding and Work Zones, if there is any, shall be shown on the plan;
  - (g) Tree protection management measures for all protected and retained trees shall be implemented at all times.

- 24     Prior to the issue of the Construction Certificate, the landscape areas shown on the plan by *Scott Carver, Revision E*, shall be the subject of amended landscape construction documentation to be submitted to and approved by City of Botany Bay's Landscape Architect. The amended plan shall incorporate the following:
- (a)     All existing mature Hills Figs along the southern boundary (Tree Nos. 14, 15, 16, 17, 18 19, 20 and 21 are to be retained on site. The design of the proposed underground on site detention (OSD) tank is to be amended to reconfigure its dimensions to increase the setback to the existing mature fig trees along the southern boundary, which are all required to be retained in-situ;
  - (b)     Tree No 13 is to be retained in situ with further modification of the building stairwell and ramp on the northern façade. Tree Nos. 7 and 10 located over the proposed underground car parking structure are to be relocated to the large podium planter bed north of the drop off zone (provided soil depths are increased), or in the area behind the relocated bus shelter, or alternatively to a select public place within the Council's local government area and at the Applicants expense; and
  - (c)     The deep soil setback to Bourke Road shall include five (5) super advanced, taller canopy trees to replace some of the *Harpullia* to soften the corners and edges of the building. The species selected should have a relatively "light" canopy commencing at a suitable height above ground and podium level to facilitate street surveillance;
  - (d)     Provide a raised planter box on the western podium edge of the proposed outdoor cafe seating area as an extension to the planter provided outside the conference rooms. Low hedge type planting is preferred;
  - (e)     A larger podium planter bed located behind the building and adjoining the drop off zone shall be increased to 1 metre in height/depth above grade to accommodate the planting of small-medium height flowering canopy trees to soften the parking and vehicular area and subdue the building facade on its eastern and northern rear elevations. Suitable planting shall be indicated; and
  - (f)     Landscaping shall be installed in accordance with this approved amended landscape plan only, prior to the issue of an Occupation Certificate. This amended plan will supersede landscape plan Revision E. 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.
- 25     The Council footpath area in Bourke Road shall be upgraded with new segmental paving (to kerb edge and around relocated bus shelter), street furniture and street tree planting, installed by the Applicant at the Applicant's expense. A separate Construction Certificate shall be submitted to and approved by Council for all work occurring within the public domain and shall include a detailed landscape construction and civil works plan for all works occurring in the public domain. The plans shall incorporate Council Landscaping and Engineering specifications and requirements. Construction shall be undertaken in accordance with Council approved plans only constructed prior to the issue of an Occupation Certificate.

- 26 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 Ausgrid'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**

- 27 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.
    - (iii) 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.
- 28 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.
- 29
- (a) The applicant shall arrange with NSW Road and Maritime Services (RMS) for any required Road Occupancy Licence prior to commencement of any road works; and
  - (b) 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 Maritime Service (RMS).
- 30 Prior to commencement of works, the developer must submit to the Principal Certifying Authority an acoustic report covering the potential noise impacts from 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.

31 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)).

32 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.
- 33 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.
- 34 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.

- 35 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.

## **DURING WORKS**

- 36 In order to ensure that existing Hills Weeping Figs, numbered 14, 15, 16, 17, 18 19, 20 and 21 are protected during construction, and their health and structural stability ensured, the following is required:

- (a) Engage the Consultant Arborist UTM Australia Pty Ltd for all tree protection works, including tree root and canopy pruning for the duration of the construction period (Construction Certificate to Occupation Certificate) and for a minimum period of 12 months post-construction for monitoring of tree condition and application of fertilizer etc;
- (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;
- (c) Prior to commencing any works on the site the trees are required to be physically protected by erecting fencing strictly in accordance with the consulting Arborists recommendation 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 or similar to a depth of 100mm and a weekly deep watering program undertaken during construction as per Arborists' recommendations. The fence shall remain in place until all construction work is complete. 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 with strapping or wire (not nails);
- (d) Prior to the removal of approved trees and before any works commence on site (including demolition), the Applicant is required to obtain and inspection of the tree protection zones by the consulting Arborist;
- (e) All detailed Construction Certificate plans shall show all trees to be protected and the TPZ;
- (f) The TPZ and the Council nature strip are a No-Go zone. There shall be no construction work, no access, no concrete mixing, strictly no washing down of concrete mixers or tools, no chemicals mixed/disposed of, no excavation or filling, no change in levels and no stockpiling, storage or sorting of waste or building materials. Any unavoidable work within the TPZ shall be under the direction of the consulting Arborist. Where unavoidable foot access is required in the TPZ, provide temporary access with timber sheets to minimise soil compaction, spillage or root damage;



- (g) Excavation within the TPZ and in any area within or outside the tree canopy, as stipulated by the consulting Arborist, shall be carried out manually using hand tools to minimise root damage or disturbance. Excavation for the *OSD* shall be carried out manually, or with small machinery. Tree roots that require pruning shall be done only under the direction of the consulting Arborist after inspection;
  - (h) Ensure no damage to the tree trunk or canopy. There shall be no canopy pruning unless supported by the consulting Arborist. Pruning shall be undertaken by the consulting Arborist in accordance with AS 4373;
  - (i) There shall be no trenching, retaining walls or change of levels within the canopy drip line or primary root zone of any tree to be retained;
  - (j) All waste concrete and debris shall be removed from areas to be landscaped to a nominal depth of 200mm, not buried, to minimise soil contamination.
- 37 The Applicant shall implement tree maintenance/management and/or remedial pruning for trees 7, 10, 13 and 14-21, as stipulated and detailed by the Consultant Arborist in a Tree Management Plan, at the completion of construction and for a period of time post-construction as deemed necessary by the consulting Arborist.
- 38 The following shall be complied with at all times:
- (a) 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;
  - (b) Construction 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;
  - (c) Hosing down or hosing/washing out of any truck (concrete truck), plant (eg concrete pumps) or equipment (eg wheelbarrows) on Council's road reserve or other property is strictly prohibited. Fines and cleaning costs will apply to any breach of this condition;
  - (d) Pavement surfaces adjacent to the ingress and egress points are to be swept and kept clear of earth, mud and other materials at all times and in particular at the end of each working day or as directed by Council's Engineer; and
  - (e) Shaker pads shall 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.
- 39 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.

- 40 During excavation, construction and deliveries, access to the site shall be available in all weather conditions. The area shall be stabilised and protected from erosion to prevent any construction-related vehicles (including deliveries) tracking soil materials onto street drainage system/watercourse, Council's lands, public roads and road-related areas. Hosing down of vehicle tyres shall only be conducted in a suitable off-street area where wash waters do not enter the stormwater system or enter Council's land.
- 41 During construction, the applicant shall ensure that all works and measures have been implemented in accordance with following approved plans at all times:
- (a) Approved Erosion and Sediment Control Plan;
  - (b) Approved Construction Traffic Management Plan; and
  - (c) Approved Construction Management Plan.
- 42 All works carried out on the road reserve shall be inspected and approved by Roads and Maritime Service (RMS) and Council's Engineer. Documentary evidence of compliance 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 RMS and 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) Prior to installation of bus shelter;
  - (e) Final inspection;
- Council's Inspection fee will apply to each of the above set inspection key stages. Additional inspection fees may apply for any additional inspections undertaken by Council.
- 43
- (a) 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;
  - (b) If groundwater is encountered at any time during excavation or construction works, then the Applicant is to obtain a "Controlled Activity Approval" from the NSW Office of Water for de-watering from the site.
  - (c) 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; and

- (d) All vehicles transporting soil, sand or similar materials to or from the site shall cover their loads at all times.
- 44 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.
- 45 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.
- 46 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; and
- (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.

47

- (a) Existing structures and or services on this and adjoining properties are not endangered during any demolition excavation or construction work associated with the above project. The applicant is to provide details of any shoring, piling, or underpinning prior to the commencement of any work. The construction shall not undermine, endanger or destabilise any adjacent structures.
- (b) As the development involves an excavation that extends below the level of the base of the footings of a building 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.

48 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.

- 49 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.
- 50 The following shall be complied with during construction:
- (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 04:00pm;
    - (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.

- 51 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.
- 52 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.
- 53
- (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), prior to being disposed of to a NSW approved landfill or to a recipient site;
  - (c) Any material containing asbestos found on site during excavation shall be removed and disposed of in accordance with:
    - (i) Workcover NSW requirements. An appropriately licensed asbestos removalist must complete all asbestos works if they consist of the removal of more than 10sqm of bonded asbestos and/or any friable asbestos;
    - (ii) Protection of the Environment Operations Act 1997;
    - (iii) Protection of the Environment Operations (Waste) Regulation;
    - (iv) DECC Waste Classification Guidelines 2008.

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

- 54 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 Consultancy Pty Ltd, dated 28 June 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).

- 55 It is a condition of this approval that the applicant shall, at no costs or expense to Council, comply with the following:
- (a) Dedicate a 1 metre wide x 21.8 metre long strip of land from the subject site to Council for the provision of a bus bay in Bourke Road, as indicated in red on the approved Site Plan. The Plan of Dedication shall be lodged with Council prior to the issue of the Construction Certificate and registered with the NSW Land and Property Information prior to the issue of the Occupation Certificate. A copy of the registered document shall be submitted to Council for record purposes;
  - (b) Construct the required bus lay by on Bourke Road to Road and Maritime Services (RMS) and State Transit Authority (STA) requirements;
  - (c) Upgrade the public domain on Bourke Road by reconstruction/relocation of the existing bus shelter, road pavement, kerb and gutter, construction of a 1.2 metre wide footpath, 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; and
  - (d) 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.
- 56 The final development shall not result in the introduction of any new overhead power or telecommunications cables to the Bourke Road frontage or nature strip.
- 57 Prior to the issue of the Occupation Certificate, documentation from a suitably qualified engineer shall be submitted to the Principal Certifying Authority certifying that the loading dock, taxi zone, pick-up/drop-off zone, car parking areas (including queuing area, turning area and disabled parking area), driveways and vehicular access paths have 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.
- 58 Prior to the issue of the Occupation Certificate, minimum of **sixty-eight (68)** off-street car parking bays shall be provided to the development in accordance with the approved architectural plans. **Ten (10)** of these parking bays shall be allocated to staff and **one (1)** for the site manager.
- 59 Prior to the issue of the Occupation Certificate, impact resistant bollards shall be installed at the following location as shown on the architectural plans:

- (a) Footpath area fronting the loading dock to ensure the safety of pedestrian when service vehicle reversing into the loading area;
  - (b) Area adjacent to the entrance to basement car parking area to prevent right turning movements from the porte-cochere to the basement car parking area.
- 60 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.
- 61 Prior to the issue of the Occupation Certificate, maintenance schedule of the rainwater re-use and OSD/absorption system and pump-out system shall be prepared by a qualified engineer and submitted to Principal Certifying Authority. A copy of maintenance schedule shall also be submitted to Council for record purpose.
- 62 Prior to the issue of the Occupation Certificate a sign shall be erected within or adjacent to the garbage room encouraging residents to recycle and not place recyclables into waste bins. The sign shall be a minimum of A3. Details of an acceptable wording for the sign are available from Council's Internet site at <http://www.botanybay.nsw.gov.au>.
- 63 Prior to the issue of the Occupation Certificate the operator shall enter into a commercial contract for the collection of trade waste and recyclables arising from the premises. A copy of all contracts and receipts shall be kept on the premises and made available to Council Officers on request.
- 64
- (a) In order to ensure that the constructed rainwater re-use and OSD/absorption 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 system. 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 system, 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 the issue of the Occupation Certificate; and
  - (b) In order to ensure that the constructed 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 the issue of the Occupation Certificate.

- 65 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.
- 66 Prior to the issue of the Occupation Certificate, all civil works associated with the indented bus bay (including pavement reconstruction, kerb and guttering, footpath paving, street lighting, stormwater pit reconstruction, landscaping, line marking and signage) shall be completed to Roads and Maritime Services (RMS) and 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 Roads and Maritime Services (RMS) and Council;
  - (b) Inspection reports (formwork and final) for the works associated with the construction of indented bus bay obtained from RMS and Council;
  - (c) A copy of the approved engineering construction plans of the indented bus bay showing Work-as-Executed details (together with an electronic copy) prepared by a registered surveyor.
- 67 Prior to the issue of the 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.
- 68 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.
- 69 Any damage not shown in the photographic survey required in Condition No. 16 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.
- 70 Prior to the issue of the Occupation Certificate, three (3) street trees, to Council specification, min. height 2.4 metres and 200 litre, shall be installed in the Bourke Road verge by a qualified landscape contractor. Two trees shall be installed north of the bus lay-by area and 1 tree to the south. Trees shall be sourced from a reputable

supplier that grows to NATSPEC. A Dial-Before-You-Dig enquiry is essential prior to all street tree planting to ascertain the potential to plant trees in relation to services. The trees shall be planted in tree pits and finished with a permeable stabilized gravel surface to Council specifications. Council inspection and approval of new street tree plantings is required prior to the maintenance period commencing.

- 71 An experienced Landscape Contractor shall be engaged to undertake the landscaping and shall be provided with a copy of the approved landscape drawing and the conditions of approval to satisfactorily construct the landscape to Council requirements. The contractor shall be engaged weekly for a minimum period of 26 weeks from final completion of landscaping for maintenance and defects liability, replacing plants in the event of death, damage, theft or poor performance. After that time regular and ongoing maintenance is required.
- 72 Prior to the issue of the Occupation Certificate
- (a) Tree Nos. 7, 10 and 13 shall be relocated on site or alternatively elsewhere to a select public place within Council's local government area at the Applicants expense; and
  - (b) Tree Nos. 14, 15, 16, 17, 18, 19 and 20 located along the southern boundary shall be retained in situ and subject to a suitable setback from the re-configures underground on site detention tank as required by Condition Nos. 19(d)(vii) and 27(a) of this consent.
- 73 Prior to the issue of the Occupation Certificate:
- (a) To ensure satisfactory growth and maintenance of landscaped areas, a fully automatic drip irrigation system is required, to be installed by a qualified landscape contractor. The system shall provide full coverage of all planted areas, automatic controller and backflow prevention device and shall be connected to a recycled water source. Irrigation shall comply with both Sydney Water and Council requirements as well as Australian Standards, and be maintained in effective working order at all times;
  - (b) A raised concrete edge or similar shall be installed around the landscape areas to contain soil and mulch finishes. The edge shall be raised 100-150mm above adjoining pavements. Timber retaining edges are unsuitable;
  - (c) Concrete wheel stops shall be installed in all car spaces adjoining garden beds in accordance with Council specifications and Australian Standard AS/NZS 2890.1:2004 to prevent overhang of garden beds; and
  - (d) All internal parking areas and pedestrian walkways shall be unit paved. Large areas of asphalt or concrete are not permitted. Driveway crossovers shall be constructed of plain broom finished concrete.
- 74 The sculpture shall be relocated to the position shown in the landscape plan without damage and must be sited entirely on Lot 13 DP853792.

- 75     Prior to the issue of the Occupation Certificate:
- (a)     Planter boxes constructed on a podium or the OSD shall be built so as to ensure soil depths in accordance with Council's Landscape DCP. The base of the planter must be screeded to ensure drainage to a piped internal drainage outlet of minimum diameter 90mm, with no low points elsewhere in the planter. There are to be no external weep holes;
  - (b)     A concrete haunch shall be constructed at the internal join between the sides and base of the planter to restrict water seepage between the floor and walls of the planter to external areas;
  - (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. All internal sealed finishes are to be sound and installed to manufacturer's directions prior to backfilling with soil. An inspection of the waterproofing and sealing of edges is required by the Certifier prior to backfilling;
  - (d)     Drainage cell must be supplied to the base and sides of the planter. Apply a proprietary brand filter fabric and backfill with an imported lightweight soil suitable for planter boxes and which complies with AS 4419 and AS 3743. Install drip irrigation;
  - (e)     Planter boxes shall be finished externally with a suitable render to co-ordinate with the colour schemes of the building.
  - (f)     The electrical kiosk shall be softened by built screening treatments and/or landscaping so as not to reduce the visual amenity of the development, streetscape or pedestrian environment. The screening treatment surrounding the kiosk is to be approved by Council's Landscape Architect prior to installation;
  - (g)     Fire booster assemblies shall be housed within the external face of the building structure and screened from view from the public domain area. Assemblies within the landscape setback area are not permitted; and
  - (h)     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.
- 76     Prior to the issue of the Occupation Certificate, a detailed Management Plan for the approved serviced apartment complex shall be submitted to Council. This shall incorporate the measures to be undertaken to mitigate anti-social behaviour from guests, management of the drop off/pick up zone and general guest use of the facility. The Plan of management shall also incorporate the approved function/conference facility, gymnasium and entry/access to the building including the basement car parking facility.
- 77     Prior to the issue of the Occupation Certificate, a Site Audit Statement (SAS) shall be submitted to Council in accordance with the Contaminated Land Management Act 1997, clearly stating that the site is suitable for the subject development.

78

- (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 54 to 77 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**

79 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.

80

- (a) The approved Waste Management Plan for the site prepared by (Capital Corporation Pty Ltd, dated August 2011) shall be complied with at all times during demolition works, construction works, and use of the premises; and
- (b) The building owner shall be provided with at least one copy of the waste management plan. The approved Waste Management Plan shall be complied with at all times.

81 All waste and recycling containers shall be stored in the designated waste storage area. The waste containers shall not be over filled and the lids kept closed at all times except when material is being put in them. The Owners Corporation or building owner shall be responsible for the following:

- (a) Where waste and recycling containers need to be moved to the street;
- (b) Movement of the waste and recycling containers to the footpath for collections, and the return of waste and recycling containers to the on site waste storage area;
- (c) Refuse containers are to be returned to the waste storage area on the same day as the refuse is collected;
- (d) Cleaning and maintaining the waste storage area, any drainage installations and waste collection containers;
- (e) Providing and maintaining signage and information to uses to encourage recycling;
- (f) No waste or waste containers shall be placed on the public way (including: footpaths, roadways, and reserves) at any time.

- 82 The taxi zone and pick-up/drop-off zone shown on the approved architectural plans shall be set aside for taxi and pick-up/drop-off purpose only and shall not be used for other purposes. No vehicles shall be permitted to park in these areas.
- 83 **Ten (10)** of the off-street parking bays from the development shall be allocated to staff and **one (1)** to be allocated to the site manager.
- 84 The operation of the development and movements of vehicles shall comply with the following requirements:
- (a) All vehicles (including deliveries and garbage collection) shall enter and exit the site in a forward direction;
  - (b) The largest size of vehicle accessing the development shall be restricted to 7.6m long, with height of 2.9 m;
  - (c) Garbage collection and loading and unloading activities associated with the delivery shall take place wholly within the loading dock;
  - (d) Qualified traffic controllers shall be present when the delivery/service vehicle reverses to the loading dock;
  - (e) 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 etc);
  - (f) All manoeuvring movements of vehicles between the parking bays shall be carried out wholly within the site;
  - (g) Vehicular manoeuvring area shall be kept clear at all times. All vehicles shall be parked in the marked parking bays;
  - (h) Maximum number of delivery vehicles on-site shall be limited to one (1).
- 85
- (a) The operations of the site must at all times fully comply with the requirements of the approved Plan of Management for the site; and
  - (b) At all times the approved Workplace Travel Plan shall be fully complied with.
- 86 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.
- 87 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.
- 88 New street trees shall be maintained by the Applicant for a 9 month period after Council inspection of the installation. Maintenance includes periodic watering at a

frequency to sustain adequate growth but does not include trimming or pruning the trees under any circumstances.

89

- (a) The use of the premises must not give rise to the transmission of offensive noise to any place of different occupancy and must meet the City of Botany Bay Standard Noise Criteria.
  - (i) Offensive noise is defined in the Protection of the Environment Operations Act 1997 as noise:
    - (i) that, by reason of its level, nature, character or quality, or the time at which it is made, or any other circumstances:
    - (ii) is harmful to (or is likely to be harmful to) a person who is outside the premises from which it is emitted, or
    - (iii) interferes unreasonably with (or is likely to interfere unreasonably with) the comfort or repose of a person who is outside the premises from which it is emitted, or
    - (iv) that is of a level, nature, character or quality prescribed by the regulations or that is made at a time, or in other circumstances, prescribed by the regulations.
- (b)
  - (i) The operation of all plant and equipment shall not give rise to an equivalent continuous (LAeq) sound pressure level at any point on any residential property greater than 5dB(A) above the existing background LA90 level (in the absence of the noise under consideration);
  - (ii) The operation of all plant and equipment when assessed on any residential property shall not give rise to a sound pressure level that exceeds LAeq 50dB(A) day time and LAeq 40 dB(A) night time;
  - (iii) The operation of all plant and equipment when assessed on any neighbouring commercial/industrial premises shall not give rise to a sound pressure level that exceeds LAeq 65dB(A) day time/night time;
  - (iv) For assessment purposes, the above L<sub>Aeq</sub> 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.

90

- (a) The approved signage shall be suitably fixed to the building and any damage caused by the installation of the sign shall be promptly repaired with matching materials;
- (b) At no time shall a roof sign be installed at the premises;

- (c) The approved Pylon Sign within the Bourke Road setback must not exceed dimensions of 8000mm x 2500mm;
- (d) The approved High Elevation 'Medina' sign on the north elevation of the building – Level 6, must not exceeds dimensions of 7500mm x 1560mm;
- (e) The approved High Elevation 'Medina' sign on the South elevation of proposed building – Level 6, must not exceed dimensions of 5500mm x 1160mm;
- (f) The approved building entry sign adjacent to main entrance must not exceed dimensions of 2000mm x 425mm;
- (g) The signage shall be appropriately maintained at all times and kept in a clean and tidy condition;
- (h) No further signs or advertising which require consent shall be installed or displayed at the property without a development application being lodged with Council and consent thereto being given by Council;
- (i) There shall be no illumination of the approved signs between the hours of 10:00pm each day to 7:00am the following day.

- 91 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 (Microbial Control) Regulation 2000 and the Public Health (Microbial Control) Amendment (Miscellaneous) Regulation 2003, under the Public Health Act 1991. 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.
- 92 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. 11/160 dated as 19 August 2011 and that any alteration, variation, or extension to the use, for which approval has been given, would require further Approval from Council.