

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

<b>JRPP No</b>	<b>2012SYE117</b>
<b>DA Number</b>	<b>DA12/230</b>
<b>Local Government Area</b>	<b>City of Botany Bay</b>
<b>Proposed Development</b>	<b>Integrated Development and Joint Regional Panel Application comprising the construction of a twelve (12) storey hotel containing 238 rooms with ancillary facilities (restaurant, bar etc), retail space and commercial area, four levels of basement car parking to accommodate 93 car spaces, associated landscaping and public domain works.</b>
<b>Street Address</b>	<b>210 O’Riordan Street and 135-137 Baxter Road, Mascot</b>
<b>Applicant/Owner</b>	<b>Isak Investments Pty Ltd</b>
<b>Number of Submissions</b>	<b>Four (4) submissions</b>
<b>Recommendation</b>	<b>Conditional Consent</b>
<b>Report by</b>	<b>Christopher Mackey, Senior Planner, City of Botany Bay</b>
<b>Date</b>	<b>10 September 2014</b>
<b>Capital Investment Value</b>	<b>\$71,200,000.00</b>

## **PRECIS**

Council received Development Application No. 12/230 on the 6 December 2012 seeking consent for the construction of a twelve (12) storey hotel containing 238 rooms with ancillary facilities (restaurant, bar etc), retail space and commercial area, four levels of basement car parking to accommodate 93 car spaces, associated landscaping and public domain works.

The development application is required to be referred to the Joint Regional Planning Panel pursuant to Clause 3 of Schedule 4A of the Environmental Planning and Assessment Act 1979 (EP&A Act) as the Capital Investment Value of the proposal is \$71,200,000.00.

The proposed development is Integrated Development under the provisions of Section 91 of the Environmental Planning and Assessment Act as the development involves temporary construction dewatering and therefore requires approval from NSW Office of Water. In a letter dated 19 June 2013, the NSW Office of Water has granted its General Terms of Approval to the proposed development.

Council received the following additional information:

- 18 December 2012, being corrected architectural plans;
- 18 April 2013, being an email from the Applicant regarding DCP 33 compliance tables, an Access Report and Energy Efficiency Report, amended SEPP 1 Objection;
- 7 May 2013, being an email from the Applicant advising that it accept a condition of consent requiring the Hotel, to achieve a NABERS rating of 4.5 stars;
- 23 August 2014, being a an assessment of the proposal against Part 7 of BBDCP 2013;
- 2 September 2014, being an assessment of the proposal against Part 3A of BBDCP 2013.
- 11 September 2014, being a letter from Neustein Urban in respect of the SEPP 1 Objection.

The application was publicly exhibited for a period of thirty (30) days from 18 December 2012 to the 22 January 2013. Four (4) submissions were received following the public exhibition process.

Council's Design Review Panel (DRP), considered the current design before the Panel on the 23 January 2013, which concluded that *"the four storey curved podium in combination with the eight storey form above creates an appropriate scale in the immediate context and the podium in combination with the continuous awning would result in a comfortable scale for pedestrians"* and concluded that, the development can be supported subject to certain amendments. These minor façade amendments can be incorporated into an appropriate condition of consent.

It should be noted that Botany Bay LEP 2013 was gazetted on 21 June 2013 and came into force on 26 June 2013, however due to the savings provisions is not applicable to this development application.

## **FSR**

The proposed development seeks consent for an FSR of 6.6:1. The maximum FSR permitted for a building within the 4c(2) Industrial zone under BLEP 1995 is 1:1 pursuant to Clause 12(1). Clause 12(3) permits a maximum FSR of 1.5:1 for commercial development other than

that referred to in subclause (4). Clause 12(4) permits a maximum FSR of 2.5:1 for hotels, motels and free standing office complexes within the 4(c2) Industrial Special – Airport Related – Restricted zone where the site area exceeds 4000m<sup>2</sup>. The subject site has a total area of 2094m<sup>2</sup>. Therefore, the maximum FSR permitted for the subject site is 1.5:1 under subclause (3). The Applicant has submitted an amended SEPP 1 Objection, which argues that the FSR variation will not result in any adverse impact on the immediate locality.

The Panel should note that the site has the benefit of Development Consent No. 08/132 for a commercial office building with a FSR of 7.28:1. This consent, granted in March 2009 has been acted upon by way of lot consolidation, geotechnical works, et al.

The proposed FSR now sought by the Applicant is marginally less than that currently approved for the site. The FSR variation is appropriate as the bulk and scale of the development is consistent with the prevailing bulk and scale of other hotels and commercial buildings in the vicinity of the site. The change in use from commercial to hotel will be less intense and will have a significantly lower parking demand, traffic generation rate and employee numbers than the approved commercial office building. The proposal will also have a lower intensity than the use of complying commercial building. On this basis the proposed FSR variation is considered appropriate in this instance as it will have less impact on the amenity of the immediate locality and the surrounding road network than both the current approved commercial use and a complying commercial building.

It should be noted that under BBLEP 2013, the subject site is permitted an FSR of 3:1 (6,282sqm). Consideration has been given to the new LEP controls in the assessment of the development application.

### **Officer Recommendation**

The application is referred to the Joint Regional Planning Panel (JRPP) for determination pursuant to Clause 3 of Schedule 4A of the Environmental Planning and Assessment Act as the Capital Investment Value of the proposed development is \$71,200,000 million.

The recommendation is for approval, as stated below:

*The Joint Regional Planning Panel (JRPP), as the determining Authority in this instance, resolve to:*

- (a) Grant consent to the SEPP 1 Objection under Botany Bay Local Environmental Plan 2013 to permit a maximum FSR of 6.6:1; and*
- (b) Approve Development Application No. 12/230 for the construction of a twelve (12) storey hotel containing 238 rooms with ancillary facilities (restaurant, bar etc), retail space and commercial area, four levels of basement car parking to accommodate 93 car spaces, associated landscaping and public domain works at 210 O’Riordan Street, Mascot.*

### **Site Description**

The subject site is located in a prominent position with three street frontages, of which forms as one of the major arterial gateways to Sydney (Kingsford Smith) Airport. The site sits approximately 900 metres south of Mascot Railway Station and an approximate distance of

500 metres north of the domestic terminal of Sydney (Kingsford Smith) Airport. The railway line tunnel is linked with the airport and runs directly west of the site underneath O’Riordan Street, in a north-south direction. The zone of influence from this rail tunnel encroaches the subject site. The Marrickville/Botany Goods Rail Line is situated approximately 40 metres south of the site.

The subject site is located on the eastern side of O’Riordan Street with street frontages to Baxter Road to the south and Robey Street to the north. It formerly comprised of seven separate allotments being Lots 3, 4 and 5 in DP 262141, Lot 67 in DP 979354, Lot 1 in DP 135997, Lot 4 in DP 653471, and Lot 133 in DP 1030495. Since lodgement of the application, all lots have been consolidated into one allotment, being Lot 1 in DP 1190559. Two existing single storey residential dwellings exist on the site, one of which is known as No. 118 Robey Street and the other No. 133 Baxter Road. The site is affected by RMS road widening along its O’Riordan Street frontage of which comprises a width of approximately 2.9 metres, and a sewer easement runs east-west through the centre of the site. Traffic islands front the site along O’Riordan Street and Robey Street.

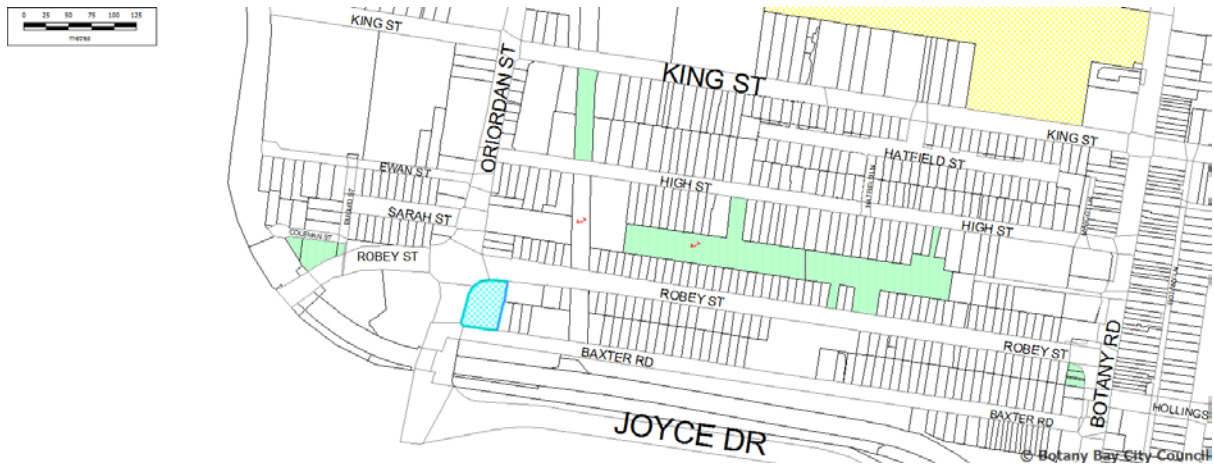
The subject site in its entirety is approximately 2,094m<sup>2</sup> and is irregular in shape. The site has a total frontage of approximately 53.89 metres to O’Riordan Street (including arc), 30.64 metres to Robey Street, and 37.59 metres to Baxter Road. The site is relatively level and is located within the Industrial Special – Airport Related – Restricted 4(c2) zone under Botany LEP 1995.

The area is characterised by a mix of residential, commercial, industrial and airport related industrial uses. Immediately adjoining the site to the east on Baxter Road is a serviced apartment development and a mixture of commercial / industrial uses and low density residential development on its northern side. The neighbouring site to the east along Robey Street accommodates a premise with commercial / industrial uses further east and south of the site. At the opposing side of the site on O’Riordan Street is a multi-storey building comprising the Stamford Hotel and Airport Central building which are part 10 and 11 storey buildings. Billboard signage for general advertising is also prominent in the immediate vicinity of the site along O’Riordan Street and Joyce Drive, and is situated some 50 metres from the subject site.

The Joint Regional Planning Panel on 22 July 2014 approved a part 8/9 storey hotel containing 162 rooms on the opposite corner to the subject site at 2-8 Sarah Street.

The site is situated within the Mascot Industrial Precinct of which is a large consolidated industrial area immediately north of Sydney (Kingsford Smith) Airport and provides the main area for uses related to the airport. This area is divided into three sub-precincts and the subject site is situated in the south-eastern part of the precinct, which contains the Airport Central development and numerous smaller and established holdings. The precinct is affected by a road reservation of which is situated along the eastern side of O’Riordan Street between High Street and Baxter Road.

## **Figure 1 - Locality Plan**



## Site Photo



Figure 2 - Subject site as viewed to the north from Baxter Road



Figure 3 - Existing cottage when viewed from Baxter Road

## Site and Development History

Site history includes the following previous approvals:

DA No.	Proposal	Determination
04/064	Application lodged on 5 August 2003 seeking approval for the demolition of existing structures and the erection of one billboard sign and associated site screening and landscaping, for a temporary period of 15 years.	Approved 12 February 2004
04/064/02	Section 96(1A) Application lodged with Council on 15 March 2004 seeking modification to amend the third party advertising fee owing in respect of the approved signs	Approved 15 June 2007
04/064/01	Section 96(2) Application lodged with Council on 23 November 2005 seeking modifications to DA04/064 to enable the erection of additional billboard sign.	Approved 22 March 2006
07/202	Application approved for temporary use of the site as a car park for up to 5 years.	Approved 8 June 2007
07/202/02	Section 96 (1A) modification to vary internal car park design	Approved 27 October 2007
08/132	Conditional consent granted for the demolition of the existing residences and construction of a new multi level commercial office building comprising of 12 storeys including car parking, landscaping and open plaza area.	Approved 18 March 2009
08/132/02	Section 96(1A) Application lodged with Council on 23 December 2011 to replace the approved levels of above ground car parking with expanded commercial space and the relocation of the car parking to four new underground levels.	Yet to be determined.
08/132/03	Section 96(1A) Application lodged with Council on 18 March 2013 to stage the construction process into 2 stages.	Approved 27 August 2013

**Table 1 – Historic applications**

## Description of Development

The development application seeks consent for the construction of a twelve (12) storey hotel containing 238 rooms with ancillary facilities (restaurant, bar etc), retail space and commercial area, four levels of basement car parking to accommodate 93 car spaces, associated landscaping and public domain works.

In detail the proposal includes

- four levels of car parking accommodating a total of 93 space, bicycle and motorcycle parking;
- a twelve (12) storey hotel comprising 238 rooms (being 211 standard rooms and 27 two bedroom suites), a ground floor lobby, retail shop, restaurant, bar, seminar rooms and amenities;

- On-site drop-off and pick up zone for a bus with vehicle entry and exit points off Robey Street, and
- A pool, bathroom and gymnasium at Level 4
- Shuttle bus service.

## **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:

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

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 under the provisions of Section 91 of the Environmental Planning and Assessment Act as the development involves temporary construction dewatering and therefore requires approval from NSW Office of Water.

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 NSW Office of Water. In a letter dated 19 June 2013 the NSW Office of Water has provided its General Terms of Approval for the proposed development and is attached to the schedule of consent conditions.

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

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.

The proposed development involves the construction of a building for use as a hotel with basement car parking and associated landscaping. The application has been by a Detailed Stage 2 Site Assessment which highlights that contaminated groundwater exists on site. In this regard, it is appropriate to impose a condition on any consent to require a Remediation Action Plan (RAP) 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.

## State Environmental Planning Policy (Infrastructure) 2007

### *Clause 86(4) – Excavation in, above or adjacent to rail corridors*

The subject site is affected by the airport rail line and is close proximity to the Marrickville/Botany Goods Rail Line. The development application has been referred to Railcorp for concurrence. As of 1 July 2014, Railcorp has delegated its concurrence functions to Sydney Trains.

In a letter dated 30 July 2014, Sydney Trains has provided its concurrence to the development and conditions have been included in the draft schedule of conditions.

The development application was also referred to Australian Rail Track Corporation (ARTC) the body responsible for the Goods Rail Line. In a letter dated 21 December 2012, ARTC have provided its conditions.

### *Clause 104 - Traffic Generating Development*

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 & Transport Impact Assessment Report prepared by Transport & Urban Planning, dated December 2012.

Plans and documentation were referred to the NSW RMS for consideration and comment. In a letter dated 8 April 2013, the RMS has advised that it has no objection to the proposed development and has provided conditions which have been included in the draft conditions.

## 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 4(c2) Industrial Special – Airport Related – Restricted and Council may only consent to the erection of a building if the floor space ratio (FSR) does not exceed 1:1 or 2,094m<sup>2</sup> in accordance with Clause 12(1) of the Botany LEP 1995.

Clause 12(1), (3) and (4) 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.*

- (4) *Notwithstanding the provisions of subclause (1) and (3), the Council may consent to the carrying out of development for the purposes of hotels, motels and free standing office complexes on land within Zone No. 4(c2) (consisting of an allotment that exceeded 4,000sqm on 7 May 1993) to a maximum floor space ratio of 2.5:1, the Council is satisfied that.....*

The proposal seeks an FSR as indicated in the table below. It should be noted that the FSR under BBLEP 2013 is provided as a comparison only and is not applicable to this application.

<b>FSR under Clause Botany LEP 1995</b>	<b>Approved FSR under BLEP 1995</b>	<b>Proposed FSR under BLEP 1995</b>	<b>FSR under BBLEP 2013</b>	<b>Proposed FSR under BBLEP 2013</b>
1.5:1 (3,141m <sup>2</sup> )	7.28:1 (15,259m <sup>2</sup> )	6.6:1 (13,820m <sup>2</sup> )	3:1 (6,282m <sup>2</sup> )	6:1 (12,438m <sup>2</sup> )

**Table 2 – FSR Comparison**

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 states that the purposes of the standard can be implied to be:

- *To ensure that the bulk and scale of proposed development is appropriate for the site; and*
- *To ensure the intensity of the development is appropriate in its context.*

The Applicants SEPP 1 has relied on implied objectives, which are considered acceptable as reinforced by the case of *CSA Architects Pty Limited v Waverley Council [2007] NSWLEC 575* where consideration was given to the objective of *intensity* of a land use when considering a departure from an FSR development standard. *‘The underlying purpose of an FSR standard is generally accepted as being to control the bulk and scale of a development but also to limit the intensity of development.’*

Botany Bay LEP 2013 was gazetted in 2013 and due to savings provisions does not apply to this application. Notwithstanding, consideration has been given to the new

LEP and it is noted that other objectives in respect of FSR are included in Clause 4.4. The permissible FSR for the subject site under BBLEP 2013 is 3:1 (6,282m<sup>2</sup>).

**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?***

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:

- *To ensure that the bulk and scale of proposed development is appropriate for the site; and*

*The subject site is a key gateway site to the Sydney Airport precinct, as approached from the north along O’Riordan Street. The principal curved façade addressing the O’Riordan Streets and Robey Street corner relates to and reflects the geometry, scale and form of its neighbour. The proposed building will have the effect of balancing the streetscape and provide an appropriate urban design solution for the entrance to the airport gateway precinct.*

*Shadow diagrams submitted with the application indicate that there is no significant overshadowing occurs to the public domain or residential properties.*

**Comment:**

The locality is predominately comprised of commercial development including a number of large hotels and commercial buildings providing goods/services to the workforce and tourist population. These buildings range in bulk and scale with similar FSR to that currently proposed, such as the site immediately to the east, being the Quest Apartments with an FSR of 5:1 under BLEP 1995. Opposite the subject site is the Stamford Hotel/Airport Central office building which has an FSR in excess of 5:1. It is considered appropriate to encourage redevelopment of sites in this location for greater FSR where such floor space will support and enhance the existing commercial function of the locality, Sydney Airport and Mascot Station, without significant adverse impacts.

The Applicant has appropriately identified the subject site as a gateway site to the precinct and the proposed FSR is appropriate, being less than the approved FSR, a reduction of 9.5%. The proposed bulk and scale is considered appropriate in the context, given that it adjoins a nine storey motel directly to the east and is in very close proximity to other hotel and commercial developments of a similar FSR, bulk and scale.

Council has considered the degree of variation and impacts of the resulting built form on the surrounding neighbourhood. The bulk and scale of the proposal is characteristic of adjoining development, without adversely impacting on the amenity of the surrounding neighbourhood by reason of noise, privacy or overshadowing. There will be limited traffic impacts from the proposed development with specific traffic arrangements/routes being carefully considered and designed to minimise impacts on adjoining developments.

The Applicant has provided the following in respect of a further implied objective:

- *To ensure the intensity of the development is appropriate in its context.*

*Building Occupancy - Located in the immediate vicinity of the airport, the site is part of a special designated economic employment centre (Sydney Airport) under the Metro Strategy. In this centre, employment and economic activity are encouraged and the intensity of site will contribute to the targets required of the LGA. The hotel will have 238 rooms and provide direct employment in excess of between 50 to 100 persons.*

*Traffic and parking - As stated in the Traffic Impact Assessment submitted with the application, the applicant's traffic consultant is satisfied that compliance with the identified parking rate of 1 space per 75m<sup>2</sup>, combined with scheduled improvements to public transport facilities in the area, will ensure that no additional parking stress is placed on the surrounding road network as a result of the development. The traffic generation will be substantially less than that resulting from the current approval for an office building on the site.*

*The proposed solution for servicing the building has also been designed to minimise any disruption to the local road network. The proposal incorporates two loading bays on the ground level to ensure that all delivered and pick ups can occur on site. The loading bays are served by a one way access from Baxter Road through to Robey Street. The exit onto Robey Street is left turn only so as to divert service vehicles back onto O'Riordan Street rather than down the length of Robey Street which is residential in character. This will ensure that smaller local streets are not forced to accommodate additional vehicle movements as a result of the development.*

**Comment:**

The proposed development is essentially a change in use from commercial to private hotel use, which is a less intense use than the approved commercial development, having a lower parking demand, lower traffic generation and reduced commuter employee numbers on site.

A complying development would provide a floor plate area of approximately 250sqm, with a hotel use of less intensity, fewer employees and fewer traffic movements. However, the nature of the proposed hotel at its proposed scale will not create an intensity which is inappropriate in its context. A complying development would also be regarded as an under development of the site, which is not supported at this particular location.

Consideration has been given to the existing approval for the site, and the following table provides a comparison between the approved commercial building, the proposed hotel, a commercial development complying with the 1.5:1 FSR and a commercial development complying with the 3:1 FSR.

Details	Proposed Hotel	Approved Use	Complying Commercial BLEP 1995	Complying Commercial BBLEP 2013
<b>FSR</b>	6.6:1 (13,820m <sup>2</sup> )	7.28:1 (15,259m <sup>2</sup> )	1.5:1 (3,141m <sup>2</sup> )	3:1 (6,282m <sup>2</sup> )
<b>Height</b>	12 storeys	12 storeys	3 storeys	6 storeys
<b>Trips Per Hour</b>	61	170	62	125
<b>Employee Numbers</b>	90-100	897	181	367
<b>Car Parking spaces</b>	93	184	79	157

**Table 3 – Comparison of complying developments with proposed hotel**

Therefore, based on the above comparison, the proposed FSR is appropriate in this instance as it will result in a development which has a lower FSR, reduced traffic generation, reduced employees and reduced parking to that currently approved for the site and less intensity of use when compared to complying commercial developments.

**(b) *The underlying objective or purpose is not relevant to the development;***

The Applicant provides the following statement in respect of relevance:

*In this particular case, the purpose of the FSR control is not relevant to the gateway development. Only an increase in the FSR will allow the area to fulfil its role as a special economic employment centre designated under the Metro Strategy and the Employment Lands for Sydney Action Plan, released in March 2007 as part of the Metro Strategy program.*

*An increase in the FSR of the proposal will also enable the development to complement the height and scale of the 12 storey Stamford/Airport Central building, providing an appropriate gateway treatment to the entry to the Airport precinct. A building of the height, scale and design of the subject application is required if the Council's desired airport gateway urban design vision is to be realised.*

**Comment:**

The FSR control applying to the subject site under BLEP 1995 is now redundant by way of gazettal of Botany Bay Local Environmental Plan 2013, which adopts a maximum FSR for the site of 3:1 (6,262m<sup>2</sup>). The proposal exceeds the 3:1 FSR under BBLEP 2013, at approximately 6:1 (12,438m<sup>2</sup> calculated under BBLEP 2013), however remains consistent with similar

hotel, serviced apartment and commercial developments in the immediate locality.

- (c) ***The underlying objective or purpose would be defeated or thwarted if compliance was required with the standard;***

The Applicant provides the following statement:

*Under the BLEP 1995 FSR control, the orderly urban design of the site cannot be met except by non-compliance with the standard. Complying with the FSR control would result in an uneconomic 3 storey development and an inappropriate scale development for the gateway to Sydney Airport.*

**Comment:**

If the proposed development were restricted to an FSR of 1.5:1 (3,141m<sup>2</sup>), this would result in a built form which is out of character and inconsistent with the prevailing built form in the locality. 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).

Further, strict compliance with the standard would inhibit the achievement of the aims of Draft Subregional Strategy as it would not maximise employment opportunities in and around Sydney Airport.

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.

- (d) ***The development standard has been virtually abandoned or destroyed by Council's own actions.***

The Applicant provides the following statement:

*The proposal is a unique case as the site, together with the Stamford building, forms the gateway to the airport precinct. Approval of the proposal will not be a precedent for other claims and does not suggest that Council has undermined its controls. However, Council cannot fulfil the vision of the gateway to the airport without non-compliance with the standard.*

**Comment:**

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 2,094m<sup>2</sup>, strict application of the FSR development standard (i.e. 1.5:1) would allow for a maximum GFA of 3,141m<sup>2</sup> to be achieved, which does not respond to the gateway element sought at this site.

The proposed development is for a hotel, which as previously stated will be of less intense use and will result in a reduced number of employees, reduced parking demand and reduced traffic generation to the already approved commercial building for the site, which will have an FSR of 7.28:1.

On this basis, the proposed private hotel with its less intense nature and reduced FSR is appropriate and supported. 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 of the case.

#### **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 6.6:1, which is a reduction in gross floor area of approximately 9.5% to the commercial building approved for this site under Development Consent No. 08/132.

The Applicant has provided the following response:

*The increased floor space ratio of the proposed development will make a valuable contribution to the Sydney Airport, its gateway area and the City of Botany Bay. The proposal will help the area fulfill its role as a gateway function and help reach LGA employment targets allocated under the Metro Strategy. It will have no significant adverse impacts on neighbours or upon the public domain and will directly employ between 50 and 100 persons and accommodate some (rooms x 1.2 persons per room) tourists. The subject proposal maintains the high quality design evident in the earlier office building application. Compliance with the FSR as stipulated is unnecessary and the objection is well founded.*

In arriving at a view that the objection is reasonable and well founded, it is necessary to consider the aims and objectives of the BLEP1995, which seeks to ‘encourage developments which will contribute to the economic growth and employment opportunities within the commercial and neighbourhood centre, so that they remain commercially attractive and viable’.

It is considered that the proposed hotel will 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. It has been demonstrated that strict compliance with the standard is unreasonable and

unnecessary. 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.***

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 provides the following comments in respect of the aims of the SEPP.

*It would be reasonable to require compliance with the LEP if some adverse impact of the proposal was sufficient to negate the positive benefits of providing a hotel in this State Government designated economic and employment centre. No such adverse impact has been identified in the comprehensive analysis carried out for the DA (refer to Statement of Environmental Effects). Hence, compliance is unreasonable because the proposal provides a means of achieving high level strategic outcomes important for the State of NSW, in a key location, without the usual adverse outcomes for adjoining development.*

*It is also unreasonable to ensure compliance because the consent authority has identified the site as a key part of the airport precinct gateway and development on the site has sought to match that adjoining in terms of bulk and scale. Compliance would frustrate the achievement of this locally important aim.*

*As the site is a unique gateway to the airport precinct, approval of such a project, well beyond the normal guidelines, will not be a precedent for other claims. For these reasons, application of SEPP 1 to the proposal on its very special site is very appropriate and deserving of approval.*

**Comment:**

As stated under 3 above, it would be unreasonable to require strict compliance with the development standard in this instance as the standard had been abandoned in the past, has been replaced by a new development standard under BBLEP 2013 and would result in an inappropriate development form on site which does not achieve the strategic outcomes sought for the gateway precinct. It would not represent the economic development of the land.

- (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.*

The Applicant states the following in the SEPP 1 Objection:

*The Metro Strategy repeatedly stresses the importance of the area as an economic and employment centre that must be enhanced. This area has also been singled out as being an employment hub, as shown both in the Metro Strategy and the Employment Lands for Sydney Action Plan, released in March 2007 as part of the Metro Strategy program, the relevant points of which are below:*

*The Metro Strategy repeatedly stresses the importance of the area as an economic and employment centre that must be enhanced. This area has also been singled out as being an employment hub, as shown both in the Metro Strategy and the Employment Lands for Sydney Action Plan, released in March 2007 as part of the Metro Strategy program, the relevant points of which are below:*

*“Key Recommendations of The Employment Lands Task Force:*

*5. Protect strategic employment lands between Sydney Airport and Port Botany with more flexible planning controls to support economic development, but also retain logistics which service both Port Botany and Sydney Airport.”*

*The Employment Lands Task Force, in point five of its executive summary, quoted above, states that “more flexible planning controls to support economic development” are required. In this respect the development proposal responds directly to the recommendations of the Metro Strategy.*

*“Demand for employment lands in established parts of Sydney will remain high, especially in proximity to gateway infrastructure (Port Botany, Sydney Airport and the Orbital Motorway Network) to meet both local (urban services) and regional (transport and logistic) industrial demands. Protection and possible regeneration of these strategic employment areas will be vital to Sydney’s future competitiveness.”*



*Sydney Airport and its surrounds cover an area of only 3km<sup>2</sup> and have an increased employment generation target of over 50%. In this respect, the proposed development represents a critical opportunity to assist in achieving the aims and goals of the Metro Strategy. Failure to utilise this opportunity would hinder the economic development aims of the Metro Strategy and the EPA Act.*

**Comment:**

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. The Applicant has identified the strategic aims of the site within the gateway precinct.

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, without any adverse impacts in 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.

**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 Non compliance with the maximum floor space ratio control will not raise any matter of adverse significance for State or Regional environmental planning. The proposal accords with the Metro Strategy vision for the area as well as satisfying State Government employment targets.***
- (b) The development will significantly enhance the streetscape and the gateway function of the site and maintaining the maximum floor space ratio control is not in the best interest of the public.***

*The proposal will not result in detrimental overshadowing or loss of privacy for any residential properties therefore not causing adverse environmental effects on the use or enjoyment of adjoining properties and the public domain. The proposal will generate approximately 50 to 100 full-time equivalent jobs and considerable tourist income. This will support the economic development of the City of Botany Bay, providing local employment and expenditure.*

*Under the current maximum floor space ratio control of 1.5:1, the proposal would not be more than 3.5 storeys and have a very small floor plate. As the site is located in the immediate vicinity of the airport, the site is part of a special economic employment centre (Sydney Airport) designated under the Metro Strategy. In this centre, employment and economic activity are encouraged and the intensity of site use will contribute to the targets required of the LGA.*

*Increasing the FSR control for the development will facilitate economic development and permit a 238 room hotel and provide direct employment in excess of between 50 to 100 persons.*

The proposed development will create a total FSR on site of 6.6:1 and a height of 12 storeys (RL50.90m). The proposed design of the development has been supported by the Design Review Panel. As previously stated, the proposed change in use from commercial to hotel will result in a less intense use on site, less parking demand, significantly fewer employee numbers and reduced traffic generation.

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 6.6:1.

#### 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 twelve storey building for use as a hotel 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 currently used as a vehicle rental centre and will 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 hotel that is located within the Mascot Business Development 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 visitor accommodation, which will have a less intense nature to the previously approved commercial building under Development Consent No. 08/132. This will be of public benefit as the amenity of the locality area will be maintained.

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 development 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 is defined as a **hotel** and is permissible in the zone with the appropriate consent of Council.

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 hotel 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 hotel and is considered to be suitable so as not to adversely impact on the amenity of nearby residents.

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 900 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 6.6:1. 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 25-30 contour on the Aircraft Noise Exposure Forecast (ANEF) chart, and is located along O’Riordan Street (a classified road) and within close proximity to the Marrickville/Botany Goods Rail Line. 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 Wilkinson Murray, dated December 2012, and has been submitted with the application to address, noise impacts from road, rail and air transport. 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 rail and 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 proposes building height consistent with the previously approved development in 2009, which exceed the maximum height and was therefore referred to Sydney Airports Corporation Limited (SACL) for consideration. SACL raised no objections to the proposed maximum height of 50.9 metres AHD, subject to conditions to be imposed on any consent.

*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 ninety three (93) car parking spaces across four (4) basement levels. The Applicant has submitted a Traffic Impact Assessment Report prepared by Transport & Urban Planning dated December 2012 that addresses Council's car parking requirements for the proposed development.

The proposed development has proposed car parking on site in accordance with an accepted parking rate of 1 space/2.5 rooms.

Council adopted its current DCP in December 2013, and an assessment against the new DCP is provided below:

<b>BBDGP 2013 Parking requirement</b>	<b>Number/Area</b>	<b>Spaces provided</b>
1 space/ 2.5 rooms	95	93
1 space /2 employees	25	-
1 space/manager	1	-
<b>Total</b>	<b>121</b>	<b>93</b>

**Table 4 – Council Parking requirements**

As detailed in the above table, there is a shortfall of approximately twenty eight (28) car parking spaces for the proposed development. The Applicant argues that the proposal complies with the RTA requirements for hotel car parking, assuming that a shuttle bus service is provided.

Based on the RTA car parking requirements for hotel development, a total of 93 spaces would be required, as follows:

<b>RTA Parking requirement</b>	<b>Number/Area</b>	<b>Spaces provided</b>
1 space/ 4 rooms less 20% due to proximity to airport	59-11.8 = 47	
Restaurant/bar	13.1	-
Seminar rooms	20.3	-
<b>Total</b>	<b>81</b>	<b>93</b>

**Table 5 – RTA parking requirements**

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 hotel developments within close proximity to the subject site. In particular, the Quest Apartments 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, the majority of hotels in the precinct 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.

The Applicant has advised that it has no objection to a condition requiring a shuttle bus service to and from the airport/hotel/train station. 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 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 proposal incorporates two loading bays on the ground level to ensure all picks ups and deliveries occur on site. The loading bays are serviced by a one way private access driveway from Baxter Road through to Robey Street. The exit onto Robey Street is left turn only to ensure all vehicles revert back to O’Riordan Street rather than down Robey Street which has a residential character. Accordingly, the application 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: As stated above, all service vehicles will be required to enter in a forward direction from O’Riordan Street, Baxter Road, through the site and exit onto Robey Street and back to O’Riordan Street. A condition has been include in the draft schedule of conditions to this effect.

In terms of traffic generation, the proposed hotel use will have a significantly reduced traffic generation to the previously approved commercial development for the site.

The proposed parking shortfall is discussed in 17(3) (a) above and it is considered that the proposed off street car parking is adequate for the development. Accordingly, the application 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 13 metres from the edge of the building face so as to conceal plant from street level. Accordingly, the application 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: The site is adequately serviced by public transport. The proposal is not expected to have any adverse impacts on the neighbourhood in terms of traffic movement and will also utilize a shuttle bus service. The traffic generation will be a reduction to that previously approved for the commercial development. It is not considered that the hotel use 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 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 construction of the building on the boundary, as per the previous approval for the commercial development. Landscaping at the O’Riordan Street frontage is limited due to future road widening. Communal open space is provided at podium level with an acceptable level of landscape garden beds. Communal open space is also provided at Level 4 with a swimming pool and decking area.

Accordingly, the application 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 curved shape. It will have a height of RL50.90m which is compatible with the height of nearby buildings. The design incorporates architectural elements to provide interest to the façade fronting O’Riordan Street at this gateway location. Accordingly, the application 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 to the western face of the adjoining hotel building to the east (Quest) from 1pm on June 21. The existing dwelling at 133 Baxter Road will have its rear private open space in shadow from 12noon to 3:00pm as a result of the proposed development. 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 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. The design has been the subject of Accordingly, the application 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 zoned B5 – Business Development pursuant to Botany Bay Local Environmental Plan 2013. As such, the precinct is changing from residential and warehouse/industrial uses to support commercial uses including tourist and visitor accommodation. The proposed development is considered to complement surrounding developments within the

locality and accordingly, the application 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 8.8 metres in length. It is not anticipated that the hotel use 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 Wilkinson Murray dated December 2012. The report concludes that whilst no specific design has occurred for the car park supply and exhaust system and condensers, 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 for an ongoing condition regarding operational noise. Accordingly, the application 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 hotel with basement car parking and associated landscaping. The application has been by a Detailed Stage 2 Site Assessment which highlights that contaminated groundwater exists on site. In this regard, it is appropriate to impose a condition on any consent to require a Remediation Action Plan (RAP) 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 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 application has not been accompanied by an Energy Efficiency Report, however the Applicant has submitted a written letter from an Energy Consultant which states that it is appropriate to impose a condition on any consent to require compliance with the Section J of the BCA. Accordingly, the consent will include an appropriate condition.

*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 RL-0.70 metres. Some additional depth of 0.5 metres to RL-1.2 is expected for trenching.

The Applicant has submitted a Geotechnical Investigation Report prepared by Douglass Partners and dated September 2011. The report indicates that groundwater was detected at depths of 2m below existing ground level. Therefore, with basement excavation of depths up to 6m, dewatering will be required. The development application was



referred to the NSW Office of Water for its concurrence. In a letter dated 19 June 2013, the Office of Water has provided its General Terms of Approval, which are included in the draft schedule of conditions.

*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.

No Acid Sulfate Soils Assessment has been carried out to date. Therefore, it will be necessary to impose a condition on any consent granted that requires the preparation of an Acid Sulfate Soils Management Plan to be submitted to Council prior to the issue of the Construction Certificate.

Botany Local Environmental Plan (LEP) 2013

Botany Bay Local Environmental Plan 2013 (BBLEP 2013) was gazetted on 21 June 2013 and commenced on 26 June 2013.

Clause 1.8A of the BBLEP 2013 states: *If a development application has been made before the commencement of this Plan in relation to land to which this Plan applies and the application has not been finally determined before that commencement, the application must be determined as if this Plan had not commenced.*

The DA the subject of this report was lodged prior to the gazettal of the BBLEP 2013. Notwithstanding, the provisions of the BBLEP 2013 have been considered in the assessment of this Development Application and the following information is provided:

<b>Principal Provisions of BBLEP 2013</b>	<b>Compliance Yes/No</b>	<b>Comment</b>
Landuse Zone	N/A	The site is zoned B5 – Business Development under BBLEP 2013.
Is the proposed use/works permitted with development consent	Yes	The proposed hotel building is permissible with Council's consent under BBLEP 2013.
Does the proposed use/works meet the objectives of the zone?	Yes	The proposed development is consistent with the following objective in the BBLEP 2013: <i>To enable a mix of business and warehouse uses, and bulky goods premises that require a large floor area, in locations that are close to, and that support the viability of centres.</i>
Does Clause 2.6 apply to the site?	N/A	The development does not propose any subdivision.
What is the height of the building?	Yes	The proposed building height is 12 storeys with a maximum height of 43.40m (R.L 50.90m).
Is the height of the building below the maximum building		The height of the building is below the permitted 44m.

height?		
What is the proposed FSR? Does the FSR of the building exceed the maximum FSR?	<b>No – SEPP 1 Objection submitted</b>	The proposed FSR is 6:1 (12,438sqm), which exceeds the maximum permitted FSR of 3:1 (3,141m <sup>2</sup> ). <b>Refer to SEPP 1 Objection discussion in this report.</b>
Is the land affected by road widening?	N/A	The subject site is affected by road widening on the Land Acquisition Map.  NSW RMS has advised that land fronting O’Riordan Street and Robey Street is required.
Is the site identified on the Key sites Map?	N/A	The subject site is not identified in the Key Sites Map
Is the site listed in Schedule 5 as a heritage item or within a Heritage Conservation Area?	N/A	The subject site is not identified as a Heritage Item or within a Heritage Conservation Area.
The following provisions in Part 6 of the LEP apply to the development:  6.1 – Acid Sulfate Soils  6.2 – Earthworks  6.3 – Stormwater management		<p>Clause 6.1 – Acid Sulfate Soils. The subject site is affected by Class 2 and Class 4 Acid Sulfate Soils.</p> <p>No Acid Sulfate Soils Assessment has been carried out to date. Therefore, it will be necessary to impose a condition on any consent granted that requires the preparation of an Acid Sulfate Soils Management Plan to be submitted to Council prior to the issue of the Construction Certificate.</p> <p>Clause 6.2 – Earthworks. The development involves significant excavation and dewatering on site. The development application was referred to the NSW Office of Water. In a letter dated 19 June 2013, NSW Office of Water has provided General Terms of Approval for the proposed development. These conditions are included in the draft Schedule of Conditions. The development is considered to be consistent with Clause 6.2 of the BBLEP 2013.</p> <p>Clause 6.3 – Stormwater. A Stormwater Report and Plans have been prepared for the subject site and concludes that the existing stormwater infrastructure in the vicinity of the</p>

6.8 - Airspace operations		<p>site should be adequate to accommodate the proposed development. The development is considered to be consistent with Clause 6.3 of the BBLEP 2013.</p> <p>Clause 6.8 – Airspace Operations. The subject site lies within an area defined in the schedules of the Civil Aviation (Building 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 proposes buildings which exceed the maximum height and was therefore referred to Sydney Airports Corporation Limited (SACL) for consideration. SACL raised no objections to the proposed maximum height of 50.9 0metres AHD, subject to conditions to be imposed on any consent. The development is considered to be consistent with Clause 6.8 of the BBLEP 2013.</p>
6.9 – Development of areas subject to aircraft noise.		<p>Clause 6.9 – Aircraft Noise. The subject site is affected by the 25-30 ANEF contour. An acoustic report has been submitted with the development application, which indicates that if the development incorporates the recommendations of the report it will comply with ASA2021-2000. The development is considered to be consistent with Clause 6.9 of the BBLEP 2013.</p>

**Table 6 – BBLEP 2013 Compliance Table**

Botany Bay Development Control Plan (BBDGP) 2013

BBLEP 2013 is the comprehensive development guideline for the City of Botany Bay. Council resolved on 11 December 2013, to adopt the BBDGP 2013 in accordance with the provisions of the *Environmental Planning and Assessment Act 1979* and the *Environmental Planning and Assessment Regulation 2000*.

Part	Control	Proposed	Complies
3A.2 Parking Provisions	C2 – Car parking provisions shall be provided in accordance with Table 1.	<p>A total of 93 car parking spaces have been provided across four levels of basement car parking.</p> <p>Table 1 requires a total of 121 spaces for the hotel, however</p>	<b>No - parking is consistent with the rate applied to</b>

Part	Control	Proposed	Complies
		<p>the RTA requirements for hotels in the vicinity of an airport only require 81 spaces.</p> <p>A shuttle bus service will also be provided to the airport. The parking rate has been provided at 1 space per 2.5 rooms.</p>	<b>other hotels in the vicinity of the site and is considered acceptable</b>
3A.3.1 - Car Park Design	C1 – All off-street parking facilities shall be designed in accordance with current Australian Standards AS2890.1 and AS2890.6. The design of off-street commercial vehicle facilities shall be in accordance with AS2890.2.	The traffic report submitted prepared by Transport & Urban Planning confirms that the internal configuration of the car park and loading area has been designed in accordance with AS2890.1 and AS2890.2	Yes
3C.1 – Access and Mobility	C2 – All development must comply with the provisions of the Disability Discrimination Act 1992, BCA, the Premises Standards and the relevant Australian Standards	The proposal has not been accompanied by an Access report. A condition can be imposed to require compliance with the BCA.	Condition to comply
3G.2 – Stormwater Management	C1 – Development shall not be carried out on or for any lands unless satisfactory arrangements have been made with and approved by Council to carry out stormwater drainage works.	The stormwater plans prepared by Michael Frost & Associates indicate that the existing stormwater infrastructure in the vicinity of the site is adequate to accommodate the proposed new hotel development.	Yes
3G.3 – Water	C3 – All	The submitted plans and	Yes

Part	Control	Proposed	Complies
Sensitive Urban Design	developments shall adopt an integrated approach on water management through a coordinated process to address water efficiency, water conservation, stormwater management, drainage and flooding.	reports provide several initiatives for water sensitive design that can be implemented throughout the development.	
3G.4 – Stormwater Quality	C1 – Water quality objectives stated in “ <i>Botany Bay &amp; Catchment Water Quality Improvement Plan (BBWQIP)</i> ” shall be satisfied.	The Stormwater plans prepared by Michael Frost & Associates Pty Ltd include appropriate sediment and stormwater measures to ensure the quality of stormwater runoff meets the objectives of the BBWQIP.	Yes
3I.– Crime Prevention Safety and Security	C1 – Building entrances shall be visible from the street and be clearly recognisable through design features	The entrance to the proposed hotel will be clearly recognisable from Robey Road.	Yes
	C8 – Entrances to new development shall front the street to maximise surveillance to the public environment and provide clear sightlines with direct access from the street to the building entrance.	The entrance to the proposed hotel fronts Robey Street and will provide maximum surveillance to the reception/retail area and direct sightlines and access from the internal entrance from the drop off area. Further it is noted that there will be a staff member located in the ground level of the building at all times.	Yes
	C10 – Entrances and exits of buildings shall be well lit, secure and	Adequate lighting will be provided to the building entrance along Robey Street and the pick-up and drop-off	Yes

Part	Control	Proposed	Complies
	highly visible to and from public spaces, streets and adjoining buildings.	area. Lighting will be provided to the car parking areas.	
3J.2 – Aircraft Noise and Exposure Forecast	C2 – Where a building site is classified as “conditional” under Table 2.1 of AS20121-2000, development may take place, subject to Council consent and compliance with AS2021-2000	The subject site is affected by the 25-30 ANEF Contour. An Acoustic Report has been prepared by Wilkinson Murray and concludes that provided the measures recommended are implemented aircraft noise emissions will comply with AS2021-2000.	Yes
3J.3 – Aircraft Height Limits and Prescribed Zones	C1 – If the building is located within a specific area identified on the OLS map or seeks to exceed the height limit specified on the OLS map or seeks to exceed the height limit specified in the map the application must be referred to Civil Aviation Safety Authority and Airservices Australia for assessment.	The development application has been referred to SACL. SACL raised no objections to the proposed maximum height of 50.90m AHD, which is the same height as the approved commercial building.	Yes
3L Landscaping -	C3 – landscaping shall be designed to reduce the bulk, scale and size of buildings, to shade and soften hard paved areas, to create a comfortably scaled environment for	<p>The proposed development is accompanied by Landscape Plans prepared by Taylor Brammer.</p> <p>The landscaping including the elevated planter boxes provided to the front and east of the building will soften the built form and enhance the streetscape when viewed from</p>	Yes

Part	Control	Proposed	Complies
	pedestrians in the public domain, or from within the site, and to screen utility and vehicle circulation or parking areas. Emphasis should be placed on landscaped setbacks designed to soften buildings.	O’Riordan Street.	
3N.2 – Waste Minimisation and Management/ Demolition and Construction	C1 – A Site Waste Minimisation and Management Plan in accordance with Part 1 – Model Site Waste Minimisation and Management Plan must be submitted.	A Waste Management Plan has not been submitted. An appropriate condition can be imposed.	Condition to comply.
6 – Mascot Business Development Precinct	C1 – Development is to encourage a higher public transport (including walking and cycling) use and include strategies to encourage and promote car sharing and carpooling strategies. In this respect a Workplace Travel Plan is to be lodged with the development application. The Workplace Travel Plan shall establish measurable targets to achieve the mode share targets stated in the Mascot Town	<p>The proposed hotel is located in close proximity to Sydney’s Domestic and International terminals. The proximity to Mascot Train Station (930m north) encourages active transport modes such as walking and cycling. The site’s location adjacent to O’Riordan Street where a high volume of taxi transportation is available makes it ideal for the short trips to the Domestic and International Airport. It is noted that the Domestic Terminal Station is approximately 875m from the hotel. The hotel will also provide a shuttle bus service which will lessen traffic demand on roads in the immediate area.</p> <p>It should also be noted that the proposed use as a hotel will have a far less traffic</p>	Yes

Part	Control	Proposed	Complies
	Centre Precinct TMAP – maximum car mode share: 65% by 2021 and 57% by 2031.	generation than the previously approved commercial building and far fewer employees.	
	<p>C7 – Development shall be designed and constructed in accordance with Australian Standard AS2021 (Acoustic Aircraft Noise Intrusion-Building siting and Construction)</p> <p><b>Note:</b> Details to be included in the Development Application. For further details in relation to Aircraft Noise refer to Part 3J – Development Affecting Operations at Sydney Airport.</p>	An Acoustic Report prepared by Wilkinson Murray was submitted with the application and made recommendations to ensure that the development when built complies with AS2021-2000.	Yes
	C8 – The introduction of noise abatement measures to achieve compliance with current AS 2021 must be done in a manner that does not compromise the architectural design of a building or impact on the character of an existing streetscape.	The proposed development incorporates noise abatement measures to achieve compliance with AS 2021-2000 and so as not to compromise the architectural design of a building or impact on the character of an existing streetscape.	Yes
	C9 – All development that is in, or immediately	The proposed development has been designed in accordance with NSW Department of	Yes



Part	Control	Proposed	Complies
	adjacent to, the rail corridor or a busy road must be designed in accordance with NSW Department of Planning 'Development Near Rail Corridors and Busy Roads – Interim Guidelines, December 2008'.	Planning 'Development Near Rail Corridors and Busy Roads – Interim Guidelines, December 2008'.	
6.3.1 Amalgamation and subdivision	Development to comply Part 3E to ensure consistency with the Desired Future Character	It can be demonstrated that sites to immediate east can develop independently of the proposed development in the future.	Yes
6.3.5 Setbacks	Side Setback - 2m Front – 3m landscape 9m to Building Rear nil to 3m	The building is proposed to be built to each boundary to accommodate basement car parking required to meet Councils parking requirements.  Above podium, a rear setback to the eastern boundary is provided of approximately 17m.	No Considered acceptable
7F.2 General Requirements – Hotels & Motel Accommodation	C1 – The maximum stay permitted is 3 months.	A condition can be imposed to require that stays are limited to a maximum of three (3) months.	Condition to comply
	C2 – The main access point is to be located at the main street frontage of the property. Access Points should be avoided at the boundaries of the property where and impact on noise or privacy could result for adjoining residences.	The main pedestrian access point has been provided off O’Riordan Street/Robey Street.  Vehicular access is provided from a two way driveway off Robey Street.  Service vehicle access is provided from Baxter Road and all service vehicles enter and leave in a forward direction onto Robey Street.	Yes

Part	Control	Proposed	Complies
	C4 – The minimum size for a visitor's room is 5.5m <sup>2</sup> for the bedroom floor area for each person staying within the room.	The rooms are substantially above this requirement.	Yes
	C7 – A small kitchenette is permitted if adequate cupboards and shelves are provided.	Kitchenettes are not proposed.	Yes
	C9- Bathrooms must be provided in accordance with the <i>Building Code of Australia</i> .	A separate bathroom is provided within each hotel room in accordance with the BCA.	Yes
	C10 – The design and operation of hotel and motel accommodation must take into account possible noise impacts on adjacent properties and the surrounding area.	An Acoustic Report by Wilkinson Murray has been prepared for the site. It is considered that the proposed hotel will not have any adverse noise impacts on adjacent properties or the surrounding area.	Yes
	C12- The building is to comply with Parts C, D, and E of the BCA.	The proposal has been reviewed by a building consultant confirming compliance has been achieved by the proposal with regards to fire safety requirements.	Yes
	C13 – Each room is to comply with Parts C, D E and F5 of the BCA so as to ensure there is adequate fire safety in the building and adequate sound insulation between	The proposal has been reviewed by a building consultant confirming compliance has been achieved by the proposal with regards to fire safety requirements.	Yes

Part	Control	Proposed	Complies
	each room.		

**Table 7 – BBDCP 2013 Compliance Table**

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

These matters have been considered in the assessment of the Development Application. It is considered that the proposed development will have no significant adverse environmental, social or economic impacts on the locality. Any likely impacts of the proposed development are considered to have been adequately dealt with in the assessment of the Development Application.

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

These matters have been considered in the assessment of the development application. The subject site is currently operating as a vehicle rental centre. A Detailed Stage 2 Contamination Report has been submitted which concludes that contaminated groundwater exists on site, therefore, a condition has been imposed in the draft schedule of conditions to require a Remedial Action Plan (RAP) be submitted to Council prior to the issue of the Construction Certificate. In addition the subject site is affected by the 25-30 ANEF contour and also affected by road traffic noise and rail noise. In this regard the applicant has submitted an acoustic report which demonstrates that the development can meet the acoustic requirements of both affectations.

Accordingly, it is considered that the site is suitable for the proposed development. The proposed development being for the construction of a twelve (12) storey hotel containing 238 rooms with ancillary facilities (restaurant, bar etc), retail space and commercial area, four levels of basement car parking to accommodate 93 car spaces, associated landscaping and public domain works at 210 O’Riordan Street, Mascot located in the 4(c2) Industrial Special – Airport Related – Restricted zone is considered to be a suitable development in the context of the site and the locality.

**(d) Any submissions made in accordance with the Act or Regulation**

These matters have been considered in the assessment of the development application. In accordance with the Botany Bay Development Control Plan 2013 Part 2 – Notification and advertising, the development application was notified to surrounding property owners for thirty (30) days from 18 December 2012 to 22 January 2013 and four (4) submissions were received. The main issues raised in the submissions are summarised as follows:

- *The bulk and scale of this proposal will greatly overshadow my property blocking sunlight to my solar panels.*

Comment

The shadow diagrams submitted with the development application indicate that the proposal will not cast a shadow to the roof of 125 Baxter Road on 21 June until later in the afternoon. The shadow cast on the roof of 125 Baxter Road is from the existing Quest Apartments on Robey Street from 12 noon and remains for the rest of the day. This is an existing situation.

- ***Sunlight which is now enjoyed in the backyard of 131 Baxter Road will be lost as the massive bulk of this building generated overshadowing that will totally cover the rear private open space area. Overlooking will be incessant and all privacy lost.***

#### Comment

The property at 131 Baxter Road is presently a residential dwelling. The site is zoned in the same manner as the subject site, which encourages the redevelopment of land for commercial and employment generating development. The site is situated in the 25-30 ANEF contour, and directly opposite the Marrickville/Botany Goods Rail Line. It is an inappropriate site for continued residential use. The shadow diagrams submitted with the development application indicate that the proposal will cast a shadow onto the rear private open space and dwelling at 131 Baxter Road from 12 noon onwards.

Due to the very close proximity of the adjoining site to the east, the privacy impacts arising from the proposal would be very minimal due to the acute angle between the hotel rooms and the rear private open space area. The proposed pool and deck on Level 4 will be immediately adjacent to the dwelling but located at Level 4 above, therefore the angle from the communal area is too acute to permit viewing into the adjoining property. Beyond the podium, a five (5) metre high wall is proposed directly along the common boundary to screen service areas and drop off zones. The height of this wall will also preclude viewing of the majority of the rear yard. Some viewing will still be permitted, however one would need to be standing on the balconies looking directly down.

- ***The proposal has potential to create an isolated site at 131 Baxter Road, which is not a desirable outcome for the future redevelopment of the precinct.***

#### Comment

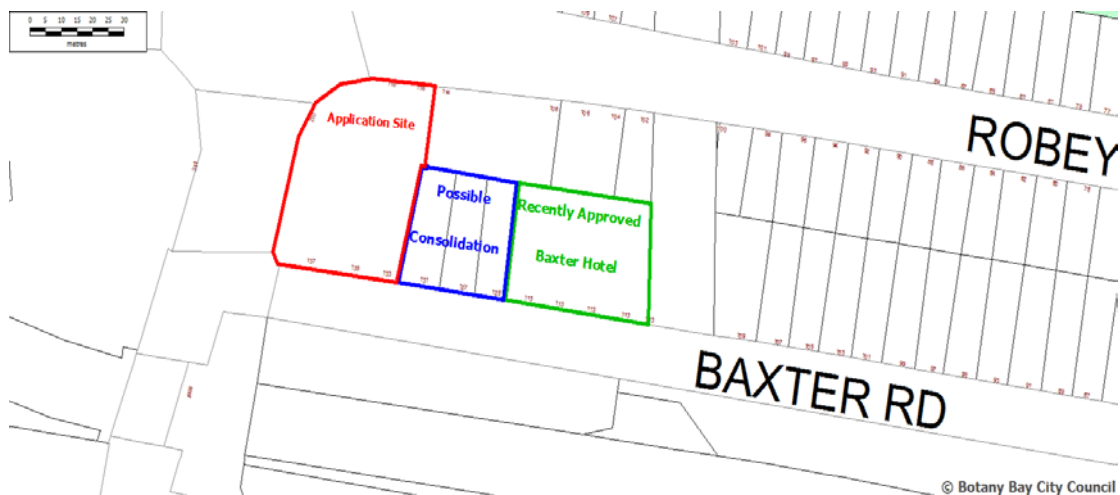
An assessment of site isolation has been undertaken with consideration to the relevant Planning principle including Cornerstone Property Group Pty Ltd v Warringah Council [10493 of 2003].

The following assessment is provided which addresses the relevant matters of consideration to the Isolation of Sites principles. However, as there is no minimum lot size and given the following assessment, it is considered that there will be no site isolation as a result of the proposed development and the principles need not be addressed.

The subject site formerly comprised of multiple allotments which have now been consolidated in accordance with the conditions of Development Consent No. 08/132 to facilitate the approved 12 storey commercial building on site. Development

Consent No. 08/132 does not incorporate the adjoining site at 131 Baxter Road, which currently accommodates a residential dwelling.

Despite the above, it is not considered that the adjoining site at No. 131 Baxter Road would be left as an isolated site, as it also adjoins two sites to its immediate east (Nos. 125-127 Baxter Road), which could be consolidated in the future to create a site of approximately 1,101sqm as indicated in the figure below. Those sites adjoining 131 Baxter Road, Mascot are not currently subject to any development applications with Council.



**Figure 4 – Future Consolidation**

- ***Extent of Floor Space Exceedence Proposed is inappropriate and the SEPP 1 Objection is not well founded.***
  - *Additional FSR Objective required to ensure that the bulk and scale of the proposal is appropriate when considered in the context of surrounding development; and*
  - *A third objective to ensure that the bulk and scale of the development does not result in unacceptable amenity impacts.*

**Comment**

The SEPP 1 Objection identifies two implied underlying objects or purposes of the standard. The applicant has submitted a response to this matter on the 11 September 2014, which states that the reference to the approved development on site, within its identification and assessment of the implied objectives is appropriate.

Notwithstanding the absence of other objectives, Council has considered the site, the proposed bulk and scale and its context. The proposed bulk and scale is considered appropriate given that it adjoins a nine storey motel directly to the east, which has an FSR of 5:1 (calculated under BLEP 1995) and is in very close proximity to other hotel and commercial developments of similar FSR, bulk and scale.

The proposed development with its bulk and scale does not result in any significant adverse impacts onto the streetscape, adjoining or nearby properties.

There are no significant overshadowing impacts, no adverse privacy impacts. Whilst the proposal will generate traffic, this will be significantly less than the traffic and parking generation anticipated for the approved commercial development and less than that expected of a complying commercial development. The proposed development is consistent with the objectives of the 4(c2) zone, the objectives of the B5 – Business Development zone under BBLEP 2013 and the Desired Future Character of the precinct as stated under BBDCP 2013.

- ***The SEPP 1 objection does not address why a complying development is unreasonable or unnecessary.***

#### Comment

The SEPP 1 Objection states:

*It would be reasonable to require compliance with the LEP if some adverse impact of the proposal was sufficient to negate the positive benefits of providing a hotel in this state government designated economic and employment centre.*

*Under the current FSR control of 1.5:1, the proposal would not be more have 3.5 storeys and a have a very small floor plate.*

An assessment of the proposed development indicates that there are no significant adverse impacts as a result of the proposal. The site has been identified as a gateway site, for employment opportunities under the Draft Subregional Strategy and this has been acknowledged in the approval of the office building for the site. To strictly comply with the standard would result in a building which is starkly inconsistent with prevailing scale and form of nearby commercial development and will be an under utilisation of the site, which is not supported at this particular location.

It has been demonstrated that a complying commercial development would have a more intense nature than the proposed hotel and on this the proposed FSR variation is appropriate and the SEPP 1 Objection is considered acceptable and is supported.

#### **(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.

#### **Other Matters**

##### 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.

The application proposes buildings which exceed the maximum height and was therefore referred to Sydney Airports Corporation Limited (SACL) for consideration. SACL raised no

objections to the proposed maximum height of 50.90 metres AHD, subject to conditions to be imposed on any consent.

*Ausgrid*

Correspondence was received from Ausgrid dated 2 January 2013, 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.

*NSW Office of Water*

Correspondence was received from NSW Office of Water on the 19 June 2013, advising that they have no objection to the proposal, and have provided their General Terms of Approval which have been required as conditions of consent.

*Railcorp/Sydney Trains*

Correspondence was received from Sydney Trains on the 30 July 2014, advising that they have no objection to the proposal, and have provided conditions.

*Australian Rail Track Corporation (ARTC)*

Correspondence was received from ARTC on 21 December 2013 and conditions have been provided.

*Sydney Water*

Correspondence was received from Sydney Water on 20 January 2013 and conditions have been provided.

*NSW Police*

Correspondence was received from Mascot Police on 22 January 2013 and conditions have been provided.

*NSW Roads and Maritime Service (RMS)*

Correspondence was received from RMS on 8 April 2013 and conditions have been provided.

Internal Referrals

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

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 23 January 2013. The DRP made the following recommendations:

*It is considered that the development of the hotel of the height and form proposed close to the airport is appropriate in this location. Apart from the density issue, subject to the submission of a satisfactory detailed architectural design of the building and satisfactory response to the comments, the development is supported in principle.*

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

	Issue	Applicant's Response
1	<p><b>Relationship to the Context of the Proposal</b></p> <p>The constant heavy traffic on O’Riordan Street presents a challenge in relation to noise and pollution. The decision to locate the main entry in Robey Street is supported. The courtyard vehicle entry is sensible. The development is consistent with the scale of adjoining development.</p>	No amendments to plans required.
2	<p><b>The Scale of the Proposal</b></p> <p>The four storey curved podium in combination with height storey form above created an appropriate scale in its immediate context and the podium combination with the continuous awning will result in a comfortable scale for pedestrians.</p>	No amendments to plans required.
3	<p><b>The built form of the proposal</b></p> <p>Built form clearly addresses the issues relating to access and scale and is sensible and supported.</p> <p>The four storey section returning to Baxter Road with amenities and garden on the roof will create a suitable precedent for the development of the adjoining and nearby sites</p>	No amendments to plans required.
4	<p><b>The proposed density</b></p> <p>The FSR of 6.4:1 is in excess of the LEP and Draft LEP. The SEPP 1 Objection is well founded for a number of reasons, the existence of the approved DA at a slightly higher density, the desirability of encouraging the preferable hotel use on the site, the generally good quality of the design and the fact that there would appear to be no negative implications in relation to precedent.</p>	No amendments to plans required.
5	<p><b>Resource and Energy Use and Water Efficiency</b></p> <p>The applicant is urged to adopt</p>	Subject to Section J of the BCA and NABERS ratings.



	<b>Issue</b>	<b>Applicant's Response</b>
	environmentally responsible design measures in relation to rain water recycling, solar hot water and other initiatives.	
6	<p><b>Landscaping</b></p> <p>The entrance driveways should be paved to create an attractive pedestrian friendly ground surface level.</p> <p>The proposed major tree planting along O’Riordan Street frontage would be particularly important for enhancing the character of the street and screening the new building from traffic to improve amenity of rooms fronting the road.</p>	Landscaping plans submitted with the DA prepared by Taylor Brammer which indicate paved driveways.
7	<p><b>The Amenity of the Proposal for its users</b></p> <p>All bedrooms should be designed to have the opportunity for natural ventilation with doors opening to balconies.</p>	The ground floor lobby is of a sufficient size for hotel guests to wait for transportation. The bedrooms can be required to provide operable doors to the balconies.
8	<p><b>The Safety and Security Characteristics of the Proposal</b></p> <p>No Comment</p>	It is noted that the application has been referred to NSW Police who have provided conditions.
9	<p><b>Social issues</b></p> <p>A good quality hotel in this location, provided with a gym and roof top pool, together with attractive ground floor amenities.</p>	No amendments required.
10	<p><b>The Aesthetics of the Proposal</b></p> <p>Some further articulation and detailed design of the ground floor glazed frontage to O’Riordan Street is suggested to enliven this facade.</p>	This elevation has been further articulated to provide depth and interest in the façade.

**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.

### 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 **\$217,120.98** to paid prior to the issue of the Construction Certificate towards the provision and/or improvement of human services in the local government area. The Applicant has stated that there will be 90 staff members. Therefore, the contribution consists of the following;

(i)	Community Facilities	\$23,310.00
(ii)	Administration	\$3,780.00
(iii)	Shopping Centre Improvements	\$16,920.00
(iv)	Open Space & Recreation	\$157,050.00
(v)	Transport Management	\$16,060.98

### Land Dedication

The subject site is affected by road widening on O'Riordan Street, running from the south-western corner of the property north through the arc of the western boundary into Robey Street. The land is required to be dedicated for road widening purposes until such time as the NSW RMS require the physical widening works to take place. It is noted that the proposed building at its upper levels marginally overhangs the future road reservation area. An appropriate condition is imposed in respect to the required land dedication.

### **Conclusion**

The Joint Regional Planning Panel, Sydney East Region (JRPP) is the consent authority for the development application. The design currently before the Panel has been the subject of a design review process. The view is expressed that the application given the findings of the assessment process should be supported.

The proposal has been assessed in accordance with Section 79C of the *Environmental Planning and Assessment Act 1979* and the *Botany Bay Local Environmental Plan 2013*. The proposal is permissible in the zone, and is considered to result in a development which is suitable in the context. It is therefore recommended that the Panel grant approval to the application subject to the conditions in the attached schedule.

### **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 SEPP 1 Objection under Botany Local Environmental Plan 1995 to permit a maximum FSR of 6.6:1; and*
- (b) *Approve Development Application No. 12/230 for the construction of a twelve (12) storey hotel containing 238 rooms with ancillary facilities (restaurant, bar etc), retail space and commercial area, four levels of basement car parking to accommodate 93*

*car spaces, associated landscaping and public domain works at 210 O’Riordan Street, Mascot.*

**Premises: 210 O’Riordan Street Mascot**

**DA No: 12/230**

## **SCHEDULE OF CONSENT CONDITIONS**

### **GENERAL CONDITIONS**

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

<b>Drawing No.</b>	<b>Author</b>	<b>Dated Received</b>
DA000 Drawing List (Rev D)	Ancher/Mortlock/Wolley	6/12/2012
DA010 Site Analysis, Roof Plan (Rev E)	Ancher/Mortlock/Wolley	18/12/2012
DA012 Roof Context Height (Rev D)	Ancher/Mortlock/Wolley	6/12/2012
DA099 Basement Levels 1/2 Plan (Rev E)	Ancher/Mortlock/Wolley	18/12/2012
DA100 Level 00 Plan (Rev D)	Ancher/Mortlock/Wolley	6/12/2012
DA101 Level 1 and Podium Levels (Rev D)	Ancher/Mortlock/Wolley	6/12/2012
DA102 Level 4 and High Levels (Rev D)	Ancher/Mortlock/Wolley	6/12/2012
DA140 Area Calculations (Rev E)	Ancher/Mortlock/Wolley	18/12/2012
DA200 North Elevation (Rev D)	Ancher/Mortlock/Wolley	6/12/2012
DA201 West Elevation (Rev D)	Ancher/Mortlock/Wolley	6/12/2012
DA202 South Elevation (Rev D)	Ancher/Mortlock/Wolley	6/12/2012
DA203 East Elevation (Rev D)	Ancher/Mortlock/Wolley	6/12/2012
DA300 Section AA (Rev D)	Ancher/Mortlock/Wolley	6/12/2012
DA301 Section BB (Rev D)	Ancher/Mortlock/Wolley	6/12/2012
DA400 Sun Study - June 21 (Rev D)	Ancher/Mortlock/Wolley	6/12/2012
DA401 Sun Study - Dec 21 (Rev D)	Ancher/Mortlock/Wolley	6/12/2012
DA402 Sun Study 20 March (Rev D)	Ancher/Mortlock/Wolley	6/12/2012
DA403 Sun Study 23 Sep (Rev D)	Ancher/Mortlock/Wolley	6/12/2012
DA404 Sun Study Winter//Summer (Rev D)	Ancher/Mortlock/Wolley	6/12/2012
DA405 Sun Study Spring/Autumn (Rev D)	Ancher/Mortlock/Wolley	6/12/2012

<b>Drawing No.</b>	<b>Author</b>	<b>Dated Received</b>
Landscape Plans LA01 Landscape Plan (Rev A)	Taylor Brammer	6/12/2012
Stormwater Drainage Plans, Drawing Nos.: SW01 Basement & Ground Floor (Issue A) SW02 Roof Plan (Issue A) SW03 Sediment & Erosion Control (Issue A) SW04 Details Sheet (Issue A)	Michael Frost	6/12/2012
Survey Plan, Ref No. 26085RH		6/12/2012

<b>Reference Document(s)</b>	<b>Author</b>	<b>Date Received</b>
Statement of Environmental Effects	Neustein Urban	6/12/2012
Amended SEPP 1 Objection	Neustein Urban	January 2013
Cost Summary	Davis Langdon	6/12/2012
Phase 2 Contamination Assessment Project No. 73122 dated October 2012	Douglas Partners	7/12/2012
Water Conservation Report	Michael Frost & Associates	6/12/2012
Traffic & Transport Impact Assessment	Transport & Urban Planning	12 December 2013
Finishes Schedule	Ancher/Mortlock/Wolley	6/12/2012
Acoustic Report	Wilkinson Murray	6/12/2012
Wind Environment Statement	Windtech	6/12/2012
Geotechnical Investigation	Douglas Partners	6/12/2012
Assessment Against Part 3 of BBDCP 2013	Neustein Urban	29/8/2014
Assessment Against Part 7 of BBDCP 2013	Neustein Urban	21/8/2014
Letter regarding SEPP 1 Objection	Neustein Urban	11/9/2014

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 | \$361,000.00; |
| (b) | Development Control       | \$2,700.00;   |
| (c) | Tree Maintenance Bond     | \$6,000.00;   |
| (d) | Section 94 Contribution   | \$217,120.98; |

**Note:** The Section 94 Contribution is to be paid prior to the issue of the Occupation Certificate. The Section 94 Contribution fees are subject to annual review and the current rates are applicable for the financial year in which your consent is granted. If you pay the contribution in a later financial year you will be required to pay the fee applicable at the time.

3 This Consent relates to land in Lot 1 DP1190559 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.

4

- (a) The design of the development is to be amended so that all new buildings and structures are erected clear of the land required for road widening as set out in the letter dated 8 April 2013 from NSW RMS (ref: SYD13/00072) and accompanying plan. This includes all overhangs etc in the strata above and below the affected areas;
- (b) If complying with Condition No. 4(a) requires design modification to the building a Section 96 Application is to be lodged with Council for assessment and determination, and include if necessary resubmission to the Council's Design Review Panel.

5 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.

6

- (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**

7 The following conditions are imposed by the Ausgrid:

- (a) The Applicant shall make provision for a substation(s). The size and type of substation(s) required cannot be confirmed until a completed Connection Application with load details has been received by Ausgrid.

8 The following conditions are imposed by NSW Office of Water:

#### **General**

- (a) An authorisation shall be obtained for the take of groundwater as part of the activity. Groundwater shall not be pumped or extracted for any purpose other than temporary construction dewatering at the site identified in the development application. The authorisation shall be subject to a currency period of 12 months from the date of issue and will be limited to the volume of groundwater take identified.
- (b) The design and construction of the structure shall preclude the need for permanent dewatering by waterproofing those areas that may be impacted by any water table (ie. fully tanked structure) with adequate provision for unforeseen fluctuations of water table levels to prevent potential future inundation.
- (c) Construction methods and material used in and for construction shall be shall not cause pollution of the groundwater.

#### **Prior to excavation**

- (d) Measurements of groundwater levels beneath the site from a minimum of three monitoring bores shall be taken and a report provided to the NSW Office of Water. A schedule and indicative plans of the proposed ongoing water level monitoring from the date of consent until at least two months after the cessation of pumping shall be included in the report.

- (e) A reasonable estimate of the total volume of groundwater to be extracted shall be calculated and a report provided to the NSW Office of Water. Details of the method shall be included in the report.
- (f) A copy of a valid development consent for the project shall be provided in the report to the NSW Office of Water.
- (g) Groundwater quality testing shall be conducted and a report supplied to the NSW Office of Water. Samples must be taken prior to the commencement of pumping and a schedule of the ongoing testing throughout the dewatering activity shall be included in the report. Collection and testing and interpretation of results must be done by suitably qualified persons and NATA certified laboratory identifying the presence of any contaminants and comparison of the data against accepted water quality objectives or criteria.
- (h) The method of disposal of pumped water shall be nominated (i.e. street drainage to the stormwater system or discharge to sewer) and a copy of the written permission from the relevant controlling authority shall be provided to the NSW Office of Water. The disposal of any contaminated pumped groundwater (tailwater) must comply with the provisions of *the Protection of the Environment Operations Act 1997* and any requirements of the relevant controlling authority.
- (i) Contaminated groundwater shall not be reinjected into any aquifer. The reinjection system design and treatment methods to remove contaminants shall be nominated and a report provided to the NSW Office of Water. The quality of any pumped water (tailwater) that is to be reinjected must be compatible with, or improve the intrinsic or ambient groundwater in the vicinity of the reinjection site.

#### During excavation

- (j) Piping or other structures used in the management of pumped groundwater (tailwater) shall not create a flooding hazard. Control of pumped groundwater is to be maintained at all times during dewatering to prevent unregulated off-site discharge.
- (k) Measurement and monitoring arrangements to the satisfaction of the NSW Office of Water are to be implemented. Monthly records of the volumes of all groundwater pumped and the quality of any water discharged are to be kept and a report provided to the NSW Office of Water after dewatering has ceased. Daily records of groundwater levels are to be kept and a report provided to the NSW Office of Water after dewatering has ceased.
- (l) Pumped groundwater shall not be allowed to discharge off-site (e.g. adjoining roads, stormwater system, sewerage system, etc.) without the controlling authorities approval and/or owners consent. The pH of discharge water shall be managed to be between 6.5 and 8.5. The requirements of any other approval for the discharge of pumped groundwater shall be complied with.
- (m) Dewatering shall be undertaken in accordance with groundwater-related management plans applicable to the excavation site. The requirements of any management plan (such as acid sulfate soils management plan or remediation action plan) shall not be compromised by the dewatering activity.

- (n) The location and construction of groundwater extraction works that are abandoned are to be recorded and a report provided to the NSW Office of Water after dewatering has ceased. The method of abandonment is to be identified in the documentation.
- (o) Access to groundwater management works used in the activity is to be provided to permit inspection when required by the NSW Office of Water under appropriate safety procedures.

Following excavation

- (p) All monitoring records must be provided to the NSW Office of Water after the required monitoring period has ended together with a detailed interpreted hydrogeological report identifying all actual resource and third party impacts.

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 in and around the development to provide maximum surveillance coverage of the area, particularly in 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 (underground car park, foyer entrance);
- (c) Any proposed landscaping and vegetation should adhere to the following principles:
  - (i) Shrubs bushes, plants should remain under 900mm in height;
  - (ii) Branches or large trees should start at a height of two (2) metres and higher;
    - (a) This will assist with natural surveillance and reduce hiding spots and dark areas for potential offenders.
- (d) 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;
- (e) Any cash safes should be secured to the floor and placed away from view of the public. Staff should be trained in safe cash handling practices to minimise the loss of monies in the event of a robbery.

10 The following conditions are imposed by the Department of Infrastructure, Transport, Regional Development and Local Government:



- (a) The height of the development may not exceed 50.9m AHD at the location described, inclusive of all lift over-runs, vents, chimneys, aerials, TV antennae, light or any other appurtenance;
- (b) The south-eastern corner of the building is to slope downwards at no less than a 10 per cent gradient and the south-eastern most height of the roof must not exceed a height of 48m AHD as per the attached plan (Attachment A) inclusive of all lift over-runs, vents, chimneys, aerials, TV antennae, light or any other appurtenance;
- (c) The shielding principles as stipulated in MOS Part 139 Section 7.4.2 are to be strictly adhered to in accordance with the details provided in the application.
- (d) The building is to be obstruction lit (medium intensity steady red lights) in accordance with Part 139 of the MOS issued by CASA. The obstruction lights must operate 24 hours and be maintained in working order at all times by the proponent;
- (e) In accordance with CASA requirements, the obstacle light is to be located at the 50.9m AHD roof level and is to be visible from the runway 34R threshold.
- (f) Separate approval must be sought under the Airports (Protection of Airspace) Regulation 1996 for any cranes required to construct the building.
- (g) The proponent must notify SACL upon completion of construction of the building and finished building heights must be provide to SACL upon completion (in AHD), so that it can update its plans and other records for Sydney Airport and it surrounds.
- (h) Exact locations of obstruction lighting must be provided.

11 The following conditions are imposed by Sydney Trains:

- (a) Unless amendments are required by RailCorp as part of the review and approval/certification of the documentation listed in Condition A2 all excavation and construction works are to be undertaken in accordance with the following documents:
  - (i) Douglas Partners Pty Ltd report titled "Proposed Multi-Storey Building, 210 O'Riordan St, 116-118 Robey St & 133-137 Baxter Rd, Mascot" (Project: 73122.01), dated September 2012'
  - (ii) General Notes Plan - Drawing No. SO.001 Revision 02 dated 13/5/14 prepared by SDA Structures Pty Ltd;
  - (iii) Shoring Wall & Airport Tunnel Protection Limit Plan – Drawing No. SO.100 Revision 03 dated 10/6/14 prepared by SDA Structures Pty Ltd;
  - (iv) Shoring Wall & Airport Tunnel Protection Section Construction Sequencing 1-4 - Drawing No. SO.101 Revision 03 dated 10/6/14 prepared by SDA Structures Pty Ltd;
  - (v) Shoring Wall & Airport Tunnel Protection Section Construction Sequencing 5-8 - Drawing No. SO.102 Revision 03 dated 10/6/14 prepared by SDA Structures Pty Ltd;

- (vi) Shoring Wall Sections & Details Sheet 1 - Drawing No. SO.111 Revision 02 dated 13/5/14 prepared by SDA Structures Pty Ltd;
- (vii) Basement 4a to Basement 4 Marking Plan - Drawing No. SO.200 Revision 02 dated 13/5/14 prepared by SDA Structures Pty Ltd;
- (viii) Basement 3a to Basement 3 Marking Plan - Drawing No. SO.201 Revision 02 dated 13/5/14 prepared by SDA Structures Pty Ltd;
- (ix) Basement 1 Marking Plan - Drawing No. SO.202 Revision 02 dated 13/5/14 prepared by SDA Structures Pty Ltd;
- (x) Mott MacDonald report titled "210 O'Riordan, Mascot – Basement Adjacent to the Airport Line Tunnel" (Revision 3) dated 12/06/2014;

The Principle Certifying Authority is not to issue the Construction Certificate until written confirmation has been received from RailCorp confirming that the documentation listed in this condition have not be superseded with the approval/certification of documentation in Condition A2. Should RailCorp advise that any of the documentation listed in this condition have not been superseded, then the measures detailed in those specific documents are to be incorporated into the construction drawings and specifications prior to the issuing of the Construction Certificate. Prior to the commencement of works the Principle Certifying Authority is to provide verification to RailCorp that this condition has been complied with.

- (b) Prior to the issuing of a Construction Certificate, the Applicant shall prepare and provide to RailCorp for approval/certification the following items:
  - (i) Detailed design documentation addressing the issues raised in Section 9 of the abovementioned Douglas Partners report.
  - (ii) In relation to the abovementioned Mott MacDonald report, the following details:
    - (1) Finite Element (RocScience) Analysis Output - Concrete Piles – Area: Confirmation as to whether the units of measurement for the temporary sheetpile, shear walls, i-Beam require updating.
    - (2) Finite Element (RocScience) Analysis Output - Concrete Piles – Moment of Inertia: Confirmation as to whether the units of measurement for the temporary sheetpile, shear walls, i-Beam require updating.
  - (iii) A tunnel monitoring report outlining proposed instrumentation and monitoring. Instrumentation and monitoring shall be undertaken of the site during the basement excavation process to provide early warning should unexpected adverse conditions develop and to compare with predicted results from numerical analysis.

Any conditions issued as part of RailCorp's approval/certification of any of the above documents will also form part of the consent conditions that the Applicant is required to comply with. The Principle Certifying Authority is not to issue the Construction Certificate until written confirmation has been received from RailCorp confirming which of the documentation listed in this condition are to now apply and supersede the documentation in Condition

A1. The measures detailed in the documents approved/certified by RailCorp under this Condition are to be incorporated into the construction drawings and specifications prior to the issuing of the Construction Certificate. Prior to the commencement of works the Principle Certifying Authority is to provide verification to RailCorp that this condition has been complied with.

- (c) All excavation/ground penetration works within 25m of the rail corridor are to be supervised by a geotechnical engineer experienced with such excavation projects. This notation is to be added to all the structural drawings;
- (d) No rock anchors/bolts are to be installed into RailCorp's property or easements;
- (e) The Applicant is to submit to Council, for its records, copies of any certificates, drawings or approvals given to or issued by RailCorp;
- (f) Prior to the commencement of works and prior to the issue of the Occupation Certificate, a joint inspection of the rail infrastructure (including tunnels) and property in the vicinity of the project is to be carried out by representatives from RailCorp and the Applicant. These dilapidation surveys will establish the extent of any existing damage and enable any deterioration during construction to be observed. The submission of a detailed dilapidation report will be required unless otherwise notified by RailCorp;
- (g) The following items are to be submitted to RailCorp for review and endorsement prior to the issue of a Construction Certificate:
  - (i) Machinery to be used during demolition, excavation/ground penetration and construction

It should be noted that excavations undertaken in rock are to maintain and limit vibration levels to levels that will not adversely impact Railcorp assets.

- (h) An acoustic assessment is to be submitted to Council and RailCorp prior to the issue of a construction certificate demonstrating how the proposed development will comply with the Department of Planning's document titled "Development Near Rail Corridors and Busy Roads- Interim Guidelines". The Applicant must incorporate in the development all the measures recommended in the report to control that risk. A copy of the report is to be provided to the Principle Certifying Authority with the application for a Construction Certificate;
- (i) Prior to the issue of a Construction Certificate the Applicant is to engage an Electrolysis Expert to prepare a report on the Electrolysis Risk to the development from stray currents. The Applicant must incorporate in the development all the measures recommended in the report to control that risk. A copy of the report is to be provided to the Principle Certifying Authority with the application for a Construction Certificate;
- (j) Prior to the issue of a Construction Certificate a Risk Assessment/Management Plan and detailed Safe Work Method Statements (SWMS) for the proposed works are to be submitted to RailCorp for review and comment on the impacts on rail corridor. The Principle Certifying Authority is not to issue the Construction Certificate until written

confirmation has been received from RailCorp confirming that this condition has been satisfied;

- (k) Prior to the issue of a Construction Certificate the Applicant must hold current public liability insurance cover for a sum to be determined by RailCorp. This insurance shall not contain any exclusion in relation to works on or near the rail corridor. The Applicant is to contact RailCorp's Rail Corridor Management Group to obtain the level of insurance required for this particular proposal. Prior to issuing the Construction Certificate the Principle Certifying Authority must witness written proof of this insurance in conjunction with RailCorp's written advice to the Applicant on the level of insurance required;
- (l) Prior to the issue of a Construction Certificate the Applicant is to submit to RailCorp the demolition, excavation and construction methodology and staging for review and endorsement. The Principle Certifying Authority is not to issue the Construction Certificate until written confirmation has been received from RailCorp confirming that this condition has been satisfied;
- (m) Prior to the issue of an Occupation Certificate the Applicant shall provide RailCorp and Council as-built drawings and survey locating the development with respect to any rail boundary, RailCorp easement and rail infrastructure. This work is to be undertaken by a registered surveyor, to the satisfaction of RailCorp's representative. The as-built survey is to confirm that there has been no encroachment into any RailCorp land or easement area.

12 The following conditions are imposed by NSW Roads and Maritime Service:

- (a) The subject property is affected by a road proposal as shown by pink colour on the attached plan.  
  
However, RMS would raise no objections on property grounds to the submitted application provided any new building or structures (other than footpath pedestrian awnings or minor landscaping) are erected clear of the land required for road (unlimited in height or depth).  
  
The area required for road should be identified as a separate lot in any plan of subdivision.
- (b) The developer is to submit detailed documents and geotechnical report relating to the excavation of the site and support structures to RMS for approval in accordance with the Technical Direction (GTD 2012/001) – copy attached. The developer is required to meet the full cost of the assessment by RMS. Detailed design plans.
- (c) Detailed design plans and hydraulic calculations of any changes to the stormwater drainage system are to be submitted to RMS for approval, prior to the commencement of any drainage works.

Details should be forwarded to:

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

A plan checking fee will be payable and a performance bond may be required before RMS approval is issued. With regard to the Civil Works requirement please contact the RMS Project Engineer, External Works Ph: 8849 2114 or Fax: 8849 2766.

- (d) 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;
- (e) A Demolition Construction Traffic Management Plan detailing construction vehicles 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.
- (f) All construction vehicles are to be contained wholly within the site and vehicles must enter the site before stopping. A construction zone will not be permitted on O’Riordan Street;
- (g) The layout of the proposed car parking areas associated with the development (including driveways, grades, turn paths, sight distance requirement, aisle widths, aisle lengths and parking bay dimensions;
- (h) Disabled car parking spaces are to be provided in accordance with Council’s requirements and are to conform to Australian Standard 2890.6:2009;
- (i) To improve sight lines and to allow safer manouvering to both the Hotels driveway and the adjacent Quest apartments entry driveway, parking restrictions should be installed along the sites Robey Street frontage up to the adjacent Quest apartments entry driveway. This would be subject to the Local Traffic Committee’s approval.
- (j) To minimise confusion the Service Vehicle/Coach and Car Park entry/exit along Baxter Road should be clearly designated and signposted;
- (k) All vehicles are to enter and exit in a forward direction;
- (l) The proposed loading areas are to be kept clear of any obstacle, including parked cars, at all times;
- (m) The proposed development should be designed such that road traffic noise from O’Riordan Street is mitigated by durable materials and complies with the requirements of Clause 102 – (Impact of road noise or vibration on non-road development) of State Environmental Planning Policy (Infrastructure) 2007;
- (n) All works regulatory signposting associated with the proposed development are to be at no cost to RMS.

13 The following conditions are imposed by Sydney Water:

Wastewater

- (a) The main available for connection is the 225mm wastewater main traversing the site.

Subject to the scope of development the 225mm wastewater main traversing the site may require deviation or disuse, if no upstream properties are

connected. Further, compliance with the guidelines for building over/adjacent to Sydney Water assets may apply. The WSC will provide more detailed requirements.

#### Trade Waste Information

Should this development generate trade wastewater, this correspondence does not guarantee the applicant that Sydney Water will accept the trade wastewater to its sewerage system. In the event trade wastewater is generated, the property owner is required to submit an application for permission to discharge trade wastewater to the sewerage system before business activities commence. A boundary trap will be required where arrestors and special units are installed for trade waste pre-treatment.

#### Water

- (b) The 150mm drinking water main fronting the proposed development does not comply with the Water Supply Code of Australia (Sydney Water Edition – WSA03-2002) requirement for minimum sized mains for the scope of development.

The drinking water main need to be amplified to 200mm from point “A” to point “B”, as seen in Figure 1. The proposed drinking water infrastructure for this development will be sized and configured according to the Water Supply Code of Australia (Sydney Water Edition WSA 03-2002).

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

- 14 Prior to the issue of any Construction Certificate, at the proposed point of construction site entry, photographic survey showing the existing conditions of Council’s infrastructure shall be submitted to Council and Principal Certifying Authority.

The survey shall detail the physical conditions and identify any existing damages to the roads, kerbs, gutters, footpaths, driveways, street trees, street signs and any other Council assets fronting the property and extending to a distance of 50m from the development. Failure to do so may result in the applicant/developer being liable for any construction related damages to these assets. Any damage to Council’s infrastructure during the course of this development shall be restored at the applicant’s cost.

- 15 Prior to the issue of a Construction Certificate, and subject to the approval of the Civil Aviation Safety Authority (CASA), the applicant is to provide roof-mounted solar collector panels below a height of RL51m AHD to the rooftop area of the building. The collectors shall collect sufficient electricity to supply at least 20% of the building’s energy requirements. Details of the panel system are to be provided with the Construction Certificate, including the approval of CASA.

16 A Construction Management Program shall be submitted to, and approved in writing by the Council prior to the issue of a Construction Certificate. The program shall detail:

- (a) The proposed method of access to and egress from the site for construction vehicles, including access routes through the Council area and the location and type of temporary vehicular crossing for the purpose of minimising traffic congestion and noise in the area, with no access across public parks or public reserves being allowed;
- (b) Access to and egress can only be obtained from O’Riordan Street and at no times shall construction vehicles approach the site from Botany Road;
- (c) The proposed phases of construction works on the site and the expected duration of each construction phase;
- (d) The proposed order in which works on the site will be undertaken, and the method statements on how various stages of construction will be undertaken;
- (e) The proposed manner in which adjoining property owners will be kept advised of the timeframes for completion of each phase of development/construction process;
- (f) The proposed method of loading and unloading excavation and construction machinery, excavation and building materials, formwork and the erection of any part of the structure within the site. Wherever possible mobile cranes should be located wholly within the site;
- (g) The proposed areas within the site to be used for the storage of excavated materials, construction materials and waste containers during the construction period;
- (h) The proposed method/device to remove loose material from all vehicles and/or machinery before entering the road reserve, any run-off from the washing down of vehicles shall be directed to the sediment control system within the site;
- (i) The proposed method of support to any excavation adjacent to adjoining properties, or the road reserve. The proposed method of support is to be designed and certified by an Accredited Certifier (Structural Engineering), or equivalent;
- (j) Proposed protection for Council and adjoining properties, and
- (k) The location and operation of any on site crane.

**Note:** A crane may require prior approval from Sydney Airports Corporation.

The location of any Construction Zone (if required) approved by Council’s Traffic Committee, including a copy of that approval.

17 Prior to the issue of the Construction Certificate, a detailed Traffic Management Plan for the pedestrian and traffic management of the site during construction shall be prepared and submitted to the relevant road authority (Council or Roads and Maritime Services) for approval. The plan shall:

- (a) be prepared by a RMS accredited consultant;

- (b) nominate a contact person who is to have authority without reference to other persons to comply with instructions issued by Council's Traffic Engineer or the Police;
- (c) during construction, access can only be obtained to Baxter road from O'Riodan Street;
- (d) if required, implement a public information campaign to inform any road changes well in advance of each change. The campaign may be required to be approved by the Traffic Committee;

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

- 18 Prior to the release of the Construction Certificate, the following required section(s) are to be submitted to and approved by Council:
  - (a) All driveways/access ramps/vehicular crossings shall conform with Australian Standards AS 2890.1.
  - (b) For commercial developments, the applicant shall provide longitudinal sections along the extremities and the centre line of each internal driveway/access ramp at a scale of 1:25. These long sections shall extend from the horizontal parking area within the property to the centre line of the roadway. The sections shall also show the clear height from the ramp to any overhead structure.
  
- 19 Prior to the issue of any Construction Certificate, the applicant shall contact "Dial Before You Dig" to obtain a utility service diagram for, and adjacent to the property. The sequence number obtained from "Dial Before You Dig" shall be forwarded to Principal Certifying Authority. All utilities within the work zone shall be protected during construction.
  
- 20 Prior to the issue of any Construction Certificate, detail design and construction plans in relation to stormwater management and disposal system for the development shall be submitted to the Principal Certifying Authority for approval.  
 (The detail drawings and specifications shall be prepared by a suitably qualified and experienced civil engineer and to be in accordance with Council's Development Control Plan 'Stormwater Management Technical Guidelines', AS/NSZ 3500 – Plumbing and Drainage Code and the BCA. All drawings shall correspond with the approved architectural plans.)  
 The plans shall incorporate but not be limited to the following:
  - (a) Provision of an On-site Infiltration system in accordance with but not limited to Part 5 of the SMTG. A part infiltration, part OSD system may be



considered in exceptional circumstances when it can be demonstrated to Council that all other options to regulate the discharge from the site have been exhausted;

- (b) Infiltration rates shall be determined by a suitably qualified geotechnical engineer and shall be part of the geotechnical report submitted to Council or alternatively the rate of 0.25L/m<sup>2</sup>/s shall be used;
- (c) Provision of a minimum 10kL rainwater tank collection system for internal reuse in accordance with Section 4 of Botany Bay's SMTG;
- (d) No pump-out shall be used to drain seepage from the basement due to the elevated water table level. That is the basement shall be designed as a "fully tanked" structure;
- (e) The pump-out can only be utilized to dispose runoff that may enter the basement carpark from driveway access to the basement;
- (f) The pump out system from the basement carpark proposed shall discharge to the on-site stormwater infiltration system;
- (g) Incorporate a Stormwater Quality Improvement system to ensure compliance with Section 16 of Botany Bay's SMTG;
- (h) The water quality improvement system and WSUD strategy proposal shall be designed to capture and treat at least 85% flows generated from the site;
- (i) Any proposed discharge to Council and/or RMS Kerb and Gutter shall be limited to 10L/s. If a higher rate is proposed, a connection shall be made to RMS/Council's underground stormwater drainage system. Any connection to a Sydney Water or RMS stormwater system will require specific approval from the relevant organisation, and
- (j) The submission of detailed calculations including computer modelling where required to support the proposal.

21

- (a) Prior to the issue of the Construction Certificate, the measures in the acoustical report prepared by Wilkinson Murray, Report No. 07222-H, dated December 2012, shall be undertaken in accordance with the provisions of AS 2021 – 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:
    - (1) Appropriate acoustic glazing to stated windows and doors, including all required acoustic seals – glazing must be of the thickness exactly specified in the report;
    - (2) The proposed concrete wall and roof construction as proposed;
    - (3) 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.

- 22 An Erosion and Sediment Soil and Water Management Plan (ESCP) shall be prepared in accordance with the Landcom Managing Urban Stormwater – Soils and Construction 4th Edition (2004) and submitted to the Principal Certifying Authority prior to the release of the Construction Certificate.

This plan shall be implemented prior to commencement of any site works or activities. All controls in the plan shall be maintained at all times during the construction works. A copy of the ESCP shall be kept on-site at all times and made available to Council Officers on request.

- 23 A sufficient area shall be provided onsite to enable separate stockpiling of excavated materials for sampling and analysis prior to removal or reuse on site. Details of this area shall be provided in the Erosion and Sediment Control Plan (ESCP) prior to the issue of the Construction Certificate.

This plan shall incorporate and reference the construction environmental management plan and address site limitations

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

- (a) Carry out a survey of all utility and Council services within the site including relevant information from utility authorities and excavation if necessary to determine the position and level of services,
- (b) Negotiate with the utility authorities (eg AusGrid, Sydney Water, Telecommunications Carriers and Council in connection with:
- (i) The additional load on the system, and
- (ii) The relocation and/or adjustment of the services affected by the construction.

Any costs in the relocation, adjustment, and provision of land or support of services as requested by the service authorities and Council are to be the responsibility of the developer.

25

- (a) As part of this development, the Ausgrid power and lighting poles along Baxter Road, O’Riordan Street and Robey Street will need to be decommissioned and new underground and above ground infrastructure shall be provided as specified

by Ausgrid or any other affected service provider. The location of the new electrical pillars and new lighting poles shall be confirmed with Council prior to the issue of the Construction Certificate.

- (b) 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.

26 Prior to the release of the Construction Certificate, the landscape areas shown on the concept plan by *Taylor Brammer, LA01 Issue A, dated 8 November 2012* shall be the subject of detailed landscape construction documentation (plans and specifications) submitted to and approved by the City of Botany Bay's Landscape Architect. The landscape documentation is to be prepared by a suitably qualified landscape architect, in accordance with DCP 2013. The detailed (construction level) plan shall include, but not be limited to:

- a) A detailed planting plan at 1:100 scale showing all plant locations, centres, numbers and pot sizes. there is to be a dense 3-tier planting of trees, shrubs and groundcovers in all landscaped areas.
- b) All trees shall be min. 100 litre.
- c) The fire egress path on the eastern boundary is to be relocated to the building façade to make the deep soil area near the boundary available for canopy tree planting. A small planter shall be retained to accommodate climbers.
- d) Details of the proposed climbing frame/trellis for all areas proposed.
- e) Details for landscaping at the rear boundary and planter boxes required.
- f) Relocation of the fire hydrant booster assembly and gas meter/regulator assembly in the front setback to alternative location out of the setback or within the basement/level 1 as per other utilities
- g) An increase in width to the main planter in the front setback to achieve DCP compliance.
- h) Areas of paving, schedule of materials, edge treatments and sectional construction details.
- i) All fencing, privacy screening and pergolas – elevations and materials.
- j) Planter box on slab sectional details. Planter box depths to be in accordance with Council's DCP which requires 900mm soil depth for planting trees.
- k) Trees shall be used extensively throughout the site and be of an appropriate scale to ameliorate and soften buildings and provide a measure of screening and privacy for adjoining landuses. Deep soil zones (side/rear setbacks) must include larger canopy trees. Trees to be predominantly native, evergreen species.

27 Prior to the release of the Construction Certificate, a public domain improvements plan shall be submitted for approval by Council. The plan shall be undertaken by a suitably experienced landscape architect and shall include, but not be limited to, new street tree planting, incorporation of existing street trees, full width segmental footpath paving with tree pit cut outs (to Council specification), street tree pit treatments and tree guards (where required). The plan shall be in accordance with Council specification and requirement. Civil drawings shall be included providing levels and detailed footpath construction sections in accordance with Council's

engineering and landscape requirements and are required to align with the landscape drawings.

- 28 Prior to the release of the Construction Certificate, planter boxes constructed over a concrete slab shall be built in accordance with the following requirements:
- (a) 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 hob or haunch shall be constructed at the internal join between the sides and base of the planter to contain drainage to within the planter.
  - (c) Planters are to be fully waterproofed and sealed internally with a proprietary sealing agent and applied by a qualified and experienced tradesman 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 with soil.
  - (d) Drainage cell must be supplied to the base and sides of the planter to minimize damage to the waterproof seal during backfilling and facilitate drainage. Apply a proprietary brand filter fabric and backfill with an imported lightweight soil suitable for planter boxes compliant with AS 4419 and AS 3743.
  - (e) Finish externally with a suitable paint, render or tile to co-ordinate with the colour schemes and finishes of the building.
- 29 The Applicant shall submit to Council details of the construction and fit out of the food premises. Such details must demonstrate compliance with the following requirements:
- (a) the Food Act 2003,
  - (b) Food Regulations 2004;
  - (c) the Food Standards Code as published by Food Standards Australia and New Zealand; and
  - (d) the Australian Standard AS 4674-2004: Construction and fit out of food premises.
- Details to be submitted to the Principal Certifying Authority prior to the release of the Construction Certificate.
- 30 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.

31 Prior to the issue of the Construction Certificate, as recommended in the *Report of Phase 2 Contamination Assessment – Proposed Commercial Development* by Douglas Partners dated October 2012:

- (a) A non-intrusive investigation (e.g. ground penetrating radar) of the site shall be undertaken prior to the preparation of the RAP and any excavation to locate any unknown UST's and, if found, details of the decommissioning and removal from the site shall be provided, and
- (b) A supplementary groundwater assessment shall be undertaken to define the extent of the plume of identified exceedences, to allow the development and finalisation of an effective Remedial Action Plan (RAP) which would render the site suitable for the intended development.

All investigations outlined above shall be undertaken prior to completion of the RAP for the site.

32 Prior to the issue of the Construction Certificate, a Stage 3 – Remedial Action Plan (RAP) shall be prepared by a suitably qualified contaminated land consultant and shall be in accordance with:

- (a) NSW Office of Environment and Heritage (OEH) 'Contaminated Sites – Guidelines for Consultants Reporting on Contaminated Sites'; and
- (b) State Environmental Planning Policy 55 (SEPP55) – Remediation of Land.

The RAP shall incorporate all findings and recommendations in the *Report of Phase 2 Contamination Assessment – Proposed Commercial Development* by Douglas Partners dated October 2012 for the site, and any findings in further investigations as recommended in this report, it shall clearly state proposed cleanup objectives, and demonstrate how the site can be made suitable for the proposed use.

The RAP shall be submitted to Council for review and concurrence prior to commencement of any remedial action works or any excavation, demolition or other building works undertaken that are not associated with the preparation of the RAP.

33 Prior to the issue of the Construction Certificate, an Acid Sulphate Soils Management Plan (prepared by a suitably qualified and experienced environmental/geotechnical consultant) shall be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate. This report shall include any site specific procedures and mitigation measures required and shall include a site analysis from a NATA registered laboratory. The plan shall provide details of the following:

- (a) Site specific mitigation measures to both minimise the disturbance of acid sulphate soils as well as any measures relating to acid generation and acid neutralisation of the soil;
- (b) Management of ASS affected excavated material;
- (c) Measures taken to neutralise the acidity of any ASS affected material; and
- (d) Run-off control measures for the ASS affected soil.

All recommendations of the report shall be implemented prior to the commencement of building works.

- 34 Prior to the issue of the Construction Certificate:
- (a) The developer will need a Section 73 Compliance Certificate from Sydney Water. The Certificate will confirm that the developer meets Sydney Water's infrastructure requirements and payment of Sydney Water charges; and
  - (b) The developer must fund any adjustments needed to Sydney Water infrastructure. Developers should engage a Water Servicing Coordinator to get a Section 73 Certificate and manage the servicing aspects of the development. Details are available from Sydney Water's website [www.sydneywater.com.au](http://www.sydneywater.com.au).
- 35 Prior to the issue of the Construction Certificate, a report prepared by a suitably qualified and experienced energy efficiency consultant is to be submitted to the Principal Certifying Authority. The report is to confirm that the design of the building meets the requirements of Council and the relevant requirements of Section J of the Building Code of Australia (BCA).

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

- 36 The development is to be constructed to meet the requirements detailed in the approved acoustic report (Wilkinson Murray, Report No. 07222-H dated December 2012), and the following construction noise requirements:
- (a) Noise from construction activities associated with the development shall comply with the NSW Environment Protection Authority's Environmental Noise Manual – Chapter 171 and the *Protection of the Environment Operations Act 1997*.
  - (b) Construction period of 4 weeks and under:  
the  $L_{10}$  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 20 dB(A).
  - (c) Construction period greater than 4 weeks and not exceeding 26 weeks:  
the  $L_{10}$  sound pressure level measured over a period of not less than 15 minutes when the construction site is in operation must not exceed the background level by more than 10 dB(A).
  - (d) Time Restrictions
    - (i) Monday to Friday 07:00 am to 06:00 pm
    - (ii) Saturday 07:00 am to 04:00 pm
    - (iii) No Construction to take place on Sundays or Public Holidays.
  - (e) All possible steps should be taken to silence construction site equipment.

- (f) Throughout the construction period, Council's warning sign for soil and water management shall be displayed on the most prominent point of the building site, visible to both the street and site workers. A free copy of the sign is available from Council's Customer Service Counter.
- 37 All management measures recommended and contained within the erosion and sediment Control Plan (ESCP) submitted as part of the construction certificate shall be implemented in accordance with the *Landcom Managing Urban Stormwater – Soils and Construction 4<sup>th</sup> Edition (2004)*. This plan shall be implemented prior to commencement of any site works or activities. All controls in the plan shall be maintained at all times and made available to council officers on request.
- 38 Erosion and sediment control devices shall be installed and functioning prior to the commencement of any demolition, excavation or construction works upon the site in order to prevent sediment and silt from site works (including demolition and/or excavation ) being conveyed by stormwater into public stormwater drainage system, natural watercourses, bushland and neighbouring properties. In this regard, all stormwater discharge from the site shall meet the legislative requirements and guidelines.
- These devices shall be maintained in a serviceable condition AT ALL TIMES throughout the entire demolition, excavation and construction phases of the development and for a minimum one (1) month period after the completion of the development, where necessary.
- 39 Where any shoring is to be located on or is supporting Council's property, or any adjoining private property, engineering drawings certified as being adequate for their intended purpose by an appropriately qualified and practising structural engineer, showing all details, including the extent of encroachment and the method of removal (or any other method) and de-stressing of shoring elements, shall be submitted with the Construction Certificate to the Principle Certifying Authority along with Council's (or other) consent if the works intrude on Council's (or other) property.
- 40 The vehicular entry/exits to the site must be protected from erosion and laid with a surface material which will not wash into the street drainage system or watercourse.
- 41 Shaker pads are to be installed at the entry/exit points to the site to prevent soil material leaving the site on the wheels of vehicles and other plant and equipment.
- 42 For any water from site dewatering to be permitted to go to stormwater, the water must meet ANZECC 2000 Water Quality Guidelines for Fresh and Marine Water for the 95% protection trigger values for marine water. The results of all testing must be completed by a NATA accredited laboratory.
- All laboratory results must be accompanied by a report prepared by a suitably qualified person indicating the water meets these guidelines and is acceptable to be released into council's stormwater system. If it is not acceptable, details of treatment measures to ensure the water is suitable for discharge is to be provided in this report.

Reports shall be provided to council prior to discharge of groundwater to the stormwater system

43 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)).

44 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.
- 45 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.
- 46 All works carried out on the public roads shall be inspected and approved by Council's engineer. Documentary evidence of compliance with Council's requirements shall be obtained prior to proceeding to the subsequent stages of construction, encompassing not less than the following key stages:
- (a) Initial pre-construction on-site meeting with Council's engineers to discuss concept and confirm construction details, traffic controls and site conditions/constraints prior to commencement of the construction of the civil works associated with the road widening;
  - (b) Prior to placement of concrete (kerb and gutter and footpath);
  - (c) Prior to construction and placement of road pavement materials; and
  - (d) Final inspection.
- Note:** Council's standard inspection fee will apply to each of the above set inspection key stages. Additional inspection fees may apply for additional inspections required to be undertaken by Council.

### **DURING WORKS**

- 47 Any material containing asbestos found on site during the demolition process shall be removed and disposed of in accordance with:
- (a) WorkCover NSW requirements. An appropriately licensed asbestos removalist and must complete all asbestos works if they consist of the removal of more than 10m<sup>2</sup> of bonded asbestos and/or any friable asbestos
  - (b) Protection of the Environment Operations Act 1997;
  - (c) Protection of the Environment Operation (Waste) Regulation

(d) DECC Waste Classification Guidelines 2008.

- 48 Results of the monitoring of any field parameters such as soil, groundwater, surface water, dust or noise measurements shall be made available to Council Officers on request throughout the remediation and construction works.
- 49 Any new information that comes to light during demolition or construction which has the potential to alter previous conclusions about site contamination and remediation must be notified to Council and the accredited certifier immediately.
- 50 All materials excavated from the site (fill or natural) shall be classified in accordance with the NSW Department of Environment and Climate Change (DECC) Waste Classification Guidelines (2008) prior to being disposed of to a NSW approved landfill or to a recipient site.
- 51 The management of potential and actual acid sulfate soils shall be conducted in accordance with all recommendations within the Acid Sulfate Soil Management Plan required to be submitted prior to the construction certificate including:
- (a) Site specific mitigation measures to both minimise the disturbance of acid sulfate soils as well as any measures relating to acid generation and acid neutralisation of the soil; and
  - (b) Management of acid sulfate affected excavated material;
  - (c) Measures taken to neutralise the acidity of any acid sulfate affected material; and
  - (d) Run-off control measures for the acid sulfate affected soil.
- 52 To prevent contaminated soil being used onsite and to ensure that it is suitable for the proposed land use, all imported fill shall be appropriately certified material and shall be validated in accordance with the:
- (a) Office of Environment and Heritage (OEH) approved guidelines;
  - (b) Protection of the Environment Operations Act 1997; and
  - (c) Protection of the Environment Operations (Waste) Regulation 2005.
- 53 The principal contractor or owner builder must install and maintain water pollution, erosion and sedimentation controls in accordance with:
- (a) The Erosion and Sediment Control Plan;
  - (b) 'Managing Urban Stormwater – Soils and Construction'(2004) Landcom ('The Blue Book'); and
  - (c) Protection of the Environment Operations Act 1997.

- 54 During excavation, construction and any associated deliveries activities, 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 Council's lands.
- 55 Any adjustments or damage to public utilities/services as a consequence of the development and associated construction works shall be restored or repaired at the applicant's expense.
- 56 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.
- 57 During excavation and construction, care must be taken to protect Council's infrastructure, including street signs, footpath, kerb, gutter and drainage pits etc. Protecting measures shall be maintained in a state of good and safe condition throughout the course of construction. The area fronting the site and in the vicinity of the development shall also be safe for pedestrian and vehicular traffic at all times. Any damage to Council's infrastructure (including damage caused by, but not limited to, delivery vehicles, waste collection, contractors, sub-contractors, concrete delivery vehicles) shall be fully repaired in accordance with Council's specification and AUS-SPEC at no cost to Council.
- 58 If an excavation associated with the proposal extends below the level of the base of the footings of a building on an adjoining allotment of land or the common boundary fence the person causing the excavation to be made:

- (a) Must preserve and protect the building/ fence from damage; and
  - (b) If necessary, underpin and support such building in an approved manner;
  - (c) Must at least be 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of the intention to do so to the owner of the adjoining allotment of land and, furnish particulars of the excavation to the owner of the building being erected or demolished;
  - (d) Any retained 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, piercing, or underpinning prior to the commencement of any work. The construction shall not undermine, endanger or destabilise any adjacent structures.
  - (e) If the soil conditions required it:
    - (i) Retaining walls associated with the erection of a building or other approved methods of preventing movement or other approved methods of preventing movement of the soil must be provided, and
    - (ii) Adequate provision must be made for drainage.
- 59 During construction, the applicant shall ensure that all works and measures have been implemented in accordance with approved Traffic Management Plan and Construction Management Plan at all times.
- 60 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.
- 61 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 Principal 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.
- 62 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.

63 For any water from site dewatering to be permitted to go to stormwater, the water must meet ANZECC 2000 Water Quality Guidelines for Fresh and Marine Water for the 95% protection trigger values for Marine Water. All testing must be completed by a NATA accredited laboratory. All laboratory results must be accompanied by a report prepared by a suitably qualified and experienced person indicating the water is acceptable to be released into Councils stormwater system. If the groundwater does not meet these guideline levels a Trade Waste permit from Sydney Water must be sought to put the groundwater to sewer.

64

- (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**

65 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 **\$217,120.98** listed below towards the provision of services is to be paid to Council prior to the issuing of an Occupation Certificate either interim or final.

(i)	Community Facilities	\$23,310.00
(ii)	Administration	\$3,780.00
(iii)	Shopping Centre Improvements	\$16,920.00
(iv)	Open Space & Recreation	\$157,050.00

(v)	Transport Management	\$16,060.98
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The Section 94 Contribution fees are subject to annual review and the current rates are applicable for the financial year in which your consent is granted. If you pay the contribution in a later financial year you will be required to pay the fees applicable at that time

66

- (a) Prior to the issue of the Occupation Certificate a Stage 4 – Site Validation Report (SVR) shall be prepared by a suitably qualified contaminated land consultant and shall be in accordance with:
  - (i) NSW Office of Environment and Heritage (PEH) ‘Contaminated Sites – Guidelines for Consultants Reporting on Contaminated Sites’;
  - (ii) NSW Environment Protection Authority (NSW EPA) approved guidelines under the Contaminated Land Management Act 1997; and
  - (iii) State Environmental Planning Policy 55 (SEPP55) – Remediation of Land; and
- (b) The site validation report shall provide a notice of completion of remediation works, whether there are ongoing site management requirements and a clear statement of the suitability of the likely proposed site use. The report shall be submitted to the Principal Certifying Authority (and the Council if the Council is not the Principal Certifying Authority for review and concurrence). The report is to be submitted after completion of remediation works and prior to the issue of the Occupation Certificate.

67

- (a) To ensure that the site is suitable for the proposed use, a Site Audit Statement (SAS) completed by an accredited site auditor under the *Contaminated Land Management Act 1997* shall be submitted to Council clearly demonstrating that the site is suitable for the proposed development. This shall be provided prior to the release of the Occupation Certificate; and
- (b) Any conditions imposed on the SAS shall form part of this consent. The accredited site auditor shall provide Council with a copy of the Site Audit Report (SAR) and the Site Audit Statement (SAS) prior to the issuing of the Occupational Certificate.

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

68

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, updated and received by Council 17 April 2014 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).

- 69 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, 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.
- 70 Prior to the issue of the Occupation Certificate, minimum of **sixty-nine (69)** off-street car parking bays shall be provided to the development in accordance with the approved architectural plans.
- 71 Prior to the issue of the Occupation Certificate 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. Certification from a Professional Engineer shall be provided to the Principal Certifying Authority.
- 72 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>.
- 73 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.
- 74 Prior to the issue of the Occupation Certificate:
- (a) Dedicate land fronting O'Riordan Street for road widening as required by NSW RMS letter dated 8 April 2013 (ref: SYD13/00072) and accompanying plan
  - (b) Replace all the existing above ground electricity and telecommunication cables to underground cables that adjoin the site and road reserve area fronting Baxter Road, O'Riordan Street and Robey Street in accordance with the guidelines and requirements of the relevant utility authorities and Ausgrid. The applicant shall bear all the cost of the construction and installation of the below ground cables and any necessary adjustment works. These works and payments shall be completed prior to the issue of the Occupation Certificate; and

- (c) Provide appropriate and suitable street lighting to a high decorative standard to both street frontages of the site together with those internally publicly accessible paths, spaces and corridors, so 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.
- 75 Any damage not shown in the photographic survey submitted to Council before site works have commenced will be assumed to have been caused by the site works (unless evidence to prove otherwise). All damages as a result from site works shall be rectified at the applicant's expense to Council's satisfaction, prior to occupancy of the development and release of damage deposit.
- 76 All services (Utility, Council, etc.) within the road reserve (including the footpath) shall be relocated/adjusted to match the proposed/existing levels as required by the development.
- 77 Prior to the issue of the Occupation Certificate, inspection reports (formwork and final) for the works on the road reserve shall be obtained from Council's engineer and submitted to the Principal Certifying Authority attesting that this condition has been appropriately satisfied.
- 78 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 Wilkinson Murray, Report No. 07222-H, dated December 2012 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).
- 79 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, 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.
- 80 Prior to the issue of the Occupation Certificate, minimum of ***ninety three (93)*** off-street car parking bays shall be provided to the development in accordance with the approved architectural plans.
- 81 Prior to the issue of the Occupation Certificates, documentation from a practising civil engineer shall be submitted to the Principal Certifying Authority certifying that
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the stormwater drainage system has been constructed generally in accordance with the approved stormwater management construction plan(s) and all relevant standards.

82 Prior to the issue of the Occupation Certificate, the applicant shall carry out the following works:

- (a) Dedicate land fronting O'Riordan Street and through to Robey Street for road widening purposes as required by NSW RMS letter dated 8 April 2013 (ref: SYD13/00072) and accompanying plan;
- (b) On Baxter Road, O'Riordan Street and Robey Street adjacent to development, reconstruct existing kerb and gutter for the full length of the property in accordance with Council Infrastructure Specifications;
- (c) On Baxter Road, O'Riordan Street and Robey Street adjacent to development, demolish existing concrete footpath and construct new paved footpath as per Council's Infrastructure and Landscape Architect specifications, and
- (d) On Baxter Road, O'Riordan Street and Robey Street adjacent to development, reconstruct full width of road asphalt, in accordance with Council's Infrastructure Specifications.

83 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.

84

- (a) In order to ensure that the required on-site detention, infiltration and rainwater reuse systems will be adequately maintained, Positive Covenant and Restriction on the Use of Land on the Title under Section 88B/88E(3) of the Conveyancing Act 1919 shall be created in favour of Council as the benefiting authority for the as-built on-site detention, infiltration and rainwater reuse systems. The standard wording of the terms of the Positive Covenant and Restriction on the Use of Land are available in Council. The relative location of the on-site detention, infiltration and rainwater reuse systems, in relation to the building footprint, shall be shown on a scale sketch, attached as an annexure to the plans/ forms. Proof of registration shall be submitted to the Principal Certifying Authority prior to occupation of the premises.
- (b) In order to ensure that the required pump-out system will be adequately maintained, Positive Covenant and Restriction on the Use of Land on the Title under Section 88B/88E(3) of the Conveyancing Act 1919 shall be created in favour of Council as the benefiting authority for the as-built pump-out system. The standard wording of the terms of the Positive Covenant and Restriction on the Use of Land are available in Council. Proof of registration shall be submitted to the Principal Certifying Authority prior to occupation of the premises.

85 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.

- 86 Prior to the issue of the Occupation Certificate 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.
- 87 Landscaping shall be installed in accordance with the council approved landscape plan only prior to the issue of an occupation certificate. This amended plan will supercede previous landscape plans. The landscaped areas on the property shall be maintained in accordance with the approved landscape documentation, the conditions of consent and to council's satisfaction at all times.
- (a) An experienced landscape contractor shall be engaged to undertake the landscaping work and shall be provided with a copy of both the approved landscape drawing and the conditions of approval to satisfactorily construct the landscape to council requirements.
  - (b) The contractor shall be engaged weekly for a minimum period of 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.
  - (c) At the completion of landscaping on the site, the applicant is required to obtain a certificate of compliance from the landscape consultant to certify that the landscaping has been installed in accordance with the council approved landscape plan. The certificate is to be submitted to the City of Botany Bay Council prior to the issue of an occupation certificate.
- 88 The public domain and council footpath area shall be upgraded with new paving, street furniture and street tree planting installed by the applicant at the applicant's expense. All improvements shall be constructed and completed prior to the issue of an Occupation Certificate.
- 89 Council approval of public domain works is required prior issue of Occupation Certificate. The public footpaths shall be re-constructed in accordance with Council specification. The footpath dimensions, location, paver type and construction methods shall be in accordance with these specifications only. Pavers shall be ordered accounting for adequate lead time for manufacture. Construction hold points and council inspections are required at the following points:
- (a) after formwork installation and to prior pouring the concrete blinding slab;
  - (b) at the commencement of paving works, and
  - (c) at final completion.
- 90 Prior to the issue of the Occupation Certificate:

- (a) Lighting (lux) levels for this development must include the installation of low glare/high uniformity lighting levels in line with Australian Standard AS:1158. Lighting sources should be compatible with requirements of any surveillance system installed within the development. (Poor positioning choices in relation to light can cause glare on the surveillance screens). The luminaries (light covers) should be designed to reduce opportunities for malicious damage. Lighting within the development needs to be checked and maintained on a regular basis.
  - (b) Any lighting on the site shall be designed so as not to cause nuisance to other residences in the area or to motorists on nearby roads, and to ensure no adverse impact on the amenity of the surrounding area by light overspill; and,
  - (c) All lighting shall comply with AS4282-1997 Control of the obtrusive effects
  - (d) The porte cochere to the building shall be lit in accordance with Condition 90(a), (b) and (c).
- 91 The applicant is to submit payment for a public works defects liability bond of \$10,000.00. The duration of the bond shall be limited to a period of 12 months after council approval of public domain works. At the completion of the 12 month period the bond shall be refunded pending a satisfactory inspection of the new public domain work by council. If rectification or maintenance work is required in this period then council will forfeit all or part of the bond to undertake the required work, unless the applicant undertakes this work.
- 92
- (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 2(d), 11(f), 11(m) and 65 to 92 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**

- 93 A shuttle bus required to service the Hotel must be provided to transport occupants to and from the development site to the Sydney Airport and Mascot Train Station. Should the shuttle bus no longer be provided, for whatever reason a separate development application shall be submitted to Council to provide an alternative travel and parking arrangement for the use.
- 94 The operations of the premises shall be conducted in such a manner as not to interfere with or materially affect the amenity of the neighbourhood by reason of noise, vibration, odour, fumes, vapour, steam, soot, ash, dust, particulate matter, waste water, waste products or other impurities which are a nuisance or injurious to health.

- 95 The use of the premises shall not give rise to air impurities in contravention of the Protection of the Environment Operations Act 1997 and shall be controlled in accordance with the requirements of this Act.
- 96 The use of the premises shall not give rise to any of the following when measured or assessed at “sensitive” positions within any other property. These “sensitive” positions should be selected to reflect the typical use of a property (ie any outdoor areas for day and evening but closer to the façade at night time), unless other positions can be shown to be more relevant.
- (a) The operation of all plant and equipment shall not give rise to an equivalent continuous (LAeq) sound pressure level at any point on any residential property greater than 5dB(A) above the existing background LA90 level (in the absence of the noise under consideration).
  - (b) The operation of all plant and equipment when assessed on any residential property shall not give rise to a sound pressure level that exceeds LAeq 50dB(A) day time and LAeq 40 dB(A) night time.
  - (c) The operation of all plant and equipment when assessed on any neighbouring commercial/industrial premises shall not give rise to a sound pressure level that exceeds LAeq 65dB(A) day time/night time.
  - (d) For assessment purposes, the above LAeq sound levels shall be assessed over a period of 10-15 minutes and adjusted in accordance with EPA guidelines for tonality, frequency weighting, impulsive characteristics, fluctuations and temporal content where necessary.
- 97 All waste and recycling containers shall only be collected during daylight hours.
- 98 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.
- 99 The operation of the development and movements of vehicles shall comply with the following requirements:
- (a) The largest size of vehicle accessing the development shall be restricted to MRV;
  - (b) All service vehicles shall enter the site via O’Riordan Street, Baxter Road, left in only in a forward direction and exit the site left only onto Robey Street and onto O’Riordan Street;

- (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) Vehicular manoeuvring area shall be kept clear at all times. All vehicles shall be parked in the marked parking bays;
- (g) Maximum number of delivery vehicles on-site shall be limited to one (1).
- (h) The loading dock must be clear of delivery or any other vehicles when the shuttle bus is manoeuvring on site.

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- (a) The operations of the site must at all times ensure that guest stays are limited to a maximum of three (3) months.
- (b) The sub-leasing of car parking spaces is strictly prohibited; and
- (c) A staff member shall be located on the ground floor lobby at all times.

101 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.

102 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.

103 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. 12/230 dated as 6 December 2012 and that any alteration, variation, or extension to the use, for which approval has been given, would require further Approval from Council.