

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

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|------------------------------|---|
| JRPP No | 2013SYE029 |
| DA Number | DA 12/213 |
| Local Government Area | City of Botany Bay |
| Proposed Development | <p>Development Application for the redevelopment of the subject site in the following manner:</p> <ul style="list-style-type: none"> ▪ construction of a 13 storey residential flat building accommodating 113 apartments; ▪ four basement levels of car parking to accommodate 206 cars ▪ a communal room and terrace at Level 12; ▪ the dedication of land fronting Church Avenue for the widening of Church Avenue and for a public reserve; ▪ a secondary land dedication along the western boundary for a pedestrian through link; ▪ associated public domain works including the works to establish the public park and pedestrian through link, the road widening works to Church Avenue and the road widening work to Linear Park; and ▪ the undergrounding of the existing overhead power cables. |
| Street Address | 2-4 Haran Street and 1 Church Avenue, Mascot |
| Applicant | Krikis Tayler Architects |
| Number of Submissions | Six (6) submissions |
| Recommendation | Conditional Consent |
| Report by | Rodger Dowsett, Director Planning and Development |

THE DIRECTOR OF PLANNING AND DEVELOPMENT REPORTS:

PRECIS

Background

Council received Development Application No. 12/213 on the 14 November 2012, which originally sought consent for the construction of a 13 storey residential flat building accommodating 125 apartments, four basement levels of car parking for 234 cars, communal room and terrace at Level 12 and dedication of approximately 345sqm of land fronting Church Avenue for road widening purposes and a public reserve.

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 exceeds \$20 million.

The Development Application is also Integrated Development, pursuant to Section 91 of the EP&A Act as the development involves temporary construction dewatering and therefore requires approval from the NSW Office of Water. In a letter dated 26 June 2013, the NSW Office of Water has granted General Terms of Approval to the proposed development.

Council received additional information on the 8 March 2013, being revised architectural plans to address the concerns of Council, the preliminary feedback from the JRPP Briefing Session in relation to bulk, scale and FSR. The additional information also addressed the Design Review Panel concerns in relation to bulk, density and FSR. The amended design resulted in the following changes:

- Reduced the FSR from 4.33:1 down to 4.17:1 (pursuant to BBLEP 2013) and 4.87:1 down to 4.69:1 (under BLEP 1995);
- Maintain the 13 storey height at 39 metres.
- A reduction in the number of car parking spaces from 234 down to 221; and
- A change in the unit mix with an increase in the number of one (1) bedroom units and a decrease in the number of two (2) bedroom units
- Retention of the 125, despite the design concept of 113 apartments previously being considered by the DRP in January.

Council received additional information on the 3 April 2013, being an Environmental Site Assessment of contamination. This was referred to Council's Environmental Scientist. Concern was raised with the depth of samples taken and the number of samples analysed, being one out of nine samples. As such, the matter was discussed with the EPA, who advised that due to the extensive sampling of the groundwater, that this was acceptable only in this instance. Council's Environmental Scientist also raised concern that the submitted report did not analyse the samples against the criteria for public recreation use, which is different to the criteria for residential development.

Council received additional information on the 6 August 2013, being the Applicants response to the issues raised in the submissions and an Addendum to the Environmental Site Assessment, which now indicates that those areas of land to be dedicated to Council for public parks meets the specific criteria for public recreation areas and as such is suitable for such use.

The development application was notified for a period of 31 days from 9 April 2013 to 14 May 2013. Six (6) submission were received which raise the issue of traffic impact, bulk, scale, density, FSR, overshadowing and view loss. The issues raised in the submissions are addressed detailed further in this report.

Council then received additional information on the 5 June 2013, being Groundwater Dewatering Modelling and a Geotechnical Investigation.

Council received amended plans and supporting documents for the proposed development on the 12 July 2013. The changes now seek to:

- Reduce the FSR from 4.17:1 down to 3.79:1 (pursuant to BBLEP 2013) and from 4.69:1 down to 4.39:1 (under BLEP 1995);
- Maintain the 13 storey height at 39 metres.
- A reduction in the total number of apartments from 125 down to 113
- A reduction in the number of car parking spaces from 221 down to 206
- The amended design maintains the previously proposed land dedication on Church Avenue for road widening purposes and for a public reserve and now also includes an additional strip of land running adjacent to Linear Park for a pedestrian through link.

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.

The developer has acquired all three subject allotments, which form the subject site. It is considered appropriate to require the three allotments to be consolidated into one allotment to facilitate the development, which has been imposed upon the development in the Schedule of Consent Conditions section of this report.

Amended Proposal

The development application (in its amended form) seeks consent for the:

- Construction of a 13 storey residential flat building to a height of 39m accommodating 113 apartments;
- Four basement levels of car parking to accommodate 206 cars;
- Communal room and terrace at Level 12;
- Dedication of land fronting Church Avenue for the widening of Church Avenue and for a public reserve;
- Dedication of land along the western boundary for a pedestrian through link;
- associated public domain works including the works to establish the public park and pedestrian through link, the road widening works to Church Avenue and the road widening work to Linear Park and the undergrounding of the existing overhead power cables.

In Council's view there are two (2) main issues for consideration with the amended proposal. These include floor space ratio (FSR) under BLEP 1995 which exceeds the maximum FSR of 2.1:1 and design considerations (including view loss), as discussed below.

Floor Space Ratio

The maximum FSR permitted by BLEP 1995 is 2:1. The maximum FSR permitted by BBLEP 2013 is 3.2:1.

The development application (in its amended form) seeks an FSR of 3.79:1 (10,039m²) under BBLEP 2013 and an FSR of 4.39:1 when calculated under BLEP 1995 (11,639 m²), which does not comply with Clause 12A(1) of BLEP 1995.

Notwithstanding, the SEPP 1 objection to FSR submitted by the applicant demonstrates that the proposal with an FSR of 4.39:1 is similar in height, bulk and scale to existing and recently approved developments in the area. In Council's view the maximum FSR standard should be varied in this circumstance as the proposal satisfies the underlying objectives of the FSR control, the development results in significant public benefits through the dedication of land Church Avenue and Linear Park and the proposal will result in the orderly and economic development of the land. The SEPP 1 is considered to be well founded and the variation to the FSR control is supported in this case.

Design

The design of the proposed development has been considered by the Design Review Panel (DRP) on four (4) separate occasions. The latest DRP sitting was on the 23 January 2013. That design comprised of 113 apartments, four levels of basement parking and an FSR of 4.69:1 (under BLEP 1995).

Council received amended plans and supporting documents for the proposed development on the 12 July 2013 in response to the DRP recommendations. The changes now seek to further reduce the FSR from 4.69:1 down to 4.39:1 (under BLEP 1995) and from 4.17:1 down to 3.79:1 (pursuant to BBLEP 2013), a reduction in the total number of apartments from 125 down to 113, a reduction in the number of car parking spaces from 221 down to 206. Whilst the FSR has been reduced, it remains non compliant with the 3.2:1 permitted under BBLEP 2013 and BLEP 1995. The Applicant states that the subject site is unique in that it has two street frontages and a frontage to Linear Park, which supports an increase in density together with increased amenity provided by an attractive outlook and access to sunlight and ventilation.

The proposed development in its amended form is considered to adequately address the recommendations of the DRP and is considered acceptable.

BBLEP 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 development application the subject of this report was lodged prior to the gazettal of the BBLEP 2013.

The provisions of the BBLEP 2013 have been considered in the assessment of this Development Application as presenting the future intent of development in the Mascot

Station Precinct. The subject site is located within the B4 – Mixed Use zone and is permissible in that zone under BBLEP 2013, and it also satisfies the objective of the zone. The design is also consistent with development in the Mascot Station Precinct and the future intent of the BBLEP 2013.

Public Exhibition

The development application in its original form was publicly exhibited for a period of thirty seven (37) days between 9 April 2013 and 15 May 2013 in accordance with Council's Notification DCP, including an advertisement in the newspaper and site notices. Six (6) submissions were received in response to the proposed development. The issues raised in the submissions relate to the proposed height, FSR and built form of the development, solar access impacts, traffic generation potential and view loss. These issues have been addressed and are discussed in detail further in this report. The amended design has not been placed on public exhibition as it is considered that the amendments made result in a reduction of the density of development from that originally notified.

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 exceeds \$20 million.

The recommendation is for approval, as stated below:

It is recommended that the Joint Regional Planning Panel (JRPP), as the determining Authority in this instance, resolve to:

- (a) Grant consent to the objection submitted under the provisions of State Environmental Planning Policy No. 1 – Development Standards to vary the provisions of Clause 12A(1) of Botany Local Environmental Plan 1995 relating to maximum floor space ratio of 2:1, so that the maximum floor space ratio for the subject site is 4.39:1, on the basis that:*
 - (i) Clause 12A(1) of Botany Local Environmental Plan 1995 is a development standard; and*
 - (ii) The objection lodged by the applicant is well founded; and*
- (b) Approve Development Application No. 12/213 for the construction of a 13 storey residential flat building accommodating 113 apartments, four basement levels of car parking to accommodate 206 cars, a communal room and terrace at Level 12 together with the dedication of land fronting Church Avenue for the widening of Church Avenue and for a public reserve and a secondary land dedication along the western boundary for a pedestrian through link and associated public domain works including the works to establish the public park and pedestrian through link, the road widening works to Church Avenue and the road widening work to Linear Park and the undergrounding of the existing overhead cables at 2-4 Haran Street and 1 Church Avenue, subject to the Conditions imposed in the attached schedule.*

1.0 BACKGROUND

1.1 Site Description

The subject site is located between Church Avenue to the north and Haran Street to the south, with frontages to both streets, lying west of O’Riordan Street and east of Bourke Street Mascot. The site is trapezoidal in shape, has a frontage to Church Avenue of 45.07m, a frontage to Haran Street of 62.885m and to Linear Park of 52.795m. The subject site is formed by the following three allotments, which make up a total site area of 2,649m².

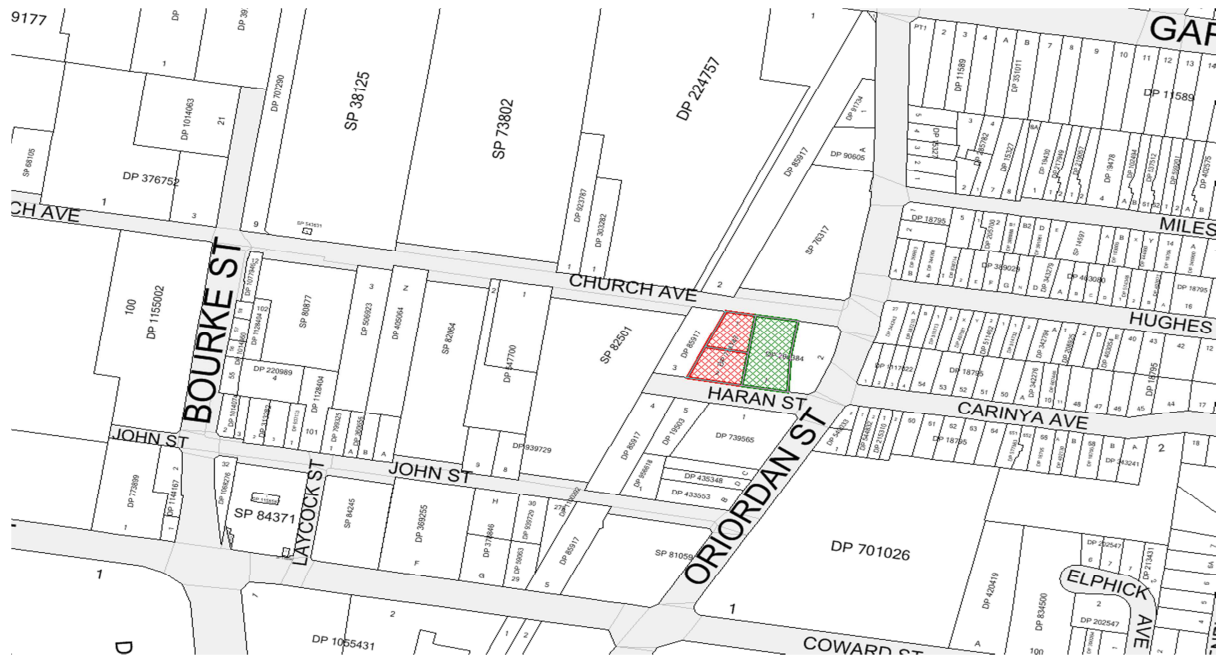
- Lot 1 in DP 774147 being 1 Church Avenue, Mascot;
- Lot 1 in DP 206384 being 2 Haran Street, Mascot;
- Lot 2 in DP 774147 being 4 Haran Street, Mascot.

The site was formerly comprised of three vacant industrial buildings which contain internal asbestos building elements, now demolished. There are associated landscape gardens beds at the perimeter of the sites together with vehicle manoeuvring areas and access driveways.

The properties surrounding the site are the Sydney Water drainage reserve immediately to the west (known as Linear Park), 3-9 Church Avenue further to the west, accommodating three residential apartment towers of up to eight storeys in height. Directly to the north is 109 – 123 O’Riordan Street containing a part 6/7 storey residential flat building. To the south is located No. 5 Haran Street, which comprises an existing vacant two storey office building with workshop to the rear. Development Application No. 12/86 for the demolition of all existing buildings and construction of a 9-storey building containing 30 units and 47 underground parking spaces was No. 5 Haran Street recently approved by the NSW Land & Environment Court. Also to the south is located 1-3 Haran Street, which comprises a two storey industrial building with office and associated car parking in the front setback. To the immediate east of the site is located an existing Caltex Service Station, comprising of fuel bowser forecourt area, car parking, landscaping and shop. Access to the service station is via Haran Street and O’Riordan Street.

The existing ground levels at the site vary between 8.55m AHD near the sites south-eastern corner, 10.20mm AHD at the sites north-eastern corner and 10.37m AHD at the sites south-western corner.

Locality Plan



Site Photos



1.2 Description of the Locality

The subject site is located approximately 1km from Sydney Domestic Airport Terminal and 3km from Sydney International Airport Terminal.

The site is situated within the Mascot Station Precinct (at its eastern extent) which is bounded by Kent Road, Coward Street, O'Riordan Street and Gardeners Road. The precinct is an evolving precinct which is transforming from industrial warehouse uses to a mixed use area with an emerging residential trend.

The centre of the MSP is the underground Mascot station which enhances the excellent accessibility of the area. The precinct is located in close proximity to major regional road networks and Port Botany. As such the site has excellent accessibility to major transport and employment opportunities.

The precinct has historically been comprised of primarily light industrial uses including manufacturing, foundries, engineering services, tanneries, textiles and pharmaceutical products. Over the last 10 years the precinct has been evolving with the introduction and now dominance of a residential population in the precinct.

Due to the past industrial use of the majority of the land in the Precinct, land in the area is highly susceptible to land contamination, resulting in the majority of sites requiring some level of remediation. In addition, most sites within the MSP have water table issues. These two factors alone contribute to the high cost associated with development in the MSP.

Directly to the east is the Caltex service station at 125 O’Riordan Street, which also has a frontage to Church Avenue and Haran Street. Its vehicular access is via O’Riordan Street and Haran Street. The site accommodates a fuel bowser area, forecourt and retail store. This site is affected by road widening for the widening of Church Avenue and the owner of this land has entered into a Deed of Agreement with Council for the dedication of the land in the future. The service station operates 24 hours per day, seven days per week.

Further to the east beyond O’Riordan Street are located low density residential dwellings and warehouses uses.

Immediately to the north of the site is located No. 109-123 O’Riordan Street (Sublime) which comprises of a 6/7 storey residential flat development with a secondary frontage to Church Avenue.

Immediately to the west is located the Sydney Water drainage reserve which is the future Linear Park and beyond is located No. 3-9 Church Avenue, which accommodates three residential apartment towers of eight storeys in height.

To the south of the subject site is located No. 5 Haran Street which was recently approved for the demolition of all existing buildings and construction of a 9-storey building containing 30 units and 47 underground parking spaces. No. 133-141 O’Riordan Street is also located on the southern side of Haran Street and comprises of warehouse buildings.

1.3 Site and Development History

1 Church Avenue

Development Application No. 00/038 was approved by Council on the 23 September 1999 for the use of the existing factory as a mailing warehouse.

Development Application No. 03/506 was approved by Council on the 9 May 2003 for the alterations and additions to the existing building and use of the property as commercial offices for a construction company incorporating ancillary storage.

2 Haran Street

Development Application No. 08/091 was approved by Council on the 28 November 2007 for the use of the premises for the processing of prams for warranty purposes and vehicles for disabled persons with modifications to the building to create a new reception area, new vehicle entry ramp, internal partitioning and car parking, new access door, accessible toilet and advertising sign to the eastern elevation of the building.

Council approved Development Application No. 13/028 on the 18 April 2013 for the demolition of all existing structures on the subject site.

1.4 The Proposal

The development application (in its amended form) requests consent for the construction of a 13 storey residential flat building accommodating 113 apartments, four basement levels of car parking to accommodate 206 cars, a communal room and terrace at Level 12 together with the dedication of land fronting Church Avenue for the widening of Church Avenue and for a public reserve and a secondary land dedication along the western boundary for a pedestrian through link and associated public domain works including the works to establish the public park and pedestrian through link, the road widening works to Church Avenue and the road widening work to Linear Park and the undergrounding of the existing overhead power cables.

Residential Flat Component

The proposed development is comprised of one residential flat building, which is accessible via both Haran Street and Church Avenue. The building contains two lifts separated by corridors linking the two lifts at Levels 1, 4, 7, 10 and 12. There is no link between the lift/corridors at Levels 2, 3, 5, 6, 8, 9 and 11. A communal room and terrace is provided at Level 12.

The unit mix of the development is as follows:

| | TOTAL | Unit Mix |
|------------------|--------------|-----------------|
| Studio | 12 | 10% |
| 1 bedroom | 20 | 18% |
| 2 bedroom | 81 | 72% |
| | 113 | 100% |

Summary table:

This table contains a summary of the proposed development based a total of 113 dwellings.

| Unit No. | No. of Bedrooms | Dwelling Size (m²) | Private Open Space (m² / dwelling) | Storage (m²) | Car parking provision | Cross Ventilation | 2 Hours Sunlight |
|-----------------|------------------------|--------------------------------------|--|--------------------------------|------------------------------|--------------------------|-------------------------|
| Unit 101 | 2 bedrooms | 100m ² | 75m ² | 4m ² | 2 | Yes | Yes |
| Unit 102 | 2 bedrooms | 100m ² | 115m ² | 4m ² | 2 | Yes | Yes |
| Unit 103 | 2 bedrooms | 100m ² | 38m ² | 4m ² | 2 | No | No |
| Unit 104 | 2 bedrooms | 100m ² | 74m ² | 4m ² | 2 | No | No |
| Unit 105 | 1 bedroom | 75m ² | 42m ² | 4m ² | 1 | Yes | Yes |
| Unit 106 | 1 bedroom | 75m ² | 32m ² | 4m ² | 1 | Yes | Yes |
| Unit 107 | 1 bedroom | 75m ² | 45m ² | 4m ² | 1 | No | Yes |
| Unit 108 | 1 bedroom | 75m ² | 68m ² | 4m ² | 1 | No | Yes |
| Unit 201 | 2 bedrooms | 100m ² | 16m ² | 4m ² | 2 | Yes | Yes |
| Unit 202 | 2 bedrooms | 100m ² | 27m ² | 4m ² | 2 | Yes | Yes |
| Unit 203 | 2 bedrooms | 100m ² | 18m ² | 4m ² | 2 | No | No |
| Unit 204 | 2 bedrooms | 100m ² | 26m ² | 4m ² | 2 | Yes | No |
| Unit 205 | 2 bedrooms | 100m ² | 15m ² | 4m ² | 2 | Yes | Yes |
| Unit 206 | 2 bedrooms | 100m ² | 15m ² | 4m ² | 2 | Yes | Yes |
| Unit 207 | Studio | 60m ² | 13m ² | 4m ² | 1 | Yes | Yes |
| Unit 208 | 2 bedrooms | 100m ² | 15m ² | 4m ² | 2 | Yes | Yes |

| Unit No. | No. of Bedrooms | Dwelling Size (m ²) | Private Open Space (m ² / dwelling) | Storage (m ²) | Car parking provision | Cross Ventilation | 2 Hours Sunlight |
|----------|-----------------|---------------------------------|--|---------------------------|-----------------------|-------------------|------------------|
| Unit 209 | 1 bedroom | 75m ² | 12m ² | 4m ² | 1 | No | Yes |
| Unit 301 | 2 bedrooms | 100m ² | 16m ² | 4m ² | 2 | Yes | Yes |
| Unit 302 | 2 bedrooms | 100m ² | 17m ² | 4m ² | 2 | Yes | Yes |
| Unit 303 | 2 bedrooms | 100m ² | 18m ² | 4m ² | 2 | No | No |
| Unit 304 | 2 bedrooms | 100m ² | 26m ² | 4m ² | 2 | Yes | No |
| Unit 305 | 2 bedrooms | 100m ² | 15m ² | 4m ² | 2 | Yes | Yes |
| Unit 306 | 2 bedrooms | 100m ² | 15m ² | 4m ² | 2 | Yes | Yes |
| Unit 307 | Studio | 60m ² | 13m ² | 4m ² | 1 | Yes | Yes |
| Unit 308 | 2 bedrooms | 100m ² | 15m ² | 4m ² | 2 | Yes | Yes |
| Unit 309 | 1 bedroom | 75m ² | 12m ² | 4m ² | 1 | No | Yes |
| Unit 401 | 2 bedrooms | 100m ² | 16m ² | 4m ² | 2 | Yes | Yes |
| Unit 402 | 2 bedrooms | 100m ² | 27m ² | 4m ² | 2 | Yes | Yes |
| Unit 403 | 2 bedrooms | 100m ² | 18m ² | 4m ² | 2 | No | No |
| Unit 404 | 2 bedrooms | 100m ² | 26m ² | 4m ² | 2 | Yes | No |
| Unit 405 | 2 bedrooms | 108m ² | 40m ² | 4m ² | 2 | No | No |
| Unit 406 | Studio | 60m ² | 13m ² | 4m ² | 1 | Yes | Yes |
| Unit 407 | 2 bedrooms | 100m ² | 15m ² | 4m ² | 2 | Yes | Yes |
| Unit 408 | 1 bedroom | 75m ² | 12m ² | 4m ² | 1 | No | Yes |
| Unit 409 | 1 bedroom | 75m ² | 14m ² | 4m ² | 1 | No | Yes |
| Unit 501 | 2 bedrooms | 100m ² | 16m ² | 4m ² | 2 | Yes | Yes |
| Unit 502 | 2 bedrooms | 100m ² | 17m ² | 4m ² | 2 | Yes | Yes |
| Unit 503 | 2 bedrooms | 100m ² | 18m ² | 4m ² | 2 | No | No |
| Unit 504 | 2 bedrooms | 100m ² | 26m ² | 4m ² | 2 | Yes | No |
| Unit 505 | 2 bedrooms | 100m ² | 15m ² | 4m ² | 2 | Yes | Yes |
| Unit 506 | 2 bedrooms | 100m ² | 15m ² | 4m ² | 2 | Yes | Yes |
| Unit 507 | Studio | 60m ² | 13m ² | 4m ² | 1 | Yes | Yes |
| Unit 508 | 2 bedrooms | 100m ² | 15m ² | 4m ² | 2 | Yes | Yes |
| Unit 509 | 1 bedroom | 75m ² | 12m ² | 4m ² | 1 | No | Yes |
| Unit 601 | 2 bedrooms | 100m ² | 16m ² | 4m ² | 2 | Yes | Yes |
| Unit 602 | 2 bedrooms | 100m ² | 27m ² | 4m ² | 2 | Yes | Yes |
| Unit 603 | 2 bedrooms | 100m ² | 18m ² | 4m ² | 2 | No | No |
| Unit 604 | 2 bedrooms | 100m ² | 26m ² | 4m ² | 2 | Yes | No |
| Unit 605 | 2 bedrooms | 100m ² | 15m ² | 4m ² | 2 | Yes | Yes |
| Unit 606 | 2 bedrooms | 100m ² | 15m ² | 4m ² | 2 | Yes | Yes |
| Unit 607 | Studio | 60m ² | 13m ² | 4m ² | 1 | Yes | Yes |
| Unit 608 | 2 bedrooms | 100m ² | 15m ² | 4m ² | 2 | Yes | Yes |
| Unit 609 | 1 bedroom | 75m ² | 12m ² | 4m ² | 1 | No | Yes |
| Unit 701 | 2 bedrooms | 100m ² | 16m ² | 4m ² | 2 | Yes | Yes |
| Unit 702 | 2 bedrooms | 100m ² | 17m ² | 4m ² | 2 | Yes | Yes |
| Unit 703 | 2 bedrooms | 100m ² | 18m ² | 4m ² | 2 | No | No |
| Unit 704 | 2 bedrooms | 100m ² | 26m ² | 4m ² | 2 | Yes | No |
| Unit 705 | 2 bedrooms | 100m ² | 40m ² | 4m ² | 2 | No | No |

| Unit No. | No. of Bedrooms | Dwelling Size (m ²) | Private Open Space (m ² / dwelling) | Storage (m ²) | Car parking provision | Cross Ventilation | 2 Hours Sunlight |
|-----------|-----------------|---------------------------------|--|---------------------------|-----------------------|-------------------|------------------|
| Unit 706 | Studio | 60m2 | 13m2 | 4m2 | 1 | Yes | Yes |
| Unit 707 | 2 bedrooms | 100m2 | 15m2 | 4m2 | 2 | Yes | Yes |
| Unit 708 | 1 bedroom | 100m2 | 12m2 | 4m2 | 1 | No | Yes |
| Unit 709 | 1 bedroom | 75m2 | 14m2 | 4m2 | 1 | No | Yes |
| Unit 801 | 2 bedrooms | 100m2 | 16m2 | 4m2 | 2 | Yes | Yes |
| Unit 802 | 2 bedrooms | 100m2 | 27m2 | 4m2 | 2 | Yes | Yes |
| Unit 803 | 2 bedrooms | 100m2 | 18m2 | 4m2 | 2 | No | No |
| Unit 804 | 2 bedrooms | 100m2 | 26m2 | 4m2 | 2 | Yes | No |
| Unit 805 | 2 bedrooms | 100m2 | 15m2 | 4m2 | 2 | Yes | Yes |
| Unit 806 | 2 bedrooms | 100m2 | 15m2 | 4m2 | 2 | Yes | Yes |
| Unit 807 | Studio | 60m2 | 13m2 | 4m2 | 1 | Yes | Yes |
| Unit 808 | 2 bedrooms | 100m2 | 15m2 | 4m2 | 2 | Yes | Yes |
| Unit 809 | 1 bedroom | 75m2 | 12m2 | 4m2 | 1 | No | Yes |
| Unit 901 | 2 bedrooms | 100m2 | 16m2 | 4m2 | 2 | Yes | Yes |
| Unit 902 | 2 bedrooms | 100m2 | 17m2 | 4m2 | 2 | Yes | Yes |
| Unit 903 | 2 bedrooms | 100m2 | 18m2 | 4m2 | 2 | No | No |
| Unit 904 | 2 bedrooms | 100m2 | 26m2 | 4m2 | 2 | Yes | No |
| Unit 905 | 2 bedrooms | 100m2 | 15m2 | 4m2 | 2 | Yes | Yes |
| Unit 906 | 2 bedrooms | 100m2 | 15m2 | 4m2 | 2 | Yes | Yes |
| Unit 907 | Studio | 60m2 | 13m2 | 4m2 | 1 | Yes | Yes |
| Unit 908 | 2 bedrooms | 100m2 | 15m2 | 4m2 | 2 | Yes | Yes |
| Unit 909 | 1 bedroom | 75m2 | 12m2 | 4m2 | 1 | No | Yes |
| Unit 1001 | 2 bedrooms | 100m2 | 16m2 | 4m2 | 2 | Yes | Yes |
| Unit 1002 | 2 bedrooms | 100m2 | 27m2 | 4m2 | 2 | Yes | Yes |
| Unit 1003 | 2 bedrooms | 100m2 | 18m2 | 4m2 | 2 | No | No |
| Unit 1004 | 2 bedrooms | 100m2 | 26m2 | 4m2 | 2 | Yes | No |
| Unit 1005 | 2 bedrooms | 100m2 | 40m2 | 4m2 | 2 | No | No |
| Unit 1006 | Studio | 60m2 | 13m2 | 4m2 | 1 | Yes | Yes |
| Unit 1007 | 2 bedrooms | 100m2 | 15m2 | m2 | 2 | Yes | Yes |
| Unit 1008 | 1 bedroom | 75m2 | 12m2 | 4m2 | 1 | No | Yes |
| Unit 1009 | 1 bedroom | 75m2 | 14m2 | 4m2 | 2 | No | Yes |
| Unit 1101 | 2 bedrooms | 100m2 | 16m2 | 4m2 | 2 | Yes | Yes |
| Unit 1102 | 2 bedrooms | 100m2 | 17m2 | 4m2 | 2 | Yes | Yes |
| Unit 1103 | 2 bedrooms | 100m2 | 18m2 | 4m2 | 2 | No | No |
| Unit 1104 | 2 bedrooms | 100m2 | 26m2 | 4m2 | 2 | Yes | No |
| Unit 1105 | 2 bedrooms | 100m2 | 15m2 | 4m2 | 2 | Yes | Yes |
| Unit 1106 | 2 bedrooms | 100m2 | 15m2 | 4m2 | 2 | Yes | Yes |
| Unit 1107 | Studio | 100m2 | 13m2 | 4m2 | 1 | Yes | Yes |
| Unit 1108 | 2 bedrooms | 100m2 | 15m2 | 4m2 | 2 | Yes | Yes |
| Unit 1109 | 1 bedroom | 75m2 | 12m2 | 4m2 | 1 | No | Yes |
| Unit 1201 | 2 bedrooms | 100m2 | 64m2 | 4m2 | 2 | Yes | Yes |
| Unit 1202 | 2 bedrooms | 100m2 | 18m2 | 4m2 | 2 | No | No |

| Unit No. | No. of Bedrooms | Dwelling Size (m ²) | Private Open Space (m ² / dwelling) | Storage (m ²) | Car parking provision | Cross Ventilation | 2 Hours Sunlight |
|-----------|-----------------|---------------------------------|--|---------------------------|-----------------------|-------------------|------------------|
| Unit 1203 | 2 bedrooms | 100m ² | 26m ² | 4m ² | 2 | Yes | No |
| Unit 1204 | 2 bedrooms | 100m ² | 40m ² | 4m ² | 2 | No | No |
| Unit 1205 | Studio | 60m ² | 13m ² | 4m ² | 1 | Yes | Yes |
| Unit 1206 | 2 bedrooms | 100m ² | 15m ² | 4m ² | 2 | Yes | Yes |
| Unit 1207 | 1 bedroom | 75m ² | 12m ² | 4m ² | 1 | No | Yes |
| Unit 1208 | 1 bedroom | 75m ² | 14m ² | 4m ² | 1 | No | Yes |
| Unit 1301 | 2 bedrooms | 100m ² | 72m ² | 4m ² | 2 | Yes | Yes |
| Unit 1302 | 2 bedrooms | 100m ² | 33m ² | 4m ² | 2 | Yes | No |
| Unit 1303 | 2bedrooms | 100m ² | 15m ² | 4m ² | 2 | Yes | Yes |
| Unit 1304 | 2 bedrooms | 100m ² | 15m ² | 4m ² | 2 | Yes | Yes |
| Unit 1305 | Studio | 60m ² | 13m ² | 4m ² | 1 | Yes | Yes |
| Unit 1306 | 2 bedrooms | 100m ² | 15m ² | 4m ² | 2 | Yes | Yes |
| Unit 1307 | 1 bedroom | 75m ² | 12m ² | 4m ² | 1 | No | Yes |

Summary

- The unit sizes and private open space balconies proposed comply with the requirements under Council's adopted MSP DCP;
- Car parking is compliant with the car parking requirements of the MSP DCP;
- Access to sunlight and cross ventilation complies with the requirements of SEPP 65.

The following table provides a summary of compliance:

| Control | Required | Proposal | Complies |
|------------|--|---|---|
| FSR | 3.2:1 (under BBLEP 2013 (8,476.8m ²)) 2:1 under BLEP 1995 | <u>BBLEP 2013</u> <i>Amended Proposal:</i> 3.79:1 (10,039m ²) <i>Original Proposal:</i> 4.17:1 (11,046m ²) 4.39:1 (11,639 m ²) under BLEP 1995 | No – SEPP 1 Objection submitted to applicable statutory plan being BLEP 1995 It should be noted that gross floor area is calculated differently under BBLEP 2013 which explains the different FSR calculations |

| | | | |
|----------------------|---|---|--|
| Height | 44 metres (under BBLEP 2013) 6 storeys (under Mascot Station Precinct DCP) | 39 metres 13 Storeys | Yes with BBLEP 2013 Not complying with MSP DCP, however is considered acceptable given the following: - the recent approvals for similar development in close proximity to the subject site; - the new height limit of 44 metres under BBLEP 2013; - the proposed design does not adversely impact on the amenity of the streetscape, nearby residential development in terms of solar access and privacy. |
| Site Coverage | MSP DCP = 55% maximum | 50.8% | Yes |
| Car Parking | 211 spaces are required as follows for the amended proposal: <ul style="list-style-type: none">• 194 residential• 17 visitors Note: 2 visitors spaces to be shared with car wash bays | 206 spaces are proposed as follows: <ul style="list-style-type: none">• 194 residential• 12 visitors Note: condition proposed requiring 2 visitors spaces to be shared with car wash bays | Yes – Considered acceptable Control 58 of Section 6.6 – Car Parking in the MSP DCP permits a reduction in visitor car parking for residential flat buildings in excess of 55 units. |
| Deep Soil | Merit based under MSP DCP | 426m ² (18% of site area following land dedications) | Merit Based – Considered to be acceptable. |

Floor Space Ratio

The maximum FSR permitted by BLEP 1995 is 2:1. The maximum FSR permitted by BBLEP 2013 is 3.2:1.

The development application (in its amended form) seeks an FSR of 3.79:1 (10,039m²) under BBLEP 2013 and an FSR of 4.39:1 under BLEP 1995 (11,639 m²), which does not comply with Clause 12A(1) of BLEP 1995, which permits a maximum FSR for the subject site of 2:1.

As such the Applicant has submitted a SEPP 1 Objection to vary the development standard contained within Clause 12A(1) of BLEP 1995. This SEPP 1 Objection, which is supported by Council, is discussed in further detail in this report.

Basement Car Parking and Parking Allocation

The basement car park contains 206 spaces that will comprise 194 residential car spaces and 17 visitor's spaces (2 visitor's spaces to be shared as car wash bays). The car parking is provided over four basement levels which will be excavated approximately 10.7 metres and raised between 1.0 and 1.3 metres above the existing ground level. Visitor spaces and the car wash bays are to be located on Basement Level 1.

Land Dedications/Public Benefits

Road Widening - The development application involves the dedication of land to Council for the widening of Church Avenue, the reconstruction of Church Avenue road pavement, kerb and guttering together with associated public domain works in the nature strip. The road widening works are to incorporate the widening of Church Avenue where it affects the adjoining land immediately to the west owned by Sydney Water (Linear Park).

Park and Through Site Link – The application involves the dedication of 145 sqm of land at the south-western corner of the site in satisfaction of Clause 6.4.3 of the Mascot Station Precinct Development Control Plan. This will involve the creation of a through site link from Haran Street to Church Avenue together with landscaping/paving of this land. The dedication of land to Council for a public reserve is a requirement for the subject site under the Mascot Station Precinct DCP.

Additional Park – The development application involves the dedication of land to Council for a public park located at the north-western corner of the site fronting Church Avenue. The area of this proposed dedication is 205sqm. This will involve the establishment of landscaping and associated paving/services.

Haran Street Public Domain Works – The Applicant has indicated in the submitted statement of Environmental Effects that additional public benefit/public domain works will be undertaken by the developer including the reconstruction of kerb and gutter to the sites with a Haran Street frontage.

Undergrounding of Existing Overhead Cables – The Applicant has also indicates in the submitted Statement of Environmental Effects that it will underground all existing overhead cables in Haran Street on the southern side of the subject site. This is also a requirement of the Mascot Station Precinct DCP.

2.0 PLANNING CONSIDERATIONS

2.1 Section 79C(1) - Matters for Consideration

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

(a) Provisions of any Environmental Planning Instrument (EPI), draft EPI and Development Control Plan (DCP)

Environmental Planning and Assessment Act – Schedule 4A

The application is required to be determined by the Joint Regional Planning Panel pursuant to Clause 3 of Schedule 4A of the Environmental Planning and Assessment Act as the Capital Investment Value of the proposed development exceeds \$20 million.

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

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

The development application is Integrated Development in accordance with the *Water Management Act 2000* as the development involves a temporary construction dewatering activity.

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 development application was referred to the NSW Office of Water. In a letter dated 26 June 2013, NSW Office of Water has provided its General Terms of Approval for the proposed development, which have been imposed upon the development in the Schedule of Consent Conditions section of this report.

State Environmental Planning Policy (Infrastructure) 2007

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 Impact Assessment Report prepared by Thompson Stanbury & Associates, dated July 2013.

Plans and documentation were referred to the NSW RMS for consideration and comment. In a letter dated 30 April 2013, the RMS has advised that it has no objection to the proposed development and has provided conditions which have been imposed upon the development in the Schedule of Consent Conditions section of this report.

State Environmental Planning Policy No 1 – Development Standards

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

Under the provisions of the Botany LEP 1995 the site is zoned 10(a) Mixed Use Commercial/Residential and Council may only consent to the erection of a building if the floor space ratio (FSR) does not exceed 2:1 or 5,298sqm in accordance with Clause 12A(1) of the Botany LEP 1995.

The proposal seeks an FSR as indicated under Column 2 of the table below. Column 3 provides a comparison with the FSR control under BBLEP 2013:

| Botany LEP 1995 | | Variation | BBLEP 2013 | | Variation |
|--|------------------------------|-----------|--|-------------------------------|-----------|
| Requirement under Clause 12A(1) of Botany LEP 1995 | Proposed FSR under BLEP 1995 | | Requirement under Clause 4.4 of BBLEP 2013 | Proposed FSR under BBLEP 2013 | |

| | | | | | |
|-------------------------------|-----------------------------------|------|---------------------------------|-----------------------------------|-----|
| 2:1 (5,298m ²) | 4.39:1 (11,639m ²) | 120% | 3.2:1 (8,476m ²) | 3.79:1 (10,039m ²) | 18% |
|-------------------------------|-----------------------------------|------|---------------------------------|-----------------------------------|-----|

Accordingly, the applicant has submitted an objection to Clause 12A(1) 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. Clause 12A(2) states Council is to include any land required to be dedicated in the site area calculation. Consideration has also been given to BBLEP 2013 in this assessment.

1. *Is the requirement a development standard?*

The subject floor space ratio requirement is a development standard contained in Clause 12A(1) the Botany Local Environmental Plan 1995.

2. *What is the underlying object or purpose of the standard?*

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

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

“The objectives of the development are addressed in turn:

- (a) To ensure that the floor space ratios allocated to each sub-precinct provide sufficient incentive to encourage redevelopment within the MSP, within a reasonable time frame.*
- (b) To allocate floor space ratios to each sub-precinct which are commensurate with the permitted building heights within the MSP.*
- (c) To ensure equity amongst potential redevelopment sites within the MSP by allowing those property owners, that are affected by the public facility dedication provisions within this development control plan, to utilise their original site area for the purposes of determining their maximum permitted floor space ratios.*
- (d) To provide sufficient development incentives to compensate for the dedication of land for public facilities on identified development sites.*

Even though there are no specific objectives for FSR in BLEP 1995, the subject site is located within in the Mascot Station Precinct DCP which contains the objectives and desired character for the redevelopment of the area. The comments made above by the applicant in the SEPP 1 Objection are consistent with objectives of the DCP, that is to establish controls that encourages good quality urban design, a high level of residential amenity and environmental sustainability.

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

- (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 claims that compliance with the maximum FSR development standard of 2:1 is unreasonable and unnecessary in the circumstances of the case on the following grounds:

- *The site is constrained in that it needs to dedicate a portion along Church Avenue towards road widening, and a portion adjacent Linear Park for public park and the floor space ratio control of 2:1 does not provide sufficient incentive to support a viable redevelopment of the site. This has been recognised by Botany Council as evidenced by the many developments which have been approved in the Mascot Station Precinct with floor space ratio's well in excess of the control. The proposed increase in height and floor space ratio for the site as expressed in Botany Bay Local Environmental Plan 2013 is further recognition that the current floor space ratio controls within the Precinct do not provide sufficient incentive to support viable redevelopment.*
- *Whilst the floor space ratio control of 2:1 may be commensurate with the height control of 6 storeys expressed for the site in the current Mascot Station Precinct DCP, it is not commensurate with the 44 metre height control expressed for the site under the Botany Bay Local Environmental Plan 2013. This increase in height recognises the inappropriateness of the current height control. The proposed heights and floor space ratio in the BBLEP 2013 were based on a study undertaken by Neustein Urban, David Lock Associates and Taylor Brammer Landscape Architects in February 2010. The study concluded that there are significant opportunities for intensification in the Mascot Station Precinct. The Precinct is well served by public transport and located at the gateway to Sydney's CBD. The Study has indicated that there is further potential for redevelopment particularly given the larger lot sizes, and the large areas of common ownership that can support higher levels of consolidation. In light of the conclusions of this study the height for the entire precinct under the Botany Bay LEP 2013 is now 44 metres and the proposed floor space ratio in this development application is commensurate with the new height control.*
- *The proposal is affected by the public facility dedication provisions within the Mascot Station Precinct DCP and has utilised the original site area for the purposes of determining the floor space ratios.*
- *The proposal involves the dedication of a significant portion of the site along Church Avenue and the western boundary adjacent to Linear Park. These dedications are of significance to the locality, and particularly the road widening dedication which is necessary to achieve a consistent increased road reservation width for the entire length of Church Avenue. In order to provide sufficient incentive to deliver these public benefits, the proposed floor space ratio is considered necessary.*

Comment:

The applicant's justification is generally agreed with. The proposal is considered to be of an appropriate bulk, scale and height for the subject site which has been amended to a reduced size and reduced FSR following further consideration by Council's Design Review Panel, and a suitable amount of soft landscaping is proposed for the development

The traffic generation resulting from the amended proposal is reduced from the original proposal and is considered to be satisfactory in this instance.

The overall impacts from the proposed development have been minimised and the built form combined with the proposed landscape treatment is considered to improve the public domain of the locality.

The development will enhance economic growth in the local precinct and significantly improve both the pedestrian environment and the streetscape of Haran Street and Church Avenue.

The proposal is therefore considered to satisfy the underlying objectives for the FSR control.

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

The underlying objectives and purposes of the FSR control remain relevant to the proposed development. The proposed development is consistent with the objectives of the FSR control in the Mascot Station Precinct DCP as detailed above.

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

The applicant has provided the following justification to demonstrate that the underlying objectives of the FSR control (i.e. Clause 12A(1) of BLEP 1995) would be thwarted or defeated if compliance were required:

The floor space ratio control within the Botany Local Environmental Plan 1995 has been consistently varied over time by Council in recognition of a need to meet the demands for housing in the area. The proposed floor space ratio is not inconsistent with the extent of variations to which consent has previously been provided. The following table provides a list of those variations approved by Council, the JRPP and the NSW Land & Environment Court.

| Address | FSR Control | Approved FSR (BBLEP 1995) | Approval Date |
|---|--------------------|----------------------------------|----------------------|
| 214 Coward Street (JRPP Application) | 2.5:1 | 4.5:1 | 16 December 2010 |
| 230 Coward Street (aka 25 John Street) | 2.5:1 | 4:1 | 23 August 2006 |
| 3-9 Church Avenue | 2:1 | 2.08:1 | 21 May 2008 |

| Address | FSR Control | Approved FSR (BBLEP 1995) | Approval Date |
|--|-------------|---------------------------|------------------|
| 13A Church Avenue | 2:1 | 2.36:1 | 30 June 2009 |
| 10-14 Church Avenue & 619-629 Gardeners Road (JRPP Application) | 2:1 | 2.52:1 | 3 August 2011 |
| 1-5 Bourke Street | 3.3:1 | 3.35:1 | 11 August 2004 |
| 7 Bourke Street & 30-32 John Street | 2.9:1 | 4.16:1 | 13 January 2011 |
| 24-26 John Street | 2:1 | 3.46:1 | 6 September 2009 |
| 8 Bourke Road & 37 Church Avenue | 3.3:1 | 4.24:1 | 13 May 2009 |
| 208-210 Coward Street (JRPP Application) | 2.5:1 | 4.44:1 | 5 December 2011 |
| 5 Haran Street (Court Approved) | 2:1 | 3.4:1 | June 2013 |
| 103-105 O’Riordan Street, Mascot | 2:1 | 3.16:1 | June 2012 |

The amended FSR of 4.39:1 is less than several other developments (214 Coward Street and 208-210 Coward Street) which were approved under the same instrument, the Botany LEP 1995, as that which applies to the subject proposal.

Public Contributions

The proposal provides a substantial amount of public contributions. The following public benefits, as required by the Mascot Station Precinct Development Control Plan, will be delivered by the development:

- *Dedication of land for the widening of Church Avenue and the construction of the road and footpath including landscaping of the verge.*
- *Reconstruction of the road and footpath including landscaping of the verge in front of Linear Park so that the Church Avenue widening merges with that to the west of Linear Park;*
- *Dedication of 145 square metres of land at the south western corner of the site as park;*
- *The reconstruction of both the footpath and verge in Haran Street on the southern boundary of the site; and*
- *The undergrounding of overhead services in Haran Street on the southern boundary of the site.*

The following substantial public benefits, in addition to the public benefits required by the Mascot Station Precinct Development Control Plan, will be delivered by the development:

- *The creation of a through site link including landscaping and paving along the western side of the building; and*
- *The dedication of a 205 square metre portion at the north west corner of the site as park in addition to the area required as park at the south west corner. This contribution reduces the burden to Council to acquire 1000 square metres of land along the Linear Park to increase the size of the Park through S94 offsets. It is also noted that the developer, Toplace, has already dedicated approximately 400 square metres of land at 1 John Street to Council towards the embellishment of the park. Therefore, Toplace who have or are undertaking 2 developments with frontage to Linear Park (Toplace projects represent approximately 15% of the total Linear Park frontage) will have contributed over 50 % of the DCP goal for Council to acquire 1,000 square metres towards the embellishment of Linear Park.*

Botany Bay LEP 2013

Whilst the amended floor space ratio of 3.79:1 (as calculated under the definition of Gross Floor Area in the new BBLEP 2013 (for the purposes of this comparison) exceeds the floor space ratio for the site of 3.2:1 as expressed in the BBLEP 2013, it is nonetheless considered acceptable in relation to the BBLEP 2013 for the following reasons:

Bulk and Scale

The amended proposal is consistent with the principle of uplifting the FSR and density for sites within the Mascot Station precinct. Whilst it exceeds the suggested FSR of 3.2:1, the additional 0.59:1 does not result in an unacceptable bulk and scale. The proposed building has a height of 39m which is less than the 44 permitted in BBLEP 2013 and accordingly the scale of the building is appropriate.

The bulk of the building is examined in terms of the footprint of the building and also the floorplate. In relation to the footprint, the amended proposal only occupies less than half of the overall site area, at 45% and also only 50.8% of the site area after dedication of a portion of the site to Council. This is a particularly low site coverage for a residential flat building and has provided the opportunity for generous setbacks comprising a liberal apron of landscaping to Church Avenue as well as landscaped setbacks to both the eastern boundary and also Linear Park.

The floor plate of the amended building is also highly modulated which presents as a slim line articulated form. Evidence of this is the high level of environmental performance and amenity which is achieved with both cross flow ventilation and solar access exceeding the recommendations of the Residential Flat Design Code. Therefore, in this circumstance, the additional 0.59:1 FSR does not result in an

excessive building footprint, a bulky building, or poor environmental performance. On the contrary, it has been demonstrated that an appropriate urban design outcome has been achieved with the proposed FSR of 3.79:1 and that the additional FSR has not compromised an acceptable outcome for the site. As the height and bulk of the building is appropriate for the site circumstances and context, the proposed additional FSR can be supported as it does not result in an unacceptable built form.

Overshadowing

The proposed bulk and scale of the development does not result in any unreasonable overshadowing impacts. In the first instance, the building has a height which complies with the BBLEP 2013 and as such the length of the shadow cast by the proposal is cannot be considered unreasonable in the context of the new control. In relation to the width of the shadow, a complying FSR (reduced floor plate) would result in negligible difference to the overshadowing of the southern adjoining properties, which are separated by Haran Street, in comparison to the amended proposal.

The proposed development at No. 5 Haran Street to the south of the site has been examined and has not been designed to maximise sunlight from its western boundary across which sunlight is unimpeded to the Linear Park. A redesign of the development at No.5 Haran Street would ensure that it can receive adequate sunlight, taking into account the shadow cast by the amended proposal on the subject site. Therefore, the proposed additional FSR does not result in unreasonable shadow impacts.

Traffic

Council officers advised at the DRP meeting on 23 January 2013 that the primary reason for the nominated FSR of 3.2:1 in the BBLEP 2013 for the subject and surrounding sites, as opposed to a different FSR figure, was based on the findings of SMEC's TMAP for the Mascot Town Centre Precinct. The resulting FSR control of 3.2:1 related to traffic concerns and the concern that a higher FSR control would result in unacceptable traffic impacts within the local road network.

However, due to the favourable characteristics of this particular site, the proposed additional FSR above the control does not result in any detrimental traffic impacts to the area. The site is located at the perimeter of the Mascot Station Precinct and accordingly, all traffic associated with the development will occur primarily along O'Riordan Street to the north and the south and will not result in an impact to the road network within the boundaries of the Mascot Station Precinct.

Thompson Stanbury Associates traffic consultants have examined the proposal in comparison to the existing traffic generation associated with the site and also examining the impact associated with the additional FSR above the new FSR in BBLEP 2013 of 3.2:1. The traffic

report provides that the existing use of the site generates 30 peak hour vehicle trips to and from the site and that the proposed development will result in less than 36 peak hour vehicle trips from the site. Therefore, the proposed FSR will only result in 6 more peak hour vehicle trips from the site, which will have a negligible difference to the performance of the local road network.

In examining the difference between a 3.2:1 FSR and the higher proposed FSR, the traffic report has found that a complying FSR would result in a traffic generation of 26 peak hour vehicle trips, which is actually 4 less peak hour vehicle trips than the current use of the site and 10 less peak hour vehicle trips than the proposed development. To suggest that a development with a traffic generation which is less than that which is generated by the existing use on the site is necessary is unreasonable and indicates that at a minimum, in terms of traffic impacts, the site is capable of accommodating a higher FSR than the 3.2:1 permitted under BBLEP 2013.

In terms of the comparison between a FSR complying with BLEP 1995 and the FSR under BBLEP 2013, the traffic report concludes:

The traffic generating ability of the subject proposal represents 1 additional vehicle movement every 6 minutes during peak period over and above that which would be generated by a scheme compliant with the BBLEP 2013. Such minor levels of additional traffic will not result in any measurable impacts on existing and projected future operating conditions of the surrounding road network reported upon by the TMAP for the reasons outlined in Section 5.2 of the report.

Accordingly, an analysis of the traffic implications associated with the redevelopment of the site have demonstrated that:

- a) An FSR of 3.2:1 would result in less traffic generation than the existing use of the site.*
- b) The proposed FSR of 3.79:1 will not result in any meaningful impact to the performance of the local road network beyond an FSR of 3.2:1 and the existing use on the site.*

Comment:

The applicant's justification is generally agreed with. The application has undergone rigorous assessment and it is considered that strict compliance with the 2:1 FSR would hinder attainment of the underlying objectives identified in Item 2 above. Most notably:

- The applicant has demonstrated that the proposed development will be similar in height, density and scale to existing and proposed development in the vicinity and surrounding area.
- The applicant has shown that the proposal could have a similar massing to that of a compliant building with an FSR of 3.2:1 under BBLEP 2013. An assessment against BBLEP 2013 is considered more relevant

in this case as it was gazetted on the 21 June 2013 (refer to assessment of the BBLEP 2013 later in the report). Therefore, compliance with the 2:1 FSR required under BLEP 1995 would unreasonably restrict the development and prevent compliance with the objectives.

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

The applicant's rationale, being that the development standard has been virtually abandoned or destroyed by Council's own actions, is generally agreed with. Their key rationale includes:

- BBLEP 2013 is now in force and the applicable FSR for the subject site is 3.2:1;
- The definition of "gross floor area" in BLEP 1995 has been replaced with the new Standard Definition which allows a greater yield;
- Other developments have been approved in the area which exceed the current FSR controls. These are indicated in the Table under (c) above.

4. Is the objection well founded?

It is considered that the proposal is generally consistent with the underlying objectives of the standard identified in 2 above. The SEPP 1 objection contends that compliance with the 2:1 FSR development standard is unreasonable and unnecessary in the circumstances of the case with respect of the aims and objectives of SEPP 1 and the relevant matters of consideration. The rationale and argument presented in the SEPP 1 submission is generally agreed with and it is recommended that the development standard relating to the maximum FSR for the site as contained within Clause 12A(1) of the Botany LEP 1995 should be varied in the circumstances to allow the development to attain a floor space ratio of 4:39:1.

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

The Strategic matters are as follows:-

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

The area since 2001 has seen substantially redeveloped. It should be noted that the Mascot Station Precinct has been identified as a future town centre by the Department of Planning and Infrastructure's (DoPI) Draft East Subregional Strategy.

Neustein Urban together with David Lock Associates and Taylor Brammer Landscape Architects were commissioned by the City of Botany Bay in February 2010 (under Planning Reform Funding from the Department of Planning) to inform the development of the City of Botany Bay's LEP 2011. The purpose of this study was to translate recommendations of the Botany Bay Planning Strategy 2031 (BBPS), prepared by SGS Economics and Planning in 2009, into LEP Standards (FSR, height and zoning) and urban design controls for five study areas within the Botany Bay

Local Government Area. These five areas were identified in order to develop LEP and urban design controls that will assist the City of Botany Bay to meet its subregional targets for housing and employment. One of the areas was the Mascot Station Precinct and its surrounds.

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

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

The Neustein Urban Study also examined the means by which the BBPS sought to provide for the housing and employment targets and subsequently determined that alternative means of reaching these targets needed to be devised. Like the BBPS, the Neustein Urban study found that the housing and employment targets will be substantially satisfied by development in the Mascot Town Centre. Development elsewhere will provide a useful addition to the number of dwellings and jobs in the Mascot Town Centre but these numbers will only ever be subsidiary to the Town Centre. The Neustein Urban Study found that in the long term, with 50% of sites redeveloped within the Mascot Station Precinct, this will result in an employment capacity yield of 16,926 to 21,484 jobs and a dwelling capacity of 3,300 dwellings.

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

Botany Bay Local Environmental Plan 2013 (BBLEP 2013) was gazetted on 21 June 2013 and commenced on 26 June 2013. The DA the subject of this report was lodged prior to the gazettal of the BBLEP 2013 and as such does not apply to the development application. The FSR permitted for the subject site in the new LEP is 3.2:1 and the maximum height permitted for the subject site is 44 metres.

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

5. Is the granting of consent consistent with the aims and objectives of 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 and unnecessary***

As noted elsewhere, the additional floor space created is a product of considered site analysis and careful spatial arrangement of built and landscape elements across the site. Full numerical compliance in this instance would not provide any additional benefits to the locality.

(b) *Will strict compliance with the development standard tend to hinder the objects of the Act, namely:*

(i) *the proper management of development and conservation of natural and artificial resources, including agricultural land, natural forest, forest, minerals, water, cities, town and villages for the purposes of promoting the social and economic welfare of the community and a better environment; and*

(ii) *promotion and co-ordination of orderly and economic use and development of land.*

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

The objects of the Act are:

(a) *to encourage:*

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

(ii) *the promotion and co-ordination of the orderly and economic use and development of land,*

(iii) *the protection, provision and co-ordination of communication and utility services,*

(iv) *the provision of land for public purposes,*

(v) *the provision and co-ordination of community services and facilities, and*

(vi) *the protection of the environment, including the protection and conservation of native animals and plants, including threatened species, populations and ecological communities, and their habitats, and*

(vii) *ecologically sustainable development, and*

(viii) *the provision and maintenance of affordable housing, and*

(b) *to promote the sharing of the responsibility for environmental planning between the different levels of government in the State, and*

(c) *to provide increased opportunity for public involvement and participation in environmental planning and assessment.*

In the discussion under point 3 above, it has been established that Council's view is that in the circumstances of the case, the proposed development is appropriate and strict adherence to the development standard in this instance is unreasonable and unnecessary.

The proposed development provides a high quality residential development that facilitates the orderly and economic development of land in a manner that is appropriate in the Precinct. The dwelling sizes are compliant with Council's MSP DCP comparatively high minimum unit sizes (compared to those set out in the Residential Flat Design Code). It is acknowledged that whilst the larger unit sizes are designed to ensure a higher standard of internal amenity, they do have an impact on the economic use of land, particularly in terms of dwelling yield.

Furthermore, the additional floor space does not manifest itself in any substantive impact to adjoining properties in terms of residential amenity, overshadowing or visual impact. To strictly apply the standard, in the absence of any tangible impact, would be unreasonable and without basis.

In the circumstances of this development, the underlying objectives would be thwarted if strict compliance with the FSR standard was required.

6(a) Whether or not non-compliance with the development standard raises any matter of significance for State or Regional environmental planning;

The proposed variation to the FSR standard does not raise any matters of significance for state or regional planning. The variation is also not contrary to any state policy of ministerial directive.

6(b) The public benefit of maintaining the planning controls adopted by the environmental planning instrument.

As detailed above, the development application involves public benefits required by MSP DCP and will provide public benefits over what is required under the DCP which will result in significant public benefits being provided.

Conclusion

The proposal is broadly consistent with Council's expectations for development and the desired future character of this locality. It also assists Council in achieving its residential and employment targets as identified in the Draft East Sub Regional Strategy. It is considered that the proposed development is a well-conceived response to all the relevant planning controls and strategies, and addresses the constraints and opportunities presented by the site.

The SEPP1 objection submitted by the applicant in respect of the non-compliance with the 2:1 FSR standard in Botany Local Environmental Plan 1995 is considered to be well founded as:

Accordingly, it is considered that the development standard relating to the maximum FSR development for the site as contained within Clause 12A(1) of the Botany LEP

1995, should be varied in the circumstances to allow the development to attain a floor space ratio of 4.39:1.

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

The provisions of SEPP No. 55 have been considered in the assessment of the development application. Clause 7 of SEPP No. 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 applicant submitted a Phase 2 Environmental Site Assessment prepared by Environmental Investigations dated 11 December 2012.

The report concludes that the levels of heavy metals and other contaminants were well below the acceptable criteria for residential development. No asbestos was detected. The groundwater samples detected higher levels of zinc than are acceptable, however groundwater is to be dewatered during basement construction.

Council's Environmental Scientist has reviewed the submitted report and liaised with the EPA in relation to the depth of sample undertaken, which were only to a depth of 200mm and the fact that only one of eight samples were analysed. The EPA have advised that the depth of samples and analysis of samples is acceptable only in this instance as the Applicant has also undertaken Groundwater investigation.

Notwithstanding the above, it is appropriate to impose a condition on any consent granted to ensure that a Site Audit Statement (SAS) is submitted to Council prior to the issue of the Construction Certificate which states the subject site is suitable for residential development, together with a supplementary SAS which states that the land to be dedicated to Council for public reserves meets the criteria for recreation areas. A condition has been imposed upon the development in the Schedule of Consent Conditions section of this report.

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

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

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

- (a) to ensure that it contributes to the sustainable development of New South Wales:*
 - (i) by providing sustainable housing in social and environmental terms, and*
 - (ii) by being a long-term asset to its neighbourhood, and*
 - (iii) by achieving the urban planning policies for its regional and local contexts, and*
- (b) to achieve better built form and aesthetics of buildings and of the streetscapes and the public spaces they define, and*

- (c) to better satisfy the increasing demand, the changing social and demographic profile of the community, and the needs of the widest range of people from childhood to old age, including those with disabilities, and*
- (d) to maximise amenity, safety and security for the benefit of its occupants and the wider community, and*
- (e) to minimise the consumption of energy from non-renewable resources, to conserve the environment and to reduce greenhouse gas emissions.*

The provisions of SEPP No. 65 have been considered in the assessment of the development application. The applicant has submitted a SEPP 65 assessment of the proposed development along with a design verification statement prepared by Krikis Tayler Architects, dated 12 July 2013, to verify that the plans submitted were drawn by a Registered Architect and achieve the design quality principles set out in Part 2 of SEPP No. 65.

Council's Design Review Panel has considered the proposed development prior to the lodgment of the application on two occasions, on 2 May 2012 and on 29 August 2012. Following the submission of the application, the design was again considered by the DRP on the 5 December 2012 and again on the 21 January 2013. The current plans which are the subject of this assessment have addressed the concerns raised by the Design Review Panel and present a reduction in FSR from 4.69:1 down to 4.39:1 (under BLEP 1995), along with other significant design changes to accommodate the concerns of the Panel and the Council.

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

The ten design principles are addressed as follows:

Principle 1: Context

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

The surrounding built form context consists of mixed residential and commercial development of similar height and density to that of the subject proposal. Recently constructed residential flat buildings in this precinct range from 6 to 13 storeys in height. Effectively, the proposal will occupy the currently vacant land with a built form that is more contextually appropriate, adding to the active and desired setting for the site with the establishment and dedication of a public reserve in accordance with the requirements of the MSP DCP. On this basis, it is considered that the proposed use of the subject site for the purposes of a residential flat development is consistent with its context.

Principle 2: Scale

The scale of the proposed development is similar to several of the approved residential flat developments located in close proximity to the site, particularly on Bourke Street, Church Avenue and Coward Street (some of these are yet to be constructed or are under construction). Recently constructed developments range from 6 to 13 storey heights with podium level commercial premises upon which is erected residential towers.

To the north-west is 619 -629 Gardeners Road comprising of seven buildings ranging from 6-13 storeys. To the north is the “Sublime” development located at the corner of Church Avenue and O’Riordan Street, comprising of two residential flat buildings 6-7 storeys high.

To the west beyond Linear Park, the Rina complex at 3-9 Church Avenue comprises of three separate towers to 8 storeys in height.

The height and scale of the proposed development is considered acceptable given that the subject site is unique in that it has a frontage to both Church Avenue and Haran Street, adjoins the Caltex service station to the east and Linear Park to the west. The height of the proposed development is 39 metres, being less than the 44m permitted under BBLEP 2013.

The scale of the proposed development does not result in any unreasonable impacts on the adjoining properties in terms of overshadowing, visual impact or privacy.

Principle 3: Built Form

The development form will comprise of two towers accessible from both Church Avenue and Haran Street. Considerable setbacks have been provided to Church Avenue to accommodate the land required for road widening and a new public reserve. The setbacks to Linear Park have been increased as recommended by the DRP to provide additional soft landscaping and deep soil area and the 3m setback to Haran Street is compliant with the requirements of the MSP DCP.

The building is delineated in scale providing articulated facades and comprises a built form that is described as a contemporary painted masonry style with external elements providing visual interest. The overall built form is compatible with the adjacent developments and the emerging character of the area as it undergoes redevelopment. The proposed modern architectural form will contribute to the public domain, which is further enhanced by the proposed land dedications for road widening and public parks together with the undergrounding of the existing overhead cables.

Principle 4: Density

Council’s Design Review Panel has considered the proposed development both prior to and following the lodgment of the application. The Design Review Panel sought amendments, notably a reduction in floor space ratio. The current plans that are the subject of this assessment have addressed the concerns raised by the Design Review Panel through reduction of FSR from 4.69:1 to 4.39:1 (under BLEP 1995).

The Applicant has been required to acquire the subject three allotments to facilitate the proposed development of the land, which will require consolidation. This is a requirement of Councils Mascot Station Precinct DCP. Additional DCP requirements include the provision and dedication of land in the southern western corner of the subject site for a public reserve adjacent to Linear Park together with the dedication of land on Church Avenue for the widening of Church Avenue. As such, the proposed development exceeds the permissible FSR by 6,331sqm. A total of 113 apartments are now proposed, being a reduction from 125 apartments initially proposed. This will comprise of 12 studio apartments, 20 x 1 bedroom apartment, 81 x 2 bedroom apartments. The number of units provided within the building is appropriate given that sufficient landscaping, car parking, private open space, appropriate internal layouts, and setbacks are integrated into the design.

Principle 5: Resource, energy and water efficiency.

The location, orientation and design of the development provides for adequate solar access and cross ventilation to the majority of apartments in accordance with SEPP 65. The Residential Flat Design Code (RFDC) recommends that at least 60% of the proposed units shall achieve flow through ventilation with the proposal indicating 69% of proposed units able to achieve cross flow ventilation. The applicant has confirmed that all habitable spaces are adequately ventilated.

The RFDC recommends that at least 70% of all proposed units and balconies shall achieve 2 hours of direct sunlight during the period 9.00am and 3.00pm at mid-winter in dense urban areas. The proposal indicates that 74% of proposed units will receive at least 2 hours sunlight during mid-winter to balconies. In addition, the development can meet the requirements of BASIX.

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

Principle 6: Landscape

There are three distinct types of landscape open space provided to the development. This includes private open space balconies, communal open space terrace at Level 12 and deep soil zones at the sites western perimeter and the southern and eastern podium levels. A landscape plan has been submitted with the application which demonstrates that a quality landscaped setting for the proposed development will provide a significant level of amenity for future occupants and the adjoining properties, with street planting to enhance the streetscape.

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

Council's Landscape Officer has reviewed the proposal and provided conditions. The proposed landscape planting is commensurate with the building size and bulk; hence it is considered that the proposal is consistent with this design quality principle.

Principle 7: Amenity

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

Private recreational areas are provided in the form of balconies off the living areas and are supplemented by communal landscaped areas to ensure an overall quality of living for future occupants.

An assessment of environmental acoustic impacts as well as a road traffic noise and aircraft noise assessment have accompanied the application, which details measure to be implemented. To ensure that the occupants of the development are not adversely impacted upon.

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

Principle 8: Safety and Security

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

Principle 9: Social Dimensions

The amended development provides a more balanced mix of apartment apartments to a site that is located within close proximity to public transport, recreation facilities, and shopping facilities. Whilst the proportion of studio and one bedroom apartments exceeds the 25% suggested in the MSP DCP, the amended mix is considered appropriate as it reflects current market demand and future projections for increased demand for smaller apartments.

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

Principle 10: Aesthetics

Aesthetically and functionally, the development proposes quality internal and external design, having regard to built form, landscaping, setbacks, internal layouts and provision of underground parking. Particular emphasis has been placed on external appearance to enhance the streetscape and create visual interest in the architecture of the building for all elevations, along with a selection of appropriate finishes. The contemporary design of the building is compatible with the design and scale of the urban form for the Mascot Station Precinct. It is considered that the proposed rendered/painted masonry, glazed finishes, and articulation contribute to the overall contemporary style. Therefore the proposed development is considered to be consistent with this design quality principle.

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

Botany Local Environmental Plan (LEP) 1995

Clause 10 – Zoning

The subject site is zoned 10(a) – Mixed Uses Commercial/Residential in accordance with clause 10 of the LEP. The proposed development, being for a residential flat building is permissible in the 10(a) zone with the appropriate consent of Council. The primary objective of the 10(a) zone is as follows:

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

It is considered that the proposed development, being for a residential flat development is consistent with this primary objective.

The secondary objectives of the zone are as follows:

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

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

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

The proposed development is therefore considered to adequately address the requirements of Clause 10 of the BLEP 1995.

Clause 12(3) – Floor space ratio

The requirements of Clause 12A have been considered in the assessment of the development application. The maximum FSR permitted for the subject site is 2:1. The development is proposed with an FSR of 4.39:1.

The applicant has submitted a SEPP 1 Objection, discussed earlier in the report, which demonstrates that the development standard is unreasonable and unnecessary in the circumstances of this case and it is recommended that this Objection be supported.

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

The site is located within the 20-25 contour on the Aircraft Noise Exposure Forecast (ANEF) chart, and is located adjacent to O’Riordan Street which is identified by the Roads and Maritime Service (RMS) as a classified road. As such, Clause 13 and 13A of the LEP have been considered in the assessment of the Development Application.

The development application has been accompanied by an Environmental Noise Impact Report and an Aircraft and Road Traffic Intrusion Report prepared by Day Design and dated July 2013. Council’s Health and Environmental Services Department has confirmed that compliance with the aircraft noise requirements contained in AS2021-2000, and the relevant acoustic requirements for traffic noise, can be achieved with the installation of acoustic treatment devices within the development as detailed in the report. A condition has been imposed in the recommendation that the development comply with AS2021-2000 and AS3671-1989. Therefore it is considered that the proposed development is consistent with Clause 13 and 13A of BLEP 1995.

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. As such, the development application has been referred to Sydney Airports Corporation Limited (SACL) for consideration. SACL raised no objections to the proposed maximum height of 51 metres AHD, subject to conditions to be imposed on any consent.

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

Clause 18A requires Council not to grant consent to the carrying out of any development on land in Zone 10(a) unless it is satisfied that a number of criteria have been suitably met as follows:

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

The proposed development provides a total of 206 car parking spaces that will comprise 194 residential car spaces and 17 visitor’s spaces (2 visitor’s spaces to be shared as car wash bays). The car parking is provided over four basement levels which is excavated approximately 10.7 metres and raised between 1.0 and 1.3 metres above the existing ground level. Visitor spaces and the car wash bays are located on Basement Level 1. The visitor spaces do not strictly comply with the requirements of the Mascot Station Precinct DCP, and as such the Applicant requests a variation to the number of visitor spaces required.

The development application has been accompanied by a Traffic Impact Assessment Report prepared by Thompson Stanbury & Associates dated July 2013. The submitted report identifies that adequate parking will be provided for each proposed apartment, but that a shortfall of five (5) visitor spaces is proposed. The provisions of the Mascot Station Precinct DCP – Control C58 state that consideration will be given to a

reduction in visitor spaces where a proposed development comprises of 55 dwellings or more.

Given that the subject site is located within 400m walking distance to Mascot Station and in much closer proximity to bus stops, the shortfall in visitor parking is considered acceptable in this instance. Therefore it is considered that the proposed development is consistent with the requirements of Clause 18(a) of BLEP 1995.

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

The design of the basement car park entrance is such that appropriate Australian Standards are met and all vehicles can enter and exit the site in a forward direction. Vehicle access to the site is proposed off Haran Street only via a 6 m wide ingress /egress driveway and this is considered to be the most suitable location for vehicular access to and from the development. The Traffic Impact Assessment prepared by Thompson Stanbury & Associates dated July 2013 has concluded that the provision for servicing, including loading/unloading is satisfactory for the nature of the development. Therefore it is considered that the proposed development is consistent with the requirements of Clause 18(b) of BLEP 1995.

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

Basement Level 1 accommodates two waste storage rooms for the storage of garbage bins. The Haran Street setback will accommodate a garbage collection area and electrical kiosk which will be suitably screened from public view.

The basement has been designed to accommodate service vehicles. Plant associated with the functioning of the building has been designed to be contained in the basement car park. On this basis, it is considered that the proposed development is consistent with the requirements of Clause 18(c) of BLEP 1995.

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

The Traffic Impact Assessment prepared by the Applicant's Consultant, Thompson Stanbury dated July 2013 has been submitted to accompany the development application and this report concludes that the traffic generation resultant from the proposed development is not considered to have a significant impact on the surrounding road network, and the provision for servicing, and loading/unloading are satisfactory for the nature of the development.

The submitted report states that the subject development represents a net additional traffic generation of three (3) peak hour trips over and above that currently being generated by the three existing sites, being increase from 30 peak hour vehicle trips to 33 peak hour vehicle trips.

Therefore it is considered that the proposed development is consistent with the requirements of Clause 18(d) of BLEP 1995.

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

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

the proposed development, it is unlikely to result in significant adverse impact as to pollutant discharge, other emissions or hours of operation. Therefore it is considered that the proposed development is consistent with the requirements of Clause 18(e) of BLEP 1995.

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

It is considered that the essential residential nature of the proposed development will ensure that there are no adverse impacts in the locality with respect of noise generation. Therefore it is considered that the proposed development is consistent with the requirements of Clause 18(f) of BLEP 1995.

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

A landscape plan has been submitted with the application demonstrating that a distinctive landscape setting for the proposed development will provide a high level of amenity for future occupants and adjoining properties, with street planting to enhance the streetscape. Council's Landscape Architect has reviewed the proposal and provided conditions requiring additional planting on the site to further enhance the streetscape. Therefore it is considered that the proposed development is consistent with the requirements of Clause 18(g) of BLEP 1995.

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

The bulk, scale and height of the proposed development is similar to nearby developments located in close proximity to the site, particularly along Coward Street and Church Avenue. Given that the subject site is unique in that it has a frontage to Haran Street, Church Avenue, Linear Park and the existing Caltex service station, the subject site is able to accommodate a building of the scale proposed. The proposed height of 39m is less than the 44m permitted under BBLEP 2013. The owner of the site has acquired all three subject allotments, as required by MSP DCP and the site is further constrained by land dedication requirements under MSP DCP.

The development application responds to these requirements and seeks to provide additional public benefits over that required by the DCP, which will result in significant public domain works being undertaken to Church Avenue, Haran Street and Linear Park. It is considered that the proposal will complement the future character of the locality and is specifically designed to have a strong link to the Mascot Station Precinct. Therefore it is considered that the proposed development is consistent with the requirements of Clause 18(h) of BLEP 1995.

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

A Wind Environment Statement prepared by Windtech Consultants dated 25 February 2013 has been submitted to demonstrate that the development in its amended form will not result in adverse impact on the amenity of the locality with respect of wind generation.

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

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

The Applicant has also submitted both an Environmental Noise Impact Assessment and an Aircraft and Road Traffic Noise Intrusion Report prepared by Day Design and both dated 8 July 2013. The submitted acoustic reports reviewed the potential of noise reflection from aircraft and traffic from the amended development and it was found that the amended development will not increase noise reflection onto the adjoining development from either aircraft or traffic. The buildings have been designed with articulation, and in keeping with the adjoining development, which reduces any reflection that could occur. Therefore it is considered that the proposed development is consistent with the requirements of Clause 18(i) of BLEP 1995.

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

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

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

The development application was accompanied by an Environmental Site Assessment prepared by Environmental Investigations dated 11 December 2012. The report concludes that the levels of heavy metals and other contaminants were well below the acceptable criteria for residential development. No asbestos was detected. The groundwater samples detected higher levels of zinc than are acceptable, however groundwater is to be dewatered during basement construction.

Council's Environmental Scientist has reviewed the submitted report and liaised with the EPA in relation to the depth of sample undertaken, which were only to a depth of 200mm and the fact that only one of eight samples were analysed. The EPA have advised that the depth of samples and analysis of samples is acceptable only in this instance as the Applicant has also undertaken Groundwater investigation.

Council received an Addendum to the Environmental Site Assessment on the 6 August 2013 prepared by Environmental Investigations which indicates that further sampling has been undertaken on that land to be dedicated as public parks. The findings of the analysis indicate that no contaminants were identified and that the site can be made suitable for public recreational use. However it will be necessary to ensure that the existing soil in these areas remain in situ.

On this basis, it is appropriate to impose a condition on any consent granted to ensure that a Site Validation Report is submitted to Council prior to the issue of the Occupation Certificate which states the subject site is suitable for residential development, together with a supplementary Statement which states that the land to be dedicated to Council for public reserves meets the criteria for recreation areas. A condition has been imposed upon the development in the Schedule of Consent

Conditions section of this report. Therefore it is considered that the proposed development is consistent with the requirements of Clause 18(k) of BLEP 1995.

Clause 22 – Greenhouse, Energy Efficiency, etc.

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

BASIX Certificates and associated thermal comfort certificates dated July 2013 have been submitted with the application indicating that the proposal meets the water saving target of 40%, energy saving target of 20%, and the thermal comfort requirements of the SEPP (BASIX) 2004. As such, the proposal is considered to adequately address the requirements of this clause.

Clause 28 – Excavation and filling of land

Clause 28 of the LEP has been considered in the assessment of the development application as the site seeks consent for excavation to a maximum depth of approximately 2 metres below the existing ground level.

The groundwater table is located between 5.4-5.6m AHD (which is approximately 5m below ground level) and the applicant has confirmed that the development (including footings) involves excavation works that will transect the watertable.

The proposed basement level will be constructed with a finished floor level of RL - 1.65m. As such, the proposed development is Integrated Development and requires a Controlled Activity Approval for construction dewatering pursuant to the provisions of Section 91 of the Environmental Planning and Assessment Act 1979 (EP&A Act).

In a letter dated 26 June 2013, NSW Office of Water has provided its General Terms of Approval for the proposed development, which have been imposed upon the development in the Schedule of Consent Conditions section of this report. As such the proposed development is considered to satisfy the provisions of Clause 28 of BLEP 1995.

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

The site is located within a Class 2 Acid Sulfate Soil Area. As such under Clause 30A of the Botany LEP 1995 any works that are below ground surface require the submission of an acid sulfate soils management plan.

An Acid Sulfate Soils Investigation was undertaken within the Environmental Site Assessment prepared by Environmental Investigation Services date 11 December 2012 and received by Council on the 3 April 2013. The findings of this ASS investigation conclude that no presence of any Potential or Actual Acid Sulfate Soils were associated with any subsoil strata layers within the subject site. As such the proposed development is considered to satisfy the provisions of Clause 30A of BLEP 1995.

Clause 38 – Water, wastewater and stormwater systems

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

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

Sydney Water requested by letter dated 2 May 2013 that conditions be imposed requiring the upgrade of the drinking water main, deviation/adjustment to the existing wastewater main and the submission of a Section 73 Certificate. The Sydney Water requirements are proposed as conditions of consent.

Concept stormwater plans were also submitted with the application, which have been reviewed by Council's Development Engineer. Council's Engineer has provided conditions of consent with regard to the provision of stormwater drainage and rainwater reuse for the development. As such the proposed development is considered to satisfy the provisions of Clause 38 of BLEP 1995.

Botany Bay Local Environmental Plan 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.

The provisions of the BBLEP 2013 have been considered in the assessment of this Development Application and the following information is provided:

| Principal Provisions of BBLEP 2013 | Compliance Yes/No | Comment |
|---|--------------------------|---|
| Landuse Zone | N/A | The site is zoned B4 – Mixed Use under the BBLEP 2013. |
| Is the proposed use/works permitted with development consent? | Yes | The proposed residential flat building is permissible with Council's consent under the BBLEP 2013. |
| Does the proposed use/works meet the objectives of the zone? | Yes | The proposed development is consistent with the following objectives in the BBLEP 2013: <ul style="list-style-type: none"> ▪ <i>To provide a mixture of compatible land uses;</i> ▪ <i>To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling</i> |
| Does Clause 2.5 and Schedule 1 | N/A | Clause 2.5 does not apply to the subject site. |

| Principal Provisions of BBLEP 2013 | Compliance Yes/No | Comment |
|---|-------------------|---|
| – Additional Permitted Uses apply to the site? | | |
| What is the height of the building? Is the height of the building below the maximum building height? | Yes | The proposed building height is 39 metres, which is less than the 44m permitted by Clause 4.3 of BBLEP 2013. |
| What is the proposed FSR? Does the FSR of the building exceed the maximum FSR? | No- See Note 1 | The proposed FSR is 3.79:1, which exceeds the maximum FSR of 3.2:1 permitted under Clause 4.4 of BBLEP 2013. The exceedence represents a variation of 1,562.91 m ² |
| Is the proposed development in a R3/R4 zone? If so does it comply with site of 2000m ² min and maximum height of 22 metres and maximum FSR of 1.5:1? | N/A | The subject site is not located within an R3 or R4 zone. |
| Is the site within land marked “Area 3” on the FSR Map | N/A | The subject site is not identified as being within “Area 3” on the FSR map. |
| Is the land affected by road widening? (Clause 5.1 – Relevant Acquisition) | Yes | The subject site is affected by the widening of Church Avenue, which has been addressed by the Applicant. |
| 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 | Yes | Clause 6.1 – Acid Sulfate Soils. The subject site is affected by Class 4 Acid Sulfate Soils. An Acid Sulfate Soils Investigation was undertaken within the Environmental Site Assessment prepared by Environmental Investigation Services date 11 December 2012. The findings of this ASS investigation conclude that no presence of any Potential or Actual Acid Sulfate Soils were associated with any subsoil strata layers within the subject site. The development is considered to be consistent with Clause 6.1 of BBLEP 2013. Clause 6.2 – Earthworks. The proposed development involves bulk excavation to accommodate 4 basement levels. The development application has been accompanied by a Geotechnical Assessment and Groundwater Report. The development application is Integrated Development and as such, the NSW Office of Water has provided its 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 |

| Principal Provisions of BBLEP 2013 | Compliance Yes/No | Comment |
|---|-------------------|--|
| <p>6.3 – Stormwater management</p> <p>6.8 - Airspace operations</p> <p>6.9 – Development in areas subject to aircraft noise</p> <p>6.16 – Design excellence</p> | | <p>with Clause 6.2 of BBLEP 2013.</p> <p>Clause 6.3 – Stormwater. The development application involves an underground On Site Detention system/rainwater tank for collection and reuse of rainwater for landscaping on site. The development is considered to be consistent with Clause 6.3 of BBLEP 2013.</p> <p>Clause 6.8 – Airspace Operations. The subject site lies within an area defined in the schedules of the Civil Aviation (Buildings Control) Regulations that limit the height of structures to 50 feet (15.24 metres) above existing ground height without prior approval of the Civil Aviation Safety Authority. The application proposed buildings to this maximum height and was therefore referred to Sydney Airports Corporation Limited (SACL) for consideration. SACL raised no objections to the proposed maximum height of 51 metres AHD, subject to conditions to be imposed on any consent. The development is considered to be consistent with Clause 6.8 of BBLEP 2013.</p> <p>Clause 6.16 – Aircraft Noise. The subject site is affected by the 20-25 ANEF contour. An acoustic report has been submitted with the development application which indicates that the design of the building alterations have been designed to comply with the requirements of AS2021-2000. The development is considered to be consistent with Clause 6.9 of BBLEP 2013.</p> <p>Clause 6.16 Design Excellence. The proposed design has been the subject of consideration by Council's Design Review Panel on four separate occasions.</p> <p>Council received amended plans on the 12 July 2013. The changes now seek to further reduce the FSR from 4.69:1 down to 4.39:1 (under BLEP 1995) and from 4.17:1 down to 3.79:1 (pursuant to BBLEP 2013), a reduction in the total number of apartments from 125 down to 113, a reduction in the number of car parking spaces from 221 down to 206.</p> <p>Whilst the FSR has been reduced, it remains non compliant with the 3.2:1 permitted under BBLEP 2013. The Applicant states that the</p> |

| Principal Provisions of BBLEP 2013 | Compliance Yes/No | Comment |
|------------------------------------|-------------------|--|
| | | <p>subject site is unique in that it has two street frontages and a frontage to Linear Park, which supports an increase in density together with increased amenity provided by an attractive outlook and access to sun, natural light and ventilation.</p> <p>Given the existing site constraints including, the level of excavation require to accommodate car parking for the development, the site consolidation requirements of the MSP DCP and the significant level of public benefits proposed over and above that required by the MSP DCP, the density proposed is considered acceptable.</p> <p>The bulk, scale and height of the proposed development is appropriate as the development will not create any unreasonable impacts on the residential amenity of adjoining sites. The built form as proposed is contemporary in nature and presents an articulated façade providing enhanced interest to the streetscape and the precinct generally.</p> <p>On this basis, it is considered that the Applicant has adequately addressed the recommendations of the Design Review Panel and the proposed development is considered to be consistent with Clause 6.16 of BBLEP 2013.</p> |

The objectives and provisions of BBLEP 2013 have been considered in relation to the subject development application. The proposal is considered satisfactory in terms of the BBLEP 2013.

Note 1 – Floor Space Ratio (FSR)

The FSR for the proposed development is considered to be 3.79:1 which exceeds the maximum 3.2:1 permitted under BBLEP 2013. A summary of the FSR pursuant to the BBLEP 2013 is provided in the table below:

| Botany Bay LEP 2013 | |
|---------------------------------|-------------------------------------|
| Permitted FSR under Clause 4.4 | Proposed FSR |
| 3.2:1 (8,476m ²) | 3.79:1:1 (10,039m ²) |

The above calculations are based on definition of GFA contained in the new LEP which is as follows:

***gross floor area** means the sum of the floor area of each floor of a building measured from the internal face of external walls, or from the internal face of walls separating the building from any other building, measured at a height of 1.4 metres above the floor, and includes:*

- (a) the area of a mezzanine, and*
- (b) habitable rooms in a basement or an attic, and*
- (c) any shop, auditorium, cinema, and the like, in a basement or attic,*

but excludes:

- (d) any area for common vertical circulation, such as lifts and stairs, and*
- (e) any basement:*
 - (i) storage, and*
 - (ii) vehicular access, loading areas, garbage and services, and*
- (f) plant rooms, lift towers and other areas used exclusively for mechanical services or ducting, and*
- (g) car parking to meet any requirements of the consent authority (including access to that car parking), and*
- (h) any space used for the loading or unloading of goods (including access to it), and*
- (i) terraces and balconies with outer walls less than 1.4 metres high, and*
- (j) voids above a floor at the level of a storey or storey above.*

The applicant has demonstrated in their SEPP 1 objection that the subject development is similar in height and scale to existing and approved development nearby to the site and will not create any unreasonable amenity impacts in terms of overshadowing, privacy or view loss. The SEPP 1 Objection also highlights that a compliant 3.2:1 development could have a similar bulk and scale to the proposed development and a similar traffic generation rate. The variation to the FSR control is supported by Council.

The objectives and provisions of the BBLEP 2013 have been considered in relation to the subject development application. The proposal is considered satisfactory in terms of the BBLEP 2013.

Mascot Station Precinct Development Control Plan (DCP)

Background

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

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

1. To conduct a desktop review of the Mascot Station Precinct DCP and the Public Domain Manual (PDM) documents.

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

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

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

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

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

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

Neustein Urban together with David Lock Associates and Taylor Brammer Landscape Architects were subsequently commissioned by the City of Botany Bay under Planning Reform Funding from the Department of Planning to translate recommendations of the Botany Bay Planning Strategy 2031, prepared by SGS Economics and Planning in 2009, into LEP Standards (FSR, height and zone) and urban design controls for five study areas within the Botany Bay Local Government Area which were identified by Council with the aim to develop LEP and urban design controls that will assist the City of Botany Bay to meet its subregional targets for housing and employment.

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

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

It is acknowledged that the DA does not comply with the provisions of the current MSP DCP. At present, the Draft Botany Bay Development Control Plan 2013 is on exhibition and includes controls relating to the Mascot Station Precinct in line with the work done to date by Council under the Botany Bay Planning Strategy 2031 and the LEP Standards & Urban Design Study. Both studies recommended higher FSRs given that the public transport system being the New Southern Railway that runs under the Precinct and the location of the Mascot Station entrance in the centre of the Precinct. However, as the Draft Botany Bay DCP 2013 has not been adopted by Council as yet, it is not appropriate to assess the development application against the draft controls in this instance.

The current DCP requirements require lot consolidation (Control C4) including the consolidation of No. 125 O’Riordan Street (Caltex service station) however as stated later in this report, the viability of the service station will remain and this development will affect the long term viability of the use, land dedication in terms of road widening (Control C39) and open space (Control C42) for this site. Council also requires the construction/embellishment of the road widening and the public open space as conditions of consent for development within the Precinct. The DA complies with these controls (as well as Council’s policy on road & open space construction/embellishment) which have a great public benefit to the overall Precinct.

The location of the public open space does not comply with the DCP – the DCP requires that the public open space be provided adjacent to “Linear Park” along

Church Avenue. The DA indicates the park's location at the western side of the site fronting Church Avenue. The concept of "Linear Park" is under review by Council. "Linear Park" is the Sydney Water land containing the Southern Sewer Outfall. At the time of writing the DCP in 2001 it was envisaged that Sydney Water would allow the use of their land as a major open space area for the Precinct; with the existing size being increased by the purchase/dedication of land in the locality. The subject site under Control C42 was to dedicate an area of approximately 1,140m² fronting Church Avenue adjacent to the Sydney Water land.

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

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

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

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

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

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

*Studio - 60 sqm
1 bedroom - 75 sqm
2 bedrooms - 100 sqm
3 bedrooms - 130 sqm*

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

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

*Studio or 1-bedroom apartments – 1 space.
2 or more bedroom apartments – 2 spaces.
Visitor parking - 1 car space per seven (7) dwellings – consideration will be given to a reduction in visitor parking for developments containing greater than a total of 55 dwellings.*

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

Compliance with DCP Controls

The subject site is contained within Sub-precinct No. 1 under the DCP. The following is an assessment of the applications against the provisions of the DCP:

| Requirement | Comment | Complies |
|---|--|---|
| C13 Demonstrate no potential sterilisation of land | The location and nature of the proposed development site is that it will still permit the appropriate development of adjoining sites. It is considered that the adjoining service station will have long term viability and remain within the precinct. | Yes |
| C14 Floor Space Ratio Max – 2:1 | The application proposes a FSR of 4.39:1 across the entire site. This exceeds the maximum permitted and the applicant has submitted an objection to the development standard in accordance with SEPP 1. The variation is supported in this instance, as discussed in detail in the sections above. | No – Refer to SEPP 1 Objection to Clause 12A of Botany LEP within this report. |
| C15 Public Facility | As the site is affected by public facility dedication, the original site area (inclusive of the | Yes |

| Requirement | Comment | Complies |
|--|---|------------------------------|
| Dedications | land required for the Church Avenue widening) has been utilised for the purposes of determining floor space ratio. | |
| C16 Maximum Building Height = 6 storeys | A building height of 13 storeys is proposed. | No – See Note 1 below |
| C18 Airport related building heights – buildings over 15.24 metres in height shall be referred to FAC | Sydney Airports have provided approval for the building to a maximum height of 51 metres AHD, subject to conditions of consent. | Yes |
| C23 Maximum site coverage = 55% | The development proposes a site coverage of 50.8%. | Yes |
| C25 Minimum apartment sizes: Studios 60m ² 1 bedroom 75 m ² 2 bedrooms 100m ² | All units within development comply with the specified minimum unit sizes. Proposed minimum apartment sizes are as follows: Studios 60m ² 1 bedroom 75m ² 2 bedrooms 100m ² | Yes |
| C26 Unit mix - maximum 25% studio/one bedroom apartments | Studio/One bedroom = 22 units (28%) Two bedrooms = 81 units (72%) | No – See Note 2 below |
| C26A The minimum internal widths are as follows: Cross over units: 4m (excluding garage) Single level unit/dwelling: 6m excluding garage | The minimum width of the single level units exceed 6 metres | Yes |
| C26B Facilities to be provided in a convenient location within the apartment and built appropriate to the function and use of the apartment | Laundry, food preparation, and sanitary facilities have been designed so that they are in a convenient location | Yes |
| C26C and D Floor to ceiling tiles | Will be conditioned to comply. | Yes |
| C26E and F Building Separation <u>Up to 4 storeys:</u> • 12 metres between habitable rooms/balconies; • 9 metres between habitable/balconies | 27 metres separation to 3-9 Church Avenue to the west; There are streets to the north and south of the proposed building; | Yes |

| Requirement | Comment | Complies |
|--|---|------------------------------|
| <p>and non-habitable rooms; and</p> <ul style="list-style-type: none"> • 6 metres between non-habitable rooms. <p><u>5 – 8 storeys:</u></p> <ul style="list-style-type: none"> • 18 metres between habitable rooms/balconies; • 13 metres between habitable rooms/balconies and non-habitable rooms; and • 9 metres between non-habitable rooms. | <p>On average a 3m setback will be provided to the service station site.</p> | |
| <p>C27 – C31</p> <p>Submission of concept landscape plans, landscaping requirements, paving, trees and street trees</p> | <p>A concept landscape plan has been submitted to accompany the development applications and this has been reviewed by Council's Landscape Architect and is considered acceptable, subject to relevant conditions.</p> | Yes |
| <p>C32</p> <p>Communal open space = 20% of development site and 25% of this area shall be deep soil planting.</p> | <p>The proposal incorporates 345m² of communal open space at ground floor level which is to be dedicated to Council upon satisfactory completion of works. This represents 14.5% of the site after dedications.</p> <p>A communal terrace is provided to Level 12.</p> <p>Each dwelling is provided with open space balconies in excess of the DCP requirements.</p> <p>In total 18% of the site after dedication of Church avenue will be deep soil area.</p> | No – See Note 3 below |
| <p>C33</p> <p>Private open space= 12m²/unit with minimum 3 metre width</p> | <p>All proposed units are provided with a balcony/terrace exceeding the minimum 12m² requirement and have a minimum depth of 3 metres.</p> | Yes |
| <p>C34</p> <p>Landscaped Setback Church Avenue & Haran Street - 3m</p> | <p>The proposed setbacks to the walls of the development are:</p> <p>Church Avenue = 5.6-11metres</p> <p>Haran Street = 3 metres</p> | Yes |
| <p>C34A – underground parking is to be configured to allow for deep soil zones – parking to be provided under the building footprint only</p> | <p>The basement level car parking has been configured to allow for 345m² of deep soil area to Church Avenue and Linear Park.</p> | Yes |
| <p>C34B – underground</p> | <p>The stormwater detention basin is located within</p> | Yes |

| Requirement | Comment | Complies |
|--|--|----------|
| stormwater tanks not to be located within landscaped areas | the building footprint behind the deep soil planting zones and within the basement car parking areas. | |
| C34C Deep soil planting is required in all setback zones | Deep soil areas are provided to Haran Street setback and the setback to the service station at podium level due to the basement footprint required. The Applicant has submitted a detailed landscape plan which is considered acceptable to Council's Landscape Architect and involves the replanting of the nature strip on Haran Street. | Yes |
| C37 All development sites adjoining Linear Park shall have a minimum 3 metres setback for the full boundary | The development provides a staggered setback of minimum 3m to its eastern boundary with Linear Park. This area is a pedestrian through link from Haran Street to Church Avenue, to be soft landscaped and for deep soil planting. | Yes |
| C38 Compliance with Landscape DCP | Construction landscape plans have been submitted to accompany the development applications and these have been reviewed by Council's Landscape Architect and are considered to be acceptable. | Yes |
| C39 Road widening | The development has been designed to incorporate the required road widening to Church Avenue. The consent will be conditioned to require the road widening works to be completed and dedicated to Council prior to the issue of the Occupation Certificate. | Yes |
| C40 Finished ground levels | Council's Engineering Services Department have raised no objection to the finished ground levels proposed within the development. Relevant conditions are proposed to ensure that the road reserve and internal site levels are built in accordance with Council's road design levels. | Yes |
| C44 Compliance with Energy Efficiency DCP | BASIX Certificates and associated thermal comfort certificates have been submitted with the applications. The development satisfies the solar amenity controls with respect of solar access to adjoining properties. | Yes |
| C45 Maximum building depth -18 metres | The proposed buildings have a maximum habitable depth of in excess of 20 metres (exclusive of any balcony space). | Yes |
| C46 Cross ventilation | The DCP requires for 25% of the floor areas of the development to achieve cross ventilation. The Residential Flat Design Code recommends that at least 60% of the proposed units shall achieve flow through ventilation. The proposal indicates 69% of proposed units are able to achieve cross flow ventilation. | Yes |
| C47 Wind control | A Wind Environment Assessment prepared by Windtech dated 25 February 2013 is considered satisfactory. | Yes |

| Requirement | Comment | Complies |
|---|--|-----------------------------|
| C48 Aircraft Noise | The development site is located within the 20 – 25 ANEF contour. A Noise Impact Assessment has been submitted to accompany the development applications and it is recommended that the consent be conditioned to require compliance with the recommendations made within this assessment. | Yes |
| C49 Road traffic noise | An acoustic report has been submitted to accompany the development applications in relation to aircraft and road traffic noise. It is recommended that the consent be conditioned to require compliance with the recommendation within this report to ensure noise impacts in accordance with relevant standards. | Yes |
| C50 Internal noise transmission to comply with BCA | The consent is proposed to be conditioned to require compliance with the BCA. | Yes |
| C51 Contamination | The applicant has submitted an Environmental Site Assessment prepared by Environmental Investigations dated 11 December 2012. The report concludes that the levels of heavy metals and other contaminants were well below the acceptable criteria for residential development. No asbestos was detected Council's Environmental Scientist has reviewed the documentation and raised no objection to the proposed development, subject to the site audit statement being submitted ahead of issue of the Construction Certificate. | Yes |
| C54 Acid Sulfate Soils | The site is located within the Class 4 Acid Sulfate Soil Area. An Acid Sulfate Soils Investigation was undertaken within the Environmental Site Assessment prepared by Environmental Investigation Services date 11 December 2012. The findings of this ASS investigation conclude that no presence of any Potential or Actual Acid Sulfate Soils were associated with any subsoil strata layers within the subject site. | Yes |
| C55 Groundwater requirements | The NSW Office of Water has granted concurrence to the proposed development subject to General Terms of Agreement issued to Council on 26 June 2013. | Yes |
| C56/57/58/C62 Carparking: 1 space – studios/1 bed 2 space – 2 bed/3 bed 1 visitor space/7 units | In accordance with the DCP, car parking is required at the following rates for the proposed development: <ul style="list-style-type: none"> 1 space per studio/1 bedroom units = 32 spaces required 2 spaces per 2 and 3 bedroom units = 162 | Yes - Considered acceptable |

| Requirement | Comment | Complies |
|--|--|-----------------------------|
| <p>Traffic study may be required.</p> <p>Consideration will be given to a shortfall in visitor spaces for developments in excess of 55 dwellings</p> | <p>spaces required</p> <ul style="list-style-type: none"> • 2 car wash bays per development site • 1 visitor space per 7 dwellings = 17 spaces required <p>The development thus requires a total of 211 car parking spaces.</p> <p>The proposed development provides car parking for a total of 206 vehicles over four basement levels.</p> <p>This represents a shortfall of five (5) visitor spaces, which is permitted by the DCP for developments in excess of 55 dwellings</p> | |
| C63/C64/65 Internal vehicular access/design of parking areas | Off street parking will be accessible from a 6 metre wide shared ingress/egress driveway from Haran Street. | Yes |
| C69-72 Loading/Unloading facilities, location/aesthetics | Loading / unloading is expected to be undertaken by waste contractors, courier/passenger vehicles/vans that are to utilise the visitor car parking spaces located with the basement car parking. | Yes |
| C71 Open storage areas are to be screened at ground level from public view | The development proposes a garbage enclosure area and electricity substation within the Haran Street setback. The garbage enclosure area will be screened, however the electricity substation is required to be unobstructed. | Yes – considered acceptable |
| C73 Sites adjacent to Linear Park are to be designed to provide relatively quiet communal/private open space areas adjacent to the Park by using the building to screen traffic noise emanating from O’Riordan Street | The development has been designed with communal/private open space areas adjacent to Linear Park and the buildings height and depth will assist in providing a buffer from road traffic noise on O’Riordan Street. | Yes |
| C75A All development are to comply with the provisions of SEPP | The proposed development complies with the provisions of SEPP 65 | Yes |

| Requirement | Comment | Complies |
|--|--|----------|
| 65 | | |
| C76 Facade composition | The facades within the development make use of appropriate urban design principles as outlined within the DCP. | Yes |
| C77 Balcony design | Balconies within the development are functional for their intended purposes and are capable of providing appropriate table/chair settings. Balconies to the primary frontages are presented with solid balustrades varying in length and depth to articulate building facades, whilst internal balconies feature varying depths to provide articulation and off-set private open space areas. | Yes |
| C78 Materials | The development incorporates a variety of materials to ensure that the building will provide a positive contribution to the Church Avenue and Haran St streetscapes | Yes |
| C79 Entries | The entrance into the development has been designed so to be clearly identifiable from the street yet integrated into the overall appearance of the development. | Yes |
| C80 Integration of rooftop elements | Lift overruns and plant are integrated into the design of the roof. | Yes |
| C81 Rooftop recreation areas | A communal terrace is provided to Level 12 and is considered acceptable. | Yes |
| C82-C88 Crime prevention | <p>Appropriate crime prevention design elements have been included as part of the overall development, which include natural surveillance opportunities, lighting, defined public/private spaces, and space management / maintenance.</p> <p>The proposed development has been referred to Mascot Police Local Command Area for detailed assessment against Crime Prevention Through Environmental Design (CPTED) principles, with their comments and recommendations to be incorporated into the consent.</p> | Yes |
| C92 - 97 Accessibility- Separation of uses/active street fronts | <p>Separate entrances are proposed to residential uses located at ground floor level.</p> <p>Pedestrians enter the site from both Church Avenue and Haran Street via paths that are separate from the vehicle entry point.</p> | Yes |

| Requirement | Comment | Complies |
|------------------------------|---|----------|
| | Vehicular access is provided solely from Haran Street and pedestrian access is separated from the vehicular access points. | |
| C98 - 103 Services | <p>Underground Cabling – the consent will be conditioned to require that cabling be provided underground in accordance with relevant energy providers.</p> <p>Electricity – An electrical substation is proposed at the south-eastern of the site.</p> <p>Water and sewerage – Sydney Water raised no objection to the proposed development, and has requested an upsized drinking water main, and deviation/diversion of the wastewater main. This will be required as a condition of consent.</p> <p>Stormwater – Councils Development Engineer has reviewed the proposal and raise no objection subject to conditions.</p> <p>Fire Hydrants – shall be provided and the development shall be appropriately conditioned for concealment.</p> <p>Waste Management – Garbage collection areas are proposed from within the basement car parking areas. These have been designed so that they are accessible to serve vehicles. The consent will be conditioned to provide a plan of Management for Waste.</p> | Yes |
| C105- C107 Other controls | <p>Fencing – Fencing is proposed to the Church Avenue boundary (after dedications) Linear Park boundary (after dedications) and to Haran Street.</p> <p>Transparent palisade with a masonry base.</p> <p>Storage – Appropriate storage areas have been provided for all units within the development, both within the units themselves and in the basement areas of the development</p> | Yes |

Non-Compliances

Note 1: Maximum Building Height

The maximum building height as required under the DCP for the subject site is 6 storeys. The proposed building will have a height of 13 storeys.

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

- “▪ *The site is important as its is located adjacent to the Sydney Water drainage reservation which is ultimately planned to form a Linear Park for the use of residents and the public. The proposed height of the building will frame the Linear Park and define the eastern end of the Mascot Station Precinct;*
- *The proposed height creates a balance as it references the 12-13 storey towers which have been approved on surrounding sites and therefore assists in creating a consistent scale of towers within the precinct so that the approved towers do not appear as an anomaly once constructed, but rather part of a coordinated gathering of residential towers which identify the precinct;*
- *The proposed height is necessary in order to achieve an increased density for the site commensurate with the principle of the BBLEP 2013 to increase densities within the precinct in recognition of its ability to deliver a high amount of residential accommodation.*
- *The proposal includes the dedication of land along Church Avenue to facilitate the street widening, as well as dedication of a portion of the site for public open space, and as such the proposed height is necessary to achieve an appropriate density on the reduces site area;*
- *The proposal does not result in any unreasonable impacts on the surrounding properties in terms of loss of views, solar access or privacy.*

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

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

“It is considered that if the basic form is to be accepted, the building bulk should be reduced to comply with the FSR control, the impact of overshadowing on future residential development to the south minimised to the extent possible and the form modified as necessary. On the Linear Park frontage, any structure should desirably be setback from the boundary to allow deep soil soft landscaping to dominate.

The design (in its amended form) has incorporated a compliant setback to Linear Park for soft landscaping and deep soil to dominate. A pedestrian through link is now proposed from Haran Street to Church Avenue and the orientation of the western units affords adequate surveillance of this through link. The overall height considered by the DRP has not changed, however the FSR has been reduced and the resulting number of apartments reduced from 125 down to 113.

The Applicant states that the additional FSR over a development complying in FSR does not generate any additional overshadowing impact on the properties on the southern side of Haran Street.

The height of the 13 storeys is RL51.00. The building height has been designed to provide an appropriate visual relationship and transition in line with the existing developments along the streetscape. Directly to the west beyond Linear Park, the “Rina” development has a maximum height of RL38.7 metres. A reduction in height will not necessarily result in a reduction in overshadowing impact to any significant extent.

Mascot DCP part 3.11 states that *‘the existing low scale development of the MSP... suggests that the area is underdeveloped in terms of the opportunities presented by the recent completion of the Mascot Station.’* The DCP further outlines the overall objectives and urban strategy under Part 4, with the future character of the Sub-Precinct 1 – O’Riordan Street, identified as follows:

The built form is to maintain a strong connection with O’Riordan Street while establishing a practical relationship with the open space linear spine, located immediately to the west. In this regard the built form is to be designed, in part, to buffer road traffic noise emanating from O’Riordan Street. This should create comfortable communal open spaces on the western side of the new sub-precinct buildings and within the proposed sewer open space reserve.

It is important to note that future development of the adjacent planned open space area identified as the Linear Park in the DCP is to be made available to the public in the near future. As such, the development has been designed with a 3 metre wide setback from the adjoining Sydney Water land and will have a direct relationship with the land without adversely impacting on the enjoyment of the public open space area. Once the land is established in the future as public domain space, significant casual surveillance will be available to the park. Further, the proposed development will fulfill the underlying objective and urban strategy of the DCP by virtue of its height, scale and improved streetscape amenity.

Note 2: Unit Mix

The following table indicates the proposed unit mix.

| | TOTAL | Unit Mix |
|------------------|--------------|-----------------|
| Studio | 12 | 10% |
| 1 bedroom | 20 | 18% |
| 2 bedroom | 81 | 72% |
| | 113 | 100% |

Control C26 of Section 6.3.5 – *Apartment Sizes and Mix* of DCP 30 states that the combined total of studio units and one bedroom apartments shall not exceed 25% of the total number of apartments within any single development. The total number of studio and one bedroom apartments proposed within the development is 28% of all apartments, being 22 apartments out of 113 proposed apartments. It is noted that some of the one bedroom apartments also contain a study.

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

“The NSW Household and Dwelling Projections, 2008-2036:2008 Release” prepared by the Department of Planning indicates that the average household size in Sydney is expected to continue to decline from 2.6:1 in 2006 to 2.49:1 by 2036. In addition, the population projections indicate that the lone person household is the type of household expected to experience the greatest percentage increase between 2006 and 2036. The provision of smaller units is consistent with the expected increase in smaller households”.

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

Note 3 – Communal Open Space

Control C 32 of Section 6.4.1 of MSP DCP states that 20% of each development site shall be set aside for communal open space with 25% of the communal open space available for deep soil planting.

The proposed development provides communal open space of 345sqm, being 14.5% after dedication to Council. It is noted that the development provides a communal room and terrace at Level 12 which will contribute to communal space available for future residents.

Whilst the proposed development is non-complaint with the 20% control, the Applicant has provided a written undertaking of the proposed public benefit works outlined in this report, which are significant and beyond those required in the MSP DCP. On this basis, the proposed shortfall in communal open space is considered acceptable in this instance.

Note 4: Solar Amenity

In accordance with Council’s Energy Efficiency DCP, solar access to a minimum 40% of the private open space of adjoining property shall not be less than 2 hours between 9am to 3pm on 21 June. The submitted shadow diagrams demonstrate that the proposal complies with relation to adjoining properties solar access.

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

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

Comment: The site is located within the Mascot Station Precinct, identified as a high density mixed use commercial/residential area and accordingly, it is unreasonable to expect that adjoining properties will retain existing sunlight. To the west of the subject site is the Linear Park, which at present remain the Sydney Water drainage reserve. To the south of the subject site is No. 5 Haran Street and No. 1-3 Haran Street. Shadow diagrams have been submitted which indicate that the adjoining developments to the south will be affected by overshadowing,

however will continue to receive a minimum of 2 hours sunlight during winter solstice. The shadow cast on No. 5 Haran Street is limited to the hours of 9:00am to 12 noon. Therefore this site received in excess of 2 hours direct sunlight after 12 noon. The shadow cast onto 1-3 Haran Street is longer in duration. 50% (the western part of the site) is affected by overshadowing at 9:00am. The shadow remains on site from 10:00am to 2:00pm, where the north-eastern part of the site remains in shadow.

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

Comment: The proposal is of quality design and is appropriate in context given the primary location within the Mascot Station Precinct and dual street frontages. The width of the shadow, whilst excessive would not be significantly reduced should the development be required to fully comply with 6 storey height limit as the floor plates would not be reduced either. Any future redevelopment of No. 1-3 Haran Street has the opportunity to maximise solar access from its eastern aspect. Land on the eastern side of O'Riordan Street has a height limit of 26m and 11m respectively, which will allow solar access to the majority of the site at 1-3 Haran Street. O'Riordan Street has a 20 metre reservation width and any building on 1-3 Haran Street will be required to be setback 6 m from its boundary to O'Riordan Street.

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

Comment: As submitted on the aerial perspective shadow analysis, the north facing and west facing glazed areas of 5 Haran Street will be in direct solar access after 12 noon and will therefore achieve a minimum of 2 hours sunlight during the winter solstice.

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

Comment: The private open space areas to the adjoining properties are limited to balconies and private courtyards. Due to the design and orientation of the approved development at No. 5 Haran Street (it has no easterly aspect), its north facing private open space areas are overshadowed by the proposed development from 9:00am to 12 noon. Therefore, its private open space balconies will be in

direct solar access after 12 noon and will therefore achieve a minimum of 2 hours sunlight during the winter solstice.

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

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

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

Comment: The area is a high-density locality currently undergoing significant re-development centred on Mascot train station. The adjoining properties to the north and west have been recently redeveloped for residential development in accordance with the 10(a) mixed use commercial/residential under the Botany LEP 1995. The potential for increased density and height for buildings within the precinct from what was permitted under BLEP 1995 is now a reality as BBLEP 2013 was gazetted on the 21 June 2013.

Aircraft Noise Development Control Plan

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

The Applicant has submitted an amended Environmental Noise Impact Assessment to identify noise impacts on future residential occupants of the subject site and an Aircraft and Road Traffic Noise Intrusion Report prepared by Day Design and both dated 8 July 2013. The report concludes that the proposed building can achieve the indoor noise levels recommended in AS2021-2000 subject to compliance with the details contained in the report and will not be adversely impacted upon by noise emanating from the adjoining development.

Council's Environmental Health Officer has reviewed the report and confirmed that compliance with the aircraft noise requirements contained in AS2021-2000 can be achieved by the development.

The proposal is therefore considered satisfactory with regards to Council's Aircraft Noise DCP subject to a condition requiring compliance with the submitted acoustic report and AS2021-2000.

Contaminated Land Development Control Plan (DCP) No. 34

The provisions of DCP 34 have been considered as part of the assessment against the requirements of SEPP 55. The proposed development is considered satisfactory with respect of the provisions of the Contaminated Land DCP in that sufficient information has been provided to demonstrate that the site can be made suitable to accommodate the proposed development.

Access Development Control Plan

Consideration has been given to Council's Access DCP in the assessment of the proposed development. The Applicant has submitted with the development application a BCA – 2012 Assessment Report which includes a Section J Energy Efficiency Assessment. A condition of consent is proposed requiring that an access report be submitted prior to issue of the Construction Certificate to ensure that the proposal provides appropriate access to and within the development in accordance with the Council's Access DCP, the Disability Discrimination Act (DDA) and the Building Code of Australia (BCA). In this regard, the proposed development is considered to adequately address the requirements of the Access DCP.

Waste Management Development Control Plan (DCP) No. 29

The submitted Waste Management Plan prepared by Elephants Foot (dated July 2013) is considered to adequately address the requirements of Council's DCP No. 29.

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

These matters have been considered in the assessment of the Development Applications. 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 site is not known to be affected by any site constraints or other natural hazards likely to have a significant adverse impact on the proposed development, and adequate information has been submitted to demonstrate that the site can be remediated and made suitable for the proposed development. The proposed development is permissible in the zone and satisfies the objectives of the zone. The traffic impacts have been considered and are not considered to warrant refusal of the proposed development. Accordingly, the site is considered suitable to accommodate the proposed development.

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

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

These matters have been considered in the assessment of the development application. In accordance with Council's Notification Development Control Plan No.24 the proposed development was notified to surrounding property owners and advertised in the local newspaper for a thirty (37) day period from 9 April 2013 and 15 May 2013. Six (6) submissions were received in response to the proposed development, which raises the following issues:

- ***FSR, Setbacks, Bulk and Height***
The height of the proposed development is more than double than that allowed by the current controls and the proposed FSR is 245% higher. Such disproportionate increases cannot be justified as the proposed building does

not relate to its existing and future context and its bulk, height and density will unreasonably impact on the amenity of neighbouring residents.

Our concerns in this regard are summarised below:

Amenity – the development at 109-123 O’Riordan Street was approved with more than 10 single aspect units that will now directly face a 50m wide building mass that is 13 storeys tall rising straight from the street level.

Comment

The subject site is identified for redevelopment in the Mascot Station Precinct Development Control Plan, which envisaged high density residential development. Whilst the proposed development exceeds the permitted height and FSR, its design is compliant with the DCP controls. Furthermore, the subject site is constrained, in that the owner has acquired all three allotments, which is a DCP requirement prior to redevelopment of the subject site. The site is also affected by road widening on Church Avenue and is affected by land dedication requirements for public open space, on its south western boundary.

The development controls relating the precinct have changed over time and these changes have been detailed in this report. The recently gazetted BBLEP 2013 permits an increase in FSR to 3.2:1 for the precinct and an increase in height to a maximum of 44m. The proposed development, whilst exceeding the permitted FSR, is below the maximum height permitted. The resulting development provides significant public benefits and its built form responds to its site specific constraints in an acceptable manner, without significant adverse impacts on nearby residential development.

- ***View, Solar Access and Privacy – At least one third of all the units at 109-123 O’Riordan Street will be affected by significant loss of views and privacy. All eastern facing units at 3-9 Church Avenue will suffer loss of solar access and views***
- ***We are residents of 3-9 Church Avenue and our apartment is located on Level 7 with an easterly view. The height of the proposed development will interrupt and obscure our easterly view and will dominate the skyline from our balcony. We propose that the buildings height be reduced to six floors to be consistent with the existing buildings along O’Riordan Street.***

Comment

A complying development of 6 storeys would eliminate any views to the south for the south facing units at 109-123 O’Riordan Street. The southerly aspect from this building is likely to be built out over time with the redevelopment of all other vacant sites in precinct further south and south-east. The new height control for land on the south eastern side of O’Riordan Street is 26m and therefore it is reasonable to expect that future redevelopment on the south-eastern side of O’Riordan Street will further eliminate any views from 109-123 O’Riordan Street.

The shadow diagrams submitted with the development application, which are considered acceptable, indicate that there is no shadow cast onto the residential development at 3-9 Church Avenue.

It is unlikely that any adverse privacy impacts would be created by the proposed development. The distance to these buildings is in excess of 29 metres, which is 50% greater than that required by the Residential Flat Design Code.

The View Loss Principles established under *Tenacity Consulting v Warringah* [2004] NSWLEC 140 there are four-steps in assessing of view sharing. Commissioner Roseth states that “*water views are valued more highly than land view. Iconic views (eg of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons. Whole views are valued more highly than partial views, eg a water view in which the interface between land and water is visible is more valuable than one in which is obscured.*”

Council recognizes that with the new 44 metre height control contained within the recently gazetted BBLEP 2013, that existing views from certain residential sites will be affected. The submission raises view loss from south facing apartments at 109-123 O’Riordan Street (Sublime) and from the east facing apartments at 3-9 Church Avenue (Rina).

In this regard, it cannot be said that the views lost from the Rina building or the Sublime building as a result of the proposed development are “iconic”, nor are there any water views. Any existing iconic view of the city skyline will be lost as a result of the approval of the 6, 9 and 13 storey buildings at 12-14 Church Avenue (currently under construction). Some acute angle city skyline vistas may still be achieved through Linear Park to the north. The proposed development does not otherwise affect this vista. Views to the east from the Rina building consist of district views.

Reference is also made to the recently approved development at No. 5 Haran Street, which was approved by the NSW Land & Environment Court. This development comprises of a nine (9) storey residential flat building accommodating 30 apartments. It comprises a single building running north/south on its allotment, which will have an overall length of 35 metres when viewed from Linear Park and the east facing units at the Rina building. Its overall height will be RL45 metres (including plant/lift overruns), which will be 30.7 metres above existing ground level, less that the 44m height control permitted under BBLEP 2013. This is not unlike the overall height of the buildings at 3-9 Church Avenue, which are at RL39m (including plant/lift overruns). This building will obscure the easterly views that currently exist from the eastern units at the Rina building.

It should also be noted that the original height limit to “Rina” development was approved at 6 storeys. The owner of the site at the time acquired the additional land to the rear fronting John Street, and as a result of this, the owner at the time requested an additional 2 levels to each buildings to cover the acquisition of this lot. The units on levels 7 and 8 of three buildings at the Rina development are benefiting from a view which would not have existed, and which are a non-compliance with the height control under MSP DCP, if the development was built as originally approved.

In relation to the submission from 3-9 Church Avenue, Mascot, this unit has an easterly aspect and is located on Level 7, at the southern end of the site nearest to John Street. It overlooks Linear Park to the east and will be affected by the development at 5 Haran Street. The proposed development is approximately 60 metres north east of the subject apartment. However, this apartment has two east facing bedrooms and one narrow living room. As such, the proposed building will not be visible from within the apartment when seated. The proposed building will only be visible once standing on the balcony of Unit 272.

The district views currently afforded to this apartment will be obscured by both 5 Haran Street in its foreground, overlapped by the subject building behind. The obscuring of this view (further south) is likely to be further eroded in the future should the redevelopment of the remaining undeveloped sites between Haran Street and John Street be redeveloped under the controls within BBLEP 2013.

It is noted that Council wrote to each resident in the Mascot Station Precinct advising them that the Draft LEP was being placed on public exhibition. Council did not receive any submissions from residents within the precinct opposing the new 44 metre height limit during the extensive public exhibition of the Draft BBLEP.

Noise – the acoustic report submitted with the application alleges that it was not possible to predict and analyse the impacts of noise reflection. However there are serious issues with echoing and reverberation of aircraft and traffic noise

Comment

It is noted that there are currently no Australian Standards or code requirements for the assessment of reflective noise impact to surrounding receivers. Consideration has been given to the issue of reflective noise and it is considered that the proposed development will not create any significant level of reflective noise from road traffic noise or aircraft noise due to its facade design. Reflections from the proposed development will be deflected as the proposed building facades are 'broken' with balconies and the like. The proposed design of the facade therefore presents conditions which will defuse noise to surrounding receivers, rather than reflect noise.

Future streetscape and precedents – This is the last remaining site on Church Avenue east for which an approval is not in place. The proposed development is for a 50m wide building mass that is 13 storey's high rising straight from the street. There will be no other residential flat building of similar bulk and height within the visual catchment of the subject site now or in the future. All existing and approved buildings present as a maximum of 8 storeys to Church Avenue.

Comment

Whilst the subject site has a frontage to Church Avenue, it also has a frontage to Haran Street and to Linear Park. Further, the site essentially has a "setback" to O'Riordan Street, which is likely to remain in the future. As such, the subject site is heavily constrained, as it is required to present itself to each aspect, being significantly setback from Church Avenue to accommodate road widening and a public open space dedication area for the betterment of the local residential and workforce population. There are numerous sites within the entire precinct which have

an FSR higher than the 4.39:1 now proposed by the Applicant, which is less than that previously exhibited by Council.

The subject site also falls within Sub-precinct 1 under the MSP DCP, which requires the design of the building to incorporate a building which will assist as a noise buffer from road traffic noise to receivers west of the subject site. Further, the Applicant is required to incorporate into the design, communal open space areas on its western edge and within Linear Park. In this regard, the proposed design has incorporated communal open space areas to Church Avenue and its western boundary with Linear Park, which assist in opening up the future park to pedestrians in Haran Street and Church Avenue.

Setbacks and land dedication – according to the site plan and 3D images submitted by the Applicant, the 13 storey high wall on the eastern section of the proposed building facing Church Avenue will encroach 3m into the front setback alignment of other development further along Church Avenue. At the ground floor level, private open space courtyards encroach up to 10 metres into the street alignment.

Comment

Following dedication of land fronting Church Avenue for the purpose of widening Church Avenue, a new boundary will appear. The proposed development is required to have a 3m landscape setback to this new boundary. The proposed development complies with this requirement. There are no other setback requirements applicable to this new Church Avenue boundary. It is noted that other residential flat buildings along the western part of Church Avenue have different setbacks to their new boundaries.

Traffic – The submitted traffic report fails to address the realistic scenario where all sites fronting Haran Street are fully developed into residential apartment buildings.

Comment

The proposed development seeks to create one single shared ingress/egress driveway on Haran Street, being 6m wide. This is considered acceptable. The predicted traffic generation outlined in the submitted traffic report prepared by Thompson Stanbury dated July 2013 indicates that the proposed development could generate approximately 33 peak hour vehicle trips. This is calculated under the NSW Roads and Maritime Services (RMS) *Guide to Traffic Generating Developments*.

The traffic report further indicates that this is an overall increase of three (3) peak hour vehicle trips, when compared to the previous uses on the subject site. Therefore, the proposed development does not significantly increase traffic generation over that which previously existed on site.

Consideration has been given to the approved development at No. 5 Haran Street for 30 residential apartments. The Traffic Report submitted with this development application prepared by Varga Traffic Planning Pty Ltd dated 29 May 2012 indicates the development will generate approximately fourteen (14) peak hour vehicle trips, which is an increase in seven (7) peak hour vehicle trips when compared to the existing traffic generation on that site at the time.

It is anticipated that in the future, the redevelopment of the site at 1-3 Haran Street could generate traffic volumes similar to that proposed under this Development Application (DA12/213). Therefore, the future traffic projection for Haran Street, as a worst case scenario, is likely to be in the vicinity of 80 peak hour vehicle trips, which is within capacity for a two way local street.

- ***Lack of proper site amalgamation: the development potential of the adjoining service station will be severely impacted.***

Comment

The adjoining service station was upgraded in 2000 and it is anticipated that the service station has a long term economic life. At the time of the upgrade in 2000, the owner of the land entered into Deed with Council to require dedication of land fronting Church Avenue, when Council was in a position to undertake the physical road widening works. Earlier discussions with the owner of 2-4 Haran Street and 1 Church Avenue, Mascot indicate that they have approached the owner of 125 O'Riordan Street (the service station) and the outcome of this was that they are not willing to sell the land for the purposes of residential development.

On this basis, it is considered that the owner of the land the subject of this development application has endeavoured to acquire the service station site, but this has not been successful. Whilst not ideal from a planning perspective, the service station site does service the day to day needs of the resident and workforce population of the precinct and surrounding area and this is supported by Council at present.

(e) The public interest.

These matters have been considered in the assessment of the development applications. The conditions include standard conditions requiring the placement of overhead cables underground (in Haran Street) and the provision of new footpaths to both Church Avenue and Haran Streets. In addition, the applicant has provided a public pedestrian through link from Haran Street through to Church Avenue adjacent to the future Linear Park, will undertake road widening works to the future Linear park and to the subject sites Church Avenue frontage together with the dedication of land fronting Church Avenue for a public reserve.

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

2.2 Other Matters

2.2.1 External Referrals

- *Ausgrid (formerly Energy Australia)*

Ausgrid provided the following response to the amended application by letter dated 16 April 2013:

"I wish to advise that, there following an investigation of electrical loadings in the area, including which might be expected for the proposed development, you are requested to make provision of accommodation for an electricity substation within the premises as a condition on any consent granted.

The above requirement of Ausgrid has been imposed upon the development in the Schedule of Consent Conditions section of this report.

- *Sydney Water*

Sydney Water, by letter dated 2 May 2013, raised no objection to the proposed development subject to the following:

- Upsize of the drinking water mains to 200mm in Church Avenue;
- Deviation/adjustment of the existing wastewater main traversing the subject site;
- Application to Sydney Water for a Section 73 Certificate as a condition of consent.

The above requirements of Sydney Water have been imposed upon the development in the Schedule of Consent Conditions section of this report.

- *NSW Police – Botany Bay Local Area Command*

The application was referred to the NSW Police for a ‘Safer by Design’ Assessment in accordance with the Draft Protocol established between Botany Bay City Council and the NSW Police Force.

The NSW Police identified that a ‘medium’ crime risk rating for the proposed development on a sliding scale of low, moderate, high, extreme crime risk.

The key recommendations from the assessment include:

- Installation of CCTV Cameras within and around the development;
- Improved lighting around the car park areas and building within the development;
- Landscaping that promotes natural surveillance of all areas; and,
- 24 hour security for the multi-storey public car park.

Other recommendations relate to the external design, materials, surveillance, lighting, territorial reinforcement, landscaping, signage, space/activity management and access control.

A comprehensive condition is proposed on the consent requiring compliance with the recommendations made in the NSW Police Safer by Design assessment.

- *NSW Office of Water*

Groundwater levels encountered across the site vary between 5.4-5.6m AHD. This is approximately 5m below ground surface within sandy soils. The proposed basement level will be constructed with a finished floor level of RL-1.65m. As such, the proposed development is Integrated Development and requires a Controlled Activity Approval for construction dewatering pursuant to the provisions of Section 91 of the Environmental Planning and Assessment Act 1979 (EP&A Act).

In a letter dated 26 June 2013, NSW Office of Water has provided its General Terms of Approval for the proposed development, which have been imposed upon the development in the Schedule of Consent Conditions section of this report.

- *Sydney Airports Corporation Limited (SACL)*

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 development application (in its original form, which has not changed in height) was therefore referred to SACL for consideration. Under letter dated 15 March 2013 SACL provided concurrence for the development, subject to conditions, and on the following basis:

- Building height permitted to a maximum of 51.06m AHD; and,

The conditions provided by SACL have been imposed upon the development in the Schedule of Consent Conditions section of this report.

- *Roads and Maritime Services (RMS) / Sydney Regional Development Advisory Service (SRDAC)*

The Application is “Traffic Generating Development” and was referred to RMS. The proposal (in its original form) was considered by RMS and in a letter dated the 30 April 2013, RMS have advised that they have no objection to the proposed development and have provided conditions to be imposed on any consent granted.

2.2.2 Internal Referrals

The development application was referred to relevant internal departments within Council, including the Development Engineer, Traffic Engineer, Landscape Officer, Environmental Scientist and Environmental Health Officer for consideration. Relevant conditions have been imposed into the recommendation of the operational consent.

Council’s Design Review Panel (DRP)

The design of the subject development was referred to the Design Review Panel on the 2 May 2012, 29 August 2012, 5 December 2012 and again on the 21 January 2013.

The design put to the DRP on the 23 January 2013 comprised of 113 apartments, four levels of basement parking and an FSR of 4.69:1 (under BLEP 1995).

The recommendations made by the Panel at that meeting were:

- *The interface between the subject proposal and a potentially much smaller and lower development on the opposite side of Haran Street immediately to the south remains a challenge;*
- *Although the current submission has been reduced by deleting 12 apartments, it remains some 25% in excess of the provisions of the pending new LEP. This cannot be supported, but if it were reduced to be compliant there would be significant advantages in relation to overshadowing and visual bulk and/or height and setbacks.*
- *The building is now setback varying distances from the Linear Park boundary with the DCP 3 m control and this is considered acceptable. On the Haran Street frontage the setback may be generally compliant with the DCP 3m control, however this should be an absolute minimum given the dominant 13 storey street wall height. It would be desirable for the street setback to be increased at the expense of a lesser*

setback to the Church Avenue frontage where there would be no apparent negative consequences in relation to amenity or visual impact.

- *A critical consideration remains the determination of an acceptable density. The current revised application has deleted 12 apartments but remains significantly in excess of the current LEP control. The planning submission advised that the proposal exceeds this by some 230% with an FSR of 4.69:1 by comparison with the 2:1 control. In the draft LEP, the permissible FSR is to be increased to 3.2:1, and the method of measurement also adjusted with the effect of excluding some areas of floor space previously counted. In all, owners of sites in this zone would benefit to a very significant extent, of the order of a doubling the floor space. The applicants advised that under the new control and the new method of measurement the FSR of the current application would be 4.01:1, still some 25% non-compliant.*

The applicant presented images of existing nearby apartment blocks addressing the linear park, and argued that the proposal would be consistent with the general form, scale and character of these buildings. In reality they are remarkably varied, some large some smaller, and with great variety in heights. A critical site not addressed was that immediately to the south on the opposite side of Haran Street, which in preliminary designs viewed by the Panel was substantially smaller and lower, and would be adversely impacted by any excessive development on the subject site. The Panel was not persuaded by this presentation that there was any case for non compliance with density controls.

The applicants presented sketch diagrams indicating some re-planning of units on the western side of the building, which would increase density above that in the current proposal, and argued that this option should be accepted since it would resolve other concerns in relation to setbacks from the boundary, and would not result in the loss of 12 apartments. The Panel does not accept this contention for the reasons set out above.

A further argument put forward in support of permitting increased density was the proposed dedication of a small part of the site on the north-west corner to Council as a landscaped space adjoining the linear park. It is understood that this dedication has been presented to Council. The Panel is not aware of all the considerations involved, but it is not apparent how this dedication would be of particular value to the community. Responsibility for future management and maintenance would fall to Council rather than the owners of the new apartments. The total floor space proposed in the new building is of course already calculated on the full site area so that the applicant would include benefit from current ownership of the area proposed for dedication. The Panel cannot agree that the proposed dedication would justify any increase in floor area.

In summary it is considered that there is no justification for the floor space exceeding that proposed in the pending new LEP, which already would give generous benefit to the applicant beyond that permissible under the current LEP.

- *The various positive aspects of the design development following earlier submission are acknowledged, but the application remains so far in excess of FSR even if assess*

under the new Draft LEP controls, with inevitable consequential negative impacts on bulk and form, that the proposal cannot be supported for the reasons set out above.

Officer's Concluding Comments to DRP Issues:

Following the recommendations of the Panel being forwarded to the Applicant, Council received amended plans and supporting documents for the proposed development on the 12 July 2013. The changes now seek to further reduce the FSR from 4.69:1 down to 4.39:1 (under BLEP 1995) and from 4.17:1 down to 3.79:1 (pursuant to BBLEP 2013), a reduction in the total number of apartments from 125 down to 113, a reduction in the number of car parking spaces from 221 down to 206. Whilst the FSR has been reduced, it remains non compliant with the 3.2:1 permitted under BBLEP 2013. The Applicant states that the subject site is unique in that it has two street frontages and a frontage to Linear Park, which supports an increase in density together with increased amenity provided by an attractive outlook and access to sun, natural light and ventilation.

An increased setback to Haran Street has not been incorporated in the amended plans. The Applicant states that the proposed 3m setback complies with the DCP control and that an increased setback would result in minimal change in terms of overshadowing and relationship to the street, would reduce the area of dedication of land at the Church Avenue frontage and impact upon view lines to Linear Park past the building. The setbacks to Linear Park have been maintained and increased significantly where appropriate to provide an average of 3m. This area is now proposed to be a pedestrian through link from Haran Street to Church Avenue, will be a deep soil planting area and is now proposed to be dedicated to Council.

The development application in its amended form incorporates significant improvements to address the issues raised by the Design Review Panel. As discussed above, the DRP support the proposed development subject to the issues raised in their report being satisfied to Council's satisfaction. The amended proposal is considered to satisfactorily address the design recommendations of the panel and the proposed design outcome is supported.

Section 94 Contributions

At Council Development Committee on 6 May 2009, Council was advised of the changes made to the Section 94 Contributions imposed by the State Government. The Minister for Planning issued a Section 94E Direction on 23 January 2009, which capped levies for residential development and residential subdivision to \$20,000.00. Council responded to the Direction by passing a resolution on the 18 March 2009 to comply with the cap. Therefore based on the cap the Section 94 Contributions may be applied to the proposed 113 residential units. As such, the calculations are as follows:

- DA12/213 = 113 units @ \$20,000.00 each = \$2,260,000.00

Credit: The Application is entitled to a Section 94 credit based on historic industrial use of the land. This is calculated based on the number of employees that would occupy the floor areas based on the rates within the Section 94 Contributions Plan 2005-2010. On this basis a total of \$20,804 can be deducted from the total contribution.

Therefore a total Section 94 Contribution of **\$2,239,196.00** is required to be paid to Council in accordance with the draft schedule of Conditions attached to this report.

Voluntary Planning Agreement (VPA)

The development applications involve the dedication of land for road widening to Church Avenue, the dedication of land for a public reserve fronting Church Avenue and the dedication of land fronting Linear Park for a proposed pedestrian through link.

As the development seeks to benefit from additional a floor space, in a letter dated 31 July 2013 the applicant has requested to enter into a Voluntary Planning Agreement pursuant to Section 93F of the Act, the details of this have not been initiated at this stage.

On this basis, such details will be the subject of further discussions with the Applicant, should the development application be supported by the Panel. It is recommended in this report that a condition be imposed in the draft schedule of conditions for the public domain works to be completed to the satisfaction of Council and subsequent land dedications associated with the establishment of the public parks to be lodged with Council prior to the issue of any Occupation Certificates for the development.

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

3.0 Conclusion

In accordance with Clause 3 of Schedule 4A of the Environmental Planning and Assessment Act, the Application is referred to the The Joint Regional Planning Panel Sydney East Region (JRPP) for determination.

The proposed development has been significantly amended to address issues raised during the assessment process, including the recommendations of Council's Design Review Panel. Council received amended plans and supporting documents for the proposed development on the 12 July 2013. The changes now seek to further reduce the FSR from 4.17:1 down to 3.79:1 (pursuant to BBLEP 2013), a reduction in the total number of apartments from 125 down to 113, a reduction in the number of car parking spaces from 221 down to 206. The amended design maintains the previously proposed land dedication on Church Avenue for road widening purposes and for a public reserve and now also includes an additional strip of land running adjacent to Linear Park for a pedestrian through link.

The amended proposal now requests approval for the following:

- Construction of a 13 storey residential flat building accommodating 113 apartments;
- Four basement levels of car parking to accommodate 206 cars;
- Communal room and terrace at Level 12;
- The dedication of land fronting Church Avenue for the widening of Church Avenue and for a public reserve; and
- A secondary land dedication along the western boundary for a pedestrian through link
- Associated public domain works including the works to establish the public park and pedestrian through link, the road widening works to Church Avenue and the road widening work to Linear Park and the undergrounding of the existing overhead power cables.

The final amended plans submitted to the JRPP for determination are considered to address the issues raised by the Council's Design Review Panel, and the design of the proposal is to Council's satisfaction.

The proposed development has an FSR of 4.39:1 which exceeds the maximum 2:1 FSR permitted under the Botany LEP 1995, however the applicant has submitted a SEPP 1 objection which demonstrates that the proposal satisfies the underlying objectives of the FSR control and that the proposal will result in the orderly and economic development of the site, which has been consolidated. The SEPP 1 objection is considered to be well founded and the variation to the FSR control is supported by Council in this case.

In addition, significant weight is now required to be given to BBLEP 2013. The proposed development is permissible in the B4 – Mixed Use Zone, and the development is considered to satisfy all requirements and the relevant objectives of BBLEP 2013 with the exception of the 3.2:1 FSR control. The applicant has demonstrated that, given the existing significant site constraints the proposed density, height, bulk and scale is appropriate for the site and will contribute to the amenity of the residential locality. Therefore the variation to the maximum FSR under BBLEP 2013 is considered acceptable in this instance.

The application was the subject of six (6) objections and the matters have been addressed in the body of the report.

The proposal has been assessed in accordance with Section 79C of the *Environmental Planning and Assessment Act 1979*, the *Botany Local Environmental Plan 1995* and the *Botany Bay Local Environmental Plan 2013*. The proposal is permissible in the 10(a) Mixed Uses Commercial/Residential 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.

4.0 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:

- (c) Grant consent to the objection submitted under the provisions of State Environmental Planning Policy No. 1 – Development Standards to vary the provisions of Clause 12A(1) of Botany Local Environmental Plan 1995 relating to maximum floor space ratio of 2:1, so that the maximum floor space ratio for the subject site is 4.39:1, on the basis that:
 - (i) Clause 12A(1) of Botany Local Environmental Plan 1995 is a development standard; and
 - (ii) The objection lodged by the applicant is well founded; and
- (d) Approve Development Application No. 12/213 for construction of a 13 storey residential flat building accommodating 113 apartments, four basement levels of car parking to accommodate 206 cars, a communal room and terrace at Level 12 together with the dedication of land fronting Church Avenue for the widening of Church Avenue and for a public reserve and a secondary land dedication along the western boundary for a pedestrian through link and associated public domain works including the works to establish the public park and pedestrian through link, the road widening works to Church Avenue and the road widening work to Linear Park and the undergrounding of the existing overhead power cables at 2-4 Haran Street and 1 Church Avenue, Mascot subject to the Conditions imposed in the attached schedule.

5.0 CONDITIONS OF CONSENT

Premises: 2-4 Haran Street and 1 Church Avenue, Mascot

DA No: 12/213

SCHEDULE OF CONSENT CONDITIONS

GENERAL CONDITIONS

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

| Drawing No. | Author | Dated Received |
|--|--------------------------|-----------------------|
| Architectural Plans, Elevations and Sections with Project No. 1013 and Drawing No.: A01 (Issue 04) A02 (Issue 04) A03 (Issue 04) A04 (Issue 04), | Krikis Tayler Architects | 12 July 2013 |

| Drawing No. | Author | Dated Received |
|--|----------------------------|-----------------------|
| A05 (Issue 05) A06 (Issue 05) A07 (Issue 04) A08 (Issue 04) A09 (Issue 04) A10 (Issue 04) A11 (Issue 04) A20 (Issue 04) A21 (Issue 04) A22 (Issue 04) A23 (Issue 04) A30 (Issue 04) A31 (Issue 04) A32 (Issue 04) A33 (Issue 04) A34 (Issue 04) A50 (Issue 03) | | |
| Landscape Plan, Drawing No. 146.13(12)/399'D' | Iscape | 18 July 2013 |
| Survey Plan, Reference No. 10-16-11 | Grinsell & Johns Pty Ltd | 14 November 2012 |
| Stormwater Management Plan (Job No. 120698), Drawing Nos.: D00 (Issue B) D01 (Issue D) D02 (Issue D) D03 (Issue D) D04 (Issue D) D05 (Issue B) D06 (Issue D) D07 (Issue C) D08 (Issue C) D09 (Issue C) | Emerson Associates Pty Ltd | 19 April 2011 |

| Drawing No. | Author | Dated Received |
|---|---------------|-----------------------|
| D10 (Issue C) D11 (Issue C) D12 (Issue C) | | |

| Document(s) | Author | Date Received |
|--|----------------------------------|----------------------|
| Statement of Environmental Effects | Sutherland & Associates Planning | 12 July 2013 |
| Architectural Design Statement | Krikis Tayler Architects | 12 July 2013 |
| Waste Management Plan | Elephants Foot | 12 July 2013 |
| Pedestrian Wind Environment Statement, Reference No. WB475-02F02 (Rev2) | Wintech Pty Ltd | 12 July 2013 |
| SEPP 1 Objection | Sutherland & Associates Planning | 12 July 2013 |
| Environmental Site Assessment, Report No. E1735.1AD | Environmental Investigations | 3 April 2013 |
| Addendum to Environmental Site Assessment dated 31 July 2013 | Environmental Investigations | 5 August 2013 |
| Groundwater Dewatering Model, Reference No. 12108 | Environmental Strategies | 5 June 2013 |
| Geotechnical Investigation | Asset Geotechnical Engineering | 5 June 2013 |
| Aircraft and Road Traffic Noise Intrusion Report, Report No. 5019-1-1rRevA | Day Design Pty Ltd | 12 July 2013 |
| Environmental Noise Impact, Report No. 5019-2RevA | Day Design Pty Ltd | 12 July 2013 |
| Traffic Impact Assessment, Reference No. 12-124-3 | Thompson Stanbury | 12 July 2013 |
| Access & Adaptable Housing Report | Accessibility Solutions Pty Ltd | 8 April 2013 |
| BCA Compliance Statement | Blackett Maguire Goldsmith | 19 April 2011 |
| Building Code of Australia | Barry Johnson & Associates | 3 April 2013 |

| Document(s) | Author | Date Received |
|---|-------------------------|----------------------|
| Assessment Report | Pty Ltd | |
| BASIX Assessment. Reference No. 458477M_02 | NSW DoPI | 12 July 2013 |
| VPA Letter | Krikis Tayler Architect | 31 July 2013 |
| Apartment Schedule | Krikis Tayler Architect | 12 July 2013 |
| Communal Open Space and Site Area Calculations Sheets | Krikis Tayler Architect | 12 July 2013 |
| Gross Floor Area Schedule | Krikis Tayler Architect | 12 July 2013 |
| Site Plan identifying Pole A and Pole B and survey identifying the extent of road widening and land dedications | Krikis Tayler Architect | 7 August 2013 |

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

2

(a) The applicant must prior to the issue of the Construction Certificate, pay the following fees:

- (i) Builders Security Deposit \$50,000.00;
- (ii) Development Control \$11,011.00;
- (iii) Section 94 Contributions \$2,239,196.00;
- (iv) Waste Contribution \$25,000.00;
- (v) Street Tree Maintenance Bond \$5000.00;

Note: 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 Lots 1 and 2 in DP 774147 and Lot 1 in DP 206384 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 It is a condition of consent that the applicant shall, at no costs or expense to Council, comply with the following:

- (a) Dedicate the portion of land to Council for the purpose of widening Church Avenue. The areas of the land to be dedicated shall be the full length of Church Avenue frontage of the development site and the width measuring from the centerline of Church Avenue, as detailed in the Mascot Station Precinct Development Control Plan. The Plan of Dedication shall be lodged with Council prior to the issue of the Construction Certificate and registered with the Department of Lands prior to the issue of the Occupation Certificate. A copy of the registered document shall be submitted to Council for record purposes;
- (b) Dedicate the portion of land to Council for the purpose of a public park adjacent to Linear Park and the new Church Avenue boundary (following the road widening of Church Avenue) with a total area of 205sqm must be dedicated to Council prior to the issue of any Occupation Certificate. Construction of paving and landscaping within this area is to be in accordance with the approved landscape plans identified in Condition No.1 of DA12/213;
- (c) Dedicate the portion of land to Council for the purpose of a public pedestrian through link adjacent to Linear Park running from Haran Street through to the Church Avenue park dedication, with a total area of 145sqm must be dedicated to Council prior to the issue of any Occupation Certificate. Construction of paving and landscaping within this area is to be in accordance with the approved landscape plans identified in Condition No.1 of DA12/213;
- (d) Upgrade the public domain by the reconstruction of half the road pavement, kerb and gutter, footpath, drainage system, street trees, landscaping and any associated works for the street frontage to Church Avenue of the site, including the Church Avenue frontage of Linear Park (identified as Lot 4 in DP85917) at the applicant's expense. All improvements shall be in accordance with specifications and requirements from Council's landscape and engineering sections and the approved civil works construction plans and landscape plans. All the public domain works shall be constructed and completed to Council's satisfaction prior to the issue of any Occupation Certificate;
- (e) Upgrade the public domain by reconstruction of the kerb and gutter to the full street frontage to Haran Street of the site including footpath, drainage system, street trees, landscaping and any associated works for the street frontage to Haran Street of the site, at the applicant's expense. All improvements shall be in accordance with specifications and requirements from Council's landscape and engineering sections and the approved civil works construction plans and landscape plans. All the public domain works shall be constructed and completed to Council's satisfaction prior to the issue of any Occupation Certificate;
- (f)
 - (i) Replace all the existing above ground electricity and telecommunication cables to underground cables within the site and road reserve area fronting both Haran Street and Church Avenue in accordance with the guidelines and requirements of the relevant

utility authorities. The applicant shall bear all the cost of the construction and installation of the cables and any necessary adjustment works. These works and payments shall be completed prior to the issue of the Occupation Certificate; and

- (ii) Provide appropriate and suitable street lighting to a high decorative standard to both street frontages of the site, 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.

5

- (a) The Strata subdivision of the development shall be the subject of a further Development Application to Council; and
- (b) The subdivision application must be accompanied by a formal copy of the by-laws which shall be in accordance with the plans and documentation approved under this Consent and must also include the following:
 - (i) Responsibilities with regard to the ongoing maintenance of the building and landscaped areas at the property in accordance with the plans and details approved under Development Consent No. 12/213.
 - (ii) Responsibilities with regard to the maintenance of artificial features at the property in accordance with the plans and details approved under Development Consent No. 12/213.
 - (iii) Responsibilities regarding the maintenance of the car wash bay the Owners Corporation / building owner.
 - (iv) Responsibilities for ensuring owners and/or tenants have adequate and hygienic disposal and collection arrangements and for ensuring the waste storage area is appropriately maintained and kept in a clean and safe state at all times in accordance with the Plan of Management required under the conditions of this consent.
 - (v) Responsibilities to ensure that receptacles for the removal of waste, recycling etc. are put out for collection between 4.00pm and 7.00pm the day prior to collection, and, on the day of collection, being the day following, returned to the premises by 12.00 noon;
 - (vi) Responsibilities to ensure that wastewater and stormwater treatment devices (including drainage systems, sumps and traps) are regularly maintained in order to remain effective. All solid and liquid wastes collected from the devices shall be disposed of in a manner that does not pollute waters and in accordance with the Protection of the Environment Operations Act 1997.
 - (vii) The Owners Corporation/Executive Committee obligations under clauses 177, 182, 183, 184, 185 and 186 of the *Environmental Planning and Assessment Regulation 2000*.
 - (viii) The linen plan must include details of any easements, encroachments, rights of way, including right of footway. restriction as to user or

positive covenants and include a Section 88B Instrument under the *Conveyancing Act, 1919*. Council is to be nominated as the only authority permitted to release, vary or modify any easements, encroachments, rights of way, restriction as to user or positive covenants.

- (c) Consolidation of Lots 1 and 2 in DP 774147 and Lot 1 in DP 206384 into one (1) allotment.

6 The consent given does not imply that works can commence until such time that:

- (a) Detailed plans and specifications of the building have been endorsed with a Construction Certificate by:
 - (i) The consent authority; or,
 - (ii) An accredited certifier; and,
- (b) The person having the benefit of the development consent:
 - (i) Has appointed a principal certifying authority; and
 - (ii) Has notified the consent authority and the Council (if the Council is not the consent authority) of the appointment; and,
 - (iii) The person having the benefit of the development consent has given at least 2 days notice to the council of the persons intention to commence the erection of the building.

7

- (a) All building work must be carried out in accordance with the provisions of the Building Code of Australia; and
- (b) All plumbing stacks, vent pipes, stormwater downpipes and the like shall be kept within the building and suitably concealed from view. This Condition does not apply to the venting to atmosphere of the stack above roof level;
- (c) The basement of the building must be designed and built so that on completion, the basement is a “fully tanked” structure, i.e. it is designed and built to prevent the entry of ground water / ground moisture into the inner part of the basement;
- (d) The provision of disabled access throughout the development is required and shall be in compliance with the Building Code of Australia Part D3 “Access for People with Disabilities” and Australian Standard AS1428.1 (2001) - Design for Access and Mobility - Part 1 General Requirements for Access - Buildings. This requirement shall be reflected on the Construction Certificate plans.
- (e) Prior to the issue of a Construction Certificate, the construction drawings shall indicate the following:
 - (i) That water will be prevented from penetrating behind fittings/linings and into concealed spaces in laundry, sanitary areas and bathrooms etc;

- (ii) That floor to ceiling in laundry and bathroom areas to be tiled;
- (iii) That timbers used in the development are plantation, recycled or regrowth timbers of timbers grown on Australian farms or State forest plantations and that no old growth or rainforest timbers are to be used in any circumstances; and
- (iv) That plumbing to each dwelling will be separated and adequately contained to prevent noise transmission and vibration.

8 Pursuant to clause 97A(3) of the Environmental Planning & Assessment Regulation 2000, it is a condition of this development consent that all the commitments listed in each relevant BASIX Certificate for the each building in the development are fulfilled.

(a) Note:

Relevant BASIX Certificate means:

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

9 The rooftop landscaping on Levels 12 is to be built and installed in accordance with the architectural plans and landscape plan (Issue C).

10 The service strip located between footpath and Haran Street boundary is to be planted with *Lomandra Tanika* or similar, not turf, to screen and soften the boundary wall and electrical pillars. The remainder of the Council nature strip areas shall be turfed at the completion of construction work and at the Applicant's expense.

11 Any fencing to be built on the western property boundary shall be open palisade style metal fencing.

12 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. Install drip irrigation including to lawns;
 - (e) Finish externally with a suitable paint, render or tile to co-ordinate with the colour schemes and finishes of the building.
- 13 The applicant is to submit payment for a Street Tree Maintenance Bond of \$5000.00. The duration of the Bond shall be limited to a period of 12 months after planting the new street trees and final signoff from Council. At the completion of the 12 month period the Bond shall be refunded pending a satisfactory inspection of the trees by Council. If any tree is found to be dead or dying then Council will forfeit all or part of the bond to replace or maintain the tree, unless the Applicant undertakes this work.

CONDITIONS IMPOSED BY AN EXTERNAL AUTHORITY

- 14 The following condition is imposed by Ausgrid and is to be complied with:
- (a) Following an investigation of electrical loadings in the area, including which might be expected for the proposed development, you are requested to make provision of accommodation for an electricity substation.
- 15 The following condition is imposed by Sydney Water and is to be complied with:
- Water
- (a) The 100 mm drinking water main fronting the proposed development in Church Avenue does not comply with the Water Supply Code of Australia (Sydney Water Edition – WSA 03-2002) requirement for minimum sized mains for this scope of development.
 - (b) The 100 mm drinking water main must be upsized to a 200 mm main.
- Wastewater
- (c) The wastewater main available for connection is the 225mm main traversing the south eastern portion of the site.
 - (d) Where proposed works are in close proximity to a Sydney Water asset, the developer may be required to carry out additional works to facilitate their development and protect the wastewater main. Subject to the scope of development, servicing options may involve adjustment/deviation and or

compliance with the Guidelines for building over/adjacent to Sydney Water assets.

Sydney Water Servicing

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

16 The following conditions are imposed by the NSW Roads and Maritime Service (RMS).

- (a) The Applicant should be aware of the potential for road traffic noise impact on the development on the subject site. Noise attenuation measures should be provided in accordance with Office of Environment and Heritage's Environmental Criteria for Road Traffic Noise;
- (b) The swept path of the longest vehicle (including garbage trucks) entering and exiting the subject site as well as manoeuvrability through the site, shall be in accordance with AUSTROADS. In this regard, a plan shall be submitted to Council for approval which shows that the proposed development complies with this requirement;
- (c) The number of car parking spaces should be provided to Council's satisfaction;
- (d) The layout of the proposed car parking areas associated with the subject development (including driveways, grades, turn paths, sight distance requirements, aisle widths, aisle lengths and parking bay dimensions) should be in accordance with AS 1890.1-2004, AS 2890.2 – 2002 for heavy vehicle useage and AS 2890.6:2009 for the disabled;
- (e) Consideration should also be given to providing bicycle parking facilities either within the development or close to it;
- (f) A Construction Traffic Management Plan detailing construction vehicle routes, number of trucks, hours of operation, access arrangements and traffic control should be submitted to Council prior to the issue of the Construction Certificate;
- (g) All vehicles are to enter and exit in a forward direction;
- (h) 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;

- (i) All works and regulatory signposting associated with the development are to be at no cost to RMS or Council.

17 The following conditions form the General Terms of Approval by the NSW Office of Water and must be complied with:

General and Administrative Issues.

- (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 (i.e. a 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 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 calculation method shall be included in the report;
- (f) A copy of a valid development consent for the project shall be provided 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 (tailwater) 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 (tailwater) 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 (tailwater) 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 sulphate 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 precautions;

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.

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

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

(CCTV) AS:4806:2006 shall to be implemented to receive, hold or process data for the identification of people involved in anti-social behaviour prior to the issue of the Occupation Certificate. The system is obliged to conform with Federal, State or Territory Privacy and Surveillance Legislation;

- (b) The CCTV system should consist of surveillance cameras strategically located at the front and rear of the premises to provide maximum surveillance coverage of the area. Particularly areas that are difficult to supervise. Cameras should be strategically mounted outside the development buildings and within the car parking areas to monitor activity within these areas. One or more cameras should be strategically mounted at entry and exit points to monitor activities around these areas;
- (c) Digital technology should be used to receive, store and process data. Recording equipment should be secured away from public access areas to restrict tampering with the equipment and data. This equipment needs to be checked and maintained on a regular basis;

Note: It is crucial even in the development stage that these cameras are installed as soon as power is available to the site;

Note: A monitor intruder alarm system which complies with the *Australian Standard – Systems Installed within Clients Premises, AS:2201:1998* shall be installed within the premises to enhance the physical security and assist in the detection of unauthorised entry to the premises. This standard specifies the minimum requirements for intruder alarm equipment and installed systems. It shall apply to intruder alarm systems in private premises, commercial premises and special installations. The system should be checked and tested on a regular (at least monthly) basis to ensure that it is operating effectively. Staff should be trained in the correct use of the system;

Note: The light emitting diodes (LED's red lights) within the detectors should be deactivated, to avoid offenders being able to test the range of the system;

Note: Consideration should be given to incorporating duress facility into the system to enable staff to activate the system manually in the event of an emergency, such as a robbery. *NB. Duress devices should only be used when safe to do so*;

Note: By angling fire egress inlet walls 45 degrees or more, opportunities for entrapment, loitering and vandalism can be reduced;

Note: Care should be taken when using glazing in entry foyers. At night the vision of departing occupants can be affected by reflections on the interior of the glass (cant' see outside). Mirroring can be reduced by using appropriate external lighting;

Note: The configuration of car park spaces can impact the risk of car thieves. Grid rows increase natural surveillance. Avoid dark spots, corners and isolated car spaces;

Note: Garbage disposal areas and other communal spaces should not be located in a buildings 'leftover space'. Poor supervision of communal facilities can greatly increase the risk of predatory crime, theft and vandalism. Areas that are unused or sporadically used after hours and unsupervised or, under supervised should not be accessible to the public;

Note: Uneven building alignments, insert doorways and hidden entrances should be avoided. They can facilitate predatory crimes, theft, malicious damage and other crimes;

Note: 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;

Note: Prior to the issue of the Occupation Certificate, lighting shall be installed at the premises in accordance with the requirements of the *Australian Standard: Lighting AS:1158*. The emphasis shall be on the installation of low glare, high uniformity lighting levels in line with the standard;

Note: Lighting sources should be compatible with and not interfere with the requirements of any surveillance system at the premises;

Note: The luminaires (light covers) should be designed to reduce opportunities for malicious damage. Lighting within the development needs to be checked on a regular basis;

Note: A limited amount of internal lighting should be left between the hours of sunset and sunrise, to enable patrolling police, security guards or passing people to monitor the activities within the business;

Note: Improved lighting needs to extend from the development towards O'Riordan Street and Bourke Road. Consideration must be given to pedestrians walking from the development to surrounding streets for the purpose of catching public transport etc. Areas adjoining pathways should be illuminated to avoid opportunities for concealment and entrapment. Lighting in public places should cater for pedestrians as much as motor vehicles. Pedestrian scale lighting heels attract people into areas and increase night supervision.

Note: Clear street number signs should be displayed and appropriately positioned at the front of the business to comply with Local Government Act, 1993 Section 124 (8). Failure to comply with any such order is an offence under Section 628 of the Act. Offences committed under Section 628 of the Act attract a maximum penalty of 50 penalty units (currently \$5500) for an individual and 100 penalty units (currently \$11000) for the corporation. The numbers should be in contrasting colours to the building materials and be larger than 120mm.

Note: Warning signs should be strategically posted around the buildings to warn intruders of what security treatments have been implemented to reduce opportunities for crime.

(i) Warning, trespasser will be prosecuted;

(ii) Warning, these premises are under electronic surveillance;

Note: Directional signage should be posted at decision making points (eg. X Entry/egress points) to provide guidance to the uses of the development. This can also assist in access control and reduce excuse making opportunities by intruders.

Note: Signage needs to be provided at fire exits to assist occupants to identify exits in emergency situations.

Note: Signage needs to be provided to assist occupants to identify fire suppression equipment, eg extinguishers, fire hoses etc.

Note: An Emergency control and evacuation plan which complies with the Australian Standard, Emergency Control Organisation and Procedures for Buildings, Structures and Workplace, AS:3745:2002 should be prepared and maintained by your development to assist management and staff in the event of an emergency. This standard sets out the requirements for the development of procedures for the controlled evacuation of the building, structures and workplaces during emergencies. Further information in relation to planning for emergencies can be obtained from Emergency NSW <http://vwww.emergency.nsw.gov.au> or Emergency Management Australia <http://www.ema.gov.au>.

Note: Consider the large park space in the middle of the proposed buildings and ask what this space will be used for, who will use this space and when will this space be used.

Note: Encourage local community use of the park space (eg. Vegetable gardens, yoga classes, exercise classes etc).

Note: Consider children's play equipment, will it be used correctly or will it be subjected to vandalism and breed anti-social behaviour (eg underage drinking at night) Make an assessment based on the demographics of the area, whether it will be used by children for the appropriate reasons. Lighting will determine usage, will the community feel safe to make use of the park at night.

Note: The door and door frames to these premises should be of solid construction.

Note: Doors should be fitted with locks that comply with the Australian Standard – Mechanical Locksets for doors in buildings, AS:4145:1993, to restrict unauthorised access and the Building Code of Australia (fire regulations). This standard specifies the general design criteria, performance requirements and procedures for testing mechanical lock sets and latch sets for their resistance to forced entry and efficiency under conditions of light to heavy usage. The standard covers lock sets for typical doorways, such as wooden, glass or metal hinged swinging doors or sliding doors in residential premises. Requirements for both the lock and associated furniture are included. Certain areas may require higher level of locking devices not referred to in this standard (eg. Locking bars, electronic locking devices and detection devices) Dead locks are recommended for residential units.

Note: There are some doors within the premises which are designated as fire exits and must comply with the Building Code of Australia. This means that they provide egress to a road or open space, an internal or external stairway, a ramp, a fire isolated passageway, a doorway opening to a road or open space. The doors in the required exits must be readily open-able without a key from the side that face the person seeking egress, by a single hand downward action or pushing action on a single device which is located between 900mm and 1.2m from the floor.

Note: The main access to the underground car park should have restricted access with a security pass. The opening/closing mechanism should be protected from vandalism and tampering. All exit doors from the car park should have striker plates installed to minimise chance of tampering.

Note: The main entry/egress doors to the development should have an electronically operated lock which require security swipe pass for entry. The lifts operating in the building should have the same security swipe pass technology. When an occupant buzzes in a visitor the lift should recognise the floor the occupant resides and only allow the visitor access to that floor in the lift.

Note: Entrance doors to commercial premises (convenient store etc.) should include an electronically operated lock, which can be locked after hours to control access to the development. Staff could release this lock electronically from the safety of the counter area once the customer has been identified. This locking mechanism should be activated during the hours of darkness.

- 19 The following conditions are imposed by the Sydney Airport Corporation Limited (SACL) and must be complied with:
- (a) The PROPERTY DEVELOPMENT at 2-4 HARAN STREET AND 1 CHURCH AVENUE MASCOT lies within an area defined in schedules of the Civil Aviation (Buildings Control) Regulations, which limit the height of structures to 50 feet (15.24 metres) above existing ground height (AEGH) without prior approval of this Corporation.
 - (b) The Civil Aviation Safety Authority (CASA) have no objection to the erection of the building to a height of 51.0 metres above Australian Height Datum (AHD).
 - (c) The approved height is inclusive of all lift over-runs, vents, chimneys, aerials, TV antennae, construction cranes etc.
 - (d) Should you wish to exceed the above heights, a new application must be submitted. Should the height of any temporary structure and/or equipment be greater than 50 feet (15.24 metres) above existing ground height (AEGH), a new approval must be sought in accordance with the Civil Aviation (Buildings Control) Regulations Statutory Rules 1988 No. 161.
 - (e) Construction cranes may be required to operate at a height significantly higher than that of the proposed controlled activity and consequently, may not be approved under the Airports (Protection of Airspace) Regulations. SACL advises that approval to operate construction equipment (ie cranes) should be obtained prior to any commitment to construct. Information required by SACL prior to any approval is to include:
 - (i) the location of any temporary structure or equipment, ie. construction cranes, planned to be used during construction relative to Mapping Grid of Australia 1994 (MGA94);
 - (ii) the swing circle of any temporary structure/equipment used during construction;

- (iii) the maximum height, relative to Australian Height Datum (AHD), of any temporary structure or equipment ie. construction cranes, intended to be used in the erection of the proposed structure/activity;
- (iv) the period of the proposed operation (ie. construction cranes) and desired operating hours for any temporary structures.
- (f) Any application for approval containing the above information, should be submitted to this Corporation at least 35 days prior to commencement of works in accordance with the Airports (Protection of Airspace) Regulations Statutory Rules 1996 No. 293, which now apply to this Airport.
- (g) The development is to comply with the Civil Aviation Safety Authority (CASA) requirements as outlined in the Council's Development Application Guide for Multi-Unit Residential, Commercial and Industrial.

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

- 20 The City of Botany Bay being satisfied that the proposed development will increase the demand for public amenities within the area, and in accordance with Council's Section 94 Contributions Plans listed below a contribution of **\$2,239,196.00** is required as follows:

| | | |
|-------|-------------------------|----------------|
| (i) | Community Facilities | \$236,828.00 |
| (i) | Administration | \$7864.00 |
| (ii) | Open Space & Recreation | \$1,875,468.00 |
| (iii) | Transport Management | \$119,036.00 |

The Section 94 Contribution of **\$2,239,196.00** is to be paid to Council prior to the issue of the Construction Certificate.

- 21 Prior to the issue of the Construction Certificate, the applicant shall contact "Dial Before You Dig on 1100" to obtain a Service Diagram for, and adjacent to, the property. The sequence number obtained from "Dial Before You Dig" shall be forwarded to Principal Certifying Authority. Any damage to utilities/services will be repaired at the applicant's expense.

- 22 Prior to issue of any Construction Certificate, a Dilapidation Report of the immediate adjoining properties and public infrastructure (including Council and public utility infrastructure) shall be prepared by a Practising Structural / Geotechnical Engineer and submitted to Council. The report shall include records and photographs of the following area that will be impacted by the development:

- (a) Sydney Water Southern Western Suburbs Ocean Outfall Sewer (SWSOOS)
- (b) A copy of the dilapidation report together with the accompanying photographs shall also be given to all immediately adjoining properties owners and public utility authorities, and a copy lodged with Principal Certifying Authority and

the Council. The report shall be agreed by all affected parties as a fair record of existing conditions prior to commencement of any works.

- (c) It is a condition of consent that should construction works cause rise to public safety and/or workplace safety; works shall halt until absolute safety is restored.

(Note: Prior to commencement of the surveys, the applicant/ owner of the development shall advise (in writing) all property owners of buildings to be surveyed of what the survey will entail and of the process for making a claim regarding property damage. A copy of this information shall be submitted to Council.)

- 23 A Soil and Water Management Plan (also known as an Erosion and Sediment Control Plan) shall be prepared according to *'Do It Right On-Site' Soil and Water Management for the Construction Industry* (available from Council) and NSW EPA's *Managing Urban Stormwater: Construction Activities* and submitted to the Principal Certifying Authority prior to issue 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 Soil and Water Management Plan shall be kept on-site at all times and made available to Council Officers on request.
- 24 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.
- 25 Prior to the issue of the Construction Certificate design verification is required to be submitted from a qualified designer to confirm the development is in accordance with the approved plans and details and continues to satisfy the design quality principles in State Environmental Planning Policy No. 65 Design Quality of Residential Flat Development.
- 26 Prior to the issue of the Construction Certificate, the measures required in the Aircraft and Road Traffic Noise Intrusion Report, Report No. 5019-1-1rRevA prepared by Day Design dated 8 July 2013 shall be undertaken in accordance with the provisions of *AS2021-2000: Acoustics – Aircraft Noise Intrusion – Building Siting and Construction* to establish components of construction to achieve indoor design sound levels in accordance with Table 3.3 of AS2021-2000 shall be incorporated into the construction of the building:
- 27
 - (a) 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;

- (b) Prior to the issue of the Construction Certificate details are to be provided on acoustic treatment to the entry and exit roller door to driveway of the development to comply with the Office of Environment & Heritage's Industrial Noise Policy and Noise Control Guidelines.

- 28 Prior to the issue of the Construction Certificate, a Certificate under Section 73 of the Water Board (Corporation) Act 1994 shall be obtained and submitted to Council for each stage of construction to ensure that the developer has complied with all relevant Sydney Water requirements, including appropriate connections, correctly sized amplifications, procurement of trade waste agreements, where necessary, and the payment of developer charges.

Note: Immediate application should be made to Sydney Water for this Certificate to avoid problems in servicing the development.

- 29 Plans and specifications for the storage room for waste and recyclable materials shall be submitted to the Principal Certification Authority with the application for the Construction Certificate. Storage of Waste and recycling shall meet the following requirements:

- (a) The rooms for the storage of garbage and recyclable materials shall be:
 - (i) fully enclosed;
 - (ii) adequately ventilated;
 - (iii) Constructed with a concrete floor, concrete or cement rendered walls coved to the floor;
 - (iv) The floor shall be graded to an approved sewer connection incorporating a sump and galvanized grate cover or basket in accordance with the requirements of Sydney Water Corporation.
 - (v) Washing facilities shall be provided within close proximity to the garbage and recycling storage area.

- 30 A suitable intercom system linked to all units within the development shall be provided at the vehicle entrance to the development to ensure any visitors to the site can gain access to the visitor parking in the car parking area. The details of the intercom system shall be submitted to Principal Certifying Authority prior to the issue of a Construction Certificate and its location and specifications endorsed on the construction drawings.

- 31 Prior to the issue of the Construction Certificate, the following documentation shall be submitted to Principal Certifying Authority:

- (a) Longitudinal sections along centreline of all the ramps between each basement parking levels;

- (b) Design certification, prepared by a suitably qualified engineer, showing the longitudinal sections shall be designed in accordance with AS2890.1 (including gradients and gradient transitions).
- 32 Prior to the issue of the Construction Certificate, detailed construction plans in relation to the development shall be revised and submitted to Council for approval. The plan shall be revised to include the following:
- (a) Any wall or fence or solid object on either side of the driveway/vehicular crossing where it meets the Council's road reserve at the boundary must comply with sight distances stipulated in AS 2890.2.
- 33 Prior to the issue of the Construction Certificate, detailed construction plans in relation to the stormwater management and disposal system for the development shall be submitted to the Council and Principal Certifying Authority for approval.
- 34 Prior to the issue of the Construction Certificate, detailed Stormwater Management Plans and specifications shall be prepared by a suitably qualified and experienced civil engineer and the design shall be generally in accordance with the Concept Stormwater Management Plans prepared by Australian Consulting Engineers Pty Ltd, Job No. 120698, Drawing No. D00 to D12 and received by Council on the 12 July 2013.
- With the following issues to be complied with and shown on the plans:
- (a) The stormwater drainage system from the roof and balcony of the building to the On-site detention (OSD) system shall be shown on the stormwater management plans. All stormwater runoff from the roof area and balcony shall be directed to the system.
 - (b) The layout of the basement parking area and OSD system shown on the stormwater management plans shall correspond with the architectural plan. The location of the discharge control pit shall be revised accordingly.
 - (c) The emergency overflow of OSD systems shall be shown on the plans to ensure any overflow from the OSD system will be conveyed to the public streets via surface overland flow.
 - (d) Additional access grates shall be provided to each corner of the OSD tank.
 - (e) In order to protect the buildings from stormwater inundation, the OSD tank shall be water-tight.
 - (f) The outlet pipes of the OSD system and the GPT shall be minimum 300mm diameter.
 - (g) Rainwater tanks shall be provided with a minimum 5,000 L capacity and shall service any landscape systems.
 - (h) All stormwater runoff from the site shall pass through a pollution control device capable of removing litter and sediment prior to entering the public stormwater system.

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

- 35 Prior to the issue of the Construction Certificate, design certification, prepared by a suitably qualified engineer shall be submitted to Principal Certifying Authority certifying the car parking area shown on the construction plans has been designed in accordance with AS 2890.1, AS2890.2 (for loading area) and AS2890.6.
- 36 Prior to the issue of the Construction Certificate, design certification, prepared by a suitably qualified engineer shall be submitted to Principal Certifying Authority certifying the stormwater drainage (including OSD and infiltration system) and basement pump-out system shown on the construction plans have been designed to comply with current Australian Standards and Council's requirements.
- 37 In order to maximise visibility in the basement car parks, the ceilings shall be painted white. This requirement shall be reflected on the Construction Certificate plans.
- 38 The development shall make provision for the following car parking allocations:

| Car Parking Rates | Required |
|--|---|
| 1 space per studio and 1 bedroom units | 32 spaces |
| 2 spaces per 2 and 3 bedroom units | 162 spaces |
| 1 visitor space per 7 dwellings | 12 spaces (Note: this includes provision for three (3) parking spacs for those persons with a disability) |
| Car wash spaces | 2 |
| TOTAL REQUIRED | 211 |
| TOTAL PROVIDED | 206 |

This requirement shall be reflected on the Construction Certificate plans. The approved car parking spaces shall be maintained to the satisfaction of Council, at all times.

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

- (a) There shall be no loss of support to the Council's nature strip area as a result of the construction within the site. Details prepared by a practicing Structural Engineer of how this support will be maintained during the demolition works shall be submitted to Council prior to the commencement of works.
- (b) Council's property shall be supported at all times. Where any shoring is to be supporting (or located on) Council's property, certified engineering drawings showing all details including the extent of encroachment, the type of shoring and the method of removal, shall be submitted prior to the issue of the Construction Certificate. If the shoring cannot be removed, it shall be cut to 150mm below footpath level and the gap between the shoring and any buildings shall be filled with a 5Mpa lean concrete mix.

40 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))

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

- (a) be prepared by a RTA 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) if required, implement a public information campaign to inform any road changes well in advance of each change.
- (d) 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.
- (e) During construction, all works and measures shall be implemented in accordance with approved Traffic Management Plan at all times.
- (f) Toilet facilities are to be provided at or in the vicinity of the work site on which work involves:

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- (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.
 - (iii) The provisions of toilet facilities in accordance with this clause must be completed before any other work is commenced.

43 Prior to the commencement of works, the applicant must inform Council, in writing, of:

- (a) The name of the contractor, and licence number of the licensee who has contracted to do, or intends to do, the work: or
- (b) The name and permit number of the owner-builder who intends to do the work;
- (c) The Council also must be informed if:
 - (i) A contract is entered into for the work to be done by a different licensee; or
 - (ii) Arrangements for the doing of the work are otherwise changed.

44 A detailed Construction Management Plan (CMP) shall be submitted to Council and the Principal Certifying Authority for approval prior to the commencement of any works. The plan shall address:

- (a) Excavation and construction vehicles access to and egress from the site;
- (b) Parking for demolition and construction vehicles. All construction-related vehicles shall be parked on-site and no parking of these vehicles shall be allowed on Church Avenue or Haran Street;
- (c) Locations of site office, accommodation and the storage of major materials related to the project;
- (d) Protection of adjoining properties, pedestrians, vehicles and public assets;
- (e) Location and extent of proposed builder's hoarding and Work Zones, if there is any.
- (f) Active measures to control and suppress dust, grit and the like that are associated with construction activity.
- (g) Measures to control the arrival of plant and equipment associated with the construction process and the delivery of such plant and equipment during reasonable hours of the working day;
- (h) Public Notification where working hours are extended for a particular construction activity;
- (i) Provision of on-site car parking for employees, contractors and site personnel during the construction phase of the development; and
- (j) During construction, all works and measures shall be implemented in accordance with approved Construction Management Plan at all times.

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 The Applicant must indemnify Council against all loss of or damage to the property of others and injury or death to any persons which may arise out of or in consequence of the carrying out of the work and against all claims, demands, proceedings, costs, charges and expenses whatsoever in respect thereof or in relation thereto. In this regard, the Applicant shall take out a public liability policy during the currency of the works in the sum of not less than \$20,000,000 and to be endorsed with City of Botany Bay Council as principal, and keep such policy in force at the Applicant's own expense. A certificate from the Applicant's insurers to this effect is to be **LODGED WITH COUNCIL BEFORE ANY WORK IS COMMENCED**. The amount of Common Law liability shall be unlimited.
- 47 During construction, the applicant shall ensure that all works and measures have been implemented in accordance with following approved plans at all times:
- (a) Approved Erosion and Sediment Control Plan;
 - (b) Approved Traffic Management Plan and;
 - (c) Approved Construction Management Plan.
- 48 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

- 49 If the work involved in the construction of a building:
- (a) likely to cause pedestrians or vehicular traffic in a public place to be obstructed or rendered inconvenient; or,
 - (b) involves the enclosure of a public place:

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

50

- (a) Any new information that comes to light during construction which has the potential to alter previous conclusions about site contamination and remediation must be notified to Council;
- (b) 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.

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

52 During construction works, the applicant / builder is required to ensure the protection and preservation of all boundary fencing or boundary walls between the subject site and adjoining properties. Any damage caused as a result of such works will be at the full cost of the applicant/builder.

53 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.

54 All vehicles transporting soil, sand or similar materials to or from the site shall cover their loads at all times.

55

- (a) Existing structures and or services on this and adjoining properties shall not be endangered during any demolition associated with the above project. The Applicant is to provide details of any stabilisation works required to adjacent developments to Council.

- (b) As the development involves an excavation that extends below the level of the base of the footings of a building or road on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
 - (i) Protect and support the adjoining premises from possible damage from the excavation, and
 - (ii) Where necessary, underpin the adjoining premises to prevent any such damage.
 - (iii) Must at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of his intention to do so to the owner of the adjoining allotment of land and, furnish particulars of the excavation to the owner of the building being erected or demolished.

56

- (a) The operations of the site shall be conducted in such a manner as not to interfere with or materially affect the amenity of the neighbourhood by reason of noise, vibration, odour, fumes, vapour, steam, soot, ash, dust, particulate matter, waste water, waste products or other impurities which are a nuisance or injurious to health.
- (b) All possible and practicable steps shall be taken to prevent nuisance to the inhabitants of the surrounding neighbourhood from wind-blown dust, debris, noise and the like.

57 The operation shall not give rise to offensive odour or other air impurities in contravention of the Protection of the Environment Operations Act 1997. The Principle contractor shall ensure that all practical means are applied to minimise dust and odour from the site. This includes:

- (a) Covering excavated areas and stockpiles,
- (b) The use of fine mists of hydrocarbon mitigating agents on impacted stockpiles or excavation areas,
- (c) Maintenance of equipment and plant to minimise vehicle exhaust emissions,
- (d) Erection of dust screens on the boundary of the property and/or closer to potential dust sources,
- (e) All loads entering or leaving the site are to be covered,
- (f) The use of water sprays to maintain dust suppression,
- (g) Keeping excavated surfaces moist.

58 The construction of the premises shall not give rise to transmission of vibration at any affected premises that exceeds the vibration in buildings criteria outlined in the NSW Environmental Noise Control Manual.

- (a) In order to prevent vehicles tracking soil or other materials onto public roads and washing of materials into the street drainage system or watercourse, during excavation, construction and deliveries, access to the site shall be available in all weather conditions. The area shall be stabilised and protected from erosion;
- (b) Concrete trucks and any other trucks that used for the transportation of building materials or similar, shall not traffic soil cement or other materials onto the road reserve. Hosing down of vehicle tyres shall only be conducted in a suitable off-street area where wash waters do not enter the stormwater system or enter Council's land;
- (c) Building operations such as brick cutting, washing tools or brushes and mixing mortar shall not be carried out on public roadways or footways or in any other locations which could lead to the discharge of materials into the stormwater drainage system or onto Council's lands;
- (d) Hosing down or hosing/washing out of any truck (concrete truck), plant (eg concrete pumps) or equipment (eg wheelbarrows) on Council's road reserve or other property is strictly prohibited. Fines and cleaning costs will apply to any breach of this condition.
- (e) During construction works the area in front of the premises and for the full width of the site, be maintained at all times and kept clean and tidy.

60 The Development is to be constructed to meet the following construction noise requirements:

- (a) Construction Noise
 - (i) Noise from construction activities associated with the development shall comply with the NSW Environment Protection Authority's Environmental Noise Manual – Chapter 171 and the Protection of the Environment Operations Act 1997.
- (b) Level Restrictions
 - (i) Construction period of 4 weeks and under:
 - (1) The L10 sound pressure level measured over a period of not less than 15 minutes when the construction site is in operating must not less than 15 minutes when the construction site is in operating must not exceed the background level by more than 10dB(A).
 - (ii) Construction period greater than 4 weeks and not exceeding 26 weeks:
 - (1) The L10 sound pressure level measured over a period of not less than 15 minutes when the construction site is in operating must not exceed the background level by more than 10 dB(A).
- (c) Time Restrictions
 - (i) Monday to Friday ...07:00am to 06:00pm;
 - (ii) Saturday 08:00am to 04:00pm

- (iii) No Construction to take place on Sundays or Public Holidays.
- (d) Silencing
 - (i) All possible steps should be taken to silence construction site equipment.
- 61 Building plans must be lodged at Sydney Water Quick Agent for approval prior to commencement of works.
- 62 During construction, care must be taken to protect Council's infrastructure, including street signs, footpath, kerb, gutter and drainage pits etc. Protecting measures shall be maintained in a state of good and safe condition throughout the course of construction. The area fronting the site and in the vicinity of the development shall also be safe for pedestrian and vehicular traffic at all times. Any damage to Council's infrastructure (including damage caused by, but not limited to, delivery vehicles, waste collection, contractors, sub-contractors, concrete delivery vehicles) shall be fully repaired in accordance with Council's specification and AUS-SPEC at no cost to Council.
- 63 The fire hydrant and booster assembly are required to be housed within an external façade/wall of the building or elsewhere within the building structure and shall be enclosed/screened with doors to Council approval.
- 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) To prevent contaminated soil being used onsite, all imported fill shall be certified VENM material and shall be validated in accordance with the Office of Environment and Heritage (OEH) approved guidelines to ensure that it is suitable for the proposed development. Imported fill shall be accompanied by documentation from the supplier which certifies that the material has been analysed and is suitable for the proposed land use.
 - (c) Any soil disposed of offsite shall be classified in accordance with the procedures in the Department of Environment and Climate Change Waste Classification Guidelines (2008).

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

- (a) Prior to the issue of the Occupation Certificate, the development is to be constructed to meet the requirements detailed in the Aircraft & Road Traffic Noise Intrusion Report, prepared by Day Design Pty Ltd dated 8 July 2012, received by Council 12 July 2013, and the Environmental Noise Impact Report prepared by Day Design Pty Ltd dated 8 July 2013, received by Council 12 July 2013; and
- (b) All acoustic work including that acoustic work required at Condition No.27 shall be completed prior to the issue of the Occupation Certificate and validated by a person with appropriate qualifications and experience.

66 Prior to the issue of the Occupation Certificate, a Site Validation Report is to be submitted to Council which states the subject site is suitable for residential development, together with a supplementary Statement which states that the land to be dedicated to Council for public reserves meets the criteria for recreation areas and those within the public reserve areas has not been excavated and remains undisturbed.

67 Prior to the issue of the Occupation Certificate, the following is to be complied with:

- (a) Dedicate the portion of land to Council for the purpose of widening Church Avenue. The areas of the land to be dedicated shall be the full length of Church Avenue frontage of the development site and the width measuring from the centerline of Church Avenue, as detailed in the Mascot Station Precinct Development Control Plan. The Plan of Dedication shall be lodged with Council prior to the issue of the Construction Certificate and registered with the Department of Lands prior to the issue of the Occupation Certificate. A copy of the registered document shall be submitted to Council for record purposes;
- (b) Dedicate the portion of land to Council for the purpose of a public park adjacent to Linear Park and the new Church Avenue boundary (following the road widening of Church Avenue) with a total area of 205sqm. Construction of paving and landscaping within this area is to be in accordance with the approved landscape plans identified in Condition No.1 of DA12/213;
- (c) Dedicate the portion of land to Council for the purpose of a public pedestrian through link adjacent to Linear Park running from Haran Street through to the Church Avenue park dedication, with a total area of 145sqm. Construction of paving and landscaping within this area is to be in accordance with the approved landscape plans identified in Condition No.1 of DA12/213;
- (d) Upgrade the public domain by the reconstruction of half the road pavement, kerb and gutter, footpath, drainage system, street trees, landscaping and any associated works for the street frontage to Church Avenue of the site, including the Church Avenue frontage of Linear Park (identified as Lot 4 in DP85917) at the applicant's expense. All improvements shall be in accordance with specifications and requirements from Council's landscape and engineering sections and the approved civil works construction plans and landscape plans. All the public domain works shall be constructed and

completed to Council's satisfaction prior to the issue of any Occupation Certificate;

- (e) Upgrade the public domain by reconstruction of the kerb and gutter to the full street frontage to Haran Street of the site including footpath, drainage system, street trees, landscaping and any associated works for the street frontage to Haran Street of the site, at the applicant's expense. All improvements shall be in accordance with specifications and requirements from Council's landscape and engineering sections and the approved civil works construction plans and landscape plans. All the public domain works shall be constructed and completed to Council's satisfaction prior to the issue of any Occupation Certificate;
- (f)
 - (i) Replace all the existing above ground electricity and telecommunication cables to underground cables within the site and road reserve area fronting both Haran Street and Church Avenue in accordance with the guidelines and requirements of the relevant utility authorities. The applicant shall bear all the cost of the construction and installation of the cables and any necessary adjustment works. These works and payments shall be completed prior to the issue of the Occupation Certificate; and
 - (ii) Provide appropriate and suitable street lighting to a high decorative standard to both street frontages of the site, 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.

68

- (a) The 206 car parking spaces shall be made available to residents and visitors at all times, with such spaces being clearly marked and signposted prior to issue of the Occupation Certificate;
- (b) Allocation of the car parking shall be as follows:
 - (i) Each studio/one (1) bedroom unit shall be allocated 1 car parking space;
 - (ii) Each two (2) bedroom and three (3) bedroom unit shall be allocated 2 car spaces;
 - (iii) Two (2) car wash bay shall be provided in accordance with the Mascot Station DCP. Such space shall not to be allocated to any unit within the development and this shall be included in any future strata subdivision of the site.
 - (iv) Twelve (12) visitors car spaces shall be provided. Such spaces being located nearby the entrance to the development and three (3) to be allocated for disabled car parking.

- 69 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.
- 70 Street numbers shall be clearly displayed with such numbers being of contrasting colour and adequate size and location for viewing from the footway and roadway. Details of street numbering shall be submitted to Council for approval prior to the issue of the Construction Certificate.
- 71 Prior to the issue of the Occupation Certificate, documentation from a practising civil engineer shall be submitted to the Principal Certifying Authority certifying that the car parking area has been constructed generally in accordance with the approved construction plan(s) and comply with AS2890.1, AS2890.2 and AS2890.6 requirements. The internal parking facilities shall be clearly designated, sign posted and line marked. Signage and line marking shall comply with the current Australian Standards.
- 72 The following shall be complied with prior to the issue of the Occupation Certificate:
- (a) A new vehicular crossing including layback and/or gutter and any associated road restoration shall be constructed in accordance with Council's requirements. The applicant shall make a separate application to Council's Customer Service Counter for the construction/ reconstruction of vehicular crossing (either by Council or own forces) to the vehicular entry point of the site as shown on the submitted approved plan.
 - (b) The crossing shall be able to accommodate the turning movement of Heavy Rigid Vehicle (HRV) entering and leaving the site and at 90° to the kerb and gutter in plain concrete. All adjustments to the nature strip, footpath and/or public utilities' mains and services as a consequence of the development and any associated construction works shall be carried out at the full cost to the Applicant.
 - (c) The redundant vehicular crossing, together with any necessary works shall be removed and the footpath, nature strip and kerb and gutter shall be reinstated in accordance with Council's specification.
 - (d) Written confirmation / completion certificate obtained from Council.
 - (e) Inspection report (formwork and/or final) for the works on road reserve obtained from Council's engineer.
 - (f) A copy of the approved public domain civil works plans showing Work-as-Executed details (together with an electronic copy) prepared by a registered surveyor.
 - (g) Driveways and vehicular access paths shall be designed and constructed to comply with the minimum requirements (including changes of grade) of AS/NZS 2890.1.

- 73 Prior to the issue of the Occupation Certificate, a Certificate of Survey from a Registered Surveyor shall be submitted to the Principal Certifying Authority to the effect that all reduced levels shown upon the approved plans, with relation to drainage, boundary and road reserve levels, have been strictly adhered to.
- 74 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.
- 75
- (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.
- 76 Prior to the issue of the Occupation Certificate:
- (a) the construction of the stormwater drainage system of the proposed development shall be generally in accordance with the approved stormwater management construction plan(s), Council's 'Guidelines for the Design of Stormwater Drainage Systems within City of Botany Bay', AS/NSZ 3500 – Plumbing and Drainage Code and the BCA. All downpipes shall be located within the property boundaries;
 - (b) documentation from a qualified plumber/ practising civil engineer shall be submitted to the Principal Certifying Authority certifying that the stormwater drainage system has been constructed generally in accordance with the approved stormwater management construction plan(s) and accepted practice.

77 Any damage not shown in the dilapidation report required under Condition No. 22 submitted to Council before site works have commenced, will be assumed to have been caused as a result of the site works undertaken and must be rectified at the applicant's expense, prior to the issue of the Occupation Certificate.

78 Prior to the issue of the Occupation Certificate, landscaping shall be installed in accordance with the approved landscape plan by *iScape, Issue D, dated 15 July 2013*. The plan is to be supplemented with the following additional landscape requirements:

- (a) The *Sapium*, *Pyrus* and *Michelia figo* are to be deleted from the eastern boundary landscape setback and replaced with a narrow canopy evergreen species such as *Acmena smithii*, Native Frangipanni or Native Quandong. The trees are to be closely planted to provide a screen - 4 metre centres.
- (b) The service strip is to be planted with *Lomandra Tanika* or similar to screen the boundary wall and electrical pillars;
- (c) The rooftop planting (Level 12 and 13) as shown on the previous landscape plan – Issue C, is to be installed;
- (d) Two (2) small trees are required in the Haran Street setback fronting unit 104 to provide privacy and amenity;
- (e) The *Eucalyptus botryoides* are to be replaced with *Eucalyptus leucoxylon* or *Corymbia maculata* due to structural and pest issues with the former species.

Landscaping on the property and in the public domain shall be installed in accordance with the approved landscape plan by *iScape Issue D* and Levels 12 and 13 with *Issue C*, and in accordance with sub-clauses (a) to (e) above, prior to the issue of an Occupation Certificate. The landscaped areas on the property shall be maintained in accordance with the Council stamped and approved landscape documentation, the conditions of development consent and Council's Landscape DCP 32 at all times.

79 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. The contractor shall be engaged weekly for a minimum period of 52 weeks from final completion of landscaping for maintenance and defects liability, replacing plants in the event of death, damage, theft or poor performance. After that time regular and ongoing maintenance is required.

80 To ensure satisfactory growth and maintenance of the landscaping, a fully automatic drip irrigation system is required in the following areas :

- (a) all site boundary landscape setbacks and frontages, and
- (b) the communal open space area off Church Avenue.

The system shall be installed by a qualified landscape contractor and provide full coverage of planted areas with no more than 300mm between drippers, automatic controllers and backflow prevention devices, and should be connected to a recycled water source. Irrigation shall comply with both Sydney Water and Council requirements as well as Australian Standards, and be maintained in effective working order at all times.

- 81 Prior to the issue of the Occupation Certificate, the Church Avenue and Haran Street public footpaths shall be constructed in accordance with Council specifications *CHUR RW/SS 1 – Revision 5 (August 2012)*. The footpath dimensions, location, paver type and construction methods shall be in accordance with this specification. Hold points and Council inspections are required after formwork setback and to prior pouring the concrete blinding slab, at the commencement of paving works and at final completion. Pavers shall be ordered accounting for adequate lead time for manufacture.
- 82 Prior to the issue of the Occupation Certificate, new street trees at the pot size specified shall be installed in the Church Avenue and Haran Street nature strips in accordance with the approved landscape plan. The trees shall be sourced from a reputable supplier that grows to NATSPEC. A Dial-Before-You-Dig enquiry is required prior planting. Council is not liable for any damage to subsurface infrastructure during public domain works:
- (a) The trees shall be planted in an area measuring approx. 1 metre square ensuring adequate space for the root ball, backfilled with water holding additive and fertiliser and mulched to a depth of 75mm and at a diameter of 1 metre. Trees are to be staked as required;
 - (b) Two hold point inspections are required prior planting trees to ensure plant stock is suitable and post planting.
- 83 The Council nature strips shall be suitably replaced in accordance with Council Specification and the approved landscape documentation at the completion of construction work and at the Applicant's expense.
- 84 The public area of the residential parts of each building must be designed by a practicing Interior Designer or other appropriately qualified person and include (but not limited to) colour schemes, artwork surface finishes, timber mid rails/skirting boards etc.
- 85 Any air conditioning units are to be located so that they are not visible from the street or public place and are not obscure windows/window frames or architectural features of the development.
- 86
- (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 4 and 65 to 85 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

- 87 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.
- 88 Vehicles making deliveries (including goods, merchandise and the like) and accessing the site shall comply with the following requirements:
- (a) The maximum size of vehicles making deliveries and accessing to the site shall be limited to B99 vehicles (5.2m in length, as denoted by the current version of AS/NZS 2890.1) only.
 - (b) All loading and unloading of vehicles shall be carried out wholly within the site. No deliveries to the premises shall be made direct from a public places, public streets or any road related areas (eg. footpath, nature strip, road shoulder, road reserve, public car park, service station etc).
 - (c) 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.
- 89 The ongoing maintenance of the nature strip shall then be undertaken by the occupier/owner/strata body. Maintenance shall include mowing, watering and maintaining an even coverage of grass at all times. Maintenance does not include pruning, trimming, shaping, or any work to street trees located on the road verge/nature strip at any time the removal of weeds and rubbish and maintaining a good, even coverage of grass at any time.
- 90 The landscape contractor shall be engaged weekly for a minimum period of 52 weeks from final completion of landscaping for maintenance and defects liability, replacing plants in the event of death, damage, theft or poor performance. After that time monthly maintenance is required.
- 91 New street trees shall be maintained by the Applicant/Owner/Strata Corporation for a twelve (12) month period after planting. Maintenance includes watering twice weekly within the first four months then weekly thereafter to sustain adequate growth and health, annual feeding, weed removal within the mulched base and mulch replenishment at three (3) monthly intervals (to 75mm depth). It does not include trimming or pruning of trees under any circumstances.

92 The use of the premises shall not give rise to any of the following when measured or assessed at “sensitive” positions within any other property. These “sensitive” positions should be selected to reflect the typical use of a property (ie any outdoor areas for day and evening but closer to the façade at night time), unless other positions can be shown to be more relevant.

- (a) The operation of all plant and equipment shall not give rise to an equivalent continuous (LAeq) sound pressure level at any point on any residential property greater than 5dB(A) above the existing background LA90 level (in the absence of the noise under consideration).
- (b) The operation of all plant and equipment when assessed on any residential property shall not give rise to a sound pressure level that exceeds LAeq 50dB(A) day time and LAeq 40 dB(A) night time.
- (c) The operation of all plant and equipment when assessed on any neighbouring commercial/industrial premises shall not give rise to a sound pressure level that exceeds LAeq 65dB(A) day time/night time.
- (d) For assessment purposes, the above L_{Aeq} sound levels shall be assessed over a period of 10-15 minutes and adjusted in accordance with EPA guidelines for tonality, frequency weighting, impulsive characteristics, fluctuations and temporal content where necessary.

93 Any air conditioning units shall comply with the following requirements:

- (a) Air conditioning units are not to be visible from the street or public place and are not to obscure windows/window frames or architectural features of the dwelling.
- (b) A person must not cause or permit an air conditioner to be used on residential premises in such a manner that it emits noise that can be heard within a habitable room in any other residential premises (regardless of whether any door or window to that room is open):
 - (i) Before 8 am or after 10 pm on any Saturday, Sunday or public holiday, or
 - (ii) Before 7 am or after 10 pm on any other day.
- (c) The transmission of vibration to any place of different occupancy above the requirements of AS2670, Australian Standard AS2021- 2000: Acoustics, Aircraft Noise Intrusion, Building Siting and Construction. Australian Standard AS2107 2000: Recommended Design Sound levels and Reverberation levels for Building Interiors.
- (d) Any air-conditioning unit shall comply with the City of Botany Bay’s General Noise Criteria detailed in Condition 105 below.

94

- (a) Each residential dwelling (apartment) is approved as a single dwelling for use and occupation by a single family. They shall not be used for separate residential occupation or as separate residential flats. No plumbing fixtures, fittings, walls shall be deleted or added, doorways enclosed or any other

changes made from the approved plans in Condition No. 1 of this Consent without the prior Consent of the Council;

- (b) The adaptable apartments approved under this development consent are to remain unaltered at all times; and
- (c) The storage areas located within the basement shall be allocated to the relevant residential dwelling in any future subdivision of the site. In addition, any isolated storage areas and other spaces identified by the NSW Police in Condition 11, shall be monitored by CCTV cameras at all times.

- 95 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. 12/213 dated as 14 November 2012 and that any alteration, variation, or extension to the use, for which approval has been given, would require further Approval from Council.