

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

JRPP No	2014SYE063
DA Number	DA 13/135
Local Government Area	City of Botany Bay
Proposed Development	<p>Integrated Development Proposal for a mixed use development comprising the following:</p> <ul style="list-style-type: none"> • Demolition of existing buildings, site works and remediation. • Construction of one x 12-storey mixed use building (Northern Tower) and one x 13-storey residential flat building (Southern Tower) with a total floor space ratio of 3.34:1 and a maximum building height of 45.5 metres providing: A total of 337 residential apartments; 980m² of commercial/retail floor space to Gardeners Road and New Street; one level of basement, one level at grade and one level of podium car parking for 485 vehicles; • Dedication of new public land with a total area of 795m² for the planned construction of New Road; Embellishment of the public domain along Gardeners Road and New Street frontages. • Amalgamation of three existing lots into one allotment and Torrens stratum subdivision.
Street Address	659, 661-663 and 665-669 Gardeners Road, Mascot
Lot & DP Nos.	Lot 1 in DP 797133, Lot 1 in DP 534350 and Lot 31 in DP 789177
Applicant	Mascot Circle Pty Ltd C/- Dedico
Capital Investment Value (CIV)	\$116,700,000.00
Number of Submissions	<p>First notification - Two (2) submissions</p> <p>Second Notification – One (1) submission</p>
Recommendation	Deferred Commencement Consent
Report by	Rodger Dowsett, Director Planning and Development

THE DIRECTOR OF PLANNING AND DEVELOPMENT REPORTS:

PRECIS

Background

Council received Development Application No. 13/135 on the 2 August 2013, which originally sought consent for a mixed use development comprising the following:

- Demolition of existing buildings, site works and remediation.
- Construction of one x 9-storey mixed use building (Northern Tower) and one x 13-storey residential flat building (Southern Tower) with a total floor space ratio of 3.22:1 and a maximum building height of 45.5 metres providing: A total of 309 residential apartments; 2,637m² of commercial premises; basement and at grade parking for 427 vehicles;
- Dedication of new public land with a total area of 795m² for the planned construction New Road; Embellishment of the public domain along Gardeners Road and New Street frontages.
- Amalgamation of three existing lots into one allotment and Torrens stratum subdivision.

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 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 30 September 2013, the NSW Office of Water has granted its General Terms of Approval to the proposed development.

The site is zoned B4 – Mixed Use pursuant to the Botany Bay Local Environmental Plan 2013. The proposal falls within the definition of “mixed use development” and is therefore permissible in this zone with development consent.

The floor space ratio (FSR) of the proposed development is 3.4:1 and therefore exceeds the maximum floor space ratio permitted under Clause 4.4 of the BBLEP 2013. The building also does not comply with the maximum building height of 44 metres under Clause 4.3 as the lift overruns and sections of the Level 13 sky park exceed the building height by 300mm to 1.5 metres. Accordingly, the proposal is seeking a variation to these standards under Clause 4.6.

The design of the subject development was referred to the Design Review Panel on 12 June 2013. The DRP was generally supportive of the proposal and made a number of recommendations which have been incorporated into the amended design.

The development application was notified for a period of 30 days from 21 August 2013 to 20 September 2013 in accordance with Council's Notifications Policy together with the Integrated Development Provisions under the *Environmental Planning and Assessment Act 1979*. Two (2) submissions were received from nearby landowners which, the concerns of overshadowing and building separation and has been addressed further in this report.

In addition to this negotiations have taken place between the applicant and the adjoining landowner at No. 653 Gardeners Road in order to coordinate the development of the two sites resulting in an amended development scheme which was submitted on 14 April 2014. The issues raised by the submissions are addressed in the body of this report.

The development application was amended on the 14 April 2014 as follows:

- Addition of a ground and podium to align with the future development of the neighbouring site to the east (653 Gardeners Road), deletion of the 2nd basement parking level to provide an additional 98 car parking spaces with a total of 505 spaces provided to the development;
- Increase the total GFA by 1,035m² resulting in an FSR of 3.34:1 which exceeds the maximum FSR of 3.2:1 allowable under the BBLEP 2013;
- Delete all east and west facing balconies to comply with SEPP 65 separation distances;
- Relocation of southern tower by 3 metres to the west to reduce shadow impacts to the future area of public open space to the south at No. 42 Church Avenue;
- Increases to some apartment sizes and reduce the number of studio/one bedroom apartments from 82.5% to 70%;
- Deletion of 30 x dual key apartments;
- The provision of an additional 3 storeys to the northern tower in line with the development to the west at 671 Gardeners Road (approved by JRPP);
- Replacement of Level 1 commercial tenancies with residential apartments resulting in 28 additional apartments (309 to 337 units) and a decrease in retail floor area by 1,677m² from 2,637m² to 960m²;
- Increase the number of adaptable units from 11 to 34 in accordance with BBDCP 2013.
- Amendments to the north and south elevations to provide articulation to the podium levels.

Therefore, the development application (as amended) remains as a mixed use development, but with the following amendments:

- Demolition of existing building, site works and remediation.
- Construction of one x 12-storey mixed use building (Northern Tower) and one x 13-storey residential flat building (Southern Tower) with a total floor space ratio of 3.34:1 and a maximum building height of 45.5 metres providing: A total of 337 residential apartments; 980m² of commercial/retail floor space to Gardeners Road; one level of basement, one level at grade and one level of podium car parking for 485 vehicles;
- Dedication of new public land with a total area of 795m² for the future construction New Road; Embellishment of the public domain along Gardeners Road and New Street frontages.

- Amalgamation of three existing lots into one allotment and Torrens stratum subdivision.

Upon assessment of the amended documentation for the development, it was found that insufficient information had been provided in regards to the stormwater drainage design and that the vehicular access points from Gardeners Road and New Street do not have adequate clearances as required by AS2890.2 to allow site servicing by medium rigid vehicles. At the date of writing this report no further information has been received and therefore, if approval is to be granted, it is recommended that amended plans be submitted to address these issues through a deferred commencement consent.

The amended proposal has been renotified to nearby landowners for a period of 30 days from 30 April 2014 to 14 May 2014. One (1) additional submission was received from the owner of No. 42 Church Avenue, which is addressed in the body of this report. The land at No. 42 Church Avenue is to the rear of the development site.

The following table provides a summary of compliance:

Control	Required	Proposal	Complies
FSR	3.2:1 (28021m ²) (BBLEP 2013)	<i>Original Proposal</i> 3.22:1 (28,259m ²) <i>Amended Proposal</i> 3.31:1 (29,064m ²) 3.34 (29,294m ²) after the completion of New Road	No – Clause 4.6 variation to FSR submitted.
Height	44 metres (BBLEP 2013)	44.3 - 45.5m (lift overruns)	No – Clause 4.6 Variation submitted.
Car Parking	<i>Residential</i> Studio = 1 space per unit 1 bedroom = 1 space per unit 2-3 bedroom = 2 spaces per unit Visitor = 1 space per 7 apartments Note: Submitted Traffic Assessment adopts a rate of 1 visitor space/10 units due to proximity of Mascot Train Station. <i>Retail</i>	<i>Residential</i> Studio = 74 x 1 = 74 1 bedroom = 163 x 1 = 163 2 bedroom = 98 x 2 = 196 3 bedroom = 2 x 2 = 4 Residential Total = 437 Visitor = 1 space per 10 apartments = 34 <i>Retail</i> Stage 1: 695m ² /80 = 9 <u>Total Required</u> = 480 spaces	Yes A total of 480 spaces are required and a total of 505 spaces are proposed. After the completion of New Street the final development will require the provision of 483 car parking spaces. Despite the overall reduction in car parking by 20 spaces required for the establishment of new retail tenancies fronting New Street, the development will provide a total of 485 car

	1 space/40sqm of GFA Note: Submitted Traffic Assessment adopts a rate of 1/80sqm due to proximity of Mascot Train Station.		parking spaces which will be in compliance with the BBDCP 2013 parking rates.
Unit Sizes	Studios 60m ² 1 Bedroom 75m ² 2 Bedroom 100m ² 3 Bedroom 130m ²	Studios 60-68m ² 1 Bedroom 72-82m ² 2 Bedroom 106-123m ² 3 Bedroom 156m ²	No – Deferred commencement condition recommended to comply with the minimum unit size.
Unit Mix	Total number of studio/one bedroom = Maximum of 35 % (BBDCP 2013)	70%	No – Refer to discussion within body of this report.
Building Separation	<u><4 storeys/12 metres</u> - 12 metres between habitable rooms - 9 metres habitable to non-habitable - 6 metres between non-habitable rooms <u>five to eight storeys/<25 metres</u> - 18 metres between habitable rooms - 13 metres habitable to non-habitable - 9 metres between non-habitable rooms <u>>9 storeys/ >25 metres</u> - 24 metres between habitable - 18 metres habitable to non-habitable - 12 metres between non-habitable rooms (RFDC)	<i>North Tower to South Tower</i>	Yes
		Level 1 to 4 = 18.75m (habitable to habitable)	Yes
		Level 4 to 9 = 18.75m (habitable to habitable)	Yes
		Level 9 to 10 = 18.75m (habitable to habitable)	No – However, considered satisfactory subject to mitigation measures such as planters, screening and balustrade treatments.
		Level 11 = 31m (habitable to non-habitable)	Yes
		<i>To 671-675 Gardeners Rd (Western Elevation)</i>	
		Level 1 to 4 = 12m (habitable to habitable)	Yes
		Level 4 to 9 = 18m (habitable to habitable)	Yes
		Level 9 to 11 = 18m	No – However, considered satisfactory as per reasons outlined above.
		<i>To No. 653 Gardeners Rd (Eastern Elevation)</i>	
		Level 1 to 4 = 0m	Yes – Zero lot line to future podium of adjoining development.

		Level 4 to 9 = 14m (habitable to habitable)	No – However, considered satisfactory as future development at No. 653 Gardeners Rd is likely to have habitable windows but no balconies on this elevation and appropriate privacy measures to be implemented to these windows.
		Level 9 to 11 = 14m (habitable to habitable)	No – However, considered satisfactory as per reasons outlined above.
Solar Access	70% of apartments (BBDCP 2013, SEPP 65)	57.23%	No – Refer to discussion within body of this report.
Cross Ventilation	70% of apartments (BBDCP 2013, SEPP 65)	100%	Yes
Communal Open Space	20% for residential flat buildings	40% (3,549m ² including sky gardens and central courtyard)	Yes

The Applicant on 1 April 2014 lodged Class 1 proceedings in the Land and Environment Court (No: 10196 of 2014) against the deemed refusal of the application. Call-over was 30 April 2014, where it was agreed that the matter be adjourned until the 6 June 2014 pending the outcome of the JRPP determination.

The amended development application has been assessed in accordance with the relevant requirements of the Environmental Planning and Assessment Act 1979 and it is recommended that the Joint Regional Planning Panel, as the determining Authority in this instance, issue a deferred commencement consent to resolve the matters of stormwater and vehicle access and service to the site as discussed above, as well as other matters that relate to the existing right of way and the New Street.

Background

Description of the Site and Surrounding Development

The subject site is located on the southern side of Gardeners Road between the intersections of Bourke Road and Kent Road. The site will be bounded by the future construction of New Road, to the south which will run through the southern portion of the site. The site consists of three separate allotments, which when amalgamated will have a combined 78.5 metre frontage to Gardeners Road and a site area of 8,756.8m². Vehicle access to the site can be made from the existing vehicular crossovers at Gardeners Road, however it is expected that the vehicular access will be relocated to New Street once the construction of this road is completed.

An existing Right of Carriageway burdens the subject site, benefitting No. 1-3 Kent Street to the southwest. While the easement is currently not in use, provision is made

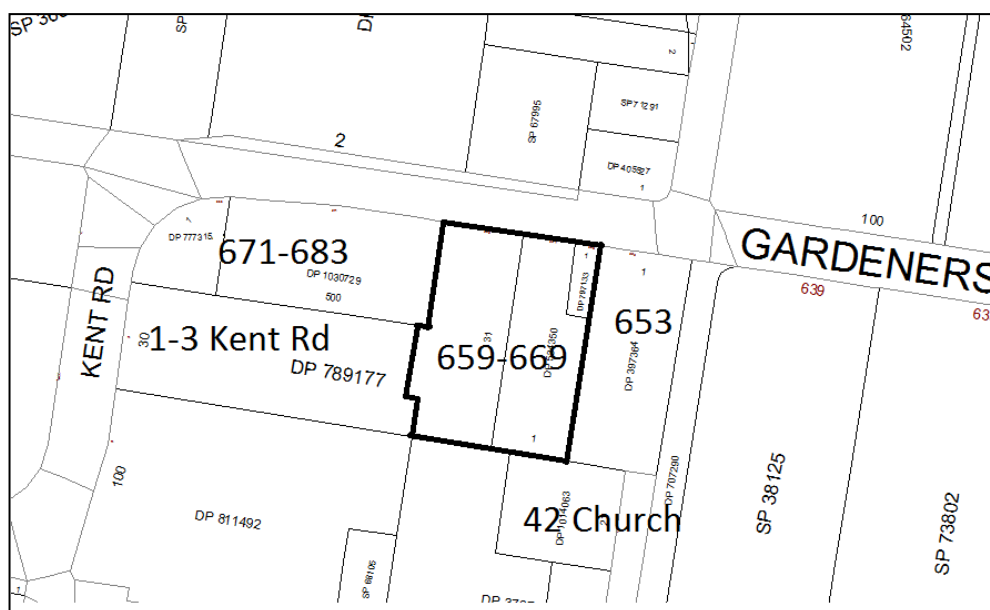
within the at grade car park to allow access. The easement will be extinguished upon the construction of New Street.

Immediately to the west of the subject site at No. 671-683 Gardeners Road are existing industrial premises. Council has received Development Application No. 13/172 for a staged mixed-use development consisting of the construction of one x 13-storey mixed-use building (Building A) and two x 12 storey mixed use buildings (Buildings B & C) with 242 residential units, 4 commercial tenancies and 308 basement car parking spaces. The application is was determined JRPP on the 16 May 2014.

Immediately to the east of the site are located mixed industrial and commercial uses. It is expected that this site will be redeveloped in the future and the form of development will be influenced by the planned widening of Bourke Road. To the north and south of the site are located mixed industrial and commercial uses.

Due to the past industrial use of the majority of the land in the locality, land in the area is susceptible to contamination, resulting in the majority of sites requiring remediation. In addition, most sites within the locality have water table issues.

Location Plan



Site Photo



Photo 1 – No. 665-669 when viewed from Gardeners Road

Development History of the Site

Site/DA No.	Development Description	Date of Determination
659 Gardeners Road – Lot 1 DP 797133		
10/320	Continued use of the shop as a takeaway food shop and change of use of the existing factory to a food preparation business with outdoor seating.	17 August 2011
2115	Rebuilding of existing weatherboard shop premises.	11 July 1989
665-669 Gardeners Road – Lot 31 DP 789177		
10/340	Change of use of Building B for a vehicle rental centre, including internal alterations to install a vehicle hoist, wash bay and to undertake minor repair of fleet vehicles with an associated office.	7 January 2011
3288	Use of the front part of the building for the manufacture, assembly and warehousing of soft toys and souvenirs, with ancillary office.	14 July 1995
3358	Use of the rear part of the building for packaging, processing and distribution of mail order products.	10 February 1995
661-663 Gardeners Road – Lot 1 DP 534350		
02/117	Placement of a portable	20 November 2001

	office and use of part of the site for general engineering.	
2888	Demolition of existing building and erection of 5 factory units.	December 1992

Description of Development

The proposed development (as amended 14 April 2014) is for a mixed use development comprising the following:

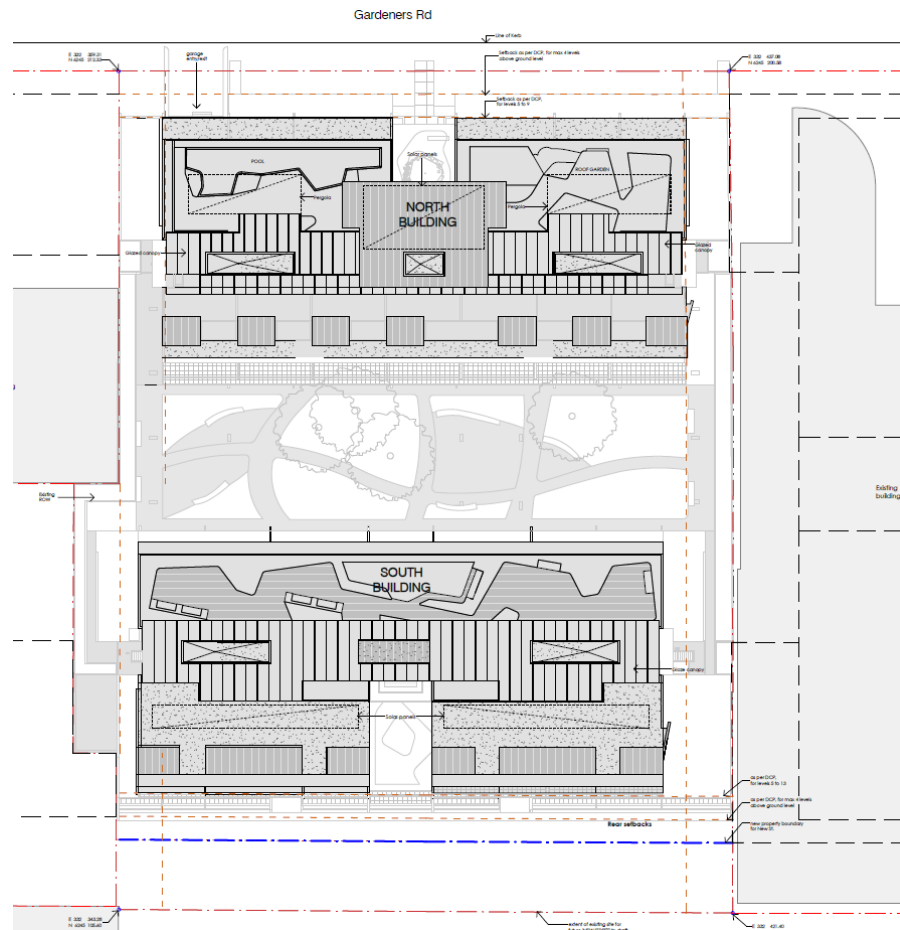
- Demolition of existing buildings, site works and remediation.
- Construction of one x 12-storey mixed use building (Northern Tower) and one x 13-storey residential flat building (Southern Tower) with a total floor space ratio of 3.34:1 and a maximum building height of 45.5 metres providing: A total of 337 residential apartments; 980m² of commercial/retail floor space to Gardeners Road and New Street; one level of basement, one level at grade and one level of podium car parking for 485 vehicles;
- Dedication of new public land with a total area of 795m² for the future construction of New Road; Embellishment of the public domain along Gardeners Road and New Street frontages.
- Amalgamation of three existing lots into one allotment and Torrens stratum subdivision.

Once the construction of New Street is completed, it is proposed to relocate the existing vehicular access to this development from Gardeners Road to New Street. The obsolete vehicular access will be replaced with a retail tenancy fronting Gardeners Road and four additional retail tenancies comprising 230m² will be established on the frontage to New Street. Prior to the construction of New Street, the development will comprise a total FSR of 3.31:1 and car parking for 505 vehicles.

The proposed unit mix of the application is as follows:

	TOTAL	Unit Mix
Studio	74	22%
1 bedroom (60-68m ²)	163	48%
2 bedroom (72-82m ²)	98	29%
3 bedroom (156m ²)	2	1%
	337	100%

Table 1 – Unit Mix & Sizes



Proposed Site Plan



Proposed Northern Elevation (view from Gardeners Road)



Proposed Southern Elevations (prior to completion of New Street)



Proposed Southern Elevation (after completion of New Street)

The proposed development is described in detail below:

- North Tower

The North Tower is located at the northern part of the subject site with frontage to Gardeners Road. The building has a total of 12 storeys with a step on the

southern elevation at Level 10. The maximum height of the building is 45.5 metres with the lift overruns exceeding the maximum building height of 44 metres by 1.5 metres. The rooftop of the building will be a communal open space area comprising a rooftop 'skygarden', swimming pool multi-purpose communal room, change room and shared amenities.

This tower is proposed to contain 5 x retail/commercial tenancies with a total of 600m², residential lobby at ground floor and 29 x studio units, 90 x 1 bedroom units and 36 x 2 bedroom units, resulting in a total of 155 units.

After the completion of New Street and the relocation of the vehicular access, the obsolete access point will be in-filled with an additional retail tenancy. As a result, the final development of the North Tower will comprise 6 retail/commercial tenancies with a total commercial/retail GFA of 687m² fronting Gardeners Road.

Access to the residential units is provided via the main residential lobby from Gardeners Road. Residential services such as garbage rooms, security room, mail rooms, and the iButler service is located on the ground floor with access to the lifts.

- South Tower

The South Tower is located at the southern part of the subject site with frontage to the future New Street. The building has a total of 13 storeys and has a maximum building height of 45.2 metres, with the roof overrun and part of the canopy roof exceeding the maximum building height of 44 metres. The rooftop of the building will be a communal open space area comprising a rooftop 'skygarden' and outdoor seating area.

This tower is proposed to contain 4 x retail/commercial tenancies with a total of 230m², residential lobby at ground floor and 54 x studio units, 64 x 1 bedroom units, 62 x 2 bedroom units and 2 x 3-4 bedroom units, resulting in a total of 182 units.

The vehicular access will be relocated to the South Tower on the completion of New Street along with four commercial/retail tenancies with a total GFA of 230m². The building will comprise a residential lobby fronting New Street, garbage room and amenities.

Basement Car Parking and Parking Allocation

The development proposes three levels of car parking comprising one basement level, one level at grade and one level on the first floor podium in sleeved design.

Prior to the completion of New Street, the development will provide a total of 505 car parking spaces including 437 resident spaces, 32 commercial spaces and 36 visitor spaces.

After the completion of New Street, the number of parking spaces will be reduced by 20 spaces in order to establish new residential tenancies and the new vehicular access on the New Street frontage. As a result, once fully developed, the site will provide a

total of 485 car parking spaces, including 437 residential spaces, 12 commercial spaces and 36 visitor spaces.

Prior to the construction of New Street, the development will require 480 car parking car parking spaces to be provided. After the construction of New Street, the development will require 483 car parking spaces due to the establishment of new retail shops/floor area to the frontage of New Street.

Provision is also made within the ground floor parking area for 7 motorcycle spaces and 47 bicycle spaces (27 bicycle spaces will be provided prior to the completion of New Street).

On-site servicing shall take place within the ground level car park area with provision made for three loading bays for 2 x Medium Rigid Vehicles and 1 x Small Rigid Vehicle.

A total of 36 parking spaces for disabled persons is provided including 34 adaptable residential spaces, 1 accessible commercial space plus 1 accessible visitor space.

Retail Component

As detailed above, there are a total of ten (10) retail tenancies proposed with a total combined floor area of 980m². Access is provided to each tenancy from the street frontage and internal access to amenities and services (service lift, plant/loading and garbage areas) is via the residential lobby. Each tenancy has a presentation to the street frontage.

Landscaping

The application proposes extensive landscaping within the development including the following:

- Street front deep soil planting on Gardeners Road and New Street;
- Landscaped entries to the residential lobbies on both street frontages;
- Landscaped private courtyards;
- Landscaped central courtyard;
- 'Sky gardens' on North Tower Level 1, and South Tower Level 4;
- 'Streets in the sky'. Widened residential walkways which are natural ventilated with landscaped planters and seating;
- Landscaped rooftop terraces ('sky parks') on each building, with a swimming pool and communal facilities provided on the North Tower rooftop.

Subdivision

The proposed development involves the consolidation of the three (3) existing allotments into one (1) Torrens allotment and Torrens stratum subdivision into two lots being Lot 1 (commercial floor area) and Lot 2 (residential levels and basement car parking) in order to facilitate a future Strata subdivision.

SECTION 79C CONSIDERATIONS

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

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

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.

Groundwater was encountered across the site at depths varying from 2-3 metres below natural ground level. Therefore, the basement structure will penetrate the watertable of the locality and as such, the application is classified as Integrated Development in accordance with the *Water Management Act 2000* as the development involves temporary construction dewatering activities.

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. On 9 May 2014, the NSW Office of Water issued Council with a letter providing 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 and is therefore required to be referred to the NSW Roads and Maritime Services. An updated traffic report was prepared by Traffix Traffic Consultants dated 14 April 2014 in accordance with the amended development scheme and was referred to the RMS.

In a letter dated 21 May 2014, the RMS has advised that it has no objection to the proposed development.

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. On 8 April 2014 the applicant submitted a Phase 2 Environmental Site Assessment dated 21 March 2014 and a Remedial

Action Plan prepared by Environmental Investigation Services, dated 7 April 2014.

The findings of the investigation are that the site contains contamination, namely fill (0.4 - 1.4m in depth) with elevated levels of lead, B(a)P, Aldrin & Dieldrin, PCB's and asbestos. The report concludes that the site can be remediated with most of (if not all) the fill removed from the site during excavation works. An Acid Sulfate Soils Assessment should be undertaken prior to excavation. An assessment of groundwater on the site found elevated concentrations of copper and zinc at several locations however this is most likely to be a regional issue rather than site specific.

Council's Environmental Scientist has reviewed the submitted report and has advised that there is no objection to the development in respect of contamination. Appropriate conditions would apply if the application is to be supported.

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 Development

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 policy aims to improve the design quality of

residential flat development in NSW namely to maximise amenity, safety and security and achieve a better built form of buildings and streetscapes. An Architectural Design Statement, a SEPP 65 Assessment and an assessment against the Residential Flat Design Code accompany the application. A design verification statement prepared by Brent Marvin from MD+A Architects, dated 1 August 2013, was also submitted to verify that the plans submitted were drawn by a registered Architect. An updated statement dated 14 April 2014 was also submitted to address the amended scheme.

The Council's Design Review Panel (DRP) has considered the proposed development prior to the lodgment of the application on 2 August 2013. The Panel acknowledged that the aesthetic design should result in a very good outcome and that overall the development is acceptable in principle subject to further detailed planning.

The recommendations of the Panel made at the meeting are:

- *The quality of the street planting in the public domain will be extremely important. For New Street the selection of species must take into account the fact that there will be very little sunlight at ground level during the winter months.*
- *The internal streets need to be very comfortable and excessive exposure to wind and drafts at either open and/or central area would quickly make them unappealing. An acceptable balance between the amenity of the 'streets' and adequate cross ventilation to the flats must be achieved.*
- *The majority of bedrooms face each other and would give rise to visual and aural privacy concerns. While screen planting is proposed it is more difficult to overcome aural privacy. Acoustic concerns need to be addressed without requiring bedroom windows to be shut, encouraging the use of air conditioning.*
- *It is suggested that at every level in both blocks there should be a small extension of the lift lobby space that allows for seating and garden area, perhaps no more than 3 metres deep.*
- *At ground level the screen wall fronts New Street together with landscaping. It is strongly recommended that when the street is realized in the future, that there should be active uses addressing the frontage. The site will look out at an attractive new square. There is the possibility of soho type units with commercial spaces at ground level and internal stairs to the flats above.*
- *The residential entries of both blocks are recessed and are a concern for amenity and security reasons.*
- *The clear glass balustrade to balconies should be reviewed to ensure adequate privacy, useability and screening for clothes drying. This could be from a mix of solid balustrade and operable louvre screens.*
- *Provision could be made for a small communal room within the roof top space with facilities that provide protection from the wind.*

- *The internal elevations facing the central courtyard are somewhat bland and would benefit from additional articulation. Variation in the pattern of balconies would assist.*
- *The façade design of the car park podium walls exposed to view must provide modulation and external finishes treatment to ensure a high quality presentation.*

The design currently before the Panel is an elaboration of the initial design presented to the DRP in August 2013. The applicant has addressed the recommendations of the DRP and has incorporated these into the final design.

The area is currently characterized by commercial/industrial uses which will gradually undergo transition to the high density mixed use/residential development proposed under this development application. To the west of the subject site, the adjacent development at No. 671-683 Gardeners Road proposes one 13-storey building and two 12-storey buildings. The site to the south at No. 653 Gardeners Road is likely to be developed into a 13-storey with a continuous podium which will match the podium of the proposed development, which is consistent with the Masterplan vision for this street frontage. Accordingly, the proposed development will be similar in density, bulk and scale to these new developments.

The Masterplan building envelopes proposed 'L shaped' blocks which would have resulted in the overshadowing of internal courtyard spaces. The proposed design is a much simpler configuration with two parallel blocks of 12 and 13 storeys, with units orientated to the north and south. The podium level has been retained and will create a continuous streetscape once it is matched to the podium of the future development at No. 653 Gardeners Road, which is consistent with the vision for this street frontage as set out by the Masterplan. The podium levels are articulated and have an acceptable presentation to the street. Proposed improvements to the public domain along the frontage of Gardeners Road, when combined with contributions from adjoining developments, are likely to result in good outcome for the streetscape along Gardeners Road, which is currently characterised by heavy traffic conditions.

The design includes a visual break to both the North Tower and South Tower facades that are facing the street frontage, which provides articulation to the building along with increased sunlight into lift/lobby spaces. In accordance with DRP recommendations, small seating areas have been included adjacent to each lift lobby space which provides future residents better access to landscaped areas close to their apartments.

Due to the northerly site orientation, solar access to the subject site during the afternoon will be impacted by the proposed 12 storey building to the northern part of the site. Accordingly, the height of the north tower has been increased to 12 storeys, in line with the adjoining development, in order to provide solar access to a greater proportion of units.

Future landscaping and other embellishments along the New Street frontage will be determined once New Street has been constructed. The applicant will be required to liaise with Council's Landscape Architect to determine appropriate plant species to be established within areas that receive limited solar access. Overall the provision of landscaping including the proposed rooftop 'skyparks'

and the 'skygardens' on Level 1 and Level 4 will improve the visual appearance of the building and afford a high level of amenity to future residents. The issues associated with the control of natural elements within the open residential walkways along with visual and aural impacts from facing units along this walkway have been appropriately addressed through the use of shelter and screening devices, plantings and the installation of wind barriers.

With respect to the activation of New Street, new retail tenancies are proposed to be established once New Street has completed construction, which have a presentation to this frontage. While 'Soho' style units were not implemented the proposal is considered to provide adequate 'live and work' opportunities, with internal access provided to retail tenancies via the residential lobby.

The entry lobbies have been amended to have a small recess into the building. The increased areas within the lobbies will provide opportunities for seating and informal meeting places which are likely to improve passive surveillance of the building entrances.

Shared communal facilities have been provided such as a communal room and pool amenities on the north Tower rooftop, children's play area within the courtyard of Level 1 and seating provided within the lift/lobby spaces. A large central courtyard has been provided with dense plantings and good access to both the North and South Tower.

The amended design has improved the façade design through the use of a mix of solid and transparent balustrades, wind screens to the east and west facades, concrete finishes to the podium walls and a combination of vertical and horizontal window elements.

In performing a detailed assessment, it is considered that the proposed development is consistent with the aims and objectives of the policy. While there are deviations from the Urban Block envisaged under the BBDCP 2013, it is considered that the proposal is consistent with surrounding development in terms of its setbacks, height, bulk and scale. The proposed development generally complies with the building separation requirements and provides appropriate mitigation measures where variations are proposed.

The ten design principles are addressed as follows:

Principle 1: Context

Good design responds to and contributes to its context. Context can be defined as the key natural and built features of an area.

Responding to context involves identifying the desirable elements of a locations current character or, in the case of precincts undergoing transition, the desired future character as stated in planning and design policies. New buildings will thereby contribute to the quality and identity of the area.

Officer Comment: The site falls within the Mascot Station Precinct that has been identified for significant re-development in accordance with the provisions of Botany Bay Local Environmental Plan 2013 (BBLEP 2013) and Part 9A of the Botany Bay DCP 2013.

The surrounding built form context consists of mixed industrial/commercial development. Recently constructed residential flat buildings in this precinct

range from 6 to 13 storeys in height. Effectively, the proposal will occupy the land with a built form that is more contextually envisaged in the future. On this basis, it is considered that the proposed development of the subject site for the purposes of *mixed use development* is consistent with this desired future context.

Principle 2: Scale

Good design provides an appropriate scale in terms of the bulk and height that suits the scale of the street and the surrounding buildings.

Establishing an appropriate scale requires a considered response to the scale of existing development. In precincts undergoing a transition, proposed bulk and height needs to achieve the scale identified for the desired future character of an area.

The scale of the proposed development is similar to several of the approved residential flat developments located in close proximity to the site further to the east and south east, particularly on Gardeners Road, Bourke Street, Church Avenue and Coward Street. Recently constructed developments attain a height of 6 to 13 storeys with podium level commercial premises upon which is erected residential towers.

The height and scale of the proposed development is generally consistent with the built form envisaged for the site under BBLEP 2013 and BBDCP 2013 in that a continuous podium is proposed to Gardeners Road which will now be joined to the future podium of No. 653 Gardeners Road, however the height of the North Tower has been increased from 9 storeys to 12 storeys in line with the proposed development at No. 671 Gardeners Road, which is 12 storeys in height. The lift overruns and part of the proposed communal room encroaches on the 44 metre height limit by 300mm to 1500mm. The Applicant has submitted a Clause 4.6 Variation request which is supported in this instance.

The proposal is generally compliant with the building separation requirements with the exception of the following:

- Levels 9 to 11 between the facing balconies of the North and South Tower which have a separation of 18.75 metres. It is considered that appropriate measures can be implemented such as screening devices, planters and balustrade treatments in order to mitigate any impacts.
- Levels 9 to 12 on the west elevation have an 18 metre separation to the proposed development at No. 671 Gardeners Road. All west facing balconies have been deleted from this elevation and the windows are high silled. Therefore, the proposed 18 metre separation is acceptable.
- Levels 9 to 12 on the east elevation have a 14 metre separation to the conceptual building envelopes provided for the future development of 653 Gardeners Road. It is considered that the adjacent development to the east is unlikely to have balconies to this elevation due to not being able to meet the building separation requirements and appropriate measures could be implemented such as high silled windows and privacy screens. Therefore, the proposed 14 metre separation is acceptable.

Principle 3: Built Form

Good design achieves an appropriate built form for a site and the building's purpose, in terms of building alignments, proportions, building type and the manipulation of building elements.

Appropriate built form defines the public domain, contributes to the character of streetscapes and parks, including their views and vistas, and provides internal amenity and outlook.

The development form is split into two tower buildings above a 4-storey podium as envisaged by the Masterplan. The two towers have a simpler east/west orientation as opposed to the L-shaped building envelopes under the Masterplan, allowing for a larger central courtyard with views from internal facing units. One of the reasons provided by the applicant for the proposed massing is that the application includes the amalgamation of the three sites, which was not anticipated by the Masterplan. Setbacks have been provided from Gardeners Road and the future New Street to allow for land dedications and deep soil landscaping.

Both the North and South Tower have a presentation to their respective street frontages and articulation has been provided through a defined central core, stepped podium, active street frontages and variation of solid and transparent balcony balustrades. The podium walls where they present to the east and west elevations have been provided with concrete treatments to soften the visual appearance of the podium where visible from the adjacent sites.

The buildings comprise a built form that is described as a contemporary style with external elements that provide visual interest. The podium of the proposed development will be joined to that of the future development at No. 653 Gardeners Road, creating a continuous podium along Gardeners road which is encouraged. Despite the deviations from the building envelopes within the Masterplan, the overall built form would be consistent with the desired built form of the Urban Block precinct as it undergoes redevelopment, as envisaged under BBDCP 2013. Potential impacts on the proposed development and resulting from the amended scheme from solar access and overshadowing including a comparative analysis between the Masterplan building envelopes and the amended design are discussed in further detail within this report. The Design Review Panel has advised that the proposed built form is supported subject to a number of recommendations, which have been implemented in the amended design.

Principle 4: Density

Good design has a density appropriate for a site and its context in terms of floor space yields (or number of units or residents).

Appropriate densities are sustainable and consistent with the existing density in an area or, in precincts undergoing a transition, are consistent with the stated desired future density. Sustainable densities respond to the regional context, availability of infrastructure, public transport, community facilities and environmental quality.

The development application proposes an FSR of 3.34:1 which exceeds the maximum FSR of 3.2:1 under Clause 4.4(2) of BBLEP 2013 by approximately

1,273m², which is a variation to the standard by 4.5%. The applicant has submitted a Clause 4.6 Variation to the FSR, which is discussed in further detail within this report.

The applicant has acquired all three allotments and it is proposed to consolidate the land into one allotment, whereas the Masterplan envisaged the separate development of these lots with the requirement for the amalgamation of the smaller residual lot at No. 659 Gardeners Road into No. 661 Gardeners Road.

A total of 337 apartments are proposed, comprising of 74 x studio units, 163 x 1 bedroom units, 98 x 2 bedroom units and two (2) x 3 bedroom units. In support of the proposed unit mix, the applicant has submitted a Residential Market Analysis for mascot, prepared by Hill PDA, dated 10 April 2014. The Market Analysis includes an assessment of the residential unit supply in Mascot over the next three to four years based on developments within the pipeline that are recently completed, under construction, approved or waiting for approval. Based on this information Hill PDA have identified that there is a strong market demand in Mascot for studio and one bedroom apartments.

Principle 5: Resource, energy and water efficiency.

Good design makes efficient use of natural resources, energy and water throughout its full life cycle, including construction.

Sustainability is integral to the design process. Aspects include demolition of existing structures, recycling of materials, selection of appropriate and sustainable materials, adaptability and reuse of buildings, layouts and built form, passive solar design principles, efficient appliances and mechanical services, soil zones for vegetation and reuse of water.

The location, orientation and design of the development provides for natural cross ventilation to all apartments and solar access to the majority of apartments. The Residential Flat Design Code (RFDC) recommends that at least 60% of the proposed units shall achieve flow through ventilation. The proposed design includes open residential walkways which will allow 100% of the proposed units to achieve cross flow ventilation. The applicant has confirmed that all habitable spaces are adequately ventilated, including the majority of kitchens.

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 60% of proposed units will achieve the solar access requirements, the reason being that the development will be impacted by the proposed 12-storey tower to the west which does not conform to the building envelopes set out by the Masterplan. Detailed solar access studies have been provided in support of the application and this aspect of the proposal is discussed in further detail within this report.

- All units within the development are designed with open layouts and private balconies or courtyards.
- BASIX Certificates have been submitted with the application demonstrating the development is capable of meeting thermal, energy, and water efficiency targets.

- Storm water detention tanks are proposed to be constructed within the development however no details have been provided as to whether captured stormwater will be re-used for irrigation of communal landscape areas and car wash bays. Conditions have been included in the recommendation that further details be submitted.

Principle 6: Landscape

Good design recognises that together landscape and buildings operate as an integrated and sustainable system, resulting in greater aesthetic quality and amenity for both occupants and the adjoining public domain.

Landscape design builds on the existing site's natural and cultural features in responsible and creative ways. It enhances the development's natural environmental performance by co-ordinating water and soil management, solar access, micro-climate, tree canopy and habitat values. It contributes to the positive image and contextual fit of development through respect for streetscape and neighbourhood character, or desired future character.

Landscape design should optimise useability, privacy and social opportunity, equitable access and respect for neighbours' amenity, and provide for practical establishment and long term management.

A large communal open space area is proposed between the North and South Tower which is consistent with the Masterplan. This space is located on the podium above car parking and therefore not entirely available for deep soil planting, however sufficient depth is proposed to enable landscaping within the non deep soil areas.

Additional communal landscaped areas are provided within Level 1 and Level 4 'skygardens' which also include seating areas and children's play area. The rooftop areas of both buildings include landscaped terrace gardens or 'sky parks' provided with seating areas, a communal room with tea and coffee facilities and swimming pool with associated amenities. Residential walkways or 'streets in the sky' are proposed which have wide avenues that are open to each elevation and provided with landscaped planters which will be visible from the east and west elevations. Private courtyards and balconies will also be provided with suitable landscaping.

Public domain improvements to the frontage of Gardeners Road and New Street are proposed including new street trees and pavement treatments. The entries to the residential lobbies will be highlighted by landscaped planter boxes.

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 total landscaped area for the site is 40%, comprising 1,475m² within the central courtyard, 647m² on the rooftop of the South Tower and 758m² on the rooftop of the North Tower. No deep soil zones are proposed for the site, due to the podium form of development which is resultant from the low water table and the desired streetscape to Gardeners Rd. Based on the type of landscaping provided the

deficiencies is offset by quantity and quality of landscaping proposed which will have good outcome for visual appearance of the building and high level of amenity afforded to future residents.

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

Good design provides amenity through the physical, spatial and environmental quality of a development.

Optimising amenity requires appropriate room dimensions and shapes, access to sunlight, natural ventilation, visual and acoustic privacy, storage, indoor and outdoor space, efficient layouts and service areas, outlook and ease of access for all age groups and degrees of mobility.

Proposed apartments meet the minimum unit size requirements specified under Part 9A of BBDCP 2013. Apartments are open plan and functional, and each unit is provided with sufficient private open space in the form of a balcony or courtyard and storage space. Due to the north and south orientation of units, each apartment will enjoy views across Gardeners Road to the north, into the central courtyard or across New Street and the future public open space to the south.

An Assessment of Wind Impacts, submitted in support of the application recommends the installation of wind barriers to the open residential walkways and windbreaks to the open courtyards and rooftop terraces in order to mitigate potential amenity impacts on residents from adverse wind conditions. Issues relating to acoustic and visual privacy within the residential walkways have been addressed through the use of landscaping, privacy screens and offsetting habitable rooms where possible.

An assessment of environmental acoustic impacts as well as a road traffic noise and aircraft noise assessment have accompanied the application, which details measures to be implemented to ensure that future 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 proposal is likely to afford residents a high level of amenity and as such the development is consistent with this principle.

Principle 8: Safety and Security

Good design optimises safety and security, both internal to the development and for the public domain.

This is achieved by maximising overlooking of public and communal spaces while maintaining internal privacy, avoiding dark and non-visible areas, maximising activity on streets, providing clear, safe access points, providing quality public spaces that cater for desired recreational uses, providing lighting appropriate to the location and desired activities, and clear definition between public and private spaces.

The development provides for safe direct pedestrian access from Gardeners Road and the future access from New Street. Casual surveillance to the communal open space area within the central courtyard is achieved with apartments overlooking the courtyard. 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

Good design responds to the social context and needs of the local community in terms of lifestyles, affordability, and access to social facilities.

New developments should optimise the provision of housing to suit the social mix and needs in the neighbourhood or, in the case of precincts undergoing transition, provide for the desired future community.

New developments should address housing affordability by optimising the provision of economic housing choices and providing a mix of housing types to cater for different budgets and housing needs.

The subject site is located in an area identified for higher density mixed development. The applicant proposes a unit mix which exceeds the 35% maximum for studio and one bedroom units at 70%. As discussed above, a Residential Market Analysis prepared by Hill PDA has been submitted in support of the application which identifies that there is a high demand for studios and one bedroom apartments in Mascot.

The proposal includes a number of facilities which provide opportunities for social interaction including communal open space within the centralised courtyard and rooftop terraces, the swimming pool and amenities on the rooftop of the North Tower and communal room. Outdoor seating is provided within the rooftop gardens, the sky gardens on Level 1 and Level 4 and close to the lift on each level. The large residential lobbies also provide opportunities for informal meeting places with shared facilities and seating areas. On this basis, the proposal is considered to be consistent with this principle.

Principle 10: Aesthetics

Quality aesthetics require the appropriate composition of building elements, textures, materials and colours and reflect the use, internal design and structure of the development. Aesthetics should respond to the environment and context, particularly to desirable elements of the existing streetscape or, in precincts undergoing transition, contribute to the desired future character of the area.

The façade to Gardeners Road is divided by a large central atrium above the main entry and the commercial awning is capped by an awning/overhang which provides shade and weather protection for pedestrians. A four storey void running through the podium levels to both street frontages acts to break up the

mass of the development at the lower levels and provides a strong vertical element. Feature blade walls run from the ground to the sky parks above in order to unify the ground floor, podium and tower elements, and landscaping runs through the central gap and across the top of the podium. Further articulation is provided through the use of a mix of solid and transparent balcony balustrades.

Once the future development of No. 653 Gardeners Road is underway, the podium will form a continuous podium along Gardeners Road to the corner of Bourke Road as envisaged by the Masterplan. The east and west elevations of the podium are articulated by concrete features where the podium wall is visible from adjacent sites.

Built elements are softened by landscaping and treatments to the public domain such as street tree planting. Overall, the design has a satisfactory presentation to the streetscape and is therefore considered to be consistent with the aims and objectives of SEPP 65.

Residential Flat Design Code

Requirement	Comment	Complies
PART 01: LOCAL CONTEXT		
<i>Building Height</i>		
Development responds to the desired scale and character of the street and local area	The proposed building height is consistent with the desired scale and character of the street. The proposed building height of 45.5 metres, due to lift overruns breaches the maximum height control and a Clause 4.6 Variation has been submitted.	Considered satisfactory within the context of future development of adjoining sites – Refer to Note 2

Allow reasonable daylight access to all developments and the public domain	<p>The proposal provides 60% of apartments with a minimum of 2 hours sunlight during winter. Comments received from the DRP suggest that the non-compliance may be offset with consideration given to the rooftop gardens which will receive direct sunlight throughout the day.</p> <p>The owner of No. 42 Church Avenue has submitted an objection to the application in relation to potential overshadowing of the future development of this site, specifically the future public park to the south.</p> <p>A detailed shadow analysis submitted in support of the application shows that the cumulative impact from future developments to the north, including the proposed development, will result in the park receiving solar access to 9.2% to its area at 10.00am and 33.3% at 11.00am.</p>	Considered satisfactory – Refer to Note 1 regarding solar access and discussion of objection received from No.42 Church Avenue regarding overshadowing.
<i>Building Depth</i>		
Maximum internal depth of building – 18m from glass line to glass line. Where greater than 18m depth, must justify how satisfactory daylight and ventilation is achieved	<p>North Tower = 34m South Tower = 34m</p> <p>Solar access = 60% Cross Ventilation = 100%</p>	No – Refer to Note 1
<i>Building Separation</i>		

<p>Development scaled to support desired area character with appropriate massing/spacing between buildings</p> <p><i>five to eight storeys/up to 25m height:</i> 18 metres between habitable rooms 13 metres between habitable/balconies and non-habitable rooms 9 metres between non-habitable rooms</p> <p><i>9 storeys +/-over 25m height:</i> 24m between habitable rooms/balconies 18m between habitable/balconies and non-habitable rooms 12m between non-habitable rooms</p>	<p><i>North Tower to South Tower</i> Levels 9 to 10 = 18.75m</p> <p>However, appropriate measures can be implemented to facing balconies such as screening, balustrade treatments and planters.</p> <p><i>To 671-675 Gardeners Rd (Western Elevation)</i> Levels 9 to 11 = 18m.</p> <p>Considered to be satisfactory as west facing windows are high sill, therefore privacy impacts are minimal.</p> <p><i>To No. 653 Gardeners Rd (Eastern Elevation)</i> Level 4 to 9 = 14m</p> <p>Considered satisfactory as future development at No. 653 Gardeners Rd is likely to have habitable windows but no balconies on this elevation and appropriate privacy measures to be implemented to these windows.</p>	<p>Considered Satisfactory – Refer to Note 3</p>
<p>Zero building separation only in appropriate context (between street wall building types – party walls)</p>	<p>Zero building separation is proposed between the 4 storey podium and the podium of the future development at No. 653 Gardeners Road. This is considered acceptable in this instance as the design will allow for a continuous streetscape along Gardeners Road as envisaged by the Masterplan.</p>	<p>Yes</p>
<p>Where building step creates terrace, the building separation distance for floor below applicable</p>	<p>Level 11 of North Tower steps back from the central courtyard and the required building separation has been provided.</p>	<p>Yes</p>
<p><i>Street Setbacks</i></p>		

Minimise overshadowing of the street and/or other buildings	<p>North Tower = 3m from Gardeners Road South Tower = 3m from New Street</p> <p>The New Street to the south will be overshadowed throughout the day due to the orientation of the site.</p> <p>No. 671 Gardeners Road will be overshadowed from 9.00am to 10.00am.</p> <p>No. 653 Gardeners Road will be overshadowed from 12.00pm to 3.00pm.</p> <p>No. 42 Church Avenue to the south will be overshadowed from 1.00pm to 3.00pm.</p>	Yes
No part of building to encroach into a setback zone	There are no encroachments into the setback zone	Yes
<i>Side and Rear Setbacks</i>		
Side setbacks minimise impact of development on light, air, sun, privacy, views and outlook for neighbouring properties (including future buildings)	<p><i>Rear Setback</i> South Tower = 3m to New Street</p> <p><i>Side Setback</i> <u>North Tower</u> *Zero lot to podium Level 4 (east and west boundaries) *5m setback from Level 4 to 12 (east and west boundaries)</p> <p><u>South Tower</u> * Zero lot to podium Level 4 (east and west boundaries) *8-9m setback from Level 4 to 13 (eastern boundary) *3-8m setback from Level 4 to 13 (western boundary)</p>	Yes
Rear setbacks maintain deep soil zones	There is a 3m deep soil landscaping area along the southern and northern boundaries of the site, along the street frontages.	Yes
Rear setbacks maximise opportunity to retain/reinforce mature vegetation	The rear setback provides opportunity to reinforce mature vegetation with the 3m deep soil planting area proposed.	Yes
Rear setbacks should optimise use of land at rear and surveillance of the street at front	The rear setback will link into the future New Street to the south.	Yes
Rear setbacks should maximise building separation to provide visual and acoustic privacy	The rear setbacks will provide adequate separation for future redevelopment of the sites to the south.	Yes

<i>Floor Space Ratio</i>		
Development in keeping with optimum capacity of site and local area	The proposal exceeds the maximum 3.2:1 FSR under BBLEP 2013. A Clause 4.6 Variation has been submitted by the applicant. Proposed FSR is in keeping with history of approvals given to similar development within the Precinct. This aspect of the proposed is discussed in further detail within this report.	Considered satisfactory – See discussion of Clause 4.6 Variation below
PART 02: SITE DESIGN		
<i>Site Analysis</i>		
Detailed site analysis required to be submitted with development application	A site analysis was prepared with the lodgement of this DA.	Yes
<i>Deep Soil Zones</i>		
Minimum 25% of open space area of a site should be deep soil zone – more is desirable	20% of open space area (626sqm) is deep soil zone. While this does not comply with the RFDC, more than ample landscaping is provided along with improvements to the public domain. It is also noted that no minimum deep soil zone is required by Council's DCP for mixed use development. Therefore, the proposed provision of deep soil planting is considered to be acceptable under the circumstances.	No – Considered satisfactory
Optimise provision of consolidated deep soil zones by design of basement/sub basement car parking so not to fully cover the site and by use of front and side setbacks	3m wide perimeter deep soil areas are provided to the northern and southern boundaries.	Yes
Optimise extent of deep soil zones beyond the site by locating them contiguous with deep soil zones to adjacent properties	Deep soil zones along the street frontage will be aligned with those on adjoining sites.	Yes
Increase permeability of paved areas by limiting paved area and/or using pervious paving materials	Ample impervious surfaces and landscaping are provided over the central courtyard.	Yes
<i>Fences and Walls</i>		
Respond to identified architectural character for the street/area	Combination of clear glass and solid balustrades proposed to the apartments. No blank walls are proposed to the street. Podium walls visible from the east/west elevations will be provided with concrete treatments to minimise visual impact.	Yes

Delineate public and private domain without compromising safety or privacy	Private open space is delineated by private balconies with planters. Landscaping to the street frontage and central courtyard provides a soft delineation, whilst maintain casual surveillance of both the public and private domain within the site.	Yes
Contribute to amenity, beauty and useability of private and communal open space	Planter boxes, benches and seats are located within the communal open space areas at Level 1 and Level 4, the rooftop 'sky parks' and the central courtyard. The North Tower 'sky park' is provided with a swimming pool, amenities and communal room which enhances the useability of this space. At grade communal area is adequate in size to provide a pleasant and useable space for future residents.	Yes
Retain and enhance amenity of the public domain	The proposal avoids continuous lengths of blank walls to both streetscapes.	Yes
Comprise durable materials that are easy to clean and graffiti resistant	Materials proposed are durable and easily maintained	Yes
<i>Landscape Design</i>		
Improve amenity of open space by good landscape design	Detailed Landscape design submitted with the application, which details high quality treatments at grade, podium level, Level 1 and Level 4 gardens, residential walkways and to Level 12/13 communal terraces.	Yes
Contribute to streetscape character and amenity of the public domain	Public domain improvements will be made along Gardeners Road and the future New Street such as street tree plantings and pavement treatments. It shall be conditioned that a Public Domain Plan be developed in consultation with Council's Landscape Architect.	Yes
Improve energy efficiency and solar efficiency of dwellings and microclimate of private open spaces	60% of apartments meet solar access requirements and 100% receive natural cross ventilation.	Yes
Use of robust elements to minimise maintenance	Materials and elements are robust in nature and will assist with minimising maintenance.	Yes
<i>Open Spaces</i>		
Communal Open space should be minimum 25-30% of site area	40% of site area (3,549m ²)	Yes
Minimum private open space for ground level apartments is 25m ² with minimum 4m dimension in one direction	No ground floor apartments are proposed.	Yes
<i>Orientation</i>		

Position and orient buildings to maximise north facing walls – within 30° east and 20° west of north	All apartments are single aspect with 40% of apartments being north facing.	Yes
Align buildings to street on east-west streets and use courtyards, L-shaped configurations and increased setbacks to side boundaries on north-south streets	The development fronts an east/west street and has been aligned to the street.	Yes
Orient living spaces and associated private open space to north	Majority of apartment's private open space areas and living areas where possible are oriented to the north.	Yes
Building elements used to modify environmental conditions to maximise sun access in winter and sun shading in summer	High silled windows are proposed to the western elevation.	Yes
<i>Planting on Structures</i>		
<p><i>Large trees</i> (16m canopy): min. soil volume 150m³, min soil depth 1.3m, min soil area 10m x 10m</p> <p><i>Medium trees</i> (8m canopy): min soil volume 35m³, min soil depth 1m, min soil area 6m x 6m</p> <p><i>Small trees</i> (4m canopy): min soil volume 9m³, min soil depth 800mm, min soil area 3.5m x 3.5m</p> <p><i>Shrubs</i>: min soil depth 500-600mm</p> <p><i>Ground cover</i>: min. soil depth 300-450mm</p> <p><i>Turf</i>: min. soil depth 100-300mm</p>	Council's Landscaped Architect has advised that the development does not provide adequate soil depths as required by the RFDC. A condition shall be imposed requiring an amended landscape plan which meets the soil depth requirements.	No – Conditions required
<i>Stormwater Management</i>		
Minimise impervious areas by using pervious/open pavement materials	The proposal incorporates a combination of pavement and turf to the communal spaces at grade	Yes
Retain runoff from roofs in water features for landscaping/reuse	The proposal incorporates an OSD system suspended above the parking area. No information has been provided as to the reuse of collected stormwater runoff. Information is required subject to a deferred commencement.	No – Insufficient detail provided
Landscape design to incorporate appropriate vegetation	The proposed landscape plan includes species which promote water minimisation	Yes
<i>Safety</i>		
Reinforce development boundary to distinguish between public and private space	Landscape plan identified appropriate elements to delineate between public and private domain	Yes
Orient building entrances to public street	The building entrances are orientated towards Gardeners Road and New Street with lobby location towards the rear of the site. Commercial tenancies are oriented towards Gardeners Road and New Street.	Yes

Provide clear lines of sight between entrances, foyers and street	Clear lines of sight between entrances, foyers and street are provided.	Yes
Orient living areas with views over public or communal areas	All apartments are orientated to the north or south with views over communal open space or the street frontage.	Yes
Use bay windows/ balconies that protrude beyond main façade to enable wider angle of vision	Balconies protrude beyond the main facade.	Yes
Use corner windows to provide oblique views	No corner windows are proposed.	Yes
Casual views available to common internal areas	Units overlook the central courtyard.	Yes
No blind/dark alcoves in design/layout	Corridors are wide and have openings at each end and the north/south elevations to provide aspect and natural light.	Yes
Provision of well lit routes through the site and appropriate illumination to all common areas	Pedestrian paths through the site are wide and well lit.	Yes
Apartments to be inaccessible from balconies, roofs, windows of neighbouring buildings	Vertical fins or blade walls are provided between balconies.	Yes
Separate residential component of car parking from other building uses and control car park access from public/ common areas	Secure access to the entire site. Commercial/visitor car parking is at grade while residential is concentrated at basement and first floor.	Yes
Direct access for car parks to apartment lobbies for residents	Lift access from basement car park levels to apartment lobbies for residents.	Yes
Separate access for residents in mixed-use buildings	As above	Yes
Visual Privacy		
Site layout to increase building separation	Building separation is generally compliance with RFDC requirements.	Yes
Layout to minimise direct overlooking of rooms/ private open spaces	<p>Windows facing the proposed future developments to the East and West are high silled and therefore will not result in overlooking.</p> <p>The distance between North Tower and South Tower facing balconies is 18.75m at Levels 9-11, which does not comply with the required 24m separation requirement. It is considered that appropriate treatments such as planters, balustrade materials and/or screening could be implemented to mitigate overlooking.</p>	Yes

Use of site and building design element to increase privacy without compromising access to light and air	Vertical fins are provided between adjacent balconies.	Yes
Site Access		
Entries to relate to existing street/subdivision pattern, street tree planting, pedestrian access network	Entries to each building are defined by wide paths with open landscaped areas in the front setback and entry lobbies.	Yes
Entries to be clearly identifiable element in the street	Main entries are clearly identifiable within the streetscapes.	Yes
Direct physical and visual connection between street and entry	Yes	Yes
Clear line of transition between public street, shared private, circulation spaces and individual units	Yes	Yes
Provide separate entries from the street for pedestrians and cars and different uses	The entrances to both the Gardeners Road and New Street are at grade for all users.	Yes
Entries and circulation space of adequate size to allow movement of furniture	Corridor widths are satisfactory.	Yes
Mailboxes to be convenient and not add to street clutter	The mailboxes are located within the ground floor level of the buildings.	Yes
Parking		
Appropriate parking provision	<p>Prior to construction of New Street</p> <p>480 spaces are required as follows:</p> <ul style="list-style-type: none"> • 437 residential; • 34 visitors; • 9 Commercial. <p>505 spaces are proposed.</p> <p>After construction of New Street</p> <p>483 spaces are required as follows:</p> <ul style="list-style-type: none"> • 437 residential; • 34 visitors; • 12 Commercial. <p>485 spaces are proposed.</p>	Yes
Limit visitor parking on small sites where impact on landscape/open space is significant	<p>337 apartments require 34 visitor spaces. There are 34 visitor spaces proposed at grade.</p> <p>Note: The submitted Traffic Report adopts a reduced rate of 1 visitor space per 10 apartments.</p>	Yes

Preference to underground parking – where above ground parking is proposed the design must mitigate impacts on streetscape/amenity	Resident parking is located across one levels of basement parking, one level at grade and one podium level. Parking area is screened by retail shops and units above.	Yes
Provision of bicycle parking easily accessible from ground level	27 bicycle and 7 motorbike parking spaces are proposed at grade.	Yes
<i>Pedestrian Access</i>		
Main building entrance accessible for all from the street – ramps to be integrated into overall building design	Entrances to both the Gardeners Road and New Street are at grade for all users.	Yes
Ground floor apartments and associated private open space to be accessible from street	No ground floor units proposed.	Yes
Maximise accessible, visitable and adaptable apartments – min. AS1428 requirements	10% of units (ie. 34 units) are adaptable.	Yes
Separate and clearly delineated pedestrian and vehicle entries	There is one vehicular access to the site from Gardeners Road. Pedestrian access is from Gardeners Road. Future access for vehicles and pedestrians can be achieved to the new Street to the south.	Yes
Provision of public through-site pedestrian accessways in large developments	Public through site access is not proposed.	No
<i>Vehicle Access</i>		
Max. driveway width = 6m	The driveway width at the Gardeners Rd boundary will be 8.4m. The future details of the relocated vehicular access on New Street will be confirmed through a separate application.	Yes
Maintain pedestrian safety by minimising pedestrian/ vehicle conflicts	There are separate vehicular and pedestrian entry points to the buildings.	Yes
Limited number of vehicle accessways at site	The development has been designed to incorporate a single access point from Gardeners Rad. Future access can be provided to the New Street to the south.	Yes
Car park entry/access located to secondary frontages/lanes	As above	Yes
PART 03: BUILDING DESIGN		
<i>Apartment Layout</i>		

<i>Studio:</i> Internal area = 38.5m ² External area = 6m ² <i>1 Bed cross through:</i> Internal area = 50m ² External Area = 8m ² <i>1 bed maisonette/loft:</i> Internal area = 62m ² External area = 9.4m ² <i>1 bed single aspect:</i> Internal area = 63.4m ² External area = 10m ² <i>2 bed corner:</i> Internal area = 80m ² External area = 11m ² <i>2 bed cross through:</i> Internal area = 89m ² External area = 21m ² <i>2 bed cross over:</i> Internal area = 90m ² External area = 16m ² <i>2 bed corner with study:</i> Internal area = 121m ² External area = 33m ² <i>3 bed:</i> Internal area = 124m ² External area = 24m ²	Units achieve the minimum internal areas.	Yes
Single aspect apartments max 8m depth from window	All single-aspect apartments are greater than 8m in depth.	Yes
Back of a kitchen max. 8m from window	The kitchens are incorporated into the combined dining/living area. For most apartments the back wall of the kitchen is less than 8m from the window.	No
Cross over/cross through apartments over 15m - min. 4m width	All apartments have a minimum width greater than 6m.	Yes
Units to accommodate a variety of furniture arrangements, range of activities, household types, furniture removal/ placement	Most apartments would support a variety of furniture arrangements.	Yes
Unit layout to respond to natural and built environment/ optimise site opportunities	Units layouts maximise solar access to living space. Highlight east and west facing windows to the corner apartments are proposed.	Yes
Kitchen not main circulation space of unit	Kitchens are located along the party wall and for some apartments, such as studios, kitchen are located adjacent to main entry hallways.	No

<i>Apartment Mix</i>		
Variety of unit types and appropriate mix dependant on population trends and location	Studio and 1 bedroom units equate to 70% of all proposed dwellings. A Market Analysis has been provided in support of the proposed unit mix.	No
<i>Balconies</i>		

Where other private open space not provided, at least 1 balcony - primary balconies min. depth 2m, adjacent to living areas and accommodate dining table & 2 chairs (small unit) or dining table & 4 chairs (large unit)	All apartments provide a minimum balcony depth of 2m or greater.	Yes
Balustrade design to enable views, casual surveillance, safety and visual privacy	A mix of solid and transparent balcony balustrades are proposed. All apartments will have views to the street front or to the central courtyard.	Yes
Building services to be integrated with façade and balcony design	All services are proposed to be concealed	Yes
Provision of tap and gas point on primary balconies	There are no details of whether a tap or gas point are provided.	TBA
<i>Ceiling Heights</i>		
Ceilings define spatial hierarchy between areas of a unit, enable better proportioned rooms, maximise heights in habitable rooms, promote use of ceiling fans	Floor to ceiling height of approximately 2.8 metres	Yes
Ceilings allow better access to natural light by use of taller windows, highlight windows and fanlights.	Highlight windows incorporated into units where appropriate.	Yes
Ceiling heights promote building flexibility over time to accommodate other uses where appropriate (i.e. retail/commercial)	All residential apartments have a minimum ceiling height of approximately 2.8m. The commercial floor space premises and lobby levels have a minimum ceiling height of greater than 4.2m	Yes

<i>Flexibility</i>		
Building over 15m long - multiple building entries and circulation cores required	A single building entry and circulation core is provided to each Tower. Multiple entries to the Towers are provided from the central courtyard.	No
Unit layout accommodates changing use of rooms	34 apartments (ie. 10%) are adaptable with flexible layouts to accommodate changing households.	Yes
Structural system to support a degree of future change in building use or configuration	Southern façade of the buildings will form a secondary street frontage with the future New Street. An area of the basement has been set aside and an access point has been provided to accommodate the existing right of carriageway to No.1-3 Kent road. Once New Street is constructed, the right of way will be extinguished.	Yes
<i>Ground Floor Apartments</i>		
Front gardens and terraces contribute to spatial/visual structure of street whilst maintaining privacy	Landscaped terraces and 'sky gardens' are provided to the central core which soften the appearance of the building.	Yes

Where no street setback adequate privacy and safety to be provided by steeping ground floor level, manipulating balustrade design and window heights, integrating screens/bars into elevation design	The street setback is 3 metres. Privacy is achieved to balconies through balustrade treatments.	Yes
Provision of private gardens accessible from living areas	Private balconies are directly accessible from the living rooms.	Yes
High number of accessible and visitable units	34 apartments (ie. 10%) are adaptable with flexible layouts to accommodate changing households.	Yes
<i>Internal Circulation</i>		
Solar access increased through higher ceilings/ taller windows and appropriate landscape selection	All residential apartments have a minimum ceiling height of approximately 2.8m.	Yes
Maximum number of units accessible from single core/corridor = 8	The scheme proposed long open corridors with openings that access to up to 15 apartments. The corridors are broken up by voids, planting and stairwells.	Yes
Long corridors articulated	Corridors are articulated by voids, landscaping, seating areas near the lift lobbies and 'sky gardens' on Level 1 and Level 4.	Yes
<i>Mixed Uses</i>		
Complimentary mix of uses compatible with locality	The proposed mixed use development with retail shops and apartments above is compatible with the desired land use of the local area.	Yes
Office = min. 3.3m ceiling height Retail = min. 3.3-4m ceiling height	The commercial/retail premises have a minimum ceiling height of 4.2m.	Yes
Max 10-18m building depth for residential/ smaller commercial uses	Commercial tenancy depths range from 5m – 15m	Yes
Separate commercial services (eg loading dock) from residential	Separate loading area for commercial tenancies to cater for 1 x SRV and 2 x MRV.	Yes
Separate, clearly identified residential entry and commercial entry from street	Yes	Yes
Active uses front major streets	Ground floor commercial tenancies face Gardeners Road and future New Street	Yes
No blank walls on ground level	Blank walls at ground level are not visible from the street.	Yes
Acoustic separation between uses (esp. for residential uses)	Residential sits above commercial tenancies. Therefore future uses shall be subject to assessment of any potential acoustic impacts on the residential occupants above.	Yes
<i>Storage</i>		
Min 50% storage within apartment accessible from hall or living area Min. storage requirements: <i>Studio/1 bed</i> = 6m ³	Apartments comply with minimum storage requirements.	Yes

2 bed = 8m ³ 3 bed & above = 10m ³		
Storage not within units appropriately secured	Secure basement storage is provided.	Yes
Basement storage does not compromise ventilation, fire regulations	The basement level storage areas are located either behind certain car spaces, within the periphery of the parking levels.	Yes
Basement storage excluded from FSR calculations	The basement level storage is excluded from FSR calculations.	Yes
Acoustic Privacy		
Building separated from neighbouring buildings	As discussed above, building separation is considered to be satisfactory.	Yes
Like uses of adjoining units located together ie living rooms with living rooms, bedrooms with bedrooms	Adjoining apartments have like room uses where possible	Yes
Storage/circulation spaces used to buffer noise	Where possible, internal storage areas/circulation areas have been used to provide an adequate buffer.	Yes
Minimal amount of shared/party walls	Due to the site orientation, shared party walls are not minimised	Yes
Internal apartment layout separates living/service areas from bedrooms	Internal configuration separates living areas from bedrooms in most units	Yes
Daylight Access		
Living rooms/private open spaces for at least 70% of units receive min. 3 hours direct sunlight b/n 9am-3pm midwinter (possible reduction to 2 hours in dense areas)	60% of units receive at least 2 hours of direct sunlight in midwinter	No – Refer to Note 1.
Max. 10% single aspect units with southerly aspect (SW-SE)	All apartments within the development are single aspect and 34% are south facing.	No
Oriented to optimise northern aspect	Due to the orientation of the buildings the majority of apartments either have a northerly or southerly aspect.	Yes
Direct daylight access to communal open space b/n March – September	Communal areas on Level 12/13 and communal courtyard have adequate daylight access.	Yes
Lightwells not primary source of daylight to habitable rooms	Lightwells are not primary source of daylight to the habitable rooms of the north-facing apartments.	Yes
Natural Ventilation		
Max building depth = 10-18m	Despite the buildings having a proposed maximum building depth of greater than 18 metres they have an open residential corridors to allow cross ventilation.	No
Min. 60% units naturally cross ventilated	100% of all apartments have natural ventilation.	Yes
Min. 25% kitchens access to natural ventilation	Most kitchens have natural ventilation.	Yes
All habitable rooms have direct access to fresh air	All habitable rooms have direct access to a window.	Yes
Awnings and Signage		
Awnings provided to retail strips	No awnings proposed.	N/A

giving continuous cover and complementary to existing awnings		
Signage integrated with design of development	No details provided at this stage.	N/A
Signage provides clear and legible directions for residents and visitors	No details provided at this stage.	N/A

<i>Facades</i>		
Facades provide appropriate scale, rhythm and proportion given building use and context	There are strong horizontal and vertical framing elements with a mix of solid and glass balustrades, and concrete blade and end walls.	Yes
Facades reflect orientation of site	The strong horizontal and vertical framing elements are more prominent on the northern and southern elevations which orientate towards the Gardeners Road/New Street streetscape.	Yes
Important corners provided with visual prominence	Corner elements provide interest along the Gardeners Road and New Street frontage.	Yes
Building services (eg downpipes) integrated with façade and balcony design	All services are adequately concealed	Yes
<i>Roof Design</i>		
Roof design related to desired built form	The North Tower has a communal terrace at Level 12, which is integrated with plant rooms/lift overruns	Yes
In dense areas roof area utilised for open space	Yes	Yes
Design facilitates roof area to be utilised (now or in future) for sustainable functions	Yes	Yes

Table 7 - RFDC Compliance

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

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies to the proposed development. The development application was accompanied by BASIX Certificate No. 1005528656 committing to environmental sustainable measures.

Botany Bay Local Environmental Plan 2013

The provisions of the Botany Bay Local Environmental Plan 2013 (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
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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 <i>mixed use development</i> 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 – Additional Permitted Uses apply to the site?	N/A	Clause 2.5 does not apply to the subject site.
What is the height of the building? Is the height of the building below the maximum building height?	No	Max. Height = 44m North Tower = 44.3m South Tower = 45.5m A Clause 4.6 variation has been submitted. Refer to discussion below.
What is the proposed FSR? Does the FSR of the building exceed the maximum FSR?	No	Max. FSR = 3.2:1 The proposed FSR is 3.34:1. A Clause 4.6 variation has been submitted. Refer to discussion below.
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. R3 zoned land adjoins to the immediate south of the subject site.
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?	Yes	The subject site is not affected by the road widening.
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.

Principal Provisions of BBLEP 2013	Compliance Yes/No	Comment
6.1 – Acid sulfate soils	Yes	Clause 6.1 – Acid Sulfate Soils. The subject site is affected by Class 2 Acid Sulfate Soils. The development application has not been accompanied by an Acid Sulfate Soils Assessment. An investigation of ASS will be required prior to any excavation commencing on site as the presence of ASS is likely at the subject site. The development is considered to be consistent with Clause 6.1 of BBLEP 2013.
6.2 – Earthworks	Yes	Clause 6.2 – Earthworks. The proposed development involves bulk excavation to accommodate 1 basement level. The development application has been accompanied by a Geotechnical Assessment. The development application is Integrated Development and in a letter dated 30 September 2013, the NSW Office of Water has provided its General Terms of Approval for the proposed development. The development is considered to be consistent with Clause 6.2 of BBLEP 2013.
6.3 – Stormwater management	No	Clause 6.3 – Stormwater. The development application involves an underground On Site Detention system/rainwater tank suspended above the ground level parking area. Insufficient information has been provided to enable engineering assessment of the proposed drainage system. As such it is recommended that this information be provided through a deferred commencement. The development as proposed is not consistent with Clause 6.3.
6.8 - Airspace operations	Yes	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. In a letter dated 16 May 2014, SACL raised no objections to the proposed maximum height of 45.5 metres. The development is considered to be consistent with Clause 6.8 of BBLEP 2013.

Principal Provisions of BBLEP 2013	Compliance Yes/No	Comment
6.9 – Development in areas subject to aircraft noise	Yes	Clause 6.9 – 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.
6.16 – Design excellence	Yes	<p>Clause 6.16 Design Excellence. The proposed design has been the subject of consideration by Council's Design Review Panel in 2012. The recommendations of the DRP have largely been incorporated into the current design before the Panel.</p> <p>The proposal does not comply with the maximum FSR and height. A clause 4.6 Variation has been submitted.</p> <p>The bulk and scale of the proposed development is considered to be satisfactory and the building is generally compliant with building separation requirements under the RFDC.</p> <p>The built form is contemporary in nature and presents an articulated facade providing enhanced interest to both street frontages and the precinct generally. The design provides ample landscaping and communal open space which is expected to provide a good level of amenity to future residents.</p> <p>On this basis, it is considered that the development application is consistent with Clause 6.16 of BBLEP 2013.</p>

Table 8 – BBLEP 2013 Compliance Table

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

Clause 4.6 Exceptions to development standards

Clause 4.6 is reproduced as follows:

(1) *The objectives of this clause are as follows:*

- (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
 - (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*
- (2) *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*
- (3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
 - (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
 - (b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*
- (4) *Development consent must not be granted for development that contravenes a development standard unless:*
 - (a) *the consent authority is satisfied that:*
 - (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
 - (b) *the concurrence of the Director-General has been obtained.*
- (5) *In deciding whether to grant concurrence, the Director-General must consider:*
 - (a) *whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
 - (b) *the public benefit of maintaining the development standard, and*
 - (c) *any other matters required to be taken into consideration by the Director-General before granting concurrence.*
- (6) *Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if:*
 - (a) *the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or*
 - (b) *the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.*

Note. When this Plan was made it did not include Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E3 Environmental Management or Zone E4 Environmental Living.

- (7) *After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).*
- (8) *This clause does not allow development consent to be granted for development that would contravene any of the following:*
 - (a) a development standard for complying development,*
 - (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy – Building Sustainability Index – BASIX (2004) applies or for the land on which such a building is situated,*
 - (c) clause 5.4.*

In a letter dated the 13 August 2013, the Department advised Council that its delegations in respect of Clause 4.6 remain and that Council does not need to apply for further delegations. Therefore, Council is not required to seek concurrence for each Clause 4.6 variation.

The proposed height of North Tower at 45.5m and South Tower at 45.3m exceeds the 44m height limit permitted under Clause 4.3 of BBLEP 2013.

The development also proposes a FSR of 3.34:1 which exceeds the maximum FSR of 3.2:1 under Clause 4.4 of the BBLEP 2013.

As such, the applicant has submitted with this development application a Clause 4.6 variation that argues that compliance with the height and FSR is unreasonable and unnecessary in the circumstances of the case on the following grounds:

- (a) in relation to FSR:*
 - i. the objectives of the FSR standard (see Section 3.3.4.2 above) are satisfied notwithstanding the non-compliance of 0.14:1 which is proposed;*
 - ii. the objectives of the B4 Mixed Use zone are satisfied notwithstanding the noncompliance of 0.14:1 which is proposed;*
 - iii. the non-compliance of 0.14:1 is minor (only 4.37%), is of no environmental significance, and with no associated adverse impacts created;*
 - iv. the extent of the required variation to the FSR standard is less than other variations which have been approved for other developments in the Mascot Station Precinct;*
 - v. the proposal (including the non-compliant floor space ratio) will have no unreasonable traffic generation impacts or implications;*

- vi. *the proposal (including the non-compliant floor space ratio) will have no unreasonable bulk or scale impacts;*
- vii. *the proposal has a general scale which is commensurate with that of other buildings approved or likely to be approved in the Mascot Station Precinct;*
- viii. *the proposal will be consistent with the desired built form character for the Mascot Station Precinct; and*
- ix. *the proposal will result in significant public benefits, as detailed in **Appendix 4A**, including making provision for a New Street to the south of the site, increasing the supply of housing close to public transport, employment, facilities and services, and remediation and re-use of a large amalgamated site for purposes commensurate with an urban activation precinct.*

(b) in relation to height:

- i. *the objectives of the height standard (see Section 3.3.4.1 above) are satisfied notwithstanding the minor non-compliances which are proposed;*
- ii. *the objectives of the B4 Mixed Use zone are satisfied notwithstanding the minor non-compliances which are proposed; and*
- iii. *the Design Review Panel specifically requested that the Applicant explore whether the roof of the southern tower could be used as communal open space (in addition to the already proposed communal open space on the northern tower) and the non-compliance with the 44.0-metre height limit is in part related to the provision of access to and the provision of facilities on the roof;*
- iv. *the extent of the non-compliance is minor, both in terms of excess height and the limited areas of the rooftops where the height exceedances occur;*
- v. *the height non-compliances will not be seen from the street;*
- vi. *therefore, it is unreasonable in the circumstances of the case for the proposal to have to comply, particularly as there are no adverse environmental impacts associated with the height non-compliance.*

Pursuant to Clause 4.6(4)(a):-

- a) *the consent authority can be satisfied that this written request has addressed the requirements of Clause 4.6(3) in relation to both the FSR standard and the height standard; and*
- b) *the proposal is in the public interest because it does not raise any inconsistencies with the objectives of the relevant height and FSR standards or the objectives for development in the B4 Mixed Use zone.*

The objection to the height and FSR controls have been assessed in accordance with relevant case law and the applicant variation request is supported for the reasons outlined below.

1. Is the requirement a development standard?

The subject FSR and height limit is a development standard contained in Clause 4.3 and 4.4 of Botany Bay Local Environmental Plan 2013.

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

Clause 4.3 of Botany Bay LEP 2013 contains the following specific objectives in respect of height.

(1) The objectives of this clause are as follows:

- (a) to ensure that the built form of Botany Bay develops in a coordinated and cohesive manner,*
- (b) to ensure that taller buildings are appropriately located,*
- (c) to ensure that building height is consistent with the desired future character of an area,*
- (d) to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development,*
- (e) to ensure that buildings do not adversely affect the streetscape, skyline or landscape when viewed from adjoining roads and other public places such as parks, and community facilities.*

Clause 4.4 of Botany Bay LEP 2013 contains the following specific objectives in respect of FSR.

(1) The objectives of this clause are as follows:

- (a) to establish standards for the maximum development density and intensity of land use,*
- (b) to ensure that buildings are compatible with the bulk and scale of the existing and desired future character of the locality,*
- (c) to maintain an appropriate visual relationship between new development and the existing character of areas or locations that are not undergoing, and are not likely to undergo, a substantial transformation,*
- (d) to ensure that buildings do not adversely affect the streetscape, skyline or landscape when viewed from adjoining roads and other public places such as parks, and community facilities,*
- (e) to minimise adverse environmental effects on the use or enjoyment of adjoining properties and the public domain,*
- (f) to provide an appropriate correlation between the size of a site and the extent of any development on that site,*
- (g) to facilitate development that contributes to the economic growth of Botany Bay*

The subject site is located within in the Mascot Station Town Centre Precinct. Part 9A of BBDCP 2013 envisages a built form for the subject site similar to that proposed. The Applicant has adequately identified the objectives applying to height and FSR under BBLEP 2013.

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?

Clause 4.3 Height

The applicant has provided the following justification:

- “i. the objectives of the height standard (see Section 3.3.4.1 above) are satisfied notwithstanding the minor non-compliances which are proposed;*
- ii. the objectives of the B4 Mixed Use zone are satisfied notwithstanding the minor non-compliances which are proposed; and*
- iii. the Design Review Panel specifically requested that the Applicant explore whether the roof of the southern tower could be used as communal open space (in addition to the already proposed communal open space on the northern tower) and the non-compliance with the 44.0-metre height limit is in part related to the provision of access to and the provision of facilities on the roof;*
- iv. the extent of the non-compliance is minor, both in terms of excess height and the limited areas of the rooftops where the height exceedances occur;*
- v. the height non-compliances will not be seen from the street;*
- vi. therefore, it is unreasonable in the circumstances of the case for the proposal to have to comply, particularly as there are no adverse environmental impacts associated with the height non-compliance.”*

It is noted that the applicant’s response does not specifically address the objectives of this standard. Notwithstanding this, the applicant’s justification is considered to be reasonable.

While the proposal deviates from the building envelopes under the BBDCP 2013 Part 9A, Figure 5C – Urban Block 1, the podium will be joined with that of the future development at 653 Gardeners Road, resulting in a continuous street frontage along Gardeners Road as envisaged by the BBDCP 2013. While the proposed 12 storey North Tower differs from the two L-shaped 9 storey towers shown in Figure 5C, the proposed height is in line with the approved development at No 671 Gardeners Road and the future development of No. 653 Gardeners Road. On this basis, the proposed development would be consistent with the surrounding form of development and the future desired character of the Mascot Station Town Centre Precinct

The exceedence of the 44 metre height limit by 1.5 metres (3.4% variation to the standard) is not considered to be significant and the additional height would not be noticeable from the street, result in loss of views or adverse visual impacts on the streetscape from the increased bulk and scale of the building. The majority of the built form is below the height limit and the non compliance is a result of the lift overruns and a section of the rooftop communal area. The extent of the encroachment is as follows:

North Tower (12 storeys)

Lift overrun – 45.5m

Communal room – 44.3m (leading edge)

South Tower (13 storeys)

Lift overrun – 45.2m

Canopy – 45m (leading edge)

The proposed variation to the height would result in less significant shadow impacts to adjoining sites in comparison to a scenario where a more significant portion of the building were to breach the height limit.

It is noted that the DRP recommended that an enclosed communal room be provided to the South Tower resulting in the roof of the South Tower breaching the height limit by 300mm. The communal room will provide a significant benefit to residents by providing sheltered facilities and therefore the encroachment of this element of the building is reasonable.

The height of the building is below the Obstacle Limitation Surface (OLS) and Sydney Airport Corporation Limited has raised no concerns regarding the proposed height, subject to conditions.

Based on the reasons provided above, a reduction in height to comply with this standard is not considered to be necessary.

Clause 4.4 FSR

The applicant has provided the following justification:

- i. the objectives of the FSR standard (see Section 3.3.4.2 above) are satisfied notwithstanding the non-compliance of 0.14:1 which is proposed;*
- ii. the objectives of the B4 Mixed Use zone are satisfied notwithstanding the noncompliance of 0.14:1 which is proposed;*
- iii. the non-compliance of 0.14:1 is minor (only 4.37%), is of no environmental significance, and with no associated adverse impacts created;*
- iv. the extent of the required variation to the FSR standard is less than other variations which have been approved for other developments in the Mascot Station Precinct;*
- v. the proposal (including the non-compliant floor space ratio) will have no unreasonable traffic generation impacts or implications;*
- vi. the proposal (including the non-compliant floor space ratio) will have no unreasonable bulk or scale impacts;*
- vii. the proposal has a general scale which is commensurate with that of other buildings approved or likely to be approved in the Mascot Station Precinct;*
- viii. the proposal will be consistent with the desired built form character for the Mascot Station Precinct; and*
- ix. the proposal will result in significant public benefits, as detailed in **Appendix 4A**, including making provision for a New Street to the south of the site, increasing the supply of housing close to public transport, employment, facilities and services, and remediation and*

re-use of a large amalgamated site for purposes commensurate with an urban activation precinct.

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 address concerns raised by Council in relation to the proposed residential units and had increase the internal areas of residential units to comply with the requirements of Botany Bay Development Control Plan 2013.

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 through the creation of the link from Gardeners Road through to the new street at the southern boundary.

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 height and FSR controls remain relevant to the proposed development. The proposed development is consistent with the objectives of the height and FSR controls in BBLEP 2013, as detailed above.

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

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 BBLEP 2013 as detailed above.

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

Clause 4.3 Height

The following table identifies sites at the periphery of the precinct and within the centre of the precinct with similar heights exceeding 44m.

Site Address & DA No.	Approved Height	Approval Date
619-629 Gardeners Road (DA10/324)	51m AHD	3 August 2011
208 Coward Street (DA11/67)	51m AHD	5 December 2011
7 Bourke Street (30-34 John Street) (DA09/378)	49.1m AHD	November 2011
2-4 Haran Street (DA13/213)	51m AHD	June 2013

103 O’Riordan Street (DA11/135)	51m AHD	20 June 2012
19-33 Kent Rd, Mascot(13/200)	51mAHD	20 March 2014

Table 2 – Comparison of Height

The variation sought is considered appropriate in this instance. The heights listed above are at Obstacle Limitation Surface 51m AHD, as stipulated by Sydney Airport Corporation Limited maps. The 44m height exceedences relate to plant areas, lift overruns and communal open space and are not visible from public domain areas.

Clause 4.4 FSR

The applicant has provided the following justification to demonstrate that the underlying objectives of the FSR control of BBLEP 2013 would be thwarted or defeated if compliance were required:

The floor space ratio control within the Botany Bay Local Environmental Plan 2013 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.

List comparison table of other approved DA’s FSR variations.

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
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

Address	FSR Control	Approved FSR (BBLEP 1995)	Approval Date
(Court Approval)			
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
671-683 Gardeners Road, Mascot (JRPP Application)	3.2:1	3.2:1	May 2014

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 Clause 4.6 variation contends that compliance with the height of 44m and 3.2:1 FSR development standard is unreasonable and unnecessary in the circumstances of the case with respect of the aims and objectives of BBLEP 2013 and the relevant matters of consideration.

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 BBDCP 2013 comparatively high minimum unit sizes (compared to those set out in the Residential Flat Design Code). Due to past industrial uses, the land is susceptible to contamination and remediation. In addition, the site is affected by high water table issues. These two factors alone contribute to the high cost of development within the precinct.

The rationale and argument presented in the Clause 4.6 variation is generally agreed with and it is recommended that the development standard relating to the maximum height and FSR for the site as contained within Clauses 4.3 and 4.4 of the BBLEP 2013 should be varied in the circumstances to allow the development to attain a height of 45.5m and floor space ratio of 3.34:1.

5. Is the granting of consent consistent with the aims and objectives of Clause 4.6 of BBLEP 2013, namely:

(a) To provide an appropriate degree of flexibility in applying certain development standards to particular development.

As noted elsewhere, the additional height and floor space created is a product of considered site analysis and careful spatial arrangement of built and landscape elements across the site as well as the development potential of the adjoining land to the east and west. Full

numerical compliance in this instance would not provide any additional benefits to the locality.

- (b) ***To achieve better outcomes for and from development by allowing flexibility in particular circumstances.***

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.

Furthermore, the additional height and 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 development standard, in the absence of any tangible impact, would be unreasonable and without basis.

Clause 4.6(4) states the following:

- (4) *Development consent must not be granted for development that contravenes a development standard unless:*
- (a) *the consent authority is satisfied that:*
 - (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
 - (b) *the concurrence of the Director-General has been obtained.*

It is considered that the Applicant has addressed the requirements of Clause 4.6(4) and the granting of consent is consistent with the aims and objectives of Clause 4.6 of BBLEP 2013.

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 height and FSR standard does not raise any matters of significance for state or regional planning. The variation is also not contrary to any state policy or 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 BBDCP 2013 and will provide public benefits over what is required under the DCP which will result increased accessibility through the precinct, a contribution to reducing vehicle reliance and increased amenity for future residents.

Botany Bay Development Control Plan (BBDCP) 2013

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

Part	Control	Proposed	Complies
3A3.4 On-Site Loading and Unloading Facilities	<p>Service Vehicle Requirements:</p> <p>Retail – 600-999m² requires 1 x courier, 1 x SRV, 1 x MRV</p> <p>Residential Flat Buildings – >200 units requires 4 service bays plus 1 MRV per 100 dwellings</p>	<p>The proposal requires a total of 4 service bays designed to accommodate at least 1 Small Rigid Vehicle (SRV) and 3 Medium Rigid Vehicles (MRV).</p> <p>The development provides 1 x SRV and 2 x MRV service bays within the at-grade parking area.</p> <p>While the number of service bays provided is considered to be acceptable, the vehicular access points and parking area has not been designed with the appropriate clearances required by AS 2890.2 to allow MRV's to access the site. Therefore, the proposed servicing arrangements are unacceptable. It is recommended that amended plans be provided through a deferred commencement.</p>	No – Amended plans required
3J.2 Aircraft Noise Exposure Forecast	C2 Where building site is classified as "conditional", development may take place, subject to Council consent and compliance with AS2021-2000.	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.	Yes
Part	Control	Proposed	Complies
9A.4.3.1 Height	C1 The maximum height of buildings must be in accordance with the Height of	North Tower = 45.5m South Tower = 45.2	No – Refer to Discussion

	Buildings Map and Clause 4.3 of the Botany Bay Local Environmental Plan 2013.	The development exceeds the 44m height limit by 1.2-1.5m. As such a Clause 4.6 variation has been submitted.	above
	C3 Development must conform to the maximum height of buildings in storeys for Urban Blocks 1, 3, and 4 as shown in Figures 16, 17, 19 and 20.	North Tower exceeds the 9 storey building envelope at 12 storeys. South Tower complies with the 13 storey envelope, however exceeds the 44m height control by 1.2m.	No – Refer to Note 2
9A.4.3.2 Floor Space Ratio (FSR)	C1 The maximum FSR of buildings must be in accordance with the Floor Space Ratio Map and Clause 4.4 and 4.4B of the Botany Bay Local Environmental Plan 2013.	Proposed FSR is 3.34:1 (29,294m ²) The development exceeds the maximum FSR by 0.14:1. As such a Clause 4.6 variation has been submitted	No - Refer to Discussion above
	C3 Development must comply with the future layout and built form controls for Urban Blocks 1, 3, and 4 in Figures 11, 12, 14 and 15. This requirement may result in the FSR not being achieved.	Figure 11-Urban Block 1 envisages a built form for the site consisting of 4 towers (two towers addressing each north/south street frontage) In between each tower is a 4 storey podium connecting with the future development at No. 671 and sites to the south west. The podium does not connect to No 653 Gardeners Road to the west and a setback existing between these two developments. The proposed building form does not comply with future layout of the site as set out by Figure 11. Refer to discussion below.	No – Refer to Note 2
9A.4.3.3 Site Amalgamation and Subdivision	C1 The redevelopment of lots within Urban Blocks 1, 3 and 4 must conform to the amalgamation pattern in Figures 21, 22, 24 and 25.	The proposal involves the amalgamation of the three lots of land known as No. 659, No. 661-663 and 665-669 Gardeners Road. The amalgamation of these three lots was not anticipated or required under the BBDCP	Yes

		2013.	
	C2 The redevelopment of lots within Urban Blocks 1, 3 and 4 must generally conform to the lot alignments in Figures 26, 27, 28 and 29.	The development application conforms with the lot alignments with the dedication of New Street.	Yes
9A.4.3.4 Street Setbacks	C1 All development within Urban Block 1 must comply with the street setbacks identified in Figures 30 and 31.	The average setbacks of 6m (min. 5-7m) to Gardeners Rd and New Street are achieved. Gardeners Road = 6m New Street = 5m	Yes
	C4 All development within Urban Blocks 1, 3 and 4 must comply with the section plans in Figures 36, 37, 38, 39, 40, 41 and 42.	None of the sections within Figure 37 apply to the subject site.	N/A
9A.4.3.5 Side and Rear Setbacks	C1 All development within Urban Blocks 1, 3 and 4 must comply with the side and rear setbacks identified in Figures 11, 12, 14 and 15.	The side setback to the eastern boundary with 653 Gardeners Road is not consistent with that depicted in Figure 11. This is considered to be acceptable given the podiums for each development will be joined to create a continuous street frontage to Gardeners Road. This inconsistency is due to the proposed building form and the impacts of the Bourke Street road widening to No. 653 Gardeners Road. The required 3m setback to New Street is provided by the proposal. This area will be provided with landscaping and public domain improvements which will result in a satisfactory outcome for this street frontage.	No – Considered satisfactory
9A.4.3.6 – Building	C1 Mixed Use developments containing residential units	The proposed development generally complies with	Refer to Note 3

Separation	must comply with the principles and provisions of State Environmental Planning Policy No. 65 (SEPP65) and the RFDC.	required building separation distances.	
9A.4.4.4 Active Street Frontages and Awnings	C1 All development within Urban Blocks 1, 3 and 4 must provide retail or commercial street frontages where shown in Figures 49, 50, 51 and 52 .	Figure 49 shows commercial frontage to Gardeners Road. The application proposes commercial/retail to the Gardeners Road and New Street frontages, which will form an active street frontage once construction of New Street is completed.	Yes
	C2 All development within Urban Blocks 1, 3 and 4 must provide awnings where shown in Figures 53, 54, 55 and 56 .	The subject site is not required to have an awning at the street edge under Figure 53.	Yes
	C4 There must be a minimum clear passage width of 2 metres between the adjacent building and leased area for outdoor dining to allow for clear passage of pedestrian traffic at all times.	There is adequate area in the forecourt for outdoor dining and pedestrian movement.	Yes
9A.4.4.5 Residential and Non Residential Interface	C2 Shadow diagrams must be provided for all development proposals for the summer and winter solstices. Shadow diagrams must show shadow impacts at 9.00am, 12.00 noon and 3pm for both solstices.	Shadow diagrams and detailed shadow elevations are submitted in support of the application.	Yes
9A.4.4.6 Building Articulation	C2 Blank external walls of greater than 100m ² must be avoided.	There are no extensive areas of blank walls proposed that would be visible from the public domain. Podium walls on the eastern and western elevations viewed from adjacent properties will be articulated using concrete textures and treatments. The podium wall on the east elevation will be joined to the development of No. 653 Gardeners Road and therefore will not be visible.	Yes
9A.4.4.7 Dwelling	C1 Dwellings are to have the following minimum areas:	Apartment sizes meet the minimum requirements.	Yes

Size and Mix	Studio: 60m ² 1 bedroom: 75m ² 2 bedrooms: 100m ² 3 bedrooms: 130m ²	Studios: 60-68m ² 1 Bedroom: 75-82m ² Bedroom: 106-123m ² 3 Bedrooms: 156m ²	
	C2 The combined total number of studio units and one-bedroom apartments/dwellings must not exceed 35% of the total number of apartments/dwellings within any single site area.	The combined total of studios and 1 bedroom units is 70%	No – Refer to Note 4
9A.4.4.8 Landscaped Area	C4 Use appropriate plant species for screening that do not unreasonably block sunlight and air movement on neighboring sites.	Appropriate plant species are proposed.	Yes
	C5 Provide a sufficient depth of soil above paving slabs, in accordance with SEPP 65 Residential Flat Design Code, to enable growth and long term health of the selected species.	Insufficient soil depths are provided. It is recommended that a condition be imposed to ensure adequate soil depth for planting.	No – Condition required
	C8 Developers are required to execute all nominated proposed public domain works identified on Figures 57, 58, 59 and 60, including landscaping works.	The developer will be required to make public domain improvements to the frontages at Gardeners Road and New Street. Appropriate conditions are recommended to reflect these requirements.	Yes
9A.4.4.9 Private Open Space and Communal Open Space	C2 The minimum private open space requirement per dwelling for multi dwellings and residential flats are as follows: Min. POS requirements: <i>Studio/1 bed</i> = 12m ² <i>2 bed</i> = 15m ² <i>3 bed</i> = 19m ² <i>4 bed</i> = 24m ²	Studio/1 bedrooms = 13-21m ² 2 bedrooms = 21-27m ² 3/4 bedrooms = 44m ²	Yes
	C5 The minimum communal open space requirement for multi dwellings is 15% of the site area (only applies to sites with 15 or more dwellings) and residential flats is 20% of the site area.	40% of site area (ie. 3,549m ²) including rooftop, sky gardens and central courtyard.	Yes
	C7 More than 70% of the communal open space area	More than 70% of communal open space is capable of	Yes

	should be capable of growing plants, grasses and trees.	growing plants, grasses and trees.	
9A.4.4.11 Car Parking	<p>C1 Car parking provision must comply with the following car parking rates:</p> <ul style="list-style-type: none"> Commercial and retail development: consistent with the recommendations of the Mascot TMAP 1 bedroom dwelling: 1 parking space 2 bedroom dwelling: 2 parking spaces 3 bedroom (or more) dwelling: 2 parking spaces 1 space per 7 dwellings for visitors <p>Note 1: Submitted Traffic Assessment adopts a rate of 1 visitor space/10 units as previously required under BBDCP No. 35.</p> <p>Note 2: Submitted Traffic Assessment adopts a rate of 1/80sqm due to proximity of Mascot Train Station.</p>	<p><u><i>Proposed (Before New Street)</i></u></p> <p>Residential</p> <p>Studio = $74 \times 1 = 74$ 1 bedroom = $163 \times 1 = 163$ 2 bedroom = $98 \times 2 = 196$ 3 bedroom = $2 \times 2 = 4$ Residential Total = 437 Visitor = 1 space per 10 apartments = 34</p> <p>Retail</p> <p>GLA $695\text{m}^2/80 = 9$</p> <p>Total Required = 480 spaces Total Proposed = 505 spaces</p> <p><u><i>Proposed (After New Street Completion)</i></u></p> <p>Residential</p> <p>Studio = $74 \times 1 = 74$ 1 bedroom = $163 \times 1 = 163$ 2 bedroom = $98 \times 2 = 196$ 3 bedroom = $2 \times 2 = 4$ Residential Total = 437 Visitor = 1 space per 10 apartments = 34</p> <p>Retail</p> <p>GLA $980\text{m}^2/80 = 12$</p> <p>Total Required = 483 spaces Total Proposed = 485 spaces</p> <p>Note: Reduction of 20 spaces due to the establishment of new retail GLA fronting New Street.</p>	Yes
9A.4.5.4 Solar Access and Shadow	<p>C3 Development must demonstrate:</p> <p>(i) Neighbouring developments will obtain at</p>	Some overshadowing will occur to No. 42 Church Avenue to the south and No. 653 Gardeners Road to the	Yes

	<p>least three hours of direct sunlight to 50% of the primary private open space and 50% of windows to habitable rooms; and</p> <p>(ii) 30% of any common open space will obtain at least two hours of direct sunlight between 9am and 3pm on 21 June.</p>	<p>East.</p> <p>Submitted shadow diagrams and solar access studies demonstrate that the shadow impact is anticipated by the DCP building envelopes.</p>	
9A.4.5.7 Wind Mitigation	<p>C1 All new buildings are to meet the following maximum wind criteria:</p> <p>(i) 10 metres/second along commercial/retail streets;</p> <p>(ii) 13 metres/second along main pedestrian streets, parks and public places; and</p> <p>(iii) 16 metres/second in all other streets</p>	<p>A Qualitative Wind Impact Assessment has been submitted with the application prepared by SLR dated 29 July 2013.</p> <p>The submitted report identifies that several areas of the development such as the rooftops and open hallways may exceed the comfort criteria. Specific measures are recommended to be incorporated into the design to mitigate against these effects.</p>	Yes – subject to design measures

Note 1 – Solar Access

In accordance with the RFDC and Clause 4C.5.8 of the BBDCP 2013, living rooms and private open spaces for at least 70% of units should receive a minimum of 3 hours direct sunlight during midwinter. For dense areas this requirement may be reduced to 2 hours. The Mascot Town Centre Precinct is considered to be a high density area and as such it is considered appropriate to require 2 hours sunlight between 9.00am and 3.00pm midwinter.

According to the solar access studies carried out by SLR Consulting, dated 10 April 2014, the proposed development will achieve 2 hours of solar access to 57.23% of apartments within the development. Therefore, the proposal does not comply with the RFDC, representing a shortfall of 41 apartments that would not receive the required solar access.

In the Statement of Environmental Effects, the applicant has stated that the non-compliance is mainly due to the adjacent development at No. 671 Gardeners Road (approved May 2014) which proposes a 12 storey tower approximately 12m from the western boundary. On the contrary, the solar access study shows that only 4 additional apartments (1.17%) would benefit if the development at No. 671 Gardeners Road were to be constructed as per the BBDCP 2013 building envelopes. Therefore, the provision of solar access is considered to be

largely due to the proposed design, which consists of single aspect apartments, 30% of which are south facing.

Scenario	Sun Access Results on June 21 Winter Solstice
Scenario 1: 12 storey North Tower with DCP envelope to the West	<ul style="list-style-type: none"> The proposed development was found to provide 60.23% of the residential development with 2 hrs or more sunlight on the Winter Solstice, between the hours of 9.00 am to 3.00 pm at a 'sampling rate' of 15 minute intervals.
Scenario 2: 12 Storey North Tower with DA proposal to the West	<ul style="list-style-type: none"> The proposed development was found to provide 57.23% of the residential development with 2 hrs or more sunlight on the Winter Solstice, between the hours of 9.00 am to 3.00 pm at a 'sampling rate' of 15 minute intervals.
Scenario 3:	<ul style="list-style-type: none"> The proposed development was found to provide 59.05% of the residential development with 2 hrs or more sunlight on the Winter Solstice, between the hours of 9.00 am to 3.00 pm at a 'sampling rate' of 15 minute intervals when 671 is moved by additional 9 m to the west.

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The solar studies do not indicate the proportion of units would achieve solar access had the development been designed in accordance with the L-Shaped courtyard apartments as envisaged in the BBDCP 2013 envelopes and no alternative designs have been provided. It is expected that if the building envelopes were to be adhered to a better outcome in could be achieved in terms of solar access to apartments, albeit a much reduced development yield from the current proposal. In considering the application the Panel is requested to take into account the following comments:

- The subject site is located within a urban renewal precinct which is characterised by large development sites, higher densities, 12-13 storey building heights and large bulky developments resulting from these factors. In accordance with the LEC Principle for Solar Access, solar access within high density urban areas is harder to protect and therefore the claim to retain it is not as strong.
- The DRP have commented on the difficulty in providing solar access, given the high density nature of the area. The DRP have indicated support the proposed design as follows:

'The Masterplan proposed several 'L-shaped' blocks which possibly could have been developed into satisfactory residential floor plans, but would result in overshadowing of courtyard spaces and posed the challenge typical of this plan of resolving the layout of units located at internal corners. The applicant has instead developed plans with a simpler configuration... The podium forms at both street frontages have been retained, and generally this proposition offers potentially better outcomes in relation to human scale facing the street, amenity of units and courtyard spaces.'

'The proposed 60% only of units receiving 2 hours or more of sunlight at midwinter is a concern but is largely due both to constraints of potential development on adjoining properties, and the high density permitted in the draft planning controls. There is also the potential for attractive roof-top

communal areas with unobstructed sunlight available to all residents which would to some extent offset the shortfall.'

- The application will provide 40% of the site area as communal open space (significantly greater than the 20% RFDC requirement), including a large central courtyard (1,475sqm), sky gardens on Level 1 and Level 4 and rooftop 'sky parks' with communal room and swimming pool. The rooftop areas received unlimited solar access and the central courtyard would receive at least 2 hours sunlight to 50% of its area.
- All units within the development are provided with natural ventilation and ample private open space and therefore a reasonable level of amenity is still achieved to apartments without solar access.
- Single aspect apartments may be more appropriate for the subject site given the site orientation. Adherence to the L-shaped buildings within the BBDCP 2013 building envelopes or alternative designs which increase number of corner or west facing apartments may create additional challenges and may not produce a better result for the site.
- Approximately 30% of apartments within the development are south facing single aspect apartments. Internal changes could be implemented such as reducing or merging south facing apartments to improve the proportion of units achieving the minimum 2 hours of solar access. However, this would have no tangible benefits to the proposal.

While the proposal does not meet the minimum solar access requirements under the RFDC, the proposal may be considered acceptable on the basis that residents will be afforded a high level of amenity from the increased provision of communal open space and amenities such as the rooftop sky park.

Note 2 – Building Height

The objectives of Height under Section 9A.4.3.1 are as follows:

- O1 To ensure the scale of new buildings is consistent with the desired future character of each urban block within the Mascot Station Town Centre Precinct;*
- O2 To enable buildings, open space and public domain areas to achieve an acceptable level of daylight access; and*
- O3 To ensure development has minimal impact on neighbouring properties in terms of potential loss of views, loss of privacy, overshadowing or visual intrusion.*

The Height of Building Map in BBLEP 2013 limits the height of buildings for the subject site at 44m. The proposed heights of the North Tower and South Tower are 12 storeys and 13 storeys respectively. However, the lift overruns will exceed the 44m height limit by 1.3-1.5m. The applicant has submitted a Clause 4.6 variation to the maximum height which is discussed in detail in this report.

In addition to the Height of Buildings map under BBLEP 2013, the BBDCP 2013 specifies additional height requirements in storeys for sites located in Urban Block 1. In this regard, Figure 16 of the DCP envisages a 9 storey building fronting Gardeners Road and a 13 storey building fronting New Street.

While the initial design complied with the Figure 16 storey limit, the amended design submitted on 14 April 2014 raised the North Tower from 9 storeys to 12 storeys. The reasons for raising the height as provided by the applicant were to bring the North Tower in line No. 671 Gardeners Road which was recently approved for the development of a 13 storey building, and to increase the proportion of units receiving adequate solar access in response to the increase shadow impacts from this adjoining development.

The storey height limit and building envelopes as provided under the BBDCP 2013 are indicative of a development outcome only. Therefore, variations to the height and alternate building envelopes can be considered provided that the proposal complies with the Vision Statement and Urban Block Character Statements. In this regard, the following comments should be taken into consideration:

- The building meets the maximum height limit under the BBLEP 2013 with the exception of the lift overruns. The proposed Clause 4.6 variation to the height is supported for the reasons outlined in this report.
- The development generally complies with the RFDC with the exception of building separation (See Note 3) and solar access (See Note 1).
- The development will be adjoined by a 13 storey buildings to the east and west, therefore the proposed height is consistent with the surrounding form of future development and the future desired character of Urban Block 1.
- The increase in height the number of storeys to the North Tower will not result in overshadowing impacts to adjoining development. The building is adequately articulated and results in a satisfactory presentation to the street and the increased height will not result in an adverse impact on the streetscape.
- The RFDC states that slab or block apartment designs are suitable for large urban sites, with higher densities and when a strong urban form is desired such as reinforcing the edge of an important precinct or perimeter block. In this regard, the subject site is on the north boundary of Urban Block 1 and it is considered that a strong precinct edge would be established along Gardeners Road by creating a 12-13 storey building height along this frontage which is consistent with adjoining development at No. 653 and 671 Gardeners Road.
- The height of the development is below the Obstruction Limitation Surface. The application was referred to Sydney Airport Corporation Limited and it was advised that the proposal is acceptable, subject to conditions.

For the reasons above, while the proposal varies from the storey height and building envelopes under the BBDCP 2013, the building height is considered to be acceptable and would not warrant the refusal of the application.

Note 3 – Building Separation

The requirements for building separation under the RFDC are as follows:

- *One to four storeys/<12m:*
 - 12 metres between habitable rooms*
 - 9 metres between habitable/balconies and non-habitable rooms*

6 metres between non-habitable rooms

- *Five to eight storeys/up to 25m height:*
18 metres between habitable rooms
13 metres between habitable/balconies and non-habitable rooms
9 metres between non-habitable rooms
- *Nine storeys +/>25m height:*
24m between habitable rooms/balconies
18m between habitable/balconies and non-habitable rooms
12m between non-habitable rooms

The proposed development provides less than the required building separation distances to the eastern boundary to No. 653 Gardeners Road and the western boundary to 671 Gardeners Road. The North and South Tower also have a non-complying building separation of 18.75m between facing balconies at Levels 9 and 10.

The separation distance to No. 671 Gardeners Road is considered to be satisfactory on the basis that the development has been provided with a 6m setback from the boundary as required by Figure 11. In addition, corner apartments have been provided with high silled windows to and therefore will not be overlooked by the balconies on the eastern elevation of the adjoining future development.

Conceptual building envelopes provided by the applicant for the future development of No 653 Gardeners Road to the east show a 14 metre separation between the two developments. It is considered likely that the future development at No. 653 Gardeners Road will have no balconies on its western elevation to the proposed developed as these units would be overshadowed or west facing. High silled windows are provided to the western elevation of the proposed development and therefore the building separation is considered to be satisfactory.

The Panel should note that the current design represents an integrated approach to the orderly development of the site to the east and west of the development site.

With respect to the separation distance between the North and South Tower, Levels 9 and 10, it is considered that appropriate measures can be implemented such as plantings, screens or balustrade treatments. It is also noted that the windows of each building achieve a separation of 24 metres and therefore any potential non-compliance relates to the balconies alone. On this basis, the non-compliance with the SEPP is considered to be minor.

Note 4 – Unit Size and Mix

In accordance with the BBDCP 2013, Part 9A, Clause 9A.4.4.7, the total number of studio and one bedroom apartments must not exceed 35% of total apartments within the development. As indicated in the table below, the total

number of studio and one bedroom apartments for the proposed development is 70%, which does not comply with Part 9A 4.4.7.

	TOTAL	Unit Mix
Studio	74	22%
1 bedroom	163	48%
2 bedroom	98	29%
3 bedroom	2	1%
	337	100%

In support of the proposal, the Applicant has submitted a Residential Market Analysis for Mascot, prepared by Hill PDA, dated 10 April 2014. The Market Analysis includes an assessment of the residential unit supply in Mascot over the next three to four years based on developments within the pipeline that are recently completed, under construction, approved or waiting for approval. The analysis also includes recently approved applications such as No. 671 Gardeners Road and 19-33 Kent Road. Based on this information Hill PDA have identified that there is a strong market demand in Mascot for studio and one bedroom apartments.

Address	Status	Completion	Units	Studio	1b	2b	3b
37-39 Church Avenue, 36-42 John Street & 8 Bourke Road	Construction	Jul 2014	209	12%	12%	75%	0%
27 Church Ave & 18A John St	DA approved	Jun 2017	80	11%	15%	73%	0%
2-4 Haran Street & 1 Church Ave	Construction	Oct 2015	113	11%	18%	72%	0%
112 High Street	DA approved	Mar 2015	5	0%	40%	40%	20%
13A Church Avenue	DA approved	Feb 2016	80	14%	33%	0%	54%
581-587 Gardeners Road	DA approved	Jan 2017	84	0%	42%	58%	0%
659-669 Gardeners Road (Subject Site)	Currently pre-selling	Jul 2016	337	22%	48%	29%	1%
103-105 O'Riordan Street	DA	Dec 2014	54	40%	27%	27%	4%
39 Kent Road	DA approved	Oct 2016	142	9%	11%	75%	4%
19-33 Kent Road	DA submitted	2018	985	21%	44%	35%	0%
671-683 Gardeners Road	DA submitted	Nov 2019	242	23%	15%	62%	0%
Total			2,331	18%	34%	46%	2%

Source: Cordell Connect, Hill PDA Research (April 2013)

Residential Supply Pipeline in Mascot – Hill PDA 2014, Page 25

The key findings of the market analysis are as follows:

- *There is a strong demand for apartments in Mascot which is evident by the quantum of development proposals, take-up rates and rising sales prices;*
- *Demand is strong due to the suburb's attributes being in close proximity to the airport and the Sydney CBD and having good public transport infrastructure. In particular, it has a train station on the rail line between Sydney CBD and the Airport;*
- *Demand for studio and 1-bedroom dwellings in Mascot is particularly strong. This reflects the typical profile of buyers being:*
 - *Young professionals and young / small families who are predominately price-conscious renters and first homebuyers;*

- *A strong component of buyers from Asia or Asian ethnicity attracted by place rather than space and proximity to the train station;*
- *Investors and second home buyers; and*
- *Ageing residents seeking to downsize from detached houses or to upgrade from older apartments.*
- *The demand for smaller units is likely to remain strong owing to declining household sizes in Mascot (from 2.8 persons per dwelling in 2001 to 2.6 persons in 2011), a reduced rate of fertility and increasing production costs;*
- *The market is observed to be price-sensitive. Studio and 1 bedroom units are particularly in high demand as these units are more affordable and more aligned to the requirements of buyers;*
- *There is a shortage of studio and 1 bedroom units in Mascot as indicated by marked capital appreciation on the re-sale of these units. At the time of this Study there were very few 1 bedroom units available for rent. Despite strong demand for studio and 1-bedroom units the predominant stock available is 2-bedroom units demonstrating the undersupply of small units and the mismatch between supply and demand;*
- *Constrained supply of smaller units (studio and 1 bedroom units) results in an inability of the development industry to address the needs of the growing resident population. As a consequence the growth in values and prices of these smaller units will continue to outstrip that of larger units, further exacerbating the affordability problem;*
- *Housing affordability is a key demand driver for the purchase or rental of studios and 1 bedroom units in Mascot. A household with the median income for Greater Sydney (\$75,000 per annum in 2011 based on ABS data) could not afford to purchase a new 1 bedroom unit in Mascot without experiencing some financial stress (assuming 90% debt at 6.5% interest). Similarly households with the median income for Greater Sydney could only afford to pay \$433 a week rent which is less than typical rental costs for all types of units in Mascot. Affordability is therefore an important local issue;*
- *Mascot suburb and Botany Bay LGA are underrepresented with 1 bedroom units (10% and 8% respectively) when benchmarked against Inner Sydney and Eastern Suburbs (22%) and this underrepresentation is attributed to Council's direct policy of minimising such accommodation;*
- *There is a strong relationship between the size of residential units and their price. In today's market a 25sqm increase in the size of a unit in the City of Botany Bay results in at least \$110,000 price increase, and probably as high as \$150,000 if an additional car space is provided. The impact of the minimum unit sizes mandated by Council's DCP therefore is to adversely impact affordability. Based on income and affordability levels in Botany Bay and Sydney LGA, enforcing Council's bedroom mix and apartment size requirements will result in a fall in demand for apartments in the order of 20% to 30%;*
- *The DCP requirements undermine supply of dwellings because marginal revenue from the marginal floor space barely covers the marginal cost. In fact there may be some loss in profit which results in a decline in residual land values thereby undermining development feasibility; and*

- *Third parties (the rest of the Botany Bay community that are not partied to any transactions) remain unaffected at best. At worst they may even experience some adverse impact if the DCP results in larger bulkier buildings.*

While the proposal does not comply with the BBDCP 2013, the RFDC states that an appropriate unit mix should be determined based on population trends and location. Therefore, in determining the application, the Panel must take into consideration the key findings of the Residential Market Analysis as to whether an appropriate unit mix has been achieved.

(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 application. It is considered that the proposal would be unlikely to result in significant adverse environmental, social or economic impacts in the locality.

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

These matters have been considered in the assessment of the development application. The subject site has a long history of industrial/commercial uses. Pockets of contamination have been identified on site and within the groundwater, however adequate information has been submitted to confirm that the site can be made suitable for the proposed mixed use development. In addition, an acoustic report has been submitted to demonstrate that the development can meet the acoustic requirements of sites affected by ANEF 20-25 and road traffic noise impacts. Accordingly, it is considered that the site is suitable for the proposed development.

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

The development application was notified for a period of 30 days from 21 August 2013 to 20 September 2013 in accordance with Council's Notifications Policy together with the Integrated Development Provisions under the Environmental Planning and Assessment Act 1979. Two (2) submissions were received from nearby landowners and are briefly summarised as follows:

- 42 Church Avenue: Concern of increased overshadowing from the building form of the proposed south tower differing from envelope and form outlined in the BBDCP 2013.
- 653 Gardeners Road: No. 653 Gardeners Road is the adjoining neighbour to the south of the subject site. It is expected that this site will also be redeveloped in the future but is also affected by the future road widening works to Bourke Road. Therefore, the potential impacts of the proposed development with respect to the development potential of the adjoining site at No. 653 Gardeners Road are crucial to the assessment. In this regard, the landowner raised concerns regarding side setbacks along common boundary, proposed balconies on the east elevation and building separation distances between the towers.

Negotiations between the applicant and the adjoining landowner at No. 653 Gardeners Road resulted in the application being amended to delete all east facing balconies and relocate the South Tower a further 3m to the west. Conceptual building envelopes have been submitted which propose a zero lot setback to No. 653 Gardeners Road with the 4 storey podium linking to the podium of the adjoining development to form a continuous street frontage to Gardeners Road. A proposal for the development of No. 653 Gardeners is currently being prepared for submission and it is considered that the concerns raised by this landowner are now resolved.

The amended proposal was renotified to nearby landowners for a period of 30 days from 30 April 2014 to 14 May 2014. One (1) further submission was received from the owner of No. 42 Church Avenue in response to the amended plans. The objector states that the proposal will have a significant impact to the future public park and development of No. 42 Church Avenue and that the South Tower should be reduced by a storey in order to comply with the height and FSR. The objection is summarised as follows:

- *The proposal significantly overshadows the proposed public park and causes additional overshadowing on the residential building envelopes on No. 42 Church Avenue as set out in the DCP.*
- *The proposed development is considered unreasonable when considering the proposed non-compliances with the height and FSR controls, the 'rules of thumb' contained in the RFDC and the non-compliance with the building envelopes suggested in the DCP.*
- *It is acknowledged that 42 Church Street lies directly south of the application site and as such will be subject to a level of overshadowing. However, reducing the level of development on the application site such that it complies with the maximum height and FSR controls would go some way to improving the level of solar access to 42 Church Avenue. Requiring compliance with the relevant planning controls would not result in an unreasonable impact on the development potential of the application site.*
- *The bulk and scale of the building is inflated as the development exceeds the maximum height and FSR controls and the internal lobbies/walkways are excluded from the calculation of GFA. While the internal lobbies will improve the amenity to the future residents of the development, it is to the detriment of neighbouring developments due to the increased overshadowing impacts this generates.*
- *In a meeting held with Council in December 2013, it a comment was made that the proposed park could be relocated to the eastern boundary of No. 42 Church Avenue so that it would receive greater sunlight. While this option should be explored, Council does not have the information to assess the impacts of such a proposal. Further, should the park be relocated a residential building would need to be repositioned in this location. The level of solar access to that building should not be to the detriment of a non-complying scheme to the north. Therefore, whether the park is located in an alternative position is an irrelevant consideration.*

- *The proposal exceeds the maximum FSR control by 0.14:1 or 1,226m². Level 12 of the southern building has a total GFA of 1,315m². Therefore if this level of the building were to be deleted the proposal would comply with both the height and FSR controls and would have a lesser impact on 42 Church Avenue.*

The applicant's response to the objection is summarised as follows:

- *The objector's property is located to the south of the site. In circumstances where buildings up to 44.0 metres are permissible on the site which is in a dense urban area, the objector would have a clear expectation that there will be overshadowing from development to the north. In this regard, the proposal complies with the rear setback requirement in the DCP. As a consequence, the upper levels of the proposed southern building are setback just over 15.0 metres from the common boundary with the objector's boundary. The upper level of any new development on the objectors property will similarly need to be setback 15.0 metres from the common property boundary, resulting in a building separation of around 30 metres.*
- *The DCP permits a building of 13 storeys on the subject site with its upper levels set back 15.0m from the common boundary with the objectors property, and that is what is proposed. The objector would like it to be 12 storeys, but that is not what the DCP shows.*
- *The height of the proposed 13-storey building is around 3.0m below the 44.0-metre building height along the building's southern edge (having been reduced slightly in height by around 700mm as part of the April 2014 amendments) and only steps up to more than 44.0 metres where the glazed rooftop canopy (which is limited in its extent) extends only 1.0 metre or so over the height limit, with the lift overruns (which are ever more limited in their extent) extending only 1.2 metres above the height limit.*
- *The "views from the sun" which have been provided by SLR show that the non-compliant rooftop elements have no additional shadow impact on the objectors property. What is more, the solar access analysis provided by SLR shows very little net additional shadow impacts associated with the amended proposal when compared with both the DCP building envelopes and the original proposal.*
- *Insofar that the objector then raises FSR as a ground for objection, the proposed FSR is only 4.37% over the 3.2:1 limit, is not associated with any non-compliant height element and has no impact whatsoever on the extent of overshadowing. The overshadowing to which the objector objects comes from a part of the southern building which has a compliant height and a compliant rear setback.*
- *It is thus untenable for the objector to allege that the proposed development will have generally unacceptable overshadowing impacts. Furthermore, the objector has provided no details of any inability for a future development on No.42 Church Street to satisfy SEPP 65 solar access criteria – they simply say that it is unacceptable. However, it is clearly evident from the SLR solar access analysis (as submitted on 10 April 2014) that the DCP building envelopes on 42 Church Street are*

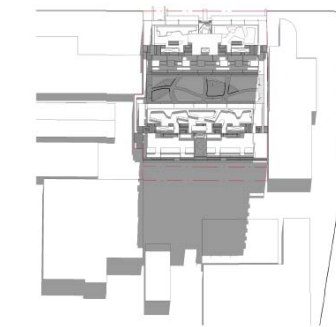
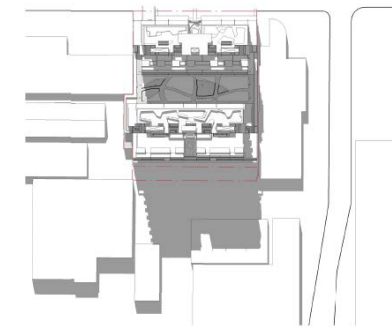
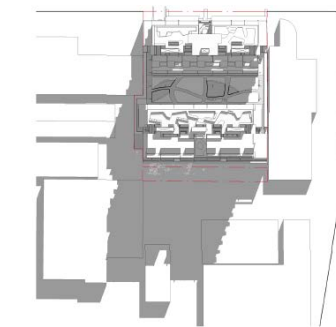
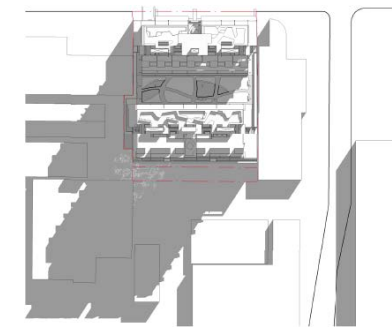
substantially in sun throughout the mid-winter day, no doubt reflecting the 30m building separation which will be provided.

Council Comments:

Detailed shadow diagrams and elevations prepared by SLR consulting were submitted in support of the application which provides a comparative analysis of the cumulative shadow impact from the development of the sites to the north, including the proposed development, against the shadow impact from the DCP building envelopes. The findings of the analysis are referred to in the table below:

Time on June 21	% of open space area with solar access with DCP model (A)	% of open space area with solar access with original Avantra DA model (B)	% of open space area with solar access with amended Avantra DA model (C)
9.00	0.0%	0.0%	0.0%
10.00	1.5%	5.0%	9.2%
11.00	35.9%	26.7%	33.3%
12.00	24.9%	1.1%	2.5%
13.00	9.3%	1.1%	1.9%
14.00	0.0%	0.2%	0.0%
15.00	0.0%	0.0%	0.0%

Avantra Solar Studies 42 Church Avenue - SLR Consulting (10 April 2014)





Avantra Solar Diagrams – Sheet No. DA 52A & 52B

As can be seen from the table above, the proposal results in reduced overshadowing in the morning at 10.00am (7.7% increase in solar access) and increased overshadowing impact after midday (reduction of 22.4% at 12.00pm and 7.4% at 1.00pm). Under the DCP building envelopes and the proposed development scheme, the park will be significantly overshadowed at all other times of the day, during the winter solstice.

It is agreed that the increased FSR and the open residential corridors contribute to the bulk and scale of the overall development. However, the South Tower maintains the required setbacks from the rear boundary and complies with the 13-storey height limit in this location. The non-compliance with the FSR relates to the increase in building height to the North Tower from 9 to 12 storeys where the proposal was amended in response to the adjoining development proposal at No. 671 Gardeners Road. The shadow from the North Tower has no impact on No. 42 Church Avenue and therefore the overshadowing is not considered to be related to the non-compliance with the FSR. As discussed previously in this report, the encroachment of the South Tower on the 44m height limit by 1.2m is due to part of the glazed roof and lift overruns on top of the building, which are not considered to have a significant impact on the shadow extent.

The DCP building envelopes indicate two 13-storey tower buildings resting on a 4-storey podium fronting New Street. While the proposed development differs from the envelopes with respect to the number of towers and specific locations of these buildings, the development still maintains the overall built form anticipated by the building envelopes which consists of a 13-storey building above a 4-storey podium with a void provided between the building

which provides articulation to the façade and some solar access penetration to the south.

It should be noted that the DCP building envelopes indicate a development outcome only and should not be applied strictly to individual applications. In addition, it should be noted that the consolidation of the three sites were not anticipated in the building envelopes and therefore some deviations from the built form should be expected in this circumstance.

Based on the above, it is considered that the proposed building form is consistent with the building envelopes and the future character of surrounding development which consists of 13-storey buildings with high densities. Accordingly, it is considered that the proposed built form and the associated shadow impacts to the south are reasonably anticipated. Furthermore, as the envelopes are conceptual, the public park may be relocated to improve solar access. However, this will be subject to a more detailed assessment once an application has been submitted for No. 42 Church Avenue.

In accordance with the LEC Principles for assessing impact on solar access, the argument for the protection of sunlight in redevelopment areas with high density is harder to maintain than in areas with lower densities. As such, the Panel should consider whether the impact on the public park is reasonable given the context of the future redevelopment of the adjoining sites, where the controls allow for similar heights and densities to occur.

(e) The public interest.

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

Other Matters

External Referrals

- *Ausgrid (Formerly Energy Australia)*

Ausgrid have by letter dated 20 August 2013 advised that a new substation is required to service the proposed development. In response, the applicant has provided a new substation to the northwest corner of the site, on the frontage to Gardeners Road.

- *NSW Office of Water*

The Office of Water in a letter dated 17 May 2014 have provided their General Terms of Approval to the proposed development.

- *NSW Police Service*

NSW Police in a letter dated 31 August 2013 have raised no objection to the proposed development, subject to conditions.

- *Sydney Airports Corporation Limited (SACL)*

SACL by letter dated 16 May 2014 confirmed that they raise no objections to the development to a maximum height of 45.5metres as shown on the plans. This does not include the height required for construction cranes, etc and further approvals will be required prior to issue of a Construction Certificate.

- *Roads and Maritime Service (RMS)*

The Application is “Traffic Generating Development” and was referred to RMS. The proposal was considered by RMS and in a letter dated the 21 May 2014, RMS have advised that they have no objection to the proposed development, subject to conditions.

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. Appropriate conditions are recommended to be imposed on any consent issued.

Section 94 Developer Contributions

At a 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 337 residential units. As such, the calculations are as follows:

- 337 units @ \$20,000.00 each = \$6,740,000.00

The Section 94 Contributions for the commercial component (retail/row shops) of the proposed development is not included in the above Directive and as such is subject to Council’s Section 94 Contributions plan 2005-2010 and Mascot Station Section 94 Plan.

As such, the calculations for the retail component are as follows:

Section 94 Contributions Plan 2005-2010:

- | | |
|--------------------------------|---------------|
| • Community Facilities | \$ 11, 380.46 |
| • Administration | \$ 1,848.00 |
| • Shopping Centre Improvements | \$ 8,272.00 |
| • Open Space & Recreation | \$ 11,176.00 |

Retail Total \$32, 676.46

Section 94 Contributions Plan – Mascot Station Precinct:

- Public Road Land Dedications \$ 55,811.00

Therefore a total Section 94 Contribution of \$6,828,487.46 is required to be paid to Council in accordance with the draft schedule of Conditions attached to this report.

The applicant may elect to enter into a Voluntary Planning Agreement (VPA) with Council for the payment of the above levy. Given that the future New Street is to be constructed by the developer, the VPA may also include a monetary contribution in lieu of the construction of New Street. If this is to occur, a signed undertaking will be required to be submitted.

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 an FSR of 3.34:1 and height of 45.5 metres which exceeds the maximum FSR of 3.2:1 and 44 metre height limit under the BBLEP 2013, however the applicant has submitted a Clause 4.6 Variation which demonstrates that the proposal satisfies the underlying objectives of the height and FSR controls and that the proposal will result in public benefits over what is required under the DCP which will increase amenity for future residents. The Variation to the maximum height and FSR is considered to be well founded and the variation to the height and FSR controls is supported by Council in this case.

The application was the subject of two (2) objections and the matters have been addressed in the body of the report.

New Street will be dedicated to Council and the construction will be funded by Applicant. As the timing for completion relies on the dedication of land from redevelopment proposal from each individual property the exact timing and costing of the new public road is not known. In order to ensure the provision of New Street the applicant will be required to enter into a Deed of Agreement with Council to provide for the dedication and construction of the road. This requirement has been imposed by way of a deferred commencement condition.

An existing right of carriageway burdens the subject site to benefit No. 1-3 Kent Street. The proposal has made provision for the right of carriageway and access to the subject site by way of a temporary vehicular access from Gardeners Road. In accordance with RMS requirements the access must be extinguished after the completion of construction for the New Road and the applicant proposes to infill the redundant vehicular access with commercial floor space. Due to uncertainty regarding the delivery of the new road, and to ensure that the cost burden of relocating the access is not transferred to the body corporate, the Deed of Agreement will require the Applicant to carry out the construction and design works for the extinguishment of the right of way and vehicular access from Gardeners Road.

The proposal has been assessed in accordance with Section 79C of the Environmental Planning and Assessment Act 1979 and the Botany Bay Local Environmental Plan 2013. The proposal is permissible in the B4 Mixed Use zone, and is considered to result in a development which is suitable in the context. It is therefore recommended

that the Panel grant approval to the application subject to the conditions in the attached schedule.

RECOMMENDATION

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

- (a) Grant consent to the Clause 4.6 variation requests under Botany Bay Local Environmental Plan 2013 to permit a maximum FSR of 3.34:1 and a maximum building height of 45.5 metres; and
- (b) Grant Development Application No. 13/135 a 'deferred commencement' consent under Section 80(3) of the Environmental Planning and Assessment Act 1979 for a mixed use development comprising the following; demolition of existing building, site works and remediation; construction of one x 12-storey mixed use building (North Tower) and one x 13-storey residential flat building (South Tower) with a total floor space ratio of 3.34:1 and a maximum building height of 45.5 metres providing a total of 337 residential apartments; 980m² of commercial/retail floor space to Gardeners Road; one level of basement, one level at grade and one level of podium car parking for 485 vehicles; dedication of new public land with a total area of 795m² for the planned construction New Road; embellishment of the public domain along Gardeners Road and New Street frontages; amalgamation of three existing lots into one allotment and Torrens stratum subdivision.

DEFERRED COMMENCEMENT CONDITIONS OF CONSENT

This consent is not to operate until the Applicant satisfies the Council within twelve (12) months from the date of this determination, the following: -

- DC1 Submission of a detailed stormwater drainage plan for the collection and design shall be prepared in accordance with all relevant sections of Botany Council's Stormwater Management Technical Guidelines (SMTG) and incorporate but not be limited to the following:
- a) Provision of an OSD system to regulate the discharge from the site; and
 - b) Provision of a rainwater tank collection system for internal reuse in accordance with Section 4 of Council's Stormwater Management Technical Guidelines; and
 - c) Incorporation of a Stormwater Quality Improvement system to ensure compliance with Section 16 of Council's Stormwater Management Technical Guidelines; and
 - d) Submission of detailed calculations including computer modelling where required supporting the proposal.
- DC2 Written consent and agreement from the beneficiary of the Right-of-way shall be provided indicating concurrence to the proposed development access arrangement, including acceptance of any likely access interruptions and/or impact that may arise during the construction phase and the future operation.
- DC3 The person who is entitled to act on this consent must give to Council in writing an irrevocable offer to enter into a Deed of Agreement, the terms of which must provide a process to:-
- a) Extinguish the Right of Way and infill the temporary vehicular access from Gardeners Road with a commercial land use together with all the necessary building work to allow the space to be adapted for that purpose; and
 - b) Dedicate land to be occupied for the New Street to Council, without cost to Council, together with proportional costs for its design and construction.
- DC4 To facilitate safe, legal access to and from the site, the carparking facility at the site including driveway access and crossings etc shall be modified where required to ensure compliance with relevant sections of AS 2890.1-2004 and AS 2890.2-2002. The design shall ensure all vehicles using the site can enter and leave in a forward direction and account for but not be limited to the following:
- a) Demonstrate safe headroom clearance of 4.5m has been achieved along the existing right of way (ROW) and the proposed travel path, parking and manoeuvring areas of a Medium Rigid Vehicle (MRV), including future access point to the New Road as per AS 2890.2-2002. A longitudinal

section plotting headroom clearance above driveway access is to be provided for assessment.

- b) The access driveway from Gardeners Road shall be redesigned where required to demonstrate compliance with Section 3.4 of AS 2890.2-2002. Additionally, the building at the location of the future access to the new road, must be designed to accommodate the future access compliance with AS 2890.2-2002. Amended architectural plans are to be submitted demonstrating compliance with this requirement.
- c) Demonstrate compliance with Section 3.4 of AS 2890.1 in relation to provision of sufficient Q length area at driveway control point (boom gate).

DC5 An updated BASIX Certificate and ABSA Certificates shall be obtained and submitted to Council for inclusion within Condition No.1 as identified within the BASIX Report No. 1005528656 received by Council on 14 April 2014.

SCHEDULE OF CONSENT CONDITIONS

GENERAL CONDITIONS

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

Drawing No.	Author	Dated Received
Site Analysis – Drawing No. 01 Revision C	MD+A Architects	Dated 14 April 2014. Received by council 14 April 2014.
Site Survey & Demolition Plan – Drawing No. 03 Revision D	MD+A Architects	Dated 14 April 2014. Received by council 14 April 2014.
Site/Roof Plan– Drawing No. 04 Revision F	MD+A Architects	Dated 14 April 2014. Received by council 14 April 2014.
Landscaped Area + DSL Areas – Drawing No. 06 Revision C	MD+A Architects	Dated 14 April 2014. Received by council 14 April 2014.
Common Open Space Diagrams & Calculations – Drawing No. 07 Revision C	MD+A Architects	Dated 14 April 2014. Received by council 14 April 2014.

Drawing No.	Author	Dated Received
Private Open Space – Drawing No. 08 Revision C	MD+A Architects	Dated 14 April 2014. Received by council 14 April 2014.
Private Open Space – Drawing No. 09 Revision B	MD+A Architects	Dated 14 April 2014. Received by council 14 April 2014.
FSR & GFA Calculation Diagrams – Drawing No. 10 Revision E	MD+A Architects	Dated 14 April 2014. Received by council 14 April 2014.
Basement Plan Level 1 plan Stage 1– Drawing No. 12 Revision E	MD+A Architects	Dated 14 April 2014. Received by council 14 April 2014.
Ground Level Plan (Street Level) – Drawing No. 13 Revision E	MD+A Architects	Dated 14 April 2014. Received by council 14 April 2014.
Level 1 Plan – Drawing No. 14 Revision G	MD+A Architects	Dated 14 April 2014. Received by council 14 April 2014.
Level 2 Plan – Drawing No. 15 Revision G	MD+A Architects	Dated 14 April 2014. Received by council 14 April 2014.
Level 3 Plan – Drawing No. 16 Revision G	MD+A Architects	Dated 14 April 2014. Received by council 14 April 2014.
Level 4 Plan – Drawing No. 17 Revision G	MD+A Architects	Dated 14 April 2014. Received by council 14 April 2014.
Level 5 Plan – Drawing No. 18 Revision G	MD+A Architects	Dated 14 April 2014. Received by council 14 April 2014.
Level 6 Plan – Drawing No. 19 Revision G	MD+A Architects	Dated 14 April 2014. Received by council 14 April 2014.
Level 7 Plan – Drawing No. 20 Revision G	MD+A Architects	Dated 14 April 2014. Received by council 14 April 2014.

Drawing No.	Author	Dated Received
Level 8 Plan – Drawing No. 21 Revision G	MD+A Architects	Dated 14 April 2014. Received by council 14 April 2014.
Level 9 Plan – Drawing No. 22 Revision G	MD+A Architects	Dated 14 April 2014. Received by council 14 April 2014.
Level 10 Plan – Drawing No. 23 Revision G	MD+A Architects	Dated 14 April 2014. Received by council 14 April 2014.
Level 11 Plan – Drawing No. 24 Revision G	MD+A Architects	Dated 14 April 2014. Received by council 14 April 2014.
Level 12 Plan – Drawing No. 25 Revision G	MD+A Architects	Dated 14 April 2014. Received by council 14 April 2014.
Roof Level Plan – Drawing No. 26 Revision G	MD+A Architects	Dated 14 April 2014. Received by council 14 April 2014.
Ground Level Plan (Street Level)- Stage 2 – Drawing No. 27 Revision C	MD+A Architects	Dated 14 April 2014. Received by council 14 April 2014.
North Elevation- Northern Building – Drawing No. 31 Revision F	MD+A Architects	Dated 14 April 2014. Received by council 14 April 2014.
North Elevation- Southern Building – Drawing No. 32 Revision F	MD+A Architects	Dated 14 April 2014. Received by council 14 April 2014.
South Elevation- Northern Building – Drawing No. 33 Revision F	MD+A Architects	Dated 14 April 2014. Received by council 14 April 2014.
South Elevation- Southern Building – Drawing No. 34 Revision F	MD+A Architects	Dated 14 April 2014. Received by council 14 April 2014.
East Elevation – Drawing No. 35 Revision F	MD+A Architects	Dated 14 April 2014. Received by council 14 April 2014.

Drawing No.	Author	Dated Received
West Elevation – Drawing No. 35 Revision F	MD+A Architects	Dated 14 April 2014. Received by council 14 April 2014.
Materials and Finishes – Drawing No. 37 Revision B	MD+A Architects	Dated 14 April 2014. Received by council 14 April 2014.
South Elevation – Southern building (Stage 2) – Drawing No. 38 Revision A	MD+A Architects	Dated 13 May 2014. Received by council 20 May 2014.
Section 1 – Drawing No. 41 Revision F	MD+A Architects	Dated 14 April 2014. Received by council 14 April 2014.
Section 2 – Drawing No. 42 Revision F	MD+A Architects	Dated 14 April 2014. Received by council 14 April 2014.
Unit Layout Plans 01 – Drawing No. 101 Revision A	MD+A Architects	Dated 19 May 2014. Received by council 20 May 2014.
Unit Layout Plans 02 – Drawing No. 101 Revision A	MD+A Architects	Dated 19 May 2014. Received by council 20 May 2014.
Unit Layout Plans 03 – Drawing No. 104 Revision A	MD+A Architects	Dated 19 May 2014. Received by council 20 May 2014.
Unit Layout Plans 01 – Drawing No. 105 Revision A	MD+A Architects	Dated 19 May 2014. Received by council 20 May 2014.
Shadow Diagrams March – Drawing No. 51A Revision C	MD+A Architects	Dated 14 April 2014. Received by council 14 April 2014.
Shadow Diagrams March – Drawing No. 51B Revision B	MD+A Architects	Dated 14 April 2014. Received by council 14 April 2014.
Shadow Diagrams March – Drawing No. 52A Revision C	MD+A Architects	Dated 14 April 2014. Received by council 14 April 2014.

Drawing No.	Author	Dated Received
Shadow Diagrams March – Drawing No. 52B Revision B	MD+A Architects	Dated 14 April 2014. Received by council 14 April 2014.
Shadow Diagrams March – Drawing No. 53A Revision C	MD+A Architects	Dated 14 April 2014. Received by council 14 April 2014.
Shadow Diagrams March – Drawing No. 53B Revision B	MD+A Architects	Dated 14 April 2014. Received by council 14 April 2014.
Cover Page- Drawing Schedule and Plant Schedule. LAN-DA-000 Revision B	360 Degrees	Dated 11 April 2014. Received by council 14 April 2014.
Key Plan LAN-DA-001 Revision B	360 Degrees	Dated 11 April 2014. Received by council 14 April 2014.
Landscape Plan- Ground Level LAN-DA-002 Revision B	360 Degrees	Dated 11 April 2014. Received by council 14 April 2014.
Landscape Typical- Street Elevations LAN-DA-003 Revision B	360 Degrees	Dated 11 April 2014. Received by council 14 April 2014.
Landscape Plan – Level 1- Sky Garden LAN-DA-004 Revision B	360 Degrees	Dated 11 April 2014. Received by council 14 April 2014.
Landscape Plan- Level 1- Central Park LAN-DA-005 Revision B	360 Degrees	Dated 11 April 2014. Received by council 14 April 2014.
Landscape Typical Elevations – Level 2 – Central Park LAN-DA-006 Revision B	360 Degrees	Dated 11 April 2014. Received by council 14 April 2014.
Landscape Plan- Level 3 LAN-DA-007 Revision B	360 Degrees	Dated 11 April 2014. Received by council 14 April 2014.
Landscape Plan – Level 4 and Typical Planters to Levels 5, 6, 7 and 8 LAN-DA-008 Revision B	360 Degrees	Dated 11 April 2014. Received by council 14 April 2014.

Drawing No.	Author	Dated Received
Landscape Plan – Typical Planters to Levels 9, 10 ,11 and 12 LAN-DA-009 Revision B	360 Degrees	Dated 11 April 2014. Received by council 14 April 2014.
Landscape Plan-Typical ‘Streets in the Sky’ (Level 11) LAN-DA-010 Revision B	360 Degrees	Dated 11 April 2014. Received by council 14 April 2014.
Landscape Plan- Level 12- Roof Garden –North Building- Sky Park LAN-DA-011 Revision B	360 Degrees	Dated 11 April 2014. Received by council 14 April 2014.
Landscape Plan – Level 13- Roof Garden – South Building-Sky Park LAN-DA-012 Revision B	360 Degrees	Dated 11 April 2014. Received by council 14 April 2014.
Civil Design- cover sheet, Drawing schedule and locality plan. Drawing No, C1.01 Revision 3 Job No. 130050	Northrop	Dated 3 April 2014. Received by council 14 April 2014.
Civil Design- concept sediment and erosion control plan and details Drawing No, C2.01 Revision 3 Job No. 130050	Northrop	Dated 3 April 2014. Received by council 14 April 2014.
Civil Design- stormwater management plan - ground level Drawing No, C3.01 Revision 3 Job No. 130050	Northrop	Dated 3 April 2014. Received by council 14 April 2014.

Reference Documents	Author	Date
Amended Development Application Report – Volume 1/ Job No. 13-013	BBC Consulting Planners	Report dated April 2014. Received by council 14 April 2014.

Reference Documents	Author	Date
Illustrative Figures - Amended Development Application Report – Volume 1.	BBC Consulting Planners	Report dated April 2014. Received by council 14 April 2014.
Phase 2 - Environmental Site assessment Ref: e27228kgcpt	Environmental Investigation Services	Report dated 21 March 2014. Received by council 14 May 2014.
REMEDIAL ACTION PLAN (RAP). Ref: E27228KGrpt2-RAP	Environmental Investigation Services	Report dated 7 April 2014. Received by Council on 1 May 2014.
WASTE CLASSIFICATION ASSESSMENT. Ref: E27228KGlet1	Environmental Investigation Services	Report dated 31 March 2014. Received by Council on 1 May 2014.
Quantity Surveyors Statement	Altus Page Kirkland	Report dated 14 April 2014. Received by Council on 28 April 2014.
Solar Access Studies	SLR Consulting Pty Ltd (SLR)	Report dated 10 April 2014. Received by Council on 28 April 2014.
Urban Design Report	Olsson Associates Architects	Report dated 14 April 2014. Received by Council on 14 April 2014.
BASIX Report No. 1005528656	Unknown	Received by Council on 14 April 2014.
Economic Assessment	Hill PDA	Report dated April 2014. Received by Council on 14 April 2014.
Arboricultural Impact Report – 659-669 Gardeners Road Mascot – Amended Development Proposal.	Landscape Matrix Pty Ltd	Dated 8 April 2014. Received by Council on 14 April 2014.
Qualitative Wind Impact	SLR Consulting Pty Ltd	Report dated 29 July

Reference Documents	Author	Date
Assessment	(SLR)	2013. Received by Council on 2 August 2013.
Qualitative Natural Ventilation Assessment. Report Number 610.13863-R1	SLR Consulting Pty Ltd (SLR)	Report dated 11 April 2014. Received by Council on 14 April 2014.
Waste management plan	Leigh Design Pty Ltd	Report dated 10 April 2014. Received by Council on 14 April 2014.
BCA compliance capability report	Environet Consultancy Pty Ltd	Report dated April 2014. Received by Council on 14 April 2014.
Landscape Architect's Design Statement	360 Degrees	Report dated April 2014. Received by Council on 14 April 2014.
Traffic Impact Assessment Reference: 13.031r02v03 (annotated)	Traffix Traffic and Transport Planners	Report dated 14 April 2014. Received by Council on 14 April 2014.
Access Report	Environet Consultancy Pty Ltd	Report dated April 2014. Received by Council on 14 April 2014.
Design Verification Statement	MD+A Architects Australia P/L	Report dated April 2013. Received by Council on 14 April 2014.
Architectural Statement Amended Development Application	MD+A Architects Australia P/L	Report dated 14 April 2014. Received by Council on 14 April 2014.
DA Noise Impact Assessment	Acoustic Logic	Report dated 25 April 2013. Received by Council on 02 August 2013

Reference Documents	Author	Date
Geotechnical Assessment Report (Ref: 26374Zrpt)	JK Geotechnics GEOTECHNICAL & ENVIRONMENTAL ENGINEERS	Report dated 5 March 2013. Received by Council on 02 August 2013
Acid Sulfate Soils Report (Ref: E26374Kletrev1)	Environmental Investigations Services	Report dated 29 July 2013. Received by Council on 02 August 2013
Arboricultural Impact Report	Landscape Matrix Pty Ltd.	Report dated 30 July 2013. Received by Council on 02 August 2013

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

2. The applicant must prior to the obtainment of the approved plans and specifications pay the following fees:

- a) Development Control \$11,200.00;

3. The applicant must prior to the issue of the Construction Certificate, pay the following fees:

- a) Builders Security Deposit \$50,000.00;

- b) Section 94 Contribution \$6,828,487.46;

- c) Waste Levy \$5,000.00;

- d) Subdivision Certificate (Torrens) \$530.00;

- e) Linen Handling Fee (Torrens) \$495.00.

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.

- 4.

- a) This Consent relates to land in Lot 1 in DP 797133 and Lot 1 in DP534350 and Lot 31 in DP789177 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; and

- b) Prior to the issue of the Occupation Certificate, a survey report must be submitted to Council to verify that Condition 4(a) above has been complied with.
 - c) Separate development applications must be lodged with Council for the use of the individual retail tenancies and associated signage.
5. The Applicant is to remove the two street trees as shown on the approved landscape plan (LAN-DA-002) at their expense. The trees may only be removed after a Construction Certificate has been issued. The following is stipulated:
- a) A qualified Arborist with their own public liability insurance must be engaged to undertake the work;
 - b) All work is to take place on the Council road reserve with the appropriate safety and directional signage implemented to ensure public safety and access otherwise road and footpath closures require a Council Road Occupancy Permit;
 - c) A Dial-Before-You-Dig enquiry is required prior to stump grinding the trunks. Tree removal work shall occur without damage to Council infrastructure or underground services and utilities;

Note: Council will take no responsibility for any damage incurred to persons, property or services during the tree removal works.

6. It is a condition of consent that the applicant shall, at no cost or expense to Council, comply with the following:
- a) Dedicate the portion of land to Council for the purpose of a new public road. The area of the land to be dedicated shall be the full length of the southern property boundary for a width of 9 metres as shown on the stamped approved plans. 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) The construction of New Street and public domain such as footpaths, street lighting, landscaping, etc. shall be constructed by the Applicant at no cost to Council or the body corporate. The developer may enter into a Voluntary Planning Agreement (VPA) with Council to provide a monetary contribution in lieu of the construction works for the new road. A signed undertaking shall be submitted by the applicant prior to the issue of the Occupation Certificate;
 - c) A Public Domain Plan shall be submitted to and approved by Council for public domain improvements along the frontage of the development to Gardeners Road. The Public Domain Plan shall include but not be limited to footpath treatments, service adjustments/access lids and street trees (as

provided by the Landscape Consultant), adjoining the site together with the provision of appropriate street light standards, drainage (if any), kerb and gutter, footway, bicycle paths, landscaping, traffic signs). The landscape component shall be in accordance with Council's City Identity Program and any other Council specification or requirement. All public domain/footpath improvements shall be installed in accordance with Council specifications by the Applicant and at the Applicant's expense. All improvements shall be completed prior to the issue of an final Occupation Certificate;

- d) Replace all the existing above ground electricity and telecommunication cables to underground cables within the site and road reserve area fronting Gardeners Road 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;
 - e) Provide appropriate and suitable street lighting to a high decorative standard to the Gardeners Road street frontage of the site, so as 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;
 - f) The public footpaths in Gardeners Road shall be constructed in accordance with Council specifications and the Draft Public Domain Manual. The footpath dimensions, location, paver type and construction methods shall be in accordance with these specifications. 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 as a minimum. Pavers shall be ordered allowing for adequate lead time for manufacture (10-12 weeks); and
 - g) New street trees at the pot size specified shall be installed in the accordance with the approved Public Domain Plan. The trees shall be sourced from a reputable supplier that grows stock to the NATSPEC specifications. A Dial-Before-You-Dig enquiry is required prior to all planting - Council is not liable for any damage to subsurface infrastructure during public domain works. Two hold point inspections are required: prior planting trees to ensure plant stock is suitable and post-planting.
 - h) The completion of works at (a) to (g) above are pre-conditions to the issue of the Occupation Certificate.
7. 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.
- 8. All building work must be carried out in accordance with the provisions of the Building Code of Australia.
- 9. Pursuant to clause 97A(3) of the Environmental Planning & Assessment Regulation 2000, it is a condition of this development consent that all the commitments identified in the 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
 - i) If a replacement BASIX Certificate accompanies any subsequent application for a construction certificate, the replacement BASIX Certificate.
 - ii) BASIX Certificate has the meaning given to that term in the Environmental Planning and Assessment Regulation 2000.

CONDITIONS IMPOSED BY AN EXTERNAL AUTHORITY

- 8. The following conditions are imposed by Ausgrid:
 - a) Provision shall be made for accommodation of an electricity substation with the premises.
 - b) There are existing substations adjoining the lot on the Western and Eastern side. The requirement for fire segregation must be met as per Ausgrid Network Standard 141 *Site Selection and Site Preparation Standards for Kiosk Type Substations*, clause 6.
- 9. The following conditions are imposed by the NSW Roads and Maritime Service (RMS).
 - a) Any redundant driveways off Gardeners Road shall be removed and replaced with kerb and gutter.

- 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.
- c) The temporary vehicular access on Gardeners Road shall be removed within 6 months of the construction of the new east-west road along the southern site boundary is completed. The redundant vehicular access on Gardeners Road shall be replaced with kerb and gutter to match existing.
- d) The design and construction of the vehicular crossing and kerb and gutter works on Gardeners Road shall be in accordance with Roads and Maritime requirements. Details of these requirements should be obtained from Roads and Maritime's Project Services Manager, Traffic Projects Section, Parramatta on 8849 2496.
- e) The proposed new east/west road shall be dedicated as road at no cost to Roads and Maritime or Council.
- f) The post development stormwater discharge from the subject site into the RMS drainage system should not exceed the pre development discharge.

Detailed design plans and hydraulic calculations of any changes to the stormwater drainage system are to be submitted to RMS for approval, prior to commencement of any works. Details should be forwarded to:

The Sydney Asset Management

Roads and Maritime Services

PO Box 973 Parramatta CBD 2124

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

- b) The developer is to comply with the requirements of the attached Technical Direction (GTD 2012/001). This will require the developer to submit detailed design drawings and geotechnical reports relating to the excavation of the site and support structures to the Roads and Maritime for assessment. The developer is to meet the full cost of the assessment by the Roads and Maritime.

The report would need to address the following key issues:

- i) The impact of excavation/rock anchors on the stability of the Gardeners Road and detailing how the carriageway would be monitored for settlement.
- ii) The impact of the excavation on the structural stability of the Gardeners Road.
- iii) Any other issues that may need to be addressed (Contact: Roads and Maritime's Project Engineer, External Works Ph: 8849 2114 or Fax 8849 2766 for details).

- c) The proposed residential component of the development should be designed such that road traffic noise from Gardeners Road is mitigated by durable materials to satisfy requirements under Clause 102(3) of State Environmental Planning Policy (Infrastructure) 2007. The Roads and Maritime's Environmental noise Management Manual provides practical advice in selecting noise mitigation treatments.
 - d) The developer shall be responsible for all public utility adjustment/relocation works, necessitated by the above work and as required by the various public utility authorities and/or their agents. All works associated with the development are to be at no cost to RMS or Council.
 - e) All demolition and construction vehicles are to be contained wholly within the site and vehicles must enter the site before stopping.
 - f) 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.
 - g) A Construction Traffic Management Plan detailing construction vehicle routes, number of trucks, hours of operation, access arrangements and traffic control should be submitted to Council prior to the issue of the Construction Certificate.
10. The following conditions form the General Terms of Approval by the NSW Office of Water and must be complied with:

General

- a) An authorisation shall be obtained from NSW Office of Water 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 in the authorisation.
- b) The design and construction of the building must prevent any take of groundwater after the authorisation has lapsed by making any below-ground levels that may be in contact with groundwater watertight for the anticipated life of the building. Waterproofing of below-ground levels must be sufficiently extensive to incorporate adequate provision for reasonably foreseeable high water table elevations to prevent potential future inundation.
- c) Construction methods and material used in and for construction shall be designed to account for the likely range of salinity and pollutants which may be dissolved in groundwater, and shall not themselves 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. These measurements should be included in a report provided to the NSW Office of Water in support of the dewatering licence application, along with a schedule and indicative level predictions for 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 parameters (e.g. permeability predicted by slug-testing, pump-testing or other means) and calculation method shall be included in the report submitted to the NSW Office of Water in support of the dewatering licence.
- f) A copy of a valid development consent for the project shall be provided in the report to the NSW Office of Water.
- g) Groundwater quality testing shall be conducted on a suitable number of samples using a suitable suite of analytes and completed by a NATA-certified laboratory, with the results collated and certificates appended to a report supplied to the NSW Office of Water. Samples must be taken prior to the substantial commencement of dewatering, 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. reinjection, 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 (sometimes referred to as “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 (i.e. above appropriate NEPM 2013 investigation thresholds) shall not be reinjected into any aquifer without the specific authorisation of the NSW Environment Protection Authority (any such discharge would be regulated through a licence issued under the *Protection of the Environment Operations Act 1997* [POEO Act]). 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 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) Engineering measures designed to transfer groundwater around the basement shall be incorporated into the basement construction to prevent the completed infrastructure from restricting pre-existing groundwater flows.
- k) Piping, piling or other structures used in the management of pumped groundwater shall not create a flooding hazard. Control of pumped groundwater is to be maintained at all times during dewatering to prevent unregulated off-site discharge.
- l) 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.
- m) Pumped groundwater shall not be allowed to discharge off-site (e.g. adjoining roads, stormwater system, sewerage system, etc) without the controlling authorities approval and/or owners consent. The pH of discharge water shall be managed to be between 6.5 and 8.5. The requirements of any other approval for the discharge of pumped groundwater shall be complied with.
- n) Dewatering shall be undertaken in accordance with groundwater-related management plans applicable to the excavation site. The requirements of any management plan (such as acid sulfate soils management plan or remediation action plan) shall not be compromised by the dewatering activity.
- o) 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.
- p) Access to groundwater management works used in the activity is to be provided to permit inspection when required by the NSW Office of Water under appropriate safety procedures.

Following excavation

- q) 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.

11. The following conditions are imposed by the NSW Police Service:

- a)

- i) 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;
 - ii) The CCTV system should consist of surveillance cameras strategically located in and around the development to provide maximum surveillance coverage of the area, particularly in areas that are difficult to supervise. Cameras should be strategically mounted outside the development buildings and within the car parking areas to monitor activity within these areas. One or more cameras should be strategically mounted at entry and exit points to monitor activities around these areas (underground car park, foyer entrance); and
 - iii) 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.
- b) Any proposed landscaping and vegetation to the street frontage should adhere to the following principles:
 - i) Shrubs bushes, plants should remain under 900mm in height;
 - ii) Branches or large trees should start at a height of two (2) metres and higher;
- c)
 - i) 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;
 - ii) Any storage cages in the underground car park areas should not be constructed in an isolated area. CCTV cameras must cover this area, as they are easy targets when they have little supervision. Solid steel housing and quality key locks should be used to prevent access.
- d) An Emergency control and evacuation plan which complies with the Australian Standard, Emergency Control Organisation and Procedures for Buildings, Structures and Workplace, AS:3745:2002 should be prepared and maintained by your development to assist management and staff in the event of an emergency. This standard sets out the requirements for the development of procedures for the controlled evacuation of the building, structures and workplaces during emergencies. Further information in

relation to planning for emergencies can be obtained from Emergency NSW <http://www.emergency.nsw.gov.au> or Emergency Management Australia <http://www.ema.gov.au>.

12. The following conditions are imposed by Sydney Water and must be complied with:
 - a) An extension of the wastewater system will be required from the 300mm main constructed under WO 40700, which will provide a connection point of at least one metre inside all the proposed lot boundaries.
 - b) The proposed wastewater infrastructure for this development will be sized and configured according to the Sewerage Code of Australia WSA 02-2002-2.2.
 - c) The applicant should engage a Water Servicing Coordinator to obtain a Section 73 Certificate and manage the servicing aspects of the development including building over and adjacent to Sydney Water assets.
13. The following conditions are imposed by the Sydney Airport Corporation Limited (SACL) and must be complied with:
 - a) The PROPERTY DEVELOPMENT at 659-669 GARDENERS ROAD, MASCOT lies within an area defined in schedules of the Civil Aviation (Buildings Control) Regulations, which limit the height of structures to 50 feet (15.24 metres) above existing ground height (AEGH) without prior approval of this Corporation.
 - b) The Civil Aviation Safety Authority (CASA) have no objection to the erection of the building to a height of 45.5 metres above Australian Height Datum (AHD).
 - c) The approved height is inclusive of all lift over-runs, vents, chimneys, aerials, TV antennae, construction cranes etc.
 - d) Should you wish to exceed the above 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:
 - f) 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);

- g) the swing circle of any temporary structure/equipment used during construction;
- h) 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;
- i) the period of the proposed operation (ie. construction cranes) and desired operating hours for any temporary structures.
- j) 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.
- k) 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.
- l) All trees to be planted shall not be capable of intruding into the Obstacle Limitation Surface when mature.

PRIOR TO COMMENCEMENT OF DEMOLITION WORKS

14. Prior to commencement of any works on-site, a dilapidation report of the immediate adjoining properties and public infrastructure (including Council and public utility infrastructure) shall be prepared by a qualified person and submitted to Council. The report shall include records and photographs of the following area that will be impacted by the development:

- a) All properties immediately adjoining the site; and
- b) Gardeners Road.

The applicant shall bear the cost of all restoration works to buildings/ structures and public infrastructure that been damaged during the course the demolition, site clearing and site remediation works. Any damage to buildings/structures, infrastructures, roads, lawns, trees, gardens and the like shall be fully rectified by the applicant/developer, at the applicant/developer's expense. In addition, the following issues shall also be complied with:

- i) A copy of the dilapidation report together with the accompanying photographs shall be given to all immediately adjoining properties owners and public utility authorities. The report shall be agreed by all affected parties as a fair record of existing conditions prior to commencement of any works;
- ii) A second dilapidation report, including a photographic survey shall then be submitted at least one month after the completion of demolition/excavation works. A copy of the second dilapidation

report together with the accompanying photographs shall be given to Council, public utilities authorities and all adjoining properties owners;

- iii) It is a condition of consent that should demolition, site clearing and site remediation 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.)

15.

- 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.

16. Prior to the commencement of demolition work, a licensed demolisher who is registered with the WorkCover Authority must prepare a Work Method Statement to the satisfaction of the Principal Certifying Authority (Council or an accredited certifier) and a copy sent to Council (if it is not the PCA). A copy of the Statement must also be submitted to the WorkCover Authority.

The statement must be in compliance with: AS2601-1991 Demolition of Structures," the requirements of WorkCover Authority and conditions of the Development Approval, and must include provisions for:

- a) Enclosing and making the site safe, any temporary protective structures must comply with the "Guidelines for Temporary Protective Structures (April 2001)";
- b) Induction training for on-site personnel;
- c) Inspection and removal of asbestos, contamination and other hazardous materials (by appropriately licensed contractors);
- d) Dust control – Dust emission must be minimised for the full height of the building. A minimum requirement is that perimeter scaffolding,

combined with chain wire and shade cloth must be used, together with continuous water spray during the demolition process. Compressed air must not be used to blow dust from the building site;

- e) Disconnection of Gas and Electrical Supply;
 - f) Fire Fighting – Fire fighting services on site are to be maintained at all times during demolition work. Access to fire services in the street must not be obstructed;
 - g) Access and Egress – No demolition activity shall cause damage to or adversely affect the safe access and egress of this building;
 - h) Control of water pollution and leachate and cleaning of vehicles tyres – Proposals shall be in accordance with the “Protection of the Environmental Operations Act 1997”;
 - i) Working hours, in accordance with this Development Consent;
 - j) Confinement of demolished materials in transit;
 - k) Location and method of waste disposal and recycling in accordance with the “Waste Minimisation and Management Act 1995”;
 - l) Sewer – common sewerage system;
 - m) On site monitoring both during asbestos removal and the remainder of demolition activities.
17. To ensure that utility authorities and Council are advised of any effects to their infrastructure by the development, the applicant shall:
- a) Carry out a survey of all utility and Council services within the site including relevant information from utility authorities to determine the position and level of services;
 - b) Negotiate with the utility authorities (eg Energy Australia, Sydney Water and Telecommunications Carriers) and Council in connection with:
 - i) The additional load on the system; and
 - ii) The relocation and/or adjustment of the services affected by the construction.
- Any costs in the relocation, adjustment, and provision of land or support of services as requested by the service authorities and Council are to be the responsibility of the developer.
18. Prior to demolition of any building constructed before 1970, the person acting on this consent shall ensure compliance with Australian Standard *AS2601-2001, Demolition of Structures* by a person with suitable expertise and experience. This may involve a Work Plan that identifies any hazardous materials including surfaces coated with lead paint, method of demolition, the precautions to be

employed to minimize any dust nuisance and the disposal methods for hazardous materials, including:

- a) Removal, cleaning and disposal of lead-based paint shall conform to the current EPA guidelines. Demolition of materials incorporating lead is to be conducted in strict accordance with sections 1.5, 1.6, 1.7, 3.1 and 3.9 of the *AS2601-1991 Demolition of structure*.
- b) Hazardous dust shall not be allowed to escape from the site. Any existing accumulations of dust (e.g.; ceiling voids and wall cavities) shall be removed by the use of an industrial vacuum fitted with a high efficiency particulate air (HEPA) filter. All dusty surfaces and dust created from work is to be suppressed by a fine water spray. Water shall not be allowed to enter the street and stormwater systems. Demolition is not to be performed during high winds, which may cause dust to spread beyond the site boundaries.
- c) All contractors and employees directly involved in the removal of hazardous dusts and substances wearing protective equipment conforming to Australian Standard *AS1716 Respiratory Protective Devices* and shall adopt work practices in accordance with the requirements of WorkSafe's *Control of Inorganic Lead At Work* (NOHSC: 102(1994) and NOHSC: 2015(1994).
- d) All lead-contaminated materials being disposed of in accordance with the Environment Protection Authorities Environmental Guidelines; *Assessment, Classification and Management of Liquid and Non Liquid Wastes (1999)* and *The Protection of the Environment Operations Act 1997 (NSW)*.

19.

- a) Demolition work shall be carried out in accordance with Australian Standards AS 2601-1991 Demolition of Structures and the requirements of the NSW WorkCover Authority; and
- b) The demolisher shall comply with Australian Standard 2601 - 1993 "*Demolition of Structures*".

20. Hazardous or intractable wastes arising from the demolition process shall be removed and disposed of in accordance with the requirements of WorkCover NSW and the Department of Environment and Climate Change and Water and with the provisions of:

- a) New South Wales Occupational Health and Safety Act, 2000;
- b) The Occupational Health and Safety (Hazardous Substances) Regulation 2001;
- c) The Occupational Health and Safety (Asbestos Removal Work) Regulation 2001;

- d) Protection Of the Environment Operations Act 1997 (NSW); and
 - e) Department of Environment and Climate Change Waste Classification Guidelines (2008).
21. Prior to commencement of any works, the following approvals and permits on Council's property/road reserve under Roads Act 1993 and Local Government Act 1993 shall be made and obtained from Council's Customer Services Counter:
- i) Permit to erect hoarding on or over a public place, including Council's property/road reserve;
 - ii) Permit for roads and footways occupancy (long term/ short term);
 - iii) Permit to open road reserve area, including roads, footpaths, nature strip, vehicular crossing or for any purpose whatsoever, such as relocation / re-adjustments of utility services;
 - iv) Permit to place skip/waste bin on footpath and/or nature strip;
 - v) Permit to use any part of Council's road reserve or other Council lands;
 - vi) Permit to stand mobile cranes and/or other major plant on public roads and all road reserve area;
 - vii) (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.)
 - viii) 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 Traffic Engineer for approval, which may impose special conditions that shall be strictly adhered to by the applicant(s).

Copy of the approved permits shall be submitted to the Principal Certifying Authority attesting this condition has been appropriately satisfied.

22. Erosion and sediment control devices shall be installed and in function prior to the commencement of any demolition works upon the site in order to prevent sediment and silt from site works being conveyed by stormwater into public stormwater drainage system, natural watercourses, bushland, trees and neighbouring properties. In this regard, all stormwater discharge from the site shall meet the legislative requirements and guidelines. These devices shall be maintained in a serviceable condition AT ALL TIMES throughout the entire demolition, excavation and construction phases of the development and for a

minimum one (1) month period after the completion of the development, where necessary.

23. 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.
24. 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.
25. 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 RMS) for approval prior to commencement of any works. The plan shall:
 - a) be prepared by a RMS accredited consultant.
 - b) nominate a contact person who is to have authority without reference to other persons to comply with instructions issued by Council's Traffic Engineer or the Police.
 - c) 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.
26. Toilet facilities are to be provided at or in the vicinity of the work site on which work involves the 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;
- a) Each toilet provided:
 - b) must be standard flushing toilet; and,
 - c) must be connected:
 - i) to a public sewer; or
 - ii) if connection to a public sewer is not practicable to an accredited sewerage management facility approved by the Council; or,
 - iii) 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.
 - d) The provisions of toilet facilities in accordance with this clause must be completed before any other work is commenced.
27. A detailed Construction Management Plan (CMP) shall be submitted to Council and the Principal Certifying Authority for approval prior to the commencement of any works. The plan shall address:
- a) Excavation and construction vehicles access to and egress from the site;
 - b) Parking for demolition and construction vehicles. All construction-related vehicles shall be parked on-site and no parking of these vehicles shall be allowed on Gardeners Road;
 - c) Locations of site office, accommodation and the storage of major materials related to the project;
 - d) Protection of adjoining properties, pedestrians, vehicles and public assets;
 - e) Location and extent of proposed builder's hoarding and Work Zones, if there is any.
 - f) 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.
28. During demolition, excavation, remediation and 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.
29. In order to ensure that the street trees proposed to be retained on the approved landscape plan are protected during construction, and their health and structural stability ensured, the following is required :
- a) A Consultant Arborist AQF Level 5 shall be engaged from site establishment to the post-construction period to erect tree protection zones and signage, inspect and advise on all works during the entire construction period, monitor tree health and to authorize and undertake tree canopy and root pruning where necessary only and to the minimum only so that the health or structural stability of the trees is not impacted;
 - b) All tree works and tree management shall be undertaken in accordance with the Arborist report by Landscape Matrix Pty Ltd dated 30 July 2013. For all tree root and canopy work to trees, comply with the recommendations and requirements and management plan contained within this report;
 - c) Trees to be retained during development are to be tagged with clearly visible marking tape at a height of approx. 2 metres from ground and numbered with the corresponding number in the Tree Report/Landscape Plan;
 - d) Prior to commencing demolition/any works the trees are to be physically protected by fencing underneath the canopy dripline or as indicated in the Arborist's report using 1.8 metre high chainwire fence to form the Tree Protection Zone (TPZ). The fence shall remain in place until construction is complete;
 - e) The area within the fencing is to be mulched with leaf mulch to a depth of 100mm and a weekly deep watering program undertaken during construction;

- f) If there is insufficient space to erect fencing in a particular area, wrap the trunk with hessian or carpet underlay to a height of 2.5 metres or to the tree's first lateral branch, whichever is greater, and affix timber palings around the tree with strapping or wire (not nails);
- g) Before any works commence on site, the Applicant is required to contact Council for an inspection of the fenced TPZ's. Council approval is required prior commencement of any work;
- h) All detailed Construction Certificate plans shall show trees to be protected and the TPZ;
- i) All TPZ's are a "No-Go" zone. There shall be no access, no stockpiling, storage or sorting of waste or building materials, no construction work, no concrete mixing, strictly no washing down of concrete mixers or tools, no chemicals mixed/disposed of, no excavation or filling, no service trenching. Any unavoidable work within the fenced zone shall be under the direction of Council's Tree Officer or Consultant Arborist;
- j) Where unavoidable foot access is required in the TPZ, provide temporary access with timber sheets to minimise soil compaction, spillage or root damage;
- k) Excavation within the canopy dripline or within an area extending 3 metres outward of the canopy dripline of any tree shall be carried out manually using hand tools to minimise root damage or disturbance and in accordance with the Arborists' report;
- l) Tree roots 40mm in diameter or greater that require pruning shall be done only under the direction of Council's Tree Officer or the consulting Arborist after a site inspection so as not to unduly impact or stress the tree;
- m) It is the Applicant's responsibility to ensure that there is no damage to the canopy, trunk or root system (including the surrounding soil) of any tree. There shall be no canopy pruning unless approval has been granted by Council's Tree Officer under separate application. Approved pruning shall be undertaken by a qualified Arborist in accordance with AS 4373;
- n) There shall be no walls retaining or otherwise, pavements, change in levels, trenching for new subsurface utilities or the location of new overhead services within the primary root zone or canopy of any tree. Any such structures in close proximity to trees must accommodate tree roots without damage or pruning;
- o) All waste concrete and debris shall be removed from areas to be landscaped on the site, not buried, to minimise soil contamination;
- p) The Applicant shall undertake any tree maintenance/remedial pruning as required by Council or the Consultant Arborist at the completion of construction;

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

30. 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 **\$6,828,487.46** is required as follows:

Community Facilities	\$730,555.68
Open Space	\$5,634,748.92
Administration	\$27,057.62
Transport	\$372,042.25
Shopping Centre Improvements	\$8,272.00
Public Road Land Dedications	\$55,811.00

The Section 94 Contribution of **\$6,828,487.46** is to be paid to Council prior to the issue of the first Construction Certificate.

31. To ensure satisfactory performance of the completed external public infrastructure works, a maintenance period of six (6) months shall apply to all external engineering works completed in relation to this application. The performance period shall commence from Council's Compliance Certificate issue date.

The applicant shall be liable for any part of the work which fails to perform in a satisfactory manner as outlined in Council's standard specification. A bond in the form of a cash deposit or an unconditional Bank Guarantee of sixty thousand dollars (\$60,000) shall be lodged with Council prior to issue of the Construction Certificate to guarantee this requirement will be met. The bond will only be refunded when the works are determined to be satisfactory to Council after the expiry of the six (6) months maintenance period.

32. Prior to the issue of the Construction Certificate, the applicant is to submit payment for a Street Tree Maintenance Bond of \$10,000. The duration of the Bond shall be limited to a period of 12 months after planting of the new street trees. At the completion of the 12 month period the Bond shall be refunded pending a satisfactory inspection of the tree by Council. If the 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.
33. Prior to the issue of the Construction Certificate, subject to the approval of CASA, the applicant is to provide roof mounted solar collector panels below a height of 51m AHD, to the rooftop area of each building, of which 20% of power generated shall be returned to the Ausgrid network together with tariff rebates. Details of the panel system are to be provided with the Construction Certificate including the approval from the Civil Aviation Safety Authority.
34. 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.

35. Prior to the issue of the Construction Certificate, a Soil and Water Management Plan (SWMP) shall be prepared in accordance with the Landcom *Managing Urban Stormwater – Soils and Construction* 4th Edition (2004) and submitted to the Principal Certifying Authority.
36. 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 SWMP shall be kept on-site at all times and made available to Council Officers on request.
37. A sufficient area shall be provided onsite to enable separate stockpiling of excavated materials for sampling and analysis prior to removal or reuse on site. Details of this area shall be provided in the Soil and Water Management Plan (SWMP) prior to the release of the construction certificate. This plan shall incorporate and reference the construction environmental management plan and address site limitations.
38. Prior to the issue of the Construction Certificate, an Acid Sulphate Soil Management Plan (prepared by a suitably qualified and experienced environmental/geotechnical consultant) shall be submitted to the Principal Certifying Authority. This plan shall include any site specific procedures and mitigation measures required and shall include a site analysis from a NATA registered laboratory. The plan shall provide details of the following:
 - a) Site specific mitigation measures to both minimise the disturbance of acid sulphate soils as well as any measures relating to acid generation and acid neutralisation of the soil;
 - b) Management of ASS affected excavated material;
 - c) Measures taken to neutralise the acidity of any ASS affected material; and
 - d) Run-off control measures for the ASS affected soil.

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

39.
 - a) 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.
 - b) 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 parts of the basement.

40. 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.
41. 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.
42.
 - a) Prior to the issue of the Construction Certificate, the measures required in the acoustical assessment report prepared by Acoustic Logic, dated 25 April 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; and
 - b) Prior to the issue of the Construction Certificate, a compliance report from a suitably qualified acoustic consultant shall be submitted to Council indicating any required noise mitigation measures to the approved building, as detailed in the NSW Road Noise Policy 2011 in accordance with AS 3671-1989 – Acoustic – Road Traffic Intrusion.
43.
 - a) Prior to the issue of the Construction Certificate, the measures required in the Qualitative Wind Impact Assessment, prepared by SLR Consulting Pty Ltd, dated 29 July 2013 shall be detailed on the Construction Certificate plans. These shall include additional wind mitigation treatments to exposed
 - b) Prior to the issue of the Construction Certificate, a compliance report from a suitably qualified consultant shall be submitted to Council indicating any required wind mitigation measures to the approved building, as recommended in the Qualitative Wind Impact Assessment, dated 29 July 2013,
44. 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.

45. Prior to the issue of a Construction Certificate, the construction drawings shall indicate the following:
- a) That water will be prevented from penetrating behind fittings/linings and into concealed spaces in laundry, sanitary areas and bathrooms etc;
 - b) That floor to ceiling in laundry and bathroom areas to be tiled;
 - c) 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
 - d) That plumbing to each dwelling will be separated and adequately contained to prevent noise transmission and vibration.
 - e) 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.
46. 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.
47. 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).

48.

- a) 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; and
- b) Detailed construction plans in relation to the development shall be revised and submitted to Council for approval. The plan shall be revised to include details of 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.

49. Prior to the issue of the Construction Certificate, detailed stormwater drainage plans for the site shall be prepared and submitted for the approval of the Principal Certifying Authority together with certification from a chartered civil engineer indicating the plans have been prepared in accordance with the requirement of this condition and Botany Council's Stormwater Management Technical Guidelines (SMTG).

The concept plans approved under the deferred commencement consent shall be thoroughly checked and amended where required to incorporate (but shall not be limited to) the following:

- a) No pump-out shall be used to drain seepage from the basement due to the elevated water table level. That is the basement shall be designed as a "fully tanked" structure. The pump-out can only be utilized to dispose runoff that may enter the basement car park from driveway access to the basement.
 - b) The OSD shall be designed to ensure it will not be subjected to backwater affect from the 100 year flood level affecting the street.
 - c) The water quality improvement system and WSUD strategy proposal shall be designed to capture and treat at least 85% flows generated from the site.
 - d) The OSD and water quality improvement system including rainwater tanks are to be relocated in an open publicly accessible area to ensure it can be readily accessed, inspected and maintained, including ensuring any surcharge flows due to the design being exceeded and/or blockage can escape via a physical overland flow path directly to the public road.
50. For any water from site dewatering to be permitted to go to stormwater, the water must meet ANZECC 2000 Water Quality Guidelines for Fresh and Marine Water for the 95% protection trigger values for Marine Water. All testing must be completed by a NATA accredited laboratory. All laboratory results must be accompanied by a report prepared by a suitably qualified and experienced person indicating the water is acceptable to be released into Councils stormwater system. If the groundwater does not meet these guideline levels a Trade Waste permit from Sydney Water must be sought to put the groundwater to sewer.

51. As this development involves an excavation below the water table these works are subject to a Council Drainage Charge for discharge of site dewatering to storm water. As such a formal application is to be submitted to Council prior to the issue of the Construction Certificate.

Note: Council will not give permission for contaminated ground water to be discharged into its stormwater system. To discharge groundwater into the Council's stormwater system the applicant must supply the following:

- a) An Application to Council for permission to discharge water from site dewatering to Council's stormwater drainage system.
 - b) A copy of a current bore license from the NSW Office of Water for dewatering.
 - c) A report prepared by a suitably qualified person is to be provided together with results from a NATA approved laboratory confirming that the quality of the water meets the 95% freshwater trigger values applying to typically slightly-moderately disturbed systems as detailed in the Australian and New Zealand Guidelines for Fresh and Marine Water Quality, Australian and New Zealand Environment and Conservation Council and Agriculture and Resource Management Council of Australia and New Zealand, Paper No 4, October 2000.
 - d) If the groundwater is not suitable for direct disposal to the stormwater, any proposed treatment methods must be noted and accompanied by relevant documentation demonstrating the processes involved as well as engineering evidence of its applicability. (Note that Council reserves the right to refuse any proposed treatment methods. In the advent Council does not have the technical expertise to review a treatment method an independent third party review may be requested. The proponent will be required to pay for these works.).
52. The proposed car parking facility (space size, aisle widths, headroom clearance gradients and safe sight distance etc) shall be redesigned where required to ensure all vehicles visiting the site can safely enter and leave in a forward direction in accordance with relevant sections of AS 2890. Traffic engineering certification confirming compliance with this condition shall be submitted for approval prior to the issue of the Construction Certificate.
53. 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.
54. 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.
55. 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) contrasting colour schemes, artwork surface finishes, and timber mid rails/skirting boards within public area/corridors, etc.

56. 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.
57. Prior to the issue of the Construction Certificate, a public domain improvements plan shall be submitted for approval by Council for Gardeners Road and New Street. The Plan shall be undertaken by a suitably experienced Landscape Architect and shall include but not be limited to new street tree planting, footpath paving (segmental/other), street tree pit treatments and tree guards, street furniture, in ground landscaping, amenity area lighting. The Plan shall be in accordance with Council's Draft Mascot Station Precinct Public Domain Manual and any other Council specification or requirement. Civil drawings shall be included detailing levels and detailed footpath construction sections in accordance with Council's Engineering Services requirements. The preparation of the public domain plan shall include consultation with Council's Landscape Architect.
58. Prior to the issue of the Construction Certificate, the concept landscape documentation submitted by 360 Degrees shall be the subject of **detailed, amended landscape documentation** to be submitted to and approved by the **City of Botany Bay's Landscape Architect**. The following amendments to the concept plan are to be incorporated in the detailed documentation:
- a) A planting plan showing all plant locations, groupings and centres. There is to be a dense layered planting treatment of trees, shrubs and groundcovers in all landscaped areas;
 - b) A plant schedule listing all plants by botanical name, total plant numbers, plant spacing, pot sizes and staking;
 - c) Amend the street tree selection to incorporate *Corymbia maculate* and setback tree to *Waterhousia 'Green Avenue'*
 - d) Incorporate addition small to medium trees (including mix of evergreen species) within the communal open spaces. A row of small to medium trees (i.e. *Elaeocarpus eumundii*) shall be provided along both side setbacks of the Level 2 landscape area at approximately 6-8 metre spacing to provide visual separation and screening to adjacent buildings.
 - e) Incorporate sufficient additional canopy tree planting within the central open space area to ameliorate the development;
 - f) All planter beds must be no less than the minimum soil depths as required by SEPP 65 (i.e. large trees – 1.3m, medium – 1m, small – 0.8m, shrubs – 500-600mm, groundcover – 300-450mm, turf – 100-300mm);
 - g) Show the location of underground stormwater tanks, ensuring deep soil availability for landscaping and tree planting is maximised.
 - h) Specifications detailing soil and mulch finishes, root barriers, irrigation, edging and other landscape hardworks such as retaining walls;

- i) Areas of paving, schedule of materials, edge treatments and sectional construction details.
- j) All fencing, privacy screening and pergolas including elevations and materials;
- k) During Stage 1 (Prior to construction of New Street) the setback along New Street shall be landscaped with trees and understorey planting. The trees shall be located to conform with Stage 2 (After construction of New Street) to ensure that they are not required to be removed after the construction of retail tenancies and their entries to the New Street frontage.

59. The development shall make provision for the following car parking allocations:

Car Parking Rates	Required
1 space per studio/1 bedroom unit	237 spaces
2 spaces per 2/3 bedroom unit	200 spaces
1 visitor space per 10 dwellings	34 spaces
Commercial spaces	12 spaces
TOTAL REQUIRED	483
TOTAL PROVIDED (Prior to New Street Construction)	505
TOTAL PROVIDED (After New Street Construction)	485

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.

60. Plans submitted with the Construction Certificate shall demonstrate compliance with the following:

- a) All residential unit size excluding balconies as minimum must be as following:
 - i) Studio = 60m²
 - ii) 1 bedroom = 75m²
 - iii) 2 bedroom = 100m²
 - iv) 3 bedroom = 130m²

- b) No consent is given or implied for the room layouts as shown on the architectural plans, Drawing No. DA14 to DA25 (Rev G) dated 14 April 2014. In this regard, the plans submitted with the Construction Certificate shall incorporate the approved Unit Layout in accordance with Drawing No. DA101 to DA105 (Rev A) dated 19 May 2014.
- c) Adaptable units must be provided in accordance with Section 4C.6.1 of Botany Bay Development Control Plan 2013. Such units shall be designed in accordance with AS 4299 and BBDCP 2013 (Section 4C.6.1). Details to be submitted with the Construction Certificate.

PRIOR TO THE COMMENCEMENT OF ANY DEVELOPMENT OR WORK

61.

- a) All management measures recommended and contained within the Soil and Water Management Plan (SWMP) submitted as part of the construction certificate shall be implemented in accordance with the *Landcom Managing Urban Stormwater – Soils and Construction* 4th Edition (2004). This plan shall be implemented prior to commencement of any site works or activities. All controls in the plan shall be maintained at all times and made available to council officers on request;
- b) Erosion and sediment control devices shall be installed and functioning prior to the commencement of any demolition, excavation or construction works upon the site in order to prevent sediment and silt from site works (including demolition and/or excavation) being conveyed by stormwater into public stormwater drainage system, natural watercourses, bushland and neighbouring properties. In this regard, all stormwater discharge from the site shall meet the legislative requirements and guidelines;
- c) These devices shall be maintained in a serviceable condition AT ALL TIMES throughout the entire demolition, excavation and construction phases of the development and for a minimum one (1) month period after the completion of the development, where necessary; and
- d) The vehicular entry/exits to the site must be protected from erosion and laid with a surface material which will not wash into the street drainage system or watercourse.

DURING WORKS

62. 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.
63. All remediation work must be carried out in accordance with:
- a) NSW Office of Environment and Heritage (OEH) 'Contaminated Sites – Guidelines for Consultants Reporting on Contaminated Sites';
 - b) NSW Environment Protection Authority (NSW EPA) guidelines under the Contaminated Land Management Act 1997;
 - c) State Environmental Planning Policy 55 (SEPP55) – Remediation of Land; and
 - d) the *Remedial Action Plan* (Report Ref: E27228KGrpt2-RAP) completed by EIS and dated 7 April 2014.
- 64.
- a) Any new information that comes to light during demolition, excavation, remediation and or 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.
65. All materials excavated from the site (fill or natural) shall be classified in accordance with the NSW Department of Environment and Climate Change (DECC) Waste Classification Guidelines (2008) prior to being disposed of to a NSW approved landfill or to a recipient site.
66. The management of potential and actual acid sulfate soils shall be conducted in accordance with all recommendations within the Acid Sulfate Soil Management Plan submitted prior to the construction certificate including:
- a) Site specific mitigation measures to both minimise the disturbance of acid sulfate soils as well as any measures relating to acid generation and acid neutralisation of the soil;

- b) Management of ASS affected excavated material;
 - c) Measures taken to neutralise the acidity of any ASS affected material; and
 - d) Run-off control measures for the ASS affected soil.
67. The land to which this Consent relates must be fenced and enclosed to protect the entry or access to the land and site by lawful persons. The fencing must be in place before demolition works commence.
68. 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.
69. During demolition and 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.
70. The Applicant shall conduct all demolition, 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.
71. All vehicles transporting soil, sand or similar materials to or from the site shall cover their loads at all times.
- 72.
- 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.

73. 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.
74. 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.
75. The operation shall not give rise to offensive odour or other air impurities in contravention of the Protection of the Environment Operations Act 1997. The Principal contractor shall ensure that all practical means are applied to minimise dust and odour from the site. This includes:
- a) Covering excavated areas and stockpiles;
 - b) The use of fine mists of hydrocarbon mitigating agents on impacted stockpiles or excavation areas;
 - c) Maintenance of equipment and plant to minimise vehicle exhaust emissions;
 - d) Erection of dust screens on the boundary of the property and/or closer to potential dust sources;
 - e) All loads entering or leaving the site are to be covered;
 - f) The use of water sprays to maintain dust suppression; and
 - g) Keeping excavated surfaces moist.
- 76.
- 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) Shaker pads are to be installed at the entry/exit points to the site to prevent soil material leaving the site on the wheels of vehicles and other plant equipment.
 - d) 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;
 - e) 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.
 - f) 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.
 - g) 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.
 - h) 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.
77. 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.

78. During demolition, excavation, remediation and construction, care must be taken to protect Council's infrastructure, including street signs, footpath, kerb, gutter and drainage pits etc. Protecting measures shall be maintained in a state of good and safe condition throughout the course of construction. The area fronting the site and in the vicinity of the development shall also be safe for pedestrian and vehicular traffic at all times. Any damage to Council's infrastructure (including damage caused by, but not limited to, delivery vehicles, waste collection, contractors, sub-contractors, concrete delivery vehicles) shall be fully repaired in accordance with Council's specification and AUS-SPEC at no cost to Council.

79. To prevent contaminated soil being used onsite and to ensure that it is suitable for the proposed land use, all imported fill shall be appropriately certified material and shall be validated in accordance with the:

- a) Office of Environment and Heritage (OEH) approved guidelines; and
- b) Protection of the Environment Operations Act 1997; and
- c) Protection of the Environment Operations (Waste) Regulation 2005.

All 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.

80. The principal contractor or owner builder must install and maintain water pollution, erosion and sedimentation controls in accordance with:

- a) The Soil and Water Management Plan;

- b) “Managing Urban Stormwater - Soils and Construction” (2004) Landcom (‘The Blue Book’); and
- c) Protection of the Environment Operations Act 1997.

81. The following shall be complied with:

- a) 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;
- b) Vibration levels induced by the demolition and construction activities shall not exceed 1mm/sec peak particle velocity (ppv) when measured at the footing of any occupied building.
- c) Vibration levels induced by the demolition and construction activities shall not exceed 3mm/sec peak particle velocity (ppv) when measured at the footing of any unoccupied building.
- d) The upper noise level from the demolition and construction operations measured over a period of 10 minutes must not exceed the background noise level by more than 10dB(A).

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

- 82. Prior to the issue of the Occupation Certificate, Lot 1 DP 797133, Lot 1 DP 534350 and Lot 31 DP 789177 shall be consolidated into one title. The linen plans for the consolidation shall be registered with Land & Property Information.
- 83. To ensure the constructed On-site detention, water quality management system including rainwater tanks and WSUD system will be maintained in operable condition a Positive Covenant under Section 88 E of the Conveyancing Act 1919, shall be created and registered on the subject land requiring the proprietor of the land to maintain the system in a satisfactory working order. The terms of the 88 E instruments are to be generally in accordance with the Council's draft terms for Maintenance of Drainage Systems and Proof of registration at the Lands and Property Information Office shall be submitted to the Principal Certifying Authority prior to issue of the Occupation Certificate.

Note: The covenant is to be submitted to Council for approval prior to lodgement with the Land and Property Information Service of NSW

- 84. All vehicular crossings are to be constructed prior to the issuing of an Occupation Certificate (or the completion of work or the use of the building). Accordingly, the applicant shall make a separate application to Council's Customer Service Counter to construct (or reconstruct) a vehicular crossing (either using Council or own forces) to all proposed vehicular entry points to the site. This work shall also include the removal and replacement of all redundant

vehicular crossings with vertical concrete kerb and gutter with the disturbed areas restored to Council's satisfaction.

85. Engineering certification shall be submitted to the Principal Certifying Authority confirming the following:

- a) Site stormwater drainage system has been constructed in accordance with approved plans and Botany Council's Stormwater Management Technical Guidellines (SMTG).
- b) Certification from Council confirming all external public infrastructure engineering works have been completed to Council satisfaction.

86.

- a) Prior to the issue of the Occupation Certificate, the development is to be constructed to meet the requirements detailed by the acoustic assessment report prepared by Acoustic Logic, dated 25 April 2013, received by Council 2 August 2013; and
- b) All acoustic work including that acoustic work required at Condition No. 42 shall be completed prior to the issue of the Occupation Certificate and validated by a qualified acoustic engineer in accordance with AS 2021-2000 and other relevant standards.

87.

- a) Prior to the issue of the Occupation Certificate, the development is to be constructed to meet the requirements detailed by the Qualitative Wind Impact Assessment, prepared by SLR Consulting Pty Ltd, dated 1 April 2014, received by Council 14 April 2014; and
- b) All wind mitigation measures required by the report at Condition No. 43 shall be completed and validated by a person with appropriate qualifications and experience.

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

- a) A Plan of Dedication shall be registered with the Department of Lands for the dedication of the new public road, at no cost to Council. The area of the land to be dedicated shall be the full length of the southern property boundary for a width of 9 metres as shown on the stamped approved plans. A copy of the registered document shall be submitted to Council for record purposes.
- b) Replace all the existing above ground electricity and telecommunication cables to underground cables within the site and road reserve area fronting Gardeners Road 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.

- c) Provide appropriate and suitable street lighting to a high decorative standard to the Gardeners Road street frontage of the site, so as 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.
 - d) The public domain shall be upgraded with new paving and street tree planting, to be installed by the Applicant at the Applicant's expense in accordance with the approved Public Domain Plan. All improvements shall be in accordance with Council's Landscaping Engineering specifications and requirements, and shall be constructed and completed prior to the issue of an Occupation Certificate.
 - e) New street trees at the pot size specified shall be installed in the accordance with the approved Public Domain Plan. The trees shall be sourced from a reputable supplier that grows stock to the NATSPEC specifications. A Dial-Before-You-Dig enquiry is required prior to all planting - Council is not liable for any damage to subsurface infrastructure during public domain works. Two hold point inspections are required: prior planting trees to ensure plant stock is suitable and post-planting.
 - f) The public footpaths in Gardeners Road shall be constructed in accordance with Council specifications and the Draft Public Domain Manual. The footpath dimensions, location, paver type and construction methods shall be in accordance with these specifications. 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 as a minimum. Pavers shall be ordered allowing for adequate lead time for manufacture (10-12 weeks).
89. Prior to the issue of an Occupation Certificate, landscaped areas on the property and in the public domain shall be installed and maintained in accordance with the Council approved amended, detailed landscape documentation, the conditions of consent (inclusive of the landscape amendments required) and Council's DCP at all times. An experienced Landscape Contractor shall be engaged to undertake the landscaping work and shall be provided with a copy of both the approved amended landscape drawing and the conditions of approval to satisfactorily construct the landscape to Council requirements. The contractor shall be engaged for a minimum period of 26 weeks from final completion of landscaping for maintenance and defects liability, replacing plants in the event of death, damage, theft or poor performance.
90. Rigid polyethylene sheet type tree root barriers shall be installed alongside the kerb and footpath edge for all new street trees for a depth of 900mm, for 3 metres each side of the tree centre and shall be located 150mm inward of the footpath and kerb edge, or any other built element. Root deflectors/directors surrounding the rootball are not permissible. The Applicant is required to contact Council's

Landscape Architect for an inspection of root barriers located within the public domain prior to backfilling and turfing.

91. To ensure satisfactory growth and maintenance of the landscaping, a fully automatic drip irrigation system is required to all site boundary landscape setbacks and frontages the communal/public open space areas, installed by a qualified landscape contractor. The system shall provide full coverage of all planted areas with no more than 300mm between drippers, automatic controller and backflow prevention device and shall be connected to a recycled water source, where provided. 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.

92. 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 DCP Part 3L. 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.

- 93.

- a) The five hundred and five (505) car parking spaces prior to the construction of New Street and the four hundred and eighty five (485) car parking spaces after the construction of New Street 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)/three (3) bedroom unit shall be allocated 2 car spaces;
 - iii) Twelve (12) car spaces shall be allocated to the commercial tenancies; and
 - iv) Thirty four (34) visitors car spaces shall be provided.
- 94. 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.
- 95. 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.
- 96. A Certificate of Survey from a Registered Surveyor shall be submitted to the Principal Certifying Authority to the effect that the maximum Floor Space Ratio (FSR) of 3.34:1 and maximum height of 45.5 metres for the North Tower and 45.3 metres for the South Tower (when calculated in accordance with the provisions of Botany Bay Local Environmental Plan 2013) as approved under this Development Application, has been strictly adhered to and any departures are to be rectified in order to issue the Occupation Certificate.
- 97. 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 Medium Rigid Vehicle (MRV) 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.
98. 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 as well as the location of the building (when complete) in relation to the boundary limits of the allotment.
99. 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.
100. 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; and
 - b) documentation from a 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.
101. Any damage not shown in the dilapidation report required under Condition No. 14 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.
102. 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.

103. Prior to the issue of the Occupation Certificate; the footpath at the commercial tenancy frontages must for reasons of public safety and presence be illuminated between sunset one day and sunrise the day following - 7 days a week and in accordance with the following standard:

- a) Lighting is to comply with the requirement for pedestrian areas in the current AS/NZS 1158;
- b) Lighting must be recessed into the facade;
- c) All associated wiring and conduits are to be completely concealed; and
- d) Light fittings should be readily accessible to support their regular maintenance.

104. Prior to the issue of the Occupation Certificate:

- a) Lighting (lux) levels for this development must include the installation of low glare/high uniformity lighting levels in line with Australian Standard AS:1158. Lighting sources should be compatible with requirements of any surveillance system installed within the development. (Poor positioning choices in relation to light can cause glare on the surveillance screens). The luminaries (light covers) should be designed to reduce opportunities for malicious damage. Lighting within the development needs to be checked and maintained on a regular basis. A limited amount of internal lighting should be left on at night to enable patrolling police, security guards and passing people to monitor activities within the premises;
- b) Any lighting on the site shall be designed so as not to cause nuisance to other residences in the area or to motorists on nearby roads, and to ensure no adverse impact on the amenity of the surrounding area by light overspill; and
- c) All lighting shall comply with AS4282-1997 Control of the obtrusive effects.

105. A Stage 4 – Site Validation Report (SVR) shall be prepared by a suitably qualified contaminated land consultant and shall be in accordance with:

- a) NSW Office of Environment and Heritage (OEH) ‘Contaminated Sites – Guidelines for Consultants Reporting on Contaminated Sites’;
- b) NSW Environment Protection Authority (NSW EPA) approved guidelines under the Contaminated Land Management Act 1997; and
- c) State Environmental Planning Policy 55 (SEPP55) – Remediation of Land.

The site validation report shall provide a notice of completion of remediation works, whether there are any ongoing site management requirements and a clear statement on the suitability of the proposed site use. The report shall be

submitted to the Principal Certifying Authority (and the Council if the Council is not the Principal Certifying Authority for review and concurrence). The report is to be submitted after completion of remediation works.

106. To ensure that the site is suitable for the proposed use, a Site Audit Statement (SAS) completed by an accredited site auditor under the *Contaminated Land Management Act 1997* shall be submitted to Council clearly demonstrating that the site is suitable for the proposed development. This shall be provided prior to the release of the Occupation Certificate.

Any conditions imposed on the SAS shall form part of this consent. The accredited site auditor shall provide Council with a copy of the Site Audit Report (SAR) and Site Audit Statement (SAS) prior to the issuing of the Occupation Certificate. In circumstances where the SAS conditions (if applicable) are not consistent with the consent, a Section 96 application pursuant to the *Environmental Planning & Assessment Act 1979* shall be submitted to ensure that they form part of the consent conditions.

107.

- 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 6 and 82 to 107 of this consent are pre-conditions to the issue of the Occupation Certificate.

CONDITIONS WHICH MUST BE SATISFIED PRIOR TO ISSUE OF SUBDIVISION CERTIFICATE

108. Submission of a subdivision certificate application accompanied by a linen plan with six (6) copies and appropriate fees.
109. Prior to the issue of Subdivision Certificate, a Certificate of Survey from a Registered Surveyor shall be submitted to the Principal Certifying Authority showing all the structures are wholly located within the property boundary.
110. A Positive Covenant and Restriction on Use of the land shall be created to all proposed lots to ensure that car parking for the residential part is not to be sublet or used for any other purposes.
111. 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:
- a) 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. 13/135.
 - b) Responsibilities with regard to the maintenance of artificial features at the property in accordance with the plans and details approved under Development Consent No. 13/135.

- c) Responsibilities regarding the maintenance of the car wash bays the Owners Corporation / building owner.
- d) 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.
- e) 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;
- f) 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.
- g) The Owners Corporation/Executive Committee obligations under clauses 177, 182, 183, 184, 185 and 186 of the Environmental Planning and Assessment Regulation 2000.
- h) 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;
- i) A graffiti management plan for the removal of graffiti and similar vandalism within seven (7) days of its occurrence and surface re-instatement;
- j) 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;
- k) Maintenance of the swimming pool;
- l) Maintenance of required acoustic and wind mitigation measures of Development Consent No. 13/135; and
- m) CCTV surveillance of all public areas within the development site.

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

112. 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.
113. 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 Medium Rigid Vehicles (as denoted by the current version of AS/NZS 2890.2) 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).
114. The approved visitor spaces shall be made available to residents, staff and visitors to the site at all times and shall not be allocated to individual units, sold or leased or any other purpose.
115. 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.
116. 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.
117. 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.
118. No roller shutters are to be installed to any of the commercial shopfronts that front Gardeners Road.

119. The hours of operation of any future commercial use must be restricted to the hours of 7:00am to 10:00pm Monday to Saturday and 7:00am to 8:00pm Sunday and public holidays.
120. The use of the premises shall not give rise to any of the following when measured or assessed at “sensitive” positions within any other property. These “sensitive” positions should be selected to reflect the typical use of a property (ie any outdoor areas for day and evening but closer to the façade at night time), unless other positions can be shown to be more relevant.
- a) The operation of all plant and equipment shall not give rise to an equivalent continuous (L_{Aeq}) sound pressure level at any point on any residential property greater than 5dB(A) above the existing background L_{A90} level (in the absence of the noise under consideration).
 - b) The operation of all plant and equipment when assessed on any residential property shall not give rise to a sound pressure level that exceeds L_{Aeq} 50dB(A) day time and L_{Aeq} 40 dB(A) night time.
 - c) The operation of all plant and equipment when assessed on any neighbouring commercial/industrial premises shall not give rise to a sound pressure level that exceeds L_{Aeq} 65dB(A) day time/night time.
 - d) For assessment purposes, the above L_{Aeq} sound levels shall be assessed over a period of 10-15 minutes and adjusted in accordance with EPA guidelines for tonality, frequency weighting, impulsive characteristics, fluctuations and temporal content where necessary.
121. 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 120 above.

122.

- 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.

123. New street trees shall be maintained by the Applicant/Owner/Strata Corporation for 12 months after planting (ie. final hold-point inspection). Maintenance includes watering twice weekly to enable good establishment and sustain adequate growth. There shall be two (2) fertilizer applications using a suitable product for natives applied at manufacturer's recommendations, ongoing weed removal, mulch replenishment (minimum of 2) maintaining a 1 metre wide mulch ring at all times and removal of grass/weeds within the mulch ring. Maintenance does not include trimming or pruning the trees under any circumstances. Formative pruning will be undertaken by Council.

124. The landscaped areas on the property shall be maintained in accordance with the approved landscape documentation and to Council's satisfaction at all times. The automatic drip irrigation system shall be maintained in working order at all times.

125. 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. 13/135 dated as 2 August 2013 and that any alteration, variation, or extension to the use, for which approval has been given, would require further Approval from Council.